

(2013) 09 SC CK 0140

In the Supreme Court Of India

Case No : C.A. No. 8406 of 2013 (Arising out of SLP (C) No. 27092 of 2011)

Union Public Service Commission

APPELLANT

Vs

Arun Kumar Sharma and Others

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 3, 3(1), 5, 5(1), 5(2)
Recruitment Rules — Rule 9

Citation : (2014) 1 ESC 1 : (2013) 14 SCALE 31

Hon'ble Judges : V. Gopala Gowda, J;G.S. Singhvi, J;C. Nagappan, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. Leave granted. The questions which arise for consideration in this appeal filed against order dated 19.5.2011 passed by the Division Bench of the Calcutta High Court in WPCT No. 831 of 2003 are whether Calcutta Bench of the Central Administrative Tribunal (for short, 'the Tribunal') had the jurisdiction to re-assess the relative merit of Respondent No. 1 and the private Respondents and whether the Division Bench of the Calcutta High Court rightly refused to interfere with order dated 1.4.2003 passed by the Tribunal in O.A. No. 1064 of 1996 for re-convening the Selection Committee for promotion to the Indian Police Service.

2. Respondent No. 1 joined the State Police Service on 09.06.1979. His case was considered by the Selection Committees constituted for preparation of the Select List for promotion of the State Police Service officers to the Indian Police Service against the vacancies of 1995 and 1996. For the year 1995, the State Government had reported two vacancies in the promotion quota which were required to be filled in accordance with the provisions contained in the Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short, 'the Regulation'). As per Regulation 5(1) and (2), the size of the Select List was determined as four and the zone of consideration was fixed as twelve. In the

eligibility list, Respondent No. 1 was placed at Sl. No. 8. On an overall relative assessment of the record of eligible officers, the Selection Committee categorized Respondent No. 1 as 'Very Good' and his name was placed at Sl. No. 4 in the Select List. S/Shri Maharathi Adhikari and Daniel Tshering Lepcha, were categorized as 'Outstanding' and were placed at Sl. Nos. 1 and 2. They were appointed to Indian Police Service by promotion vide notification dated 20.12.1995. Subsequently, one vacancy became available on account of premature retirement of one officer. Against that vacancy, Shri Jyoti Prasad Sinha Roy, who was placed at Sl. No. 3 in the Select List, was appointed vide notification dated 8.2.1996.

3. For the year 1996, the State Government reported four vacancies in the promotion quota. In terms of Regulation 5(1), the size of the Select List was determined as six. The name of Respondent No. 1 was included in the eligibility list at Sl. No. 5. On an overall relative assessment of his service record, the Select Committee categorised Respondent No. 1 as 'Very Good'. Four Officers, namely, S/Shri Pasang Tshering Sherpa, Akhil Kumar Roy, Binoy Kumar Chakraborty and Pankaj Kumar Dutta were categorized as 'Outstanding'. Accordingly, they were appointed against the available promotion quota vacancies. The names of Shri William Karketta and that of Respondent No. 1 were placed at Sl. Nos. 5 and 6, respectively. Vide Government of India notifications dated 13.12.1996 and 3.3.1997 they were appointed against 2 unforeseen vacancies.

4. The minutes of the meeting of the Selection Committee held on 20.3.1996 of which xerox copy was produced by the learned Additional Solicitor General, read as under:

CONFIDENTIAL

U.P.S.C. FILE No. 7/21/96-AIS.

Minutes of the meeting of the Selection Committee constituted under Regulation 3 of the Indian Police Service (Appointed by Promotion) Regulations, 1955, for preparation of a list of such members of the State Police Service of West Bengal as are suitable for promotion to the Indian Police Service.

The Committee met at Calcutta on the 20th day of March, 1996 at 10.30 A.M. The following were present:

2. The Committee were informed that the maximum number of State police Service Officers which can be included in the Select List is 6(six). This number has been determined in pursuance of the provisions of Regulation 5(1) of the Indian Police Service (Appointment by Promotion) Regulations, 1955.

3. It has also been brought to the notice of the Committee that disciplinary proceedings instituted against the following eligible officers are pending.

4. The Committee examined the records of the officers (whose names are

included in the Annexure), who fulfilled the conditions of eligibility, and assessed them as indicated against their names. The Committee did not take into consideration the adverse remarks in the ACRs of the officers which were not communicated to them, while assessing their suitability.

