

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.

601/91

Transfer Application No.

519/95
Date of Decision August, 1995Madhukar Babarao Shinde

Petitioner/s

Mr. Gurusahani with Mr. LonkarAdvocate for
the PetitionersVersusUnion of India & 2 ors.Mr. P. M. Pradhan, for R.1

Respondent/s

Mr. Sureshkumar for Mr. M. I. Sethna for R.2Mr. V. S. Masurkar, for R.3Advocate for
the RespondentsCORAM :

Hon'ble Shri.

Justice M. S. Deshpande, Vice Chairman

Hon'ble Shri.

P. P. Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ? *Ans*

Vice Chairman

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(19)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESOT ROAD, BOMBAY 1

O.A.NO. 601/91

MADHUKAR BABARAO SHINDE
Commandant,
Maharashtra State Reserve Police Force Gr.VIII
Goregaon (E), Bombay ..Applicant

V/s.

1. Union of India through
Secretary, Min. of Personnel,
Public Grievance & Pensions
New Delhi
2. The State of Maharashtra
through Secretary,
General Administration Department
Mantralaya, Bombay 400021
3. The Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi 110011 ..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri P.P.Srivastava, Member(A)

Appearance:

Mr. Gurusahani, Senior Counsel
with Mr. M.D. Lonkar, counsel for applicant

Mr. P.M.Pradhan
Counsel for Respondent No.1

Mr. Sureshkumar for Mr. M.I.Sethna
Counsel for Respondent no.2

Mr. V.S.Masurkar,
counsel for Respondent No.3

ORAL JUDGMENT: DATED: 5.06.1995
(Per: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges his non-selection to the Indian Police Service (I.P.S.) in the year 1986 and 1987 on the ground that the Selection Committee took into consideration the adverse remarks which had been recorded against him in 1983-84 and 1985-86.

2. The applicant was appointed as a Deputy Superintendent of Police, Maharashtra State Police Cadre on 4.9.1977 and was confirmed by letter dt.19.8.85.

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He was appointed as Additional Superintendent of Police on 28.9.83. While he was working in Jalgaon District the District Magistrate recorded adverse confidential remarks against him for the years 1983-84 and they were communicated to him on 15.5.1985. The applicant made a representation against the adverse remarks and the State Government vide its letter dated 9.10.85 informed the applicant that the adverse remarks have been expunged. The applicnat's contention is that ~~though~~ there were 16 vacancies to be filled from the State Cadre, and there were only three eligible persons, he being one of them, and in Selection Committee meeting which was held in December 1985 the fact that the adverse remarks had been expunged was not noticed and as a result thereof he was not selected. Adverse remarks were also recorded in his Annual Confidential Rolls for the year 1985-86 by the DIG(P) Amravati and they were communicated to the applicant on 12.9.86. He was informed by the letter dated 7.12.87 that the Government had expunged the adverse remarks. The applicant was selected to the I.P.S. cadre by the notification dated 22.9.88. He made a representation to the first respondent, Union of India, on 1.10.1988, but that representation was kept pending and came to be rejected by the order dated 6.5.91 and the applicant filed the present application in August 1991. With regard to the selection in the year 1986, the applicant's

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contention is that the integrity certificate was not forwarded by the State Government and since adverse remarks came to be expunged after the meeting of the Selection Committee in the year 1986 his non-selection was improper. It is urged that he should be deemed to have been promoted in the year 1986 or in the year 1987 instead in the year 1988.

3. Respondent No.1 Union of India contended that the applicant's representation dated 10th October 1988 for refixation of seniority on the footing that he is entitled to be promoted from 1986 on the basis of the selection held in 1985 could not be accepted because there is no provision in the Indian Police Service (Appointment by Promotion Regulation, 1955 for reviewing the earlier select list which has been finalised. It was urged that the preparation and finalisation of the select list was primarily of the concern of both State Government and Union Public Service Commission and with regard to the adverse remarks and withholding of integrity certificate of the applicant it is entirely the concern of the State Government, and therefore the applicant is not entitled to any relief.

