

(2005) 12 MP CK 0039

**Madhya Pradesh High Court****Case No:** Writ Petition (S) No. 5988 of 2005

State of M.P.

APPELLANT

Vs

Surendra Nath, IAS and Another

RESPONDENT

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**Date of Decision:** Dec. 8, 2005**Acts Referred:**

- Constitution of India, 1950 - Article 227

**Citation:** (2006) ILR (MP) 212 : (2006) 1 MPHT 215**Hon'ble Judges:** A.K. Patnaik, C.J; R.K. Gupta, J**Bench:** Division Bench

**Advocate:** Vivekanand Awasthy, for the Appellant; Rajendra Tiwari and S.K. Rao, R.K. Tripathi, Satish Awasthy, Thamman Khadku and V.K. Pandey for Respondent No. 1 and S.A. Dharmadhikari, for the Respondent

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**Judgement**

A.K. Patnaik, C.J.

The respondent No. 1 is a Member of the Indian Administrative Service and belongs to the Madhya Pradesh cadre. In the CR of the respondent No. 1 for the period Ist April, 1996 to 30th June, 1996, there were some remarks which the Central Government by an order dated 24-7-2002 directed to be treated as "nonest". In his CR for the period of 2001-02, the respondent No. 1 was graded as "Average". The respondent No. 1 filed W.P. (C) No. 7001/2003 before the Delhi High Court and by an interim order dated 30-1-2004, the Delhi High Court directed that the said grading of "Average" given in his CR for 2001-2002 shall not be taken into consideration for promotion within his own cadre till further orders. On 30-1-2004, a DPC met to consider the case of IAS Officers of the Madhya Pradesh cadre including respondent No. 1 for promotion to the grade of Chief Secretary. Since the case of the respondent No. 1 was Sub-judice before the Delhi High Court, the DPC in the said meeting deferred the case of the respondent No. 1 till the final decision of the Delhi High Court. Being aggrieved, the respondent No. 1 filed O.A. No. 761/2004 before the Central Administrative Tribunal, Jabalpur Bench and the said Tribunal disposed

of the aforesaid O.A. by order dated 29-9-2004 with a direction to the DPC to reconsider the case of the respondent No. 1 ignoring his ACR for the year 2001-02 in which he had been given overall grading of "Average" and consider his all other available CRs. Pursuant to said order dated 29-9-2004 of the Tribunal, a review DPC was held on 1-11-2004 and recommended that the respondent No. 1 was not suitable for promotion to the grade of Chief Secretary. The respondent No. 1 was, therefore, not promoted to the grade of Chief Secretary. The respondent No. 1 then filed O.A. No. 6/2005 before the Central Administrative Tribunal, Jabalpur Bench and by order dated 31-3-2005 the Tribunal allowed the said O.A., set aside the recommendations of the review DPC made in its meeting held on 1-11-2004 and directed the petitioner to convene a review DPC afresh to consider the case of the respondent No. 1 as on 30-1-2004, keeping in view the observations in the said order dated 31-3-2005 of the Tribunal. By the said order dated 31-3-2005, the Tribunal further directed that if the respondent No. 1 was found fit for promotion, he shall be promoted from the date his immediate junior was promoted and granted all consequential benefits including arrears of pay and allowances. Aggrieved by the said order dated 31-3-2005 passed in O.A. No. 6/2005 by the Tribunal, the petitioner has filed this petition under Article 227 of the Constitution of India.

2. Mr. Vivekanand Awasthy, learned Government Advocate appearing for the petitioner submitted that law is well settled that the Court or the Tribunal can not sit in appeal on the decision of the DPC with regard to suitability of a candidate for promotion. In support of this submission, he cited the decision of the Supreme Court in *Dalpat Abasaheb Solunke, etc. v. Dr. B.S. Mahajan, etc.* AIR 1980 SC 434, wherein it has been held 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 and whether a candidate is fit for particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. He also cited *Anil Katiyar v. Union of India and Ors.* 1997 (1) SLR 153, in which the Supreme Court has held that the scope of judicial review of the merits of a selection to a civil post is very limited and the Tribunal is not expected to play the role of an Appellate Authority or an umpire on the acts and proceedings of the DPC and it would not sit on judgment over the selection of the DPC unless the selection is assailed as being vitiated by malafides or arbitrariness. Mr. Awasthy also relied on the decision of the Supreme Court in [State of West Bengal and Others Vs. Manas Kumar Chakrabarti and Others](#), in which the Supreme Court has reiterated that it is not open to the Courts to sit in appeal over the view taken by the Appointing Authority and the case of a selection of an incumbent to a post or to substitute its own view for that of duly constituted Committee. He vehemently submitted that in the present case, a reading of the impugned order dated 31-3-2005 of the Tribunal would show that the Tribunal has itself assessed the merits of the respondent No. 1 and formed the opinion that the respondent No. 1 was entitled to be selected on the

