

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00414/2014

DATE OF ORDER: 09.02.2016

CORAM

HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR, JUDICIAL MEMBER
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Lalit Maheshwari, aged about 55 years S/o (late) Sh. Amba Lal Ji Maheshwari,
R/o B-35, Hari Marg, Malviya Nagar, Jaipur, presently posted as S.P. CID
(Intelligence), Kota (Raj.).

...Applicant

VERSUS

1. Union of India through Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi.
2. Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
3. Chief Secretary, Govt. of Rajasthan, Government Secretariat, Jaipur (Raj.).
4. Additional Chief Secretary (Home), Govt. of Rajasthan, Government Secretariat, Jaipur (Raj.).
5. Director General of Police, Police Headquarter, Lal Kothi, Jaipur.
6. State of Rajasthan, Principal Secretary (DOP), Govt. of Rajasthan, Government Secretariat, Jaipur (Raj.).
7. Sh. Ravi Dutta Gaur, IPS at present posted as DCP (South) Commissionerate, Jaipur.
8. Laxman Gaur, IPS at present posted as S.P. Nagaur, Distt. Nagaur.
9. Sh. Prashan Kumar Khamesra, IPS at present posted as SP Chittorgarh, Distt. Chittorgarh.
10. Sh. Kishan Sahay Meena, IPS, at present posted as SP (GRP) Ajmer.
11. Om Prakash Dayma, IPS, at present posted as SP (Law & Order), P.H.Q. Lal Kothi, Jaipur.
12. Sh. Rajendra Singh, IPS, at present posted as Commandant 2nd Battalion, RAC, Kota.
13. Sh. Dr. Ramdev Singh, IPS at present posted as Commandant 10th Battalion, Bikaner.
14. Sh. Jai Narayan, IPS at present posted as SP, Pali, Distt. Pali.
15. Sh. Sandeep Singh Chauhan, IPS at present posted as SP (DCP) Metro Rail, Jaipur
16. Sh. Satyendra Singh, IPS, at present posted as SP Tonk, Distt. Tonk.
17. Sh. Ashok Kumar Gupta, IPS, at present posted as DCP (North) Commissionerate, Jaipur.

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18. Sh. Sawai Singh Godara, IPS, at present posted as SP, Sawai Madhopur, Distt. Sawai Madhopur.

...Respondents

Mr. Virendra Lodha, Sr. Advocate, with
Mr. Vinod Goyal, counsel for applicant.

Mr. Mukesh Agarwal, counsel for respondent no. 2.
Mr. V.D. Sharma, counsel for respondent nos. 3 to 6.
Mr. H.P. Singh, counsel for respondent nos. 13 & 18.
Nemo for other respondents.

ORDER

PER MR. JUSTICE MEHINDER SINGH SULLAR, JUDICIAL MEMBER

1. Claiming himself to be eligible for selection in the cadre of Indian Police Service (for short IPS) against the vacancy of the year 2010, the applicant Lalit Maheshwari S/o (late) Shri Amba Lal has preferred the instant Original Application (for brevity OA) to challenge the impugned order dated 28th June, 2013 of the Govt. of Rajasthan (DOP) and notification dated No. 1-14011/2/2013-IPS.I (II) dated 28.06.2013 issued by the Ministry of Home Affairs, Govt. of India, New Delhi (Annexure A/1) invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

2. The matrix of the facts and material culminating into the commencement, relevant for disposal of the instant OA and emanating from the record, as claimed by the applicant, is that he (applicant) was initially appointed in the cadre of Rajasthan Police Service (for short RPS) Officer in the year 1989 through a regular process of selection. He worked to the entire satisfaction of his superior and earned Outstanding and Very Good reports. According to the applicant, he was assessed as Outstanding officer for the year 2006-2007 by Reporting and Reviewing Officers. However, Accepting Officer downgraded his Annual Performance Appraisal Report (for brevity APAR) to

