

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 1.6.2001

OA No.90/95

Surendra Singh Verma s/o Shri Kishan Singh ji at present working as Revenue Appellate Authority, Bharatpur and is permanent resident of Bharatpur.

..Applicant

Versus

1. Union of India through the Secretary, Ministry of Personnel, Pension and Public Grievances, New Delhi.
2. The Union Public Service Commission through Chairman, Dholpur House, New Delhi.
3. State of Rajasthan through the Chief Secretary, Govt. Secretariat, Jaipur.
4. Shri J.L.Modi, Deputy Commissioner (Administration), Commercial Taxes Department, Jodhpur.

.. Respondents

Ms Ashish Joshi, proxy counsel for Mr. P.S.Ascopa, counsel for the applicant.

Mr. S.S.Hasan, counsel for respondent No.1

Mr. D.K.Swamy, proxy counsel to Mr. V.S.Gurjar, counsel for respondent No.2

Mr. B.N.Purohit, counsel for respondent No.3

None present for respondent No.4

CORAM:

Hon'ble Mr.Justice B.S.RaiKote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

PER HON'BLE MF. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

Applicant, Shri Surendra Singh Verma, has filed this OA for quashing the order dated 31.12.1993 by which private respondent No.4, Shri J.L.Modi, was selected for the post of Indian

Administrative Service (for short IAS) from State Civil Service of Rajasthan contending that the applicant should have been selected as against private respondent No.4, Shri J.L.Modi, since he was junior to him in State Civil Service of Rajasthan. The applicant contended that for the purpose of selection, the Selection Committee of IAS met twice, first in the year 1992 and later in the year 1993 in between 26th and 29th October, 1993 and the Committee has not recommended him only due to certain punishments of other persons which have been recorded in the service record of the applicant. The applicant contended that there was adverse entries in the APAP of the year 1991-92, but on the basis of his representation, the same was expunged by the Appellate Authority vide order dated 7.2.1994. Unfortunately as on 26-29th October, 1993, the said adverse entries stood in his record and accordingly considering the said entries, the DPC which met between 26th and 29th October, 1993 has not recommended him for selection. Otherwise, apart from these adverse entries, which were expunged later, the relevant record of the applicant was neat and clean. The learned counsel appearing for the applicant strenuously contended that when the adverse entries were expunged later, taking into account the same adverse entry by the DPC held in the year 1993 prejudiced the case of the applicant. The applicant accordingly contended that he being the senior should have been considered for selection by the DPC as against private respondent No.4. Therefore, the impugned selection issued on 31.10.1993 vide Ann. Al on the basis of the DPC proceedings held between 26th and 29th October, 1993 is liable to be quashed.

2. The respondents by filing counter denied the case of the applicant. They have contended that, it is no doubt, true that the adverse entries made vide communication dated 3.8.1992 have been expunged vide order 7.2.1994, but as on the date of the DPC

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proceedings in the month of October, 1993, these adverse entries stood as part of the record and perhaps the DBC might have considered the same. At any rate, they have contended that apart from the said adverse entries, there were punishments as part of the applicant's service record. They have also stated that applicant has made a wrong and false statement stating that he was not awarded any punishment during his service, but the applicant was awarded punishment of Censure vide order dated 14.5.1979 and one grade increment of the applicant was withheld without cumulative effect vide order dated 30.7.1981, and these punishments were part of the record. On the basis of consideration of the entire record, the Selection Committee has not selected the applicant. They have contended that this Tribunal cannot sit as an Appellate Authority over the decision of the Selection Committee. Therefore, this application is not maintainable. They have further stated that the applicant has not made any allegation of mala-fide against the Members of the Committee and decision of the Selection Committee, therefore, cannot be assailed by the applicant. They relied on the judgment of the Hon'ble Supreme Court reported in JT 1995 (2) SC 654, Major General IFS Dewan v. Union of India and ors. in support of their contention contending that decision of the Selection Committee in not selecting the applicant and selecting respondent No.4, cannot be interfered with by this Tribunal. As against this contention of the respondents, the learned counsel for the applicant contended that the said adversity, if any, on the basis of the punishment awarded to the applicant in the year 1979 and 1981 existed even then such adversity should be taken as washed off the moment applicant was promoted in the Super Time Scale of Rajasthan Administrative Service (for short RAS). By relying upon the judgment of the Hon'ble High Court of Rajasthan (Jaipur Bench) reported in RLR 2000 (2) 503, Fateh Chand Soni v. State of Rajasthan and ors. the counsel appearing for the applicant, contended that in view of the law

