

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 159/2001

Dated this Wednesday the 17th day of October, 2001.

Shri Sitaram Kondiba Nyaynirgune Applicant.

Shri S.G. Aney with Shri S.R. Atre Advocate for the
Applicant.

VERSUS

The Secretary, Deftt. of Home affairs Respondents.
and others.

Shri V.S. Masurkar

Advocate for the
Respondents.

CORAM :

Hon'ble Mrs. Lakshmi Swaminathan, VC (J).
Hon'ble Shri B.N. Bahadur, M(A).

(i)	To be referred to the Reporter or not ?	Yes
(ii)	Whether it needs to be circulated to other Benches of the Tribunal ?	No
(iii)	Library.	Yes

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
VC (J)

OS*

Central Administrative Tribunal
Mumbai Bench

O.A.159/2001

Mumbai this the 17th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri B.N. Bahadur, Member(A).

Shri Sitaram Kondiba Nyaynirgune,
Principal,
Police Training School,
Marol, Mumbai -400 059

Residing at -

Government Quarters,
Haji Ali, Mumbai. ... Applicant.

(By Advocates Shri S.G. Aney, with Shri S.R. Atre)

Versus

1. The Secretary,
Department of Home Affairs,
South Block, New Delhi-10.
2. The Secretary,
Ministry of Personnel,
Public Grievance and Pension,
Department of Personnel & Training,
Government of India, South Block,
New Delhi-10.
3. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110 001.
4. The Additional Chief Secretary,
and Secretary (Home),
Home Department,
Government of Maharashtra,
Mantralaya, Mumbai-32. ... Respondents.

(By Advocate Shri V.S. Masurkar)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

This application is a sequel to an earlier
application filed by the applicant in the Tribunal (Mumbai Bench-

3. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. Learned counsel for the respondents has also submitted the relevant records of the Review Selection Committee meetings and the ACR Folder of the applicant.

4. Learned counsel for applicant has submitted at the outset that he does not have any grievance with regard to Paragraphs 1 and 2 of the order dated 28.8.2000, the relevant portions of which read as follows:

".....The Review Selection Committee held on 29.6.2000 did not consider the name of the applicant for inclusion in the select list of 1994-95 for appointment by promotion to the IPS as no officer junior to him figured in the zone of consideration

2. Select list for the year 1995-96: There were 5 vacancies for which select list was to be prepared for the year 1995-96. Your name was considered by the Committee. You were adjudged as "Very Good" on the basis of your annual confidential reports. Your serial number was 9(A) above your junior Shri H.R. Jadhav. Since only 5 posts were to be filled in, your name could not be included in the select list for 1995-96".

He has challenged the vires of the order in other aspects. He has submitted that if, as stated by the respondents in Paragraph 2 of this order, the applicant's name appears at Serial No.9 (A) above his junior Shri H.R. Jadhav and there were 5 posts which were filled, then under what circumstances his name has been placed at Serial No. 7 (A), as stated in Paragraph 3 in the

OA 194/1999) which was disposed of by this Bench by order dated 2.11.1999. Earlier to that, the applicant had approached the Maharashtra Administrative Tribunal (MAT) in OA 235/98, in which that Tribunal allowed the petition and certain adverse remarks in the applicant's ACRs for the years 1993-94 and 1995-96 were ordered to be quashed and set aside by order dated 22.2.1998.

2. After the Tribunal's order dated 2.11.1999 in OA 194/1999 was passed, the applicant had filed Contempt Petition (CP 63/2000). This was disposed of by Tribunal's order dated 5.1.2001, in which the observations had been made that the respondents have complied with the directions given by the Tribunal and there was no deliberate contempt or disobedience by the respondents. Thereafter, the applicant had filed a Miscellaneous Petition in the CP in which the Tribunal by order dated 26.2.2001 has stated that after hearing the learned counsel for the applicant and respondents despite an order passed in CP 63/2000 in OA 194/1999, it was clarified that the dismissal of the CP will not come in the way of the applicant instituting an Original Application, if he is so advised. Shri S.G. Aney, learned counsel, has submitted that in consequence of this order, this application has been filed, in which the order passed by the respondents dated 28.8.2000 implementing the Tribunal's directions in O.A.194/1999 has been impugned.

