

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 709/92

Transfer Application No:

DATE OF DECISION: 6.10.1994

Shri A.K.Banerjee Petitioner

Shri A.S.Bobade Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

Shri V.S.Masurkar Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ? M.

2. Whether it needs to be circulated to other Benches of
the Tribunal ? M.

(P.P.SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 709/92

Shri A.K.Banerjee

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri A.S.Bobade
with Shri S.Natarajan
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for Respondent No. 1.

Shri A.I.Bhatkar
for Shri M.I.Sethna
Advocate
for Respondents No. 2&3.

ORAL JUDGEMENT

Dated: 6.10.1994

(PER: M.S.Deshpande, Vice Chairman)

Though M.P.No. 693/94 for interim relief was fixed for hearing today with the consent of the learned counsel, Since the same points shall have to be considered in the main petition, we heard the learned counsel for the main petition as well as on the interim relief.

2. The applicant who was in the State Police Service became due for promotion as a Superintendent of Police w.e.f. 4.5.1977. Since certain adverse remarks had been recorded in the Annual Confidential Reports against him for the years 1976-77 and 1978-79, he was not granted the promotion which would otherwise have been due to him. These adverse remarks were communicated to the applicant by the letter dated 31.1.1987 and came to be expunged upon his representation on 7.3.1989 (Ex.A-1). The applicant was granted retrospective confirmation as Deputy Superintendent

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of Police w.e.f. 1.7.1973 by a Government Resolution dated 9.10.1991 and he was given also retrospective promotion as Superintendent of Police w.e.f. 24.5.1977 and appropriate seniority by the letter dated 28.10.1991. The applicant became entitled to be considered for induction in the Indian Police Service in the year 1978 but on account of adverse remarks recorded against him and the non-confirmation as Deputy Superintendent of Police, he was not considered for the said induction into the Indian Police Service during the year 1978 and thereafter until he was appointed by promotion to Indian Police Service w.e.f. 4.6.1985. The applicant asked for a review selection committee for retrospective appointment to the Indian Police Service. By the letter dated 3.6.1992 he was informed that the IPS (Appointment by Promotion) Regulation, 1955 did not provide for convening a review selection meeting for the select list finalised and acted upon and that in the circumstances it was not possible to hold a review selection committee meeting to consider his name for inclusion in the select list for 1978.

3. The applicant filed the present OA. for a declaration that he is entitled to be considered for appointment by promotion to the Indian Police Service in the year 1978, and for a direction to the respondents to consider the case of the applicant for appointment by promotion to the Indian Police Service in the year 1978 and in subsequent years and for ordering retrospective promotion with all consequential benefits including payment of difference in salary. By M.P. No. 693/94 the applicant sought an interim relief by a direction to the Respondents No. 1 & 4 to consider the case of the applicant for inclusion of the applicant in the IPS select list of the year 1978 and in subsequent years.

4. The facts narrated above are not in dispute. The submission of learned counsel for the Union of India Shri V.S.Masurkar was that the application for the interim relief would not arise because there has been no change in the circumstances since the petition was filed and we may not consider the application for interim relief. It was pointed out that no interim relief was sought when the OA. was filed. The interim relief, ^{was filed} first time being sought only by application dated 25.4.1994. The situation to which Shri Masurkar, learned counsel for the Respondent No. 1 refers would be relevant if at the time of the admission of the main petition interim relief had ^{been} sought and had been rejected by the Tribunal. It is only then that the question of change in the circumstances of the legal position could have been appropriate. Such a situation does not arise now and we see no bar to the application for interim relief being moved at a later stage.

5. Since counsel agree that we should decide the main petition itself as the arguments which have been advanced at the hearing of the application for interim relief would also cover the main relief in the petition, we proceed to decide the main petition itself.

6. We have already referred to the facts bearing upon the question of limitation which have been raised in the present application. The adverse remarks recorded in the Annual Confidential Reports for the years 1976-77 and 1978-79 were conveyed to him by the letter dated 31.1.1987 and upon ^{his} representation they came to be expunged by the order dated 7.3.1989. It was thereafter that the applicant made a representation to the respondents and he was informed

by the letter dated 3.6.1992 (Ex.A-4) that his representation could not be accepted because the IPS (Appointment by promotion) Regulation, 1955 does not provide for convening a review selection meeting for the select list finalised and acted upon^{and} therefore it was not possible to hold a review selection committee meeting to consider his name for inclusion in the select list of 1978. The present application was filed on 16.7.1992. It is obvious that the main application would be within time in view of the provisions of Section 21 of the A.T.Act.

