

GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-99/2003 disposed pg-1 to 2 INDEX

disposed date-05/09/2003

O.A/T.A No. 176/2001.....

R.A/C.P No.

E.P/M.A No. 99/2003.....

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SECTION OFFICER (Judl.)

FORM NO. 4
(See Rule 42.)IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::::: GUWAHATI

ORDER SHEET

Original APPLICATION NO176... OF 2001.

Applicant (s) Aramita Kr. Malakar

Respondent (s) U.O.I. Govt

Advocate for Applicants (s) B.K. Phonsong, S. Sarma, Mrs U. Dey

Advocate for Respondent (s) Case.

| Notes of the Registry | Date | Order of the Tribunal |
|--|---------|--|
| <p>This application is in form but not in time. Condonation Petition is filed vide M.P. No. C.P. for Rs. 50/- deposited vide IPO/3/ No. 63792 098 Dated: 7-5-2001 S. D. (Dy. Registrar) (b) (d)</p> <p>Notice not yet served on Standing Council, State of Assam and State of Meghalaya.</p> <p>FS F3/6/5</p> | 28.6.01 | <p>We have heard Mr. S. Sarma, learned counsel for the applicant and Mr. A. Deb Roy for respondents. By this application applicant has challenged the order dated 12-4-2000 by which he has been communicated that his case for promotion to I.A.S. in the 1992-93 and 1993-94 Select Lists has been considered. However, the Review Selection Committee did not recommend any change in the two Select Lists after making an overall relative assessment of the service records of the applicant. The recommendation of the Review Selection Committee has been approved by the Union Public Service Commission. The review of the selection was in pursuance of the order of this Tribunal dated 7-8-1998 passed in O.A. No. 180 of 1994.</p> <p>It is not disputed by the applicant that the case of the applicant has been considered. However, he submitted that there were several other candidates, but their claims have not been considered and the case of the</p> |

contd..

(2)

28.6.01

applicant was examined in isolation.

We do not find any merit in this application. If any other candidate was considered by the Committee, the applicant could have raised grievance, but the applicant could not have any grievance on that ground. The case of the applicant has been re-examined by the Review Selection Committee and we do not find any irregularity in the selection process.

The application has no merit. Accordingly the application is rejected.

30
18.7.01

4.4.03

Memo No. 2018/2M dated 1.4.03 received a judgment from the Hon'ble Gauhati High Court, Gauhati in connection with WP(C) No. 6844/2001 in OA 176/2001. 8.4.03. put up again on 21.4.03 enabling the applicant to take necessary steps for impleadment etc.

K C Shaha

Member

Vice-Chairman

Submitted for consideration, if approved, we may place before the Hon'ble court for necessary orders.

A place before the Hon'ble Court. DR. N. G. 21/4/03
SOL) DR. A. B. 21/4/03

21.5.03

An additional statement has been submitted by the applicant.

24.4.2003

Further four weeks time is allowed to the respondents to obtain necessary instructions on the matter. List on 27.5.2003 for orders.

Vice-Chairman

mb

27.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra, Administrative Member.

Slips not received.
07/5/03.

Slips taken. Notice issued and sent to DLS for issuing the respondent No. 1 to 6 by Regd. A.D. along with addl. statement.

DL No. 1163 to 1168

Std 5/6/03

No. written statement has been filed.

23
24.6.03

No. W/S has been filed.

25
15.7.03

17.7.03

An affidavit in opposition filed by the Respondent No. 5 & 6.

Ap.

mb

25.6.2003 Heard Mr. S. Sarma, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents and Mrs. M. Das, learned Govt. Advocate for the State of Assam.

Put up again on 16.7.2003 for orders.

Sum
Member

Vice-Chairman

Vice-Chairman

mb

16.7.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. N.D. Dayal, Member (A).

Heard Miss U. Das, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

It seems that the respondent Nos. 5 and 6 had already filed written statement in High Court. Mr. A. Deb Roy, learned Sr. C.G.S.C. has re-filed a copy of the written statement which shall be treated as written statement in this case also. The case may now be listed for hearing on 31.7.2003. The other respondents mainly respondent Nos. 2 to 4 may file written statement, if any, in the meantime.

Member

Vice-Chairman

31.7.2003 Passed over for the day. Put up on 1.8.2003 for hearing.

Member

mb

Vice-Chairman

(1.8.2003) - Heard Mr. B. K. Sharma, learned Counsel for the appellant, Mrs. M. Das, learned Counsel appearing for respondent Advocate Mr. A. D. Doley, Esq., C. A.

Hearing Concluded.

Judgment reserved.

Also

Adv.

8.8.2003.

Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs.

Member

mb

Vice-Chairman

Received copy
of judgment for
Bank of Bihar
Bihar 13.8.03

Copy 148

18.8.03
copy of the Judgment
handed over to the
L/Advocate for the
Respondents

BS

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / XXXX No. . 176 . . of 2001

DATE OF DECISION

8th August 2003

Ananta Kr Malakar

APPLICANT(S).

Mr B.K. Sharma, Mr S. Sarma and Ms U. Das

ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and others

Central Administrative Tribunal
Guwahati Bench

RESPONDENT(S).

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

Mrs M. Das, Government Advocate, Assam

ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE MR N.D. DAYAL, 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 ?

- VERSUS -

Judgment delivered by Hon'ble Vice-Chairman

8th August 2003

1. VICE-CHAIRMAN
2. ADMINISTRATIVE MEMBER

8

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.176 of 2001

Date of decision: This the 8th day of August 2003

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

The Hon'ble Mr N.D. Dayal, Administrative Member

Ananta Kr Malakar
Labour Commissioner,
Assam, Guwahati.

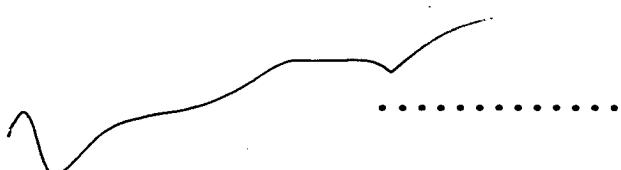
.....Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma
and Ms U. Das.

- versus -

1. The Union of India, represented by
The Secretary,
Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel & Training,
Central Secretariat, New Delhi.
2. The State of Assam, represented by
The Chief Secretary to the
Government of Assam,
Dispur, Guwahati.
3. The Commissioner & Secretary,
Personnel (A) Department,
Government of Assam,
Dispur, Guwahati.
4. The State of Meghalaya, represented by
The Chief Secretary,
Government of Meghalaya,
Shillong.
5. The Union Public Service Commission,
Represented by the Secretary,
Union Public Service Commission,
New Delhi.
6. The Selection Committee constituted
under Regulation 3 of the IAS
(Appointment by Promotion) Regulation,
1955 for preparing the list of
members of State Civil Service for
nomination to the IAS for the year
1994-95, represented by its
Chairman, C/o The Chief Secretary to the
Government of Assam,
Dispur, Guwahati.Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C. and
Ms M. Das, Government Advocate, Assam.

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8

O R D E R

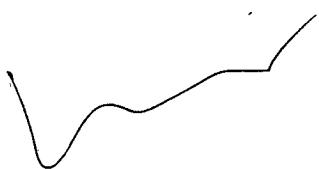
CHOWDHURY. J. (V.C.)

Backwards and forward swam the boys - that is the story.

This is the third round of the litigating battle between the parties. The controversy relates to recruitment of persons by promotion from amongst the State Civil Service in terms of the provisions contained in the Indian Administrative Service (Recruitment) Rules, 1954 read with Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

2. A thumbnail sketch leading to the institution of the O.A. is given hereinbelow:

The applicant was communicated with adverse remarks in his Annual Confidential Report (ACR for short) for the period 1.1.1990 to 22.12.1990 by communication dated 17.3.1993. The applicant submitted a representation on 3.4.1993 for expunction of the adverse remarks entered in his ACR. The State of Assam under whom the applicant served as a member of the State Civil Service (SCS for short) took a move to initiate disciplinary proceeding against the applicant. According to the applicant he was passed over for promotion to the Indian Administrative Service (IAS for short) from the SCS for the year 1993-94 promoting officers junior to him. When the preparation for selection to the IAS from SCS was in process the applicant moved this Bench by way of an O.A. apprehending that he would again be overlooked for promotion. The Bench disposed of the said O.A. (O.A.No.72 of 1994) by order dated 8.4.1994 holding



inter alia that adverse remarks of 1993 could not be acted upon. At that time the Tribunal was informed that Government had already decided to drop the disciplinary proceeding against the applicant initiated vide letter dated 17.3.1993. At the same time the Tribunal was made aware by the Government that another disciplinary proceeding had since been drawn up against the applicant. By the above order of the Tribunal dated 8.4.1994, the Tribunal held that the subsequent disciplinary proceeding initiated in April 1994 could not be acted upon by the Selection Committee which initiated selection proceeding from 29.3.1994 for preparing the list of eligible ACS Class I officers for nomination to the IAS. The Tribunal accordingly disposed of the said O.A. leaving it to the Selection Committee for preparing a select list for the year 1994-95 without taking into account the adverse remarks against the applicant in 1990, the disciplinary proceeding initiated in March 1993 since dropped and also the disciplinary proceeding initiated in the month of April 1994. The respondents were accordingly directed by the Tribunal to recommend and forward the name of the applicant to the Selection Committee alongwith his service records as to whether his name could be included in the select list for IAS Cadre for the year 1994-95. The Selection Committee held its meeting on 29.3.1994 to select persons for the year 1994-95, but this time also the name of the applicant did not appear in the select list. The applicant again moved the Bench in O.A.No.180 of 1994 assailing the action of the respondents.

3. The respondents in the written statement asserted that the Selection Committee meeting for promotion of SCS officers to IAS Cadre of Assam was already held on 29.3.1994. The applicant was considered for promotion at serial No.4 alongwith twenty eligible officers. The respondents also stated that the judgment dated 8.4.1994 in O.A.No.72/1994 was pronounced well after the Selection Committee Meeting had taken place and therefore there was no scope for the Selection Committee to take into consideration the order of the Tribunal dated 8.4.1994 in O.A.No.72/1994 while assessing the service records of the applicant. While disposing of O.A.No.180/1994 by Judgment and order dated 7.8.1998, the Tribunal found that the applicant was found eligible for selection in the meeting of the Selection Committee held on 6.2.1996 and the applicant was accordingly appointed. However, in view of the fact that the case of the applicant was not considered in the right perspective in the year 1993, the Bench by its Judgment and Order dated 7.8.1998 in O.A.No.180/1994 directed the respondents to consider the case of the applicant as on 31.3.1993 as per law. It appears that a Review Selection Committee meeting was held on 15.2.1999 to reconsider the case of the applicant from 1992-93 and 1993-94 select list. By the impugned communication dated 12.4.2000 the applicant was intimated that the Review Selection Committee meeting was held on 15.2.1999 and the committee on consideration of the applicant's case did not consider it justifiable to recommend any change in the select list after making an overall assessment of the service records of the applicant. The applicant was also informed that the UPSC had approved the recommendation of

the.....

the Review Selection Committee and that the same was made final. Hence this application assailing the legality and validity of the action of the respondents.

4. Mr B.K. Sharma, learned Sr. Counsel for the applicant, assisted by Mr S. Sarma and Ms U. Das, contended that the applicant was denied a fair consideration of his case in the light of Article 14 of the Constitution of India. The right to be considered for promotion and appointment flows from Article 16 of the Constitution read with Article 14 of the Constitution within the ambit of Article 16. The learned Sr. counsel submitted that consideration is not a mere incantation, but it envisages a fair consideration in the right perspective.

5. In the course of hearing, Mr B.K. Sharma, learned Sr. counsel for the applicant, referred to the additional statement of fact presented by the applicant on 21.5.2003. The learned Sr. counsel particularly drew our attention to the order passed by the State Government conveying the appreciation of the Government vide communication sent by the Adviser to the Government of Assam for the period 1990-91 vide Memorandum dated 30.5.1991 treating the record of performance of the applicant during the period from 1.1.1990 to 20.12.1990 in the light of the appreciation letter.

6. Mr A. Deb Roy, learned Sr. C.G.S.C., contended that under Article 16 a Government servant is entitled for consideration and as a matter of fact the case of the applicant was duly considered, but he was not found suitable by the Selection Committee. Mr A. Deb Roy referred to us the materials indicated in the written statement and submitted that successive Selection Committee meetings held

on.....

on 31.3.1993, 29.3.1994, 18.9.1997 and 15.2.1999 considered the case of the applicant. The Review Selection Committee meeting that was held on 15.2.1999 fairly considered the case of the applicant, but the committee on overall assessment of the service records of the applicant assessed the applicant as 'good' for both Select List years of 1992-93 and 1993-94. The learned Sr. C.G.S.C. submitted that the Selection Committee ignored the adverse remarks in his ACR for the period 1.1.1990 to 20.12.1990. On the basis of the assessment, the Review Selection Committee did not recommend any change in the recommendation of the Review Selection Committee that met on 18.9.1997. The Refiew Selection Committee also did not take into account the adverse remarks which were expunged on 5.2.1996 and the disciplinary proceedings which were finalised on 2.2.1996. Denying the contention of the applicant that incomplete records were furnished to the Selection Committee, Mr A. Deb Roy submitted that the Government of Assam furnished the ACR dossier and other relevant records in respect of the applicant while forwarding the proposal to convey the Review Selection Committee meeting. As per the direction issued by the Tribunal the case of the applicant was considered. The Selection Committee assiduously performed its statutory duty and deliberated on the quality of the officer on examining various columns recorded by the Reporting/Reviewing Officer and the Accepting Authority in the ACRs for different years. The Selection Committee reviewed and determined the overall grading recorded in the ACR to ensure that the overall grading in the ACR was not inconsistent with the grading/remarks under various parameters.....

parameters. Lastly, Mr A. Deb Roy submitted that the suitability of the applicant was assessed by a high level committee which considered the merits of the applicant vis-a-vis other candidates in the right perspective and it is not for the Tribunal to go into the assessment of suitability.

7. We have given our anxious consideration in the matter. The Tribunal while exercising power under Section 19 of the Administrative Tribunals Act, 1985 is to confine itself to the decision making process and not on the merits of the decision. We are also aware of the fact that power under Section 19 of the Act for judicial review is not to be equated with the appellate power. The assessment of the Selection Committee approved by the UPSC and the Governmental authority is not to be lightly interfered with. Judicial review, however, meant as to whether the executive authority including the Selection Committee acted within the parameters of law. One of the aspects of the equality clause is to provide fair and equitable consideration to a public servant in the matter of public employment. Fair consideration means lawful consideration in the proper perspective. In the instant case the Tribunal sent the matter to the Selection Committee to consider the case of the applicant lawfully. The Selection Committee in assessing the merits is required to look into the gradings given by the Reporting/Reviewing Officer in the ACR which refers to the inputs in respect of the merits of the officer.

