

(2014) 05 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 733 Of 2008 and CMA Nos. 3597/2011 and 494/2014

Kasturi Lal Bhagat

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Citation : (2014) 3 JKJ 428

Hon'ble Judges : M.M. Kumar, C.J.;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : D.C. Raina, Sr. Advocate and Anil Verma, Advocate for the Appellant; Gagan Basotra, AAG, J.A. Hamal, vice and Basit M. Keng, Advocate for the Respondent

Judgement

Dhiraj Singh Thakur, J.—The present writ petition has been preferred challenging the order dated 10th August, 2007, passed by the Central

Administrative Tribunal, Chandigarh Bench, whereby the original application filed by the petitioner, seeking relief of constitution of Review DPC

for his selection and induction in IPS with effect from 1998 and consequently allotting 1994 as the order of allotment, has been rejected. With a

view to understand the controversy in correct perspective, it is necessary to give brief background of the material facts as emerge from the records.

The petitioner was selected as a Deputy Superintendent of Police on 21st of February, 1984 under the reserved category of Schedule Caste and

subsequently appointed as Superintendent of Police in the year 1994 in his own pay and grade. It is stated that even when his service record was

excellent, his name did not figure in the list of 20 officers inducted into IPS vide

notification dated 20th March, 2000. It was urged that the APRs of the petitioner for the years 1997-98, 1998-99, 1999-2000 which were rated 'Very Good' and 'excellent' by the initiating/reviewing authorities were downgraded to 'Good' and 'Average' by the Accepting Authority without assigning any reason for the same.

Representations filed against the down grading of APRs were favorably considered and upon reconsideration of the entire matter, the APRs of the petitioner were up-graded by virtue of following orders issued by the Government vide Government order Nos.

(a) Home 291 (P) of 2002 dated 11.06.2002 for the year 1997-98.

(b) Home-292 (P) of 2002 dated 11.06.2002 for the year 1998-99; and

(c) Home-230 (P) of 2002 dated 22.04.2002 for the year 1999-2000.

The up-gradation of the APRs of the petitioner were from 'Good' and 'Average' to 'Very Good' and 'Excellent' respectively.

It is stated that, in the meantime, by virtue of notification dated 29.08.2002, the petitioner was appointed IPS and was allocated the Jammu &

Kashmir Cadre in terms of Rule 5(i) of the IPS Service (Cadre) Rules, 1954.

It is further stated that by virtue of order dated 6th February, 2003, the petitioner was assigned 1997 as the year of allotment as against 1994, and

being aggrieved thereupon, a detailed representation was made to the respondents on 25.07.2003 which was never considered.

Being aggrieved of the non-consideration and failure of the respondents, the petitioner invoked the jurisdiction of Central Administrative Tribunal,

seeking the following relief:

Treat the applicant having been selected and formally inducted in the list of 1998 of Indian Police Service (IPS) officers and consequently to allot

as 1994 as year of allotment.

(i) By directing the respondents to review the minutes/proceedings of the select list for the year 1998 of Indian Police Service (IPS).

(ii) By directing the respondents to include the name of the applicant in the Notification dated 9-3-2001 as well as Notification No. 1-

15011/13/2001-IPS dated 30-1-2003.

(iii) By directing the respondents to place the applicant at appropriate place in the aforementioned list.

By directing the respondents to consider the case of the applicant purely on the basis of seniority list of Dy. S.Ps and APR's of the applicant as provided under rules.

The Central Administrative Tribunal by virtue of the order impugned dismissed the original application of the petitioner, inter alia, by holding as under:

6. We have heard Shri D.C. Raina Id. Counsel for the applicant and Shri Namit Kumar and Shri B.S. Salathia, Id. Counsels for respondents and have carefully examined the pleadings and documents on record.

7. The main issue which needs our consideration is whether any improvement made in the ACRS of an officer at a later point of time would require

re-opening of the selection process for induction into an All India Service, like IPS which was done on the basis of the reports as were available at

the time when Selection Committee meeting was held. For proper adjudication of this issue, it would be worthwhile to mention here the procedure

which is followed by Selection Committee, Which is held under the Chairmanship of a Member of the UPSC and has senior officers of Govt. of

India and the State Government as its Members. The ACR folders are individually examined by all the Members with special reference to the five

reports, immediately preceding the year for which the Select List is to be made. Each Member, after going through the reports in detail, including

the grading given at various levels, makes his own assessment about the grading of that particular year. Thereafter, each Member makes the overall

assessment of various officers in the consideration zone. Finally, a discussion takes place amongst all the Members and consensus is arrived at

about the overall grading to be assigned to an officer. In this kind of procedure, if an officer has been assessed as 'Outstanding' or 'Very Good' by

the Reporting and the Review Officers, even if the Accepting Officer downgraded his report to 'Good' or 'Average' without assigning any reason,

does not mean that the Selection Committee takes such a report to be 'Average'/'Good' for the purpose of making overall assessment of record of

the officer.

