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## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 40/92 198  
 T.A. No. --

DATE OF DECISION 27-4-93

Abhindranath Fanindranath Banerjee Petitioner

Mr. M.A. Mahalle Advocate for the Petitioner(s)

Versus

U.O.I. & Ors. Respondent

Mr. A.I. Bhatkar Advocate for the Respondent(s)

## COURT:

The Hon'ble Mr. Justice M.S. Deshpande, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

MOIPRRND-12 CAT/86-3-12-86-15,000

M

*[Signature]*  
 (M.S. DESHPANDE)  
 VC

(B)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.40/92

Ahindranath Fanindranath Banerjee,  
32, Sagar Tarang Society,  
Khan Abdul Gaffar Khan Road,  
Worli Sea Face, Worli,  
Bombay - 400 025. .. Applicant

-versus-

1. Union of India  
through  
Secretary(Personnel)  
Ministry of Home Affairs,  
Govt. of India,  
New Delhi.
2. State of Maharashtra,  
through  
Chief Secretary,  
Govt. of Maharashtra,  
Mantralaya,  
Bombay - 400 032.
3. Additional Chief Secretary,  
Home Department,  
State of Maharashtra,  
Mantralaya,  
Madam Cama Road,  
Bombay - 400 032. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande  
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar,  
Member(A)

Appearances:

1. Mr.M.A.Mahalle  
Advocate for the  
Applicant.
2. Mr.A.I.Bhatkar  
Counsel for the  
Respondents.

ORAL JUDGMENT: Date: 27-4-93  
(Per M.S.Deshpande, Vice-Chairman)

By this application the applicant  
seeks a direction to the respondents to promote  
him to the rank of Additional Inspector General  
of Police w.e.f. 21-5-1981 with consequential  
benefits such as seniority and emoluments and  
a further direction to consider him for  
further promotion to the cadre of Special  
Inspector General of Police and then to Director  
General of Police.

(9)

2. The applicant was appointed as IPS Officer of 1954 batch and joined as Asstt. Superintendent of Police. He was appointed as Superintendent of Police on 19-4-60 and was taken in the Selection Grade in 1976. He was promoted to the post of Deputy Inspector General of Police on 31-1-1981. He was considered for promotion to the post of Additional Inspector General of Police as on 21-5-81 but was not selected. The non selection of the applicant to the post of Additional Inspector General of Police was the subject of certain litigation but it is necessary to state that the post of Deputy Inspector General of Police was then carrying the pay scale of Rs.2000-125/2-2250. By the Resolution dt. 22-4-1981, Ex.6 to the reply filed by the respondents, a further channel of promotion was provided in order to mitigate stagnation in the cadre of Deputy Inspectors General of Police and six posts in the rank of Deputy Inspector General of Police were upgraded to that of Additional Inspector General of Police in the scale of Rs.2250-125/2-2500 with the reservation that where the statutory requirements make it necessary to keep the earlier designation in tact the designation shall be suitably modified such as "Additional Inspector General of Police-cum-Commissioner of Police." The submission of the learned counsel for the applicant was that what was brought about was merely upgradation of six posts of DIG Police and the selection to the post of Additional Inspector General of Police could not

have been made on the basis that it was a promotional post. This submission, however, overlooks the language of para 1.2 of the Govt. resolution dt. 22-4-81 Ex.6 to which we have adverted.

3. Our attention was drawn to the written statement filed by Mr. Limaye in Tr. 397/87 where it was stated that although DIG Level I is a promotion post from DIG Level II, the duties and responsibilities of both the posts are same. The reference occurs in the context of the observations of the High Court in its order dt. 6-5-85 which required the State Government to reconsider the promotion made in November, 1984 and consider Petitioner Pradhan's case within three weeks from the date of the order. It was mentioned in the written statement that left to itself the proposal for consideration would have been limited only for reconsidering the petitioner (i.e. after expunction of the remarks) for promotion to the post of DIG Level I. This was so because at the meeting of November, 1984 there were two distinct proposals for promotion. The first proposal dealt with the names of officers belonging to DIG Level-II, for being considered for promotion to the post of DIG-I and the second proposal dealt with the names of officers who were already working as DIG-I for being considered for promotion to the post of Special IGP. This is the background in which it was said that the duties and responsibilities of both the posts of DIG Level I and II were the same and it was added that the incumbent of any post of

DIG can be an officer either in the grade of DIG Level I or DIG Level II. So far as the post of Spl. IGP was concerned it was distinctly a promotion post carrying higher responsibilities. It is difficult to construe what was said in the written statement filed by Mr. Limaye on 12-1-1988 in that case as amounting to an admission that the post of DIG Level I and II stood at the same level and criteria for appointment to the one and the other would be the same.

4. In fact clause (2) of Govt. resolution dt. 28-1-1975 (Ex. 3 to the reply) which contains the principles which should be observed in the matter of promotions from a lower to higher grade, service or post mentions/says promotions above the first promotion to Class I should be by strict selection i.e. only those persons who possess positive merit and achieve tangible good results should be considered suitable for promotion irrespective of their seniority provided they fulfill the criteria of length of service prescribed if any. The Govt. resolution dt. 19-9-1977 (Ex. 4 to the reply) substituted the earlier resolution of 1-4-76 by the following definitions: "3(b) for a Government servant to be considered as possessing positive merit, the overall assessment of his record should show that he possesses positive qualities initiative drive integrity and efficiency to a noticeably higher degree than necessary for discharging efficiently the duties of the post held by him and also shoulder the responsibilities of a higher post. The person should be clearly fit for promotion to a higher post and should not be a border line case." We may also refer to

Govt. resolution dt. 9-9-88 which was key to the gradings. The requirement under the Govt. resolution dt. 7-7-77 described 'A+' as Outstanding, 'A' as Very Good, 'A-' Nearing very good, 'B+' positively good, 'B' as Good, (B-) as Average and '(C)' as Below average. The change which was brought about by the resolution dt. 9-9-88 was that the grading "Nearing Very Good(A-)" was dropped and Very Good was to be indicated as '(A)'. It would be apparent that for earning a remark that the Govt. servant had positive merit he should have secured B+(Positively good). Mr. Mahalle, for the applicant, urged that the resolution dt. 9-9-88 cannot be valid in the present case. Though he is right in submitting this, we find that the key as on 7-7-77 was still valid and so far as the description positively good was concerned it was indicated by B+.

