

Prabhakar Singh and anr. Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Oct-03-2005

Reported in : 124(2005)DLT494; 2005(85)DRJ168

Judge : Vijender Jain and; J.P. Singh, JJ.

Appeal No. : WP (C) No. 6186/2003

Appellant : Prabhakar Singh and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Kailash Gambhir, Adv. for Respondent No. 1 and ; B. Rana, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Renu Verma, Adv

Disposition : Petition allowed

Judgement :

Vijender Jain, J.

1. The writ petition was filed, inter alia, by the petitioners, as there were thirteen vacancies of Superintending Engineers (Electrical) in the CPWD. Thirty senior most Executive Engineers (Electrical) who had at least five years' regular service as Executive Engineer (E) were considered and a panel dated 15.1.2002 of

thirteen names was prepared including two petitioners. The petitioners had assailed the merit list as the DPC did not follow the criteria of merit but adopted the criteria of 'fit and unfit' which was prescribed by the revised instructions of 8th February, 2002. The grievance of the petitioners was that they had all along been graded as 'Outstanding' and had the DPC followed the criteria in vogue prior to the revised instructions on the subject issued by the DOPT vide their OM dated 8.2.2002, they would have been placed at the top of the panel drawn by the DPC. The respondents took the stand before the Central Administrative Tribunal (CAT) that the DPC was held on 21.11.2001 much before the issue of the aforesaid OM dated 8.2.2002. The stand of the respondent was that the DPC of 21.11.2001 was held strictly in accordance with the criteria laid down in para 6.3.1 (v) of the old DPC instructions.

2. The grievance of the petitioners is that petitioner No. 1 had all 'Outstanding' ACRs and petitioner No. 2 had five 'Outstanding' and one 'Very Good'. However, the DPC adopted the non-selection criterion whereby 'Outstanding' was converted to 'Very Good' without any bench mark. It was also contended that one of the persons who was also selected, i.e. Mr. P.D. Agnihotri had ACR for 1995 - 'Good', 1995 to 1996 - 'Average', 1996-97 - 'Very Good', 1997-98 - 'Very Good', 1998-99 - 'Very Good' and for 1999-2000 - 'Good' has been rated as 'Very Good' and was also shown in the select list of thirteen persons at Seriall No. 2 whereas petitioners who were all along getting 'Outstanding' were shown at the bottom of the merit list.

3. It was contended before us by learned counsel for the petitioners that the main grievance of the petitioners was that the DPC mechanically treated all 'Outstanding' ACRs as 'Very Good'. The other contention raised by learned counsel for the petitioners was with regard to the exercise undertaken by the UPSC of changing the criterion illegally from selection to non-selection.

4. In support of her arguments, learned counsel for the UPSC relied on Anil Katiyar (Mrs.) v. Union of India and Ors. : AIR 1997 SC2656 and has contended that the scope of judicial review in the merits of selection made for the appointment to a service or a civil post, the Court cannot play the role of an appellate authority or an umpire with regard to proceedings of DPC and the Court

would not sit in judgment over the selection made by the DPC unless the selection is assailed being vitiated by mala fides or on the ground of being arbitrary.

5. Learned counsel for the respondent/UPSC has also relied upon *Nutan Arvind (Smt.) v. Union of India and Anr.* : [1996]1SCR491 for the same proposition. Learned counsel for the respondent/UPSC has also relied upon a recent judgment of Supreme Court in *U.P.S.C. v. K. Rajaiah and Ors.* : AIR 2005 SC2853 .

6. In sum and substance the learned counsel for the UPSC has contended that it was within the competence of the DPC to have adopted any criteria which is in consonance with para 6.2.1 (e) of the OM No. 22011/5/91-Estt (D) dated 27.3.1997. The same is as under :-

'The DPC should not be guided merely by the overall 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, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.'

7. On the basis of the aforesaid instructions it was contended that the DPC had to make its own assessment and it was not to be guided merely by the overall grading that was recorded in the CRs.

8. Normally there cannot be any dispute with the proposition that the DPC should take into consideration overall assessment in order to find out whether the overall assessment made in the entries are inconsistent with the grading under various parameters or attributes which have been mentioned in the CR dossiers. It is possible that sometimes an officer is graded 'Outstanding' by the reporting officer but the same may not be found to be correct by the reviewing officer or vice-versa or in some cases the various parameters and attributes as mentioned in the CR dossiers do not correctly reflect the ultimate grading given in the ACRs. An argument was advanced by the learned counsel for the respondent/UPSC that no reason has been given for giving 'Outstanding' by the reviewing officer. We have summoned the original record and following are the observations in respect of petitioner No. 1.

