
(2006) 04 GAU CK 0002
In the Gauhati High Court
Case No : CR No. 3628 of 1998

Sailendra Nath Talukdar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Evidence Act, 1872 — Section 114

Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 3, 5, 5(4), 5(5), 5(6)

Citation : (2006) 4 GLT 643

Hon'ble Judges : B.S. Reddy, C.J;B.P. Katakey, J

Bench : Division Bench

Advocate : S. Saikia and B.J. Talukdar, for the Appellant; P.K. Tiwari, D.C. Chakraborty and B. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—This Writ Petition is directed against the order dated 17.6.98 passed by the learned Central Administration Tribunal, Guwahati Bench in O.A. No. 136 of 1997 dismissing the Original Application (OA) filed by the present Writ Petitioner rejecting the challenge made by him to the selection made by the selection committee for the purpose of promotion of State Police Service officer to the Indian Police Services under the Indian Police Service (Appointment by Promotion) Regulation, 1955. (in short 1955 Regulation).

2. The Writ Petitioner filed O.A. No. 136 of 97 against present Respondent Nos. 1 to 6, who were the Respondent Nos. 1 to 3 and 6 to 8 in the OA and against the Commissioner and Secretary, Govt. of Assam, Home department as well as Director General of Police, Assam, who were Respondent Nos. 4 and 5 in the said O.A., praying for rectification of the select list prepared in the month of June 1996, placing the present Writ Petitioner (original applicant) above the present Respondent No. 5 and 6 (Respondent No. 7 and 8 in the O.A) for promotion to the Indian Police Service (in short IPS), basically on the ground of improper

consideration of annual confidential reports (ACRs) and non consideration of the inter-se-seniority between them and also on the ground of non-consideration of entire service of records by the selection committee by ignoring the meritorious service rendered by the Writ Petitioner. The Union Public Service Commission on receipt of the notice entered appearance and filed the Written statement stating inter alia that the committee duly classified eligible State Police Service officers, included in the zone of consideration, as "outstanding", "very good", "good" or "unfit". as the case may be, on an overall relative assessment of their service records as required under Regulation 5(4) of the 1955 Regulation by adopting its own norms and yardsticks in order to ensure equity, justice and fairplay in the assessment of the ACRs. It has further been contended that the Tribunal cannot get into the validity or otherwise of the selection as the same was done by UPSC, more so when the Tribunal cannot sit on appeal over the selection made by the selection committee. The learned tribunal upon perusal of the pleadings of the parties as well as the records produced by the UPSC, vide order dated 17.6.98 dismissed the original application filed by the Petitioner by holding that the original applicant could not show any instance which demonstrate dereliction of duties in Writing the ACRs and the ACRs were Written by the reporting officer and scrutinize and reviewed by the accepting and reviewing officer and therefore recorded the finding that the assessment of the officers made by the selection committee on the basis of the ACRs and subsequent gradation on such assessment fulfills the requirement of Regulation 5 of 1955 Regulation. It has further been held that the selection committee being an expert body knows how to make assessment and the tribunal is not competent to interfere with the decision of the selection committee in making the assessment and subsequent gradation unless there is something patently wrong on the face of it. The learned tribunal has held that the tribunal keeping in view the facts and circumstances of the case is not inclined to interfere with the decision of the selection committee in respect of placement of successful candidates. Hence the present Writ Petition before this Court.

3. We have heard Mr. S. Saikia, learned Counsel for the Writ Petitioner, Mr. D.C. Chakraborty, learned central Govt. Counsel appearing on behalf of the Respondent No. 1 and 2, Mrs. B. Goyal, learned State Counsel appearing on behalf of the Respondent No. 4 and Mr. P.K. Tiwari, learned Counsel appearing on behalf of the Respondent No. 6. None appears on behalf of the other Respondents.

