

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No.200/00030/2018

Jabalpur, this Monday, the 26th day of February, 2018

**Hon’ble Mr. Navin Tandon, Administrative Member
Hon’ble Mr.Ramesh Singh Thakur, Judicial Member**

Gaurav Rajput S/o Shri Kamal Singh Rajput,
Aged about 37 years, R/o 15th Battalion house,
Marimata Chowraha, Airport Road,
Indore-452005- (M.P.)

- Applicant

(By Advocate – Shri V.Bhide)

Versus

- 1. Union of India, Ministry of Home Affairs, Through its Secretary, Central Secretariat, New Delhi-110 001**
- 2. Union Public Service Commission, Through its Chairman, Dholpur House, Shahjahan Road, New Delhi-110 069**
- 3. The State of Madhya Pradesh, Through its Principal Secretary, Department of Home Affairs, Vallabh Bhawan, Bhopal (M.P.)-462001**
- 4. The Director General of Police, Madhya Pradesh Police Head Quarters, Jehangirabaad, Bhopal (M.P.)-462008**
- 5. Shri Sanjay Kumar, Office of Deputy Inspector General of Police (SAF), Gwalior (M.P.)-474003**
- 6. Shri Irshad vali, Office of Deputy Inspector General of Police, Balaghat Range, Balaghat (M.P.)-481001**

7. Shri Rakesh Kumar Jain, Office of Deputy Inspector General of Police, Sagar Range, Sagar (M.P.)-470001

8. Shri Anil Maheshwari, Office of Deputy Inspector General of Police, (DIG, HQ, SAF, PHQ, Bhopal (M.P.)-462001.

9. Shri Deepak Verma, Office of Deputy Inspector General of Police (DIG, SAF, Central Range), Bhopal (M.P.)-462001

10. Shri Ashok Kumar, Office of Deputy Inspector General of Police, (DIG, Crime Against Women), Gwalior (M.P.)-474003

11. Shri M.S.Sikarvar, Office of Deputy Inspector General of Police,(DIG, AJK) Bhopal (M.P.)-462001

12. Shri Prem Babu Sharma, Office of Deputy Inspector General of Police,(DIG, SISF PHQ), Bhopal (M.P.)-462001

13. Shri A.K.Pandey, Office of Deputy Inspector General of Police, (DIG, Khargone Range), Khargone-(M.P.)-451001

14. Shri R.A.Choubey, Office of Deputy Inspector General of Police,(DIG Selection PHQ) Bhopal (M.P.)-462001

15. Shri M.S.Verma, Office of Deputy Inspector General of Police, (DIG, Gwalior Range), Gwalior (M.P.)-474003. **-Respondents**

(By Advocate – Shri S.P.Singh for respondent-UOI
& Shri Vijay Pandey for respondent-State)

(Date of reserving the order: 15.02.2018)

ORDER

By Navin Tandon, AM,-

The applicant is an officer of the Indian Police Service (for brevity ‘IPS’) of the year 2004. He is aggrieved that he has not

been considered for the post of Deputy Inspector General (for brevity 'DIG') of Police and hence has filed this Original Application.

2. The brief facts of the case are that the applicant was found successful by Union Public Service Commission and was placed in the select list of IPS for the year 2004. He is placed higher than private-respondents Nos.5 to 15. On completion of 13 years of service, he was awarded Pay Matrix 13 with effect from 01.01.2017 vide order dated 30.12.2016 (Annexure A-13).

2.1 During his tenure as Superintendent of Police, Katni, a case of suicide of politically affiliated individual took place. In consequence thereof, a complaint was lodged against the applicant by an individual. The applicant further submits that since 30.12.2015, he has faced several fact finding enquiries and till date no adverse communication was served on him.

2.2 A screening committee for promotion to the post of DIG was held on 29.12.2017 in which the applicant did not find his

name in the select list published on 1st January, 2018 (Annexure A-9).

