

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 122 of 1998

DATE OF DECISION..... 27.9.1999

Shri Kewal Chand Mohanlal Punmiya (PETITIONER(S))

Mr A. Roy, Mr J.L. Sarkar,
Mr M. Chanda and Ms N.D. Goswami ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

The Union of India and others RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C. and
Mr B.C. Pathak, Addl. C.G.S.C. ADVOCATE FOR THE
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.122 of 1998

Date of decision: This the 27th day of September 1999

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

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

Shri Kewal Chand Mohanlal Punmiya,
Depot Manager,
Government Medical Store Depot,
Government of India,
Ministry of Health and Family Welfare,
Guwahati.

.....Applicant

By Advocates Mr A. Roy, Mr J.L. Sarkar,
Mr M. Chanda and Ms N.D. Goswami.

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Health and Family Welfare, New Delhi.
2. The Director General of Health Services, New Delhi.
3. The Deputy Secretary, Government of India, Ministry of Health and Family Welfare, New Delhi.
4. The Union Public Service Commission, Represented by the Secretary, New Delhi.

.....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.
and Mr B.C. Pathak, Addl. C.G.S.C.

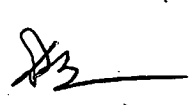
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O R D E R

BARUAH.J. (V.C.)

In this application the applicant has prayed for certain directions to the respondents.

2. The facts for the purpose of disposal of this application are:



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The applicant was initially appointed Depot Manager in the Central Government Group 'A' service. He was recruited through selection made by the Union Public Service Commission (UPSC for short) and posted under the Ministry of Health and Family Welfare, Government of India. He joined service on 1.9.1983 at the Government Medical Store Depot, Karnal in the State of Haryana. Later on, in the month of 1990, he was transferred and posted in Guwahati. Thereafter, in April 1994 he was transferred to Madras. He was again transferred to Guwahati as Depot Manager in March 1997.

3. According to the applicant some officers of Group 'A' Gazetted Non-Medical Scientific and Technical posts approached the Supreme Court by filing Writ Petition (C) 1018/1689 praying for direction to the Ministry of Health and Family Welfare to provide appropriate promotion opportunities and various allowances to the Group 'A' Non-Medical Scientists. The Supreme Court gave certain directions by judgment and order dated 15.11.1989. As per the said direction the Ministry was to frame appropriate rules for providing promotional avenues on the basis of the scheme in the Department of Science and Technology. Thereafter, the Ministry of Health and Family Welfare, in compliance with the direction of the Supreme Court, framed the "Department of Health (Group 'A' Gazetted Non-Medical Scientific and Technical posts) in Situ Promotion Rules, 1990". The rules for In Situ Promotion were given retrospective effect from 15.11.1989, i.e. the date on which the Supreme Court passed the order in the aforesaid Writ Petition. As per Rule 6 the Department should prepare a list of candidates who fulfil the qualification

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prescribed in the said rules and who have completed or who would complete three years regular continuous service on 1.4.1990 or 1st day of October 1990 as the case may be. The Department was required to make assessment for promotion in meetings to be held every year in the month of January and July.

4. According to the applicant he became eligible for consideration for promotion to the next higher grade in the Departmental Assessment Board Meeting as on 1.4.1990, The meeting was held. However, the list of candidates selected were published only on 24.10.1992. The applicant came to know that his junior had been promoted overlooking his claim. It is not known how the applicant was assessed in the said meeting. Thereafter also, the applicant was not selected in the subsequent years. Only on 24.11.1995, while considering the claim of the applicant for promotion his assessment was kept under sealed cover on the ground of want of clearance of the vigilance. The chargesheet was issued on 23.2.1995 and the Departmental Assessment Board in its meeting held on 24.11.1995 adopted the sealed cover procedure on the ground of initiation of disciplinary proceeding against the applicant. However, the disciplinary proceeding is still pending. Hence the present application.

5. The Union of India has filed written statement. However, the UPSC has not filed any written statement. In the written statement the Union of India- respondent No.1 has stated that the applicant's name was forwarded



to the UPSC for consideration in September 1992, i.e. immediately before the publication of the Select List. However, for certain reasons the case of the applicant could not be considered. Two years thereafter, certain queries were made and thus his case was kept pending and on 24.11.1995 the Assessment Board of the UPSC found that the chargesheet had already been issued. The UPSC, however, has not filed any written statement to explain the reasons for the delay.

6. We have heard Mr A. Roy, learned Sr. Counsel for the applicant and Mr B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the UPSC. None appears on behalf of the Union of India though written statement has been filed. Mr Roy submits that the applicant was victimised. Without any ground whatsoever his case was not considered. According to Mr Roy if there were any queries to be made before selection that ought to have been done prior to the selection of the candidates. The assessment was made as on 1.4.1990. The name of the applicant was forwarded in September 1992. Nothing was done Two years thereafter certain queries were made and by the time the replies were sent, the chargesheet had been served. Therefore, the applicant's case could not be considered by the Assessment Board of the UPSC. But the reasons for the delay have not been explained. Mr Pathak has not been able to say anything as to why there was such delay. Had prompt action been taken, the applicant's case could have been decided before the submission of the chargesheet and thus the adoption of sealed cover procedure would not have been required. We

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are surprised to see the inaction of the UPSC in not taking up the matter at the appropriate time. Such inaction could in some cases be the cause of prejudice and deprivation of legitimate right. Strangely enough the written statement has also not been filed by the UPSC. Mr Pathak submits that as no relief was prayed for, the UPSC instructed him not to file any written statement. We fail to understand this, because the action of the UPSC has been challenged in the present application. In our opinion if prompt action was taken then a decision could have been arrived at. The assessment could have been made prior to 1992 at the time when there was no charge against the applicant.

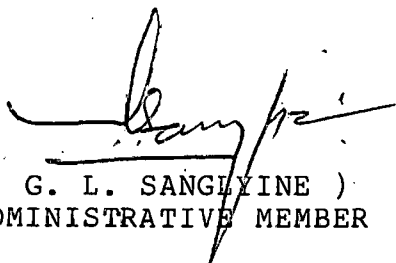
7. In view of the above we direct the respondents to make assesement of the applicant by holding a Review DPC as on 1.4.1990 on the basis of which selected candidates' names were published including the applicant's junior, namely P.K. Guha. If the applicant was found suitable by the Review DPC the subsequent chargesheet issued in 1995 would not affect him. If the applicant is found not suitable as on 1.4.1990, the Review DPC should also make assessment in the subsequent years prior to the issuance of the chargesheet. If he is found suitable in any of such years, he should be promoted irrespective of the submission of the chargesheet. If, however, he was not found suitable in those years the present sealed cover procedure should be followed. If any further promotion had become due before issuance of the chargesheet the applicant's case should also be considered by the authority. This must be done



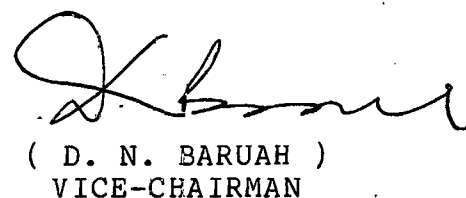
as early as possible, at any rate within a period of three months from the date of receipt of the order.

8. In this present application Mr Roy has also prayed for setting aside the proceedings initiated against the applicant. We feel that this is a subject matter relating to a different cause of action. Therefore, the applicant may approach this Tribunal by filing a separate application.

9. With the above observations the application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.



(G. L. SANGLYINE)
ADMINISTRATIVE MEMBER



(D. N. BARUAH)
VICE-CHAIRMAN