

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1195/92

~~Transfer Application No:~~

DATE OF DECISION 6 Apr. 93

Shri P.V. Joshi Petitioner

Mrs. S.P. Joshi Advocate for the Petitioners

Versus

State of Maharashtra & Others Respondent

Shri M.I. Sethna Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. PRIOLKAR, MEMBER (A)

The Hon'ble Shri V.D. DESHMUKH, MEMBER (J).

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.*


(V.D. DESHMUKH)
MEMBER (J).

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

O.A.1195/92.

Shri P.V. Joshi, I.P.S.
Flat No.A-10, Building No.13,
Haji Ali Govt. Colony,
Mahalaxmi, BOMBAY - 400 034.

.. Applicant.

Vs.

1. State Of Maharashtra
(Through Chief Secretary to
the Govt. of Maharashtra)
G.A.D., 5th Floor, Mantralaya,
BOMBAY - 400 032).
2. Director General & Inspector
General of Police, M.S.
Old Council Hall,
Shahid Bhagat Singh Road,
BOMBAY - 400 039.
3. Establishment Board (through
Chief Secretary to Govt. of
Maharashtra, 5th Floor, GAD,
Mantralaya, Bombay - 400 032.
4. Union of India (through
Secretary, Union Home Ministry,
NEW DELHI.

Coram : Hon'ble Shri M.Y. Priolkar, Member (A).
Hon'ble Shri V.D. Deshmukh, Member (J).

Appearances:

1. Mrs. S.P. Joshi, Counsel
for the applicant.
2. Mr.M.I. Sethna, Counsel
for the respondents.

JUDGMENT:

Date : 6 Apr, 93.

[Per : Hon'ble Shri V.D. Deshmukh, Member (J)]

The applicant was appointed to the Indian Police Service in the year 1976. He was allotted to the Maharashtra Cadre since December, 1977, and was continuously serving in the State of Maharashtra. He held the rank of Superintendent of Police in Junior Administrative Grade at the time when the present application was filed. He was promoted to the selection grade under the notification dtd.2.1.93.

O.A.1195/92.

2. The present application has been filed by the applicant concerning his ACRs from 1986-87 onwards. It is his contention that his ACRs remained incomplete and they were invalid by reason of illegal reporting and reviewing. The State of Maharashtra the Respondent No.1 had issued an OM dtd. 29.2.1980 (Exhibit 1) which prescribed reporting/reviewing/accepting authorities in matters of writing of ACRs of IPS Officers in the State of Maharashtra. In the original application the applicant had challenged the ^{validity of} authority of this O.M. on various grounds and particularly on the ground that it was ^{of the} ~~in~~contravention ^{of the} that All India Services (Confidential Rolls) Rules 1970. While the petition was being argued, ^{the} the learned Counsel for the applicant on instructions of the applicant present in the Court stated that the applicant did not press this point and consequently deleted the prayer 'C' in the application.

3. The applicant interalia had ~~prayed in~~ the application that the Respondent Nos.1 and 3 be directed to consider the applicant for promotion to selection grade of I.P.S. and to the rank of D.I.G.P. without ^{had} reference to the ACR which according to him were illegal and invalid. The applicant had filed O.A.No.871/90 in which he ^{had} challenged adverse part of the ACRs for the year 1985-86. This O.A. was decided by us on 28.1.1993. When this O.A. was decided it was pointed ^{out} by the Respondents that the applicant was already promoted to the selection grade under the Notification dtd. 2.1.1993. For the reasons recorded in our judgment dtd. 28.1.1993 the Respondents were directed not to take into consideration the adverse part in the ACR, which was marked as Part B, ^{As} for the year 1985-86, ^{as} the applicant is already promoted ^{to}

O.A.1195/92.

