

(2020) 01 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1182 Of 2018

Dayaram Singh Yadav

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 226, 320

Citation : (2020) 1 PLJR 597

Hon'ble Judges : Ashwani Kumar Singh, J;Partha Sarthy, J

Bench : Division Bench

Advocate : Amit Srivastava, Girish Pandey, Rajesh Kumar Verma, Bipin Kumar Sinha

Final Decision : Dismissed

Judgement

.....

1. This application under Article 226 of the Constitution of India has been filed by the petitioner for quashing the order dated 07.04.2017 passed by the.....

Central Administrative Tribunal, Patna Bench, Patna (for short â??the Tribunalâ??) in O.A. No. 104 of 2013 whereby the prayer of the petitioner to".....

grant him promotion to the post of Superintendent of Police, Central Bureau of Investigation (for short â??CBIâ??) from the date of grant of".....

promotion to his junior has been rejected. The petitioner has further prayed for issuance of a writ in the nature of mandamus for commanding the.....

respondents to grant him promotion as Superintendent of Police, CBI from the date his junior Sri Raj Kumar Shukla was granted the said promotion".....

being 30.11.2005.....

2. The facts of the case, in brief, are that the petitioner was selected to the post of Sub-Inspector of Police in CBI and joined as direct recruit Sub-".....

Inspector on 19.01.1971. Subsequently, he was promoted to the post of Inspector of Police on 26.07.1982. He was further promoted as the Deputy",,,,,,

Superintendent of Police on 04.01.1993 and as Additional Superintendent of Police on 11.06.2001. There were five vacancies of general category in,,,,,

the rank of Superintendent of Police in CBI under promotion quota in the year 2005. As per Recruitment Rules, 2000 in force at the relevant time, the",,,,,,

Additional Superintendent of Police with six years of regular service in the grade was eligible for promotion to the rank of Superintendent of Police,,,,,,

failing which the Additional Superintendent of Police with combined regular service of 12 years in the grades of Additional Superintendent of Police,,,,,,

and Deputy Superintendent of Police was eligible for promotion to the rank of Superintendent of Police.,,,,,,

3. In order to fill the five vacancies, 13 Additional Superintendent of Police in the feeder grade were required to be considered in the zone of",,,,,,

consideration by the Departmental Promotion Committee (for short â??DPCâ??) to draw a panel of suitable candidates for promotion. Accordingly, a",,,,,,

proposal including ACR folders in respect of all the 13 Additional Superintendent of Police, CBI in the consideration zone was sent to the UPSC for",,,,,,

holding the meeting of DPC, which met on 30.11.2005. The DPC in its meeting held on 30.11.2005 assessed the ACRs for the preceding five years",,,,,,

i.e. for the years 1999, 2000, 2001, 2002 and 2003 of all the 13 officers including the petitioner in the consideration zone and assessed five officers",,,,,,

â??fitâ?? for promotion to the rank of Superintendent of Police in CBI. The DPC has assessed the petitioner and three others â??unfitâ?? as they,,,,,,

did not meet the prescribed benchmark.,,,,,,

4. One Sri Raj Kumar Shukla, junior to the petitioner has been assessed as â??fitâ?? and recommended for promotion to the grade of Superintendent",,,,,,

of Police by the DPC.,,,,,,

5. Being aggrieved by the assessment of the DPC, the petitioner had filed an original application being O.A. No. 489 of 2006 before the Tribunal. He",,,,,,

had prayed for a direction to the respondents to grant him promotion to the post of Superintendent of Police, CBI with effect from the date his",,,,,,

immediate junior Sri Raj Kumar Shukla was promoted with all consequential benefits.,,,,,,

6. The Tribunal vide order dated 01.08.2010 passed in O.A. No. 489 of 2006

allowed the application of the petitioner. The operative portion of the order dated 01.08.2010 passed by the Tribunal is reproduced hereunder :-

