

(2017) 03 GAU CK 0010
In the Gauhati High Court
Case No : WP(C) No. 1093 of 2015

The State of Tripura

APPELLANT

Vs

Sri. Braj Mohan Singha

RESPONDENT

Date of Decision : 14-03-2017

Acts Referred:

Administrative Service (Appointment by Promotion) Regulations, 1955 — Regulation 5(5)
Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLT 350

Hon'ble Judges : Mr. Ajit Singh, CJ. and Mr. Manojit Bhuyan, J.

Bench : Division Bench

Advocate : Mr. S. Dutta, Mr. H. Das and Ms. S. Roy, learned Counsel, for the Petitioners; Mr. U.K. Nair and Mr. S.N. Sarma, learned counsel, for the Respondents

Final Decision : Allowed

Judgement

Ajit Singh, C.J.—This petition by the State of Tripura is directed against the order dated 26.11.2012 passed by the Central Administrative Tribunal, Gauhati Bench, Guwahati whereby it has allowed OA No.138/2011 of Respondent No.1 with a direction to consider his appointment to Indian Administrative Service from the date of notification dated 13.5.2011 with all consequential benefits.

2. Respondent No.1 was appointed in the Tripura Civil Service. In the year 2007, he also became eligible for appointment to Indian Administrative Service. He was however served with a charge-sheet on 28.11.2007. The Screening Committee constituted to make selection under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (in short "Regulations, 1955") in its meeting held on 31.12.2010 included the name of Respondent No.1 along with 9 (nine) other Tripura Civil Service Officers in the select list for appointment to the Indian Administrative Service. But since Respondent No.1 was facing a

departmental enquiry, the State Government withheld the integrity certificate in respect of him. Later, the enquiry ended with a word of caution to Respondent No.1 vide order dated 19.1.2011. Respondent No.1 took this word of caution as adverse and punitive and challenged it by filing WP(C) 226/2011 in the High Court wherein vide order dated 9.6.2011 operation of order dated 19.1.2011 was stayed. And on receiving notice, when the State Government clarified that the word of caution recorded in order dated 19.1.2011 does not amount to punishment, the writ petition was closed vide order dated 25.6.2012.

3. But before passing of order dated 25.6.2012, another charge-sheet had already been submitted against Respondent No.1 on 7.5.2011 in which he was also found guilty of the charges. Also because of the issuance of second charge-sheet to Respondent No.1 on 7.5.2011, the State Government withheld his Integrity Certificate. In the result, Respondent No.1 was not appointed to Indian Administrative Service vide notification dated 13.5.2011 though 9 (nine) other Tripura Civil Service Officers were given appointment.

4. Respondent No.1 aggrieved with the denial of his appointment to Indian Administrative Service vide notification dated 13.5.2011 filed OA No.138/2011 before the Tribunal which has been allowed by the impugned order. The Tribunal mainly relying upon the decision of the Supreme Court in *Delhi Jal Board v. Mahendra Singh*, 2000 (7) SCC 210 has held that exoneration of Respondent No.1 from the charges in the 1st departmental enquiry would relate back to the date when charges were framed and it would be as if he was not subjected to any enquiry. The Tribunal has also held that issuance of 2nd charge-sheet on 7.5.2011 would not come in the way of considering the case of Respondent No.1 for appointment to Indian Administrative Service from the date of notification dated 13.5.2011. On these findings, the Tribunal has directed to consider the case of Respondent No.1 for appointment to Indian Administrative Service from the date of notification with all consequential benefits. It is in this background the State of Tripura has filed the present petition.

5. After hearing the learned counsel for the parties, we are of the considered view that the impugned order of the Tribunal cannot be allowed to sustain. This we say so because the Tribunal lost sight of the fact that case of Respondent No.1 for appointment to Indian Administrative Service is governed by the Regulations, 1955 whereas the case of *Delhi Jal Board (supra)* was decided on the general principles of service jurisprudence. Also in that case Regulations, 1955 was not applicable at all.

6. Appointment by promotion to Indian Administrative Service is governed by Regulations, 1955. Regulation 5 deals with the preparation of a list of suitable officers by the Committee. And proviso to Sub-Regulation (5) of Regulation 5 reads as under :

"Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect

of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government."

From the above quoted proviso, it is clear that till the State Government withholds the integrity certificate in respect of officer, the name of such officer though included in the list, shall be treated as provisional.

7. Under Regulation 6, the select list prepared in accordance with Regulation 5 is forwarded by the State Government to the Union Public Service Commission ("Commission") along with records of all the members of the State Civil Service included in the list as well as with the observations of the State Government on the recommendations of the Committee. The State Government is also required to forward a copy of the select list to the Central Government and the Central Government in turn is required to send its observations on the recommendations of the Committee to the Commission. The Commission then under Regulation 7 after considering the list as well as the documents received from the State Government and the observations of the Central Government may either approve the list or make changes when necessary. As per Sub-Regulation 3 of Regulation 7 the select list as finally approved by the Commission shall form the select list of the State Civil Service. Proviso to Sub-Regulation 3 however reads as under :

"Provided that if an officer whose name is included in the select list is, after such inclusion, issued with a charge-sheet or a charge-sheet is filed against him in a court of law, his name in the select list shall be deemed to be provisional."

8. According to Regulation 9 the appointment of a member of the State Civil Service is made by the Central Government in the order in which the names of the members of the State Civil Service appeared in the select list. And proviso to sub-regulation 1 of Regulation 9 reads as under :

"Provided further that the appointment of an officer, whose name has been included or deemed to be included in the Select list provisionally under proviso to sub-regulation (5) of Regulation 5 or under proviso to sub-regulation 3 of regulation 7, as the case may be, shall be made after the name is made unconditional by the Commission on the recommendations of the State Government during the period the select list remains in force. While making appointment of an officer junior to select list officer whose name has been included or deemed to be included provisionally in the select list one post will have to be kept vacant for such a provisionally included officer."

9. The Regulations, 1955 are very clear on the point that in spite the name of an officer being included in the select list by the Committee, the inclusion of name shall be treated as provisional, unless integrity certificate is given by the State Government in respect of that officer. Likewise the name of the officer included in the select list shall also be deemed as provisional if after such inclusion he was issued with a charge-sheet. Not only this, even the appointment of such officer shall be made only after his name is made unconditional by the Commission on

the recommendations of the State Government. Apparently, because of the issuance of charge-sheets against Respondent No.1 his name though included in the select list remained provisional and could not become unconditional and final. The 2nd charge-sheet was admittedly issued to Respondent No.1 on 7.5.2011 prior to notification dated 13.5.2011 and in the departmental enquiry of this charge-sheet he was also found guilty of the charges. The State too could not grant integrity certificate because he was found guilty of charges. Therefore, vide notification dated 13.5.2011 Respondent No.1 could not be appointed by promotion to Indian Administrative Service. The Tribunal was apparently ignorant about the provisions of Regulations, 1955 and by wrongly applying the general principles of service jurisprudence directed for promotion of Respondent No.1. The impugned order of the Tribunal is therefore illegal on the face of it. We accordingly quash the same and allow the writ petition.