basis of his CRs. Mr. Awasthy submitted that the Tribunal has further directed that if the respondent No. 1 is found fit for promotion, he shall be promoted from the date his immediate junior was promoted. He submitted that the opinion of the DPC is at best recommendation and the State Government is not bound to promote the respondent No. 1 even if the review DPC opined that the respondent No. 1 was suitable to the grade of Chief Secretary. In this context, he referred to Para 14 of the guidelines of the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) enclosed with the circular dated 28th March, 2000, in which it has been clarified that the recommendations of the DPC are advisory in nature and the State Government may disagree with the recommendations of the DPC.

3. In reply, Mr. Rajendra Tiwari, learned Senior Advocate, appearing on behalf of the respondent No. 1, submitted that he does not dispute the well settled position of law that the Court or the Tribunal can not sit in appeal over the decision of the DPC in matters regarding suitability of the candidates for promotion. He submitted that in the present case, the Tribunal has found that the entire selection procedure was vitiated by bias and arbitrariness. He referred to the impugned order of the Tribunal to show that one criteria was followed by the DPC which met on 30-1-2004 for considering promotion of all the eligible officers to the grade of Chief Secretary and another criteria was followed in the review DPC which met on 1-11-2004 for considering only the case of the respondent No. 1 for promotion to the grade of Chief Secretary. He further submitted that the Tribunal has also found that ten years CRs of different officers have been considered by the DPC for finding out the suitability of the officers for promotion to the grade of Chief Secretary and that the CRs of the respondent No. 1 for the two years namely; 1996-97 and 2001-2002 could not be considered by the DPC on account of the orders passed by the Central Government declaring the CR for the year 1996-97 as "nonest" and the orders passed by the Delhi High Court directing that the CR for the year 2001-2002 shall not be considered for any promotion of the respondent No. 1. He submitted that the Tribunal had accordingly directed that CRs for the two previous years should be considered by the DPC so that 10 years CRs of the respondent No. 1 could be considered as has been done by the DPC for other officers. Mr. Tiwari further submitted that the Tribunal had also found that officers who were junior to the respondent No. 1 and were considered alongwith the respondent No. 1 for promotion by the DPC which met on 30-1-2004 were the members of the review DPC which met on 1-11-2004 to assess the merits/suitability of the respondent No. 1. He vehemently argued that the Supreme Court in the case of [A.K. Kraipak and Others Vs. Union of India \(UOI\) and Others](#), had deprecated the participation of an Officer in the Selection Board who was himself one of the candidates for selection, saying that in such participation, there will be conflict between interest and duty of such an Officer and that such a selection was not likely to be free from bias. He further argued that the aforesaid findings of the Tribunal made it clear that the DPC had

acted in an unfair and arbitrary manner and for this reason the Tribunal had set aside the recommendations of the DPC and directed reconsideration of the case of the respondent No. 1 for promotion to the grade of the Chief Secretary in accordance with the observations in the order of the Tribunal.

4. There can be no dispute over the proposition that selection of a candidate for promotion is to be done by the DPC who have expertise to make the selection and the Tribunal or Court can not sit in appeal over the decision of the DPC in such matters and can not substitute its own view with regard to merit/suitability of the candidate for such promotion for that of the DPC. But, where a candidate makes a grievance before the Court or the Tribunal that the DPC has been unfair or biased while assessing his merit/suitability for a selection post, the Court or the Tribunal after examining the matter can interfere with the recommendations of the DPC if it comes to the conclusion that the petitioner has not been accorded a fair treatment or that the approach of the DPC is vitiated by arbitrariness or bias.

5. In the present case, the Tribunal has found that the DPC has been unfair and arbitrary while assessing the suitability of the respondent No. 1 for promotion to the grade of Chief Secretary. The Tribunal has found that the DPC held on 30-1-2004 had decided that out of 10 confidential reports 5 should be of outstanding category, but in the review DPC meeting held on 1-11- 2004, the DPC decided that besides five outstanding reports, the remaining five CR should also be of not less than very good category including the one for part period. The Tribunal was of the view that the review DPC in its meeting on 1-11-2004 should have adopted the same criteria as fixed by the DPC on 30-1-2004.