Under the above circumstances, the assessment of the DPC in the meeting dated 30.11.2005 for the vacancies of the year 2005 so far as the same relates to the applicant, and the order conveyed through the impugned memo dated 13.02.2006 are set aside, and we direct the respondents that the "Good" entries and "Average" entry be communicated to the applicant within a period of one month from the receipt/production of copy of this order. On being communicated the applicant may make representation against the entries within one month thereafter, and the said representation would be considered within two months thereafter. If the entries are upgraded, the applicant would be considered for promotion by the Review DPC within three months thereafter. If the applicant gets selected for promotion, he would be promoted retrospectively from the date his junior, Shri Raj Kumar Shukla was promoted, he would however, be not entitled to pay and other allowances of the Supdt. Of police but would be considered for the benefit of re-fixation of pension and other retirement benefits.

7. In compliance with the order dated 01.08.2010 passed by the Tribunal in O.A. No. 489 of 2006, copies of the ACRs for the periods 01.01.2002 to 31.12.2002, 01.01.2003 to 31.12.2003, 01.01.2004 to 05.09.2004 and 06.09.2004 to 31.12.2004 containing the "Average" and "Good" entries were communicated to the petitioner by the CBI. Thereafter, the petitioner submitted his representation on 08.10.2010 for expunging adverse remarks and upgradation of the grading in his ACRs. The representation of the petitioner was considered by the Special Director, CBI. He upgraded the ACR grading from "Average" to "Good" for the year 2002 and rejected the appeal for upgrading the ACRs for the years 2003 and 2004. The decision of the Special Director was conveyed to the petitioner whereafter he again submitted a representation on 29.12.2011 addressed to the Director, CBI stating therein that though he had received a communication from CBI about the upgradation of his ACRs for the year 2002 but nothing has been heard thereafter about the action taken as well as consideration made for promotion in the Review DPC. He requested to consider his case,

and order for promotion.,,,,,,

8. Thereafter, the representation of the petitioner was considered and he was informed vide office memorandum dated 07.01.2013 that the competent" ,,,,,,

authority has rejected his representation for expunging the remarks in the ACRs for the years 2002, 2003 and 2004." ,,,,,,

9. Upon receipt of the aforesaid communication on 20.11.2013, the petitioner filed another original application vide O.A. No. 104 of 2013 before the" ,,,,,,

Tribunal seeking a direction to the respondents to grant him promotion to the post of Superintendent of Police, CBI from the date his junior Sri Raj" ,,,,,,

Kumar Shukla was granted promotion. The said original application has been dismissed by the Tribunal finding the same to be devoid of any merit vide ,,,,,,

impugned order dated 07.04.2017. ,,,,,,

10. Being aggrieved by the aforesaid order dated 07.04.2017 passed by the Tribunal, the instant writ petition has been filed by the petitioner." ,,,,,,

11. Mr. Amit Srivastava, learned counsel appearing for the petitioner submitted that the petitioner is entitled in law to be promoted as Superintendent" ,,,,,,

of Police, CBI with effect from 30.11.2005 in view of the entry in his ACRs from 1999 to 2003 being the preceding five years from the date of his" ,,,,,,

eligibility for grant of said promotion. He submitted that he cannot be discriminated with regard to his ACRs vis-À-vis one Sri R.P. Kaushal and Sri ,,,,,,

Ram Nath Azad, who have been promoted as Superintendent of Police, CBI having same remarks as the petitioner in the preceding five years. He" ,,,,,,

contended that having been granted remarks â??Goodâ?? for the years 2002 and 2003 and â??Very Goodâ?? for the year 2000 and 2001, the" ,,,,,,

petitioner is legally entitled to be promoted as Superintendent of Police, CBI from 30.11.2005 being the date Sri Raj Kumar Shukla was promoted. He" ,,,,,,

contended that the Tribunal has committed patent error in rejecting the prayer of the petitioner for grant of promotion vide order dated 07.04.2017. He ,,,,,,

argued that it is well settled that similar circumstanced employees are to be treated similar and without any discrimination. He urged that when a ,,,,,,

statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented" ,,,,,,

by fresh reasons otherwise an order which may be initially bad may be validated by additional grounds later when the matter is brought before the ,,,,,,

