

**(2007) 08 DEL CK 0047**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 13108 of 2006**

Baljeet Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision : 31-08-2007**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 323, 406, 498A, 506

Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 4, 5, 5(4)

**Citation : (2007) 98 DRJ 356**

**Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J**

**Bench : Division Bench**

**Advocate :** Sanjay Jain, Amit Mahajan and Nikita Mangla, for the Appellant; A.K. Bhardwaj, for respondent No. 1, P.S. Patwalia and H.K. Kataria, for respondent Nos. 2 and 3, Jyoti Singh and Ankur Chibber for respondent No. 4 and Rajiv Bansal, for the Respondent

**Final Decision : Dismissed**

## Judgement

A.K. Sikri, J.—The petitioner, who is working as Deputy Superintendent of Police in the Haryana State Police, aspires to get inducted to Indian Police Service (for short, "IPS") and wants appointment to the said cadre under the promotion channel. Undoubtedly, as he was eligible for consideration to IPS, the Selection Committee constituted by the Union Public Service Commission (UPSC) for this purpose duly considered his case along with certain other eligible candidates in its meeting held on 20.12.2005. However, the Selection Committee recommended the names of two officers junior to the petitioner and on the basis of the said recommendation, the said two officers have been appointed superseding the petitioner. The petitioner filed OA No. 556/2006 challenging this act, but without any success as the OA filed by him has been dismissed by the Tribunal vide judgment dated 3.8.2006. Impugning this judgment, the present writ petition is preferred by the petitioner.

2. To appreciate the exact controversy revolving around the aforesaid issue, we

may take note of certain important facts. The petitioner was appointed as direct recruit Assistant Sub-Inspector in Haryana Police on 25.3.1971. He was promoted as Sub-Inspector on 10.11.1975, as Inspector on 23.1.1984 and thereafter on 16.9.1990, the petitioner was further promoted as Deputy Superintendent of Police. Officers of this rank can be appointed to the IPS as per the relevant extant rules. However, for this purpose, maximum age limit is 54 years. Though the petitioner became eligible for consideration in the year 2004, which was his last chance as he was crossing 54 years of age, there was delay in holding the Selection Committee meeting for the said year. The petitioner, Therefore, approached the Central Administrative Tribunal, which gave directions to the respondents to hold meeting of the Selection Committee within six weeks. This six weeks period was to expire on 22.12.2005. Having regard to those directions, meeting of the Selection Committee was convened on 20.12.2005. The Selection Committee was constituted by the UPSC. It considered the candidature of six officers and recommended the names of the respondent Nos. 5 & 6 herein, though they were junior to the petitioner.

3. In the OA filed before the Tribunal, the case set up by the petitioner was that he being the senior official he was wrongly superseded and having regard to his ACRs for the period of preceding 5 years, there was no question or occasion for the Selection Committee to supersede him. He also submitted that he had better/superior record of service than the respondent Nos. 5 & 6 for the relevant years. It was also pointed by him that the respondent No. 5 could not have even been considered, inasmuch as, an FIR had been registered against him under Sections 498-A/406/506/323 IPC with P.S. Model Town, Panipat, in which even charge sheet/challan has been submitted by the Police, after investigation, in the court of the concerned Magistrate. The pendency of such a criminal case, in which charge sheet had been filed, debarred the consideration of the candidature of the respondent No. 5 in view of the provisions of Indian Police Service (Appointment by Promotion) Regulations, 1955. Both the contentions are negated by the Tribunal while dismissing his OA. Before us, the petitioner has argued on the similar lines.

4. RE.: Validity of the Criteria adopted by the Selection Committee Before advertng to the arguments of the petitioner, on the basis of which exercise done by the Selection Committee is questioned, it would be apposite to take note of relevant regulations and guidelines.

It is the common case that the Indian Police Service(Appointment of Promotion) Regulations, 1955 govern the instant case. Here we are concerned with Regulation 5 of the said Regulations which lays down the procedure for consideration. In so far as it is relevant, it has been extracted later in the judgment.

5. As per Regulation 5(4), the Selection Committee is to classify the eligible officers as outstanding, very good, good or unfit. This is to be done on an overall relative assessment of their service records. The Government of India has also

issued guidelines/procedures for the Selection Committee for the purpose of classifying the officers as outstanding, very good, etc.