4. At this stage it is worth to mention that though the present Respondent No. 7 to 9 were not parties in O.A No. 136 of 1997, they were added as Respondents in the Writ Petition, even without any leave from this Court. This Court on the basis of the application filed by the Respondent No. 10, namely Nawab Imdad Hussain in Misc. Case No. 862/98 and by Sri Debendra Nath Hazarika, present Respondent No. 11 in Misc. Case No. 863 of 98, who were not selected by the selection committee for promotion to IPS, were allowed to be added as Respondent in the Writ Petition.

5. Mr. Saikia, learned Counsel for the Writ Petitioner has submitted that the Petitioner was all along graded as "outstanding" in the ACRs in the relevant years i.e. for the years 1991-92 to 94-95 except for the year 1990-91, in which year he was graded as "very good" in the ACR but the selection committee graded him as "very good" in spite of such "outstanding" gradation in the ACRs, by ignoring the receipt of President's Police medals as well as other meritorious award by the Petitioner. It has further been submitted that though the Respondent Nos. 5 and 6 herein were junior to the Petitioner and they did not receive any president's Police medals or other meritorious awards, they were graded as "outstanding" by the selection committee and placed them above the Petitioner in the select list prepared by such selection committee. In other words it is submitted that the selection was made without taking into consideration the entire service record required to be considered under Regulation 5(4) of the 1955 Regulation. It has further been submitted that as the Petitioner ought to have been graded as "outstanding" on the basis of the entire service record, Respondent No. 7, 8 and 9 having graded as "very good" by the selection committee, though they were senior to the Petitioner in State police service, ought to be placed after the Petitioner in the select list. The learned Counsel has further submitted that there was no proper selection by the committee as it has failed to take into consideration the fact that the disciplinary proceeding against Birendra Kumar Hazarika, Respondent No. 9 in the Writ Petition, was pending and the said fact was not placed before the selection committee, as is apparent from the record produced by the UPSC. Mr. Saikia, has further submitted that though the selection committee has the power to make independent assessment of the service records of all the eligible officers while considering for promotion to IPS, it cannot simply ignore the assessment made by the authority in the ACRs for the relevant years and while making such assessment the selection committee is also required to indicate as to how and in what respect it has made the overall assessment and arrived at a particular grading which is different from the grading given in the relevant ACRs of the officers who were considered for promotion. According to the learned Counsel it is evident from the record produced by the UPSC before the learned Tribunal that except mentioning the overall assessment by the selection committee there is absolutely no indication and/or reasons recorded by it while making such grading by such selection committee. The learned Counsel therefore, submits that the selection made by the selection committee was not in conformity with the provisions contained in the 1955 Regulation and therefore required to be interfered with. Mr. Saikia, in support of his contention has placed reliance on the decision of the Apex Court in *R.S. Dass v. Union of India* and Ors. reported in 1986 (Suppl.) SCC 617 and in *State of West Bengal and Others Vs. Md. Khalil*,

6. Mr. Tiwari, learned Counsel appearing on behalf of the Respondent No. 6 has submitted that the selection made by the selection committee for promotion to IPS was in accordance with the provision of the 1955 Regulation. Referring to the provision of 1955 Regulation, it has further been submitted that the Selection

