

(2018) 11 SHI CK 0036

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 7177, 9009 Of 2012

P.C. Patial

APPELLANT

Vs

Union Of India And Other

RESPONDENT

Date of Decision : 16-11-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) LabIC 344

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Sunny Dhatwalia, Shashi Shirshoo, K.D. Sood, Shubham Sood

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Since common questions of law and facts are involved in these petitions, the same were taken up together for hearing and are being disposed of by a common judgment. However, in order to maintain clarity, facts from CWP No. 7177 of 2012 are being taken into consideration.

2. This is the third round of litigation between the parties. The sole question involved in these petitions is whether the petitioners could be superannuated at the age of 58 years. The earlier writ petition filed by the petitioner being CWP No.855 of 2007 was disposed of by this Court vide judgment dated 13th November, 2007, the operative portion whereof reads thus:-

"Keeping in view all the facts and circumstances of the case, we are of the considered view that it was the duty of the Screening Committee to assess the suitability of the petitioner. The Board of Governors had no right or authority to hold that the petitioner be superannuated at the age of 58 years without assessing his suitability. We accordingly set-aside the decision of the Board of Governors. The petitioner completes 58 year of age this month. Therefore, we direct that the Screening Committee shall assess the suitability of the petitioner

for continuation in service beyond 58 years upto 60 years as per established norms and if the petitioner is found so suitable he shall be continued in service till the age of 60 years. The Screening Committee may take its decision by 25th November, 2007. In case the Screening Committee does not decide the matter by the said date the petitioner shall be allowed to continue in service till the Screening Committee and consequently the Board of Governors take a decision in the matter."

3. The cases of the petitioners were thereafter considered by the Committee constituted by the respondents on 24.11.2007, however, the same was held to be not in consonance with the Office Memorandum dated 12.11.2003 and accordingly its recommendations were ordered to be set aside in the second petition that came to be filed by the petitioners, lead being CWP No.12 of 2008 which was disposed of with the following directions:-

"5. Accordingly, in view of the observations and discussions made hereinabove, the petitions are allowed. The Committee constituted on 24.11.2007 and the recommendations made by it are set aside. Respondents are directed to re-constitute the Committee as per office memorandum dated 12.11.2003, within a period of four weeks from today and consider the case(s) of the petitioner(s) within a further period of four weeks thereafter. In case the petitioner(s) are found suitable, they shall be entitled to all the consequential benefits, as prayed for. The question, what age the petitioner(s) and similarly situate persons will retire, is kept open. The pending application(s), if any, also stands disposed of."

4. It is not in dispute that in compliance to the aforesaid directions, the cases of the petitioners have been considered and rejected vide order dated 19.01.2012 which is the subject-matter of these petitions and has been assailed on various grounds as taken in the memo of petitions.

5. As observed earlier, the sole question to be determined in these cases is whether the petitioners were to be retired at the age of 58 years on superannuation in accordance with the service conditions issued by respondent No.1 and duly placed and approved by the Board of Governors, NIT, Hamirpur, in its third meeting held on 28.04.2004 for its adoption and implementation in the institute for non-teaching employees or whether the petitioners had indefeasible right to serve till the age of 60 years despite the Screening Committee having rejected their cases for extension in their age of superannuation from 58 years to 60 years in compliance to the directions passed by this Court in CWP No.12 of 2008 (supra).

6. The respondents in their reply have annexed the minutes of the Screening Committee that was held pursuant to the directions passed by this Court on 21st November, 2011 and the same reads as under:-

"MINUTES OF THE SCREENING COMMITTEE MEETING HELD ON 9-1-2012 at 10 a.m. IN THE OFFICE OF THE REGISTRAR, IIT DELHI

The committee constituted by NIT Hamirpur vide Office Order No.NIT/HMR/Admin/CWP/383/2008-6434-39 dated Dec. 19, 2011 in pursuance of the orders of Hon'ble High Court of Himachal Pradesh, Shimla met in the Office of Registrar, IIT Delhi on 9-1-2012. This committee has been constituted to re-consider the cases of S/Sh. Narender Kumar, Jr. Assistant, Santosh Kumar, Technician Gr. I, P.C. Patial, Sr. Assistant for assessing their suitability to be allowed to serve upto the age of 60 years.

The committee perused the earlier minutes of the Screening Committee dated 24-11-2007 and observed that the assessment was made on a total score of 100 with split up as under:-

(a)

ACR for the preceding 3 years

: 60 marks

(b)

Personal strong skills

: 15 marks

(c)

Status of health

: 10 marks

(d)

Computer skills and related

: 15 marks

knowledge

The cut-off marks for declaring the candidate suitable/fit for retention in service upto the age of 60 years was 60% i.e. a score of 60 out of 100.

