

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

O.A.No. 291 of 1998

19.3.1999  
DATE OF DECISION.....

Shri C.M. Chang

(PETITIONER(S)

Mr P.K. Goswami, Mr A.K. Phukan and

Mr S.S. Goswami

ADVOCATE FOR THE  
PETITIONER(S)

**-VERSUS-**

Union of India and others

**RESPONDENT(S)**

Mr B.C. Pathak, Addl. C.G.S.C. and

Ms T. Khro. Jr. Government Advocate.

ADVOCATE FOR THE  
RESPONDENTS.

## 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



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.291 of 1998

Date of decision: This the 19th day of March 1999

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

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

Shri C.M. Chang,  
Additional Secretary,  
Government of Nagaland,  
Youth Resources and Sports Department,  
Kohima.

.....Applicant

By Advocates Mr P.K. Goswami,  
Mr A.K. Phukan and Mr S.S. Goswami.

- versus -

1. The Union of India, represented by the Secretary, Personnel & Administrative Reforms, New Delhi.
2. The Union Public Service Commission, represented by its Chairman, New Delhi.
3. The Secretary to the Government of India, Department of Personnel & Training, New Delhi.
4. The State of Nagaland, represented by the Chief Secretary, Government of Nagaland, Kohima.
5. The Secretary to the Government of Nagaland, Department of Personnel & Administrative Reforms, Kohima.
6. Shri R.B. Acharjya, Joint Secretary, Department of Commerce & Industries, Kohima.

.....Respondents

By Advocates Mr B.C. Pathak, Addl. C.G.S.C. and Ms T. Khro, Jr. Government Advocate, Nagaland.

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O R D E R

BARUAH.J. (V.C.)

This application has been filed by the applicant praying inter alia for an order to quash and set aside the Annexure VIII order dated 4.12.1998 passed by the Under Secretary (AIS), Union Public Service Commission and declare the action of the respondents as arbitrary, illegal

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and capricious and also to set aside the Select List prepared on 8.12.1998. The applicant has also prayed for direction to the respondents to immediately send his name for selection by promotion/nomination to the Indian Administrative Service from the State Service.

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

The applicant, at the material time, belonged to the Nagaland Civil Service (NCS for short). He served in the said service in various capacities. By Annexure IV order dated 25.8.1998 the State Government sent the relevant papers including the names of the eligible candidates to the Union Public Service Commission (UPSC for short) for inclusion in the Select List for promotion to the Indian Administrative Service (IAS for short) for the year 1998-99. The applicant's name was at serial No.3. In October 1998 the UPSC- 2nd respondent wrote to the State Government to inform the 2nd respondent as to why the name of the applicant was not sent in the previous year, i.e. 1996-97. The State Government replied to the UPSC by Annexure VII letter dated 19.11.1998 stating inter alia that despite the inadvertent omission of the name of Sh C.M. Chang during 1996-97 proposals, the officer was otherwise eligible from all other aspects including the age limit, his date of birth attested as 1.4.1943. The reason for not sending the name of the applicant for the year 1996-97 has been mentioned in para 2 of the said letter. It has been stated in the said para as follows:

".....the name of Sh C.M. Chang could not be included in the proposals for 1996-97, pending clarification regarding documents of his date of birth. The matter was under scrutiny when the proposals of 1996-97 was made in Nov.96. The records pertaining to his date of birth could be ascertained after due verification in the later part of Jan. 1997 only. And as such necessary rectification to include his name in the proposal 1996-97 could not be submitted in time."

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By Annexure VIII order dated 4.12.1998 the UPSC informed the State Government that the applicant was not eligible to be considered, and therefore, his name was not considered by the Selection Committee for the year 1997-98 also. The Selection Committee meeting held on 8.12.1998 did not consider the case of the applicant. The contention of the applicant is that the respondent No.2 had no jurisdiction under the regulations to take decision as contained in the impugned Annexure VIII letter dated 4.12.1998. According to the applicant, under the regulations the UPSC comes into the picture only after the Select List is prepared and forwarded by the Selection Committee together with its comments. The name of the applicant was not forwarded for consideration for recruitment to the IAS by promotion for the year 1996-97 through mistake and this was rectified by the State Government by forwarding his name for consideration in the subsequent year, i.e. 1997-98. But, the applicant was not considered. On 1.4.1997 the applicant attained the age of 54 years. It may be pertinent to mention that earlier the year for recruitment used to be counted from 1st April to 31st March. By Annexure III Notification dated 31.12.1997 this was amended and the year was changed to first day of January to the last day of December of the same year. This came into effect from 1.1.1998.

3. Under Clause 2 (1) of the Annexure III Notification dated 31.12.1997 the year has been defined as 'the period commencing on the first day of January and ending on the thirty first day of December of the same year'. By Annexure V letter dated 14.9.1998 the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training has given a clarification regarding this aspect. We quote below the

relevant.....