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declared by the Hon'ble High Court, the adversity arising on the basis of the punishment in the year 1979 and 1981 stood washed off. Therefore, the DPC could not have considered the same as part of the record. In these circumstances, the selection of private respondent No.4 based on the recommendation of the DPC held in the month of October, 1993 is liable to be set-aside. The learned counsel appearing for the respondents strenuously contended that in terms of Regulation 5(4) of the Indian Administrative Service (Appointment by Promotion) Rules, 1955, the DPC considered the entire service record while assessing the candidates as 'Very Good', 'Good' and 'Unfit', therefore, the wash off theory does not apply to the IAS cadre. He submits that on the basis of the entire record grading of officers is required to be done as 'Very Good', 'Good' etc. Therefore, if the DPC has considered the punishment of the year 1979 and 1981, there would not be any illegality. The respondents accordingly submitted that there are no merits in this application and the same may be dismissed.

3. Heard.

4. On the basis of the pleadings and arguments addressed at the Bar, we have to see whether the proceedings of the DPC dated 26-29th October, 1993 are liable to be set-aside on the basis that the DPC has considered certain records which are impermissible to be considered for the purpose of selection to the post of IAS.

5. It is not in dispute that the applicant and respondent No.4, who was junior to the applicant, were within the zone of consideration for the purpose of their selection to the IAS from State Civil Service of Rajasthan and accordingly the DPC has considered them in the meeting dated 26-29th October, 1993, and on the basis of the said recommendation of the Selection Committee, respondents No.4 was

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selected alongwith others vide order dated 31st December, 1993 (Ann. A1) and the applicant was not selected. But applicant in his application in para 4.2 has stated as under:-

"The applicant has been working honestly and efficiently and has not been awarded any punishment or adverse remarks except for the year 1991-92 which has been communicated to him on 3.8.1992".

6. The applicant further stated that this adverse entry communicated vide order dated 3.8.1992 related to the appointment of Teachers in Alwar District in Upper Middle Schools during the period when the applicant was working as District Education Officer at Alwar. On his representation, the said adverse entry has been expunged by the Appellate Authority vide order dated 7.2.1994 Ann.A2 and A3. The fact that the adverse entry communicated vide order dated 3.8.1992 has been expunged vide order dated 7.2.1994 is not disputed by the respondents, but the respondents contend that, notwithstanding, such expunging the adverse remarks vide order dated 7.2.1994, still the service record of the applicant reflected his punishment of the year 1979 and 1981. They contended that as on the date the Selection Committee held the proceedings, the adverse remark, which was expunged later, was a part of the record and in addition to that, the punishment of the applicant in the year 1979 and 1981 were also reflected in the service record. The DPC considered the entire service record and accordingly it has not recommended the applicant for his selection to the IAS. They have specifically contended that the applicant has purposely suppressed these punishments of the year 1979 and 1981 in para 4.2 stating that the applicant has not been awarded any punishment except the adverse remark which was communicated to him vide order dated 3.8.1992 and expunged late. In our considered opinion, the contention of the respondents that the applicant suppressed regarding punishment of the

year 1979 and 1981 is acceptable. The applicant in all fairness should have stated in his OA regarding the punishment of the year 1979 and 1981 but, on the other hand, he stated that except the adverse entry communicated vide order dated 3.8.1990 his service record was clean. A person who is supposed to become an IAS officer cannot afford to suppress his punishment of the year 1979 and 1981. In fact, the applicant had already admitted such punishment of the year 1979 and 1981 only in rejoinder in the Appeal filed before the Rajasthan Civil Services Appellate Tribunal in appeal No.298 of 1993. The respondents have brought to our notice the reply filed by the State in that Appeal vide Ann.P5 and also rejoinder to the reply filed by the present applicant in the said appeal No.298 of 1993. At page 28 of this OA in the said rejoinder, the applicant has stated that :-