Court. In support of his submission, he has placed reliance on the judgment of

the Supreme Court in Mohinder Singh Gill & Anr. Vs. The Chief" ,,,,,,

Election Commissioner, New Delhi & Ors., since reported in AIR 1978 SC 851." ,,,,,,

12. Mr. Amit Srivastava, learned counsel for the petitioner further submitted that every State action must satisfy Article 14 of the Constitution and if it" ,,,,,,

is shown to be arbitrary, it must be struck down. The impugned action whereby the petitioner has been denied promotion as Superintendent of Police," ,,,,,,

CBI from 30.11.2005 is grossly arbitrary. Hence, the same is required to be struck down. In support of his submission, he has placed reliance on the" ,,,,,,

judgment of the Supreme Court in the matter of Kumari Shrilekha Vidyarthi & Ors. Vs. State of U.P. & Ors, AIR 1991 SC 537." ,,,,,,

13. Per contra, Mr. Bipin Kumar Sinha, learned counsel for the CBI submitted that even after upgradation of ACR of the petitioner for the year 2002" ,,,,,,

only three ACRs out of five considered in the DPC met the required benchmark. He contended that only one officer, namely, Sri Raj Kumar Shukla," ,,,,,,

junior to the petitioner, was considered in the DPC meeting held on 30.11.2005 and the DPC had assessed him fit and recommended his name for" ,,,,,,

promotion to the grade of Superintendent of Police as he met the prescribed benchmark i.e. "Very Good" in the ACRs of four years i.e., ,,,,,,

01.01.1999 to 01.07.1999, 2000, 2001, 2002 and 23.05.2003 to 31.12.2003. The gradings in the ACRs for the rest period from 02.07.1999 to 31.12.1999" ,,,,,,

and 01.01.2003 to 27.05.2003 was "Good". On the other hand, the grading of the petitioner for three years only i.e. 1999, 2000 and 2001 met the" ,,,,,,

prescribed benchmark "Very Good". Thus, the contention that his junior having same entries in the ACRs were promoted is incorrect. He" ,,,,,,

contended that as far as Sri R.P. Kaushal (UR) having "Good" remarks in the ACRs of 2001, 2002 and 2005 and Sri Ram Nath Azad (SC)" ,,,,,,

having "Good" remarks for 2000 and 2001 are concerned, their case for promotion was considered in the DPC held on 10.07.2006. In the said" ,,,,,,

DPC the ACRs for the preceding five years i.e. 2000 to 2004 were considered. Sri R.P. Kaushal (UR) was having the grading "Good" for the" ,,,,,,

year 2001 and from 01.01.2002 to 12.04.2002. The rest of the gradings were "Very Good" and met the prescribed benchmark. The gradings of" ,,,,,,

Sri Ram Nath Azad (SC) for the years 2000 and 2001 were "Good" and the remaining three years were "Very Good", which accordingly" ,,,,,,

met the prescribed benchmark. The grading of the petitioner for the years 2000 and 2001 were "Very Good" and the remaining three years i.e.,

2002, 2003 and 2004 were "Good". Thus, out of five ACRs considered in the DPC held on 10.07.2006, only two ACRs of the petitioner met the

prescribed benchmark. He contended that the averments made in the writ petition are misleading and the petitioner is not entitled for any relief.

14. We have carefully considered the rival submissions with reference to the records placed before us.

15. In the instant case, there were five vacancies of general category in the rank of Superintendent of Police, CBI under promotion quota in the year

2005. The names of the 13 Additional Superintendent of Police were considered in the meeting of the DPC on 30.11.2005 under the UPSC for

promotion to the post of Superintendent of Police, CBI. The minutes of the meeting of the DPC held on 30.11.2005 has been brought on record as

Annexure-R/1 to the counter affidavit. Annexure-1 to the said R/1 is the remarks on assessment of all the 13 officers, which reads as under :-

"ASSESSMENT FOR THE YEAR 2005 (NO. OF VACANCIES : FIVE):

Sl.No. Name of Officer(S/Shri) Assessment,

1. H.S. Chopra Unfit,

2. S.N.R.Dwarampudi Unfit,

3. S.S. Lakra Unfit,

4. K. Murlidhar As in sealed cover,

5. Rajani Ranjan Sahay Fit,

6. S.K. Kashyap Fit,

7. S.N. Saxena Fit,

8. M.K. Bhat Fit,

9. B.N. Sharma As in sealed cover,

10. D.R.S. Yadav Unfit,

11. Rajkumar Shukla Fit,

12. R.C. Choudhary } Not required to be assessed in view

of Department of Personnel and

13. V.A. Mohan } Training O.M. No. 35034/7/97-Estt.

(D) dated 8.2.2002.â??,.....