7. On the second point which has been raised, namely, no provision for convening a review selection meeting, we are afraid such a contention cannot now be entertained because we have in OA. 28/92, Rajendra A.Sonawane vs. Union of India & Ors. decided on 4.8.1994, held that the applicant therein who was similarly placed ^{was} entitled to reconsideration of his entitlement when he should have been considered when his junior came to be considered. In Amar Kant Choudhary vs. State of Bihar & Ors. 1984 SC Cases (L & S) 173, the Supreme Court observed as follows :-

"After giving our anxious consideration to the uncontroverted material placed before us we have reached the conclusion that the case of the appellant for promotion to the Indian Police Service Cadre has not been considered by the Committee in a just and fair way and his case has been disposed of contrary to the principles laid down in Gurdial Singh Fijji Case. The decisions of the Selection Committee recorded at its meetings in which the case of the appellant was considered are vitiated by reason of reliance being placed on the adverse remarks which were later on expunged. The High Court committed an error in dismissing the petition of the appellant and its order is, therefore, liable to be set aside. We accordingly set aside the order of the High Court. We hold that the appellant has made out a case for reconsideration of the question of his promotion to the Indian Police Service Cadre of the State of Bihar as on December 22, 1976 and if he is not selected as on that date for being considered again as on March 12, 1981."

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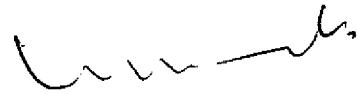
8. The learned counsel for the applicant pointed out to us that Rule 5⁽⁶⁾ of the Indian Police Service (Appointment by Promotion) Regulations, 1955 also provides that the list so prepared shall be reviewed and revised every year and this therefore would show that the ground put forward by the Respondent No. 1 for not reviewing or revising the select list is not substantial.

9. In R.K.Singh vs. State of U.P. and Ors. (1991) 17 ATC 341, it was observed that "once the adverse entries awarded to the appellant were expunged the appellant is entitled to Selection Grade with effect from January 1, 1986 , the date on which he was eligible for grant of Selection Grade." An identical situation arises in the present case and we see no merit in the objection raised by the Respondent No. 1, Union of India to reviewing the case of the applicant in the light of the expunction of the adverse confidential remarks. We note that the Respondent No. 2, State of Maharashtra in their reply has pointed out that since the applicant has become eligible for being considered for promotion to the IPS in the year 1978 in view of the changed circumstances in the State Service record, his representations were forwarded to the Government of India, Ministry of Home Affairs by letter dated 30.11.1991 with the recommendation that the applicant's case may again be placed before the Selection Committee with a view to assess whether he was fit to be included in the Select List of SPS officers for appointment to the IPS for the year 1978. But this recommendation was not accepted by the first Respondent by the letter dated 22.4.1992. It is difficult for us to accept the submission on behalf of Respondent No. 1 that the applicant is not entitled to relief. We see no merit in the plea of limitation which has been raised

and the other points raised are covered by the decisions of the Supreme Court to which we had adverted above.

10. In the result we hold that (a) the applicant is entitled to be considered for appointment by promotion to the Indian Police Service in the year 1978, (b) the respondents are directed to consider the case of the applicant for appointment by promotion to the Indian Police Service in the year 1978 and in subsequent years and order retrospective promotion with all consequential benefits including payment of difference in salary. We direct that these directions shall be implemented within four months from the date of receipt of a copy of this order. There will be no order as to costs. M.P. is disposed of.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.

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

CONTEMPT PETITION NO. 106/95

in

ORIGINAL APPLICATION NO.709/92

Dated this 2 Aug day of 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.

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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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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.

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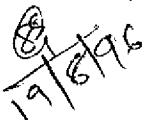
7. Considering the pleadings of the parties, we are of the view, that the Respondents have adhered to the directions of the Tribunal. The Review Selection Committee found the applicant eligible for promotion to the IPS only in 1984; thereby the action of the Respondents does not lead to any contempt; 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 21/6/96
order / ~~copy~~ despatched
to A.P.C. ~~copy~~ ¹³ student (s)
on 13/6/96


13/6/96