

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 862/96

4.11.99

Date of Decision:

M.B.Shinde

.. Applicant

Shri G.K.Masand along with Sh.Karker Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

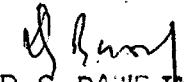
Shri V.S.Masurkar and Shri Vadhavkar Advocate for  
for Shri M.I.Sethna Respondent(s)

CORAM:

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library

  
(D.S.BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.862/96

Dated this the 4th day of November 1996.

CORAM : Hon'ble Shri D.S.Bawej, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Madhukar Babarao Shinde,  
Deputy Commissioner of Police,  
Port Zone, Mumbai.

... Applicant

By Advocate Shri G.K.Masand  
alongwith Shri S.S.Karkera

V/S.

1. Union of India through  
Secretary,  
Ministry of Home Affairs,  
New Delhi.
2. The State of Maharashtra  
through the Secretary,  
General Administration Dept.,  
Mantralaya, Bombay.
3. The Union Public Service  
Commission, Dholpur House,  
New Delhi.
4. The State of Maharashtra  
through Additional Chief  
Secretary, Mantralaya,  
Bombay.

... Respondents

By Advocates Shri V.S.Masurkar  
for Respondent No.1 and Shri  
V.D.Vadhavkar for Shri M.I.Sethna  
for Respondents No.2 & 4.

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..2/-

ORDER

{Per : Shri D.S.Baweja, Member (A)}

The applicant was initially appointed as Deputy Superintendent of Police Service in State of Maharashtra on 16.8.1976. After being promoted to higher scales from time to time, the applicant was appointed to Indian Police Service (IPS) under Indian Police Service (Appointment by promotion) Regulations 1955 in 1988 as per notification dated 22.9.1988 based on the selection committee meeting held in December, 1987. The case of the applicant is that he was entitled to be promoted to IPS in 1986 based on the selection held in 1986. The applicant represented against the same on 10.10.1988 stating that he was denied consideration in 1985 only on the basis of the adverse remarks of 1983-84 which were conveyed        in May 1985 had already been expunged by letter dated 9.10.1985. The applicant again was not considered in December 1986 on account of adverse remarks conveyed for 1985-1986 on 19.11.1986 which were also expunged based on his representation by order dated 7.12.1987. The applicant represented for his non inclusion in the select list of 1985 and 1986. However, his representation for retrospective promotion and consequent fixation of seniority was rejected as per letter dated 6.3.1991 and communicated to the applicant on 6.5.1991.

2. Feeling aggrieved by the order dated 6.6.1991, the applicant had earlier filed OA.No.601/91 challenging his non promotion to IPS by placing reliance on the expunged adverse remarks. This OA. was decided as per order dated 5.9.1995 directing the respondents to convene a review Selection Committee in respect of the selection made in December, 1986 and consider the case of the applicant ignoring the adverse remarks conveyed for the report of 1985-86. In pursuance of this order, the applicant submits that the respondents as per order dated 13/14.5.1996 have informed him that the review Selection Committee did not assess the applicant as 'Fit' for appointment by promotion to IPS in 1987. Feeling aggrieved by this order, the applicant has filed the present OA. on 21.8.1996 seeking the following reliefs : -

(a) set aside the order dated 13/14.5.1996 and direct respondents to promote the applicant to IPS with effect from 1985 with all consequential benefits.

(b) to direct respondents to consider the case of the applicant afresh on the basis of his corrected service record as on December, 1985 and place the name of the applicant in 1986 select list prepared based on December 1985 Selection Committee meeting and promote the applicant from the date Shri S.M.Mushrif was promoted.

(c) Alternatively, declare that the failure of the respondents to select the applicant by the Selection Committee meeting held in December, 1986 is bad in law and direct respondents to place the name of the applicant in the select list of 1987 from the date when Shri Iqbal Ahmd was appointed to IPS in 1987.