8. We have already indicated the fact that the applicant's case was considered by the Review Selection Committee in its meeting held on 15.2.1999. On 15.2.1999

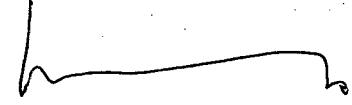
the.....

the Selection Committee only had the information that the adverse remarks were expunged. But then, the applicant's ACR for the aforesaid period was not rewritten. Only by communication dted 16.7.2002 the Government of Assam decided that the appreciation letter sent by the then Adviser to the Governor dated 30.5.1991 complimenting the officers for commendable performance was made a part of the record of performance of the applicant. The said communication, might have some impact on the career graph of the applicant for the relevant period. Mr A. Deb Roy, however, contended that that would not have changed the assessment of the decision of the Selection Committee meeting that was held on 15.2.1999. We find it difficult to accept the said assertion of Mr A. Deb Roy. Since the matter is for consideration of the Selection Committee before whom this relevant piece of information was not made known and the case of the applicant was left out of fair consideration, we feel that ends of justice would be met if a direction be issued to the respondents to hold a Review Selection to consider the case of the applicant as on 31.3.1993 on the basis of the materials on record and also to take into consideration the record of performance vide communication dated 16.7.2002 and to pass appropriate order as per law. The respondents are accordingly directed to hold a Review Selection afresh as expeditiously as possible and to consider the case of the applicant in the light of the facts enumerated above and pass appropriate order as per law with utmost expedition, preferably within four months from the date of receipt of the order.

With the above observation the application stands disposed of. There shall, however, be no order as to costs.



(N. D. DAYAL)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm

THE GUAHATI HIGH COURT
[THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH]

W.P.(C) NO. 6844 OF 2001

Shri Ananta Kumar Malabar,
Labour Commissioner, Government of Assam,
Guwahati, resident of Dispur, Guwahati-6.

...PETITIONER

-Versus-

1. The Union of India,
Represented by the Secretary, Ministry of Personnel,
Public Grievance and Pension, Department of Personnel
& Training, Central Secretariat, New Delhi.
2. The State of Assam,
Represented by the Chief Secretary to the
Government of Assam, Dispur, Guwahati-6.
3. The Commissioner & Secretary to the Govt of Assam,
Personnel (A) Department, Dispur, Gwuahati -6 .
4. The State of Meghalaya,
Represented by the Chief Secretary,
Government of Meghalaya, Shillong.
5. The Union Public Service Commissioner,
Represented by the Secretary, Union Public Service
Commission, Dholpur House, Sahjahan Road,
New Delhi.
6. The Selection Committee constituted under Regulation 3.
Of the Indian Administrative Service (Appointment by
Promotion) Regulation, 1955 for preparing the list of
Members of State Civil Service for nomination to the IAS
for the year 1994-95, represented by its Chairman,
C/o The Chief Secretary to the Government of Assam,
Dispur, Guwahati- 6.

...RESPONDENTS.

P R E S E N T
HON'BLE THE CHIEF JUSTICE MR. P. P. NAOLEKAR
THE HON'BLE MR. JUSTICE AMITAVA ROY

For the petitioner : Mr. B. K. Sharma,
Mr. U. K. Nair,
Mr. S. K. Das, Advocates.

2

For the Respondents: Mr. G.P.Bhowmik, Central Govt Standing
Counsel.

Date of hearing : 30.01.2003

Date of judgment : 30th January, 2003.

JUDGMENT AND ORDER
(ORAL)

Naglekar C.J.

While the petitioner was serving in the State Civil Service his case was considered for giving him appointment by promotion to the Indian Administrative Service (IAS) in the year 1992-93 and 1993-94. The petitioner was not given promotion by the Selection Committee constituted by the UPSC for preparing the list of Members of State Civil Service for nomination to the IAS on the basis that there was an adverse remark against the petitioner for the period 01.01.90 to 22.12.90. The petitioner aggrieved by the said order has filed Original Application No. 180/ 1994 contending therein that the adverse entry which was considered by the Selection Committee, was communicated to him for the first time on 17.03.93 and on his representation the adverse entry was expunged in the year 1996 and therefore the Selection Committee could not have take into consideration the un-communicated adverse entry against him in ascertainment of his merits for giving appointment by promotion. The Central Administrative Tribunal, Guwahati Bench has accepted the contention of the petitioner and by its order dated 07.8.98 directed the respondents to re-consider the case of the petitioner. In pursuance of the directions issued by the Central Administrative Tribunal, Guwahati Bench the Union Public Service Commission again considered the case of the petitioner and on fresh consideration the claim of the petitioner was rejected and he was not given promotion. Aggrieved by the said order, the petitioner again approached the Central Administrative Tribunal by filing a petition, which was registered as Original Application No.176/2001 (Ananta Kumar Malakar vs. Union of India & Others). The Central Administrative Tribunal

T.T.W.

by its order dated 28.06.2001 has rejected the application filed by the petitioner on the ground that the petitioner could not be permitted to raise the cause of other incumbents, if they have grievance, they can approach the Court. The writ petitioner challenges this order of the Tribunal by filing the writ petition.

2. It is contended by the learned counsel for the petitioner that the Tribunal was wrong in its premises that the petitioner was exposing and advancing cases of other persons. In fact, the points which has been raised in the petition is that while considering his case the Selection Committee should have considered his case vis-à-vis other junior officers who have been given promotion denying promotion to him on the same merit criteria as was applied while considering the cases of the officers promoted. We find substance in the submissions made by the learned counsel. The petitioner has challenged the order passed by the Union Public Service Commission not giving him promotion and raised contention that his case has not been considered on the basis of same criteria as has been considered for the other officers, who were junior to him. It is for the Tribunal to adjudicate upon the matter and to decide whether a similar criterion has been adopted or not but the petition could not have been dismissed on the ground that he is exposing the case of other persons. That being the case, the order of the Tribunal dated 28.06.2001 is set aside. The Tribunal shall consider the Original Application No.176/2001 filed by the petitioner on its merit.

3. The petition is disposed of with the above directions. In the circumstances of the case, we make no order as to costs.

Sd/- A. Roy.
JUDGE.

Sd/- P.P. Naolekar.
CHIEF JUSTICE.

Memo No. 2018

R.M. Dtd. 1-4-03

Copy forwarded for information and necessary action to the:-

1. The Central Administrative Tribunal, Guwahati Bench, Bhangagarh, Guwahati-5.

By order

Asstt. Registrar (B)
Gauhati High Court, Guwahati.

(Ch-4-03)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under Section 19 of the Administrative
Tribunal Act, 1985)

Title of the case..... OA No. 176 /2001

Between

Shri Ananta Kumar ~~MAJAKAR~~ & Ors.

...Applicant

- AND -

Union of India & Ors.

... Respondents

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Filed by For Office Use

S. Sarma
(Advocate) Registration No.

Date :

File- wsd\ss SS(B.K.S.)

20
Filed by
the applicant through
Chhota Dass,
Advocate
14/5/2001

THE CENTRAL ADMINISTRATIVE TRIBUNAL: :GUWAHATI BENCH
GUWAHATI

(Application under Section 19 of the Central Administration Tribunal Act, 1985)

O.A. No. 176 of 2001

BETWEEN

Ananta Kr. Malakar,
Labour Commissioner,
Assam Guwahati.

... Applicant

AND

1. The Union of India, represented by the Secretary, Ministry of Personnel, Public Grievances and Pension, Department of personnel & Training, Central Secretariat, New Delhi.
2. The State of Assam, represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati-6.
3. The Commissioner & Secretary, Personnel (A) Department, Government of Assam, Dispur, Guwahati-6.
4. The State of Meghalaya, represented by the Chief Secretary, Government of Meghalaya, Shillong.
5. The Union Public Service Commissioner, represented by the Secretary, Union Public Service Commission, Dholpur House, Sahjahan Road, New Delhi.
6. The Selection Committee constituted under regulation 3 of the IAS (Appointment by promotion) Regulation, 1955 for preparing the list of members of State Civil Service for nomination to the IAS for the year 1994-95, represented by its Chairman, C/o. The Chief Secretary to the Government of Assam, Dispur, Guwahati-6.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The instant application is directed against the order bearing No. AAP.&79/94/Pt/176 dated 12.4.2000 issued by the under Secretary to the Government of Assam conveying the decision of the review selection committee whereby claim of the Applicant for consideration of his case for promotion to IAS from the select lists of 1992-93 and 1993-94 has been rejected. The Applicant through his application prays for a direction to the Respondents for inclusion of his name in the select list of 1992-93 and 1993-94 prepared under regulation 5 for the purpose of nomination the members of the State Civil Services suitable for promotion to IAS.

The Applicant through the present application also challenges the constitution of the selection committee constituted under regulation 3 of IAS (appointment by Promotion, Regulation 1955 in preparing the lists of suitable State Civil Service Officers for promotion to IAS for the year 1993-94 along with the constitution of both the selection committee including the Review selection committee which met on 15.2.99, pursuant to the judgment and order dated 7.8.09 passed in OA No. 180/94 by the Hon'ble Tribunal .

2. JURISDICTION OF THE TRIBUNAL :

The applicants declare that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The applicants further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant belongs to Assam Civil Service Class-I Officer of 1975 batch of ACS. He belongs to Schedule Caste Community and at present he is holding the post of Labour Commissioner, Assam. The name of the Applicant figured at serial No. 13 of the gradation list prepared as on 1.1.94.

A copy of the extract of the said gradation list is annexed herewith and marked as Annexure-A.

4.2 That the Applicant begs to state that he has got an outstanding service career as ACS Officer and during his service tenure he had occasions to work in various responsible posts. The brief resume of the same is being given below in a *seriatim* for a sake of convenience.

(a) From April 1976 to September 1979, the Applicant held the post of Extra Assistant Commissioner with additional charge of the post of Chief Executive Officer of Town Committee, Morigaon. During this period, lots of development works were carried out surpassing all past records. Applicant also worked in riots and floods even at the risk of his life.

AKH.

b). From 1979 to 1981, the Applicant as senior EAC in Haflong also held the additional charge of the District Publicity Officer, During this period his functions as senior EAC also included functions of the Judicial Magistrate 1st Class during this period Applicant also rescued passengers of a mail train, which got derailed killing 21 passengers by working day and night.

c). From 1981 to 1983 as Secretary to the Karimganj Mahkuma Parishad, the Applicant worked in flood and riots and also carried out law and order duty.

d). From 1983 to 1985 as Secretary of the N.C. Hills District Council, the Applicant also subsequently acted as Incharge of Principal Secretary of the Council. During this period, the developmental activities of the council made a rapid progress. The Applicant also produced the first Dimasa Feature Film "The Untold Story of Blue Hills". He also published a book explaining the developmental activities of his period.

e). In 1986, the Applicant acting as Addl. Deputy Commissioner of Karimganj brought out the draft of the decentralised planning of the District. The quality of this publication was highly appreciated by Shri H.N. Das, IAS the then Special Secretary, P&D Department. This year

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Applicant also seized logs worth lakhs of rupees.

f). From 1987 to 1988 , the Applicant acted as Deputy Secretary to the Government of Assam, Department of Handloom, Textiles and Sericulture and from 1988 to 1989, he held the post of Managing Director, Assam Government, Marketing Corporation, within a short period Applicant could revive the sick corporation.

g). From May 1989, till September 1992 Applicant acted as the Director, Social Welfare and Probation. This was Applicant's toughest period due to various reasons. During this period, department could achieve 100% target and the Applicant got the commendation letter of the Hon'ble Governor of Assam.

h). From September 1992 to till this date, the Applicant has been holding the post of Joint Secretary, Handloom, Textile and Sericulture Department. He has also been holding the additional charge of Joint Secretary of Labour and Employment Department with effect from 28.7.93, since 15.10.93, the Applicant is also working as Labour commissioner, which is a cadre post.

4.3 That surprisingly during the year 1993, the Applicant was communicated with the adverse remarks in his ACR for the period 1.1.90 to 22.12.90. The

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Respondents vide a communication dated 17.3.93 communicated the aforesaid adverse remarks. On receipt of the said communication the Applicant preferred a representation dated 3.4.93 praying for expungion of those adverse remarks highlighting the fact that the Respondents have taken more than two and half years for communicating the said adverse remarks. The representation preferred by the Applicant dated 3.4.93 remained pending for more than one year. Moreover the Government decided to proceed departmentally against the Applicant and to that effect Respondents issued a letter vide No. AAP/167/92/38 dated 17.3.93.

Due to the aforesaid reasons although name of the Applicant figured at the serial No. 17 of the gradation list of ACS officers as on 1.1.93, was not considered for promotion to IAS. While preparing the select list for the said purpose for the year 1993-94. Person below him whose name figured at serial No. 21 of the said gradation list was promoted to IAS pursuant to the said select list of 1993-94.

4.4 That the Applicant before initiation of the process of preparing select list for the year 1994-95 for the purpose of nominating the ACS Class-I Officers to IAS, apprehending non-consideration of his case for the aforesaid nomination to IAS as happened in 1993 approached the Hon'ble Tribunal by filing OA No. 72/94. The Hon'ble Tribunal after hearing the parties to the proceeding vide its judgment and order dated 8.4.94 has held that the adverse remarks of 1990 cannot be acted upon to deny the promotional avenue of the Applicant.

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During the course of hearing it was brought to the notice of the Tribunal that the Government has decided to drop the proceeding initiated against the Applicant vide letter No. AAP/167/92/38 dated 17.3.93. At the same time it was also pointed out that another departmental proceeding initiated against the Applicant vide letter No. AAP/167/92/PK/69 dated 6.4.94. The Hon'ble Tribunal in the aforesaid judgment and order has held that the proceeding of April 1994 cannot be taken into account by the selection committee which initiated selection proceeding from 29.3.94 for preparing the list eligible ACS class-I officers for nominate to IAS. Finally the Hon'ble Tribunal was pleased to dispose of the said OA No. 72/94 holding that the selection committee entrusted with the responsibility of preparing the select list for 94-95 shall not take into account, finally the adverse remarks for the year 1990, Secondly, the departmental proceedings initiated in March 1993, Since dropped and thirdly the departmental proceeding subsequently initiated in April 1994. The Hon'ble Tribunal was further pleased to direct the Respondents to recommend and forwarded the name of the Applicant along with his relevant service records immediately to the selection committee for preparing the select list for promotion to IAS pursuant to the select list of 1994- 95.