9. In respect of petitioner No. 1, for the ACR given on 3.5.1996, the reason which has been given in the ACR for giving 'Outstanding', is given as follows :

'The officer is capable of taking prompt decision. He is fully dependable and organises his work in excellent way. Very intelligent officer. Rated Outstanding.'

10. Thereafter on 6th May, 1996, the Chief Engineer while endorsing has recorded his remarks to the following effect :-

'An officer of exceptional ability and dedication.'

And has given 'Outstanding' to him.

11. For the year 1996 reporting officer on 12.6.1997 has remarked :-

'He has been very dependable and intelligent officer. Performance has been Outstanding.'

12. The Chief Engineer on 30.6.1997 while endorsing the remark of the reporting officer has given the following remarks :-

'An officer exceptionally dedicated to the work. Outstanding.'

13. On 12.5.1998, the reporting officer (Superintending Engineer) has given the following remarks :-

'Mr.Prabhakar Singh is an officer of outstanding capabilities. He is sincere, fully dependable officer and an asset to the department.'

14. The Chief Engineer as reviewing officer has noted:-

'He is an officer fully capable of handling delicate situations in VVIP areas. Outstanding.'

15. This was recorded on 21.5.1998. Then from 1.4.1999 to 24.2.2000, the Joint Secretary, Ministry of Urban Development Mr. S. Banerjee has recorded:

'His effort during the period under review to streamline the working of his directorate was noteworthy, particularly in streamlining allotments. Willingness to shoulder additional responsibility and discharge them to the best of his ability made him an asset to the Ministry. For the reasons in the foregoing parts I rate Mr. Prabhakar Singh's performance for the period under review as Outstanding.'

16. Similarly, for petitioner No. 2 S.K.S. Deol, reporting officer has endorsed in the CR for the year 1995 as follows :

'The officer is very hard working, painstaking and takes keen interest in the work. He has full command on the progress of work and maintain very good relations with his subordinate and the clients. His overall performance is Outstanding.'

17. The Chief Engineer has recorded on 9.5.1995 :-

'Competent, sincere, hard working and dedicated officer. His performance during this period was Outstanding.'

18. The reporting officer for the year 1996 recorded :-

'Officer is hard working, painstaking and intelligent. He maintains very good progress of work and also had very good liason with the clients. His overall performance was Outstanding.'

19. The reviewing officer on 12.7.1996 has recorded :-

'An outstanding Executive Engineer (electrical).'

20. It has been mentioned by the reviewing officer 'Outstanding Officer' and thereafter the reporting officer has stated in his remarks on 23.6.1997 as under :-

'Shri Deol is an outstanding executive engineer (Electrical).'

21. For the year 1997, the reviewing officer has given the following remarks :-

'A very hard working, sincere, efficient, dependable and intelligent officer. His grading is outstanding.'

22. The reviewing officer has given the following grading on 23.6.1997 :-

'Overall performance Very Good.'

23. For 1998, the reviewing officer has given the following grading :-

'A very sincere, efficient, hard working officer.'

24. However, the reviewing officer on 7.7.1998 has given the following grading :-

'Overall performance of the officer has been Outstanding.'

The reviewing officer has given Outstanding.

25. For 1999, the reporting officer has given the following grading. :-

'A very hard working, sincere, dependable and efficient officer. His performance has been Outstanding for the period under report.'

26. The reviewing officer has simply given the following remarks :-

'Overall performance Outstanding.'

27. For the year 2000, the reviewing officer has given the following remarks :-

'A sincere, dependable, hard working officer. His performance has been Outstanding for the period under reporting.'

28. The reviewing officer has given the following remarks:-

'An excellent officer, sincere, hard working and dependable with keen initiative and drive. Grade Outstanding.'

29. thereforee, to say that no comments were given by the reviewing officer or the reporting officer on the ACRs is not correct. In contra-distinction to these ACRs, one P.O. Agnihotri, who was also an executive engineer, has been placed at Seriall No. 2 on the merit list by converting his ACR which was 'Good' to 'Very Good'.

30. Interesting aspect which emerges after seeing the ACR of P.D. Agnihotri who has been placed at Serial No. 2 of the select panel is that from 1.4.1995 to 16.12.1995 he has been given 'Good'. The UPSC has also graded him 'Good' for that period. From 16.12.1995 to 31.3.1996, he has only been graded 'Average'. The UPSC has jumped him to 'Very Good', although the same shall be considered for one year. Thereafter from 20.6.1996 to 31.3.1997 he was graded 'Very Good', from 3.4.1997 to 31.3.1998 - 'Very Good', 1998-99 - 'Very Good' and for 1999-2000 - 'Good' but given 'Very Good' by the UPSC.

