

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
CIRCUIT COURT AT IMPHAL**

Original Application No.042/00199/2015

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Shri Aleng A.S. Shimray, IAS (Retd.)
Son of Late A.S.Heisha
Khong Nang AniKarak
Opposite I.S.B.T. Imphal
P.O: & P.S: Porompat
PIN: 795 010
Dist: East Imphal
Manipur.

... Applicant

By Advocates : Mr.M.Chanda & Ms.S.Begum

- Versus -

1. The Union of India
Represented by Secretary (DOPT)
To the Government of India
Ministry of Personnel, Public
Grievances and Pensions
Department of Personnel & Training
North Block, New Delhi-110 001.
2. The State of Manipur
Represented by the Chief Secretary (DP)
Govt. of Manipur
Department of Personnel
And Administrative Reforms
Imphal-795 001, Manipur.
3. The Additional/Deputy Secretary (ACR)
Govt. of Manipur

Imphal-795 001, Manipur.

... Respondents.

By Advocate: Mr.S.Sarma, S.C., Govt. of Manipur
Mr.S.K.Deka

Date of hearing: 17.12.2018

Date of order: 19.12.2018

ORDER

MANJULA DAS, MEMBER (J):

By this OA applicant makes a prayer for setting aside the impugned letter dated 14.05.2014 (Annexure A8) by which his request for benefit of IAS Selection Grade was not acceded. It is further prayed for direction to grant Selection Grade from 01.10.2010 along with all consequential benefits.

2. Mr.M.Chanda, learned counsel for the applicant submitted that applicant was initially appointed as Sub Deputy Collector with due recommendation of Manipur Civil Service (MCS in short) in the year 1974. After rendering services for about 25 years in the MCS, the applicant was inducted to IAS with selection as 1997 batch in IAS. On 28.02.2011m the applicant retired from service on attaining the age of superannuation. According to the learned counsel, applicant

having been inducted to IAS and completed the stipulated period of 13 years of service in the cadre in 2010, acquired the eligibility for grant of Selection Grade from 01.01.2010. Learned counsel submitted that applicant regularly submitted his Performance Appraisal Report. On 20.05.2010, the respondent no.2 directed the applicant to submit his Performance Appraisal Report for the Financial Year 2009-2010. On receipt of such letter dated 20.05.2010, the applicant, vide letter dated 16.06.2010, intimated that he had already submitted his APAR for the year 2009-2010 along with Performance Appraisal Report to Sri A.N.Jha, Principal Secretary. It was further submitted that on 01.02.2011, the respondent no.2 further informed the applicant and some other officers that the DOPT have taken necessary action for promotion to IAS officers for the year 1995, 1996 and 1997 to the higher grades and their ACR/APARs were required for that purpose for different years which were lacking. From the said letter it appears that applicant's APAR for the year 2008-09 were lacking. As such, applicant was directed to submit the same on or before 07.02.2011. In compliance of the said directions, the applicant submitted the ACR/APAR for the year 2007-08, 2008-09 on 07.02.2011. It was further submitted by the learned counsel that

prior to that applicant in fact submitted the Performance Appraisal Report for the year 2007-08 and 2008-09.

3. Mr.M.Chanda, learned counsel further submitted that the respondent no.3 vide letter dated 10.02.2011 forwarded the APARs for the period 2008-09 and 2009-10 to the Secretary to the Chief Minister, Manipur. However, despite being eligible his case was not considered for grant of Selection Grade and applicant retired from service on 28.02.2011. Applicant did make representation before the authority on 29.07.2013 and 07.09.2013 with a request for grant of Selection Grade w.e.f. 01.10.2010. However, vide impugned letter dated 14.09.2014, his prayer was rejected on the ground that since the applicant had retired and the Screening Committee Meeting had not recommended his case for promotion to IAS Selection Grade, the Government could not accede to his prayer for grant Selection Grade after retirement.

4. Learned counsel further submitted that applicant sought information under RTI Act, 2005 and in response to his application, applicant was furnished information vide letter dated 13.06.2014 that due to non-availability of ACR/APARs the Screening Committee Meeting dated 14.02.2011 did not

recommend his case. According to the learned counsel, due to illegal and unfair denial of Selection Grade the applicant has been suffering heavy financial loss and irreparable injuries in terms of his retirement benefits, causing distress in his post retirement days.

