
(2002) 02 AP CK 0109

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13017 of 2001

Government of Andhra Pradesh

APPELLANT

Vs

Madanlal, IPS and Another

RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

All India Services (Confidential Roll) Rules, 1970 — Rule 8(2)

Citation : (2002) 2 ALD 512 : (2002) 1 ALT 767

Hon'ble Judges : V. Eswaraiah, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Government Pleader for Services-II, for the Appellant; M. Surender Rao, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The Government of Andhra Pradesh filed this writ petition to quash the order of the Central Administrative Tribunal Hyderabad Bench at Hyderabad made in OA No. 1568 of 1999 dated 19-10-2000. The 1st respondent-Deputy Inspector General of Police filed the said Original Application to quash or set aside the proceedings in G.O. Rt. No. 5810, dated 6-11-1997 holding that the delay in finalising the enquiry into the charges as arbitrary, unjust and illegal.

2. The Tribunal while remitting the case back to the authorities for reconsideration, set aside the decision of the respondents therein treating him as unfit for promotion, directed them to peruse those confidential reports of the applicant afresh which were placed before the Screening Committee which met on 28-6-1999 and make necessary corrections as warranted keeping in view the observations of the Supreme Court in U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, . After the above exercise is done, a review Screening Committee should meet and decide the case of the petitioner to the post of the Inspector General of Police in accordance with law. If the review Screening Committee makes him fit for promotion, then he should be treated as promoted from the date of his immediate junior promoted to the post of Inspector General

of Police.

3. Brief facts of the case are as follows:- The 1st respondent was selected for appointment in Indian Police Service during 1980 and was allotted to the cadre of Andhra Pradesh. He worked as Superintendent of Police, Khammam from 6-1-1994 to 7-1-1995. Three charges have been framed by the Government in G.O. Rt. No. 5810, GAD, dated 6-11-1997 against him. Additional Superintendent of Police and other subordinates with regard to hiring of the vehicles for Andhra Pradesh Assembly Elections held in the month of December, 1994 causing advantage to the owners of the vehicles and loss to the Government and paid less amounts to the owners of the hire vehicles than the actual figures shown in the receipts issued to them and some vehicles were two wheelers whereas they were shown as four wheelers and from out of the total amounts received Rs. 55,00,000/- from the Director General and Inspector General of Police for hiring private vehicles failed to account for an amount of Rs. 4,93,606/- etc., and he failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a member of Indian Police Service. The charge-sheet was served on the concerned and enquired into the irregularities said to have been committed by him along with other co-delinquents.

4. It is stated that as per the guidelines issued by the Government of India, a member of service who completed 18 years of service in cadre is eligible for promotion to the Supertime Scale 11 in the cadre of Inspector General of Police. As per the said guidelines issued by the Ministry of Home Affairs, Government of India, the Screening Committee, for the cases of IPS Officers for empanelling for promotion to the Supertime Scale 11 in the cadre of Inspector General of Police comprises of the Chief Secretary to the Government, Secretary In charge of the Home Department and Director and Inspector General of Police. The promotion to the Inspector General rank shall be considered on merit with due regard to the seniority as provided in Sub-rule (2a) of Rule 3 of Indian Police Service (Pay) Rules, 1954. Suitability of the Officers to hold Supertime Scale post shall be judged by the Screening Committee appointed for the purpose by evaluating their confidential records as a whole and general assessment of their work. According to the guidelines issued by the Government of India, the cases of the officers falling under the following should be brought to the notice of the Screening Committee :--

- (1) Government Servants under suspension,
- (2) Government Servants in respect of whom, a charge-sheet has been issued and disciplinary proceedings are pending; and
- (3) Government Servants in respect of whom prosecution for criminal charge is pending.

5. The Screening Committee shall assess the suitability of the officers coming within the purview of the circumstances mentioned above along with the order eligible candidates without taking into consideration the disciplinary case/criminal

prosecution, which is pending. Assessment of the Screening Committee including "unfit for promotion" and grading awarded by it will be kept in a sealed cover superscribed "findings regarding the suitability for promotion to the scale/grade of..... in respect of Sri....."

6. During 1999 the cases relating to 1980 batch of IPS Officers were considered by the Government for promotion to the Supertime Scale of IPS Officers in the cadre of Inspector General of Police. The case of the 1st respondent was also considered for promotion to the Supertime Scale in the cadre of Inspector General of Police and it was brought to the notice of the Committee that the disciplinary proceedings are pending against him. It appears that enquiry authority has submitted enquiry report and the charges framed against respondent No. 1 were reported to have been supplied along with a copy of the enquiry officer's report to the 1st respondent and he has also submitted his representation and his representation is under consideration of the Government.