to the selection grade of I.P.S. ^{2nd} The relief in the present application shall concern ^{his 2nd} only ~~is~~ claim to promotion to the rank of D.I.G.P. The applicant had prayed in the present application that by way of interim relief the Respondent No.1 be restrained from ~~effecting~~ ^{vacating} any further promotions to selection grade of I.P.S. and to the rank of D.I.G.P. on the basis of D.P.C. meeting held in August 1991 and June 1992. On 8.1.1993 when the claim for interim relief was being considered by this Tribunal, ^{2nd} a statement was made by Mr. Bhatkar, Learned Advocate for the Respondents that the D.P.C. meeting already held considered the officers belonging upto the 1975 batch only and the applicant belonged to 1976 batch. It was further stated that the applicant had not been considered alongwith the entire 1976 batch. This Tribunal after hearing the parties passed an interim order on the same date i.e. 8.1.1993 directing the respondents not to promote any officer of Maharashtra Cadre junior to the applicant ^{to 2nd} in the rank of D.I.G.P. On 12.2.1993 the Respondents filed M.P.No.114/93 for vacating our interim order dtd. 8.1.1993 in view of the grave law and order situation in Bombay during the previous two months. After hearing the parties and for the reasons recorded in our order dtd. 12.2.1993, the interim order was vacated. But interim order was ^{2nd} further vacated subject to the condition that one post of D.I.G. may be kept vacant ^{for} on ^{purpose} the basis of accommodating the applicant/subject to the condition that any promotions made shall be subject to the final decision in the present application.

O.A.1195/92.

4. The applicant moved a contempt petition on 18.2.1993 alleging that the Respondents suppressed certain facts from the Tribunal. This was directed as against the statement made on behalf of the Respondents on 8.1.1993. When the Respondents moved an application on 12.2.1993 for vacating the interim stay they filed an affidavit of Shri R.D. Sankhe, Under Secretary (Law) Home Department, Mantralaya, Bombay. This affidavit stated that the applicant who belonged to 1976 batch was considered alongwith other batch members by the D.P.C. convened on 3.12.1992 for selection to the post of D.I.G. This information was contrary to the statement made on 8.1.1993. However, Mr. Sethna, for the respondents explained that the incorrect statement was made through mistake and as a result of lack of proper communication. The applicant also made a grievance that one Shri A.V. Parasnis was promoted to the post of D.I.G.P. inspite of the interim order passed by this Tribunal, ^{but} ~~though~~ ^a Mr. Sethna made statement that Mr. Parasnis was senior to the applicant. After taking into consideration the various circumstances and also the fact that one post was directed to be kept vacant in case the applicant succeeded in the application, ^{we} ~~we~~ rejected the contempt petition of the applicant on 18.2.1993.

5. The Respondents produced before us the confidential files and the relevant DPC Proceedings. We heard the Learned Counsels for the applicant and the Respondents.

O.A.1195/92.

6. The applicant has not made any grievance as regards the ACRs for the year 1985-86. His main contention ^{as regards the} ~~on record to~~ the subsequent ACR^s is that ^{they} ~~it~~ ^{are} ~~is not~~ in contravention ^{of} that the All India Services (Confidential Rolls) Rules 1970. It was also his contention that the O.M. dtd. 29.2.1980 which prescribed the reporting authority/reviewing authority and accepting authority for the various posts was also in contravention ^{of} ~~in~~ the above stated Rules. However, as pointed out earlier the applicant did not press his challenge to the validity ^{of} ~~of this Rules~~ of this O.M. and deleted the relevant prayer. It was however, contended that the impugned ACR were in contravention of the aforesaid Rules.

7. All India Services (Confidential Rolls) Rules 1970 (Rule 2(c)) ^{provides} ~~provided~~ that the 'reporting authority' means the authority who was during the period for which the confidential report was written, immediately superior to the member of the Service. ^{These} ~~This~~ Rules ^{provides} ~~provided~~ that the ^{reviewing} ~~reporting~~ authority means the authority who was during the period for which the confidential report was written immediately superior to the reporting authority (2 F) ^{As} ~~as~~ per ^{these} ~~these~~ Rules the accepting authority means the authority who was during the period for which the confidential report was written immediately superior to the reviewing authority. The learned Counsel for the applicant relied upon the Judgment in Anil Kumar Chatterjee Vs. Union of India & Others (1987) 3 ATC 81 (Calcutta Bench). It was held in this case that procedural safeguards which ^{were} ~~was~~ laid down for recording entries in annual confidential report ^{were} ~~to be~~

O.A.1195/92.

followed to ensure fairness and absence of bias or malice.