4. The Respondent no.2 while admitting the service particulars given by the applicant contended that after the applicant became eligible for consideration for inclusion of select list of 1985, the meeting of the Selection Committee was held on 5.12.85 and the name of the applicant

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was considered by the Committee at that time, but the applicant was found unfit for inclusion in the select list for appointment in Indian Police Service on the basis of his ACRs. The name of the applicant was again placed before the Select Committee in its meeting on 15.12.86 but he was found unfit for inclusion into IPS on the basis of his ACRs and his name was placed again before the Selection Committee on 4.12.87 and he was found fit for inclusion in the IPS and he was accordingly promoted and appointed in the IPS on 22.9.1988. With regard to the ACRs before the Selection Committee meeting held on 16.12.1986 it was contended that the applicant's representation dated 19.11.86 for expunging the adverse remarks of 1985-86 was considered by the State Government in December 1987, but those adverse remarks were expunged much after the meeting of the Selection Committee and the Government of India was requested to consider the request of the applicant for inclusion of his name in the select list in its meeting held on 16.12.86, but the Government of India by the letter dated 21.12.90 informed that as the Indian Police Service (Appointment by Promotion) Regulation 1955 do not provide for inclusion in earlier select list, the applicant's request could not be acceded to. They also reiterated the position that the adverse remarks were expunged prior to the date of meeting of the Selection Committee in the year 1985 and yet the Selection Committee found him unfit for inclusion in the select list.

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5. The third respondent, the Union Public Service Commission, contended that the name of the applicant was considered by the Selection Committee which met on 5.12.85, 16.12.86 and 4.12.87 and on the basis of the overall assessment of the service records of the applicant he was found unfit in the first two meetings, but his overall assessment in the Selection Committee meeting held on 4.12.87 was good and he was therefore included in the Select List. It ^{is} also contended that it was incorrect to say that the applicant was denied promotion due to adverse remarks in respect of which representations were then pending since the Government of Maharashtra had given a certificate that representations for expunging the adverse remarks, if any made by the applicant, was not pending with them.

6. With regard to the Selection Committee held on 5.12.85 the contention of the Ld. Counsel for the applicant was that the applicant was found unsuitable though the adverse remarks which were recorded against him for the year 1983-84 had been expunged by the order dated 9.10.85. The only question was whether the Respondent No.2 had forwarded to the Respondent No.3 the State Government's order expunging the adverse remarks which came to be passed earlier. The Ld. Counsel for respondent no.2 produced before us the relevant file for the year 1985 which shows that the adverse remarks were deleted on 15.10.85. The letter dated 8.10.85 shows that the Deputy Secretary to the Government of Maharashtra, Home Department, had sent all the

relevant material to the Respondent no.3 including the certificate regarding integrity, the list of officers in respect of whom integrity was certified and the certificate regarding representation about the adverse remarks. It is apparent that the applicant's name did not figure in the list of officers in respect of whom the certificate of integrity was withheld and he had been issued with the integrity certificate as well as the certificate that no representation about the adverse remarks made against him was pending. The very fact that the integrity certificate was issued would show that the Selection Committee did not have before it the adverse remarks which were recorded against the applicant and those expugned adverse remarks had not been taken into consideration by the Selection Committee. We are, therefore, satisfied that the applicant's case did not suffer when the question of his selection arose in the year 1985 and that his unfitness for promotion was not a result of the adverse remarks which were recorded against him in the year 1983-84. The basis for the applicant's grievance for this year therefore did not exist and we find that the applicant is not entitled to have a Review D.P.C. for the selection made in the year 1985.

7. Turning to the adverse remarks of 1985-86 recorded by the DIG(P) Amravati which were communicated to the applicant on 3.1.86 the applicant was informed on 7.12.87 that the Government had expunged those adverse remarks.

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In view of the admission of the 2nd respondent, State Government, that the Selection Committee did not have before it the order expunging the earlier adverse remarks when the question of the applicant's selection came up, it is apparent that the Selection Committee which met on 16.12.86 acted upon the adverse remarks which came to be expunged by the letter dated 7.12.87 (Exhibit F). It is also apparent from the letter dated 21.12.90 which has been annexed to the written statement filed by the first respondent which was addressed by the Under Secretary to the Government of to the Chief Secretary, Government of Maharashtra that though the State Government had made the request for holding a Review Selection Committee meeting, since there was no provision to that effect in the I.P.S. (Appointment by Promotion) Regulation, 1955.

