
(2007) 04 DEL CK 0069

In the Delhi High Court

Case No : Writ Petition (C) No. 7887 of 2003

State of Haryana

APPELLANT

Vs

Suraj Pal and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Citation : (2007) 04 DEL CK 0069

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Manish Bishnoi, for the Appellant; L.R. Khatana and R.V. Sinha, for respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—Petitioner, the State of Haryana, assails the order dated 25-08-2003 passed by the Principal Bench, Central Administrative Tribunal, (Tribunal for short), New Delhi whereby the Original Application (OA for short) No. 37/2002 preferred by the Respondent No. 1 was partially allowed. The Tribunal vide the said impugned order directed the Petitioner State to issue an Integrity Certificate qua the respondent No. 1, who is the contesting Respondent herein, to treat his selection in the Select List (Indian Police Service) dated 06-03-92 as unconditional and to appoint him to Indian Police Service (IPS) with effect from the date his junior was appointed and grant him all consequential benefits.

2. Respondent No. 1 Shri Suraj Paul who is wrongly described as Suraj Pal by the petitioner, is an officer of the Haryana Police Service. He was promoted as DSP on 16-09-81 and further promoted to the post of Superintendent of Police on 16-11-89. On 31-12-91, respondent No. 1 was served with a charge sheet by the State of Haryana. A duly constituted Selection Committee met on 06-03-92 to consider the case of respondent besides others eligible officers, for promotion to IPS in terms of the IPS (Appointment by Promotion) Regulations, 1955. Respondent No. 1 was selected only on provisional basis for the year 1991-92 as

the said inquiry was pending against him. He was placed at Sl. No. 1 in the select list but integrity certificate was not issued in respect of him.

3. To expedite the inquiry, the Respondent filed a Civil Writ Petition No. 7498/92 before the High Court of Punjab & Haryana which was disposed of with a direction to the petitioner herein to complete the inquiry by 31-12-92. However, the same did not happen. In the mean time, Shri Sohan Lal, a junior officer in the select list, was promoted/appointed to IPS on 02-05-93. Respondent No. 1 filed an OA-130/HR/1993 before the Chandigarh Bench of the Tribunal which was dismissed as premature. He filed CWP-5431/1995 before the High Court of Punjab & Haryana which culminated in an order directing the petitioner to complete the inquiry within six months of 18-10-95. Meanwhile, on 03-10-94, a second charge sheet was issued to the respondent. Thereafter, on 05-09-97 a third charge sheet was issued to the Respondent No. 1. The second charge sheet culminated, vide order dated 08-07-2003, into a punishment of compulsory retirement. The third charge sheet culminated into a punishment of reduction in rank reverting him to the post of DSP from the post of SP on 10-05-2002. In the mean time, the petitioner successively issued integrity certificates in respect of the respondent for the years 1997, 1998, 1999 and 2000.

4. The first charge sheet dated 31-12-91 was dropped vide order dated 04-11-99. Respondent then requested the petitioner to issue an integrity certificate with reference to the select list dated 06-03-92 and to declare his selection as unconditional and to appoint him to IPS. This request was not acceded to, and the contesting respondent preferred OA No. 0216/2000 before the Chandigarh Bench of the Tribunal, which was subsequently withdrawn with liberty to file a fresh application.

5. Vide letter dated 22.3.2000 the UPSC informed the petitioner that the representation of the contesting respondent for appointment to IPS could not be acceded to as the Select List of 1991-92 had ceased to be in force and also highlighting the fact that integrity certificate had not been issued till that date.

6. On 4.10.2001 the adverse remarks in the respondent's ACR pertaining to the period 22.10.1991 to 23.1.1992 were also expunged by the petitioner.

7. The contesting respondent preferred O.A. No. 37/2002, inter alia, seeking direction to the petitioner herein to issue an integrity certificate and to treat his selection to UPSC as not being provisional. This was allowed by the Tribunal by its impugned order.

8. Before us the petitioner has contended that under Regulation 7(4) of the Indian Police Service (Appointment by Promotion) Regulation, 1955, the select list of 06-03-92 had ceased to be in force and Therefore the appointment by promotion of the contesting respondent could not be made. Petitioner also relies upon the subsequent charge sheets issued/punishments imposed upon the contesting respondent to disentitle him of his selection. Petitioner's case is that the combined effect of reading of Regulations 5(1), 5(6), 7(4) and 9(1) of the

Regulations is that the select list, in the absence of sealed cover procedure, remains in force only till the 31st day of December of the year in which meeting of the selection committee is held or up to 60 days from date of approval of the select list by the Commission, whichever is later.

9. Petitioner relies on the proviso to regulation 5 (5) to submit that the name of any officer included in the list shall be treated as provisional if the State Government withholds integrity certificate, on account of proceedings being pending or in contemplation against him. Petitioner relies on proviso to regulation 7(4), which provides that where the State has forwarded a proposal to the Commission to declare a provisionally included officer in the Select List as "unconditional" during the time when the select list was in force, the Commission shall decide within 90 days and the appointment, if made by the Central Government under second proviso to regulation 9(1), shall not be invalid merely for the reason that the Select List ceased to be in force.

10. From the aforesaid scheme, it is contended that the select list has a limited life and a provisionally included candidate like the respondent No. 1 could be appointed if the State had forwarded such a proposal when the select list was in force. Petitioner submits that it is for this reason the Hon'ble High Court had directed the inquiry to be concluded by 31.12.1992. The petitioner tried its best but respondent No. 1 did not cooperate and this fact found judicial acceptance in the order dated 22.4.1993 when the Hon'ble High Court withdrew the time limit earlier fixed. It was also submitted that the Supreme Court has consistently held that no appointment can be made from a select list/panel after it has expired under the rules. Such a direction cannot be issued to the authorities since it would amount to either restraining them from enforcing the law or directing them to act contrary to law.

