

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2926/2003

New Delhi, this the 3rd day of August, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

M.A.J. Farooqui
Duplex Flat No.1
DCP South Office Complex
P.S.Hauz Khas
New Delhi - 110 007. ... Applicant

(By Advocate: Sh. M.Chandrasekharan, Senior Counsel
with Shri C. Hari Shanker)

Versus

Union of India
through The Secretary
Ministry of Home
North Block
New Delhi - 110 001. ... Respondent

(By Advocate: None)

ORDER

Justice V.S. Aggarwal:-

Applicant (M.A.J.Farooqui) by means of the present application seeks to challenge the recommendations of the Departmental Promotion Committee (for short 'DPC') meeting held for promotion to Selection Grade, and for further promotions as Deputy Inspector General (for short 'DIG') and Inspector General of Police (for short 'IG Police').

2. The relevant facts are that the applicant was posted as Deputy Commissioner of Police and a chargesheet dated 13.9.1993 was issued to him. It was during the pendency of the disciplinary proceedings that followed certain DPC meetings for grant of selection grade and for further promotion to the grades of DIG and IG Police were held wherein the applicant was not found fit for promotion. In view of the pending disciplinary proceedings, the DPC placed

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its recommendations in the sealed cover. The disciplinary proceedings culminated in the order of 7.3.2001 whereby the applicant was awarded the punishment of withholding of his increments for two years with cumulative effect.

3. The disciplinary proceedings and the resultant penalty order were challenged by the applicant by filing OA No.950/2001 in this Tribunal. On 27.5.2002, this Tribunal had quashed the disciplinary proceedings against the applicant and had directed the respondents to open the sealed cover in which the DPC recommendations pertaining to the applicant's promotion as DIG and IG Police were placed and that in case he has been found fit, promote him accordingly.

4. Respondent No.1 had challenged the said order of this Tribunal by filing Civil Writ No.5673/2002 in the Delhi High Court. The Delhi High Court on 6.9.2002 had directed:

"Rule D.B.

Mr. C. Hari Shankar, Advocate accepts notice on behalf of respondent.

Let the matter appear for final disposal on 24th September, 2002.

Mr. C. Hari Shankar states that the contempt petition before the learned Tribunal shall not be pressed.

CM No. 9629/2002

In view of the above statement made at the bar, no order of stay is passed.

CM is disposed of.

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CHIEF JUSTICE

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- 3 -

Sd/-
A.K. SIKRI, J"

5. Subsequently, the application had been admitted but no stay was being granted. The applicant had moved an application (CM No.3089/2003) for a direction to the respondents to implement the directions given in the order of this Tribunal keeping in view the fact that no stay had been granted. The said CM 3089/2003 in CW 5673/2002, initially, came up for hearing before the Delhi High Court on 5.5.2003. The Delhi High Court had directed that, in the first instance, the sealed cover containing the DPCs' recommendations be brought into Court. Thereafter, on 16.9.2003, the sealed covers containing the recommendations of the DPCs were opened by the Delhi High Court. The applicant had been found 'unfit' for grant of selection grade and for promotion as DIG and IG. The Delhi High Court permitted the applicant to challenge the same and had passed the following order:

"O R D E R
16.09.2003

Since operation of the impugned order had not been stayed so far, and the sealed covers had not been opened in terms of the directions by the Tribunal, we had directed the petitioner to produce the same. Pursuant thereto three sealed covers, containing recommendation(s) of various screening committees, held for promotion to the selection grade, promotion to DIG cadre and empanelment for IGP grade in the cadre have been produced. These have been opened in the Court. We find that the respondent has been found to be "unfit" for promotion to all the said three posts.

Since the sealed covers have now been opened, if required, results of the said DPC may be communicated to the respondent, as per rules. Needless to add that in case the respondent has any grievance against the decisions of the Screening Committees, it will be open to him to take recourse to any legal remedy, as may be available to him.

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The result of the three committees has been returned to learned counsel for the petitioner.

In view of the above, no further directions can be issued in the application. The same stands disposed of accordingly."

