

FORM NO. 21.

(Sec Rule 114.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD .

DA/ ~~MA/CO/MA~~ 1221 of 1997

..... N. Gure Applicant (S)


Versus

..... The Secretary M/o External Respondent (S)
..... Affairs New Delhi

INDEX SHEET

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Certified that the file is Complete
in all respects.


30/3/98

Signature of
Dealing Hand.

(In record Section)

Signature of S.O.

Handwritten notes:
Noted
Des. M. A.
16/3/98

OA 1221/97

| Date | Office Note | Orders. |
|------|-------------|---------|
|------|-------------|---------|

3-11-97

List this case on 18-11-97. If the records are not produced on Friday, no further adjournment will be given and the case will be decided on the basis of available material. The respondents may note this point and act accordingly.

Jk
HBS SP
MJD

HARAN
MCA

18-11-97

At the request of counsel for the respondents counsel, list it on 24-11-97.

Jk
HBS SP
MJD

HARAN
MCA

24-11-97

Hand in K. Sridharan affidavit for the applicant and in V. Rajagopal Rao for respondents. List it on 1-12-97.

Jk
HBS SP
MJD

HARAN
MCA

SES
1-12-97

List it on next week

i.e., 8/12/97

Jk
HBS SP
MJD

HARAN
MCA

Centre:1 Administrative Tribunal Hyderabad Bench; Hyderabad.

C.A. No. 1221 of 1997.

N. Gurni Applicant(s).

VERSUS.

The Secretary, min. of External Affairs, New
Delhi & Co. (Respondents).

| Date | Office Note. | ORDER |
|------|--------------|-------|
|------|--------------|-------|

17-9-97.

Heard Mr. K. Sudhakar Reddy for the applicant and Mr. V. Rajeswara Rao for the respondents.

Notice before admission
list it on 16-10-97.

Jw
HBSJP
M(J)

J
HRRN
M(A)

16-10-97

Mr. K. Sudhakar Reddy, for the applicant and Mr. V. Rajeswara Rao, for the respondents.

The learned counsel for the respondents request 2 weeks time to file a counter. We are not satisfied with the reply given. This is being a small issue the reply should have been filed by now. list it on 3/11/97. If the selection proceedings and reply ~~has~~ not filed on that day R₂ should personally be present on that day for explaining the same.

(C.C. Today)

Jw
HBSJP
M(J)

J
HRRN
M(A)

(4)

DATE

OFFICE NOTE

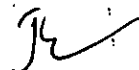
QA. 1281/97

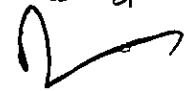
ORDER

5.7.98

Mr. K. Sudhakara Reddy, for the applicant and Mr. V. Rajeswara Rao, for the respondent.

The learned counsel for the applicant requests time to file a rejoinder. List it on 3.2.98.



HBSVP
M (J)



HRRN
M (A)

3.2.98

List it day after ie.

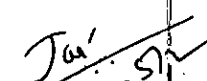
5.2.98 for orders.


HBSVP
M (J)


HHRP
M (A)

on

List it on 9.2.98 at the request of counsel for the applicant.


HBSVP
M (J)


HHRP
M (A)

3

G & 1221/97.

| DATE | OFFICE | NOTE | ORDER |
|------|--------|------|-------|
|------|--------|------|-------|

8.12.97.

Reply has been received
in this G. B.

List it ~~on~~ on 10/12/97

Jan
HBSTP
M(J)

8
HBSTP
M(J)

855

9-12-97

List-22- on 29.12.97.

JK
HBSTP
M(J)

AK
HRRN
M(A)

31.12.97

At the request for the
applicant's counsel, list it on
5.1.98.

JK
HBSTP
M(J)

AK
HRRN
M(A)

| DATE | OFFICE NOTE | ORDERS |
|---------|-------------|---|
| 9-2-98 | | <p>List List it after two weeks at the request of the Counsel for the Applicant Mr Sudhakara Reddy.</p> <p>HBSTP M(J)</p> <p>HHRP M(A)</p> |
| 26-2-98 | | <p>O. A. Rejected. order on separate sheets. No costs.</p> <p>HHRP M(A)</p> <p>HAVHD VC (EB)</p> |

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH : HYDERABAD

ORIGINAL APPLICATION NO. 1221 OF 1997.

N. Guom

(Applicants(s))

VERSUS.

Union of India, Repd. by.

Secretary, Min of External Affairs

New Delhi & anr

Respondent(s).

The application has been submitted to the Tribunal by
Shri B. Subhakar Reddy Advocate/party-in-
person Under Section 19 of the Administrative Tribunal
Act, 1985 and the same has been scrutinised with reference
to the points mentioned in the check list in the light of
the provisions in the administrative Tribunal (procedure)
Rules 1987.