5. Though the stand that the Screening Committee was not properly constituted was not raised in the O.A. Shri Mahalle urged that he became aware of the constitution of Screening Committee only after the reply was filed by the respondents, in compliance with our directions. In para 2(d) of the reply it was mentioned that the Screening Committee which met on 9-10-91 consisted of the then Chief Secretary to the Government of Maharashtra as the Chairman, the then Addl. Chief Secretary, Home and the then Director General of Police as the two members of the said body and the nomenclature 'Screening Committee' was adopted in place of Establishment Board. In the rejoinder filed by the applicant in O.A. 866/89, Annexure A-3 to

the application, the applicant has stated that the Screening Committee should consist of Chief Secretary, The Secretary in charge of the Police Department, and the State Inspector General of Police, for promotion on the basis of merit with due regard to seniority. In that case exception was taken to the presence of one Shri S.P.Singh, Spl.IGP in the Screening Committee because Shri S.P.Singh was also an IPS Officer of 1954 batch. That objection was upheld and the direction was given that the applicant's case should be considered by a properly constituted Screening Committee. It is therefore apparent that the Screening Committee which has examined the case of the applicant was the same as it was required under the Rules and no exception can be taken to the Screening Committee which considered the case of the applicant in the present case.

6. We have already indicated that the promotion to the post of Additional Inspector General of Police which was equivalent to DIG Level I was a promotional post for the DIG. When the applicant was promoted as DIG the pay of the post was Rs.2000-2250 and under the Govt.resolution dt. 22-4-81 the pay for upgraded post was Rs.2250-125/2-2500. This is clearly a case of promotion and the strict test of positive merit had to be adopted for being selected to that post. It is not the case that anyone from DIG Level II could be mechanically promoted by adopting the test of seniority-cum-fitness and appointed to the post of DIG Level I which is equivalent to Additional Inspector General of Police.

(14)

7. The submission of Mr. Mahalle for the applicant was that ~~whether~~ the same reports ~~were~~ had been taken into consideration for considering the applicant for his promotion to the post of Additional Inspector General of Police as on 21-5-81. In the judgment of this Tribunal dt. 9-7-91 in O.A. Nos. 489/86, 129/88, and 866/89 it was observed in paragraph 19 that in the written statement filed on behalf of the respondents the applicant's annual confidential reports for the years 1975-76 to 1979-80 were taken into consideration as per the directions of the Tribunal and the Establishment Board took into consideration the ACR of 1980-81 and after evaluating his work as DIG the Establishment Board was of the view that the applicant was not fit/promotion as Additional Inspector General of Police on 21-5-81 and this recommendation was accepted by the State Government. The Tribunal expressed no opinion on the merits of the assessment. It is however obvious that while it was necessary to take the annual confidential reports of the applicant for the five years for his promotion to the post of DIG, his performance as DIG after his appointment as DIG on 31-1-81 would also come in for consideration and assessment when the promotion to the post of Additional Inspector General of Police had to be considered on 21-5-81. Mr. Mahalle urged that the applicant's work could not <sup>have</sup> deteriorated to such an extent between 31-1-1981 to 21-5-81 so as to make him unsuitable for appointment as Additional Inspector General of Police because the standard for appointment of DIG Police was also positive merit.

*My/.....*

8. The learned counsel for the respondents placed before us the confidential reports for the relevant years and the minutes of the meeting of the Screening Committee and we find that the Committee was of the view that the applicant did not have positive merit. The applicant has not alleged any malafides in the matter of selection and assessment ~~against~~ the members of the Selection Committee. The confidential reports for the year 80-81 shows that the applicant had obtained only 'B' in that year and the committee unanimously took the view that the applicant had earned only 'B' which was not sufficient for earning the promotion of Additional Inspector General of Police.

9. The learned counsel for the applicant submitted that the reasons for supercession should have been mentioned as ~~it~~ was required under the Govt. resolution dt.26-8-1976,Ex.2 to the reply, Under the caption Method of selection at item no.(iv) it is mentioned that the reasons for supersession may be kept on record in the case of officers who are not included in the panel.

~~(i)~~ Item (i) states that Selection should be based on merit with due regard to seniority as provided by sub-rule 2(A) of Rule 3 of the Indian Police Service (Pay)Rules,1954. In our view it was not necessary to ~~make~~ separate ~~remarks~~ when the performance of the applicant had been considered for determining the suitability and he had not earned the ~~marks~~ which would help him to enable him to qualify for the selection. If the applicant's performance was not found to be of the level required then that observation itself was sufficient for supersession.

10. Considering all these facts we find that the applicant is not entitled to be promoted to the post of Additional Inspector General of Police. We see no merit in this application. We dismiss the same with no order as to cost.

*M.Y. Priolkar*

(M.Y.PRIOLKAR)  
Member(A)

*M.S. Deshpande*

(M.S.DESHPANDE)  
Vice-Chairman

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