

(2006) 04 MAD CK 0294

Madras High Court

Case No: Writ Petition No. 24914 of 2005 and W.P.M.P. No. 27273 of 2005 and W.V.M.P. No. 2350 of 2005

Union of India (UOI),
Central Board of Excise
and Customs and
Union Public Service
Commission

APPELLANT

Vs

The Central
Administrative Tribunal
and V. Manivannan
(formerly known as
D.V. Inderajith)

RESPONDENT

Date of Decision: April 20, 2006

Citation: (2006) 04 MAD CK 0294

Hon'ble Judges: R. Sudhakar, J; P.K. Misra, J

Bench: Division Bench

Advocate: R. Santhanam, Central Govt. Counsel and M.T. Arunan, Central Govt, for the Appellant; P.V.S. Giridhar and P.V.S. Giridhar, Associates for R-2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Sudhakar, J.

Though the miscellaneous petitions are listed for disposal, by consent of learned Counsel for the parties, the main writ petition itself is taken up for disposal.

2. The writ petition has been filed by (i) Union of India, represented by its Secretary to Government, Ministry of Finance, (ii) Central Board of Excise and Customs, represented by its Member (P & V) and (iii) Union Public Service Commission, represented by its Secretary, challenging the order of the Tribunal dated 9.12.2004. The affidavit in support

of the writ petition has been filed by the third petitioner, namely, the Deputy Secretary, Union Public Service Commission.

3. The Tribunal's order, which is impugned before this Court, reads as follows:

We are therefore of the considered view that the prayer of the applicant has to be granted. Accordingly, we direct the respondents to review the case of the applicant for promotion to the grade of Joint Commissioner for the year 1997-98 in accordance with the revised instructions of the DOPT vide O.M. dated 8.2.2002. and the later instructions on the subject and further direct that this exercise shall be completed within a period of two months from the date of receipt of a copy of this order. If the applicant is found suitable, he is entitled to get the consequential benefits on par with his juniors. The O.A. is allowed as above.

4. The case of the second respondent herein who is the applicant before the Tribunal, is as follows:

The second respondent entered into the service of the Central Excise Department as Assistant Collector, presently known as Assistant Commissioner, on 13.12.1984 and thereafter, after completion of probation, he was posted in the regular vacancy as Assistant Collector (R & I), Bombay in the year 1986. He was promoted to the post of Deputy Commissioner on ad-hoc basis, by order dated 7.8.1997 and transferred to Chennai Commissionerate on 25.5.1998 and re-designated as Joint Commissioner on 21.6.1989. By order dated 20.9.2000, he was granted non-functional selection grade of Rs.14300-18200 in the junior administrative grade and designated as Additional Commissioner. On 17.10.2003, several officers officiating on ad-hoc basis as Joint Commissioners, have been appointed on regular basis in the scale of pay Rs.12000-16500 as Joint Commissioners for the panel years 1992-93 to 1997-98. Though the contesting second respondent was officiating as Joint Commissioner, he was not promoted, while 21 of his juniors including one Mr. Devendra Mishra, Mr. R. Sekar and Mr. Ashok Kumar have been promoted for the year 1997-98. It is contended that no adverse remarks have been communicated and no vigilance case is pending against the contesting second respondent. Further, it is submitted that the contesting second respondent was on medical leave during 1997-98 as he suffered infection of the spinal cord.

5. It is further contended by the second respondent that since the promotion was for the year 1997-98, the performance and grading that could have been considered by the Departmental Promotion Committee (hereinafter referred to as "DPC"), would be for the previous five years, namely 1992-93 to 1997-98. Since he was not considered for regular promotion, he made a representation dated 31.10.2003 to the second petitioner stating that he had a good service record and that he was denied promotion to the grade of Joint Commissioner on regular basis even though his juniors have been promoted. By order dated 17.12.2003 communicated to the second respondent on 2.1.2004, the first

petitioner herein informed the second respondent that the DPC has found him unfit.

6. It is the grievance of the second respondent that the DPC has failed to assess his performance in a fair, impartial and objective manner and there is no proper appreciation of the relevant materials available in the service records and the annual confidential reports (hereinafter referred to as "ACR"), which would clearly demonstrate his high caliber of work and exemplary performance and appreciation given by his superiors. In any event, it was submitted that there are sufficient vacancies for the year 1997-98 and therefore, without disturbing any one of the persons already promoted, the case of the second respondent could be considered for promotion. Further, the contention of the second respondent is that the instructions relating to the constitution and assessment by the DPC have not been properly followed. The DPC have taken the ACR of each candidate as the basis for selection and the gradation given in the ACR was the only relevant factor while considering all the candidates. While so, the ACR of the second respondent alone was not properly construed.