16. The DPC was informed of the provisions contained in the DOPT guidelines, circulated by the Department of Personnel and Training vide O.M.",.....

No. 22011/5/86-Estt(D), dated 10.04.1989. The relevant extract of the said instructions are as under :-",.....

â??3. (iii) â??6.2.1(e)- The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should",.....

make its own assessment on the basis of entries in the CRs, because it has been noticed that some times the overall grading in a CR",.....

may be inconsistent with the grading under various parameters or attributes.,.....

4. The Committee were also informed that in accordance with the instructions contained in para 6.3.1 of the DOP&T O.M. No. 22011/5/86-Estt. (D),",.....

dated 10.04.1989, read with subsequent O.M. No. 22011/5/91-Estt.(D) dated 27.03.1997 and O.M. No. 35034/7/97-Estt.(D) dated 08.02.2002, the",.....

bench mark for promotion in the present case is â??Very Goodâ??,.....

5. Attention of the Committee were also invited to the instructions contained in DOP&T O.M. No. 35034/7/97-Estt.(D) dated 08.02.2002, which inter-",.....

alia provides that â??the DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench mark and,.....

accordingly grade the officers as â??fitâ? or â??unfitâ? only. Only those who are graded â??fitâ? (i.e. who meet the prescribed bench mark) by the,.....

DPC shall be included and arranged in the select panel in order of their inter-se seniority in the feeder grade. Those officers who are graded,.....

â??unfitâ? (in terms of the prescribed bench mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in",.....

promotion among those who are graded â??fitâ?? (in terms of the prescribed bench mark) by the DPCâ??,.....

6. The Committee were apprised that taking into account the instructions/ guidelines, issued by DOP&T, as detailed above, the Commission in",.....

S.

No.", "Name of the

Officer", Year-wise grading of the ACRs,,,,

,S/Shri,1999,2000,2001,2002,2003

1,"Dayaram

Singh Yadav",VG,VG,VG,G,G

2,"Rajkumar

Shukla","VG (from

1.1.1999 to

21.6.1999)

& G

(from

2.7.1999 to

31.12.1999)",VG,VG,VG,"G

(from

1.1.2003 to

27.5.2003) &

VG

(from 20.7.2003

to

31.12.2003)

considered in accordance with law. Where the DPC has proceeded in a fair, impartial or reasonable manner applying the same yardstick and norms to",,,,,,

all candidates and there is no arbitrariness in the process of assessment by the DPC, the Court would not interfere. (vide State Bank Of India & Ors.",,,,,,

Vs. Mohd. Mynuddin [(1987) 4 SCC 486], Union Public Service Commission Etc. Vs. Hiranyalal Dev & Ors.[(1988) 2 SCC 242] and Badrinath Vs.",,,,,,

Government Of Tamil Nadu and Ors.[(2000) 8 SCC 395]),,,,,,

26. The petitioner failed to achieve the required benchmark. The reliance placed by the petitioner on the judgment of the Constitution Bench of the,,,,,,

Supreme Court in Mohinder Singh Gill (Supra) is of no help to the petitioner as the DPC has passed the order in accordance with the guidelines issued,,,,,,

by the DOP&T. It is not a case where the order has been passed on one ground and when it is validated while being judged, some fresh reasons have",,,,,,

been assigned.,,,,,,

27. In the absence of any allegation of malafide or bias against the DPC, there was no justification for interference in the order passed by the",,,,,,

respondents and the Tribunal dismissed the original application.,,,,,,

28. The petitioner has placed reliance on the judgment of the Supreme Court in Kumari Shrilekha Vidyarthi (Supra). In the said judgment, the Supreme",,,,,,