The application is in order and may be listed for
Admission on -----

S. 9/97
Scrutiny Asst.

Amr
DEPUTY REGISTRAR (JUDL)

11. Have legible copies of the annexure duly attached been filed. 84
12. Has the applicant exhausted all available remedies. 84
13. Has the Index of documents been filed, and Pagination done Properly. 84
14. Has the declaration as required by item No. 7 of form, I been made. 84
15. Have required number of envelopes (file size) bearing full address of the respondents been filled. 84
16. (a) Whether the relief sought for, arise out of single cause of action. 87
17. (b) Whether any interim relief is prayed for, 84
17. In case an MA for condonation of delay is filed, is it supported by an affidavit of the applicant. —
18. Whether this case can be heard by single Bench. TW-
19. Any other Point. —
20. Result of the Scrutiny with initial of the scrutiny clerk.

may be numbered PL


Scrutiny Assistant.

Section Officer.

Deputy Registrar.

Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD.

No. 2880/97

Report of the Agent of Application.

Presented by Sh. K. Subhakar Reddy, Adv. Date of Presentation.

Applicant (s) N. Guwal

9.9.97

Respondent (s) Secretary, Ministry of External Affairs, New Delhi

2 am

Nature of grievance Promotion

No. of applicants 1 No. of Respondents 2

CLASSIFICATION

Subject Promotion (No. 120) Department Ministry of External Affairs (Noted)

1. is the application in the proper form, (three complete sets in paper books form in two applications. Yes
2. Whether name, description and addressed of all the Parties been furnished in the cause title. Yes
3. (a) Has the application been fully signed and verified. Yes
(b) Have the copies been duly signed. Yes
(c) Have sufficient number of copies of the application been filed. Yes
4. Whether all the necessary Parties are impleaded. Yes
5. Whether English translation of documents in a language other than English or Hindi been filed. Yes
6. Is the application on in time, (See Section 21) Yes
7. Has the Vakalatnama/Memo of Appearance/Authorisation been filed. Yes
8. Is the application maintainability. (U/s 2, 14, 18, or U/R. 8 etc.) Yes
9. Is the application accompanied IPO/DD, for Rs.50/- Yes
10. Has the impugned orders Original, duly attested legible copy been filed. Yes

no impugned order M.

...P.T.O.

CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH, HYDERABAD

INDEX SHEET

O.A. NO. 1221 of 1997.

CAUSE TITLE N. Gurusu

VERSUS

The Secretary, M/o. E.A., N. Dutt & Co. etc.

| SL.NO. | Description of Documents | Page No. |
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| 1. | Original Application | 1 to 5 |
| 2. | Material Papers | 6 to 9 |
| 3. | Vakalat | 1 |
| 4. | Objection Sheet | |
| 5. | Spere Copies 2 (Two), | |
| 6. | Covers 2. A | |

7. Reply Statement of Respondent
Filed By Mr. V. Rajeswara Rao
Adl Cate on 20-11-97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA No. 1221 of 1997

Between:

N. Guru

..Applicant

A N D

Union of India rep.by Secretary,
Min of External Affairs and
another.

..Respondents

I N D E X

| Sl. No. | Documents relied upon | Page | Ann |
|------------|--|------|-----|
| 1. | Original Application | 1-5 | |
| 2. | Order No.CPO/2/97 dt. 15.5.97. | 687 | I |
| 3. | Seniority list No.V.IV/582/3/94 dated 17.11.94. | 889 | II |

Certified that the above are true copies to
the originals.

Hyderabad
Dated: 8.9 97

COUNSEL FOR THE APPLICANT

8

APPLICATION FILED UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNALS ACT

Date of filing:

or

Date of Receipt:

By Post:

Registration No:

Signature :

Registrar:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

OA No. 1221 of 1997

Between:

N.Guru, s/o late A. Guru .
aged about 50 years,
Occupation: Public Relations Officer,
O/o the Regional Passport Officer,
Exhibition Grounds, Nampally,
HYDERABAD.

..Applicant

A N D

1. UNION OF INDIA REPRESENTED BY
its Secretary, Ministry of
External Affairs, North Block
(CPV Division), New Delhi.
2. THE REGIONAL PASSPORT OFFICER,
Exhibition Grounds, Nampally,
Hyderabad.

..Respondents

DETAILS OF APPLICATION:

1. PARTICULARS OF THE APPLICANT:

The particulars and addresses of the applicant are the same as given in the cause title. The address for service of all notices on the applicant is that of his counsel Mr.K.Sudhakar Reddy, Advocate, 1-3-37, Street No.5, Habsiguda, Hyderabad.

2. PARTICULARS OF THE RESPONDENTS:

The particulars and addresses of the respondents are the same as mentioned in the above cause title for the purpose of service of summons notices etc.

3. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

- a) Order No & Date: Nil
- b) Passed by : Nil
- c) Subject in brief: The applicant herein is working in the second respondent's office as Public Relations Officer and he is put up long length of unblemished service to his credit and he is entitled for promotion to the post of Asstt. Passport Officer and he is fully qualified to be considered for the same. But the respondent authorities did not consider the case of the applicant for promotion and considered the applicant's junior for the same. Hence, this OA before the Hon'ble Tribunal.

4. JURISDICTION:

The applicant declares that the subject matter of the action of the respondents wants redressal is within the jurisdiction of this Hon'ble Tribunal under section 14 of the AT Act.

5. LIMITATION:

The application is filed within the time prescribed in section 2 of the AT Act under Section 21 (1) (a).