6. It is in this backdrop that the above said relief, to which we have referred to above, is claimed. It is asserted that the Departmental Promotion Committee meeting has not considered the facts correctly. The applicant has an excellent record and, therefore, the decision of the DPC should be quashed.

7. The application is being contested. It is denied that the applicant was found 'unfit' for grant of selection grade and subsequent promotion as DIG and IG because of the disciplinary proceedings pending against him. As per the instructions pertaining to promotion of officers belonging to All India Services against whom disciplinary proceedings are pending, the Screening Committee is required to assess the suitability of such officers along with other eligible candidates without taking into consideration the disciplinary cases that are pending. The Screening Committee had, in terms of these instructions, assessed the suitability of the applicant and found 'unfit' for promotion.

8. It has further been pleaded that as per the instructions issued by the Government of India regarding promotion of officers of the Indian Police Service to various grades in the service, the suitability of officers to hold posts in the various grades is required to be adjudged by the Screening

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Committee by evaluating their character roll record as a whole and general assessment of their work. It has further been provided in these instructions that each Committee shall decide its own method and procedure for objective assessment of the suitability of the candidates and that advancement in an officer's career is not required to be regarded as a matter of course. It is required to be earned by dint of hard work and good conduct. The promotions are required to be based on strict and rigorous selection process. The claim of the applicant for empanelment for promotion to selection grade was considered by the Screening Committee besides to the posts of DIG and IG. It is denied that he has been ignored and found 'unfit' merely because of the pending disciplinary proceedings. The Committee had, on basis of his overall record of service and general assessment of his work, found him 'unfit' for empanelment.

9. The brief resume of the facts given above clearly indicates that the penalty order and the disciplinary proceedings against the applicant had been quashed by this Tribunal. A Writ Petition seeking judicial review of the order passed by this Tribunal is pending in the Delhi High Court but no stay had been granted. The sealed cover proceedings were opened in the Delhi High Court, the applicant was found 'unfit' for promotion but he was given liberty to challenge the said order. This makes it clear that any decision pertaining to promotion of the applicant necessarily has to be, subject to the final outcome of the pending Writ Petition.

18 Ag

10. To our directions, the respondents have made available the Annual Confidential Reports of the applicant as well as the photocopy of the minutes of the DPC meeting held on 21.8.2003. But obviously, firstly it has to be detected as to what is the scope of interference of this Tribunal, in judicial review, in the proceedings of the DPC. It is not in dispute that a Departmental Promotion Committee can devise its own method pertaining to promotion for objective assessment of the suitability of the concerned official. Para 6.1 of the DPC instructions issued by the Government of India dated 15.1.1999 in this regard makes the position clear. It reads:

"PROCEDURE TO BE OBSERVED BY COMMITTEES:

6.1 Each Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. While merit has to be recognised and rewarded, advancement in an officer's career should not be regarded as a matter of course but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential report and based on strict and rigorous selection process. The misconception about "Average" performance also requires to be cleared. While "Average" may not be taken as adverse remark in respect of an officer, it cannot also be regarded as complimentary to the officer as such performance should be regarded as routine and undistinguished. It is only the performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards."

11. At the same time, on perusal of Paras 7.1 and 7.2 of the above instructions, it is obvious that Annual Confidential Reports are the basic inputs on basis of which assessment is to be made by each

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Committee. Necessarily, they cannot be ignored though there is no positive benchmark in this regard. The said paragraphs read:

CONFIDENTIAL REPORTS:

7.1 The annual Confidential Reports are the basic inputs on the basis of which assessment is to be made by each Committee. The evaluation of ACRs should be fair, just and non-discriminatory. The Committee should consider ACRs for equal number of years in respect of all officers falling within the zone of consideration for assessing their suitability for promotion. Where one or more ACRs have not been written for any reason, the Committee should consider the available ACRs. While making the assessment, the Committee should not be guided merely by the overall grading that may be recorded in the ACRs but should make its own assessment on the basis of the overall entries made in the ACRs. If the Reviewing Authority or the Accepting Authority, as the case may be, has overruled the Reporting officer or the Reviewing Authority respectively, the remarks of the latter authority should be taken as the final remarks for the purposes of assessment provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of all these authorities are complementary to each other, then the remarks should be read together and the final assessment made on that basis.

