

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 285 of 2013

Date of Order: This, the 10th day of December 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

Shri Suresh Kalai, Tripura Police Service, Gr. I
Commandant
Tripura Home Guard Organization
AD Nagar, PO:AD Nagar
District: West Tripura
PIN:799003.

... Applicant.

By Advocates: Mr.C.S.Sinha

-Versus-

- 1 The Union of India
 represented by the Secretary
 Ministry of Home Affairs
 Government of India, New Delhi-110001

2. The Union Public Service Commission
 represented by its Chairman
 Dholpur House
 Sahajahan Road, New Delhi-1100069.

3. The State of Tripura
 represented by Chief Secretary
 Government of Tripura
 New Secretariat Complex
 PO: Secretariat, Agartala
 District: West Tripura, PIN: 799010.

4. The State of Manipur
represented by the Chief Secretary
Government of Manipur
Imphal, Manipur
PIN: 795001.
5. The Secretary,
Government of Tripura
General Administration (P&T) Department
New Secretariat Complex,
PO: Secretariat, Agartala
District: West Tripura, PIN: 799010.
6. The Joint Cadre Controlling Authority
Manipur-Tripura, Joint Cadre
represented by the Chief Secretary
Government of Tripura
New Secretariat Complex
PO: Secretariat, Agartala
District: West Tripura, PIN: 799010.
7. The Director General of Police, Tripura
PHQ, Agartala, District West Tripura
PIN-799001.
8. Sri Lalhminga Darlong, IPS.
9. Sri Sumitra Dhar, IPS.
10. Sri Arjun Debbarma, IPS.
11. Sri Har Kumar Debbarma, IPS
12. Sri Jitendra Debbarma, IPS.
13. Sri Carey Marak, IPS.
14. Sri Bijoy Nag, IPS.
15. Sri Suranjan Das, IPS.

... Respondents

By Advocate: Mr. S. Dutta, GA, Tripura

ORDER

N. NEIHSIAL, MEMBER (A):

This is a remand case from the Hon'ble High Court of Tripura, Agartala under WP(C) (CAT) No. 02/2015 dated 09.11.2016. The Hon'ble High Court of Tripura has remanded to decide the case of the petitioner afresh in accordance with law with the following remarks:-

“In our considered view, the view taken by the Tribunal does not appear to be sound. Needless to say, the petitioner is questioning the legality of denial of promotion to him on the ground of non-communication of ACRs to and, conversely, the promotion of the private respondent to IPS. Thus, when considering the legality of the impugned promotion of the private respondent or the impugned denial of promotion to the petitioner, the effect of the non-communication of the ACRs shall have to be examined by the Tribunal in order to adjudicate the case of the petitioner effectively and fairly. To this extent, the Tribunal has failed to exercise the jurisdiction vested in it by law by not entertaining the Original Application of the petitioner on merit. This calls for the limited interference of this Court.

Resultantly, the impugned order is set aside. The case is remanded to the Central Administrative Tribunal, Guwahati Bench to decide the case of the petitioner afresh in accordance with law.”

2. The case was already considered and examined in detailed by this Tribunal under O.A. No. 285 of 2013 with the following remarks:-

“15. Heard the rival parties, perused the pleadings as well as the materials placed on record. The respondent no. 2 – UPSC have fairly submitted that they have completed the exercise as per the Regulations and following the procedure. Learned counsel for the applicant again submitted that there is no act of omission and commission on the part of the UPSC. As far as completion of ACRs is concerned, this court agreed with the submission of the UPSC that prior to promotion to IPS, the officer is SPS officer and if he is aggrieved by any acts of omission and commission on the part of the State Government, he should approach the SAT/High Court. This Tribunal cannot intervene in the matters related to ACRs of the State Government officers. In view of the above, this Tribunal finds no merits in the case of the applicant, and accordingly, OA is dismissed.

16. In case, the applicant is able to agitate the issue of ACRs successfully in his favour at the appropriate level, he will be at liberty to come before this Tribunal, if aggrieved, subsequently.”

3. The case has been taken up by this Tribunal on 29.11.2016, 20.01.2017, 21.02.2017, 19.05.2017, 08.06.2017, 09.08.2017, 13.09.2017, 28.08.2017, 22.09.2017, 18.12.2017, 02.02.2018, 23.03.2018, 10.05.2018, 19.06.2018, 28.08.2018, 12.09.2018, 18.09.2018, 26.09.2018 and 02.11.2018. The matter could not be adjudicated earlier either due to absence of Division Bench or non representation from both sides. However, the case was taken up at Circuit Bench at Agartala on 02.11.2018. None appeared on behalf of respondent Nos. 2 & 4 i.e. UPSC and State of Manipur. But written statements have already been filed by them. After hearing the pleadings on both sides, the

O.A. was kept CAV on 02.11.2018. In the meantime, parties were allowed to file their written argument, if so desire, by 16.11.2018. Further the respondent No. 2 UPSC was directed to make available a copy of the Minutes of the Selection Committee for promotion to the post of IPS from TPS on 01.11.2011. Accordingly, copy of the Minutes of the Selection Committee was made available to this Tribunal.

