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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A.No.161 of 1994

Date of decision 30.11.95

1. Shri Nirmal Kumar Sarma
2. Shri Hemanta Kumar Saikia
3. Shri Kanak Chandra Dutta

PETITIONER(S)

Shri M.Z. Ahmed

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

Shri S. Ali, Sr. C.G.S.C., for
respondent Nos.1, 2 & 10.

ADVOCATE FOR THE
RESPONDENT(S)

Dr Y.K. Phukan, Sr. Government Advocate, Assam,
for respondent Nos.3 & 4.

Shri B.K. Sharma for respondent Nos.5, 7, 8 & 9.
THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. Whether the Judgement is to be circulated to the other Benches?

M.G. Chaudhuri
Judgement delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.161 of 1994

Date of decision: This the 30/4 day of November 1995

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

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

1. Shri Nirmal Kumar Sarma,
Deputy Conservator of Forests,
C/o Conservator of Forests, C.A.C.,
Guwahati.
2. Shri Hemanta Kumar Saikia,
Deputy Conservator of Forests,
C/o Conservator of Forests, C.A.C.,
Guwahati.
3. Shri Kanak Chandra Dutta,
Deputy Conservator of Forests,
C/o Conservator of Forests, C.A.C.,
Guwahati.

.....Applicants

By Advocate Shri M.Z. Ahmed.

- versus -

1. The Union of India
represented by the Secretary to the Government of India,
Ministry of Environment, Forests, Wildlife, etc.,
New Delhi.
2. The Secretary to the Government of India,
Ministry of Personnel, Grievances, etc.,
New Delhi.
3. The State of Assam,
represented by the Commissioner and Secretary,
Government of Assam,
Forests etc. Department,
Dispur, Guwahati.
4. The Principal Chief Conservator of Forests,
Government of Assam,
Guwahati.
5. Shri B.B. Nobis,
Deputy Conservator of Forests,
D.F.O., S.F. Division, Sibsagar.
6. Shri C.K. Das,
Deputy Conservator of Forests,
C/o P.C.C.F., Assam,
Guwahati.
7. Shri N. Das,
D.F.O., Doomdooma Division,
Tinsukia, Assam.



8. Shri S.N. Buragohain,
D.F.O., Doomdooma Division,
Doomdooma, Tinsukia, Assam.

9. Shri J.C. Dey,
D.F.O. Dhubri S.F. Division,
Gauripur, Dhubri, Assam.

10. The Union Public Service Commission,
Represented by its Chairman,
Shah Jahan Road, New Delhi. Respondents

By Advocate Shri S. Ali, Sr. C.G.S.C., for respondent Nos.1, 2 & 10
Dr Y.K. Phukan, Sr. Government Advocate, Assam, for respondent Nos.3 & 4
Shri B.K. Sharma for respondent Nos.5, 7, 8 & 9.

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O R D E R

CHAUDHARI.J. V.C.

The three applicants were appointed to the Assam State Forest Service as Class I Officers on 31.3.1973. They were promoted as Deputy Conservators of Forest in 1979-80. It is their case that they became eligible to be considered for promotion to the Indian Forest Service (IFS) in the year 1980 after they completed continuous State Forest Service of 8 years and also had undergone the prescribed training for 2 years at the Indian Forest College, Dehradun, which is the eligibility criteria under the Indian Forest Service (Recruitment) Rules. Besides they had been officiating in cadre posts from time to time. However, they were not considered till 1991 and have not so far been promoted to IFS.

2. It is averred by them that one of the reasons for which they could not earn their promotion was the failure of the State Government to carry out yearwise cadre review and publish annual gradation lists. No gradation list was published in the periods 1979 to 1981, 1983 to 1985, 1987 and 1987-91.

3. In the year 1979 large number of direct recruits were appointed and as they would be largely benefitted as compared to the applicants, they (applicants) filed representations last of which was filed in March 1990 and thereafter their names were considered

by the Selection Committee on 13.3.1991 for Assam State vacancies in the Assam - Meghalaya Joint Cadre of IFS for selection. Though they were selected alongwith respondent Nos.5, 6 and 7 no appointments were eventually made in pursuance of that list. Thus they lost the chance of promotion. It is their contention that the respondent Nos.5 to 7 were wrongly included in the list. They had filed representations and the Government of Assam decided to delete the names of respondent Nos.5 and 6. These respondents challenged that decision in this Tribunal in O.A.Nos. 6/92 and 10/92. Both the cases have been disposed of as rendered infructuous. All this led the list to be rendered ineffective. The respondent No.5, however, was not included in the next select list dated 30.3.1993 and his application to the Tribunal challenging the same being O.A.No.106/93 has also been disposed of as infructuous. The applicants were not included in the 1993 select list.

