

CASE NO.:
Appeal (civil) 3024 of 2005

PETITIONER:
U.P.S.C.

RESPONDENT:
K. RAJIAH & ORS.

DATE OF JUDGMENT: 03/05/2005

BENCH:
P. VENKATARAMA REDDI & P.P. NAOLEKAR

JUDGMENT:
JUDGMENT

ORDER

ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 709 OF 2004

WITH
C. A. NO. \005.. OF 2005 @ S.L.P.(C) NO. 728 OF 2004

P. VENKATARAMA REDDI, J.

Leave granted.

The 1st respondent herein belonging to A.P. Police Service of the rank of Superintendent of Police, filed an application before the Central Administrative Tribunal, Hyderabad Bench, in the year 2002 questioning the two notifications dated 21.1.2002 & 15.2.2002 issued by the Central Government selecting and appointing certain police officers of Andhra Pradesh State cadre to the Indian Police Service against the vacancies of 1998 and 1999. It has been the case of the 1st respondent that despite his outstanding service he has not been selected whereas officers having inferior merit were selected. The main contention before the Tribunal was that there was no proper assessment of merit by the Selection Committee and the awards and commendations which he got and the 'outstanding' grading given in the ACRs for as many as four years were not duly taken into account by the selecting body. He claimed to possess superior merit over the three respondents who were senior to him and who were selected and appointed by the Government. The Tribunal did not accept the contention of the respondent. It dismissed the application while observing thus:

"\005On careful scrutiny of the ACRs of the applicant and other eligible candidates in the list, we are satisfied that the official respondents have considered the merits and demerits of each and every candidate while notional benefits keeping open the said two posts for consideration for Selection from others in the eligibility list.

Though it is pointed out by the learned counsel for the applicant that the applicant has been recommended President's Police Medal for distinguished service rendered by him and this fact has not been taken into consideration by the said Committee, it is found that the said Police

Medal has been awarded to the applicant on the Republic Day of 2001 i.e, nearly after one year from the date on which the Selection Committee met i.e, 22.12.1999 for preparation of the select lists for the years 1996-1997, 1998 and 1999. As already pointed out by us, whatever awards given to the applicant during various years prior to 22.12.1999 are noted in the ACRs of the respective years of the applicant and they were taken into consideration by the Selection Committee in giving the grading to the applicant. Thus it is found that the Selection Committee has taken into consideration all the relevant facts in making in-depth assessment of the candidates of the eligibility lists of the relevant years 1998 and 1999."

Aggrieved by the said order, the 1st respondent filed a writ petition under Article 226 of the Constitution in the High Court of Andhra Pradesh. Apart from the prayer to quash the order of the Tribunal and the two notifications issued by the Central Government in 2002, the first respondent sought for the direction to set aside the appointments of respondents 5 to 7 and to convene a fresh Selection Committee for re-assessment of comparative merit on the basis of the service records and not confining the consideration to ACRs only.

The High Court proceeded on the premise that the 1st respondent had four 'outstanding' gradings from "1996 to 1999" (it must be 1994 to 1996) in the ACRs, whereas the other officers did not have so many outstanding gradings. The High Court observed that no reasons were disclosed for revising the classification to the detriment of the writ petitioner. The main reason however which weighed with the High Court was that the Selection Committee omitted to consider the relevant material which, according to the High Court, was not merely the ACR, but also the entire service record / service register of the officers. The High Court observed thus:

"Thus, it is clear that what was considered by the Selection Committee was the ACRs only and not the service records. On directions by this Court, the Government produced the records. The crucial file in which the Committee categorized the officers has not been made available. The said file only clears the mist as to whether the Committee considered only ACRs or the S.Rs. also. We have to necessarily draw adverse inference in this regard\005

\005It is one thing to say that the S.Rs. and ACRs of the officers have been placed before the Committee and on the basis of these documents the categorization was made. But, it is another thing to say that the Committee can categorise on the basis of ACRs. The latter procedure conflicts with sub-regulation (4) of Regulation 5. The learned tribunal failed to analyse and examine this issue and thereby committed an error apparent on the face of the record\005"

The High Court accordingly allowed the writ petition and directed the official respondents to constitute a fresh Selection Committee and to prepare the panel of officers to be promoted to IPS for the year 1999 by assessing "overall

relative assessment by considering the relevant ACRs and Service Records as directed supra". Assailing this judgment of the High Court, the SLPs were preferred by the Union Public Service Commission (UPSC) and the Union of India. Before proceeding further, we may note the relevant provisions contained in Regulation 5(4) & 5(5) of Indian Police Service (Appointment by Promotion) Regulations, 1955 in regard to preparation of select list.

