

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 615/97

DATE OF DECISION: 2/7/2000

Shri R.M.Pathan

Applicant.

Shri S.P.Saxena

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri V.S.Masurkar-R-1 & 2
Shri P.M.Pradhan

Advocate for
Respondents.

CORAM:

Hon'ble Shri B.S.Jai Parameshwar, Member(J)
Hon'ble Shri Govindan.S.Tampi, Member(A)

1. To be referred to the Reporter or not? / X
2. Whether it needs to be circulated to other Benches of the Tribunal? / ✓
3. Library.

(GOVINDAN.S.TAMPI)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION No: 615/97
DATED THE 27 DAY OF JULY, 2000

CORAM: HON. SHRI B.S. JAI PARAMESHWAR, MEMBER (J)
HON. SHRI GOVINDAN.S. TAMPI, MEMBER (A)

Shri R.M. Pathan
Managing Director,
Western Maharashtra Development Corporation,
PUNE (Residing at: A-7, Reyvenue Colony,
Ganeshkhind Road, PUNE - 411 007).

... Applicant

By Advocate Shri S.P. Saxena

V/s.

1. The Union of India,
Through The Secretary,
Ministry of Personnel & Training,
Government of India,
NEW DELHI-110 011.
2. The State of Maharashtra,
Through The Chief Secretary,
Mantralaya, MUMBAI-400 032.
3. The Chairman
Union Public Service Commission,
Shahjahan Road,
NEW DELHI-110 011.

... Respondents

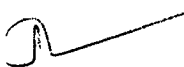
By Advocates
Shri V.S. Masurkar for R-1 & 2.
Shri P.M. Pradhan for R-3.

ORDER

Per Shri Govindan.S. Tampi, Member (A)

Shri A.M. Pathan, an I.A.S. Officer of Maharashtra Cadre is the applicant in OA No. 615/1997. He seeks to have the proceedings of the DPC/Selection Committee, held on 20/12/1995, examined and accord him promotion to IAS from 1987 and quash the letter dated 19/4/97 communicating the results of the DPC and give him promotion from the date, his junior Shri N.P. Bhanage was promoted to IAS. *from 1987.*

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2. Applicant who was recruited on 21/6/1965 as a Deputy Collector on the recommendation of MPSC, got his selection grade on 19/6/1979. He had, an outstanding record, up to 1982-83, as informed to him. Though he was placed on the select list of Officers for induction to IAS for 1985, none was promoted. Thereafter for the period 29/10/85 to 31/3/86, he was given an adverse entry, which on his representation dated 20/3/87 was disposed of on 20/10/86, deeming it as expunged. During the pendency of his representation, Selection Committee for 1987 met and promoted in November, 1987, Seven Officers, including four of his juniors. On his moving the Tribunal in OA-658/91, certain directions were issued by the Tribunal by its order dated 13/1/95. S.L.P. against the order was dismissed by the Apex Court. In the meanwhile, he was promoted to IAS against the vacancies of 1994, though he should have got it from 1987. On his representation dated 10/10/96, seeking the implementation of Tribunal's order in OA-658/91, he was informed by the impugned letter that the reviewing Selection Committee held on 20/12/95, decided against the revision of the select list of 15/12/86 for filling up the vacancies of 1987. Hence this application.

3. Respondent No.2, the State of Maharashtra, contents^s the application on grounds of *laches* delay, non-representation and res-judicata. On the merits they say that none of those selected for the vacancies of 1985, by the meeting on 12-13/12/1984 could be promoted. In the select list prepared on 19/12/85, the applicant was at 12 but only eight (8) could be taken. He did