4. In the O.A. No. 285 of 2013, the applicant has sought the following reliefs:

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the Select List-2010 prepared by the Selection Committee in respect of members of the Tripura Police Service for promotion to IPS against the Tripura Segment of Manipur-Tripura Joint Cadre and the impugned Notification dated 15.3.12 so far as the Select List-2010 is concerned.
- 8.2 That the Hon'ble Tribunal be pleased to set aside and quashed the appointment effected in the case of the private respondents to the Tripura Segment of the IPS, M-T Joint Cadre from the Select List of 2010 published vide impugned Notification dated 15.3.2012.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondent authority to review the case of the applicant and to reconsider his promotion to IPS against Tripura Segment of T-T Joint Cadre effecting from the date of promotion of his juniors with consequential service benefit.
- 8.4 That, the Hon'ble Tribunal be pleased to declare the ACRs of the applicant for the periods from 2005 to 2006, from 1.4.06 to 06.10.06, 1.4.07 to 31.03.09 unjustified, unreasonable and set-aside.

8.5 That, the Hon'ble Tribunal be pleased to pass any other relief(s) which is/are deemed to be considered appropriate, to the applicant for ends of justice."

5. The main grievance of the applicant is that during the process of selection for promotion from TPS to the IPS against vacancies of 2008 to 2010, he has been left out for the reasons best known to the respondents that the Selection Committee, acting on the un-communicated and incomplete ACRs, illegally and arbitrarily excluded the applicant from the Select List of 2010 for promotion to IPS against Tripura Segment of Joint M-T Cadre. For non-communication of ACRs, the applicant did not get opportunity to make representation against his ACRs for the years 2005-2006, 2008-2009 and non initiation certificate, shortly, NIC in respect of his ACRs for the periods of 01.04.2006 to 06.10.2006 and 01.04.2007 to 31.03.2008. As such, his exclusion from the select list of 2010 for promotion to IPS, leading juniors appointed on promotion to IPS, is illegal and arbitrary and contrary to the natural justice.

6. On direction from this Tribunal on 02.11.2018, the respondent No. 2 i.e. UPSC has supplied the copy of the Minutes as brought out in the forgoing para of the Selection Committee held on 01.11.2011. On going through the Minutes of the Selection Committee, the followings recordings of the Committee are observed:

Para 8.2 'Thus in accordance with Regulation 5(4) of the Promotion Regulations, the Selection Committee has to classify the eligible officers as 'Outstanding', 'Very Good', or 'Unfit' as the case may be on an overall relative assessment of their service records as made available by the State Govt. The Selection Committee would go through the service records of each of the eligible officers and after deliberation will record the assessment of the Committee'.

Para 8.3 'Thus, where one or more ACRs of an officer have not been written for a year or more on account of his being on leave, training or because no officer supervised his work for more than three months of for any other valid reason during the relevant period, the Selection Committee has to make a categorization on the basis of available ACRs. The Selection Committee should consider the ACRs of the years preceding the period of five years'.

Para 8.4 'Quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing officer/Accepting Authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer. For making an overall relative assessment, the Committee is not to depend solely on the grading recorded by the Reporting/Reviewing officer/Accepting Authority but is to make its independent assessment of the service records of the eligible officers'.

Para 8.5 'The Committee did not take into consideration the adverse remarks in the ACRs of the officers which were not communicated to them while assessing their suitability. The Committee did not take into consideration the adverse remarks in the ACRs of the officers which were not communicated to them, while assessing their suitability'.

7. The relevant period of the ACR considered by the Selection Committee in respect of the applicant were as under:

Sl.No	Period	Grading	Graded by
1	2000-2001	"Very Good"	Sri B L Vohra, DGP, TPA
2	2001-2002	"Very Good"	Sri B L Vohra, DGP, TPA
3	2002-2003	"Very Good"	Sri Mathew John, DGP, TPA
4	2003-2004	"Very Good"	Sri G M Srivastava, DGP, TPA
5	1.1.2004 to 31.3.2005	"very good"	Sri G M Srivastava, DGP, TPA
6	1.4.2005 to 31.3.2006	"good"	Sri G M Srivastava, DGP, TPA
7	1.4.2006 to 6.10.2006	Non initiation Certificate, not granted due to transfer of Sri G M Srivastava, DGP, TPA	
8	7.10.2006 to 31.3.2007	"very good"	Sri G M Srivastava, DGP, TPA
9	1.4.2007 to 31.3.2008	Non initiation certificate, not granted due to sudden demise of Sri KTD Singh (Ex.DGP)	
10	1.4.2008 to 31.3.2009	"good"	Sri P Sahay, DGP, TPA
11	1.4.2009 to 27.11.2009	"very good"	Sri P Sahay, DGP, TPA
12	28.11.2009 to 31.3.2010	Non initiation Certificate	
13.	31.5.2010 to 31.3.2011	"very good"	Sri P Sahay, DGP, TPA

8. It would be seen from the above that the issue raised by the applicant pertains to 01.04.2005 to 31.03.2006 and 01.04.2006 to 06.10.2006 and again for the period from 01.04.2007 to 31.03.2008 and 01.04.2008 to 31.03.2008 and 01.04.2008 to 31.03.2009. In these periods, the applicant's overall gradings were 'good', for the period from 01.04.2005 to 31.03.2006 and for the period from 01.04.2008 to 31.03.2009. In respect of the period from 01.04.2006 to 06.10.2006, 01.04.2007 to 31.03.2008 and 28.11.2009 to 31.03.2010, 'Non initiation Certificate' were attached/inserted.

