

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.477/2000

THIS THE 9 TH DAY OF JANUARY, 2003

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

Madhav Sanap,
working as Dy. Commissioner of
Police/ Superintendent of Police,
Anti Corruption Bureau, Central
Building, C-Barrack, Pune-1. Applicant

By Advocate Shri G.K. Masand.

Versus

1. Union of India, through
the Secretary in the Ministry of Home Affairs,
New Delhi.
2. State of Maharashtra, through
the Chief Secretary, Government
of Maharashtra, Home Department,
Mantralaya, Mumbai-400 032.
3. Union Public Service Commission,
Shahjahan Road,
New Delhi-110 001. Respondents

By Advocate Shri V.S. Masurkar for
Respondents 1 and 2.
None for Respondent No.3

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

Before filing of the present OA, the applicant
had approached this Tribunal earlier by OA No.240/92
challenging the selection for induction into Indian
Police Service by Promotion from the years 1989 and 1990
and seeking a direction to review/reconsider the case of
the applicant for appointment by Promotion to the IPS
service to the vacancies arisen for the years 1989 and
1990 separately and without expansion of the zone of

consideration vis-a-vis the particular year and to appoint him with all consequential benefits and to quash and set aside the impugned order dated 08th March, 1991 including the promotions of Respondents 4, 5 and 6. The Tribunal disposed off the application by judgment dated 26.3.1998 with the following directions:

- "(i) The claim of the applicant with regard to seniority over Respondent No.4 T.S. Bhal, is concerned, is hereby rejected.
- (ii) The applicant is entitled to claim seniority over Respondent No.5, T.A. Chavan and Respondent No.6, V.N. Bokey, provided the applicant is found suitable for promotion to the I.P.S. Cadre by the Review D.P.C. to be held as per the guidelines given in this order in para 18. If the review D.P.C. holds that the applicant is entitled to promotion as on 22.02.1990, then the applicant is entitled to seniority over Respondent Nos.5 and 6 from the date they came to be promoted to the I.P.S. Cadre, namely with effect from 08.03.1991.
- (iii) If as a result of review D.P.C., the applicant is not found suitable for promotion as on 22.02.1990 having regard to the number of vacancies available then and having regard to his grading, etc, then there is no necessity to disturb the seniority given in the impugned order dated 08.03.1991.
- (iv) The review D.P.C. should complete this exercise within a period of four months from the date of receipt of this order.
- (v) In the circumstances of the case, there will be no order as to costs."

2. Thereafter, the respondents took their own time and finally advised the applicant vide the impugned order that even after exclusion of Shri T.A. Chavan and Shri V.N. Bokey, the review committee did not recommend

any change in the selection list in the year 1989 and 1990 and the applicant was not recommended for appointment by promotion to the I.P.S. against the vacancies of 1989 and 1990. It is against this impugned order dated 19.4.2000 that the applicant is now seeking to get quashed and set aside. He has prayed that he should be declared inducted to the IPS as a result of a selection in the meeting of the selection board held on 22.02.1990 and to correct his seniority based on the selection by the selection committee held on 22.02.1990.

3. The respondents had taken a preliminary objection in the written reply that the applicant had not impleaded the UPSC as a party, the same has been rectified.

4. The respondents' submission in the matter is that a review meeting of the Selection Committee was conducted on 07.10.1998 and the applicant's candidature was duly considered. However, on overall assessment of his service record, the committee could not include him in the select list due to lower grading and statutory limit on the size of the list. So the review selection committee did not recommend any change in the select list of 1989 and 1990 prepared by the selection committee earlier on 22.02.1990. The recommendation of the review selection committee meeting was approved by the UPSC on 13.3.2000 and the Government of Maharashtra

thereafter conveyed the decision to the applicant vide the impugned letter dated 19.4.2000. According to the respondents, the applicant is not entitled for appointment to the IPS by promotion.

5. The contention of the applicant is, that if as directed by the Tribunal, the names of Respondents No.5 and 6 were not to be included, then automatically the applicant being below Shri T.S. Bhal should have been included in the select list. Earlier, in the meeting of the selection committee which was held on 22.02.1990 against eight vacancies a select list of 10 persons was prepared. The following persons were selected.

1. Shri S.B. Sawarkar
2. Shri M.K. Karve
3. Shri G.D. Pol
4. Shri S.A. Kakkar
5. Shri V.B. Lokhande
6. Shri V.N. Bokey
7. Shri T.A. Chavan
8. Shri T.S. Bhal
9. Shri S.A. Khopde
10. Shri R.N. Wagh.

