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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, 'GULESTAN BUILDING' NO.6
PRESCOT ROAD, FORT, MUMBAI-400 001.

CONTEMPT PETITION NO. 106/95

in

ORIGINAL APPLICATION NO.709/92

Dated this 2nd day of ^{Aug} July 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri P.P. Srivastava, Member (A).

Shri A.K. Banerjee
Dy. Commissioner of Police

(By advocate Shri M.S.
Ramamurthy)

... Applicant

v/s

1. The Secretary
Ministry of Home Affairs
North Block
New Delhi 110 001

(By advocate Shri V.S.
Masurkar, Central
Govt. Standing Counsel)

2. Shri Sharad Upasani
Chief Secretary
Govt. of Maharashtra
General Administration
Department, 5th floor,
Mantralaya
Bombay 400 032

(By counsel Shri M.I.
Sethna)

3. Shri K. Padmanabhaiah
Addl. Chief Secretary
Home Department
Maharashtra State
5th floor, Mantralaya
Bombay 400 032.

(By counsel Shri M.I.
Sethna)

4. The Secretary
Union Public Service Commission
Dholpur House
New Delhi 110 001.

(By advocate Shri S.S. Karkera
for Shri P.M. Pradhan,
counsel for UPSC)

... Respondents.

O R D E R

This C.P. has been filed by the applicant against the judgement of the Bombay Bench Tribunal dated 6-10-1994. The Tribunal after considering the rival contentions of the parties has observed that the applicant is entitled for appointment for promotion to the Indian Police Service in the year 1978 and the Respondents are directed to consider the case of the applicant for promotion to the Indian Police Service in the year 1978 and subsequent years and ordered retrospective promotion with all consequential benefits including payment of difference in salary and that these directions shall be implemented within four months from the date of receipt of a copy of this order.

2. As a consequence of expunction of the adverse remarks, he was eligible or entitled to be considered for induction in the IPS in the year 1978, but on adverse remarks recorded against him and non-confirmation as Dy. Superintendent of Police, he was not considered for the said induction into the I.P.S. in 1978 and thereafter he was appointed by promotion to IPS from 4-6-1985. Accordingly, the applicant has asked for the Review Selection Committee for retrospective appointment to the Indian Police Service. In 1992, the applicant was informed that the Indian Police Service (Appointment By Promotion) Regulations, 1955 did not provide for convening a Review Selection Committee meeting for the select list finalised and acted upon and it was not possible to hold a Review Selection Committee.

From pre-page:

3. The question for consideration is whether the Respondents pursuant to the directions of the Tribunal, have intentionally or unintentionally committed contempt of the Tribunal's orders. As a result of the Tribunal's directions, the Review Selection Committee met on 6-1-1995 and 3-2-1995 to consider the case of the applicant for inclusion of his name in the select list prepared in 1978 upto the year 1983. However, the Selection Committee did not assess the applicant as fit for appointment by promotion to IPS for the year 1978 and subsequent years till 1983. The recommendation of the D.P.C. has been accepted both by the State Government as well as the Government of India and further approved by the UPSC.

4. The main thrust of the argument of the learned counsel for the applicant in the C.P. is that the Selection Committee acted arbitrarily and had not followed the directions of the Tribunal and judgement dated 6-10-1994. Having been categorised as B+ in 1977, he could not have been declared as not having even B (Good) classification required for appointment by promotion to the IPS. Further, the applicant could not have been differently based on the same record of service especially since the adverse remarks for the year 1977-78 were expunged. The case of the applicant was recommended by the State of Maharashtra and also the Review Selection Committee was not properly constituted inasmuch as the prescribed members were not associated in terms of Rule 3 of the IPS (Appointment By Promotion) Regulations 1955. His juniors have been included in the select list of 1978 and subsequent years but no reasons for supersession has been communicated to him. Accordingly,

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From pre-page:

he sought for certain records for perusal by the Tribunal.

5. We have heard the learned counsels of the parties - Shri M.S. Ramamurthy for the applicant, Shri M.I. Sethna for the State of Maharashtra, Shri V.S. Masurkar for the Union of India and Shri S.S. Karkera for Shri P.M. Pradhan for the UPSC and carefully perused the record. We have also perused the assessment made by the Review Selection Committee both on 6-1-1995 as well as on 3-2-1995 respectively. On perusal of the record, we find that the contention of the applicant stating that the selection committee was not properly constituted in terms of Rule 3 is not based on record. As a matter of fact, in the first meeting, all the six members were present; in the second meeting, only the Inspector General of Police was not present; the rest of the members were present, thereby the contention of the applicant is found to be not tenable. In fact, the Committee ignored the average report for the period from 22-4-1977 to 12-8-1977 for screening the select list of 1980 to 1983 and the adverse remarks made against the applicant were ignored by the Committee and on the basis of this assessment, he could not have been promoted for 1978 and the subsequent years till 1983. The Respondents have denied all the contentions raised by the applicant in the C.P.

6. In so far as the Union of India is concerned, they contend by saying that the preparation and finalisation of the select list is primarily the concern of the State Government and the UPSC. Under IPS (Appointment By Promotion) Regulations, 1955, the State Government

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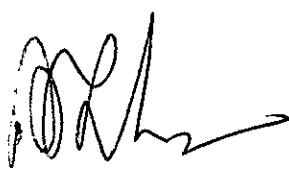
is the sole Custodian of service records of SPS officers. There is no relevancy between temporary appointment of ex-cadre officers to the post of Superintendent of Police and induction of SPS officers to the IPS. The selection of SPS officers for promotion to IPS is primarily based on merit. As stated earlier, the Committee has considered the case of the applicant and he was found fit for inclusion only in the year 1984 and there is no irregularity in not offering him the IPS inclusion prior to 1984. The applicant has no locus standi to substitute his own judgement regarding his merit and suitability for that of the duly constituted selection committee. How the merit of the officer is to be assessed is solely the concern of the selection committee. The State Government in their reply clearly stated they have not defied the orders or directions of the Tribunal and not committed any contempt. Selection Committee i.e. DPC for preparation of select list of Dy. Superintendent of Police for promotion to the post of Superintendent of Police is different than that of the Review Selection Committee. List for promotion to the post of Superintendent of Police, the DPC consists of officers of the State Government, whereas the Review Selection Committee consists of representatives of the Government of India, State Government under the chairmanship of the Member, UPSC. For promotion to the post of S.P., the Selection Committee considers the ACRs of preceding 3/5 years, whereas for nomination to the IPS, the Selection Committee considers an overall relative assessment of service record of the concerned officers.


Ans

(21)

From pre-page:

7. Considering the pleadings of the parties, we are of the view, that the Respondents have adhered to the directions of the Tribunal. The Review Selection Committee found the applicant eligible for promotion to the IPS only in 1984; thereby the action of the Respondents does not lead to any contempt; on the other hand, the Respondents have complied with the directions of the Tribunal and there is no cause for the applicant to file this C.P. Accordingly, we do not find any merit in the C.P. and the same is therefore dismissed.


(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

ssp.

dd 2/8/96
order/... despatched
to A... dent (s)
on 13/8/96
19/8/96