

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No. 148/94

Dt. of order: 16.9.94

Madhukar Tandon

: Applicant

vs.

Union of India & Ors.

: Respondents

Mr.P.N.Mathur

: Counsel for applicant

Mr.K.P.Mishra

: Counsel for respondents No.2

Mr.M.S.Gupta

: Counsel for respondent No.3

CORAM:

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant Madhukar Tandon in this application under Sec.19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:

i) He may be granted promotion on the post of DIG in Super Time Scale of Indian Police Service with effect from the date persons junior to him have been given promotion, namely 30.3.1992 with all consequential benefits including pay of the aforesaid post from the above mentioned date.

ii) The Vigilance Enquiry against the applicant initiated by the State Government may be closed.

iii) He may be given posting.

as

2. The facts stated by the applicant are that he was appointed to the Indian Police Service (IPS) in 1977 and was allotted Rajasthan Cadre. While posted as Superintendent of Police, Ajmer District during December 1992 to May 1993, an incident occurred, on 26.2.'90. On this date his wife travelling in a Maruti Van towards Kanpur met with an accident somewhere on the way to Kanpur, resulting in minor injury to her. The Newspaper 'Nyaya' reported the incident on 16.4.90 adding falsely, that the applicant's wife was carrying an amount of Rs.8 lakhs with her. According to the applicant the report about carrying of the amount was false and malicious. He asked the Editor of the Newspaper to issue a contradiction, but when the Editor refused to do so, he filed a complaint with the Press Council of India. The Press Council vide its order Annex.44, Censured the Newspaper concerned, for misconduct and gross violation of journalistic

(10)

ethic. On the basis of the said News item a Police Vigilance enquiry was also initiated against the applicant in May 1990 and to his knowledge a finding in favour of the applicant was given in 1991. Even after a Review enquiry, the applicant's information is that he has been completely exonerated therein.

3. On 20.4.'93, the applicant received a communication Anxx.A5 dated 15.4.'93, mentioning that certain adverse remarks have been recorded in his ACR for 1989-90, and he was given an opportunity to represent against these remarks. The adverse remarks communicated to him were to the effect that he had not submitted his self appraisal within the prescribed time despite reminders and that the applicant was facing a Police Vigilance enquiry at the time of his posting as S.P, Ajmer. It was further mentioned that the officer recording these remarks was not aware of the out-come of the enquiry. The applicant submitted a representation against these remarks but has received no communication in response to the representation. Though the incident concerned took place on 26.2.'90, the Vigilance enquiry was started in May 1990 and therefore this incident could not have figured in the ACR for the year 1989-90, which takes into account facts only upto 31st March '90. Neither of the remarks communicated to him is justified. Also the remarks for the year 1989-90 have been communicated after an inordinate delay of 3 years and he believes that the remarks were recorded in the year 1993. Therefore, the provisions of Rule 8 of the All India Services (Confidential Folls) Rules, 1970 and the notification dated 26.5.88 issued by the Govt. of India have been violated.

4. Further, according to the applicant, persons junior to him have been granted promotion as DIG as seen from Anxxs.A2 and A3 dated 29.8.'93 and 30.3.'92 respectively. On learning about his supersession in the matter of promotion as DIG, the applicant sought repatriation from the Central Industrial Security Force, New Delhi, where he was sent on deputation in June 1991 and with which he remained on deputation till May '93. His request for repatriation was granted. However, on reporting back to Rajasthan he was not given a posting and no salary was paid to him. The

(1)

applicant is aggrieved by the failure of the respondents to consider the applicant's name for promotion to the post of DIG and to grant him promotion to the said post.

5. The respondents in their reply have stated that the applicant's name was considered for promotion to the post of DIG on 4.7.'91, 3.5.'93, 20.8.'93 and 23.6.'94. The Screening Committee which met on 4.7.'91 could not consider the case of the applicant for want of ACRs for the years 1989-90 and 1990-91. The Screening Committee again met on 3.5.'93 and found that adverse remarks in the ACRs 1989-90 had been communicated on 15.4.'93 and decided that the case of the applicant should be considered after 45 days of decision on the representation 'if any'. The Screening Committee again met on 20.8.'93 but could not consider the case of the applicant as the representation filed by him against the adverse remarks had not yet been decided upon. The Committee again met on 23.6.'94 and its recommendations are under the approval of the Chief Minister.

6. Further, according to the respondents, the incident which took place on 26.2.'90 could be taken into consideration in the ACR for the year 1989-90. The ACR for 1989-90 could be initiated only on 23.2.'93, because the applicant had not submitted his self assessment, as required under the rules, in spite of reminders.