The Judgment proceeded to stress upon the purpose served
by the review ~~by~~

by the reviewing authority and the acceptance by the
accepting authority. There cannot be any dispute about
this purpose. However, ultimately it has ~~been found~~ *to be*
whether any prejudice has been caused to the applicant
as a result of the alleged infirmities as regards the
ACRs in dispute. The learned Counsel for the applicant
also contended that any clarification of the Rules could
not go beyond the scope of the Rules themselves and
relied in this connection on the decision in the case
of S. Mohan Kumar V. Comptroller and Auditor-General
of India, 1988 (3) SLJ (CAT) 369 (Madras Bench). There
cannot be any dispute about this principle also. But
we must point out *that* in the first place ~~that~~ the applicant
withdrew his challenge to the O.M. dtd. 29.2.1980 and in
the second place the entire question will depend on
whether any prejudice has been caused to the applicant.
The main contention of the applicant is that the ACRs
are vitiated by legal malice as they were ~~passed~~ *not* in
contravention of All India Services (Confidential Rolls)
Rules 1970.

8. The applicant was posted as Principal, R.P.T.S.
Jalna in 1986-87. According to him the D.I.G.P.
(Training and Special Units), Bombay should have
reported on the applicant, the Special I.G. of Police
incharge of Police Training Schools should have reviewed
the ACR and the Director General of Police should have
accepted the ACRs for this year as per the Rules. *The*
above post ~~ing~~ *is* equivalent to the Superintendent of
Police. The ACRs of the applicant for this year were
reported by the D.I.G. (Training) who was the proper
authority. However, admittedly they were reviewed *not* ~~by~~ *him*

O.A.1165/92.

^{but 9th}
the Special I.G.P./ by the Director General of Police
^{and} as they were not accepted by any other authority. The
ACR were technically incomplete. The respondents do not
dispute this position. However, according to them no
prejudice has been caused to the applicant. The most
material fact so far as the year 1986-87 is concerned is
that the applicant received the highest grading in this
year. He was assessed as Very Good officer both by the
reporting and the reviewing authority. The ACR files
and the summary given to us by Shri Sethna for the
^{oh} Respondents/all the ACRs for the relevant years show^S
this position. In this view of the matter we do not
find that it would be even in the interest of the
applicant to strike down the ACR for 1986-87. As we
would show^{later} later these ACRs have been taken into
consideration by the D.P.C. convened subsequently. As
the applicant received the highest ranking in this year
and as this was taken into consideration by the D.P.C.
obviously no prejudice was caused to the applicant. The
Respondents in their counter dtd. 29.1.1993 accept that
the ACR for the year 1986-87 ought to have been reported
reviewed and accepted as for the year 1985-86 ^{we state that} but it was
not possible to verify how the discrepancy occurred.
However, in view of the above circumstances we do not
find that any purpose would be served by striking down
the ACR for 1986-87.

9. The applicant was posted in 1987-88 and
1988-89 as D.C.P.(Security) C.I.D., Bombay Special
Branch I. According to the applicant for these years
his ACR should have been reported by the A.C.P.,
entrusted with the duty of supervision over Special
Branch, CID, Bombay ^{the applicant's A.C.R.} should have been reviewed by the

O.A.1195/92.

Commissioner of Police and should have been accepted by the D.G.P. But they were reviewed by the Director General of Police. According to the respondents this was done in view of the O.M. dtd. 29.2.1980. This O.M. which is Exhibit I to the application puts both the A.C.P. and the D.C.P. Bombay at the same rank and the reporting authority ~~under the O.M.~~^{is} the Commissioner of Police, the reviewing authority is the Inspector General of Police i.e. after the upgradation, the Director General of Police and the accepting authority is the Home Secretary. The Respondents contended that the ACR for these years have been reported and reviewed as per the O.M. dtd. 29.2.1980. It is also their contention that before the D.P.C. was convened these ACRs were completed and were placed before the D.P.C. As the applicant has withdrawn his challenge to the validity of O.M. dtd. 29.2.1980 these A.C.R.s have to be accepted as valid. Apart from that we find that no prejudice was caused to the applicant as higher authority i.e. Commissioner of Police, Greater Bombay had reported upon his performance. It appears that the process begins with the self assessment by the officer concerned in a prescribed form and the ACRs are reported thereafter. Mr. Sethna also pointed out that there was no post of A.C.P. for C.I.D. Special Branch I till 1st October, 1990 when the post was created for the first time^{from} and therefore the ACRs were reported by the Commissioner of Police. It was contended on behalf of the applicant that ACP (Admn.) was his immediate superior and therefore he ought to have reported the ACR for the above said years. We do not find any reason why the statement made by Shri Sethna should not be accepted. Apart from that the ACRs were reported by the higher authority, the files show that the applicant was ranked as a good Officer,

O.A.1195/92.

the ACRs were completed before the D.P.C. was convened and they were taken into consideration by the D.P.C. In these circumstances we do not find that any prejudice was caused to ^{the} applicant.