8. We would now consider the effect of ordering Review Selection Committee Meeting in case the ACRs of some officer are improved on the

basis of representations. It is not uncommon that State Service Officers are able

to get their ACRs improved at much later stage with change in the political set up in the State Governments. If such improved ACRs would entitle a person to get direction to hold a Review DPC, it would lead to lot of uncertainty about the seniority amongst the officers, besides being against the rules which have no provision for holding Review DPC. Since a Review DPC would lead to a change in seniority of those who have already been inducted, we find force in the contention of the respondents that in this OA the applicant should have impleaded all those officers over whom he wants his seniority to be fixed and the O.A. is suffering from non-joinder of necessary parties.

9. As per the rules and the guidelines for induction of State Service Officers to the All India Service, it is the record of the officers as it exists at the time of holding of the Selection Committee Meeting which is relevant. If there is a pending representation against remarks recorded in some of the ACRs, the Selection Committee Meetings are sometimes postponed so that the pending representations are decided before taking a final decision about such induction. This provides necessary safeguard against any injustice likely to be caused to a person on whom adverse reports have been written and who has represented against such adverse reports.

10. This Court is not aware as to what were the facts of the cases of A.S. Lone and Rouf-ul-Hassan in which the State Govt. may have decided to hold a meeting of the Review DPC. However, in this case we find no justification for issuing any directions to respondents to hold a meeting of the Review DPC to consider the case of the applicant for induction into IPS from an earlier date and consequent allotment of an earlier year to him than the year which has now been allotted to him.

11. We find no merit in this O.A. It is hereby dismissed. No order as to costs.

2. It is against this order dated 10th August, 2007, that the present petition has been filed before this Court.

3. Objections have been filed on behalf of official respondents 1, 2 and 6, wherein the stand taken is that the selection has been made in a fair and objective manner on the basis of the relevant records by following the relevant rules and regulations and, therefore, it was urged that the same requires no interference. A further objection has been raised that the petitioner has failed to array all those officers over whom he wanted his

seniority to be fixed and in the absence of such officers, the petition was not maintainable. It was urged that the petitioner was duly considered by

the Selection Committee on the service records made available by the State Government which subsequently culminated in the approval of the

select list resulting in appointments by Government of India, Ministry of Home Affairs, under the provisions of IPS Promotion Regulations. It was

further urged that the Promotion Regulations governing promotions did not provide for suo moto review of the selection already made and

approved by the Commission and already acted upon by the Government of India.

4. Heard the learned counsel for the parties.

5. The service, that is, the Indian Police Service is governed by the Indian Police Service (Recruitment) Rules, 1954.

Rule 4(1) of the Rules, envisages recruitment to the Service inter alia, by promotion of substantive members of a State Police Service.

Rule 6 provides for appointment to the Service by the Central Government and prohibits appointment except after recruitment by one of the

methods provided in Rule 4.

Rule 9 envisages recruitment by promotion from amongst the substantive members of a State Police Service in accordance with the regulations as

the Central Government may, after consultation with the State Governments and the Commission, from time to time, make.

6. The Central Government, accordingly, framed the Indian Police Service (Appointment by Promotion) Regulations, 1955.

Regulation 3 envisages constitution of a Committee, whereas, Regulation 5, inter alia, envisages preparation of a list of such members of the State

Police Service, by the committee, as are held by them suitable, for promotion to the Service.

Regulation 6 envisages the list prepared in terms of Regulation 5 shall then be forwarded to the Commission by the State Government along with

records as reflected in the said regulation.

Regulation 7(3) envisages approval by the Commission which shall thereafter form the select list of the members of the State Police Service.

After obtaining the observations in terms of Regulation 6(A) final Regulation 9 provides for appointment to the Service by the Central Government.

7. In the background of the aforesaid statutory provisions, it will be seen that

admittedly the APRs of the petitioner for the years 1997-98, 1998-99, 1999-2000 were upgraded to 'Very Good' and 'Excellent' from 'Good' and 'Average'. Undoubtedly, the Selection Committee envisaged under the Rules and the Regulations (supra) would have considered the case of the petitioner on the basis of the APRs which would have been forwarded before being upgraded. It is precisely for that reason that the petitioner is now agitating his right before this Court that once his APRs were upgraded, he would have a right of consideration based upon those upgraded APRs along with others whose names figure in notification dated 9th March, 2000 and who were so inducted in IPS in 1998.

