

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 1007/1996

Dated this Mumbai, the 5th day of November 2001.

Rajendra Anandrao Sonawane Applicant.

Shri S.R. Atre

Advocate for the
Applicant.

VERSUS

UOI & Others

Respondents.

Shri V.S. Magukar for R-1

Advocate for the
Respondents.

Shri V.D. Vadhavkar proxy for

Shri M.I. Sethna for R-2 and R-3

CORAM : Hon'ble Shri S.L. Jain, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

(i) To be referred to the Reporter or not ? Yes.

(ii) Whether it needs to be circulated to other
Benches of the Tribunal ?

(iii) Library. Yes


(M.P. Singh)
Member (A)

Cases referred:

os* UPSC Vs. Hiranyalal Dev & Ors. 1988(3)SC SLJ 60

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.1007/1996

Mumbai, this 5th day of November, 2001

Hon'ble Shri S.L. Jain, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

Rajendra Anandrao Sonawane
15, Main Bunglow
Queen Garden, Pune, Maharashtra .. Applicant
(By Shri S.R. Atre, Advocate)

versus

1. Union of India, through
Secretary
Ministry of Home Affairs
South Block, New Delhi
2. Addl. Chief Secretary
Govt. of Maharashtra
Home Department, Mantralaya, Mumbai
3. Director General and Inspector
General of Police
Maharashtra State, Mumbai .. Respondents

(By Shri V.S. Masurkar, Advocate for R-1
Shri V.D. Vadhavkar, proxy for Shri M.I. Sethna,
Advocate for R-2 and R-3)

ORDER

Shri M.P. Singh

The applicant belongs to Maharashtra State Police Service having been initially recruited as a direct Dy. Supdt. of Police/Asstt. Commissioner of Police w.e.f. 2.6.1975. He became eligible for consideration for induction into Indian Police Service (IPS, for short) in the year 1984. In the selection committee meeting conducted by the UPSC in the year 1984, he was not found fit for promotion to IPS as there were some adverse entries in his ACR for the year 1983-84. He made a representation against the adverse remarks which were later on expunged by the Govt. of Maharashtra (Respondents No. 2). Thereafter, he made a further representation in the light of expunction of adverse



remarks from his ACR for the year 1983-84 that his case be reviewed by the selection committee for induction into IPS with effect from the date his juniors had been appointed to IPS. Respondents have rejected the representation on the ground that there was no provision of review in the Indian Police Service (Appointment by promotion) Regulation, 1955.

2. Applicant filed OA No.28/1992 before this Bench which was disposed by an order dated 4.8.1994 with the direction to the respondents to hold a review selection committee meeting to consider his case for the vacancies for the year 1984, 1985 and 1986. Review was conducted by the selection committee in its meeting held on 9.12.1994 by considering the applicant for including his name in the select list of 1984 after ignoring the adverse remarks for the year 1983-84. The selection committee classified the applicant as 'unfit' for the year 1984. Thereafter, the selection committee again considered him for induction into IPS and assessed him as 'good' and accordingly included his name in the select list of 1985. The contention of the applicant is that he should have been included in the select list of 1984 once the adverse remarks contained in his ACR for 1983-84 were expunged. According to him the selection committee has not made a proper assessment in his case. Aggrieved by this he has filed the present OA seeking directions to the respondents on the following lines:

(i) To quash and set aside the notification dated 15.9.95 and order dated 9.8.96 (Annexure A-I and A-IA) and appoint him by promotion to the Indian Police Service (IPS) w.e.f. 4.6.1985 when his juniors were so promoted and grant him seniority and consequential benefits; and

(ii) To consider his continuation officiation in the cadre post w.e.f. 28.9.1983 and determine his year of allotment in IPS on the basis of Rule 3(3)(b) of the Indian Police Service (Regulation & Seniority) Rules, 1954 (for short RULES, 1954).