5. On the basis of the above assessment the Committee selected the officers whose names are mentioned below, as suitable in all respects for promotion to the Indian Police Service and placed them in the following order:

5. The Committee was satisfied from the remarks in the Confidential reports of the officers, selected for inclusion in the list, that there was nothing against their integrity.

5. Respondent No. 1 challenged the commendations made by the Selection Committee for the year 1996 in O.A. No. 1064/1996. He pleaded that the assessment made by the Selection Committee was discriminatory and the resultant recommendations made by it were liable to be quashed on the ground of violation of Articles 14 and 16 of the Constitution.

6. The case set up by the Appellant was that in terms of Regulation 5(4), overall relative assessment is required to be made by the Selection Committee on the basis of the Annual Confidential Reports and other records and no illegality was committed in recommending Respondent Nos. 6 to 9 for promotion to the Indian Police Service (State Cadre). According to the Appellant, the assessment made by the Selection Committee was correct and the Tribunal did not have the jurisdiction to interfere with the recommendations made by the Selection Committee, more so, because the applicant (respondent No. 1) had not made any allegation of mala fide or arbitrary exercise of power.

7. The Tribunal ignored the plea taken by the Appellant, re-assessed the record of Respondent No. 1 along with that of the private Respondents and observed:

It is the case of the Respondents that overall relative assessment is done by the Selection Committee on the basis of the ACRs as provided under Regulation 5(4). The Learned Counsel for the Respondents relied upon the decision of the Supreme Court reported in *R.S. Dass Ors. Vs. Union of India (UOI) and Others*, for the proposition that Selection Committee need not record its reasons for its decision and that the principles of audi alteram partem is not applicable in making the selection. A perusal of the ACRs from 1990-91 to 1994-95 for the preceding five years in respect of the applicant and the Respondents No. 5 to 8 shows that Respondents No. 5 and 8 have been graded as "outstanding" in all the preceding five years and they deserved to be placed above the applicant in the select list of 1996. Hence the contention of the applicant that the placement of Respondents No. 5 and 8 above him in the select list of 1996 is not proper on the ground that they are juniors is not sustainable. However, a perusal of the ACRs of the applicant and the Respondents No. 6 and 7 for the year 1994-95 which were added at the time of preparation of 1996 select list shows that the applicant and the Respondents No. 6 and 7 were graded "outstanding", and there

is nothing to show that the performance and grading of the applicant has deteriorated after inclusion of his name in the select list of 1995. Moreover, as per the provisions contained in the Regulation 5(3), a member of the SPS whose name appears in the select list in force immediately before the date of the meeting of the committee shall be considered for inclusion in the fresh list, to be prepared by the Committee. Admittedly, the name of the applicant was in the select list of 1995 and the Selection Committee which met on 20.3.96 ought to have considered the name of the applicant for inclusion in the select list of 1996 in accordance with the Regulation 5(3) in view of the fact that the applicant had been graded as "outstanding" in the ACR added at the time of the preparation of the select list of 1996.

10. On a perusal of the ACRs for the relevant period viz., 1990-91 to 1994-95 we find that the applicant and the Respondents No. 6 and 7 have been assessed as 'outstanding for four years and "very good" for one year/period. To be more specific, the applicant had been graded "very good" in the ACR for the year ending 31.3.91, 6th Respondent had been graded "very good" in the ACR for the year 1992-93 and the 7th Respondent had been graded "Very Good" for the ACRs for the period from 12.11.91 to 29.2.92, but the Selection Committee had graded Respondents No. 6 and 7 as "outstanding" and the applicant as "very good" in 1996. Since the applicant and the Respondents No. 6 and 7 each had four "outstanding" and one "very good", we do not see any valid reason or basis or material for grading Respondents No. 6 and 7 as "outstanding" and for grading applicant as "very good". Moreover, if the applicant and the Respondents No. 6 and 7 stand on equal footing on merit, the order of names inter-se between the applicant and the Respondents No. 6 and 7 should be in the order of their seniority in the SPS as provided under Regulation 5(5) of the above Regulation.

