

FORM NO. 4
(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

Review

ORDER SHEET

APPLICATION NO.

1/99

CA 25/95

OF 199

Applicant(s) Hakeem Dar, IAS

Respondent(s) Union of India

Advocate for Applicant(s) Mr. B. K. Sarma,
Mr. S. Sarma

Advocate for Respondent(s)

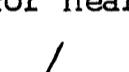
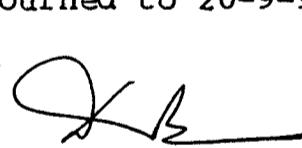
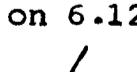
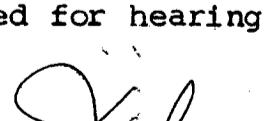
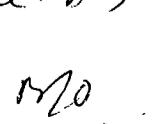
Notes of the Registry	Date	Order of the Tribunal
<p>This Review application has been filed by Mr. S. Sarma, applicant Advocate under Section 22(3)(f) of the Administrative Tribunals Act, 1985 for review of the Judgment and order dtd. 25.3.98 passed in CA 25/95.</p> <p>Laid for favour of orders.</p> <p><u>Section Officer</u></p>	<p>29.1.99 pg</p> <p>11-2-99</p> <p>lm</p>	<p>List on 11.2.99 for admission along with M.P.14/99.</p> <p><i>60</i> Member</p> <p>On the prayer of Mr. S. Sarma, learned counsel for the applicant case is adjourned to 23-2-99 for orders.</p> <p>List on 23-2-99 for orders.</p> <p><i>60</i> Member</p>
		<p><i>SL</i> Vice-Chairman</p> <p><i>SL</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
	23.2.99	<p>In view of the order passed in M.P. No. 14/99 (O.A. 25/95) the Review Application is deemed to be within time.</p> <p>List it on 8.3.99 for further orders.</p> <p><i>6</i> Member</p>
	8-3-99	<p>On the prayer of counsel for the parties case is adjourned to 11-3-99. for new Admission.</p> <p><i>6</i> Vice-Chairman</p>
	11.3.99	<p>Issue notice to the opposite party to show cause as to why this application should not be admitted. Returnable by four weeks.</p> <p>List on 9.4.99 for show cause and order.</p> <p><i>6</i> Member</p>
	9.4.99	<p>Application is admitted.</p> <p>List on 4.5.99 for hearing. In the meantime the respondents may file written statement with copy to the petitioner.</p> <p><i>6</i> Member</p>
	12/4/99	<p><i>6</i> Vice-Chairman</p>

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R-A 1/99 (04.25/95)

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3

Notes of the Registry	Date	Order of the Tribunal
Office Returned un- vealed on R. No. 7 & 10 postal remarks order Refusal.	4-5-99	<p>The name of the Government Advocate Tripura not shown. In all probability because of this learned Government Advocate Tripura is not present to-day.</p> <p>List on 31-5-99 for hearing. Office to print the name of the Government Advocate Tripura.</p> <p> Member</p> <p> Vice-Chairman</p>
<u>4-7-99</u> Written Statement seen filed.	31.5.99	<p>On the prayer of the counsel for the parties the case is adjourned to 15.7.99.</p> <p> Member</p> <p> Vice-Chairman</p>
	15-7-99	<p>On the prayer of counsel for the parties case is adjourned to 20-9-99 for hearing.</p> <p> Member</p> <p> Vice-Chairman</p>
<u>14-10-99</u> Written Statement seen filed.	20.9.99	<p>Let this case be listed for hearing on 15.10.99.</p> <p> Member</p> <p> Vice-Chairman</p>
<u>3-12-99</u> Acc'dly Seen 2. was 1, 2, 3, 6 & 8. acc unserve on 7 & 10 as not present for	15.10.99	<p>Let this case be listed for hearing on 6.12.1999.</p> <p> Member</p> <p> Vice-Chairman</p>
	6.12.99	<p>as D/B is available. Adm to 8.2.00.</p> <p> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
<u>7-2-00</u> w/ statement b/n not seen H.W.	8-2-00	Adjourned to 23.3.00. B70 L1M
<u>22-3-00</u> w/ statement b/n not seen H.W.	23.3.00	No Division Bench is available today. List on 2.5.00 for hearing. Member
<u>14.11.2000</u> 1) Notices duly served on R. 1, 2, 3, 6, 8 & 9. 2) Notice returned unanswered on R. 7 & 10. 3) Service Report are still awaited R. 4 & 5. 4) No written statement has been filed by the Respondents.	21.8.00 15.12.00	There is no D/B. adjourned to 22.6.00. B70 L1M There is no Bench adj. to 15.12.00. B70 L1M Heard learned counsel for the parties. Judgement dictated in open court, kept in separate sheets. The application is dismissed. No costs. Member (A)
<u>16.1.2001</u> Copy of the Judgement has been sent to 145 D/Sec. for issuing the same to the applicant as well as to the Govt. of S.R.L. H.S.	trd	Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

