
(2005) 08 GAU CK 0026
In the Gauhati High Court

Rakesh Chandra Choudhury

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Citation : (2005) 107 FLR 87 : (2008) GLT 823 Supp

Hon'ble Judges : I.A. Ansari, J;A.B. Pal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.B. Pal, J.—By this writ petition, the petitioner herein, who is a member of the Tripura Civil Services (for short "TCS"), has impugned the judgment and order, dated 26.4.2002, passed by the Central Administrative Tribunal (for short "CAT"), Guwahati in Original Application No. 132 of 2001, whereby the application of the petitioner challenging promotion of respondents No. 5 to 15 to the Indian Administrative Services (for short "IAS") in 1994 and seeking a direction to include his name in the select list for his promotion in IAS above, respondents No. 9 to 15 with all service benefits including arrear of salary, has been dismissed.

2. The petitioner was appointed in Grade-II of the TCS on 25.4.1977, confirmed on 24.7.1979, promoted to Grade-I of the service on 15.1.1987 and appointed as Inspector General of Prisons on 28.12.1999 without any adverse entries in his service records during the long tenure of his service as claimed by him in the writ petition. In 1994, a; select list of TCS officers for promotion to IAS was prepared, which included eleven names including seven officers, who are juniors to the petitioner. The Selection Committee meeting was held on 29.3.1994 and 30.3.1994. The name of the petitioner along with others were considered, but the petitioner was not found suitable and accordingly, not included in the select list. Being aggrieved, he filed O.A. 145 of 1994 in CAT, Guwahati which was disposed of on 11.3.1999. Before the CAT, the petitioner canvassed that the Selection Committee could not consider and recommend his name for promotion

as his ACR for the year 1991-1992 was placed in incomplete form and his ACR for 1992-1993 was not at all placed before the Selection Committee. His further submission was that as per the provision of Regulation 5 of IAS (Appointment & Promotion) Regulations, 1955, the Selection Committee is required to consider and make assessment of service records of the officers for a period of five years and such service records essentially include ACRs. His grievance before the CAT was that non-placement of his ACR of 1992-1993 and incomplete ACR of 1991-1992 led to his exclusion from the select list for the year 1993-1994. The learned Tribunal extensively dealt with the grievance of the petitioner and came to the finding that ACR for the year 1992-1993 of the petitioner was not in record as was not placed before the Selection Committee. As regards the ACR for the year 1991-1992, it was found that the same was not complete inasmuch as there was no endorsement made by the accepting authority. Other ACRs., however, were on record. The State respondents did not come forward to say whether the ACR for 1992-1993 was lost or destroyed or why the same could not be placed. After making such observations, the learned Tribunal directed the State respondents to make endeavour to find out the ACR for the said year and make proper assessment of the petitioner after comparing him with others. Following the said direction, the review selection committee met on 17.11.1999 to consider afresh the case of the petitioner and another. On 8.2.2000, the petitioner was informed that on the basis of the findings of the review selection committee, as approved by the Union Public Service Commission, he was not entitled for promotion to IAS from the 1993-1994 select list for Tripura, thus compelling the petitioner to knock the door of the Tribunal once again by filing O.A. 132 of 2001 assailing the impugned communication dated 8.2.2000 as aforesaid (Annexure-2) expressing same grievance that his ACR for the year 1991-1992 was placed in incomplete form and the ACR for 1992-1993 was not placed at all before the Review Selection Committee. He canvassed same submission again that in the absence of those ACRs., his relative merit vis-a-vis respondents No. 5 to 15, who figured in the select list could not be assessed and determined by the review selection committee, which was in contravention of the procedure laid down by the Government of India in the Department of Personnel Training, issued on 10.3.1989 (Annexure-3). The second Original Application of the petitioner was also dismissed after holding that the State Government made available the complete service record upto 1992-1993 in respect of the petitioner before the Review Selection Committee, which met on 17.11.1999 to review the case of the petitioner and Anr. and after an over all assessment of the service records, assessed him as "good" and for that reason, could not recommend him for inclusion in the select list, which included only the officers graded as "very good". Aggrieved, the writ petitioner is thus before us challenging the above decision of the learned Tribunal in this writ petition.

3. The Chairman., Union Public Service Commission (for short UPSC) being the second respondent and the State of Tripura being the third respondent filed separate counter-affidavit to contest the claim while others including the Union of

India have not filed any reply.

