
(2010) 10 DEL CK 0179

In the Delhi High Court

Case No : Writ Petition (C) No. 966 of 2010 and CM No. 11234 of 2010

Dr. (Smt.) Alaka Nanda Dash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16(2), 226

Citation : (2010) 10 DEL CK 0179

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : S.N. Sharma and R.A. Sharma, for the Appellant; Sarbjit Sharma, Central Govt. Sr. Counsel, Sumit Sharma, for UOI and Naresh Kaushik, for UPSC, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By way of the present writ petition, the Petitioner seeks the following prayers:

(i) direct the Respondents to produce before this Hon"ble High Court the Service dossier of the Petitioner and the DPC proceeding for its perusal.

(ii) issue a writ of mandamus to consider the case of the Petitioner for promotion to the Petitioner, if any ACR including the ACR for the period 2006-2007, which contain any adverse entry or entry below bench mark, has been taken into account by the DPC, after leaving out such ACR or such of the AC Rs which were not communicated. In meanwhile, 1 of the 12 existing vacancies may be left vacant during the pendency of the WP (C).

(iii) issue a writ of mandamus to grant the Petitioner promotion from the date the juniors have been promoted with all consequential benefits including arrears of pay, seniority in the higher post of DIG and eligibility service for further promotion.

2. The entire challenge by the Petitioner in the writ petition as well as in the rejoinder filed before us, is premised on allegations of discrimination and gender bias against her manifested by "non-communication of the possible adverse ACR/AC Rs considered to be adverse". The basic contention of the Petitioner is that despite her being the seniormost in the seniority/gradation list of the eligible Senior Commandants with the Central Industrial Security Force (hereinafter referred to as 'CISF') for promotion to the post of Deputy Inspector General (DIG), her candidature was not approved for such appointment.

The Petitioner has further challenged as arbitrary, the action of the Respondents in not communicating the adverse Annual Confidential Reports to her. It is her case that the adverse AC Rs have been intentionally withheld to grant promotion to the junior officers.

3. In the writ petition, the Petitioner has formulated the following three questions which according to her, arise for consideration in the present case:

(a) Whether a senior can be rejected by the Selection Committee for consideration for promotion based on ACR(s) which have never been communicated.

(b) Whether the Appointing Authority was legally right in withholding the contents of the ACR 2006-2007, even when the Petitioner informed him in writing that ACR for the year 2006-2007 might have been spoiled by her immediate superior who had practically threatened her that her ACR would be spoiled.

(c) As the omission and commission of the Respondents indicate a strong gender bias against the Petitioner and also mala fide intentions, whether the Appointing Authority should not have examined the matter prior to the approval of 3 junior officers from the opposite gender in view of guaranteed rights under Article 14 and 16(2) of the Constitution of India."

(Emphasis supplied)

4. So far as the Petitioner's career graph is concerned, it is an admitted position that the Petitioner was appointed to the post of Assistant Commandant Group 'A' on 21st August, 1989 in the Central Industrial Security Force (hereinafter referred to as 'CISF' for brevity) through the Civil Services Examination conducted by the Union Public Service Commission (hereinafter referred to as 'UPSC' for brevity) - the Respondent No. 3 before us. In the year 1995, the Petitioner was promoted to the post of Deputy Commandant and to the post of Commandant in 2001. The Petitioner was further promoted in 2004 to the post of Senior Commandant.

5. The Petitioner has submitted that there is bias in the department against her for the reason that she has been fighting for her right to be treated on equal footing with group 'A' officers who have been recruited through the UPSC in matters of service conditions or for reallocation. It is her assertion that legal

action in this behalf, initiated by her by way of Writ Petition (C) No. 5059/1997, has not been taken in the correct perspective by her seniors who are on deputation from their respective cadres and a departmental bias is harbored against her by her superiors. In the same tenor, the Petitioner has contended that being the first lady officer of the CISF and in a senior position, per force cases of sexual harassment alleged against senior officers are entrusted to her for inquiry. As per the writ Petitioner, her just and fair manner in dealing with such cases has also not found favour with the senior officers.

6. The writ Petitioner makes specific allegations against an officer, namely Shri Mithilesh Jha, DIG/NZ under whom she was working when posted as an AIG/NZ. The Petitioner has stated that the said superior officer had threatened the Petitioner that her career would be jeopardized by means of adverse or lukewarm endorsements in her Annual Confidential Report ('ACR' hereafter). In this behalf, reliance is placed before us on a communication dated 29th January, 2010 addressed by the Petitioner to the Director General of the CISF requesting protection of her ACR and conveying her apprehension that her promotion prospects were so threatened. The Petitioner had requested examination of the matter regarding her ACR for the year 2006-2007 premised on such apprehensions.