XXX./R.A. No. 1/99(O.A 25/95)

DATE OF DECISION 15.12.00

Shri Harihar Das

PETITIONER(S)

Mr. B. K. Sharma

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE MR. M.P.SINGH, MEMBER (A).

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.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No. 1 of 1999 in O.A. No. 25 of 1995

Date of decision : This the 15th day of December, 2000.
O.A. No. 25 of 1995.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.
Hon'ble Mr. M.P.Singh, Member (A).

Shri Harihar Das, IAS,
Joint Secretary,
Civil Secretariat,
Urban Development Department,
Government of Tripura,
Agartala

....Applicant

By Advocate Mr. B.K.Sharma.

-versus-

1. The State of Tripura,
represented by the Chief Secretary to
the Government of Tripura,
Agartala.
2. The State of Manipur,
represented by the Chief Secretary
to the Govt. of Manipur,
Imphal.
3. The Secretary,
Appointment and Services Deptt.,
Government of Tripura,
Agartala-799001.
4. The Union of India,
represented by the Home Secretary
to the Government of India,
New Delhi.
5. The Secretary to the Government
of India, Ministry of Personnel,
Public Grievances & Pension,
Department of Personnel & Training,
North Block,
New Delhi-110001.
6. The Chairman,
Union Public Service Commission,
Dholpur House,
Sahajan Road, New Delhi.
7. Shri K.P. Goswami, TCS Gr. I,
Joint Secretary,
Finance and Agriculture Department,
Civil Secretariat,
Agartala.

Contd..

8. Shri P. Debbarma, TCS Gr.I,
Director of Principal & Stationery,
Government of Tripura,
Agartala.
9. Shri D.K.Dey, TCS Gr. I,
Resident Commissioner,
Tripura Bhawan, 1 Pretoria Street,
Calcutta-700 071.
10. Shri B.K. Chakraborty, TCS Gr. I,
Joint Secretary,
Finance Deptt.,
Civil Secretariat,
Agartala.

..Respondents

By Advocate Mr. A. Deb Roy, Sr.C.G.S.C.

.....

O R D E R (ORAL).

CHOWDHURY J. (V.C.).

By this application the applicant is seeking for the review of the order dated 25.3.1998 passed in O.A. No.25 of 1995. The applicant presently is a member of All India Services. He was selected for appointment to IAS in conferring Regulation 5(5) of the Administrative Service (Appointment by promotion) Regulation, 1955. He was selected accordingly in the selection list of 1994. He was not appointed because of a disciplinary proceeding initiated against him after the meeting of the Selection Committee was held but before issue of his appointment order. His juniors were appointed after keeping one post vacant reserved for the applicant in accordance with the provisions of the first proviso to Regulation 9(1) of the aforementioned Regulations. The disciplinary proceeding was dropped and the applicant was appointed in the IAS in the Joint Cadre of Manipur and Tripura. The grievance of the applicant is that since the disciplinary proceeding was dropped his date of appointment was to be antedated as

Contd...

per the Selection List of 1994. Upon hearing the counsel of the applicant and the counsel for the respondents and on consideration on the materials on record and the relevant laws the Tribunal held that the applicant was appointed in the Indian Administrative Service on 21.2.97 but not out of the select list of 1994 therefore the benefit of the first proviso to Regulation 9 (1) could not be availed of. Hence the Review Application.

