

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 904/99

Date of Decision: 21.09.2001

Shri K. Ramachandran

Applicant(s)

Shri M.S. Ramamoorthy.

Advocate for Applicant

Versus

State of Maharashtra

.. Respondent

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

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

Shanta
(SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 904/99

THIS THE ~~21st~~ ^{21st} DAY OF SEPTEMBER, 2001

CORAM: SHRI S.L. JAIN.
SMT. SHANTA SHASTRY

. MEMBER (J)
. MEMBER (A)

K. Ramachandran,
then Superintendent of Police,
Railways, Mumbai, residing at
803, Tushar, A Road,
Churchgate,
Mumbai-400 020.

... Applicant

By Advocate Shri M.Ss. Ramamoorthy.

Vs.

State of Maharashtra,
through the Additional Chief Secretary,
Home Department, Government of Maharashtra,
Mantralaya, MUMBAI-400 021.

... Respondent

By Advocate Shri V.S. Masurkar.

O R D E R

Smt. Shanta Shastry. Member (A)

The applicant in this case is aggrieved that he has not been promoted to the post of Deputy Inspector General of Police (DIGP for short) in the Government of Maharashtra. He has, therefore, sought the following reliefs:

- (1) To call for the records and proceedings relating to the promotion to the Selection Grade and to the DIGP rank which have culminated in the issuance of Government notification of the Home Department dated 26.5.99 and 8.6.99 respectively by denying promotion to the applicant to the rank of DIGP.
- (2) To review and set aside the decisions of the respondents denying promotion to the applicant to the rank of DIGP and pass appropriate order or direction to the respondents ensuring

justice to the applicant by way of grant of promotion to him to the rank of DIGP with effect from 8.6.99 on which date his junior officers were promoted to the rank of DIGP;

(3) *Any other appropriate order including costs.*

2. The applicant was selected for the Indian Police Service (IPS for short) in 1981 and was allotted to Maharashtra State. On the date of filing of the OA he had completed 18 years of service. He worked in various capacities in the State of Maharashtra such as Chief Security Officer, Vidhan Bhavan, Deputy Commissioner of Police Zone-V, Marol, Mumbai, Principal, Police Training School, Mumbai, Deputy Commissioner, CID (Intelligence) Security Branch, Mumbai etc., and was working as Superintendent of Police, Railways, Mumbai before proceeding on leave. The applicant states that he received several appreciation letters from senior officers as well as prizes for essay competition. He has been awarded M.Phil Degree in appreciation of research done by him by the Tata Institute of Social Sciences without his applying for the same. He has also authored and published one book on police administration. He was promoted to the Selection Grade vide order dated 26.5.99 with retrospective effect from 11.10.97. However, he has been excluded from promotion to the next grade by the impugned order dated 8.6.99 while four junior officers belonging to later batches of 1982, 1984 have been promoted.

A

3. The contention of the applicant is that the meeting of the Screening Committee to consider promotion of officers for selection grade was held some time in May, 1999 and he was recommended for promotion to selection grade. However, the subsequent meeting of the Screening Committee, which was held 13 days thereafter for considering promotion to the DIGP rank did not recommend the applicant. The record that could have been considered in both the meetings of the Screening Committee must have been the same, as the meetings were held within 13 days of each other. He therefore wonders how he could not be formed fit after merely a lapse of only 13 days on the basis of the same record. Even if it were to be assumed that the record which found the basis for his selection to the selection grade was only upto 1997; if the Screening Committee considered the further record from 1997 till the date of the meeting of the Screening Committee i.e. from 1997 to 1999 even then it could not have made much difference. Because, if there were any adverse remarks during the period of 2 years from 1997 to 1999 they were not communicated to him and therefore, as per settled law they need to be ignored.

4. Further, new guidelines were issued on 15.1.1999 by the Ministry of Home Affairs regarding, IPS promotion to senior scale, Junior Administrative Grade, Selection Grade, Super Time Scale and above Super Time Scales. According to the new guidelines there is no

h

'bench mark' prescribed for assessing the candidates for selection to any of the grades of the IPS. Therefore, there is all the more reason why the applicant could not have been recommended for promotion as his record could not have been bad. If it were good he deserves to be cleared. The learned counsel for the applicant submits that even if there were any adverse remarks prior to 1997 he having been cleared for promotion to the selection grade as in 1997, those remarks would no longer matter as they were washed off by the selection. In this connection the applicant has placed reliance on the judgement in the case of Dr. Girish Bihari Vs. State of U.P. & Ors. 1982 Lab I.C. 1500 para 9. It reads as follows.


"If an officer is selected and promoted to a higher post despite adverse entry against him, those adverse entries lose all their value and it is not open to the authorities to consider those adverse entries against the officer again at the time of his subsequent promotion. After promotion by selection despite adverse entries the adverse cease to be of any relevant material for consideration for future promotion".

According to the applicant this case which was decided by Allahabad High Court was exactly similar to the applicant here in as much as the applicant therein was an IPS officer, who was given promotion to the rank of selection grade despite adverse entries, but was denied promotion to the DIGP rank on the basis of the same earlier adverse entries. The learned counsel further states that this doctrine of washing off of earlier


adverse entries prior to promotion had received the approval of the Hon'ble Supreme Court in two different cases viz. in the case of Regional Manager Vs. Pawan Kumar Dubey (AIR 1996 SC 1766). The Supreme Court held that there were some adverse entries also against the respondent. But this must be deemed to have been washed off by the order of promotion on adhoc or officiating basis by an order of 7th March, 1972. Similarly in the case of Baldev Raj Chaddha Vs. UOI (AIR 1981 SC 70) Held: that any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon, cannot be sustained.

