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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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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. 25/2000 OF 199

Applicant(s) L. C. Singh, IAS.

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. B. K. Sharma

Advocate for Respondent(s) C. G. S. R.
Dr. Y. K. Phukan
Mr. M. D. G. A. Assm.

Notes of the Registry	Date	Order of the Tribunal
<p>Mention in contd.</p> <p>956775 18.1.2000</p> <p>24.1.2000</p> <p>Mr. 24/1</p> <p>24/1/2000</p> <p>Requisite not filed.</p> <p>mention case</p> <p>Received copy of the order dt. 24.1.2000.</p> <p>for Dr. Todi.</p>	24.1.2000	<p>Present :- Hon'ble Mr. Justice D.N. Baruah, Vice-Chairman and Hon'ble Mr. G.L. Sanglyine, Administrative Member.</p> <p>Heard Mr.B.K. Sharma, learned counsel for the applicant.</p> <p>Application is admitted. Issue usual notices.</p> <p>List on 23.2.2000 for written statement and orders.</p> <p>Heard Mr.B.K. Sharma, learned counsel on the interim prayer.</p> <p>Annexure-5 order dated 30.7.1999 issued by the Director, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel</p>

contd..

Notes of the Registry	Date	Order of the Tribunal
<p>28-11-2000</p> <p>Service of notice prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A/D</p> <p>Vide D Nos. 284 to 287 Dtd. 31-1-2000</p> <p>Notice duly served on R. No 23.</p> <p>24.2.2000</p> <p>6-3-2000</p> <p>Written Statement has been filed by the respondents No. 2.</p> <p>30-3-00</p> <p>W/Statement has been filed on R. No 1, 304.</p> <p>2/6/00</p> <p>W/Statement has not been filed by the respondent No. 1, 304.</p> <p>8/12-00</p> <p>W/S filed by R. No. 2.</p> <p>1, 304 still awaited.</p>	<p>mk</p> <p>27/1/2000</p> <p>23.2.00</p> <p>trd</p> <p>15.3.00</p> <p>trd</p> <p>31.3.00</p> <p>trd</p> <p>5.6.00</p>	<p>and Training, North Block, New Delhi shall remain suspended.</p> <p>Member</p> <p>Vice-Chairman</p> <p>Member</p> <p>U.P.S.C. has filed written statement. Others have not filed written statement. There is no prayer for extension of time. However for the ends of justice we extend the time for submission of written statement for another two weeks.</p> <p>List on 31.3.2000 for written statement and further weeks.</p> <p>Member(J)</p> <p>Member(A)</p> <p>Written statement has not been submitted by the respondents other than U.P.S.C. There is no prayer for extension of time.</p> <p>List for hearing on 5.6.2000.</p> <p>Member</p> <p>June 6, 2000 D/B. Ad. said</p> <p>11.8.00</p> <p>11.8.00</p> <p>11.8.00</p>

25/2002

(3)

Notes of the Registry	Date	Order of the Tribunal
<p>1-12-2002</p> <p>Written Statement for the respondent No. 1.</p> <p>W/S has been filed by the R.No. 1 & 2.</p> <p>By 20-12-2000</p> <p>① Written statement filed on behalf of R.No. 1 & 2, respondent No. 3 & 4, has not yet filed.</p> <p>By 9.4.01</p> <p>29.5.2001</p> <p>Rejoinder has been filed to the written statement filed by the respondents No. 1.</p> <p>By 29/5/2001</p> <p>The case is ready for hearing.</p> <p>By 22.6.01</p>	<p>21.12.00</p> <p>10.4.</p> <p>2.5.</p> <p>14.5.01</p> <p>12.5.01</p> <p>25.6.01</p> <p>23.7.01</p>	<p>1/0. List on 10.6.01.</p> <p>To be in possession of the documents to 25.2.01</p> <p>Passes to 14.5.2001.</p> <p>On the prayer of the learned counsel the case is adjourned to 12.6.2001 for hearing.</p> <p>Member Vice-Chairman</p> <p>Mr.S.Sarma, learned counsel for the applicant, submits that connected matter O.A.226 of 1997 is listed on 25-6-2001 and this case may be taken on that day. Accordingly, the case is adjourned to 25-6-2001 for hearing.</p> <p>Member Vice-Chairman</p> <p>Mr. Y.K.Phukan, learned counsel for respondents, State of Assam, prays for and granted time for filing writ statement. Time allowed. The applicant may file rejoinder, if any. List on 23-7-2001 for hearing.</p> <p>Member Vice-Chairman</p> <p>On the prayer of Mr.S.Sarma, the counsel for the applicant, the case is adjourned to 20.8.2001 for hearing.</p> <p>Member Vice-Chairman</p>