6. FACTS OF THE CASE:

6.1. The applicant herein initially joined in the respondent department ^{on} in the year 5.10.67 and put up long length of unblemished service and at present is

working as Public Relations Officer in second respondent's office and he is entitled for consideration for promotion to the post of Assistant Passport Officer. The respondent authorities recently considered the case of several persons including the applicant's juniors for promotion to the post of Assistant Passport Officer on officiating capacity and issued orders of promotion on 15.5.94.

Whereas in the above notification, the applicant's junior one Smt S.Dewan was promoted ignoring the applicant herein. The applicant herein is senior to Smt S.Dewan as per the seniority list of Grade.III (Public Relation officers) dated 17.11.1994. In the said seniority list, the applicant herein was shown at Sl.No.10 whereas Smt S.Dewan was shown at Sl.No.12. The respondent authorities before considering the case for promotion to higher post even though it is on officiating basis they must consider the case of the senior first. Unless the senior refused to accept the promotion, considering the case of the junior does not arise. In the present case, the applicant herein was never informed about the promotion for Grade.II post on officiating basis and he never refused to accept the same. The action of the respondents in considering the applicant's junior ignoring the case of the applicant is clearly illegal, arbitrary and it amounts in violation of the applicant's fundamental rights guaranteed under articles 14 and 16 of the Constitution of India.

6.2. The applicant herein is not having any other effective and alternative remedy except to invoke the jurisdiction of this Hon'ble Tribunal under section 19 of the Administrative Tribunals Act, for redressal of his grievances. Hence, this OA before the Hon'ble Tribunal.

7.

MAIN RELIEF:

123

8.

9.

10.

11.

- a)

b)


168.50/-A

19.6.M.0.10.D. Removes

12. DETAILS OF INDEX:

Index in duplicate is enclosed.

13. LIST OF ENCLOSURES: Postal order, covers, material papers etc.


COUNSEL FOR THE APPLICANT


VERIFICATION

I, N.Guru, w/o Late A.Guru, aged about 50 years, Public Relations officer, O/o the Regional Passport Officer, Hyderabad, do hereby solemnly and sincerely verify that the contents of the paras 1 to 13 are true to my knowledge and belief and I believe them to be true on legal advice and I have not suppressed any material facts of the case.

Hyderabad

Dated: 8.9.97


SIGNATURE OF
COUNSEL FOR THE APPLICANT


COUNSEL FOR THE APPLICANT

- 6 -

Amer-1
13

(TO BE PUBLISHED IN PART I SECTION II OF THE GAZETTE
OF INDIA)

No. CPO/2/97
Government of India
Ministry of External Affairs
(CPV Division)

New Delhi, the 15th May, 1997.

NOTIFICATION

President is pleased to appoint the following officers of Grade III (Public Relation Officer) of the Central Passport Organisation to Grade II (Assistant Passport Officer) of the Central Passport Organisation in an officiating capacity w.e.f. 14.03.1997.

Sl.No. Name of Officer

1. Shri H.H. Yakkarnal (SC)
2. Shri M.L. Verma
3. Shri S.D. Sawant

4. Smt. S. Dewan

IV CSM

(M.P. Singh)

Under Secretary (PVA)

The Manager,
Govt. of India Press,
Faridabad.

No.V.IV/560/3/96

1. All Passport Issuing Authorities in India.
2. All officers concerned.
3. The Chief Controller of Accounts, MEA, New Delhi.
4. The Secretary, UPSC, New Delhi, w.r.t. their letter No.1/26(4)/96_A.U.6 dated 19.3.97.
5. Personal files of the officers concerned.
6. Gazette Notification Register.
7. Spare copy.

143
28/5

[Handwritten signature]

7

(14)

No.V.IV/560/3/96
Government of India
Ministry of External Affairs
(CPV Division)

New Delhi, April 21, 1997

MEMORANDUM

Sub: Select list of Officers of Grade-III (Public Relation Officers) of the Cadre of Central Passport Organisation approved for officiating promotion to Grade-II (Assistant Passport Officer) of the Central Passport Organisation.

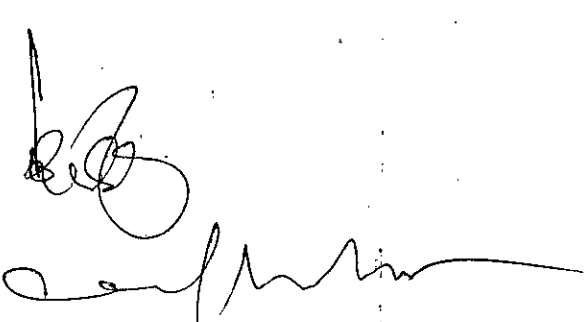
The following officers of Grade-III of the Cadre of Central Passport Organisation have been approved for inclusion in the select list for officiating promotion to Grade-II of the Central Passport Organisation:

| S.No. | Name |
|-------|-----------------------|
| 1. | Shri H.H. Yakkarnal |
| 2. | Shri M.L. Verma |
| 3. | Shri S.D. Sawant |
| 4. | Smt. Shakuntala Dewan |

The inclusion of the name of any officer in above select list will not confer upon him/her the right to claim promotion from any particular date. Actual promotion will be made in the light of availability of vacancies and exigencies of public service. The actual date of promotion will not, however, affect the inter-se seniority of the officers included in the select list.