A copy of the judgment and order dated 6.4.94 passed in OA 72/94 is annexed herewith and marked as Annexure-B.

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4.5 That in view of the aforesaid judgment and order dated 8.4.94 passed in OA No. 72/94 it is crystal clear that the service career of the Applicant is free from any adverse entries and because of his higher position in the gradation list of ACS Officers as on 1.1.93. Therefore, the Applicant was expecting that pursuant to the said select list of 1994-95, he will be promoted to IAS considering his meritorious service career.

4.6 That the selection committee in its meeting held on 29.3.94 to draw the select list of ACS officers for nomination to IAS for the year 1994. It is pertinent to mention here that drawing up of a select list is a closely guarded secret and the select list even after its preparation is not made public, only those officers whose name appear in the said select list gets the intimation about the same.

4.7 That there was certain controversies in regard to the ACS Officers for nomination to IAS for the year 1994-95. Various news items has been published and it was stated that the Government had short-listed 21 ACS Officers for nomination to IAS for the year 1994-95. It was also stated that the Government has finally decided to prepare a list of 7 ACS Officers amongst the aforesaid 21 ACS Officers for referring to the UPSC selection committee.

A copy of the news item is annexed herewith and marked as Annexure-C.

4.8 That due to the short listing of 21 ACS Officers which has subsequently reduced down to a select list of

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7 ACS Officers, dismayed the present Applicant. On amongst the 7 ACS Officers 5 are junior to the present Applicant. That apart in respect of some of them charge sheets/departmental proceedings were opening.

4.9 That the selection committee was constituted under the Regulation 3 and the said Regulation provides that the committee should consists of a Chairman of the UPSC or any other member of the Commission and other member specified in the entry column 3 of the Schedule. Column 3 of the said Schedule is as follows -

- i) Chief Secretary to the Government of Assam.
- ii) Chairman, Board of revenue, Assam.
- iii) Chief Secretary to the Government of Meghalaya.
- iv) Commissioner of Division, Meghalaya.
- v) A nominee of the Government of India, not below the rank of Joint Secretary.

4.10 That the Applicant states that in the instant case while preparing the select lit of 1994-95 the selection committee was not constituted properly as Chairman, Board of Revenue, Assam and the Commissioner of Division, Meghalaya were not present. Hence the said selection committee was not constituted in conformity with the Regulation 3 and hence same is not sustainable in the eye of law.

4.11 That the said selection committee also did not follow the guidelines contained in the Regulation 5 and violated prescribed procedure for preparation of the said select list. The provisions contained on

Regulation 5 is exhaustive and same has also been supplemented by various executive institutions of the Government of India issued from time to time. Relevant portions of the said regulation 5 is quoted below for ready reference.

"Regulation 5(4) provides that the selection committee shall classify the eligible officers as 'outstanding', 'very good', 'good' or 'unfit' as the case may be on an overall relative assessment of their service records (emphasis added).

Regulation 5(5) lays down that the select list be prepared by including the required number of names first amongst the officers finally classified as 'outstanding' then from amongst those similarly classified as 'very good' and thereafter from amongst those similarly classified as 'good'."

4.12 That the Regulation 5 thus makes it clear that there should be overall relative assessment of the service records of the eligible officers and after such assessment those officers who have been graded as "Outstanding" "Very good" & "good" should be nominated to IAS taking into consideration such gradings. However the said selection committee took into consideration cases of those officers against whom there are charges thereby violated the requirement of regulation 5 (4) and (5) while ignoring the claim of the Applicant.

4.13 That so far as the relaxation of the charges and

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to meet the controversies regarding its proper reflection in ACRs the Government of India vide Notification No. GI M.H.A. letter No. 14/23/65-AIS(III) dated 28.7.65 issued an instruction that the certificate of integrity should be recorded by the Secretary to the State concern in respect of all the eligible officers who's cases are placed before the selection committee for consideration. it has also been mentioned that such a certificate of integrity should be in reference to the entries in the ACRs of such Officers. Emphasis has been made in the said letter that selection committees should consider the question of suitability vis-a-vis the integrity and should record the remark on being satisfied.

The Applicant craves leave of this Hon'ble Tribunal to produce the aforesaid letter dated 28.7.65 at the time of the hearing of the case.

4.14 That the Applicant states that the selection committee has failed to take into consideration the aforesaid OM as well as it's subsequent clarification issued from time to time. Instances are at galore to show that the said selection committee overlooked/ignored many of the relevant fact while preparing the said select list for IAS, and acted upon irrelevant consideration and ignored the case of the Applicant.

4.15 That the Applicant states that he was eligible to cross efficiency bar with effect from 1.3.91. The aforesaid fact was duly intimated to the Secretary

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Department of Personnel, Government of Assam by the Accountant General, Assam vide its letter dated 13.6.91. However, the Under Secretary to the Government of Assam, Department of Personnel vide a subsequent letter dated 2.6.92 intimated the A.G. that the Applicant has not been found suitable to cross the efficiency bar. Thus the Applicant was not allowed to cross the efficiency bar which has no bearing so far it relates to his nomination to IAS.

4.16 That the Applicant begs to state that the adverse remarks against him for the period of 1.1.90 to 22.12.90 have been expunged and having regard to the fact that the Hon'ble Tribunal vide its judgment and order dated 9.4.94 cleared the way for consideration of his case for nomination to IAS, the Respondents had not other reason as to why he was not been allowed to cross the efficiencies bar.

4.17 That being aggrieved by the aforesaid action depriving him his legitimate promotion, the Applicant was contained to move the Hon'ble Tribunal by way of filing OA No. 180/94 before the Hon'ble Tribunal. The crux of the reliefs prayed by the Applicant in the said OA are, setting aside of the select list prepared for the year 1994-95 for nomination to IAS; implementation of 1993 select list for the purpose of making promotion appointment to IAS and allow him to cross the efficiency bar with effect from 1.3.91. The Hon'ble Tribunal after hearing the parties to the proceeding the Hon'ble Tribunal was pleased to direct

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the Respondents to hold review DPC and to consider the case of the Applicant as on 31.3.93 and in the event of he being not found suitable for nomination to IAS in the said year than to consider his case for the subsequent year.

A copy of the said judgment and order dated 7.8.98 is annexed herewith and marked as Annexure-D.

4.18 That on receipt of the aforesaid judgment and order, the Applicant preferred the representation dated 21.8.98 enclosing a copy of the judgment dated 7.8.98 praying for implementation of the aforesaid judgment granting him the reliefs.

A copy of the representation dated 21.8.98 is annexed herewith and marked as Annexure-E.

4.19 That the Respondents kept the matter pending for year together and finally on 12th April 2000 issued an order communicating the decision of the review selection committee meeting held on 15.2.99. In the said order the Under Secretary to the Government of Assam conveyed the fact that the said review selection committee did not recommend his case for promotion to IAS taking into consideration the select list of 92-93 and 93-94 and there by rejected the claim of the Applicant.

A copy of the said order dated 12.4.2000 is annexed herewith and marked as Annexure-F.

4.20 That the Applicant begs to state that the said

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review selection committee has not dealt with the matter giving due consideration of the factual matrix of the case. The said selection committee took into consideration the irreverent facts and gave weightage to the irrelevant considerations. The said committee even did not examine the full records of the Applicant and in fact the Government concerned has also not supplied the entire records before selection committee. There has been total non application of mind by the Respondents and things have been done hurriedly to avoid litigation.

4.21 That the Applicant submits that as per the rules the review selection committee ought to have taken into consideration the test applied by the earlier selection committee, applying the same yard stick and while coming into the conclusion detailed reason is required to be rejected. However, in the present case such materials are absent and the fact will be revealed from the impugned communication dated 12.4.2000 (Annexure-F) and hence same is not sustainable in the eye of law and liable to be set aside and quashed with a further direction to consider the case of the Applicant for nomination to IAS with retrospective effect.

4.22 That the Applicant begs to state that in view of the judgment and order dated 7.8.98 the case of the Applicant requires to be considered retrospectively and applying the same standard of grading along with all the officers as on 1993. The Applicant could come to know that the said review selection committee while

consideration the case of the Applicant pursuant to the judgment and order dated 7.8.98, took up his case in isolation which is per-se illegal.

4.23 That the Applicant submits that the review selection committee at the time of consideration the case of the Applicant failed to proceed in accordance with the requirement prescribed under the relevant regulation. In fact, the Applicant could come to know from the reliable source that the State Government has not forwarded the full ACRs of the Applicant and hence the consideration and the conclusion thereof has resulted in issuance of the impugned order dated 12.4.2000.

In that view of the matter the Applicant prays before the Hon'ble Tribunal for a direction to the Respondents to produce the records including the minutes of the selection proceeding.

4.24 That the Applicant begs to state that in absence of the relevant records as well as the ACRs, the review selection committee could not take into account the actual fact based on records and same has resulted the non-consideration of the case of the Applicant for nomination to IAS although he had a outstanding service career as narrated above which goes to show the inaction on the part of the Respondents in depriving him his due and legitimate promotion. The Respondents brought one after another hurdles causing delay in the promotion of the Applicant. However, due to his outstanding service career in the year 1997 vide a

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Notification date 3.1.97 the Applicant got his promotion to IAS from the select list of 96-97.

4.25 That the Applicant is filed this application bonafide and to secure the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the action/inaction on the part of the Respondents in considering the case of the Applicant by issuing the impugned communication dated 12.4.2000 is illegal, arbitrary and liable to be set aside and quashed.

5.2 For that the Respondents have acted contrary to the judgment and order dated 7.8.98 and issued the impugned order which is a non-speaking one and same depicts total non-application of mind and on this score alone the impugned order dated 12.4.2000 including the findings arrived at by the review selection committee is liable to be set aside and quashed with a further to reconsider his case for promotion to IAS takings into the consideration the select lists of 92-93 and 93-94 with all consequential benefits.

5.3 For that in the impugned order there has been non mentioned regarding the reasons of the review selection committee for not recommending his case for nomination to IAS and treating the said impugned communication dated 12.4.2000 into consideration, same can be termed as non-speaking one. On the other hand the Regulation contemplates recording of reasons for such denial. Hence, the entire action on the part of the Respondents

keeping the Applicant in dark regarding and liable to be set aside being violative of Article 14 and 16 of the Constitution of India.

5.4 For that the Respondents mainly State of Assam did not forwarded the full records of the Applicant before the review selection committee and thereby violate the provisions contained in the Rule and resulted issuance of impugned communication dated 12.4.2000 which is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and liable to be set aside and quashed.

5.5 For that the review selection committee has failed to take into consideration the various provisions including Regulation 5(4) and (5) while deciding the matter which is illegal, arbitrary and liable to be set aside and quashed.

5.6 For that the action of review selection committee is illegal and contrary to the settled principle laid down in the service jurisprudence and the impugned order is the not result of such action which is liable to be set aside and quashed.

5.7 For that in any view of the matter the action/inaction on the part of the Respondents including the review selection committee is illegal, arbitrary and liable to be set aside and quashed.

The applicants crave leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

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6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that they have no other alternative and efficacious remedy except by way of filing this application. They are seeking urgent and immediate relief.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To set aside and quash the impugned communication dated 12.4.2000 Annexure-F.

8.2 To direct the Respondents to consider the case of the Applicant by convening review selection committee with retrospective effect and to include the name of the Applicant in the select list of 1993 and in the event of non-selection, in the said year, again to consider his case as on 1994 select and to give effect

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his such promotion/nomination to IAS, retrospectively with all consequential service benefits.

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the applicant is entitled to and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

Considering the facts and circumstances of the case the present Applicant does not pray for any interim order at this stage. However, he prays before this Hon'ble Tribunal to hear matter at an early date.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 66 792098
- ii) Date : 9/5/2001
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

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V E R I F I C A T I O N

I, Shri Ananta Kumar Malakar, aged about 54 years, son of Late Haladhar Malakar, at present working as Labour Commissioner, Government of Assam, Guwahati, do hereby solemnly affirm and verify that I am one of the applicant in this instant application and conversant with the facts and circumstances of the case. Thus I am competent to verify this case and the statements made in paragraphs 1,2,3,4s,46,4'8-4'12,4'14,4'20-4'25 and 5 to 12 are true to my knowledge ; those made in paragraphs 4'1, 4'4, 4'7, 4'13, 4'15-4'19 are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 14 th day of ^{May} March 2001.


