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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.X. No. . 255 of 1998.

DATE OF DECISION .15-3-2001

Ngamkhohen Kipgen, IPS

PETITIONER(S)

S/Shri B.K.Singh, U.K.Nair.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri B.C.Pathak, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE MR K.K.SHARMA, 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 Administrative Member.

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 255 of 1998.

Date of Order : This the 15th Day of March, 2001.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Ngamkhohen Kipgen, IPS
son of late N.Gouzapao Kipgen.
New Lambulane P.O. & P.S. Imphal,
Dist. Imphal East,
Manipur.

. . . Applicant

By Advocate Shri B.K.Singh. & U.K.Nair.

- Versus -

1. Union of India
represented by the Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Secretary,
Ministry of Home Affairs,
Govt. of India,
New Delhi.
3. State of Manipur
represented by respondent No.4.
4. Commissioner(DP),
Government of Manipur,
Imphal.

. . . Respondents.

By Advocate Sri B.C.Pathak, Addl.C.G.S.C.

O R D E R

K.K.SHARMA, ADMN.MEMBER.

This application under Section 19 of the Administrative Tribunals Act 1985 is against the year of allotment to IPS. The applicant joined Manipur Police Service as direct recruit in the year 1975. He was confirmed by an order dated 28th July 1986. The applicant was appointed to the Indian Police Service (IPS for short) cadre post on officiating basis by order dated 11.9.95 for a period of 3 months. The period of officiation was extended from 10.12.95 to 10.1.96, the date

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when he was irregularly appointed to IPS. By the aforementioned order dated 11.9.95 alongwith the applicant Shri W. Meenakumar Singh was also appointed to the cadre post in officiating capacity. Both were selected by the same Selection Committee for appointment to IPS. Shri W. Meenakumar Singh was regularly appointed to the IPS vide Government of Manipur notification No.F-14011/30/95-IPS-I dated 24.12.95 against the retirement vacancy occurring on 31.10.95. The order was effective from the date of its issue. The name of the applicant was proposed for appointment by the Government of Manipur vide their letter dated 4.12.95 against a vacancy arising on 30.11.95 due to retirement of Shri A.T. Thiruvengadam. However, the notification in the applicant's case was issued vide memo No.1-14011/3095-IPS-I dated 11.1.96. It is claimed that the applicant was also selected against a clear vacancy and while in the case of W. Meenakumar Singh the notification was issued on 24.12.95 and in the applicant's case it was issued on 11.1.96 though a vacancy was existing. The names of both the officers were recommended by the same Selection Committee. The applicant has not been informed of the reason for not issuing the notification in the month of December 1995. By an order dated 31.1.98 issued by the Under Secretary to the Government of India, the year of promotion in respect of Sri W. Meenakumar Singh has been given as 1989 while in the applicant's case it is shown as 1990. The applicant claimed that he was appointed with W. Meenakumar Singh to the cadre post vide order dated 11.9.95. He was also selected by the same Selection Committee. The applicant's regular appointment was delayed though a regular vacancy was there. He wants that his year of allotment should also be 1989 as in the case of W. Meenakumar Singh. Being aggrieved the applicant

11/11/98

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submitted a representation dated 9.4.98 praying for rectification of the year of allotment. The said representation is still lying undisposed. It is stated that while forwarding the representation of the applicant dated 9.4.98, the Joint Secretary, Government of Manipur by letter dated 28.5.98 stated that both Shri W.Meenakumar Singh and the applicant were recommended by the same selection committee. The State Government recommended Government of India to consider the request of the applicant as his appointment to IPS was delayed on account of non receipt of concurrence from State Government of Tripura (Manipur Tripura being a joint cadre and concurrence of both the Government, was required). The Central Government failed to respond to the applicant's representation. It is also stated that the applicant also rendered meritorious service for which he was awarded police Medal on the occasion of Independence Day of 1998. Being aggrieved by the mala fide action of the respondents and their failure to dispose of the representation, the applicant approached this Tribunal by filing O.A.198/98 praying for rectification of the year of allotment to 1989. The application was disposed of as premature with the direction to the respondents to dispose of the representation of the applicant.

2. Mr B.K.Singh assisted by Mr U.K.Nair, learned counsel appearing on behalf of the applicant relied on the following cases in support of his claim :

- i) (1994) 2 SLJ 209 S.C,
- ii) (1999) 2 SLJ 248 S.C.
- iii) AIR 1997 SC 595.

3. The respondents have filed their written statement. The facts are not disputed. It is stated in the written statement that the applicant was included in the Selection

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List approved by the Union Public Service Commission on 14.7.1995 at serial No.2. The appointments are made on the recommendation of the State Government in the year in which the names appeared in the Selection List. Manipur and Tripura being a Joint IPS Cadre State, the concurrence of Joint Cadre Authority was necessary before issuing the notification for regular appointment. The Manipur Government forwarded the name of W.Meenakumar Singh by their letter dated 6.11.95 against a vacancy which existed from 1.11.95. In that case the concurrence of Tripura Government was received vide their letter No.F.2(27)-GA/94/L dated 11.12.1995. As the concurrence of the Tripura Government was received in case of the applicant only on 2.1.96 by the Government of India it was not possible to appoint the applicant before that date and accordingly he was appointed with effect from 11.1.96. The respondents have stated that the representation dated 9.4.98 has already been disposed of vide letter No.I.15011/1/98-IPS.I dated 17th June 1998 and the same was also informed to the applicant by the Government of Manipur vide letter No.18/28/98-IPS(DP) dated 11.11.98.