The select list will be operative for a period of one year w.e.f. 14.3.1997.

(M.P. Singh)
Under Secretary (PVA)

1. RPO/PO, Calcutta, Bareilly, Panaji & New Delhi - They may confirm whether these officers were on duty on 14.3.1997.
 2. All Pos - for information
 3. Officers concerned.
 4. Personal Files of Officers concerned.
 5. Office Order Register.
 6. Spare copies.
- Work 1
- 

- 8 -
MOST IMMEDIATE

No. V.IV/582/3/94
Government of India
Ministry of External Affairs
(CPV Division)

New Delhi, the 17th Nov., 1994


OFFICE MEMORANDUM

Subject: Seniority list of Grade III (Public Relations Officer) Officers of the Central Passport Organisation.

The seniority list of officers in Grade III (Public Relations Officer) of the Central Passport Organisation as on 15.11.1994 is enclosed.

2. This may be circulated to all officers concerned. Factual errors, if any, may be brought to the notice of the Ministry within 15 days from the receipt of this O.M. No representation will be entertained after the said period.

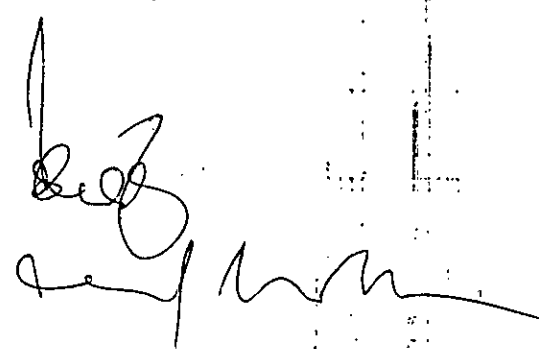
Encl. As above.


(Surinder Kumar)
Under Secretary (PVA)

ALL PASSPORT OFFICES

271
30/4

271
30/4



- 9 -

16

Government of India
Ministry of External Affairs
(COPY Division)

PRIORITY LIST OF GRADE III (PUBLIC RELATIONS OFFICER) OFFICERS OF THE CENTRAL PASSPORT ODN 15.11.1994

| S No | Name of the Officer | Whether belongs to SC or ST If not, say Neither | Date of birth | Date of appointment in Govt. service | Date of regular appointment to the present grade | UPSC reference in which recommended/approved | Remarks |
|------|----------------------|---|---------------|--------------------------------------|--|--|---------|
| 1. | Shri M. Patankar | Neither | 29.11.1934 | 11.01.1956 | 26.03.1993 | F.1/26(7)/90 -AU.VI dated 07.04.1993 | |
| 2. | Shri R.P. Kulkar | Neither | 01.12.1938 | 01.10.1955 | 26.03.1993 | -do- | |
| 3. | Shri M.H. Jadhav | (SC) | 12.06.1944 | 05.03.1960 | 26.03.1993 | -do- | |
| 4. | Shri S.G. Pande | Neither | 03.11.1938 | 27.06.1962 | 26.03.1993 | -do- | |
| 5. | Shri M.L. Varma | Neither | 07.01.1949 | 21.07.1960 | 26.03.1993 | -do- | |
| 6. | Shri S.D. Sawant | Neither | 15.05.1941 | 27.06.1962 | 26.03.1993 | -do- | |
| 7. | Shri H.R. Phatuwaria | (SC) | 13.01.1941 | 15.11.1960 | 09.07.1993 | -do- | |
| 8. | Shri Jai Ram Singh | Neither | 01.01.1937 | 01.04.1957 | 26.03.1993 | -do- | |
| 9. | Smt. Anand Sharma | Neither | 20.06.1938 | 16.07.1957 | 26.03.1993 | -do- | |
| 10. | Shri M. Gure | Neither | 05.08.1944 | 05.10.1967 | 26.03.1993 | -do- | |
| 11. | Shri S.D. Jaisale | (SC) | 03.12.1935 | 07.01.1959 | 26.03.1993 | -do- | |
| 12. | Smt. S. Dhan | Neither | 14.12.1941 | 15.01.1962 | 26.03.1993 | -do- | |

[Handwritten signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO.1221/97

Between:

Dt.of Order:16.10.97.

N.Guru

...Applicant.

And

1. The Secretary, Min.of External Affairs, North Block, (CPV Division), New Delhi.
2. The Regional Pass Port Officer, Exhibition Grounds, Nampally, Hyderabad.

...Respondents.

Counsel for the Applicant : Mr.K.Sudhakara Reddy,

Counsel for the Respondents : Mr.V.Rajeswara Rao

CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

THE TRIBUNAL MADE THE FOLLOWING ORDER:

Mr.K.Sudhakara Reddy, for the applicant and Mr.V.Rajeswara Rao for the Respondents.

The learned counsel for the respondents requests 2 weeks time to file a counter. We are not satisfied with the reply given. This is being a small issue the reply should have been filed by now. List it on 3.11.97. If the selection proceedings and reply are not filed on that day R2 should personally be present on that day for explaining the same.


DEPUTY REGISTRAR(J)

..2..