11. Respondent No. 1 per contra refuted the case set up by the petitioner. He submitted that integrity certificates were issued even when various inquiries were pending against him for the years 1997-2000. However, once the disciplinary proceedings initiated on 31.12.1991 were dropped, withholding integrity certificate for 1991-92 was totally unjustified and bad in Law.

12. The contesting Respondent also seeks support from Subramani and Others Vs. State of Tamil Nadu, to apply the Doctrine of Relation Back and the decision of the Rajasthan High Court, Jaipur Bench in G.L. Verma's case in CWP No. 371/2000 decided on 04-09-2002 to contend that once the respondent was exonerated, Doctrine of Relation Back would apply and subsequent events would not effect the promotion of the applicant.

13. The Respondent No. 1 also submitted that vide order dated 18.8.2006 the punishment for compulsory Retirement imposed on him has also been quashed by the Civil Court, Kurukshetra and the appeals preferred by the petitioner herein have been dismissed up to Supreme Court. Consequently, the only penalty presently imposed is that of reduction in rank from SP to DSP, and that too

pertains to the charge sheet issued on 05-09-97 and the punishment itself was inflicted on 10-05-2002.

14. Petitioner has relied upon various decisions of the Hon''ble Apex Court. However, in our opinion they are distinguishable on facts.

15. In State of U. P. and others Vs. Harish Chandra and others, , the dispute was as regards the right to be considered for promotion on the basis of an expired select list. It was neither a case of provisional admittance to the select list pending an enquiry nor was the factum of expiry of select list in contest. In fact it was an admitted case that the select list had already expired. This case Therefore is not applicable to the facts of this case.

16. Petitioner next relies upon State of Bihar and others Vs. Md. Kalimuddin and others, . That case also pertained to candidates, who after their interview by the selection committee were placed in the waiting list and were seeking appointment after expiry of the select list. This case also does not advance the petitioner''s case. Respondent was at the top in the select list. Due to his selection being notified as provisional, his junior Shri Sohan Lal came to be appointed to IPS on 02-05-2003.

17. The next case relied upon by the petitioner is R. Veerabhadram Vs. Govt. of A.P., . In the said case the Appellant before the Supreme Court had instituted the proceedings claiming interest on gratuity held up during the pendency of criminal case against him and for grant of monetary benefits on the basis of his entitlement to promotion during the pendency of proceedings. The Apex Court dismissed the same on the ground that, since the appellant was not considered for selection at the relevant time, he could not claim deemed selection and consequent promotion. This decision also has no application to the facts of the case before us as in the present case, the respondent''s candidature was considered by the Selection Committee and he was placed at Sl. No. 1 on the select list.

18. Petitioner also relied upon Dr. H. Mukherjee Vs. Union of India and Others, to bring home the point that promotion to the incumbent can be refused taking into account events and circumstances occurring even after recommendation by the Public Service Commission. Firstly, the facts in that case are materially different. The ACC which was to make the selection on the basis of the recommendation of UPSC, after getting the said recommendation acted on the basis of the ACR for the relevant year i.e. 1987 which contained an adverse remark. This remark was made subsequent to the recommendation of the UPSC. Since the adverse remark pertained to the relevant year 1987, the Supreme Court upheld the action of the ACC in relying upon it to deny selection to the respondent in that case. That is not the position here. In this case, the stand taken by the respondent UPSC in its communication dated 22.03.2000 for not considering the respondent''s case was merely that the select list was no longer in force and that the integrity certificate had not been received from the petitioner. No such ground was taken by them to

contend that it was on account of the subsequent charge sheets that the UPSC had not approved the selection of the respondent No. 1. In the present case the issue before us is whether the integrity certificate for the year 1991-92 could be held back once the pending proceedings and charge sheet, due to which the same was not issued earlier, were dropped, leaving the record for the relevant period unblemished. Thus, this case also is of little assistance.

19. On the other hand, learned Counsel for the respondent apart from relying upon the decisions of Rajasthan High Court in G.L. Verma's case (supra) and DOP & T instructions dated 06-10-98 bearing F. No. 14015/30/97-AIS(I), which have been considered by the Tribunal, has also relied upon the decision of this Court in Union of India v. Dinesh Bhatt in CWP No. 1451-52/04 decided on 22-09-04. In Dinesh Bhatt (supra) while dealing with the same provisions and contention, a Division Bench of this Court rejected the submission of the State holding that 60 days period prescribed for validity of the select list would run from the date the officer was exonerated and his name was approved by the UPSC pursuant thereto.

20. We find ourselves in agreement with the interpretation given to the regulations by the Tribunal on the basis of the decision of the Rajasthan High Court and on the application of DOP & T instructions dated 06-10-98. To construe it otherwise would lead to highly inequitable and unjust results, inasmuch as, officers provisionally selected on the basis of their merit would be deprived of their due selection even after exoneration in the departmental/criminal proceedings for no fault of theirs and merely because such proceedings did not get concluded within the 60 days period.

21. We have also been taken through DOP & T OM No. 22011/2/2002-Estt.(A) dated 24th February 2003, which deals with a similar situation, where the sealed cover procedure is resorted to. In short, what it says is that where in a selection process a sealed cover procedure is adopted due to pendency of departmental proceedings, and before they end in an exoneration another departmental proceeding is initiated (but after a junior on the select list is promoted), then the sealed cover should be opened and given effect to de hors the pendency of the subsequent departmental enquiry. We are of the view that the same principle and procedure should apply to the present case.

22. We find that the order of the Tribunal is fair and reasonable and, no ground is made out for interference in the exercise of writ jurisdiction. Dismissed.