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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
BOMBAY

OA No.373/91

Date of decision:-11.8.92

Ramrao Narayanrao Wagh ... Applicant
versus

Union of India & 4 ors. ... Respondents

CORAM: THE HON'BLE MR.T.S.OBEROI, MEMBER(J)
THE HON'BLE MS.USHA SAVARA, MEMBER(A)

For the Applicant ... Sh.K.K.Singhvi along
with Sh.G.K.Masand
and Sh S.R.Atre, Advocates.

For the Respondents ... Sh.M.I.Sethna, Sr.Counsel
with Sh.A.I.Bhatkar,
counsel.

1. Whether the reporters of local papers may
be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

(DELIVERED BY HON'BLE SH.T.S.OBEROI, MEMBER)

In this OA filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant
seeks the following reliefs:-

- "(a) This Hon'ble Tribunal be pleased
to direct the respondents to produce
all relevant papers pertaining
to the Selection to the Indian
Police Service for the years 1987,
1988, 1989 and 1990 including the
information regarding vacancies
for the said promotion available
in these years respectively and
after examining the legality and
propriety thereof direct the
respondents to review/consider
the case of the applicant for
appointment by promotion to the
Indian Police Service with reference
to the vacancies available from
the years 1987, 1988, 1989 and 1990
separately and without expansion
of the zone of consideration vis-
a-vis the said particular year
and accordingly appoint the applicant

by promotion to the Indian Police Service against vacancy of the appropriate year along with all consequential benefits including arrears of pay, seniority etc.

- (b) This Hon'ble Tribunal be pleased to call for the records and proceedings of the present case and after examining the legality and propriety thereof quash and set aside the impugned order dated 8th March, 1991 (Annexure 'A-5), including the promotions of Respondents No. 4 and 5 and direct the respondents to appoint the applicant to the Indian Police Service with all consequential benefits.
- (c) Pass any such order and/or orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.
- (d) Cost of the application be provided for."

2. The applicant's case briefly, is that he was directly recruited as Deputy Superintendent of Police in 1978 and joined the Maharashtra State Police Service on 16.1.78. He was promoted as Superintendent of Police in October, 1984 and has been working in the same capacity since then. He is presently posted at Sangli in Maharashtra State. As per provisions of Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations 1955, after putting in eight years' of continuous service as on 1st January in the year in which the Select Committee meets, he became eligible for appointment by promotion to the Indian Police Service. However, the applicant was super~~sed~~^seded in

the meeting of 1987, held in December, 1987, because of certain adverse remarks in his Confidential Report for the year 1985-86, which, however were expunged/modified by respondent No.3, vide communication dated 30.3.89(copy Annexure A-2). As such the applicant claims to be entitled for consideration for promotion to the Indian Police Service against the vacancies of 1987, and so, the respondents are required to review the proceedings of the committee held in December, 1987. The applicant was given another adverse remark in the Confidential Report of 1987-88 which was also expunged/toned down by the respondents vide their Memorandum dated 16th February, 1989(Annexure A-3). As per Regulation No.5, the committee is required to be convened at intervals not exceeding one year, i.e., it was required to meet in 1988 and 1989. However, no such meetings were convened in the aforesaid years and after Dec. 1987, it was ^{held} / in early 1990. The applicant was considered, but placed at Sl.No.10 of the Select List and could not be promoted as there were eight vacancies. He claims to be reconsidered for the vacancies for the year 1987 as a result of review of his case. His representation to this effect submitted on 8.4.91 still remains to be attended to, by the respondents. He also complains that two of his juniors, namely, Sh.T.A. Chavan(Shete) and Sh.V.N.Bokey, have been erroneously given promotions in the I.P.S though they were not

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eligible for such promotions having not put in eight years' of service in the State Police Service.

3. The application has been opposed by the respondents. Respondent Nos.2(U.P.S.C.), 3(Government of Maharashtra) and 5 (Sh.V.N.Bokey) have filed their counters.

