

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT AURANGABAD.

ORIGINAL APPLICATION NO.659/2000.

Tuesday, this the 7th day of August, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Shri M.P.Singh, Member (A).

R.K.Sahay,
Working as Superintendent of Police,
District Dhule,
Maharashtra.
(By Advocate Shri Suresh Kumar)

...Applicant.

v.

1. Union of India, through
Secretary,
Ministry of Home,
Parliament Street,
New Delhi - 110 001.
2. The State of Maharashtra
Through the Chief Secretary,
Mantralaya,
Madam Cama Road,
Mumbai - 400 023.
(By Advocate Shri V.S.Masurkar)

...Respondents.

: ORDER (ORAL) :

Shri M.P.Singh, Member (A).

The applicant has filed this Original Application under section
19 of the Administrative Tribunals Act, 1985 against his non-empanelment

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for posting to the rank of Deputy Inspector General of Police (for short, D.I.G.) under the Central Government.

2. The facts in brief are that the applicant is an IPS Officer of 1986 batch of Maharashtra cadre and is at present posted as District Superintendent of Police, Dhule. According to the applicant, he has been ignored for empanelment for the post of DIG. He apprehends that the DPC which conducted the selection for empanelment for the post of DIG has either not taken relevant material into consideration or has taken irrelevant material into consideration. It is stated by him that some Officers junior to him have been selected for empanelment for the post of DIG. It seems that the 'Outstanding' or 'Very Good' reports given by the Reporting Officers have been unreasonably down-graded by the Reviewing or Accepting authorities. No communications in respect of the said down-grading has been given to the applicant. In the present case, the minimum bench-mark is 'Very Good' and DPC has to form its opinion only on the basis of adverse remarks of preceding 5 years. The applicant has reasonable apprehension that in his case both the things have happened i.e. adverse uncommunicated remarks have been taken into consideration and also down-graded adverse entries have been taken into consideration. For this purpose, the applicant relies upon the Office Memorandum



dt. 10.4.1989 and as amended by further Memorandum dt. 27.3.1997

issued by the Ministry of Home Affairs. It is also stated by him that in the absence of declaration of the panel, it is not possible for him to give the names of the persons who have been empanelled. The non-empanelment of the applicant is not only wrong and illegal, but also punitive and stigmatic. Aggrieved by this, the applicant has filed this OA and has prayed for relief by seeking directions to the Respondents to hold a Review DPC for considering his case and on his being empanelled by the DPC to promote him as DIG with all consequential benefits including seniority, arrears of pay, increment etc. He has also sought directions to the Respondents not to take into consideration the uncommunicated adverse remarks or down-graded adverse remarks, if any, for the purpose of holding a Review DPC.

3. The Respondents have contested the case and have stated that the eligibility of Officers for holding the post at the level of D.I.G. in the Government of India is that the Officer should have completed 14 years of service and he should be on the panel approved by the Central Government for the scale of Rs.16,400-20,000 in that service / cadre. The inclusion of Officers in the panel for holding posts of DIG or equivalent is approved by the Central Government on the basis of the recommendations of the Central Police Establishment Board (CPEB) which is a high powered committee



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and is ~~headed by the Union Home~~ and is headed by the Union Home Secretary and also includes five Director General of Police level officers working with the Government of India. The main function of the committee is to assess the eligibility of the Officers for empanelment as I.G. and D.I.G. at the Centre. The guidelines have been prescribed, on the basis of which the members of the screening committee independently assess the suitability of each Officer for inclusion in the panel. The assessment in respect of each officer of particular year of allotment independently recorded by the members of the CPEB is consolidated and placed before the CPEB. The CPEB takes into consideration the assessment given by its members and also other relevant factors such as : the general reputation of the officer, the types of assignments he has handled, the variety of experience he has been exposed to, Vigilance clearance, punishment awarded, if any, the general pattern of CR writing in the State/Cadre to which he belongs, the need for maintaining inter-cadre parity amongst the various Indian Police Service Cadres in the number of officers empanelled, etc. It is also stated by the Respondents that empanelment of IPS Officers at the Centre is not done with a view to give them promotion, but is done with a view to fill up the limited number of Central deputation posts in the Central Police Organisation which are ex-cadre posts required to be filled

up by taking suitable and eligible Officers on Deputation from their respective State-cadre as per Recruitment Rules of the Post. An IPS Officer has a right to get promotion to higher post in his cadre only. He has no such right at the Centre against ex-cadre deputation post. In this case, the applicant has not been considered for promotion in his cadre, but has only been considered for empanelment for Central Deputation. In view of the aforesaid submission, the OA is devoid of merit and therefore, deserves to be dismissed.

