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6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

(See Rule 42)

GUWAHATI BENCH : GUWAHATI

APPLICATION NO. 231/2000 OF 199

Advocate for Respondent(s) *e.g.s*

Notes of the Registry	Date	Order of the Tribunal
<p>this original application has been received by post. m. the applicant - person (Sardar) the application not proper from per CAT Act 85 procedure les.</p> <p>Laid before Hon'ble court for their orders.</p> <p>May kindly see 11/7/2000 Section Officer.</p>	<p>12.7.2000</p> <p>mk 13/7/2000</p> <p>14.8.00</p> <p>8.9.00</p> <p>11/7/2000</p> <p>Dr. R. K. Sharma</p>	<p>Present : Hon'ble Mr. S. Biswas, Administrative Member.</p> <p>Application is admitted. Issue notice to the respondents by registered post. Returnable by 14.8.00.</p> <p>List on 14.8.00 for orders.</p> <p>S. Biswas Member (A)</p> <p>7th 5 no bench, adj'd to 8.9.00.</p> <p>10/8 h</p> <p>10 bench. To be listed on 22.9.00.</p> <p>10/8 h</p>

②

O.A. 231/2000

Notes of the Registry	Date	Order of the Tribunal
<p>13/7/00</p> <p>Requisites Short (one) copy.</p> <p>13/7/00</p> <p>Notice prepared and sent to D/S. for transcribing respondent No 4 to 3.</p> <p>vide D/No 1860 to 1863 dtd 17/7/00</p> <p>14/7/00</p> <p>21.9.00</p> <p>No O/S has been filed.</p> <p>27-10-2000</p> <p>No O/S has been filed.</p> <p>pg</p> <p>28.11.00</p> <p>Steps are yet to be received to issue notices.</p> <p>6/11/2000</p> <p>Copy of application served both the Advocates.</p> <p>7/11/2000</p> <p>Copy of application served both the Advocates.</p> <p>7.11.00</p> <p>Notice duly served on R No 1 & 3. Others are awaited.</p> <p>2/11/00. No. who has been filed on R No-2.</p> <p>5.3.01</p>	<p>22.9.00</p> <p>lm</p> <p>30.10.00</p> <p>pg</p> <p>28.11.00</p> <p>pg</p> <p>1.1.2001</p> <p>nkml</p> <p>30-1</p> <p>7.2.</p>	<p>Present: Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman.</p> <p>Office to furnish a copy of the petition with the enclosures to Mr. A. Deb Roy, Sr. C.G.S.C. to enable him to take steps. List on 30.10.00.</p> <p>Vice-Chairman</p> <p>Four weeks time is granted to the respondents to file written statement. Mr M. Chanda and Mr S. Sarma, the learned Advocate of this Bar volunteered to render assistance to this Court on behalf of the applicant.</p> <p>Office to furnish a copy of this application to both Mr Chanda and Mr Sarma List on 28.11.2000 for order.</p> <p>Vice-Chairman</p> <p>Four weeks time is granted to file written statement on the prayer of Mr A. Deb Roy, learned Sr. C.G.S.C. List on 1.1.2001 for order.</p> <p>Vice-Chairman</p> <p>No written statement, so far, has been filed. Further four weeks time allowed for filing of written statement. List it on 30.1.2001.</p> <p>Vice-Chairman</p> <p>No S.B. Adjourned to 7.2.2001.</p> <p>No S.B. Adjourned to 7.3.2001.</p>

(3) on 2.31/01

Notes of the Registry

Date

Order of the Tribunal

20.3.01

Circuit came was
fixed and cancelled.
So, it was not listed in
due time.
placed before in
court order.

la.

No. wts has been
filed.

By
27.3.01

No. wts has been filed.

By
26.4.01

Deputy Registrar is asked to
instruct the Office to make
the Office notes up-to-date
and submit his report within
24 hours as to why this was
not done.

By order

We have carefully
verified the records and
pending file but found
that no wts on behalf
of Respondent No. 1 and 2
has been filed.

DR

17/5/01
SOG

As per order dated 16/5/01
is flag (A).

25/5/2001

28.3.01

lm

27.4.2001

nk m

16.5.01

19.6.01

List on 27.4.01 to enable the
Union of India to file the written
statement.

Heard Mr. M. R. Pathak, learned counsel
for the State of Tripura. The State of
Tripura has filed the Written statement.
List on 27.4.01 for filing of written
statement by the other Respondents.

Member

Vice-Chairman

Written statement has been filed. The
applicant may file rejoinder, if any, within
two weeks from today. List for orders on 16.5.01.

Member

Vice-Chairman

Mr. M. R. Pathak, learned counsel
appearing for the State of Tripura sub-
mitted that written statement is yet to
be filed, though, it was recorded in the
order dated 28.3.2001 that written state-
ment was filed.

Mr. A. Deb Roy, learned Sr. C.G.S.C.
for the respondents submitted that
written statement has already been filed
on behalf of the respondents no. 1 & 2.
Office to verify and report immediately.

List on 19.6.2001 for orders.

Member

Vice-Chairman

Mr. J. L. Sarkar, learned counsel reque-
sts on behalf of Mr. M. Chanda and Mr. S. Sar-
ma for three weeks time to file rejoinder.

Time prayed is allowed. List on 31.7.
2001 for orders.

Member

Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal
<p><u>23.7.2001</u></p> <p>W/S has been submitted by the Respondent No. 1.</p> <p><i>Pro</i></p>	<p>7.8.01</p> <p>mb</p>	<p>The case is ready as regards pleading. List the matter for hearing on 14/9/01.</p> <p><i>U. U. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><u>24.7.2001</u></p> <p>W/S has been submitted on behalf of Respondent No. 3.</p> <p><i>Pro</i></p> <p>Received copy of Judgment for the Respondent No. 3.</p> <p><i>Manish Ranjan Pathak</i> 4/10/2001</p>	<p>14.9.01</p> <p>pg</p>	<p>Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.</p> <p><i>U. U. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><u>10.10.2001</u></p> <p>Copy of the Judgment has been sent to the office for issuing the same to the parties.</p> <p><i>U.S.</i></p>		

Memo No. HC-XXI 21633-38 / RM DTD 24.9.08
received from The Asst. Registrar (B),
Gauhati High Court, Gauhati.

The order dated 15.9.2008 passed
in WP(c) No 2120/03 may kindly
be seen at flag 'A'.

The Union of India's memo filed
the above mentioned WP(c) before the
Hon'ble Gauhati High Court against the
Judgment/order dated 14.9.2001 passed by the
Hon'ble Tribunal in OA No. 231 of 2000 which
was allowed in favour of the Applicant.
But the Hon'ble Gauhati High Court
is pleased to dismiss the WP(c)
with a direction that "The applicant
shall be deemed to be promoted to IAS
from the date when his juniors were so
promoted. The Applicant on his promotion
to the IAS will not be entitled to any
back wages as he did not shoulder the
responsibilities in the promotional post of IAS.
However, the applicant will be entitled to
notional fixation of pay with all conse-
quential benefits."

Submitted for favour of kind perusal
of order dated 15.9.2008 passed in WP(c)
No 2120/03 of the Hon'ble Gauhati High
Court.

26/9/08

26/9/08
SO (T)

26.9.08
Dy. Registrar

Hon'ble
26/09/08
please
peruse the orders.

Hon'ble
26/09/08

Seen. Thanks.

26/09/08
Member (A)

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

Appeal from

Civil Rule

WPA

No. 2120 of 2003

Appellant.

