

State of Madhya Pradesh

Vs

Bani Singh and Others

Civil Appeals Nos. 3045 and 3046 of 1988

(M. M. Punchhi, V. Ramaswami JJ)

05.04.1990

JUDGMENT

V. RAMASWAMI, J. –

1. Civil Appeal No. 3046 of 1988 has been filed against the order dated 16th December 1987 of the Central Administrative Tribunal Jabalpur Bench, in C. A. No. 102 of 1987 and Civil Appeal No. 3045 of 1988 has been filed against the order of the same Tribunal dated 25th January, 1988 in O. A. No. 201 O. A. No. 201 of 1986 is petition filed by the respondent Bani, Singh, I. P. S. Officer of the Madhya Pradesh cadre and a direct recruit of 19644 batch, under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"1. Quashing the adverse entries in the ACR for the year 1976-77 (Annexure B) and in the ACR for the year 1979-80 (Annexure F)

2. Retrospective promotion in the Selection Grade of the I. P. S. from 1978 when juniors of his batch were promoted.

3. Promotion to the post of Super Time Scale to the rank of D. I. G. with effect from 7th November 1981 when his juniors of the batch were promoted with consequential benefits including arrears of pay etc."

3. O. A. No 102 of 1987 was filed by the same officer against initiation of departmental enquiry proceedings and issue of the charge sheet on 22nd April 1987 in respect of certain incidents that happened in 1975 - 76 when the said officer was posted as Commandant, 14th Battalion, SAF Gwalior. By the order dated 16th December 1987 the Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. In the order dated 25th January, 1988 the Tribunal allowed the prayer for quashing the adverse entries in the ACR for the year 1979-80 and granted the prayer for retrospective promotion to the Selection Grade from 1979 when the juniors of the respondent's batch were promoted. In regard to the third relief prayed for the Tribunal directed the Government to constitute special review committee to consider the promotion of the officer to the Super Time Scale post of DIG with effect from the date his junior was promoted, on merits in accordance with the directions given in the judgment. These two appeals have been filed against those two orders as already stated.

4. The appeal against the order dated 16th December 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of the delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry are said to have taken place between years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then, if that investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.

5. In petition filed under Section 19 of the Administrative tribunals Act, the first relief related to the quashing of the adverse remarks for the years 1976-77 and 1979-80. The Tribunal has sustained the adverse remarks for 1976-77 but quashed the adverse remarks for 1979-80. Adverse remarks for the year ending 31st March 1980 made by one Shri Rahim read as follows :

An officer of average ability who did not show any outstanding work. Appeared dissatisfied and cause about his work. Complaints of corruption and irregularities committed by him during his posting Commandant 14th Bn, between 1975-77 are under enquiry in the Vigilance Cell of CID. The enquiry made so far indicates that there is truth in its last stages. Not considered fit for promotion.'

This remark was quashed by the Tribunal but for the same year Sh. Khurana the Inspector General has made a remark which read as :

"His performance during the period under review was colourless'

But this was not quashed by the Tribunal on the ground that this remark of the Inspector General is of the general nature.

6. The learned counsel for the appellant contended that the non-selection of the respondent for Selection Grade by the Screening Committee in 1980 should not have been interfered with by the Tribunal. We are unable to agree with this contention of the learned counsel. The Tribunal itself pointed out that the remarks of the Inspector General of Police, above quoted, is general observation of a reviewing officer and that could not have been taken into account. Generally, in relation to this the Tribunal pointed out that the Screening Committee seems to have been weighed into selecting the respondent on the ground that there were some complaints about integrity and the decision will have to be deferred until the decision on such complaints. The Tribunal pointed out that on these complaints not even the preliminary enquiry has been completed and that therefore they should not have weighed with the Screening Committee. This statement of the Tribunal cannot be said to be an incorrect approach. Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon his right to be considered.

If the departmental enquiry had reached the stage of framing of charge after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deferring the consideration in the Screening Committee meeting held on 26th November 1980 on this ground was therefore insupportable. In fact, even in respect of the adverse remarks which has been now quashed the respondent officer had made his own representation and the representation also was pending consideration at that time and it was disposed of only in December 1986. The remarks therefore, should not be taken to have become final so as to enable the Committee to take that remark into consideration. The deferring of the consideration in the meeting held on 26th November 1980 therefore, could not be considered as valid.

7. However, the learned counsel for the appellant contended that even if the Tribunal was right in this view it should have remanded the matter for fresh consideration by the Screening Committee and the Tribunal itself should not have given the relief of retrospective promotion to him to the selection grade. In any case, the learned counsel contended that since the Tribunal itself has upheld the remarks for the years ending 31st March 1977 it should not have interfered with the decision of the Screening Committee deferring the claim of the respondent in the meetings held on 27th February 1979 and 3rd March 1979. The learned counsel may be well-founded in the contention relating to overlooking of the respondent's claim by the screening committee when it met in 1979 by reason of this adverse remark, but on that ground we do not want to interfere with the order of the Administrative Tribunal because it had taken into an overall consideration of the entire facts and circumstances of the case in granting the relief.

8. The learned counsel also contended that though Screening Committee met in 1979-80 the application under Section 19 of the Administrative Tribunals Act was filed only 19th December 1986 and that therefore the application should have been dismissed on the ground of delay and laches. The Tribunal considered this question in detail and held that since the representation for the year 1980 was pending till 1986 and there is an allegation that the respondent had been making representations to the Government in this regard and in fact one such representation was accepted and it is on that basis in spite of the fact that the facts and situations remained the same in 1982 the respondent was selected for selection grade with effect from 4th March 1982. In those circumstances the Tribunal said that they were not willing to dismiss the application on ground of the laches and it has to be decided on merits. In these circumstances we are also unable to interfere with the order of the Tribunal.

9. The learned counsel for the appellant did not question the direction given by the Tribunal relating to consideration by the Special Screening Committee in respect of promotion to the post of Super Time Scale, in the rank of D. I. G. No other point also arises in this appeal. Accordingly both the appeals are dismissed. However, there will be no order as to costs in both the appeals.

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