4. Next Selection Committee met on 7.3.1994. The applicants were in the zone of consideration and they were considered. However, they have not been selected but the respondent Nos.5 and 6 have now again been selected besides respondent Nos.8 and 9.

5. Aggrieved by their non-selection and inclusion of above respondents in the select list, the applicants have filed the instant O.A. challenging the legality and correctness of the select list (dated 7.3.1994) and interalia pray that the said select list be quashed and set aside and the respondent Nos.1 to 4 be directed to implement the earlier select list dated 13.3.1991 (in which the names of the applicants had figured).

6. Although the applicants have serious objection to the selection of the respondent Nos.5, 6, 8 and 9 and have also prayed for initiating disciplinary proceedings against B.B. Nobis, respondent No.5 and C.K. Das, respondent No.6, that relief is not germane to this O.A. in the context of the substantive relief sought, namely, setting aside their (applicants) non-inclusion and quashing of the list

on that ground.

7. The question raised by the applicants, therefore, lies in a very narrow ~~compass~~ and it is: Whether the decision of the Selection Committee of not selecting the applicants for promotion to IFS is vitiated by any legal error or otherwise and whether the impugned select list is liable to be quashed on that ground and whether the applicants are entitled to be selected and promoted.

8. The various grounds on which the validity of the select list is challenged by the applicants may be summarised as below:

- i) The service record of the applicants has been satisfactory. They deserved to be selected. Hence the decision of the Selection Committee to assess them below their juniors is perverse. The bench mark allotted to them only as 'good' and to the respondent Nos.5, 6, 8 and 9, who are juniors and have a bad record, as 'very good' is whimsical.
- ii) The action of selecting the above mentioned respondents is product of malafides and bias on the part of the State Government.
- iii) The selection is based upon extraneous and irrelevant considerations and is prepared in colourable exercise of power of selection.
- iv) The number of vacancies was not correctly computed thereby resulting in the zone of consideration being unfairly expanded to their disadvantage.
- v) As the applicants were included in the select list of 13.3.1991 the respondents were estopped from not including them in the 1994 select list or from not promoting them on the basis of 1991 list.

The above noted grounds of challenge can be broadly divided into three parts. Firstly, relating to the claim of the applicants

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to have been selected, secondly, relating to the selection of the respondent Nos.5, 6, 8 and 9 in the list and thirdly, relating to non-compliance with the law and the rules.

9. The respondent No.1, the respondent Nos.3 and 4 together and respondent No.10 have filed separate written statements resisting the application. The respondent No.1 (Government of India, Ministry of Environment and Forests) interalia contend as follows:

- i) The O.A. is barred by laches and delay as regards cadre reviews not conducted for certain years in the past since the last review was notified in October 1987 and no grievance can be made relating to earlier period.
- ii) The Tribunal has no jurisdiction to go behind the assessment made by the Selection Committee and it is outside judicial review. Reliance is placed on the decision of the Hon'ble Supreme Court in R.S. Das -vs- Union of India etc, AIR 1987, SC 593.
- iii) Similarly the question of disciplinary proceedings against respondent No.5 falls outside the jurisdiction of the Tribunal.
- iv) Although allegation of bias has been made with reference to the then Chief Secretary of the State of Assam, he has not been made a party and therefore the application suffers from the defect of non-joinder of necessary parties.
- v) The vacancy position for 1994 selection was correctly calculated. The total authorised strength of Assam - Meghalaya Joint Cadre of IFS is 111. Maximum number of posts therefrom to be filled by promotion is 25. In the cadre review dated 29.4.1987 all posts that were available and could be included in the strength

and composition of the State Cadre were actually included. The applicants who were not promoted to the IFS based on the revised cadre strength could stand no chance of promotion from an earlier date. The zone of consideration of the officers of the Assam State Forest Service for 1994 selection was computed in terms of the provisions of the Promotion Regulations as 21, as 5 vacancies were intimated by the Government of Assam. The respondent Nos.5 and 6 both were within the prescribed zone of consideration.

