

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI IPO: GUWAATI..5

ORIGINAL FILE NO: 72/94

MISC. PETITION/ REVIEW APPLICATION/CIT. PETITION NO.

Shri A.K. Malakar..... APPLICANT(S)  
VERSUS

Mr. B.K. Sharma..... RESPONDENT(S)  
APPLICANT(S)

Mr. M.K. Choudhury, Mr. B. Mehta  
Mr. S. Ali, Mr. Y.K. Phukan, Mr. A. Dasgupta..... RESPONDENT(S)

OFFICE NOTE

DATE

COURT'S ORDER

5.4.94.

Learned counsel Mr B.K.Sharma moves this application under Section 19 of the Administrative Tribunals Act, 1985 on behalf of applicant Shri A.K.Malakar, ACS. Learned Sr. C.G.S.C.Mr S.Ali and learned Sr. Govt. Advocate, Assam, Mr. Y.K. Phukan receives copy of this application. Mr Phukan prays for two days time to get instructions. Time allowed.

List on 8.4.94 for consideration of admission and further orders.

Vice-Chairman

Member

acs

This application is in form and within time.

C. F. of Rs. 50/-

deposited vide

IPO/BD No. 86/687

Dated 2.3.94

By Registrar (A)

Boz  
9/4

72/94

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. Hagjer (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

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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 Fijji -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 <sup>new</sup> 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 finding 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.

Copy of the order may be furnished to the counsel for the parties.

9 Inform all concerned by Special Messenger/Fax message/Telegraphically etc. at the cost of the applicant.

By Order:

nkm

MEMBER

VICE CHAIRMAN

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Copy of order sent  
to all concerned  
and counsel of the  
parties vide MS.  
1492 to 1501 dtd.  
12.4.94

Bz  
12.4.94

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