7. The Screening Committee met on 28-6-1999 and considered the case of the 1st respondent along with other officers without reference to the disciplinary proceedings initiated against him and placed before the Committee in a sealed cover to be opened on the conclusion of the disciplinary proceedings against him. The Screening Committee considered his case on an overall assessment of his record of service and found unfit for inclusion in the panel of IPS Officers fit for promotion to the rank of Inspector General of Police.

8. The 1st respondent filed OA No. 970/99 before the Central Administrative Tribunal at Hyderabad Bench to call for the records relating to the Departmental Promotional Committee proceedings dated 28-6-1999 and direct the Government to open the sealed cover adopted by the Departmental Promotional Committee pertaining to the promotion to the rank of Inspector General of Police of 1980 batch of IPS Officers and promote him if the Screening Committee held on 28-6-1999 recommends for such promotion. The Tribunal disposed of the said OA, on 18-8-1999 directing the Government to promote the applicant to the rank of the Inspector General in accordance with the decision already taken by the Departmental Promotional Committee and implement the same by issuing posting order, if he is otherwise found eligible and his promotion as Inspector General of Police is always be subject to the result of the disciplinary proceedings. Pursuant to the said directions of the Central Administrative Tribunal, the Government opened the sealed cover containing the findings of the Screening Committee and found that the recommendations of the Committee is that the petitioner is unfit for inclusion in the panel of IPS Officers fit for promotion to the rank of Inspector General of Police in the Supertime Scale.

9. Aggrieved by the findings of the Screening Committee, the petitioner filed the OA No. 1568 of 1999 before the Central Administrative Tribunal Bench at Hyderabad praying:

(a) to call for the records relating to and connected with the G.O. Rt. No. 5810,

General Administration (SC-C) Department dated 6-11-1997 and quash or set aside the same holding that the delay in finalizing the action thereon is arbitrary, unjust and illegal.

(b) further call for the records maintained by the DPC, which met on 28-6-1999, declare that the applicant is entitled to be promoted at par with his juniors with all consequential benefits and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case.

10. He had given up the relief of prayer (b) as per the order of the Tribunal dated 15-10-2000 and restricted his relief to prayer (a) above.

11. The Tribunal by its order dated 19-10-2000 allowed the OA, setting aside the decision of the Government (Screening Committee) treating the applicant as unfit for promotion and further directed the Government to peruse the confidential reports of the 1st respondent which were placed before the Screening Committee which met on 28-6-1999 and make necessary corrections as warranted keeping in view the observations of the Supreme Court cited supra and prepare the confidential reports in accordance with the law laid down by the Apex Court. After the above exercise is done, a review Screening Committee should meet and decide the case of the applicant for promotion to the post of Inspector General of Police in accordance with law. If the Screening Committee makes him fit for promotion, then he should be treated as promoted from the date of his immediate junior was promoted to the post of Inspector General of Police in the State of Andhra Pradesh.

12. The learned Government Pleader submits that the decision of the Apex Court in U.P. Jalnigam and Ors. v. Prabhat Chandra Jain (supra), has no application to the facts of the case as the All India Service (Confidential Rolls) Rules are different from the rules applicable to the employees of the U.P. Jalnigam and the reporting authorities and reviewing authorities have followed the rules in vogue in accordance with law and it is not required to review and revise the system of writing of Annual Confidential Reports of All India Service Rules as directed by the Tribunal.

13. It is further submitted that as held by the Apex Court in Anil Kaliyar v. Union of India and Ors. 1997 (I) SLR 153 and National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, , that a Court or Tribunal cannot sit on the judgment over the selection made by the Departmental Promotion Committee which is comprised of senior and experienced officials. The records were prepared in accordance with the existing rules and procedures and the same was placed before the Screening Committee and the Screening Committee has considered the overall assessment of the records, which are properly prepared, and therefore, the Tribunal ought not to have arrived at the opinion that the Screening Committee should have been misled by the records. In the Original Application filed by the 1st respondent he has raised an apprehension that the members of the Screening Committee were prejudiced

against him on account of pending disciplinary proceedings. But the Tribunal having rightly held that the decision of the Screening Committee is not based on the disciplinary proceedings erred in setting aside the decision of the Screening Committee without any justification. It is further stated that the Tribunal travelled beyond the scope of the Original Application and granted relief, which was not asked for and arrived at the wrong conclusion.

