
(2003) 01 P&H CK 0332

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5928-CAT of 2003

Surjit Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Forest Service (Appointment by Promotion) Regulations, 1966 — Regulation 5(4)

Citation : (2004) 137 PLR 32

Hon'ble Judges : S.S. Nijjar, J;S.S. Grewal, J

Bench : Division Bench

Advocate : Rajiv Atma Ram and T.P. Singh, for the Appellant; H.S. Sran, Addl. A.G. for Respondent Nos. 1 to 3, Vipin Mahajan and M.S. Guglani, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—The petitioner in this petition under Articles 226/227 of the Constitution of India seeks the issue of a writ in the nature of certiorari quashing the proceedings of the Selection Committee dated 15.09.2000 and 21.09.2001 by which respondent No. 5 has been selected and appointed by promotion to Indian Forest Service and the order dated 06.03.2003 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, dismissing O.A. No. 994-PB of 2001 filed by the petitioner. A further direction is sought to respondent Nos. 1 to 4 to re-convene the meeting of the Select Committee and to consider the case of the petitioner as well as of respondent No. 5 for promotion to the Indian Forest Services.

2. The petitioner joined the State Forest Service as Forest Ranger on 03.04.1970. He was promoted to PFS-II on 24.07.1987. At the time of filing of the present writ petition, the petitioner was holding the post of Divisional Forest Officer, Ferozepur Division, Ferozepur. Since the filing of the writ petition, the petitioner has superannuated at the age of 58 years on 30.06.2003. The

petitioner claims that throughout the service record of the petitioner has been very good. The next promotion from PFS-II is to the Indian Forest Service. The appointment by promotion to Indian Forest Service is governed by the Indian Forest Service (Appointment by Promotion) Regulations, 1966, (hereinafter referred to as the Regulations). The controversy in the present case relates to the vacancy which arose on 01.01.1999. The Select Committee held its meeting on 14.09.2000 and considered the record of four officers including that of the petitioner. Respondent No. 5 was placed at serial No. 1 of the select list. Subsequently, the petitioner learnt that in the meeting of the Select Committee held on 15.09.2000, the Annual Confidential Reports of the petitioner for the year 1993-94 and 1998-98 had not been forwarded. By mistake, the reports of another officer of the same name, i.e. Surjit Singh son of Tara Singh had been forwarded. The petitioner, therefore, made a representation. The representation of the petitioner was accepted and the matter was reconsidered. The correct Annual Confidential Reports of the petitioner were placed before the reconvened Selection Committee. Since the Annual Confidential Report of the petitioner for the period from 1.4.1997 to 31.10.1997 had not been recorded, a certificate issued by the superior/reporting officer was forwarded to the Selection Committee. The report of the year 1993-94 indicated that the petitioner had earned a very good report and the certificate for the period 1.4.1997 to 31.10.1997 had graded the petitioner as outstanding, although no formal Annual Confidential Report had been recorded. After reconsidering the matter, the Selection Committee had maintained its earlier order i.e. respondent, No. 5 remains at serial No. 1 and the petitioner has not been selected. The petitioner challenged the original decision dated 15.09.2000 and the subsequent decision dated 21.09.2001 by way of O.A. No. 994-PB of 2001. The Central Administrative Tribunal has dismissed the O.A. and the petitioner has challenged the aforesaid order as well,

3. Mr. Rajiv Atma Ram, learned Senior Counsel, appearing for the petitioner has vehemently argued that the proceedings of the Select Committee which culminated in the selection of respondent No. 5 on 15.09.2000, are vitiated on the short ground that the correct record of the petitioner had not been before the Select Committee. However, the illegality committed by the Select Committee on 15.09.2000, was rectified by respondent No. 6 and the correct record of the petitioner was placed before the subsequently reconvened Select Committee which gave its findings on 21.09.2001. Learned counsel, however, submitted that even the findings of the reconvened Select Committee are vitiated on a number of grounds. Firstly, the Select Committee has considered only the record for the five years preceding the date on which the vacancy occurred. Secondly, the outstanding work done by the petitioner between 01.04.1997 to 21.10.1997 has been ignored by the Select Committee only on the technical ground that a regular Annual Confidential Report has not been recorded. Consequently, only four years and three months record of the petitioner has been compared with five years record of respondent No. 5. According to the learned counsel, the

aforesaid two grounds are sufficient to render the decision of the reconvened Select Committee as arbitrary and suffering from vice of unreasonableness as laid down by the Supreme Court in the case of *Badrinath v. Government of Tamil Nadu and Ors.* 2000(4) R.S.J. 256. The learned counsel has made particular reference to paragraph 40 of the judgment aforesaid in support of his submissions.

