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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.X. No. ²⁸⁵ of 1998.

DATE OF DECISION 25-1-2001.

Shri Amitabha Kar, IPS

PETITIONER(S)

S/Sri B.K.Sharma, S.Sarma.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C, Mr B.P.Kataki &
M.R.Pathak.

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 Vice-Chairman



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 285 of 1998.

Date of Order : This the 25th Day of January, 2001.

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

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

Shri Amitabh Kar, IPS
Superintendent of Police (CID)
Tripura, Agartala.

... . . . Applicant

By Advocate Shri B.K. Sharma/S. Sarma.

- Versus -

Union of India & others.

... . . . Respondents.

By Shri A. Deb Roy, Sr.C.G.S.C for
respondents No.1, 2 and Mr B.P. Kakati,
Sr. Govt. Advocate, Tripura with Mr.
M.R. Pathak for respondents No.3, 5, 7 & 8.

O R D E R -

CHOWDHURY J. (V.C)

Fixation of seniority and assignment of year of allotment is the key question raised in this application for the following circumstances.

2. The applicant was appointed in the Indian Police Service (IPS for short) on promotion in accordance with Indian police Service (Appointment by Promotion) Regulation 1955 vide Notification dated 1.3.1995. The only grievance that was raised in this application of the applicant is relating to fixation of his year of allotment and also for fixation of his year of allotment in the light of earlier selection. For the grievances the applicant moved this Tribunal earlier in O.A.109(GO/89. By judgment and order dated 7.4.1995 the Tribunal found that the applicant was selected in 1986 and 1989 under the Indian Police Service (Appointment by Promotion) Regulation 1955 and as vacancies were available particularly as admittedly a vacancy was available in 1988, the delay in the appointment of the applicant to the IPS could be avoidable. Considering the rival contentions the Tribunal held that the applicant was

selected in 1986 and 1989 and his officiation was terminated without giving him simultaneously the appointment to the cadre post when the vacancy was available in 1988 and, that the applicant was awarded Presidential Medal for meritorious service and he was found suitable for promotion in 1995. The Tribunal was not impressed by the contention of the respondents that even though the applicant's induction of his name, the respondents were not bound to appoint. In these circumstances the Tribunal found that in fitness of things it was a fit case for reconsideration of the case of the applicant for fixation of his seniority and assigning the year of allotment on the basis of his selection under the promotion Regulation. The Tribunal accordingly directed the Government of India to have a fresh look for fixation of seniority and assignment of year of allotment by taking into consideration all the relevant circumstances set out in the judgment and order with due advertance to the provisions of the All India Services (Conditions of Service) Residuary Matters Rules 1960. The respondents by order No.F.10(4)-GA/95 dated 15.10.1996 turned down the representation without assigning any reason. The said communication was further reiterated by the Government of Tripura by communication No.F.10(4)-GA/95 dated 19.11.98. Hence this application.

3. Mr B.K.Sharma, learned senior counsel appearing for the applicant submitted that the name of the applicant was in the select list of 1986. There are altogether six officers and out of those six officers in 1986 select list, the name of the applicant appeared at serial No.5. All other officers selected other than the applicant were appointed to the IPS. During the validity of the select list a vacancy was available on 10.8.88 by which

the IPS cadre post was increased from 8 to 9 posts. Mr Sharma submitted that the applicant was allowed to hold the IPS cadre post of Additional Superintendent of Police, Special Branch under Rule 9 of the IPS Cadre Rule 1954 by a Notification dated 24.12.86 and he continued to hold the cadre post till 25.3.88. Thereafter, neither he was appointed on the basis of select list nor for any other good reason his officiation for cadre post was discontinued and he was allowed to hold the cadre post. According to Mr Sharma since there was vacancy and he was selected in 1986 there is no justifiable reason in overlooking his case, more so in the face of the clear pronouncement by the Tribunal. Mr Sharma also submitted that in the year 1989 also the applicant was selected as per the recommendation but due to extension of service granted to two officers he could not be accommodated, though he was selected in the year 1988 that select list was not given effect to.

4. Union of India submitted its written statement and stated that statutory provisions governing the fixation of seniority of the promotee IPS officers did not permit the respondents to assign any other year of allotment to the applicant than the one assigned to him by the Ministry's order dated 22.9.1995. The respondents stated that the seniority of the applicant was prepared as per the existing rules. The case of the applicant was not considered for promotion on the basis of a selection list of 1986. The judgment and order of this Tribunal was given due consideration and thereafter took a decision by the Government of Tripura. Written statement also filed on behalf of the State of Tripura, wherein it was stated that on the basis of inclusion in the IPS select list of 1986 the applicant was appointed to IPS cadre post on officiating basis under rule 9 of