(ANANTA KUMAR MALAKAR)

GRADATION LIST OF AC : OFFICERS
AS ON 1.1.1994

| Sl. No. | Name in order of merit | Date of birth | Remarks |
|---------|-----------------------------------|---------------|-------------------------------------|
| 1 | 2 | 3 | 4 |
| 1. | Shri Umesh Chandra Dutta | 1.5.1937 | - |
| 2. | Shri Patreswar Basumatary, 1/25 ✓ | 1.4.1941 | Promoted to IAS w.e.f. 9.3.1994 |
| ✓ 3. | Shri Santanu Bhattacharjee | 1.3.1946 | - |
| ✓ 4. | Shri Jiban Ch. Pegu, 1/25 ✓ | 1.2.1945 | Promoted to IAS w.e.f. 9.3.1994 |
| 5. | Shri Padma Kanta Das | 1.9.1937 | - |
| 6. | Shri Hassan Ali, 1/25 ✓ | 27.2.1945 | Promoted to IAS w.e.f. 9.3.1994. |
| 7. | Shri Gokul Ch. Sharma | 1.3.1946 | - |
| 8. | Shri Monoranjan Das, 1/25 ✓ | 1.7.1946 | Promoted to IAS w.e.f. 9.3.1994 |
| ✓ 9. | Shri Pranab Kumar Khound, 1/25 ✓ | 28.2.1947 | Promoted to IAS w.e.f. 9.3.1994 |
| ✓ 10. | Md. Matahir Ali Borbbyan | 31.12.1940 | - |
| ✓ 11. | Smti. Sunanda Sengupta | 11.12.1947 | - |
| ✓ 12. | Shri Af tabuddin Ahmed, 1/25 ✓ | 1.9.1945 | 1/25 |
| ✓ 13. | Shri Ananta Kumar Malakar | 1.6.1947 | - |
| ✓ 14. | Shri Bhudev Basumatary | 1.12.1950 | - |
| ✓ 15. | Shri Kamal Krishna Hazarika, 1/25 | 1.1.1948 | - |
| 16. | Shri Guru Prasad Phatowali | 1.3.1945 | - |
| ✓ 17. | Shri Bir Bhadra Hazjer, 1/25 ✓ | 18.2.1951 | Promoted to IAS w.e.f. 9.3.1994 |
| ✓ 18. | Shri Jones Ingty Kathar | 2.2.1951 | - |
| ✓ 19. | Shri Anup Kumar Daolagupu | 31.1.1951 | - |
| ✓ 20. | Shri Dibakar Saikia | 2.3.1945 | - |
| 21. | Shri Ibrahim Ali | 1.1.1936 | - |
| 22. | Syed Md. Hasinur Rahman | 1.4.1936 | - |
| 23. | Shri Prafulla Ch. Borah | 1.10.1936 | Expired on 15.1.1994. |

Attest:

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Contd.

| 1 | 2 | 3 | 4 |
|-------|---------------------------------|------------|---|
| 24. | Shri Jyotish Chandra Dutta | 1.4.1937 | - |
| 25. | Shri Kanak Chandra Sarma | 1.2.1938 | - |
| ✓26. | Shri Mahitosh Bhattacharjee | 1.7.1939 | - |
| 27. | Shri Ganapati Chakravorty | 1.4.1938 | - |
| 28. | Shri Prabhakar Bhuyan | 1.1.1938 | - |
| 29. | Shri Godeswar Chutia | 1.4.1937 | - |
| 30. | Shri Nawab Akramul Hussain | 1.2.1930 | - |
| ✓31. | Shri Jitendra Nath Goswami | 1.1.1940 | - |
| ✓32. | Shri Keshabananda Dihingia Deka | 1.9.1939 | - |
| ✓33. | Shri Nalini Charan Sarma | 1.5.1940 | - |
| 34. | Shri Makhan Lal Nath | 15.3.1938 | - |
| ✓35. | Shri Mriganka Mohan Das | 1.1.1939 | - |
| 36. | Shri Tabiul Hussain | 1.4.1938 | - |
| 37. | Shri Taranath Gogoi | 1.7.1936 | - |
| ✓38. | Shri Trailokya Nath Borkakati | 1.8.1939 | - |
| * 39. | Shri Debabrata Chakravorty | 1.6.1939 | - |
| 40. | Shri Sushil Kr. Das | 1.1.1937 | - |
| ✓41. | Shri Dimbeswar Bora | 1.10.1939 | - |
| * 42. | Smti. Gayatri Baruah | 26.6.1952 | - |
| ✓43. | Shri Ritendra Nath Sarma | 17.1.1952 | - |
| ✓44. | Shri Abhay Kumar Verma | 27.7.1953 | - |
| ✓45. | Shri L. N. Tamuly | 6.5.1950 | - |
| 46. | Shri Lall Chand Singhi | 20.12.1951 | - |
| ✓47. | Shri Bimalendu Bhattacharjee | 1.8.1946 | - |
| 48. | Shri Harendra Nath Bhuyan | 25.2.1946 | - |
| 49. | Shri Khagendra Nath Buragohain | 6.4.1948 | - |
| 50. | Shri Nandeswar Nath | 1.5.1950 | - |

Contd.....

Arrested
Das
Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI, 781001

O.A.No.72/94

Sri Ananta Kr Malakar . . . Applicant.
vrs.
Union of India &ors . . . Resdpts.

P R E S E N T

THE HON'BLE MR.JUSTICE S.HAQE, VICE CHAIRMAN
THE HON'BLE MEMBER SRI G.L.SANGLYINE, ADWN.

For the Ap licant, Mr. B.K.Sharma,
Mr. M.K.Cheudhury
Mr. B.Mehta.

For the Resdpts. Mr. S.Ali, Sr. C.G.S.C.
G.A.Assam.

8.4.94 This application under Section 19 of the Administrative Tribunals Act, 1985 was moved by learned counsel Mr B.K. Sharma on 5.4.94 and learned Sr. Government Advocate, Assam, Mr Y.K. Phukan took time to get instruction from the Government. Learned Government Advocate, Assam, Smt M. Das submits that instructions have been received. A copy of the instruction of the State Government contained in the letter No. AAP/79/94/30 dated 7.4.94 addressed to learned Sr. Government Advocate, Assam, Mr Y.K. Phukan has been placed before the Tribunal. The application is taken up for hearing and disposal. Mr B.K. Sharma submits on behalf of the applicant, Shri Ananta Kr Malakar, ACS, Joint Secretary to the Government of Assam, Handloom, Textile and Sericulture Department. Smt M. Das submits relying on the Government Instructions.

Shri A.K. Malakar, ACS, Class I (SC) belongs to the 1975 batch. He is at Serial No.17 in the gradation list of ACS officers as on 1.1.1993. Admittedly, he comes within the zone of consideration for selection to IAS on promotion against probable vacancies in 1994-95. Respondent No.6 Shri B.B. Hagger (Sl.No.21 in the gradation list), junior to the applicant was promoted to the IAS pursuant to select list of 1993-94. This year, several ACS officers junior to the applicant have been recommended by the State Government for consideration by the Selection Committee to prepare Select List for promotion to the IAS for the year 1994-95 Assam - Meghalaya Joint Cadre.

The adverse remarks in the ACR



Advocate
Advocate.
Advocate.

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of the applicant for the period 1.1.1990 to 22.12.1990 was communicated to him only on 17.3.1993 and his representation dated 3.4.1993 against it is still pending for disposal. Mr Sharma submits that the adverse remarks is void on ground of delayed communication and becomes ineffective for pendency of representation against it. We find substance in these submissions in the light of decisions, (1) In Gur Dial Singh Fiji -vs- State of Punjab and Others reported in 1979 SLJ (SC) 229; (2) In Ishverlal J. Naik -vs- Development Commissioner and Others reported in 1985(2) SLJ 445; and (3) in the State of Haryana -vs- P.C. Wadhwa and Others reported in 1987(2) SLJ 162. Therefore, we hold that the adverse remarks of 1990 in the ACR cannot be acted upon to deny promotional avenue of the applicant.

Admittedly, the Government of Assam had already decided to drop the departmental proceeding against Shri Malakar initiated vide letter No.AAP/167/92/38 dated 17.3.1993.

The above being the position presently, there can be no justification to refuse consideration of the case of the applicant, Shri A.K. Malakar, for selection to the grade of IAS on promotion against probable vacancies of 1994-95.

Smt M. Das submits that another departmental proceeding has since been drawn up against Shri A.K. Malakar vide letter No.AAP/167/92/Pt./69 dated 6.4.1994. But she has no instructions if the chargesheet of the proceeding has been issued and served on the applicant. Consideration for preparing select list by the Selection Committee held on 29.3.1994 has not yet been finalised as



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indicated in the Government letter No. AAP/79/94/30 dated 7.4.1994. The ^{new} departmental proceeding initiated in April 1994 cannot be taken into account by the Selection Committee which initiated selection proceeding from 29.3.1994.

Upon hearing counsel for the parties and in view of the facts, circumstances, observations and findings above, we are of the view that the applicant also deserves consideration by the Selection Committee in the matter of preparation of select list for promotion to IAS for the year 1994-95 and, therefore, to meet the ends of justice we direct the respondents, excluding respondent No.6, as under:

The respondents are directed to recommend and forward the name of the applicant, Shri A.K. Malakar, ACS (SC) alongwith his records immediately to the Selection Committee for consideration while preparing the select list for promotion to the IAS for the year 1994-95, Assam - Meghalaya Joint Cadre. The Selection Committee shall not take into account the adverse remarks for the year 1990, disciplinary proceeding initiated in March 1993 since dropped and also the disciplinary proceeding initiated in April 1994 keeping in view the findings above in the order.

Intimate all concerned immediately,

This application is disposed of with the above directions.

SD/ S.HAQEE,
VICE CHAIRMAN
SD/G.L.SANGLYINE,
MEMBER(ADMN)

Memo No:- 1418 Dt. 12/4/94
Copy for information and necessary action to:-

- 1) The Secretary, Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi-1.
- 2) The Chief Secretary, Govt. of Assam, Dispur, Guwahati-6.
- 3) The Commissioner & Secretary, Personnel (A) Department, Assam Secretariat, Dispur, Guwahati-6.
- 4) The Secretary, Govt. of Meghalaya, Deptt. of Personnel (A) Shillong, Meghalaya.
- 5) The Secretary/Chairman, U.P.S.C., Dholpur House, Shahjahan Road, New Delhi.
- 6) Shri B.B. Hagger, Director, Tourism, Assam, Panbazar, Near Rly. Station,
- 7) Mr. B.K. Sharma, Advocate, C.A.T. Guwahati Bench, Guwahati-5.
- 8) Mr. S. Ali, Sr. C.G.S.C. -de-
- 9) Mr. Y.K. Phukan, Govt. Advocate, Assam, -de-
- 10) Sri A.K. Malakar, Joint Secy. Govt. of Assam Handloom & Textile & Sericulture, Deptt. Dispur, Guwahati.

By hand,

Section Officer (J)

অসম অধিকারী (স্বাধীক অধীক্ষা)
Central Administrative Tribunal

কেন্দ্ৰীয় স্বাধীক অধীক্ষা

Guwahati Bench, Guwahati-6

১০০ মুক্তি, ১৫.৪.৯৪

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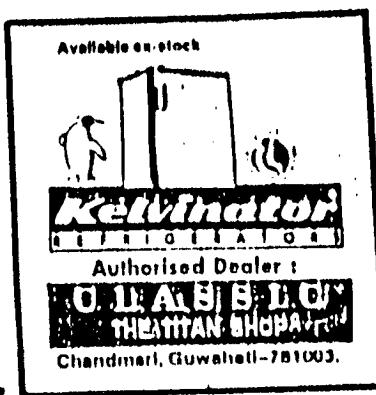
THE SENTINEL,
SUNDAY,
MAY 15, 1994.



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Govt list for nomination to the IAS

Resentment grips ACS

By a Staff Reporter

GUWAHATI, May 14: *The Sentinel* had published a report under the caption "Resentment prevails in bureaucratic circles" on April 28 wherein the State Government's scheme of screening officers (who had put in 25 years of service or had attained 50 years of age and whose integrity was doubtful or had outlived their utility) for weeding them out of service was stated to have been motivated by the refusal of many officers to follow the telephonic or verbal instructions of higher ups after what they had seen happening to treasury and veterinary officials.

The Government of Assam promptly issued a contradiction to the news item, which was published in the "Letters to the Editor" column on May 2. All the Government had said about the screening committees was that the Government had the "prerogative" in forming such committees, as if the report had never questioned that prerogative.

However, the Government also saw in the report an "attempt to bring about a rift between the Assamese and non-Assamese IAS officers which is very unfortunate." The report had only mentioned how several IAS officers, both Assamese and non-Assamese, had already left the State or were queuing up for postings outside. Far from making any attempt to drive a wedge between Assamese and non-Assamese IAS officers, the report had only highlighted the fact that the various acts of omission and commission of the Government in the matter of administration of the State had forced the IAS officers to seek postings outside.

However, it is the latest act of the Government in the matter of nomination of ACS officers to the IAS which has drawn the serious charge of driving a communal wedge into the State bureaucracy. Almost the entire ACS cadre officers are contemplating massive protest

against the way the seven officers were shortlisted recently for nomination to the IAS under Regulation 5(3) of the Indian Administrative Services (Recruitment by Promotion) Rules, 1955 for the year 1994-95.

It may be mentioned here that the State Government shortlists a group of ACS officers for nomination to the IAS every time some vacancy arises. The shortlisting is done according to the formula — the number of vacancies plus two into three. Thus, if in a given year the vacancy is, say, two, then the Government will shortlist the names of 12 officers. Their ACRs (annual confidential reports) during the past five years alone would be the basis for nominations. Under the rules, the ACRs making only three grades for the officers, "outstanding," "very good" and "good" would be considered for the nomination.

This year, the Government had shortlisted 21 officers to fill up five vacancies and has readied a final list of seven officers for referring it to the UPSC selection committee. They are: (i) Mr Debabrata Chakravorty, (ii) Ms Gayatri Baruah, (iii) Mr Shantanu Bhattacharjee, (iv) Ms Sunanda Sengupta, (v) Mr Bhudev Basumatary, (vi) Mr Anup Daolagopu and (vii) Mr Dibakar Saikia.

Almost the entire ACS officers are sore at the way these officers were selected for nomination to the IAS. Their complaint is that considerations other than merit and efficiency had gone into their selection for nomination to the IAS.

In the first place, two cases, one in the Gauhati High Court and the other in the Central Administrative Tribunal are pending against Mr Chakravorty on the question of his seniority. Several of his batch-mates have moved the courts challenging the Government's decision to leave them out of the "zone of consideration" for nomination to the

IAS. Under the rules, no officer, who has attained the age of 54 on the first day of April in the year when the selection committee meets, would be selected for nomination.

In the case of Ms Gayatri Baruah, cases by the CBI and the Vigilance and Anti-corruption Branch are pending against her for her alleged involvement in the Janala cloth scheme scandal vis-a-vis Mr Jagannath Sarma of the Brahmaputra Valley Weavers' Cooperative Society. However, the Government has also taken care to see that the cases against her are dropped, official sources said.

In the case of Ms Sunanda Sengupta also the ACS officers are sore because she had been once dismissed from service and later placed under suspension for a long time. Mr Shantanu Bhattacharjee was once charged by the Calcutta Police for indulging in espionage activities in collaboration with the CIA in Calcutta.

The selection of Mr Bhudev Basumatary, however, has literally raised a storm. He was recently indicted by the Chief Minister's Vigilance Cell for involvement in a scandal in the Tourism department.

Sources said, the selection of Mr Anup Daolagopu and Mr Dibakar Saikia was made as a cover to confuse the ACS officers that justice and fairplay had gone into making the list.

A close look into the list also reveals the Personnel department's bias towards a particular linguistic group, official sources said. This has added to the resentment among the ACS officers. But the most serious charge they have made relates to alleged manipulation of the ACRs in the case of these officers who would not have been otherwise brought into the purview of the "zone of consideration." Several officers today threatened to launch an agitation if the list was not corrected immediately.

IAS

15/5/94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.180 of 1994

Date of decision: This the 7th day of August 1998

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

Shri Ananta Kumar Malakar,
Joint Secretary to the
Government of Assam,
Handloom, Textile & Sericulture Department,
Dispur, Guwahati.Applicant

By Advocate Mr B.K. Sharma.

