CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

16

O.A.No. 145 of 1994
And
O.A.No. 214 of 1994

11.3.1999
DATE OF DECISION.....

Shri R.C. Choudhury (in O.A.No.145/94)
And
Shri D.K. Chakraborty (in O.A.No.214/94) ---(PETITIONER(S)

Mr B.K. Sharma ---ADVOCATE FOR THE PETITIONER(S)

-VERSUS-

Union of India and others ---RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.,
Mr B.K. Bhattacharjee, Advocate General, Tripura,
Mr B.P. Kataki, Government Advocate, Tripura.

---ADVOCATE FOR THE RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN
THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.145 of 1994
And
Original Application No.214 of 1994

Date of decision: This the 11th day of March 1999

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

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

1. O.A.No.145/94
Shri Rakesh Chandra Choudhury
2. O.A.No.214/94
Shri Dipak Kumar Chakraborty .....Applicants

By Advocate Mr B.K. Sharma

- versus -

Union of India and others .....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Mr B.K. Bhattacharjee, Advocate General, Tripura
and Mr B.P. Kataki, Government Advocate, Tripura.

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O R D E R

BARUAH.J. (V.C.)

Both the applications involve common questions of law and similar facts. Accordingly we propose to dispose of both the applications by this common order.

2. Shri R.C. Choudhury, applicant in original application No.145/94, was recruited to the Tripura Civil Service in the year 1977. He was confirmed in Grade II of Tripura Civil Service two years thereafter, i.e. in 1979. In 1987 he was given the Selection Grade of Tripura Civil Service. Since then he had been working in various capacities in the State of Tripura. After completion of the period prescribed he became eligible for appointment by

promotion to the Indian Administrative Service (IAS for short) Manipur-Tripura Cadre under the provisions of IAS (Appointment by promotion) Regulations, 1955 (for short the Regulations). In the year 1994 he was one of the eligible candidates for appointment by promotion to IAS as per the provisions of the Regulations. His case was considered alongwith others by a Selection Committee constituted under the provisions of the rules. The said Selection Committee met on 29.3.1994 and 30.3.1994 and a Select List was prepared. However, his name was not included in the Select List. The applicant's grievance is that his case was not properly considered as per the provisions of Rule 5 of the Regulations, inasmuch as the Annual Confidential Reports (ACR for short) were not made upto date and some of the ACRs were not made available. As per the procedure, the Selection Committee should make assessment after consideration of the ACRs of five years preceding the date of selection. In the present case the ACRs of all the five years were not available and those which were available were not made upto date.

3. Shri D.K. Chakraborty, the applicant in original application No.214/94 was also similarly recruited to the Tripura Civil Service in the year 1977. After serving in different capacities he became eligible for appointment by promotion to the IAS of Manipur-Tripura Cadre as per the provisions made in the Regulations. In 1993 his name was included in the Select List. However, he was not appointed. In 1994 his name was not included in the Select List although he was eligible for appointment. The reason for non-inclusion of his name has not been made known to the applicant. His grievance is also similar to Shri R.C. Choudhury (applicant in O.A.No.145/94) inasmuch as while making his assessment his ACRs were also not complete and upto date. According to him only the ACR for one year, i.e.

1992-93.....

1992-93, was placed before the Selection Committee which met on 29.3.1994 and 30.3.1994, even though as per rules, ACRs of five years preceding the date of selection ought to have been placed before the Selection Committee. According to the applicant even the ACR for the year 1992-93 was not complete inasmuch as there was no endorsement made by the accepting authority.

4. Both the cases were admitted as far back as in 1994. In due course the respondents have entered appearance. The State of Tripura, respondent No.3 has filed written statements. The Chairman, Union Public Service Commission, respondent No.2 has also filed written statements. In para 8 of the written statement filed by the State of Tripura, in reply to the averments made in para 6(vii) of the application in original application No.145/94, the respondent No.3 has stated as follows:

> ".....In fact, the State Government recommended the name of the applicant alongwith other eligible candidates for consideration to the selection Committee constituted under the 1955 Regulations and the Selection Committee duly considered the cases of all eligible candidates including the applicant and on being considered on merit the Selection Committee did not find the applicant suitable for promotion to Indian Administrative Service and consequently the applicant's name did (sic) not include in the Select List of 1994....."

In para 6(xii) of O.A.No.145/94 the applicant has further stated that ACR for one year only, i.e. 1992-93 was placed before the Selection Committee contrary to the provisions made under the Regulations. On the other hand, in para 5 of the additional written statement filed by the State of Tripura, the respondent No.3 has made a categorical statement that all the ACRs except the ACR for 1992-93 were placed before the Selection Committee. It is further submitted that the Selection Committee after perusal of all the other ACRs assessed him and he was not selected. However, respondent

No.3 has not categorically stated as to how many ACRs were placed before the Selection Committee.

5. In the written statement filed by the Chairman, Union Public Service Commission, the respondent No.2 has stated as follows:

> ".....the Selection Committee which met at Calcutta on 29th and 30th March, 1994 for selection of SCS Officers for promotion to IAS (Tripura Segment of Manipur-Tripura Joint Cadre) had considered the case of Shir R.C. Choudhury alongwith 38 other eligible SCS Officers and prepared a Select List comprising of 13 names. The Committee examined inter-alia the service records of Shri Choudhury placed before it by the State Govt. On an overall relative assessment of his service records, Shri Choudhury earned lower grading as compared to those included in the Select List. Therefore, the name of the applicant could not be included in the Select List....."