5(4) The Selection Committee shall classify the eligible officers as 'outstanding', 'very good', 'good' or 'unfit' as the 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 among the officers finally classified as 'outstanding' then from among 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.

After hearing the arguments on 18.1.2005, the following order was passed by us:

"Having considered the arguments, we are of the prima facie view that the reason which weighed with the High Court in quashing the select list of IPS for the year 1999 relating to Andhra Pradesh State is not correct. It seems to us that the Annual Confidential Reports Parts I & II placed before the Selection Committee are comprehensive enough to furnish requisite material to judge the comparative merit and that the non-perusal of service register/record by itself has not vitiated the selection. Still the question that remains is whether the consideration was based on the relevant criteria as laid down in the Regulations, namely, Indian Police (Appointment by Promotion) Regulations, 1955 remains to be considered, especially in view of certain observations made by the High Court in support of the respondent's plea on merits. Instead of remitting the matter to the High Court for fresh consideration, we deem it just and proper to settle the issue once and for all, especially, for the reason that the respondent-writ petitioner has retired from the State Police service at the age of 58 years and if his claim is accepted, he would perhaps serve as an Officer of IPS for a short time.

Though the broad stand taken by the UPSC in the counter-affidavit filed before the Tribunal / High Court and also in the memorandum of SLP does not spell out the precise reason as to why the respondent who was graded outstanding for three years preceding the year under consideration was not selected, certain facts including the actual procedure that is being followed by UPSC to evaluate the candidates were projected in the course of arguments. Certain documents were placed before us for our perusal though the copies were not served to the respondent's counsel.

It is only fair and proper that the UPSC files an additional affidavit clarifying the relevant aspects bearing on the non-selection of the respondent as per the extant procedure so that the respondent will be able to make out his case with reference to those aspects."

Pursuant to this Order, an additional affidavit was filed on behalf of UPSC and reply thereto was filed by the 1st respondent. Thereafter, the matter has been listed for further hearing.

In regard to the service records and ACRs, we reiterate the prima facie view expressed by us in our Order dated 18.1.2005. The assumption underlying the Writ petitioner's contention that the ACRs do not reflect the details of awards and commendations and the penalties is not correct. Therefore, the substratum of the reasoning of the High Court that relevant material in the form of service registers were not made available to the Selection Committee for scrutiny collapses.

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 1st respondent. The High Court relied on the decision of this Court in National Institute of Mental Health & Neuro Sciences Vs. Dr. K. Kalyana Raman & Ors. [AIR 1992 SC 1806]. 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 the person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Das Vs. Union of India [1986 (Suppl.) SCC 617] at Page 633." In the next paragraph, the learned Judges indicated as to what is expected of the Selection Committee, in the following words:

"\005we 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 administration 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\005"

That being the legal position, the Court should not have faulted the so called down gradation of the 1st respondent for one of the years. Legally speaking, the term 'down gradation' 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.

What remains is whether the case of the 1st respondent was duly considered vis-a-vis the other eligible officers including Respondents 5 to 7. The question is whether the non-selection of the 1st respondent to IPS against the vacancies pertaining to A.P. State for the year 1999 is on account of non-adherence to relevant rules or arbitrariness in the process of selection.

The actual procedure adopted and the factors taken into account by the UPSC / Selection Committee has been narrated in the additional affidavit dated 15.2.2005 filed on behalf of UPSC sworn to by the Deputy Director (AIS), UPSC. The relevant extracts are given hereunder:

"It is also submitted that the Regulations do not provide for the detailed method to be followed in the matter of assessment of officers. The Commission has, therefore, evolved certain guidelines to be followed by the Selection Committee in the matter of the procedure for assessing the records. It is submitted that the confidential procedure of the Union Public Service Commission has been circulated to this Hon'ble Court. The procedure contained therein is followed by the Selection Committee in respect of all the States/Cadres for induction to the All India Services under the Promotion Regulations.