No counter has been filed on behalf of Respondents 1&4. Respondent No.5 has taken up the plea that he was granted promotion by the State Government(Respondent No.3), who is in possession of the relevant record and would protect his interests. Respondent No.2 has stated in his counter affidavit that the Selection Committee which met on 4.12.87 did not find the applicant fit for promotion; that there is no provision in the rules for review of the proceedings of the Selection Committee because of expunction of adverse remarks and that the expunction of remarks fell within the domain of Respondent No.3. It is admitted that no meeting of the Selection Committee was held in 1988 and after 1989, it was held only on 22.2.1990. It is further stated that it is ^{not} mandatory to hold Selection Committee meeting every year. In the meeting held on 22.2.90, the applicant's name was considered and was included at Sl.No.10 in the Select List of 1989. It is submitted that the meetings were duly held for years 1987 and 1989. As regards the promotion of respondents 4&5, it is stated by respondent No.2 that both of them had put in 8 years' of service on account of having been given deemed date of appointment as Dy.S.P. in the State Police Service w.e.f. 1.6.80 and 28.7.80 respectively, as per orders at page 9 to 12 of the paper-book and hence were eligible for promotion and that the names of these respondents were proposed by respondent No.3

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4. Respondent No.3 has also filed counter taking somewhat similar pleas as put forth by respondent No.2 in opposing the applicant's claim. It is stated that the adverse remarks communicated to the applicant from his ACR for the year 1985-86 & 1987-88 were partly expunged and toned down.

5. We have heard the learned counsel for both the parties at length. We have also perused the relevant material on record.

6. Precisely, three points were urged, during arguments, by the learned counsel for the applicant. Firstly, as per Regulation 5(1) of the Indian Police (Appointment By Promotion) Regulations, 1955, the meeting of the committee is supposed to ^{be} held ordinarily at the interval not exceeding one year, whereas, admittedly, in this case, no meeting was held for the years 1988 and 1989 and after 4.12.87, the next meeting was held on 22.2.90, and thus, specific directions in the Regulations mentioned above, have not been complied with, resulting in prejudice to applicant's interests. Secondly, the learned counsel for the applicant urged that after toning down of the remarks, in respect of the applicant, for the ACRs of 1985-86 and 1987-88, his case should have been considered by the Review Selection Committee. The learned counsel for the applicant pleaded that it goes without saying that once adverse remarks are expunged or even toned down, the applicant

was to be placed in the position he would have been in, without such ^{adverse} remarks, as its natural consequence, inherent in Articles 14&16 of the Constitution, and, therefore, he deserved to be reconsidered by the Review Selection Committee for the year 1987, and also separately for each year, thereafter, even if meeting or the Selection Committee could not be held for a particular year. He relied upon a case reported in 1989(1)(CAT) 257 decided by the Principal Bench of this Tribunal, on 13.11.87 (S.N.Sharma & Ors. Vs. Union of India & Ors.). Thirdly, the learned counsel for the applicant pleaded that two of the officers, namely respondents 4&5 had been considered in the Selection Committee held on 22.2.90, even though they had not put in 8 years' of service in the State Police cadre, as is required under third proviso to Regulation 5(2) of the Indian Police Service (Appointment by Promotion) Regulations, 1955. Further, by referring to a Government of India decision reproduced as 2.2 under Regulation 5 of the Regulations *ibid*, the learned counsel for the applicant pleaded that experience in the equivalent posts in non-Police departments was intentionally excluded from the scope of the eligibility clause (Regulation 4) for the reason that the experience not involving ^{experience} in Police ^{service} should not be reckoned for this purpose. Coming to the case of Respondent No.4, the learned counsel for the applicant pointed out that though Sh.T.A.Chavan was recommended by the Maharashtra Pradesh State Commission for the post of Deputy Superintendent in the reserved quota for economically backward classes in 1979, but because of a complaint that claim of Sh.Chavan as belonging to ^{an} economically backward class was not correct, which however, was eventually found to be in order, he was actually appointed as Deputy Superintendent of Police on 6.12.82 and thus