6. The applicant submits that he knows for certain that officers from the Combined list of Dy. Superintendent of Police/ Assistant Commissioner of

Police as on 01.01.1981 namely those at S1. No.188 and 197 were not eligible and those at S1. No.192 to 196 being over age could not be considered. That, left only S/Shri M.K. Karve, G.D. Pole, C.B. Rokade, S.A. Katkar and V.B. Lokhande, all these officers were included in the select list of 1989 and 1990. Since the applicant's name appeared immediately below Shri V.B. Lokhande in the eligibility list, there is no reason as to why he could not be placed in the select list by the Review DPC after exclusion of the names of Shri Bokey and Shri Chavan as per the directions of this Tribunal. He further submits that officers senior to him in the combined gradation list namely S/Shri R.G. Nimaje, Shri A.D. Jadhav, V.G. Daithankar and C.B. Rokade could not have been considered by the Review DPC, because they were no longer in service inasmuch as both Shri R.G. Nimaje and Shri A.D. jadhav had died and services of Shri V.G. Daithankar had been terminated and Shri C.B. Rokade had sought voluntary retirement, Shri H.B. Sable had been dismissed from service on account of prosecution in Anti Corruption case. Therefore, he could not have been included in the zone of consideration being involved in Anti Corruption case. Therefore, the the Selection Committee ought to have selected the applicant, being the next person in the eligibility list.

7. The applicant submits that as far as his

service record is concerned, he has been awarded Police Medal for meritorious service in January, 1996 and the criterion adopted for award of Police Medal is similar to the criterion adopted for promotion; whereas other officers senior to him as well as Shri Bokey and Chavan till date had not been awarded any Police Medal for meritorious service. Thus, the applicant was not only eligible, but entitled to higher gradation at the hands of the Review DPC.

8. The applicant contends that the respondents have stated in a mechanical manner that he could not find a place in the select without stating any reason as to why he could not be placed even after the deletion of Shri Bokey and Chavan. It is not the case of the respondents that the applicant's grading was below the grading prescribed for induction to the IPS under the relevant Rules and Regulation. He had been duly selected and his name was at serial number 11 of the panel of the selected candidates as on 22.02.1990 but he could not find place in the promotion order on account of the illegal consideration and placement of Shri Bokey and Shri Chavan. Now that the Tribunal had directed not to consider Shri Bokey and Chavan, applicant's name ought to have been placed in the select list.

9. In the rejoinder the applicant has analyses the selection and had once again repeated that his name was

below Shri T.S. Bhal in the seniority list of officers who were eligible for consideration. The name of Shri Bhal was included in the select list in pursuance of the meeting of the Selection Committee held on 22.02.1990 and his name was at Sl. No.10. The applicant believe that in the said list, his name was at Sl. No.11 immediately below Shri Bhal, but the panel was restricted upto Sl. No.10 only, which included Shri Bokey and Shri Chavan. Now that the names of Shri Bokey and Shri Chavan were directed to be deleted by the Tribunal, naturally his name which earlier stood at Sl. No.11 would be advanced to Sl. No.9 below Shri T.S. Bhal whose position would improve to 8 and thus, the applicant's name would find a place in the select panel. It is further submitted that in the select list of 22.02.1990 names of four officers who were allegedly graded 'Good' could not have been included as these four senior officers could not find place because of this unsatisfactory record. Whereas the applicant's name was included immediately below Shri T.S. Bhal at Sl. No.11. The applicant therefore, question as to how their case be once again considered by the Review DPC especially when they have not challenged their non-selection as has been done by the applicant in OA No.240/92. Further as already pointed out after exclusion of Shri Bokey and Shri Chavan, the other officers who had earlier been considered, but who were either facing criminal prosecution or disciplinary

proceedings and who were found unfit in the selection panel earlier and who had not challenged their non-selection could not have been considered by the Review DPC. Consideration of Shri Rokade and Shri Sable by the Review DPC is not correct. The fact of Shri Sable having been convicted on 14.9.1997 in a trap case against him on 02.9.1990 and his dismissal later on was suppressed deliberately.