- vi) The Selection Committee conducted selections on the basis of the records placed before them. The selection is made strictly on the basis of merit, ability and suitability of the officers. Seniority would be considered only where these attributes are approximately equal.
- vii) The Selection Committee did not consider the three applicants as suitable for promotion to the IFS. However, the Committee had found the respondent Nos.5, 8 and 9 suitable. The assessment awarded to an officer in the confidential records is not a matter open to inspection or challenge and the applicants cannot assail the remarks awarded by the various level of functionaries in reporting on the work and performance of the officer.
- viii) The names of respondent Nos.5 and 6 have been included in the select list provisionally subject to clearance of enquiries pending against them. As and when a decision would be taken by the State of Assam it will be considered by the Central Government in consultation with the UPSC. The assessment of these officers has been made by the Selection Committee and its

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findings have been approved by the Union Public Service Commission. Thus, there is no legal error or defect in the preparation of the select list and it is not open to challenge.

10. The respondent Nos.3 and 4 have also dealt with the various averments made by the applicants in great detail. The contentions are similar to those raised by respondent No.1. We do not therefore propose to set out the contentions raised in extenso and it will suffice to note that according to the said respondents also the Committee had made objective assessment of every candidate coming within the zone of consideration after strictly following the procedure laid down in Regulation 5(3A) and 5(4) of the IFS (Appointment by Promotion) Regulation, 1966 and it is not open to challenge. As regards respondent Nos.5 and 6 it is submitted that mere allegations against an officer do not debar him from getting promotion unless departmental proceedings on vigilance enquiry are started against him. Even pendency of such an enquiry does not bar promotion. Moreover the State Government had duly intimated the UPSC about the pendency of the departmental proceedings against the respondent Nos.5 and 6. The Committee has therefore made their actual promotion subject to clearance of the departmental proceedings/enquiry.

11. The Union Public Service Commission (UPSC), respondent No.10, have in their written statement made similar submissions as are urged by respondent No.1 (Union of India). It is not therefore necessary to set out the contents in detail. It is submitted that the selection of officers to IFS is made purely on the basis of overall assessment of their service records. The procedure has been correctly followed by the Selection Committee. The applicants had at no point of time any vested legal right to appointment. It is further submitted that pendency of departmental proceedings against an officer is not a bar for inclusion of that officer in the select list

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subject to the condition that the appointment of that officer shall only be made on the clearance in departmental proceedings and grant of integrity certificate by the State Government. As regards the procedure followed under Regulation 5(4) and 5(5) by the Committee reference in support has been made to the decision of the Hon'ble Supreme Court in R.S. Das's case (Supra). It is also pointed out that applicants have acted with gross impropriety in knowing the contents of the select list which is a confidential and privileged document under Sections 123 and 124 of the Indian Evidence Act 1872 and they are therefore not entitled to challenge the select list and to seek relief on that basis since their own conduct is blameworthy.

All the contesting respondents thus submit that the O.A. is liable to be dismissed. None of the private respondents have filed a written statement. Their counsel however prays for dismissal of the O.A. proceeding on the basis of denials.

12. We find the written statements filed by the official respondents as highly satisfactory and drawn up with meticulous care answering all the averments and submissions made by the applicants effectively. We are inclined to accept the various contentions made and submissions urged therein for the reasons discussed below:

13. We shall now proceed to examine the three facets of the applicants' case noted earlier.

I. Non-inclusion of the applicants in the impugned select list

In this connection the position is well established. An eligible officer has merely a right to be considered for promotion and he has no vested right to be promoted. The promotion is based on the relative assessment of the officers in the zone of consideration made by the Selection Committee. The objective selection so made is not open to judicial review, unless it is shown that the proceedings

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of the Selection Committee are vitiated on account of any legal defect or by reason of malafides or bias the selection made by it cannot be interfered with. The Tribunal does not sit in appeal over the decision of the Selection Committee nor can substitute its opinion for the opinion of the Committee as regards the assessment of merit and suitability of the various officers considered by it. The respondents have rightly placed reliance on the decisions of the Hon'ble Supreme Court in R.S. Das -vs- Union of India and others (AIR 1987 SC 593, 1986 Suppl. SCC 617) and in Syed Khalid Rizvi and others -vs- Union of India and others, 1993 Suppl.III SCC 575. With respect, we are bound by these decisions and as we find that the Selection Committee has correctly followed the procedure as explained by the Supreme Court it is not open to interfere with its decision. We shall instantly point out that there is no case of malafides or bias established by the applicants and there is no ground to hold that the decision of the Selection Committee is perverse or vitiated. We therefore hold that the applicants have not acquired a right to be appointed to the IFS and cannot claim to be promoted till they are duly selected and as they are not included in the impugned select list which we find to be legal and valid and therefore cannot be quashed they are not entitled to the relief as prayed for directing the respondents to promote and appoint them to the IFS by holding a fresh selection in place of the impugned select list.