7. Mr. S.N. Sharma, learned Counsel representing the Petitioner has submitted that the DIG/Pers. had by a communication dated 1st February, 2010 conveyed to the Petitioner that her apprehensions were being examined. It has been urged that this communication was a camouflage for the illegal action of the Petitioner's rejection by the departmental promotion committee in its proceedings held on 19th January, 2010.

8. Based on this ground, the Petitioner has challenged the order dated 2nd February, 2010 whereby three persons were promoted by the Respondents. It has been vehemently contended on behalf of the Petitioner that the non-grant of promotion to the Petitioner is directly attributable to the gender as well as departmental bias by her senior officers and has the impact of her supersession. The entire challenge is premised on non-communication of the ACR/ACRs considered to be adverse so that she is deprived of promotion.

9. The Respondents have contested every allegation of departmental bias or gender bias in the counter affidavit. The Respondents have also disputed the Petitioner's contention that there was any adverse entry in her Annual Confidential Reports.

10. Repudiating the assertion of gender bias or departmental bias, the Respondents have submitted that the very fact that the Petitioner has been regularly promoted from the post of Assistant Commandant till the post of Senior Commandant would militate against the allegations which have been levelled in the writ petition. It has also been explained that the Petitioner stood posted to prominent units and was never posted to an area which could be considered a

hard area posting including the naxal infested states and never in any area in the north-eastern states. The Petitioner is presently stated to be posted in the National Industrial Security Academy at Hyderabad which is the premier training institute of the country. She was allowed a deputation posting at the Rajya Sabha Secretariat for a period of three years.

The Respondents have also disputed any bias on the ground that the Petitioner was a party to the earlier litigation.

11. We find that after the filing of the previous writ petition in 1997, the Petitioner has been promoted to the post of Commandant on 17th September, 2001 and again promoted on 13th July, 2004, to the post of Senior Commandant. There is not even a suggestion of mala fide or bias or delay so far as these appointments are concerned. These promotions also suggest that the Petitioner's feeling that bias is harboured against her because of the sexual harassment cases is also not made out by her career progression graph. No other ground or basis for gender or departmental bias is stated. There is therefore substance in the contentions of the Respondents that no bias of any kind is harboured against the Petitioner.

12. In view of the challenge in the writ petition on the ground of non-communication of adverse or such entries as would adversely impact the consideration by the DPC, we called upon the Respondents to produce the AC Rs of the Petitioner before us.

13. We find that there is no entry which could be considered even "lukewarm", let alone any adverse entry in the Petitioner's Annual Confidential Reports in her entire service record. The ACR for the year 2006-2007 is neither lukewarm nor adverse. In fact, the same contains positive remarks in respect of the Petitioner, all of which have been placed before the Departmental Promotion Committee which has scrutinised the Petitioner's ACR record for the purposes of selection.

14. It is also not disputed that the selection process is undertaken under the aegis of Union Public Service Commission. The Respondents have pointed out that the DPC, which was constituted by the UPSC, has considered the candidature of the Petitioner along with seven other eligible senior commandants.

15. We find that the Petitioner has wrongly stated that she was the seniormost senior commandant who was eligible and was considered by the DPC. So far as the officers in the order of seniority who were considered by the DPC are concerned, their particulars are as follows:

Sl. No. Name of the Officer (S/Shri) 1. S.C. Saklani 2. Utpal Chaudhary 3. Mahavir Singh 4. B.C. Mehta 5. Smt. Alaka Nanda Dash (Petitioner herein) 6. B.N. Bhattacharya 7. S.K. Hazra 8. S.R. Dahiya (SC)

16. The proceedings of the Departmental Promotion Committee have been placed before this Court. The writ petition does not contain even a whisper of contention that the DPC was not properly constituted or that its proceedings suffered from

any element of bias or mala fide. There is no challenge to the proceedings of the Departmental Promotion Committee in the writ petition.

17. Mr. Naresh Kaushik, learned Counsel appearing for the UPSC has submitted that even if a challenge had been laid, assessment by a departmental promotion committee, as in the instant case, is not lightly to be interfered with. Reliance has been placed on the pronouncement of the Supreme Court in (paras 20, 21, 24 & 27) R.S. Dass Ors. Vs. Union of India (UOI) and Others, Union Public Service Commission Vs. Hiranyalal Dev and Others, ; Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, in support of the contention that in the absence of statutory provisions, principles of natural justice requiring the selection Committee to record reasons for their decision are not applicable to the proceedings of the departmental promotion committee. It is well settled that the assessment by the departmental promotion committee is not in the nature of adjudication. The jurisdiction to make a selection vests in the selection committee.

