

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :::GUWAHATI-5.

O.A.No. 196 of 1997

DATE OF DECISION...18.9.1998.....

!! Shri Katikaba Jamir

(PETITIONER(S))

Mr P.K. Goswami, Mr D.K. Mishra and  
Mr N. Sinha

ADVOCATE FOR THE  
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

Mr S. Ali, Sr. C.G.S.C., Mr G. Sarma, Addl. C.G.S.C.,  
Mr A.K. Choudhury, Addl. C.G.S.C. and  
Mr C.T. Jamir, Government Advocate, Nagaland.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.196 of 1997

Date of decision: This the 18th day of September 1998

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Katikaba Jamir,  
Director of Printing & Stationery,  
Government of Nagaland,  
Kohima.

.....Applicant

By Advocates Mr P.K. Goswami,  
Mr D.K. Mishra and Mr N. Sinha.

- versus -

1. The Union of India, through the  
Secretary to the Government of India,  
Ministry of Personnel, Public Grievance and Pension,  
Department of Personnel and Training,  
New Delhi.
2. The State of Nagaland, through the  
Chief Secretary to the Government of Nagaland,  
Kohima.
3. The Union Public Service Commission,  
Represented by the Secretary,  
Union Public Service Commission,  
New Delhi.
4. The Chairman,  
Union Public Service Commission,  
New Delhi.
5. The Selection Committee of  
Union Public Service Commission,  
Constituted for Nagaland State Cadre of IAS,  
(Represented through the Chief Secretary to the  
Government of Nagaland, Kohima).
6. The Commissioner and Secretary,  
Department of Personnel and  
Administrative Reforms,  
Government of Nagaland,  
Kohima.

.....Respondents

By Advocates Mr S. Ali, Sr. C.G.S.C.,  
Mr G. Sarma, Addl. C.G.S.C.,  
Mr A.K. Choudhury, Addl. C.G.S.C. and  
Mr C.T. Jamir, Government Advocate, Nagaland.



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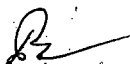
O R D E R

BARUAH.J. (V.C.)

In this application the applicant has challenged the proceedings of the Selection Committee held on 19.2.1997 and all consequential actions taken thereto pertaining to the selection/promotion to the IAS Cadre and also the select list, if any, prepared on the basis of the meetings of the Selection Committee. The applicant has further challenged the approval given by the Union Public Service Commission (UPSC for short) etc. to the selection. The application has prayed for reconsideration of his case keeping in view of his selection to higher grades by the State Selection Board much before his juniors had been selected by the UPSC on the basis of merit etc.

2. Facts for the purpose of disposal of this application are:

The applicant was selected by the Nagaland Public Service Commission (NPSC for short) on the basis of combined competitive examination for appointment to the Nagaland Civil Service (NCS for short) in the year 1965. Pursuant to his selection he was appointed Circle Officer vide order dated 24.3.1965. In the year 1975 he was promoted to the post of Extra Assistant Commissioner vide order dated 14.10.1976. Thereafter he was promoted to the Senior Grade in the year 1987 and in July 1996 he was promoted to the Higher Selection Grade vide order dated 19.9.1996. During his service career he was posted at various places in the State. According to the applicant his service career was also satisfactory and he discharged his duties with utmost dedication and sincerity. He had an excellent service record. He was never communicated with any adverse entry in his ACR.



3. For the year 1996-97 a Selection Committee was constituted as per Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulation 1955, for the purpose of selecting officers of the Nagaland Civil Service to Indian Administrative Service (IAS for short). The Selection Committee held its meeting on 19.2.1997 and 25.3.1997. The applicant further stated in his application that he came to know that for recruitment to the IAS by way of promotion for the year 1996-97, the Selection Committee considered the ACRs of the NCS officers from 1991 to 1995. The applicant also states that in the year 1991 he was posted as Additional Deputy Commissioner, Parem and his reporting officer was Deputy Commissioner, Kohima. From August 1991 to December 1991 he held the post of Joint Secretary, Home and his reporting officer was Home Commissioner and Secretary. From January to May 1992 and from June 1992 to October 1992 he was posted as Deputy Commissioner, Mon and Phek respectively and his reporting officer was Commissioner, Nagaland. From November 1992 to April 1993 he was posted as Joint Secretary, Education and during that period his reporting officer was Secretary, Education. From May 1993 to September 1996 he was posted as Deputy Commissioner, Tuensang and his reporting officer was Commissioner, Nagaland.