4. We have heard the learned counsel for the parties at length and have also referred to the authorities cited on behalf of the applicant. The facts are not in dispute. The applicant alongwith W.Meenakumar Singh was selected by the same Selection Committee and was also approved by the UPSC alongwith W.Meenakumar Singh in the same DPC. While W.Meenakumar Singh was appointed regularly vide letter dated 24.12.95 against a retirement vacancy occurring on 31.10.95. In the applicant's case the vacancy arose on 30.11.95. However, in his case notification could not be issued alongwith W.Meenakumar Singh because the concurrence of Government of Tripura

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was not received in time. The applicant felt aggrieved on account of this delay and made representation for being allotted the year 1989 against 1990 allotted by the Central Government. Rules are made to provide justice and in the applicant's case though there was a clear vacancy, he could not be appointed in 1995, a few days delay has shifted the year of allotment to the next year i.e. 1990. The applicant's right has been adversely affected on account of allotment of year 1990. The applicant in his rejoinder stated that three officers, namely, S.Vaiphei, M.Karnajit Singh and Mrs. R.K.Redhesana Devi, who were appointed in the year 1997 and 1998 respectively by order dated 3.10.98 and 3.11.98 have also been allotted the year 1990.

5. The name of the applicant was brought in the select list for appointment to I.P.S under I.P.S. (Appointment by Promotion) Regulations 1955. The said select list was approved by the UPSC on 14.7.1995. He was appointed to the IPS cadre post, as SP Vigilance, on officiating basis in IPS Senior scale, for a period of three months vide order dated 11.9.1995. His officiating appointment in the cadre post was extended from 10.12.95 to 10.1.96 vide order of the Manipur Government. The said officiating appointment of the applicant was done with the concurrence of the Government of India as ex post facto basis vide Government of India, Ministry of Home Affairs letter No. I-11012/1/96-I PS-I dated 4.6.96. The applicant, was regularly appointed to IPS and allocated him to the cadre of Manipur-Tripura under Sub rule (1) of Rule 5 of IPS (Cadre) Rules 1954 with effect from 11.1.1996. By virtue of the continuous officiation from the date of inclusion of his name, in the select list, the aforementioned period of officiation was to be counted for the determination of seniority in view of the explanation (1) of Rule 3 of the IPS (Regularisation

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of Seniority) Rules 1954. In the case of a promotee the period of continuous officiation in a senior post shall count from the date of inclusion of his name in the select list or from his continuous officiation whichever is later. Explanation 2 of the said Rule seeks to exclude the period of temporary posting made by way of local arrangement from the purview of continuous officiation. There is no indication whatsoever from the materials available, that the posting of the applicant with effect from 11.9.1995 was by way of a local arrangement or temporary. No materials are also made available to us to the effect that on 11.9.95 any cadre officer was available and notwithstanding the promotees were posted to cadre posts. We are also unable to agree to the arguments of Mr Deb Roy to the effect that continuance of the officiation beyond three months prior concurrence of the Central Government was required. The issue is resolved by the Supreme Court in the case of M.V.Krishna Rao vs. Union of India & Ors. reported in (1994) 3 SCC 553.

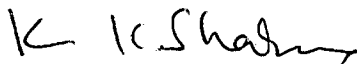
6. Considering the facts and circumstances of the case, we are of the view that injustice has been done in the applicant's case, though vacancy was there from 30.11.95 he was not regularised in the year 1995. Position would have been different if no vacancy was available in the year 1995. The allotment of 1990 as year of allotment has affected the rights of the applicant. We see no justification for regularising the applicant's appointment to IPS on 11.1.96 when a vacancy was existing with effect from 30.11.1995. Apart from the delay in receiving the concurrence from the Government of Tripura, we find no other objection from the side of the respondents. No legal bar has been cited by the respondents.

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Considering these facts we are of the opinion that the applicant's case for regularisation in the year 1995 against the vacancy occurred on account of retirement of Sri Thiru Vengadam is justified.

7. In the facts and circumstances and also in view of the legal provisions set out above the impugned order of the Government of India, communicated vide letter No. I.1501/1/98-IPS dated 17.6.1998 issued by the Ministry of Home Affairs and letter No. 18/28/98-IPS/DP dated 11.11.98 despatched by Government of Manipur cannot be upheld and accordingly the impugned decision, whereby the representation of the applicant, was rejected, are quashed. The Union of India is accordingly directed to redetermine the seniority and the year of allotment of the applicant, counting the period of officiation in the light of the findings and observations made above. The respondents are directed to complete the above exercise expeditiously preferably within two months from the date of receipt of a certified copy of this order.

8. The application is allowed to the extent indicated above. There shall, however, be no order as to costs.



(K.K.SHARMA)
ADMINISTRATIVE MEMBER



(D.N.CHOWDHURY)
VICE CHAIRMAN