The petitioners also appeared before the committee to present their case in person. The committee interacted with the petitioners on following broad issues:-

(a) Sharing with the petitioners their earlier score under various assessment heads, the petitioners were advised to offer their comments/objections to this assessment, if any.

(b) To bring to the notice of the committee any other point(s) that may strengthen their case.

The assertions made by various petitioners are reproduced hereinunder:-

(i) Sh. Narender Kumar: He stated that though there was no Doctor/medical

specialist or computer expert on the committee, evaluation of status of health and computer skills has also been done by the Screening Committee. He also objected to the presence of some members of staff during the process of screening. He also asserted that such extension in service beyond 58 years and upto the age of 60 years should have been allowed without any scrutiny.

(ii) Sh. P.C. Patial & Sh. Santosh Kumar: They neither raised any objection about the earlier screening process nor put forth any new point but requested to consider their cases on humanitarian grounds.

The issues raised by various representationists were considered by the committee in-depth and decided as under:

(a) The process of screening for allowing the existing employees to be retained in the service upto the age of 60 years is mandatory as per provisions laid down under MHRD OM No. F.20-11/2003-TS.III dated November 12, 2003. Such extension cannot be allowed without such scrutiny.

(b) The members of the committee had adequate knowledge about computer and related skills to assess the computer skills since such assessment was required to be done only qua basic computer knowledge like MS-Word etc. No computer expert was required for this purpose.

(c) The assessment about the status of health probably could not have been done objectively by this committee since no medical specialist was represented on it. Further, evaluating someone on this aspect on a very low scale merely on the ground that he is under medication is not justified.

With the above in view the committee decided as under:

(a) There are no justified grounds to have a fresh/ de novo scrutiny. Earlier assessment has been made objectively. However, the assessment on status of health should be deleted from the total score on account of reasons elucidated above. The total score of various representationists after deducting the marks on the status of health are re-calculated as under:

S.No.

Name of Candidate

Total Marks

Marks Obtained

(%)

1.

Sh.Narender Kumar, Jr. Assistant

90

31

<35

2.

Sh. Santosh Kumar, Technician Gr.I

90

49

<55

3.

Sh. P.C. Patial, Sr. Assistant

90

42

<47

(b) The committee also endorsed the earlier cut-off i.e. 60% of the total score for an employee to be declared suitable for retention in service upto the age of 60.

Since none of the petitioners has been able to achieve the prescribed cut-off i.e. 60% of the total marks, the committee did not find them to be recommended for extension in their age of superannuation from 58 years to 60 years.

Sd/-09.1.12

(Dr. A.S.Singha)

Registrar, IIT

Hamirpur.

Sd/- 9/1/12

(Dr.Sushil Chauhan)

Member

Sd/-

(Dr. R.L.Sharma)

the then Director

NIT, Hamirpur.

Sd/- 9/1/XII

(Dr. Rakesh Kumar)

Registrar, IIT Delhi

Sd/-

(Rajesh Singh)

Dy. Secy(NITs)

MHRD

Sd/- 9/1/2012

(Prof. Rajnish Shrivastava)

Director, NIT, Hamirpur"

7. Shri Sunny Dhatwalia, learned counsel for the petitioners, has vehemently argued that the Screening Committee was only to see whether the petitioners can carry out the duties and responsibilities of the posts, more particularly, when no adverse ACRs had been conveyed to the petitioners. He would further argue that the case of the petitioners ought to have been recommended by the Screening Committee as neither was there any disciplinary proceedings initiated against any of the petitioners nor was any penalty imposed upon them. The Screening Committee was required to consider the cases of the petitioners de novo and could not have been influenced by the recommendations of the earlier Screening Committee whose recommendations already stood set aside by this Court in the earlier litigation.

8. Shri K.D.Sood, learned Senior Advocate, assisted by Shri Shubham Sood, Advocate, for respondents No.2 and 3, would argue that as per OM dated 12.11.2003 issued by respondent No.1, the age of superannuation of non-teaching employees was allowed upto 60 years subject to screening at the age of 58 years by a duly constituted Screening Committee and approval of its recommendations by respective Board of Governors.

