

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00094/2017

Date of Order: This, the 26th day of February 2020

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Shri Joy Barman
Resident of House No. 19
Nabajyoti Nagar, Panjabari
P.S. – Dispur, Guwahati – 781037
District – Kamrup (Metro), Assam.

...Applicant

By Advocates: Sri G. Rahul & Sri D.M. Nath

-Versus-

1. The Union of India
Represented by the Secretary
Ministry of Water Resources
River Development and Ganga
Rejuvenation, Shram Shakti Bhawan
Rafi Marg, New Delhi – 110001.
2. The Secretary to the
Government of India
Ministry of Water Resources
River Development and Ganga
Rejuvenation, Shram Shakti Bhawan
New Delhi – 110001.
3. The Brahmaputra Board
Basistha, represented by its Chairman
Guwahati – 781029, Kamrup (M), Assam.
4. The Chairman
Brahmaputra Board, Basistha
Guwahati – 781029, Kamrup (M), Assam.



5. The Deputy Secretary to the Government of India
Ministry of Water Resources
River Development and Ganga Rejuvenation
Shram Shakti Bhawan
Rafi Marg, New Delhi – 110001.
6. The Departmental Promotion Committee
Constituted for the purpose of
Filling up the post of Secretary and
Chief Engineer (Level-II) of the
Brahmaputra Board, under the
Government of India, Ministry of
Water Resources, River Development
And Ganga Rejuvenation, Shram Shakti
Bhawan, Rafi Marg, New Delhi – 110001.
7. Sri Iltaf Hussain
Presently serving as the Secretary
Brahmaputra Board, Basistha
Guwahati – 781029, Kamrup (M), Assam.
8. Shri Chan Mohan Das
Presently serving as the Chief
Engineer (Level-II), Brahmaputra
Board, Basistha, Guwahati
781029, Kamrup (M), Assam.

...Respondents

By Advocate: Sri R. Hazarika, Addl. CGSC

O R D E R (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):-

This O.A. was filed by the applicant on 12.04.2017 with the grievance of non-granting of promotion to the post of Chief Engineer (Level-II). The reliefs sought by him in this O.A. are as follows:



“a. To set-aside and quash the Impugned Order under No. A.12026/01/2016-E.III dated 08.03.2017 passed by the respondent No. 5 by which, the respondent nos. 7 & 8 have been illegally promoted to the post of Secretary and Chief Engineer (Level-II) respectively of the Brahmaputra Board, Basistha, Guwahati-781029, Kamrup (M), Assam in supersession of the applicant who is admittedly senior than the said respondents.

b. To set-aside and quash the impugned decision of the Departmental Promotion Committee, i.e. the respondent no. 6 in determining the applicant “unfit” for promotion and in recommending the names of the respondent nos. 7 and 8 for promotion to the post of Secretary and Chief Engineer (Level-II) respectively of the Brahmaputra Board, Basistha, Guwahati-781029, Kamrup (M), Assam.

c. To direct the respondent authorities, more particularly the respondent no. 6 to reconsider the case of the applicant, for promotion, keeping in view of the gradings carried by him in his APARs for the preceding 5 (five) years and also the law laid down in the case of Union of India-versus-K.V. Janakiraman, reported in AIR 1991 SC 2010 and the Office Memorandum dated 14.09.1992 and 25.10.2004 relating to the requirement of Vigilance Clearance Certificate in deciding the fitness of a candidate for promotion.

d. Any other reliefs deemed fit and proper in the facts of the case.”

2. After giving reasonable opportunities to both sides, hearing was concluded on 26.02.2020 and the O.A. was dismissed during the hearing. The issue is relating to non-promotion of the applicant for want of issue of Vigilance Certificate for his promotion as his name was in the agreed list. In this connection, this Tribunal summoned the Chief Vigilance Officer vide its order dated 16.11.2017. The Chief Vigilance Officer



accordingly appeared on 20.11.2017 for giving clarification to this Tribunal. The respondent authorities were accordingly directed to file additional affidavit in this regard. Additional affidavit was filed by the respondent authorities on 15.12.2017. In the process of hearing, Sri G. Rahul, learned counsel for the applicant also requested the Tribunal to issue direction to the respondents for production of some ACRs. This was done in its order dated 23.01.2020. However, from the records, it is seen that the applicant had already enclosed copies of the same ACRs related to the year 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 as a part of the OA.

3. In response to the O.A., the respondent authorities initially filed their written statement on 31.07.2017 contesting the submission of the applicant with the support of the Govt. instructions on the issue regarding non-promotion of officers who are in the agreed list. They also brought out at para 5.2 apropos the complaint as received by the DIG, CBI, ACB, Guwahati that the applicant was involved in corruption and disproportionate asset of Rs. 3..52 crores. Accordingly, in consultation with the investigation

agency, the applicant was put in the agreed list. The same was also reflected in his ACR for the year 2014-15. In response to the written statement filed by the respondents, the applicant filed his rejoinder on 12.09.2017. Rejoinder to the above additional written statement filed by the respondents was also filed by the applicant on 01.06.2018.



4. The issue under examination and for consideration is whether an officer who is in the agreed list at the relevant point of time and who is not issued a vigilance clearance certificate could be promoted to the post for which he is eligible. Arguments and counter arguments have been submitted by both the parties in the written statements/rejoinder as well as in the oral arguments in the court. It is agreed that apart from the essential merits as may be assessed and reflected in the ACR/APAR of the officer. A Vigilance Clearance Certificate is essential. This Vigilance Clearance Certificate is not a mere absence of negative records but positive affirmation of the integrity of the officer. The question is whether an officer who is placed in the agreed list at the relevant point of time of holding the

DPC for promotion could be given promotion, while the issue is still pending. As clarified by the C.V.O. as well as by the respondent authorities, this agreed list is valid for 1 year. The agreed list is reviewed every year in which if material evidence/records are not found against an officer, the name is deleted from the agreed list. Otherwise, the names of officers who are already included in the agreed lists are reflected from year to year after annual review.



5. In the present case of the applicant, it is observed from the records that his name appeared in the agreed list in the year 2015 as minuted by the DIG & Head of Branch, CBI, ACB, Guwahati, Chief Vigilance Officer/respondent department on 05.05.2016. In the subsequent year 2017, his name is retained in the agreed list for year 2017 as minuted between the Chief Vigilance Officer/respondent department and SP & Head of Branch, CBI, ACB, Guwahati on 22.05.2017. In this context, another essential input for the Tribunal was to examine the Minutes of the DPC held on 03.03.2017. After going through the Minutes, the DPC at para 10(ii) has recorded as under:-

"The Committee has, therefore, recommends that Shri Joy Barman, Superintending Engineer, Bramhaputra Board is not 'fit' for promotion in the light of the instructions issued by the Ministry of Home Affairs at this stage. The Committee further recommends that a Review DPC may be conducted, in the event Shri Barman's name is cleared from the Agreed List and Integrity Certificate is issued in his favour."

6. After due consideration, keeping in view of the fact that the positive certification of integrity being essential in promotion and the applicant being put in agreed list, extended to the next year, during which the DPC was held, we found no justified reason to interfere with the decision of the DPC in regard to non-recommending the applicant for promotion. Accordingly, we found that the applicant has no merit in this O.A. and liable to be dismissed.

7. Accordingly, O.A. stands dismissed. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