3. The applicant has also raised the issue of his seniority. The applicant submits that before 1988, The IPS (Regulation of seniority) Rules, 1954 were in operation. These Rules were replaced by the seniority Rules of 1988 which came into effective have from 27.7.1988. These Rules drastically changed the method of assignment of year of allotment with prejudice to efficient officers who had officiated in senior posts long before their appointment by promotion to IPS. Instead of linking it to the year of allotment of a direct recruits as was done as per 1954 Rules, a system of flat weightage is evolved under the new Rules. The applicant's contention is that since the applicant had a right to be appointed to service prior to the notification of 1988 Rules, the applicant cannot be deprived of the benefit of 1954 Rules. Based on these averments, the applicant has sought the reliefs 8 (g), (h) and (i) to declare that the applicant is governed by IPS (Regulation of Seniority) Rules, 1954 and entitled to same year of allotment as the junior most directly recruited IPS officer who was appointed to a senior post prior to 29.9.1988

or alternatively junior most directly recruited IPS officer who was appointed to the senior post prior to December, 1985.

4. The respondents in the written statement have strongly opposed the application. The respondents submit that the applicant cannot raise the issue of promotion to IPS from 1985 again through the present OA. as this prayer earlier made in OA. 601/91 was not allowed as per the order dated 5.9.1995. As regards promotion in the select list of 1987 based on the Selection Committee meeting held in December, 1986, review Selection Committee meeting was held on 8.2.1996 as per the directions in the order dated 5.9.1995 and the applicant has not been found fit. He was accordingly informed as per the order dated 13/14.5.1996. The applicant was found fit by the Selection Committee meeting held on 4.12.1987 and accordingly his name was included in the select list of 1987 and appointed to IPS as per notification dated 22.9.1988. The respondents further add that the applicant is mixing up the issue of seniority and inclusion of his name in the seniority list in the same OA. Further, the applicant has taken up the point of seniority rules for the first time in the present OA. and the same is time barred and does not survive. In the context of the averments made in the written statement, the respondents pray that present OA. deserves to be dismissed.

5. The applicant has not filed any rejoinder reply for the written statement of the respondents.

6. We have heard the arguments of Shri G.K.Masand along with Shri S.S.Karkera, learned counsel for the applicant and Shri M.I.Sethna along with Shri V.D.Vadhavkar, learned counsel for the respondents.

7. The applicant in the pleadings in the OA. has made out a case that he is entitled for promotion to IPS cadre in 1985 and has accordingly prayed for the reliefs as detailed above. Respondents have opposed the same stating that the prayer for this relief was earlier made in the OA.NO.601/91 which was rejected in the order dated 5.9.1995 and therefore for this prayer the present OA. is not maintainable. On going through the order dated 5.9.1995, we find merit in the submission of the respondents. The prayer of the applicant for promotion to IPS in 1985 attracts the principle of res-judicata and therefore not maintainable. The counsel of the applicant during the hearing however made a statement at the Bar that he does not press for this relief.

8. The main issue under challenge is with regard to non-placement of the applicant in the select list of 1987 framed based on the Selection Committee meeting held in December, 1986. As brought out above, the applicant had filed OA.NO.601/91 seeking this relief and the OA. was decided as per order dated

5.9.1995 with the direction to hold review Selection Committee to consider the case of applicant ignoring the adverse remarks in the report of 1985-86 which came to be expunged. As per respondents, in pursuance of this order, review Selection Committee held its meeting on 8.2.1996 and it did not find the applicant fit for promotion. The present OA. therefore arises out of the impugned order dated 13/14.5.1996 through which the applicant has been intimated the result of the review Selection Committee meeting. The applicant has challenged his non-selection by the review Selection Committee through the present OA. The applicant in the OA. has advanced the argument that the applicant was promoted as Addl. S.P. on 26.9.1983 implying that his record upto March, 1983 was graded as B + which is the bench mark for promotion as non cadre officer in Maharashtra State. He adds further that adverse remarks conveyed for the reports of 1983-84 and 1985-86 had been subsequently expunged and therefore the applicant ought to have been declared as included in the select list of 1986. During the hearing the counsel for the applicant took additional grounds not averred in the OA. to challenge the proceedings of the review Selection Committee. The counsel for the applicant stated that review Selection Committee has not properly considered the case of the applicant because of (a) the adverse remarks in the report of 1985-86 which were expunged appear to have been taken into account as the expunged remarks were not deleted by pasting a sheet over the same in the report. (b) With the expunging of the

