

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 11/2000

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 11/2000

OF 199

Applicant(s) Mrs. Indira Gareng.

Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. M. Chanda.

Mr. N. D. Goonami

Advocate for Respondent(s) Mr. G. N. Chakrabarty.

C.G.S.L.

Notes of the Registry	Date	Order of the Tribunal
for filing with the C. P. of R. No. deposited vide I.P.O. Regd. No. 456246 Dated 11-1-2000	12.1.2000 pg 24/11/2000	<p>Application is admitted. Issue usual notice.</p> <p>List on 14.2.2000 for written statement and order.</p> <p>Pendency of this application shall not be a bar for the respondents in granting relief to the applicant.</p> <p><i>J.B.</i> Vice-Chairman</p>
Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A.D. Vide D.Nos. 235 to 25.1.2.37 Dtd - 27.1.2000	14.2.2000 69 24/11/2000	<p>Two weeks time is allowed on the prayer of Mr. M. Chanda, learned counsel for the applicant.</p> <p>List on 1.3.2000.</p> <p><i>J.B.</i> Vice-Chairman</p>

Notes of the Registry

Date

Order of the Tribunal

28-2-2000

1) Service reports are awaited.

2) W/Statement by me
seen B.M.

1.3.00

Two weeks time allowed for filing of written statement on the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C. List it on 15.3.00 for written statement and further orders.

jk

Member(J)

6
Member(A)

nkm

15.3.00

On the prayer of Sri A. Deb Roy, learned Sr. C.G.S.C. two weeks further time is allowed for filing of written statement.

List on 3.4.2000 for written statement and further orders.

jk

Member(J)

6
Member(A)

trd

3.4.00

Two weeks further time is allowed for filing of written statement on the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C.

List on 24.4.2000 for written statement and further order.

6
Member

trd

24.4.00

On the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C., the case is adjourned to 15.5.00 for filing of written statement and further orders.

6
Member12-5-00

no wds. has been

A.M.

15-

mk

3

Notes of the Registry

Date

Order of the Tribunal

3

15.5.00

Sri M. Chanda learned counsel for the applicant. Learned Sr. C.G.S.C. Sri A. Deb Roy prays time to file written statement. Prayer is allowed.

List on 2.6.2000 for written statement and further orders.

Sh
Member (J)

trd

2.6.00

There is no Bench today.
Adjourned to 27.6.00.

Mo
h

14-6-2000
with statement
has been filed by
the respondents along
with their petition
for adjournment
with statement.

27.6.00

There is no Bench today.
Adjourned to 26.7.00.

Mo
b

26.7.00

There is no Bench. Adjourned
to 29.8.00.

Mo
b

29.8.00

There is no Bench. Adjourned
to 6.11.00.

Mo
b

Writ has been filed.

6.11.00

Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.

Written statement has already been filed.

List on 14.2.2001 for hearing.

h
Vice-Chairman.

pg

21/2/2001

Shivam

Ref'd to 14.2.2001

B.D.
Sh

Notes of the Registry

Date

Order of the Tribunal

13.2.2001

Le joined in submitted
by the applicant in reply
to the W/S submitted
by the Respondents.

14.2.01

Heard in part. Hearing could not
be completed due to shortage of time.
List the case tomorrow i.e. on
15.2.2001 for further hearing.

List the case as part heard.

Member

Vice-Chairman

trd

2001
13/2

14.2.01

Heard in part. Hearing could be
completed since the Bench is to rise
for the Single Bench. List the case
tomorrow i.e. on 15.2.2001 for further
hearing.

List the case as part heard.

Member

Vice-Chairman

trd

15.2.2001

Heard the learned counsel for the
parties. Hearing concluded. Judgment delivered
in open court, kept in separate sheets. The
application is allowed. No order as to costs.

K L Shan

Member

Vice-Chairman

nkm

21.2.2001

Copy of the Judgment
has been sent to
the Dpecc for issuing
the same to the applicant
as well as to the Mr.
C.G.S.C for the Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX No. 11 of 2000

DATE OF DECISION 15.2.2001

Mrs Indira Gurung

PETITIONER(S)

Mr M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakrabarty

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment. ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.11 of 2000

Date of decision: This the 15th day of February 2001

The Hon'ble Mr Justice D.N. Chowdury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Mrs Indira Gurung,
Wife of Shri L.B. Gurung (Bishan Gurung),
Resident of Assam Rifles Bazar,
Happy Valley, Shillong.Applicant

By Advocates Mr M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakrabarty.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Defence,
New Delhi.

2. The Headquarters of 101 area,
C/o 99 APO.

3. The Administrative Commandant,
Station Headquarters,
Shillong.Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The sole grievance of the applicant in this application under Section 19 of the Administrative Tribunals Act, 1985, is non-consideration of her case for promotion to the post of Accounts Clerk against the available vacancies which fell vacant since 1987 in the Station Headquarters, Shillong, Government of India, Ministry of Defence.

2. The applicant is presently working as a Store Keeper on regular basis in the scale of pay of Rs.825-1200 (Pre-revised) in the Station Headquarters, Shillong, Government of India, Ministry of Defence since 1985. Three posts of Accounts Clerk fell vacant in November 1997 due to promotion of three Accounts Clerk to the cadre of General Supervisor.

When the vacancies arose the applicant submitted a representation on 22.9.1998 praying for consideration of the eligible candidates for promotion to the post of Accounts Clerk. Failing to get any response, the applicant submitted another representation on 19.4.1999 to the Administrative Commandant, Station Head Quarters, Shillong, wherein she also referred to her earlier representation dated 22.9.1998. In her representation the applicant also mentioned about the order of the Tribunal in O.A.No.83 of 1995 disposed of on 30.6.1998 in the case of Smt Madhumita Dey vs. Union of India and others. The Administrative Commandant, respondent No.3, by his communication dated 3.6.1999 disposed of her representation and overruled any injustice as pleaded by her. It was also informed that the DPC would proceed as per laid down instructions. The applicant failing to get any remedy from the respondents moved this Tribunal by way of the present application seeking for a direction to consider her case as per law.

