

GAHC010164552020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4881/2020

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK, CENTRAL SECRETARIATE
NEW DELHI 110001

2:THE CENTRAL VIGILANCE COMMISSON

REPRESENTED BY THE SECRETARY
A BLOCK
GPO COMPLEX
SATARKATA BHAWAN
INA NEW DELHI 10023

3:THE ENFORCEMENT DIRECTORATE
REPRESENTED BY THE DIRECTOR
6TH FLOOR
LOK NAYAK BHAWAN
KHAN MARKET
NEW DELHI 110003

4:THE UNDER SECRETARY
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

(AD ED SECTION) ROOM NO. 269-B
NORTH BLOCK
NEW DELHI 11000

Advocate for the Petitioner : MR. A GOYAL

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : **06.06.2023.**

Date of judgment : **06.06.2023.**

JUDGMENT & ORDER (Oral)

Heard Mr. A. Goyal, learned counsel appearing for the writ petitioner. Also heard Mr. R. K. D. Choudhury, learned Deputy Solicitor General of India appearing for the respondents.

2. The petitioner herein is an Indian Police Service (IPS) Officer of the 2005 batch, his allotment being in the Assam-Meghalaya cadre. As per the case projected in the writ petition, the petitioner has served as an IPS Officer with distinction and without any blemish to his reputation. On 29.08.2019 the Government of India, Ministry of Finance, Department of Revenue had issued an Office Memorandum inviting applications for filling up two posts of Additional Director of Enforcement at Chandigarh and Kolkata on deputation basis. In response to the OM dated 29.08.2019 the writ petitioner had submitted his application. Subsequently, another

OM dated 04.11.2019 was issued by the Government of India, Ministry of Finance in supersession of the earlier OM dated 29.08.2019 thereby, expanding the total number of posts of Additional Director of Enforcement to 5 posts. In the OM dated 04.11.2019 it was mentioned that applications received by the department under the earlier OM dated 29.08.2019 will be considered for the aforesaid vacancies.

3. The procedure for selection and appointment of Additional Directors in the Enforcement Directorate is laid down under Section 25 of the Central Vigilance Commission Act, 2003. As per the provisions of Section 25, a five member selection committee headed by the Central Vigilance Commissioner is to conduct the selection and make recommendations. Accordingly, a 5 member Committee headed by the Central Vigilance Commissioner, as its Chairperson, was constituted. The said Committee had considered the 17 applications which were found to be in order. Upon such consideration the names of four applicants were recommended vide Minutes of the Meeting of CVC held on 19.10.2020. The consequential notification dated 02.11.2020 was issued by the Under Secretary to the Government of India notifying the appointment of the four selected candidates as Additional Director of Enforcement on deputation. At that point of time, although there were seven vacancies in the post of Additional Director of Enforcement, it appears that only four vacancies have been filled up.

4. Aggrieved by the aforesaid decision and recommendation made by the Selection Committee, the petitioner has approached this Court by filing the present writ petition inter-alia contending that the Selection Committee did not take into

account the policy decision of the Government of India notified vide Circular dated 18.02.2009 wherein certain special provisions have been made for Officers from the North-Eastern Region so as to encourage them to go on Central deputation, as a result of which the petitioner's candidature has been erroneously ignored by the Selection Committee.

5. Taking note of the grievance expressed by the petitioner, this Court had passed an interim order dated 18.11.2020 in this writ petition, directing the respondents to keep one post in the rank of Additional Director of Enforcement vacant awaiting final disposal of the writ petition.

6. It appears from the materials on record that during the pendency of this writ petition, the petitioner has also gone on deputation and is presently posted as Additional Director in the Competition Commission of India at New Delhi with a three years term of deputation. Mr. Goyal submits that the petitioner has one more year to go as Additional Director of Competition Commission.

7. The learned counsel for the petitioner has addressed elaborate arguments in support of his contention that since there is a policy decision of the Government of India, the same ought to have been adhered to scrupulously by the Selection Committee which was not done in this case. Mr. Goyal further submits that had the Selection Committee as well as the Director of Enforcement taken note of the policy decision of the Government of India as notified on 18.02.2009, the petitioner would have fared well in the selection process and in all probability his name would have found place amongst the selected candidates. Contending that the respondents

cannot take a stand which is contrary to the policy decision of the Government, Mr. Goyal has referred to the decision of the Supreme Court of India rendered in the case of **Lloyed Electric and Engineering Limited vs. State of Himachal Pradesh** reported in **(2016)1 SCC 560** to submit that the petitioner's case calls for fresh consideration by the Selection Committee.

