

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 291 of 2003

Jabalpur, this the 19th day of August, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

Manish Shankar Sharma, aged about 36
years, S/o Shri K.S. Sharma, Presently
Posted Superintendent of Police,
Chhindwara.

APPLICANT

(By Advocate - Shri R.K. Gupta)

VERSUS

1. Union of India, through Secretary, Ministry of Home Affairs, Govt of India, North Block, New Delhi.
2. Sardar Vallabh Bhai Patel National Police Academy, Hyderabad, through its Director.

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

ORDER (ORAL)

By A.K. Bhatnagar, Judicial Member -

By this application under Section 19 of the AT act the applicant has prayed for the following reliefs :-

- "1. The Hon. Tribunal be pleased to direct the respondents to include 50-70 marks towards the directors assessment marks based on the applicants overall performance according to the academy circular, probationers handbook and home ministry's notification and thereafter direct the respondents to correctly place the applicant in order of seniority by including his foundation course and directors assessment marks. And issuing a fresh inter se seniority list.
2. The Hon. Tribunal be further pleased to direct the respondents to issue a fresh marksheets to the applicant by including his foundation course marks and directors assessment and to correct the placement of the applicant in the inter se seniority of the 1992 batch of IPS probationers.
4. The Hon. Tribunal may be pleased to direct the respondents to produce all the quarterly assessment reports written in relating to the applicant by the guide officer and other staff members when the applicant was in training in foundation course and National Police Academy during 12.10.92 to 2.11.94.
5. The Hon. Tribunal be pleased to direct the respondents to produce the report of Supdt. of Police, Indore under whom the applicant underwent training in 1993-94.
6. The Hon. Tribunal be pleased to direct the respondents to produce the Directors Assessment of the applicant for the foundation course and his comments thereon. And also the guide officers report for the applicant for the foundation course.

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7. The Hon. Tribunal be pleased to direct the respondents to produce all the quarterly and final assessment reports of all the MP cadre Probationers of the 1992 batch , 45 RR.

8. The Hon. Tribunal be pleased to direct the respondents to further produce the grounds on which they had earlier, during OA 589/95, in their reply had said the applicants performance was found to be good by the director and excellent by the SP.

9. The Hon'ble Tribunal be pleased to direct the respondents to produce the list of all officers who received 2 or more memos and the marks they were allotted under directors assessment.

10. The Hon. Tribunal be pleased to direct the respondents to produce the list of all officers who also received similar memos as the applicant, all 3 separately and there were many officers, and the marks allotted to them in directors assessment".

2. The brief facts of the case as per the applicant are that the applicant is an IPS officer of 1992 batch belonging to Madhya Pradesh Cadre. He was given this cadre on the basis of marks and he was ranked third in the cadre as per gradation list of IPS officers Borne on the MP cadre. As on 1.3.94 his name was at Sl. No. 258 immediately below Shri Pawan Deo and Shri R.K. Dewangan. After selection he underwent training for foundation course from 12.10.92 to 10.1.93, Phase I of was basic training at the NPA from 11.1.93 to 10.9.93 and the was phase II from 28.7.94 to 2.11.94 along with all officers of his batch. The procedure is that the marks obtained by an officer in the UPSC exams out of total marks 2050 are added to marks obtained in the training(also out of total marks 2050) for obtaining the final interse ranking. The training includes marks for phase I and II, foundation course and Directors assessment. The applicant obtained marks as follows:

"	MAXIMUM MARKS	MARKS OBTAINED
UPSC Marks	2050	1096
Foundation Course	50	-
NPA Marks(Assessment)	100	00
Phase I	1445	923.25
Phase II	455	276
GRAND TOTAL	4100	2295.25"

It is claimed by the applicant/he had performed consistently well in all the examinations including Phase I and II training

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at the NPA. He has all through done very well in the training and training period as well as performed excellently in district/ so also in his later career ~~xxxxxx~~ has received many Commendation Certificates and Appreciation letters from the Government and the other concerned officers. The total marks awarded by the respondents to the applicant is 2326.50 but the mark sheet only shows 2295.25(Annexure-A-4). It is further claimed that a standard procedure has been laid down in the probationers handbook for phase II training for 45 RR issued to every probationer(Annexure-A-5) and also in the academy's circular no. EC/25/75 dated 11.7.1988 issued by the then director, and the Home Ministry notification on this subject vide no. 11058/1/91 AIS III(DP&T) dated 8.11.93. But the respondents have not followed this procedure while allotting the marks to the applicant under the directors assessment. While writing the final assessment, guide officers comments on the following duties/activities in which the probationer is expected to participate outside the classroom (co-curricular activities)" 1. Participation and performance in mess management activities. 2. participation in social activities like officers club and calling on officers.