The adverse remarks have not been expunged. A charge sheet has also been issued to the applicant on 17.6.'94 (Annex.R2/1). Salary to the applicant has been released for the period from 15.8.'93 to 31.3.'94 (Annex.R2/3) and action is being taken to pay salary for the remaining period from 1.4.'94 to 30.5.'94. The applicant has also been given posting. The applicant's case for promotion has been considered as per rules and only those who were eligible for promotion have been granted promotion as DIG. The applicant's representation against the adverse remarks has been rejected on 19.5.'94.

7. During the arguments, the learned counsel for the applicant stated that when his name came for consideration for promotion for the first time on 4.7.'91, his name was not considered because ACRs for the years 1989-90 and 1990-91 were not available. The applicant

has been blamed for not recording his self appraisal report for completion of his ACR for 1989-90. Govt. of India ~~now~~ in their instructions regarding writing of the ACR of All India Service Officers contained in letter dated 8.12.'87 reproduced at pages 256-257 of the All India Services Manual 6 Edition Corrected upto 31.7.'90, published by the Deptt. of Personnel & Training, Govt. of India, have provided a detailed time schedule for writing of ACRs of the All India Service Officers. As per the Schedule, the Reporting Officer has to complete the ACR by 31st May. Thus the ACR for the year 1989-90 should have been completed by the Reporting Officer by 31st May '90. These instructions further provide that if the officer reported upon does not submit ACR after duly completing the self appraisal portion within the time schedule prescribed, which is 30th April, the Reporting Officer shall write the report without the self assessment and submit it to the Reviewing Authority. In other words, if the applicant did not submit his self appraisal within one month of the completion of the financial year 1989-90, the Reporting Officer ought to have completed the ACR on the basis of his own information and knowledge. The failure of the applicant to submit his self appraisal could not be a ground for not completing the ACR for 1989-90 till 1993. Further, no blame could be laid at the door of the applicant for non-availability of the ACR for the year 1990-91. Moreover, the failure of the applicant to submit his self appraisal in the ACR for the year 1989-90 could be a ground for the Reporting Officer drawing his own inference regarding the performance of the applicant, but his failure to submit the self appraisal could not mean that an adverse remark could be recorded in his ACR. The Vigilance Enquiry against the applicant had been closed. Further more the so called adverse remarks in the ACR for the year 1989-90 regarding the Vigilance enquiry were merely to the effect that the applicant was facing a Police Vigilance Enquiry at the time of his posting as S.P.Ajmer and that out-come thereof was not known. The mere fact that a Vigilance Enquiry was going on did not mean the integrity of the officer was found to be doubtful or that ~~in~~ anything definite against the officer with regard to his integrity had been established.

(13)

It was only on conclusion of the Vigilance enquiry that it could be said that there was something definite against the applicant, if anything definite casting a doubt on the integrity of the officer had emerged from such enquiry. Therefore, as far as the ACR 1989-90 was concerned, neither of the remarks against the applicant constituted an adverse entry in fact. Moreover, from the communication Anxx.R3/2 dated 10.5.94, which is a reply to the applicant's representation, it has been stated that the remarks are maintained but these have been treated as advisory in nature. So even according to the respondents there is in fact nothing adverse against the applicant as far as the ACR for the year 1989-90 is concerned. If the ACRs of the applicant for the years 1989-90 and 1990-91 were not available to the Screening Committee, through no fault of the applicant, the Screening Committee could have seen the ACRs <sup>for</sup> still two earlier years for forming an opinion about the suitability of the applicant for promotion. The charge sheet issued on 17.6.'94 (Anxx.R3/1) could not stand in the way of the applicant's promotion because no such disciplinary proceedings have either been contemplated or initiated when the applicant was due for consideration for promotion as DIG on 4.7.91, 3.5.93 and 20.8.93. Moreover the charges in the charge sheet dated 17.6.94, contain charges which have no bearing on the integrity of the officer and these relate purely to administrative matters. He, therefore prayed that the applicant was entitled to promotion w.e.f. the date on which his next junior was granted such promotion as DIG.

