

CASE NO.:
Appeal (civil) 2717 of 2007

PETITIONER:
Union of India & Anr

RESPONDENT:
A.K. Narula

DATE OF JUDGMENT: 18/05/2007

BENCH:
CJI K G Balakrishnan & R V Raveendran

JUDGMENT:
J U D G M E N T
[Arising out of SLP (C) No.20719/2005]

R.V. RAVEENDRAN, J.

Leave granted.

Union of India has filed this appeal by special leave against the judgment and order dated 27.5.2005 of the Punjab & Haryana High Court in Civil W.P. No.4455/2004.

2. Respondent was appointed as Deputy Superintendent of Police in the Central Reserve Police Force (CRPF for short) on 1.12.1971. He was promoted as Assistant Commandant on 23.7.1983. Promotion from the post of Assistant Commandant to the next higher post of Second-in-Command is on the basis of selection.

3. The O.M. dated 10.3.1989 issued by the Ministry of Personnel, Public Grievances and Pension laid down the procedure of selection where the Recruitment Rules required promotions to be made by selection. It provided that where vacancies to be filled are more than four, the number of officers to be considered by the Departmental Promotion Committee ('DPC' for short) shall be three times the number of vacancies. It authorized the DPC to decide its own method and procedure for objective assessment of the suitability of the candidates. It excluded interviews, unless specifically provided for in the relevant recruitment Rules and directed that Confidential Reports (CRs) were to be the basic inputs for assessment. The O.M. required the DPC to follow the procedure laid down therein to ensure that the evaluation of the CRs was fair, just and non-discriminatory. A summary of the relevant portions of the procedure laid down in the OM is given below:

(i) Suitability should be assessed on the basis of service record, with particular reference to CRs for five preceding years. CRs of equal number of years should be considered in respect of all officers.

(ii) DPC should not be guided merely by the overall grading that may be recorded in the CRs but should make its own assessment on the basis of entries made in the CRs. If the reviewing authority or the accepting authority had overruled the reporting authority or the reviewing authority as the case may be, the remarks of the latter authority should be taken as the final remarks for purposes of assessment provided it is apparent from the relevant entries that the higher authority had come to a different assessment consciously after due application of mind. If the remarks of the reporting authority, reviewing authority and accepting authority are complementary to each other, and

one does not have the effect of overruling the other, then final assessment should be made by the DPC, by reading the remarks together.

(iii) DPC should give an overall grading to each officer whose CRs are assessed, as outstanding, very good, good, average or unfit. The panel of promotion should be prepared by the DPC based on the overall grading assigned to each of the candidates considered by the DPC. Officers graded as 'outstanding' would rank en bloc senior to those who are graded as 'very good' and officers graded as 'very good' would rank en bloc senior to those who are graded as 'good' and placed in the select panel accordingly. Officers with the same grading would maintain their inter se seniority in the feeder post. Appointments from the panel should be made in the order of names appearing in the panel.

(iv) For promotion to posts which are in the level of Rs.3700-5000 and above, the benchmark grade should be "very good". For promotions to Group 'A' posts carrying lesser scales of pay, the benchmark grade should be "good".

4. A Departmental Promotion Committee ('DPC' for short) was convened to fill up 48 vacancies of Second-in-Command on 13.6.1990. The DPC considered the CRs of 144 eligible Assistant Commandants. The benchmark for promotion to the rank of Second-in-Command was 'very good'. As per the parameters adopted by the DPC held on 13.6.1990 on the basis of their prevailing instructions, a candidate should have four 'very good' reports of ACRs out of last 5 ACRs including the ACR for the latest year and should have no adverse remarks in CRs for the other years under consideration for securing the benchmark of 'very good'. Out of 148 officers considered, DPC rated 39 officers as 'very good' and 80 officers as 'good'. After due deliberations, the DPC recommended that the 39 officers who had secured the benchmark grade of 'very good' should be empanelled for promotion. It also recommended that an additional nine senior-most Assistant Commandants from those who were graded as 'good' be empanelled for promotion to the rank of Second-in-Command so that 48 vacancies could be filled. The DPC further empanelled the next ten senior-most Assistant Commandants graded as 'good' for promotion against 10 anticipated vacancies.

5. The respondent had three ratings of 'good' for the years 1985-86, 1987-88 and 1988-89 and two ratings of 'very good' for the years 1986-87 and 1989-90. The DPC, therefore, gave the overall rating of 'good' to the respondent. As only 19 officers were needed from the list of officers with 'good' rating to fill the existing as well as anticipated vacancies, only the first nineteen in the list of officers with the rating 'good' were empanelled and promoted. The respondent, though rated 'good', was not empanelled for promotion, as his name did not figure in the first nineteen, having regard to the inter-se-seniority among those who secured the overall rating of 'good'.