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he had not completed 8 years' of service in the State Police cadre, in the month of January, 1990, as per the Regulations earlier referred. Similarly, in the case of Respondent No.5, Sh.V.N.Bokey, the learned counsel for the applicant pointed out that he was recommended by the Maharashtra Public Service Commission for the post of Maharashtra Finance and Accounts Services(Junior)Class-I in 1979 and had worked in that service till 28.4.83 and thus Sh.Bokey actually joined as Deputy Superintendent of Police on 29.4.83 and, therefore, could not have completed the requisite years of service in the Selection Committee ^{meeting} held in February, 1990. In this regard, the learned counsel for the applicant again emphasised that by virtue of the decision 2.2, referred to above, any other type of experience should not have been reckoned for State Police Service, unless the former experience was declared as equivalent by the State Government concerned.

7. We have also heard the learned counsel for the respondents, who pleaded that holding of the yearly meeting is not mandatory but merely directory, except in special type of cases as provided in/^{2nd} proviso to Regulation 5(3) of the I.P.S(Appointment by Promotion) Regulations, 1955. As regards, the second point regarding consideration of the remarks after the same having been toned down or expunged, the learned counsel

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for the respondents pleaded that there is no such provisions in the I.P.S. Regulations, ^{and} in the absence of any specific provisions, the court should not look into that aspect. As regard the third point regarding the deemed appointment as Deputy Superintendent of Police given to respondents 4&5, in the State Police, the learned counsel for the respondents pleaded that reckoning the service of the two officers from the date they had~~de~~ been given the benefit of deemed service, they are very much within the requisite number of years' of service in the State Police cadre, for being considered for promotion in I.P.S. The learned counsel for the respondents also pleaded that with the diversification of Police service, engulfing various fields which were earlier not within the sphere of their duties as Police Officers, the objection regarding deemed appointment of Respondents 4&5 w.e.f. 1.6.80 and 28.7.80, respectively, is no more valid. Moreover, as recruitment to various services such as State Police Service, Finance and Accounts service etc. is carried out by a common examination held through the State Public Service Commission, their equivalence is obvious and no separate declaration to this effect need be issued by the State concerned.

8. We have given our careful consideration to the rival contentions, as briefly discussed above. 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.S.N.Sharma & ors. Vs. U.O.I. & Ors, referred to by the learned counsel for the applicant wherein it was held that the

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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 OA. In the said representation, the applicant has also alternatively submitted that his case may be considered against one post kept vacant for one Sh. Sawarkar, who is facing some criminal case which is likely to take quite some time, before it is finally decided, and also against the possible increase in the quota of I.P.S. officers to be promoted out of the State Police Service, because of triennial review of the I.P.S. cadre. We accordingly direct the respondents 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. His other prayers including his objection regarding deemed appointment as Dy.S.P. of Respondents 4&5 with effect from 1.6.80 and 28.7.80, respectively, contained in his representation dated 8.4.1991, be suitably considered by the respondents and appropriate decision taken thereon. The learned counsel for the applicant fairly stated, during arguments, that in case the applicant is given seniority from 1987, even in 1990, with no arrears for the intervening period, he would be satisfied. In view of the same, we direct that in the event of his promotion in I.P.S. as a result of consideration of his case by the Review Selection Committee, he may be granted seniority from 1987 or from a subsequent year, keeping in view the toned down remarks, as put forth by the learned counsel for the applicant.

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We also direct that action on the above lines be taken with utmost expedition, but not later than a period of three months from the date of communication of this judgement.

9. The OA is decided on the above lines with no order as to costs.

U. Savara
(USHA SAVARA) 11.8.92
MEMBER(A)

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)