2.3 The applicant submits that he has an excellent service record and is entitled to the benefit of promotion on merits. On the date the applicant was considered for promotion i.e. on 29.12.2017 and till the date of filing of the Original Application, the applicant has not been served with any charge sheet, therefore, there is no departmental enquiry pending against him and the official respondents have erred in law in depriving the applicant his rightful promotion.

2.4 The applicant has filed a copy of Office Memorandum F.No.22034/4/2012-Estt.(D) dated 02.11.2012(Annexure MA-1) along with Misc. Application No.200/00132/2018, on the subject of “Comprehensive review of instructions pertaining to vigilance clearance for promotion”. In the said OM it has been stated that vigilance clearance cannot be denied on the ground of pending disciplinary case against a Government servant, if he is neither under suspension nor any charge sheet has been issued.

3. In this Original Application the applicant has prayed for the following relief:

“8. The applicant, therefore, prays that this Hon’ble Tribunal may kindly be pleased -

(i) To call for the entire records pertaining to the case.

(ii) To issue directions being declaratory in nature holding that no departmental enquiry or criminal case was pending at the time when Departmental Promotion Committee dated 29/12/2017 was convened.

(iii) To issue directions/orders of appropriate nature holding that the Applicant is entitled to be considered for promotion to the post of DIG and on being found fit, to be promoted to the post of DIG with effect from the date when his immediate juniors were promoted along with all consequential benefits including seniority.

(iv) To any other relief deemed fit and proper in the facts and circumstances of the case may also be granted.

(v) To award costs to the Applicant”

4. The official respondents (Respondents 3 and 4) have filed their reply on 05.02.2018. They have stated that a formal complaint of misconduct pertaining to the applicant’s tenure as Superintendent of Police, Katni had been received and an enquiry was conducted by ADG Balaghat, in which allegations were prima facie proven. It was well within the knowledge of the applicant

that an enquiry is being conducted. An explanation was sought in this respect from the applicant and his reply is still awaited.

5. With the consent of both parties the matter was heard finally.

6. We have heard the learned counsel of parties and carefully perused the pleadings of both the parties and the documents annexed therewith.

7. On perusal of the minutes of the Screening Committee dated 29.12.2017 (Annexure R 3/2) held for promotion of IPS officers of 2004 year of allotment and earlier years, to the post of DIG we find that as regards the applicant the integrity certificate, issued by Police Headquarters, states thus:

“The record of service of Shri Gaurav Rajput, IPS(2004) Incharge DIG, CAW Indore has been carefully scrutinized and it is certified that there is no departmental enquiry or criminal proceeding/case pending against this officer as per information received from PHQ Vigilance Branch.

However, a formal complaint of misconduct during investigation pertaining to Shri Gaurav Rajput’s tenure as SP Katni had been received by the Department. An enquiry conducted by ADG Balaghat concluded that the allegations were prima facie proven. A formal explanation has been sought from Shri Gaurav Rajput and his reply is awaited as

part of further inquiry prevalent in the PHQ Vigilance Branch.

The performance appraisal reports of this officer has not been perused. The same may be verified at the Government level.”

7.1 The screening committee, therefore, has recorded following findings in respect of the applicant, in its minutes dated 29.12.2017: -

“Ifefr }kjk fopkj.k {ks= esa IfEefyr Jh xkSjo jktiwr] Hkikiqls ¼2004½ ds lafu”Bk izek.k&i= dks] lansgkLin Js.kh ds :i esa oxhZd`r fd;k tkdj] mudh mi iqfyl egkfujh{kd ds in ij inksUufr gsrq mi;qDrrk ds laca/k esa fopkj ugha fd;k x;k A’

7.2 Thus, on perusal of the above remarks in respect of the applicant it is found that only a formal complaint of misconduct pertaining to the applicant while working as SP Katni had been received by the department and a preliminary enquiry was conducted by ADG Balaghat and thereafter, an explanation had been sought from the applicant. However, no charge sheet as such had been issued against the applicant till the meeting of the screening committee.