3. The post of Accounts Clerk is a Group 'C' post. The recruitment of Group 'C' and 'D' posts in the Formation Headquarters and Station Staff Office under General Staff Branch of the Army Headquarters in the Ministry of Defence are regulated by a set of rules, known as Formation Headquarters and Station Staff Offices (Conservancy Staff) Recruitment Rules, 1980. As per the rules, the method of recruitment, age limit and other qualifications, etc., relating to the posts are specified in Columns 6 to 14 of the Schedule. The Accounts Clerk is classified as Civilian Defence Service Group 'C' Non-Gazetted, Non-Ministerial staff and it is a non-selection post. The qualification prescribed is Matriculation or its equivalent with typing speed of thirty words per minute and knowledge of accounts keeping. The post of Conservancy Store Keeper has also been classified as a civilian in Defence Service, Group 'C', Non-Ministerial and Non-Gazetted post. This post is also a non-selection post. The essential qualifications prescribed is matriculation and experience in Storekeeping is desirable. 90% of the posts are to be filled up by transfer, failing which by direct recruitment and 10% by promotion from Group 'D' employees borne on regular establishment

subject.....

subject to the conditions like selection to be made through DPC etc. The maximum number of recruits by DPC was limited to 10% vacancies in the cadre of Accounts Clerk occurring in a year and un-filled vacancies were not to be carried over. The Recruitment Rules contain the provision for promoting persons from Conservancy Sanitary Mate/Land Supervisor with five years regular service in the grade. Persons working in equivalent or analogous or higher grade in the lower formations of the Defence services who have the qualifications prescribed under column 8 are also eligible for consideration as per the rules. The applicant who was working in the Stores Section, put her claim for consideration for promotion to the post of Accounts Clerk which has been countered by the respondents.

4. The respondents have submitted their written statement and disputed the claim of the applicant for her promotion to the post of Accounts Clerk. The respondents stated and contended in the written statement that the post of Storekeeper is not considered as one of the channels for promotion to the post of Accounts Clerk. As per the provisions of the Schedule to Formation Headquarter and Station Staff Offices (Conservancy Staff) Recruitment Rules, 1980, Storekeepers are not entitled for promotion to the post of Accounts Clerk as 80% of the posts of Accounts Clerks are to be filled by transfer of persons working in similar, analogous or higher posts in lower formations of Defence Services and 10% to be promoted from ex-servicemen by transfer on deputation/re-employment, failing which these posts are to be filled through direct recruitment, and 10% of the posts were required to be filled by Departmental promotion from the existing Group 'D' employees. The applicant, though made representations one after another her case could not be considered since she was not eligible for promotion to the post of Accounts Clerk. According to the respondents, Storekeepers are outside the channel for promotion to the post of Accounts Clerk. Storekeepers are, however, entitled for promotion to the post of General Supervisor and as and when the post of General Supervisor falls vacant the right of the applicant will be considered as per laid down procedure

and.....

and rules. The respondents also stated that though the posts of Accounts Clerk were vacant in November 1997, no decision regarding filling up the posts as per laid down procedure could be taken in view of the case (O.A.No.83 of 1995) filed by Ms Madhumita Dey in the Central Administrative Tribunal in April 1998. The said case remained pending in the Tribunal till June 1998 and the Judgment and Order was delivered by the Tribunal on 30.6.1998, which was further challenged in the Gauhati High Court in Civil Rule No.4620 of 1998. The High Court stayed the implementation of the order of the Tribunal dated 30.6.1998. In the written statement it was also indicated that the High Court, by order dated 16.3.1999 in Civil Rule No.4620/98, further directed that if more vacancies existed those were to be filled up as the Civil Rule pertained to only one post.

5. Mr M. Chanda, learned counsel for the applicant, submitted that the Storekeepers are also entitled for consideration for promotion to the post of Accounts Clerk and, as a matter of fact, two persons, namely Shri B.N. Singh and Smt Kabita Sharma were promoted to the post of Accounts Clerk from the post of Storekeeper. For that purpose, Mr Chanda referred to the rejoinder filed by the applicant on 1.2.2001. The learned counsel also submitted that the case of Ms Madhumita Dey (Supra) was also a case of promotion to the post of Accounts Clerk from the post of Storekeeper. Referring to the written statement filed by the respondents in O.A.No.83/1995, Mr Chanda submitted that the plea of outside the channel was never taken up by the respondents and therefore, no credence should be given. Mr Chanda also submitted that the two reasons cited by the respondents for not considering the the applicant for promotion are no reasons at all. A Storekeeper is entitled for consideration for promotion to the higher post from the lower post as per rules and impediments, as such, has been created by the High Court in the case of Ms Madhumita Dey for not taking up the case of the applicant by the respondents.

6. Mr A. Deb Roy, learned Sr. C.G.S.C., referring to the written statement, submitted that Storekeeper is outside the channel of promotion to the post of Accounts Clerk.

7. The rules contemplate for 10% of the vacancies to be filled up by promotion. The field of choice for promotion to the post of Accounts Clerk does not exclude the Storekeeper for consideration of promotion to the level of Accounts Clerk. Conservancy Storekeeper, though a Group 'C' post, is a post in the lower formation. The rules does not debar the Conservancy Storekeeper for being considered for promotion to the higher post of Accounts Clerk. Admittedly, the respondents also appointed persons from the post of Storekeeper to the level of Accounts Clerk. The applicant cannot be excluded from being considered for promotion to the post of Accounts Clerk only on the ground that she was holding a lower formation post of Conservancy Storekeeper. We also do not find any impediment created by the High Court in the matter of promotion to the post of Accounts Clerk. On the other hand, the order of the High Court dated 16.3.1998 in Misc. Case No.1109/1998 in Civil Rule No.4620/98 clarified that the interim order dated 11.9.1998 pertained to only one post. If other vacant posts were there, there was no reason why the same could not be filled up. We do not find any good ground for keeping the posts of Accounts Clerk vacant for over three years. The proressed policies and norms of the Central Government expressed in Swamy's Manual, as was referred to by Mr Chanda, laid down that vacancies are required to be filled up without much delay. Keeping promotional posts vacant, apart from creating dissatisfaction amongst the employees also affects the public service. Undue delay of filling up vacancies creates dissatisfaction among those who are eligible for promotion. The executive instructions also lays emphasis on the policy of holding frequent DPCs.

8. In the circumstances we do not find any valid reason on the part of the respondents for not filling up the posts and considering the case of eligible persons for appointment by promotion to the post of Accounts Clerk. The applicant who is holding a post in the lower formation, in our view, cannot be made disentitled for the post of Accounts Clerk.

9. For the reasons stated above we allow the application and direct the respondents to take up the case of promotion to the post of Accounts Clerk under the respondents with further direction to consider the case of the applicant also for the post alongwith other similarly situated persons as per law. Since the posts are lying vacant, the respondents are directed to take all necessary steps including holding of DPC for consideration of promotion of eligible candidates including the applicant, as early as possible, to the post of Accounts Clerk, preferably within three months from the date of receipt of this order.

No order as to costs.

K. K. Sharma
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

D. N. Chowdhury
(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm

11 JAN 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH3
Filed by Mr. S. Chatterjee
Advocate
11/1/2000

(An Application under Section 19 of the Administrative Tribunals Act, 1985).

Title of the Case : O.A. No. 11/2000

Mrs. Indira Gurung : Applicant

-versus-

Union of India & Ors. : Respondents

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Advocate

Filed by

N.D. Goswami

Advocate

Mrs Indira Gurung

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985).