6. Feeling aggrieved, the respondent filed W.P. No.12316 of 1990 praying for a direction to the appellants herein to include his name in the list of officers approved for being appointed as Second-in-Command. The respondent contended that his service record was similar to that of R. S. Virk, another Assistant Commandant, who was promoted. It was contended that both had secured 'very good' for three years and 'good' for two years, during the five years under consideration (1985-86, 1986-87, 1987-88, 1988-89 and 1989-90); that the DPC upgraded the rating of R.S. Virk for the year 1988-89 from 'good' to 'very good' and, consequently, gave him the overall rating of 'very good'; that in respect of the year 1987-88, his case was similar to that of R.S.Virk for 1988-89, and therefore his rating for 1987-88 ought to have been upgraded from 'good' to 'very good' and that if it had been done, he would have also got the overall rating of 'very good' instead of 'good',

thereby becoming entitled to be placed in the block of 'very good' candidates selected for promotion.

7. By order dated 11.2.1992, a learned Single Judge accepted the Respondent's contention and allowed the writ petition holding that the DPC having modulated the rating of R.S. Virk from 'good' to 'very good', failure to do so in the case of respondent in similar circumstances would amount to unfair and hostile discrimination. He also held that the appellants failed to prove that those who were promoted had a better service record than respondent. He, however, noted that as the respondent had been promoted as Second-in-Command (during the pendency of the writ petition), all that survived for consideration was whether respondent was entitled to be promoted from an earlier date. He directed the appellants to include the name of the respondent in the approved list of Assistant Commandants for appointment to the rank of Second-in-Command from the date when anyone junior to him was promoted as Second-in-Command (in pursuance of the selection by the DPC on 13.6.1990), with all consequential benefits.

8. The said judgment dated 11.2.1992 was challenged by the appellants herein in LPA No.586 of 1992. The Division Bench found that in the case of R. S. Virk (who was senior to respondent in the feeder post) for the year 1988-89, the accepting authority had rated him as 'good', but DPC had upgraded the rating as 'very good' on the ground that the reporting authority and the reviewing authority had rated him as 'very good', and the accepting authority had failed to record any reason for downgrading him to 'good'. The Division Bench found that in the case of Respondent for the year 1987-88, the reviewing authority had graded him as 'very good' whereas the accepting authority had graded him as 'good' without assigning any reason. The Division Bench was of the view that no plausible explanation was disclosed for applying different yardsticks to R.S. Virk and Respondent, that application of a different yardstick to Respondent would amount to unfair treatment, and that if the same yardstick applied in the case of R S Virk, had been applied to Respondent, the DPC would have rated the Respondent also as 'very good' instead of 'good'. The Division Bench, however, felt that the learned Single Judge ought not to have issued a direction to include the name of Respondent in the approved list (and that too from the date when a person junior to him was promoted) and ought to have left it to DPC to reconsider the matter. The Division Bench, therefore, allowed the appeal in part by judgment dated 12.7.2001, set aside the order of the learned Single Judge and directed the DPC to reconsider the respondent's case, keeping in view the observations made in the said judgment while adjudging his suitability. The Division Bench also observed that if on reconsideration the respondent was found suitable, he shall be promoted with retrospective effect from the date on which R.S. Virk was promoted as Second-in-Command, and should be given all consequential benefits.

9. Pursuant to the decision of the Division Bench, a review DPC was convened on 4.12.2003. It reconsidered the case of the respondent. It held that there was no ground to upgrade his rating for 1987-88 from 'good' to 'very good'. Consequently, the overall rating of Respondent by the DPC remained 'good' and DPC did not recommend him for promotion with respect to the DPC dated 13.6.1990. We extract below the reasoning given by the review DPC:

"In view of the observations made by the Hon'ble Court, the ACRs for the period from 1.4.1985 to 31.3.1990 in respect of Shri A.K. Narula and Shri R.S. Virk have been duly scrutinized by the DPC. Scrutiny of records reveals that ACR of Shri A.K. Narula for the year 1987-88 is in two parts. The first part is for 6 months from 1.4.1987 to 26.9.1987 in which he was graded "Good" by Reporting Officer, "Very Good" by Reviewing Officer and "Good" by Accepting Officer whereas, in the second part of ACR for a period of six months from 3.10.1987 to 31.3.1988, Reporting Officer, Reviewing Officer and Accepting Officer all had rated him as "Good". Having gone through all these facts, the Review DPC is of the view that the overall performance of Shri A.K. Narula during the year 1987-88 was

"Good" only. His case is not identical to that of Shri R.S. Virk since his ACR was for full one year and Reporting and Reviewing Officer had graded him as "Very Good" and it was the final Accepting Authority who had graded him as "Good" without any reasons. Hence, no case is made out to upgrade the report of Shri A.K. Narula from "Good" to "Very Good".