8. The learned counsel for the applicant has cited before us the judgment of the Hon'ble Supreme Court in Brij Mohan Singh Chopra Vs. State of Punjab reported at page 800 onwards of Supreme Court Service Rulings 1950-92 Vol.I, according to which unless a representation against the adverse entries in an ACR is considered and disposed of it is not just and fair to act upon those adverse entries. This judgment is dated 11.2.'87. He has also cited before us the judgment of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Bani Singh & Anr. (1990) 1 LLN 780, according to which where not even a preliminary enquiry has been contemplated, consideration for promotion to higher or selection grade cannot be

(IV)

with-held. Further, he relied upon the judgment of the Hon'ble Supreme Court in Union of India & Ors. Vs. K.V. Janki-Raman & Ors. (1991) 4 SCC 109 according to which consideration of an employee for promotion etc. cannot be with-held merely on ground of pendency of any preliminary enquiry and that sealed cover procedure can be adopted only after the date of issue of the charge sheet, and that would be the date from which disciplinary proceedings can be said to have been initiated. He added that although this last judgement relates to cases of employees of the Central Govt, yet the principle laid down therein would be equally applicable to officers of All India Services.

9. The learned counsel for the respondents stated before us that proceedings of the Screening Committee held on 23.6.'94 were under consideration of the Chief Minister. However, according to him that the Tribunal should note take note of the fact that the disciplinary proceedings have been initiated against the applicant by issue of a charge sheet dated 17.6.94 and therefore, the applicant would be eligible for grant of promotion after the proceedings against him had been finalised.

10. We have heard the learned counsel for the parties and have gone through the records and the judgments and rules cited before us. For one reason or the other the Screening Committee did not consider the name of the applicant for promotion to the post of DIG on the first three occasions when it met namely on 4.7.91, 3.5.93 and 20.8.93. On the first occasion his name was not considered because ACRs for 1989-90 and 1990-91 were not available. The applicant could not be blamed for nonavailability of the ACRs for these two years. For the year 1990-91 it is not the respondents' case that the applicant was in any way responsible for non-availability of the ACR for this year. As regards ACR was for the year 1989-90, the Reporting Officer expected to write the ACR as per the schedule prescribed in the instructions noted above regardless of whether the applicant had submitted his self appraisal or not. The Reporting Officer was entitled to draw an adverse

63

inference about the performance of the applicant if he did not submit his self appraisal in time. But the deferment of the case of the applicant for promotion by the Screening Committee on 4.7.91 was not proper merely on the ground that ACR for that year was not available. If the Reporting Officer had done his duty as prescribed in the instructions, the applicant's ACR for 1989-90 would also have been available for consideration by the Screening Committee. In any case, if the ACRs for these two years were not available the Screening Committee could have gone back to earlier ~~two~~ two years and considered the ACRs for those two years to make the total number of the years of which ACRs have to be considered by the Screening Committee for promotion of the applicant. In *V. Kashyap and Anr. Vs. Indian Airlines & Ors.*

(1994) 27 ATC 430 the Hon'ble Supreme Court were dealing with a ~~time~~ case in which the Annual Performance Reports of the last 3 years were required to be considered for adjudging suitability for a particular post. However, the ACRs of the last few years were not available. On the facts of the case, the Hon'ble Supreme Court held that the suitability of the person concerned could be considered on the basis of the ACRs of the 3 preceding years.

In the present case also, the Screening Committee could have considered the requisite number of ACRs of the available preceding years. Regarding non-consideration of the applicant's case on 3.5.93 and 20.8.93, again the applicant can hardly be blamed. The ACR for the year 1989-90 was initiated only on 23.3.93 and the adverse remarks were communicated on 15.4.93. It was on account of delay on the part of the respondents that the matter regarding the adverse remarks in the ACR of the applicant for the year 1989-90 could not be resolved.

11. In any case, the adverse remarks for the year 1989-90 have since been treated as advisory by the respondents, as stated in the communication Annex.P2/T dated 10.5.94. These cannot therefore be treated as adverse in nature. The first adverse remarks relate to the failure of the applicant to submit his self appraisal

report. May be the applicant ~~was~~ at fault but the consequence of this default cannot be anything other than the competence of the Reporting Officer to record his own independent assessment of the performance of the officer without taking into consideration the self appraisal of performance by the officer concerned. The adverse remark is not based on any such consideration but merely refers to the failure of the applicant to submit his self appraisal. The adverse remark regarding integrity merely refers to the applicant facing a Police Vigilance enquiry at the time of his posting as SP Ajmer. There can be complaints against an officer and these can be looked into by the departmental authorities. It however does not follow that merely because a complaint is being looked into there is anything adverse against the officer with regard to his integrity. An adverse entry with regard to integrity can be made in the ACR of an officer only after preliminary investigation, something specific, actionable has emerged against the officer. It is not the case of the respondents that something specific, actionable had emerged against the officer out of the vigilance enquiry at that time or even later. Therefore, the remarks against the column 'integrity' recorded in the ACR of the applicant for the year 1989-90 also cannot be regarded as adverse in nature. Our conclusion therefore is that neither on the basis of the communication Anx. B2/2 dated 12.5.94 or ~~on~~ merits/remarks can be treated as adverse in nature. The applicant is, therefore, entitled to consideration of his case for promotion as DIG by not treating the remarks in the ACR 1989-90 as adverse in nature.