II. Selection of respondent Nos.5 and 6

The main target of attack of the applicants is selection of B.B. Nobis, the respondent No.5. Their averments are reflective of their ire over his selection. They give an impression that they are more concerned about his selection whom they describe as a thoroughly unsuitable officer. They have tried to paint him as a dishonest and corrupt officer who according to them would pollute the IFS. They feel that if a person like respondent No.5 could be

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selected and found suitable then there would be no reason to find them unsuitable since they have clean and better service record. It is therefore their allegation that their non-selection is the result of favouritism, bias and machinations. They almost raise the question of transparency and propriety in the administration of the State Government. They have made allegation of bias with reference to earlier selection (and not the impugned one) alleging that the then Chief Secretary to the Government of Assam, Shri H.N. Das, who was a member of the Selection Committee was related to one of the candidates. That allegation however is not relevant to the impugned select list nor has been substantiated. It has been stoutly denied by the official respondents. We are not impressed by the allegation. The applicants have referred to several facts relating to respondent No.5 and have tried to create an impression that he is not an officer with clean record and has been under cloud and a public interest action has already resulted in a direction from the Gauhati High Court to carry out a probe. All this exercise is however of no avail to the applicants to get themselves selected. These allegations are neither relevant nor sufficient to quash the impugned select list. Moreover all the authorities concerned including the Selection Committee were aware about the disciplinary proceedings that had earlier been taken and as was likely to be initiated by the State Government against respondent No.5. However as on the day of selection he was not debarred from being considered as he was not found guilty of any misconduct at any inquiry nor any proceeding was actually pending against him it cannot be said that he was illegally considered. Hence these allegations of misconduct are of no consequence and would not bar consideration for promotion since he was otherwise found suitable. The Selection Committee in our view was within its legitimate province if it thought respondent Nos.5 and 6 suitable having regard to their service record, merit and suitability. The Committee have acted very appropriately in making the promotion of the said respondents

provisional.....



provisional and subject to clearance of the enquiry and consequential grant of integrity certificate in their favour by the State Government. The respondent No.1 have also stated in categoric terms that "unless the enquiries against the two officersculminate, during the period of validity of the Select List in which their names currently figure, there is no question of their being promoted to the Indian Forest Service." The position therefore is that though respondent Nos.5 and 6 have been provisionally selected the applicants cannot complain against it as they have not been found suitable for selection by the Selection Committee. We have gone through the minutes of the Selection Committee's meeting dated 7.3.1994 and we do not notice any illegality or irregularity in its proceeding. Thus the applicants are not entitled to get the relief as prayed on the ground that selection of respondent Nos.5 and 6 has vitiated the select list.

Other grounds

(a) Malafides: This is a vague allegation made. It revolves around selection of respondent No.5, Nobis. We find no substance in this allegation.

(b) Bias: This allegation is also related mainly to the selection of respondent No.5. Bias is not alleged *per se* for their own non-selection. It is not alleged against any particular authority. The Selection Committee are not joined as respondents. No allegation is levelled against its members individually. The Selection Committee was presided over by the Chairman of the UPSC. The allegation of bias against the then Chief Secretary, H.N. Das, related to earlier select list and is not relevant to the impugned select list. He was not a member of the 1994 Select Committee. It is too far fetched to suggest that he could be instrumental in eventual selection of respondent Nos.5 and 6 or award of lesser category of assessment by the Selection Committee to them^(applicants). Thus we find no substance in the allegation and reject it.

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(c) Seniority:

It is true that the applicants are senior in the State service as compared to some selected candidates. That however does not entitle them to get selected to IFS when they have not been recommended by the Selection Committee. Seniority could assume importance only if they were to be selected. There can remain no doubt about this position in view of the decision of the Supreme Court in R.S. Das (Supra). Hence this ground is rejected.