u (4) 07/25/2000

Notes of the Registry	Date	Order of the Tribunal
<u>28.6.2001</u> W/S on behalf of State or Government (Clpat. 3) has been submitted.	20.8.01	It has been stated by the counsel for the parties that this case is analogous to O.A. Nos. 198 of 2000 and 383 of 2000. Accordingly it is directed to list this case along with the aforesaid cases. K. C. Sharma Member Vice-Chairman
<u>3.12.01</u> Written Statement filed on behalf of the respondent No. 1, 2 and 3. Rejoinder filed by the applicant. <u>20.7.01</u> Both the matters have been transferred from CAT/Quidabali Bench to CAT/Al. Bench vide letter dated 22/06.02. Both the case nos. are re-allocated O.A. No. 811/2002 W. M.A. No. 464/2002 respectively. Notice is issued to both the parties concerned for hearing.	3.12.01 3.12.01 2.1.02 9.1.02 23.1.02	List on 2.1.02 alongwith O.A.No. 383 of 2000. K. C. Sharma Member(A) List on 9.1.02 alongwith O.A.No. 383 of 2000. K. C. Sharma Member List on 23.1.2002 alongwith O.A. No. 383/2000 for order. K. C. Sharma Member List the matter alongwith O.A. No.383 of 2000 before the appropriate Division Bench. K. C. Sharma Member

SO(5)

93-1
DN SAIL
OA 383/2
6 OA 100/98

24 JAN 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH
Guwahati Bench

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

O.A. No. 25 of 2000

Shri L.C. Singhi

... Applicant

- Versus -

The Union of India & Ors.

... Respondents

I N D E X

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Filed by

: Shri S. Sarma
Advocate

Date of filing :

Registration No. :

Registrar

DATE OF FILING

OR
DATE OF RECEIPT

BY :
REGISTRATION NO

(GHTY no. 322/2000)

Re-numbered
7/8/2002

OA No. 811/2002

RECEIVED

Filed By
The Applicant
Through
S. Sarma
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

D.A. No. 25 of 2000

BETWEEN

Shri L.C. Singhi, IAS,
S/D Shri Surajmal Singhi,
Deputy Director,
LBS National Academy of Administration,
Mussoorie.

... Applicant

AND

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pension, North Block, New Delhi.
2. The Union Public Service Commission, represented by its Secretary, Dholpur House, Sahjahan Road, New Delhi.
3. The State of Assam, represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati-6.
4. The State of Meghalaya, represented by the Chief Secretary to the Government of Meghalaya, Shillong.

.... Respondents

DETAILS OF APPLICATION

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

The present application is directed against letter No. AAI.32/94/554 dated 3.1.2000 (received on 19.1.2000 at Guwahati) issued by the Government of Assam, Department of Personnel, Personnel(A), Assam Secretariat (Civil), Dispur, Guwahati forwarding therewith Government of India's order No.

F.14015/24/98-AIS dated 30.7.99 along with its enclosures and corrigendum thereon under No. F.14015/24/98-AIS (I) dated 7.1.99 by which appointment of the Applicant to IAS by promotion vide Notification No. F.14015/4/96-AIS(I) dated 30.12.96 has been rescinded.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That in the instant O.A. the Applicant has challenged the legality and validity of the decisions as contained in the impugned letter dated 3.1.2000 by which the promotion of the Applicant to the IAS way back in 1996 has been sought to be rescinded. Presently the Applicant is holding the post of Deputy Director at Lal Bahadur Shastri (LBS) National Academy of Administration, Mussoorie. He belongs to the Assam Meghalaya Joint Cadre of IAS and the impugned order has been served on him on 19.1.2000 while in Guwahati with some official assignment.

