

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 27.09.02

OA No.420/96

Navdeep Singh s/o Shri Kuldeep Singh r/o A-35, Hanuman Nagar,
Khatipura, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, Government of India, Central Secretariat, New Delhi.
2. State of Rajasthan through the Chief Secretary, Govt. of Rajasthan, Jaipur
3. Home Commissioner, Govt. of Rajasthan, Secretariat, Jaipur
4. Secretary to the Government, Department of Personnel, Govt. of Rajasthan, Secretariat, Jaipur.
5. Shri Jaswant Sampatram, Deputy Inspector General of Police, R.S.B., Jaipur.
6. Shri Pukhraj Sirvi, Deputy Inspector General of Police, Bharatpur Range, Bharatpur.
7. Shri Durga Lal Sharma, Director, Police Telecom, Jaipur.
8. Shri Ganpat Raj Mathur (Retd.) Deputy Police Intelligence, Jaipur r/o D-23, Hanuman Nagar, Khatipura, Jaipur.

.. Respondents

Mr. P.S.Asopa, counsel for the applicant

Mr. Bhanwar Bagri, counsel for respondent No.1

Mr. U.D.Sharma, counsel for respondent Nos. 2,3 & 4

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OA No.133/97

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Khatipura, Jaipur.

.. Applicant

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5. Shri Jaswant Sampatram, Deputy Inspector General of Police, R.S.B., Jaipur.
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8. Shri Ganpat Raj Mathur (Retd.) D.I.G., Police Intelligence, Jaipur r/o D-23, Hanuman Nagar Khatipura, Jaipur.

.. Respondents

Mr. P.S.Asopa, counsel for the applicant

Mr. Bhanwar Bagri, counsel for respondent No.1

Mr. U.D.Sharma, counsel for respondent Nos. 2,3 & 4

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CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

In OA No.420/96, the applicant is aggrieved of the inaction of the respondents for not operating the panel prepared on the recommendations of the Screening Committee in its meeting held in second fortnight of July, 1996 for promotion to the post of Deputy Inspector General (DIG) in I.P.S. Cadre of Rajasthan State. In relief, he has prayed for appropriate directions to the respondents to operate the panel as prepared by the Screening Committee and also to restrain them for reviewing the same. He has also prayed that the respondents be directed to promote the applicant to the post of DIG w.e.f. the date of occurrence of the first vacancy with all consequential benefits. It has also been prayed that promotion orders of respondent Nos. 5 to 8 as ordered vide order dated 29.8.96 to the post of DIG may be quashed and respondents be directed to hold the Review Screening Committee and to promote him to the said post from the date his juniors were promoted i.e. from 29.8.96, with all consequential benefits.

2. The case of the applicant as made out, in brief, is that:-

2.1 Having been declared successful in the Civil Services Examination 1980, he was appointed to the IPS vide order dated 30.3.82 and was allotted Rajasthan cadre. He was granted Senior Time Scale in 1985 and thereafter he

was promoted to the Selection Grade of IPS carrying a pay scale of Rs. 4500-5700 w.e.f. 1.7.94. For preparation of the panel for the post of DIG carrying a pay scale of Rs. 5100-6150, a meeting of the Screening Committee was convened in the second fortnight of July, 1996. There were clear two vacancies as on 9.7.96 and third vacancy was likely to occur on account of promotion to the post of I.G. (Vigilance) which was vacant. The said Screening Committee prepared a panel and according to his information, he was placed at Sl.No.1. The said panel is final and no approval is required under IPS (P) Rules, 1954 and the circular dated 4.9.89. The applicant was not communicated any adverse entry till that time. Since he was granted selection grade of IPS vide order dated 7.9.94 w.e.f. 1.7.94, he has every reason to believe that he is meritorious and there is nothing against him upto 8.9.94 and thereafter also he was not communicated any adverse remarks till date. Being seniormost and found place at No.1 in the panel and the vacancies being available, the Government was under obligation to fill up the vacancies by operating the panel. Despite two clear vacancies available, the respondents have not operated the said panel and are searching grounds to review the same to give undue advantage by giving promotions to junior officers. Since the panel prepared by the Screening Committee is final, no review is permissible.