4. In both the counter-affidavits, (he respondents have taken the same stand that the petitioner was assessed as "good" by the selection committee and on the basis of that assessment, he could not be included in the select list for 1993-1994 due to the statutory limit on the size of the select list and that officers with a higher grading were available for inclusion in the select list. However, in pursuance to the direction dated 11.3.1999 of the learned Tribunal in O.A. 145 of 1994, the Government of Tripura forwarded again a proposal on 11.8.1999 for review of the cases of the petitioner and another. The service records of the petitioner upto 1992-1993 were collected and placed before the review selection committee on 17.11.1999, which, however, again graded the petitioner as "good" after over all assessment of his service records. As the select list of 1993-1994 consisted all officers with over all grading of "very good", the petitioner could not be accommodated therein. It has been further contended that selection of officers for appointment to IAS falls within the exclusive domain of the selection committee and before the Review Selection Committee all the service records of the petitioner upto 1992-1993 were placed and as such he could not have any reason to be aggrieved as no employee has any right to be promoted though he has a right to be considered for promotion. The petitioner has been considered by the Review Selection Committee for promotion, but because of his low grading, he could not be included in the select list and it is not within the jurisdiction of a Court or a Tribunal to interfere with the assessment made by the Selection Committee.

5. We have heard Mr. A.K. Bhowmik, learned Senior Counsel, assisted by Mr. S. Ghosh, learned Counsel for the petitioner and Mr. K. Bhattacharjee, learned Assistant S.G. (as he was then) for the respondent-Union of India as well as Mr. S. Chakraborty, learned Counsel for the State respondents.

6. Mr. Bhowmik advanced his first submission that even before the Review Selection Committee, the ACR of the petitioner for the year 1992-1993 was not placed and what was placed in the name of service record was a performance report. According to him, a performance report cannot take place of ACR for the purpose of judging comparative merit of the candidates. This submission takes us to the relevant part of the impugned order of the learned Tribunal, which reads as follows:

It was contended that complete ACR for the year 1993-1994 was not this time also placed before the Selection Committee and the respondents only acted on some reports which caused great miscarriage of justice.

Referring to para 7 of the written statement of the State respondents, it was further contended by the petitioner that the respondents acted only on the performance report and obviously ignored the direction of the Tribunal in O.A. 145 of 1994. This contention was, however, controverted by the State respondents submitting that the complete service record of the petitioner was

placed before the Review Selection Committee at the time of forwarding the name of the petitioner along with another by letter, dated 11.8.1999 proposing review of their cases. This has been clearly stated in para 14 of the written statement of the State respondents. Thus the State respondents made available complete service record of the petitioner upto 1992-1993 and on that basis, the Review Selection Committee, which met on 17.11.1999, made a fresh exercise and after overall assessment, assessed the petitioner as "good" for which he could not find place in the select list for 1993-1994. In para 4 of the judgment, the learned Tribunal held thus:

4. We have given our anxious consideration on this matter. From the facts indicated clearly leaves no doubt that the ACR and complete service record upto 1992-1993 of the officers including the applicant were made available before the Selection Committee and the Selection Committee considered the same and made overall assessment of the service record and thereafter made selection. No doubt on the basis of the ACRs eligible officers are categorized in terms of Regulation 5(4) of the Promotion Regulations. In addition to the grading made by the ACR the Selection Committee made its own assessment on the basis of the examination of the service record of officers deliberating on the basis of the performance. The power to judge the comparative merits of the candidates and consider the fitness and suitability of the applicant is vested on a high level committee. The function of grading and assessment is vested on the Selection Committee. It is for them to evaluate the respective merits". The Tribunal in exercising judicial review can examine the legitimacy of the decision making process. It is not the authority to evaluate and assess like that of an appellate authority.

7. From the above observation of the learned Tribunal, we have noted that the ACRs and complete service record upto 1992-1993 of the petitioner were made available before the Review Selection Committee and so the contention of Mr. Bhowmik that the Review Selection Committee acted on the basis of performance report, not on ACRs., is not correct. The dispute whether ACR or performance report only was placed before the Review Selection Committee is a question of fact, which has been decided by the learned Tribunal in definite terms. In our considered view in the absence of any definite material to the contrary, we cannot delve into this question of fact, bottled by the learned Tribunal, in exercise of our writ jurisdiction.

8. The second submission of Mr. Bhowmik is that the learned Tribunal has failed to appreciate the fact that Regulation 5 of the IAS (Appointments & Promotions) Regulations, 1995, was not complied with by the Review Selection Committee while making overall assessment of the comparative merit of the officers on the basis of the service records.