2. Mr. B.K.Sharma, learned Sr. counsel appearing on behalf of the Review Applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C. for the Respondents. Learned counsel Mr. B.K.Sharma submitted that since the proceeding was closed the applicant was entitled to get back the benefit already approved to him before initiation of the proceeding and his appointment ought to have antedated on the strength of Select List of 1994. Mr. B.K.Sharma, learned Sr. counsel referred to the decision rendered by the Supreme Court in the cases of State of M.P. Vs. J.S. Bansal and Another reported in 1998 (III) SCC 714, Delhi Jal Board Vs. Mahinder Singh, reported in AIR 2000, Vol 87, 2767, Union of India & Ors. v. K.V.Jankiran & Ors., reported in AIR 1991 2010. Mr. Sharma further submitted even respondent authority appointed the juniors of the applicant to the Indian Administrative Service (Appointment by Promotion) keeping one post vacant reserved for the applicant in accordance with the provisions of the first proviso to Regulation 9(1) of the Regulation 5(5). Mr. Sharma also submitted that the applicant approached this Tribunal by filing O.A. No. 25 of 1995 during the validity of the Select List of 1994. The applicant filed a Misc. Petition No. 28/95 in O.A. No. 25/95 and had prayed for an interim order restraining the respondents from holding the meeting and to direct the respondents to appoint the applicant to I.A.S. on the basis of the 1994 Select List. The Tribunal

Contd..

had declined to stop the process of holding the Selection Committe Meeting for 1995 but directed that the selection made at the said selection meeting would be without prejudice to the rights and contentions of the applicant in the O.A. and to the relief as eventually may be granted to him in the O.A. if his case is accepted. The Tribunal also made it clear that the pendency of that O.A. would not be a bar for the respondents to consider the case of the applicant at the selection for 1995 at the meeting was scheduled to be held on 26.3.95. Mr. Sharma submited that since the Tribunal itself gave formal protection therefore it was not justified in refusing to give the same benefit as was given in O.A. No. 63 of 1994 as was reffered by the Tribunal itself in the aforementioned judgement. Mr. Sharma further submitted that the aforesaid error was apparent on the face of the record and therefore Tribunal is thus competent to review the order and set at right the wrong committed to the applicant. Mr. Sharma also relied on the decisions of the Apex Court reported in (1995) 1 SCC 58, (1997) 10 SCC, 592. The state Respondents on the other hand in contesting the application has submitted this is not the case for review of the judgement. The power of the Tribunal is confiened under section 22 of the Act. The power conferred by section 22 is limited to the power conferred by section 144 read with order XLVII of the Civil Procedure Code. The review can be made only on the ground set out in order XLVII Rule (1) namely on the discovery of a new and important matters or evidence whichafter due diligence was not within the knowledge of the applicant or could not be produced when the order was passed or on account of mistake apparent on the face of the record or any other sufficient reasons. Mr. Sharma has submitted that since the Tribunal overlooked its own

interim order that was passed in M.P No. 28/95 in O.A. No. 25/95 on 24.3.95, therefore the judgment and order can be reviewed. The Tribunal in its order also took note of the first proviso to Regulation 9 (1) and held that benefit provided by the Regulation could not be availed of by the applicant. The contention that the Tribunal fell into error in not giving the benefit of the earlier select list in our view it could have been at best an erroneous view but not an error apparent on the face of the record. The power of review is limited. In our view the error pointed out by Mr. Sharma cannot be said to be an error apparent on the face of the record requiring interference of the Tribunal.

3. In the circumstances mentioned above we are constraint to dismissed the Review Application, accordingly the Review Application is dismissed. There shall, however, be no order as to costs.


(M.P. SINGH)
Member


(D.N. CHOWDHURY)
Vice-Chairman

trd



FILED BY : The Applicant
11
Through,
Mr. Siddhanta Sain
Advocate
Sijon

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

R.A. No. 1 of 1999
In O.A. No. 25 of 1995

IN THE MATTER OF :

Judgment and Order dated 25.3.98
passed in O.A. No.

25/95

- AND -

IN THE MATTER OF :

An application under Section
22(3)(f) of the Administrative
Tribunals Act, 1985 for review of
the judgment and order dated 25.3.98.
passed in O.A. No. 25/95

- AND -

IN THE MATTER OF :

Shri Harihar Das, IAS, Joint
Secretary, Civil Secretariat, Urban
Development Department, Government
of Tripura, Agartala.