Copy to:

1. The Secretary, Min.of External Affairs, North Block,
(CPV Division), New Delhi.
2. The Regional Pass Port Officer, Exhibition Grounds,
Nampally, Hyderabad.
3. One copy to Mr.K.Sudhakara Reddy,Advocate,CAT,Hyderabad.
4. One copy to Mr.V.Rajeswara Rao,Addl.CGSC,cAT,Hyderabad.
5. One copy to ~~Mr~~ duplicate.

YLKR

Ho
C.C. today
(X)

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

Dated: 16/10/97

ORDER/JUDGMENT

M.A/R.A/C.A.NO.

in

O.A.NO. 1221/97

Admitted and Interim Directions
Issued.

Allowed List it on 3-11-97

Disposed of with Directions

Dismissed

Dismissed as withdrawn

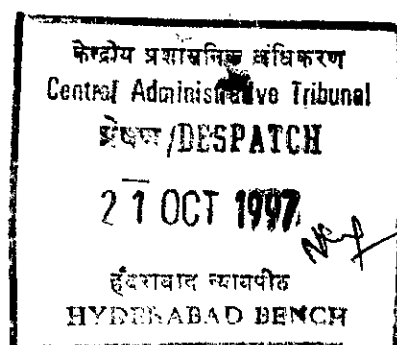
Dismissed for Default

Ordered/Rejected

No order as to costs.

YLKR

II Court



20

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD
O.A.NO.1221 of 1997

Between:

N.Guru s/o (late) A.Guru,
aged about 50 years,
Occ: Public Relation Officer,
O/o the Regional Passport Officer,
Exhibition Grounds, Nampally, Hyd.

... APPLICANT

A N D

1. UNION OF INDIA REPRESENTED BY
Its Secretary, Ministry of
External Affairs, North Block,
(CPV Division), New Delhi.
2. THE REGIONAL PASSPORT OFFICER,
Exhibition Grounds, Nampally,
Hyderabad.

... Respondents.

REPLY AFFIDAVIT FILED ON BEHALF OF RESPONDENTS NOS., 1 & 2.

@ @ @

I, C. Rajasekhar, Son of Shri C. Radhakrishna Murthy,
aged about 33 years, Regional Passport Officer, Hyderabad,
do hereby solemnly and sincerely affirm and state as follows:-

- Retained Copy
for call
K. Radhakrishna
20/11/97*
1. No comments
 2. No comments
 3. No comments
 4. No comments
 5. No comments

6.1: The case of Shri N. Guru for promotion to Grade II of the
Central Passport Organisation (Asstt. Passport Officer) was
examined alongwith others including Smt. S. Dewan by the
Departmental Promotion Committee on 14.03.97 under the chairman-
ship of Smt. K. Kathuria, member, UPSC. The DPC found him fit
for promotion. However it was decided to keep the findings of
DPC in sealed cover in terms of para 7 of DOPT's O.M.No. 22011/4/91-
Estt.(A) dated 14.9.92 (Annexure I) in view of the fact that a

...2.

ATTESTOR

एम. अ. सय्यद
M.A. SAYED

अधीक्षक Superintendent
पासपोर्ट कार्यालय, हैदराबाद
Passport Office, Hyderabad

श्री. राजसेखर DEPONENT.

C. RAJASEKHAR
I.F.S.

क्षेत्रीय पासपोर्ट अधिकारी
Regional Passport Officer
हैदराबाद Hyderabad.

minor penalty chargesheet was issued to him vide order No.V.Vig.II/843/3/95 dated 13.03.97 (Annexure-II) after the DPC met but before the actual orders implementing the decision of the DPC were issued. The decision regarding promotion of Shri N. Guru to the post of Asstt. Passport Officer can be taken only after the Departmental inquiry against Shri N. Guru in the above case is concluded. This is strictly in accordance with DOPT's order referred to above and there is no infringement of article 14 and 16 of the Constitution as alleged by Shri N. Guru.

6.2: No comments

7. None of the reliefs sought by the applicant is liable to be granted. It is prayed that OA may be dismissed.

Solemnly affirm and signed

before me on this 20th Nov day of 1997

Rajasekhara
DEPONENT
श्री. राजसेखर
C. RAJASEKHAR
I.F.S.
संजीव पासपोर्ट अधिकारी
Regional Passport Officer
हैदराबाद/Hyderabad.

M.A. Sayed
ATTESTOR.

एम. अ. सय्यद
M.A. SAYED

अधीक्षक Superintendent
पासपोर्ट कार्यालय, हैदराबाद
Passport Office, Hyderabad

done subsequently also every six months. The review should, *inter alia*, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

Procedure for ad-hoc promotion.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

- Whether the promotion of the officer will be against public interest;
- Whether the charges are grave enough to warrant continued denial of promotion;
- Whether there is any likelihood of the case coming to a conclusion in the near future;
- Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

6. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions have been issued after consultation with the Comptroller and Auditor General of India.

9. Hindi version will follow.


(M.S. BALI)
DIRECTOR

To

All Ministries and Departments of the Government of India with usual number of spare copies.
No. 22011/4/91-ESII(A) Dated the 14th Sept., 1992.

Copy forwarded for information to:-

- Central Vigilance Commission, New Delhi.
- Central Bureau of Investigation, New Delhi.
- Union Public Service Commission, New Delhi.
- Comptroller and Auditor General, New Delhi.
- President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat and Prime Minister's Office.
- Chief Secretaries of All States and Union Territories.
- All Officers and Administrative Sections in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.


