

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT SITTING AT RANCHI
OA/051/00229/2019

Reserved on : 16.12.2019
Pronounced on: 18.12.2019

C O R A M
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MR. SWARUP KUMAR MISHRA, JUDICIAL MEMBER

Satish Chandra Choudhary, Son of Late Jagdish Chandra Choudhary, Superintending Engineer, Road Construction Department, Road Circle, Chaibasa, P.O.- Chaibasa, P.S.- Sadar Chaibasa, District- West Singhbhum, Chaibasa.

.... Applicant.

By Advocate: - Mr. Arun

-Versus-

1. The Union of India through its Secretary, Department of Personnel, Administrative reforms & Public Grievances, Government of India, New Delhi- 110001.
2. Union Public Service Commission, Dholpur House, New Delhi through its Secretary.
3. State of Jharkhand through its Chief Secretary, Project Building, Dhurwa, P.O. & P.S.- Dhurwa, District- Ranchi.
4. Additional Chief Secretary, Department of Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, project Building, Dhurwa, P.O. & P.S.- Dhurwa, District- Ranchi.

.... Respondents.

By Advocate(s):- Mr. Rajendra Krishna for UOI.
Mr. R.A. Gupta, for State of Jharkhand.
Mr. Faiz-Ur-Rahman for UPSC.

O R D E R

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for issuing direction upon respondent no. 2 (UPSC) to review the weightage or marks awarded to the applicant, for the component of service record

with particular reference to ACRs for the last five preceding years, by the selection committee, in its meeting held on 05.12.2018, for preparation of select list of 2017 for appointment to the IAS of Jharkhand Cadre from Non-SCS officers. They have also prayed for issuing direction to the UPSC to produce original evaluation sheets and to review the select list prepared on the basis of Selection Committee Meeting (SCM) held on 05.12.2018. The case of the applicant is that he has been given 44 marks (as per the minutes of the SCM held on 05.12.2018, Annexure A/3) for his CR assessment out of 50 marks. This assessment is wrong since he should have been given at least 10 marks for Outstanding and 8 marks for Very Good. Since the ACR of the applicant has been outstanding for the 5 preceding years he could not be assigned 44 out of 50 marks. The applicant has also annexed with this OA information regarding SCMs held for earlier years 22.12.14 and 21.12.2015 to support his argument about the arbitrary working of the respondent no. 2 in respect of assessment and awarding of marks.

2. A written statement has been filed by respondent no. 2 (UPSC) in which, while providing the details of the procedure relating to the determination of the vacancies and preparation of list of suitable officers by the Committee for selection of Non-SCS officers into the IAS, they have given details of how 50% weightage is provided for ACRs and the rest 50% for personal interview. According to the respondents, the statutorily constituted Selection Committee has followed a uniform and consistent practice in the matter of induction to the All India Services. The Select List is prepared after deliberating on the quality of the officer and after detailed

mutual deliberation and discussion it finally arrives at a classification assigned to each officer. While doing so, the selection committee also reviews and determines the overall gradings recorded in the ACRs to ensure that the overall grading is not inconsistent with the grading/remarks under various specific parameters or attributes. The selection committee assessed the applicant as outstanding for 2 years (2012-13 and 2013-14). Assigning 10 marks for these two years and 8 marks (Very Good) for the remaining three years, the committee assigned 44 marks to the applicant. The applicant got 35 marks in the interview and thus total 79 marks were assigned to him. Since there were two officers who obtained more marks than him, the applicant's name was not included in the select list. The respondents have also cited a number of cases of the Hon'ble Apex Court such as **Nutan Arvind Vs. Union of India** (1996 (2) SCC 488), **UPSC Vs. K. Rajaiah & Ors.** (2005 AIR SCW 3275), **UPSC Vs. H.L. Dev & Ors.** (AIR 1988 SC 1069), **M. V. Thimmaiah and Ors. Vs. Union of India & Ors.** (judgment dated 13.12.2007 in Civil Appeal No. 5883-5891 of 2007) and **UPSC Vs. M. Sathiya Priya and Ors.** (judgment dated 13.04.2018 in Civil Appeal No. 10854 of 2014). All these decisions support the respondents' claim that the recommendations of the Selection Committee cannot be challenged except on ground of malafides or serious violation of statutory rules. The courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a court of appeal.

3. The learned counsel for the respondents (State) submits that this case also suffers from non-joinder of necessary parties since the two

candidates recommended by the select committee have not been made parties in this case.

4. We have gone through the pleadings and heard the arguments of learned counsels of the parties. Though not specifically pleaded as the main ground for challenging the selection committee recommendation dated 05.12.2018, the main thrust of the argument of the learned counsel for the applicant was about the inclusion of the ACR of the year 2016-17, while considering the records of the candidates before it, in the selection for the IAS for the year 2017. It was argued that ACRs of the last five years, only upto the year 2015-16, should have been taken into consideration and not of five years including the year of 2016-17. To support this argument, the learned counsel cited the decision of the Hon'ble Supreme Court in Civil Appeal No. 10854 of 2014 (UPSC Vs. M. Sathiya Priya) where the Hon'ble Apex Court struck down the decision of CAT, Chennai Bench (which was upheld by Hon'ble High Court of Madras) by which this Tribunal and the Hon'ble High Court had directed inclusion of the respondents therein in the select list after taking into consideration the ACR of the period ending in the March of the year for which the selection to the IPS (in that case) was meant. We have gone through this decision which has been quoted by both the parties in support of their arguments. While the learned counsel for the applicant considered this judgment as an authoritative pronouncement about not including the last ACR in the process of selection, the learned counsel for the respondents (UPSC) have quoted the same judgment for supporting non-interference by a Tribunal in the decisions of a Selection

Committee which do not suffer from any malafide or arbitrariness. We find that in the case before us the Selection Committee has adopted a uniform criteria and have included the ACRs of all the contenders upto the year 2016-17. There is apparently no mistake, or any prima facie reason to suspect malafides, in their calculation of marks assigned for such ACR assessment. In fact, we notice that out of 10 candidates the applicant has received the second highest marks both in his ACR assessment and in the interview. He has missed selection only because other two candidates secured more marks than him on overall assessment. There are a number of decisions of the Hon'ble Apex Court, cited by the respondent no. 2 in their written statement, all of which cautioned against courts sitting in judgment over assessment made by the DPCs/Selection Committees. The judgment cited by the applicant is also in that class of judgments and has found fault with the Tribunal/High Court for their having suggested inclusion in a list while applying a criteria which the Tribunal/High Court thought was more correct. This judgment should not be read as a decision on the merit of the criteria (whether the ACRs under consideration should be exclusive or inclusive of the last financial year part of which falls under the year for which the selection is being proposed). Since, in the present case before us, the Selection Committee has consciously recorded the criteria of selection of Non-SCS officers and stated in paragraph-7 of the minutes (Annexure A/3) that they have taken ACRs of "at least five years including and upto the year 2016-17", we do not find that there is any arbitrariness in the process of selection which has been uniformly applied for all the short listed

candidates. The facts of this case also differ from Sathiya Priya's case since in that case the issue was about inclusion in the short list of a person who was left out and not about inter-se merit of the candidates already shortlisted. Because of all these reasons, we do not see any merit in the claim of the applicant. The OA is, therefore, dismissed. No order as to costs.

[Swarup Kumar Mishra]
Judicial Member

[Dinesh Sharma]
Administrative Member

Srk.