... Applicant
Petitioner

- Versus -

1. The State of Tripura,
represented by the Chief
Secretary to the Government of
Tripura, Agartala.

2. The State of Manipur, represented by the Chief Secretary to the Govt. of Manipur, Imphal.
3. The Secretary, Appointment and Services Deptt., Government of Tripura, Agartala-799001
4. The Union of India, represented by the Home Secretary to the Government of India, New Delhi.
5. The Secretary to the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, North Block, New Delhi-110001.
6. The Chairman, Union Public Service Commission, Dholpur House, Sahjahan Road, New Delhi.
7. Shri K.P. Goswami, TCS, Gr-I, Jt. Secretary, Finance and Agriculture Department, Civil Secretariat, Agartala.
8. Shri P. Debbarma, TCS, Gr-I, Director of Principal & Stationery, Government of Tripura, Agartala.

9. Shri D.K. Dey, TCS, Gr-I, Lt.
Resident Commissioner, Tripura
Bhavan, 1, Pretoria Street,
Calcutta-71.

10. Shri B.K. Chakraborty, TCS,
Gr.I, Joint Secretary, Finance
Dept., Civil Secretariat,
Agartala.

... Respondents

The humble petition on behalf of
the abovenamed Petitioner

MOST RESPECTFULLY SHEWETH :

1. That the Petitioner as the Applicant filed O.A. No. 25/95 making a grievance against his non-promotion to IAS pursuant to inclusion of his name in the 1994 select list. It was the case of the Petitioner that his name was included in the 1994 select list above the Respondents No. 7 to 10. However ignoring this position in the select list, the said Respondents No. 7 to 10, admittedly juniors to the Petitioner were allowed to officiate the IAS cadre posts under Rule 9 of the IAS Cadre Rules, 1954. Instead of repeating the contentions raised in the O.A., the Applicant craves leave of the Hon'ble Tribunal to refer and rely upon the said O.A. at the time of hearing of this review application.

2. That the Hon'ble Tribunal having found a prima facie case in favour of the Petitioner was pleased to admit the O.A. During the pendency of the O.A. the

Applicant/Petitioner filed an application for an interim order registered and numbered as M.P. No. 28/95 making a praying therein to restrain the Respondents from holding the selection committee meeting scheduled to be held on 26.3.95 expressing an apprehension that in the event of holding of such meeting for preparation of 1995 select list, appointments may not be possible to be made from the 1994 select list. Thus the Applicant moved this Hon'ble Tribunal in time for protection of his interest. The Hon'ble Tribunal having regard to the facts and circumstances of the case was pleased to dispose of the said Misc. petition by an order dated 24.3.95 making it clear that the proposed selection shall be without prejudice to the rights and contentions of the Applicant in the O.A.

A copy of the said order dated 24.3.95 is annexed as ANNEXURE-A.

3. That the Petitioner states that in view of the aforesaid order dated 24.3.95, his interest was well protected by this Hon'ble Tribunal.

4. That the reason assigned by the State of Tripura in its written statement for non-promotion of the Applicant was that he could not be promoted in view of contemplation of a departmental proceeding and that subsequent issuance of a charge-sheet. In the written statement, it was the further contention of the said Respondent that the persons who are junior to the person whose inclusion in the select list has been deemed to be provisional in view of pendency of a

departmental proceeding can be appointed to the IAS on promotion by keeping one post reserved for the said officer whose name is deemed to be provisional. It was the categorical statement in the W.S. that a post has been reserved for the Applicant/Petitioner.

Instead of repeating the contentions raised in the W.S., the Petitioner craves leave of the Hon'ble Tribunal to refer and rely upon the said W.S. at the time of hearing of this application.

5. That the aforesaid disciplinary proceeding initiated against the Applicant/Petitioner was after the promotion of the juniors to the IAS cadre posts under Rule 9 of the IAS (Cadre) Rules. Be that as it may, the departmental proceeding came to an end in favour of the Applicant/Petitioner as the charges levelled against him could not be established.

6. That the O.A. was taken up for final hearing and has since been disposed by judgment and order dated 25.3.98 with a direction to the Applicant that if he desires may submit a representation to the competent authority with requests for granting him allotment year as if he was appointed out of the select list of 1994. The further direction was to consider the prayer of the Applicant on merit and to issue a speaking order.