4. It is further averred by the applicant that he received an extract of a letter dated 21.4.1995 written by the then Chief Secretary, Nagaland wherein it has been mentioned that the applicant's ACR for the year 1992 was not complete as the reporting officer, reviewing officer and also the accepting officer had demitted office. The then Chief Secretary further stated that since the concerned officers had demitted office the remark given by the reporting officer was not valid. The said letter was

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received by the applicant on 6.5.1996. On receipt of the said extract of the letter, the applicant tried to find out as to whether his ACRs had been updated. However, the applicant was not informed on the pretext that this was confidential. The applicant, therefore, had the reason to believe that full and complete dossier was not placed before the Selection Committee, rather incomplete ACRs had been submitted to the Selection Committee. In April 1997 the applicant came to know that the Selection Committee held its meeting on 19.2.1997 and 25.3.1997 and a Select List was prepared. The applicant also came to know that his name did not figure in the said Select List. The applicant asked for a copy of the Select List, but it was not given to him. The applicant came to know that several officer junior to him had been selected to the IAS Cadre. According to the applicant this must have occasioned because of the failure of the authority to send his full and complete ACRs. According to the applicant the very fact that he was selected to the senior grade on 12.11.1987 and selection grade with effect from 15.3.1991 and finally higher selection grade with effect from 1.7.1996 was enough to indicate that he had better merit than his juniors, recruited to the IAS Cadre by way of promotion. The applicant has also stated that the Government of India issued instructions under Regulation 6A vide Government of India, Ministry of Home Affairs letter No.5/14/56-AIS (I) dated 13.6.1956. As per the said instructions, the State Government is required to forward the Select List together with a copy of the proceedings of the Selection Committee to the Ministry of Home Affairs. The instructions further requires that while forwarding the list, the State Government should indicate full details of the vacancy position and other details. The letter dated 26.3.1997 sent by the Deputy Secretary, Department of Personnel and Training, Nagaland did not contain any such information.

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Further the said letter simply conveyed the approval of the State Government to the recommendation made by the Selection Committee. The applicant has also alleged that he has reason to believe that the said letter dated 26.3.1997 was prepared even before the date of the meeting, i.e. 25.3.1997 of the Selection Committee without following the mandatory provisions contained under the Regulations. The applicant has challenged this selection on the ground that he having better merit and being a senior person was most arbitrarily overlooked and there was no proper assessment. He has also stated that full and complete dossiers had not been sent to the Selection Committee to make a proper assessment. Because of this the applicant's name, in all probability, was not included in the Select List.

5. In due course the respondents entered appearance and filed written statement. The applicant, thereafter, filed rejoinder.

6. We heard all. Mr P.K. Goswami, learned counsel for the applicant submitted before us that the applicant's case was not properly considered, inasmuch as the full and complete dossier of the applicant was not furnished before the Selection Committee at the time when the case of the applicant alongwith others had been considered. Mr Goswami also submitted that the applicant's ACR for 1992 was not complete and therefore, the ACR for 1992 in respect of the applicant necessary for consideration had not been placed before the Selection Committee. Therefore, it was apparent that the applicant's case was not properly considered. Mr S. Ali, learned Sr. C.G.S.C. appearing on behalf of the Union of India and Mr G. Sarma, learned Addl. C.G.S.C. appearing on behalf of the UPSC, reiterated what have been stated in the written statements.