6. We may mention at this stage itself that the aforesaid Regulation 5 and these guidelines came up for judicial scrutiny by the Apex Court in the case of U.P.S.C. Vs. K. Rajaiah and Others, to which we shall refer a little later in the judgment.

7. As per the directions contained in earlier orders passed by this Court, learned Counsel for the UPSC produced the record of the Selection Committee which went into the particular exercise of making comparative assessment. Record reveals that ACRs for preceding 5 years, i.e. 1998-99 to 2002-03 of all these officers were considered. In the minutes it is also recorded that the Selection Committee had before it the service record of the candidates as well. The Selection Committee had noted the comments of Reporting Officer, Reviewing Officer and Accepting Officer for each year and thereafter gave its own grading for that year. In this manner, after giving its own grading for each year, overall grading is given by the Selection Committee. In this overall grading, the petitioner is rated as "Good" whereas the overall grading of the respondent Nos. 5 & 6 is "Very Good". On this basis, the Selection Committee opined that in the comparative assessment done by it, the respondent Nos. 5 & 6 were rated superior to the petitioner and, Therefore, the Committee recommended the names of the respondent Nos. 5 & 6 for appointment into IPS and in supersession of the petitioner.

8. The submission of learned Counsel for the petitioner was that the format of ACRs would show that the ACR is to be recorded having regard to various attributes which are contained therein. These include: honesty, moral character, promptness and moral courage to take action against delinquent subordinates, public relations, appropriate behavior with public, public image, secular credentials, dispassionate behavior towards political parties and faithful towards Government, attitude towards subordinates, organisational skill and general control, personality and enterprise, commanding power, interest towards modern investigation tools, ability to investigate and eradication of crime, practical knowledge of criminal law and procedures, reliability, attitude towards socially and economically weaker section and SC & ST, efficiency in parade, demerits, if any, role in prevention and control of communal rights, presence, ability to control and prevent conspiracy and general comment.

9. He, thus, submitted that when ACR was recorded by the Department after evaluating the work and conduct of a particular officer in respect of a specific year keeping in view the aforesaid yardsticks, the Selection Committee could not have come to a different grading without any cogent material before it. His submission was that the Selection Committee did not interview any of the candidates and, Therefore, it had no occasion to have interaction with the candidates. It could adjudge the comparative assessment only on the basis of ACRs before it and there was no possible reason to tone down the grading recorded in the ACRs. He pointed out that the petitioner, in the relevant period of

5 years, earned 1 "Good", 3 "Very Good" and 1 "Outstanding" ACR and in the face of these ACRs of the petitioner, overall grading by the Selection Committee as "Good" was totally unwarranted, arbitrary and illegal and was, thus, tainted by mala fides. He referred to the Division Bench judgment of this Court in Prabhakar Singh and Another Vs. Union of India (UOI) and Others, wherein, contended the learned Counsel, similar exercise was held to be arbitrary. That was a case where certain Executive Engineers (Electrical) in CPWD were considered for promotion to the post of Superintendent Engineer (Electrical). Similar exercise was done by the Selection Committee by giving its own grading. The petitioner No. 1 in the said case, who had all "Outstanding" ACRs, and the petitioner No. 2, who had 5 "Outstanding" ACRs and 1 "Very Good" ACR were given the grading of "Very Good" by the DPC and one of the persons, namely, Mr. P.D. Agnihotri, who was selected, was rated as "Very Good" by the Selection Committee, who had otherwise earned 3 "Very Good", 2 "Good" and 1 "Average" ACR for the relevant period. The Division Bench, treating this to be arbitrary, observed as under:

30. We have seen the DPC grading of the officers. We have asked learned Counsel for the respondent/UPSC to place on record any material on the basis of which the "Outstanding" has been converted to "Very Good" for all five years in case of petitioners. Apart from stating that the same has been done as per the policy of the respondent nothing has been placed before this Court.

31. We have perused the ACRs as well as the grading given by the DPC constituted by the UPSC. We have not found any inconsistency with the grading under various parameters or attributes which is discernible from the reports of the reporting officer as well as of the reviewing officer from the perusal of the ACR in relation to petitioners. No doubt this Court while dealing with this kind of cases where DPC as a High Level Committee, has considered the ACRs and graded the officers would not interfere. However, if there is manifest arbitrariness which is reflected from the overall grading given by the UPSC on the basis of the perusal of the record of the UPSC and the ACRs given by the department concerned, the Court while exercising its power of judicial review must strike down arbitrariness which has crept in the decision making process....