4.2 That the Applicant was appointed in the Assam Civil Service Class I (Junior Grade) vide Government of Assam Notification No. AAA.1/76/24 dated 20.4.77 and joined as Extra-Assistant Commissioner, Silchar in the State of Assam on 30.4.77. Thus he belongs to the 1977 batch of ACS and in the Gradation List of the relevant period for ACS, his name appeared at Sl. No. 5.

4.3 That the Applicant was confirmed in the ACS Class-I (Junior Grade) with effect from 5.5.79 (although it ought to have been with effect from 30.4.79) vide Government of Assam Notification No. AAA.44/77/41 dated 20.7.81. It will be pertinent to mention here that he was the first person to get confirmation in the entire batch and as on the date of confirmation of the services of the Applicant, many officers belonging to 1975 batch of ACS were yet to be confirmed and as such, he is senior to all those who were not confirmed till the Applicant got senior scale in ACS as per Rule 19 and Rule 25 of the Assam Civil Services Rules.

4.4 That after joining the services of the ACS as stated above, the Applicant had been serving in the said service in various capacities to the best of his abilities. He was placed in charge of the Sub-Division and posted as Sub-Division Officer, Guwahati vide Government of Assam Notification No. AAI.59/82/17 dated 23.4.83. He was promoted to the senior grade of ACS Class-I and posted as the Additional Deputy Commissioner, Sibsagar vide Notification No. AAA.72/83/74 dated 18.3.86. He was placed as Head of

the Department and posted as the Director, Organisation and Method vide Notification No. AAP.20/77/28, dated 4.11.91. He had joined as the Managing Director of the Assam State Co-Operative Marketing and Consumers' Federation Ltd., Assam when he was so appointed vide Notification No. AAA.4/9/PT/4 dated 20.11.83. He was also given the additional charge of the post of Joint Secretary in the Chief Minister's Secretariat vide Notification No. AAA.6/91/PT-II/8 dated 13.1.95. He was appointed as the Joint Secretary to the Government of Assam in the Finance Department vide Notification No. AAA.61/95/53 dated 11.12.95 and he also continued to hold the post of Joint Secretary in the Chief Minister's Secretariat till he was appointed as the Deputy Commissioner, Dhubri vide Notification No. AAA.1/94/PT-I/33 dated 12.2.96. Be it stated here that all the posts viz. the Joint Secretary to the Government and the Deputy Commissioner of a District are the cadre posts of IAS and the Applicant was thus holding a cadre post of IAS since 13.1.95.

4.5 That the Applicant was appointed to the IAS by promotion vide Notification No. 14105/4/96-AIS(I) dated 30.12.96 and was allocated to the Assam Meghalaya Joint Cadre. The Notification dated 30.12.96 was notified by the Government of Assam vide Notification dated 3.1.97.

A copy of the Notification dated 3.1.97 republishing the Notification dated 30.12.96 is annexed as ANNEXURE-1.

4.6 That pursuant to the said Notification, the Applicant joined in the IAS and he was assigned 1990 as the the year of allotment vide letter dated 20.2.97 issued by the Government of India, Ministry of Personnel, PG and Pensions, Department of Personnel and Training, New Delhi as communicated vide letter dated 8.1.98 issued by the Government of Assam, Department of Personnel, (Personnel-A).

Copies of the letters dated 8.1.98 and 20.2.97 are annexed as ANNEXURES-2 and 2A respectively.

4.7 That the Applicant was appointed in the Lal Bahadur Shastri National Academy of Administration as a Professor of Law vide order of appointment No. 243 dated 1.12.97 and the Applicant joined as such on 22.12.97. Be it stated here that the Applicant is the first IAS officer to join as a Professor of Law in the Academy and he is also the first IAS (SCS) officer to be the member of the faculty in the LBS National Academy of Administration. The Applicant has now been appointed as the Deputy Director of the said Academy vide Government of India's order dated 21.12.99 and since the date of joining the said post on 22.12.99, the Applicant is holding the said post.

A copy of the office memorandum dated 21.12.99 is annexed as ANNEXURE-3.