9. Respondent No.2 in compliance to the directions passed by this Court on 21.11.2011 had reconstituted a Committee vide its order dated 19.12.2011 to reconsider the cases of the petitioners. The meeting of the reconstituted Committee was held on 09.01.2012 and the petitioners were also invited to appear before the Screening Committee and they in fact attended the said Screening Committee on 09.01.2012. The contentions put-forth by the petitioners were duly considered and the Screening Committee found that none of the petitioners was able to achieve the prescribed conditions as per the guidelines/tenure of service conditions issued by respondent No.1 vide its letters dated 09.11.2003 and 12.11.2003, respectively and, therefore, their cases were accordingly rejected.

10. It is not the function of the Court to hear the appeals over the decision of the Selection Committee and to scrutinize the relative merits of candidates. Whether a candidate is fit enough for being continued further in service has to be decided by the duly constituted Committee which has the expertise on the subject. The Court has no expertise. The decision of the Selection Committee can be

interfered with only on limited grounds, such as illegalities or patent material irregularity in the constitution of the Committee or its procedure vitiating the recommendations, or proved malafide affecting the recommendations etc. Jurisdictional review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision as such.

11. A learned Division Bench of this Court in *Ranjeet Singh and others versus State of H.P. and others*, 2016 (3) Shim. LC 1774 : 2016 LIC 4325 observed as under:-

"20. Petitioners would then seek indulgence of this court to interfere with the grading given by the Selection Committee, which to our mind, is not permissible in view of the consistent law on the subject, as discussed hereinafter.

21. In *Union Public Service Commission Vs. Hiranyalal Dev and others* AIR 1988 SC 1069, the Hon'ble Supreme Court held as under:

"5.....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. The jurisdiction to make the selection is vested in the Selection Committee....."

22. In the case of *Dalpat Abasaheb Solunke Vs. Dr.B.S. Mahajan etc*, AIR 1990 SC 434, the Hon'ble Supreme Court held as under:

"9.....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....."

23. In the case of *State of Madhya Pradesh Vs. Shrikant Chapekar*, JT 1992 (5) SC 638, the Hon'ble Supreme Court held as under:

"4.We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the annual confidential report are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of a general nature. In any case, the Tribunal 'outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. It is not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. This Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was considered for promotion or the consideration was illegal, then the only direction which can be given is to reconsider his case in accordance with law. It is not within the competence of the Tribunal, in the fact

of the present case, to have ordered deemed promotion of the respondent."

24. In *Nutan Arvind Vs. Union of India & ors* (1996) 2 SCC 488, the Hon'ble Supreme Court has held that when a High level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, the court cannot sit over the assessment made by the DPC as an appellate authority.

25. In the case of *Ramanand Prasad Singh & another Vs. Union of India & others* (1996) 4 SCC 64, the Hon'ble Supreme Court held as under:

"14.....The Committee applies its mind to the service records and makes its own assessment of the service records of the candidates marking them as outstanding, very good. good and so on. The Selection Committee does not necessarily adopt the same grading which is given by the Reporting/Reviewing Officer in respect of each of the candidates. In fact the Selection Committee makes an overall relative assessment of the confidential report dossiers of the officers in the zone of consideration. It thus does not evaluate the confidential report dossier of an individual in isolation. It is after this comparative assessment that the best candidates are put in the Select List....."

26. The Hon'ble Supreme Court in the case of *UPSC Vs. K.Rajaiah* (2005) 10 SCC 15, has held that the power to classify as 'outstanding', 'very good', 'good' and 'unfit' is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the Committee is by and large guided by the classification adopted by the State Government, but for good reasons, the Selection committee can evolve its own classification which may be variance with the gradation given in the ACRs.

27. Again, the Hon'ble Supreme Court in the case of *UPSC Vs. L.P. Tiwari* (2006) 12 SCC 317, has held that it is now more or less well settled that the evaluation made by an expert committee should not be easily interfered with the courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose.

28. In the case of *Union of India & Another Vs. S.K. Goel and others* (2007) 14 SCC 641, it has been held by the Hon'ble Supreme Court as under:

"28.....In the absence of any violation, the impugned order of the High Court while undertaking a judicial review under Art. 226 of the Constitution of India, is wholly unjustified. Since the matter of seniority has been well settled and this Court in a plethora of cases has held that the seniority/promotion granted on the strength of DPC selection should not be unsettled after a lapse of time. Therefore, in the facts and circumstances of the present case, where there is no adverse remarks whatsoever against respondent No.1, the High Court ought not to have interfered with and passed the impugned direction. This apart, as per the instructions contained in para 6.21 of DOPT Order No. 22011/5/86/Estt. D dated

19.4.1981, as amended, the DPC is not required to be guided merely by the overall grading, if any, that may be recorded in the CRs but to make its own assessment on the basis of the entries in the CRs. The DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, the impugned order of the High Court, in our opinion, is liable to be set aside."