Petitioner

The Union of India et al

Sontosh Kr. A Thi Karu.
Respondent

Respondent

Opposite Party

Appellant

For

Petitioner

Mr. C. Chow Shung

Sr. C. G. B. C.

Respondent

For

Opposite Party

Mr. B. C. Parker, Adv

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>WP(C) No. 2120/03</p> <p>BEFORE HON'BLE THE CHIEF JUSTICE MR J CHELAMESWAR HON'BLE MR JUSTICE BK SHARMA</p> <p>15. 9-2008 (Sharma, J)</p> <p>By means of this application under Article 226 of the Constitution of India, the petitioners, who are the respondents in OA No.231/2000 in the Central Administrative Tribunal, Gauhati Bench, have assailed the legality and validity of the judgment and order dated 14-9-2001 passed in the Original Application.</p> <p>The facts are in a very narrow compass. The applicant in the Original Application, who is the respondent herein, while was serving as an officer in the cadre of Tripura Civil Service, was included in the select list prepared for the year 1996-97 for appointment by promotion to the Indian Administrative Service (IAS). His name was so included in consideration of his case along with others as per the provisions of the <i>Indian Administrative Service (Appointment by Promotion) Regulation, 1955</i>. His name was included at Sl No.1 in the select list which was prepared pursuant to the meeting of the Selection Committee held on 27-3-97. However, the applicant was selected provisionally in view of the fact that at the time of his such selection, a departmental proceeding was pending against him. Thus, the integrity certificate required for the purpose of effecting the promotion could not be issued.</p> <p>The select list was approved by the Union Public Service Commission on 9-10-97 and the same was</p>

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>notified by the Govt of India on 22-10-97. However, as stated above, due to pendency of the departmental proceeding against the applicant, the integrity certificate necessary for promotion could not be issued. In the meantime the candidates at Sl. Nos.2 and 3 were promoted after keeping one post reserved for the applicant in terms of the provisions of Reg 9(1) of the aforesaid Regulation. After a protracted enquiry the applicant was imposed with a minor penalty of <u>censure</u> vide order dated 17-3-98. However, the applicant was exonerated of the penalty in consideration of his appeal. The appellate authority passed the order exonerating the applicant from the charge on 12-3-98. However, before the applicant could be promoted to IAS he retired from service on attaining the age of superannuation w.e.f. 29-2-2000.</p> <p>The applicant by filing the aforesaid Original Application before the Tribunal prayed for a direction to the respondents to promote him to the IAS in consideration of the select list of 1996-97 in which his name was included at Sl. No.1. It is the case of the respondents/petitioners herein that in terms of Reg 7(4) of the aforesaid Regulation the select list ordinarily remains in force until it is reviewed or revised and the same could not be given effect to in view of the fact that there was delay in the conclusion of the departmental proceeding and eventually the applicant retired from service. The Tribunal having found that the applicant had no hand towards early finalization of the departmental proceeding and that he was eventually exonerated from the charge levelled against him, issued direction to the</p>

2

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>respondent for giving effect to the select list of 1996-97 wherein the applicant was placed at Sl. No.1.</p> <p>We have heard Mr H Rahman, learned Asstt Solicitor General of India appearing for the respondent/petitioners. None has appeared on behalf of the respondent/applicant. We have given our anxious consideration to the submissions made by Mr Rahman and the materials on record.</p> <p>The applicant having been included in the select list prepared for the year 1996-97 and that too at Sl No.1, in the normal circumstances, he would have been promoted to the IAS. However, since the departmental proceeding was pending against him the competent authority did not issue the integrity certificate required for such promotion. At the same time one post was kept reserved for him and in the meantime persons below him were promoted to the IAS. Nothing is discernible as to what prevented the respondent/petitioners from promoting the applicant when the appellate authority exonerated him of the charges by order dated 12-3-98. Even thereafter the applicant continued in his service upto 29-2-2000. Nothing has been indicated as to why the applicant could not be promoted during that period of two years.</p> <p>It will be iniquitous to deny promotion to the applicant for no fault of his own. In the departmental proceeding, which was the stumbling block for his promotion, he was exonerated by order dated 12-3-98 and thus the select list ought to have been operated by way of promoting the applicant from the date when his juniors were so promoted. It is in the aforesaid circumstances the</p>

2

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

Tribunal issued the aforesaid direction for promotion of the applicant.

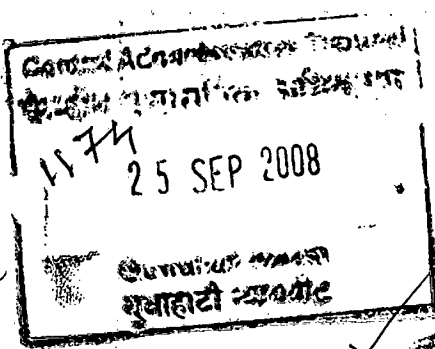
We do not find any infirmity in the direction issued by the Tribunal. Thus, while upholding the judgment and order dated 14-9-2001 passed by the Tribunal in OA No.231/2000 and dismissing the writ petition we hereby provide that the applicant shall be deemed to be promoted to IAS from the date when his juniors were so promoted. The applicant on his promotion to the IAS will not be entitled to any back wages as he did not shoulder the responsibilities in the promotional post of IAS. However, the applicant will be entitled to notional fixation of pay with all consequential benefits. Necessary notification in this regard shall be issued as expeditiously as possible preferably within two months from today.

The writ petition stands dismissed, subject, however, the above observation and direction. There shall be no order as to costs.

Sd/- B.K. SHARMA
JUDGE

Sd/- J. CHELAMESWAR
CHIEF JUSTICE

Contd...



URGENT

Memo No. HC.XXI. 21,633-38 /R.M. Dtd. 24/9/08

Copy forwarded for information and necessary action to: -

1. The Union of India, represented by the Secretary, Govt. of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), New Delhi.
2. The Chairman, Union Public Service Commissioner, Dholpur House, Shahjahan Road, New Delhi-110 001.
3. The State of Tripura, through the Chief Secretary, Govt. of Tripura, Agartala.
4. The State of Manipur, through the Chief Secretary, Govt. of Manipur, Imphal.
5. Sri Santosh Kumar Adhikari, C/o Sri Dhirendra Kumar Bhomick, Roy para, P.O. Krishnagar, Dist.- Nadia, West Bengal, PIN-711101.
6. The Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati-5. He is requested to acknowledge the receipt of the following records. This has a reference to his letter No. 16-3/02-JA/65 dtd. 29th January 2007.

Encl.:-

O.A. 231/2000

Part 'A' File with Original Judgment and Order sheets.

By order

Asstt. Registrar (B)
Gauhati High Court, Guwahati.

Chis H
24/09/08

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 231 of 2000.

Date of Decision.....14-9-2001.

Shri Santosh Kumar Adhikari

-----Petitioner(S)

S/Sri M.Chanda, S.Sarma.

-----Advocate for the
Petitioner(s)

-Versus-

Union of India & Ors.

-----Respondent(s)


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

-----Advocate for the
Respondent(s)

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.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 231 of 2000.

Date of Order : This the 14th Day of September, 2001.

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

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

Shri Santosh Kumar Adhikari,
C/O Shri Dharendra Kr. Bhowmick,
Roy Para, P.O. Krishnagar,
Dist, Nadia,
West Bengal, Pin-741101. . . . Applicant.

By Advocate S/Sri M.Chanda, S.Sarma.