4.8 That as stated above, the Applicant was holding a cadre post of IAS since 19.1.95 and accordingly his period of probation in the IAS is deemed to be over on

his date of appointment to IAS i.e. 30.12.96 in terms of the provisions contained in the first proviso of sub-rule (2) of Rule 3 of the IAS (Probation) Rules, 1954. The Applicant accordingly, submitted an application on 2.9.99 to the Government of Assam stating that he is entitled to be confirmed in the IAS with effect from the date of his appointment. It is further stated that the Applicant has already completed his induction training in the 79th Induction Training Programme. However, the Applicant is not aware as to what action, if any, has been taken by the Government in respect of thereto. In any case, in terms of the aforesaid provisions of the relevant rules and also by operation of law relating to confirmation, the services of the Applicant is confirmed in the IAS on the date of his appointment to IAS i.e. 30.12.96.

A copy of the representation dated 2.9.99 is annexed as ANNEXURE-4.

4.9 That the Applicant has come to Guwahati on an official assignment commencing from 9.1.2000. He is surprised and shocked to receive a letter No. AAI.32/94/554 dated 3.1.2000 forwarding therewith Government of India's order No. F.14015/24/98-AIS dated 30.7.99 alongwith its enclosures and corrigendum thereon under No. F.14015/24/98-AIS(I) dated 7.9.99. The said letter dated 3.1.99 has been served on him on 19.1.2000 making a grievance against which this O.A. has been field at the earliest opportunity. As per the order dated 30.7.99 communicated vide the said letter dated 3.1.2000, there has been a division in inter-se

seniority of the members of the ACS by the Government of Assam pursuant to the direction of the Hon'ble Gauhati High Court dated 23.9.95 in Civil Rule No. 1079/93 (L.N. Tamuly & Ors. -Vs- State of Assam) and consequently certain review selections were held pertaining to the years 1992-93, 1993-94 and 1995-96. As per the said review selections, the name of the Applicant has been included at Sl. No. 8 in the select list for the period 1995-96 and since at that relevant time, there were only seven vacancies, the Applicant was not entitled to be appointed to IAS from the said list. Accordingly, by the said order dated 30.7.99, the very appointment of the Applicant to IAS vide notification dated 30.12.96 (Annexure-1) has been rescinded. Alongwith the said impugned order, the notification dated 30.7.99 rescinding the order of appointment of the Applicant to IAS has been enclosed as Annexure-III.

A copy of the letter dated 3.1.2000 (served on 19.1.2000) alongwith the Government of India's order dated 30.7.99 together with its enclosures and corrigendum dated 7.9.99 are collectively annexed as ANNEXURE-5 series.

4.10 That the Applicant states that the said impugned order dated 30.7.99 has been served on him by the Government of Assam vide letter dated 3.1.2000 only on 19.1.2000 and that too at a time when the Applicant has been appointed as Deputy Director in the LBS National Academy vide Annexure-3 O.M. dated 21.12.99 as an IAS

officer on approval of the proposal to appoint him as such. The said order is quoted below :

"The proposal to appoint Shri L.C. Singhi, IAS (AM:90) as Deputy Director (Deputy Secretary Level) in the LBS National Academy of Administration, Mussoorie against a sanctioned post of Deputy Director (DS Level) has been approved for the remaining period of his four year tenure from the date of his taking over charge of the post i.e. upto 21.12.2001 or until further orders, whichever event takes place the earliest. He counts his tenure at the Centre w.e.f. 22.12.97."

4.11 That on perusal of the impugned order, it is revealed that the said order has been passed purportedly with a view to implement the directions of the Hon'ble Gauhati High Court dated 23.9.95 passed in Civil Rule No. 1079/93 filed by the Applicant alongwith Shri L.N. Tamuly, IAS. The said writ petition was filed by the Applicant alongwith Shri Tamuly making a grievance against assigning higher seniority to the Respondents therein who are in Class-II ACS service over the Petitioners in Class-I ACS service. Both the Writ Petitioners belong to 1977 batch of ACS. In the said writ petition, 19 other ACS officers belonging to 1977 batch were also impleaded as intervenors and they supported the case of the Writ Petitioners. The Writ Petition was allowed by judgment dated 20.3.95 quashing the impugned notifications in terms of which the private Respondents therein were given higher seniority above the Writ Petitioners and other incumbents/ intervenors belonging to the same

batch. The Hon'ble Court in the said judgment at para 34 has held -

"..... The Petitioners and similarly situated persons of the 1977 batch shall maintain their seniority above the private Respondents and their promotions shall be considered accordingly....."

