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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A. No. 83 of 1994

Date of decision 21.9.95

Dr. Hiranya Lal Deb

PETITIONER(S)

Mr. G.N.Sahewalla

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr. S.Ali, Sr.C.G.S.C. for respondent Nos. 1 & 6.
Mr.Y.K.Phukan, Govt. Advocate, Assam for
respondent Nos. 2 & 4.
Respondents 3 & 5 served.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANLYINE, MEMBER (ADMINISTRATIVE).

1. Whether Reporters of local papers may be allowed to see the Judgement? ye
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. Whether the Judgement is to be circulated to the other Benches?

H.G. Chaudhary

Judgement delivered by Hon'ble Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 83 of 1994.

Date of decision : This the ~~21st~~ day of *Sept* - 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Dr. Hiranya Lal Deb,
Superintendent of Police,
Vigilance & Anti-corruption,
Assam, Guwahati-781 005.

..... Applicant.

By Advocate Mr. G.N. Sahewalla.

-versus-

1. Union of India through the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi.
2. The State of Assam through the Chief Secretary to the Government of Assam, Dispur, Guwahati-6.
3. The State of Meghalaya through the Chief Secretary to the Government of Meghalaya, Shillong.
4. The Commissioner and Secretary to the Government of Assam, Ministry of Home, Dispur, Guwahati-781006
5. Sri Sarder Pradip Kar, D.G.I.P. secretary, Kahilipara, Guwahati-19.
6. Union Public Service Service Commission, Through Secretary, Dholpur House, Sahjahan Road, New Delhi-11.

.... Respondents

By advocate Mr. S. Ali, Sr. C.G.S.C. for respondent Nos. 1 & 6.

By Advocate Mr. Y.K. Phukan, Govt. of Advocate, Assam for respondent Nos. 2 & 4.

Respondents 3 & 5 served.

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Judgement

The applicant, Dr. Hiranya Lal Deb was a member of Assam Police Service having been appointed thereto in 1966. He was subsequently promoted to the Senior Grade. Theafter he has been appointed to the Indian Police Service (IPS) on 16.3.92. His grievance is that although he became eligible for being considered for promotion to the Indian Police Service (IPS) in the year 1983 under the IPS (Appointment by promotion) Regulation, 1955 but he was denied that promotion illegally at that time.

2. The Selection Committee for preparing a select list for promotion to the joint IPS cadre of Assam-Meghalaya met on 27.12.1983. However the committee did not include the name of the applicant in the select list although two officers junior to him were selected. The respondent No. 5 is one amongst them. Being aggrieved by his non-inclusion in the select list the applicant filed a Civil Rule in the Guwahati High Court which was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1986 and was renumbered as GC No. 225 of 1986. The then learned Members of the Tribunal found that certain adverse remarks in the Confidential Character Rolls (CC Rolls) of the applicant had not been communicated to him till the date of the meeting which on his representation to the State Govt. were subsequently expunged. It was therefore held that as the Selection Committee had taken these remarks into account the non-selection of the applicant was bad in

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law. On that conclusion the Tribunal held that the applicant should be deemed to have been included in the impugned select list at least in the place in the order of seniority and appointed to IPS on the date on which his immediate junior, namely, Shri Sardar Pradeep Kar was appointed. The Tribunal directed that the applicant therefore be appointed accordingly. The said order was passed on 17.2.1987.

3. The Union Public Service Commission (Respondent No. 6) filed an appeal against the said order in the Supreme Court being Civil Appeal No. 3016/86. The State of Assam (with 2 others) also filed Civil Appeal No. 3017/86. Both these appeals were disposed of ^{by} the Hon'ble Supreme Court by Judgement and Order dated 22.3.1988. Their Lordships although agreed with the view of the Tribunal that the Selection Committee had fallen into error in taking into account the adverse remarks which in the eye of law did not exist and which could not have been lawfully taken into account however were pleased to hold that that did not necessarily mean that the applicant should have been categorised or considered 'Very Good' vis-a-vis others who were in the field of choice. It was observed that how to categorize in the light of relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. In this view it was held that the Tribunal had erred in holding that the applicant should be deemed to have been included in the impugned

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select list and in directing the applicant to be appointed with effect from the date Shri Kar was appointed. Their Lordships therefore substituted the operative order passed by the Tribunal in following terms :

" In place of the order quoted herein above we substitute an order in the following terms viz :-

The selection Committee shall reconsider the impugned select list prepared in 1983 as if it was deciding the matter on the date of the selection on the footing that the adverse remarks made against respondent No. 1 which were subsequently set aside did not exist in the records and consider the question as to whether he would have been appointed or Respondent No. 11 Shri Sardar Pradeep Kar would have been appointed on the basis of the categorization to which each of them was entitled having regard to the C.C. Rolls (ignoring the adverse remarks against the Respondent No. 1 which were subsequently quashed) and pass appropriate orders in the light of the decision taken on this point. If the Respondent No. 1's claim is accepted upon reconsideration in the light of the aforesaid exercise, the order of appointment should provide for his appointment with effect from the date on which he would have been appointed if he was selected when the original selection was made in 1983 and he should be given all the benefits. The Selection Committee shall complete its exercise within two months from the date of this order."

4. Pursuant to the aforesaid directions of the Hon'ble Supreme Court a Review Selection Committee was constituted and it held its meeting on 21.7.1988. The

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Committee once again assessed the applicant as "Good" and consequently did not consider any necessity to change the ranking between the applicant and Sardar Pradeep Kar assigned in the earlier select list prepared on 27.12.1983. This opinion was expressed by the Selection Committee in the last para of the Minutes of the Meeting (Copy of the Minutes has been produced by respondent No. 2) in the following manner :

"As directed by the Supreme Court the Committee again assessed the C.R. dossier of Shri H.L. Deb after ignoring the adverse remarks of 1979-80, 1981-82 and 1982-83. On an overall assessment of his service records, Shri Deb was again assessed as 'Good'. On the basis of this assessment, the Committee do not consider any necessity to change the ranking between Shri H.L. Deb and Sardar Pradeep Kar in the Select List as prepared on 27.12.83".

5. The Govt. of India (Ministry of Home Affairs) intimated the Govt. of Assam by letter No. I-15016/17/92- IPS.I dated 15.10.92 (Annexure-A) the proposal for determination of seniority of promotee IPS officers mentioned in the letter, under IPS (Regulation of seniority) Rules, 1988. In that list the name of the applicant figured at Sl. No. 8 and he has been assigned 1986 as the year of allotment. The date of his appointment to IPS is shown as 16.3.92. It is the case of the applicant that he got the knowledge from this letter that he was not selected by the Review Selection Committee which considered his selection as in 1983 pursuant to the directions of the Supreme Court. He



submitted representations on 16.7.93 and 21.9.93 to the Govt. of Assam as well as to the Govt. of India requesting for reconsideration of inclusion of his name in the select list for promotion to IPS in 1983. As his request was not accepted he filed the instant O.A. on 27.4.94. He seeks following reliefs :

1. The selection committee should hold the selection of the applicant for considering his placement in the 1983 select list afresh vis-a-vis the other candidates in the 1983 selection.
2. The selection committee shall consider the relative gradation of the applicant and other candidates as in 1983 with the ACRs of the applicant with expungtion of the adverse remarks.

The respondent No. 2 (State of Assam) and No. 6 (UPSC) oppose the application. The gravamen of their opposition is that as the Review Selection Committee which considered the matter as in 1983 in pursuance of the directions of the Hon'ble Supreme Court while not taking into account the adverse remarks in the C.C. Rolls categorized the applicant again as "Good" and therefore he could not be appointed. They rely on the minutes of the (Review) Selection Committee. They contend that the question of selection of the applicant in 1983 therefore does not survive and he is not consequently entitled to get any relief.

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6. It has however to be noted that despite the above stand in the written statement, the respondent No. 2 i.e. State of Assam informed this Tribunal by letter No. HMA.250/94/42 dated 6.3.95 that Govt. of Assam do not have any objection to constituting a review/revision committee for the impugned select list of 1983 in order to restore his/ ^(applicant's) seniority in IPS cadre. This information has been conveyed through the Govt. Advocate Shri Y.K.Phukan appearing for the said respondents.

7. Mr. Sahewalla the learned counsel for the applicant submitted that the committee had not carried out its task as was directed by the Supreme Court in as much as it did not reevaluate the service record of the applicant by comparing it with the record of the other officers in the list of 1983 including Shri Kar and thus it failed to apply the same norms and standards of assessment while retaining the same categorization as earlier. Thus according to the learned counsel the opinion of the Committee is perverse and that calls for fresh consideration of applicant's case.

8. The learned counsel for the respondents maintain that the Selection Committee has acted correctly and its decision is not open to challenge.

9. In the above noted historical bakground of the case and the submissions of the counsel following point arises for our consideration :

Whether the (Review) Selection Committee has carried out the process of reconsidering the suitability of the applicant in the 1983 list correctly as directed by the Hon'ble Supreme Court ?

10. We are inclined to hold in answer that the Selection Committee has not acted consistently with the directions of the Hon'ble Supreme Court and therefore the matter requires reconsideration. We take this view for the reasons stated below.

11. It will be seen that the Supreme Court has not disagreed with the conclusion of the Tribunal on merits but held that the operative order as was passed was not correct. Hence it merely substituted the operative order. That is clear from the following observations :

"In these appeals against the order passed by the Tribunal, the main question is as to whether the Tribunal could have lawfully passed the operative order which it has on reaching the conclusion that the Selection Committee had committed an error in taking into account the adverse remarks made against Respondent No. 1 (i.e. applicant herein) during a particular period".

and

"The proper order for the Tribunal to pass under the circumstances was to direct the Selection Committee to reconsider the merits of Respondent No. 1 vis-a-vis the official who was junior to him and whose name was Shri Sardar Pradeep Kar".