committee while making selection is to give its own grading after overall assessment of the service records of all the eligible officers and it is not that the grading given in the ACRs are to be accepted by the selection committee. Mr. Tiwari has further contended that it is evident from the records produced before the learned Tribunal that the selection committee has after taking into account the relevant service records gave independent grading in respect of all the officers. It is not the requirement of law that the selection committee while making its independent assessment of relevant service records of the officers and while giving its grading has to record reason or at least indicate how it has arrived at such grading, submitted by the learned Counsel and therefore, no illegality has been committed by the selection committee while recommending name of the Respondent No. 6 above the Petitioner for promotion to IPS. Mr. Tiwari has submitted that in fact the Respondent No. 6 was also given the grading of "outstanding" in the ACRs for the years 1991 -92 to 94-95 and "very good" in respect of the year 1990-91, as is the case of the Petitioner, but the selection committee by taking into account the entire service record has arrived at its independent grading, which it is entitled to do. The learned Counsel has further submitted that in the O.A filed by the Petitioner it has not been contended that while Writing ACR by the concerned officers the receipt of the President's Police medals as well as other meritorious awards by the Petitioner were not taken into consideration and therefore the Petitioner now cannot say that the selection committee while making its assessment did not take into consideration such meritorious service, as the grading in the ACRs is given by the competent authority by taking into account such meritorious award received by the officer. The learned Counsel contends that the Court normally should not interfere with the selection made by the authorities, such as UPSC, unless glaring illegality on the face of the record is committed while making such selection. According to the learned Counsel no such illegality has been committed by the selection committee while making such selection. Mr. Tiwari, referring to the application filed by the present Writ Petitioner in Misc. Case No. 1208 of 98 praying for directing the official Respondent Nos. 1 to 3 to consider his case for promotion to IPS, in terms of the impugned select list and against the vacancy which occurred on 1.4.97, due to superannuation of Sri N.C. Penging, there by claiming promotion on the basis of the said select list and his consequent promotion to IPS on the basis of such select list, has subjected that the Petitioner at this stage cannot turn around and challenging the said select list, he having accepted the promotion to IPS on the basis of the such select list. Mr. Tiwari in support of his contention has placed reliance on the decision of the Apex Court in U.P.S.C. Vs. K. Rajaiah and Others, on the point of the scope of judicial review of the selection made by the selection committee.

7. Mr. Chakraborty, learned Central Govt. Counsel appearing on behalf of the Respondent No. 1 and 2 relying on the records produced by the UPSC has contended that the selection committee while making the independent assessment of the service records of the concerned state police service officers

scrupulously followed the guideline issued by the UPSC in that regard. It has further been submitted by the learned Counsel that the UPSC is not bound to accept the grading given in the ACR for the relevant years and it has to make independent assessment on the basis of the entire service record of each officer placed before it and give its own grading, which may be different from the grading given in the ACRs of such officers. The learned Central Govt. Counsel has contended that though the case of the Writ Petitioner is that receipt of the President's Police medals and other meritorious award were not taken into consideration by the selection committee, there is no whisper in the O.A. filed by him that while Writing the ACRs, the competent authority did not take into consideration such meritorious awards received by him and the ACRs having been Written by taking into account all those factors, it cannot be said that there was non consideration of the receipt of such awards and medals by the Petitioner, while making selection for promotion to IPS. The learned Counsel has further contended that the Writ Petitioner having not arraigned the present Respondent Nos. 7 and 9 as parties in O.A. No. 136 of 1997 cannot challenge the selection of those Respondents for promotion to IPS by adding them Respondents in the present Writ Petition field challenging the decision given by the Tribunal in the said O.A. The learned Counsel therefore, submits that even if the pendency of the departmental proceeding against the present Respondent No. 9 was not taken into consideration while making selection, the same cannot be challenged by the Petitioner in the absence of any challenge to the selection of the said Respondents before the learned tribunal in the OA filed by the Petitioner. In any case according to the learned Counsel even if a departmental proceeding is pending against an officer it will not debar such officer for being considered for promotion to IPS as under 1955 regulation selection of such officer is required to be treated as provisional subject to clearance of the departmental proceeding as required under regulation 5(5) of the said 1955 Regulation, as has been done in the instant case. The learned Counsel further submits that pursuant to the order dated 4.12.98 passed by this Court in Misc. Case No. 1208 of 1998, on the basis of the prayer made by the Writ Petitioner, he was promoted to IPS on the basis of the impugned selection made by the selection committee and therefore, Petitioner now cannot challenge the proceeding of the such selection having accepted the promotion. Mrs. Goyal, the learned State Counsel has adopted the arguments of the learned Central Government Counsel.

