

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THIS THE 23RD DAY OF JANUARY,1987.

PRESENT:

Hon'ble Mr.Justice K.S.Puttasway, .. Vice-Chairman.

And

Hon'ble Mr. L.H.A.Rego, ..Member(A).

APPLICATION NUMBER 689 OF 1986.

L.K.Dasi Kumar,
S/o Sri L.T.Kannan,
Aged 28 years, residing at
No.20, 1st Floor,
Achutaraya Mudaliar Road,
Frazer Town,Bangalore-560 005.

.. Petitioner.

v.

1.The Central Bureau of Investigation,
Special Police Establishment Division,
represented by its Superintendent
of Police, No.223, Bellary Road,
Bangalore-560 080.

2.The Government of India,
Represented by its Director,
Central Bureau of Investigation,
Delhi Special Police Establishment
Division, Ministry of Home Affairs,
Department of Personnel
and Administrative Reforms, Sardar
Patel Road, New Delhi-I. .. Respondents.

(By Sri N.Basavaraju, Standing Counsel).

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This application coming on for hearing this day, Vice-Chairman made the following:

ORDER

In this transferred application received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act,1985 ('the Act'), the applicant has challenged his non-promotion to the post of Inspector of Police ('Inspector') as on 16-11-1979.

2. On 2-1-1974, the applicant joined service as a Sub-Inspector of Police ('SI') in the Central Bureau of Investigation of Government of India (CBI) and as on 17-10-1979 he was eligible for promotion as an Inspector.

3. On 17-10-1979 a Departmental Promotion Committee ('DPC') constituted by Government for the purpose considered the case of the applicant and other SIs, who were within the range of selection for the vacant posts of Inspectors and recommended his supersession and the promotion of several others with whom we are not concerned. On the basis of the recommendations of the DPC, the competent authority on 16-II-1979 had promoted 21 SIs as Inspectors out of whom 6 were juniors to the applicant. But, the DPC in October 1980 found that the applicant was suitable for promotion and accepting its recommendations he has been promoted as Inspector on 21st November, 1980 (Annexure-D).

4. Among others the applicant has urged that the adverse entries in his Confidential Records ('CRs') for the calendar year 1978 had not been communicated to him, and that in its absence it was not open to the DPC to rely on the same and supersede him in 1979.

5. In their statement of objections filed before the High Court, the respondents have asserted that the case of the applicant had been considered for promotion and he was found not fit for promotion on relevant considerations and material and that decision of the DPC -- accepted by the appointing authority cannot be interfered with by this Tribunal.

6. Sri L.K.Dasi Kumar who is the applicant in the case

case contends that the adverse entries made by the reporting officer for the calendar year 1978 concurred by the reviewing officer, that had not been communicated to him, could not be the basis for his supersession.

7. Sri N.Basavaraju, learned Additional Central Government Standing Counsel appearing for the respondents contends that the assessment made by the reporting and reviewing officer for the year 1978, even without their communication, formed valid material for his supersession and that decision of the DPC cannot be examined by this Tribunal as if it is a Court of Appeal.

8. We have carefully examined the CRs of the applicant for the calender years 1978 and 1979 that formed the material for the DPC held on 17-10-1979 and the proceedings of the DPC.

9. On an examination of the CRs of the applicant, the DPC in its metting held on 17-10-1979, had found that he was not fit for promotion and recommended for his supersession, with which the appointing authority had concurred. If the DPC that was competent to examine the CRs of the applicant for the relevant years, examines them and reaches a conclusion that he was not fit for promotion, this Tribunal, however extensive its powers are under the Act, cannot sit as a Court of Appeal and come to a different conclusion and hold that he was fit for promotion as on 17-10-1979.

10. In the CR for the calendar year 1978, the reporting officer on making his entries on various aspects of the performance of the applicant had opined that he was not fit for promotion, with which the reviewing officer also had concurred. In the very next year, the very same reporting officer has

has given a good chit to the applicant with which the reviewing officer has concurred. In the CR for the year 1979, the reviewing officer had opined that the applicant was fit for promotion in his own turn.

II. Sri Dasi Kumar contends that the assessment made by the reporting officer, with which the reviewing officer had concurred for the year 1978, was an adverse entry and should have been communicated to him. In support of his contention Sri Kumar strongly relies on the circular instructions issued by the Government of India in the Ministry of Home Affairs, and the opinion expressed at para 108 of Swamy's Hand Book.

12. We are of the view that the assessment made by the reporting officer with which the reviewing officer had concurred for the year 1978 on the fitness or otherwise of the applicant for promotion, cannot be treated as an adverse entry to be communicated to the applicant. When once we hold that there was no adverse entry, the question of communication of that entry does not arise and vitiate the supersession of the applicant. We are of the view that the instructions issued by Government and the opinion of the author in Swamy's Hand Book do not really bear on the question.

13. As all the grounds urged by the applicant fail, this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

Mr. Purushottam
VICE-CHAIRMAN 23/1/1982

OK
23/1/1982
MEMBER(A)
23/1/1982

dms/np