Original Application No. 11 /2000

BETWEEN

Mrs. Indira Gurung

Wife of Shri L.B.Gurung (Bishan Gurung)

Resident of Assam Rifles Bazar

Happy Valley

Shillong Applicant

-AND-

1. The Union of India,
represented by the Secretary
to the Government of India,
Ministry of Defence
New Delhi.

2. The Headquarters of 101 area
C/o 99 APO

3. The Administrative Commandant
Station Headquarters,
Shillong

.... Respondents

DETAILS OF THE APPLICATION

1. Particulars of order against which this application is made.

This application is made praying for a direction to the respondents to promote the applicant to the post of Accounts Clerk against anyone of the three available

Mrs Indira Gurung

vacancies of Accounts Clerk which fall vacant during the month of November 1997 in the Station Headquarter, Shillong, Government of India, Ministry of Defence, due to promotions of three Accounts Clerk, namely Sri B.N. Singh, Mrs. D. Marwein and Mrs. A. Thangkiew and also for non-consideration of her representation dated 22.9.98 and 19.4.99 which were submitted by the applicant for consideration of her promotion against the aforesaid vacancies in terms of existing recruitment rule and also in terms of posts based roster point which is in force with effect from 2.7.1997.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declares that this application is filed within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

4.1 That the applicant is a citizen of India as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That your applicant had passed her Pre-University Examination in the year 1982 under North Eastern Hill University. She was initially appointed as Storekeeper on regular basis in the scale of Rs. 825-1200 (Pre-revised) in the Station Headquarter, Shillong, Government of India,

Mrs. Melina Lusang

Ministry of Defence during the year 1985. The next promotional avenue of the applicant as per existing recruitment rule is Accounts Clerk. The applicant has acquired the requisite qualification for consideration of promotion to the post of Accounts Clerk as per existing recruitment rule (Annexure-1). She has rendered nearly 15 years service in the cadre of Storekeeper under the respondents without any promotion.

A copy of the recruitment rule referred to above is annexed and marked as Annexure-1.

3. That your applicant begs to state that during the month of November, 1997 three posts of Accounts Clerk has fallen vacant due to promotion of three Accounts Clerk namely Shri B.N.Singh, Mrs. D. Marwein, and Mrs. A. Thankgiew from the post of Accounts Clerk to the cadre of General Supervisor. The applicant being eligible for promotion to the post of Accounts Clerk she was expecting for consideration of her promotion to the cadre of Accounts Clerk in terms of existing recruitment rule. But the respondents did not take any step for consideration of her promotion to the post of Accounts Clerk. The applicant being disappointed submitted a representation on 22.9.98 addressed to the Administrative Commandant, Station Headquarter, Shillong, wherein the applicant inter alia praying for consideration of her promotion against the resultant vacancy which occurred due to promotion of Shri B.N.Singh and also requested to follow the rules strictly while considering the case of promotion to the post of Accounts Clerk. The applicant did not find any response from the respondents and in compelling circumstances was forced to submit another

Mrs. Madina Gurung

representation on 19.4.99 to the Administrative Commandant, Station Headquarter, Shillong, wherein the applicant further stated with reference to her earlier representation dated 22.9.98 that she is eligible for consideration of her promotion to the post of Accounts Clerk against anyone of the available three resultant vacancies which occurred due to promotion of three Accounts Clerks to the cadre of General Supervisor. She also requested that for application of Hon'ble Tribunal's order dated 30.6.98 passed in O.A. No.83/95 on 30.6.98 in the case of Smt. Madhumita Dey Vs. Union of India & Ors and also prayed for strict compliance of the roster point while considering the promotion to the available avacancy.

A copy of the representation dated 22.9.98 and representation dt. 19.4.99 is annexed as Annexedres 2 & 3 respectively.

4.4 That most surprisingly the Administrative Commandant, Station Headquarter, Shillong vide his letter bearing 652/5/Estt (Part) dt. 3.6.99 informed the applicant in response to her representation dated 19.4.99 that anticipation of imaginary injustice on the part of the applicant is not justified. It is also stated in the said letter that the DPC would proceed as per laid down instructions and her application is finally disposed of. It is regret to note that although it is stated by the Administrative Commandant that the DPC would proceed as laid down instructions but in the instant case the respondents did not follow the instructions issued by the Government of India from time to time regarding sitting

Mrs Molova Gurung

of the DPC. In this connection it is relevant to mention here that the post of Accounts Clerk were occurred long back in the month of November, 1997 and thereafter no action was initiated by the respondents to fill up aforesaid vacancies. As a result the present applicant and other similarly situated employees incurring huge financial loss in each and every month due to non consideration of their promotions to the post of Accounts Clerk. Although the applicant has attained her eligibility in all respects for consideration of promotion to the post of Accounts Clerk. The Government of India from time to time instructed all the departments to arrange DPC well in advance so that the employees should not incur any financial loss. It would be evident from Swamy's Complete Manual on Establishment and Administration for Central Govt. offices in chapter 53 Promotions wherein part II it is held as follows :

" Frequency at which DPC should meet.

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilised on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, integrity certificates, seniority list, etc., for placing before the DPC. DPCs could be

Mrs Indira Gurung

convened every year if necessary on a fixed date, e.g. 1st April or May. The Ministries/ Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being reviewed/ amended. A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to recruitment rules normally have only prospective application, the existing vacancies should be filled as per the recruitment rules in force.

Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.

3.2 The requirement of convening annual meetings of the DPC should be dispensed with only after

Max Indira Gandhi

a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question."

In view of the above instructions of the Govt. of India, the respondents ought to have convened the DPC well in advance for filling up of the aforesaid three available vacancies which were occurred during the month of November, 1997. But in the instant case only on 3rd June, 1999 the respondents informed the applicant that DPC would proceed as per laid down instruction. It appears that the respondents are not well aware regarding the instructions of the Govt. of India for holding of Departmental Promotion Committee Meeting for consideration of promotion for the vacant posts which occurred due to promotion of three Accounts Clerks named above.

A copy of the letter dated 3.6.99 is annexed and marked as Annexure-4.

4.5 That your applicant begs to state that she being eligible for consideration of promotion as per existing recruitment rule as well as the existing points based roster introduced by the Government of India incurring financial loss each and every month since November, 1997 due to action/inaction of the respondents. It is relevant to mention here that the Government of India also issued necessary instructions for filling up of vacancies on the day on which the same was occurred. Therefore in view of the aforesaid instruction of the

Mrs. Indira Arora

Government of India the present applicant is entitled to be considered for promotion with retrospective effect with all consequential service benefit to the cadre of Accounts Clerk, i.e. with effect from November, 1997.

4.6 That your applicant further begs to state that the present respondents in an earlier occasion did not follow the correct procedure regarding roster points which is applicable in the matter of promotion of the Accounts Clerk in the case of Station Headquarter, Shillong, which is evident from the Judgement and Order dated 30.6.98 passed in O.A. No. 83/85 dt. 30.6.98 in the case of Smt. Madhumita Dey Vs. Union of India & Ors. In the said OA the Hon'ble Tribunal was pleased to set aside the irregular appointment of one Group 'D' employee Smt. Reba Dey who was illegally appointed to the post of Accounts Clerk and upheld the contention of Smt. Madhumita Dey who is serving as Storekeeper. However the matter is carried on appeal before the Hon'ble Gauhati High Court and the same is presently subjudiced.