14. On the other hand, the learned Counsel appearing for the 1st respondent submitted that though several of his batch-mates were given promotions in pursuance of the minutes of the Screening Committee meeting held on 28-6-1999, he was not given promotion and the result was kept in a sealed cover on the ground that the disciplinary proceedings case against him pertaining to the charges issued in G.O. Rt. No. 5810, dated 6-11-1997 has not concluded by that date and the 1st respondent shall not be blamed for not concluding the enquiry as his name was already considered for promotion to the post of IGP during the pendency of the disciplinary proceedings and the same cannot be taken as a ground for withholding promotion. Earlier, he has filed OA No. 970 of 1999 seeking a direction to open the sealed cover and to promote him as he was found fit by the Screening Committee but when the sealed cover was opened pursuant to the direction of the Tribunal, he came to know that Screening Committee declared that he was not found fit for promotion. Therefore, he was constrained to file OA No. 1568 of 1999 questioning the decision of the Screening Committee in holding that he was not fit for promotion. The learned Counsel for the 1st respondent further submits that the 1st respondent had no opportunity to make a specific complaint against any illegal entries, and therefore, the Screening Committee was legally bound to consider the entries made in Annual Confidential Reports.

15. The Tribunal looked into the confidential reports and noticed that for the period from 1-4-1998 to 30-9-1998, the Reporting Officer has graded the applicant as "average" and Reviewing Authority has agreed with him. For the period from 1-10-1998 to 31-3-1999, the Reporting Authority has graded him as "good" whereas the Reviewing Authority has graded as "average" i.e., down gradation of grading from "good" to "average" and Accepting Authority as accepted the same. With regard to the performance of the 1st respondent, the Reviewing Authority noted as "good". When the performance is good, the very reason for bringing down the gradation from good to average by the Reviewing Authority needs to be explained though the downgrading from "good" to "average" is not considered to be an adverse remark. The Tribunal further opined that the basic record is only one, the same is not prepared properly and hence it is not proper to reject the case of the 1st respondent as unfit for promotion on the basis of the basic record.

16. As per the Rule 2(b) of All India (Confidential Rolls), Rules, "Confidential Roll" means the compilation of the confidential reports written on a member of the Service and includes such other documents as may be specified by the Central

Government by general or special order, in this behalf. The Government of India specified the following documents to be included in confidential roll such as; letters of appreciation, copy of orders imposing penalties, copy of communication conveying displeasure, reprimand, record of final result of enquiry into the charges or allegations, copies of certificates regarding languages, copies of certificates regarding educational qualifications, copies of certificates regarding the training received, record about any books, articles and other publications brought out etc., to be mentioned in the Confidential Report. As per Rule 4, the confidential report shall be written by the Reporting Authority in such form as may be specified by the Central Government. The authority, which writes the confidential report, is termed as Reporting Authority. As per Rule 5, a confidential report assessing the performances, character, conduct and qualities of every member of the service, which shall be written each year by the Reporting Authority. Under Rule 6, confidential reports shall be reviewed by the Reviewing Authority ordinarily within one month of its being written by the Reporting Authority. The report is written by the Reviewing Authority. Under Rule 6-A, review of the confidential report by the Reviewing Authority shall be accepted with such modification as may be considered necessary by the Accepting Authority. Under Rule 8, where the confidential report contains an adverse remark, it shall be communicated to the member of the service in writing together with a substance of the entire confidential report by the concerned authority within two months of the receipt of the confidential report. Where the Reporting Authority or Reviewing Authority or the Accepting Authority records adverse remark, he shall record a note to the effect that the remark is an adverse remark. The question whether the particular remark recorded in the confidential report of member of service is adverse remark or not shall be decided by the Government under first proviso to Rule 8(2). As per explanation to Sub-rule (2) of Rule 8, "adverse remark" means a remark, which indicates the defects or deficiencies in the quality of work or performance or conduct of an officer, but does not include any word or words in the nature of Counsel or advice to the officer. A member of service may represent to the Government against an adverse remark communicated to him and the Government shall consider, in consultation with the Reporting and Reviewing Authority, the representation and pass orders either rejecting the representation or toning down the remark or expunging the remark.