(M.S. BALI)
DIRECTOR

Sealed cover procedure for confirmation.

Sealed cover procedure applicable to officers coming under cloud after holding of DPC but before promotion.

Annexure I
22

No.22011/4/91-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training

North Block, New Delhi - 110001
Dated, the 14th Sept., 1992.

OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose Conduct is under investigation - Procedure and guidelines to be followed.

O.M.No.
39/3/69-Estt.A dt.31.8.60
7/28/63-Estt.Adt.22.12.64
22011/3/77-Estt.A
dt.14.7.77
22011/1/79-Estt.A
dt.31.1.82
22011/2/86-Estt.A
dt.12.1.88
22011/1/91-Estt.A
dt.31.7.91.

Cases of Government
Servants to whom Sealed
Cover Procedure will be
applicable.

Procedure to be followed
by DPC in respect of
Government servants
under cloud.

Procedure by subsequent
DPCs.

Action after completion of
disciplinary case/criminal
prosecution.

Six Monthly review of
"Sealed Cover" cases.

The undersigned is directed to refer to Department of Personnel & Training OM No.22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgement dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of In respect of Shri (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of 'censure' should be imposed.

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be

Government of India
Ministry of External Affairs
CPV Division

No.Q/Vig.II/843/16/94 New Delhi, the 2nd April 1997.

SANCTION ORDER FOR PROSECUTION

WHEREAS it is alleged that Shri N. Guru, Public Relations Officer, while posted and functioning as acting Regional Passport Officer, Regional Passport Office, Chandigarh, during the period 1992-94 ordered for issue of passports to Shri Gurmit Singh, Shri Harnek Singh, Shri Ravinder Singh and Shri Ram Gopal by using forged, fabricated and bogus documents.

WHEREAS, it is alleged that Shri Gurmit Singh, son of Shri Khazan Singh, VPO Rajauli, Distt. Ambala (Haryana) applied for passport in the Regional Passport Office, Chandigarh on 17.7.92. Shri Gurmit Singh submitted an application for issue of passport on out of turn basis alongwith an affidavit regarding death of his mother in Malaysia and a photocopy of a telegram regarding the death of his mother in Malaysia. The said telegram was found to be bogus and forged and the fake nature was apparent. Still Shri A.L. Verma, the then Public Relations Officer, Regional Passport Office, Chandigarh recommended issue of passport to Shri Gurmit Singh and Shri Guru ordered for issue of the passport on 10.12.92.

WHEREAS, it is alleged that Shri Harnek Singh, son of Shri Gurcharan Singh, resident of Jarosi Kalan, Pehowa, Haryana applied for a passport in the Regional Passport Office, Chandigarh on 27.7.92. He submitted an application for issue of passport on out of turn basis

....2/-

-2-

alongwith a copy of a telegram regarding illness of his brother at Germany. The said telegram was found to be forged and bogus and the fakeness was apparent. Still, Shri Balbir Singh Gupta, the then Superintendent, Regional Passport Office, Chandigarh recommended issue of passport to Shri Harnek Singh and Shri Guru ordered for issue of the passport on 20.12.92.

WHEREAS, it is alleged that Shri Ravinder Singh, son of Shri Mangal Singh, resident of Village Aulakh, P.O. Bhaowal, Teh. Anandpur Sahib, Distt. Ropar (Punjab) applied for a passport in the Regional Passport Office, Chandigarh on 17.12.93. Shri Ravinder Singh submitted an application for issue of passport on out of turn basis alongwith a certificate purportedly issued by Health Care Hospital for Kiddies, New York, USA regarding illness of his brother. The said certificate was found to be forged and bogus and was apparently fake even to the naked eye. In spite of this, Shri A.L. Verma, the then Public Relations Officer, Regional Passport Office, Chandigarh recommended issue of passport to Shri Ravinder Singh and Shri N. Guru, the then acting Regional Passport Officer ordered for issue of passport to Shri Ravinder Singh on 01.3.94.

WHEREAS, it is alleged that Shri Ram Gopal, son of Shri Kansi Ram, resident of House No.144, Sukhdev Nagar, Panipat (Haryana) applied for a passport in the Regional Passport Office, Chandigarh on 01.10.93. He submitted an application to the Regional Passport Officer, Chandigarh for issue of a passport on out of turn basis alongwith a photocopy of a letter dated

....3/-

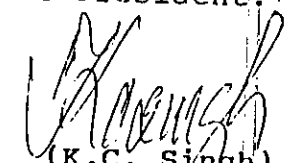
11.2.94 of M/s Politex Industries Ltd., Toronto, Canada wherein it has been mentioned that Shri Ram Gopal was to come to Toronto with various samples. The said letter of M/s Politex Industries Ltd. was found to be bogus. Still, Shri N. Guru ordered for issue of passport to Shri Ram Gopal.

AND WHEREAS the said acts of constitute offences punishable under section 120-B read with 420, 468, 471 IPC and section 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988.