2.2 He made enquiries and came to know that the ACR for the year 1994-95 was not under the grading of 'adverse' and, therefore, he was not communicated anything either by the reviewing officer or by the DOP. The said ACR is now being treated/made adverse by the accepting

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authority which is contrary to Rule 4, 6 and 6(a) of the All India Service (Confidential Rolls), Rules, 1970 as amended vide notification dated 31.7.93. A bare perusal of the rules alongwith the selection criteria dated 4.9.89 would reveal that the entire process is to be completed before the First of July i.e. the crucial date of eligibility and till the holding of the meeting, the applicant was not communicated any adverse remark. Therefore, the question of review does not arise at all. The ACR of 1994-95 cannot be made the basis for review after the crucial date of 1.7.96. The uncommunicated ACR cannot be made basis for review and the question of communication of the same after the meeting, is wholly arbitrary and contrary to the rules.

2.3 He came to know that the proceedings of the Screening Committee are being reviewed and, therefore, he sent a notice of demand of justice on 12.8.96 but no reply was received and the respondents convened the Screening Committee meeting on 26.8.96, prepared a fresh panel and promoted four officers junior to the applicant on 29.8.96. The respondents later on revealed that when the Screening Committee met on 17.7.96, the ACR for 1994-95 was not available. The ACR for 1994-95 having been available and there being adverse remarks, the Screening Committee in its meeting of 26.8.96, did not find the applicant fit for promotion to the post of D.I.G.

3. The main grounds taken by the applicant are that:-

3.1 The inaction on the part of the respondents for not operating the panel prepared by the Screening Committee in its meeting of July, 1996 for the post of

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DIG, is contrary to the rules and instruction thereof. Further initiation of review proceedings on the basis of the some adverse material, which came in existence or treated adverse after the date of meeting of the said Screening Committee, is contrary to the selection criteria dated 4.9.89 apart from being highly unreasonable, arbitrary and discriminatory.

3.2 He was granted selection grade vide order dated 8.9.94 w.e.f. 1.7.94, therefore, the applicant has every reason to believe that he is meritorious and there was nothing against him upto 8.9.94 and thereafter also he was not communicated any adverse remarks till the date of the meeting of Screening Committee. In the aforesaid facts and circumstances, he has every reason to believe that he has been empanelled at Sl.No.1 being seniormost and the Government is under obligation to fill up the vacancies by operating the panel. The Government has not operated the panel despite two clear vacancies and they are now searching grounds of review to give undue advantage to the junior officers.

3.3 According to his information, the ACR of 1994-95 was submitted by him in time and was reviewed in time and it was not under the grading of 'adverse', therefore, the same was not communicated to him either by the reviewing officer or by the DOP. The said ACR is now being treated as adverse, which is contrary to Rule 4, 6 and 6(a) of the All India Service (Confidential Rolls) Rules, 1970.

3.4 The entire selection process is to be completed before 1st of July as the same is crucial date of eligibility and till the holding of the meeting, the

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applicant was not communicated any adverse remarks. Therefore, the question of review does not arise at all and the said ACR of 1994-95 cannot be made basis of review after the crucial date of 1st July, 1996. Even if, the same was communicated before the meeting of the Screening Committee then also the same cannot be made use of unless an opportunity for filing representation is given and the same is decided. On account of the basic principle of consideration of the adverse remarks only in case the particular ACR attained finality after giving the opportunity to submit representation and final decision is taken thereon. Since he was not communicated the adverse remarks of 1994-95 till the date of the meeting of the Screening Committee and therefore, the same ought not to have been considered by the Screening Committee. Consequently, the applicant has been superseded only on the ground of consideration of uncommunicated adverse remarks.

3.5 The respondents prepared a fresh panel for promotion to the post of DIG in violation of the interim direction dated 13.8.96 of the Hon'ble Tribunal and also passed the order dated 29.8.96 promoting respondent No. 5 to 8, who were junior to the applicant to the post of DIG whereas the applicant, who is senior to all the four respondents, was not promoted. Instead of communicating the adverse remarks in the ACR of the year 1994-95 to the applicant in order to enable him to submit representation, the respondents convened another meeting of the Screening Committee on 26.8.96 promoting respondent Nos. 5 to 8, who were junior to the applicant, in order to jeopardise his claim for promotion. Therefore, the promotion order dated

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29.8.96 is liable to be quashed and set-aside.

3.6 The applicant was communicated adverse ACR of 1994-95 after a delay of more than 17 months, therefore, the same should not have been considered by the Screening Committee while considering the applicant's case for promotion to the post of DIG.

4. The respondent Nos. 2, 3 and 4 have filed reply. Briefly stated, they have submitted that :-

4.1 The recommendations made by the Screening Committee for promotion to the post of DIG were submitted to the competent authority for approval. However, it was found by the competent authority that the ACR of the applicant for the year 1994-95 which was relevant and also adverse was not placed before the Screening Committee to enable him to submit representation. The competent authority, therefore, desired that after the decision on the representation of the applicant, another meeting of the Screening Committee should be held. It is, therefore, submitted that no panel has been prepared and as such the question of not operating the panel does not arise.