4. Heard both Learned Counsels for rival contesting parties and perused the record.

5. During the course of the argument, Learned Counsel for the applicant submitted that the applicant has so far never been communicated any adverse entries except the one for the period from 1.4.1997 to 30.6.1997. According to him, his apprehension is that either the applicant has been awarded the grading below the bench mark which is 'Very Good' for the post of DIG or the Reviewing Officers/Accepting Officers have downgraded the grading below the bench mark which has not been communicated to him. He also submitted that the grading which is below the bench-mark is an adverse entry and is required to be conveyed. He further submitted that in the absence of non-communication of these



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remarks which are below the bench mark, they should not be taken into consideration while considering the applicant for the post of DIG or equivalent post. To support his contention, the learned counsel for the applicant has relied upon the Supreme Court Judgment dt. 31.1.1996 in the case of **U.P. Jal Nigam & Ors. Vs. Prabhat Chandra Jain & Ors.** (1996 (1) SC SLJ 335). He has also relied upon certain Judgments of the Tribunal viz. OA No.117/99 in the case of **Charan Singh Azad Vs. State of Maharashtra & Ors.** decided on 7.1.2000 by the Mumbai Bench, and OA No.237/98 in the case of **K.K.Verma Vs. UOI & Anr.** decided on 22.2.2001 by the Mumbai Bench. He has further drawn our attention to the Writ Petition filed in the High Court of Bombay against the Judgment of the Tribunal in the case of **Charan Singh Azad Vs. State of Maharashtra**, wherein the Hon'ble High Court has granted interim relief only to the extent that the grading given below the bench mark be communicated to the applicant and the applicant be allowed to make a representation against those adverse remarks. On the other hand, Learned Counsel for the Respondents has submitted that the applicant has been considered for the empanelment for Central deputation against an ex-cadre post under Central Staffing Scheme. According to him, the applicant has a right for promotion in his own cadre, but has no such right with regard to his selection for



Central deputation. His growth, development & career prospects are in his own service/cadre and he is, therefore, considered for promotion by and within his cadre. The learned counsel for the respondents also contended that the Judgment relied upon by the Learned Counsel for the applicant are not applicable, as the applicant has not been considered for promotion in his cadre. He has only been considered for empanelment to the post of DIG or equivalent against an ex-cadre post under Central Staffing Scheme. Therefore, the law laid down by the Hon'ble Supreme Court and the Tribunal for communicating the remarks/grading which is below benchmark is not applicable in the present case. He also submitted that the applicant's case has been considered by the high powered committee headed by the Home Secretary which also includes five top ranking Officers of the level of Director General of Police. He also produced the original record before us and submitted that in the case of promotion in his cadre only five years ACRs are required to be considered by the Committee, whereas in case of Central Deputation the entire service record of the applicant will have to be considered.

6. After hearing both Learned Counsels and perusing the record, we find that the aforesaid judgment of the Supreme Court and the Judgments of the Tribunal are not applicable in this case as the applicant has not been



considered for promotion in his cadre, but has been considered for empanelment for the post of DIG for Central deputation against an ex-cadre post where apart from considering entire service record, other relevant factors such as the variety of experience, types of assignment handled, the need for maintaining inter-cadre parity etc. are also taken into consideration by the committee. However, we also find that the Confidential Report of the applicant for the period from 1.4.1997 to 30.6.1997 contains adverse entries. These adverse entries had been recorded by the Reporting Officer on 28.2.1999; the same were confirmed by the Reviewing Officer on 27.6.1999. The Government of India wrote to the Chief Secretary of Maharashtra requesting him to communicate these adverse entries to the applicant vide their letter dt. 30.8.1999. However, the Government of Maharashtra had unduly delayed the matter and communicated these entries to the applicant only on 6.2.2001. The high powered committee i.e. CPEB considered the Officer for the post of DIG in its meeting held on 10.7.2000. It is, therefore, clear from the above that at the time when the Officer was considered by the CPEB the adverse remarks had been taken into consideration. As per the procedure for writing the Confidential Reports, a time frame has been prescribed by the Government of India to communicate the adverse remarks to the applicant



so as to enable him to make a representation against those remarks. The Govt. of India instructions also stipulate that in case the adverse remarks have not been communicated to the applicant or if any representation is pending in this regard they should not be deemed to be operative. Keeping this position in view we feel that the Government of Maharashtra has violated the rules relating to CRs and the Respondent No.1 has acted illegally by taking into consideration the adverse remarks while assessing the suitability of applicant for Central deputation. In a similar case, the Hon'ble Supreme in its Judgment dt. 9.3.1979 in the case of **Gurdial Singh Fijji Vs. State of Punjab & Ors.** (1979) 2 SCC 368) has held as under :

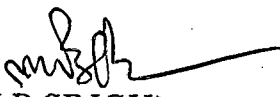
"The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified".

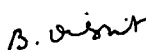
In view of the aforesaid position, we are of the considered view that non-communication of adverse remarks by the Government of Maharashtra in time has prejudiced the case of the applicant while he was considered for Central Deputation for empanelment to the post of DIG or equivalent post.



During the course of argument, the Learned Counsel for the Respondents stated that even if the adverse remarks are not taken into consideration, it would not change the outcome of the selection, as the entire C.R. Dossiers is to be taken into consideration by the committee. We are not concerned with this aspect of the matter. It is for the committee to consider and adjudge as to what would be the outcome even if the adverse remarks are not taken into consideration while assessing the suitability of the applicant. We cannot say as to what degree the mind of the Members of the committee would have been prejudiced against the applicant by taking into consideration these adverse remarks.

7. In view of the aforesaid reasons, we direct the Respondents to consider the case of the applicant afresh after ignoring the adverse remarks for his empanelment to the post of DIG or equivalent under the Central Staffing Scheme within a period of three months from the date of receipt of the copy of this order. The OA is allowed partly to that extent. However, we make it clear that persons who have already been empanelled by the Committee and appointed to the rank of DIG or equivalent shall not be disturbed from their present positions. No costs.


(M.P. SINGH)
MEMBER(A)


(BIRENDRA DIKSHIT)
VICE-CHAIRMAN