AND WHEREAS, the President being the authority competent to remove the said Shri N. Guru from service, after fully and carefully examining the material placed before him in regard to the said allegations and circumstances of the case considers that Shri N. Guru, the then acting Regional Passport Officer, Regional Passport Office, Chandigarh presently working as Public Relations Officer, Passport Office, Hyderabad should be prosecuted in the court of law for the said offences.

NOW, THEREFORE, the President hereby accords sanction under section 19(1)(a) of the Prevention of Corruption Act, 1988 for the prosecution of the said offences and any other offence punishable under other provisions of the law in respect of the aforesaid acts and for taking cognisance of the said offence by the court of competent jurisdiction.

By order and in the name of the President.


(K.C. Singh)
Joint Secretary (CPV) & CPO

(K. C. SINGH)
Joint Secretary (CPV) &
Chief Passport Officer
Ministry of External Affairs
New Delhi.

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No.Q/Vig.II/843/16/94
Government of India
Ministry of External Affairs
CPV Division

New Delhi, the 2nd April, 1997.

M E M O R A N D U M

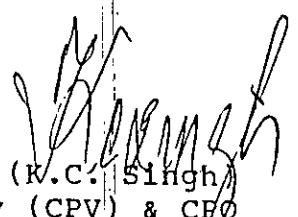
Shri N. Guru, Public Relations Officer, Passport Office, Hyderabad is hereby informed that it is proposed to take action against him under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. A statement of imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed.

2. Shri N. Guru is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri N. Guru fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri N. Guru ex parte.

4. The receipt of this Memorandum should be acknowledged by Shri N. Guru.

By order and in the name of the President.


(K.C. Singh)
Joint Secretary (CPV) & CEO

Shri N. Guru
Public Relations Officer
Passport Office
HYDERABAD.

Copy to:

1. Passport Officer, Passport Office, Hyderabad.
2. PV-IV Section.

Departmental Promotion
has been
covered. Such a review should be

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STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR ON WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST SHRI N. GURU, PUBLIC RELATIONS OFFICER, PASSPORT OFFICE, HYDERABAD.

That Shri N. Guru, Public Relations Officer was posted and functioning as acting Regional Passport Officer in the Regional Passport Office, Chandigarh during the year 1993-94.

That Mahant Santi Nath, son of Mahant Ram Nath, resident of Dera Baba Bakhtanath, VPO Balbera, District Patiala (Punjab) applied for a passport on 26-11-1993 in the Regional Passport Office, Chandigarh vide passport file No.5/43033/93.

That one invitation card addressed to Mahant Santi Nath for attending a marriage at Handsworth, UK on 2-4-1994 alongwith a sponsorship declaration was enclosed with the said application.

That Shri N. Guru, acting Regional Passport Officer ordered for issue of passport to Mahant Santi Nath on 8-3-1994 on out of turn basis by mentioning the ground that the applicant was proceeding to UK for attending marriage of his disciple as per request letter and copy of invitation card. However, no letter of request of the applicant for issue of passport on out of turn basis was found in the passport file of Mahant Santi Nath.

That as per the conditions mentioned at Sl.No. X of the letter No.VI/401/34/92 dated 31-3-1993, passport can be issued on out of turn basis to an individual wishing to go abroad to attend marriage of immediate blood relative. In this case, Shri Guru issued passport to Mahant Santi Nath even though he was not going to attend the marriage of a close relative.

Thus Shri N. Guru failed to maintain absolute integrity and devotion to duty and he thereby contravened the provisions of Rule 3(1)(i) and (ii) of the CCS (Conduct) Rules, 1964.

... should review
... or convening the first Departmental Promotion
... kept its findings in the sealed cover. Such a review should be

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL AT HYDERABAD.

O.A.NO. 1221 of 1997

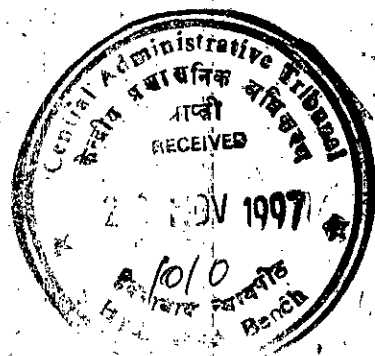
REPLY AFFIDAVIT/Written STATE-
MENT FILED ON BEHALF OF
RESPONDENTS NO..... TO

FILED ON: 20/11/97

FILED BY:

V. RAJESWARA RAO, SC FOR RLYS/
Addl. CGSC, CAT, Hyd.

Phone. 272585.



Raymond
20/11/97

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.1221/97

DATE OF ORDER : 24-02-1998.

Between :-

N.Guru

... Applicant

And

1. Union of India rep. by its
Secretary, M/o External Affairs,
North Block (CPV Division),
New Delhi.
2. The Regional Passport Officer,
Exhibition Grounds, Nampally,
Hyderabad.

... Respondents

-- -- --
Counsel for the Applicant : Shri K.Sudhakar Reddy

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC

-- -- --
CORAM:

THE HON'BLE SHRI A.V.HARIDASAN : VICE-CHAIRMAN (ERNAKULAM BENCH)

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

(Order per Hon'ble Shri A.V.Haridasan, VC).

-- -- --
... 2.

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(Order per Hon'ble Sri A.V. Haridasan, Vice-Chairman).