4. Learned counsel further argued that not only the good record of the petitioner has been ignored, but the respondents have deliberately glossed over the bad record of respondent No. 5. He makes a particular reference to order Annexure P8 to show that on 25.10.1983, the services of respondent No. 5 were dispensed with as he had failed to complete the probation period satisfactorily. Therefore, respondent No. 5 has managed to get himself reinstated. However, the intervening period between 25.10.1983 and the date that he was reinstated on 27.6.1986, has not been regularised till date. On the basis of the aforesaid adverse entries in his record, respondent No. 5 has been ignored on a number of occasions and persons junior to him have been promoted to the Indian Forest Service.

5. Learned counsel has also argued that there is no legal justification for ignoring the outstanding work done by the petitioner between 01.04.1997 to 21.10.1997 as it was due to no fault of the petitioner that the Annual Confidential Report was not recorded. Even at this stage, the officers are still in service and the report can still be recorded and considered.

6. We have considered the submissions made by the learned counsel for the parties,

7. The candidates from the Punjab Forest Service Class-11 are entitled to be considered to be promoted to Indian Forest Service on the basis of the Regulations. Their cases have to be considered in terms of Regulation 5, which pertains to the procedure to be adopted for Preparation of a list of suitable officers. This regulation provides for the formulation of a Committee which ordinarily meets every year and prepares a list of such members of the State Forest Service as are held by them to be suitable for promotion to the service. It was under this Regulation that both the Select Committees were held on 15.09.2000 and 21.01.2001. The manner in which the Select list is to be prepared is governed by Regulation 5(3-AA) and 4 of the Regulations. The aforesaid Regulations may be reproduced for ready reference:-

"Regulation 5(3-AA):

The Selection Committee shall classify the eligible officer at "Outstanding" "Very Good" "Good" or "Unfit" as the case may be on all relative assessment of their service records.

Regulation 5(4):

The list shall be prepared by including the required number of names, first from

amongst the officers finally classified as "Outstanding" than from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of names inter se within each category shall be in the order of their seniority in the State Forest Service".

8. A bare perusal of the aforesaid Regulations shows that there is not much force in the submissions made by the learned counsel for the petitioner to the effect that selection has to be made by taking into account the entire service record. Regulation 5(3-AA) of the Regulations clearly postulates that the Committee shall classify eligible officer as "Outstanding", "Very Good" "Good" or "unfit", as the case may be on all relative assessment of their service records. Learned counsel for the petitioner has laid a great deal of emphasis on the word "all" to submit that the entire service record of the candidates has to be seen.

9. We are unable to accept this submission of the learned counsel for the petitioner. The sentence clearly means that the Committee shall consider all relative assessment of the service record. The relevant service record for the purposes of promotion generally means the most recent record. It would, otherwise, be wholly impracticable to consider the entire service record of all the officers that are to be considered. In the present case, the Committee has considered the record of previous five years from the date of vacancy occurred. We see no arbitrariness or unreasonableness in the restrictions on the number of years for which the relevant record has to be seen.

10. Learned counsel for the petitioner has, thereafter, laid much stress on the fact that the record of the petitioner is superior to that of respondent No. 5. Keeping the aforesaid submission in view, we have taken a look at the relevant record of the petitioner and respondent No. 5. The relative record of the petitioner and respondent No. 5 may be reproduced, which is as under:-

No.	Year	Grading of	Grading of Shr Sh. Surjit Singh S.P. Singh, (Applicant)
(Respondent No. 5)	1. 1993-94	Very Good	Average
	2. 1994-95	Outstanding	Satisfactory
	3. 1995-96	Good	Outstanding
	4. 1996-97	Good	Good (4.6.96 to 28.11.96)
	5. 1997-98	Outstanding-on the basis	Average of certificate for the (4.12.96 to 31.3.97) period
	4/97 to 10/97, and "Average"		for the period Very Good 11/97 to 31.3.98. (1.4.97 to 1.12.97) Outstanding (2.12.97 to 31.3.98)