10. It is clear from the dicta laid down in the aforesaid judgment, normally the Court is not to interfere with the grading given by the DPC, more particularly when it consists of higher level committee wherein DPC graded the officers by considering their ACRs. It clearly follows and even otherwise well established principle, that the Selection Committee would not necessarily go by the ACRs recorded but would be competent to give its own grading to the officers. The only ground on which Court can interfere would be the situation when the Court finds manifest arbitrariness reflecting from the overall grading given by the Selection Committee on the basis of the ACRs given by the department concerned. It is this yardstick which has to be kept in mind while bestowing our consideration to the present case. We have also to ensure that UPSC kept in mind the provisions

of Indian Police Service (Appointment by Promotion) Regulations, 1955, which have been made in pursuance of Indian Police Service Recruitment Rules, while considering the candidature of the eligible candidates whose cases were considered. Regulation 5 of these Regulations is relevant for our purposes, attention whereof was drawn by counsel for both the parties. We are specifically concerned with Sub-Regulations 4 and 5 of Regulation 5 and, Therefore, reproduce the same hereunder:

5(4) The Selection Committee shall classify the eligible officers as "Outstanding", "Very Good", "Good", "Unfit", as the case may be, on an overall relative assessment of their service records.

5(5) The list shall be prepared by including the required number of names first from amongst the officers finally classified as "Outstanding; then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsustainable for appointment to the service has come to the notice of the State Government.

Explanation I:

The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court, as the case may be.

Explanation II:

The adverse thing which came to the notice of the State Government rendering him unsustainable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the office and investigation thereof is essential.

11. Sub-Regulation (4) of Regulation 5 itself empowers the Selection Committee of the UPSC to classify the eligible officers as "Outstanding", "Very Good", "Good" and "Unfit". Therefore, this exercise is to be done by the Selection Committee and is not to routinely follow the grading given to the officers in their ACRs. This Sub-Regulation further stipulates that such a grading is to be given by the Selection Committee on an overall relative assessment of their service records. Sub-Regulation (5) provides that the Selection Committee shall prepare a list of the eligible officers first from amongst those who are Finally Classified as "Outstanding". Thereafter, it will take those persons in the list who are classified as "Very Good" followed by "Good". These officers with "Outstanding" grading would be on the top of the list; below them would be included those officers who

earn the classification as "Very Good" and officers classified as "Good" would be at the bottom of the list. This is clearly the merit list. Persons of a particular category would be arranged in the order of their seniority in the State Police Service. For example, if there are two "Outstanding", then the seniormost among them would be ranked first. Similar exercise would be done for those bracketed as "Very Good and "Good" respectively.

12. Proviso to this sub-rule deals with those officers in respect of whom the State Government has withheld the integrity certificate or those who are facing departmental or criminal proceedings. We would advert to this proviso later during our discussion about appropriate stage. Learned Counsel for the petitioner drew our attention to the guidelines/procedure laid down by the Government for the purpose of carrying out the exercise by the Selection Committee in terms of the aforesaid regulation. The relevant portion of the said guidelines is quoted below:

Guidelines/procedures for categorization of State Civil/Police/ Forest Service officers in terms of Regulation 5(4) of the IAS/ IPS/IFS.

In accordance with Regulation 5(4) of the Promotion Regulations, the Selection Committee has to classify the eligible officers as "Outstanding", "Very Good", "Good" or "Unfit" as the case may be on an overall assessment of their service records. In this regard, for making an overall relative assessment, the procedure indicated below was followed:

1. The Selection Committee would go through the service records of each of the eligible officers, with special reference to the performance of the officer during the last five years (preceding the years in which the Selection Committee meets), deliberating on the quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing Officer/ Accepting Authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer. The Selection Committee would also take into account orders regarding appreciation for the meritorious work done by the concerned officers during the period for which they are assessed. Similarly it would also keep in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation, have not been completely expunged.

2. In some cases, the ACRs of an officer cannot be written for a year or more on account of his being on leave, training or because no officer supervised his work for more than three months. As the overall assessment of the officer cannot be withhold (sic) because of that period, the Selection Committee would make a categorization on the basis of available ACRs.