5. On the legal aspects learned counsel argued that in terms of the DOPT OM No.22011/5/86-Estt.(D) dated 20.06.1989 read with corrigendum dated 13.07.1989, in case of non-availability of ACRs/APARs, the respondents ought to have considered the ACRs preceding the period in question or even ACR of the feeder grade to complete the requisite number of ACRs/APARs and extended the benefits of Selection Grade to the applicant for which he had already acquired the eligibility on completion of 13 years of residency period in IAS cadre.

6. On the other hand, Mr.Satyen Sarma, learned Sr. counsel assisted by Mr.S.K.Deka, learned counsel for the respondent nos. 2 & 3 (Government of Manipur) submitted that applicant nowhere mentioned in the letter dated 07.02.2011 that as per direction of the authority he further submitted the APAR for the period 2007-08 and 2008-09, rather stated that he "had already submitted the ACRs Forms to be recorded by the

Reporting officer and the Reviewing officers at the relevant time". Mr.Sarma by referring to the para 17 of the written statement filed by the Government of Manipur, submitted that no record of submission of the relevant time to the reporting or reviewing authority of the APARs is available with Chief Secretary's Confidential Branch. Non availability of the same was later on communicated vide letter dated 01.02.2011 by the Deputy Secretary (ACR), Government of Manipur to the applicant and three other concerned. According to the learned counsel, it is the responsibility of the applicant to record his APAR in time. Learned counsel further submitted that though 5 officers including the applicant were eligible for promotion to Selection Grade and Super time Scale, only Dr.Sajjad Hassain, IAS was recommended for such promotions by the Screening Committee on 14.02.2011 and the cases of remaining four officers were to be considered as and when their service records (ACRs/APARs) were ready. Another Screening Committee meeting was held on 26.09.2011 but the case of the applicant could not be considered as he had already retired on 28.02.2011.

7. Mr.Sarma vociferously argued that in the instant case, applicant showed negligence and irregularity towards submission of his APAR. According to the learned counsel, the time line for every stage with regard to submission of APARs as per AIS PAR Rules, 2007 is in public domain and it is not the duty of the Government to remind the officer time and again. However, a reminder/circular was sent from time to time to the officers for timely submission of APARs by enclosing a copy of the PAR for the relevant assessment year. Hence letter dated 20.05.2011 is one such letter issued to remind the officer about timely submission of their PARs by enclosing a copy of PAR for the relevant assessment year (2009-2010). Learned counsel submitted that the representation of the applicant was considered and disposed of vide letter dated 14.05.2014 by rejecting his prayer, and therefore, the OA is liable to be dismissed.

8. In reply to the arguments advanced by Mr.Sarma, Mr.M.Chanda, learned counsel for the applicant, however, submitted that there is no fault on the part of the applicant for non-availability of the requisite APARs as he had duly submitted the same at that relevant time and the respondents could

have followed the prescription of the DOPT OM dated 20.06.1989 and considered the case of the applicant on the basis of available ACRs preceding the period in question.

9. Learned counsel for the applicant, in support of his contentions, relied on the following decisions:-

- (i) Order dated 26.05.2014 passed by CAT, Guwahati Bench in Jayanta Kumar Sinha Vs UOI & Others;
- (ii) Arun Roy vs UOI & Others, 2012 (3) GLT 406;
- (iii) P.N.Premachandran vs State of Kerala & Others, (2004) 1 SCC 245;
- (iv) Major General H.M.Singh, VSM vs UOI & Others, (2014) 3 SCC 670; and
- (v) UOI & Anr. Vs Hemraj Singh Chauhan & Ors., (2014) 4 SCC 290.

10. We have heard the learned counsel for the parties, perused the pleadings, the documents annexed therein and the decisions relied upon.

11. The main plank of arguments advanced by learned counsel for the applicant is that on completion of 13 years of induction to IAS cadre from Manipur Civil Service (MCS in short),

the applicant had acquired the eligibility for grant of Selection Grade w.e.f. 01.01.2010.