17. It is contended by the learned Government Pleader that review of the confidential report modifying the gradation and finally accepted by the Accepting Authority from "good" to "average" is not an adverse remark, and therefore, it need not be communicated. It is further contended that the Screening Committee after taking into consideration the totality of the confidential report of the 1st respondent arrived at the conclusion that he is not fit for promotion to the post of Supertime Scale in the cadre of Inspector General of Police.

18. It is pertinent to note that the Central Government specified the forms of the confidential reports to be written by the Reporting Authority under Rule 4 of the

said Rules. Form No. II is prescribed for confidential report for Indian Police Service (Supertime Scale). The Reporting Authority shall maintain personal data at Part-I, description of the duties, targets and medals at Part-II, nature of work attributes, traits/ special abilities at Part-III, health integrity, general assessment and grading at Part-IV. Part-V relates to the remarks of the Reviewing Authority. After the review, the remarks of the Accepting Authority shall be stated at Part-VI. There is a column in Part-IV and Part-V in respect of gradation that an officer should not be graded outstanding unless exceptional qualities and performance have been noticed. Grounds for giving such a grading should be clearly brought out. The Reporting Authority in Part-IV general and Part-V remarks for Reviewing Authority with regard to the gradation of outstanding/very good/good/ average an officer shall not be graded outstanding unless exceptional qualities and performance have been noticed; grounds for giving such grading should be clearly brought out.

19. "Adverse remark" means a remark, which indicate the defects or deficiencies in the quality of work or performance or conduct of an officer but does not include any word or words in the nature of Counsel or advice to the officer. As per counselling of the Reviewing Authority, gradation given by him as "average" from "good" graded in general by the Reporting Authority, which cannot be treated as an adverse remark, and therefore, there was no need or requirement to communicate the same to the concerned under the rules. The gradation noted by the Reviewing Authority has been accepted by the Accepting Authority and it was not an adverse remark. The reasoning of the Tribunal that the Reviewing Authority having noted the performance of the 1st respondent as "good" in the confidential report for the period ending from 1-9-1998 to 31-8-1999 the same Reviewing Authority is bound to give the grading as "good" only, and therefore, gradation given by the Reviewing Authority from good to average is a downgrading one which requires an explanation. The said observation of the Tribunal is illogical, unreasonable and without any justification. Performance may be a good but on an overall assessment of his record the gradation may be average. On the overall consideration of the record, the gradation will be given by the concerned Reporting Authority or Reviewing Authority as the case may be and the view taken by the Reviewing Authority grading him as average for the period ending from 1-10-1998 to 31-3-1999 cannot be treated that it is an adverse remark. The Reviewing Authority, after perusal of the report, made his remarks in Part-V and then gave a gradation and no separate grounds or reasons are required to be written, as the officer has not been graded as "outstanding".

20. In *U.P. Jalnigam v. Prabhat Chandra Jain* (supra), the Apex Court while explaining the observations of the High Court with regard to the Nigam Rules whereunder an adverse entry is required to be communicated to the employee concerned but not downgrading of an entry. The Apex Court held that "..... if the graded entry is of going a step down, like falling from "very good" to "good" that may not ordinarily be an adverse entry since both are positive grading.....". Considering the rules of Jalnigam, the Apex Court held that no reasons for the

change is mentioned for downgrading and the downgrading was reflected by a comparison, and therefore, the judgment of the High Court was confirmed. In the very same judgment, an example has been given that if an employee legitimately had earned outstanding report in a particular year which in a succeeding one and without his knowledge he is reduced to the level of satisfactory without any communication to him, it would certainly be an adverse remark and affect him at one or other stage of his career. But the graded entry is of going step down like falling from one "very good" to "good" that may not ordinarily be an adverse entry since both are positive grading. In the instant case, the rules are different and the down gradation is only by one step and in the view of the remarks of the Reviewing Authority the 1st respondent is graded as average but whereas in the general view of the Reporting Authority his view was good i.e., one step higher but after review by the Reviewing Authority, Accepting Authority also accepted the same as average and entered in the confidential roll and the same is not an adverse remark. The petitioner has not questioned the gradation and his prayer was only to quash the disciplinary case pending against him.

21. The Tribunal travelled beyond the scope of the prayer made in original application and sat over the decision of the review committee by setting aside the decision of the review committee.