18. As noted above, before us the writ Petitioner has not laid down any challenge to the constitution or proceedings of the DPC. Despite the stand taken in the counter affidavit as well, the Petitioner has merely reiterated the same allegations of gender and departmental bias against her in the rejoinder. In the facts and circumstances noticed by us hereinabove, the assertions of the Petitioner based on totally vague suggestions and general bias are unsupported by any material placed on record before us or by the service record of the Petitioner which has been produced before us. In any case, the recommendations for fitness for appointment are not by an intra-departmental promotion committee but by an independent departmental promotion, appointed by the UPSC.

19. We may also notice that the Petitioner was not the seniormost person who was assessed as unfit by the DPC. The Petitioner was placed at the fifth position as per the seniority list. Three officers namely Shri S.C. Saklani, Shri Utpal Chaudhary & Shri Mahavir Singh who were placed above the Petitioner at serial Nos. 1, 2 & 3 of the seniority list, were also considered by the DPC. Just as the Petitioner, they were also assessed as unfit for the appointment. Shri B.C. Mehta who was placed on serial No. 4 as per the seniority of the eligible candidates, senior to the Petitioner, was found fit and recommended for promotion by the DPC.

The Petitioner has chosen not to disclose these facts in the writ petition. A clever slant to suggest that the Petitioner stands singled out because of gender bias has been unfairly attempted in the writ petition.

20. So far as the scope of scrutiny by the court to a challenge to the selection process is concerned, our attention is drawn to the pronouncement of the Supreme Court reported at Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others, In this case, in para 27, the Supreme Court had reiterated the well settled legal position

that courts have to show deference and consideration to the recommendation of an expert selection committee consisting of distinguished experts in the field and that the high court would not sit as an appellate court on the recommendations made by such committee.

21. In *Union Public Service Commission Vs. Hiranyalal Dev and Others*, , on the issue of categorization by the selection committee in para 5, the court observed thus:

how to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee

It was further observed that:

The jurisdiction to make the selection vested in the Selection Committee. The Selection Committee had to make the selection by applying the same yardstick and norm as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials as "outstanding", "very good" "good" etc. This function had also to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules.

22. So far as promotion from the rank of Senior Commandant to Deputy Inspector General is concerned, it is explained that the selection is premised on the principle of "merit-cum-seniority". On this basis, the Respondents have disputed the Petitioner's claim of promotion based on seniority alone.

23. In *Union Public Service Commission v. Hiranyalal Dev and Ors.*(supra), the court also specifically observed that the concept of supersession is relevant in the context of promotion and not in the context of selection. This very principle would guide the consideration in the present case. The contention of the Petitioner that she stands superceded by the recommendations is therefore wholly devoid of merit.

24. It also needs no elaboration that the jurisdiction of this Court in exercise of its power of judicial review under Article 226 of the Constitution of India into proceedings of a departmental promotion committee is limited. A high level departmental promotion committee is appointed to consider the respective merits of the candidates. It assesses and considers their cases for promotion applying the same yardstick and norms qua all the names being considered by it for promotion. It is not open to this Court to sit as if in appeal over the assessment made by such committee. (Ref: *Smt. Nutan Arvind Vs. Union of India and another*, and *Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others*, .

25. Our attention has been drawn to the pronouncement reported at *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, wherein the court has stated thus:

9. It will thus appear that apart from the fact that the High Court has rolled the

cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

The same principles would guide the present consideration.

26. In the instant case, the DPC has scrutinized the records of the eligible persons placed before it and arrived at the following assessment:

Sl. No. Name of the Officer (S/Shri) Assessment 1. S.C. Saklani Unfit 2. Utpal Chaudhary Unfit 3. Mahavir Singh Unfit 4. B.C. Mehta Fit 5. Smt. Alaka Nanda Dash Unfit 6. B.N. Bhattacharya Fit 7. S.K. Hazra Fit 8. S.R. Dahiya (SC) Fit

27. In *Satya Narain Shukla Vs. Union of India (UOI) and Others*, , the court considered the issue as to whether reasons have to be recorded for empanellment and non empanellment of officer or officers. The court also considered the issue as to whether non empanellment of an officer with an outstanding service record would be arbitrary. In this regard, in paras 26 & 27, the court observed as follows:

26. Another contention urged by the Appellant is that the Appellant has an outstanding service record, and therefore, his non-empanelment is arbitrary. This Court has reiterated in *Samar Singh (supra)* that merely because an officer has an outstanding service record there is no automatic empanelment. After referring to para 14 of the Central Starling Scheme, this Court observed (vide para 12) as follows:

Apart from the record there are other matters that have to be considered, namely, merit, competence, leadership and flair for participating in the policy-making process and the need of the Central Government which is the paramount consideration. We are unable to hold that since the performance of the Respondent after his promotion as Additional Secretary had been found to be excellent and outstanding, the non-inclusion of his name from the panel by the

Special Committee must lead to the inference that there was no proper consideration of the merit, and suitability of the Respondent for empanelment by the Special Committee.

