

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3950/2016

Thursday, this the 20th day of December 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Bhawani Prasad Lal Das
Aged about 56 years
Son of late Shri Panchanan Lal Das
Resident of Flat No.E-1, Beena apartment
Chandra Vihar Colony, Dhanbad, Jharkhand

..Applicant

(Mr. Sarasani Satyam Reddy, Senior Advocate and
Mr. Ajit Kulshreshtha, Mr. Anupam Lal Das and
Mr. Anurudh Singh, Advocates with him)

Versus

1. The Union of India
Through the Department of Personnel & Training
Govt. of India, North Block, New Delhi
2. The Union Public Service Commission
Through its Secretary, Dholpur House
Shahjahan Road, New Delhi – 110 001
3. The State of Jharkhand
Through the Chief Secretary
Govt. of Jharkhand
Project Bhawan, HEC Township, Dhurwa
Ranchi, Jharkhand
4. The Principal Secretary
Personnel Administrative Reforms &
Rajbhasha Department
Govt. of Jharkhand
Project Bhawan HEC Township, Dhurwa
Ranchi, Jharkhand

..Respondents

(Mr. Y P Singh, Advocate for respondent No.1,
Mr. Ravinder Aggarwal and Mr. Lekh Raj Singh, Advocates for
respondent No.2 and
Mr. Devashish Bharuka, Advocate for respondent Nos. 3 & 4

O R D E R (ORAL)

Mr. K.N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

- “8 (a) For a direction to the Respondent No. 2, Union Public Service Commission, after calling for the records of the case, to hold a review Selection Committee meeting and consider the case of the Applicant afresh for promotion to the Indian Administrative Services against a vacancy for the year 2010 under the provisions of IAS (Appointment by Promotion) Regulations, 1955 in view of the fact that he has all “outstanding” ACR’s and fraudulently and malafidely his un-expunged ACR entries (for 5 months) was conveyed to the UPSC by the Respondent Nos. 3 and 4, State of Jharkhand; and
- (b) For issuance of an appropriate direction to the Respondent Nos. 1, 3 and 4 to grant all consequential benefits, monetary or otherwise, including seniority from the date of his entitlement, in case the Applicant is found suitable for promotion to the cadre of IAS, by Respondent No. 2, UPSC and to prepare a fresh seniority list, thereafter; and
- (c) For issuance of an appropriate direction quashing and setting aside the recommendation/grading of the Selection Committee of Respondent No. 2, UPSC, qua the Applicant in its meetings held on 06.11.2013 and continued on 23.05.2014; and
- (d) For issuance of an appropriate direction quashing and setting aside the recommendation/grading of the Review Selection Committee of Respondent No. 2, UPSC, qua the Applicant in its meeting held on 06.10.2016.”

2. The factual matrix of the case, as noticed from the records, is as under.

3. The applicant joined State Civil Service (SCS) of Bihar Government on 01.01.1987 as Deputy Collector through a recruitment process conducted by the Bihar Public Service Commission (BPSC). After the bifurcation of the Bihar State into two parts, i.e., Bihar State and Jharkhand State, the applicant was allocated to Jharkhand State and, thus, became a member of Jharkhand Administrative Service (JAS). Vide its Annexure A-3 order dated 24.11.2003, the Jharkhand State Government published the seniority list of JAS officers, in which the applicant's name figures at Sl. No.430.

4. As per the scheme of Indian Administrative Service (IAS), there is a quota prescribed for induction of officers of SCS into IAS. As per the provisions of All India Services Act, 1951 and the Recruitment Rules formulated under the Act for IAS, the IAS (Appointment by Promotion) Regulations, 1955 have been framed. In accordance with these Regulations, a Selection Committee, presided over by Chairman or Member of Union Public Service Commission (UPSC), makes selection of SCS officers for promotion to IAS.

5. As per Regulation 5 (1) of IAS (Appointment by Promotion) Regulations, number of vacancies, against which

selection is to be made for a particular select list for promotion to IAS of a State cadre, is determined by Government of India in Department of Personnel & Training (DoPT) in consultation with the State Government concerned. Thereafter, the State Government forwards a proposal to UPSC along with seniority list, eligibility list of the SCS officers with their integrity certificates, certificates regarding disciplinary / criminal proceedings, certificates regarding communication of adverse remarks, details of penalty imposed and ACR dossiers.

6. In terms of Regulation 5 (4) of IAS (Appointment by Promotion) Regulations, the Selection Committee duly classifies the eligible SCS officers included in the zone of consideration as 'outstanding', as 'very good', as 'good' or 'unfit', as the case may be, on an overall relative assessment of their service records. Thereafter, in terms of the provisions of Regulation 5 (5), the Selection Committee prepares a list 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 thereafter those classified as 'good'. The order of names within each category is maintained in the order of their respective *inter se* seniority in SCS.