adverse remarks, the grading should have gone up and this was not done. (c) review Selection Committee should have compared the record of all the selected candidates with that of the applicant and (d) since the report of 1985-86 only came in the way of placement in the select list, then this will mean that record upto March, 1985 was good and the expunging of the remarks for 1985-86, he should have been selected.

9. The respondents have made available the proceedings of the review Selection Committee meeting and the relevant confidential reports. We have carefully gone through the same. Before we go into the grounds raised by the applicant in challenging the recommendations of the review Selection Committee meeting, we will review the judgements cited by the applicant in support of his contentions. The applicant has placed reliance on the following judgements :-

(a) Union of India vs. M.L. Cooper & Ors.,

AIR 1974 SC 87.

(b) Dr. B.R. Kulkarni vs. Government of Gujarat & Ors.,

1978 (2) SLR 682 (Gujarat High Court).

(c) Brij Mohan Chopra vs. State of Punjab,

AIR 1987 SC 948.

(d) **Pranabandhu Sahu vs. State of Orissa & Ors.,**

II (1990) ATLT (SAT) 132.

(e) **Vasant Waman Pradhan vs. State of Maharashtra,**

1991 (1) SLJ (CAT) 257.

**(a) Union of India vs. M.L.Cooper**

The applicant has called in this judgement to support his ground that the review selection committee should have reviewed comparative merit of all those placed on the select list in determining the fitness of the applicant. In this judgement, we note that the Hon'ble Supreme Court while interpreting the Regulation 5 (2) of Indian Police Service (Appointment by promotion)Regulations 1955 has stated that the required number has to be selected by a comparison of merits of all the eligible candidates of each year.

**(b) Dr.B.R.Kulkarni vs. Government of Gujarat & Ors.**

The applicant has cited this judgement of Gujrat High Court to support his ground that after expunging the adverse remarks from his reports, the upward revision of the grading was required to be done. The applicant has relied upon what is laid down in this judgement in para 25. The Hon'ble Single Judge has held that grading consists<sup>in</sup> reality of summing up and assessing

of the various points included in the report. If the adverse remarks which are earlier taken into account in arriving at the grading, then on expunging of such adverse remarks, the grading must also go up.

(c) Brijmohan Chopra vs. State of Punjab

This judgement deals with the subject of compulsory retirement. The applicant has relied upon this referring to head note 'D' based on para 7 of the judgement. In para 7, their Lordships of Hon'ble Supreme Court have laid down that adverse entries if any in the reports lose their significance after promotion of employee and therefore cannot be taken into account while forming opinion to retire him prematurely. As discussed earlier, this judgement is not relevant to the present case as there were no adverse reports before 1983 when the appellant was promoted to non-cadre post.

(d) Paranabandhu Sahoo vs. State of Orissa

This is the order of Orissa Administrative Tribunal. The applicant has cited this order referring to what is held in para 7 to support his contention that adverse entries in the reports before promotion become stale after promotion. In this case, the applicant was promoted on 1.9.1981 on the basis of merit cum seniority on temporary basis against direct recruitment

quota. He was also allowed to cross efficiency bar on 10.5.1981. Subsequently, case of the applicant along with others was considered for promotion against vacancies meant for promotion quota for the year 1981 onwards by the Public Service Commission. The Commission found the applicant unsuitable for promotion and reverted the applicant. This was challenged before the Tribunal. The Tribunal set aside the reversion order holding that adverse entries prior to promotion on 1.9.1981 and crossing of efficiency bar on 10.5.1981 became non-existent in the eyes of law. As stated earlier in respect of judgement in the case Brij Mohan Chopra, what is held in this order is not relevant to present case of the applicant.

