

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No. 502/99

_____ this the 19th day of April, 2001

HON'BLE MR. KULDIP SINGH? MEMBER (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Shri Rajendra Anandrao Sonawane
presently working as Superintendent
of Police (CID) (Crime) Pune and
presently residing at
15, Main Bunglow, Queens Garden,
Pune, Maharashtra.

...Applicant

By Advocate: Shri S.R. Atre

Versus

1. The Union of India,
through the Secretary,
Min. of Home Affairs,
Government of India, South Block,
New Delhi-110 010.
2. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110 001.
3. The Additional Chief Secretary,
Government of Maharashtra,
Home Department, Mantralaya,
Mumbai-400 032.
4. The Director General and Inspector
General of Police, Maharashtra State,
SBS Marg, Mumbai-400 005. ..Respondents

By Advocates: Shri R.K. Shetty, Counsel for respondent No.1.
Shri V.S. Masurkar, Counsel for respondent Nos.3
and 4.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA is aggrieved of the order
issued by the Government of Maharashtra, Home Department
whereby certain persons who are juniors to the applicant

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have been promoted as DIG of Police whereas the applicant has been ignored. The applicant has challenged the inaction on the part of the respondents ^{not} to promote the applicant to the post of Deputy Inspector General of Police.

2. The facts in brief are that the applicant was initially recruited as a direct Deputy Superintendent of Police/Assistant Commissioner of Police w.e.f. 2.6.1975 in the service of the State of Maharashtra and in the selection list of the Maharashtra Public Service Commission, he was shown senior to S/Shri R.T. Rathod, R.S. Bachewar and S.M. Vaidya. Thereafter the applicant was promoted to the post of Superintendent of Police, Jalna, which is the cadre post of the Indian Police Service. Ultimately he was selected and regularly appointed to the post of Indian Police Service by promotion w.e.f. 22.9.1988.

3. It is further pleaded that somewhere in the year 1983-84 the applicant was served with an adverse remark which was entered in his confidential rolls in the year 1983-84 but the same were expunged. It is further submitted that as the applicant was not granted the due benefits so he had come with an OA which was allowed and the date of appointment for promotion to the IPS was ante-dated as 24.6.86. But the applicant was still not satisfied as he wanted that his promotion to the IPS should be w.e.f. 4.6.85 so he preferred another OA which is still pending.

4. The applicant further contends that he had been working as a Deputy Commissioner of Police (Traffic), Pune under the Commissioner of Police, Pune.

5. The applicant further states that the annual confidential rolls of the officers of the Indian Police Service are required

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to be written for the financial year, but during the period of report the concerned officer is also required to be told of his short-comings which ~~are~~ being noticed by the reporting officer. The applicant's services were neither badly reported upon nor the applicant was at any stage told about the short-comings noticed by the reporting officer, rather the applicant had been receiving appreciation letters from the Commissioner of Police, Pune on various dates ~~during~~ 1995 to 1996.

6. The applicant further submits that for the period 1.4.1995 till 31.3.1996 the reporting officer should have communicated to the applicant the adverse remarks by 30.6.96 but the said report came to be communicated only on 19.11.1996. Thus there is a delay of more than 5 months in communicating the adverse remarks. A copy of the adverse remarks is annexed as Annexure A-I. A representation was made against the same whereby the applicant had highlighted his achievement during the year and he was never informed of his short-comings. It appears that the representation had been rejected.

7. The applicant further submits that he has been given 1981 as his year of allotment in the IPS below one Shri P.K. Jain and between ~~Smt.~~ Borwankar and Shri Mushrif. He further says that as regards further promotion to the Junior Administrative Grade, Selection Grade and to the Super Time scale, post of the DIG of Police, the Government of India had been issuing instructions from time to time and consolidated instructions have been issued by the Government of India on 15.1.99. As regards the suitability of officer to hold the post of and above the selection grade, it has been directed that the

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suitability of the officer may be adjudged by evaluating his character roll as a whole and general assessment of his work and if a vigilance or departmental enquiry has been started against an officer on the panel after a preliminary enquiry establishing charges prima facie the said officer is not to be promoted pending the result of the departmental enquiry. As regards promotion to the selection grade is concerned it has been stated that a Committee consisting of the Chief Secretary, Secretary In-charge of the Police Department and the Director General and the Inspector General of Police may screen the cases of those officers in the JAG grade who had completed 13 years of service, for promotion to the selection grade as per the provisions of the Indian Police Service (Pay) Rules, 1954 on the basis of merit with due regard to their seniority. The applicant was granted selection grade w.e.f. 5.5.97 and for that purpose the ACR upto 1995-96 has been taken into consideration but still the applicant had been promoted along with Smt. Borwankar and Shri Mushriff. Thus the applicant claims that the ACR for the year 1995-96 had lost its sting that is why the applicant ^{given} had been promoted to the selection grade.