8. The writ petition has been contested by the respondent No.3 by filing affidavit primarily taking three grounds. Firstly, that the Circular dated 18.02.2009 has been duly considered by the Committee while conducting the selection process for appointment of Additional Director in the Directorate of Enforcement on deputation basis. Secondly, the decision taken by the Committee in exercise of discretion conferred under Section 25(f) of the Central Vigilance Commission Act, 2003 which is not liable to be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India. The third ground taken by the respondents is that there is no right of the petitioner that can be enforced in this writ petition. However, the minutes of the meeting of the Selection Committee dated 19.10.2020 is not under challenge in this writ petition.

9. In order to examine the contention of the writ petitioner, this Court has gone through the minutes of the CVC meeting held on 19.10.2020 and finds that the Committee had scrutinized the applications submitted by all the eligible candidates including the writ petitioner and after making a proper assessment of their candidature on various parameters, four Officers had been selected and recommended for appointment as Additional Director of Enforcement on deputation

basis. The minutes of the meeting dated 19.10.2020 does not record any negative entry against any of the applicants but merely indicates the names of the four applicants who were found to be most suitable. The exercise adopted by the Selection Committee not only appears to be fair and transparent but the same also appears to be in consonance with the mandate of Section 25 of the Act of 2003.

10. It is no doubt correct that there is a policy decision of the Government of India notified on 18.02.2009 laying down the criteria to be taken note of while considering the applications for Central deputation of the Officers serving in North Eastern States. The three factors highlighted in the Circular dated 18.02.2009 are reproduced herein below for ready reference :-

“a) In order to attract officers of North East to come on Central deputation, additional weightage and priority be given for empanelment and for Central deputation for officers who have spent at least 10 years in the North-East cadres.

b) The Officers of the North East will be given priority for foreign assignments and nominations for foreign trainings.

c) Officers of North East cadres would be provided facility to indicate three domain preferences based on their experience for Central deputation in Government of India. Efforts shall be made as far as possible to accede to their requests.”

11. A plain reading of the aforesaid conditions would go to show that the criteria in clause No.(a), which aims at encouraging Officers from North East to go for Central deputation will be relevant in this case. The clause (a) provides that additional weightage and priority to be given for the empanelment and for Central deputation

in case of those Officers who have spent at least 10 years in North East cadre. There is no reason for this Court to presume that the Selection Committee, which is a Central Government Agency, was unaware of the policy decision of the Government of India as notified by the Circular dated 18.02.2009. Moreover, it may be noted that the policy decision of the Government is only to encourage Officers serving in the North Eastern Cadre to go for Central deputation but the same does not create any quota for the North Eastern Officers. In other words, such policy cannot preclude the Selection Committee from assessing the merit of the applicants on transparent criteria. Therefore, I find force in the submission of Mr. R. K. D. Choudhury that the Directorate of Enforcement, being a premier agency, the question of appointment of Additional Directors therein would ultimately depend on merit and overall suitability of the Officers which the Selection Committee would be the best judge to assess. Therefore, it is not for the petitioner to point out the parameters on which such selections are to be held. After careful scrutiny of the materials available on record, I do not find any element of discrimination or arbitrariness in the decision making process leading to the recommendation and appointment of the four candidates as Additional Director of Enforcement on deputation basis.

12. The decision rendered in the case of **Electric and Engineering Limited** (supra) as relied upon by Mr. Goyal no doubt lays down that the Government must adopt a consistent stand and comply with the policy decision of the Cabinet. However, the aforesaid decision was rendered in the context of implementation of the 2004 Industrial Policy in the matter of CST concession to the eligible units. Therefore, the aforesaid decision was evidently rendered in the facts and circumstances of that

case which, in the opinion of this Court, would have no bearing in the facts of the present case. The matter would have been entirely different if the stand of the Selection Committee or the respondents was found to be contrary to the policy decision of the Government of India, which is not the case in hand.

13. For the reasons stated herein above, I do not find any justifiable ground to interfere in the matter. This writ petition is therefore, held to be devoid of any merit and is accordingly dismissed.

The interim order dated 18.11.2020 passed in this proceeding stands vacated.

There would be no order as to cost.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant