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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 25.11.2011

MA No. 175/2011 & MA No. 176/2011
(OA No. 405/2007 with MA No. 42/2008)

Mr. R.N. Mathur, counsel for applicant.
Mr. V.D. Sharma, counsel for respondents.

Heard learned counsels for the parties.

Learned counsel appearing for the respondents prays for a short time to place the documents on record as directed earlier vide order dated 29.09.2011, with an advance copy of the same to the learned counsel appearing for the applicant.

Put up the matter on 01.12.2011 for dictation of judgment.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

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Kumawat

1-12.11
Mr. Puneet Singhvi, Proxy Counsel for
Mr. R.N. Mathur, Sr. Counsel for applicant
Mr. V.D. Sharma, Counsel for respondents

Both the learned Counsel for the parties
filed written statements after exchanging the
same.

Heard learned counsel for the parties. The
OA is disposed of by a separate order

Anil Kumar

K.S. Rathore
(Justice K.S. Rathore)
M (J)

(Anil Kumar)
M (A)

Recd. Record.
MUT
7/12/11
Vijay Dutt
Sharma

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 1st day of December, 2011

Original Application No. 405/2007

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Kumar Indu Bhushan
s/o Shri Gurudayal Sahu,
r/o Flat No.2, C.O. Quarters Block,
Rajasthan Police Academy,
Shastri Nagar, Jaipur,
Presently posted as D.I.G. (Traffic),
Police Headquarter, Rajasthan,
Jalebi Chowk, Jaipur.

.. Applicant

(By Advocate: Shri Punit Singhavi, proxy counsel for Shri
R.N.Mathur)

Versus

1. Union of India
through Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.
2. State of Rajasthan,
through Principal Secretary,
Department of Personnel,
Government of Rajasthan,
Government Secretariat,
Jaipur

.. Respondents

(By Advocate: Shri V.D.Sharma)

ORDER (ORAL)

Heard on Misc. Application No. 175/2011 for restoration of the OA and the Misc. Application No.176/2011 for condonation of delay in filing the restoration application. In view of the averments made in these Misc. Applications, both are allowed and the OA is restored to its original number and position.

2. The only controversy involved in this OA is that the applicant was not considered for promotion on the post of Inspector General of Police (IGP).

3. Brief facts, relevant for deciding the case, are that vide order dated 31.8.2004, the Government of Rajasthan relieved the applicant to join UN mission and the mission permitted the applicant to join on 3.9.2004. The applicant remained on UN deputation for a period of one year from 3.9.2004 to 3.9.2005 and he was relieved on 3.9.2005 by the UN mission from deputation. The applicant reported duty in the Department of Personnel, Government of Rajasthan at Jaipur on 7.9.2005.

4. The applicant was promoted in the Super Time Scale of Indian Police Service Rs. 16400-450-20000 on the post of Deputy Inspector of Police (DIG) vide order dated 5.4.2007 (Ann.A/1) whereas his batch mates of 1989 batch were promoted in the Super Time Scale of the service in the pay scale of Rs. 18400-500-22400 on the same date i.e. 5.4.2007 (Ann.A/2).



5. Aggrieved and dis-satisfied with non-consideration of promotion, the applicant preferred this OA on the ground that while he was serving in deputation in UN mission his batch-mates (1989 batch) have been promoted and the applicant ought to have been promoted w.e.f. the date his batch-mates are given promotion.

6. It is further stated by the learned counsel appearing for the applicant that as the applicant was of 1989 batch IPS officer and was eligible for first selection grade on 1.1.2005. On 24.6.2005 batch mates of the applicant were promoted to Super Time Scale of IPS in the pay scale of Rs. 16400-450-20000 to the post of DIG. Further, the applicant was on deputation to the UN mission for a period of one year and in the meantime, his batch mates were promoted to Super Time Scale. Therefore, after his return from UN mission he was promoted to the Super Time Scale vide order dated 5.4.2007 (Ann.A/1) whereas on the same date i.e. 5.4.2007 his batch mates were promoted to the post of IGP. The applicant prayed that consideration of promotion is vested right, but he was not considered for promotion in the Super Time Scale with his batch mates, which violates his right of consideration for promotion.

7. The learned counsel further stated that the 1989 batch Screening Committee for the purpose of promotion of IPS 1989 batch was held on 27.8.2003 which could have only be held on 1.1.2005 or after that but the respondents held the same two years before the meeting of Selection Committee. Further, for the purpose

of promotion in the year 2005, only ACRs of the last five years i.e. from 2000-01 to 2004-5 could be looked into by the respondents.

8. It is not disputed that promotion of the applicant on the post of IGP has been deferred. It is submitted that after completion of deputation in UN, the applicant reported to Director General of Police on 8.9.2005. In the meeting of Review Screening Committee held on 13.9.2006, the applicant was found fit for promotion to Dy. IGP grade and he was promoted w.e.f. 7.5.2007. Thereafter another Screening Committee meeting was held after four months on 29.1.2007 for the purpose of promotion on the post of IGP but within a span of four months the Screening Committee did not find the applicant fit for promotion. It is further stated that no reason or material was supplied to the applicant for finding him unfit for promotion within a span of four months. Thereafter further Screening Committee meeting was held by the respondents and the applicant was considered but his promotion was deferred. It is alleged by the learned counsel appearing for the applicant that no reason for deferring promotion to the applicant has been given by the respondents to the applicant.

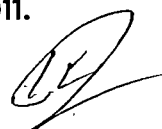
9. On the contrary, the learned counsel appearing for the respondents has strongly controverted the submissions made on behalf of the applicant and it is submitted that candidature of the applicant for promotion to the grade of DIG was considered by the Screening Committee held on 27.8.2003, but in view of the adverse remarks recorded in his ACR, which were duly communicated to the



applicant, the applicant was not found fit for promotion to the post of DIG by the Screening Committee.