27. There is no merit in the contention that the non-empanelment of the Appellant is arbitrary, as urged.

In this judgment, the court clearly observed that it could only examine if the procedure for selection was adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and mala fides.

28. Mr. Naresh Kaushik, learned Counsel for the Respondent No. 3 also places reliance on the judgment of the Supreme Court reported at (paras 7 & 8) National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, wherein the court has authoritatively pronounced on the issue of recording of reasons for the decision of the selection committee as well as procedural fairness. In this regard, the court has observed thus:

7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has, however, referred to the decision of this Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, . That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil service. The decision in Capoor case was rendered on 26 September, 1973. In June, 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil services. The Capoor case cannot, therefore, be construed as an authority for the proposition that there should be reason formulated for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Dass Ors. Vs. Union of India (UOI) and Others, in which Union of India (UOI) Vs. Mohan Lal Capoor and Others, was also distinguished.

8. As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of

procedural fairness. The procedural fairness is the main requirement in the administrative action. The "fairness" or "fair procedure" in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection Committee did anything to the contrary. The High Court however, observed, that Dr. Kalyana Raman did not receive a fair and reasonable consideration by the Selection Committee. The inference in this regard has been drawn by the High Court from the statement of objections dated 18 February, 1980 filed on behalf of the Selection Committee. It appears that the Selection Committee took the stand that Dr. Kalyana Raman did not satisfy the minimum requirement of experience and was not eligible for selection. The High Court went on to state that it was some what extraordinary for the Selection Committee after calling him for the interview and selecting him for the post by placing him second, should have stated that he did not satisfy the minimum qualifications prescribed for eligibility the High Court the stand taken by the Selection Committee raises serious doubts as to whether the deliberations of the Selection Committee were such as to inspire confidence and re-assurance as to the related equality and justness of an effective consideration of this case. It is true that selection of the Petitioner and the stand taken by the Selection Committee before the High Court that he was not eligible at all are, indeed, antithetical and cannot co-exist. But the fact remains that the case of Dr. Kalyana Raman was considered and he was placed second in the panel of names. It is not shown that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards Dr. Kalyana Raman. The fact that he was placed second in the parcel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion.

29. In this regard, reference can usefully also be made to the pronouncement reported at Smt. Nutan Arvind Vs. Union of India and another, wherein the court held as follows:

6. The DPC which is a high-level committee, considered the merits of the respective candidates and the Appellant, though considered, was not promoted. It is contended by learned Counsel for the Appellant that one K.S. Rao was the officer at the relevant time to review the performance of the Appellant whereas in fact one Menon had reviewed it. The latter was not competent to review the performance of the Appellant and to write the confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessments of the respective candidates is made. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered there 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 write the confidentials 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.

30. Mr. Naresh Kaushik, learned Counsel for Respondent No. 3 has also placed the pronouncements of the Supreme Court reported at Mrs. Anil Katiyar Vs. Union of India and others, ; UPSC v. K. Rajaiah and Ors. 2005 (1) SCC 15; Purushottam Kumar Jha Vs. State of Jharkhand and Others, ; Union Public Service Commission Vs. L.P. Tiwari and Others, ; K.M. Mishra Vs. Central Bank of India, ; M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others, and Baljeet Singh Vs. Union of India (UOI) and Others, on the same questions.

31. In the given circumstances, the Petitioner's contention that she is a victim of gender or departmental bias is unsubstantiated and not supported by the record placed before us. Her submission that she stands singled out because of gender is also not made out. The consideration and recommendations by the UPSC have not been challenged in the writ petition. In view of the binding principles laid down in the judicial precedents noticed above, the Petitioner has been unable to make out any legally tenable ground of challenge to the order dated 2nd February, 2010.

32. It is noteworthy that during the pendency of the writ petition, an application being CM No. 11234/2010 was filed by the Petitioner pointing out that a Departmental Promotion Committee constituted by the UPSC was meeting on 22nd & 23rd August, 2010 at Chennai for making further recommendations for promotion to the post of DIG. By way of CM No. 11234/2010, the Petitioner had prayed for a direction to the Respondents not to declare the result of the proposed Departmental Promotion Committee. In the alternative, it had been prayed that a post be kept vacant for her promotion in case the writ petition was favourably decided. When this application was listed before this Court on 20th August, 2010, we had simply directed that anything done by the DPC shall be subject to the final outcome of the writ petition. We are today informed that the recommendations of the Departmental Promotion Committee so convened, also stand implemented and further appointments have been made. There is no substantive challenge to these appointments as well till date.

We therefore find no merit in this writ petition which is hereby dismissed.

CM No. 11234/2010

In view of the writ petition having been dismissed, this application does not survive for adjudication and is dismissed as such.