

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1969 OF 2006
WITH
CIVIL APPLICATION NO. 2794 OF 2006**

Sadanand J. Koche and ors. ...Petitioners
Versus
Union of India and ors. ...Respondents

Mr. R.G. Walia for the Petitioners.
Mrs Neeta V. Masurkar a/w. V.S. Masurkar and Ms Nieyaati
Masurkar for Respondent Nos.1 and 2.
Mrs. Lata Patne I/b Mr. S.R. Atre for Respondent No.7,8,9,10
and 13.
Mr. N.V. Bandiwadekar for Respondent No.14.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 12.07.2018.

ORAL JUDGEMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the common judgment and order dated 6.2.2006 in O.A. Nos. 291, 308,335, 409 & 486 of 2004. The relief applied for by the petitioners in said O.A., was in the following terms:

"a. That this Hon'ble Tribunal be pleased to call for all and full record and proceedings of this case pertaining to and preceding the notification dated 29.3.2004 and more particularly the DPC proceeding of 2002 and 2003 from the office of the Respondents

and after going through the legality, validity and propriety of the same, quash and set aside the selection process adopted by Respondents and DPC in its meeting held on 11.12.2003, the decision of departmental promotion committee and the notification dated 29.3.2004;

b. That this Hon'ble Tribunal may further be pleased to quash and set aside the notification dated 29.3.2004 and consequently quash and set aside all the appointments made by the Respondent pursuant to the selection committee recommendations pursuant to notification dated 29.3.2004;

c. That this Hon'ble Tribunal may further be pleased to direct convening of fresh DPC and direct the selection for promotion be done on the basis of seniority and fitness, as per the Regulations and OM dated 8.2.2002 and as was done by DPC of 2002;

d. Pass such other or further orders as may be deemed necessary, fair and proper was done by DPC of 2002;

e. Award costs of this Application."

3] By the common judgment and order, the Central Administrative Tribunal (CAT), Mumbai has dismissed all the original applications by giving detailed reasons in support of its conclusion. The dispute in all these matters relates to seniority and promotion of the petitioners as well as the respondents. As of this date, there is no dispute that both the petitioners as well as the respondents have already retired from the service. Mr. Walia, learned counsel for the petitioner, however, submits that if the petitioners succeed

in the present petition, they can at least be granted monetary benefits on the basis of notional seniority and promotion. He submits that such a relief will also result in the petitioners securing additional pensionary benefits.

4] Mr. Walia submits that the respondents enjoined with the duty of fixing the seniority and holding DPC for promotions have adopted multiple yardsticks, which is itself illegal and arbitrary. He points out that the DPC, which met in December 2000 applied the yardstick of "*seniority-cum-fitness*". The DPC met in December 2003. However, applied some other yardstick in variance with the O.M. dated 8.2.2002. Mr. Walia submits that adoption of such variable yardstick vitiates the proceedings before the DPC and the recommendation of the DPC are required to be set aside.

5] Mr. Walia submits that in the DPC of 2003, unequal yardsticks were applied in case of the officers who fell within the zone of consideration. He points out that in case of Mr. Sawant, Mr. Sanap and Mr. Gabriel are concerned, the yardstick employed was that of seniority-cum-fitness whereas in case of other officers, a different yardstick was

made applicable. Mr. Walia submits that the application of unequal yardstick amounts to violation of Article 14 of the Constitution of India. Mr. Walia submits that this is a case where certain officers have secured accelerated gradation. He points out that some of the officers given gradation of outstanding without any rhyme or reason only in order to facilitate their entry into the IAS cadre. Mr. Walia submits that there is no consistency in the record of gradation and officers, who were average were average throughout, were suddenly graded as outstanding and officers, who were graded as very good, had to suffer. Mr. Walia submits that such arbitrary gradation vitiate the recommendations of the DPC and the promotions effected, on the basis of such recommendations. Mr. Walia submits that for all these reasons, the common impugned judgment and order is liable to be set aside.

6] Ms Neeta Masurkar, Mr. N.V. Bandiwadekar, Ms Lata Patne, learned counsel for the respondents, refute the contentions of Mr. Walia and insist that the reliefs in the present petition have, by now, been rendered infructuous. Even otherwise, they point out that there is absolutely no

material to suggest application of any unequal yardstick. They point out that the yardstick as applicable have been consistently applied and there is no arbitrariness in the recommendations of the DPC or promotions made on the basis of such recommendations. They point out that the challenges to gradation in such general terms and without even alleging any *mala fides* are incompetent. They point out that the CAT, has considered the contentions of the petitioners in great details and there is neither any illegalities nor any unreasonability in the view taken by the CAT in the common impugned judgment and order. For all these reasons, they submit that this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] At this point of time, as noted earlier, the petitioners as well as the respondents have already retired from service. In that sense, therefore, the reliefs applied for by the petitioners have been rendered infructuous. However, in deference to Mr. Walia's submissions that if the petitioners succeed, then it might possibly entitle them to be

considered for promotions on notional basis and if promoted, the same may have some effect upon retiral benefits which they presently draw, we have examined the rival contentions in this petition.

9] From the record, we are unable to accept Mr. Walia's contention that the DPC, had adopted any unequal yardsticks. In this regard, the CAT has quite correctly relied upon the affidavit of the UPSC, in which, it is categorically stated that for the years 2002-2003, the selections have taken place in accordance with regulation, then in force. In particular, the UPSC, had relied upon the Regulations 5(4) and 5(5), which have been quoted in extensio in paragraph 12 of the common impugned judgement and order. The petitioners have not succeeded in establishing that the procedures followed by the UPSC in the year 2002-2002 were in breach of said two Regulations. It is also not the case of the petitioners that these two Regulations were inapplicable for the relevant years under consideration.

10] From the perusal of the impugned judgment and order, including in particular, paragraph 13, we find that the CAT,

had in fact perused the UPSC files regards 2002 selection. The CAT has, in details, considered and approved the methodology adopted by the UPSC insofar as this selection is concerned. The CAT has correctly held that the UPSC is a constitutional body and in the absence of the petitioners demonstrating any statutory breach or *mala fides*, ordinarily it is not for the Tribunals and Courts to second guess the decisions of such expert bodies.

11] In ***Nutan Avind vs. Union of India and ors. - 1996 (2) SCC 488***, the Hon'ble Supreme Court has held that when a high level Committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, the Court cannot sit over assessment made by the DPC, as if it were an appellate authority. The CAT, in the present case, has quite correctly deferred to this principle, which binds both upon this court as well as the CAT.

12] Again, insofar as the 2003 selection are concerned, the position is not significantly different. During this year,

there was a question of determination of number of vacancies and consequently the zone of consideration. Again, the CAT has given cogent reasons for rejection of the petitioners' contentions.

13] For all the aforesaid reasons, we see no good ground to interfere with the view taken by the CAT in the common impugned judgment and order. Therefore, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

14] In view of dismissal of main petition, the civil application does not survive and the same is disposed of accordingly.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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