4.2 The function of the Screening Committee is to assess the suitability of the officers for promotion and make recommendations. The Screening Committee is not empowered to prepare the panel by itself. The recommendations made by the Screening Committee are required to be approved by the competent authority as a general principle. The scope and extent of the IPS (Pay) Rules is quite different and does not cover the subject matter under consideration. As regards the circular dated 4.9.89, it is stated that it is in the nature of

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guidelines and the absence of the provisions therein regarding the approval of the panel by the competent authority will not make the recommendations made by the Screening Committee as a panel for promotion. Since there is no ^{such} provision in the said circular, the consolidated instructions issued by the Department of Personnel and Training in their O.M. dated 10.4.89 will be applicable and as per Para 16.1 thereof, the recommendations of the D.P.C. which are advisory in nature, are required to be duly approved by the competent authority.

4.3 It is submitted that the adverse remarks in the ACR for the year 1994-95 were communicated to the applicant vide DO letter dated 24.8.96, a copy of which was sent to him vide letter dated 6.9.96 (Ann.A/H to the OA). The allegation of the applicant that the respondents are now searching grounds of review to give undue advantage to the junior officers is not only false but is also malicious. Further, since the said ACR of the applicant for the year 1994-95 was not before the Screening Committee and that the same was not communicated to him, the recommendations made by the Screening Committee had not been approved by the competent authority.

4.4 It is further relevant to mention that the applicant has submitted his representation dated 23.9.96 against the aforesaid adverse entries and the said representation was duly and properly considered by the competent authority and some of the entries had been retained as adverse and some had been treated as advisory remarks only and the remarks regarding the integrity had been expunged and the integrity certificate was ordered to be restored. The decision was conveyed to the applicant

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vide letter dated 6.3.97 (Ann.R1). Accordingly, a final decision on the ACR for the year 1994-95 has been taken after giving proper opportunity to the applicant.

4.5 This Hon'ble Tribunal vide its order dated 13.8.96 had restrained the respondents from taking any further step for revision of the panel. The order of the Hon'ble Tribunal is reproduced below:-

"in view of the above, 'short notice Dasti' be issued to Respondent Nos. 2, 3 and 4 and to file a short reply on 22.8.96 before any further steps are taken for the apprehended revision of the panel, if already not taken, which is said to have been prepared on or about second fortnight of July, 1996."

In their short reply, the respondents had submitted that the panel for the post of DIG had already been formed and the same was being reviewed. It was further clarified that the Screening Committee had met on 18.7.96 and considered the cases of all eliglble officers including the applicant for promotion to two posts of DIG and the said recommendations had been sent to the competent authority for approval. It was, therefore, submitted before the Hon'ble Tribunal that no panel for promotion to the post of DIG has so far been formed. It is further submitted that thereafter the adverse remarks recorded in the ACR of the applicant for the year 1994-95 had been communicated to him vide DO letter dated 24.8.96 and thereafter another meeting of the Screening Committee was held on 26.8.96 wherein the cases of eliglble officers including the applicant were considered and the Screening Committee found the applicant as not fit for promotion on

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account of the adverse entry in his ACR for the year 1994-95. The Screening Committee found other four officers fit for promotion. The competent authority approved the recommendations of the Screening Committee and promotion orders of four officers were issued on 29.8.96. The decision of the competent authority on the representation made by the applicant could not be taken within the stipulated time as the Chief Minister had undergone bypass surgery and on the said ground, this Hon'ble Tribunal was pleased to grant extension from time to time. The decision of the competent authority on the representation made by the applicant has been communicated to him vide letter dated 6.3.97. Thereafter the meeting of the Screening Committee was convened. It is further submitted that the applicant has since been promoted to the post of DIG (P) in the pay scale of Rs. 5100-6150 vide order dated 8.8.97 (Ann.R2).