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3. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. Learned counsel for the respondents has also submitted the relevant records of the Review Selection Committee meetings and the ACR Folder of the applicant.

4. Learned counsel for applicant has submitted at the outset that he does not have any grievance with regard to Paragraphs 1 and 2 of the order dated 28.8.2000, the relevant portions of which read as follows:

".....The Review Selection Committee held on 29.6.2000 did not consider the name of the applicant for inclusion in the select list of 1994-95 for appointment by promotion to the IPS as no officer junior to him figured in the zone of consideration

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He has challenged the vires of the order in other aspects. He has submitted that if, as stated by the respondents in Paragraph 2 of this order, the applicant's name appears at Serial No.9 (A) above his junior Shri H.R. Jadhav and there were 5 posts which were filled, then under what circumstances his name has been placed at Serial No. 7 (A), as stated in Paragraph 3 in the

order. He has submitted that as the five persons above him at Serial No. 9(A) have been selected, then the applicant would have comfortably come within the next available 5 vacancies and should not have been ignored for appointment by promotion to Indian Police Service (IPS) under the provisions of the IPS (Appointment by Promotion) Regulation, 1955 (hereinafter referred to as "the Regulation"). According to him, in the select list for the year 1996-97, according to the respondents his name had been placed at Serial No. 7(A) above the name of his junior, Shri H.R. Jadhav, and as there were 5 vacancies, even if he was adjudged as "Good" on the basis of Annual Confidential Reports (ACRs), he should have been in the select list. Learned counsel has submitted that the applicant's grading should have been actually "Very Good" in all the select lists, having regard to the observations of the aforesaid judgement of the MAT dated 22.2.1999.

5. It is relevant to mention here that during the course of arguments, Shri S.G. Aney, learned counsel, has submitted that having regard to the provisions of the relevant Regulation for constitution of the Selection Committee which has reviewed the applicant's case in terms of the aforesaid order of the Tribunal dated 2.11.1999 and the actual composition of the Review Selection Committee, he does not press those arguments regarding the wrong composition of the Review Selection Committee.

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Therefore, that ground is disposed of as not pressed. Similarly, learned counsel for the applicant has also submitted that he does not press another ground that the Selection Committee proceedings were not approved by the Chief Minister but only by the Deputy Chief Minister and certain appropriate Members of the Committee were also not present. Having regard to the provisions of Paragraph 3 of the Regulation, as there is no infirmity in either of those grounds, and noting the submissions of the learned counsel for the applicant, those grounds are also disposed of as not pressed.

6. The other ground taken by the learned counsel for the applicant was that the applicant who belongs to the Scheduled Caste (SC) community has not been granted relaxed standards while the Review Selection Committee assessed his suitability for appointment by promotion to IPS. He has relied on the Ministry of Home Affairs O.M. No.1/9/1969 dated 26.3.1969 on the subject of concession to SC and ST in posts filled by promotion. Paragraph 2 of this O.M. provides that in promotions by selection to posts within Class I, which carry a salary of Rs.2,000 per month, or less, the SC/ST officers, who are senior enough in the zone of consideration for promotions and are within the number of vacancies for which the select list has to be drawn would be included in that list provided they are not considered

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unfit. The last sentence of this paragraph, however, states that "They would not be given, for this purpose, one grading higher than the grading otherwise applicable to them on the basis of their record of service".

7. With regard to the contention of the grading of the applicant's ACRs, learned counsel for the respondents has relied on the judgement of the Tribunal (Mumbai Bench) in Dr. S.R. Kapse Vs. The State of Maharashtra & Ors. (O.A.269/2001), decided on 29.8.2001. He has also emphasised that under the relevant statutory Regulation which govern the facts in this case, regarding the appointment of the applicant by promotion to IPS, paragraph 5 (4) lays down a specific procedure to be adopted by the Selection Committee to classify the eligible officers as 'Outstanding', 'Very Good', 'Good', 'Unfit', as the case may be, on an overall relative assessment of their service records. He has also submitted that paragraph 5 (5) of the Regulation further provides that the list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good', and thereafter from amongst those classified as 'Good'. His contention, therefore, is that the observations of the Supreme Court in Jal Nigam's case (supra)

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will not apply to the facts in the present case as there are specific statutory provisions in the Regulation to lay down the criteria in the Selection Committee procedure for making the selection for the eligible candidates.