10. Denial of promotion on the post of DIG at the relevant point of time has been assailed by the applicant by way of filing OA No.538/2003 before this Tribunal against the adverse remarks recorded in the ACR and this Tribunal vide order dated 31.3.2005 dismissed the OA. The applicant was only found fit for promotion to the post of DIG grade in the meeting of the Screening Committee held on 13.9.2006. Further the applicant was considered for promotion on the post of IGP on 29.1.2007 by the Screening Committee. However, the applicant was not found fit for promotion to the post of IGP grade by the Screening Committee. Subsequently, meeting of Review Screening Committee was convened on 30.7.2007. The Committee, however decided to defer promotion of the applicant in IGP grade. It is submitted on behalf of the respondents that the Screening Committee has considered the case of the applicant strictly in accordance with the provisions of law and in accordance IPS (Pay) Rules of 1954 and the direction issued by the Union of India from time to time, thus, action of the respondents cannot be said to be in violation of the provisions of law.

11. We have heard the rival submissions of the respective parties and perused of the material available on record as well as the relevant original record which was produced by the respondents in view of the order passed by this Tribunal on 29.9.2011.



12. This Tribunal on 16.11.2007 issued notices to the respondents and respondents were called upon to file their reply within a period of four weeks. Again, the matter was listed on 14.2.2008 and having considered the Misc. Application moved by the applicant thereby he has prayed that respondent State may be restrained from promoting any person junior to the applicant to the IPS cadre and having considered the submissions made on behalf of the respective parties, this Tribunal deemed it proper to direct the respondents to keep one post of IGP vacant for the purpose of selection in process.

13. The matter was argued at length on 29.9.2011 and after hearing the matter at length, the respondents were directed to place the documents of the Review Screening Committee held on 13.9.2006 in which the applicant was found fit for promotion to the post of DIG and further when the DPC considered the case of the applicant for promotion to the post of IGP on 29.1.2007 what was the material before the Screening Committee by which the Committee has not found the applicant fit for promotion to the post of IGP on record, which has been placed for our perusal.

14. We have thoroughly perused the original record placed before us alongwith the report of the Screening Committee and Review Screening Committee. It is not disputed that case of the applicant has been considered for promotion on the post of DIG by the Screening Committee held on 13.9.2006 and the applicant was found fit.



15. We have gone through the relevant provisions of law. As per Rule 3(2)(A) of IPS (Pay Rules, 1954-

“Appointment to the Selection Grade and posts carrying pay above the time scale of pay in the Indian Police Service shall be made by selection on merit with due regard to seniority.

Provided that no member of Service shall be eligible for appointment to the Selection Grade unless he has entered the fourteenth years of service calculated from the year of allotment assigned to him under Rule-3 of the Indian Police Service (Regulation of Seniority) Rules 1954 or under Regulation-3 of the Indian Police Service (Seniority of Special Recruits) Regulation, 1960 as the case may be.

Ministry of Home Affairs, Government of India has issued guide lines to the Chief Secretaries of all States in the matter of appointment and promotion to various grades in the Indian Police Service. In para 4(b) Zone of consideration- The Zone of consideration of the officers for promotion to various grade, would be as follows, depending upon availability of post-

1. For promotion to the Grade of DIG- Officers who have completed 14 years of service
2. For promotion to the Grade of IGP –Officers who have put in 18 years of service.

16. Bare perusal of the aforesaid provisions of law, it reveals that the Screening Committee has to consider eligible persons in accordance with the procedure laid down. So far as eligibility is concerned, the applicant is eligible and was considered for promotion to the post of IGP. Therefore, in these circumstances, it cannot be said that the applicant was not considered for promotion.

17. Upon perusal of the minutes of the Screening Committee, it appears that when the case of the applicant was considered for promotion on the post of IGP, the Screening Committee was not having ACRs of the year 2006-2007 and for want of ACR, the promotion of the applicant was deferred with the stipulation that whenever the Screening Committee holds its meeting for considering case of the applicant for promotion on the post of IGP, the ACRs for the year 2006-2007 be looked into. Therefore, we find no illegality in deferring the case of the applicant for promotion on the post of IGP.

18. We are in agreement with the submissions made on behalf of the respondents that in view of the ratio decided by the Apex Court in the case of UPSC vs. L.P. Tiwari and Ors. reported in 2007 (3) SLJ 125 wherein the Hon'ble Apex Court has held that "the evaluation made by an expert committee should not be easily interfered with by the courts which do not have necessary expertise to undertake the exercise i.e. necessary for such purpose".

19. Further, the Hon'ble Supreme Court in the case of UPSC vs. K.Rajaiah reported in 2005 (10) SCC 15 observed that in the absence of any allegation of malafide against selection committee no interference can be drawn about subjective satisfaction of the Selection Committee.

20. In view of the above ratio decided by the Apex Court, we refrain ourselves to interfere with the recommendations made by the expert committee and it is admitted fact that the applicant has



not alleged malafide allegation against the members of the Screening Committee. Further, the ratio decided by the Apex Court in the case of K.Rajaiah (supra) is also attracted in the facts and circumstances of this case, but since the Screening Committee itself has decided to defer the matter of the applicant for promotion on the post of IGP for want of ACR of the year 2006-2007, therefore, we are of the view that the respondents be directed to hold Review Screening Committee meeting and after considering ACRs of the year 2006-07 subjectively candidature of the applicant for promotion to the post of IGP be considered.

21. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

J.L.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/