(emphasis supplied)

8. The Tribunal then referred to the judgment of this Court in Harjeet Singh Ors. Vs. Union of India (UOI) and Others, and observed:

It is not disputed that the applicant is senior to Respondents No. 6 and 7 in the State Police Service and hence placement of Respondents No. 6 and 7 above the applicant in the select list of 1996 does not appear to be correct in the light of the provision contained in Regulation 5(5) extracted above.....It is no doubt true that this Tribunal cannot sit in judgment over the decision of the Selection Committee, but the above decision of the Supreme Court makes it clear that the decision of the Selection Committee can be interfered with on the limited grounds such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved malafides affecting the selection etc. In the present case. (1) the Selection Committee has failed to consider the name of the applicant for inclusion in the select list of 1996 in accordance with the Regulation 5(3); (2) the Selection Committee has committed a glaring and patent factual error regarding the grading of the applicant and the

Respondents No. 6 and 7 in the relevant ACRs and (3) the Selection Committee has also failed to follow the provisions of Regulation 5(5) regarding the placement of the applicant and the Respondents No. 6 and 7 according to their seniority in the State Police Service. Under these circumstances, we are of the view that the (not illegible) Selection Committee to review its decision dated 20.3.96 and consider and decide the correct placement of the applicant and the Respondents No. 6 and 7 in the select list of 1996 in the light of the provisions of Regulation 5(5), within a period of four months from the date of receipt of the order.

9. The Appellant challenged the order of the Tribunal in Writ Petition No. 831/2003. It relied upon the judgments of this Court in Smt. Nutan Arvind Vs. Union of India and another, Durga Devi and another Vs. State of H.P. and others, Union Public Service Commission Vs. Hiranyalal Dev and Others, State of Madhya Pradesh Vs. Shrikant Chaphekar Mrs. Anil Katiyar Vs. Union of India and others, and pleaded that the Tribunal committed a jurisdictional error by re-assessing the relative merit of the candidates.

10. The Division Bench of the High Court dismissed the writ petition by a rather cryptic order, the relevant portion of which is reproduced below:

The Tribunal allowed the application and directed the Selection Committee to review its decision dated March 20, 1996 and consider and decide the correct placement of the applicant and the Respondent Nos. 6 & 7 in the selection list of 1996. Even if, we accept the contention of Ms. Bhattacharyya that the promotional process was had on the basis of amended Rules, would find that no rationale was forthcoming as to how Respondent No. 1 could be superseded by Respondent Nos. 6 & 7. Ms. Bhattacharyya relies on a supplementary affidavit filed by UPSC affirmed on June 07, 2007. Perusal of the said affidavit, has not improved the situation. We are not at all satisfied as to how the Respondent No. 1 could be superseded. Even if we observe that the Tribunal erroneously relied on the pre-amended Rule, are would come to the same conclusion as we do not find any rationale supporting the decision of the Petitioner.

11. We have heard Shri Gourab Banerji learned Additional Solicitor General and perused the record. Regulations 3(1) and 5 of the Regulations, which have bearing on the decision of this appeal read as under:

3. Constitution of the Committee to make Selection:--(1) There shall be constituted for a State Cadre or Joint Cadre a Committee consisting of the Chairman of the Commission or where the Chairman is unable to attend, any other member of the Commission representing it and the following other members namely:

(a) For State other than Joint Cadre;

(i) Chief Secretary.

(ii) Officer not below the rank of Secretary to the Government Incharge of Home

Department.

(iii) Director-General and Inspector General of Police. Where no cadre post of Director General and Inspector General of Police exists, then the Inspector General of Police.

(iv) A member of the service not below the rank of Deputy Inspector General of Police; and

(v) A nominee of the Government of India not below the rank of Joint Secretary.

3(2) The Chairman or the member of the Commission shall preside at all meetings of the Committee at which he is present.

3(3) The absence of a member other than the Chairman or member of the Commission shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attend its meetings.

4. Preparation of a list of Suitable officers:

5(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the service. The number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty percent of such number or two, whichever is greater.

Explanation: In case of Joint Cadres a separate select list shall be prepared in respect of each State Police Service, the size of each select list being determined in the manner indicated above.

5(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of a seniority in that service of a number which is equal to three times the number referred in Sub-regulation (1). Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the select list and in such a case the Committee shall consider all the eligible officers.

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in Sub-regulation (3) shall be excluded.

Provided also that the Committee shall not consider the case of a member of the State Police Service unless on the first day of April of the year in which it meets he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared

equivalent thereto by the State Government.

Explanation: The powers of the State Government under the third proviso to the Sub-Regulation shall be exercised in relation to the members of the State Police Service of Constituent State by the Government of the State.

5(2A): Deleted.

5(3): The Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of April of the year in which it meets:

Provided that a member of the State Police Service whose name appears in the Select List in force immediately before the date of the meeting of the committee shall be considered for inclusion in the fresh list to be prepared by the Committee even if he has in the meanwhile attained the age of 54 years.

