

MUMBAI
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: ~~XXXXXX~~ BENCH

O.A. No. 566 of 1996

-9-2001.

DATE OF DECISION:

S.A.Khopade.

..Petitioner(s)

Mr.S.R.Atre

..Advocate for
the Petitioner(s)

Versus

1. UOI, through Secy., to Govt. of India, : Respondent(s)
M/o Home Affairs, New Delhi & others.

Mr.V.S.Masurkar

..Advocate for
the Respondent(s)

THE HON'BLE SRI Justice V.Raja Gopala Reddy, Vice Chairman
THE HON'BLE SRI Smt. Shanta Shastray, Member(Admn.)

1. Whether Reporters of local papers may be : **NO**
allowed to see the Judgment ?
2. To be referred to the Reporter or not ? **NO**
3. Whether His/Their Lordship wish to see the **Yes**
fair copy of the ~~or~~ Judgement?
4. Whether the Judgement is to be circulated **NO**
to the other Benches ?

JUDGEMENT DELIVERED BY HON'BLE SRI Justice V.Rajagopala Reddy, VC

HSG
M(A)

OAI
HVRGRJ
VC

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH

MUMBAI

O.A.No.566 of 1996

DATE OF DECISION: 21-9-01.

Between:

S.A.Khopade, presently working
as Commandant, State Reserve Police
Force, Group No.2, Pune. Applicant

and

1. The Union of India, through the
Secretary to the Govt. of India,
M/o Home Affairs, South Block,
New Delhi-110 011.
2. The Chairman,
Union Public Service Commission,
Dolpur House, Shahajahan Road,
New Delhi-110 011.
3. The State of Maharashtra, through
the Chief Secretary to the Govt.
of Maharashtra, Home Department,
Mantralaya, Mumbai-400 032. Respondents

COUNSEL FOR THE APPLICANT : Mr.S.R.Atre

COUNSEL FOR THE RESPONDENTS : Mr.V.S.Masurkar

CORAM:

THE HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN

THE HON'BLE SMT.SHANTA SHAstry, MEMBER(ADMN.)

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: O R D E R :

(PER HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN)

This OA is filed for a direction to consider the applicant for appointment by promotion to Indian Police Service (for short "IPS") in the vacancies of the year 1987 along with his juniors and/or in the succeeding years viz., 1988, 1989 and 1990 with all consequential benefits.

2. The following are the brief facts of the case:

The applicant stood appointed as Deputy Superintendent of Police in 1978 and was promoted to the post of Superintendent of Police in 1984. He became eligible for appointment by promotion to IPS in 1987 under Regulation 5 of IPS (Appointment by Promotion) Regulations, 1955 (for short "the rules"). The Selection Committee in its meeting held in December, 1987, having considered the applicant along with others had not recommended him for promotion. It is the case of the applicant that his non-selection along with his juniors was due to the adverse remarks recorded in his ACR of 1996-97, which is wholly illegal as the adverse remarks were communicated on 16-1-1988 after the Selection Committee had met. Such adverse remarks cannot be considered by the Selection Committee without having been communicated to the applicant. It is further stated that as the applicant made representations promptly against the remarks and the respondents having considered the same,

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expunged them partly on 23-1-89 and totally on 11-1-90 his case for promotion should have been reviewed by the Selection Committee. It is also stated that the applicant was awarded the President's Police Medal in August, 1993 and within 1 year thereafter in June, 1994, he was awarded President's Gallantry Medal as well. In the Selection Committee meeting held on 26.2.90, for filling up the vacancies, which arose during the years 1988, 1989 and 1990, he was selected and inducted into IPS on 8-3-1991 and confirmed on 8-3-1992. Thereupon the applicant made a representation on 22-1-93 for awarding the deemed date of appointment with effect from 22-9-88 as his juniors have been promoted on the said date and the year of allotment to be fixed as 1984 and also for financial benefits. As the representation was rejected, the applicant having no other remedy, approached this Hon'ble Tribunal in this OA.

3. Both the Central Govt. as well as the State Govt. filed their replies and resisted the OA.

4. It is was averred in the replies that the Selection Committee having considered the applicant along with other eligible officers did not find him suitable for inclusion in the list of 1987. It was specifically stated in the reply filed by the State Government that the adverse remarks, which were not communicated to the officers were not taken into consideration by the Selection Committee,

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therefore the presumption of the applicant that in view of the adverse entries made in the ACR of 1986-87, he was not recommended for promotion, was wholly misconceived. The award of the Police Medal and the Gallantry Medal awarded in 1993 and 1994, can have little relevance to the question of the fitness of the applicant for induction into IPS in 1987.

5. We have given careful consideration to the arguments advanced by the learned Counsel on either side. We have also perused the Selection Committee meeting held in December, 1987, as well as the ACRs of the applicant.