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not make the grade in the selection held on 15/12/86, as his gradation by the Committee stood at "good" as against "Very Good" which was as per the norms and which was obtained by the last person selected. Following the judgement of the Tribunal's decision dated 13/1/95 in OA-658/91, to reconsider the selection ignoring the adverse remarks of 29/10/85 to 31/3/86, the Review Selection Committee met on 20/12/95. It was observed that even after ignoring the adverse entry, there was no improvement in over all ACRs. Remaining entries were colourless and without any positive merit. His capacity to get work done by the subordinate was assessed as 'average'. General intelligence and administrative ability including judgement initiative and drive was merely 'good'. For 1984-85 the entries on the various columns ranged between average and good. Even for 1983-84 entries against the columns 'industry and application and general intelligence are 'average'. Overall standard of the ACRs was only 'good' and the Committee did not recommend any change in the select list prepared on 15/12/1988. The above recommendation was duly accepted by the Government and the applicant was informed on 19/4/97. Applicant's plea that any downgrading in ACR, ought to have been communicated to him, in terms of the Apex Court's decision in UP Jal Nigam's case (J>T>1996(1)SC 641) was not in conformity with the Government's policy. Respondents reiterate that Selection Committee which met on 15/12/86, for vacancies of 1987 perused his report from 1981-82 to 1985-86 but joined them to be deserving only 'good'. Even after ignoring the adverse remarks of 1985-86, the position did not improve and hence the

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decision of the Review Selection Committee not to disturb the earlier finding applicant's juniors have been promoted only on the basis of their superior grading.

4. Respondent No.3 UPSC state that the selection process followed by them are in pursuance of their constitutional duties and in terms of recruitments for all India Service and IAS (appointment by Promotion) Regulation, 1955. They agree that the applicant was included in the select list of 1985 and 1986. Inclusion of one's name in one year does not essentially guarantee automatic inclusion in the select list during the subsequent years, as one more ACR is added and his overall assessment can get upgraded or downgraded in relation to the merit of other officers under consideration. Hence, even though the applicant was included in the select lists of vacancies of 1985 and 1986, his inclusion in the select list for the vacancies of 1987, depended on availability of more meritorious officers that the petitioner in the consideration zone and therefore the applicants plea was not correct. Tribunal's decision in OA No.658/91, was not to ignore the entire ACR for 1/4/85 to 31/3/80 but only to ignore the adverse entries of relating to 29/10/85 to 31/3/86. The review selection committee that met on 20/12/1995, did an equitable assessment of the records /ACRs of the applicant and assessed him "good" and it therefore did not recommend any change in the select list prepared on 15/12/86 as a large number of officers with "Very Good" assessment were available in the eligibility list and they had done it correctly. Placing

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reliance on the judgement of the Apex Court in the case of R.S.Dass V/s. Union of India and Others (AIR 1987 SC 593) the respondents plead that the selection ^{Committee} had done their job properly and insinuations to the contrary are incorrect. Communication of the reasons for non-inclusion of any individual in the select list was also not called for. Respondents also refer to the Apex Courts findings in H.L.Dev V/s. UPSC and state that as to how the records of the eligible officers should be assessed is the concern of the Selection Committee and the Tribunal cannot take upon itself the said function. Therefore the applicant's contentions that he had been superceded ^{seceded} by the juniors was untenable.

5. Heard the Counsel for both sides. Shri S.P.Saxena, ~~the~~ learned Counsel for Applicant reiterated his pleas and indicated that he felt that the Review Selection Committee had not acted in accordance with the directions of the Tribunal in OA-658/91 and that he was denied his due place in the selection list of 1987. He also stated that if the norms or benchmark was fixed for promotion, any grading less than that should have been communicated, in view of decision by the Supreme Court in U.P.Jal Nigam case. Since this has not been done, his assessment by the Review Selection Committee was faulty and deserved to be struck down. On the other hand Shri V.S.Masurkar for the respondents stated that the procedure adopted by the Review Selection Committee was correct and the applicant could not make the grade only as on his performance appraisal, he was rated as 'good' and

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there were more than adequate number of candidates in the 'very good' category to fill the vacancies for 1987. As nothing irregular has been committed by any of the respondents, the applicant cannot have a case, according to the Counsel. He also submitted that he was producing the relevant records in this regard.

6. We have deeply deliberated on the issue, as ably argued by the Counsel, who have made out jobs less taxing. The short point for determination in this case is whether the respondents have strictly adhered to the directions of this Tribunal in OA.No.658/91 filed by the applicant and the Selection Committee has acted accordingly. The operative portion of the order dated 13/1/95 (reads as below:- "Accordingly we allow the OA and direct the respondents to consider the case of the applicant in the year 1987, because in the earlier years of 1985 and 1986, though he was in the select list in the year 1986, no one was selected and in 1986 list he stands lower in the rank and only 8 persons have been selected to the cadre of IAS and therefore he could not be appointed." In the circumstances he could be considered in the select list of 1987 along with those who have been considered in the select list in the year 1987, ignoring the adverse remarks passed against the applicant and take appropriate decision in accordance with the rules". Respondents were also given four months time w.e.f. 28/8/95 to implement the order. Accordingly, the Review Selection Committee chaired by a member of the UPSC met on 20/12/95 and after perusing the relevant records/ACR and

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came to the conclusion not to recommend any change in the select list prepared earlier on 15/12/86.