- Versus -

1. Union of India
through the Secretary,
Government of India,
Ministry of Personnel, Public Grievances
and Pensions, (Department of Personnel
& Training), New Delhi.
2. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110 001.
3. The State of Tripura,
through the Chief Secretary
to the Government of Tripura,
Agartala.
4. The State of Manipur,
through the Chief Secretary
to the Government of Manipur,
Imphal. . . . Respondents.

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

O R D E R

CHOWDHURY J.(V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 praying for a direction for providing necessary benefits to the applicant pursuant to his selection to All India Service in accordance with Indian Administrative Service (Appointment by Promotion) Regulations 1955 in the following circumstances.

contd..2

2. The applicant belonged to the Tripura Civil Service. A Select List was prepared for the year 1996-97 for appointment by promotion to the Indian Administrative Service (IAS) under the IAS Appointment By Promotion Regulation 1955. In the said select list the name of the applicant was included at serial No.1 by the Selection Committee which met on 27.3.1997. The applicant was selected provisionally subject to clearance of departmental proceeding pending against him and grant of Integrity Certificate by the State Government in accordance with the provisions of IAS (Appointment by Promotion) Regulations 1955. The Select List was approved by the Commission vide their letter dated 9.10.1997 and notified by the Government of India on 22.10.97. In view of the pendency of the departmental proceeding officers named at serial No.2 and 3 were promoted after keeping one post reserved for the applicant in terms of the proviso of the Regulation 9(1) of IAS Promotion Regulations of the IAS (Appointment by Promotion) Regulations 1955. After a protected enquiry the applicant was imposed with a minor penalty of censure vide order dated 12/17.3.1998. The said penalty imposed on the applicant was set aside on appeal vide order dated 12.3.98. In the meantime the applicant retired from service on 29.2.2000. On conclusion of the departmental enquiry the applicant sought for a direction for appointing him in the IAS on the basis of the Select List of 1996-97. It was asserted that the disciplinary proceeding was initiated on 14.8.92 but the proceeding was unnecessarily dragged on by the State Government for no fault of his own. There was delay in appointing the Presenting Officer and conclusion of the enquiry and finally the applicant was exonerated by the department in 1999. According to the applicant none of

contd..2

the respondents took any genuine steps for giving him the benefit of promotion under the Regulation and on the strength of the Select List of 1996-97.

3. The respondents submitted their written statement. According to Union Public Service Commission (UPSC) the Selection Committee included the name of the applicant at serial No.1 provisionally but he could not be appointed to IAS due to the pendency of the disciplinary proceeding. By order dated 20.2.1999 the applicant was exonerated from the disciplinary proceeding pending against him. Though there was a clear vacancy for the applicant on 1.11.97 he was not appointed to IAS instead his junior officers were appointed from the Select List of 1996-97. It was stated by the UPSC that the State Government by its letter dated 26.3.98 stated that the officer had been fully exonerated from the charges and requested the Commission to make his name unconditional and final in terms of Regulation 9(1) of IAS Promotion Regulations. The Commission observed that the officer has not been fully exonerated and a minor penalty of censure was imposed on him and accordingly Government of Tripura was informed. It was stated that the State Government did not bring to notice of the Commission so far about the later development wherein his penalty of censure was set aside.


4. The respondent No.1 in its written statement also asserted that the name of the applicant remain provisional in 1996-97 and it was yet to be made unconditional from the UPSC. The State of Tripura, the respondent No.3 in its written statement stated that in view of the pendency of the disciplinary proceeding officers placed below the

applicant in the Select List were promoted to IAS keeping one post reserved for the applicant.

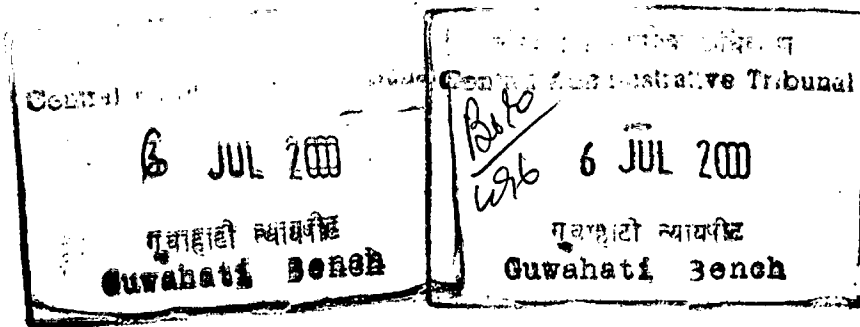
5. From the facts enumerated above it thus appears that no steps were so far taken by any of the respondents for declaring the applicant unconditional in the Select List of 1996-97 despite the fact that one post was kept reserved for the applicant in pursuance of proviso 9(1) of the Regulations. We do not find any justification on the part of the respondents for not taking the follow up action after the applicant was exonerated. The applicant could not lawfully be refused the benefit of his selection to the IAS on the procrastination^{of} the departmental proceeding in which he was fully exonerated in due course.

6. Upon hearing Mr M.Chanda, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents and upon considering all the aspects of the matter, we are of the view that ends of justice will be met if a direction is given to all the respondents for giving effect to the Select List of 1996-97 wherein the name of the applicant was placed at serial No.1. The respondents are accordingly directed to take the necessary steps for giving effect to the Select List prepared in 1996-97 and provide all the consequential benefits to the applicant as per law. The respondents are directed to complete the above exercise, as early as possible, preferably within a period of 3 months from the date of receipt copy of this order.

The application is allowed. There shall, however be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN



APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT, 1985.

TITLE OF THE CASE : 221/2000

I N D E X

<u>Sl.No.</u>	<u>Description of documents</u> <u>relied upon</u>	<u>Page No.</u>
1.	Application	1 to 4
2.	Copy of the Govt. of India Notification No.14015/58/ 96 - A I S (I) (dated the 22nd October, 1997	Ann. I
3.	Copy of the Govt. of India Notification No.14015/58/ 96 - A I S (I) dated the 22nd October 1997 <u>24th March 1998</u>	Ann. II
4.	Copy of the Govt. of Tripura Order No.F.11(14)-ARD/91/639 -40 dated March 12, 1998.	
5.	Copy of the Govt. of Tripura No.F.11(14)-ARD/91/452-53 dated the 20th February, 1999.	
6.	Copy of the Pay, etc., Regu- lation Slip(Provisional) No.F. 9(5)(3)-FIN(E)/88 dated the 11th January, 2000	

SO(3)

11/16/2000

Recd.
BSC
Add: 11/17/2000

Signature of the Applicant.
(S. K. ADHIKARI)

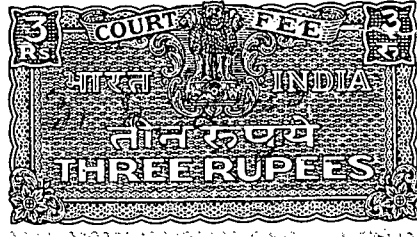
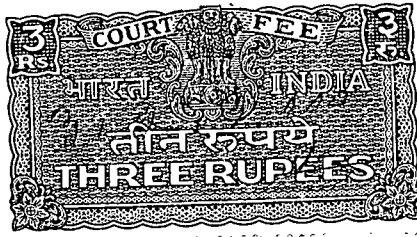
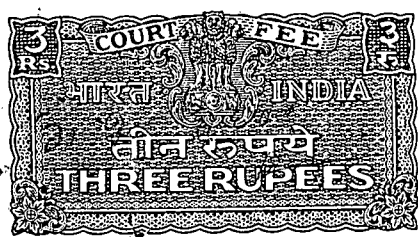
For use in the Tribunal's Office.