(d) Computation of vacancies and zone of consideration:

We find no illegality on this account. The respondents have satisfactorily explained that the Government of Assam had intimated 5 vacancies under Regulation 5(1) of the IFS (Appointment by Promotion) Regulations, 1966. Hence under Regulation 5(1) the size of the select list was determined as 7. Under Regulation 5(2) the zone of consideration was extended to 21. The Selection Committee considered all the 21 eligible officers including the applicants and selected 7 officers. Respondent Nos.5, 8 and 9 were assessed as 'very good' besides two others and respondent No.6, C.K. Das and respondent No.7, N. Das, earned the categorization 'good'. Respondent No.6, C.K. Das, belongs to Scheduled Caste. The minutes show that the Committee examined the records of the eligible officers and had assessed them on merits without taking into account uncommunicated adverse remarks contained in the ACRs. It was noted that as far as Nobis (respondent No.5) was concerned the Tribunal had vacated the interim order and as regards C.K. Das (respondent No.6) it was noted that the Committee was informed that disciplinary proceedings initiated against him were pending. The Committee therefore made their selection subject to grant of integrity certificate. The Committee in our opinion has acted fairly. The list has also been approved by the UPSC. We see no illegality arising in the selection on account of any wrong calculation of vacancies or in fixing the size of the list and zone of consideration. The challenge based on these grounds thus fails.



(e) Age:

A contention is introduced by the applicants that respondent No.9, J.C. Dey, was not eligible to be included in the zone of consideration as he had crossed 54 years of age on 7.3.1994, but has been considered and selected hence the impugned list is vitiated being violative of the Regulations.

The State of Assam have explained that as the said respondent fulfilled the requirements of the third proviso to Sub-regulation (2) of Regulation 5 of the IFS (Appointment by Promotion) Regulations he was included in the list. We are satisfied with this explanation. The proviso refers to 1st day of January of the year and therefore the contention based on the date 7.3.1994 cannot be accepted.

We may however note that the month of 'January' occurring in Regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, has been substituted by the month 'April' vide amendment to the said Regulations introduced by the Department of Personnel and Administrative Reforms Notification No.14015/4/88-AIS(1) dated 30.3.1989. No such amendment in Indian Forest Service Regulations has been brought to our notice. The reference to January made by the respondents therefore cannot be said to be wrong. However as the Regulations of Forest Service are pari materia with IAS Regulations we may even assume that the month is to be reckoned as April. That however does not help the applicant. It is not his case that on 30.3.1993 the respondent had crossed 54 years of age. The record shows his date of birth as 1.9.1939. He could therefore be considered on 30.3.1993. It is clear from the written Statement of respondent No.1 that in view of the order of stay issued by the Tribunal on 16.6.1993 and taking all aspects into consideration the UPSC had decided to reconvene the meeting of the Selection Committee for preparation of select list for promotion of State Forest Officers to IFS Cadre of Assam - Meghalaya (Assam segment) and accordingly the next meeting of the Selection Committee was held on 7.3.1994. Thus that was the reconvened meeting and not the 'next' meeting so as to result in the list dated 30.3.1993 irrelevant. As on that date the respondent was eligible no question

of his being age barred with reference to 7.3.1994 can arise.

Thus we hold that there is no illegality in the preparation of the select list and reject this ground of attack.

(f) Other grounds:

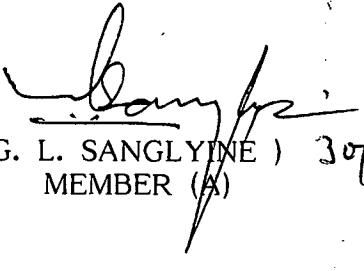
The appointment of direct recruits in the past has no relevance and affords no legal ground to challenge the impugned select list. Likewise the circumstance of selection of the applicants in 1991 list cannot be availed after the currency of the list had expired and it cannot affect the validity of the impugned select list.

(g) Disciplinary action against respondent Nos.5 and 6:

As already stated this aspect cannot be gone into in this O.A. nor it is the function of the Tribunal to initiate such action. Moreover as the applicants are making individual grievance and seek individual benefit the scope of the O.A. cannot be expanded to treat it as a public interest petition even assuming that such a petition could be filed. We therefore refrain from going into that aspect.

Thus none of the grounds raised by the applicants to challenge the validity of the impugned seniority list survive and the applicants are not entitled to get any relief. The application is therefore liable to be dismissed.

15. In the result the original application is dismissed. No order as to costs.


(G. L. SANGLYINE) 30/11/95
MEMBER (A)


(M. G. CHAUDHARI)
VICE-CHAIRMAN