Court has held that the State must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. There is no quarrel",,,,,,

with the said proposition of law propounded by the Supreme Court. It is well settled position in law that the State action must not be susceptible to the,,,,,

vice of arbitrariness. However, there is nothing on record on the basis of which it can be said that the decision of the DPC in not recommending the",,,,,,

case of the petitioner for promotion to the post of Superintendent of Police, CBI was arbitrary.",,,,,,

29. In Anil Katiyar Vs. Union of India, (1997) 1 SCC 280, while setting aside the observation of the Central Administrative Tribunal, held as under :-",,,,,,

â??Having regard to the said confidential procedure which is followed by the Union Public Service Commission, we are unable to hold that the",,,,,,

decision of the DPC in grading the appellant as â??very goodâ? instead of â??outstandingâ? can be said to be arbitrary. No ground is, therefore,",,,,,

made out for interference with the selection of Respondent 4 by the DPC on the basis of which he has been appointed as Deputy Government,,,,,

Advocate. But, at the same time, it must be held that the Tribunal was in error in going into the question whether the appellant had been rightly graded",,,,,,

as â??outstandingâ? in the ACRs for the years 1990-91 and 1991-92. The observations of the Tribunal that out of the two â??outstandingâ? gradings,,,,,

given to the appellant one â??outstandingâ? grading does not flow from various parameters given and the reports entered therein, cannot, therefore,",,,,,

be upheld and are accordingly set aside.â??,,,,,,

30. In Union Public Service Commission vs L.P. Tiwari & Ors., 2016(12) Scale 278, the Supreme Court held as under :-",,,,,,

â??It is now more or less well-settled that the evaluation made by an expert committee should not be easily interfered with by the Courts which do,,,,,

not have the necessary expertise to undertake the exercise that is necessary for such purpose. Such view was reiterated as late as in 2005 in the case,,,,,

of U.P.S.C. vs. K. Rajaiah & Ors., reported in (2005) 10 SCC 15, wherein the aforesaid Rules for the purpose of promotion to the I.P.S. Cadre was",,,,,,

under consideration. Apart from the above, at no stage of the proceedings, either

before the Tribunal or the High Court or even before this Court, has" ,,,,,,

any allegation of mala fides been raised against the Selection Committee and the only grievance is that the Selection Committee erred while making ,,,,,,

assessment of the comparative merits of the respective candidates. While concluding his submissions, Mr. Rao had pointed out that the direction given" ,,,,,,

by the High Court to the appellant to hold a Review Departmental Promotion Committee was also erroneous since the Regulations provided for ,,,,,,

selection to be made not by a Departmental Promotion Committee but by a Selection Committee constituted as per the Regulations. Although, on" ,,,,,,

behalf of the respondents it has been urged that there was no bar which precluded the Tribunal from looking into the original ACRs of the respective ,,,,,,

candidates, what we are required to consider is whether it was at all prudent on the part of the Tribunal to have adopted such a procedure which" ,,,,,,

would amount to questioning the subjective satisfaction of the Selection Committee in preparing the Select List. ,,,,,,

From the submissions made and the materials on record, we are satisfied that the methodology which has been evolved and included in the" ,,,,,,

Regulations for grading the eligible officers have been religiously followed by the Selection Committee which did not call for any interference by the ,,,,,,

Tribunal. The High Court has merely followed the decision of the Tribunal without independently applying its mind to the facts involved.â?? ,,,,,,

31. In view of the ratio laid down by the Supreme Court in the aforesaid decisions, we are of the opinion that the DPC enjoyed full discretion to devise" ,,,,,,

its method and procedure for objective assessment of suitability and merit of the candidates being considered by it. The evaluation made by the DPC ,,,,,,

is based on sound reasoning. The said evaluation is not required to be interfered with in exercise of power of judicial review. ,,,,,,

32. For the foregoing reasons, we find no merit in this writ petition. It is dismissed, accordingly." ,,,,,,