12. In this connection we may refer to the judgment of the Hon'ble Supreme Court in the case of Bani Singh referred to above. The Hon'ble Supreme Court were dealing with the case of promotion of a Police Officer, whose case was ignored for promotion on the ground that there were some complaints about the integrity of the officer and a decision in the matter ~~was~~ was deferred till the decision of such complaints. The Hon'ble Supreme Court noted the observations of the ~~AT~~ <sup>that</sup> on this point, on these complaints, not even a preliminary enquiry had been completed and therefore, these should not have

(17)

weighed with the Screening Committee. The Hon'ble Supreme Court held that this statement of the Tribunal cannot be said to be an incorrect approach. Further, according to them normally pendency or contemplated initiation of a disciplinary proceedings against a candidate must be considered to have absolutely no impact upon his right to be considered for promotion. In the instant case, it is not the case of the respondents that vigilance enquiry had been completed and that some thing actionable against the officer had emerged on the relevant date on which the applicant's case was to be considered by the Screening Committee. We are fortified in our above view by the judgment of the Hon'ble Supreme Court in the case of K.V.Janki-Paman cited above. Although the main principle laid down by the Hon'ble Supreme Court was with regard to the cases of the Central Govt. employees, in regard to which specific instructions had been issued by the Deptt. of Personnel & Training, the general principle laid down by the Hon'ble Supreme Court would be equally applicable to cases of all government servants including All India Service Officers. The general principle laid down by the Hon'ble Supreme Court in this case is that sealed cover procedure can be adopted when a charge sheet is actually issued to an employee. In so far as this case is concerned, there was no issue of charge sheet when the case of the applicant came up for consideration on the first three occasions on 4.7.91, 3.5.93 and 20.8.93. Therefore, on any count nonconsideration of the case of the applicant for promotion on the ground of adverse remarks in the integrity column of the ACR for the year 1989-90 or on account of the vigilance enquiry pending against him was not justified.

13. Promotion accorded to officers junior to the applicant vide Annex A2 and A3 were in 1993 or 1990. The charge sheet was issued to the applicant on 17.6.94. Thus, on the dates on which the Screening Committee have met for consideration of cases of officers who were granted promotions vide Annex A2 & A3, no disciplinary proceedings were pending against the applicant. It is not the case of the respondents that any disciplinary proceedings were even contemplated on those dates. Thus, nonconsideration of the case of the applicant

for promotion to the post of DIG on the dates prior to 1994 on which the cases of officers junior to the applicant were considered and as a result of which they were granted promotions was unjustified. Incidentally the charges contained in the charge sheet are "administrative in nature" and have nothing to do with integrity. The procedure of sealed cover is not applicable to All India Service Officers. However, the essence of the sealed cover procedure is that the case of the officer is considered alongwith others when it is due for consideration by the DPC but actual promotion is granted to the officer only after the disciplinary proceedings against the officer have been concluded and the grant of promotion also depends on the nature of the final order passed on conclusion of the disciplinary proceedings. We have already noted above that in Jankiraman's case the Hon'ble Supreme Court held that disciplinary proceedings against an officer can be said to be pending only when the charge sheet is issued. In the instant case on the dates on which the Screening Committee met to consider the cases of officers junior to the applicant and as a result of which consideration they were granted promotion, the disciplinary proceedings had not even been contemplated. In the circumstances of the present case, therefore, we direct that the case of the applicant be considered for promotion as DIG by the Screening Committee which may be specially constituted for the purpose, if necessary, with reference to the earliest date on which the Screening Committee had considered the names of officers junior to the applicant as a result of which the juniors to the applicant were granted promotion. For this purpose the so called adverse remarks in the ACR 1989-90 have to be ignored, for the reasons given above. If the applicant is found fit for promotion as a result of the deliberations of the Screening Committee he shall be granted promotion from the date from which his next junior was granted promotion. If any penalty is found impossible on the applicant as a result of the disciplinary proceedings initiated against him on 17.6.1994,

(19)

it can have effect from the date on which such penalty order is passed.

14. The O.A. is disposed of accordingly with no order as to costs.

(O.P.Sharma  
Member (A)).

D.L.Mehta  
Vice Chairman.