-versus-

1. The Union of India, represented by the
Secretary, Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel & Training,
Central Secretariat, New Delhi.
2. The State of Assam, represented by the
Chief Secretary to the Government of Assam,
Dispur, Guwahati.
3. The Commissioner & Secretary,
Personnel (A) Department,
Government of Assam,
Dispur, Guwahati.
4. The State of Meghalaya, represented by the
Chief Secretary, Government of Meghalaya,
Shillong.
5. The Union Public Service Commission,
Represented by the Secretary,
Union Public Service Commission,
Dholpur House, New Delhi.
6. The Selection Committee constituted
under Regulation 3 of the IAS (Appointment
by Promotion) Regulation, 1955 for
preparing the list of members of
State Civil Service for nomination to
the IAS for the year 1994-95,
represented by its Chairman,
C/o the Chief Secretary to the
Government of Assam, Dispur, Guwahati.
7. Mr Debabrata Chakraborty
8. Ms Gayatri Baruah
9. Mr Shantanu Bhattacharjee
10. Ms Sunanda Sengupta
11. Mr Bhudev Basumatary
12. Mr Anup Daolagopu
13. Mr Dibakar SaikiaRespondents

By Advocates Mr A.K. Choudhury, Addl. C.G.S.C.,
Dr Y.K. Phukan, Sr. Government Advocate, Assam,
Ms M. Das, Government Advocate, Assam, and
Mr B.K. Das for respondent No.9.

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Accested
Uttar
Advocate.

O R D E R

BARUAH.J. (V.C.)

The applicant, a member of the Assam Civil Service Class I (ACS for short) was recruited to the said service in 1975. He belongs to a community listed in the Schedule of the Constitution. At the time of filing of this application he was holding the post of Joint Secretary, Government of Assam, Department of Handloom, Textile and Sericulture. Applicant's position in the gradation list as on 1.1.1994 was at serial No.13. He states that he has a distinguished service career in the ACS. He worked in various capacities in the said Service from April 1976 till the date of filing of this application as mentioned in para 4.2 of his application. According to him, his service career is excellent.

2. In the year 1993 the applicant was communicated with an adverse remark in his Annual Confidential Report (ACR for short) for the period from 1.1.1990 to 22.12.1990. These remarks were communicated to him on 17.3.1993, i.e. after two and half years. He submitted a representation on 3.4.1993 for expunction of the adverse remarks entered in his ACR. However, the representation was not disposed of for more than a year. Besides, the State of Assam- the 2nd respondent, decided to initiate a departmental proceeding against the applicant vide letter dated 17.3.1993. The applicant feels that because of this his case for promotion to the Indian Administrative Service (IAS for short) Cadre was not considered for the year 1993-94.

ANUSOJIT
CHOWDHURY
Advocate

RZ

However, a junior officer, Shri B.B. Hagjar, was promoted. Shri Hagjar's position as per the seniority list was at serial No.21, whereas the applicant's position was at serial No.17. The preparation of the select list for recruitment to the IAS Cadre for the next year, i.e. 1994-95 was under process. Apprehending that he might be overlooked this time also, the applicant approached this Tribunal by filing an original application (O.A.No.72 of 1994). The said original application was disposed of on 8.4.1994 by this Tribunal holding interalia that the adverse remarks of 1990 could not be acted upon to deny the promotional avenue of the applicant. At that time the Tribunal was informed that the Government had already decided to drop the departmental proceeding against the applicant, initiated vide letter dated 17.3.1993. However, it was also informed to this Tribunal that another departmental proceeding had since been drawn up against the applicant. This Tribunal, held that the subsequent departmental proceeding initiated against the applicant in the month of April 1994 could not be taken into account by the Selection Committee which initiated the selection process from 29.3.1994 for preparing the list of eligible ACS Class I officers for nomination to the IAS. The original application No.72/94 was disposed of by this Tribunal entrusting the Selection Committee with the responsibility of preparing a select list for the year 1994-95 without taking into account of the adverse remarks made against the applicant in the year 1990, disciplinary proceeding initiated in March 1993 later on dropped and also the disciplinary proceeding initiated in the month of April

Attested

MSDN
Advocate.

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1994. By the said order passed in O.A.No.72/94, the Tribunal further directed the respondents to recommend and forward the name of the applicant immediately to the Selection Committee for consideration as to whether his name could be included in the select list for promotion to the IAS Cadre for the year 1994-95. Because of the order passed by this Tribunal in the aforesaid original application No.72/94, the applicant had reasonable expectation of promotion to the IAS cadre in view of his position in the seniority list and also his otherwise clean and meritorious service record. The applicant came to know from a news item published in an English Daily that the Government had finally prepared a list of seven ACS officers out of the twentyone selected officers to send their names to the UPSC Selection Committee for consideration. As per the said news item, the name of the applicant did not find place among those seven selected candidates. This was done in a very secret manner; only the name of the selected officers had been published. The applicant was surprised to know that the seven officers selected for promotion to the IAS Cadre who were much junior to the applicant. He further states that as per the seniority list of the ACS officers, the applicant's position was at serial No.13 while five of those seven officers, namely, Bhudev Basumatary, A.K. Daolagopu, Dibakar Saikia, D. Chakraborty, and Smt G. Barua (respondent Nos.11, 12, 13, 7 and 8 respectively) were placed in serial Nos.14, 19, 20, 39 and 42 respectively in the seniority list. From this, according to the applicant, these officers were much junior to him. The contention of the applicant is that the Selection Committee was not properly constituted inasmuch as the Chairman,

Board of Revenue, Assam and the Commissioner of Division, Meghalaya, were not present. Therefore, the Selection Committee was not in conformity with Regulation 3 and therefore, proceedings are not sustainable in law. The further submission of the applicant is that the list prepared by the Selection Committee was contrary to the guidelines and the executive instructions of the Government. Besides, as per Regulation 5 (of 1955 Regulation) there should have been relative assessment of the service records of the eligible officers and only those officers who upon their overall service record had been classified 'outstanding', 'very good' and 'good' should be nominated to the IAS Cadre. The respondent Nos. 7 to 11, the applicant states, had serious allegations of corruption and certain vigilance enquiries were pending against them. The Selection Committee, however, ignored those in violation of the requirements of Regulation 5(4) and (5) (of 1955 Regulation) in finally selecting them for nomination to the IAS Cadre. The applicant was, according to him, most unreasonably and unfairly overlooked. The applicant has referred to in his application, the Government of India, Ministry of Home Affairs letter dated 28.7.1965. As per the said letter certificate of integrity ought to be recorded by the Chief Secretary to the State Government in respect of eligible officers and those are to be placed before the Selection Committee for promotion to the IAS Cadre. This was not done. The further allegation of the applicant is that the Selection Committee failed to act in conformity with the instructions of the Government

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Advocate.

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of India contained in the Ministry of Home Affairs letter dated 8.6.1965 read with the Ministry of Home Affairs letter dated 28.7.1965. Because of these anomalies, the selection of the candidates was not fair, just and reasonable and cannot sustain in law. Besides, the applicant also states that it is imperative on the part of the Selection Committee to record the reasons for supersession and this must not be done in a hush, hush manner. The authority should maintain complete transparency in these matters. Therefore, according to the applicant, the selection of the five officers for promotion to the IAS Cadre was contrary to the Regulation and Government of India's guidelines and not informed of reasons. Because of these, the applicant has approached this Tribunal praying inter alia for order to set aside and quash the impugned select list prepared by the Selection Committee in its meeting held on 29.3.1994 and to direct the respondents to implement the earlier select list of 1993 for the purpose of making appointments by way of promotion to the IAS and also to direct the respondents to allow the applicant to cross the efficiency bar with effect from 1.3.1991.

3. In due course the respondents entered appearance. Respondent Nos. 2, 3 and 6 have also filed their written statement in the month of February 1995. Another written statement was filed by respondent Nos. 2 and 3 in December 1996. Respondent Nos. 5 and 9 also have filed their written statements. The applicant has filed additional written statement. The respondent No. 9 also has filed objection against the additional written statement of the applicant. In their written statements respondent Nos. 2, 3 and 6 have controverted the averments.....

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averments of the applicant. At para 3 of their written statement they have inter alia stated as follows:

.....The case of the applicant was considered by the Selection Committee in its meetings held on 31.3.1993 and 29.3.1994 for preparation of select list of SCS officers for appointment to IAS by promotion. The officer stated to be junior to the applicant was appointed to the IAS by promotion as he found his place in the Select list for 1993-94 prepared on the basis of merit cum seniority. Even though the applicant came within the zone of consideration, he did not find his place in the said Select list. As the Select list for 1994-95 is confidential it is not known now if the applicant's name is included therein."

4. Again in para 4, the said respondents have stated that the Select List for 1994-95 was confidential and it was not known if the applicant's name was included therein. They further submit that as the Select List for the year 1994-95 was prepared on 29.3.1994, after due consideration of the cases of the required number of eligible officers including the applicant, the question of considering his case afresh would not arise. It has been further contended in the said written statement that the selection of the applicant was made on the basis of his service record. The said respondents have also stated that seniority was not the sole criterion for selection; it was on the basis of merit cum seniority. Regarding the absence of the members other than the Chairman, these respondents have stated that this would not invalidate the proceedings of the Committee if more than half the members of the Committee had attended the meeting. The said respondents have also stated that there was no unfair treatment and the selection was made strictly under the provisions of the law. The allegation of violation of the provisions of the Constitution, according to these respondents, are nothing but a myth.

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The respondent No.5- UPSC, in its written statement have stated that the Selection Committee presided over by the Chairman, UPSC, had made the selection of the SCS officers for promotion to the IAS Cadre. The said respondent have also stated that the service records of the officers are in possession of the State Government and it is the State Government who would be in a better position to say about the averments made by the applicant. Regarding the direction given by this Tribunal in its order passed in original application No.72/94 this respondent has stated thus:

"However, the Selection Committee Meeting for promotion of SCS officer to IAS Cadre of Assam Segment of Assam-Meghalaya Joint Cadre had already been held on 29.3.94 at New Delhi. Shri Malakar, the applicant was considered at Sl. No.4 for promotion along with 20 other eligible officers. It is submitted that the judgment dated 8.4.94 in OA 72/94, was pronounced well after the Selection Committee Meeting had taken place. Hence, there was no occasion for the Selection Committee to take the direction dated 8.4.94 by Hon'ble Tribunal in OA 72/94 into consideration while assessing the service records of Shri Malakar, the applicant. Moreover the Selection Committee became functus officio after the meeting on 29.3.94."

The 5th respondent in its written statement has also referred to a decision of the Apex Court in case of R.S. Das -vs- Union of India and others reported in 1987 SC 593. Referring to the said decision the 5th respondent has stated that the Apex Court observed that the amended provision of Regulation 5 curtailed and restricted the role of seniority in the process of selection. Priority should be given to merit. Regarding the improper constitution of the Selection Committee the 5th respondent has categorically stated that under Regulation 3(3) of the IAS (Appointment by Promotion)

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Regulation, 1955, the absence of a member other than the Chairman or member of the Commission shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attended the meeting. It has been further stated that in the present case out of five members of the Selection Committee four were present which is more than half of the total strength. Regarding not recording of reasons in selecting junior persons ignoring the claim of senior officers like the applicant this respondent has stated that under IAS (Appointment by Promotion) Regulation, there is no such provision to record the reason for supersession. In this connection also the said respondent has reiterated what has been stated by the Apex Court in the case of R.S. Das (Supra). The Selection Committee is required to categorise the eligible officers in four different categories, namely, 'outstanding', 'very good', 'good' and 'unfit' on overall assessment of the service record. As per the said decision after categorisation is made the Committee has to arrange the names of the officers in the Select List in accordance with the procedure laid down under Regulation 5(b). In arranging the names in the Select List the Committee has to follow the inter se seniority of the officers in each category. However, the number of officers falling in one category should be arranged in accordance with the seniority, and therefore, for the purpose of listing the names of one category such as 'outstanding' or 'very good' the seniority should be maintained. If a junior officer's name finds place in the category of 'outstanding' he will be placed in a higher position in preference to a

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senior officer finding place in 'very good' or 'good' category. In that process the junior officer having higher grading would supersede the senior. The said decision further held that where selection was to be made on merit alone for promotion to higher service selection of an officer, though junior in service, in preference to a senior does not strictly amount to supersession. The 5th respondent further states that pendency of the departmental proceeding would not be a bar for inclusion of those officers in the Select List if such officers are found suitable otherwise.

6. We have heard Mr B.K. Sharma, learned counsel for the applicant, Mr A.K. Choudhury, learned Addl. C.G.S.C. appearing on behalf of respondent Nos.1 and 5, Dr Y.K. Phukan, learned Sr. Government Advocate, Assam, and Mr B.K. Das, learned Sr. counsel for respondent No.9. Mr Sharma submitted before us that in spite of the direction given by this Tribunal in the original application No.72/94 (which decision has now reached its finality) the case of the applicant was not considered. His case was not considered without taking into consideration the departmental proceedings and adverse remarks which was subject matter in the said original application and because of this the applicant was deprived of his promotion to the IAS Cadre and his juniors had been promoted. According to Mr Sharma the applicant was entitled to get his promotion with retrospective effect. His further submission was that the promotion was actually denied to the applicant on the ground of adverse remarks which were communicated to him belatedly and this Tribunal in its order dated 8.4.1994 passed in O.A.No.72/94 directed the respondents.....

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respondents not to take into consideration the adverse remarks. He further submitted that in the present case the applicant had been given his promotion, but not with retrospective effect. This was his grievance. The learned counsel strenuously argued that the only ground taken by the 5th respondent was that at the time of selection the direction given by this Tribunal was not received. He submitted that it was true that on the date when the meeting was held for selection the 5th respondent might not have received the order, but, according to Mr Sharma, the date on which the meeting was held the selection was not made final. It was only after the final approval of the 5th respondent the Select List became final. Mr Sharma also challenged the constitution of the Selection Committee. Mr A.K. Choudhury refuted the contentions of Mr B.K. Sharma. Mr B.K. Das also supported the decision of the UPSC.

7. On the rival contentions of the learned counsel for the parties, it is now to be seen whether the selection was made in a proper manner and whether the applicant was entitled to get promotion with retrospective effect. Before we consider the contentions of the learned counsel for the parties it will be apposite to look to some of the relevant provisions regarding appointment by promotion to the IAS Cadre.

8. The Central Government in consultation with the State Government and the UPSC have made Regulations known as IAS (Appointment by Promotion) Regulation, 1955. This Regulation was made in pursuance of Sub Rule 1 of Rule 8 of the IAS (Recruitment) Rules, 1954.

Regulation 3.....

Arrested
A. D. S.
Advocate.