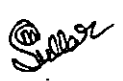
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Good from Outstanding, without assigning any valid ground. He challenged the down-grading of his APAR in the Hon'ble High Court of Rajasthan, Jaipur Bench by virtue of Civil Writ Petition No. 8542/2010. The Hon'ble High Court vide order dated 22.12.2010, directed the respondents that downgrading remarks below the benchmark recorded in APARs for the years 2006-07 & 2007-08 pertaining to the applicant shall not be taken into consideration while considering his case for grant of super time scale of RPS or for promotion in the IPS cadre. However, it would not preclude the respondents to communicate downgrading remarks below the benchmark recorded in APARs of years 2006-07 & 2007-08 of the petitioner who if so desired may make representation against communication of downgrading remarks (supra) and after receipt whereof, respondents are at liberty to decide the same in accordance with law.

3. Consequently, the applicant submitted a detailed representation on 14.02.2011 which was accepted and remarks of the Accepting Authority in APAR of the applicant for the year 2006-2007 was upgraded from Good to Very Good by the competent authority vide communication dated 12.05.2011 (Annexure A/3). It was claimed that in this manner the APAR of the applicant was upgraded from Good to Very Good for all intends and purposes and was duly entered in the official record. Accordingly a review Departmental Promotion Committee (for short DPC) came to be convened and on the recommendation of the review DPC, the applicant was promoted to RPS Super Time Scale against the vacancy of the year 2010-2011 by means of order dated 29th February, 2012 (Annexure A/4). In this manner, he should have been shown below the Sl. No. 8 i.e. just below Shri Dilip

Kumar whose name appears at Sl. No. 8 in the seniority list, as he (applicant) has already received all the consequential benefits due to upgradation of APARs as Very Good for the year 2006-2007.

4. The case of the applicant further proceeds that due to utter dismay and surprise, the impugned order dated 28th June, 2013 of the Govt. of Rajasthan (DOP) and notification dated No. 1-14011/2/2013-IPS.I (II) dated 28.06.2013 was issued by the Ministry of Home Affairs, Govt. of India, New Delhi (Annexure A/1) whereby the applicant was promoted to the cadre of IPS from the year 2012 and was placed at Sl. No. 1 and not against the vacancy of the year 2010. Since the APAR of the applicant for the year 2006-2007 was upgraded from Good to Very Good and he now possessed four out of five Very Good APARs to enable him for consideration so he was entitled to be promoted to IPS cadre against the vacancy of year 2010 (not vacancy of 2012). The UPSC was stated to have not considered the relevant APARs of the applicant for the year 2006-2007 as Very Good. Subsequently, the representation made by him on 19th March 2014 (Annexure A/5) for redressal of his grievances was declined vide letter dated 03rd July, 2014 (Annexure A/2) mainly on the ground that there is no enabling provisions in the Indian Police Service (Appointment by Promotion) Regulation 1955 (hereinafter referred to as Regulation 1955) to reconsider the case of an Officer for inclusion in the select list already approved and acted upon.

 5. Leveling a variety of allegations and narrating the sequence of events in all, the applicant claimed that in view of the upgraded APARs for the year 2006-2007 as Very Good, his name should have been placed below Mr.

Dilip Kumar and above Mr. Ravi Dutta Gaur who is right now placed at Sl. No. 1 in the select list for the year 2010. In fact he (applicant) should have been promoted and placed at Sl. No. 1 in the select list for the year 2010. On the basis of the aforesaid grounds, the applicant has challenged the impugned order dated 28th June, 2013 and notification No. 1-14011/2/2013-IPS.I (II) dated 28.06.2013 (Annexure A/1) by virtue of filing the present OA claiming for the following reliefs: -


“By an appropriate order or direction, the learned Tribunal may call for the entire record pertaining to convening of IPS Board and after examining the same the action of the official respondents in not considering the candidature of the applicant in the matter of appointment by way of promotion to IPS against the vacancy of year 2010 to the extent the action of the official respondents be declared null and void and be quashed and set aside.