The Tribunal has further found that a chart had been prepared and placed before the review DPC which met on 1-11-2004 showing the overall grading obtained by the respondent No. 1 in his five years CR namely 1992-93 to 2003-2004 and the said chart indicated the respondent No. 1 was graded "outstanding" for the years 1992-93, 1995-96, 1997-98, 1998-99 and 1999-2000. The Tribunal has further found that the respondent No. 1 had been graded as "Average" in the CR for the part period from April, 2002 to 15-10-2002 and Good+ for the part period from 16-10-2002 to 31-3-2003 and it was probably because of this CR for the year 2002-2003 that the review DPC had not found him fit for promotion. Thus, if this criteria adopted in the review DPC in its meeting on 1-11-2004 that besides five ACRs being outstanding, the remaining five ACRs should not be less than very good category including the one for part period which has prevented the selection of the respondent No. 1 in the said review DPC. The unfairness of the adoption of such new criteria by the review DPC which met on 1-11-2004 is thus apparent.

6. The Tribunal also found that the Confidential Reports of the respondent No. 1 for the period from April, 1996 to June, 1996 had been treated as "nonest" and removed from his CR dossiers and the CR for the remaining period from July, 1996 to March, 1997 was not available and therefore could not have been considered. The Tribunal

has also taken view that the Confidential Report of the respondent No. 1 for the period 2001-02 which was "average" could not be considered for promotion in view of the interim order passed by the Delhi High Court. The Tribunal has therefore rightly held that since the DPC had decided to consider last ten years Confidential Reports of all the eligible officers and in the case of the respondent No. 1 only 8 years Confidential Reports from 1993-94 to 2002-2003 were available and could be considered, the DPC should have considered the confidential reports of the respondent No. 1 for the period from 1991-92 and 1992-93.

7. The Tribunal has further found that officers who were junior to the respondent No. 1 and were considered alongwith him for promotion by the DPC on 30-1-2004, were nominated as members of the review DPC which met on 1-11-2004 to assess the merits/suitability of the respondent No. 1. Such a review DPC comprising of officers who were junior to the respondent No. 1 and who had been considered alongwith the respondent No. 1 in the DPC which met on 30-1-2004, could act with bias while making the assessment of the merits of the respondent No. 1 as promotion of respondent No. 1 in the grade of Chief Secretary with retrospective effect would have affected their seniority in the grade of Chief Secretary. In the case of A.K. Kraipak (supra), the Supreme Court has held that not only actual bias but also reasonable likelihood of bias would affect a selection process. Thus, the Tribunal was right in setting aside the recommendations of the review DPC in its meeting held on 1-11-2004.

8. We, however, find that in Para 13 of the impugned order, the Tribunal has proceeded to make some observations with regard to the remarks in the CRs of the respondent No. 1 for different periods and has observed that the said remarks should have been ignored by the review DPC. In our considered view, unless the remarks are held by a Court or Tribunal as "nonest", the same can not be ignored and it is for the DPC and not for the Tribunal to consider the said remarks while assessing the suitability of the Officer. The observations in Para 13 of the judgment were not warranted and the review DPC which will now meet again pursuant to the directions of the Tribunal, will consider the remarks in the CRs for whatever they are worth.

9. We also find that in Para 18 of the impugned order, the Tribunal has observed that if the respondent No. 1 is fit for promotion he be promoted from the date his immediate junior was promoted. Mr. Vivekanand Awasthy, learned Government Advocate for the petitioner is right that the opinion of the review DPC would be at best recommendations to be placed before the State Government and this has been clarified in the guidelines issued alongwith the Circular dated 28-3-2000 of the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training). In Para 14.1 of the said guidelines, it is stated that recommendations of the Screening Committee are advisory in nature and are to be placed before the State Government, but in Para 14.2 thereof the procedure

has been laid down as to what the State Government can do when it proposes to disagree with the Screening Committee. Obviously, the State Government has to act in a reasonable and not arbitrary manner and in accordance with the said guidelines while considering the recommendations of the DPC.

10. For the aforesaid reasons, we are not inclined to interfere with the impugned order of the Tribunal. The Review DPC will be held within a month from today and a decision will be taken by the State Government on the recommendations within one month from the recommendations of the review DPC since the respondent No. 1 will retire within a few months.

11. With the aforesaid observations and directions, the writ petition stands disposed of.