At para 36 of the said judgment, it has been held as follows :

"..... This Court has allowed the writ petition for maintaining the seniority of direct recruits of 1977 batch above the private Respondents....."

A copy of the aforesaid judgment dated 20.3.95 is annexed as ANNEXURE-6..

4.12 That on a bare perusal of the said judgment, it is revealed that as stated in the impugned order, there is no direction in the said judgment for any revision of seniority of the members of the ACS so as to prejudicially affect the Applicant and for that matter any member of the ACS belonging to 1977 batch of ACS. What was ordered by the said judgment is that the impugned orders in the said Civil Rule have been held to be illegal with the direction that the members of the 1977 batch of ACS will maintain their seniority over the private Respondents who were given higher seniority by the said impugned orders. Further in the impugned order, the review selections have been stated to be held as per the directions of the Hon'ble Gauhati

High Court dated 23.9.95 whereas there is no such order in existence and the Civil Rule was disposed of in favour of the Writ Petitioners by judgment and order dated 20.3.95. Thus the Applicant has failed to understand as to how the impugned order has been passed and/or the tasks of review selections were undertaken on the basis of an order dated 23.9.95 passed in the writ petition filed by the Applicant alongwith Shri Tamuly. Admittedly such an order dated 23.9.95 is non-est. On this score alone, the impugned orders are not sustainable and liable to be set aside and quashed. It is most respectfully submitted that no such order as mentioned in the impugned order was ever passed by the Hon'ble Gauhati High Court in the said Civil Rule. Further there is also no revision of seniority as mentioned in the impugned order. The Applicant has never been appraised of any such revision of seniority adversely affecting his seniority position in the ACS. In the impugned order, there is mention of three review selections for the years 1992-93, 1993-94 and 1995-96 and the said review selections have superseded the earlier selections. At no point of time, the Applicant was ever notified about the holding of such review selections adversely affecting his service career. Everything has been done behind his back and without even issuing any notice to him.

4.13 That the Applicant states that nowhere in the said judgment of the Hon'ble Gauhati High Court, there is any direction to review the select lists of 1992-93, 1993-94 and 1995-96. In the Civil Rule, the Applicant

who was Writ Petitioner No. 2 did not even pray for review of any select list already prepared and acted upon. As will be revealed from the said judgment, it was the Government of Assam which had sought permission of the Hon'ble Court for appointment of one Shri Debabrata Chakravorty on the basis of 1993-94 select list which the Hon'ble Court had refused. The Hon'ble Court never authorised and/or asked the Central and/or State Government to review the select list of 1993-94 which was not the matter in issue before the Hon'ble High Court. While deciding the said Civil Rule, the Hon'ble High Court only determined the issue of seniority between the contending parties i.e. the Applicant and his batchmates being the Writ Petitioners and Shri Debabrata Chakravorty and others as the opposite party. The question of appointment to IAS or preparation of select list or any review thereto was neither agitated nor decided by the Hon'ble Court. The matter of review of select list approved by the Government of India on 20.10.94 was brought by the Government of Assam with a view to appoint said Shri Debabrata Chakravorty and the request was rejected by the Hon'ble Court. It is, therefore, wrong on the part of the Government of India to carry out the review selections and/or to pass the impugned order taking recourse to the said judgment of the Hon'ble Court.

4.14 That as already stated above, the permission sought for by the Government of Assam to promote the Respondent No. 20 in the said Civil Rule viz. Shri

Debabrata Chakravorty was refused by the Hon'ble Court since the said Respondent No. 20 was the private Respondent and who alongwith others were sought to be given seniority over the Writ Petitioners and the intervenors by the impugned orders therein was held to be illegal and accordingly, the impugned orders by which the private Respondents were given seniority over the Writ Petitioners and intervenors were set aside holding that the Writ Petitioners and the intervenors belonging to 1977 batch of ACS would maintain their seniority over the private Respondents. On the face of such refusal of the Hon'ble Court, one Shri Dibakar Saikia was appointed in place of Shri Debabrata Chakravorty. Thus there is no question of any review of 1992-93 select list and consequential review of 1993-94 and 1995-96 select lists. The revision of these select lists were never issue in the said Civil Rule No. 1079/93 and there was also no decision regarding any such review by the Hon'ble Court.