The applicant recently came to know from a reliable source that the respondents have decided to fill up two posts out of three available vacancies of Accounts Clerk amongst the serving Group D employees in total violation of the existing recruitment rules as well as in violation of points based roster recently came into force by the Government of India with effect from 2.7.94. Although formal notification for filling up of two vacancies from the Group D employees has not been issued but the same is likely to be issued very shortly. The present

Mrs Molina Curuay

applicant is apprehending that if the respondents resorted to fill up two available vacancies amongst the Group D employees of the Station Headquarters in that case she would be deprived from her legitimate claim of promotion to the post of Accounts Clerk. It is categorically stated that as per the existing recruitment rule only 10% quota is available for Group D employees for promotion to the cadre of Accounts Clerk, if otherwise eligible as per existing recruitment rule. In this connection it is also relevant to mention here that there are altogether five posts of Accounts Clerk, against which already one post of Accounts Clerk has already been filled up amongst the Group D employee i.e. Miss Reba Dey and the appointment of Smt. Reba Dey had been challenged by one Smt. Madhumita Dey of Station Headquarter, Shillong. Although the Hon'ble Tribunal, Guwahati Bench was pleased to set aside the appointment order of Miss Reba Dey, however the judgement and order dated 30.6.98 passed in O.A. No. 83/95 has been carried on appeal before the Hon'ble Gauhati Court and the Hon'ble High Court was pleased to stay the operation of the judgement and order dt. 30.6.98 passed in O.A. No. 83/95 (Smt. Madhumita Dey Vs. U.O.I. & Ors) by the Hon'ble Dribunal on 30.6.98. As such the dispute regarding appointment of Miss Reba Dey is still subjudiced and the appointment of Miss Reba Dey was also in violation of the existing rule. Therefore the present applicant also apprehends that the respondents may resort to such illegal action on appointing other Group D employees in total violation of recruitment rules. Therefore finding

Mrs. Indira Currim

no other alternative under compelling circumstances approaching the Hon'ble Tribunal for a direction to the respondents for protection of her valuable rights and interests and the Hon'ble Tribunal further be pleased to restrain the respondents from ~~making~~ any appointment amongst the Group D employees to the cadre of Accounts Clerk, otherwise the present applicant will incur irreparable financial loss and the applicant will suffer adversely so far her service prospects is concerned.

4.7 That your applicant begs to state that due to non-consideration of her case for promotion to the post of Accounts Clerk she is incurring financial loss as well as loss in her promotional prospects. As such finding no other alternative the applicant is approaching this Hon'ble Tribunal for protection of his legitimate rights and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interests of the present applicant directing the respondents to constitute DPC with immediate effect to consider the case of the applicant for promotion to the post of Accounts Clerk with retrospective effect i.e. from the date of occurrences of the vacancies i.e. from the month of November, 1997 with all consequential service benefits.

4.8 That this application is made bona fide and for the cause of justice.

Mrs Indira Curry

5. Grounds for relief(s) with legal provisions.

5.1 For that three vacancies of Accounts Clerk are lying vacant with effect from November, 1997 in the Station Headquarter, Shillong, Government of India, Ministry of Defence.

5.2 For that the applicant attained the eligibility for consideration of promotion in terms of the existing recruitment rules.

5.3 For that the applicant repeatedly approached the authorities for consideration of her promotion to the post of Accounts Clerk by submitting representation but to no result.

5.4 For that as per instructions laid down by the Government of India, DPC is required to be held immediate before vacancy is occurred but in the instant case the respondents have violated the instruction laid down by the Government of so far constitution of DPC is concerned.

5.5 For that the applicant is incurring financial loss as well as promotional prospects due to negligence and inaction of the respondents.

5.6 For that the respondents further initiating illegal action for filling up the vacancies amongst the Group D employees in total violation of the existing recruitment rules.

6. Details of remedies exhausted.

That the applicant states that she have no other alternative and other efficacious remedy than to file

Mrs. Molina Curueng

this application, Representations through proper channel were submitted by the applicant to the Administrative Commandant but to no result.

7. Matters not previously filed or pending with any other court.

The applicant further declares that she had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought for :

Under the facts and circumstances of the case the applicant prays that Your Lordships would be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :

8.1 That the respondents be directed to promote the applicant to the cadre of Accounts Clerk with immediate effect with all consequential service benefits i.e. from the date of occurrence of vacancy in terms of the existing recruitment rules and also in terms of existing points based roster, issued by the Government of India.

Mrs. Indira Gurung

8.2 Costs of the application.

8.3 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for :

During pendency of this application, the applicant prays for the following reliefs :

9.1 That the Hon'ble Tribunal be pleased to restrain the respondents to make any appointment amongst the Group D employees to the cadre of Accounts Clerk in the existing available three ^{Accounting} resultant vacancies of ~~Store~~ Clerk, in the Station Headquarters, Shillong. The applicant also prays that the instant application be disposed of expeditiously.

10.

This application is filed through advocate.

11. Particulars of the I.P.O.

i. I.P.O. No. : 456744

ii. Date of Issue : 11-1-200

iii. Issued from : G.P.O., Guwahati

iv. Payable at : G.P.O, Guwahati.

12. List of enclosures :

As stated in the Index.

..... Verification

Mrs. Molina Curmi

VERIFICATION

I, Mrs. Indira Gurung, Wife of Shri L.B.Gurung, aged about 38 years, resident of Assam Rifles Bazar, Happy Valley, Shillong, do hereby verify that the statements in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 9th day of January, 2000.

Mrs Indira Gurung
Signature

Annexure
1/6

New Delhi, the 3rd April, 1980

S.R.O. 128.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to certain Group 'C' and Group 'D' posts in the Formation Headquarters and Station Staff Office under General Staff Branch of the Army Headquarters in the Ministry of Defence, namely:

1. Short title and commencement.—(1) These rules may be called the Formation Headquarters and Station Staff Offices (Conservancy Staff) Recruitment Rules, 1980.

(2) They shall come into force from the date of their publication in the Official Gazette.

(3) Past cases will not be re-opened.

2. Application.—These rules shall apply to the posts specified in column 2 of the Schedule annexed to these rules.

3. Number, classification and scales of pay.—The number of the said posts, their classification and the scales of pay attached thereto, shall be as specified in columns 3 to 5 of the Schedule annexed.

4. Method of recruitment, age limit and other qualification etc.—The method of recruitment, age limit, qualifications and

other matters relating to the said posts, shall be as specified in columns 6 to 14 of the Schedule aforesaid.