7. Before the Tribunal, the Union Public Service Commission filed a reply stating that the DPC meeting was held on 8.10.2003 and 9.10.2003 to consider selection of officers to promotion to the grade of Joint Commissioner of Customs and Central Excise against total of 145 vacancies pertaining to the years 1992-93 to 1997-98. It is stated that the DPC followed the revised guidelines issued by the Department of Personnel and Training - vide their O.M. No. 35034/7/97-Estt.(D), dated 8.2.2002 regarding assessment of officers. It was stated that as per the earlier DPC guidelines issued by the Department of Personnel and Training (hereinafter referred to as "DOPT") which remained in force till 7.2.2002, the DPC was required to give an over-all grading of the officers being assessed and the over-all grading was required to be the one among (i) outstanding, (ii) very good, (iii) good, (iv) average and (v) unfit. As per the DPC guidelines, the benchmark prescribed for promotion to all posts in the pay scale on Rs.12000-16500 and above was "very good" with the stipulation that the officers who are graded as "outstanding" would rank en-bloc senior to those who are graded "very good" and placed in the select panel accordingly up to number of vacancies by maintaining inter-se seniority in the feeder grade/post. However, as per the revised DPC guidelines dated 8.2.2002, the DPC should determine the merit of those being assessed for promotion with reference to the prescribed benchmark and accordingly grade the officers as "fit" or "unfit".

8. It is further contended by the Department that for the promotion to the grade of Joint Commissioner of Customs and Central Excise, which is in the pay scale of Rs.12000-16500, the benchmark is "very good". The second respondent was considered by the DPC for the panel year 1996-97. However, he could not be assessed by the DPC for the said year as sufficient number of officers with prescribed benchmark had become available to fill-up the vacancies. He was therefore considered by the DPC for the year 1997-98. It is stated that on the basis of assessment of the ACR for the relevant years 1992-93 to 1996-97, as furnished by the Department of Revenue, the second respondent was assessed by the DPC as unfit, as he failed to attain the prescribed benchmark "very

good" in terms of the revised DOPT guidelines dated 8.2.2002 and therefore, he was not recommended for promotion and however, though some officers junior to him who were assessed by the DPC as fit and covered under the then available vacancies, were recommended for promotion.

9. It is the further contention of the Department that the DPC was convened according to the rules and instructions and on the basis of the documents including the ACR of the eligible officers as furnished by the Department of Revenue, which was considered for the purpose of the DPC selection. It was also contended that as per the DOPT OM dated 10.4.1989, the DPC meeting has full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates.

10. Counsel for the petitioners-Department would submit that the DPC was not guided merely by over-all grading, if any, that may be recorded in the CRs, but should make its own assessment on the basis of the entries in the CRs. He would also submit that the over-all grading in the CR may be inconsistent with the grading under various parameters or attributes. The petitioners' counsel also contended that the Tribunal or Court should not sit in judgment over the assessment with the DPC/selection committee, save in the rarest of rare cases where the findings of the DPC/selection committee may be tainted with malice and relied upon the case reported in [Smt. Nutan Arvind Vs. Union of India and another](#), . Petitioners also relied upon the case reported in [Union Public Service Commission Vs. Hiranyalal Dev and Others](#), to say that the selection committee is entitled to fix its own norms in making the assessment. They also relied on the judgment of the Supreme Court reported in [Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others](#), to state that the Court should not sit in appeal over the decision of the selection committee and scrutinise the relative merits of the candidates. They would also further rely upon the judgment of the Supreme Court reported in 1997 (1) SLR 153 (Anil Katiyar v. UOI and Ors.) to state that the scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal, cannot play the role of appellate authority or umpire in the acts and proceedings of the DPC and could not sit in judgment over the selection made by the DPC, unless the selection is assailed as being vitiated by mala-fides or on the ground of being arbitrary.

11. It was therefore contended by the Department that the DPC meeting was held in accordance with the rules and the instructions and the case of the second respondent was considered and since he failed to attain the prescribed benchmark "very good", he was assessed as unfit and was not included in the panel for the year 1997-98 and therefore, there was no infirmity in the proceedings.