Regulation 3 prescribes the procedure for constitution of a committee to make selection. We quote Regulation 3:

"3. Constitution of the Committee to make Selection.- There shall be constituted for a State Cadre or a Joint Cadre specified in column 2 of Schedule a Committee consisting of the Chairman of the Commission or where the Chairman is unable to attend, any other member of the Commission representing it and other members specified in the corresponding entry of column 3 of the said Schedule:

Provided that-

- (i) no member of the Committee other than the Chairman or the member of the Commission shall be a person who is not a member of the Service;
- (ii) the Central Government may after consultation with the State Government concerned, amend the Schedule.

(2) The Chairman or the member of the Commission shall preside at all meetings of the Committee at which he is present.

(3) The absence of a member, other than the Chairman or member of the Commission, shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attended its meetings."

The Government of India had taken a decision on the basis of the recommendation of the Committee on prevention of corruption that the Chief Secretary to the State Government should record a certificate of those eligible officers whose cases are placed before the Selection Committee. The Selection Committee shall also consider the question of suitability of the officers for selection with reference to their integrity and should specifically record in their proceedings that they were satisfied from the remarks in the confidential reports of the officers.

9. Among others, the Regulation 5 prescribes the procedure for preparation of the list of suitable officers. As per the said regulation each committee

shall.....

*Amritpal
Kaur
Advocate.*

shall ordinarily meet at an interval not exceeding one year and prepare a list of such members of the State Civil Service, as are held by them to be suitable for promotion to the Service. The number of members shall be more than twice the number of substantive vacancies anticipated in the course of the year commencing from the date of preparation of the list. The committee shall consider for inclusion of the said list the cases of the members of the Civil Service in order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1). However, such restrictions would not apply in respect of a State where the total number of eligible officers is less than three times the maximum possible size of the Select List. The committee shall not also consider the case of a member of the State Civil Service unless on the first day of the year in which it meets he is substantive in the State Civil Service and has completed not less than eight years of continuous service in the post of Deputy Controller or in any other post or posts declared equivalent thereto by the State Government.

10. From mere reading of Regulations 3 and 5 it appears that a committee shall be constituted under Regulation 3, however, absence of a member other than the Chairman or member of the Commission, shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attended its meeting.

11. The contention of the learned counsel for the applicant was that the committee made the selection in violation of the provisions of Regulation 3 inasmuch as the Chairman, Board of Revenue and the Commissioner

Attested
W. S. D.
Advocate.

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remained.....

remained absent when the decision was taken for preparation of the list of suitable candidates. Therefore the Select List in absence of the said members was invalid. This was, however, refuted by the learned counsel for the respondents. As per Sub regulation 3 of Regulation 3 the absence of any member other than the Chairman or member of the Commission will not invalidate any proceedings of the committee if more than half of the members of the committee attended the meeting. In the instant case there was more than fifty percent of the members present and only the Chairman, Board of Revenue and the Commissioner remained absent. Therefore, the requirement of Sub regulation 3 of Regulation 3 had been fully complied with. We are of the opinion that the contention of the learned counsel for the applicant that the selection was made by not a properly constituted committee, has got no force. Accordingly we reject the said contention.

12. So far the preparation of the Select List is concerned, in our opinion, it was rightly done. The learned counsel for the 5th respondent had drawn our attention to a decision of the Apex Court in R.S. Das (Supra). The said respondent has countered the averments made by the applicant saying that while superseding the applicant no reasons were required to be recorded. In para 18 of the said decision the Apex Court has categorically stated thus:

"The amended provisions of Regn.5 have curtailed and restricted the role of seniority in the process of selection as it has given primacy to merit. Now the Committee is required to categorise the eligible officers in four different categories, namely "Outstanding", "Very Good", "Good" and "Unfit" on overall relative assessment of their service records. After categorisation is made the Committee.....

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Committee has to arrange the names of officers in the select list in accordance with the procedure laid down in Regn. 5(5). In arranging the names in the select list the Committee has to follow the interse seniority of officers within each category. If there are five officers fall within the "Outstanding" category their names shall be arranged in the order having regard to their interse seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the officers falling in the category of "Very Good" and "Good". Similarly if a junior officer's name finds place in the category of "outstanding", he would be placed higher in the list in preference to a senior officer included in the "Very Good" or "Good" category. In this process a junior officer if categorised "Outstanding" or "Very Good" would supersede his seniors. This cannot be helped. Where selection is made on merit alone for promotion to a higher service, selection of an officer though junior in service in preference to his senior does not strictly amount to supersession. Where promotion is made on the basis of seniority, the senior has preferential right to promotion against his juniors but where promotion is made on merit alone, senior officer has no legal right to promotion and if juniors to him are selected for promotion on merit the senior officer is not legally superseded. When merit is the criterion for the selection amongst the members of the service, no officer has legal right to be selected for promotion, except that he has only right to be considered along with others....."

13. Therefore, following the said decision of the Apex Court we find no reason to hold that the applicant though being a senior officer was overlooked. On that ground the selection cannot be set aside. Now we are left with the case regarding taking into consideration of the adverse remarks. It has to be seen whether the Selection Committee actually took into consideration the adverse remarks of the authority.

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Attest
W. S. Jaiswal
Advocate

14. In original application No.72/94 this Tribunal by order dated 8.4.1994 held that the belatedly communicated adverse remarks should not be taken into consideration while making the selection, but in the selection for the year 1993-94 the Selection Committee took into consideration of the adverse remarks. This Tribunal held that those adverse remarks could not be acted upon to deny the promotional avenue of the applicant and accordingly in the aforesaid judgment it was held that the applicant deserved consideration by the Selection Committee in the matter of preparation of the Select List for promotion to IAS. Therefore, this Tribunal disposed of the aforesaid application by giving the following direction:

"The respondents are directed to recommend and forward the name of the applicant, Shri A.K. Malakar, ACS (SC) alongwith his records immediately to the Selection Committee for consideration while preparing the select list for promotion to the IAS for the year 1994-95, Assam - Meghalaya Joint Cadre. The Selection Committee shall not take into account the adverse remarks for the year 1990, disciplinary proceeding initiated in March 1993 since dropped and also the disciplinary proceeding initiated in April 1994 keeping in view the findings above in the order."

As per the said decision the Selection Committee ought not to have taken into consideration of the belatedly communicated remarks and accordingly directed the State of Assam, respondent No.2, to send the relevant records to the UPSC, respondent No.5, and also respondent No.6 for consideration of the case of the applicant afresh. However, as submitted by the learned Government Advocate, Assam, there was no meeting of the Selection Committee in the year 1995. The departmental proceeding

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instituted against the applicant was disposed of by order dated 2.2.1996 exonerating the applicant from the charges of the Departmental proceeding. Besides this, the adverse remarks made against the applicant in his ACRs for the period from 1.1.1990 to 22.12.1990 were expunged by order dated 5.2.1996 Thereafter a meeting of the Selection Committee was held on 6.2.1996 after the order of this Tribunal dated 8.4.1994 passed in original application No.72/94. The Selection Committee was apprised of the conclusion of the departmental proceeding instituted against the applicant and the expunction of the adverse remarks. According to the State Government this information was received by the Under Secretary, UPSC on 6.2.1996 at Shillong when he came in connection with the meeting of the Selection Committee. The applicant found his place in the Select List prepared by the Selection Committee on 6.2.1996 and he got his promotion to the IAS. It was also submitted that though the applicant came within the zone of consideration of the Selection Committee meetings held on 31.3.1993 and 29.3.1994 he did not find his place in the two Select Lists prepared on 31.3.1993 and 29.3.1994 as he had adverse remarks. But the learned Government Advocate, Assam, could not place anything to show whether there was a subsequent Review Selection Committee meeting for consideration of the case of the applicant. The decision of the Tribunal in original application No.72/94 was that the adverse remarks made against the applicant which was communicated belatedly could not be acted upon and direction was given

B2

Advocate.

accordingly. However, there is nothing on the record to show that the case of the applicant was considered as on 31.3.1993 when the meeting was held for selection for the year 1993. On the other hand, the 5th respondent-UPSC, in its written statement have categorically stated as follows:

"However, the Selection Committee Meeting for promotion of SCS officer to IAS Cadre of Assam Segment of Assam-Meghalaya Joint Cadre had already been held on 29.3.94 at New Delhi. Shri Malakar, the applicant was considered at Sl.No.4 for promotion along with 20 other eligible officers. It is submitted that the judgment dated 8.4.94 in OA 72/94, was pronounced well after the Selection Committee Meeting had taken place. Hence there was no occasion for the Selection Committee to take the direction dated 8.4.94 by Hon'ble Tribunal in OA 72/94 into consideration while assessing the Service records of Shri Malakar, the applicant. Moreover the Selection Committee became functus officio after the meeting on 29.3.94."

From the above written statement it is now very clear that the case of the applicant was not considered without the adverse remarks as on 31.3.1993. This, in our opinion, is contrary to law. There ought to have been a Review Selection Committee Meeting to consider the case of the applicant without taking into consideration the adverse remarks for the period from 1.1.1990 to 22.12.1990 as on 31.3.1993, when the Selection Committee Meeting was held for selection as on 31.3.1993. Therefore, we find sufficient force in the contention of the learned counsel for the applicant in this regard.

B

15. It is an admitted fact that the applicant's case was considered with the adverse remarks belatedly communicated. In all probability his name did not find place in the Select List of 1993 because of the adverse remarks. For the next selection, i.e. in 1994, the applicant apprehended that the same thing would be repeated in his case and he would be deprived of his legitimate right. Apprehending that, the applicant approached this Tribunal by filing original application No.72/94. In the said application the applicant, among others, prayed for the following relief, which we quote below:

"(a) a direction to the respondents to appoint the applicant to I.A.S. on promotion with effect from the date of such promotion of his batchmates/junior with all consequential benefits including seniority and salary."

In the above prayer the applicant prayed that his case should be considered without the adverse remarks as on 31.3.1993. At the time of filing of the application the Select List for 1994-95 was not yet decided. This Tribunal gave direction to the respondents to forward the name of the applicant alongwith his record immediately to the Selection Committee for consideration while preparing the Select List of IAS for the year 1994-95. This only means that when the selection would be made his case should also be considered, but the most important fact is from which date he would be entitled to. As per rule if the adverse remarks were taken into consideration not legally then his case ought to have been considered as on 31.3.1993. However, on the date of passing of the order the Selection Committee had already made the selection and there was no selection for the year.....

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year 1995. In 1996 there was a meeting of the Selection Committee in which the applicant was found fit. It may be mentioned here that the departmental proceeding had since been withdrawn and the respondents had also expunged the adverse remarks. This will go to show that the applicant's right to be considered would spring back to the date of 1993 and his case ought to have been considered in that year and only if he would not qualify in that year his case ought to be considered in the subsequent years. Unfortunately, this was not done.

16. We, therefore, direct the respondents to hold review selection as early as possible, at any rate within a period of six months from the date of receipt of this order to consider the case of the applicant as on 31.3.1993 and if he is found eligible for recruitment to the cadre by way of promotion in that year this should be done. If not his case ought to be considered in the next year.

17. With the above direction the application is accordingly disposed of. No order as to costs.

Sd/-VICE CHAIRMAN

Sd/-MEMBER(ADM)

TRUE COPY

*Sidhartha
9/3/2002*

Section 14(3)(b)

STATE OF
Central Adm'tt
High Court
G. J. Adm'tt
2002

*Ambedkar
V.D.
2002*

KM

From : Shri A.K.Malakar, IAS
 Labour Commissioner, Assam,
 Gopinath Nagar,
 Guwahati 781016 (Assam) Dt 21-8-98

To : The Chief Secretary
 Govt. of Assam,
 Dispur,
 Guwahati 781006

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SUBJECT : RETROSPECTIVE EFFECT OF PROMOTION / APPOINTMENT TO I.A.S.

REFERENCE: JUDGEMENT AND ORDER DTD. 7/8/98 PASSED BY THE HON'BLE C.A.T. /
 GUWAHATI BENCH IN OA NO.180/94 (A.K.MALAKAR Vs. UOI & CRS)

Sir,

With reference to the above, I with due deference and profound submission beg to state that the Hon'ble Tribunal by its judgement and order dtd. 7/8/98 passed in my case OA No.180/94 has been pleased to allow the same. A copy of the judgement is enclosed for your ready reference.

In terms of the findings recorded and conclusions arrived at by the Hon'ble Tribunal, my promotion/appointment to I.A.S. effected in 1996 pursuant to inclusion of my name in the 1996 select list should now relate back to 1993, with all consequential benefits including refixation of year of allotment and seniority. The Govt. of India may kindly be moved towards implementation of the directions contained in the aforesaid judgement. It may also be mentioned that my E.B. held back in 1993 has also been allowed to be crossed in 1996.

Your early action in the matter will be highly appreciated.

With sincere regards,

Yours faithfully,

A.K. Malakar
 (A.K.Malakar, IAS)

21-8-98

Copy to :

The Secretary to the Govt. of India,
 Ministry of Personnel & Public Grievances and Pensions,
 Central Secretariat, New Delhi.

- He is requested to take the follow up action towards antedating the promotion/appointment of the undersigned in terms of the directions of the Hon'ble C.A.T., Guwahati Bench passed in OA No.180/94.

(A.K.Malakar, IAS)

AMG
 UO/2000/2000
 21/08/98

NO. AAP. & 79/94/PC/176
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL: A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI- 781006
G219

Dated Dispur, the 12th April, 2000

To

Shri A.K. Malakar, IAS
Labour Commissioner, Assam,
Guwahati.

Sub :-

Review of the Select lists of 1992-93 and
1993-94 for promotion to IAS.

Sir,

I am directed to say that in pursuance of the order dated 7.8.98 of the Honourable Central Administrative Tribunal, Guwahati Bench, the Review Selection Committee met on 15.2.99 to reconsider the case of your promotion to IAS from the 1992-93 and 1993-94 Select lists. The Review Selection Committee did not recommend any change in the two Select lists after making an overall relative assessment of your service records. The Union Public Service Commission has approved the recommendation of the Review Selection Committee and made it final.

Yours faithfully,

H.N. SARMA
(H.N. SARMA)

Under Secretary to the Govt. of Assam

Memo No. AAP.79/94/PC/176-A: Dated Dispur, the 12th April, 2000
Copy to :-

1. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, North Block, New Delhi.
2. The Under Secretary, Union Public Service Commission, Bhulpur House, Shahjahan Road, New Delhi- 110017.
3. The Dy. Registrar, Central Administrative Tribunal, Guwahati Bench, Guwahati.

By order etc.,

H.N. SARMA
(H.N. SARMA)

Under Secretary to the Govt. of Assam

A.C. S.
W.S.
A.C. S.