7. The Selection Committee does not take into account the overall grading that might have been recorded in the ACRs of

the eligible officers, but in order to ensure just, equity and fair play makes its own assessment on the basis of in-depth examination of service records of eligible officers after deliberating on the quality of the officers on the basis of the performance, as reflected under various columns recorded by reporting/reviewing officer/accepting authority in their ACRs for different years. The Selection Committee also keeps in view the penalties awarded or adverse remarks communicated to the officer, which even after due consideration of his representation have not been completely expunged. The Selection Committee is required to include names of eligible officers up to a maximum of three times of number of vacancies available for induction of its SSC officers into IAS. The State and Central Governments are required to furnish their observations on the recommendations of the Selection Committee and after taking into consideration such observations, the UPSC finally recommends the select list for appointment to IAS, to DoPT, Government of India.

8. In the present case, two meetings of the Selection Committee took place on 06.11.2013 and 23.05.2014 to prepare a list of members of SCS of Jharkhand State for promotion to the IAS of Jharkhand cadre against the vacancies for the years 2010 and 2011. 30 vacancies for the year 2010 and 3 vacancies for the year 2011 were to be filled up. The applicant's name was in the zone of consideration, but the Selection Committee did

not find him suitable for selection due to the reason that the candidates finally recommended for selection were having better ACR gradings in comparison to the applicant.

9. The respondents, in their reply, have stated that out of 5 years, which were considered at the time of assessment, the applicant was assessed to be having 'good' grading for 3 years and 'very good' grading for remaining 2 years, on the basis of year-wise assessment. The Selection Committee overall assessed him as 'good'. It is stated that the Selection Committee first recommends candidates having 'outstanding' grading for selection followed by those having 'very good' grading and lastly those having 'good' grading.

10. The grievance of the applicant is that he has been having 'outstanding' grading throughout his career, happens to be the topper of his batch, and as such, he has been unfairly denied induction into IAS. The applicant has contended that for a brief period of 5 months, i.e., from 01.11.2009 to 30.03.2010, there were adverse remarks in his ACR against which he had represented and the competent authority, vide its order dated 07.09.2012, expunged the adverse remarks. But the State Government while sending the proposal for consideration of the Selection Committee did not reflect the factum of expunction of adverse remarks and in Annexure A-6 of the proposal (p.387), *qua* the applicant, it had mentioned that 'adverse remarks have

been communicated to the officer concerned and final decision has not been taken as yet'. He, thus, contends that the State Government has not placed the facts correctly before the Selection Committee *qua* the applicant, which has severely prejudiced his interest inasmuch as the Selection Committee did not recommend his name for selection to IAS.

11. The applicant had earlier approached the Tribunal in O.A. No.1957/2015 on the ground mentioned in the pre-paragraph and had sought a direction to the respondents to hold a meeting of the review Selection Committee. During the course of hearing of the said O.A., Mr. Ravinder Agarwal, learned counsel for UPSC, who continues to be a learned counsel for UPSC in the present *lis*, had submitted that ACR of the applicant for the period 01.11.2009 to 31.03.2010 had not been taken into account by the Selection Committee and the consideration of the applicant for his induction into IAS, in view of expunction of the order 07.09.2012, would not bring any different result. The Tribunal, however, felt that the omission on the part of the State Government in not informing the Selection Committee of the factum of expunction of adverse remarks in the ACR of the applicant for the period from 01.11.2009 to 31.03.2010 was sufficient ground to hold Review Selection Committee meeting and accordingly ordered while disposing of the O.A. vide order dated 29.07.2015. The relevant portion of the order is extracted below:-

“7. Ex facie, such reason/ omission on the part of the State of Jharkhand is sufficient ground to hold a review meeting of the Selection Committee for the relevant year. It is stare decisis that the justice should not only be done but seem to have been done. Even when the reconsideration may not bring any different result, the procedure laid down in accordance with rules / instructions has to be followed.”

12. In compliance of the Tribunal's *ibid* order, a meeting of the Review Selection Committee was held on 06.10.2015 in UPSC. The order of the State Government dated 10.06.2015, based on note dated 07.09.2012 regarding expunction of 'below benchmark' for the period from 01.11.2009 to 31.03.2010 in respect of the applicant, was also considered by the Review Selection Committee, who, however, decided to retain the overall grading of the applicant as 'good' for the year 2010 as had been done by the Selection Committee in its meeting held earlier on 23.05.2014. Accordingly, the Review Selection Committee did not recommend the name of the applicant for selection to IAS against the vacancy for the year 2010. We are informed that the applicant subsequently has been selected to IAS against the vacancy for the year 2015. It is settled law that assessments of an expert body, like Selection Committee/ Review Selection Committee are not to be interfered with by Courts/Tribunals unless it is established that such assessments are in violation of any law or procedure. There is no such allegation in the instant case.

13. In view of the discussions in the foregoing paragraph, we do not find any merit in this O.A. It is accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

December 20, 2018
/sunil/