

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 116 of 1997

20.4.1999
DATE OF DECISION.....

Shri M.I. Bora

(PETITIONER(S))

Mr B.K. Sharma and Mr S. Sarma

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

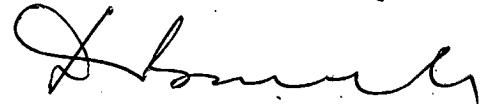
Ms T. Khro and Ms A. Aier, Government Advocates, ADVOCATE FOR THE
Nagaland. RESPONDENTS.

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.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.116 of 1997

Date of decision: This the 20th day of April 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman
The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Mukibul Islam Bora,
Deputy Commissioner, Wokha,
Nagaland (since retired).Applicant
By Advocates Mr B.K. Sharma and Mr S. Sarma

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Personnel, Public Grievances and
Pension,
Department of Personnel & Training,
Delhi.

2. The State of Nagaland, represented by the
Chief Secretary to the
Government of Nagaland,
Kohima.

3. The Chief Secretary,
Department of Personnel and
Administrative Reforms,
Personnel-A Branch
Government of Nagaland, Kohima.

4. The Union Public Service Commission,
represented by its Secretary,
New Delhi.Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Ms T. Khro, Government Advocate, Nagaland
and Ms A. Aier, Government Advocate, Nagaland.

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O R D E R

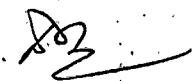
BARUAH.J. (V.C.)

The applicant, at the material time, was a member
of the Nagaland Civil Service. At that time he was the
Deputy Commissioner, Wokha. He became eligible for
appointment to the Indian Administrative Service (IAS for
short) by way of promotion as per the provisions of IAS
(Appointment by Promotion) Regulations, 1955 in due



course. Accordingly the Selection Committee found him suitable for appointment to the IAS Cadre and in the year 1995 his name was included in the Select List. In the said Select List his name appeared at serial No.5. Pursuant to that Select List four persons above the applicant were appointed to the IAS Cadre by way of promotion. During the validity of the said Select List one Shri Imty Kumzuk expired causing a vacancy in the Cadre. According to the applicant this vacancy was to be filled up from the Select List of 1995. However, he was not appointed. The applicant has further stated that two officers of the IAS Cadre had been given extension denying the claim of the applicant for promotion. The grievance of the applicant is that he ought to have been promoted at that time when the 1995 Select List was still valid. It may be pertinent to mention that immediately after the vacancy arose on the death of said Shri Imty Kumzuk, the State of Nagaland had recommended the name of the applicant by Annexure A letter dated 14.3.1997. However, the Union of India did not take any steps in that regard without giving any reason whatsoever.

2. In 1997 the Selection Committee met again. In that year the Selection Committee found the applicant suitable to be selected. A Select List was prepared and in that Select List the applicant's name appeared at the top of the list, i.e. at serial No.1. By Annexure D letter dated 28.3.1997 the Government of India forwarded the said Select List to the Government of Nagaland for appointment. According to the applicant the Select List was prepared on 27.3.1997 and it was communicated on 28.3.1997. In all probability this communication was received on the same day, i.e. 28.3.1997. However, no

 appointment.....

appointment was made on the ground that during this period there were holidays. On the day of reopening, i.e. on 31.3.1997 also he was not appointed. According to the Government of Nagaland the applicant reached the age of superannuation on 31.3.1997 and therefore, he could not be appointed. Hence the present application.

3. In due course the respondents have entered appearance and the Union Public Service Commission (UPSC for short)- the 4th respondent, has filed written statement. The State of Nagaland has also filed written statement.

4. We have heard Mr B.K. Sharma, learned counsel for the applicant, Mr A. Deb Roy, learned Sr. C.G.S.C. appearing on behalf of the Union of India and UPSC, and Ms T. Khro and Ms A. Aier, learned Government Advocates, Nagaland. Mr Sharma submits that the applicant was not appointed most unreasonably when the vacancy occurred and thereafter also, when he was selected and occupied the first position in the Select List, he ought to have been promoted, but he was deprived of his promotion because of some technical ground. Mr Deb Roy also submits before us that in the present facts and circumstances of the case the applicant ought to have been appointed and he also submits that communication in this regard was made by the Government of India as far back as June 1997 and the reply to it was made by the State Government by Annexure R/2 letter dated 14.7.1997 to the written statement of respondent No.1. The only reason put forward by the State of Nagaland is that during the period from 28.3.1997 to 30.3.1997 there were holidays. Mr T. Khro has very candidly submitted before us that this was a fit case where the applicant should have been appointed, but because of the holidays the applicant could not be appointed.