However, the UPSC also is absolutely silent regarding the number of ACRs examined for the purpose of selection on the face the clear averment made by the applicant that only one ACR, i.e. for the year 1992-93 was placed before the Selection Committee.

6. In the case of Shri D.K. Chakraborty the Chairman, Union Public Service Commission, respondent No.2 has stated in his written statement that all the ACRs had been placed before the Selection Committee. In para 4.21 of the application (in O.A.No.214/94) the applicant has made a categorical statement that the entire records of the officers including the applicant were not placed before the Selection Committee. Only some records were placed before the Selection Committee and that too incomplete ACRs. Again in para 4.23 of the said application the applicant has stated as follows:

> ".....ACRs of the officers for 1992-93 were only sent leaving aside the other ACRs but for which the Applicant would have been selected in the 1994 selection, more particularly when he was already selected in the 1993 selection. In this connection, the Deputy Secretary to the Government of Tripura had written a letter to the UPS (sic) on 23.8.94.....

> 23.8.94 as will be evident from the aforesaid records at page No.55. There is nothing on record to show that complete ACRs and upto date service records for all the relevant years were placed before the Selection Committee. This position is also fortified from the note referred to above given by one of the members of the Selection Committee."

However, this has been denied by the respodent No.3 in para 5 of the additional written statement filed by the State of Tripura. The Union Public Service Commission has remained silent on this aspect.

6. We have heard both sides on various dates. Mr B.K. Sharma, learned counsel for the applicants has reiterated what have been stated in the applications. He submits that all the ACRs were not placed before the Selection Committee which will be evident from the records. Both the cases were argued on behalf of the State of Tripura earlier by Mr B.K. Bhattacharjee, learned Advocate General, Tripura and later on by Mr B.P. Kataki, learned Government Advocate, Tripura. The submissions of Mr Sharma were countered by Mr Bhattacharjee by saying that all the ACRs were placed before the Selection Committee. Mr Bhattachargee submitted that the ACRs were flown to Calcutta and updated. However, at that point of time Mr Bhattacharjee, in order to obtain certain instructions, prayed for time and at a later date the additional written statement was filed by the State of Tripura, wherein it has been stated regarding the applicant in original application No.145/94 that only ACR for the year 1992-93 was not sent. But, in the case of the applicant in original application No.214/94, in the additional written statement the respondent No.3 has stated that all the ACRs had been sent.

7. The crux of the whole matter is whether the Union Public Service Commission made the assessment as required under Regulation 5 of the Regulations, i.e. overall relative assessment of their service records. The service records mainly include the ACRs. The learned counsel for

the parties admit that the professed norm is to consider the ACRs of the preceding five years. In case of some of the officers who were selected their assessments were made on the basis of their ACRs of five years, but that was not done in case of the applicant, Shri R.C. Choudhury. According to Mr Sharma, in case of the applicant, Shri D.K. Chakraborty, only ACR of 1992-93 was placed before the Selection Committee. However, Mr Kataki disputes the same and submits that ACRs of all the five years preceding the date of selection had been placed before the Selection Committee. Mr Sharma very strenuously argues that the ACRS were not complete. This compells us to look to the records. On perusal of the records, we find that in case of the applicant, Shri R.C. Choudhury, ACR for the year 1992-93 is not in the record. Mr Kataki also submits that the ACR for the year 1992-93 was not placed before the Selection Committee. He further submits that the ACR for the year 1991-92 was not complete inasmuch as there was no endorsement made by the accepting authority. The other ACRs are in the record. In the case of the applicant, Shri D.K. Chakraborty all the ACRs were placed before the Selection Committee, but these were not complete inasmuch there was no endorsement made by the accepting authority. We have also noticed a confidential note at page 66 of the record written by Shri V. Thulasidas, Principal Secretary as he then was. He was one of the Members of the Selection Committee. In his note he has stated among others that the calculation of vacancies for IAS was not done correctly. Adequate number of officers had not been sponsored by the Appointment and Service Department. Six ACRs had to be specially flown from Agartala to Calcutta on the date of the meeting. Those ACRs were incomplete. Integrity and other clearance had not been given in time. The ACRs of

other.....

other officers were also imcomplete, etc.

8. We are told that at present Shri V. Thulasidas is the Chief Secretary. We cannot ignore his note and it cannot be brushed aside. Regulation 5 of the Regulations requires that the assessment of all eligible officers should be made on the basis of service records and the assessment should be made as correctly as possible. On perusal of the records we find that some ACRs were not placed before the Selection Committee, some were not complete in respect of the applicants. However, complete ACRs were sent in respect of others and among them there were persons who had been selected. This has created anomalies and such selection cannot be just and fair. Therefore, we have no hesitation to come to the conclusion that the assessment of the present two applicants were not properly made and therefore, this should be reviewed. At least it has been admitted by the Government that the ACR for the year 1992-93 was not placed before the Selection Committee so far the applicant, Shri R.C. Choudhury is concerned. The Government has not come forward to say that this was destroyed or otherwise lost and could not be traced out. The Government has only said that this could not be produced due to obvious reasons. We do not know what are the obvious reasons.

9. In view of the above we direct the respondents that if the ACRs had been lost or otherwise not traceable the authority should make endeavour to find out the same and make proper assessment of the applicants and grade them and then compare them with the others and place them accordingly. This must be done as early as possible, at any rate within a period of three months from the date of receipt of this order.

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10. The applications are accordingly disposed of. No order as to costs.

(G. L. SANGLYINE)
ADMINISTRATIVE MEMBER

(D. N. BARUAH)
VICE-CHAIRMAN

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