8. The applicant further submits that for the promotion to the post of Deputy Inspector General of Police, the same circular of 1999 says that the Screening Committee for promotion to the post of DIG would consist of Chief Secretary, one non-IPS officer of the rank of Chief Secretary and working in the State Government, Director General of Police and the method of selection should be based on merit with due regard to the seniority. Thus he claims that the criteria for

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selecting an officer to the selection grade as well as to the rank of DIG should remain the same and since the applicant had been granted selection grade so he should not have been denied promotion to the rank of Deputy Inspector General of Police in the year 1999.

9. Besides that it is submitted that a criminal case under Sections 120-b, 415, 255, 259, 260, 109 of the IPC is pending against Shri P.K. Jain but the said officer had been granted promotion to the rank of Deputy Inspector General of Police.

10. For challenging his non-promotion, the applicant submitted that the adverse remarks in the confidential roll for the year 1995-96 deserves to be expunged and even otherwise since the same has been found to be good to grant him promotion to the selection grade so there is no reason to deny him promotion to the rank of DIG of Police. Thus it is further stated that denial of promotion to the applicant is illegal and is bad in law so it is prayed that the record be called and directions be given to expunge the adverse remarks entered in the confidential rolls of the applicant for the year 1995-96 and respondents be directed to consider the case of the applicant for promotion to the post of DIG.

11. The OA is being contested by the respondents. The respondent Nos. 3 and 4 have only filed their counter-affidavit.

Respondents have taken a stand that as far the adverse remarks for the period 1995-96 is concerned, the applicant had made a representation against the same but the same had been rejected by the Government vide their letter dated 7.8.99. The respondents further submitted that while rejecting the

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representation, the Government had considered the letter of appreciation sent by the Commissioner of Police, Pune and the Government had considered in detail the contents of those letters and had come to the conclusion the scope of the letters issued to the applicant in appreciation of his work was very much limited to a particular incident about which the appreciation letter was issued.

12. It was further pointed out by the respondents that while recording ACRs the reporting officer and the authority who accepts the remarks of the reporting officer had to see the overall record and functioning of the officer during the entire year. It was also mentioned that there is a practice in police to issue such like appreciation letters but for the purpose of recording the ACR for considering the case of the officer for further promotion, the overall record is to be seen.

13. The respondents further submitted that the applicant for the first time was considered for promotion to the rank of DIG in the Screening Committee Meeting held on 22.4.98 and ACRs of the officers in the zone of consideration was considered upto the year 1996-97. In the meeting the applicant was found not fit for promotion, therefore, his case was reviewed in the next meeting dated 14.5.99 on receipt of the next two ACRs for the period 1997-98 and 1998-99. In this meeting also the applicant was found unfit for promotion after considering his overall record. Therefore, the applicant's presumption that he had been superseded because of the adverse remarks in the ACR for the year 1995-96 is stated to be not correct.

14. It is also denied that the applicant was not informed of his short-comings rather is it stated that everyday the

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Commissioner of Police used to meet the DCPs in the evening and used to review law and order situation in the past 24 hours and in those meetings the Commissioner of Police used to guide them as well as inform them about their shortcomings and then advised them how to overcome those shortcomings. Similarly the shortcomings noticed in the applicant's work were also discussed and conveyed to him in the said evening meetings from time to time in the presence of all other officers to the rank of DCPs and above. It is further submitted that the reporting officer as well as the reviewing authority had not only made comments adverse to the applicant but had also issued appreciation letters to the applicant. The fact that reviewing authority had made an assessment of his work in a very objective manner and gave him the credit whatever he deserves and at the same time the applicant was pointed out of his shortcomings which were noticed by the reviewing authority so it is submitted that since the representation of the applicant had been dealt in detail and the same had been rejected so the remarks cannot be expunged and since in the DPC for promotion to the post of DIG the applicant had not been found fit so he cannot be given promotion. The applicant had only the right of consideration for being promoted and since he had been considered and found unfit so the court cannot direct the respondents to promote the applicant.