7.2 In the case of each officer, an overall grading should be given which will be either "Fit" or "Unfit". There will be no benchmark for assessing suitability of officers for promotions."

12. The abovesaid specific instructions, indeed, could not be ignored.

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13. The Supreme Court in the case of MAJOR GENERAL I.P.S. DEWAN v. UNION OF INDIA AND OTHERS, (1995) 3 SCC 383 categorically held that unless the rules so require, the Selection Committee is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be.

14. Similarly, in the case of NUTAN ARVIND (SMT) v. UNION OF INDIA AND ANOTHER, (1996) 2 SCC 488, the conclusions arrived at were that when a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases, the Supreme Court will not sit over the assessment made by the DPC as an appellate authority. The findings read:

"6. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to writ the confidential is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference."

15. Reference with advantage can further be made to the decision of the Supreme Court in the case of UNION OF INDIA AND OTHERS v. N.R. BANERJEE AND OTHERS, (1997) 9 SCC 287. The Supreme Court mentioned about the fairness in this regard and held that candidate has to be considered in objective and impartial manner. It was held:

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"3. In making promotions, it should be ensured that suitability of the candidates for promotion is considered in an objective and impartial manner. In other words, the consideration of the candidate is not clouded by any other extraneous considerations like caste, creed, colour, sect, religion or region. In consideration of claims, merit alone should enter into objective and impartial assessments."

16. Similarly, in the case of M. BYRANNA v. DIRECTOR, CENTRAL CATTLE BREEDING FARM AND ANOTHER, (1997) 11 SCC 67, the Supreme Court held that so long as the DPC functioned bona fide, its selection should not have been interfered with and there is nothing to suggest that the DPC acted otherwise.

17. From the aforesaid, it is clear that the scope for judicial review is limited. In cases where the DPC has acted fairly and objectively, there is little scope for interference but if the DPC has swayed by some extraneous factors, though it is not required to record reasons, in that event only, this Tribunal could interfere.

18. The Annual Confidential Reports of the applicant have been perused. The same gives the following scenario:

1.4.1996 to 31.3.1997	Very Good
1.4.1997 to 17.7.1997	Very Good
16.8.1997 to 31.3.1998	Very Good
1998-1999	Leave
1.4.1999 to 31.3.2000	Very Good
1.4.2000 to 31.3.2001	Very Good
1.4.2001 to 31.3.2002	Very Good
1.4.2002 to 31.3.2003	Very Good

19. In other words, it is obvious that applicant's ACR dossiers are 'Very Good'.

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20. A perusal of the minutes of the meeting of the Screening Committee held on 21.8.2003 clearly shows that the Committee had been informed that the applicant had earlier been considered. Disciplinary proceedings had been instituted against the applicant, to which we have already referred to above, which culminated into imposition of a penalty. On basis of his overall record thereupon it has been noted that the applicant was found 'unfit' for promotion.

21. In the first instance, it requires a mention that the DPC had never been informed that the penalty against the applicant has since been quashed by this Tribunal and no stay has been granted by the Delhi High Court. It does refer to imposition of minor penalty but not the subsequent event. Obviously in the absence of correct facts being brought to the notice, the mistake necessarily would crept in. It is true that DPC is not required to record reasons but when certain reasons are mentioned which were to ensure to the test of correctness of facts, necessarily the DPC proceedings cannot be sustained.

22. We have already referred to above the fact that the applicant's dossiers do not have anything like an 'adverse' remark.

23. There is no other cogent reasons that are forthcoming in the pleadings.

24. Taking stock of these facts, the proceedings of the DPC necessarily has to be quashed.

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58

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25. For these reasons, we allow the present application and direct:

- (a) The DPC proceedings are quashed.
- (b) A review DPC should be held.
- (c) Nothing said herein should be taken to be any direction or interference in the overall work of the DPCs.
- (d) Decision in this regard preferably may be taken within four months of the receipt of the certified copy of the present order.

S.K. Naik

(S.K. Naik)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

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