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relevant portion of the said letter:

".....It is observed that in terms of the amended regulations 1st January, 1998, is the crucial date by which the eligibility criteria for consideration of the State Service officers for consideration by the Selection Committee are required to be satisfied. In terms of Regulation 5(3), as amended, a State Civil Service Officer who has crossed 54 years between 1st April, 1997 and 31st December, 1997 and hence above 54 years as on the 1st January, 1998 is not eligible to be considered by the 1998 Selection Committee, though he would have been eligible to be considered by the 1997-98 Selection Committee scheduled to meet by March, 1998, had the regulations not been amended."

In the said letter it is further stated as follows:

".....in terms of the second proviso to Regulation 5(3) of the IAS (Appointment by Promotion) Regulations, 1955, those officers who had crossed 54 years of age on the crucial date and who were not considered in the year immediately preceding the year in which the meeting of the Committee is held are entitled to be considered by the Committee in addition to the normal zone of consideration placed before the Committee. The 1997-98 Select List year in terms of the Promotion Regulations existed as a legal fiction up to the 31st December, 1997 and it ceased to exist with the coming into force of the IAS (Appointment by Promotion) Second Amendment Regulations, 1997, with effect from 1.1.1998. In all the cases where the Selection Committee for 1997-98 did not meet during the period from 1.4.1997 to 31.12.1997 it has to be construed that the Selection Committee for the immediately preceding year did not meet and those officers crossing the age of 54 years during this year allowed the benefit of consideration by the 1998 Selection Committee as and when it meets in terms of the second proviso to sub-regulation (3) of Regulation 5 of the amended Regulations."

4. According to the 4th respondent the State Government had rightly sent the name of the applicant. However, the UPSC- 2nd respondent, by Annexure VIII order dated 4.12.1998, gave a direction not to consider the case of the applicant. According to the applicant the decision of the authority not to consider the case of the applicant on the ground that he attained the age of 54 years was arbitrary,

unreasonable.....

*RZ*

unreasonable and capricious. Hence the present application.

5. In due course the respondents have entered appearance and respondent Nos. 2, 4 and 5 have filed written statements. The respondent No. 1 - Union of India has not filed any written statement.

6. On the last occasion we heard Mr. P.K.Goswami, learned Sr. counsel appearing on behalf of the applicant. Today we have also heard Mr. S.S. Goswami, learned counsel for the applicant. We have also heard Mr. B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the 2nd respondent - U.P.S.C., Ms T. Khro, learned Jr. Government Advocate, Nagaland appearing on behalf of respondent Nos. 4, 5 and 6. Mr. P.K.Goswami submitted before us that the applicant was not considered most unreasonably and arbitrarily. According to the learned counsel the applicant was not considered for the year 1996-97 through mistake. This has been admitted by the respondents. In the next year, i.e. during the period from 1.4.1997 to 31.12.1997 there was no meeting. He submitted that the applicant was entitled to get the benefit of the 2nd proviso to Sub-regulation (3) of Regulation 5 of the amended Regulations, inasmuch as for the year 1996-97 there was no meeting of the Selection Committee so far the applicant was concerned, though, in fact, meeting was held. The case of the applicant was not considered as the State Government failed to send his name through mistake. Mr P.K. Goswami further submitted that the applicant attained the age of 54 years on 1.4.1997 and not on 31.3.1997. The learned counsel had also drawn our attention to the Annexure V letter dated 14.9.1998 by which the Government of India clarified the Annexure III Notification dated 31.12.1997. The authority did not consider the case of the applicant during the period from 1.4.1997 to 31.12.1997 within the meaning of proviso (1) of the Annexure III Notification. Mr B.C. Pathak, on the other hand, very candidly submits that an officer who had not attained the age of 54 years prior to

1.4.1997 would, definitely, be entitled to be considered on 1.1.1998 in view of the Annexure V clarification dated 14.9.1998 given by the Government of India, inasmuch as there was no meeting of the Selection Committee in the year 1996-97. Mr Pathak further informs this Tribunal that during the period from 1.4.1997 to 31.12.1997 also there was no meeting of the Selection Committee. But, Mr Pathak submits before us that the applicant attained the age of 54 years on 31.3.1997 and therefore, he was not entitled to get the protection. Ms T. Khro submits that through inadvertence and unintentional omission the name of the applicant was not sent for the year 1996-97. Ms Khro further submits that the applicant was eligible for selection and he was also within the age prescribed. Ms Khro also submits that in the subsequent year, i.e. 1997-98 the applicant's name was recommended by the Government of Nagaland, but the UPSC had rejected his name on the ground of age bar, inasmuch as the applicant had attained the age of 54 years on 1.1.1998. According to Ms Khro the applicant should have been considered and given the benefit of the second proviso to Regulation 5(3) because his case was not considered earlier.