By an appropriate order or directions, the official respondents may kindly be directed to hold a Review IPS Board in the matter of appointment by way of promotion in the matter of promotion qua the applicant against the vacancy year 2010 by taking into consideration his upgraded APARs for the year 2006-07 from Good to Very Good as a consequence thereof the applicant categorization / up-gradation shall be changed from Good to Very Good and accordingly considered his case for appointment by way of promotion to IPS against the vacancy of year 2010 at Serial No.1 with all consequential benefits thereto.


By an appropriate order or directions, the official respondents may kindly be directed to place the name of the applicant for the year of allotment 2004 at above Mr. Ravi Dutta Gaur and below Mr. Dilip Kumar which was marked as (Annexure A/7) and thereafter accordingly all consequential benefits as permissible under the law.

By an appropriate order or directions, if any order prejudicial/detrimental to the interest of applicant is passed during the pendency of the original application, the same may kindly be taken on record and be quashed and set aside by this learned Tribunal.

Hon'ble Tribunal may pass any other just and able order in favour of the applicant as deemed fit.”

 6. The respondent nos. 2, 3 to 6, 13 & 18 contested the claim of the applicant and filed their respective replies. While giving the history of

establishment and procedure adopted by Union Public Service Commission (for brevity UPSC) / respondent no. 2 has maintained that the promotion of the eligible officers was made as per Regulation 1955 after considering the documents received from the State Government. It was pleaded by the respondent no. 2 that in the present case the Selection Committee Meeting for promotion to IPS of Rajasthan Cadre against the vacancies of the years 2009A, 2010, 2011 and 2012 was held on 13th June, 2013. The Selection Committee considered the name of the applicant against the indicted vacancies but his name was not included in the said select list due to statutory limit and availability of Officers with higher grading. However, for the select list of 2012, the Committee considered the name of the applicant at Sl. No. 1 against seven vacancies and after examination of his service record assessed him Very Good. The recommendations of the Selection Committee were approved by the UPSC vide letter dated 28th June 2013 and acted upon by the Govt. of India, Ministry of Home Affairs by means of notification dated 28th June 2013. It was reiterated that the applicant was not promoted to the IPS cadre against the vacancy of 2009A, 2010 and 2011 taking into consideration his record and was assessed as Good. However, he was recommended for inclusion in the select list of 2012 and he was assessed as Very Good. The jurisdiction of the selection committee and UPSC was stated to be supreme and cannot be challenged in the Court. The UPSC has relied on the decision of the Hon'ble Apex Court in U.P.S.C. vs. K. Rajaiah and Ors. reported in (2005) 10 SCC 15 wherein the following observations have been given -

 ".....The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt the committee is by and large guided by the classification adopted by the State

Government but, for good reasons, the Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs.....”

7. Sequely the remaining contesting respondents have also filed their separate respective replies in which they have adopted almost the same line of defence as projected by the UPSC. In order to avoid the repetition suffice it to say that the remaining contesting respondents have also maintained that the selection committee has rightly ignored the candidature of the applicant to be included in the list of IPS cadre against the vacancy of 2010 and he was rightly promoted as such against the vacancy of the year 2012. The respondent nos. 3 to 6 contended that upgraded APARs for the year 2006-07 was taken into account by the Selection Committee and after due consideration of record, assessed the applicant as Good for the year 2006-07. By referring to Regulation, 1955, it is also contended that there is no enabling provisions in the regulation to reconsider the case of an officer for inclusion in the select list already approved and acted upon. On behalf of respondent nos. 13 & 18 it is argued that these officers have already been promoted and their interests are required to be protected and if any relief is given to the applicant it should not in any way adversely affect their position and seniority. It will not be out of place to mention here that all the contenting respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

8. Controverting the allegations pleaded in the replies of the respondents and reiterating the claim contained in the main OA, the applicant has filed rejoinder to the replies filed by the respondents.