5. Disqualification.—No person—

(a) who has entered into or contracted a marriage with a person having a spouse; or

(b) who, having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to any of the said posts:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

6. Power to relax.—Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order, and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons or posts.

7. Savings.—Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

SCHEDULE

S. No.	Name of post	No. of posts	Classification	Scale of pay	Whether selection post or Non-Selection post.	Age limit for direct recruits	Educational and other qualifications required for direct recruits
1	2	3	4	5	6	7	8
1.	General Supervisor	23	Civilians in Defence Services, Group 'C' Non-Gazetted, Non-Ministerial.	Rs. 330-8-370. 10-400-EB-10-480	Non-selection	25 years (relaxable for Govt. servants upto 35 yrs. as per rules)	(i) Matriculation or equivalent (ii) 3 years experience of supervising conservancy staff.

Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees/transferees

Period of probation if any, Method of rectt. whether by direct rectt. or by promotion or transfer and percentage of the vacancies to be filled by various methods.

In case of rectt. promotion/ transfer grade from which promotion/transfer to be made

If a DPC exist.

Circumstances in which UPSC is to be consulted in making recruitment.

Age: No; Educational qualifications Yes

2 years. By promotion failing which by transfer and failing which by direct rectt.

Promotion; Store-keepers and Accounts Clerks with 8 years regular service in the grade.

(also for considering confirmation of the direct recruits) consisting of

N.A.

Transfer : Persons working in equivalent or analogous or grade in the lower formations of the Defence Service who have the qualifications prescribed under column 8

- Chairman : Officers of the rank of Lt. Col/ Major.
- Members 2 : Officers of the rank of Captain/ Lieutenant.

1	2	3	4	5	6	7	8
2. Accounts Clerk	17	Civilian in Dcf- Rs. 260-6-290- ence Services EB-6-326-8-366- Group 'C' Non- EB-8-390-10-400 Gazetted, Non- Ministerial.	Non-select- ion	25 years (relaxable for Govt. servants upto 35 yrs. as per rules)	(i) Matriculation and its equiva- lent (ii) Typing speed 30 words per minute. (iii) Knowledge of accounts keep- ing.		
3. Conservancy Storekeeper	24	Civilians in Def- Rs. 225-5-260-6- ence Services 290-EB-6-308- Group 'C' Non- Gazetted, Non- Ministerial.	Non-select- ion	25 yrs. (relaxable for Govt. servants upto 35 years as per rules)	Essential (i) Matriculation and its equiva- lent (ii) Desirable Experiance in Storekeeping.		

9	10	11	12	13	14
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Age: No
Educational
qualifications: Yes.

2 years
90% by transfer, failing
which by direct recruit-
ment. 10% by promo-
tion of Group 'D' em-
ployees borne on regu-
lar establishment subject
to the following condi-
tions :-

- (a) Selection shall be made through De-
partmental examina-
tion confined to such
Group 'D' employees
who fulfil require-
ments of minimum edu-
cational qualifications
namely, Matriculation
or equivalent.
- (b) The maximum age for
this examination shall
be 45 years (50 years for
the Scheduled Caste
and the Scheduled Tri-
bes candidates).
- (c) At least 5 years service
in Group 'D' posts is
essential.
- (d) The maximum number
of recruits by this me-
thod shall be limited to
10% of the vacancies in
the cadre of Ac-
counts Clerks occur-
ring in a year and unfil-
led vacancies shall not
be carried over.

Age: No
Edl. Qual. Yes 2 years

By promotion, failing
which by transfer, and fail-
ing both by direct recrt.

Group 'C' D.P.C. (also
for considering confirma-
tion of the direct recruits)
consisting of :-

1. Chairman : Officer of
the rank of Lt. Col/Major
2. Members 2 : Officer of
the rank of Captain/Lieu-
tenant.

N.A.

Promotion : By conservancy
Sanitary Mate/Land Supervi-
sor with 5 years regular ser-
vice in the grade.

Transfer : Persons working in
equivalent or analogous or
higher grades in the
lower formations of the
Defence services who have
the qualifications prescribed
under column 8.

Group 'C' D.P.C. (also
for considering confirma-
tion of the direct recruits)
consisting of :-

1. Chairman : Officer of the
rank of Lt Col/Major.
2. Members 2: Officer of
the rank of Captain/Lieu-
tenant.

N.A.

1	2	3	4	5	6	7
4. Land Supervisor	5.	Civilians in Defence Services, Group 'D' Non-Gazetted. Non-Ministerial	Rs. 200-3-206-4-234-EB-4-250	Non-selection	N.A.	N.A.
5. Sanitary Mate	30	Civilians in Defence Services, Group 'D' Non-Gazetted. Non-Ministerial	Rs. 200-3-206-4-234-EB-4-250	Non-selection	N.A.	N.A.
6. Conservancy Safaiwala	11185	Civilian in Defence Services, Group 'D' Non-Gazetted. Non-Ministerial	Rs. 196-3-220-4-232	Non-selection	25 years (relaxable for Government servants upto 35 years as per rules)	Desirable : 4th standard Pass.

8	9	10	11	12	13
N.A.	2 years	By promotion, failing which by transfer	Promotion : Conservancy Safaiwala with minimum 5 years service in the grade who is able to write and read Hindi, English or regional language.	Group 'D' D.P.C. consisting of : 1. Chairman—Officer of Major, 2. Members—2: Officer of the rank of Captain/Lieutenant.	N.A.
N.A.	2 years	By promotion, failing which by transfer	Transfer : Persons working in similar analogous and higher grades in the lower formations of the Defence Services.	Group 'D' D.P.C. consisting of : 1. Chairman—Officer of Lt Col/Major, 2. Members—2: Officer of the rank of Captain/Lieutenant.	N.A.
N.A.	2 years	By direct recruitment	Promotion : Conservancy safaiwala with minimum 5 years service in the grade who is able to write and read Hindi, English or regional language.	Group 'D' D.P.C. consisting of : 1. Chairman—Officer of Lt Col/Major, 2. Members—2: Officer of the rank of Captain/Lieutenant.	N.A.
			Transfer : Persons working in similar analogous and higher grades in the lower formations of the Defence services.	Group 'D' Departmental Promotion Committee (also for considering confirmation of the direct recruits) consisting of : 1. Chairman—Officer of the rank of Lt Col/Major, 2. Members—2: Officer of the rank of Captain/Lieutenant.	N.A.

Notes : 1. The crucial date for determining age limit for direct recruits shall in each case, be the closing date for the receipt of applications from candidates in India (other than those in the Andaman and Nicobar Islands and Lakshadweep).

2. In respect of posts the appointments to which are made through the Employment Exchange, the crucial date for determining age limit shall in each case, be the last date upto which the Employment Exchanges are asked to submit names.