11. A bare perusal of the aforesaid record would clearly indicate that it is not possible to hold that the record of the petitioner is so superior to that of respondent No. 5 that no reasonable person could come to a conclusion that respondent No. 5 even though senior would have to be superseded to make room for the petitioner. Even if one is to exclude the outstanding Annual Confidential Report of respondent No. 5 for the period from 2.12.1997 to 31.3.1998, as according to the learned counsel, outstanding entry of the petitioner for the year 1997-98, has not been considered, it would make no difference to the ultimate result. Even then the petitioner has one outstanding, one very good and two good ACRs, whereas on the other hand, respondent No. 5

has one average, one satisfactory, one outstanding and one good ACR. There is hardly any difference between the record of the two officers which would entitle the petitioner to steal a march over his senior. In fact, the observations made by the Supreme Court in Badrinath's case (supra), are of no assistance to the petitioner. These observations, rather, support the conclusion reached by the Selection Committee which has been upheld by the Central Administrative Tribunal. The relevant observations of the Supreme Court in the aforesaid judgment are as under:-

"38. Normally, this court does not enter into question of the correctness of assessment made by Departmental Promotion Committee (or Joint Screening Committees).

59. But the case before us appears to be a very exceptional one as it has serious overtones of legal bias (to which we shall refer in detail when we come to Points 4 and 5).

40. Unless there is a strong case for applying the Wednesbury doctrine or there are mala fides, Courts and Tribunal cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such conclusions, or if there is illegality attached to the decision, then the powers of Judicial review under Article 226 of the Constitution are not foreclosed.

41. While the Courts are to be extremely careful in exercising the power of judicial review in dealing with assessment made by Departmental Promotion Committees, the executive is also to bear in mind that in exceptional cases, the assessment of merit made by them is liable to be scrutinised by courts, within the narrow Wednesbury principles or on the ground of mala fides. The judicial power remains but its use is restricted to rare and exceptional situations. We are making these remarks so that Courts or Tribunals may not by quoting this case as an easy precedent interfere with assessment of merit in every case. Courts and Tribunals cannot sit as appellate authorities nor substitute their own views to the views of Departmental Promotion Committees. Undue interference by the Courts or Tribunals will result in paralysing recommendations of Departmental Committees and promotions. The case in hand can be a precedent only in rare cases".

12. The aforesaid observations make it abundantly clear that the Courts would not interfere with the assessment made by the Departmental Promotion Committee unless there is a strong case for applying the Wednesbury doctrine or the assessment is proved to be mala fide. From the facts narrated above, we are unable to come to the conclusion that the proceedings of the Selection

Committee are either unreasonable or vitiated by mala fides.

13. Apart from this, the law has been well settled by the Supreme Court that neither the Central Administrative Tribunal nor the High Court would sit as a court of appeal over the selection made by the expert committee. This view of ours will find support from the judgment of the Supreme Court rendered in the case of *Dalpat Abasaheb Sounke, etc. etc, v. Dr. B.S. Mahajan etc. etc.*, AIR 1990 Supreme Court 434, in which it has been observed as follows:-

"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".

14. Keeping in view the aforesaid observations, it would be wholly inappropriate for this Court to interfere in the conclusions reached by the expert Selection Committee. Even if one is to look at the situation in the converse, in that the certificate of outstanding performance given to the petitioner for the period from 1.4.1997 to 31.10.1997 has to be included, it would make no difference to the final outcome. If the aforesaid period has to be included, then the outstanding report of respondent No. 5 for the period from 2.12.1997 to 31.3.1998 would also have to be included. In that eventuality, the petitioner will have two outstanding reports, one very good report and two good reports. Respondent No. 5 will also have two outstanding reports, one very good report, one good report and open average/satisfactory report. This marginal difference in favour of the petitioner would not be sufficient to term the recommendations of the Selection Committee as suffering from vice of arbitrariness or such unreasonableness, as to fall within the *Wednesbury* principles.

15. We have carefully perused the order passed by the Central Administrative Tribunal. We find that the Tribunal has meticulously examined the entire matter. All the submissions made by the learned counsel for the parties had been noticed and duly considered. In our view, the order passed by the Central Administrative Tribunal does not suffer from any error of jurisdiction.

Dismissed. No costs.