8. We have considered the submissions of the learned Counsel for the parties and also perused the pleadings and the order passed by the learned tribunal as well as the record produced by the UPSC. Though the UPSC has filed an affidavit claiming privilege in respect 22 numbers of notes and 176 numbers of correspondences contained in File No. 7.2.96-AIS, the said affidavit was not moved and as such no order was passed. In any case as submitted by the learned Counsel for the parties, this very record was produced by the UPSC before the learned Tribunal, which has allowed the parties to peruse the same.

9. Before dealing with the rival contention of the parties, we would like to

observe that this Court on completion of hearing of the learned Counsel for the parties on 4.4.2006 kept the judgment reserved, but upon perusal of the records produced by the UPSC in a sealed cover, it was subsequently found that the guidelines issued by the UPSC to the selection committee for making selection was not produced along with records, though it has been mentioned in the note sheet, therefore, the Court vide order dated 11.4.2006 directed the learned Counsel appearing on behalf of the UPSC to produce such guidelines and accordingly guidelines were produced before this Court on 24.4.2006, when the matter was taken up again under the heading "for being spoken to". We record our displeasure on the conduct of the UPSC is not producing the full record before this Court at a time, which necessitated for listing the case again under the heading "for being spoken to" after the judgment was kept reserved.

10. The Writ Petitioner in the OA filed before the learned Tribunal, copy of which is annexed as annexure-A to the Writ Petition, prayed for rectification of the select list prepared by the selection committee under 1955 Regulation for promotion to IPS by placing him above the Respondent No. 7 and 8 therein (Respondent Nos. 5 and 6 in the Writ Petition) and to appoint him in IPS after such rectification. The legality and validity of the select list was not under challenge except the limited prayer for rectification as aforesaid. The said prayer was basically made on the ground that the receipt of the President's police medals and other meritorious awards and commendable achievements of the Writ Petitioner were not taken into consideration by the selection committee while making selection for promotion to the IPS, though entire service record of the concern officer is required to be taken into consideration by virtue of Regulation 5(4) of 1955 Regulation and though the Respondent Nos. 7 and 8 therein were much junior to him they have been included in the select list above the Writ Petitioner. It not the case of the Writ Petitioner before the learned Tribunal that while Writing the ACR for the relevant years, such meritorious awards and commendable achievements were not taken into consideration by the reporting officer, reviewing officer, or by the accepting officer. The further case of the Petitioner was that though he was graded as "oustanding" in the ACR of several years, he was graded as "very good" and placed at SI. No. 6 in the select list for promotion by the selection committee. The selection of the present Respondent Nos. 7, 8 and 9 in the Writ Petition, who were placed at SI. No. 3,4 and 5 and admittedly senior to the Writ Petitioner in State police service have also not been challenged before the learned Tribunal. The Respondents No. 7, 8 and 9 though were not parties in the OA filed by the Writ Petitioner before the learned Tribunal, they are added as party in the present Writ Petition, even without obtaining any leave from this Court, with a prayer for setting aside the entire select list of 1996 prepared by the selection committee for promotion to IPS as well as judgment and order dated 17.6.98 passed by the learned Tribunal in OA No. 136 of 1997, with a further prayer for directing the Respondents not to give effect to the said select list as well as the impugned judgment of the learned Tribunal. An interim order was also prayed for suspending the operation of the

said select list and the order of the learned Tribunal and/or enabling the official Respondents namely Respondent No. 1 to 4 to make appointments to all vacancies as existed on date from the said select list. This Court vide order dated 31.7.98 in the Writ Petition had passed an interim order directing the official Respondent to consider the Petitioner for promotion to IPS on the basis of the said select list and by considering him to be at SI. No. 6 and kept the question whether he is entitled to be placed higher in the select list open for hearing in the Writ Petition. The Writ Petitioner thereafter filed another application in Misc. Case No. 1208 of 1998 praying for directing the Respondent Nos. 1 to 3 to consider his case for promotion to IPS pursuant to the said select list and by treating the vacancy which had occurred on 1.4.97, due to superannuation of Sri N.C. Panging, to be within the purview of the select list of the year 1995-1996. This Court vide order dated 4.12.98 directed consideration of the case of the Petitioner for promotion against the said vacancy occurred on 1.4.97 on the basis of the select list impugned in the Writ Petition. It has been stated at bar that pursuant to the said order passed by this Court, the Writ Petitioner has already been promoted to IPS on the basis of his position in the select list prepared in the year 1996.