3. The qualification regarding experience is relaxable at the discretion of the competent authority in the case of candidates belonging to the Scheduled Castes and the Scheduled Tribes, if at any stage of selection, the competent authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

4. The number of posts indicated in column 3 is subjected to variation according to workload.

Annexure-2

From :

Mrs Indira Gurung, SKT
Station Headquarters
Shillong

To

The Administrative Commandant
Station Headquarters
Shillong

Sub : REPRESENTATION FOR THE POST OF ACCOUNTS CLERK.

Sir,

With due respect and humble submission I beg to request you to kindly consider the following while carry out the DPC in respect of the posts of Accounts Clerk lying vacant in Station Headquarters :-

(a) In the case of Accounts Clerk it is mandatory for this HQ to follow the 1985 roster. In this connection kindly refer to Note 2 of Model Roster-SC/ST (C-45 of 1996) while clearly states as under :-

"The old roster shall be deemed to have been closed from the specified date and the new roster operates from the point next to the point at which recruitment stopped in the previous roster. The reservations which had to be carried forward in the previous roster will be carried over to the new roster."

(b) Even if the verdict of Supreme Court in the case of R.K. Sabharwal V. State of Punjab as well as J.C. Mallick V. Ministry of Railways to be followed, the post for which I am interested to post No. 2 vacated by Shri BN Singh which is a General post. However the post for which Madhumiita is contesting refers to post No. 5 which is a general category post also.

2. May I request your good self to kindly follow the rules correctly before deciding any procedure to be followed so that I am not deprived of my promotion.

3. Anticipating for an early reply

4. Thanking you,

Yours faithfully,
Sd/- Indira Gurung
SKT

22 Sep 98

*Attest
S. Gurung*

From
Mrs Indira Gurung
SKT (Q Wks dealing Clerk)
Station Headquarters
Shillong

Annexure-3

To

The Administrative Commandant
Station Headquarters
Shillong

Sub : REPRESENTATION FOR THE POST OF ACCOUNTS CLERK.

Sir,

With due respect I have the honour to invite your reference to my earlier representation dated 22 Sep 98.

2. My said representation may kindly be read in conjunction with the order of CAT Guwahati Branch dated 30 Jun 98 in respect of Smt. Cadhumita Dey Vs. Union of India and Others.

3. I am, now given to understand that very shortly three resultant vacancies of Accounts Clerk are being filled up through DPC of this Headquarters.

4. From the pith and substance of the obiter-dicta of the aforesaid CAT Order dated 30 Jun 98, the above resultant vacancies of the Accounts Clerk (on correct application of 100 Points Roster) as I understand are to be filled up: by the General Category candidate and one by ST category candidate. If this is given effect to, then I being an eligible senior General Category candidate from SKT should stand chance for promotion to the post of one Accounts Clerk, out of the three resultant vacant posts.

5. In view of above stated facts, it is necessary that the constituted DPC follows judicious application of existing rules vis-a-vis CAT Orders and Roster Points, in true spirit, while affording promotion to the said three posts of Accounts Clerk.

6. Considering above aspects, I beg to request you that necessary order may please be passed by your goodself to the concerned DPC, for following judicious application of above referred CAT Order vis-a-vis application of the Roster points, while recommending promotion to the posts of three Accounts Clerk, for your approval. In this connection please refer High Court Order dated 16 Mar 99. If this is done, it will go a long way in preserving the principle of justice equity and good conscience, so long upheld by the Headquarters.

7. Anxiously awaiting for your kind response to my this representation please.

8. Thanking you,

Dated 19 Apr 99

Yours faithfully,

Copy to
GOC's Secretariat

Sd/- Indira Gurung
(Mrs. Indira Gurung)
SKT

*Alwest and
S. Gurung*

Annexure-4

Tele Mil : 6242

Station Mukhyalaya
Station Headquarters
Shillong

652/5/Est (Part)

03 Jun 99

Mrs Indira Gurung
SKt

REPRESENTATION FOR THE POST OF ACCOUNTS CLK

1. Your petition dt. 19 Apr 99 was persued by the Stn Cdr and GOC 101 Area.
2. Anticipation of imaginary injustice on your part is not justified. The DPC will proceed as per laid down instructions.
3. Your petition is hereby finally disposed off.

Sd/- H. Sankaradhas
Capt
Offg Adm Comdt.

Fecuary 2 1999

GUWAHATI BENCH

O.A.NO.11 OF 2000

MRS. INDIRA GURUNG

-VS-

UNION OF INDIA & OTHERS.

IN THE MATTER OF :

Written statement submitted by
Respondent No. 1, 2 & 3.

WRITTEN STATEMENT

The humble respondents beg to submit
their written statement as follows :

1. That with regard to para 1, the respondents beg to state that the method of recruitment and promotion of certain Group 'C' and Group 'D' Posts in the Formation Headquarters and Station Staff Offices under General Staff Branch of Army HQs and the Ministry of Defence is laid down in Formation HQs and Station Staff Offices (Conservancy Staff) Recruitment Rules, 1980 issued under SRO 128/80 dated 03-04-1980 as amended by SRO 121 of 1988 (enclosed as Annexure A). The requirement and promotion to the post

of SKT, Accounts Clerk and General Supervisor are regulated as per said rules.

2. That with regard to para 2, the respondents beg to state that the representation of the petitioner was not considered by the respondents as the applicant was not in the channel of promotion for the post of Accounts Clerk. As per the provisions of Schedule to Formation Headquarters and Station Staff Offices (Conservancy Staff) Recruitment Rules 1980, SKT are not entitled for promotion to the posts of Accounts Clerks as 80% of the posts of Accounts Clerks are to be filled by transfer of persons working in similar, analogous or higher posts in lower formations of Defence Services and 10% to be promoted from ex-servicemen by transfer on deputation/re-employment, failing which these posts to be filled through direct recruitment, and 10% of the posts are required to be filled by Departmental promotion from the existing Group 'D' employees. Post based will be followed while filling up the vacancies in the Cadre. The petitioner is misleading the Honble Tribunal by wrongly interpreting the clear cut rules to her own vested interests. The request of the petitioner requires no consideration as post of SKT is not in the line for promotion to the post of Accounts Clerk. The applicant was making representation time and again for the post for which she was not entitled.

2
nb

3. That with regard to para 3, 4, 4.1, the respondents beg to offer no comment.

4. That with regard to para 4.2, the respondents beg to state that the applicant had passed Pre-University which is requisite qualification for the post of Accounts Clerk and she joined this service as SKT during the year 1985. It is submitted that the applicant is misleading the Honble Tribunal by misrepresenting the rules. It is evidently clear from the Formation Headquarters & Station Staff Office (Conservancy Staff) Recruitment Rules 1980 that 80% of the posts are to be filled through transfer failing which these posts are to be filled by direct recruitment, 10% of the posts are to be filled through servicemen and 10% of the posts are to be filled by promotion from Group 'D' staff. The SKT are nowhere in the channel of promotion to the post of Accounts Clerk. SKT are entitled to be promoted to the post of General Supervisor and not the post of Accounts Clerk. As and when the post of General Supervisor falls vacant the right of the applicant may be considered as per laid down procedure and rules.

