

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00550/2016

Date of Order: 04.07.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Sudhir Kumar, S/o Sri Parmanand Prasad, 24-Adarsh Colony, Kidwaipuri, District-Patna.

.... Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary, Ministry of Environment, Forests and Climate Change, New Delhi.
2. The Under Secretary to the Government of India, Ministry of Environment, Forests & Climate Change, New Delhi.
3. The Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
4. The Chief Secretary, State of Bihar, Patna.
5. The Pr. Secretary, Department of Environment & Forests, Government of Bihar, Patna.
6. The Principal Chief Conservator of Forest, Bihar, Patna.

.... Respondents.

By Advocate: - Mr. S.N. Madhavan

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- The case of the applicant is that he, a direct recruit Bihar Forest Service officer of 1990 batch, was eligible and qualified for selection and promotion to Indian Forest Service against the vacancies of the year 2011. However, he was not selected and instead, his junior was selected and promoted, by the selection committee meeting held on 4.6.2015. He has come to know that this was due to the selection committee

treating some of his ACR ratings as “good”, on the basis of the alleged downgrading (by accepting authorities) of some of his ACRs in between 2006-07 to 2009-10 from “very good” to “good”. The applicant has alleged that these ACRs were not communicated to him and any such adverse consideration of these remarks is against the law settled by the judgments of Hon’ble Apex Courts/ High Courts and also this Tribunal (*OA No. 559 of 2008 Smt. Binita Mitra Vs. the UOI* upheld by Hon’be Patna High Court in *CWJC No. 18719 of 2014 on 18.08.2015*, judgment of Hon’ble Supreme Court dated 23.07.2015 in the matter of **Prabhu Dayal Khandelwal Vs. Chairman, UPSC & Ors.**). The applicant has further contended that after he came to know of his non-selection due to such un-communicated entries, he had requested the state Government to review his ACRs, but the government has not taken any corrective action despite favourable recommendation from one of the accepting authorities. The applicant has also contended that there was still a vacancy for the year 2011, due to one of the officers selected (Shri Shashi Shekhar) not getting appointment.

2. The respondent No.3 (UPSC) has filed a written statement in which they have informed about the relevant provisions of the rules relating to promotion to the Indian Forest Service [the IFS (Appointment by Promotion) Regulations, 1966]. According to Regulation 5(3AA) of these regulations the Selection Committee classifies the eligible State Forest Service Officers as “Outstanding”, “Very Good”, “Good” or “Unfit”, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(4), 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 from “Good”. The order of seniority within those selected in these groups is kept as per the order of seniority in the State Forest Service. Following these instructions, the selection committee meeting held on 4.6.15, to consider eligible officers against promotion of 3 vacancies of the year 2011, rated the applicant, based on the ACRs of previous five years including the year 2010-11, as “Good”. On the basis of this assessment his name was not included in the select list due to availability of officers with better grading, and the name of Shri Sunil Kumar-I (an officer junior to the applicant in the State Forest Service, who was assessed as “very Good”) was included at Sl. No. 3 in the list. The respondent also quoted a number of cases decided by the Hon’ble Supreme Court (**Nutan Arvind Vs. Union of India and Ors.**, (1996) 2 Supreme Court Cases, 488, **Durga Devi and Anr. Vs State of Himachal Pradesh** [1997 – SCC(L&S)-982], **UPSC Vs, H.L. Dev** and Or.s [AIR 1988 SC 1069] and **Abasaheb Solanke Vs. B. S. Mahajan** [AIR 1990 SC 434]. These are to support their contention that the courts should not sit in judgment or substitute their judgment for the assessment made by the selection committees, unless there is proven mala-fide. Regarding the decision of the Apex Court in Prabu Dayal Khandelwal’s case (which prohibited using uncommunicated ACR entries), the respondent has argued that it is not applicable in this case since there is no concept of “Bench Mark” in the promotion of State Service Officers to All India Services. The UPSC has also stated that there is no

provision in the Promotion Regulations to review the select list due to non-appointment of a provisionally included officer.

3. The respondents no 4, 5 and 6 (State of Bihar) also filed their written statement in which they supported the stand taken by the 2nd respondent (UPSC) and denied the claim made by the applicant.

4. The applicant filed a rejoinder in which, besides reiterating his earlier claims, he has informed about his having been promoted to IFS against select list of 2015 and alleged that his claim for consideration against the vacancy of 2011, which still exists, remains. He has also mentioned about Sri Shashi Shekhar, (who, according to him, is less qualified for selection) having been directed to be treated as included in the select list of 2011 by this Tribunal (in OA /050/00668/2017).