-- -- --

The applicant who was working as Public Relations Officer under the Regional Passport Officer, Exhibition Grounds, Hyderabad, has filed this application aggrieved by the fact that by the impugned order dt.16-5-97 one Smt.S.Dewan, Junior to him has been promoted as Gr.II Asst.Passport Officer on an officiating basis. The applicant, who is senior and has been cleared by the Departmental Promotion Committee has not been promoted. He has therefore filed this application praying that the respondents be directed to consider the applicant for promotion to the post of Asst.Passport Officer on officiating capacity with effect from 14-3-97 i.e. the date on which his junior was promoted with all consequential benefits of seniority, arrears of salary and etc.,. It has been alleged in the application that there is no reason why the applicant could not be promoted while his junior has been promoted.

2. Respondents in their reply statement have conceded that Smt.S.Dewan, who has also been promoted by Annexure A-I is junior to the applicant. The non promotion of the applicant is sought to be justified on the ground that immediately after the recommendations of the Departmental Promotion Committee adjudging the applicant fit for promotion, a charge sheet for imposing a minor penalty was served on the applicant on 2-4-97 and therefore the recommendations of the DPC are kept in sealed cover pending finalisation of the departmental proceedings. This action, according to the respondents is in consonance with the instructions of the Government of India contained in OM dt.14-9-92 of the Ministry of Personnel, Public

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Grievances & Pensions, Department of Personnel & Training, a copy of which is annexed as Annexure-I to the reply.

3. We have perused the pleadings and the material available and have heard at length Sri K.Sudhakar Reddy, counsel for the applicant and Sri V.Rajeshwar Rao, standing counsel for the respondents. It is not disputed that after the recommendations of the Departmental Promotion Committee and before ordering promotion pursuant thereto, a charge sheet was issued to the applicant and that the same has not yet reached its logical conclusion. The reason for pendency of the proceedings, according to the respondents is that the applicant took a long time to file an explanation to the notice issued under Rule-16. However, the fact remains that minor penalty proceedings has not reached its conclusion either way. The counsel for the applicant stated that the necessary papers sought for by him for submitting explanation have not been furnished to him. The Government of India, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training issued OM dt.14-9-92 in regard to the procedure to be followed when an official while being considered for promotion is facing a Departmental disciplinary Proceedings and also in case where Departmental Disciplinary Proceedings have been initiated after holding the DPC but before actual promotion. Clause-7 of the memorandum reads as follows :-

"7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para-2 above arise after the recommendations of the

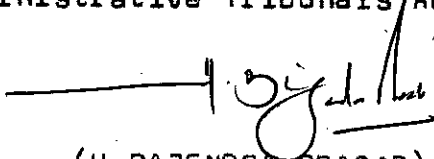
- 4 -

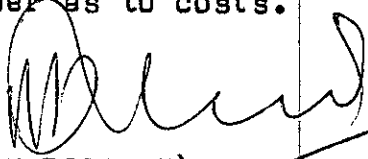
DPC are received but before he is actually promoted will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and provisions contained in this OM will be applicable in his case also."

It is in accordance with this provision contained in clause-7 of the OM mentioned above that the respondents have withheld the promotion of the applicant while his junior Smt. S. Dewan has been promoted. The action of the respondents cannot be faulted as it is so provided in the instructions contained in the above referred O.M. Learned counsel for the applicant vehemently argued that this clause introduced after the decision of the Hon'ble Supreme Court in Janaki Raman's case is arbitrary and apposed to what is contained in para-4 of the above OM. If the applicant considers that the offending clause in the memorandum is unsustainable, it is up to him to challenge the validity of that clause. So long as such a relief has not been sought in this application, we are not going into the legal validity of the said clause. Suffice to say that as the matter stands now, the stand of the respondents according to the government instructions that the applicant cannot be promoted till a final decision is taken in the Departmental Disciplinary Proceedings cannot be faulted. In that view of the matter, we do not find any legitimate grievance of the applicant presently deserving redressal by this Tribunal.

....5.

- 5 -
The application therefore rejected under section 19(3) of the
Administrative Tribunals Act, 1985. No order as to costs.


(H. RAJENDRA PRASAD)
Member (A)


(A.V. HARIDASAN)
Vice-Chairman (Ernakulam Bench)

Dated: 24th February, 1998.

Dictated in Open Court.

av1/


Deputy Registrar

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To

1. The Secretary,
Union of India, Ministry of External Affairs,
North Block (CPV Division)
New Delhi.
2. The Regional Passport Officer,
Exhibition Grounds, Nampally,
Hyderabad.
3. One copy to Mr.K.Sudhakar Reddy, Advocate, CAH Hyd.
4. One copy to Mr.V.Rajeswar Rao, Addl.CGSC. CAT.Hyd.
5. One copy to DR(A) CAT.Hyd.
6. One spare copy.

pvm

11/3/98

I Court

TYPED BY
COMPALED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE AV Haxirasan,
VICE-CHAIRMAN (Ernakulam Bench)
AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

DATED: 24-2-1998

~~ORDER~~/JUDGMENT:

M.A./R.A./C.A.No.

in

O.A.No. 1221/97.

T.A.No. (W.P.)

Admitted and Interim directions
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