(e) Vasant Waman Pradhan vs. State of Maharashtra

This order is also cited referring to para 8 of the order on the point that the review selection Committee is required to prepare comparative statement while re-assessing the applicant in respect of all those who had been placed on the select list.

10. In the light of the grounds advanced by the applicant and the cited judgements, we have carefully gone through the proceedings of the review Selection Committee meeting and the Annual Confidential reports of the relevant years made available by the respondents. Taking the first ground, we note that the

adverse remarks which were accepted by the competent authority for expunging have been deleted from the reports and necessary endorsement to this has been made in the reports. Further, the minutes of the review Selection Committee meeting reveal that the Committee has reviewed the case of the applicant after taking into account the expunged remarks. In view of this, applicant's contention that the expunged adverse remarks were again taken into account by the review Selection Committee due to non pasting of the same in the report is without any substance and is based merely on apprehension.

11. The second ground is that the review Selection Committee has not done review of the record of the applicant in comparison with all those placed on the select list. The applicant has relied upon the judgement of the Hon'ble Supreme Court in the and case of Union of India vs. M.L.Cooper/order of the Tribunal in the case of Vasant Waman Pradhan. On going through the proceedings of the review Selection Committee and briefing note that put up to the UPSC, it is noted In the earlier select list based on the meeting held in December, 1986, only one officer was placed on the select list. The review selection Committee graded applicant unfit for promotion and therefore the question of comparison of merit with other selectees did not arise which is required for the purpose of placement on the select list as per IPS (Appointment by promotion) Regulations 1955. This contention of the applicant is therefore not tenable and there is no

violation of the law laid down in the cited judgements as to vitiate the proceedings of the review Selection Committee.

12. The third ground advanced by the applicant is that with the expunging of the adverse remarks, the grading in the confidential reports of 1983-84 and 1985-86 should have been revised upwardly placing reliance on the judgement in the case of Dr.B.R.Kulkarni (supra). It is agreed that expunging of the adverse remarks may call for revision of the grading, if any earlier given based on the gravity of the adverse remarks and how far a particular adverse remarks had influenced the overall grading. However, whether the grading requires modification and to what extent is within the domain of the competent authority. In the present case, on going through the confidential report of 1985-86, we note that there is no column for the overall grading. For the purpose for selection to IPS as per the IPS (Appointment by Promotion) Regulations,1955 clause 5 (4), the Selection Committee is to determine the grading of overall assessment of the service record. We note that the review Selection Committee has reassessed the grading of the applicant after ignoring the expunged remarks and has not found the applicant fit. Therefore this contention is without any substance.

13. Now we come to the fourth ground and which is the main plank of defence of the applicant. The applicant submits that the applicant was graded B + till 1983 which is the bench mark for promotion to the post of Addl. S.P. in Maharashtra State.

Thereafter, the adverse remarks conveyed for the report of 1983-84 were subsequently expunged and nothing adverse was conveyed based on 1984-85 report. This as per applicant would imply that his record upto 1985 was good. The applicant further states that adverse remarks for the report of 1985-1986 which came in the way of the applicant being placed on the select list in 1986 were also expunged and therefore review Selection Committee should have declared him fit for placement on the select list. As regards the contention of the applicant that his record upto 1985 was upto the mark, we refer to the earlier OA. No.601/91 filed by the applicant wherein he had challenged his non placement in the select list based on the Selection Committee meetings held in December 1985 and December 1986. The Bench in its order dated 5.5.1995 as stated earlier did not find merit in his claim for placement in the select list based on the Selection Committee meeting held in December, 1985 when the reports upto March 1985 must have been considered. Therefore, the inference of the applicant that his record upto 1985 was positively good in the face of the fact that the Committee did not find him fit even after expunging of the adverse remarks for the year 1983-84 is not understandable. We are therefore not impressed by the applicant's contention and unable to endorse the same. Now coming to the expunging of the adverse remarks for the report of year 1985-86, we note that the adverse remarks were conveyed as per letter dated 12.9.1986. Adverse remarks have been expunged as per the order dated 22.9.1987 based on the representation made