8. The Regulation which is applicable to the facts in this case with regard to his appointment by promotion to IPS does not provide for any such upgradation of SC/ST officers and even the Ministry of Home Affairs O.M. relied upon by the applicant stipulates that there is no entitlement for higher gradation of such officers in the matter of concession to SC/ST officers in cases of promotion. Learned counsel for the applicant has also made a submission that the Review Selection Committee perhaps was ~~also~~ not aware that the applicant belongs to the SC community as no reference has been made to it and, therefore, this is also another flaw in the proceedings of the Review Selection Committee. We are unable to agree with this contentions as it was pointed out by Shri V.S. Masurkar, learned counsel for the respondents, that in the relevant proforma of the ACR, which the applicant has filled, there is a specific column regarding the status of the employee, namely, whether he belongs to the SC, ST or OBC i.e. reserved category or not. We have also perused the ACR Folder of the applicant and there is no ambiguity about the fact that the applicant belongs to the SC community. The relevant ACRs of the applicant have been placed before the Review

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Selection Committee which has considered his case in terms of the Tribunal's order dated 2.11.1999 in OA 194/1999 and the contentions of the learned counsel for the applicant are, therefore, baseless and are accordingly rejected. We also find force in the submissions made by Shri V.S. Masurkar, learned counsel for the respondents, that in the present case the applicant is seeking appointment by promotion to IPS which is a method of recruitment and not a promotion as such from one post to a higher post in the normal circumstances. In the facts and circumstances of the case, we are unable to agree with the contention of the learned counsel for the applicant that the Review Selection Committee has not considered his case for appointment by promotion to IPS in accordance with the provisions of Paragraph 5 of the Regulation. The M.H.A. O.M. dated 26.3.1969 relied upon by the applicant deals with concession to SC/ST employees in posts filled by promotions in Class-I Services and is not applicable to the facts in the present case. Apart from that, as seen from Paragraph 2 of the O.M. itself, such persons are to be included in the select list provided they are not considered unfit for promotion but are not to be given one grade higher than the grade otherwise assignable to them on the basis of their record of service and ACRs. Therefore, at this stage for the applicant to contend that he should have been given relaxed standards which has not been done by the Review Selection Committee is untenable. It is also relevant to note that from

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the records of the Review Selection Committee meetings held for consideration of, the applicant's case that, besides the applicant, there are a number of other candidates belonging to SC/ST community who have also been dealt with along with the applicant, applying the same standards. Therefore, the procedure adopted by the Review Selection Committee is not only in accordance with the provisions of the Regulations but cannot also be held to be arbitrary, unreasonable or illegal to justify any interference in the matter.

9. Another ground taken by the learned counsel for the applicant to challenge the validity of the implementation order passed by the respondents dated 28.8.2000 is that the respondents have failed to have a triennial review at the appropriate times in order to ascertain the actual number of vacancies available from 1989 onwards. He has relied on the judgements of the Supreme Court in S. Ramanathan Vs. Union of India & Ors. (2001 SCC (L&S) 340). He has also referred to the judgements of the Supreme Court in U.P. Jal Nigam & Ors. Vs. Prabhat Chandra Jain & Ors. (1996(33) ATC 217) which has been followed by the Tribunal in A.K. Verma Vs. Union of India & Ors. (OA 170/2001), and the Tribunal (Mumbai Bench) in B.N. Mishra Vs. Union of India & Ors. (OA 120/99). These contentions have also been controverted by the learned counsel for the respondents. His contention is that nowhere the applicant has contended that

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if the triennial review had been conducted, there would have been an upward revision of the vacancies of the earlier relevant years. He has submitted that it could also be reverse as it could result in reduced number of vacancies. He has also submitted that he should not be mistaken to mean that the respondents are not conducting the review which is a statutory requirement, as held by the Supreme Court in S. Ramanathan's case (supra). He has submitted that it should not be taken that the Department is not duty bound to conduct the review but the applicant cannot claim the relief based on this argument. Learned counsel for the respondents has submitted that at this stage the applicant cannot challenge the implementation order passed by the respondents dated 28.8.2000 in furtherance of the Tribunal's order in OA 194/1999, on grounds which he had not even cared to agitate earlier, apart from the fact that in the relief clause itself there is no prayer even for quashing the so called impugned order. According to him, once the assessment of the applicant has been conducted for the relevant years in accordance with the relevant Rules/Regulations and directions of the Tribunal, the applicant cannot reagitate the matter.