A copy of the said judgment and order dated 25.3.98 is annexed as ANNEXURE-B.

7. That the Hon'ble Tribunal has given its reason for not granting the relief to the Applicant on amongst

others the ground that there was no intervention by the Hon'ble Tribunal before expiry of the 1994 select list which is an error apparent on the face of the record and in view of the fact that the O.A. was filed before expiry of the select list and the interest of the Applicant was well protected by the interim order dated 24.3.95 passed in M.P. No. 28/95. Even otherwise also law is well settled that in case of exoneration of an officer from a departmental proceeding, he should get back his promotion from the date when his juniors were so promoted with all consequential benefits which was withheld during the pendency of the departmental proceeding.

8. That the Hon'ble Tribunal misread and misinterpreted the case laws referred to in the judgment more particularly the one delivered in O.A. No. 63/94. In case of any deviation from an earlier judgment, the Hon'ble Tribunal ought to have referred the matter to a larger bench.

9. That the Hon'ble Tribunal has applied the law and principles holding the field in its rigid terms and the same has been interpreted to the disadvantage of the Applicant/Petitioner. The Petitioner cannot be made to suffer for no fault of his own. It was not a case of extending any relaxation to the Petitioner but he is entitled to be promoted to IAS on the basis of inclusion of his name in the 1994 select list from the same date on which his juniors or persons below in the select list were appointed to IAS.

10. That the private Respondents have been arrayed as they were parties in the Original Application. They have been so arrayed as they were in the Original Application. However with the change of time, their position and addresses have been changed and accordingly, direction may be issued for service of notice on them through the Respondent No. 3.

11. That there is error apparent on the face of the record in the findings both on law as well as on fact requiring review of the judgment in question. In this connection, decisions of the Apex Court as reported in (a) (1995) 1 SCC 58 and (b) (1997) 10 SCC 592 may be referred to.

12. That being aggrieved by the aforesaid judgment and order dated 25.3.98, the Petitioner prefers this review application on amongst others the following

G R O U N D S

I. For that there is an error apparent on the face of the record in not taking into account the order dated 24.3.95 passed in M.P. No. 28.95.

II. For that it being a well settled principle of law that a person who is exonerated in a departmental proceeding is entitled to get his promotion which was withheld during pendency of the departmental proceeding, the judgment in question being against the said principle of law, is required to be reviewed.

III. For that there being a categorical statement from the state of Tripura in their W.S. that a vacancy has

been kept reserved in favour of the Petitioner, the Hon'ble Tribunal ought to have issued a direction for appointment of the Petitioner to IAS against that vacancy from the date when his juniors were so promoted pursuant to 1994 select list.

IV. For that the Hon'ble Tribunal committed manifest error of fact and law, errors apparent on the face of the records in directing the Petitioner to submit representation forcing him to be at the mercy of the Respondents. This is not a case of removing any hardship in exercise of power of relaxation. Instead of taking recourse to such an order, the Hon'ble Tribunal ought to have given a direction for appointment of the Petitioner to the IAS as was prayed for in the O.A.

V. For that the direction of the Hon'ble Tribunal being contrary to the settled law and the rules holding the field, same is required to be reviewed.

VI. For that the only ground to withhold the promotion of the Applicant being the pendency of the departmental proceeding, the Hon'ble Tribunal committed an error apparent on the face of the record in not issuing the direction for his promotion to IAS after dropping of the departmental proceeding.

VII. For that the judgment in question being contrary to the settled principle of law in service jurisprudence, same is required to be reviewed there being error apparent on the face of the record.

VIII. For that there is error apparent on the face of the record in construing the case of the Applicant/Petitioner to be a case of relaxation inasmuch as the Petitioner is entitled to be promoted

to IAS pursuant to inclusion of his name in the 1994 select list as a matter of right. Such a right cannot be approbate without any valid reasons.

IX. For that in any view of the matter, the impugned judgment and order is liable to be set aside on a review of the same and the O.A. deserves to be allowed.