15. We have heard the learned counsel for the parties and have gone through the records of the case.



16. Shri Atre, learned counsel appearing for the applicant submitted that the applicant's case was recommended by the Police Commissioner Shri Aggarwal to the Director General for award of Police medal on 9.9.96. The applicant's case for grant of DGP8s insignia was sent by the said Commissioner of Police to the Director General on 29.6.96 and while sending these two recommendations report regarding applicant's services right from 1983 had been reported upon and there is also mention of the service rendered by the applicant during the disputed period of 1995-96 for which the applicant has been adversely commented upon. Thus the adverse remarks communicated to the applicant cannot stand.

17. During the course of arguments, the counsel for the respondents has also submitted that while considering the case of the applicant for promotion to the post of DIG the adverse remarks for the year 1995-96 had not been considered and it is only on the basis of overall performance of the applicant that he had been found unfit. On commenting upon the same the counsel for the applicant submitted that if the adverse remarks had not been considered for promotion to the next grade and the applicant had been found unfit and had been denied promotion on the basis of some other remarks then the same should have been communicated to the applicant.

18. On the contrary the counsel for the respondents submitted that granting a selection grade to an officer is a separate issue and granting promotion to the post of DIG is a separate issue. A person may be found suitable for grant of selection grade but at the same time an officer may not be fit for promotion to the next higher rank. Counsel for the respondents also pointed out that when the selection grade

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was granted then the ACRs which were considered were considered upto a particular year but when the case for grant of promotion to the next higher post of DIG is concerned then even the ACRs for subsequent years were also taken into consideration and the applicant was found unfit for promotion.

19. It was further pointed out by the respondents that while considering the case of the applicant for promotion to the post of DIG the adverse remarks communicated to the applicant during the year 1995-96 had not been taken into consideration at all and it is on the basis of total performance record that the applicant was found unfit for promotion.

20. After considering the rival contentions, we thought it proper to go into the DPC record to have a first hand view as to how the DPC had considered the case of the applicant for promotion to the post of DIG.

21. From a perusal of the DPC records we find that the case of the applicant was considered in all the DPC meetings but the applicant was unable to reach the requisite 'Bench Mark' as assessed by the DPC though the applicant was found 'Good' but at the same time he was found unfit for the purpose of promotion whereas only those officers who were found 'Very Good' were granted promotion to the post of DIG. From the record it is quite manifest that the adverse remarks recorded and communicated to the applicant for the year 1995-96 had not been considered by the DPC. In view of this assessment arrived at by the DPC in respect of the applicant we find that the case of the applicant had

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been considered in all respects for grant of promotion to the post of DIG and the adverse remarks communicated to him had not been taken into consideration while considering the case of the applicant for promotion and since the applicant has not been able to make up the 'Bench Mark', as fixed by the DFC which has been so fixed in accordance with the guidelines and instructions on the subject so we are left with no option but to record the finding that the applicant had not been able to make up this grade for promotion to the post of DIG.

22. As regards expunging of adverse remarks entered in the confidential roll of the applicant is concerned, the applicant in his OA has pointed out that the same had not been written in time and had not been conveyed to the applicant as per the time schedule and the facts regarding issuing of appreciation letters by the Commissioner of Police had not been taken into consideration, we find that the same has been duly replied by the respondents when they say that out of the 4 letters issued to the applicant, 2 pertained to the subsequent year and only two letters pertained to the year for which the adverse remarks had been recorded and then they have further explained that those appreciation letters relate to a particular incident and their scope is very limited and it has nothing to do with the overall performance of the applicant which has to be taken into consideration while recording the ACRs.

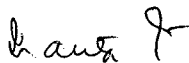
23. Besides that the detailed representation of the applicant has also been considered by the competent authority. We while sitting in a judicial review do not find

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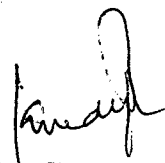
any ground to interfere in the matter of expunging of remarks recorded in the ACR of the applicant.

24. Even otherwise we find that since the department has made a categorical statement that these adverse remarks recorded in the ACR of the applicant had not been taken into consideration for considering the case of the applicant for promotion to the post of DIG, in that context these remarks also loses its significance and since the representation against these remarks had already been considered by the competent authority and the grounds taken in the representation show that these are only technical objections and it has nothing to do with the subjective assessment of the reporting officer and the accepting officer as well as of the reviewing authorities so we find that the prayer with regard to the expunging of the ACR has to be rejected. we find

25. In view of the above discussion, OA has no merits and the same is dismissed. No costs.



(MRS. SHANTA SHASTRY)
MEMBER (A)



(KULDIP SINGH)
MEMBER (J)

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