6. The main grievance of the applicant appears to be that, as his record of service had undergone a change inasmuch as the adverse remarks stood expunged, a review DPC ought to have been constituted to review his case for promotion along with his juniors with effect from 1987. The grievance, on the face of it, appears to be justified. The adverse remarks made in the year 1986-87 have not been admittedly communicated till 16-1-1988 i.e., much after the meeting of the Selection Committee. Hence, the Selection Committee should not have given any weight to those remarks. Further, on the representations made by the applicant, those remarks have been expunged totally by 12-1-1990. Normally, therefore, the record having stood changed, his case should have been reviewed. But, it is categorically

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stated in the reply affidavit filed by the State Government that the adverse remarks of the officers, which have not been communicated, were not taken into consideration by the Selection Committee, and we find support to the plea of the respondents, in that we find from the Minutes of the Selection Committee meeting that such of those adverse remarks, which were not communicated, were not given any weight whatsoever by the Selection Committee. There is no reason to doubt the minutes recorded by such a highly responsible body like the Committee as well as the clear statements made in the reply of the State Government. It is therefore becomes clear that the plea of the applicant is based on a presumption not based on facts. Hence, the question of convening review committee would not arise.

7. From the perusal of the ACRs prior to 1987-88 of the applicant, leaving aside the adverse remarks made in the ACR of 1986-87, it cannot be said that the applicant was given an unjust treatment by the Committee. The trend of the remarks of the reporting officer as well as the reviewing officer with regard to the several ACRs appears to be that the applicant did not yet mature in service and that it was too early to recommend his case for promotion. The decision of the Tribunal in Ramrao Narayanrao Wagh Vs. Union of India & Others in OA.No.373/91 of the Bombay Bench of this Tribunal, has no application to the facts of the present case. On the

pleadings and facts of that case, it was found that the adverse remarks of the applicant in his ACR for the years 1985-86 and 1987-88 having been modified/toned down and the record of service suffered change from ^{which} that was considered by the Select Committee, his case deserved to be re-considered by the Review Selection Committee for the year 1987 and also for the subsequent years and also for the reason that the clubbing of the vacancies was invalid. The present case is distinguishable for more than one reason. The adverse remarks in the ACR of the applicant were not taken into consideration while assessing his suitability. Hence the basis for review is knocked out.

8. It is, however, no doubt true that as per the second proviso to Regulation 5 of 3 (Appointment by Promotion) Regulations, 1955, the vacancies that arise every year, shall have to be filled up by constituting a regular Selection Committee and separate panels should be prepared year-wise considering the eligible officers with reference to each year. But in this case only for the year 1988-89, no such Selection Committee has been formed. For 1989-90 the Committee did meet in February, 1990 and the applicant was considered and promoted to IPS. But the applicant if aggrieved as to the violation of the rules by the respondents in not constituting the Committee for the year 1988-89, he should have agitated

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soon after or atleast after he was appointed to IPS on March, 1991 within the period of limitation as provided under Section 21 of the Administrative Tribunals Act. Admittedly, no representation was also made by him within the period of limitation after he was appointed. It was only in November, 1993 after he was confirmed on 31-12-92, he made a representation, which has been rejected in the impugned proceedings. In the said representation, he only requested for reviewing his case. At no time he made any grievance as to the clubbing of vacancies. Infact, no such relief was prayed for in the OA. We do not find any justification for granting any relief to the applicant as regards the clubbing of the vacancies, at this stage, when the applicant had kept quiet allowing things to happen and the seniority of officers, who had been inducted had been already settled. The situation is different in so far as the case of Mr. Ramrao Narayanrao Jagh (supra) as he filed the OA in 1991 itself as he had not been promoted even in the meeting held in 1990. Thus no comparison could be made on the basis of the above Judgement. The OA suffers from latches and is also hit by Section 21 of the Administrative Tribunals Act.

9. The applicant was also not entitled for review of his case by the DPC held in 1990 as the said DPC was not a review DPC. It was constituted to fill up the vacancies prospectively.

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10. The award of the Police Medal in the year 1993 was much later to the Selection made by the Selection Committee in 1987. The ACRs prior to 1987 only were considered by the Selection Committee, whereas for proposing for the award of Police Medal, the entire record of service maintained in 1993 might have gone into the consideration of the authority. Further more, the consideration of the record in 1987 for induction into IPS was by the Selection Committee comprising of the Chairman of the UPSC, the Joint Secretary, Department of Personnel, Govt. of India, and the other Officers of the State Government. Thus the composition of the body was different from the State Government, who was alone the authority to have made the proposal for Police Medal.

11. In view of the above factors, we are not inclined to hold that there was any disparity in the non-selection of the applicant by the Selection Committee in 1987.

12. As a result, we find no merit in this OA and is accordingly dismissed in the circumstances without costs.

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(SMT. SHANTA SHAstry)
MEMBER(ADMN.)

Ambrish Golani

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN

Dated: this the 21st day of September, 2001

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