10. The applicant was posted as D.C.P., CID (Int.) during the year 1989-90 and 1990-91. According to the applicant the ACR should have been reported by the Commissioner of Police, C.I.D.(Int.), should have been reviewed by the Additional Director General of Police and should have been accepted by the Director General of Police, however, although they were reported by the correct authority they were reviewed by the Director General of Police himself. The O.M. dtd. 29.2.1980 does not provide for the reporting, reviewing and accepting authority in case of the D.C.P., C.I.D.(Int.). It appears that although the ACR were reported by the Commissioner (C.I.D.)(Int.) they were reviewed by the Director General of Police. The summary of the ACR shows that the assessment of the applicant in the year 1988-89 was Good and in the year 1989-90 was Very Good. It appears that the reporting was done by the Commissioner, C.I.D.(Int.) as the O.M. dtd. 29.2.1980 provided that the ACRs of the D.C.P. should be reported by the Commissioner of Police.

11. The applicant was posted in the above said ^{and} post till 13.8.1991/he was posted from 14.8.1991 as the Chief Security Officer in Vidhan Bhavan. As per the order of the Government of Maharashtra No. IPS 4283/1329-POL-I, dtd. 27.9.1989, the reporting authority of the Chief Security Officer, Vidhan Bhavan is the Secretary, Maharashtra Legislature and the reviewing authority is the Speaker. It does not provide for the

O.A.1195/92.

accepting authority. As the applicant was the D.C.F., C.I.D.(Int.) till 13.8.1991, the ACRs were reported by the Commissioner of Police and reviewed by the Director General of Police. The Respondents contend that the ACRs were completed and were placed before the D.P.C.

12. As regards the period during which the applicant was working as the Chief Security Officer, Vidhan Bhavan, the Respondents have pointed out that the applicant himself did not furnish his self assessment in the prescribed form. It appears that ultimately under the letter dtd. 17.2.1993 the Legislature Secretary forwarded the ACR of the applicant for the above said period to the Home Department. The Respondents in this application were not concerned with the ACR for the above said period. The summary of the ACR produced by respondents shows that the applicant was assessed as Average Officer during this period. In this connection it is necessary to refer to the affidavit of Mr.Sankhe, Under Secretary (Law), Home Department dtd. 12.2.1993. The Respondents had fairly stated in this affidavit of Mr.Sankhe that as the remarks for the years 1990-91 and the 1991-92 were adverse to the applicant but were not communicated to him they were totally disregarded by the D.P.C. held on 4.2.1993. Considering all the circumstances we do not find that there is any reason to interfere with the ACRs of the applicant for the year which are the subject matter in this application. We do not find that they are initiated ^{Vitiated} by any legal malice. The applicant has not alleged malice against any individual. We may

O.A.1195/92.

also point out that the applicant has been promoted to the selection grade inspite of the ~~sub~~^{sub} pendency of O.A.871/90 and the present Original Application. We do not find therefore any substance in allegation of the applicant that the respondents deliberately kept his ACRs incomplete and denied to him the promotion.

13. The applicant is now due to the promotion to the post of D.I.G.P. if found eligible and deserving.. The submissions were made also as regards the D.P.C. dtd. 3.12.1992 and 4.2.1993. The respondents produced the proceedings of ^{these} ~~this~~ D.P.C.s. ^{We} ~~I~~ have already referred to the statement made on behalf of the Respondents on 8.1.1993 and the affidavit filed by ~~Mr.~~ Sankhe on behalf of the respondents which show that this statement was made as a result of some mistake. The proceedings of the D.P.C. convened on 3.12.1992 show that the applicant was considered alongwith other members of his batch. After going through the proceedings and the reasons given by the D.P.C. we do not find that any prejudice was caused to the applicant or that there is any reason to interfere with the findings. The applicant made a grievance that Mr.Parasnis was promoted as D.I.G.P. even before the D.P.C. was convened on 4.2.1993. However, the proceedings of the D.P.C. held on 3.12.1992 show that Mr.Parasnis was senior to the applicant and was recommended for promotion by the D.P.C. held on that date i.e. 3.12.1992.