3. An officer shall be graded as:

(a) "Outstanding", if in the opinion of the Selection Committee, the service records of the officer reflect that he is of outstanding merit possessing

exceptional attributes and abilities and these characteristics are reflected in at least four of the ACRs for the last five years including the ACR for the last year (i.e. up to the preceding year of the meeting of the Selection Committee).

(b) "Very Good", if in the opinion of the Selection Committee, his ACRs reflect that the officer has done highly meritorious work and possess positive attributes and these characteristics are reflected in at least three of the last five ACRs (i.e. up to the preceding year of the meeting of the Selection Committee).

(c) "Good" if in the opinion of the Selection Committee, the service records reflect that the officer's performance is generally satisfactory and he is considered fit for promotion and those characteristics are reflected in at least three of the last five ACRs (i.e. up to the preceding year of the meeting of the Selection Committee).

13. Thus, for grading the officers, the Selection Committee is to take into consideration the following material while giving its own classification/grading:

a) Service record, viz. performance of the officers during last five years. While going through the records, the Selection Committee would deliberate on the quality of the officer as indicated in the various columns recorded by the reporting/review officer/accepting authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer.

b) The Selection Committee has also to take into consideration orders regarding appreciation for meritorious working done by the concerned officers.

c) Orders awarding penalties or any adverse remarks communicated to the officers, which even after due consideration of his representation, have not been completely expunged.

14. On the basis of such a grading given by the Committee for last five years, if the service record of an officer reflects that he is of outstanding merit in at least four of the ACRs for last five years, he shall be graded "Outstanding"; if he has done highly meritorious work and possess positive attitudes in at least last five ACRs, he will be classified as "Very Good" and in case his performance is generally satisfactory and he is considered fit for promotion and these characteristics are reflected in at least three of the last five ACRs, he will be rated as "Good".

15. In view of this well-defined guidelines as well as the yardsticks laid down in Regulation 5, learned Counsel for the petitioner is not correct when he submits that various attributes, which are to be seen while writing the ACR, would not be available before the UPSC and the UPSC could not have any occasion to see those attributes and thus, it could not vary the classification, by giving a grading different from what is recorded in the ACR. If this argument is to be accepted, then the Selection Committee is to mechanically follow the ACR grading and make the recommendation on that basis. This is not so. On the other hand, as mentioned above, Regulation 5 as well as the procedure provide sufficient

guidelines to the Selection Committee on the basis of which it can classify the eligible officers and such a classification can be different from what is recorded in the ACR. Of course, when the material provided before the Selection Committee suggest that there is no reason to come to a different conclusion than what is recorded in the ACR and the classification given by the Selection Committee is totally off the mark from which one may legitimately infer arbitrariness in the decision-making process, such an action can be quashed.

16. In the present case we find from the perusal of the impugned judgment of the Tribunal that the Tribunal had called for the relevant records and opined that there had been no violation of the rules and regulations, nor was there any arbitrariness, unfairness or mala fide in the assessment made by the Selection Committee. We reproduce the following extract from the discussion by the Tribunal on this aspect:

24. In so far as placement of applicant's name in the Select List of 2004, it had been recorded in the minutes that the Committee had examined the records of the officers whose names were included in Annexure-1. On the basis of the Confidential record and on an overall relative assessment of their service records, the Committee assessed the officers as indicated against their names in Annexure-I of the minutes.

25. We have seen Annexure-I which is the Assessment Sheet wherein the gradings have been given with regard to five years' ACRs from the year 1998-99 to 2002-2003. We have also carefully perused the ACR dossiers of all the six officers who were considered by the Selection Committee for the Select List of 2004. We do not find any inconsistency in the overall record of the officers as it emerges from their respective ACR dossiers and the assessment made by the Selection Committee in respect of all the six Officers. As the ACRs are the main inputs on the basis of which the Selection Committee categorizes the officers, we are satisfied that the assessment has been done in a proper manner. No unfairness or mala fide intention can on the face of it be inferred by the assessment made by the Selection Committee. It would be in order to observe that it has been uniformly held by the Hon'ble Supreme Court that the Court should not normally interfere with the evaluation made by the Selection Committee/UPSC unless it appears that the Committee had not made fair and proper assessment. This has been held by the Hon'ble Court in U.P.S.C. Vs. K. Rajaiah and Others, .