5. Heard the learned counsel for the parties and perused the record.

5.1 During the course of arguments, the learned counsel for the applicant, Shri P.S.Asopa, submitted that the recommendations of the Screening Committee are final and in the nature of panel and the State Government has no authority not to operate this panel or has authority to promote other persons excluding the name of the applicant, who, admittedly was placed at No.1 position of the panel prepared
/by the Screening Committee in its meeting held on 17.7.96. The private respondents, who are junior to the applicant, have been promoted to the prejudice of the applicant and the authorities/Screening Committee cannot take into

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account the uncommunicated remarks in the ACR and also without waiting for the final disposal of the representation. He also submitted that the main remark with regard to integrity has been expunged and, therefore, the action of the respondents of not promoting the applicant was not in order. The very fact that the adverse remarks with regard to integrity was expunged and some other adverse remarks were also expunged, the action of the respondents in promoting junior officers before disposal of his representation is illegal. He further submitted that keeping some of earlier remarks while disposing of the representation is meant to justify their earlier action wherein the applicant was superseded. He also submitted that the respondents have not obeyed the interim direction of the Tribunal and went ahead with the promotion of the juniors which shows malafide intention of the respondents. The applicant was not found fit in the DPC held in 1996 but was found fit in the DPC held in 1997 based on the adverse remarks in the ACR for the year 1994-95. Since the applicant was promoted in 1997 based on the 1994-95 report which had adverse remarks, there was no reason not to promote the applicant in 1996 when the same report was said to be considered. The last contention of the learned counsel for the applicant is that as per the Ministry of Home Affairs letter of 4.8.89, the applicant was required to be considered for promotion after two subsequent years' ACRs i.e. for the year 1995-96 and the year 1996-97, but the applicant was not considered in the meeting of May, 97 when two ACRs were available.

5.2 The learned counsel for the respondents relying on the submissions made in their reply also produced ACRs

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and minutes of the various meetings of the Screening Committee in support of his contention.

5.3 We have carefully considered the submissions of the rival parties and also perused the record submitted by the learned counsel for the respondents.

5.3.1 It is an admitted fact that four juniors of the applicant were promoted to the post of DIG based on the Screening Committee meeting held on 26.8.96. It is also admitted fact that the respondents expunged the remarks about the integrity and cleared the integrity of the applicant but retained certain adverse remarks while disposing of the representation of the applicant vide their order dated 6.3.97 (Ann.R1). It is also a fact that the applicant was at Sl.No.1 of the list of officers found fit for promotion by the Screening Committee in its meeting held on 18.7.96. It is also seen from records that the applicant was not found fit by the Screening Committee in its meeting of 26.8.96 and also in its review meeting of 8.3.97 held after the disposal of the representation of the applicant on adverse remarks. As seen from records that another Screening Committee meeting was held on 8.5.97 but the Screening Committee did not find him fit for promotion due to adverse entries in the ACR. Based on the representation of the applicant, yet another meeting of the Screening Committee was held on 22.7.97. His case was considered in this meeting based on the Ministry of Home Affairs letter dated 4.8.89 which provides that an officer who was not included in the panel in the first instance should be eligible for reconsideration after earning two more ACRs. The respondents have submitted that two subsequent ACRs in respect of the applicant i.e. for the years 1995-96 and 1996-97 had since been received and

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after considering the ACRs and other relevant record, the Committee found the applicant suitable for promotion as DIG. The applicant was promoted vide order dated 8.8.97 (Ann.R2). Based on the Screening Committee meeting of 8.5.97, four officers junior to the applicant were promoted.

5.3.2 We find force in the contention of the learned counsel for the applicant that the respondents have not complied the interim order dated 13.8.96. They had gone ahead to approve the revised panel prepared by the Screening Committee in its meeting of 26.8.96 excluding the name of the applicant and promoted his juniors vide order dated 29.8.96. We are unable to agree with the contention of the learned counsel for the applicant that no approval of the minutes of the Screening Committee is necessary. Whether minutes of the Screening Committee is termed as a select list or a panel, unless these are approved by the competent authority empowered to appoint on promotion, the promotions cannot be ordered straightaway based on the select list/panel prepared by the Screening Committee/DPC. The competent authority is responsible to ensure that laid down rules/instructions are observed before ordering promotion. Since the competent authority found that the ACR of the applicant for the year 1994-95, which was required to be considered, was not before the Screening Committee, he was within his right to seek review of the recommendations of the Screening Committee. As seen from record, the Screening Committee meeting was convened on 26.8.96 after communicating the adverse remarks on 24.8.96 but before these were received by the applicant and also without