In the premises aforesaid, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to admit this application, call for the records of O.A. No. 25/95 and upon hearing the parties the cause or causes that may be shown and on perusal of the records, be pleased to set aside the judgment and order dated 25.3.95 passed in O.A. No. 25/95 on a review of the same and be pleased to allow the O.A. with a direction to promote the Applicant/Petitioner to IAS with effect from the same date on which his juniors were so promoted pursuant to 1994 select list with all consequential benefits and/or be pleased to pass such further order/orders as may be deemed fit and proper by the Hon'ble Tribunal.

And for this, the Petitioner as in duty bound, shall ever pray.

CERTIFICATE :

Certified that the above grounds are good grounds of review and I undertake to support them at the time of hearing.

(B.K. Sharma)

Affidavit.....

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A F F I D A V I T

I, Shri Harihar Das, aged about 56 years, son of Late Ananda Mohan Das, presently working as Joint Secretary, Civil Secretary, Urban Development Department, Government of Tripura, Agartala, do hereby solemnly affirm and declare as follows :

1. That I am the Petitioner in the instant petition and was the Applicant in O.A. no. 25/95 and as such I am fully acquainted with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 1,3,4,5,6 to 1 of the accompanying application are true to my knowledge and those made in paragraphs 2,6 being matters of records are true to my information derived therefrom which I believe to be true. The Annexures are true copies of the original and the grounds urged are as per the legal advice.

And I sign this affidavit on this the 9/1 day of Harihar Das
January 1999.

Solemnly affirmed and declared
before me by the deponent who is
personally known to me on this the 9th
day of January 1999.

D. K. Sharma

(D.K. Sharma)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI - 5
C.P. 28/95 (O.A. 25/95)

Sri Hemlata Das ... Applicant

-VS-

State of Tripura & Ors. ... Respondents

P R E S E N T

THE HON'BLT JUSTICE SHRI M.G. CHAUHARI, VICE CHAIRMAN
THE HON'BLE SHRI G. L. SANGLYINE, MEMBER (ADM.).

For the Applicant ... Mr. B.K.Sharma

For the Respondents ... Mr. S. Ali, Sr.C.G.S.C.

OFFICE NOTE

DATE

ORDER

24.3.95 Mr B.K.Sharma for the applicant.
Mr S.Ali, Sr.C.G.S.C for the respondents.
Mr Sharma applies for urgent interim orders.

The applicant was not recommended by the State Government to the Central Government for appointment to IAS on the basis of the select list of 1994. Aggrieved by the same the applicant has filed the O.A on 16.2.1995 and it is pending.

It is stated that the meeting of the Selection Committee for preparing select list of IAS officers of 1995 is scheduled to be held on 26.3.1995. Hence it is prayed that the respondents be restrained from holding the said meeting and to direct the respondents to appoint the applicant on the basis of 1994 select list. We are not inclined to stop the process of holding the Selection Committee meeting for 1995 on 26.3.1995. We only direct that the selection made at the said meeting shall be without prejudice to the rights and contentions of

contd...

24.3.95 the applicant in the O.A and to the relief as eventually may be granted to him in the O.A if his case is accepted. We also make it clear that the pendency of the O.A will not be a bar for the respondents to consider the name of the applicant at the selection for 1995 at the meeting scheduled to be held on 26.3.1995. The above order is passed by way of an interim order in the O.A. in addition to the clarification made in the minute dated 21.2.96 namely that the pendency of this application ^{not} will be a bar to the respondents to consider the inclusion of the applicant for appointment against 1994 select list.

The learned counsel for the applicant is given permission to communicate the above order by speed post to respondents No.1 and 3 at the cost of the applicant through the office of this Tribunal.

Misc. Petition is disposed of.
Copy of the order may be supplied to the counsel immediately.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Memo No. : 1353

Date : 24/3/95

Copy for information & necessary action to,

(1) The Chief Secretary, Govt. of Tripura, Agartala.

(2) The Secretary, Appointment & Services Deptt., Govt. of Tripura, Agartala - 799 COL.

TRB-20/3
SECTION OFFICER (J)

TRB

REGD. WITH A/D
BY HAND

Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

Despatch No. CAT/GHY/JUDL/ 1134 Dated, Guwahati the 28/4/98

✓ Original Application No. : 25795

Misc. Petition No. :

Contempt Petition No. :

Review Application No. :

Transfer Application No. :

Shri Harihar Das

Applicant(s)

VERSUS

C. I. M. A.

Respondent(s)

Mr. B.K. Sharma Advocate.
To Shri Harihar Das,
S/o Late Ananda Mohan Das
Resident of North Banamalya,
P.S. East Agartala,
Dist - West Tripura.