10. The ground taken by the learned counsel for the applicant based on the judgment of the Supreme Court in S.Ramanathan's case (supra) will not assist the applicant at this stage. The

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applicant is to retire on superannuation from service in December, 2001 and has already filed several applications, namely, O.A. 235/1998 before the MAT, and O.A.194/99, CP 63/2000 and the M.P. before this Tribunal. There was no reason why the applicant could not have taken this ground earlier in O.A. 194/1999 and it is, therefore, barred by the principles of constructive res judicata. However, we hasten to add that this does not mean, as also submitted by the learned counsel for the respondents, that the respondents are not duty bound to carry out their statutory duties, including cadre review. Besides, the applicant has not placed any document on record to substantiate his claim that there would be an increase in the number of vacancies for induction to the post of IPS under the Regulation and accordingly his submissions can at best only be termed as surmises and conjectures. Therefore, taking into account the facts and circumstances of this case, this plea also fails and is rejected.

11. Shri G.S. Aney, learned counsel for the applicant, has submitted that the respondents have not carried out the directions contained in paragraph 15(4) of the Tribunal's order dated 2.11.1999 which read as follows:

"It is also made clear that while considering the name of the applicant for inclusion in the select list, the adverse remarks for the years 1993-94 and 1995-96, which are ordered to be expunged by

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the Maharashtra Administrative Tribunal by judgement dt. 22.2.1999 in O.A. No.235/94 could not be taken into consideration".

He had contended that the direction was that the ~~adverse~~ ¹⁸ ~~adverse~~ ACRs for the years 1993-94 and 1995-96 were not to be considered by the Review Selection Committee with which we do not agree. The above directions clearly show that the Review Selection Committee while considering the name of the applicant for inclusion in the said list should not take into consideration the adverse remarks for the aforesaid years which have been ordered to be expunged. From the records, we find that the expunged portions of the remarks have been pasted over by paper and the Review Selection Committee has also recorded that they have not considered the same. In any case, with the pasting over of the expunged portions of the remarks, it is not possible to read and consider the expunged remarks. In the circumstances, we are unable to agree with the contention of the learned counsel for applicant that the Review Selection Committee has not followed the above directions of the Tribunal, so as to justify setting aside the impugned order. We also see merit in the submissions made by Shri V.S. Masurkar, learned counsel that in the reliefs prayed for by the applicant, no prayer has been made to set aside the impugned order or parts thereof in the O.A., excepting that a number of objections have been taken by the learned counsel for applicant as discussed here.

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12. Similarly, we also find no merit in the contention of the learned counsel for the applicant that the methodology and procedure adopted by the Review Selection Committee for placing the applicant's name in the select list of IPS officers in the concerned years has not been done in terms of the observations of the Supreme Court in *Jal Nigam's* case (supra) where there has been down-grading and so on. The further contention on behalf of the applicant that there are other general observations in *Jal Nigam's* case (supra) relied upon by him will also not assist him having regard to the provisions of Regulations which are applicable to his case. It has also to be kept in view that the principles which are applicable to promotions *stricto sensu* will not be applicable to the present case which is governed by the statutory Regulation for appointment by promotion of eligible officers to IPS. It is clear from a perusal of paragraph 5 of the Regulation that the Review Selection Committee is to follow the procedure of grading based on the relevant years of ACRs of the applicant and thereafter place him in the select list which has been done. Therefore, we are unable to agree with the contention of the learned counsel for the applicant that the directions of the Tribunal have not been complied with in terms of the relevant applicable Regulation. We also note that even though 5 eligible candidates have been placed in the select list for the year 1994-95, only 2 had been actually recommended and appointed by promotion to IPS. Therefore, there is

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no infirmity in placing the applicant at Serial No.5 (A) for consideration in the year 1995-96 and the action of the respondents cannot, therefore, be faulted. No junior to the applicant has also been included in the select list. We have also considered the other submissions made by Shri G.S. Aney, learned counsel but do not find any good grounds justifying any interference in the matter.

13. In the result, for the reasons given above, we find no merit in this application. O.A. fails and is accordingly dismissed. No order as to costs.

B.N.Bahadur

— (B.N. Bahadur)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'