3. Participation and performance in games and sports. 4. Participation and performance in cultural activities. 5. Participation and performance in competitions like debate, essey, etc." All these aspects are taken into consideration for evaluation of the over all performance of the probationer for the directors assessment. The probationers required to be graded in one of the 5 mentioned categories (outstanding, very good, good, satisfactory with some shortcomings and not really satisfactory) and the marks allotted for outstanding 81-100 very good 61-80, good 41-60 satisfactory with some shortcomings 21-40, not really satisfactory 0-20, there after, the personal dossiers of each probationer, which contain record

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of their (a) performance (spot and periodical tests, etc. in indoor and outdoor) (b) behaviour (commendations, appreciations, warnings, etc.) (c) participation in co-curricular activities at the academy, will then be scrutinized. The marks so determined by following certain procedure will be final marks given by the directors. It is also claimed that as per the mandate of the aforesaid academy circular, probationers handbook and Home Ministry notification dated 8.11.93 there has to be a quarterly assessment of the probationer by the guide officer, and the director is only supposed to allot his final marks after considering the above quarterly report and other aspects such as performance in games, cultural activities, competitions, snap tests and the performance in the respective state during training and only then the Director can allot his marks.

3. It is further claimed that the applicant represented as games captain from the NPA Hyderabad for squad III (Annex-A-7) showing his sports activities as outstanding. Marks given by the director to other games captains are as follows :-

" Squad I- Thangkanlal Guite	75
Squad II-Rahul Sharma	80
Squad III-	0 (applicant)
Squad IV-C.S. Rawda	94
Squad V-Ramesh Kharel	Officer from Nepal Police
Squad VI-C.V. Anand	50 "

Squad III, clearly shows that the applicant was awarded zero marks in over all assessment by director out of personal prejudice. After completion of training a marksheet was issued to the applicant dated 9.12.1994. (Annexure-A-4), which shows that the applicant was awarded zero marks out of 100 marks towards the early records National Police Academy Marks, without taking into account marks in foundation course. The applicant earlier submitted a representation which was not replied. Aggrieved by this the applicant has filed OA No.589/95 in the Tribunal

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which was decided vide order dated 19.3.2002 whith a direction to the applicant to submit a fresh representation and further direction to the respondents to decide the same. In pursuance to the above direction the applicant has filed a detailed representation Annexure-A-8 which was accordingly decided by the respondent No.1 by order dated 2.8.2002. Aggrieved by this order, the applicant has filed this OA.

4. The learned counsel for the applicant assailed on the grounds taken in para 5 of the OA and submitted that the respondents have not applied their mind while passing the order on the representation of the applicant which was sent to them in pursuance to the Tribunal's order. While deciding the representation, it has been stated that the Police Academy though has inserted the amendment in the mark sheet and the marks obtained by the applicant in the foundation course have been added to the total aggregate marks for the purpose of giving inter se seniority. The said statement of fact of the reason apparently is not correct. It is so because the mark sheet dated 9.12.1994 which has been supplied to the applicant itself indicates that out of total 50 marks towards the foundation course the applicant has been allotted no marks and, therefore, for this reason it cannot be said under any stretch of imagination that the aggregate marks including the foundation course marks is for the purposes of counting inter se seniority. Thus, until the marks obtained by the applicant towards the foundation course are shown in the marksheet and as a consequence of the same it is informed to the applicant about his correct placement in the interse seniority the reasons assigned as such apparently are incorrect and perverse. The learned counsel for the applicant further submitted that only 4 incidents have been given as the basis of allotment of zero marks to the applicant, whereas, the applicant submits, a whole gamut of activities were required to be evaluted before allotment of marks(According to Annexure Nos.A-5 & A-6)./
The entire period

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of training was from 12.10.92 to 30.10.94. It is noticeable that 2 out of 3 memos. have been given on the same date i.e. 21.10.94(Annexures A-9 and A-10) (which was in effect 10 days before the completion of the entire training period of more than 2 years). Therefore, the action of the respondents is arbitrary and illegal. The learned counsel further submitted that despite the applicants outstanding performance during and after the said period, the director has awarded zero marks, which is in direct contravention of the Home Ministry's ~~above-mentioned~~ notification, as respondent has not considered the applicants performance in the state at all and is based on the prejudiced attitude of the then Deputy Director Shri A.R. Mahipathy, who was unhappy and annoyed with the applicant for some inexplicable reason. It is further submitted by the learned counsel for the applicant that the applicant's conduct cannot undergo a total change only for a period of 2 months(9.94 to 11.94 during which the said bad conduct has said to have taken place) while the performance of the applicant was outstanding in the whole training period. Moreover, the version of the respondents that the applicant's conduct was not worthy of an IPS Officer is not true as the conduct and performance of the applicant is always outstanding. It is also submitted that at the time of allotment of marks by the Director none of the quarterly assessment reports of the Guide Officers have been considered while awarding the total marks to the applicant, as such the impugned order is bad in law. More so awarding zero marks is also not justified. A great disparity has been shown by giving zero marks to the applicant for his absence for a period of 2 days during which the applicant was sick while in other cases of probationers, the director has given marks to those who either failed in the examination or were absent in the final examination which shows the arbitrariness of the respondents towards the applicant. The learned counsel finally submitted that in the cases of all

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the probationers the same standard criteria cited above should have been taken in awarding the numbers. The personal prejudice, like or dislike should have not been taken into account while allotting the marks, and the commendation certificate issued by various authorities should have also been considered.