12. Secondly, as the applicant was not granted Selection Grade, he sought information under RTI Act and as per the information supplied under the Act on 30.06.2014, *"The Screening Committee meeting was convened on 14.02.2011 for promotion to the Selection Grade scale, however, since 90% of the ACRs/APARs of the applicant and three others were not available they could not be recommended by the Screening Committee meeting."*

13. Thirdly, the applicant duly submitted his APARs before the Reporting Authority, however, a letter was received from the Under Secretary (ACR), Govt. of Manipur on 20.05.2010 for furnishing the APAR for the financial year 2009-10 and the applicant replied vide his letter dated 16.06.2010 that he has already submitted the same to Sri A.N.Jha, Principal Secretary. Said claim had been denied by the respondents and also their counsel. Another letter dated 01.02.2011 was issued to the applicant along with three others by the Deputy secretary, (ACR), Govt of Manipur where insofar as applicant is concerned it was intimated that his ACR for the Financial Year

2007-08 and 2008-09 were lacking and accordingly applicant was requested to furnish the same on or before 07.02.2011. In response to said letter applicant vide his reply dated 07.02.2011 intimated that he has already submitted his APAR for the Financial Year 2007-08 in time. Subsequently, the ACR/APAR of the applicant for the year 2007-2008 and 2008-09 were submitted by the applicant on 07.02.2011 which was forwarded by the Deputy Secretary, (ACR), Govt. of Manipur to the Secretary to the Chief Minister, Manipur vide letter dated 10.02.2011 with a request to get the same reported, reviewed and accepted by the Chief Minister of Manipur in terms Sub Rule 5 of Rule 5 of The All India Services (Performance Appraisal Report) Rules, 2007. The 2nd Screening Committee Meeting was held on 26.09.2011 for promotion to the Selection Grade and as the applicant had by then retired from service on superannuation, his case was not considered by the Screening Committee.

14. Thus, it is apparent that before the date of retirement of the applicant on 28.02.2011 his APARs in question were already available with the authority. Besides, the 1st Screening Committee in its Meeting held on 14.02.2011, observed that

applicant along with 4 others are eligible for promotion not only to the Selection Grade but also to the Supertime Scale w.e.f. 01.01.2010, however, due to want of requisite ACR/APARs their cases could not be recommended, however, it was recommended that their cases would be considered as and when their service records (ACR/APAR) are ready. Therefore, on the face of the letter dated 10.02.2011 of the Deputy Secretary (ACR), Govt. of Manipur, the respondents could have taken necessary steps to complete the APARs and consider his case for grant of Selection Grade before his retirement. The applicant can only submit his self appraisal reports and it is for the concerned authority to get the same reported, reviewed and accepted. That apart in the case of non-availability of requisite ACR/APARs, the DOPT has issued the OM No.22011/5/86-Estt.(D) dated 20.06.1989. The learned counsel for the applicant has heavily relied on this OM. The relevant portion of the said OM is extracted below:-

“...

(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If

this is also not possible, all the available CRs should be taken into account...."

The said OM is clearly applicable in the case of the applicant. Even if the requisite ACR/ACRs of the applicant were not available, the respondents could have taken into account the ACRs of the preceding period in question. The aforesaid OM was discussed and quoted in the decision of the Hon'ble Gauhati High Court in **Arun Roy** (supra). Therefore, non-granting Selection Grade to the applicant first on the pretext of non-availability of requisite ACR/APARs and thereafter on the ground of retirement before the date of DPC is not justified. Thus, we are of the considered view that it is a fit case to intervene in the matter in the light of DOPT OM dated 20.06.1989.

15. In the light of the above observations, and by taking into entire conspectus of the matter, we direct the respondents to reconsider the case of the applicant for the grant of Selection Grade with all consequential benefits by a Review DPC or Screening Committee by taking into account the ACRs/APARs preceding 2007-08, and in case, the APARs for 2007-08, 2008-09 are available the same shall be considered by

the Review DPC. Consequently, the impugned letter dated 14.05.2014 is set aside and quashed.

16. With the above observations and directions the OA is disposed of. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICAIL MEMBER

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