Please find herewith a copy of Judgment/Order dated
25-3-98 passed by the Bench of this Hon'ble Tribunal
comprising of Hon'ble Justice Shri D.N. Barnah
Vice-Chairman and Hon'ble Shri G.L. Saengzame,
Member, Administrative in the above noted case for information
and necessary action, if any.

Please acknowledge receipt of the same.

Enclo: As stated above.
- Sheets.

BY ORDER

25/4/98
DEPUTY REGISTRAR

18/4/98

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 25 of 1995.

Date of Order : This the 25th Day of March, 1998.

Justice Shri D.N.Baruah, Vice-Chairman

Shri G.L.Sanglyine, Administrative Member.

Sri Harihar Das
resident of North Barimalipur,
P.S. East Agartala, Dist. West Tripura. . . . Applicant

By Advocate Shri B.K.Sharma.

- Versus -

Union of India and others. . . . Respondents

By Advocate Shri B.P.Kataki for
respondents No.1 and 3.

None present for the other respondents.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER,

The applicant was a member of the Tripura Civil Service and was eligible for appointment to the Indian Administrative Service by promotion. He was selected for such appointment in the select list of 1994. But he was not appointed because of a disciplinary proceeding initiated against him after the meeting of the Selection Committee was held but before issue of his appointment order. In view of the proviso to the Regulation 5(5) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 his inclusion in the list was treated to be only provisional. His juniors were appointed in the I.A.S after keeping one post vacant reserved for the applicant in accordance with the provisions of the first proviso to Regulation 9(1) of the aforesaid Regulations.

2. Mr B.K.Sharma, the learned counsel for the applicant, submitted that the disciplinary proceeding had been dropped.

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and the applicant had since been appointed in the Indian Administrative Service, in the Joint Cadre of Manipur and Tripura. His only contention in this original application is that since the disciplinary proceeding had been dropped the applicant should be appointed in the Indian Administrative Service with effect from the date of appointment in the IAS of his junior according to the selection List of 1994. In support of his contention he placed reliance on *Ashok v. David vs. Union of India and others*, reported in AIR 1996 Supreme Court 2165, *Dr Y.P.Gupta vs. Union of India and others* reported in (1985) 1 S.C.C 43 and on the order of this Tribunal dated 28.7.1997 in O.A.No. 63 of 1994, Bhudev Basumatary, ACS vs. Union of India and others. Mr B.P.Kataki, Advocate, Tripura learned Qvt. for the respondents No.1 and 3, The State of Tripura, opposed the contention of Mr Sharma. According to Mr Kataki, no appointment can be made on the basis of the selection list of 1994 in view of the provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 as the list had expired. None of the other respondents had submitted written statements and no one appeared for them at the time of hearing.

3. We have heard learned counsel for the parties. In the light of their submissions the following regulations of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 are reproduced below which will be relevant for our consideration in this original application.

(1) Regulation 5(5) -

"The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and there after from amongst those similarly classified as 'Good' and the order of names inter se

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within each category shall be in the order of their seniority in the State Civil Police Service :

Provided that the name of any officer is included in the list, shall be treated as provisional if the State Government withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government. (emphasis supplied).

(ii) Regulation 7(4) :

The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of Regulation 5, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2):

Provided that no appointment to the service under Regulation 9 shall be made after the meeting of fresh Committee to draw up a fresh list under Regulation 5 is held. (emphasis supplied)

(iii) Regulation 9(1) :

Appointment of members of the State Civil Service to the Service shall be made by the Central Government on the recommendation of the State Government in the order in which the names of members of the State Civil Service appear in the Select List for the time being in force:

Provided further that the appointment of an officer, whose name has been included in the Select List provisionally, under proviso to sub-regulation (3) of Regulation 8 shall be made after his name is made unconditional by the Commission on the recommendations of the State Government during the period the select list remains in force. While making appointment of an officer junior to a select list officer whose name has been included provisionally in the select list, one post will have to be kept vacant for such a provisionally included officer. (emphasis supplied)