11. Regulation 5 of 1955 Regulation provides for preparation of a list of members of the State police service by the committee constituted under Regulation 3 of the said Regulation, as held by them to be suitable for promotion to IPS. Regulation 5(4) of the 1955 Regulation provides that the selection committee shall classify the eligible officers as "outstanding", "very good", "good" or "unfit", as the case may be, on an overall relative assessment of their service records. Regulation 5(5) stipulates that the list shall be prepared by the selection committee by making inclusion of required number of names, first from amongst the officers classified as "outstanding", than 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 have to be in the order of their seniority in the State police service. Proviso to Regulation 5(5) of the 1955 Regulation provides that inclusion the name of any officer in the select list shall be treated as provisional if any proceeding is contemplated or pending against him. Regulation 5(6) stipulates that list so prepared shall be reviewed and revised every year.

12. As provided by Regulation 5(4) of 1955 Regulation the selection committee is required to make independent assessment of the eligible officers, who come within the zone of consideration, for the purpose of promotion to IPS by making an overall relative assessment of their service records, which means not only the ACRs but also other records pertaining to the service of such eligible officers. The selection committee is not therefore, bound to accept the grading of the officers recorded in the relevant ACRs and has to classify the eligible officers as "outstanding", "very good", "good", or "unfit", as the case may be, independent of the grading given in the ACRs. It appears from the affidavit-in-opposition filed by the UPSC as well as the record produced before this Court that a set of guide

lines/procedures for categorization of State civil/ police/forest service officers in terms of the Regulation 5(4) of the IAS/IPS/IFS (promotion) regulation has been formulated. In the said guidelines detailed procedure required to be followed by the selection committee for making an overall relative assessment of the service record of the eligible officers have been laid down. In the affidavit filed by the UPSC a categorical statement has been made that the selection committee has classified eligible officers as "oustanding", "very good", "good", as the case may be, on an overall relative assessment of the service record and in terms of the guidelines issued by the UPSC for that purpose.

13. In the instant case, the case of the Writ Petitioner is that receipt of the President's police medals and other meritorious awards during the relevant period i.e. from 1990-91 to 1994-95 were not taken into consideration by the selection committee while making the selection, though under Regulation 5(4) of the 1955 Regulation the selection committee is required to classify the eligible officers on an overall relative assessment of their service records. According to the Petitioner he has been classified as "very good" though he was graded as "oustanding" in the ACRs pertaining to the year 1991-92 to 1994-95 and therefore, according to the learned Counsel the entire selection process is vitiated, having not taken into consideration the relevant factors. It is not the contention of the learned Counsel for the Petitioner and rightly so, that the selection committee cannqt classify the officers independent of tile grading given in the ACRs for the relevant years. What has been contended is that the relevant factors were not taken into consideration.

14. In Writing the ACRs and giving the grading in the ACRs by the reporting officer, reviewing officer and accepting officer, the meritorious awards as well as the police medals received by an officer, during the relevant period of time, has to be taken into consideration and the authority is accordingly required to give the appropriate grading in the ACRs. In the instant case it is not the case of the Petitioner before the learned Tribunal that the said authorities, while Writing the ACRs for the relevant years and while giving appropriate grading in such ACRs, did not take into consideration the receipt of police medals and other meritorious award by the Petitioner and therefore, those factors have to be taken into consideration by selection committee independently along with the ACRs of the Petitioners for the relevant years. The grading in the ACRs having required to be given by the competent authorities by taking into account all those factors, as aforesaid, it cannot be presumed that those were not taken into consideration while Writing ACRs of the Petitioners, more so, when no such contention has been raised by the Writ Petitioner before the learned Tribunal. The contention of the learned Counsel for the Petitioner that the selection committee did not take into consideration those meritorious services of the Petitioner, therefore, cannot be accepted as admittedly the selection committee took into consideration the ACRs of the Petitioners for the relevant years, while making selection of officers for the purpose of promotion to IPS.

