

28.11.2024
(D/L-13)
Ct. No.4
(B.K.N.)

W.P.C.T. 313 of 2024

Tapan Kumar Barman
Vs.
The Union of India & Ors.

Mr. Bharat Bhushan,
Mr. Atindranath Misra
...for the Petitioner

Mr. Arun Kanti Chattopadhyay
...for the U.P.S.C.

Mr. Biswabrata Basu Mallick, Ld. AGP.,
Mr. Sayan Ganguly
...for the State

1. The petitioner, an officer serving the State Government claimed consideration for being placed in the Indian Administrative Service in accordance with the procedure for such promotion governed by the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the Regulations).
2. His case was considered by the Selection Committee constituted by the Union Public Service Commission (UPSC) which found him unfit. The vacancies against which he was being considered are in respect of the year 2009-2010. The consideration, however, was done by the Selection Committee constituted under Regulation 3 of the Regulations, on 7th December, 2011.

3. The writ petitioner filed an Original Application before the Central Administrative Tribunal, Kolkata Bench five years thereafter for the following relief:

“a. Do issue mandate upon the respondents their men and agents and each of them to forthwith select the applicant for promotion to Indian Administrative Service, West Bengal Cadre against the vacancies of 2010 with retrospective seniority and other benefits including salary and arrear thereof from the date and at par with the officers of the said select list and with admissible rate of interest on the said total due arrears from the date of accrual of such promotion till the date of actual payment thereof.

b. Do issue mandate upon the respondent their men and agents and each of them to forthwith certify and transmit all the papers and documents in connection with the instant his in respect of Promotion of the applicant to Indian Administrative Service, West Bengal Cadre against the vacancies of 2010 with retrospective effect of Seniority and for all other admissible benefits at par with the officers of the said select list before this Ld. Tribunal for kind perusal and on such kind perusal do conscionable justice to the applicant.

c. Grant of this proceeding in favour of the applicant;

d. Pass such other or further order or orders direction or directions, mandate or mandate as may appear to be fit and proper.”

4. The learned counsel for the petitioner submits that the Committee’s consideration is in violation of the statutory provision contained in the 1955 Regulations. It is submitted that Regulation 5(4) has been violated by the Committee. Regulation 5(4) reads as follows:

“5(4) 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.”

5. It is submitted that the Selection Committee has proceeded on the assessment of the petitioner being average in the general assessment as per the A.C.R. for the year 2009-2010. The said general assessment, was objected to by the petitioner, and as a result modified assessing him as 'Good'.
6. The Selection Committee considering his claim for promotion has overlooked this aspect of the matter that the general assessment of the petitioner had been modified as being a 'Good' officer. Thus, the petitioner has been classified as unfit by the Selection Committee in stark violation of the statutory rule.
7. The learned counsel for the respondent Union Public Service Commission has referred to the submissions advanced on their behalf before the Tribunal relying upon the decisions of the Apex Court in the case of **UPSC -vs.- K. Rajaiah & Ors.** reported in **2005 (10) SCC 15** as well as the case of one **Sh. M. V. Thimmaiah & Ors. -vs.- Union of India & Ors.** reported in **(2008) 2 SCC 119**.
8. Referring to the decisions it is submitted that the recommendations of the Selection Committee cannot be normally challenged except on the ground of malafide or serious violation of the

statutory rules. The Court should not sit as an Appellate Authority to examine the recommendations of the Selection Committee like a Court of Appeal.

9. It is submitted that the Selection Committee has based its classification on an overall assessment of his service records for the preceding five years up to the year 2009-2010. The process of consideration by the Selection Committee involves a scrutiny of all the materials; and the A.C.Rs of the individual officers is only one of the several material which are forwarded by the State Government. The Commission makes its own independent assessment of this material supplied by the State Government to arrive at a conclusion. The classification, therefore, cannot be faulted with merely by relying upon an upgradation of one of the petitioner's A.C.R. from 'Average' to 'Good' for the year 2009-2010.

10. We have considered the rival submissions. We have also gone through the decision of the Central Administrative Tribunal, Kolkata Bench on the O.A. filed by the petitioner. While dismissing the petitioner's application the Tribunal has relied upon the decision of the Apex Court in the Case of **K. Rajaiah** (supra) and **Sh. M. V. Thimmaiah** (supra) taken note of above.

11. The Tribunal has also taken into consideration that the Selection Committee forms its opinion for classifying the individual officer based on the entire material forwarded to it by the State Government. It is based on such material that the opinion has been arrived at.
12. After going through the Regulations cited by the learned counsel for the petitioner we find that the Rule cannot be said to be violated merely because upgrading of his general assessment in the A.C.R. for the year 2009-2010 was allegedly not taken into consideration by the Selection Committee. The A.C.R. for the year 2009-2010 is only one of the various materials forwarded to the Selection Committee by the State Government.
13. The fact that the petitioner's general assessment for that year being upgraded from 'Average' to 'Good' is not the sole determinant based on which he can claim to be classified higher than what the Selection Committee has classified him.
14. From perusal of the Rule it is apparent that the commission takes into consideration the entire dossier of the officer forwarded by the State Government, which includes the A.C.R. for the last five years. That apart we further venture to examine the "Overall Relative Assessment" of the

candidates in the process of selection by the Selection Committee and found that out of fifty four officers only three have been classified as 'Good'. All the remaining officers have been classified as 'Very Good'. Only one person, other than the petitioner has been classified as unfit.

15. Though we have taken note of the fact that the assessment is based on the entire dossier and not only on the A.C.R. of any particular year in the last five years. However, even if for the sake of argument we were to accept the submission of the petitioner that he has been upgraded to 'Good' and, therefore, his Overall Relative Assessment should have been evaluated as "Good", the same would not inure to the petitioner's benefit. We do not find that any person who was classified as 'Good' by the Selection Committee has been included in the select list of eighteen candidates who were granted promotion. In fact from bare perusal of the select list it is evident that only those who have been assessed "Very Good" have been allowed promotion.

16. We do not find any statutory violation or infirmity in assessment done by the Selection Committee on 7th December, 2011. The Tribunal

has meticulously taken note of the Rule provision and the arguments advanced.

17. The petitioner being denied the promotion has approached the Tribunal after five years. The claim for promotion was, therefore, a belated claim and was liable to be rejected on this ground alone.

18. Thus, for the above noted reasons we find no reason to interfere with the order of the Tribunal. The writ petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)