8. The Ld. Counsel for Respondent no.2 urged that since the relevant Regulation did not provide for a Review Selection Committee meeting the respondents could not have entertained the applicant's request to that effect. This position is no longer res-integra in view of the decision of this Tribunal in O.A.No. 373/81 RAMRAO NARAYANRAO WAGH Vs. UNION OF INDIA & 4 ORS., decided on 11.8.92. In para 8 it was observed as follows:

"The adverse remarks in respect of the applicant in his ACR for the years 1985-86 and 1987-88 having been modified/toned down, in our view, his case deserves

to be considered by the Review Selection Committee for the year 1987 and also for the subsequent years, as held in the case of Sh..N.Sharma & Ors. Vs. U.O.I. & Ors., referred to by the learned counsel for the applicant wherein it was held that the vacancies occurred over years, cannot be clubbed together and one panel formed. We further notice that applicant's representation dated 8.4.91, in this regard has not been disposed of by the respondents, as in the meantime, the applicant had filed the present O.A.

"... We accordingly direct the respondnets that with the modified/toned down remarks for the years 1985-86 and 1987-88 the applicant's case may be reconsidered by the Review Selection Committee for the year 1987 as well as for the subsequent years held on 22.2.90, for his promotion from the appropriate year, if found suitable.

In O.A.No. 147/93 UTTAM MANUAL KALE Vs. UNION OF INDIA & 9 ORS., decided on 11.6.1993 a direction was made to complete the process of selection of the applicant and in O.A. No. 28/92, RAJENDRA A.SONAWANE Vs. UNION OF INDIA & 2 ORS., decided on 4.8.1994 it was held that the applicant would be clearly [] entitled to reconsideration of his entitlement when he should have been considered when his junior was considered in

the years 1984, 1985 and 1986 and if the applicant is found suitable to give him appropriate placement as per rules ^{with} and a direction that an appropriate Review Selection Committee be held within four months from the date of communication of the order. In O.A.No. 595/91 S.K. IYENGAR Vs. UNION OF INDIA & ORS., decided on 7.3.95 a Review Selection Committee was ordered.

9. The Ld. Counsel for the Respondent no.3 however referred to our observations in O.A.No.892/90 U.D. JOSHI Vs. UNION OF INDIA ORS., decided on 27.7.1995 to the effect that since the Screening Committee or Selection Committee was a High Powered Body comprising of very senior officers, no injustice could have occasioned to the applicant therein when they are aware that the representation made by the applicant against the adverse remarks is pending and the Selection Committee would not take those adverse remarks against the applicant while assessing the overall performance of the officer. There the representation against the adverse remarks was ultimately rejected and therefore it was held that no injustice could have occasioned to the applicant. Reference was also made to the observations made in MAJOR GENERAL I.P.S. DEWAN Vs. UNION OF INDIA & ORS., (1995) 29 Administrative Tribunals Cases 579. But it is difficult to see ^{how} para 13 of that decision would help the applicant, because what was said was as follows:

"Assuming that the said remarks were indeed taken into consideration, the non-selection of the appellant cannot be faulted. Firstly, it cannot be said that the said remarks alone were the cause of non-selection; the non-selection of appellant appears to be based on an overall assessment. Secondly, the statutory complaint preferred by the appellant against the said remarks have been rejected by the Central Government, no doubt subsequent to the said consideration. As stated above, the situation may have been different had the said complaint been upheld partly or wholly. In the circumstances, the Court cannot sit as an appellate authority over the acts and proceedings of the Selection Board."

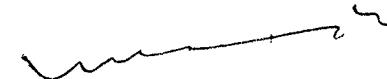
In the present case the situation is different because the adverse remarks against the applicant had been expunged and his non-selection was therefore vitiated by taking into consideration the remarks which ought not to have been taken into consideration and we find it difficult to accept the submission made in this behalf by the Ld. Counsel for Respondent No.3.

10. In the result we direct that a Review Selection Committee Meeting should be called

in respect of the selection made for the year 1986. That Review Selection Committee shall ignore the adverse remarks in the Annual Confidential Report which came to be expunged for the year 1985-86 and ascertain the suitability of the Applicant by ignoring the expunged adverse remarks. This process shall be completed within four months from the date of receipt of a copy of this order by the respondents. There would be no order as to costs.


(P.P.Srivastava)

Member(A)


(M.S.Deshpande)

Vice Chairman

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