Date of filing _____
or

Date of receipt by post _____

Registration No. _____

(S. K. ADHIKARI)
Director,
Employment Services &
Manpower Planning, Agartala



19
Santosh Kumar Adhikari

Page - I

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

G U W A H A T I

B E T W E E N -

Shri Santosh Kumar Adhikari Applicant

A N D

Union of India and 3 others Respondents.

DETAILS OF APPLICATION

1. Particulars of the Applicant :

- | | | |
|-------|---|--|
| (i) | Name of the applicant - | Shri Santosh Kumar Adhikari |
| (ii) | Name of father | - Late Phanindra Adhikari |
| (iii) | Age of applicant | - 58 years |
| (iv) | Designation and particulars of office (name and station) in which employed. | - Director of Employment Services & Manpower Planning, Government of Tripura, Agartala. |
| (v) | Office address | - Directorate of Employment Services & Manpower Planning, Civil Secretariat Complex, Agartala, West Tripura. |
| (vi) | Address for service of notices | - C/o Shri Dharendra Kr. Bhowmik, Roy Para, P.O. KRISHNAGAR, Dist. Nadia, West Bengal. Pin-741101. |

Contd.....P/2

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Santosh Kumar Dhillon

2. Detailed Particulars of the Respondents :

Respondent No.1 - The Union of India, through the
Secretary, Government of India,
Ministry of Personnel, Public
Grievances & Pensions; (Depart-
ment of Personnel & Training),
New Delhi ;

Respondent No.2 - The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110 001;

Respondent No.3 - The State of Tripura,
through the Chief Secretary
to the Government of Tripura,
Agartala;

Respondent No.4 - The State of Manipur,
through the Chief Secretary
to the Government of Manipur,
Imphal

3. Jurisdiction of the Tribunal:-

The applicant declares that the subject matter
of the instant application is within the juris-
diction of the Tribunal.

4. Limitations:-

The applicant further declares that the application
is within the limitation under section 21 of the
administrative Tribunals Act, 1985.

The applicant could have filed the instant
application a bit earlier. But, as he did not like to
incur the annoyance of the authority on the verge of
retirement, he refrained from doing so earlier.

Contd....2/3.

5. Facts of the Case

The facts of the case are given below:-

(i) That the applicant is a Citizen of India. The applicant obtained the Post Graduate Degree in Islamic History and English in the University of Calcutta.

(ii) That the applicant appeared in the written and personality Tests conducted by the Tripura Service Commission for selection of candidates for the Tripura Civil Service, Grade II, Tripura Police Service, Grade-III, and the Tripura Junior Civil Service in 1975 and he was selected and appointed to the TCS II (Tripura Civil Service, Grade II) as Deputy Collector in 1976. He was at serial No.5 in the Merit List.

(iii) That in January, 1987, the applicant was appointed on promotion to the TCS I.

(iv) That in 1991, a few TCS officers were appointed to the IAS (Indian Administrative Service). Though his junior, Shri S.C.Das, was appointed to the IAS, he was not considered for such an appointment. Then followed a long story of deprivation. Several TCS officers in groups and individually were thereafter appointed to the IAS in the following years. But the applicant was never considered for appointment to the IAS.

(v) That the applicant was, at least, along with two other officers, was selected for appointment to the IAS, the applicant's name appearing at serial No.1 of the Select List published in the Govt. of India Gazette.

VIDE ANNEXURE - 1.

(vi) That two of the officers appearing at Serial No. 2 and 3 on the ANNEXURE I were appointed to the IAS.

Contd...P/4.

21
Admission
Santhosh Kumar

27/10/97

Santosh Kumar P.P.

Vide ANNEXURE - 2.

But, the applicant, though much senior to them and appearing at serial No.1 on the same Select List, was denied appointment to the IAS.

(vii) That the ground for denying the applicant appointment to the IAS may be the pendency of a disciplinary proceeding against him. This totally mala fide departmental proceeding against him had been funnily kept pending by the then authority for an unusually long time. This ended at last in a CENSURE to him.

Vide ANNEXURE - 3.

Then, on appeal, it was disposed of with complete EXONERATION.

Vide ANNEXURE - 4.

(viii) That in the event of EXONERATION, there appeared no bar to the applicant's appointment to the IAS. The departmental proceeding which ended in EXONERATION was not at all a good ground to deprive the applicant. The proceeding arising from the loss of government money from the custody of the cashier was not at all a good ground to departmentally proceed against the Drawing & Disbursing Officer for supervisory lapse and harass him and keep him in agony for about a decade is, undoubtedly, a glaring instance of official mockery. At every step, there was an unusual and intentional delay. At last, the Inquiring officer was pleased enough to give his findings and the Disciplinary Authority was pleased to dispose of the case.

(ix) That though there was nothing adverse against the applicant, he was not considered in 1991 and thereafter for appointment to the IAS. The funnily concocted Charge Sheet was maliciously drawn up much later. There was an unfortunate incident on 1/2.6.90. Some fictions

Santo Kumar Dutt

charges were framed against the applicant on the 14th August, 1992 (after more than two years). The Inquiring Officer and the Presenting Officer were appointed on the 24th December, 1992. The Presenting Officer was reappointed on the 6th April, 1994. ^{He} happened to be posted under the applicant and still the Presenting Officer of the case owing to sheer callousness on the part of the authority. He was changed and another officer was appointed as the Presenting Officer on the 16th April, 1994. The Inquiring Officer did not feel it necessary to tolerate the presence of the Defence Assistant. The Defence Witnesses were never called by him. The applicant was not examined as per the mandatory provisions of the Rules. Without giving the findings, the Inquiring Officer expressed his unwillingness to continue with the proceedings on the 2nd February, 1996, and left Tripura for New Delhi on deputation. After a long time, under pressure from the government, he submitted his perfunctory findings on the 1st January, 1997. Again, there was a great delay at every step. At last, the disciplinary proceeding was disposed of in EXONERATION. Such a vague disciplinary proceeding should not be drawn up. If at all drawn up, this could be disposed of before 1991. This was not done simply because of intentionally preferred malicious lethargy on the part of the authority.

(x) That even though there was a clear vacancy for the applicant from 1-11-1997 because of retirement of Shri S.S.Dutta, he was not appointed to the IAS on and from 1-11-1997. There was no bar. There was a departmental proceeding pending of course, but it was invalid in the eye of law because it would end and actually ended in EXONERATION.

(xi) That as a result of non-consideration of the applicant for appointment to the IAS, he has suffered a huge financial loss and tremendous mental agony as follows:-

Sardar Kumar
P.H.

(a) The Tripura Government introduced the policy of granting 300 days' leave encashment benefit to the retiring employees only in the last part of 1998 while the Government of India introduced it much earlier. Since the applicant will retire on 29-2-2000 A.D., he will not have this facility as a T.C.S. officer. But had he been appointed to the IAS on 1-11-1997, he would have earned 300 days' leave even much before his retirement on 29-2-2000 A.D. As a TCS officer, he has to forgo at least one months' emoluments.

(b) The Gratuity ceiling for a Tripura Government Employee is Rs.2 lakhs; but, for a Government of India employee it is much more.

(c) As a result of non-appointment to the IAS, the applicant will retire on and from 29-2-2000 A.D. at the age of 58 years as a Tripura Government employee, not on and from 28-2-2002 A.D. at the age of 60 years as a Central Government employee.