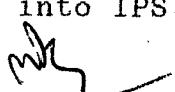
3. Respondents in their reply have contested the case and have stated that the name of applicant along with other officers was considered by the selection committee held by UPSC for induction into IPS on 15.12.84 which found the applicant 'unfit'. Subsequently, as per the judgement of this Tribunal dated 4.8.94 in OA No.28/92, the review selection committee met on 9.12.94 and considered the whole question afresh, applied their mind and also treated applicant's case as having no adverse remarks for the year 1983-84. On an overall relative assessment of applicant's records, the review committee classified him as 'unfit' and on the basis of this classification did not recommend any change in 1984 select list prepared on 15.12.84. The committee next considered his case for inclusion of his name in 1985 select list prepared on 5.12.85 and on an overall relative assessment of his service records, assessed him as 'good' and accordingly recommended for inclusion of his name in 1985 select list and induction into IPS cadre of Maharashtra. Since there were 13 vacancies available in the promotion quota of Maharashtra, the review committee noted that the applicant will definitely get appointment to IPS on the basis of inclusion of his name in 1985 select list and there was no need to review his

case for inclusion of his name in 1986 select list prepared on 16.12.86. In view of this position, there is no substance in applicant's case and the OA is liable to be dismissed.

4. Heard the contentions of the rival contesting parties and perused the records.

5. During the course of the arguments, the learned counsel of the applicant submitted that adverse remarks contained in applicant's ACR for the year 1983-84 have been expunged by the Govt. of Maharashtra and therefore the assessment made by the selection committee while reviewing the proceedings of selection committee meeting held on 15.12.84 and grading him as 'unfit' is not correct. Once the adverse remarks have been expunged from the ACR of 1983-84, there is no material against the applicant which would have come in his way for including his name in the select list for the year 1984. He also submitted that the assessment of the selection committee is not fair and has been made in an arbitrary manner by not including him in 1984 select list.

- 6. On the other hand, learned counsel for respondents took preliminary objection of not making UPSC as necessary party. He submitted that in this case the meeting of the review selection committee has been convened by UPSC which is primarily concerned for making selection of State Police Officers for their induction into IPS. The application is therefore liable to



dismissed on this ground alone. He also submitted that it is the function of the selection committee/UPSC to assess and classify the service record of the officers and make selection of candidates of the state police service for induction into IPS. The Court or the Tribunal cannot perform the role of the selection committee. He further submitted that it is not a case of promotion of the applicant from state police service to IPS but induction from state police service to IPS and therefore there is no question of supersession. The concept of selection applies only in promotion and not in selection. In support of his contention, he has relied upon the judgement of the Supreme court in the case of UPSC Vs. Hiranyalal Dev & Ors. 1988(3) SC SLJ 60.

7. The main question for consideration before us is whether the applicant could be included in the select list of 1984 once the adverse remarks from his ACR of 1983-84 have been expunged by the State of Maharashtra. On our directions, the learned counsel for respondents produced the original records relating to the selection of the applicant from state police service to IPS. From the records placed before us, we find that earlier the applicant was considered for induction from state police service to IPS by the selection committee for the years 1984, 1985 and 1986 respectively. All the three selection committee on an overall relative assessment of his service records assessed the applicant as 'unfit'. He was finally considered suitable for promotion to IPS in the year 1987 in the meeting held on 4.12.87 and was



included in the select list in that year and he was promoted to IPS on 22.9.88. The ACR of the applicant for the year 1983-84 contained certain adverse remarks. Applicant represented to the Government of Maharashtra against the said adverse remarks on 22.8.84. He again represented to the Government on 22.2.90 and after considering his second representation, the state government expugned the adverse remarks recorded in his ACR for the year 1983-84. Thereafter, applicant represented on 2.6.90 requesting that he may be given 4.6.85 as deemed date of promotion to IPS and the same was forwarded to the Govt. of India, which rejected the same.