Provided further that a member of the State Police Service who has attained the age of fifty four years on the first day of April of the year in which the Committee meets shall be considered by the Committee, if he was eligible for consideration on the first day of "April of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years.

5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as he case may be on an overall relative assessment of their service records.

5(5) The list shall be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding' then 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 Police Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Explanation I: The proceedings shall be treated as pending only if a charge sheet has actually been issued to the officer or filed in a Court as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential.

5(6) The list so prepared shall be reviewed and revised every year.

12. The aforesaid Regulations have been interpreted in large number of judgments. We may notice two of them - U.P.S.C. Vs. K. Rajaiah and Others, and M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others, The factual matrix of K. Rajaiah's case was substantially similar to the present case. The Respondent was considered for promotion to the Indian Police Service against the vacancies of 1998 and 1999 but was not selected. He failed in persuading the Tribunal to review the recommendations made by the Selection Committee. In the writ petition filed by him, the High Court of Andhra Pradesh took cognizance of the 'Outstanding' grading given in the ACRs of the Respondent from 1994 to 1996 and directed the official Respondents to constitute a fresh Selection Committee for review of the recommendations already made. This Court referred to additional affidavit dated 15.2.2005 filed on behalf of the Appellant and observed:

We cannot also endorse the view taken by the High Court that consistent with the principle of fair play, the Selection Committee ought to have recorded reasons while giving a lesser grading to the first Respondent. The High Court relied on the decision of this Court in National Institute of Mental Health & Neuro Sciences v. Dr. K. Kalyana Raman, Far from supporting the view taken by the High Court, the said decision laid down the proposition that the function of the Selection Committee being administrative in nature, it is under no obligation to record the reasons for its decision when there is no rule or Regulation obligating the Selection Committee to record the reasons, This Court then observed:

Even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Dass v. Union of India....

In the next paragraph, the learned Judges indicated as to what is expected of the Selection Committee, in the following words:

We may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection Committee did anything to the contrary.

That being the legal position, the Court should not have faulted the so-called down gradation of the first Respondent for one of the years. Legally speaking, the term "downgradation" is an inappropriate expression. 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 at variance with the gradation given in the ACRs. That is what has been done in the instant case in respect of the year 1993-94. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State Government, it would be desirable to record reasons. But having regard to the nature of the function and the power confided to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision.

(emphasis supplied)

13. The same issue was considered in *M.V. Thimmaiah v. U.P.S.C. (supra)* in the context of promotion to the All India Administrative Services. While refusing to review the recommendations made by the Selection Committee, this Court referred to a number of precedents including the judgments in *R.S. Dass Ors. Vs. Union of India (UOI) and Others*, *Mrs. Anil Katiyar Vs. Union of India and others*, and observed:

Therefore, in view of a catena of cases, courts normally do not sit as a court of appeal to assess ACRs and much less the Tribunal can be given this power to constitute an independent Selection Committee over the statutory Selection Committee. The guidelines have already been given by the Commission as to how ACRs to be assessed and how the marking has to be made. These guidelines take care of the proper scrutiny and not only by the Selection Committee but also the views of the State Government are obtained and ultimately the Commission after scrutiny prepares the final list which is sent to the Central Government for appointment. There also it is not binding on the Central Government to appoint all the persons as recommended and the Central Government can withhold the appointment of some persons so mentioned in the select list for reasons recorded. Therefore, if the assessment of ACRs in respect of *Shri S. Daya Shankar* and *Shri R. Ramapriya* should have been made as "outstanding" or "very good" it is within the domain of the Selection Committee and we cannot sit as a court of appeal to assess whether *Shri R. Ramapriya* has been rightly assessed or *Shri Daya Shankar* has been wrongly assessed. The overall assessment of ACRs of both the officers were taken; one was found to be "outstanding" and the second one was found to be "very good". This assessment cannot be made subject of court's or Tribunal's scrutiny unless actuated by mala fide.

14. In view of the propositions laid down in the aforementioned judgments, we hold that the Tribunal committed a jurisdictional error by directing the Appellant and the official Respondents to convene Review Selection Committee and the High Court erred in dismissing the writ petition filed by the Appellant. In the

result, the appeal is allowed, the impugned order as also the order passed by the Tribunal are set aside and the O.A. No. 1064/1996 filed by Respondent No. 1 is dismissed.