17. Before us, same Annexure 1, which is the assessment sheet, was produced before the UPSC. Not only this, we directed the State of Haryana to provide us the service record of the eligible candidates whose cases were considered by the UPSC. Said record was produced and we perused that as well. The State of Haryana also produced before us the material which it had supplied to the UPSC. The assessment sheet, which was prepared by the Selection Committee of the UPSC, would show that it had gone into the assessment of the eligible officers for last five years. It had specifically took note of the grading recorded by the

reporting/reviewing officer/accepting authority. It found some variation in the grading given by the reporting/reviewing officer/accepting authority in respect of some years of some candidates. It is also clear from the material produced that these officers had given their own remarks as well in respect of these officers for various years, which were also gone into by the Selection Committee. On the basis of this exercise undertaken by the Selection Committee, it gave its own grading for each year and for each eligible candidate. While giving the overall relative assessment, it has followed the guidelines extracted above. As per the final classification done by the Selection Committee, the petitioner was graded "Good" whereas, respondent Nos. 5 and 6 earned "Very Good". The respondent No. 5 being senior than the respondent No. 6 was accordingly placed at Serial No. 1 and the respondent No. 6 is at Serial No. 2 in the list prepared by the Selection Committee. After perusing the entire record, we are of the opinion that the Tribunal is right in its conclusion that there is no unfairness or arbitrariness in the decision-making process. The factual matrix, on the basis of which the Division Bench of this Court in Prabhakar Singh case (supra) held the exercise to be arbitrary, was totally different. Even in respect of an officer who had "Outstanding" ACR for all five years, the UPSC had converted the same into "Very Good, whereas the selected candidate, who was also rated very good, was having three "Very Good" ACRs, two "Good" ACRs and one "Average" ACR. The Court further found that the petitioners, who are ignored by giving lesser grading of "Very Good" by the Selection Committee had excellent remarks given not only by the reporting officer but also by reviewing officer as well as the accepting authority and on this basis, it was concluded that there was no material on the basis of which the UPSC could come to a different grading and such an exercise on the part of the Selection Committee was treated as arbitrary. This case is, thus, clearly distinguishable on facts. In the present case, once we find that there was material before the Selection Committee for awarding its own classification different from the ACRs and the Selection Committee had strictly followed the regulations and guidelines while doing the exercise, this Court cannot interfere with such an exercise. After all, it is the said Selection Committee, which is an expert body and it is its function to evaluate the comparative assessment of eligible candidates. This Court cannot substitute its own decision and question the wisdom of the Selection Committee by indulging into the same exercise and cannot assume the role of the Selection Committee. In UPSC v. K. Rajaiah (supra), the Supreme Court commented on the role of such selection committees and the scope of interference therein by the Court in the following words:

12. We have also gone through the records of assessment placed before us by the learned Counsel for UPSC. The arguments in the additional affidavit coupled with the contents of the record make it clear that the first respondent could not be selected for the reason that he did not get the gradation of "outstanding" for four years in a block of five years that was taken into account for the purpose of evaluating the merits of the candidates. The learned Counsel for the first

respondent points out that for the year 1993-94 which falls within the five-year range, the first respondent ought to have been graded as "outstanding" in conformity with the grading in the ACR. However, the Selection Committee graded him as "very good" in view of the difference of opinion expressed by the reporting officer and the reviewing officer. We do not find any unfairness or arbitrariness in grading the first respondent as "very good" for the year 1993-94. If so, as he gets "outstanding" grading only for three years, his overall grading cannot be "outstanding" in view of the existing guidelines adopted by the Commission. Normally, the Court will not interfere with the evaluation done by the Commission on a consideration of relevant material. However, we have some doubts on the validity of guidelines evolved in this behalf. The procedure of assigning the overall grading as "outstanding", on if an officer was classified as such in the ACRs of four out of five years, seems to dilute the procedure of selection by merit and give primacy to seniority to some extent.

13. Taking an overall view and having due regard to the limitations inherent in judicial review of selection process by an expert body, we are not inclined to nullify the decision taken by UPSC.

18. This dicta is followed in Smt. Nutan Arvind Vs. Union of India and another, and Smt. Anil Katiyar v. Union of India and Ors. 1997 (1) SLR 153.

19. The foregoing discussion compels us to conclude that this petition is devoid of any merits as the judgment of the learned Tribunal does not call for any interference. We, Therefore, dismiss this petition. However, the parties are left to bear their own costs.