The competent authority approved the recommendations of the review DPC and the decision was communicated by order dated 5.1.2004.

10. This led to the second round of litigation. The respondent filed W.P. No.4455 of 2004 wherein he sought quashing of the order dated 5.1.2004 and a direction to the appellant to promote him to the rank of Second-in-command with reference to DPC held on 13.6.1990 with all consequential benefits. A Division Bench of the High Court allowed the said petition by judgment and order dated 27.5.2005. The Division Bench held that the judgment dated 12.7.2001 of the Division Bench in the earlier round of litigation had held that the respondent was not treated fairly and had specifically directed the DPC to reconsider his case in the light of its observations; that the said decision attained finality as the SLP filed by Appellants against the said judgment dated 12.7.2001 was dismissed by this Court on 11.8.2003; that in spite of the above, the review DPC had reiterated its earlier decision and thereby failed to comply with the observations in the judgment dated 12.7.2001; and that therefore, the decision of the review DPC could not be upheld. The High Court, therefore, quashed the order dated 5.1.2004 and directed the appellants to reconsider the case of the respondent for promotion with reference to the DPC held on 13.6.1990 by treating the entry for the year 1987-88 as 'very good'. The court also directed that respondent shall be granted all consequential reliefs. The said decision is challenged in this appeal by special leave.

11. On the contentions urged, two questions arise for consideration:

(i) Whether the case of respondent was similar to or identical with that of R.S. Virk and, consequently, DPC ought to have treated the CR of respondent for the year 1987-88 as 'very good' thereby upgrading the overall grading from 'good' to 'very good'.

(ii) Whether the decision dated 17.2.2001 in the first round of litigation had concluded the issue of entitlement of the respondent to the rating of 'very good' for 1987-88 and consequently, all that was required of the review DPC was to include him in the approved list of Assistant Commandants with the overall rating of 'very good' and promote him to the rank of Second-in-Command with reference to DPC dated 13.6.1990 ?

Re : Question (i) :

12. R.S. Virk had the rating of 'good' for 1985-86 and 1988-89. He had three 'very good' ratings and two 'good' rating during the five year period between 1985-86 and 1989-90. The records of R.S. Virk disclosed that for the year 1988-89, the reporting authority had graded him as 'very good'; the reviewing authority had concurred and also rated him as 'very good'; but the accepting authority had downgraded his rating from 'very good' to 'good' without assigning any reason for not accepting the concurrent rating of 'very good' by the reporting authority and reviewing authority. DPC was, therefore, of the view that where both the reporting authority and reviewing authority had graded the performance of R. S. Virk as 'very good', the accepting authority was not justified in downgrading the rating without assigning any reason. Therefore exercising the power given under the

guidelines contained in the OM dated 10.3.1989, DPC modulated his rating for that year as 'very good'. As a consequence, the 'very good' rating of R.S. Virk increased from three to four, resulting in upgradation of overall DPC rating from 'good' to 'very good'.

13. The respondent had also secured three 'very good' ratings for 1986-87, 1988-89 and 1989-90. For the other two years, that is for the years 1985-86 and 1987-88, the respondent had secured the rating of 'good'. The respondent contended that his rating for 1987-88 was similar to that of R.S. Virk for 1988-89 as the accepting authority had downgraded his rating without assigning any reason, and therefore, DPC ought to have modulated his rating for 1987-88 as 'very good'. On careful consideration, we find that respondent's case was different from that of R. S. Virk. The CR of respondent for the year 1987-88 consisted of two parts. For the first half period, that is, from 1.4.1987 to 26.9.1987, the reporting authority had graded him as 'good' and reviewing authority had graded him as 'very good' and the accepting authority had graded him as 'good'. In regard to the second half, that is, 3.10.1987 to 31.3.1988, all the three authorities (reporting authority, reviewing authority and the accepting authority) had rated him as only 'good'. There was no question of reviewing or upgrading the rating of respondent for the second half of 1987-88, as all the three authorities had concurrently graded him as 'good'. Even in regard to the first half of that year (1.4.1987 to 26.9.1987), unlike the case of R.S. Virk where both the reporting authority and the reviewing authority had unanimously given the rating 'very good', the reporting authority had rated the respondent as 'good' and the reviewing authority had rated him as 'very good'; and in view of divergence between the reporting authority and reviewing authority, the accepting authority chose to rate him as 'good'. The DPC, on assessment, had rightly found that there was no case for revising the grading of respondent. The review DPC also found that the facts of respondent's case were different from that of R.S. Virk. The CRs demonstrated that R.S. Virk deserved upgrading and respondent did not.