14. The respondents have produced before us the proceedings of the D.P.C. convened on 4.2.1993. These proceedings fully support the contentions of the Respondents that all the ACRs of the applicant were


O.A.1195/92.

placed before the D.P.C. The proceedings further show that in compliance with the order passed by this Tribunal in O.A.871/90 the part of the A.C.R. ^{for the} 1985-86 which was directed to be ignored was ignored by the D.P.C. The proceedings also show that as the adverse remarks in the ACR for the year 1991-92 which were not communicated to the applicant were also not taken into consideration. The learned Counsel for the applicant pointed out that the method of selection as prescribed by the confidential letter and the Home Ministry dtd. 28.4.1988, required that the selection should be based on merit with due regard to seniority and the Officers should be assessed by evaluating their character role record as a whole and general assessment of their work. The proceedings of the D.P.C. dtd. 4.2.1993 clearly show that due weightage was given to the seniority of the applicant and all his confidential records were taken into consideration. However, still he could not be found to be suitable. It was contended on behalf of the applicant that if there was ^{any} ~~any~~ ^{prescribed} minimum bench mark and the ACR show that he could not reach the bench mark the confidential remarks ought to have been considered as adverse remarks and ought to have been communicated to the applicant. There is nothing to show that any minimum bench mark was prescribed. In the second place, as has been pointed out earlier the remarks which were not communicated to the applicant were not taken into consideration by the D.P.C. held on 4.2.1993. In addition we find that the D.P.C. has also given the reasons for their conclusions. Relying upon the decision in T.R. Sekhar v. Collector of Central Excise, Madras, (1989) 10 ATC 1, it was contended on behalf of the applicant that the reviewer ^{of} D.P.C.

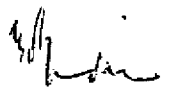
O.A.1195/92.

ought to have ^{been} ~~been~~ taken into consideration the entire batch of the persons who were assessed by the original D.P.C. After going through the proceedings of the D.P.C. we do not find that there decision can be challenged on this ground also. If the D.P.C. could not select the applicant for promotion to the post of D.I.G.P. we do not find any reason to interfere with that decision.

15. In view of the reasons discussed above, the application is dismissed with no order as to the costs.



(V.D. DESHMUKH)
MEMBER (J).



(M.Y. PRIOLKAR)
MEMBER (A).

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 30/93 in

Original Application No. 1195/92

Shri P.V. Joshi

...Applicant

V/s.

Union of India and others.

...Respondents.

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

Hon'ble Shri V.D. Deshmukh, Member (J)

Tribunal's order on Review Petition by circulation

Per Shri V.D. Deshmukh, Member (J)

Dated: 16.7.93

The applicant has filed the review petition on judgement and order passed by us on 6.4.93 dismissing the application.


2. We considered the various grounds urged in the review petition. After going through the grounds we find that the grounds urged by the applicant are more or less the same which he had urged in his original application and which were fully dealt with in our reasoned judgement. The grounds in the review petition are more or less in the nature of grounds of appeal. If the applicant is aggrieved by our judgement and order he can pursue his remedy according to law, but we do not find that the grounds urged by him can be proper grounds for reviewing the order passed by us.


3. Inter-alia the applicant contents in the review petition that the annual confidential reports and the proceedings of the D.P.C. ought to have been shown to the applicant and the applicant ought to have been permitted to inspect the same. As has been admitted in the review petition itself, we heard the counsels for the respondents and the applicants on the privilege claimed by the respondents

and we perused the A.C.Rs. We did not find it proper to allow the applicant to inspect those reports, or proceedings. It is again cannot be a ground for review of the judgement.

4. The applicant contends that the order is liable to be reviewed, in view of the Government Resolution which he has attached to the review petition as Exhibit A 2. This Government Resolution is of 31.1.90 and the applicant could have definitely produced the same if he had been diligent enough to obtain the Government Resolution at the time of hearing of the original application.

5. After considering our judgement and order and also grounds urged in the review petition, we do not find that the order suffers from any error apparent on the face of the record or that it can be reviewed on the ground that some new evidence has come to light which could not be available to the applicant at the time when the original application was heard. We do not find any just and proper ground to review the judgement and the order. In the result the review petition is rejected.


(V.D. DESHMUKH)
MEMBER (J)


(M.Y. PRIOLKAR)
MEMBER (A)