15. Records produced by the UPSC, reveals that selection committee while classifying the eligible officers as "outstanding", "very good", or "good", took into consideration the assessment made by the earlier selection committee for the purpose of selection for promotion to IPS and also made independent assessment of the service records of the eligible officers in respect of each of the last five years i.e. from 1990-91 to 1994-95 and classified those officers in respect of each year and thereafter made overall classification. It appears from the said records that the Writ Petitioner was classified by the previous committee as "very good" and he was classified by the Present Selection committee in respect of the year 1990-91,1991-92,1993-94,1994- 95 as "very good" and in respect of the year 1992-1993 as "outstanding" and thereafter classified him as "very good" after overall assessment. The Respondent No. 5, Ajit Kr. Das was classified as "outstanding" in respect of all the relevant years and also in the overall assessment made by the selection committee. Similarly, the Respondent No. 6, Deerajuddin Ahmed, was classified as "very good" in respect of 1990-91 and "outstanding" in respect of the year 1991-92 to 1994-95 and was classified as "outstanding" after overall assessment by the selection committee. By operation of the provision contained in 1955 regulation, the Respondent Nos. 5 and 6 therefore, were placed at SI. No. 1 and 2 and the Writ Petitioner was placed at SI. No. 6 in the said select list. The present Respondent Nos. 7, 8 and 9 who were admittedly senior to the Petitioner in State police service were placed at SI. No. 3, 4 and 5 respectively, having classified them as "very good" by the selection committee, they being admittedly senior to the Petitioner in State Police Service. For the sake of rePetition, it is observed that the selection of the present Respondents Nos. 7, 8 and 9 were not challenged by the Petitioner before the learned Tribunal and they have been added as Respondents for the first time in the present Writ Petition challenging the judgment passed by the learned Tribunal in OA 136 of 1997 dismissing the said OA. The Respondent Nos. 10 and 11 though were also classified as "very good" by the selection committee were not included in the select list is as they are junior to the Petitioner and keeping in view the number of vacancies available for promotion.

16. Having observed so, the questions which now require to be considered are-to what extent the Court can exercise its power of judicial review over a decision of the selection committee; whether selection committee is required to indicate the basis of grading in respect of each relevant year as well as in grading after overall assessment of service record, so that the Court in exercise of its power of judicial review can scrutinize the legality and validity of the decision making process or whether the decision making process is vitiated because of taking into consideration irrelevant factors or for not taken into consideration the relevant factors or the Court must presume in favour of having a valid selection, as such selection was made by high level authority like UPSC.

17. The scope of judicial review of the selection made by the selection committee is no doubt very limited. The Court cannot sit on appeal over the decision of the selection committee in selecting the candidates for promotion and or

appointment but at the same time if there is non-application of mind to the relevant and vital factors, which goes to the root of selection, such selection as well as the entire action taken thereafter can be interfered with. The Writ Court in fact is not concerned with the decision but is concerned with the decision making process, meaning thereby, it is not concerned who has been promoted but definitely concerned if such promotion is made pursuant to a selection made by the selection committee which did not take into consideration all the relevant factors or made the selection by taking into account the irrelevant factors. The function of the selection committee being recommendary and advisory, is purely an administrative function. Though it makes selection pursuant to the relevant service rules and regulation, the same cannot be said to be quasi-judicial function imposing a duty to give reason. However, as the decision making process is open to judicial scrutiny by a Court i.e. as the procedure adopted by the selection committee while making selection is open to judicial review, such selection committee while making such selection must indicate the basis for such selection. Strictly speaking they are not required to record reasons for making any selection but the proceeding must indicate something, from where it can be judicially scrutinize whether the selection committee took into consideration all the relevant factors required to be taken into consideration and whether any irrelevant factors were taken into consideration while making such selection. That apart the Court in exercise of its power of judicial review can definitely interfere with the selection if such selection is vitiated by bias, arbitrary, unjust or malafide or if the same is violative of the relevant service rules or regulation.

