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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::GUWAHATI-5.

O.A.No. 180 of 1994

16
DATE OF DECISION.....7-8-1998

!! Shri A.K. Malakar

(PETITIONER(S))

Mr B.K. Sharma

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

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.

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 ? *Yes*
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.



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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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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.

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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

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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,



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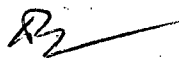
Board of Revenue, Assam and the Commissioner of Division, Meghalaya, were not present. Therefore, the Selection Committee was not in conformity with Regulation 3 and therefore, proceedings are not sustainable in law. The further submission of the applicant is that the list prepared by the Selection Committee 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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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

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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."

5. 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)




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 interse 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.....



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.....

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.

(1) 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

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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



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 prmotion, 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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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

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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.

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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."

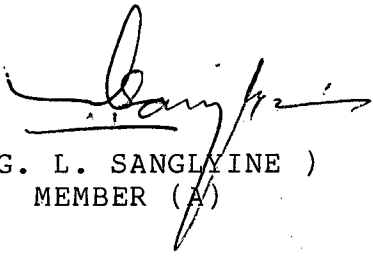
In the above prayer the applicant prayed that his case should be considered without the adverse remarks as on 31.3.1993. At the time of filing of the application the Select List for 1994-95 was not yet decided. This Tribunal gave direction to the respondents to forward the name of the applicant alongwith 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

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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.



(G. L. SANGLYINE)
MEMBER (A)



(D. N. BARUAH)
VICE-CHAIRMAN