
(2021) 01 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (C) No. 4931 Of 2020

Union Public Service Commission	Vs	APPELLANT
Brahmananda Patir And Ors		RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

Indian Forest Service (Appointment By Promotion) Regulations 1966 — Regulation 3, 3(4)

Citation : (2021) 01 GAU CK 0010

Hon'ble Judges : Sudhanshu Dhulia, Cj; Achintya Malla Bujor Barua, J

Bench : Division Bench

Advocate : R. Borah, N. Nath, K. Gogoi, T.C. Chutia

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia , CJ

1. Heard Mrs. R. Borah, learned counsel for the petitioner. Also heard Mr. N. Nath, learned counsel appearing for the respondent No.1, Mr. K.

Gogoi, learned Central Government counsel, appearing for the respondent No.2 and Mr. T.C. Chutia, learned Additional Senior Government

Advocate, Assam, appearing for the respondent No.3

2. This writ petition is filed by the Union Public Service Commission (UPSC) challenging the order dated 28.11.2019 passed by the Central

Administrative Tribunal, Guwahati Bench, Guwahati in O.A. No.040/00152/2018, which was moved by the private respondent No.1. The case of the

private respondent No.1, who is a Forest Officer in State Forest Service is that the Selection Committee was wrong in not recommending his name for

promotion to the Indian Forest Services, i.e. IFS Cadre. The selection pertains to the year 2015. Since it is a promotion relating to an All India Service,

the promotion exercise has to be done by the Public Service Commission, where a Selection Committee is appointed in terms of Regulation 3 of the

Indian Forest Service (Appointment by Promotion) Regulations, 1966 (for short '1966 Regulations'). Regulation 3 to the said Regulations reads as

under:-

3. Constitution of the Committee to make selection- [3(1) There shall be constituted for a State Cadre or Joint Cadre specified in column 2 of

Schedule, a committee consisting of the Chairman of the Commission of where the Chairman is unable to attend, any other member of the

Commission representing it and other members specified in the corresponding entry of column 3 of the said Schedule:

Provided that-

(I) No member of the Committee other than the Chairman or the member of the Commission shall be a person who is not a member of an All India

Service;

(ii) The nominees of the Government of India shall not belong to the cadre for which the meeting of the Committee is to be held; and

(iii) The Central Government may after consultation with the State Government concerned, amend the Schedule.

3(2) The Chairman or the member of the Commission shall preside at all meetings of the Committee at which he is present.

3(3) The absence of a member, other than the Chairman or member of the Commission, shall not invalidate the proceedings of the Committee if more

than half the members of the Committee had attended its meetings.

3. Since the Selection Committee had not recommended the promotion of the private respondent No.1 for the year 2015, he had filed an O.A.

No.040/00152/2018 before the Central Administrative Tribunal, Guwahati Bench, Guwahati, which was disposed of by the Tribunal vide order dated

28.11.2019 with directions to the UPSC to hold Review Selection Committee meeting within a period of 2(two) months from the date of receipt of a

copy of the said order.

4. Consequent to it, a Review Selection Committee was constituted and it came to a conclusion that the upgradation of ACR of private respondent

No.1 'Good' to 'Very Good' was not proper and, therefore, the overall assessment of the private respondent No.1 was again brought down

to 'Good'.

5. The net result of this rating would be that the private respondent No.1 will not be promoted to the IFS cadre as there are enough candidates within

the zone of consideration who have an ACR rating of either 'Outstanding' or 'Very Good' who have thus a better claim for the promotion in

terms of Sub Section (3-AA) and Sub-Regulation 4 of Regulation 5 of the 1966 Regulations. This has to be seen in terms of Sub Section (3-AA) and

Sub Regulation 4 of Regulation 5 of the 1966 Regulations, which read as under:-

'(3-AA) The Selection Committee shall classify the eligible officer at Outstanding 'Very Good'. 'Good' or Unfit as the case may be,

on all relative assessment of their service records.

(4) The list shall be prepared by including the required number of names, first from amongst the officers finally 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 be in the order of their seniority in the State Forest Service.'

6. With the overall 'Good' entry in his ACR effectively the private respondent lost his chance of promotion to the IFS cadre. Hence, the private

respondent No.1 approached the Central Administrative Tribunal again, which has now given the findings that the procedure adopted by the Review

Selection Committee was not in accordance with law as an overall assessment of the private respondent No.1 has not been done. In its operative

portion, the Tribunal has dealt with this aspect in Paragraphs 10 & 11 as follows:-

'10. We have carefully considered the rival submissions and arguments of both the parties. We also have carefully gone through the Minutes of the

Review Selection Committee meeting dated 20.12.2017. As could be made out from the reading of the Minutes of the Review Committee, it is indeed

clear that the Review Committee has applied its mind only on the upgraded ACR of the applicant. They have not made overall assessment of the

service of the applicant, as should have been done by the Selection Committee as provided under 5(3AA) of the Indian Forest Service (Appointment

by Promotion) Regulations, 1966.

11. After careful consideration, we deem it fit and proper that Minutes of the Review Selection Committee has not been fair to the applicant in

arriving at their decision as recorded therein and this Minute of the Selection Committee Meeting is liable to be set aside. Accordingly, we set aside

the Minutes of the Review Selection Committee meeting held on 20.12.2017 and direct the UPSC to hold review selection committee meeting within a

period of two months from the date of receipt of a copy of this order by considering upgraded ACRs by taking note of the orders of CAT and

Honâ??ble high Court as well as papers and documents placed by the Government of Assam and decisions cited by the learned counsel for the

applicant.â??

7. What constitutes an overall assessment, learned counsel for the private respondent No.1, Mr. N. Nath would state, is given in the guidelines of the

Union Public Service Commission from time to time. As per the guidelines, which were in force at the relevant time, i.e. on 27.03.2017, assessment

has to be done of the performance of the officer for the last 5(five) years. Para 3.1 of the guidelines read as under:-

â??3.1 The Selection Committee would go through the service records of each of the eligible officers, with special reference to the performance of

the officer during the last five years including the vacancy year, and after deliberation will record the assessment of the Committee in the Assessment

Sheet comprising the Assessment Matrix [Officer x Year-wise assessment] and the Column for Overall Assessment of the officers.â??

8. This, however, has not been done in case of the private respondent as what has been considered by the Selection Committee was only the upgraded

ACR. We are totally in agreement with the findings arrived at by the learned Tribunal. We are also, therefore, of the opinion that as there is no

anomaly in the findings, consequently there is no scope of any interference. The writ petition fails and is hereby dismissed.