21 MAY

21 MAY
Guwahati

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act, 1985)

D.A. No. 176 of 2001

Ananta Kr. Malakar

-VS-

Union of India & Ors.

IN THE MATTER OF

An additional statement of fact
highlighting certain subsequent
development of the case with a
prayer to treat the same as a part
of the OA.

The humble application above named:

MOST RESPECTFULLY SHEWETH

1. That the applicant claiming his promotion to IAS from the select list of 1992-93 and 1993-94 onwards preferred OA No. 180/94. The said OA was disposed of vide judgment and order dated 7.8.1998. In the ~~said~~ judgment the Hon'ble Tribunal directed reconsideration of the case of the applicant as admittedly because of certain uncommunicated adverse remarks ACRs for certain period were not available. The respondents in terms of the judgment and order dated 7.8.1998 issued an order dated 12.4.2000 to the applicant intimating the fact that the review selection committee which met on 15.2.99 did not recommend the case of the applicant. Against the said order dated 12.4.2000 the present OA was filed. The applicant in the said OA made categorical statement regarding improper

(49)
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Filed by
the applicant through
Alka Das
Advocate
21/05/03

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selection of the case by the review selection of the case by the review selection committee. Amongst the other grounds in para 4.22 and 4.23 of the OA the applicant pointed out that the selection committee did not take into consideration the full ACRs of the applicant and came to the conclusion considering his case in isolation.

2. That in terms of the judgment the case of the applicant is required to be reconsidered by the review selection committee for his promotion to IAS retrospectively without taking into consideration the adverse remarks that was recorded in ACR for the year 1990 in as much as his case for promotion was considered during the years 1992-93 and 1993-94 denying the existence of the adverse remarks recorded in his ACRs for the year 1990 which was subsequently expanded by a communication dated 5.2.98. The applicant also pointed out the fact that the adverse remarks reflected in the 1990 ACRs was illegal taking into consideration the communication dated 30.5.91 by which performance of the applicant was duly appreciated by the State Govt. with a specific request to place the same in his ACR. However, the aforesaid order dated 30.5.91 was not placed in the ACR of the applicant and as such it was not taken into consideration towards recording in his ACR for the period w.e.f. 1.1.90 to 20.12.90. This was the reason for which the said ACR reflected the grading as below average. It was incumbent on the part of the authorities to rewrite the ACR and to reflect the same in the ACRs after expansion of adverse remarks and to place the communication dated 30.5.91.

A copy of the communication dated 30.5.91 is annexed herewith and marked as Annexure-A-1.

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3. That true to the averments made by the applicant in the OA the Respondents now have issued an order dated 16.7.2002 conveying the decision to treat the Annexure-A-1 appreciation letter dated 30.5.91 as performance of the applicant during the period of 1.1.90 to 20.12.90. By the said communication it has further communication dated 16.7.2002 along with the appreciation letter (Annexure-A-1) be kept in the respective CR of the applicant. It has further been recorded in the said communication that there was no scope to record the ACR for the said year of 1990 as both the reviewing and accepting officers have already retired/demitted office and the record of appreciation would be treated as his ACR for the period from 1.1.90 to 20.12.90.

A copy of the said order dated 16.7.2002 is annexed herewith and marked as Annexure-A-2.

4. That the applicant states that taking into consideration the order dated 16.7.2002 so far as his contention regarding non-consideration of his ACR in the year 1990 in his true perspective by the earlier selection committee as well as the review selection committee and both selection committee on the basis of incomplete ACRs in as much as there was no ACR for the year 1990 and thus even after expansion of his adverse remark his ACR for 1990 remain the same. Admittedly, the Annexure A-1 appreciation letter was not kept in ACR till 16.7.2002 and both the selection committee took into consideration the case of the applicant as below average for the year 1990 whereas it should have been outstanding in terms of the letter of appreciation dated 30.5.91.

5. That the applicant states that in the earlier proceeding when the records were produced before the court it was revealed that the grading recorded for the period 1.1.90 to 22.12.90 that is the period when the adverse remark was communicated to the applicant. After expansion of the adverse remark the ACR was never rewritten and placed before the review selection committee. Now taking into consideration Annexure-A-1 and A-2 communications the ACR of the Applicant for the said period should have been outstanding instead of below average.

6. That the aforesaid development with the issue of Annexure -A-2 order has got a direct bearing in the issue involved in this OA and hence this additional affidavit has been filed bringing the same to the notice of the Hon'ble Tribunal with a further prayer to treat the as part of the OA.

AFFIDAVIT

I Sri Ananta Kumar Malakar, aged about 55 years, Son of Late Haladhar Malakar, at present working as Labour Commissioner, Government of Assam, Guwahati, do hereby solemnly affirm and state as follows:

1. That I am the petitioner and I am acquainted with the facts and circumstances of the case. I am competent to swear this affidavit.

2. That the statements made in this affidavit and in the accompanying application in paragraphs 5 to 6

..... are true to my knowledge ; those made in paragraphs 1 to 4 being matters of records are true to my information derived therefrom. Annexures are true copies of the originals and grounds urged are as per the legal advice.

And I sign this affidavit on this the 120 th day
of May, of 2003. 

Victoria

(Ancestral Kurinte Malakote)

Identified by me:

Alsha Das -
Advocate

Deponent

P. P. Srivastav
Adviser to the Governor
of Assam.

Dispur
Guwahati-781006

D.O. No.
Date

D.O.H.O. ADV(S) 7/90/161
30th May, 1991.

My dear Sirs,

From a review of the implementation of action under the 20 Point Programme during the year 1990-91 made by the Planning and Development Department, it has been observed that the performance in respect of programmes relating to point No. 9 (e) has been quite praiseworthy, as would be clear from the following chart.

TWENTY POINT PROGRAMME - 86
PROGRESS REPORT FOR THE YEAR 1990-91

| Point | Item | Unit | Target | Achievement | Percentage |
|-------|---------------|------|--------|-------------|------------|
| 1 | 2 | 3 | 4 | 4 | 4 |
| 9(e) | ICDS Block No | 50 | 58 | 58 | 100.00 |

COMPLIMENTED

on
commendable
Performance

With best wishes.

Yours sincerely,

(P. P. Srivastav)

of
various
departments
under the
control of
W.P.T & B.C. Dep
P.T.O.

R.P.
18/6
Shri C.R. Samaddar, IAS.
Commissioner, Govt. of Assam,
W.P.T & B.C. Department,
Dispur, Guwahati-781006

Advise to
convey the
appreciation
to the State Govt
to officers &

Attested
Ranjan
Advocate

NO. AAA. 30/75/272
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL-A)
ASSAM SECRETARIAT (CIVIL) : DISPUR
GUWAHATI-6.

Dated, Dispur, the 16th July, 2002.

ORDERS BY THE GOVERNOR OF ASSAM

Whereas, Shri Ananta Kumar Malakar, IAS, while he was in ACS, earned adverse remarks in his ACRs for the period from 1.1.1990 to 20.12.1990 in recording stage of the ACR.

And whereas, the adverse remarks earned by Shri Malakar were communicated to him vide Govt. letter No. AAA. 30/75/202 dtd. 6.3.93 in reply to which he submitted representation against the said adverse remarks.

And whereas, a copy of the representation was forwarded to the Recording Officer requesting to offer his views on the representation.

And whereas, the Recording Officer furnished his views on the representation of Shri Malakar Stating that he stood by his views initially recorded in the ACR of the officer for the said period.

And whereas, Shri P.P. Srivastava, the then adviser to Governor of Assam during the period from 1990 to 1991 during which the administration of the State of Assam was under President's Rule, in D.O. letter No. AD(S) 7/90/161 dated 30/5/1991 addressed to the Commissioner & Secretary, W.P.T. & B.C. etc. Departments conveyed appreciation of the State Govt. for achieving the target to the extent of 100% in ICDS programmes during 1990-1991 with specific mention of commendable performance of the officers concerned and to keep the appreciation letter in their C.R. dossier.

And whereas, Shri A.K. Malakar was holding the post of Director, Social Welfare during the above period under the administrative control of W.P.T. & B.C. etc. Department he deserved the appreciation in achieving 100% target in implementing ICDS programmes.

And whereas, taking into consideration the appreciation conveyed by the then Adviser to the Governor of Assam for the same period during which Shri A.K. Malakar earned adverse remarks from the Recording Officer, the adverse remarks earned by him were expunged.

Attested
W.B. Das
Advocate

Contd... 2/-

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And whereas, Shri A.K.Malakar made a prayer to Government for re-recording his ACR for the period 1.1.1990 to 20.12.1990 which almost stood blank after expunction of the adverse remarks recorded therein.

And whereas, there was no scope to re-record the said ACR as both Reviewing Officer and Accepting Officer has already retired/demitted office.

And, therefore, the Governor of Assam decided that the appreciation letter of the then Adviser to Governor should be treated as the record of performance of Shri A.K. Malakar during the period from 1.1.1990 to 20.12.1990.

A copy of this order along with a copy of the appreciation letter should be kept in C.R. Dossier of the officer.

BY ORDER AND IN THE NAME
OF THE GOVERNOR OF ASSAM.

Sd/-
(J. P. Saikia)
Commissioner & Secretary to the Govt. of
Assam, Personnel (A) Department, Dispur.

Memo No. AAA.30/75/272-A Dated, Dispur, the 16th July, 2002.
Copy to:-

1. Shri A.K.Malakar, IAS,
Labour Commissioner for information.
2. The C.R.Dossier of the officer.

By order etc.,

J. P. Saikia 16/7/02
Commissioner & Secretary to the Govt. of
Assam, Personnel (A) Department, Dispur.

R

Attested
W.Das.
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
IN THE GUWAHATI HIGH COURT

[THE HIGH COURT OF ASSAM: NAGALAND & MEGHALAYA
MANIPUR: *Shri. C. L. S. C. S.*
TRIPURA: MIZORAM & ARUNACHAL PRADESH]

Filed by
Shri. C. L. S. C. S.

16/7/03
X6
57
(A. DEB Roy)
Sr. Ct. J. C.
C. A. T., Guwahati Bench

[CIVIL WRIT JURISDICTION]

O.A. NO. 176/2001

W.P(C) NO.6844 OF 2001

IN THE MATTER OF

ANANTA KUMAR MALAKAR

PETITIONER

VS.

UNION OF INDIA & ORS.

RESPONDENTS

AN AFFIDAVIT IN OPPOSITION FILED ON BEHALF OF
RESPONDENT Nos. 5 (UNION PUBLIC SERVICE COMMISSION)
AND 6 (SELECTION COMMITTEE) AGAINST THE WRIT
PETITION OF THE PETITIONER

AFFIDAVIT -IN- OPPOSITION

MOST RESPECTFULLY SHOWETH.

I, (Ms) Molly Tiwari, solemnly affirm and state that the Deponent is an Under Secretary in the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi and is authorized to file the present reply on behalf of Respondent Nos. 5 & 6. The respondent is fully acquainted with the facts of the case as gathered from the official records and deposed below.

2. That the deponent has read and understood the contents of the above Petition and in reply, submits as under:

3.1 At the outset, it is most respectfully submitted that the Union Public Service Commission, being a Constitutional body, under Articles 315 to 323 Part

M. Tiwari
M. Tiwari
Under Secretary
U.P.S.C.
New Delhi

XIV (Services under the Union and the States) Chapter-II of the Constitution, discharge their functions, duties and Constitutional obligations assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for the IAS/IPS/IFS. In pursuance of these Rules, the IAS (Appointment by Promotion) Regulations, 1955 (Promotion Regulations, in short) have been made. In accordance with the provisions of the said Regulations, the Selection Committee, presided over by the Chairman/Member of the Union Public Service Commission makes selection of State Civil Service [SCS in short] officers for promotion to the Indian Administrative Service.

3.2 Thus, in discharge of their Constitutional obligations, the Union Public Service Commission after taking into consideration the records received from the State Government under Regulation 6 and observations of the Central Government received under Regulation 6A of the Promotion Regulations, accord their approval to the recommendations of the Selection Committee in accordance with the provisions of Regulation 7 of the aforesaid Regulations. The selections are done by the Selection Committee in a just and equitous manner on the basis of the relevant records and following the relevant Rules and Regulations.

PRELIMINARY SUBMISSIONS:

4.1 It is most respectfully submitted that the selection of State Civil Service Officers for promotion to the IAS are governed by the IAS (Appointment by Promotion) Regulations, 1955. Regulation 3 of the said Regulations provides for a Selection Committee consisting of the Chairman of the Union Public Service Commission or where the Chairman is unable to attend, any other Member of the Union Public Service Commission representing it and in respect of the Joint Cadre of Assam- Meghalaya, the following officers as members: -

- i) Chief Secretary to the Government of Assam;
- ii) Chief Secretary to the Government of Meghalaya;
- iii) Chairman, Board of Revenue, Govt. of Assam;
- iv) Commissioner of Division, Govt. of Meghalaya;



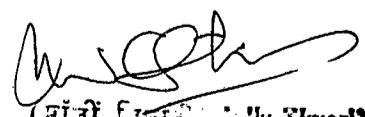
(प्रौद्योगिकी विज्ञान विभाग
राजकीय विद्यालय
जोन एन. टिवारी, एम.एस.
दिल्ली, दिल्ली, दिल्ली, दिल्ली)

v) Two nominees of the Central Government not below the rank of Joint Secretary.

The meeting of the Selection Committee is presided over by the Chairman/Member, UPSC.

4.2 In accordance with the provisions of Regulation 5(4) of the said Regulations, the aforesaid Committee duly classifies the eligible SCS officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(5) of the said Regulations, the Selection Committee prepares a list by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Civil Service.

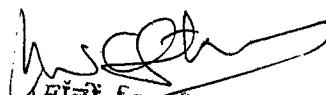
4.3 The ACRs of eligible officers are the basic inputs on the basis of which eligible officers are categorised as 'Outstanding', 'Very Good', 'Good' and 'Unfit' in accordance with the provisions of Regulation 5(4) of the Promotion Regulations. The Selection Committee is not guided merely by the overall grading that may be recorded in the ACRs but **in order to ensure justice, equity and fair play makes its own assessment on the basis of an indepth examination of the service records of the eligible officers, deliberating on the quality of the officer on the basis of his performance as reflected under the various columns recorded by the Reporting/Reviewing Officer/Accepting Authority** in the ACRs for the different years and then finally arrives at the classification to be assigned to each eligible officer in accordance with the provisions of the Promotion Regulations. While making an overall assessment, the Selection Committee takes into account orders regarding appreciation for **meritorious work done by the concerned officer**. Similarly, the Selection Committee also keeps in view orders awarding penalties or any **adverse remarks communicated to the officer, which, even after due consideration of his representation have not been completely expunged**.