"The old and stale punishment order of 1979 and 1981 referred in this para have already been washed out when the appellant was promoted in the year 1983 on urgent temporary basis and further selected on regular basis against the year 1987-88 otherwise also the said punishment censure and withholding of one grade increment are more than 7 years old as such could not have been considered. It is also pertinent to mention here that there is no punishment order dated 12.10.1991 of withholding the one grade increment which appears to have been corrected by the respondent as 12.10.1981.

7. From above statement, it is clear that applicant has admitted his punishment of the year 1979 and 1981. The learned counsel appearing for the respondents stated that the date 21.10.91 referred to in that Appeal was a mistake and it should be only 12.10.1981. By noting this correction, ultimately we find that the punishment of the

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year 1979 and 1981 stood as part of the record. In all probabilities, the Selection Committee took into consideration this punishment and also unexpunged adverse remarks communicated vide order dated 3.8.1992. But the contention of the learned counsel for the applicant is that the adverse entry relating to the punishment of the year 1979 and 1981 should not have been taken into account in view of the subsequent promotion of the applicant in the year 1983, 1987 and 1988 and such old entries shall be taken as washed off in view of the judgment of the Hon'ble High Court of Rajasthan in Fateh Chand Soni v. State of Rajasthan and ors. (cited supra). From reading of the entire judgment, we found that in that case the Hon'ble High Court was considering the non-promotion of the petitioner therein on the basis of certain adverse entries made prior to his earlier promotion. The Hon'ble High Court interpreting the Rules involved in that case held that his earlier promotion could have the effect of nullifying the earlier adverse entry for the purpose of further promotion and as such the principle of 'wash off' applied in such circumstances. But in our humble opinion the ratio of the said judgment does not apply to the facts of this case. The selection to the office of IAS is made in terms of Regulation 5, sub-regulation (4) of Indian Administrative Service (Appointment by Promotion) Rules, 1955. The said Regulation is extracted as under:-

"(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be, on an overall relative assessment of their Service records"

From reading of the entire regulation, it is clear that the Selection Committee assesses an individual as 'Very Good', 'Good' etc. on the basis of the entire record. All entries made in the service record form the part of such record which is to be considered

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by the DPC while assessing a candidate, and if that is so, the punishments recorded and other adverse entries recorded, definitely would form part of the record for assessing the overall merit of a candidate. Therefore, wash off principle does not apply to these Regulations. The consideration for promotion in the lower posts would be entirely different than the consideration for the office of the IAS. Therefore, in our considered opinion, the judgment of the Hon'ble High Court of Rajasthan does not apply to the facts of this case and under Regulation 4 of IAS (Appointment by Promotion) Rules, it is the bounden duty of the Selection Committee to consider the entire record. Therefore, we do not find any illegality if the DPC had considered the punishment of the year 1979 and 1981 as part of the record while assessing the applicant.

8. Now the other short question would be what is the effect of consideration of adverse entry, which was part of the record as on the date the DPC met in the month of October, 1993, which was expunged later in the year 1994. The applicant has not alleged any mala-fide against the Committee. So far the discretion exercised by the Committee as on the date the Committee met in the month of October, 1993, the adverse unexpunged entry stood as part of the record, such discretion cannot be found fault with. This entry might have influenced the decision making process of the Committee. But in our opinion, if the said adverse entry was the only adversity in the record, the other record being clean, things would have been different, perhaps the applicant's case could have been prejudiced for considering the sole adversity, which was expunged later. But, as we have already stated above, not only the expunged adverse remarks form part of the record, but the entries relating to the punishment of the year 1979 and 1981 also formed part of the record. *Prima-facie*, it is clear that as on the date of the proceedings in the month of October,