(d) As the home town of the applicant is Krishnagar, Dist. Nadia, West Bengal, he, as a retired TCS officer, will have to draw his pension through a complicated and roundabout procedure. This is totally directed in case of a retired IAS officer.

(e) If not appointed to the IAS, the applicant would retire on a much lower status.

6. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :-

The applicant further declares that he had not previously filed any application, writ petition

Santosh Kumar Adhikari
P/S

or suit regarding the matter in respect of this particular application before any Court of Law or any other Authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

7. RELIEFS SOUGHT :-

In view of the facts mentioned in paragraph 5, the applicant prays to the Hon'ble Tribunal to direct the Respondents to ensure the following dues to the applicant :-

(a) Appoint the applicant to the IAS from 1-11-1997.

(b) Fix his pay in the IAS with effect from 1-11-1997 in the Scale of Rs.15100 - 400 - 18,300/- on the basis of the pay drawn by him at the relevant time, i.e., on 1-11-1997, considering his next date of increment on 1-11-1998, based on the Pay slip issued by the Establishment Branch of Finance Department of Government of Tripura after making the necessary calculation in pursuance of the provisions of the F.R.

Wide ANNEXURE - 5.

(c) Pay the applicant all emoluments and other benefits as due to him as an IAS officer on and from 1-11-1997 including Dearness Allowances released from time to time by the Government of India, Gratuity and Leave encashment benefit, treating his date of retirement as on 28-2-2002 A.D.

Contd....P/8.

Satish Kumar Delhiana
23

8. The present application is being sent by Registered Post (with A/D). Since the applicant will retire on 29-2-2000 A.D. and will stay at a far away place, it is financially and physically not possible on his part to appear in person before the Hon'ble Tribunal after 29-2-2000 A.D., the applicant prays to the Tribunal to dispose of the case ex parte.

9. PARTICULARS OF POSTAL ORDERS IN RESPECT OF APPLICATION FEE :-

- i) Number of the Indian Postal Order B 16 117291
- ii) Amount for Rs. 50/-
- iii) Name of the Issuing Post Office Agartala
- iv) Date of issue of Postal Order 28 - 01 - 2000
- v) Post Office on which payable GUWAHATI

10. LIST OF ENCLOSURES :-

1. Addressed envelopes : 4 (four)
2. Indian Postal Order : 1 (one)
3. Documents : Annexure - 1 to
Annexure - 5

Santosh Kumar Adhikari

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VERIFICATION

I, Shri Santosh Kumar Adhikari, Son of Late Phenindranath Adhikari, aged 58 years, working as Director of Employment Services & Manpower Planning, Government of Tripura, in the Directorate of Employment Services & Manpower Planning, Government of Tripura, Civil Secretariat Complex, Agartala, Pin - 799001, West Tripura District, residing at III/28, Kunjaban Township, Agartala, Dist. West Tripura, do hereby verify that the contents of this application are true to my personal knowledge and that I have not suppressed any material fact.

DATE : 7.2.2000
PLACE : Agartala

Santosh Kumar Adhikari
SIGNATURE OF THE APPLICANT

To
The Registrar,
Central Administrative Tribunal,
Guwahati Bench, Guwahati,
Assam.

.....

(TO BE PUBLISHED IN THE GAZETTE OF INDIA PART I SECTION 2) **ANNEXURE - I**
 No. 14015/58/96-AIS(I)
 Government of India
 Ministry of Personnel, P.G. & Pensions
 (Department of Personnel & Training)

New Delhi, the 22nd Oct., 97.

NOTIFICATION

In exercise of the provisions contained in sub-regulation (3) of Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the Union Public Service Commission, have approved the Select List containing the names of the following members of the State Civil Service of the State of Tripura prepared by the Selection Committee in its meeting held on 27.3.1997, for one anticipated vacancy in the Tripura segment of the Indian Administrative Service Manipur-Tripura Joint Cadre, during 1997-98.

<u>S.No.</u>	<u>Name of the officer</u> S/Shri	<u>Date of Birth</u>
1.	S.K.Adhikari	04.02.1942
2.	B.K.Chakraborty	08.07.1940
3.	S.R.Paul	18.06.1941

* The name of S.No.1 has been included provisionally subject to the outcome of disciplinary proceedings pending against him and also grant of integrity certificate by the State Government.

R. Vaidyanathan
 (R.VAIDYANATHAN)
 DESK OFFICER.

To
 The Manager,
 Govt. of India Press,
 Faridabad (Haryana)

No.F.14015/58/96-AIS.I

Accepted
22nd Oct., 97.
Services
Agartala
Govt. of Meghalaya

1. Chief Secretary, Govt. of Tripura, Agartala with spare copies for onward transmission to the Govt. of Meghalaya for intimating the officers concerned.
2. Chief Secretary, Government of Manipur, Imphal.
3. The Secretary, UPSC, Dholpur House, New Delhi (Sh.N. Namasivayam, Under Secretary), for information.

R. Vaidyanathan
 (R.VAIDYANATHAN)
 DESK OFFICER.

INTERNAL DISTRIBUTION

Under Secretary (S.III)/Guard file/5 spare copies.

ANNEXURE - 2

P:01

(TO BE PUBLISHED IN THE GAZETTE OF INDIA PART I SECTION 2)

No. 14015/50/96-AIS.I
Government of India
Ministry of Personnel, P.G. & Pensions
(Deptt. of Personnel & Training)

New Delhi, the 24th March, 1998

NOTIFICATION

In exercise of the powers conferred by sub-rule (1) of Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954, read with sub-regulation (1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the President is pleased to appoint S/Shri (1) B.K. Chakraborty and (2) S.R. Paul, members of the State Civil Service of Tripura to the Indian Administrative Service with immediate effect on promotion and to allocate them to the joint cadre of Manipur-Tripura under sub-rule (1) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954.

R. Vaidyanathan
(R. Vaidyanathan)
Deputy Secretary

To
The Manager,
Govt. of India Press,
Faridabad (Haryana).

No. 14015/50/96-AIS.I New Delhi, the 24th March, 1998

Copy to:-

1. The Chief Secretary, Govt. of Tripura, Agartala with two spare copies for onward transmission to the officers concerned. The officers below the age of 50 yrs. may be advised to exercise their option for membership of CGEGIS or SIS failing which they will be treated as deemed to have opted for CGEGIS.
2. The Chief Secretary, Govt. of Manipur, Imphal.
3. The Accountant General, Tripura, Agartala.
4. The Secretary, UPSC, Dhoolpur House, New Delhi.
5. E.O. to the Govt. of India, North Block, New Delhi.

R. Vaidyanathan
(R. Vaidyanathan)
Deputy Secretary

30.6.98
(S K. ADITYA)
Director
Employment Services &
Manpower Planning, Agartala

NO.F.11(14)-ARD/91 / 639-40
GOVERNMENT OF TRIPURA
ADMINISTRATIVE REFORMS DEPARTMENT

Dated, March 12, 1998.

