

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00152/2018
Date of Order: This, the 28th day of November 2019

**THE HON'BLE SMT. MANJULA DAS, MEMBER (J)
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**



Sri Brahmananda Patiri
Resident of Saukusi Balijan
P.O. – Kahilipara, Guwahati
Pin – 781029, District – Kamrup (M), Assam.
...Applicant

By Advocates: Sri N. Nath, Sri D. Thakur & Sri S. Saikia
-Versus-

1. Union of India
Represented by the Secretary
Government of India
Ministry of Environment
Forest and Climate Change
Paryawaran Bhawan, New Delhi – 110066.
2. The Union Public Service Commission
Represented by the Secretary
Dholpur House, Sahajan Road, New Delhi.
3. The State of Assam, represented by
The Chief Secretary to the
Government of Assam, Dispur, Guwahati – 6.
4. The Commissioner & Principal Secretary
Environment and Forest Department
Government of Assam, Dispur, Guwahati – 6.

...Respondents

By Advocates: Sri H. Gupta, UPSC and
Sri K. Das, GA, Assam.

O R D E R (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):-

After repeated adjournments, mostly for want of completing formalities of pleadings from the respondents' side, this case heard in detail on 28.11.2019 and disposed of.



2. In this O.A., the applicant is seeking for the following reliefs:

“8(i) To set aside and quash the minutes of the Review Selection Committee held on 20.12.2017.

(ii) To direct/command the respondents, most particularly Respondent No. 2, to produce the record including the assessment sheet pertaining to the Review Selection Committee Meeting held on 20.11.2017.

(iii) To direct the Union Public Service Commission to constitute and convene Review Selection Committee forthwith for de novo consideration of the case of the applicant for promotion to the rank of Indian Forest Service for the year 2015.

(iv) To reconsider the case of the Applicant for promotion to the Indian Forest Service for the year 2015 notionally with all consequential benefits.

(v) Pass any other order/orders as your Lordships may deem fit and proper.”

3. The basic grievance of the applicant is that the review Selection Committee which was held on 20.12.2017

has not been done as per guideline on the subject in accordance with Rule 5(3AA) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 and accordingly, he has not been recommended for his inclusion in the selection list of 2015 for promotion to Indian Forest Service.

4. The respondent No. 3 i.e. Chief Secretary to the Government of Assam and respondent No. 4 i.e. Commissioner & Principal Secretary, Environment and Forest Department, Assam have submitted their written statement on 04.01.2019. Respondent No. 2 i.e. Union Public Service Commission has also submitted its written statement on 11.01.2019. In the written statement, the respondent Nos. 3 & 4 has submitted that the applicant made representation for upgradation of his ACR grading for the year 2011-12 and 2012-13 to the Govt. of Assam which was duly considered by the Govt. where upon vide order No. FRE.11/2017/91 dated 31.03.2017, the Govt. allowed up gradation of gradings from "Good" to "Very Good" in his ACRs for both the periods. However, the applicant's prayer to step up the overall grading from "Very Good" to "Outstanding" was rejected by the Govt.



The Union Public Service Commission (UPSC) conducted a Review Selection Committee Meeting on 20.12.2017 to consider the case of the applicant for promotion to the IFS in the Select list for 2015 and has taken into account the Govt. of Assam's order dated 31.03.2017 in respect of the applicant. Upon detail examination, the Committee, on the basis of re-assessment of the applicant's ACRs, arrived at the conclusion that the overall assessment of the applicant would be "Good". Accordingly, the Committee found no reason to recommend applicant's inclusion in the select list for 2015 for promotion to the IFS as officers with higher grading were available in the original Select list and also due to statutory limit on the size of the select list. Hence the contention of the applicant that he was considered unsuitable for promotion to the IFS for the year 2015 on the basis of assessment founded on uncommunicated ACRs is not correct. The applicant's representations in respect of his ACRs grading were duly considered by the Govt. of Assam as well as the UPSC before his case for inclusion in the Select list for 2015 was rejected by UPSC.





5. The respondent No. 2 i.e. UPSC has also submitted that the documents received from the State Government, are examined by the Commission for completeness and after getting the deficiencies resolved, if any, are placed before the Selection Committee. Unlike the Departmental Promotional Committees, wherein a system of benchmark grading is followed, this process is governed in accordance with the provisions of Regulation 5(3AA) of the Promotion Regulations. Accordingly, the Committee duly classifies the eligible State Forest Service Officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' and 'Unfit', as the case may be, on an overall relative assessment of their service records.