12. That clearly implied that the service record of the applicant was to be reassessed in comparison with the service record of Shri Pradeep Kar and not in isolation. In that connection the further observations of the Supreme Court are pertinent to be noted. It is observed thus :

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"The jurisdiction to make the selection vested in the Selection Committee. The Selection Committee had to make the selection by applying the same yardstick and norm as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials as "Outstanding", "Very Good", "Good" etc. This function had also to be discharged by the Selection Committee by applying the same norm and tests and the selection was also to be made by the Selection Committee as per the relevant rules".

(Emphasis in above passages is supplied by us)

13. In the light of above observations the directions contained in the operative order have to be understood.

It envisages following exercise :

1. Reconsideration of the impugned ^{select} seniority list prepared in 1983 on the footing that the adverse remarks made against the applicant did not exist in the records, and
2. Consideration of the question as to whether applicant would have been appointed or Shri Pradeep Kar would have been appointed on the basis of categorization to which each of them was entitled having regard to the C.C. Rolls (ignoring the adverse remarks against the applicant) and to pass appropriate orders in the light of the decision taken on this point.

14. The Review Selection Committee although has followed the direction mentioned at Serial No. 1 above it has not however followed the direction noted at Sl. No. 2 above. The Minutes of the Committee show that the service

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record of the applicant alone was perused and he was categorized on that basis and since he did not improve upon his earlier categorisation no need for a change was felt vis-a-vis Shri Pradeep Kar. This course adopted by the Selection Committee could otherwise be regarded as correct - but in the instant case it was not the correct method to adopt in view of the clear directions of the Supreme Court which had to be followed in letter and spirit.

15. As stated above the directions implied that evaluation was to be made by applying the same yardstick and norm as regards rating of applicant vis-a-vis Shri Pradeep Kar on consideration of merits of both of them. That required the Selection Committee to consider the service record & C.C. Rolls of Shri Pradeep Kar also (though not of other officers). Thereafter it had to compare the merits of applicant and Shri Kar by applying same yardstick and norm in evaluating the record and on the basis to categorize them. If in spite of that exercise the applicant could not have improved upon his earlier ratings then the Committee could take the view as it has taken. The Committee however has not adopted such course as it has not comparatively assessed the record of the two officials namely applicant and Shri Kar in arriving at its decision. Hence the decision of the Review Selection Committee (on the basis of which the interse seniority and the year of allotment of the applicant under the impugned orders have been assigned) cannot be sustained. Although the applicant has earned his

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promotion subsequently and things that happened way back in 1983 are required to be reopened that is inevitable as in our opinion the Selection Committee has not correctly followed the directions of the Hon'ble Supreme Court. We make it clear that we do not hold that the Committee has violated the directions but only that the course adopted by it was not in conformity with the directions and it seems to have been the result of wrong interpretation thereof and that needs to be set right.

16. Incidentally the grievance made by the applicant that there was no representation of the Govt. of Assam in the Review Selection Committee which resulted in the committee failing to look at the matter in its correct perspective cannot be said to be devoid of any relevance. The Minutes of the proceedings of the Selection Committee show that the Chief Secretary of Govt. of Assam and the Director General & Inspector General of Police Govt. of Assam were its members but they were absent at the meeting. It is true that as contended by the respondent No. 6 there was quorum available and the members who were present representing the UPSC, Govt. of India and State of Meghalaya (other part of joint cadre authority) could legally under the Regulations conduct the meeting. That only means that the decision taken by the committee must be held to be legal and valid. However there is room to take the view that if the representatives of the Govt. of Assam under whom the applicant had been working were present that might have been helpful in carrying out the relative assessment more comprehensively. Since we are

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directing reconsideration of the matter it is hoped that the representatives of Assam Govt. will make helpful contribution in arriving at the correct decision at the Review meeting.

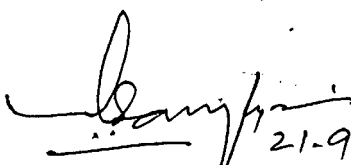
17. For the foregoing reasons we pass the following order :

Order


The respondents shall reconvene the Selection Committee. The Committee shall reconsider/revise the decision taken by the earlier Review Selection Committee on 21.7.85 and consider afresh the 1983 select list as if it was deciding the matter on the date of the selection in accordance with the directions contained in the decision of the Hon'ble Supreme Court dated 22.3.1988 as explained above in the order and pass appropriate orders in the light of the decision taken afresh on the point consistently with the directions of the Supreme Court in that behalf. The Selection Committee shall complete the exercise within two months from the date of communication of this order.

O.A. is partly allowed in terms of above order.

No order as to costs.


(G.L. SANGLIANE)
Member (A)

21.9.95


(M.G. CHAUDHARI)
Vice-Chairman