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ORDER

WHEREAS, a disciplinary proceeding was initiated vide Memo. No.F.11(14)-ARD/91 dated 14.8.92 against Shri S.K. Adhikary for his lapses during his tenure as Sr. Deputy Magistrate, O/O the District Magistrate & Collector, North Tripura, Kailashahar on 1/2-6-1990 because of, which an amount of Rs. 48,891.05 was lost in theft;

WHEREAS, an enquiry was considered essential under Rule-14 of CCS & CCA Rules, 1965 and Shri Om Prakash, IAS was appointed as Inquiry Officer vide Order No.F.11(14)-ARD/91 dated 24.12.92. In his enquiry, Shri Om Prakash held Shri Adhikary guilty of negligence for not keeping the Govt. money fully secured, consequent to which the same was lost by theft. As a DDO, it was his duty to keep excess cash in double lock rather than leave it with cashier in single lock;

WHEREAS, the opinion of TPSC was obtained in this regard and the Commission advised that ends of justice would be adequately met if a minor penalty of censure is imposed upon Shri Adhikary. The advice of TPSC was accepted by the Government in modification of its proposal to recover 50% of the lost cash in addition to censuring Shri Adhikary; (copy enclosed)

NOW, THEREFORE, the Governor is pleased to impose the minor penalty of censure on Shri S.K. Adhikary for his lapses that were responsible for loss of Govt. money.

By Order and
in the name Governor

(Manish Kumar)

Joint Secretary to the Govt. of Tripura.

To
Shri S.K. Adhikary,
Director, Relief & Rehabilitation,
Government of Tripura,
AGARTALA.

Staged
30.6.20
(S. K. ADHIKARI)
Director,
Employment Services &
MAHARAJA P. 14106, Agartala

-13-

Registrar (with A/D.)

No.F.11(14)-ARD/91 / 52-53 Confidential
 Government of Tripura
 Administrative Reforms Department
 Agartala

Dated, Agartala, the 20th February, 1999.

ORDER

WHEREAS a disciplinary proceeding was initiated vide Memo.No.F.11(14)-ARD/91 dated 14.08.92, against Shri S.K. Adhikary for his lapses during his tenure as Senior Dy. Magistrate, O/O. the District Magistrate and Collector, North Tripura, Kailashahar on 1/2-6-1990 because of which an amount of Rs. 48,891.05 was lost in theft ;

A N D

WHEREAS a minor penalty of censure was imposed upon Shri S.K. Adhikary for his lapses that were responsible for loss of Government money vide Department Order No.F.11(14)-ARD/91/639-40 dated March 12, 1998;

A N D

WHEREAS Shri Adhikary preferred a petition for revision of the order imposing the penalty of censure vide his application dated 5th November, 1998;

A N D

WHEREAS the Tripura Public Service Commission has been consulted and now therefor it has been decided to revise the order dated 12.3.98 and to set aside the penalty of censure imposed upon Shri Adhikary.

By Order and in the name of
 Governor,

(Signature)
 20/2/99

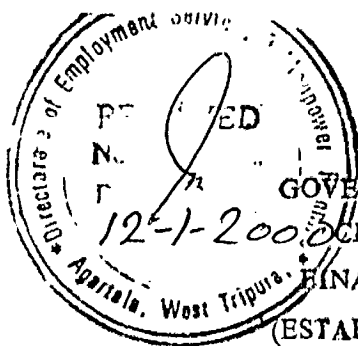
(Mrs. B. Debbarma)

Under Secretary to the Government
 of Tripura

To
 Shri S.K. Adhikary,
 Director, Employment Services & Manpower Planning,
 Government of Tripura, Agartala

Copy to :

The Joint Secretary, A & S Department, Agartala.



ANNEXURE - 5

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No. F. 9(5) (3)-FIN(E)/88

Dated, Agartala, the 11 th, 2000, January

PAY ETC. REGULATION SLIP (PROVISIONAL)

The officer (s) named below is entitled to draw Pay etc. at the monthly rate (s) shown from the date(s) specified less the amount already drawn, if any.

In case the pay/leave salary/increment(s) shown as admissible has already been drawn or withheld or is not due under rules or order, this authority shall be treated as void to that extent.

In case the officer is on leave on the date of increment, the financial benefit from the increment will accrue from the date of resumption of duties by the officer(s) concerned.

Deduction of fund subscriptions and recoveries of loans and advances and other Government dues shall be affected. Nothing shall be drawn beyond what is authorised below.

Name :— **Shri Santosh kr Adhikari, TCS-I**Designation :— **Director, Employment Services & Manpower Planning.**Scale :— **Rs. 14,150-450-29,000/-**

Name, designation and scale of pay	From	From	From	From	REMARKS
I	2	3	4	5	6
	1.1.2000				
	Rs. 15,950/-				
1. Pay : Substantive/Officiating					
2. Leave Salary :—					
3. Special Pay :—					
4. Personal Pay :—					
5. Allowance :—					
	As admissible under rules.				
D. A.					
A. D. A.					
C. A.					
H. R. A.					
Other allowances					

Signature

Mrs. N. R. DAS
Section Officer,
Finance Department
Establishment Branch
Civil Secretariat.

Copy forwarded to : **Shri Santosh kr Adhikari, TCS-I, Director, Employment Services & Manpower planning.****The Director, Employment & Services & Manpower Planning Tripura, Agartala.**

3. The Appointment & Services Department, Civil Secretariat, Tripura, Agartala.

4. The Estate Officer, P. W. D. Agartala.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

IN OA No. 231 OF 1999

BETWEEN

SANTOSH KUMAR ADHIKARI

APPLICANT

Vs.

UNION OF INDIA & ORS.

RESPONDENT

WRITTEN STATEMENT ON BEHALF OF THE UPSC
(RESPONDENT NO. 2)

1. I, Manjit Kumar S/o Shri Bujha Ram aged 44 years serving as Under Secretary in the office of the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi am authorised to file the present reply statement on behalf of Respondent No. 2. The deponent is also fully acquainted with the facts of the case deposed below:

2. That the deponent has read and understood the contents of the above Original Application and in reply he submits as under:

3.1 The Union Public Service Commission being a Constitutional Body under Articles 315 to 323 part XIV Chapter-II of the Constitution have to discharge their functions, duties and Constitutional obligations assigned to them under Article 320 and other relevant Articles of the Constitution of India as per Rules/Regulations in vogue.

3.2 Under Article 312 of the Constitution, All India Service Act, 1951 was passed by the Parliament. In exercise of the powers conferred by sub-section(1) of section 3 of the All India Service Act 1951, the Central Government after consultations with the State Governments have framed various Recruitment Rules for recruitment/promotion to IAS/IPS/IFS. In

MA

Filed by

11/12/2000

(A. DEBROY)

Sr. C

C. A. T. Guwahati Bench

-2- 16- 34


pursuance of these rules, IAS (Appointment by Promotion) Regulations, 1955, have been framed by the Government of India duly approved by the Hon'ble President as per provisions of the Constitution of India (Article 309). In accordance with the provisions of these Regulations, the Selection Committee presided over by the Chairman or a Member of the Union Public Service Commission makes selections of the State Civil Service officers for promotion to the Indian Administrative Service based on the proposal and data sent by the concerned State Government including the seniority list and other relevant documents.

3.3 Thus, in discharge of their Constitutional obligations the Union Public Service Commission after taking into consideration the record received from the State Government under Regulation 6 and observations of the Central Government received under Regulation 6A of the Promotion Regulations, accord their approval to the recommendations of the Selection Committee in accordance with the provisions of Regulation 7 of the aforesaid Regulations. Selections so done in a just and equitable manner on the basis of relevant records and following the relevant Rules and Regulations are not open for interference by any authority whatsoever, inasmuch as, it would tantamount to curtailment or modification of the Constitutional powers of the Union Public Service Commission.