10. The respondents have once again clarified their position in their sur-rejoinder. It is explained that the select list is prepared as per Regulation 5 (v) of the (Appointment by Promotion to the IPS) Regulation. The Selection Committee met on 22.02.1990 and considered 17 officers including the applicant. Though the zone of consideration was for 30 only, 17 were eligible. This was for eight vacancies and the select list was to be prepared of 10 members. After consideration, four officers were found unfit in their over all relative assessment. In the original select list 8 officers who were assessed as 'Very Good' were taken up and two officers with grading as 'Good' in the order of seniority list were taken for select list of 10 members. The Review DPC which met on 07.10.1998 which considered the case of the applicant noted that the number of vacancies was 8 and the size of select list was to be 10. Keeping in view the judgment of the Tribunal and having regard to the number of vacancies and the

gradings assigned by the original Selection Committee which met on 22.02.1990 and having reviewed on 07.10.1998 recommended that the applicant is not entitled to be included in the select list for the year 1989 and 1990 even after exclusion of Shri Chavan and Shri Bokey from the eligibility list as only six officers with grading as 'Very Good' and four officers senior to the applicant with grading as 'Good' could get included in the select list. Therefore, the Review DPC did not recommend any change in the select list of 1989 1990. In regard to Shri Rokade and Shri Sable, the respondents admit that Shri Rokade retired voluntarily on 30.4.1990 and therefore his case was rightly considered in the meeting of 22.02.1990. Shri Sable was convicted on 18.9.1997 and was later on dismissed from service. In his case, he was suspended by order dated 29.10.1990 whereas he had been confirmed in service by order dated 25.01.1990 and was in the zone of consideration and eligible at the time of meeting held on 22.02.1990. There was no suspension order against him at that time. Thus, since there were four officers who had grading of 'Good' and who were senior to the applicant, applicant could not find place in the select list even in the Review DPC.

11. The applicant only reiterated the arguments that if earlier there was a select list of 10 members and if two were to be deleted from the panel as per the

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eight officers as 'Very Good', five officers as 'Good' and the remaining four officers as 'Unfit'. The applicant had been assessed as 'Good', whereas Shri Bokey and Shri Chavan were assessed as 'Very Good'. In the review Selection Committee also even after exclusion of Shri Bokey and Shri Chavan from the eligibility list, the applicant was not entitled to be included in the select list of 1989 1990 as only six officers with 'Very Good' grading and four officers with grading as 'Good' who were all senior to the applicant could get included in the select list and therefore, the review committee recommended that change was not called for in the select list of 1989 1990 already prepared on 22.02.1990.

13. We have heard the learned counsel for the applicant as well as the respondents and have given our careful consideration to the arguments advanced on both the side. We have also perused the relevant record pertaining to the Selection Committee held on 22.02.1990 and the review meeting held on 07.10.1998. It is seen that as directed by this Tribunal a review meeting of the Selection Committee which had conducted the meeting earlier on 22.02.1990 was convened on 07.10.1998 and even after deleting the names of Shri Bokey and Chavan the applicant has not been recommended by the Review Committee. The Selection Committee did not change the grading which were given on 22.02.1990. The applicant has claimed that he was placed at Sl. No.11 in the

select list of 22.02.1990 and therefore, he ought to have been included after deleting the names of Shri Bokey and Shri Chavan. But it is seen from the written reply and sur-rejoinder of the respondents that actually against eight vacancies, 10 persons were placed on the select panel of 22.02.1990. There was no question of No.11 being put on the select panel which confined to only 10 members. Therefore, there is no substance in this contention. Further, the respondents have clearly pointed out that the applicant was duly considered in the review meeting and they deleted the names of Shri Bokey and Shri Chavan yet there were four others, who had the grading of 'Good' and who were senior to the applicant and as such the applicant's grading which was 'Good' was not adequate enough for selecting him. No junior to the applicant having the equal grading of 'Good' was selected. It is also explained by the respondents that Shri Sable though was later on prosecuted, suspended and dismissed, as on the date of the meeting of the Selection Committee held on 22.02.1990 was very much eligible. So also Shri Rokade who was also eligible as on 22.02.1990 thereafter. It being a review meeting of the Selection Committee both were considered as on that date. The position is confirmed after perusing the record. We are therefore, satisfied that the selection was conducted as per the direction given by this Tribunal and in a fair manner. It is also to be noted that the Tribunal had clearly

directed in para 18 of the judgment that by excluding the names of Shri Chavan and Shri Bokey the review DPC shall consider the name of the applicant and other candidates, who were in the zone of consideration on that date i.e. on 22.02.1990 and then find out whether the applicant can be promoted for the vacancies of the year 1989 and 1990 having regard to the number of vacancies available as on 22.02.1990 and the grading given to the applicant. Therefore, considering of the names of Shri Sable and Shri Rokade was very much relevant as both were within the zone of consideration on that date and were eligible on that date. Thus, we cannot find any fault with the selection. We are satisfied that the applicant could not have been included in the select panel of 22.02.1990 and review select panel of 1998. The OA therefore fails and is accordingly dismissed without any order as to costs.

Shanta J

(SMT. SHANTA SHAstry)
MEMBER (A)

SLJ

(S.L. JAIN)
MEMBER (J)

Gajan