14. The guidelines give a certain amount of play in the joints to the DPC by providing that it need not be guided by the overall grading recorded in the CRs, but may make its own assessment on the basis of the entries in the CRs. The DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, malafides or arbitrariness, the selection calls for interference. Where the DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by the DPC, the court will not interfere (vide *State Bank of India v. Mohd. Mynuddin* [1987 (4) SCC 486], *Union Public Service Commission v. Hiranyalal Dev* [1988 (2) SCC 242] and *Badrinath v. Government of Tamil Nadu* [2000 (8) SCC 395]). The review DPC reconsidered the matter and has given detailed reasons as to why the case of the respondent was not similar to that of R S Virk. If in those circumstances, the Review DPC decided not to change the grading of the respondent for the period 1.4.1987 to 31.3.1988 from 'good' to 'very good', the overall grading of the respondent continued to remain as 'good'. There was no question of moving him from the block of officers with the overall rating of 'good' to the block of officers with the overall rating of 'very good' and promoting him with reference to the DPC dated 13.6.1990. In the absence of any allegation of mala fide or bias against the DPC and in the absence of any arbitrariness in the manner in which assessment has been made, the High Court was not justified in directing that the benefit of upgrading be given to respondent, as was done in the case of R. S. Virk.

Re : Question (ii)

15. We have gone through the judgment dated 11.2.1992 of the learned Single Judge in CWP No.12316/1990 and the judgment of the Division Bench dated 12.7.2001 in LPA No. 586 of 1992 in the first round of litigation.

16. In the case of R. S. Virk, the DPC held that there was no justification for the accepting authority to downgrade the rating as 'good' without assigning any reason, when both the reporting authority and the reviewing authority had rated his performance as 'very good'. Therefore, it made its own assessment and upgraded the rating of R.S.Virk for the year 1988-89 as 'very good'. As a consequence, R.S. Virk had four 'very good' ratings and was placed in the block of 'very good' candidates. The High Court was of the view that if the downgrading of respondent's rating for the year 1987-88 by the accepting authority from 'very good' to 'good' was similar to that of R. S. Virk, then the same yardstick should be applied to Respondent and the rating that has been downgraded by the accepting authority as 'good' should be upgraded as 'very good' for 1987-88. It also observed that failure to do so would be 'unfair'. Having made these observations, the High Court set aside the decision of DPC for 1990 and directed a review DPC to reconsider the case of the respondent. It follows, therefore, that review DPC was required to decide whether the case of the respondent for the year 1987-88 was similar to that of R. S. Virk for the year 1988-89, and if so, upgrade the rating of respondent for the year 1987-88 as 'very good'. It is true that in that event respondent also would have had four 'very good' rating and his overall rating would have jumped from 'good' to 'very good'. But all that depended on the finding by review DPC as to whether respondent was entitled for upgradation of rating for 1987-88.

17. The decision of the Single Judge dated 11.2.1992 merged with the judgment dated 12.7.2001 in the LPA. There is no conclusive finding in the judgment dated 12.7.2001 of the Division Bench that the respondent was entitled for upgradation of the entry for 1987-88 from 'good' to 'very good'. The Division Bench held that no plausible explanation was given for adopting different yardsticks in the case of R S Virk and the respondent, if respondent's case was similar to that R. S. Virk. The effect of the decision was that if the downgrading of rating of Respondent for 1987-88 was similar to the downgrading of the rating of R. S. Virk for 1988-89, the DPC should modulate the rating of respondent for 1987-88 as 'very good' instead of 'good', as was done in the case of R.S.Virk. The direction by the Division Bench that 'if on reconsideration, the respondent is found suitable, then he shall be promoted with retrospective effect' and that 'DPC shall reconsider his case' make it clear that DPC was required to examine whether the case of respondent was identical to that of R. S. Virk. Only if the facts were the same, respondent was entitled to be treated in a manner similar to R.S.Virk. The Review DPC was, therefore, entitled to examine the case of respondent on merits and take a decision.

Conclusion :

18. In view of our finding that the case of respondent was different from that of R.S.Virk, the decision of review DPC that the respondent did not deserve upgradation from 'good' to 'very good', deserves to be upheld.

19. We, therefore, allow this appeal, set aside the judgment dated 27.5.2005 passed by the High Court and dismiss the writ petition upholding the decision of the review DPC. Parties to bear their respective costs.