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waiting for the representation of the applicant for which 45 days' time was given to the applicant. The representation of the applicant could not be available before the Screening Committee which met on 26.8.96. The Screening Committee did not include the name of the applicant in the panel and promotion orders of four junior officers were issued on 29.8.96. Notwithstanding the contention of the learned counsel for the applicant, the fact is that a few adverse remarks were finally retained and further that another DPC of the Screening Committee took place on 8.3.97 to review the proceedings of 26.8.96 based on the records including the ACR of 1994-95 after certain remarks were expunged but the Committee did not find the applicant suitable as seen from the minutes of the meeting. Therefore, we are of the view that since the case of the applicant has been considered by the Review DPC based on the remarks as retained in the ACR of 1994-95, after disposing of his representation, the applicant cannot be said to have been prejudiced. It is also admitted fact that subsequently the applicant was promoted based on the recommendations of the Screening Committee held on 22.7.97 vide order dated 8.8.97 (Ann.R2). From the minutes of this Screening Committee, it is seen that in the year 1997^{on 22.7.97} when the DPC was held, two more ACRs of the year 1995-96 and 1996-97 were available, therefore as per M.H.A letter of 4.8.89, the case of the applicant was considered and approved. Why he was not considered by the Screening Committee in its meeting held on 8.5.97 is not on record. Further there are no pleadings or relief, if any, sought in this regard. If certain junior officers were promoted and the applicant was aggrieved in any

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manner, these junior persons were required to be made a party, which is not done. In the circumstances, this aspect can not be considered. Based on aforesaid discussions, we are of the firm view that no judicial interference is called for in this case and accordingly this OA is dismissed. No order as to costs.

6. In OA No.133/97 filed by the same applicant, he has prayed for quashing the adverse remarks in his ACR for the year 1994-95 and for promoting him on the post of DIG from 28.8.96 i.e. the date from which his juniors were promoted as DIG, with all consequential benefits.

6.1 The main grounds taken by the applicant are that

6.1.1 The ACR is written in a biased and prejudicial manner and, therefore, liable to be quashed and set-aside.

6.1.2 Based on his representation, certain adverse remarks has been retained and his representation has been disposed of without speaking order.

6.1.3 The adverse remarks have been retained with pre-determined mind to withhold the promotion of the applicant.

6.1.4 The adverse ACR of 1994-95 was communicated to him after the expiry of more than 17 months, contrary to Rule 8 and 9 of All India Services (Confidential Rolls) Rules and the circular issued thereunder, therefore, the same is liable to be quashed and set-aside.

6.1.5 As per the interim order dated 11.9.96 passed in OA No.420/96, the applicant is entitled for review of the selection irrespective of the act of retention of the adverse remarks, on account of release of integrity

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certificate.


6.2 During the course of arguments, the learned counsel for the applicant has not brought any material to establish that the ACR for 1994-95 was written with biased and prejudicial manner. Based on his representation, the respondents vide their order dated 6.3.97 (Ann.A1) expunged certain adverse remarks including the remark about his integrity but retained certain adverse remarks while disposing of his representation. The case of the applicant was considered by the Screening Committee in its meeting held on 8.3.97 to review the proceedings of 26.8.96, as seen from the record produced by the respondents. Therefore, the applicant's contention that he has not been considered after certain remarks were expunged vide order dated 6.3.97, is not correct. It is a fact that the ACR for the year 1994-95 was communicated to the applicant after expiry of about 17 months. It may not be strictly in accordance with Rules 8 and 9 of the All India Services (Confidential Rolls) Rules and the circular issued thereunder, but the fact remains that the applicant was promoted in 1997 based on the circular of the M.H.A. dated 4.8.89. It is also a fact that certain adverse remarks were retained after considering his representation, and thereafter a review was also held. Therefore, we are of the view that notwithstanding the fact that there was delay in communicating the adverse remarks but it does not call for any judicial interference for the reason that the delay in communicating the adverse remarks has not prejudiced the applicant. In this view of the matter, we take guidance from the Hon'ble Apex Court order dated 7.3.1995 in Major General I.P.S. Dewan v. Union of India and ors. [1995 SCC (L&S) 691. We are not

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convinced of the ground that certain adverse entries were retained by the respondents in the ACR to justify their earlier actions in not communicating the part ACR for the year 1994-95 containing adverse entries, in time and by promoting the junior officers. The fact remains that remarks regarding the integrity were expunged and some adverse remarks were also expunged retaining a few as adverse. It is not the case of the applicant, there being no averments and grounds on this count, that the adverse remarks were endorsed in the ACR of 1994-95 without giving him opportunity to improve during the said period of the ACR. In view of above, we do not find any merit for any judicial interference and accordingly, this OA is also dismissed. No order as to costs.


(M.L. CHAUHAN)

Member (Judicial)


(H.O. GUPTA)

Member (Administrative)