CONTENTIONS MADE BY THE APPLICANT

4. Most respectfully, it is submitted that Shri S K Adhikari is a State Civil Service Officer of Tripura has filed the instant applicant before this Hon'ble Tribunal with the following contentions:

(i) That the Selection Committee which prepared the Select List of 1996-97, included his name provisionally at Sl. No.1 of the Select List but he could not be appointed to the IAS due to pendency of a disciplinary proceeding against him. Now the State Govt. vide their order dated 20-2-



-17- 35

1999 have exonerated him in the disciplinary proceedings pending against him.

(ii) That even though there was a clear vacancy for the applicant from 1-11-1997 due to retirement of Sh. S S Dutta, he was not appointed to the IAS from 1-11-97. His junior officers have already been appointed to IAS from the Select List of 1996-97.

REPLY TO CONTENTIONS

5.1 As regards the contentions made at 4(i) above it is submitted that the Select List of 1996-97 was prepared by the Selection Committee which met on 27-3-1997. The name of the applicant was included at Sl.No.1 provisionally subject to clearance of departmental enquiries pending against him and grant of Integrity Certificate by the State Govt. in accordance with the provisions of IAS (Appointment by Promotion) Regulations 1955. The Select List was approved by the Commission vide their letter dated 9-10-1997. The Select List was notified vide Govt. of India (DOPT) notification dated 22-10-1997. The State Govt. vide their letter dated 26-3-98 stated that the officer has been fully exonerated of the charges filed against him and requested the Commission to make his name unconditional and final in terms of Regulation 9(1) of IAS Promotion Regulations, applicable to 1996-97 Select List. The Commission observed that the officer had not been fully exonerated of the charges filed against him and a minor penalty of 'Censure' was imposed on him vide State Govt. order dated 12-3-1998. The matter was examined in detail by the Commission. It was observed that in this case an amount of Rs. 48,891.05 was lost in theft. The Enquiry Officer held Sh. Adhikari guilty of negligence. The State Govt. initially proposed to recover 50% of the lost cash in addition to 'Censure' but on advice of the State Public Service Commission, they imposed a minor penalty of 'Censure' on Sh. Adhikari. While not agreeing with the proposal of Govt. of Tripura, the Commission in their letter dated 28-4-98 addressed to the Govt.

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of India (DOPT) and copy endorsed to the Govt. of Tripura furnished detailed reasons in support of their decision not to make the name of Sh. Adhikari unconditional in the Select List of 1996-97.

5.2 As regards contention made at 4(ii), it is submitted that the applicant was not appointed to the IAS, as his name could not be made unconditional by the Commission in accordance with the provisions of IAS Promotion Regulation. The applicant has now stated that the State Govt. have since revised their order dated 12-3-1998, wherein a penalty of 'Censure' had been imposed on him, through another order dated 20-2-1999, whereby the said penalty of 'Censure' imposed on him has been set aside. This fact has not been brought to the notice of the Commission by the State Govt so far. It is, therefore, for the State Govt. to make necessary submissions in this regard. It is further submitted that pendency of disciplinary proceedings and imposition of penalties on the State Civil Service officers are the concern of State Govt. They may be making necessary submission in this regard.

6. That save those points which have expressly been admitted herein above, others may be deemed to have been denied by the answering respondents.

7. In view of the submission made in the preceding paragraphs, it is prayed that the applicant may be rejected by the Hon'ble Tribunal in so far as the answering respondent is concerned.


DEPONENT
(मनजीत कुमार)
(MANJIT KUMAR)
अवर सचिव
Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

6 - 19 - 39

VERIFICATION

I, the Deponent names above, do thereby declare that the contents of paragraphs 1 & 3 of this Statement are true to my personal knowledge, those of paragraphs 4 to 6 of this statement are based on record which I believe to be true; and no part of it is false and nothing material has been concealed.

Verified on 6th Oct, 2000 at New Delhi.

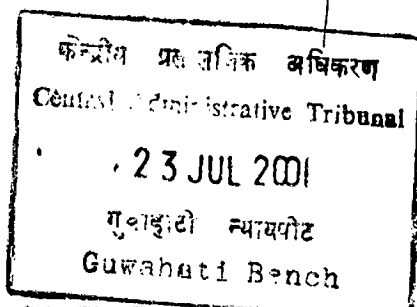

DEPONENT

**(मनजीत कुमार)
(MANJIT KUMAR)**

अवर सचिव

Under Secretary

संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi



Filed 23/7/01
(A. DEB ROH)
Sr. C. G. S. C.
G. A. T. Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 231 OF 2000

Shri S.K. Adhikari

-Vs-

Union of India & Ors.

- And -

In the matter of :

Written Statement submitted by
the respondents No. 1

The respondents beg to submit the written
statement as follows :

1. That with regard to para 1 to 3, the respondents beg to offer no comments.
2. That with regard to para 4, the respondents beg to state that the application is time barred since the cause of action relates to the year 1998 whereas the applicant has filed the OA after a lapse of two years.
3. That with regard to para 5(i) to 5(iv), the respondents beg to state that these are statements of fact about the service particulars of the applicant in the State Civil Service with which the Respondent Government of Tripura is wholly concerned whose reply may be referred to.
4. That with regard to para 5(v) & 5(vi), the respondents beg to state that the selection committee for Tripura met on 27.3.1997 towards preparing a select list to fill up 1

Plus

fill up 1 anticipated vacancy during 1997-98. The names of the three officers included in the select list as approved by the Respondent Union Public Service Commission was notified in Government of India Notification No. 14015/58/96-AIS(1) dated 22.10.1997, annexed as Annexure -1 to the O.A. The name of the applicant was included provisionally subject to the outcome of the disciplinary proceedings pending against him and also grant of integrity certificate by the State Government. In terms of the second proviso to Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955, a provisionally included officer in the select list cannot be appointed to the IAS unless and until his name is declared unconditional and final in the select list by the Union Public Service Commission, on the recommendation of the State Government. Since the applicant was not made unconditional by the UPSC, the Respondent State of Tripura could not recommend him for appointment to the service nor the Union of India could consider him for appointment to IAS from the 1996-97 select list for Tripura.

5. That with regard to para 5(vii), the respondents beg to state that the Respondent State Government sent proposals to the Union Public Service Commission for declaring the name of the applicant as unconditional vide letter dated 26.3.1998. However, by letter No. 6/12/97-AIS dated 28.4.1998, the Respondent UPSC did not agree to the proposal of the State Government to make the name of the applicant unconditional and final in the select list prepared on 27.3.1997 for promotion to IAS Manipur Tripura Joint Cadre, Tripura Segment. In view

Relief

of this, the Respondent UOI could not consider the case of the applicant for promotion to IAS from the 1996-97 select list.

6. That with regard to para 5(vii) & 5(ix), the respondents beg to state that the Government of Tripura is concerned with the averments made/issues raised by the applicant in this paragraph. It is further submitted that no proposal for making the name of the applicant as unconditional in the select list that was received after exoneration of the applicant by further order of the State Government dated 20.2.1999. In any case, the Respondent UPSC is wholly concerned in the matter of inclusion of the applicant as unconditional and final in the select list of 1996-97 for Tripura and the role of the Central Government to consider appointment of the applicant cannot take precedence over the same.