8. Applicant challenged this decision of the Govt. of India by filing OA No.28/92 in the Bombay Bench of this Tribunal. The Tribunal vide its order passed on 4.8.94 allowed the OA and directed that appropriate review selection committee meeting be held within four months. In pursuance of the above mentioned judgement, review selection committee meeting was held on 9.12.94 to review the proceedings of the selection committee held on 15.12.84 for promotion of the applicant to IPS cadre of Maharashtra. The review selection committee considered the whole matter afresh and treated his case as having no adverse remarks for the year 1983-84 and observed that even after ignoring the adverse remarks for the year 1983-84, which have been expunged by the state government, the performance of the applicant in respect of various functions assigned to him as reflected in



various columns of the ACRs is either average or below average, which fell short of the grading 'good'. As such, on an overall assessment of his service records, the committee classified him as 'unfit'. On the basis of this classification, the review selection committee did not recommend any change in the select list of 1984 prepared on 15.12.84. The committee next considered the case of the applicant for inclusion of his name in the select list prepared on 5.12.85. The committee examined the service records of the applicant upto the year 1984-85 and on an overall assessment of his service records, graded him as 'good'. On the basis of this assessment the review selection committee recommended the name of applicant to be included in the select list prepared on 5.12.85 for promotion to IPS cadre of Maharashtra. The committee noted that since there were 13 vacancies available in the promotion quota of IPS cadre of Maharashtra, applicant would definitely get appointment to IPS on the basis of inclusion of his name in the select list prepared on 5.12.85. As such, the committee observed that there was no need to review the case of applicant for inclusion of his name in the select list prepared on 16.12.86.

9. As per IPS (Appointment by promotion) Regulations, 1955, the whole CR dossier of the candidates belonging to state police service is required to be taken into consideration while making overall assessment by the selection committee. But the selection committee normally takes into account only the ACRs of last five

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years of the candidates to assess ^{their} ~~his~~ suitability for induction into IPS. We are conscious of the legal position that Tribunal cannot perform the role of selection committee and also cannot substitute itself in place of the selection committee and make selection.

10. We have gone through the ACR folder of the applicant with a view to ensure that the assessment made by the selection committee is fair, and is not arbitrary as alleged by the counsel for the applicant. The ACRs for the last five years of the applicant viz. 1979-80, 1980-81, 1981-82, 1982-83 and 1983-84 were required to be assessed by the review selection committee for including his name in the select list of 1984. We find that it was not the ACR of 1983-84 alone which contained the adverse remarks, although these remarks were expunged subsequently, but the ACR of the applicant for the year 1979-80 also contains adverse remarks. These adverse remarks in the ACR of 1979-80 were duly communicated to the applicant in 1980 itself ^{and} ~~but~~ have not been expunged. It was only in the year 1985 when he was considered for inclusion in the selection list of that year that the ACR of 1979-80, which contains adverse remarks, was not taken into account and therefore he was assessed by the review selection committee as 'good' and recommended for inclusion in the select list for the year 1985. In view of the above position, we do not find any fault with the assessment made by the review selection committee while considering him for the year 1984 and grading him as 'unfit'.

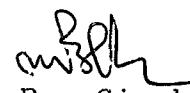
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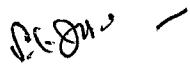
10. The other argument advanced by the learned counsel for the applicant is that by not including the name of the applicant in the select list of 1984, he has been superseded by his juniors working in the state police of Maharashtra. In this connection it is relevant to mention that the Hon'ble supreme court in a similar case, i.e. UPSC Vs. Hiranyalal Dev (supra) has held as under:

"The selection committee was making a selection and when some one was selected in preference to the other, it could not be said that it amounted to supersession of a junior by a senior. The concept of supersession is relevant in the context of promotion and not in the context of selection".

In view of the above ruling of the apex court, the aforesaid contention of the learned counsel for the applicant is not tenable.

12. In the light of the aforesaid detailed discussions, we do not find any merit in the OA and therefore there is no reason for us to interfere with the notification dated 15.9.95 and order dated 9.8.1996 issued by the respondents. In the result, the OA is dismissed being devoid of merit. There shall be no order as to costs.


(M.P. Singh)
Member(A)


(S.L. Jain)
Member(J)

/gtv/

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Received the following two Sealed envelopes.

i) IPS 3291/11763/CR69/PSC I

ii) IPS 3192/2157/CR186/PSC I


N. NAMISIVAYAM 12.94.
Under Secretary
Union Public Service Commission
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