5. Resisting the claim of the applicant, the respondents have filed counter reply and invited our attention on para 1 of the counter and submitted that the representation of the applicant was carefully considered by the Central Govt. and accordingly decided objectively. He further submitted that as regard adding the marks obtained by the applicant in the foundation course for determining his inter se seniority 31.25 marks out of 50 marks awarded to him in the foundation course, have been duly added to his total aggregate marks of 2295.25 marks making it a total of 2326.50 out of 4100 and the inter se-seniority of 1992 batch of IPS probationers was notified vide M.H.A letter dated 13.5.98(Annexure-R-1). The learned counsel for the respondents further submitted that the director's assessment marks out of 100 marks are awarded to the IPS probationers as per Rule 6(2)(b) of IPS (Probation) Rules, 1954. The relevant portion is reproduced as under :-

"At the end of the period of training in the Sardar Vallabhbhai Patel National Police Academy, the Director, Sardar Vallabhbhai Patel National Police Academy shall assess the record in the Sardar Vallabhbhai Patel National Police Academy of each probationer by awarding him such number of marks out of maximum of 100 marks as he may in each case think fit."

Therefore, the counsel has submitted that the provision of awarding assessment marks to the probationers was for enforcing discipline among them while under training in the academy. The director's assessment marks are awarded on the basis of assessment of the record of performance of probationers during their training in the Academy for which the conduct etiquette and service norms of each of the probationers during the training period is taken into consideration. After assessing

the record of performance of the applicant, the award of 'zero' marks to him was just and deserving in his case. It is prerogative of the director to assess the performance of the probationer and award the marks accordingly. The learned counsel for the respondents has also submitted that the criteria for assessment of marks by the Director of the Academy are spelt out clearly in the Academy order No.Ec/25/75 dated 11th July 1998(Annexure-R-2) which clearly shows that the probationer who is graded 'not really satisfactory' in the final assessment can be awarded 'zero' marks by the Director. Moreover, the performance of any probationer considered as 'satisfactory with some shortcomings' can be awarded 21 to 40 marks which can also be deducted completely for his bad behaviour inviting warnings, etc. Further, for a particular instance of good or bad performance/behaviour as recorded in the dossier, suitable marks are added or subtracted from the base marks. The applicant may be captain of one of squad of IPS probationer but it will not be a sole criteria for assessment of marks by the director. Whereas, the Director has to assess total performance of the probationers on the basis of records kept in personal file of each of the probationer and award marks in an objective manner by following a just, fair and reasonable procedure.

5.1 There were many instances for which memo^o were issued to the applicant which were very serious in nature i.e.(i) the applicant misbehaved with faculty member Dr.A.K. Bapuly while they were on a study cum cultural tour on 17.9.94 and the displeasure of the director was conveyed to him vide memo dated 21.10.94(Annexure-R-3)(ii) on 11.10.94 the applicant exhibited casual attitude towards institutional norms and for which a strong warning was issued vide memo dated 21.10.94(Annexure-R-4).(iii) The applicant was absent without intimation from training during CSWT attachment from 11.10.93 to 13.10.93 and his casual

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attitude towards training was taken note of and a warning was issued to him vide memo dated 13.12.93(Annexure-R-5).

(iv) The applicant took active part in engineering a protest against the discipline required by the probationers by boycotting a dinner hosted to give farewell to the participants of Level-II Management course in the Academy. The Director was compelled to send a letter to the Director General of Police, Madhya Pradesh, to keep a close watch on the conduct of the applicant vide his letter dated 3.12.94 (Annexure-R-6). In Rule 11 of the IPS(Probation) Rules, 1954, it is provided that :-

"(1) While at the academy, a probationer shall be under the disciplinary control of the Director, Lal Bahadur Shastri National Academy of Administration or of the Director, Sardar Vallabhbhai Patel National Police Academy, as the case may be and shall obey any general and special orders as may be given to him from time to time.

(2) The All India Service(conduct) Rules, 1968 and the All India Service(Discipline and Appeal) Rules, 1969 shall, so far as may be apply to a probationer."

The learned counsel for the respondents has finally submitted that considering all the points taken in the counter affidavit the applicant is not entitled for any reliefs claimed by him and the same deserves to be dismissed.