5. That with regard to para 4.3, the respondents beg to state that in November 1997, three posts of Accounts Clerk fell vacant due to the promotion of Accounts Clerks to the post of General Supervisors. The petitioner is misleading the Hon'ble Tribunal as she was not eligible for promotion to the post of Accounts Clerk as per existing service rules as on date. The petitioner was

wrongly expecting consideration of her right to promotion of which she was not entitled as per laid down rules for promotion to the post of Accounts Clerk.

When three posts of Accounts Clerk fell vacant, procedure for filling these posts could be initiated because of pendency of clearance by the competent authority i.e., Army HQs and pendency of petition No.83/95 filed by Miss Modhumita Dey in the Hon'ble CAT Guwahati Bench challenging the procedure given in the roster for filling the posts by different categories.

6. That with regard to para 4.4, the respondents beg to state that the Administrative Commandant through Office Letter No.652/5/Est (Part) dated 3.6.99 was well within his administrative jurisdiction to intimate the applicant that anticipation of imaginary injustice on the part of the applicant was not justified. It was also intimated to the applicant that DPC would proceed as per laid down procedure. The contentions of the applicant are denied that no action was taken for DPC. As per rules governing the Civilian Defence Employees in Formation Headquarters and Station Staff Offices, 80% of the vacancies are to be filled by transfer through Army Headquarters and the latest position of existing vacancies has already been intimated to Army Headquarters. If Non-availability certificate is provided by the Army Headquarters then the procedure for filling these posts

through direct recruitment will be initiated. 10% of posts will be filled from Ex-Servicemen and 10% will be filled by Group 'D' staff by promotion.

7. That with regard to para 4.5, the respondents beg to state that three posts of Accounts Clerk fell vacant in the month of November 1998, but no decision regarding filling up the posts as per laid down procedure could be taken since the case was subjudice in the Central Administrative Guwahati O.A.No.83/95 filed by Miss. Modhumita Dey in the month of April 95. The case remained pending in the CAT till June 1998 and Judgment Order dated 30.6.98 given by the Honble CAT Guwahati Bench was further challenged by Miss. Reba Dey in the High Court Guwahati under Civil Rule 4620 of 1998. The Honble High Court Guwahati stayed the implementation of Order dated 30.6.98 of Honble CAT Guwahati with the directions to issue notice to the respondents but no notice has been received by the respondent No.5 i.e. Administrative Commandant till date. However the Honble High Court further directed by Order dated 16.3.99 in Civil Rule No 4620/98 that if more vacancies are existing these should be filled as the petition with Honble High Court Guwahati pertaining to only one post. But no directions were issued by the Honble High Court Guwahati regarding which roster is to be followed, since the orders of Honble CAT regarding particular roster has been challenged before Honble High Court, Guwahati in Civil Rule of 1998.

8. That with regard to para 4.6, the respondents beg to state that the mistake if any committed earlier in filling the vacancy of Accounts Clerk will be rectified as per the judgment Order to be issued by Honble High Court Guwahati in Civil Guwahati in Civil Rule No. 4620 of 1998 filed by Miss. Reba Dey.

That the apprehensions of the petitioner are misfounded. As and when vacant posts are filled, these will be filled as per rules and as per the Judgment Order of the Honble High Court Guwahati in Civil Rule 4620 of 1998 filed by Miss. Reba Dey.

9. That with regard to para 4.7, the respondents beg to state that the applicant is misguiding the Honble CAT by misquoting the relevant Recruitment Rules as she being an SKT is not in the line of promotion to the post of Accounts Clerk.

10. That with regard to para 4.8, the respondents beg to state that the application by the applicant has been made with an ulterior motive to get undue advantage by misleading the Honble CAT.

11. That with regard to para 5.1, the respondents beg to state that there are 3 vacancies in the Cadre of

Accounts Clerk in Station Headquarters, Shillong since 1997.

12. That with regard to para 5.2, the respondents beg to state that the applicant do have the requisite educational qualification for the post of Accounts Clerk but as the post of SKT is not in the channel of promotion to the post of Accounts Clerk, her right for promotion to the post of Accounts Clerk cannot be considered.

13. That with regard to para 5.3, the respondents beg to state that the applicant has repeatedly approached the authorities concerned for her promotion for which she is not entitled as per rules.

14. That with regard to para 5.4, the respondents beg to state that the DPC could not be held as the matter of promotion to the post of Accounts Clerk was subjudice and it is further submitted that the vacancies will be filled as per laid down recruitment rules and as and when the Civil Rule 4620 of 1998 is decided by the Hon'ble High Court Guwahati.

15. That with regard to para 5.5, the respondents beg to state that the applicant is not incurring any financial loss as she has not been doing the duties of Accounts Clerk and she is not entitled for promotion to the post of Accounts Clerk. It is further submitted that there is no intentional negligence or inaction on the part of the

respondents to fill up the existing vacancies of Accounts Clerks.

16. That with regard to para 5.6, the respondents beg to state that the submissions made by the applicant are false and baseless, hence denied.

17. That with regard to para 6, the respondents beg to state that the applicant approached the Honble CAT for a relief for which she is not entitled and for the same relief she approached the Administrative Commandant.

18. That with regard to para 7, the respondents beg to offer no comment.

19. That with regard to para 8, the respondents beg to state that the applicant has approached the Honble CAT for a relief for which she is not entitled. Your Lordship would be pleased to dismiss her prayer with costs.

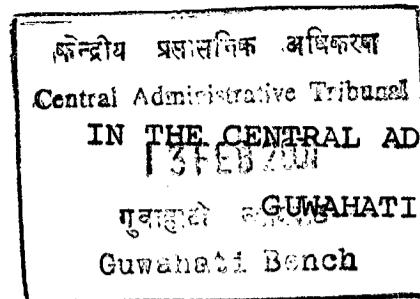
VERIFICATION

I Shri Colonel Shashi Ram of Station HQ SHILLONG
being duly authorised do hereby verify that the
statements made in this written statement are true to
my knowledge, belief and information and no material
fact has been suppressed.

And I sign this verification on this the

28th day of May 2000.


DECLARANT
COLONEL
ADMINISTRATIVE
COMMANDANT
SHILLONG.



Filed by the applicant
on 22/02/2017
T-2-103
1-2-2000

In the matter of :

O.A. No. 11 of 2000

Mrs. Indira Gurung

-vs-

Union of India & Ors.

-AND-

In the matter of :

Rejoinder submitted by the applicant
in reply to the written statement
submitted by the Respondents.