IPS Cadre Rules 1954 and thereafter the officiating period ^{wa)} has been extended upto 25.3.88 with the approval of the Government of India. Thereafter also the State Government requested the Government of India to convey the approval for continuance of the officiating period for a further period of 3 months beyond 25.3.88. Since the Central Government did not approve the same the applicant was posted to a non-cadre post . It was also intimated that the applicant could not be promoted in 1986 and 3 other officers at Serial No.1 to 3 were promoted. No selection committee meeting was held in 1987 and the next meeting held on 31.12.88. It was also mentioned that in the IPS(MT) cadre schedule of 1983, total promotion post of IPS was 19 out of which 11 were for Manipur and 8 was for Tripura. All the posts were filled up. One more post for Tripura was available from August 1988 due to increase in cadre strength. The applicant was included in the select list of 1988. Against the additional vacancy which became available from August 88, respondent No.8 Shri R.S.Bajaj was appointed in that post. Thereafter 3 vacancies were available after the retirement of other 3 officers. No selection was held in 1989. Next selection was held in 1990 but the name of the applicant was not recommended by that committee. The committee recommended altogether 6 officers including respondents No.9 and 10, namely, Shri D.S.Deb Choudhury and Dilipjit Debbarma. The 1991 selection committee also not recommended the name of the applicant but only in 1992 selection committee his name was recommended subject to expunction of adverse remarks by the State Government. In that situation the other two candidates selected were appointed to IPS. The 1993 selection committee also recommended the name of the applicant but due to non availability of

substantive vacancy no appointment could be made in 1993. Subsequently after the recommendation of the 1994 Committee the applicant was appointed to the IPS on 1.3.95 and he was given 1989 batch seniority. On the basis of the judgment of the Tribunal the applicant submitted representation dated 6.5.96 addressed to the Director(Police) MHA, Government of India for counting the period of probation and for fixation of his seniority and year of allotment. In reply to the representation it is informed that the year of allotment of the applicant was rightly determined in accordance with rules and there was no scope for review. Mr B.K.Sharma, learned Sr.counsel however, submitted that without referring to the judgment the year of allotment was fixed by the authority prior to the impugned action.

5. We have heard Mr B.K.Sharma, learned Sr.counsel for the applicant, Mr A.Deb Roy, learned Sr.C.G.S.C for Union of India and Mr B.P.Kataki, learned Sr.Government Advocate, Tripura assisted by Mr M.R.Pathak for State of Tripura at length. Admittedly, there was a vacancy on 10.8.88 in the IPS(MT) Cadre. The applicant was the person who was in the select list and whose turn was due at that time. During the validity period of selection list the applicant was atleast entitled for consideration and that indication was given by the Tribunal earlier. No good reasons are forthcoming from the respondents as to why inspite of a direction issued by the Tribunal the applicant's case for promotion in 1988 was not considered. During the validity of the select list in the absence of any other reason, when there was vacancy, we feel that the respondents

authority ought to have considered his case for appointment. Mr Deb Roy referred to the decision of Baidyanath Jena and another vs. Union of India & Ors., reported in AIR 1998 SC 3291 to show that for the purpose of determining seniority officiation must be during the period when officer's name is on select list and officiation should be continuus and not purely temporary or local arrangement. That decision cannot by itself absolve the respondents for not considering the case of the applicant against vacant post of 1988. Mr Deb Roy also referred to another decision in Syed Khalid Rizvi & Ors. vs. Union of India & Ors. reported in (1994) 26 ATC 192 and submitted that recruitment by Selection would only give the right to be considered but creates no right to appointment. The right to be considered is however a substantive right provided by the Statute itself and same are meant to adhered to and not to be wittled down. No employee has a vested right to be promoted, but he has a right to be considered for promotion as per the rules. Recruitment by promotion to the Indian Police Service is one of the method of recruitment to the Indian Police Service and the mechanism is provided by the Statutory Rules made under Section 3 of the All India Services Act, 1951. Regulation 9 of the IPS (Appointment by Promotion) Regulation 1955 as amended deals with the appointment of the State List Officers to a substantive vacancy that has to be made from the Select List for the time being in force in order in which the names appear in the select list. Appointment to a vacancy in promotion quota is made with reference to the date of origin of the vacancy or the date of inclusion of the officers name in the Select List, whichever is later. Under the Scheme of the Rules seniority would be computed only from the date

on which the name of the officer was brought in the select list, in accordance with Recruitment Rules, promotion Regulations, Seniority Rules. Mere introduction of the name in the select list does not confer a right to appointment. The appointment should be made only against a substantive vacancy within the quota in the order of the select list. As eluded the rules are made to afford an equal opportunity to the promotee officer to attain the higher echelons of service. Non performance of the statutory duties and responsibilities are to be satisfactorily accounted for.

6. The respondents in the instant case fell into error in rejecting the representation of the applicant without taking into account the directions issued by the Bench in O.A.109(G) of 1989. We accordingly set aside the impugned order of the respondents communicated vide Memo No.F.10(4)-GA/93 dated 13.10.1998 as well as vide Memo No.F.10(4)-GA/95 dated 8.11.96/F.10(4)-GA/95 dated 19th February 1998 and direct the Union of India as well as the State Government to reconsider the question of promotion of the applicant on the basis of the available vacancy in 1988 as per his position in the select list of 1986. If on such reconsideration relief would be available on the basis of the quota available in the cadre, the same may be considered as per law. It is expected that the above exercise be concluded within a period of six months from the date of receipt of this order.

7. The application is accordingly allowed to the extent indicated. In the facts and the circumstances, there shall, however, be no order as to costs.

K.K.Sharma
(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHONDHURY)
VICE CHAIRMAN