18. The Apex Court in *R.S. Dass* (supra) upon consideration of the relevant provision of IAS (Appointment by Promotion), Regulation 1955, more particularly Regulation 5(4) and 5(5) of the said Regulation. which are in parameteria of the 1955 Regulation, has held that the principle object of promotion system as contained in the regulation is to secure the best possible incumbent for promotion to IAS, which is the backbone of the administrative machinery of the country and efficiency of the administration in the Union as well as in the State largely depends upon the efficiency of the members of IAS and such efficient public service is public interest and such public interest is best secured if reasonable opportunity for promotion exist for all qualified members of State civil service and only those who are found efficient and suitable in all respects are promoted. It has further been held that under the Regulation as the service record of all eligible officers, whose names are included in the proposed select list and the records of even those who are not selected is again scrutinized by the State Government and the UPSC and only thereafter final shape is given to the selection list, therefore, adequate checks and safeguard at different stages by different authorities are available under the Regulation. It has been observed that it is true that where the merit is the sole basis of promotion, the power of selection becomes wide and liable to be abused with less difficulty, but that does not justify presumption regarding arbitrary exercise of power. The Apex Court has further held that as the selection committee consists of high ranking

responsible officers presided over by the Chairman or a member of the Union Public Service Commission, there is no reason to hold that they will not act in fair and impartial manner in making selection and therefore, it has been held that where the power is vested on high authority, it is presumed that the same would be exercised in a reasonable manner and if the selection is made in extraneous consideration and in arbitrary manner, in the Courts have ample power to strike down the same, which is an adequate safeguard against arbitrary exercise of power.

19. In *UPSC v. K. Rajaiah and Ors.* (supra), the Apex Court, while dealing with the provision of the 1955 Regulation relating to the selection to the IPS has also held that the Court will not normally interfere with the evaluation done by the commission on consideration of the relevant materials. However, Apex Court has expressed doubts on the validity of the guidelines evolved by the UPSC in making overall assessment of the service records of the concerned officer. The Apex Court however, has held that the classification required to be made is within the prerogative of the selection committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State Government, it would be desirable to record reasons. The Apex Court having regard to the nature and function of the power confided to the selection committee under Regulation 5(4), has held that it not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision. The Apex Court in the said case in the absence of specific challenge to the procedural guideline issued by the UPSC for the purpose of selection, did not express any definite opinion whether such criteria would be violative of Article 14 and 16 of the Constitution of India. In the present case also the said guideline has not been challenged.

20. Section 114 of the Indian Evidence Act provides that the Court may presume the existence of any fact which it think likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The said provision has contained the illustration where the Court may draw the presumption. The Apex Court in the *State of West Bengal and Others Vs. Md. Khalil*, , while dealing with the provision of the Tax on Entry of Goods into Calcutta Metropolitan Area Act 1972" has explained what a presumption is The Apex Court has held that a presumption is a rule of law which requires the Court to draw a given conclusion on proof or existence of certain facts and leaves it to the party disputing the conclusion to rebut the same. It has further been held that presumption may be of fact or of law and is an inference sanctioned by law, which does not logically and necessarily follow from the proved facts and for the purpose of raising a presumption there must be a specific provision in the Act.