12. The Tribunal proceeded to call for the records and the minutes of the DPC meeting as well as the ACR and the same were perused by the Tribunal. The grading in the ACR of the second respondent is as follows:

Year	Grading assigned by the Reporting Officer	Grading assigned by the Reviewing Officer
1992-93	Good	Very Good
1993-94	Good	Good
1994-95	Good	Very Good
1995-96	Very Good	Very Good
1996-97	Very Good	Very Good

The benchmark for promotion to the post of Joint Commissioner according to DOPT OM dated 10.4.1989 as amended vide OM dated 27.3.1997, is "very good" and therefore, the Tribunal came to the conclusion that the applicant has fulfilled the benchmark and the Tribunal further went on to hold that there is no adverse remarks according to the ACR of the second respondent and that his integrity was certified by the Department. The Tribunal therefore came to the conclusion that the DPC had not applied its mind in a fair and just manner to assess the second respondent's performance. However, the Tribunal also was conscious of the fact that the Tribunal cannot be expected to play the role of appellate authority or umpire in regard to the proceedings of the DPC and could not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala-fides or on the ground of arbitrariness. However, the Tribunal was of the view that there was non-application of mind by the DPC insofar as the second respondent is concerned.

13. We have given our anxious consideration to the submissions made by the learned Counsel for the petitioners and the second respondent.

14. Learned counsel for the second respondent drew our attention to the guidelines of the DPC, in particular to Paragraphs 6.1.3 and 6.2.1, which read as follows:

Guidelines for DPCs

6.1.3. While merit has to be recognised and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process.

Confidential Reports:

6.2.1. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory.

Learned counsel for the second respondent also submitted that the confidential reports of the second respondent were not properly considered before making proper assessment

in respect of the contesting second respondent and in this regard, he would rely upon the dictum laid down by the Supreme Court in the case reported in [State Bank of India etc., Vs. Kashinath Kher and others, etc.,](#) and in particular, to paragraph 16, which reads as follows:

16. It would also appear from the record that the confidential reports submitted were adopted in toto by the Committee considering promotion without any cross verification from the character rolls or the record and independent assessment of merit and ability. That would also be clearly illegal. Being a competent authority to consider the claim of the candidates, the Committee for promotion has to independently assess the merit and ability of each candidate from the reports and the records etc. consistent with the weightage prescribed in the rules and then to determine the relative merit and ability of officers and then to arrange order of merit of the officers for promotion. Being selection posts, the selection record also must indicate reasons, however, brief they may be, so that when tested by judicial review, the Court would be better assisted by such record to reach correct decision in law. This exercise should also be done by the appellant. If the confidential reports written earlier are by superior officers, then the entire record could be secured by the controlling officers. They should be considered by the promotion Committee and each case must be examined in the light of the record of each officer. It would be desirable to prepare a columnar statement with all relevant columns. The C.Rs. and other relevant records should be preserved. The matters considered by the promotion committee should also be preserved.

15. Learned counsel for the second respondent would submit that no reasons have been given by the selection committee as to why the second respondent was found unfit even though he had four "very goods" overall and three "very goods" consecutively in his confidential reports and supported by his credentials and appreciation of work and ability. In the absence of any material in the proceedings of the DPC, it can be safely inferred that the process of selection was perfunctory and the recording of "unfit" was based on no materials. It is also arbitrary as the case of other officers was based only on the grades given in the ACRs.

16. Learned counsel for the second respondent would also rely upon the judgment of the Supreme Court reported in [R. Tamilmani Vs. Union of India and others](#), and in particular, to paragraph 2, which reads as follows:

2. In our view it is clear that if out of five committee members three ranked the appellant as "outstanding" and two as "very good", the result would be that there was definitely consensus that he was at least "very good" and in fact a little better. Therefore, in our opinion, there was no reason why his case could not have been put up for consideration by the Union Public Service Commission. The Central Administrative Tribunal, with respect, was in error in dismissing the application of the appellant as it did. We direct the case of the appellant to be put up for consideration by the Union Public Service Commission for appointment in the vacancy of 1990 on the footing of the consensus as

we have set out earlier.

17. Learned counsel for the second respondent would submit that since the confidential reports clearly show that he has got three "very goods" consecutively, there was no other material for the DPC to come to adverse conclusion to hold that he is unfit and in the light of the direction of the Supreme Court in [R. Tamilmani Vs. Union of India and others](#), , the same analogy should be applied and the direction of the Tribunal that the case of the second respondent should be re-considered, is perfectly in order.