4.15 That in the 1995-96 select list, the name of the following persons were included :

- (1) Shri M.A. Borbhuiyan
- (2) Shri A.K. Malakar
- (3) Shri J.I. Kathar
- (4) Shri K.K. Hazarika
- (5) Shri R.N. Sarma
- (6) Shri L.N. Tamuly
- (7) Shri L.C. Singhi
- (8) Shri Bimalendu Bhattacharjee
- (9) Shri Khagendra Nath Buragohain.

Pursuant to the said select list, the Applicant was appointed to the IAS as stated above. In the earlier select list prepared for the years 1993-94 and 1995-96, the case of one Shri D.N. Saikia was also considered, but he having not been found suitable could not be included in any of the said select list. Be it stated here that said Shri D.N. Saikia was not within the zone of consideration to be considered for 1992-93 select list. As against the seniority position of the Applicant at Sl. No. 5, his position was at Sl. No. 10 in the ACS and thus junior to the Applicant. The selection committee meeting towards preparation of the 1995-96 select list was held almost a year after the aforesaid judgment of the Hon'ble High Court and as such the question of reviewing either the select list of 1992-93 and 1993-94 (which was reviewed by nominating and appointing Shri Dibakar Saikia in place of Shri Debabrata Chakravorty) or the 1995-96 select list did not arise and the select list of 1993-94 was reviewed in pursuance of the orders of the Hon'ble Court and the 1995-96 select list was prepared one year after the order of the Hon'ble Court. Thus it appears that the Respondents have mischievously used the order of the Hon'ble High Court towards passing the impugned order and adversely affecting the service career of the Applicant in gross violation of the principles of natural justice and the established norms of justice, equity and good conscience. As already stated above, the order of the Hon'ble High Court passed in Civil Rule No. 1079/93 was already implemented when the

select list of 1993-94 was revised with the appointment of Shri Dibakar Saikia and as such, further review of the select list of 1992-93, 1993-94 and 1995-96 could not have been made and the same has been done with the sole purpose of giving undue benefit to some other persons dearer and nearer to the official Respondents. Apparently, the impugned order has been passed in a most reckless and negligent manner and the authority passing the same has not even seen and/or read the directions contained in the judgment dated 20.3.95 passed in Civil Rule No. 1079/93.

4.16 That the Applicant states that the impugned order rescinding the order of appointment of the Applicant to the IAS could not have been issued as the Government of India is not vested with such unfettered power so as to violate the procedure prescribed under the Rules. The impugned order is virtually an order of termination of the services of the Applicant and that too in a most arbitrary and illegal manner. The Government of India is not vested with any power to cause any prejudice to the Applicant with retrospective effect. No rule can even be made with retrospective effect so as to cause prejudice to an existing member of the service. In this connection, the provisions as contained in Section 1 (A) of the All India Services Act, 1951 (Act No. LXI) of 1951 may be referred to. The language of the said provisions makes it abundantly clear that no rule, executive order or instruction can be given effect retrospectively so as to prejudicially affect the interest of any person to whom such rule may be

applicable and the impugned order is in clear violation of not only the aforesaid provisions but is also violative of the basic principles of service jurisprudence.

4.17 That the Applicant states that the Government of India has issued letter No. 11033/15/95-AISI(II) dated 9.9.96 in pursuance of the dismissal of an SLP filed by the Union of India and conceding thereby that the promotion quota in IAS shall be deemed to include the senior duty post, Central Deputation Reserve and State Deputation Reserve as Rule and interpreted by the Jabalpur Bench of the Hon'ble Tribunal in K.K. Goswami -Vs- Union of India and two other decision of the Jabalpur and Calcutta Benches. With the rejection of the SLP, the judgment and order of the Hon'ble Tribunal became absolute and as such, the promotion quota has to be treated as one-third of the seniority duty post, Central Deputation Reserve and State Deputation Reserve. The Applicant begs to refer to the said decision in K.K. Goswami's case wherein the Hon'ble Tribunal has been pleased to issue direction to incorporate the same in the cadre schedule with effect from 1984. In view of this, in respect of Assam Meghalaya Joint Cadre, the number of posts to be filled by promotion should be held to be 53 and not 51 since that period i.e. the year 1994. Thus even other wise also, the Applicant is entitled to retain his status as an IAS officer and his promotion to IAS could not have been rescinded by the impugned order and that too retrospectively.