7. On the rival contentions of the learned counsel for the parties it is now to be seen whether the applicant's case was properly considered or not. As per rule the Selection Committee is to make an overall assessment of the service records of the various officers for recruitment to the IAS Cadre by way of promotion. The officers of the State Cadre or a Joint Cadre are appointed by promotion to the IAS Cadre under the provisions of the IAS (Appointment by Promotion) Regulation, 1955. Regulation 3 prescribes the procedure for constitution of a committee for selection of the officers. Under Regulation 5 each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service, as are held by them to be suitable for promotion to the service. The number of members of the State Civil Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules. The Committee shall consider for inclusion in the said list, the cases of members of the State Civil Services in the order of a seniority in that service of a number which is equal to three times the number referred to in sub-regulation (2). In Sub-regulation (4) of Regulation 5 the Committee constituted under the provisions of Regulation 3 shall classify the eligible officers as 'outstanding', 'very good', 'good' or 'unfit' as the case may be, on an overall relative assessment of their service records. Under sub-regulation (5) of Regulation 5 the list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'outstanding',

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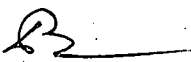


then from amongst those classified as 'very good' and thereafter from amongst those similarly classified as 'good'. The order of names inter se within each category shall be in the order of their seniority in the State Service.

8. From the above provisions it is very clear that the Selection Committee is to consider the service records of each eligible candidate and for that purpose ACRs can be said to be the basis for making the assessment. Therefore, each officer, eligible for consideration, is entitled to be considered on the basis of the service records including the ACRs. Thereafter the Committee shall make an overall assessment as 'outstanding', 'very good', 'good' or 'unfit'. Therefore, from the above it is very clear that the service records including the ACRs are required to be placed before the Selection Committee.

9. In the present case, according to the applicant his entire records were not placed before the Selection Committee. Therefore, the assessment, so far the applicant was concerned was far from reasonable and satisfactory. Therefore, the assessment thus made is liable to be set aside.

10. In para 9 of the written statement filed by the respondent Nos. 2 and 6 it is stated that the State Government had forwarded the entire C.R. dossier of the applicant to the UPSC which were placed before the Selection Committee. In para 10 of his application the applicant has stated that his complete ACRs were not placed before the Selection Committee. This has been replied by the respondent Nos. 2 and 6 in para 10 of their written statement, wherein they have stated that the averments made by the applicant were matters of record and these

 respondents.....

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respondents would not admit anything contrary to the records. However, in spite of repeated reminders the State Government have not produced any records to enable this Tribunal to know whether the averments of the applicant are correct or not. In the absence of the records it is not possible for this Tribunal to come to a definite conclusion. However, in para 8 of the written statement filed by the UPSC it has been stated as under:

"As regards the contention of the applicant that incomplete service record was placed before the Selection Committee, the Deponent submits that being cadre controlling authority, the subject matter of writing ACRs and maintenance of the same come under the purview of the State Government. Under the established convention, the Commission have to rely on the information/documents furnished by the State Government. The ACRs of the applicant for the year 1994-95 was not made available by the State Government. The applicant and other eligible officers have been categorised as 'Very Good', 'Good' or 'Unfit' as the case may be on an overall assessment of their service records as per provisions of the Promotion Regulations."

From this averment it is very clear that the UPSC did not receive the entire records of the applicant. If that is so, the averments made by the applicant to the effect that his entire records had not been placed before the Selection Committee cannot be rejected. If the entire dossier of the applicant had not been submitted, in our opinion, the applicant's case was not properly considered. Therefore, we have no hesitation to come to the conclusion that the applicant's case was not properly considered.

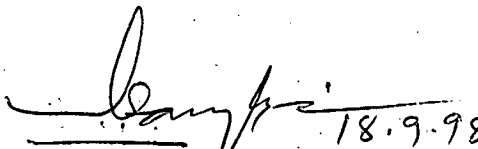
11. In view of the above we dispose of this application with direction to the respondents to consider the case of the applicant afresh after taking into consideration of his entire service records including the ACRs for the year 1992 and then make an assessment and thereafter make a comparative assessment with the other candidates who were




selected.....

selected in the said Selection Committee Meeting. He will be assessed as on that day and then make a comparative assessment with the other candidates and grade him accordingly. This must be done as early as possible at any rate within a period of six weeks from the date of receipt of this order.

12. The application is accordingly disposed of. No order as to costs.

  
18.9.98  
( G. L. SANGLINE )  
MEMBER (A)

  
( D. N. BARUAH )  
VICE-CHAIRMAN