6. In addition to the highlighting the procedure followed, the UPSC also brought out the contents of the correspondence between the UPSC and the State Govt. of Assam in respect of the applicant. Since the State Government has chosen to change the material/service records in respect of Shri Brahma Nanda Patiri (applicant) in compliance of order dated 20.01.2016 of this Tribunal, the Commission has decided to hold the Review Selection Committee to consider inclusion of the name of the

applicant in the Select List of 2015. On the basis of re-assessment of applicant's ACRs, the Committee arrived at a conclusion that the overall assessment of the applicant would be "Good". Accordingly, the Committee found no reason to recommend the inclusion of the name of the applicant in the Select List of 2015 for promotion to IFS. The UPSC has also brought out the ruling of the Hon'ble Supreme Court in the case of **Union Public Service Commission Vs. M. Sathiya Priya and Ors. Civil Appeal No. 10854 of 2014 (13.04.2018)** wherein the Hon'ble Apex Court has held as under:-

"16.This Court has repeatedly observed and concluded that the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a Court of Appeal. This discretion has been given to the Selection Committee only, and the courts rarely sits as a Court of Appeal to examine the selection of a candidate; nor is it the business of the Court to examine each candidate and record its opinion. Since the Selection Committee constituted by the UPSC is manned by experts in the field, we have to trust their assessment unless it is actuated with malice or bristles with mala fides or arbitrariness."

7. During the hearing, Sri N. Nath, learned counsel for the applicant apart from bringing out the facts of the case also submitted written argument wherein he pointed



out that the Review Selection Committee is not different from the Selection Committee as provided at para 5(3AA) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966. If that is so, the Review Committee has to meticulously and consciously follow the same procedure as adopted by the Selection Committee prescribed in the relevant rule at para 5(3AA). As per UPSC guidelines, they are supposed to go through the service records within its fold ACR (s) of the last five year and document kept therein by the competent authority.



8. Previously, the applicant was having pending disciplinary case. This however, since been dropped vide order No. FRE113/1993/234 dated 6th October 2016. Moreover, his ACR for the period from 01.04.2011 to 31.03.2012 has been upgraded from 'Good' to 'Very Good' vide order No. FRE.11/2017/91 dated 31.03.2017. His request for upgrading of his ACR from 'Very Good' to 'Outstanding' has been rejected for the other periods indicated herein. Taking into account these two new positive changes in the service profile of the applicant, the review committee, as per the guidelines provided by the UPSC, should made overall assessment of the

applicant in relation to other officials of that year under consideration. However, from the plain reading of the Minutes of the Review Selection Committee, it is very clear that the Review Committee has only looked at the ACR for the period of 2011-2012 and 2012-2013 along with State Government's order No. FRE.11/2017/91 dated 31.03.2017. This was further confirmed by recording at para 11.5 of the Minutes of the Review Committee. As such, there is apparent error of assessment by the Review Committee in the manner which would have been done by the Selection Committee as provided under Rule 3(5AA) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966.

9. Sri N. Nath, learned counsel appearing on behalf of the applicant pointed out that there is also apparent error in the observations of the Review Committee at para 11.6 of the Minutes. The simple fact is that the Reviewing Authority had already upgraded the ACR to 'Very Good' and duly accepted as 'Very Good' by the Accepting Authority. Further, under the scheme of Assam Services (confidential rolls) Rules, the accepting authority is statutorily enjoined to accept the ACR of an incumbent



with such modification as may be necessary. Thus, in the instant case, the accepting authority by endorsing 'Accepted' had not accepted the grading 'Good' provided by the reviewing authority but in fact accepted the ACR (s) of 2011-12 and 2012-13 as a whole. Learned counsel for the applicant has drawn our attention to the case of (i) **2008 (2) SCC 119 (M.V. Thimmaiah Vs. UPSC & Ors.) para 21, 39, 131 & 140** and (ii) **2007 (11) SCC 10 (Union of India Vs. A.K. Narula) para 15 & 17**.



10. We have carefully considered the rival submissions and arguments of both the parties. We also have carefully gone through the Minutes of the Review Selection Committee meeting dated 20.12.2017. As could be made out from the reading of the Minutes of the Review Committee, it is indeed clear that the Review Committee has applied its mind only on the upgraded ACR of the applicant. They have not made overall assessment of the service of the applicant, as should have been done by the Selection Committee as provided under 5(3AA) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966.

11. After careful consideration, we deem it fit and proper that Minutes of the Review Selection Committee has not been fair to the applicant in arriving at their decision as recorded therein and this Minute of the Selection Committee Meeting is liable to be set aside. Accordingly, we set aside the Minutes of the Review Selection Committee meeting held on 20.12.2017 and direct the UPSC to hold review selection committee meeting within a period of two months from the date of receipt of a copy of this order by considering upgraded ACRs by taking note of the orders of CAT and Hon'ble High Court as well as papers and documents placed by the Government of Assam and decisions cited by the learned counsel for the applicant.

12. O.A. stands allowed and disposed of to the extent as indicated above. No order as to costs.



(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)