7. Under normal circumstances this Tribunal does not interfere with the findings of a DPC/Selection Committee and that is what is enjoined upon the Tribunal by the decision of the Apex Court in H.L.Dev V/s. UPSC cited by Respondent No.3. However, we find that certain portion of the minutes of the Review Selection Committee have been almost verbatim reproduced in para 12(e) of the reply of 2/12/97 for Respondent Nos.1 and 2 and they are therefore open to examination.

8. We have also perused the records of the Selection Committee. It is a matter of record that the applicants has been having a consistently very good record which he has also been informed of from time to time. It is therefore in the light of the above, his anxiety to have his stand for getting himself vindicated, to be seen. Selection Committee which met on 19/12/85 had placed the applicant on the Select List on the basis of his grading 'Very good' but none was appointed from that list. Selection Committee which met on 15/12/86, graded him as 'good' and therefore did not include him in the select list as there were adequate number with the grading 'Very Good' to fill up the vacancies for the year. (This however, was the period when the adverse entry had been intimated and it was under representation and subsequently excluded) Persons placed on the list included the applicants' juniors also. Selection Committee which met on

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3/12/87 also graded the applicants juniors also. Selection Committee which met on 3/12/1987 ^{also} ~~also~~ graded the applicant as "good" and graded as "verygood" all persons placed on the select panel. That being the case it would be difficult to sustain the allegation of the applicant that he has been discriminated and his juniors had incorrectly supergaded him. On perusal of the minutes of the review committee, we have to say, we are slightly surprised. Reference is made to some uncommunicated remarks of 1983-84, which have not been agreed upon by the Reviewing Authority and as such should ^{not have been accepted} ~~have been agreed~~. In fact, those remarks have not come in the way of the applicant being graded as Very Good ~~by~~ the Committee which met on 19/12/85. The Committee which met on 15/12/86 graded the applicant as 'good' only, as by that time the adverse entry has been communicated. Tribunal's decision is for reconsideration of this Committee ^{binding} ~~after~~ ignoring the adverse entry, relating to the period 29/10/85 to 31/3/1986. The Review Committee has observed "thaat even after ignoring the adverse remarks which related to a period quite brief on the overall spectrum, there is no improvement in the overalol ACRs. The remaining entries are colourless and are devoid of any positive merit. In this report the performance of Shri Pathan in respect of "Column Capacity to get work done by subordinates" has been answered as 'average' "General Intelligence and Administrative Ability including judgement, initiative and drive has also been rated as merely "good". On overall perusal of the records we do not find any material to dispute this finding. More so as the applicant is not the only person who has not made the grade in the relevant year and a few others who were

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similarly graded as 'good' had to make way for those graded as "Very Good". This has been the pattern followed both on earlier and even later years. Respondents have followed a consistent policy, for selection to the higher civil service, which definitely called for greater merit and among those who were eligible for consideration the better have been selected and placed on the select list. In subsequent years also the applicant received the categorisation 'good' and finally made the selection when he was rated "Very Good". There cannot be any quarrel with the policy and practice adopted. The applicant has not made the grade for the vacancies for which Selection Committee met both in 1986 and 1987 and cannot therefore get the benefit of induction to IAS in 1987. Persons who made it got because of the admittedly higher categorisation given to them by the Selection Committee. Applicant cannot legitimately have a case against them.

9. We hold in view of the above findings that the applicant has not made a case for our intervention in the proceedings adopted by the Respondents. We hold that the Review Selection Committee has met and acted fully in consonance with the direction of the Tribunal, dated 13/1/95, issued in OA-658/91. This OA therefore fails and is dismissed. Parties to bear their own costs.

(GOVINDAN.S.TAMPI)
MEMBER (A)

abp.

(B.S.JAI PARAMESHWAR)
MEMBER (J)