by the applicant. On comparing the two letters, we find that all the adverse remarks conveyed originally have not been expunged. The applicant has not brought out whether he made any further representation against the order dated 22.9.1987. We find that substantial portion of the adverse remarks reflecting on the performance of the applicant still remained. On going through the proceedings of the review Selection Committee meeting, we note that the Committee has reviewed the case of the applicant after noting the remarks which had been expunged and ~~considering~~ the remaining adverse remarks and ~~assessment~~ against the ~~traits~~ and qualities. The committee concluded that the applicant is not ~~fit~~ 'fit' for placement in the select list. We find that Selection Committee members have applied their mind and carefully considered the case of the applicant in compliance of the direction in the order dated 5.5.1995 in OA.601/91. It is settled law that it is not the function of the Court to sit in appeal over the decision of the Selection Committee with regard to fitness of candidate for a particular post. In a judicial review, interference may be called for <sup>only</sup> on limited grounds such as patent irregularity in the constitution of the Committee, violation of rules or proved malafide etc. In this connection, we refer to judgement of the Hon'ble Supreme Court in the case of Dalpat Abasaheb Solunke vs. Dr.B.S.Mahajan, 1990 SCC (L&S) 80. Relevant para 12 is extracted below :  


"... It is needless to emphasis that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved malafides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

Similar view has been taken by their Lordships of Supreme Court in the case of Nutan Arvind vs. Union of India, (1996) 33

ATC 228 in para 6 :-

".... When a high level committee has considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this court cannot sit over the assessment made by DPC as an appellate authority...."

The respondents have cited the order dated 20.7.1999 in OA.730/92, D.S.Ranade vs. Union of India, wherein the Bench held the view that no interference can be done with the findings of which is the Selection Committee as an appellate court/in line with the law laid down by the Hon'ble Supreme Court in the above referred judgement. In ~~the~~ the infirmities pointed out by the applicant in the proceedings of the review Selection Committee, ~~we~~ we do not find

substance in any of them as deliberated earlier. The applicant has not alleged any malafides for his non placement on the select list. Therefore, in view of the law laid down by the Hon'ble Supreme Court in above cited judgement, we do not find any grounds which vitiate the decision of the review Selection Committee wherein judicial interference may be warranted.

14. The applicant has also prayed for relief of determining his year of allotment in the select list of 1987 declaring that the applicant is governed by the IPS (Regulation of Seniority) Rules of 1954 and not of 1988 which came into operation only from 27.7.1988. The respondents have opposed this relief stating that the applicant has raised this issue for the first time through the present OA. filed on 21.8.1996 and is therefore barred by limitation. On careful consideration of the facts of the case, we find that the claim of the applicant is not sustainable on several counts. Firstly, the issue of the seniority as per the 1954 Regulations does not flow out of the relief of placement in the select list of 1987. These are two distinct issues and therefore the plural reliefs have been sought through a single application and the same is not admissible as per Rule 10 of 1987 Rules of Administrative Tribunal Act. Secondly, the applicant was aware of his seniority position in 1988 and should have agitated the matter at the appropriate time. The applicant has not made even a whisper of averment to say that he had represented for his year of allotment as per 1954 Regulations. The applicant has neither

explained the delay in claiming the relief in 1996 nor has filed any application for condoning delay. In the light of these facts, we subscribe to the contention of the respondents that the application is barred by limitation so far the relief of seniority is concerned, apart the OA. being not maintainable on account of plural reliefs. It is also noted that the counsel of the applicant did not advance any arguments on this issue during the hearing.

15. In conspectus of the discussions above, we do not find any merit in the OA. and the same is dismissed accordingly. No order as h. costs.

SL Jain

(S.L.JAIN)

MEMBER (J)

D.S. Baweja

(D.S. BAWEJA)



MEMBER (A)

mrj.