29. The Hon'ble Supreme Court in the case of M.V. Thimmaiah and Others Vs. Union Public Service Commission and another (2008) 2 SCC 119, reaffirmed the aforesaid view holding that the view taken by the High Court was correct that it is always within the power of the Selection Committee to record its own assessment about the selection which may be at variance with that of the reporting officer or reviewing officer.

30. In the case of Union of India & ors Vs. S.P. Nayyar, (2014) 14 SCC 370, it has been held by the Hon'ble Supreme Court as under:

"11.It is settled that High Court under Article 226 of the Constitution of India cannot sit in appeal over the assessment made by the DPC. If the assessment made by the DPC is perverse or is not based on record or proper record has not been considered by the DPC, it is always open to the High Court under Article 226 of the Constitution to remit the matter back to the DPC for recommendation, but the High Court cannot assess the merit on its own, on perusal of the service record of one or the other employee.

12. The selection to the post of Addl. DIG is based on merit-cum- suitability which is to be adjudged on the basis of ACRs of different candidates. The merit position can be adjudged by the Selection Committee on appreciation of their Character Roll. In absence of the Character roll of other candidates, who were also in the zone of promotion, it is not open to the High Court to assess the merit of one individual who moves before the High Court, to give a finding whether he comes within the zone of promotion or fit for promotion."

31. In addition to the aforesaid, we also find that there are no allegations of malafides, violation or infraction of the rules and that being the case, this court cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the court of appeal. The discretion to make recommendation has to be given to the Selection Committee alone and the courts rarely sit in appeal to examine the selection of the candidates nor is it the business of the court to examine each candidate and record its opinion. Moreover, it is settled that the function of the Selection Committee is neither judicial nor adjudicatory, it is purely administrative.

32. It is equally settled that this court cannot arrogate to itself the power to judge the comparative merit of the candidates and consider the fitness and suitability for promotion, it is the job of DPC. That apart, this court, while exercising its power of judicial review, will not sit in appeal over the assessment made by the DPC, unless the same is perverse or is not based on record or

proper record has not been considered by the DPC and even in such cases, the court will only remit the matter back to the DPC for recommendation, but will not assess the merit of its own on perusal of the service record of one or the other employee. However, as observed earlier, in absence of bias or malafides, even this ground will not be available to the petitioners.

33. Moreover, the petitioners have failed to point out any rule or regulation requiring the Selection Committee to record reasons. In the absence of any such legal requirement, the selection made without recording reasons cannot be faltered with. Even otherwise, giving of reasons for decision is different from and in principle distinct from the requirement of procedure or fairness. The procedure or fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action has to be observed and the Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant considerations. But there is nothing on record to suggest that the Selection Committee did anything contrary.

34. As already observed earlier, petitioners have not raised or levelled directly or indirectly or even tacitly any allegations or malafides against any of the members of the Selection Committee. In fact, none of the petitioners in any of these petitions have pleaded or raised the question that the DPC had not adopted same or similar criteria or assessing/ making the evaluation of the eligible Judicial Officers considering the ACRs/service records and judgments. It is also not in dispute that the criteria adopted by the DPC was uniformly applied in respect of all the eligible officers, who together were considered in one go by the same members of the DPC for their assessment/evaluation of the ACRs/service records and judgments and, therefore, in such circumstances, there will be no question or hardly any question of any arbitrariness."

12. Bearing in mind the aforesaid exposition of law, it would be noticed that the petitioners have failed to show any illegality or patent material irregularity in the constitution of the Screening Committee and have further failed to prove that the procedure adopted by it was vitiated or there was any malafide on the part of any of the members of the Screening Committee affecting the recommendations so made by them.

13. As already observed above, jurisdictional review is permissible only to the extent of finding whether the process in reaching the decision has been observed rightly and not the decision as such. The Screening Committee has not only given personal hearing to each of the petitioners, but has also found merit in the contention of the petitioners regarding there being no justification for assessment about status of health and has thereafter deleted the same while making the assessment and thereafter made its recommendations.

14. In view of the aforesaid discussion, I find no merit in these petitions and the same are dismissed, leaving the parties to bear their own costs. Pending

application(s), if any, also stand disposed of. Registry is directed to place a copy of this judgment on the file of connected matter.