9. At the very outset learned counsel for the applicant has contended with some amount of vehemence that the Reporting and Reviewing Officers gave Outstanding report to the applicant for the year 2006-2007 but it was downgraded to Good by the Accepting Officer without assigning any valid ground, without any material and without giving opportunity of being heard to the applicant. The argument is that once the State Govt. has upgraded the APARs of the applicant for the year 2006-2007 from Good to Very Good in pursuance of the directions of the Hon'ble Rajasthan High Court, Jaipur Bench then the applicant was entitled to be promoted to the cadre of IPS against the vacancy of 2010 and not against the vacancy of the year 2012 as has been done in the instant case by the respondent no. 2 in the meeting convened on 13.06.2013. Therefore, he prayed that the official respondents be directed to reconsider the matter afresh in this regard. In support of his contentions, he also placed reliance on the judgment of the Hon'ble Apex Court in the case of **G. Mohanasundaram vs. R. Nanthagopal and Ors.** reported in (2014) 13 Supreme Court Cases 172.

10. Faced with the situation, learned counsels for the respondents have vehemently urged that since the UPSC has included the name of the applicant in the list of IPS cadre against the vacancy of 2012 (not against the vacancy of 2010) so its jurisdiction cannot be challenged in Courts. In all according to them, the UPSC has rightly selected the candidates so the main OA deserves to be dismissed.

11. Having heard learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the

entire matter, we are of the considered opinion that the instant OA deserves to be accepted for the reasons mentioned herein below -

12. It is not a matter of dispute that the Reporting and Reviewing Officers gave Outstanding report to the applicant for the year 2006-2007 but it was downgraded to Good by the Accepting Officer without assigning any cogent reasons. In pursuance of order of the Hon'ble Rajasthan High Court, the APARs of the applicant for the year 2006-2007 was upgraded from Good to Very Good by the competent authority as conveyed to the applicant vide letter dated 12th May, 2011 (Annexure A/3). As is evident from the record, not only that in pursuance thereof considering his Very Good report for the relevant year of 2006-2007 and other service record, the applicant was granted super time scale in RPS cadre against the vacancy of 2010-11 by means of order dated 04.10.2010 and he was placed immediately after the name of Dilip Kumar at Sl. No. 8 of the seniority list which is clear from the order dated 29th February, 2012 (Annexure A/4). Therefore, once the APARs of the applicant for the year 2006-2007 was upgraded as Very Good for all intends and purposes, he was granted super time scale in RPS cadre against the vacancy of 2010-11 by order dated 04.10.2010 and was placed immediately after the name of Dilip Kumar at Sl. No. 8 of the seniority list much prior to the convening of selection committee meeting on 13.06.2013 by the UPSC, indeed in that eventuality the applicant was legally entitled to be considered for promotion to the cadre of IPS against the vacancy of 2010 and not against the vacancy of the year 2012 as has been done by the official respondents in the present case.

13. The celebrated arguments of learned counsels for the respondents that since the UPSC has considered the relevant record of the officers and promoted them in the cadre of IPS so selection made by it cannot be set aside, are not only devoid of merit but misplaced as well and deserves to be out rightly rejected for more than one reason.

14. At the first instance, the UPSC has not considered the relevant record/ upgraded APARs of the applicant for the year 2006-2007 as Very Good but has considered his APARs as Good, which was subsequently upgraded by the competent authority to Very Good and super time scale in RPS cadre was released to him much prior to the convening of meeting on 13.06.2013. The vague stand taken by the UPSC that it has considered the entire record is also falsified by its own disclosure. As is evident from the record that in the wake of request made by the applicant under RTI Act 2005, the Deputy Secretary (AIS) & CPIO, UPSC has supplied the information by means of letter dated 23rd January, 2014 (Annexure A/6) in which the following year-wise assessment pertaining to the applicant was considered by Selection Committee which met on 13.06.2013 for preparation of the select lists against the vacancies of the years 2009, 2010, 2011 and 2012 for promotion of SPS officers to IPS of Rajasthan Cadre: -