5. The applicant pleads that he has been doing the work successfully with full devotion and dedication to duty. No adverse remarks were communicated to him. Uncommunicated remarks cannot be considered as has been held in Gurdial Singh Fizi Vs. State of Punjab AIR 1979 SC 1622.

6. The respondents have filed their reply and submit that the applicant was considered for promotion to selection grade in the meeting of the Screening Committee held on 30.5.97. He was not selected and was superseded. His promotion was held up due to the recommendation being kept in sealed cover. His case was reviewed after counting two more ACRS in the meeting of the Screening Committee held on 1.4.99 and he was finally recommended fit with sympathy. It being so



because he belongs to the SC. He was then considered for promotion to the rank of DIGP in the meeting of the same Screening Committee held on 14.5.1999 but the Committee found him 'unfit'. It is not denied that the meetings were held within a gap of one and a half month. However, the respondents submit that the responsibilities and duties and pay scales of two posts i.e. selection grade and that of DIGP differ. When promoted to the selection grade, there is no change in the duties and responsibilities of the incumbent. He continues in the same post held by him prior to selection grade, but draws more salary. Whereas, the promotion to the rank of DIGP is an independent promotion to a higher post and the duties and responsibilities increases. These guidelines, therefore, cannot be compared. The applicant's case was duly considered by the Screening Committee by applying principle of merit with due regard to seniority. It is true that there were no adverse remarks but he was not found fit. His over all record was assessed. Referring to the guidelines issued by the Ministry of Home Affairs on 15.1.99 the respondents state that they did follow these guidelines. The government of India have directed in these guidelines to apply stricter standards for selection and appointment to various grades. The letters of appreciation and congratulations cited by the applicant related to specific incidents. The actual over all performance is reflected in ACRS. In fact the appreciation letters or commendation letters are



included in the ACR if there are any specific directions to that effect. In the confidential report formula, there is a column No.3 in part - II to be filled in by the officer reported upon about the medals, recognition received during the year. The applicant has not made any such mention/note about the appreciation letters received by him in the relevant year under report. He has simply reported NIL in the relevant reports. In none of these letters, mentioned by the applicant it is mentioned that the same should be placed on the CR folder of the applicant. Therefore, the question of ignoring these appreciation letters by the Screening Committee does not arise. As against the appreciation letters quoted by the applicant, there was in fact a definite adverse entry recorded in the ACR dossier of the applicant. In view of the judgment of the Supreme Court in Civil Appeal No.1023/96 wherein the Supreme Court condemned the role of the applicant for illegally pursuing an honest police officer to protect the interest of a wealthy hotelier.

7. The applicant reiterated that his performance was good and he had achieved the targets for the year.

8. We have heard the learned counsel for both the parties and have given careful consideration to the pleadings. It is to be noted that there is no right for promotion. The right is only for consideration for promotion. The applicant was considered, but was not

14

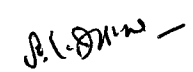
found fit. Therefore, the point to be considered by us is to see whether the Screening Committee had followed the proper procedure and guidelines and whether there was any deviation from the rules, guidelines etc., or whether there was any malafide. The respondents were asked to produce the relevant records. The same were produced and we have perused the proceedings of the Screening Committee as well as ACR dossier of the applicant. The Screening Committee, no doubt considered the case of the applicant based on his over all performance as reflected in the ACR. In the minutes of the meeting, except for recording that he is unfit, there are no reasons given as to why the applicant was not considered fit. On perusing the ACR dossier, we note that the applicant's record for the relevant period varies between 'very good' and 'good'. There are no adverse entries, except one, which was there prior to his promotion to the selection grade. Those entries cannot now be held against him as they are deemed to have been washed of after his selection to the selection grade. The Supreme Court has clearly laid down that wherever an officer is not selected or recommended for promotion, the reasons for the same need to be recorded in the relevant file, even though they may not be made public. As already stated, no reasons have been recorded in the file or in the minutes of the meeting of the Screening Committee. Even the Full Bench in their judgment and order in the case of V. Karuppan Vs. Union of India (1988 8 ATC 287 (Mad) FB) have held that

h

a bald statement that an employee was not found fit for inclusion in the selection list does not fulfil the obligation. Similarly, it has been held in K.D. Shankar Vs. Union of India (1988 7 ATC 180 (Jab)). In matters of supersession must record the reasons. The same ruling has been given in the case of T. Challam Vs. State of Gujarat & UOI (1989 2 SLJ CAT 196). It is obligatory for DPC to record reasons while superseding the petition. It is the duty to state reason when senior officers' position is down graded in the panel while making relevant assessment of merit.

9. In our considered view, since no reasons have been recorded for finding the applicant 'unfit' for being promoted to the rank of DIGP by the Screening Committee, the applicant's case needs to be reconsidered by a review DPC. The respondents are, therefore directed to hold a review DPC to reconsider the case of the applicant and if he is still found 'unfit' the Committee should record the reasons for the same. This may be done within a period of two months from the date of receipt of copy of this order. The OA is disposed of accordingly. We do not order any costs in the circumstances.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(S.L. JAIN)
MEMBER (J)