5. We have gone through the pleadings and heard the learned counsels of both the applicants and respondents nos. 4,5 and 6 (Bihar State). The main issue to be decided here is whether the respondents are right in denying the applicant selection to the IFS against the vacancies of the year 2011, if he was otherwise qualified for such selection, on the basis of un-communicated entries in the ACRs, which made his overall assessment, in the eyes of the selection committee, as "Good". The relevant portion of the summary of confidential reports of Applicants, the correctness of which is not expressly denied by the respondents, is reproduced below for better understanding of the case:

Year	Period		Remarks of Reporting Officer	Remarks of Reviewing Officer	Remarks of Accepting Officer
2004-05	25.06.2004 to 31.03.2005		Excellent	I Agree (Excellent)	Very Good
2005-06	03.06.2005 to 31.03.2006		Outstanding	Outstanding	Rate him as a Very good officer
2006-07	01.04.2006 to 31.03.2007		Outstanding	Can perform better Very Good Officer	I agree with the marks of Conservator of Forests A good officer (written on 26.05.2010)
2007-08	01.04.2007 to 02.08.2007 03.08.2007 to 31.03.2008		Outstanding Very Good	Very Good I agree with the reporting officer	I agree. A good officer (written on 26.05.2010) I agree (Very Good)
2008-09	01.04.2008 to 03.07.2008 04.07.2008 to 31.03.2009		Very Good -----	I agree Very good officer Very Good	I agree. Very good officer I agree with the marks of C.F. Patna and grade him as "Good"
2009-10	01.04.2009 to 26.07.2009 27.07.2009 to 31.03.2010		Very Good Good	Very Good Deserves Promotion	The then PCCH has been retired I agree with the remarks of reporting officer
2010-100	01.04.2010 to 12.12.2010		Very Good Excellent	Very Good I agree (Excellent)	I agree with the remarks of reporting officer

7. We find ourselves in complete agreement with the contention of the respondent no. 2 (UPSC) that this Tribunal should not go into the appraisal records of officers to make their own assessment, as this would amount to substituting the assessment of a properly constituted selection committee with the assessment by someone less qualified to make that assessment. However, we find it difficult to agree with the distinction made by the UPSC, of this case with the matters covered by the Apex court's decision in Prabhu Dayal Khandelwal's case. The UPSC has sought to distinguish these two cases, mainly, on grounds that there is no

benchmark fixed for selection to the IFS (an All India Service), and that this selection is different from promotion within a Central Service. The Hon'ble Apex court, has themselves specifically mentioned in that judgment, quoting from their earlier decision (in **Abhijit Ghosh Dastidar's** case) that:

“non communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the armed forces), has civil consequences because it may affect his chances of promotion or **getting other benefits**. Hence such non-communication would be arbitrary and as such violative of Article 14 of the constitution..... therefore, the entries “good” if at all granted to the applicant, the same should not have been taken into consideration for being considered for promotion to the higher grade. (emphasis added)”

8. Clearly, the reason why the Apex court directed ignoring the “good” ACRs was not only because of any particular rule of a service prescribing “good” as below benchmark. It was to prevent the chance of such un-communicated, apparently “good”, confidential record adversely affecting (adversely) chances of promotion or getting other benefits, without their having had any opportunity to represent against. This would certainly include selection to another, higher civil service, and therefore considering this dictum inapplicable for selection to an All India Service, as contested by the respondent UPSC, would be unreasonable. The UPSC has accepted in their written statement that they classify officers in categories “Outstanding”, “Very Good” and “Good” and select persons from a lower classification only if enough officers are not available in the higher classified category. This classification, by their own admission, is based on the recordings in the confidential reports. Such classification, apparently based on **un-communicated confidential reports** (containing remarks by

accepting authority allegedly downgrading the ratings given by the reporting and the reviewing authority) and denial of selection on that basis, is clearly in violation of the letter and spirit of the decision of the Apex court in Prabhu Dayal Khandelwal's case. Incidentally, in this case, besides remaining un-communicated, the remarks are also apparently ambiguous and self-contradictory).

9. We, therefore, direct the respondents to take immediate action, in no later than 3 months, to convene a review meeting of the relevant selection committee for selection of officers to the IFS for the vacancies of 2011. The committee should decide about his suitability for selection, **without being influenced by the un-communicated, apparently downgrading/self-contradictory remarks of the accepting authority in the ACRs of the years 2005-06 to 2008-09.** If they find the applicant suitable for selection, he should be recommended for selection to the IFS against the year 2011 vacancies, irrespective of whether that vacancy exists now or not. In case of his appointment, the applicant would not be eligible for any retrospective revision of his emoluments. His seniority will, however, be re-fixed on the basis of his original seniority in the state forest service and the salary revised prospectively after calculating the emoluments notionally from the date of appointment of his junior (in the state forest Service) to the IFS for the vacancy year 2011. The OA is disposed of accordingly. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member