9. To appreciate this contention of Mr. Bhowmik, we have examined the said provision, which is quoted below:

The list shall be prepared 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 amongst those similarly classified as "Good" and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

It has been submitted on behalf of the respondents that the petitioner having been classified as "good" found no place in the select list, which comprised only those officers, who were classified as "very good". Violation of Rule 5 thus could not be substantiated in the submission advanced by Mr. Bhowmik.

10. Mr. Bhattacharjee, on the other hand, submits that merit is the nucleus of the selection process and as such selection of junior officers having higher merit in preference to senior officers does not strictly amount to supersession, The selection has been made by the Selection Committee strictly in accordance with the provisions of the promotion regulation, which have been upheld by the Supreme Court in R.S. Dass v. Union of India. In that case, the Supreme Court held thus:

The amended provisions of Regulation 5 have curtailed and restricted the role of Seniority in the process of selection as it has given priority to merit. Now the Committee is required to categorize the eligible officers in four different categories viz. "Outstanding", "Very Good", "Good" and "Unfit" on overall relative assessment of their service records.

Mr. Bhattacharjee submits that strictly following the provisions contained in Regulation 5, the petitioner has been assessed only as "good" while all other officers, who were included in the select list were classified as "very good" and thus, there cannot be any grievance of the petitioner that the above regulation was infringed in any way.

11. Mr. Bhowmik placed his next submission that the instructions contained in para 2.2.1(b) and (c) of instructions of Government of India in the Department of Personnel and Training to be observed by the DPC has been grossly violated. Though Mr. Bhowmik has not elaborated how such infringement has taken place, we have examined the above provision, which is reproduced below:

2.2.1(b). The UPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular years, all the CRs for the relevant years shall be considered together as the CR for one year).

(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.

12. It has not been made clear to us how the above instructions have been violated when the only grievance of the petitioner before the learned Tribunal in the first O.A. was that his ACR for 1992-93 only was not placed and his incomplete ACR for the year 1991-92 was placed, before the Selection Committee grading him down in the overall assessment of his merit. In other words, his ACRs for remaining three year and all other service records were placed before (sic) 1993-94. We are, therefore, not convinced that the above instructions in any way have been violated by the Review Selection Committee while making second overall assessment of the petitioner following the direction of the learned Tribunal.

13. Learned Counsels for the respondents made their robust submissions on the limits of the writ Court in entertaining grievances, such as these, mainly based on facts when the service Tribunal has rendered decision thereon. According to them; neither the Tribunal nor the writ Court has any jurisdiction to interfere with relative assessment of merit made by the Selection Committee, as undoubtedly the Courts cannot sit in appeal against such assessment. In *Nutan Arvind v. Union of India* 1996 (72) FLR 652 (SC) the Supreme Court held thus:

When a high level committee had considered the respective merits of the candidates, assessed, graded and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority.

In *Durga Devi v. State, of Himachal Pradesh* 1997 SCC (L&S) 982 the Supreme Court held that a Tribunal cannot scrutinize comparative merits of the candidates and their fitness for a post as such a Tribunal cannot sit as an appellate authority over deselection Committee.

In *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, the Apex Court held thus:

It is needless to emphasize that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative-merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject.

Again in *Smt. Anil Katiyar v. Union of India* 1997 (1) SLR 153 the Supreme Court observed as follows:

Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not set in judgment over the selection made by the DPC unless the selection is

assailed as being vitiated by mala fides or on the ground of it being arbitrary.

14. In the light of the above ratios, we have examined the materials on record and noted that there is no allegation of mala fide or arbitrariness on the part of the Review Selection Committee. The crux of the entire grievance of the petitioner is that his ACR for the year 1992-93 was not at all placed and his ACR for the year 1991-92 was placed in incomplete form before the Selection Committee. Nothing more was canvassed before the learned Tribunal in his first round of litigation. The Tribunal addressed the grievance by directing the respondents to place all such records again after tracing out the lost ACR, if any, and accordingly, the State respondents faithfully placed all such service records including the ACR for those years, on the basis of which the Review Selection Committee re-assessed the merit of the petitioner and classified him as "good". As such assessment cannot be interfered with by the Tribunal or by the writ Court and as there is no allegation of mala fide or arbitrariness, we are of the view that the learned Tribunal has rightly refused to interfere with the assessment made by the Review Selection Committee. We find nothing wrong in the decision of the learned Tribunal in refusing to interfere with the decision taken by the review selection committee.

15. In view of the discussions made above, we are of the view that this writ petition is devoid of any merit and the same is liable to be dismissed, which we hereby do, leaving the parties to bear their own costs.

I.A. Ansari, J.

I agree.