 (Dr. S. N. Tewari)
 अधिकारी सचिव, अधिकारी सचिव
 राजकीय नियन्त्रण विभाग
 राजकीय नियन्त्रण विभाग
 नई दिल्ली, नई दिल्ली

CONTENTIONS MADE IN THE WP

5. The Petitioner has filed the instant WP against the Hon. CAT's order dated 28.06.2001 in OA No. 176/2001 on the following main grounds :-

- (i) That the Review Selection Committee which was convened in compliance with the direction dated 07-08-1998 of this Hon'ble Tribunal did not examine the full records of the petitioner; the State Government had also not supplied the entire records to the Selection Committee. The Selection Committee took into consideration irrelevant facts and gave weightage to irrelevant considerations. ✓
- (ii) The Review Selection Committee should have applied the same yardsticks applied by the earlier Selection Committee and should have given detailed reasons for the conclusion reached by them. In view of this, the communication dated 12-04-2000 communicating the decision of the Review Selection Committee is not sustainable. ✓
- (iii) The case of the petitioner was required to be considered retrospectively applying the same standard of grading applied to the other officers in 1993 whereas the Review Selection Committee took up his case in isolation which is illegal.
- (iv) Though the Hon'ble Tribunal in their order dated 07-08-1998 had directed the respondents to consider the case of the petitioner for promotion to the IAS in the year 1993 and 1994 without taking into account the adverse remarks taken into account by the Selection Committees that met in 1993 and 1994, nothing has been indicated in the communication dated 12-04-2000 as to how the case of the petitioner was considered by the Review Selection Committee.
- (v) Though the direction of the Hon'ble Tribunal was to consider the petitioner for the years 1993 and 1994 the communication dated 12-04-2000 speaks of Review Selection for the years 1992-93 and 1993-94.


 मॉली तिवारी / Molly Tiwari
 अर्थ मंत्री / Under Secretary
 राजीव गांधी जनता पार्टी
 राजीव गांधी सेक्यूरिटी
 नई दिल्ली / New Delhi

(vi) That the Hon'ble Tribunal's action in dismissing OA No.176/2001 at the admission stage itself has resulted in miscarriage of justice and violation of the principles of justice.

FACTS OF THE CASE

6.1 The background of the case is that a Selection Committee Meeting was held on 31.03.1993 to prepare the Select List of 1992-93 for promotion of SCS officers to the IAS of Assam-Meghalaya Joint Cadre (Assam Segment), for 8 vacancies and the size of the Select List was determined as 10 in accordance with the then prevailing provisions of the Promotion Regulations. The Petitioner, Shri AK Malakar, was considered at S. No.10 of the eligibility list and was assessed as 'Good' by the Selection Committee based on an assessment of his records. On the basis of this grading, he could not be included in the Select List since officers with better grading were available and because of the statutory limit on the size of the Select List. Thereafter, the Selection Committee met on 29.03.1994 for preparation of the Select List of 1993-94. The size of the Select List was determined as seven (7) and the Petitioner was considered at S. No. 4 of the eligibility list. On the basis of an assessment of his service records, the officer was again assessed as 'Good' by the Selection Committee. On the basis of this grading, he could not be included in the Select List since officers with better grading were available and because of the statutory limit on the size of the Select List.

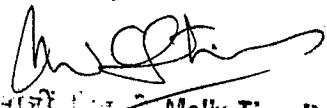
6.2 Subsequently, these two Select Lists were reviewed by a Review Selection Committee which met on 18.09.1997 in pursuance of the Judgement dated 20.03.1995 of the Hon'ble Guwahati High court in Civil Rule No. 1079/93 and the judgement dated 20.12.1995 in Writ Appeal No. 94/95. This review was carried out because of a revision in the seniority of the State Civil Service officers and since there was no material change in the service records of the officers considered by the Selection Committees that met in 1993&1994, the grading 'Good' obtained by the Petitioner in the assessment made by these Committees was retained by the Review Selection Committee. Thus, the Petitioner was not recommended for


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 Under Secretary
 Ministry of Civil Services &
 Rehabilitation
 New Delhi

inclusion in the review Select Lists of 1992-93 and 1993-94 as officers with better grading were available and because of the statutory limit on the size of the Select List.

6.3 The Petitioner filed OA No. 72/94 before the Hon CAT, Guwahati Bench apprehending that he was not considered for promotion for the year 1993-94 because of the adverse remarks in his ACR for the period from 01.01.1990 to 22.12.1990 which were communicated to him on 17.03.1993. The Hon'ble Tribunal disposed of the said OA with the direction that the Select List for 1994-95 be prepared without taking into account the adverse remarks made against the Petitioner in 1990 and also the disciplinary proceedings initiated in March 1993 and April 1994. However, it was observed by the Commission that no meeting of the Selection Committee was held in 1994-95 and the departmental proceedings against him were disposed of by the State Government's order dated 02.02.1996 exonerating the Petitioner. It was further observed that the adverse remarks against the Petitioner for the period 01.01.1990 to 22.12.1990 were expunged by the State Government's order dated 05.02.1996. Thus, the Selection Committee which met on 06.02.1996 for preparation of the Select List of 1995-96 recommended the Petitioner for promotion to the IAS at Sl. No.2 in the Select List.

6.4 It is also submitted that the Petitioner filed another OA (No. 180/94) before the Hon'ble CAT, Guwahati Bench praying to set aside and quash the Select List prepared by the Selection Committee in its meeting held on 29.03.1994 (Select List of 1993-94) and to direct the respondents to implement the Select List of 1993(1992-93). The Hon'ble Tribunal in their judgement dated 07.08.1998 observed that the case of the Applicant was considered without ignoring the adverse remarks as on 31.03.1993. The Hon'ble Tribunal observed that there ought to have been a Review Selection Committee to consider the case of the Applicant without taking into consideration the adverse remarks for the period from 01.01.1990 to 22.12.1990 as per the position on 31.03.1993 when the Selection Committee meeting was held. The Hon'ble Tribunal, therefore, directed to consider the case of the Applicant as on 31.03.1993. In compliance with this direction, a meeting of the Review Selection Committee was held on 15.02.1999.


 (Molly Tiwari)
 Secretary
 Commission
 of Audit

This Review Committee, on an overall assessment of service records of the Petitioner and after ignoring the adverse remarks in his ACR for the period 01.01.1990 to 22.12.1990, assessed the Petitioner as 'Good' for both the Select List years 1992-93 and 1993-94. On the basis of this assessment, the Review Selection Committee did not recommend any change in the recommendations of the Review Selection Committee which met on 18.09.1997. Further, while assessing the suitability of the Petitioner, in pursuance to the observations of the Hon'ble Tribunal, the Review Committee did not take into account any adverse remarks in his ACRs which were not communicated to him. The Review Committee also did not take into account the adverse remarks which were expunged on 05.02.1996 and the disciplinary proceedings which were finalized on 02.02.1996.

REPLY TO THE CONTENTIONS

7.1 As regards the contention of the Petitioner at para 5(i) above, it is respectfully submitted that the Govt. of Assam had furnished the ACR Dossier and other relevant records in respect of the Petitioner while forwarding the proposal to convene a Review Selection Committee in compliance with the direction of this Hon. Tribunal dated 07.08.1998. Therefore, the contention that the records were not furnished to the Committee is baseless. As regards the contention that the Selection Committee took into consideration irrelevant facts and gave weightage to irrelevant considerations, it is most respectfully submitted that as per the uniform and consistent practice followed by the Union Public Service Commission, the Selection Committee examines the service records of each of the eligible officers, with special reference to the performance of officers during the years preceding the year in which the Selection Committee meets, deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then after detailed deliberations and discussions, finally arrives at a classification assigned to each officer. While doing so, the Selection Committee also reviews and determines the overall grading recorded in the ACRs to ensure that the overall grading in the ACRs is not inconsistent with the grading/remarks under various parameters or attributes recorded in the respective ACRs. The grading given by


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reporting/reviewing officers in ACRs reflects the merit of the officer reported upon in isolation whereas the classification made by the Selection Committee is on the basis of logical and indepth examination of service records of all the eligible officers in the zone. The Selection Committee also takes into account orders of appreciation for meritorious work done by the concerned officers, if any. Similarly it also keeps in view orders awarding penalties or any adverse remarks communicated to the officer which even after due consideration of his representation have not been completely expunged. Thus it may be seen that the Selection Committee has made the assessment in a just and fair manner **The procedure adopted by the Selection Committee in preparing the Select Lists (as also in reviewing them on Court orders) is uniformly and consistently applied for all States and Cadres for induction into the All India Services.**

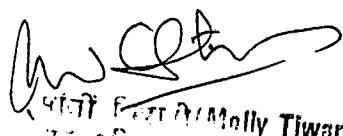
7.2 The matter relating to assessment made by the Selection Committee has been contended before the Hon'ble Supreme Court in a number of cases. **In the case of Nutan Arvind Vs. UOI & Ors. the Hon'ble Supreme Court have held as under:**

“When a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority.”

[(1996) 2 SUPREME COURT CASES 488]

7.3 **In the case of Durgadevi and another Vs. State of Himachal Pradesh & Ors. the Apex Court have held as under:**

“In the first instance, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The Selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for


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appointment. That was the function of the Selection Committee. The observations of this Court in Dalpat Abasaheb Solunke case are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10-12-1992 is quashed and the matter is remitted to the Tribunal for fresh disposal on other points in accordance with the law after hearing the parties.”

[1997-SCC(L&S)-982]

7.4 In the matter of UPSC Vs. H.L. Dev and Others. Hon'ble Supreme Court have held as under: -

“How to categorise in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The jurisdiction to make the selection is vested in the Selection Committee.”

[AIR 1988 SC 1069]

7.5 In the case of State of Madhya Pradesh Vs. Shrikant Chapekar, the Hon'ble Supreme Court have held as under: -

“We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the ACR are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Dy. Director. **It is not the function of the Tribunal to assess the service record of a Government servant, and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation.** This Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was considered for promotion


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or the consideration was illegal, then the only direction which can be given is to reconsider his case in accordance with law. It is not within the competence of the Tribunal, in the fact of the present case, to have ordered deemed promotion of the respondent.”

[JT 1992 (5) SC 633]

7.6 In the case of Dalpat Abasaheb Solunke Vs. B.S. Mahajan, the Hon’ble Supreme Court have held as under: -

“It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject.”

[AIR 1990 SC 434]

7.7 In the case of Smt. Anil Katiyar Vs. UOI & Others, the Hon’ble Supreme Court have held as under: -

“Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service of civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgement over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by mala fides.”

[1997(1) SLR 153]

The Hon’ble Court may be pleased to appreciate that in view of the aforementioned authoritative pronouncements of the Hon’ble Supreme Court, the assessment made by the Selection Committee constituted under Regulation 3 of the Promotion Regulations is not open for scrutiny by any authority/institutions or an individual.



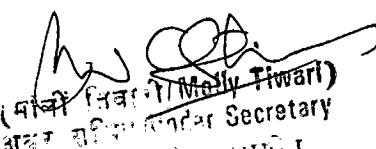
(मानोहर लाल तिवारी)
अवार सी.पी.यू. उपर्युक्त
मा.पा. विभाग के सचिव
प्राक्तन विधायक, नई दिल्ली

7.8 Regarding the contentions at para 5(ii)&(iii) above, as already stated in para 6.4 of this reply, the Review Selection Committee of 15.02.1999 applied the same yardsticks of assessment as those adopted by the Selection Committees which prepared the Select Lists of 1992-93 and 1993-94. Further, it is most respectfully submitted that as per the provisions of the IAS (Appointment by Promotion) Regulations, the Selection Committee is not required to give any reasons for the assessment made by them. This procedure of the Selection Committee has been upheld by the Hon'ble Supreme Court in their Judgement in the case of R S Das Vs. Union of India & Others:-

“Under the amended Regulations, the Committee is required to categorise officers in four categories on the basis of overall assessment of service record of officers. After categorisation, the Committee is required to place the name of those officers first on the list who may be categorised as ‘Outstanding’ and thereafter names of those officers shall be included who are found to be ‘Very Good’. And only thereafter, the names of those officers shall be included who may be categorised ‘Good’. If in this process any senior officer is superseded, the amended Regulation 5(5) does not require the Committee to record reasons for the supersession. The amended Regulations have brought in significant change and now the process of selection as contemplated by Amended Regulations do not require the Selection Committee to record reasons for the supersession of officers of the State Civil Service.”

In view of the above, these contentions are also baseless.

7.9 Regarding the contention at para 5(iv) above, it is most respectfully submitted that the Review Selection Committee that met on 15.02.1999 did not take into account the adverse remarks in the ACRs of the Petitioner while reviewing the Select Lists of 1992-93 and 1993-94 and this has also been duly recorded in the minutes of the said meeting. As such, this contention is denied since the Orders of the Hon'ble Court were complied with by this Respondent.


 (मल्ली तिवारी) Mally Tiwari
 Under Secretary
 अधिकारी नियन्त्रण विभाग
 Selection Committee
 नियन्त्रण विभाग
 New Delhi

7.10 Regarding the contention at para 5(v) above, it is most respectfully submitted that the Hon'ble Tribunal's direction was ".....to consider the case of the Applicant as on 31.03.1993 and if he is found eligible for recruitment to the cadre by way of promotion in that year this should be done. If not, his case ought to be considered in the next year." In this context, it is submitted that during the relevant period, Select Lists were prepared on a financial year basis in accordance with the then prevailing provisions of the Promotion Regulations. In view of these factors, the Review Selection Committee reviewed the Select Lists for the years 1992-93 and 1993-94 to consider the Petitioner's inclusion therein as directed by the Hon'ble Tribunal and keeping the Rules and Regulations in view. No Select List was prepared for the year 1994-95 and as such, it could not be reviewed. The Petitioner was appointed to the IAS on the basis of his inclusion in the Select List of 1995-96. In view of this, this contention is also denied since it is due to the Petitioner's ignorance of the relevant Rules and Regulations that govern the promotion to the All India Services.

8. It is humbly submitted that in view of the above submissions, the Hon'ble Court may be pleased to dismiss the Writ Petition.



DEPONENT
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Joint Secretary
Review Selection Committee
Ministry of Home Affairs
Government of India
New Delhi

VERIFICATION

I do hereby declare that the contents of the above Statement are believed by me to be true based on the records of the case. No part of it is false and nothing has been concealed therefrom.

Verified at New Delhi on the 28th day of January, 2003.



DEPONENT
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Joint Secretary
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Ministry of Home Affairs
Government of India
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