“Select List against the vacancies of the year 2009

Silber

Position of IC/DE/Cr.Proc./ Adv.Rem.	Assessment of last five years					Overall Relative Assessment	Remarks
	2004- 05	2005- 06	2006- 07	2007- 08	2008- 09		
	VG	VG	G	G	VG	Good	

Select List against the vacancies of the year 2010

Position of IC/DE/Cr.Proc./ Adv.Rem.	Assessment of last five years					Overall Relative Assessment	Remarks
	2005- 06	2006- 07	2007- 08	2008- 09	2009- 10		
	VG	G	G	VG	VG	Good	

Select List against the vacancies of the year 2011

Position of IC/DE/Cr.Proc./ Adv.Rem.	Assessment of last five years					Overall Relative Assessment	Remarks
	2006- 07	2007- 08	2008- 09	2009- 10	2010- 11		
	G	G	VG	VG	VG	Good	

Select List against the vacancies of the year 2012

Position of IC/DE/Cr.Proc./ Adv.Rem.	Assessment of last five years					Overall Relative Assessment	Remarks
	2007- 08	2008- 09	2009- 10	2010- 11	2011- 12		
	G	VG	VG	VG	VG	Very Good	Selected as No. 1

15. Meaning thereby it stands proved on the record and is even not controverted, which would reveal that the UPSC has considered the report of the applicant for the year 2006-2007 as Good (instead of upgraded report as Very Good) and non-suited him in this relevant connection. If the UPSC had considered the upgraded APARs of the applicant for the year 2006-2007 as Very Good then he would have been selected and included in the list of IPS cadre against the vacancy of 2010 and not against the vacancy of 2012 as he fulfilled all the requisite criteria. Therefore, the detailed representation filed by the applicant was wrongly rejected by the Government of Rajasthan, Department of Personnel, (A-I) vide order dated 03rd July 2014 (Annexure A/2) on a speculative ground that there is no enabling provision in the

Regulation 1955 to reconsider the case of an officer for inclusion in the select list which has already been approved and acted upon.

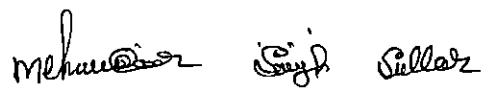
16. At the same time, it cannot possibly be denied that the jurisdiction of the Courts/Tribunals in the matter of selection by the UPSC is somewhat limited but it is now well settled principle of law that Courts/Tribunals are not powerless to correct the patent illegalities and blatant error/mistake committed by the UPSC, which is apparent on the face of record as indicated hereinabove. The Hon'ble Apex Court in **G. Mohanasundaram vs. R. Nanthagopal and Ors.** (supra) has held that under such circumstances, the Tribunal has vast power to rectify the illegalities committed by the selection committee. Therefore, if the applicant was entitled to be included in the list of IPS cadre against the vacancy of 2010, his legal right cannot be taken away by vague stand taken by the UPSC, which is self-contradictory from its own document Annexure A/6 letter dated 23rd January, 2014. Therefore, in our opinion, the applicant is entitled to equal opportunity and legal protection. Hence, the arguments of the learned counsels for the respondents "stricto sensu" deserves to be and are hereby repelled in the obtaining circumstances of the case.

17. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order dated 28.06.2013 and notification dated 28.06.2013 (Annexure A/1) ignoring the indicated claim of the applicant to be included in the list of IPS cadre against the vacancies of the year 2010, are hereby set aside. The State of Rajasthan / respondent no. 6 is directed to send the upgraded APARs as Very Good of the applicant for the year 2006-2007 and other relevant record along with other eligible officers to the UPSC within a

period of one month. At the same time, the UPSC / respondent no. 2 is directed to convene a meeting of Selection Committee to consider the case of the applicant afresh for promotion from RPS cadre to IPS cadre against the vacancies of the year 2010 on the basis of the upgraded APAR of the applicant, within a period of three months thereafter, in accordance with law.

There shall be no order as to costs.


(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE MEHINDER SINGH SULLAR)
JUDICIAL MEMBER

Kumawat