6. We have heard the learned counsel for both the parties and perused the records available before us.

7. The main grievance of the applicant is that the marks allotted as zero cannot be justified from any angle. The marks should have been allotted after assessing the over all performance of the applicant during the training period. Had it been so then the inter se seniority ranking of the applicant in the year 1992 would have considerably improved and the applicant would have certainly gained the higher ranking seniority in the batch. We have perused Annexure-A-6 filed by the applicant

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and in this letter it is specifically stated that in the final assessment forms written by the Guide Officers, the remarks of the Jt. Director/Deputy Directors and the remarks and grading thereon of the Director, in conjunction with the quarterly assessments, would be the documents on which the Director's marks would be based. It is also undisputed that the applicant was captain of squad III of the probationers. It is also not disputed that the applicant was awarded zero marks out of 100 by the Director in his final assessment as is evident from Annexure-A-4. The short question involved in this OA for consideration of this Tribunal is as to whether the Director was justified in awarding the zero marks to the applicant out of 100 marks for his assessment of the applicant during his training in the academy or not ? We have also gone through Annexure-R-2 filed by the respondents alongwith counter reply and in para 2 of the s-aid letter it is clearly written as under :-

"(2) marks for probationers graded in these categories would be awarded as follows :-

Outstanding	.. 81 to 100
Very good	.. 61 to 80
Good	.. 41 to 60
Satisfactory with some Shortcoming	.. 21 to 40
Not really satisfactory	.. 0 to 20"

This clearly speaks out that it will be the performance of the probationer which will carry the marks. In this case the Director is fully empowered to award zero marks also as given in the applicant's case and it is the Director who is the best judge to note the performance of the probationer during the training period and he must have awarded marks to the applicant as per his performance including behaviour, etiquette, conduct and service norms depending on the performance of each probationers during the training period.

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8. We have also gone through Annexure-R-3 Memo dated 21.10.1994 by which the conduct of the applicant was held to be deplorable and unworthy of an IPS Officer as he alongwith some other probationers of the 45-RR, woke up Dr. A.K.Bapuly, the conducting officer, from his sleep without any valid reason and argued with him in an agitating mood about his instruction to the R.I. relating to serving of liquor to the probationers during the dinner. We have also gone through letter dated 21.10.1994(Annexur-R-4) by which a strict warning was issued to the applicant for visiting members of the faculty against the norms. We have also gone through Annexure-R-5 by which the applicant was again warned for absenting himself w.e.f. 11.10.93 to 13.10.93. From perusal of this document we certainly do not appreciate the behaviour of the applicant shown towards his Deputy Director and Director of the training college and if he continues to misbehaved with the Director and officers of training centre in the probation period then nobody could have interfered in awarding the marks to the applicant by the concerned Director or Deputy Director of the training institute as they are the best judge for assessing the conduct, behaviour etiquette and service norms of each probationers during the training period. They award the marks after considering all the above mentioned aspects. If they award zero or 100 marks it the sole prerogative of the Director concerned and we are not supposed to interfere in that. We have also gone through Annexure-R-1 filed by the respondents and we find that in the note it is mentioned in the end that "inter se seniority remained unchanged after adding the marks obtained in the foundation course." This also weakens the submission made by the applicant's counsel. We have also perused letter dated 2.8.2002(Annexure-A-1) impugned there in the OA filed by the applicant and we find that the order passed by the Govt. of India, Ministry of Home

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New Delhi in compliance of the order dated 19.3.2002 passed in OA No.589/95, is a very detailed and reasoned order containing 14 paragraphs and has been passed after considering all the points raised by the applicant in his representation. We do not find any illegality in the order dated 2.8.2002(Annexure-A-1) passed by the respondents. Hence, the action of the respondents from any angle, cannot be taken to be against the law.

9. After carefully considering the submissions made by the learned counsel for both the sides and in view of the above discussions, we find that the OA is bereft of merit and therefore, is liable to be dismissed. Accordingly, the OA is dismissed with no order as to costs.


(A.K. Bhattacharya)
Judicial Member


(M.P. Singh)
Vice Chairman

प्रांतिक सं ओ/व्या.....जवलपुर, दि.....
प्रतिलिपि अयोगित:-

(1) राजिका अयोगिता प्रतिलिपि अयोगिता, जवलपुर
(2) उपरेक्षा अयोगिता प्रतिलिपि अयोगिता के कार्यालय R.P. Cengla
(3) पु. कार्यालय/प्रांतिक अयोगिता के कार्यालय S.A. Sharminuddin Khan
(4) अंतर्राष्ट्रीय अयोगिता, जवलपुर का अंतर्राष्ट्रीय अयोगिता

skm.

गुरुजा एवं आवश्यक लाईदाही हेतु 17/2 28-10-04
उपराजितदाता

Issued
On 28.10.04
R.S.