7. On the rival contention of the learned counsel for the parties, it is now to be seen whether the applicant was eligible for consideration for promotion in the year 1998. Regulation 5 of the IAS (Appointment by Promotion) Regulations, 1955 (for short the Regulations) prescribes the procedure for selection of State Administrative Civil Service Officers for appointment by promotion to the IAS. As per sub-regulation (3) of Regulation 5 of the Regulations the Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets. As the per the second proviso to the

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said sub-regulation (3) a member of the State Civil Service who has attained the age of fifty-four years on the first day of January of the year in which the committee meets shall be considered by the Committee, if he was eligible for consideration on the first day of April of the years or of any of the years immediately preceding the year in which such meeting was held but could not be considered as no meeting was held during such preceding year or years. Previously the year was counted from first day of April to the 31st day of March. By Annexure III amendment notification dated 31.12.1997 the year was changed. As per the amendment the year was changed to the first day of January to thirtyfirst day of December of the same year. This amendment came into force from 1.1.1998. As per the Annexure V clarification given by the Government of India during the period from 1.4.1997 to 31.12.1997 if an officer attained the age of 54 years and if no meeting was held during that period then the officer would get the benefit of the second proviso to sub-regulation (3) of Regulation 5 of the amended Regulations. Mr Pathak has informed that no meeting was held during the period from 1.4.1997 to 31.12.1997. However, he submits that the applicant attained the age of 54 years on 31.3.1997 and therefore, the benefit given the Annexure 5 clarification would not be available to the applicant. But, before we come into this aspect of the matter, it will be apposite to see whether the case of the applicant was considered in the previous year, i.e. for the year 1996-97. The admitted fact is that his name was not sent by the State Government through mistake, Mr Pathak does not dispute this aspect of the matter that the applicant's name was not sent for the year 1996-97. Respondent Nos.4, 5 and 6 have very categorically stated that the applicant's name was not sent through mistake.

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Mr P.K. Goswami submitted before us that the State Government had recommended the name of the applicant for the purpose of selection for the year 1997-98, but strangely his case was not considered on the ground of overage. According to Mr P.K. Goswami this was not only arbitrary and illegal, but most unreasonable. We have considered this aspect of the matter. The applicant's name was earlier not considered through mistake for which the applicant was in no way responsible and his case was not considered in the subsequent year on the ground of overage. We feel this will be a dangerous proposition, inasmuch as the applicant was made to suffer for no fault of his. Therefore, we hold that the applicant's case was left out of consideration in the year 1996-97 most arbitrarily and illegally.

8. The next question is whether the applicant gets the benefit of the Annexure V clarification letter dated 14.9.1998 wherein it has been mentioned that those officers who attained the age of 54 years and if there was no meeting of the Selection Committee then those officers would be entitled to get the benefit of the second proviso of sub-regulation (3) of Regulation 5 of the amended Regulations. Admittedly there was no meeting. Now the question is whether the applicant attained the age of 54 years during this period or earlier. According to Mr Pathak the applicant attained the age of 54 years on 31.3.1997. We have considered that aspect of the matter and we find that the date of birth of the applicant is 1.4.1943. Therefore, he would attain the age of 54 years on 1.4.1997 and not on 31.3.1997. He would continue to be below 54 years till 1.4.1997 and he would be 54 years of age on 1.4.1997 only. Therefore, we have

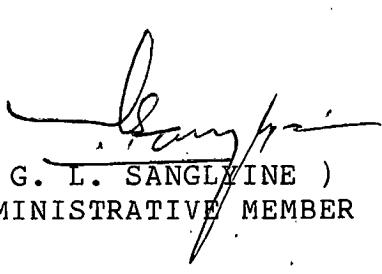
no.....

no hesitation to hold that he attained the age of 54 years on 1.4.1997 and if he was 54 years on 1.4.1997, definitely, under the Annexure V clarification letter dated 14.9.1998 he was entitled to get the benefit of the second proviso to sub-regulation (3) of Regulation 5 of the amended Regulations.

9. In view of the above we hold that the applicant's case was not considered during the period from 1.4.1997 to 31.12.1997 and also in the previous year, i.e. for the year 1996-97. Therefore, it was not just, proper and reasonable on the part of the 2nd respondent or for that matter of any of the respondents to ignore the claim of the applicant on the ground of age bar.

10. Accordingly we allow the application and direct the respondents to consider the case of the applicant for the year 1998. This must be done as early as possible, at any rate within a period of three months from the date of receipt of this order.

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

  
( G. L. SANGALINE )  
ADMINISTRATIVE MEMBER

  
( D. N. BARUAH )  
VICE-CHAIRMAN