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5. On the submissions of the learned counsel for the parties it is now to be seen whether the applicant should have been appointed in the present facts and circumstances of the case. In the written statement filed by the respondent Nos.2 and 3 it has been stated as follows:

".....The approval of the State Government was again approved by the Government of India, Ministry of Personnel, Pension & Public Grievances, Department of Personnel & Training vide their letter No.F.No.14015/8/97-AIS (I) dated 28th March, 1997 which was received by the State Government on the same date i.e. 28.3.97. As 28th, 29th and 30th March, 1997 were all holidays, by that time the processing of the applicant's case would be taken up on 31st March, 1997, the applicant had superannuated on the same day i.e. 31st March, 1997....."

The respondent Nos.2 and 3 have further stated in their written statement as follows:

".....the inclusion of the applicant's name in the Select List for the IAS does not entitle him, as a matter of right, to be appointed to the IAS."

In para 8 of the written statement filed by respondent No.1 it has been stated as follows:

".....the applicant was considered by the Selection Committee for Nagaland which met on 19.2.1997 and 25.3.1997 to prepare the 1996-97 select list for promotion to IAS, Nagaland Cadre. He was included at Sl.No.1 of the select list unconditionally and the select list was approved by the Commission on 27.3.1997. In terms of the proposal of the State Government to the Commission, the first vacancy in the promotion quota was to occur on 31.5.1997 due to retirement of Shri Chiouse Sangtam, IAS. The applicant, however, retired from service on 31.3.1997."

From this paragraph of the written statement filed by the respondent No.1 it appears that the applicant was selected for the year 1996-97 and the vacancy, according to this respondent arose on 31.5.1997. However, this has been disputed by Mr Sharma and he has drawn our attention to Annexure A letter dated 14.3.1997 to the original application. The said Annexure A letter dated 14.3.1997 was addressed to the Secretary, Government of India by the Under Secretary to the Government of Nagaland recommending

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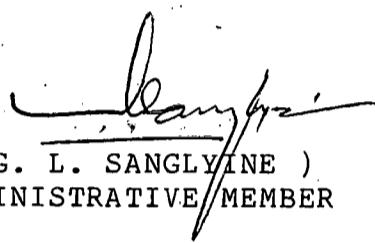
the.....

the applicant for promotion to the IAS Cadre. The Annexure A letter is annexed as Annexure I to the written statement filed by the respondent Nos.2 and 3. In the said letter it was communicated that due to the untimely death in service of Shri Imti Kumzuk, IAS on 28.2.1997, one vacancy occurred in the promotion quota of the IAS Cadre of Nagaland. From this letter we have no hesitation to come to the conclusion that there was a vacancy on 31.3.1997. Now the question is whether the applicant was rightly refused appointment. He was recommended by the State Government, the Selection Committee also found him suitable and placed him at serial No.1 of the Select List and his appointment was approved by the UPSC on 27.3.1997. The approval of the UPSC was communicated to the Government of Nagaland on 28.3.1997 and the communication was received by the Government of Nagaland on the same day, i.e. 28.3.1997. However, most unfortunately, the applicant was not appointed on the ground that there had been holidays from 28th to 30th March 1997. We find it difficult to accept this argument because the applicant had a right to be appointed. He was selected and the Government should not have shirked its responsibilities in matters of appointment on the ground of holidays. We do not think that on holidays the entire Government machinery should come to a halt. Even assuming that there were holidays, 31.3.1997 was a working day and on that day the applicant was very much in office and he attained the age of superannuation in the midnight of that day. Therefore, he could have been appointed even on 31.3.1997. The respondents have not come up with any other ground or difficulty for not appointing the applicant. In our view the applicant ought to have been appointed. However, most unreasonably and arbitrarily the applicant was denied appointment.

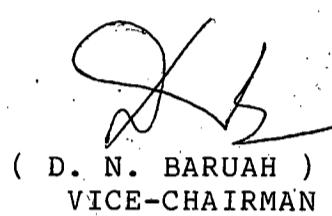


6. Considering all the above we allow the application and direct the respondents to appoint the applicant as early as possible, at any rate within a fortnight from the date of receipt of this order. However, so far as the other benefits are concerned he shall be deemed to be appointed notionally. We make it clear that this will be strictly for other benefits.

7. Considering the facts and circumstances of the case we make no order as to costs.



(G. L. SANGLYINE)
ADMINISTRATIVE MEMBER



(D. N. BARUAH)
VICE-CHAIRMAN

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