8. The legal position with regard to rights of a person after expunction of adverse remarks is no longer *res integra*, In *R.K. Singh v. State of U.P.*

& Ors, 1991 Supp (2) SCC 126, the court held as under:

After hearing learned counsel for the parties and having regard to the facts and circumstances of the case we are of the opinion that this appeal

must succeed. There is no dispute that during the pendency of this appeal the appellant's representation against the adverse entries has been

allowed and these entries have been expunged from his service record. Since the adverse entries were expunged the State Government by its

order dated January 24, 1991 granted Selection Grade to the appellant with effect from the date he takes over charge. We fail to appreciate the

view taken by the State Government. Once the adverse entries awarded to the appellant were expunged the appellant is entitled to Selection

Grade with effect from January 1, 1986 the date on which he was eligible for grant of Selection Grade. We, accordingly, allow the appeal, set

aside the order of the Central Administrative Tribunal and modify the order of the State Government dated January 24, 1991 and direct that the

appellant shall be treated in Selection Grade with effect from January 1, 1986 and he will be entitled to all other consequential benefits with effect

from that date. As regards appellant's further promotion, he will be considered for promotion in accordance with Rules.

9. Recording of adverse entries in APRs for malafide reasons or reasons extraneous to the performance of an employee cannot prejudicially effect

the rights of a person especially when the same are either expunged or upgraded. Any supersession of an employee on account of such adverse

APRs would create a right in favour of such an employee post expunction of such adverse remarks and their consequent upgradation. In such an eventuality, the employee concerned would be entitled to a consideration for promotion with retrospective effect and the argument that such a benefit cannot be granted in his favour as it would adversely effect the seniority position of those who have already got the benefit on account of his supersession is an argument which is totally untenable in law.

10. However, expunction of adverse entries or upgradation of APRs by itself does not warrant automatic promotion, and in this case induction into

IPS. Reference in this regard can be made to the Apex Court judgment in Chandra Gupta, I.F.S. Vs. The Secretary, Govt. of India, Ministry of

Environment and Forests and others, , paragraph-16 whereof is reproduced as under:

16. Mere expunction of remarks itself will not make the appellant more meritorious. The ratio of the judgment of this Court in State of Mysore

and Another Vs. Syed Mahmood and Others, will apply. Unless and until, therefore, the appellant proves that after expunction of remarks he had

a more meritorious record than these respondents, he cannot succeed. In any event, in so far as the review is concerned the Department

Promotion Committee considered the case of the appellant after the expungement and directed that he might be promoted prospectively to the

post of Chief Conservator of Forests. The appellant cannot have any grievance;

The concerned Selection Committee would have to consider the effect of the upgradation of the APRs of the petitioner or the process of selection

conducted by it resulting into Notification dated 9th March, 2000. It is just possible that despite having succeeded in getting his APRs upgraded

from 'Average' and 'Good' to 'Very Good' and 'Excellent', the petitioner might still not succeeded and may be below those who already find a

place in the select list and subsequently have been appointed by Notification dated 9th March, 2000. In that event no benefit would be available to

the petitioner, however, the entire process has to be gone through by the Selection Committee once again.

11. The second issue which arises for consideration is whether a Review DPC can be ordered to be constituted in light of the objection that there

is no specific provision for constitution of Review DPC especially after entire

selection process is finalized. In this regard it is clear that there is no specific prohibition for ordering such a Review DPC when on the face of it this Court is convinced that there is material on record to order the convening of the Review DPC in view of the fact that refusal to pass such an order would cause great prejudice to the interest of the petitioner despite the fact that he succeeded in getting his APRs upgraded for the relevant time which period was under consideration by the DPC. In any case, the petitioner has placed on record guidelines dated 15th January, 1999 issued by the Ministry of Home Affairs, Government of India, with regard to constitution of Special Review in case where adverse remarks of officers are expunged as a result of his representation, which reads as under:

Special review may be done in cases where adverse remarks in an officer's annual confidential reports are expunged subsequently as a result of his representation/memorial.

12. For the reasons mentioned above, we find merit in the present writ petition. Consequently, the order passed by the Central Administrative Tribunal, Chandigarh Bench, dated 10th August, 2007 is set-aside. The respondents are directed to constitute a Review DPC who shall review the case of the petitioner based upon his upgraded APRs for the years 1997-98, 1998-99, 1999-2000 and make recommendations accordingly. The process shall be concluded within three months from the date of this order. In case, upon such a review, the Committee finds that he makes up the merit, then he be given the benefit of induction with effect from 1998 along with similarly situate officers who were similarly inducted vide notification dated 9th March, 2000. Disposed of accordingly.