18. We have also called for the relevant records of the DPC including the confidential reports as well as the proceedings of the DPC. Apparently, on going through the records, we find that the conclusion of the DPC is on the basis of the confidential reports. The chart of the DPC grading various officers in the select list was apparently on the basis of the entries made in the confidential reports as---outstanding, very good, good and average and wherever the person concerned had "three outstandings" and "three very goods", they were taken into consideration to state that the candidate was "fit" for selection. However, in the case of the second respondent, inspite of his having "three very goods" successively for the years 1994-95, 1995-96 and 1996-97, the DPC has thought the second respondent not fit for promotion. No reasons have been shown as to why his case was considered as unfit, particularly in view of the fact that his confidential reports and other materials clearly show that he is well within the parameters for consideration.

19. Assuming without admitting that as per the OM dated 8.2.2002, the grading of the officers is to be given only as fit or unfit, such gradation will be on the basis of the confidential report which is the basic input based on which the assessment will be made by the DPC. Such view is fortified by a clear reading of Paragraph 6.2.1 of the guidelines of the DPC provided by the counsel for the petitioners, which has been set out above.

20. No doubt, the decision of the DPC cannot be faulted with. But in the light of the clear gradation of the confidential reports showing "very good" for three years consecutively, if the DPC wants to come to a different conclusion, then necessarily, there should be a reason to take a different view and hold the person concerned as unfit. There is no reason whatsoever to show that relevant factors were considered before holding the second respondent as unfit. Paragraph 16 of the decision of the Supreme Court in JT 1996 (2) SC 569 extracted above, would clearly support the case of the second respondent that in the matter of selection post, the selection record must indicate the reasons however brief they may be, so that when tested by judicial review, the Court can be better assisted by such record to reach correct decision in law.

21. In view of the above, we have no hesitation to hold that the DPC has not given any reason to hold the second respondent as unfit particularly in view of the confidential reports which show that the second respondent has "very good" for the three consecutive years and also the other records which amply prove his exemplary service records as

recorded by the reporting and reviewing officers, which would go to show that the second respondent has merit, ability and integrity in discharge of his duties. There is nothing adverse in any of the records to come to the conclusion that the second respondent is unfit. If any such remark would have been there, then the DPC could have come to a different conclusion. In the absence of any material against the second respondent and in the absence of recording of reasons to hold the second respondent as unfit, we can safely come to a conclusion that there was no proper appreciation of the case of the second respondent by the DPC.

22. Various judgments cited by the petitioners to show that normally, the Tribunal or Court should not interfere with the process of selection, no doubt, are not disputed. But the facts of each case will have to be considered before the law is made applicable to that case. When once the Court finds that there has been a total non-consideration of the relevant materials and the conclusion of the DPC is contrary to the records apparent, certainly it calls for interference. It is incumbent on the part of the DPC to record its own reasons as to why it has to come to a different conclusion to hold the second respondent as unfit. In this case, no such reason has been recorded.

23. In the light of the observations of the Supreme Court in [State Bank of India etc., Vs. Kashinath Kher and others, etc.,](#) , it can be safely inferred that the DPC has marked the second respondent as unfit without any basis or reason and also based on non-consideration of the relevant material. Therefore, in the absence of the reasons, the DPC recording in respect of the second respondent herein as unfit, calls for interference, as the case of the second respondent was not considered objectively.

24. In this case, the Tribunal has only directed that the matter should be re-considered. Such view is fortified by a similar direction given by the Supreme Court in [R. Tamilmani Vs. Union of India and others](#) , where the Supreme Court directed the UPSC to consider the case of the appellant before the Supreme Court for appointment in the vacant post on the basis of a finding that the appellant in that case was graded "outstanding" by three members of the Committee and "very good" by two members of the Committee, but however, his name was not recommended on the ground that there was no consensus.

25. The contention of the petitioners that the Courts should not interfere with the DPC proceedings, as a matter of fact, has to be rejected, as the power of the Court to subserve the cause of justice is to interfere in a case where the Court finds that injustice has been caused to a person, particularly, when his career has been affected by non-appreciation of relevant materials in an objective and impartial manner.

26. Therefore, the order of the Tribunal does not call for any interference as the direction given by the Tribunal is only to re-consider the case of the second respondent. The writ petition is dismissed. No costs. W.V.M.P. and W.P.M.P. are closed.