8. On perusal of aforementioned DOPT's Office Memorandum F.No.22034/4/2012 -Estt. (D) dated the 2nd November, 2012 (Annexure MA-1) on the subject of "comprehensive review of instructions pertaining to vigilance clearance for promotion" we find that vigilance clearance for promotion may be denied only in the following three circumstances:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

8.1 The relevant extracts of paragraphs 1, 2, 5, 6 & 12 of the said OM stipulate thus:

".....Withholding of vigilance clearance to a Government servant who is not under suspension or who has not been issued a charge sheet and the disciplinary proceedings are pending or against whom prosecution for criminal charge is not pending may not be legally tenable in view of the procedure laid down in the aforesaid O.Ms.

(2). Existing instructions provide for processing the cases of disciplinary proceedings in a time bound manner.....

(5). The O.M No. 22012/1/99-Estt. (D) dated 25th October, 2004 further provides that a DPC shall assess

the suitability of the Government servant coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum No. 22011/4/91-Estt. (A) dated 14.09.1992, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. No promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption/derelection of duty etc., there is a serious complaint and the matter is still under investigation, the Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover.

(6). When a Government servant comes under a cloud, he may pass through three stages, namely, investigation, issue of charge sheet in Departmental Proceedings and/or prosecution for a criminal charge followed by either penalty/conviction or exoneration/ acquittal. During the stage of investigation prior to issue of charge sheet in disciplinary proceedings or prosecution, if the Government is of the view that the charges are serious and the officer should not be promoted, it is open to the Government to suspend the officer which will lead to the DPC recommendation to be kept in sealed cover. The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued or the officer is placed under suspension. The pendency of preliminary investigations prior to that stage is not sufficient to adopt the sealed cover procedure.

(12). It may thus be noted that vigilance clearance cannot be denied on the grounds of pending

disciplinary/criminal/court case against a Government servant, if the three conditions mentioned in Para 2 of this Department's O.M. dated 14.09.1992 are not satisfied. The legally tenable and objective procedure in such cases would be to strengthen the administrative vigilance in each Department and to provide for processing the disciplinary cases in a time bound manner. **If the charges against a Government servant are grave enough and whom Government does not wish to promote, it is open to the Government to suspend such an officer and expedite the disciplinary proceedings"**

(emphasis supplied by us)

8.2 Thus, on perusal of above extract of the OM dated 02.11.2012 it is very much clear that withholding of vigilance clearance in the case of a Government servant may not be legally tenable if he is neither under suspension nor against whom a charge sheet has been issued. Thus, no promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issuance of charge sheet etc. The said OM clearly stipulates that if in the matter of corruption/derelection of duty etc., there is a serious complaint and the matter is still under investigation, the Government is within its right to suspend the official. In that case,

the officer's case for promotion would automatically be required to be placed in the sealed cover.

9. In the instant case we find that only a formal complaint had been received against the applicant on which a preliminary enquiry was conducted against the applicant. Thus the three stages, mentioned in the aforementioned OM, namely, investigation, issue of charge sheet in departmental proceedings and/or prosecution for a criminal charge followed by either penalty/conviction or exoneration/ acquittal had not been reached in the instant case when the screening committee had considered the case of the applicant. Thus, mere pendency of preliminary investigation prior to issuance of charge sheet was not sufficient for the screening committee to ignore the claim of the applicant for promotion. Thus, the members of the Screening Committee have not taken into consideration of the aforementioned OM in its true spirit while screening the claim of the applicant for promotion to the post of DIG.

10. In this view of the matter, the present Original Application is liable to be and is allowed. The official respondents are directed to consider the claim of the applicant for promotion to the post of DIG, as on the date when his immediate juniors were considered, and on being found fit, he be promoted to the post of DIG with effect from the date when his immediate juniors were promoted along with all consequential benefits including seniority. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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