The applicant abovenamed most humbly and
respectfully begs to state as under :

1. That your applicant categorically denies the statements made in paragraphs 2, 4, 5, and 6 of the written statement and further begs to state that a mere reading of the formations Headquarters and Staff Offices (Conservancy staff) recruitment Rules 1980 it would be evident that the employees holding the post of Storekeeper has promotional avenue to the Accounts Clerk. It is stated that in column 12, it is categorically stated that persons working in equivalent or analogous grade in the lower formation of the defence service who have the prescribed qualification under column 8 of the said recruitment rule. In this connection it is relevant to mention here that the applicant has required qualification as prescribed under column 8 of

Contd..

the recruitment rules 1980, as such she is qualified for consideration for promotion to the cadre of Accounts Clerk under the aforesaid recruitment rules, 1980 by way of transfer. It is also relevant to mention here that both Accounts Clerk as well as the Store Keeper also having promotional avenues to the cadre of General Supervisor which is also evident from column 12 of the said Recruitment Rules. Therefore contention of the Respondents is totally false and misleading and it is categorically stated that the case of the applicant for promotion is squarely covered under the scheme of 90% quota as the post of SK(T) is a higher post in lower formation of Defence Service. It is also pertinent to mention here that Shri B.N. Singh SK(T) and Smt. Kabita Sharma were promoted to the post Accounts Clerk from the post of Store Keeper (T) and they are still working in the cadre of Accounts Clerk. However, Shri B.N. Singh has been further promoted to post of General Supervisor from the post of Accounts Clerk. Therefore contention of the respondents is totally false and misleading. The applicant also relies upon the written statement filed by the same respondents in O.A. No. 83/95 (Madhumita Dey Vs. Union of India & Ors) which has been decided by this Hon'ble Tribunal on 30.6.1998. Such contention was not raised in O.A. 83 of 1995 by the respondents. This is for the first time the respondents raising such objection which is contrary to their stand in O.A. No. 83/95. **However** Further contention of the respondents made in paragraph 4 of the written statement is however contradictory to the paragraph 2 of the written statement. On the

one hand the respondents stated that the applicant has got promotional avenue to the cadre of General Supervisor alongwith the Accounts Clerk as per recruitment rules 1980 but there is no avenue of promotion to the cadre of Accounts Clerk from the post of Store Clerk. Therefore their own statement is contradictory to each other. The Hon'ble Tribunal in O.A. No. 83/95 after considering the contention of the respondents made through their written statement in O.A. 83/95 directed the said respondents to promote the applicant - Smt. Madhumita Dey of O.A. no. 83/95 from the post of SK(T) to the cadre of Accounts Clerk, therefore raising objection on this irrelevant ground is highly objectionable and the same is misleading. It is further confirmed by the statement made by the respondents in paragraph 5 that altogether there are three posts of Accounts Clerk are lying vacant but the same has not been filled up. In this connection it is also stated that O.A. '3/95 was disposed long back. Therefore non-consideration of the case of the applicant on the ground of pendency of O.A. 83/95 is false and misleading.

2. That your applicant categorically denies the contentions made in paragraphs 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, and 19 of the written statement and further begs to stated that the respondents in their own written statement made in paragraph 7 that although the judgement and order dated 30.6.98 passed in O.A. No. 83/95 pending before the Hon'ble High Court and the operation of the same stayed by the Hon'ble High Court but it is also admitted by the respondents that vide order dated 16.3.99 passed in Civil

Rule No. 4620/98 the Hon'ble High Court also clarified that since question involved in the instant case i.e. Civil Rule No. 4620/98 relating to only one post there will be no bar for filling up other vacancies available with the respondents. Therefore there is no bar as such when the Hon'ble High Court categorically observed in their order dated 16.3.99 as stated by the respondents that there will be no bar and also those vacant post should be filled up as per rule. More particularly when the respondents themselves stated in paragraph 12 of the written statement that applicant do have requisite qualification for the post of Accounts Clerk but only the post of SK(T) is not in the channel of promotion to the post of Accounts Clerk, therefore her right for promotion to the post of Accounts Clerk cannot be considered. Whereas the respondents disputed the right for consideration of the incumbent holding the post of SK(T) ~~far~~ to the post of Accounts Clerk in the case of & V.S. Singh ~~V.~~ Kabita Sharma and also in the case of Madhumita Dey. Therefore these contentions of the respondents is contrary to the recruitment rule 1980 and as such the same is not tenable in the eye of law. The ground of pendency of Civil Rule No. 4620/98 before the Hon'ble High Court also cannot be a ground for denial the promotion to the applicant since the post is vacant for last two/three years. The present being eligible in all respects for promotion incurring financial loss each and every month therefore as per the govt. instructions the case of the applicant should be considered for promotion with retrospective effect at least from date of occurrence

of vacancy with all consequential service benefits including arrear monetary benefit.

Copy of the Hon'ble High Court's order dated 16.3.98 passed in M.C. No. 1109/98 in C.R.

No. 4620/98 ~~xx~~ is annexed as Annexure-5 for perusal of the Hon'ble Tribunal.

In the facts and circumstances stated above, the application is deserves to be allowed with costs.

....Verification

VERIFICATION

I, Mrs. Indira Gurung, wife of Shri L.B. Gurung, aged about 40 years, resident of Assam Rifles Bazar, Happy Valley, Shillong ~~Maxhema~~ applicant in the above application do hereby verify that the statements made in paragraphs 1 & 2 of the rejoinder are true to my knowledge and ~~the~~ ~~maxhema~~ the rests are my humble submission before the Hon'ble Tribunal and I have not suppressed any material fact.

And I sign this verification on this the day of 1-2- 2001.



Signature

84-
Annexure-5

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH).

MISC. CASE NO. 1109/98

IN

CIVIL RULE No. 4620/98

...Petitioner

Smt. Reba Dey

-versus-

1. Smt. Madhumita Dey
Office of the Station Head Quarters,
Shillong.

...Respondent.

2. Central Administrative Tribunal
Guwahati Bench, Guwahati.

3. Union of India
(Represented by Secretary,
Ministry of Defence,
Government of India, New Delhi).

4. Headquarters 101 Area.

5. Administrative Commandant,
Station Headquarters,
Shillong

...Proforma Respondents

PRESENT

THE HON'BLE THE CHIEF JUSTICE MR. BRIJESH KUMAR
THE HON'BLE MR. JUSTICE P.G. AGARWAL.

Contd... P/2

For the petitioner : Mr. N.M. Lahiri
Mr. N. Choudhury
Mr. S.C. Kayal
Mr. B.W. Phira

For the Respondents : C.G.S.C.
Mr. S.S. Dey
Mr. M. Nath

Date Order

16.3.99

Heard Mr. N.M. Lahiri, learned Senior Counsel appearing on behalf of the petitioner and Mr. S.S.Dey, learned counsel for the respondent No.1

It is clarified that the interim order dated 11.9.98 passed in this case pertains to only one post. If other posts are there, there is no reason why the same cannot be filled up. The order passed by this Court does not require to be modified for filling up of other posts which may have fallen vacant.

Misc. Case is disposed of.

Sd/- P.G. Agarwal
Judge

Sd/- Brijesh Kumar
Chief Justice