22. The Tribunal erred in sitting over the decision of the Screening Committee in setting aside its decision, as held by the Apex Court in *Anil Katiyar v. Union of India* 1997 (1) SLR 153 (supra), that the Tribunal is not expected to play a role of an appellate authority or umpire in the acts or the proceedings of the Departmental Promotional Committee and that it would not sit in the judgment over the selection made by it unless the selection is either as being vitiated by mala fides or on the ground of being arbitrary. It is not the case of the 1st respondent in the instant case also that the consideration by the Selection Committee was vitiated by mala fides. No allegations have been made attributing the mala fides and it cannot be said that the DPC has not taken the gradation of average alone of the Reviewing Authority for the period from 1-10-1998 to 31-3-1999 while considering the case of respondent No. 1 for promotion and as a matter of fact the Departmental Promotion Committee has not taken into consideration the disciplinary proceedings pending against him. Considering the over all assessment of his record, the DPC came to the conclusion that the 1st respondent is not fit for promotion. The Tribunal erred in setting aside the decision of the Screening Committee.

23. In *State of U.P. v. Yamuna Shanker Mishra* 1997 (2) SLR 311, the Hon'ble Supreme Court while considering a case where the Tribunal as well as the High Court held that the remarks made by the Secretary, Food and Civil Supplies, were due to malice and they smack of arbitrariness but the Apex Court held that when the entries were made, the vigilance enquiry was pending against the officer therein, and therefore, adverse remarks came to be made. The findings

recorded by the Tribunal of malice and arbitrariness on the part of the Secretary as affirmed by the High Court are not warranted, and therefore, the adverse remarks cannot be said to be a smack of arbitrariness. In the instant case, there are no adverse remarks at all and the decision of the Screening Committee in finding that the 1st respondent is not fit for promotion to the rank of Inspector General of Police cannot be said that it is only based on the gradation given by the Reviewing Authority for the period from 1-10-1998 to 31-3-1999.

24. In *Ramachandra Raju v. State of Orissa* 1994 (5) SLR 199, the Apex Court observed that the appellant therein was a lecturer appointed in 1965 in a private college which was subsequently taken over by the Government in 1971 and he was a Principal for the year 1987-88 and he made a representation to the Government stating that one Mr. U.C. Mohapatra made adverse comments for the period from 1-4-1987 to 21-2-1988 and thereupon he submitted his representation alleging that remarks were made due to mala fides and personal vendetta by the Principal and in the meanwhile, he was promoted as a Reader but he was compulsorily retired from the service rejecting his representation based on the adverse remarks. The records disclose for the year 1973-74 to 1986-87, no adverse remarks against him but for the year 1987-88, adverse remarks were entered. For the subsequent years also, his performance was found satisfactory to fair till the year 1991. Only for the year 1987-88, adverse entry was made in his confidential report. In those circumstances, the Apex Court found that the adverse entry was made without any reason.

25. In the case of *State of U.P. v. Narendra Nath Singh VI* (2001) SLT 352, the Superintending Engineer approached the High Court stating that his case was not considered for promotion to the post of the Chief Engineer, Level-II based on the downgraded entries made by the reviewing officer which was accepted by the Accepting Authority in the annual confidential report and he prayed for quashing of such down graded entries and for afresh consideration of his case for promotion. The writ petition filed by him was allowed and downgrading entries were quashed directing to consider his case for the post of the Chief Engineer, Level-II. The Government filed civil appeal before the Apex Court, and the Apex Court held that the downgrading entries given by the Reporting Authority which were either from excellent or outstanding but the entries downgrading by the Reviewing Authority from excellent or outstanding to satisfactory or good is without any justification and without any reasons supporting such downgrading. In those circumstances, the Apex Court while setting aside the judgment of the High Court directed to reconsider the matter afresh. The facts in the aforesaid case relate to the promotion to an Engineer but does not relate to the Indian Police Service and the gradation was more than two steps down which was given by the Reviewing Authority without assigning any reason, and therefore, the facts of the aforesaid case have no application to the facts of the present case. However, the petitioner has not challenged the Annual Confidential Report and the gradation given by the Reviewing Authority, and therefore, no relief can be granted to the 1st respondent. Viewed from any angle, the 1st respondent is not

entitled for any relief as granted by the Tribunal and the Tribunal erred in granting such a relief, which requires to be corrected by this Court under its certiorari jurisdiction.

26. Accordingly, we set aside the order of the Tribunal, but however, we direct the Government to dispose of the disciplinary case pending against the 1st respondent as expeditiously as possible preferably within a period of 3 months from the date of receipt of a copy of this order.

27. Accordingly, the writ petition is allowed. No order as to the costs.