7- That with regard to para 5(x), the respondents beg to state that in terms of the provisions in the Promotion Regulations, the appointment of the select list officer to the IAS may be considered only during the period when the select list remains in force. The name of the applicant has not been included unconditionally in the impugned select list till date by the respondent Union Public Service Commission. In view of this, the answering respondent cannot consider appointment of the applicant to IAS from the 1996-97 select list. ~~even on~~
plus ~~date.~~

8. That with regard to para 5(XI), the respondents beg to state that the fixation of pay/leave and other consequential benefits on retirement as admissible to a member of the IAS can flow in respect of the applicant only in accordance with and subject to the provisions contained in the schedule to the

plus

IAS (Pay) Rules, 1954 and the All India Services (Death-Cum-Retirement Gratuity) Rules, 1954. In view of the fact that the applicant was not declared unconditional in the select list of 1996-97 by the Respondent Union Public Commission and hence was not appointed to IAS on the recommendations of the State Government, the issue of further benefits to him as a member of the Indian Administrative Service does not flow under the normal rules.

9. That with regard to para 6, the respondents beg to offer no comments.

10. That with regard to para 7(a), the respondents beg to state that in view of the statutory and factual position explained above, the applicant is not entitled to appointment to the IAS since his name remains provisional in the select list of 1996-97 and is yet to be made unconditional by the Respondent Union Public Service Commission. ✓✓

11. That with regard to para 7(b) and 7(c), the respondents beg to state that the applicant has not been promoted to the Indian Administrative Service, he is not entitled to the reliefs prayed in these paragraphs.

12. That with regard to para 8 to 10, the respondents beg to offer no comments.

R. Khan

V E R I F I C A T I O N

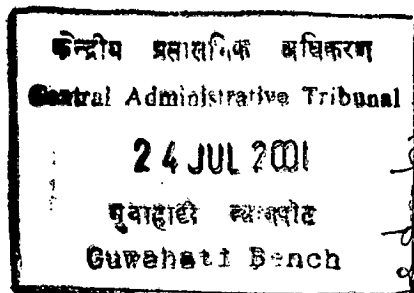
I Shri R. Vaidyanathan S/o (late) Pn T.N. Ramachandran, New Delhi, being authorised do hereby verify and declare that the statements made in this written statement are true to my knowledge, information and believe and I have not suppressed any material fact.

And I sign this verification on this the
day of 2001.

R. Vaidyanathan

Declarant.

SHRI R. VAIDYANATHAN
Under Secretary
Dept of Personnel & Training
Govt. of India



Smt. B. DEBBARMA
Under Secretary
Government of Tripura
C.A. (1 & 1) Department

through

Shonash Ranjen Pattak
Advocate
24/07/2001
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THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

O.A. NO. 231 OF 2000.

Shri Santosh Kumar Adhikari

.....Applicant.

- Versus -

Union Of India and Others

.....Respondents.

- A N D -


IN THE MATTER OF:

Written Statement submitted for and on behalf of the Respondent No.3, the State of Tripura to the application filed by the applicant in O.A.No. 231 of 2000.

The humble Respondent begs to submit the Written Statement as follows:

1) The answering respondent denies the correctness of the statements made in paragraph 5(iv) of the application and states that the State Government had prepared a list of the eligible State Civil Service Officers for consideration by the Selection Committee as per provision on the basis of their seniority. Name of the Applicant Sri S.K.Adhikary was also included in the Selection List for consideration by the Selection Committee as per provision and the Selection Committee considered the cases of all eligible officers falling in the zone of consideration. The Applicant was also considered along with other Officers on the basis of their performance and assessment as available on ACRs and other records as per provisions of Rule 5(4) and 5(5) of the relevant Regulations. The name of the Applicant was apparently not included in the Selection List prepared by the Selection Committee as other Officers having better records than him were available and as such the contention raised by the Applicant that he was never considered for appointment to the IAS is not all correct.

2) That as.....


 Smt. B. DEBBARMA
 Under Secretary,
 Government of Tripura
 G.A. (3.1) Department

2) That as regard the statements made in paragraph 5(vi) of the application, the answering Respondent states that the name of the Applicant was provisionally included in the Select List at Serial No.1. But as a disciplinary proceeding was pending against him during that period, Officers named at Serial No.2 and 3 of the said Select List, namely S/Shri B.K.Chakraborty and S.R.Paul were promoted to IAS after keeping one post reserved for the Applicant in pursuance of the proviso of the Regulation 9(1) of IAS (Appointment by Promotion) Regulations, 1955. ✓

3) That the statements made in paragraph 5(vii) to 5(x) of the application are denied, as those are not based on fact. The answering Respondent states that a Disciplinary Proceeding was initiated against the Applicant for his lapses during his tenure as Senior Deputy Magistrate in the Office of the District Magistrate & Collector, North Tripura, Kailashahar on 1/2 - 6 - 1990 because of which an amount of Rs.48, 891.05 was lost in theft. The said proceeding was disposed of by the State Government by imposing the minor penalty of censure on the Applicant for his aforesaid lapse that were responsible for loss of Government money though the advice of the TPSC was to recover 50% of the lost cash in addition to censuring the Applicant. ✓

However, after disposing of the above Disiplinary Proceeding the State Government had send proposal to made the name of the Applicant as unconditional by the UPSC in the Select List as well as to the Government of India for appointment of the Applicant to IAS. But the Government of India after considering the said proposal of the State Government has rejected the same.

In the mean while on 5th November 1998 the Applicant had preferred an Appeal for revision of the order of the State Government imposing above penalty of censure. After considering the said appeal of the Applicant, the State Government in consultation with the TPSC by its order dated 20th February 2000 had revised its earlier order dated 12-03-1998 and set aside the penalty of censure imposed upon the him. But at that time the said Select List was not in force and therefore the State Government was not in a position to send the proposal to make the name of the Applicant as unconditional by UPSC in the Select List as well as to the Government of India for appointment of the Applicant to IAS. As such, the State Government has not violated any Rules and/or Regulation of IAS (Appointment by Promotion) Regulations, 1955. ✓

The proviso to.....

The Proviso to the Regulation 9(1) of IAS (Appointment by Promotion) Regulations, 1955 reads as under:

"Provided further that the appointment of an officer, whose name ~~has~~ has been included in the Select List provisionally, under proviso to sub-regulation (5) of Regulation 5 shall be made after his name is made unconditional by the Commission of the recommendations of the State Government during the Select List remains in force. While making appointment of an officer junior to a select list Officer whose name has been included provisionally in the Select List, one post will have to be kept vacant for such a provisionally included officer". ✓

The answering Respondent further states that the Selection has got nothing to do with the proceedings instituted against the Applicant, as there are instances of other officers getting included in the list subject to clearance from vigilance angle.

4) That as regards the statements made in paragraph 5(xi) of the application the answering Respondent states and submit that as indicated in the aforementioned paragraph those are not tenable in law as well as not based in facts and circumstances of the case.

5) That as regards the relief sought for in paragraph 7 of the application, the answering Respondent submits that in view of the facts and circumstances stated above the Applicant is not entitled to any relief prayed for and as such the Application is liable to be dismissed.

VERIFICATION

I, ~~Smt.~~ Smt. Binapani Deb Barma, W/O Sri Dhiraj Deb Barma ^{L aged 53 years} Under Secretary to Government of Tripura, General Administration (Personnel & Training) Department do hereby verify that the statements made in paragraphs 1, 2 and 3 of the Written Statement are true to my knowledge, information and belief derived from the relevant records and the rests are my submission before this Hon'ble Tribunal and I sign this verification on this the 18th day of July, 2001.

Binapani Deb Barma
(Smt. B. DEBBARMA
Under Secy
Government of Tripura)

SIGNATURE