4. The applicant in O.A.63 of 1994 was included in the select list drawn on 31.3.1993. The Vigilance Inquiry against him was dropped on 2.2.1996. In the order dated 28.7.1997

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it was held by this Tribunal that the applicant was entitled to appointment on the strength of the 1993 select list and it was ordered that his appointment should be given effect from 20.4.1994 in the facts and circumstances obtaining in that case as narrated in the order. The facts in that case are different from those in the present case. Unlike in that case, in the present case the disciplinary proceeding was closed with a warning. In that case there was an intervention of the Tribunal before the expiry of the select list vide interim order dated 25.3.1994 directing to keep one post vacant till disposal/finalisation of the Vigilance case and further that the vacancy shall be left out of consideration by the Selection Committee of 1994-95. In the present case under consideration there was no such intervention by the Tribunal. Only liberty was left to the respondents to consider the inclusion of the applicant for appointment against the 1994 select list. In AIR 1996 S.C 2165, the appellants were members of a State Civil Service and they were due to be considered for appointment in the Indian Administrative Service in 1983 but were not considered. There was delay in granting them confirmation though they were qualified for the same much earlier than 1983. They were confirmed only on 1.1.1986. This delay had resulted in their non-consideration for appointment to the IAS in 1983. Finding that there was no reasonable ground whatever to justify the delay the Hon'ble Supreme Court held :

"In the aforesaid premises, we have no doubt that the appellants had become eligible for consideration when the selection committee sat in December, 1983 and we, therefore, direct the Union of India to give that order of allotment to the appellants which is due to them by treating that their selection for promotion to IAS had taken place, not pursuant to the select list prepared in 1983, but in 1983."

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5. The provisions of the first proviso to Regulation 7(4) above prohibits appointment to the Indian Administrative Service under Regulation 9 out of a Select List after meeting of a fresh Committee to draw up a fresh Select List is held. In Brahmananda Pandey vs. Union of India and others (O.A.No. 176/94) the applicant was selected and recommended by the State Government for appointment before the expiry of the Select List in which his name was included but no appointment was made by the Central Government before the next Select List was prepared. This Tribunal in the order dated 20.6.1995 after relying on the decision of the Hon'ble Supreme Court in Syed Khalid Rizvi & Ors. vs. Union of India & Ors. reported in 1993 (Suppl) 3 S.C.C 575 had held :

"In Syed Khalid Rizvi's case Their Lordships have observed that inclusion of a person's name in the Select List does not give that person a vested right to be appointed. Accordingly if no order of appointment was issued before the subsequent list came into existence, the applicant cannot claim appointment on the basis of mere recommendation of the State Government."

The applicant in this Original Application under consideration was appointed in the Indian Administrative Service on 21.2.97 but not out of the Select List of 1994. The first proviso to Regulation 9(1) referred to above provides that on clearance as laid down therein an officer whose name is provisionally included in the Select List can be appointed out of the Select List. This however, has to be done during the period the Select List remains in force. The disciplinary proceeding against the applicant, which prevented his appointment out of the 1994 Select List, was initiated on 9.2.1995, that is immediately before the expiry of the Select List of 1994. The proceeding was concluded on 30.12.1996. Therefore, in

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this particular case of the applicant the benefit provided in the First Proviso to Regulation 9(1) could not be availed of during the currency of the Select List of 1994. The Government of India however, has powers to remove hardships or difficulties in certain circumstances if there is any reasonable ground to do so. We therefore, dispose of this application with the following directions.

(i) The applicant may, if he desires, submit a representation to the competent authority of the Respondents 1 to 5 with a request for granting him Allotment Year as if he was appointed out of the Select List of 1994. This must be done within one month from the date of his receipt of this order.

(ii) The above respondents shall, if such representation is received, consider the prayer of the applicant on merit and issue a speaking order within four months from the date of receipt of the representation.

The application is disposed of as indicated above.
No order as to costs.

UN/VICE CHAIRMAN
BU/REMARK (A)

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Sect. No. 1 (20) 11/18

শাসন কার্যকলার
Central Administrative Tribunal
কেন্দ্রীয় প্রশাসনিক কার্যকলার
Guwahati Bench, Guwahati-6
লক্ষণী র পরিষ, গুৱাহাটী-6

17/11