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1993, it cannot be said that the Selection Committee committed any error in taking into account the punishments alongwith other material on record. As held by the Hon'ble Supreme Court in the case of Major General IPS Dewan v. Union of India and ors (cited supra), this Court cannot sit as an Appellate Authority over the acts and proceedings of the Selection Committee. At any rate, in our opinion, the unexpunged entry could not have out-weighed the punishment suffered by the applicant in the year 1979 and 1981. Hence, even if the adverse entry dated 3.8.82 is excluded for consideration on the ground that same was expunged vide order dated 7.2.1994, still the adversity on the basis of the punishment of the applicant of the year 1979 and 1981 stood. Therefore, in our considered opinion, even if the Committee considered the expunged adverse remarks, even then we do not think that the judgment making process of the Selection Committee held in the month of October, 1993, was totally unfounded. In fact, the material pertaining to the punishment is more graver than the said adverse entry. The adverse entry regarding appointment of Teachers in the Alwar District, during the time when the applicant worked as District Education Officer in the said District, stating that there was no pressing need to appoint Teachers in April, 91 when the schools were going to close in May, 91, in our opinion, would not have very much influenced the decision making process, after all relates to a minor irregularity. Therefore, only on this technical ground we do not think it is possible to upset the decision of the Selection Committee held in the month of October, 1993. The Hon'ble Supreme Court in Major General IPS Dewan (cited supra) held that in the absence of allegation of mala-fide or bias against the Members of the Selection Board and the said Selection being not based on any seniority but on merits, the Court shall not sit as an Appellate Authority over such decision of the Selection Committee. We think it appropriate to extract the relevant paragraph of the said judgment as under:-

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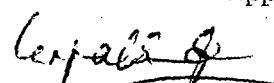
"13. So far as the non-selection of the appellant by the Selection Board for promotion to the rank of Lt. General is concerned, we see no illegality in the procedure adopted by them. We have also perused the work sheets relating to all four officers considered. Not only the appellant but two other seniors to the person selected were overlooked. The selection, it may be noted, was not based on seniority, but on merit. There is no allegation of malafides or bias against the members of the Selection Board. All that can be and is suggested against the process of selection is that the Board took into consideration the aforesaid adverse remarks. Assuming that the said remarks were indeed taken into consideration, the non-selection of the appellant cannot be faulted. Firstly, it cannot be said that the said remarks alone were the cause of non-selection; the non-selection of appellant appears to be based on an over-all assessment. Secondly, the statutory complaint preferred by the appellant against the said remarks have been rejected by the Central Government, no doubt subsequent to the said consideration. As stated above, the situation may have been different had the said complaint been upheld partly or wholly. In the circumstances, the Court cannot sit as an appellate authority over the acts and proceedings of the Selection Board."

From reading of the entire judgment, we find that the only difference between this case and the case decided by the Hon'ble Supreme Court is that in that case the adverse entry was not expunged later on an appeal filed by the appellant therein, but in the instant case the same was expunged, as have already stated above. Even if, we

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exclude the said adverse entry, which was expunged later, still the adversity on the basis of the punishment of the year 1979 and 1981 of the applicant continued to be a part of the record, to substantially influence the decision making process of the Committee. Therefore, in our considered opinion in the light of the law declared by Hon'ble the Supreme Court, we do not think that it is appropriate case to hold that non-selection of the applicant by the Selection Committee was illegal. As we have stated above, the applicant has suppressed the said punishment of the year 1979 and 1981, when he alleges in his application in para 4.2 that he was not awarded any punishment except the adverse entry which was communicated on 3.8.1992 and expunged later. Hence he has not approached the Tribunal with clean hands. At the request of such a persons, we do not think, even otherwise, that this is a fit case in which we should interfere, assuming for the sake of arguments that the said adverse entry, expunged later, should not have been taken into consideration. Viewed from this angle also, we find no merit in this application. Accordingly, we pass the order as under:-

"Application is dismissed. No costs."



(GOPAL SINGH)

Adm. Member



(B.S. RAIKOTE)

Judl. Member