21. Therefore, it cannot always be presumed that if the selection is made by a very high level selection committee consisting of the high officials, the presumption should always be drawn in favour of a proper selection. The

selection made by the selection committee as discussed above being opened for judicial review by a Court, can definitely be interfered with by the Court in the event the same is made without considering the relevant factors required to be taken into consideration or by * considering irrelevant factors or in violation of the statutory rules or regulation or on any grounds discussed above. As because the selection is made by the UPSC it cannot be said that the same is sacrosanct and the presumption is always in favour of making a proper selection. However, when selection is challenged the burden is on the person who challenges the same, to establish that the selection made by the selection committee was not proper, arbitrary and unjust or was in violation of statutory ailes and regulation.

22. In this present case the records produced by the UPSC reveals the casual approach to IPS on 30.7.96. It appears from the minutes of the meaning of the selection committee constituted under Regulation 3 of 1955 Regulation that though said minute consist of three pages that all the pages do not contain the signatures of all the six members, only in the last page i.e. page No. 3, the signatures of all the members of the selection committee appear. The first two pages contain the signatures of the only two members. It also appears from the minutes that there are certain addition by pencil, after para 2 in the following manner:

para 2A added (B.K. Hazarika"s DE) See approval letter P. 149-150

It appears from the communication dated 17.3.97 issued by the Under Secretary UPSC to the Secretary, Ministry Home Affairs, Government of India that the UPSC approved the select list prepared on 30.7.96 with the modification that para (2A) as well as para (4A) are to be added in the minutes of the proceeding of the selection committee which reads as follows:

2. A. The committee was informed that disciplinary proceeding was pending against SH. B.K. Hazarika (S. No. 3 in the eligibility list)

4. A. Name at SI. No. 5 have been included in the list provisional subject to clearance of disciplinary proceeding pending against him

It also appears form the note a page 10 of the Note Sheet that the pendency of the departmental proceeding against said Sri Hazarika was not brought to the notice of the selection committee and as such was not taken into consideration by the said committee.

23. From the aforesaid factual position as reveals from the record produced by the UPSC it therefore, cannot be said that there was proper application of mind to all the relevant factors required to be taken into consideration by the selection committee while making selection. No doubt under 1955 Regulation an officer against whom a disciplinary proceeding has been contemplated or pending can be included in the select list provisionally but pendency of such departmental proceeding, as in the case of Sri B. K. Hazarika, Respondent No. 9 herein, was not brought to the notice of the selection committee while making selection,

though the same was a relevant factor for the purpose of consideration of the officer for promotion to IPS. But in the instant case even having held so, we are not inclined to interfere with the select list prepared by the selection committee in its meeting dated 30.7.96 and also the selection of B.K. Hazarika, Respondent No. 9 in the Writ Petition, as the legality and validity of the entire select list was not challenged by the Writ Petitioner before the learned Tribunal and Sri B.K. Hazarika was not a party in the OA No. 136 of 1997 filed by the present Petitioner before the learned Tribunal. The learned Tribunal being the first Court the Petitioner ought to have challenged the same before the Court of first instance, which has not been done. This Court also in view of the finding already recorded above in the foregoing paragraphs not inclined to interfere with the placement of the Writ Petitioner at SI. No. 6 in the select list, after the Respondent Nos. 5 and 6 herein, who were placed at SI. No. 1 and 2 in the said select list, more so when the Writ Petitioner has accepted the promotion to IPS on the basis of the said select list pursuant to the order dated 4.12.98 passed in the Misc. Case No. 1208 of 1998 arising out of the present Writ Petition, which has passed at the instance of the Writ Petitioner, who cannot subsequently turn around and challenge the same.

24. In view of the aforesaid discussions, though we have expressed our reservation about the selection made by the selection committee constituted for selection of members of State Police Service to IPS as well as the final select list prepared on the basis of such selection, refrain ourselves from interfering with such selection and promotion for the reasons recorded above.

25. The Writ Petition is accordingly dismissed. No cost.