31. We have seen the DPC grading of the officers. We have asked learned counsel for the respondent/UPSC to place on record any material on the basis of which the 'Outstanding' has been converted to 'Very Good' for all five years in case of petitioners. Apart from stating that the same has been done as per the policy of the respondent nothing has been placed before this Court.

32. We have perused the ACRs as well as the grading given by the DPC constituted by the UPSC. We have not found any inconsistency with the grading under various parameters or attributes which is discernible from the reports of the reporting officer as well as of the reviewing officer from the perusal of the ACR in relation to petitioners. No doubt this Court while dealing with this kind of cases where DPC as a High Level Committee, has considered the ACRs and graded the officers would not interfere. However, if there is manifest arbitrariness which is reflected from the overall grading given by the UPSC on the basis of the perusal of the record of the UPSC and the ACRs given by the department concerned, the Court while exercising its power of judicial review must strike down arbitrariness which has crept in the decision making process. therefore, the authorities cited by the learned counsel for the respondent/UPSC are of no help to her as the question addressed in *Nutan Arvind* and *Anil Katiyar's* cases (supra) were totally different. In *Anil Katiyar's* case (Supra) the Court held :-

'Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it 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 it being arbitrary.'

33. Time and again we have asked learned counsel for the respondent/UPSC to place before us the material or the objective consideration which went into toning down the ACRs for last five years from 'Outstanding' which has been consistently made by the reviewing officer as well as reporting officer, to 'Very Good'. No material was placed before us nor any material was taken into consideration apart from the ACRs as per the stand of the learned counsel for the respondent/UPSC. We have seen the forms on which merit list was prepared, simply the form was filled in a mechanical manner by toning down the ACR from 'Outstanding' to 'Very Good'. To our mind this is not the intent, purpose and scope of the guideline which has been relied upon by the respondent. Para 6.2.1 (e) as reproduced above takes into consideration that the DPC so constituted by the UPSC should not be guided merely by the gradings in the CRs. But should make its own assessment on the basis of the entries in the CRs as sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes. When the gradings are recorded in the CRs there are different columns which have been filled by the persons who have been assessed including self-appraisal. Then it has to be approved by the reporting officer who writes the CR and the same goes before the reviewing officer. If sometimes some person or some officer is given very high grading by the reporting officer same can be toned down by the reviewing officer. May be in such kind of cases there is a strong presumption that the gradings so recorded do not reflect the true grading of an officer. But when there is inconsistency in recording of the grading by the hierarchy of officers then in the absence of any objective material before the UPSC mechanically toning down the ACRs so recorded without even maintaining any note of the deliberations of the DPC, vitiates the decision making process and the same, in our view, is arbitrary. Reliance has also been placed by learned counsel appearing for respondent/UPSC on K. Rajaiah's case (supra). To our mind this authority does not help the case of the respondent rather it goes to the aid of the petitioners. In this case the Court held :-

'...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 vocative of Articles 14 & 16, is a matter which might deserve serious consideration....'

34. In the instant case it can be noticed that P.D. Agnihotri who was for three years having 'Very Good' and for two years 'Good' has been shown at Seriall No. 2 of the merit list. When we had questioned the wisdom of DPC in doing so, the learned counsel correctly stated that as P.D. Agnihotri was senior and he was having 'Very Good' for three years, thereforee, he was to be placed in the merit list at No. 2. If seniority was the only criterion then there was no use of preparing a merit list. The whole decision making process has been vitiated by non-application of mind and consideration which was irrelevant and extraneous in terms of para 6.2.1 (e) of the said OM and this reflects the question posed by the Supreme Court in K. Rajaiah's case. thereforee, the apprehension expressed by the Supreme Court in K. Rajaiah's case (supra) is clearly discernible in the present case.

35. Exceptionally outstanding officers, even if they were not senior could have superseded other less meritorious but senior persons and we hold that in the absence of any other material the down grading from 'Outstanding' to 'Very Good' of the juniors and upgrading from 'Average' and 'Good' to 'Very Good' of the senior was done to keep the principle of seniority only, alive thus giving a go-bye to merit as envisaged under the rules.

36. We, thereforee, set aside the order passed by Central Administrative Tribunal on 4.7.2003 and allow the petition. We remand the case back to the UPSC to decide afresh in accordance with law as stated above within a period of three

months.

Petition stands disposed of.

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