9. Considering the above facts and from the perusal of the Minutes of the Selection Committee, it is very clear that the period of

'Non initiation Certificate' were excluded (Para 8.3 of minutes) from the consideration by the Committee in overall assessment of the officer or applicant. This means that these 3 periods during which his ACRs were not initiated, the impact on overall assessment of the officer by the Committee was not negative. As regards to the grievance of non communication of his ACR for the period i.e. 01.04.2005 to 31.03.2006 and again from 01.04.2008 to 31.03.2009 during the period of which he was graded as 'Good', his contention is found not maintainable due to the fact that the Govt. of Tripura vide their letter No. F.11(1)-GA(P&T)/92 dated 05.08.2010 has issued directions for communicating of all entries (whether Poor, Fair, Average, Good and Very Good) in ACRs to the employees in pursuance of the latest legal position taken by the Hon'ble Supreme Court reported in **(2008) 8 SCC 735** whereas the ACRs in question pertained to the period 2005-06 and 2008-09. In fact, prior to the decision of the Hon'ble Supreme Court of India, there was no such provision under instructions for communication of non adverse ACRs to the Govt. employees. Since 'Good' is not adverse ACR, non communication of these ACRs for the period 2005-06 and 2008-09 by the respondents before instructions were issued could not be challenged by the applicant.

10. Learned counsel for the applicant also submitted along with written argument a copy of the judgment and order of Hon'ble

Gauhati High Court WP(C) No. 4548 of 2012 dated 22.07.2013 and CAT, Guwahati Bench judgment dated 08.08.2013 under O.A. No. 269 of 2013. In the first case, the Hon'ble Gauhati High Court, due to non communication of adverse ACRs has directed the respondents to hold review DPC in respect of Sri Arup Kumar Das, applicant therein. On careful perusal of the judgment and the order of Hon'ble Gauhati High Court, it is observed that the case is slightly different from the case of this applicant. In case of Arup Kumar Das (supra), the ACR for the year 2002-03 was graded as 'Good' by the Reporting Officer but downgraded to 'Average" by the Reviewing and Accepting Authorities without assigning any reason. This downgrading of ACR was considered to be adverse particularly in the context of Promotion Regulation para 5(3AA) wherein the empanelled officers are to be graded as 'outstanding', 'very good', 'good' or unfit. Since these downgraded ACRs were not communicated to the applicant and formed part of input for assessment by the Selection Committee to make overall assessment of the officer, the applicant could not make to the benchmark thereby missing the opportunity for getting promotion to the IFS.

11. In the case of Smt. Rama Rakshit under O.A. No. 269 of 2012, CAT, Guwahati Bench after detailed review of the ACR has directed the respondents to hold review SCM. On going through the aforesaid judgment of Smt. Rama Rakshit, it is observed that over all

grading of the applicant was not adverse per se. However, there are adverse narratives/remarks in some of the columns of the ACR as below:

“(i) She is a hard working officer, She can further improve her inter-personal relations with colleagues and sub-ordinates.

(ii) I agree, She needs to attend to Inter-personal relations as indicated by Reporting Authority and to show total dedication to her duties and police work. Graded “Good.

(iii) I generally agree but find her still making efforts to raise her standard of quality in work.

(iv) I generally agree but find her still making efforts to raise her standard of quality in work.”

These remarks are patently adverse in nature but they have not been communicated to the applicant. Moreover, the ACRs have been downgraded from ‘Very Good to Good’ for the period of 2006-07 and 2008-09. The court accordingly directed the respondents to hold review SCM by excluding those ACRs.

12. In the present case, the limited grievance of the applicant is that incomplete of ACRs were not excluded by the Selection Committee and the low grading of the ACRs (Good) were taken into account by the Selection Committee, though these were not communicated to him and had not the opportunity to represent against the gradings. Combination of these two factors rendered by him to be ‘low’ in overall assessment, thereby leading to his denial

for selection to the Indian Police Service. But the Minutes of the Selection Committee as brought out has clearly excluded the ACRs which were not initiated/not completed. As regards to the non-communication of the ACR for the period where he was graded as 'Good', this cannot be legally challenged on the ground that there adverse and should have been communicated because grading of 'Good' per se is not an adverse ACR. Further it cannot be challenged on another ground as well since instructions for communication of all gradings of ACRs were issued by the Govt. of Tripura in 2010.

13. Keeping in view of the above facts, we considered that the applicant does not have merit for granting the relief sought for by him. It is therefore, liable to be dismissed.

14. Accordingly, we hereby dismiss the O.A. with no order as to costs.

(N. NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)