It is submitted that the Selection Committee is required to go through the service records of each of the eligible officers, with special reference to the performance of the officer during the last five years (preceding the years for which the Select List is being prepared), deliberating on the quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing Officer/ Accepting Authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer. The Selection Committee also takes into account orders regarding appreciation for the meritorious work done by the concerned officers. Similarly, it is also required to keep in view orders awarding penalties or any adverse remarks communicated to the officer, which even after due consideration of his representation, have not been completely expunged.

That as per the uniform procedure followed by the Selection Committee for preparing the IPS Select List for 1999, the ACRs for the years 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 were taken into consideration by the Selection

Committee for categorizing all the eligible SPS officers as 'outstanding', 'very good', 'good', or 'unfit' as the case may be.

That, for the year 1999 against 03 (three) vacancies, 09 (nine) officers were considered by the Selection Committee. The respondent No.1 was considered at S.No.08 in the eligibility list of 1999. For preparation of the Select List of 1999, the ACRs for the years 1993-94, 1994-95, 1995-96, 1996-97 & 1997-98 were taken into consideration because the crucial date for reckoning the eligibility is 01.01.1999. The Selection Committee on an overall relative assessment of his service record assessed Respondent No.1 as 'Very Good' as he secured 'Outstanding' only in respect of three years. On the basis of overall grading as 'Very Good', the name of Respondent No.1 could not be included in the Select List of 1999 due to the statutory limit on the size of the Select List. That, sufficient number of officers senior to the respondent No.1 with overall grading as 'Very Good' were available and in accordance with the provisions of Regulation 5(5) of the Promotion Regulations, their names were included in the Select List of 1999. Two officers senior to the Respondent No.1 who were graded as 'Very Good' also could not find a place in the Select List of 1999 due to the statutory limit on the size of the Select List."

We have also gone through the records of assessment placed before us by the learned counsel for the UPSC. The arguments in the additional affidavit coupled with the contents of the record make it clear that the 1st respondent could not be selected for the reason that he did not get the gradation of 'outstanding' for four years in a block of five years that was taken into account for the purpose of evaluating the merits of the candidates. The learned counsel for the 1st respondent points out that for the year 1993-94 which falls within the five year range, the first respondent ought to have been graded as 'outstanding' in conformity with the grading in the ACR. However, the selection Committee graded him as 'very good' in view of the difference of opinion expressed by the reporting officer and the reviewing officer. We do not find any unfairness or arbitrariness in grading the 1st respondent as 'very good' for the year 1993-94. If so, as he gets 'outstanding' grading only for three years, his overall grading cannot be 'outstanding' in view of the existing guidelines adopted by the Commission. Normally, the Court will not interfere with the evaluation done by the Commission on a consideration of relevant material. However, we have some doubts on the validity of guidelines evolved in this behalf. The procedure of assigning the overall grading as 'outstanding', only if an officer was classified as such in the ACRs of four out of five years, seems to dilute the procedure of selection by merit and give primacy to seniority to some extent. For instance, if a junior officer gets three 'outstanding' grades and two 'very good' gradings, the officers senior to him, though they might not have got 'outstanding' even for one year, will be selected by virtue of their seniority. Whether this result that follows from the application of the criterion that is being adopted by the Commission is contrary to the statutory Regulations or whether such criteria would be violative of

Articles 14 & 16, is a matter which might deserve serious consideration. But, in the absence of specific challenge to the rule or the procedural guidelines spelt out in the additional affidavit filed by the UPSC and the arguments not having been advanced on this aspect, we are not inclined to express a definite opinion on this aspect.

Taking an overall view and having due regard to the limitations inherent in judicial review of selection process by an expert body, we are not inclined to nullify the decision taken by the UPSC.

In the light of the foregoing discussion, we set aside the judgment of the High Court and hold that the Tribunal has rightly dismissed the application filed by the 1st respondent. The appeals are thus allowed.

JUDIS