4.18 That the Applicant states that in paragraph 4 of the aforesaid Government letter No. 11033/107/95-AIS(II) dated 9.9.96 the Union Government has clearly stated that the promotion quota has to be increased against the vacancies in the DR quota caused due to retirement, resignation or death till the maximum permissible quota for promoted officers is reached. In this connection, be it mentioned that in the year 1996 and 1997, the following vacancies which occurred due to retirement ought to be added to the promotion quota for that year :

<u>Date of vacancy</u>	<u>Name of officer</u>
31.10.96	Shri A. Bhattacharya
2.6.96	Shri R.V. Pillai
31.7.97	Shri C.D. Tripathi
31.7.97	Shri J.K. Bagchi

All the above vacancies will naturally get added to the quota for th promotee officers. Thus even according to the Government scheme, the number of posts for the promoted officers in the Assam Meghalaya Cadre would be as follows :

<u>Date</u>	<u>No. of posts</u>	<u>Persons in positions</u>
30.12.96	51+2 (vacancies caused by retirement of 2 DRs)	2
31.12.96	53	51 (retirement of H.K. Barua)
10.2.97	53	52 (appointment of M.A. Borbhuiyan)

1.3.97	53	51 (retirement of S.K. Chakravorty)
3.3.97	53	52 (appointment of B.M. Mitra)
30.4.97	53	51 (retirement of N. Ghosh)
30.5.97	53	50 (retirement of A. Malik)
31.7.97	55 (retirement of 2 DRs)	50
28.2.98	55	49 (retirement of S.B. Medhi)
30.4.98	55	48 (retirement of D.B. Chetry)

The above tabulation will amply demonstrate that at no point of time, the promoted officers have ever exceeded their quota and even if any review selection and/or any retrospective promotions are required to be effected as has been stated to be so in the impugned order, same will not result in getting this quota exceeded at any point of time and consequently, there could not have been any question of rescinding the order of appointment of the Applicant on ground of non-availability of vacancy.

4.19 That the Applicant states that contrary to the above position that the direct recruits to the IAS have always been in far excess of their quota even as on 1.1.97 in regard to Assam Meghalaya Joint Cadre, there were 164 direct recruit officers as against the authorised strength of 156 and if one takes into account the all India figure then also it will be revealed that there were 3857 direct recruit officers against authorised strength of 3815, but even on all

India basis, the total number of promotee officers were 1134 as against 1258 of authorised strength. After the consequential revision, this gap has further widened and as on 1.1.98, there were 162 DR as against the authorised strength of 144 whereas there were only 49 promotee officers as against the authorised strength of 63. At the all India level as on 1.1.98, there were 3745 DR as against the authorised strength of 3551 and whereas there are only 1197 promotee officers as against 1354 posts. The contentions of the Government of India that the quota of promotee officers has exceeded is absolutely incorrect and not based on the fact and on the other hand the Government of India has been favouring the direct recruits causing injustice to the promotee officers. As a matter of fact, the SCS officers appointed by promotion have all along been treated as step children, but in the case of the Applicant, the Government of India have gone even far and he is even sought to be thrown away from the cadre of IAS by the impugned order which is prima facie illegal and arbitrary.

In support of the above contentions, the Appendix I of the civil list for the year 1997 and 1998 are annexed and marked as ANNEXURES-7 and 8.

4.20 That the Applicant states that he does not admit that the promotee offices have ever exceeded their quota. Even assuming but not admitting that the same is the case then also, the Respondents can and ought to create a supernumerary post to accommodate the Applicant. In this connection, mention may be made of

the case of one Shri B.C. Thakuria belonging to Assam Meghalaya Cadre in whose favour a supernumerary post was created and a temporary increase was effected to the cadre schedule in the year 1985 and that too covering the period from 13.7.72 to 1.11.72. In another case, cadre strength of Haryana was increased and one supernumerary post was added to the promotion quota with effect from 17.5.89 and the same was in pursuant to the order passed by the Punjab & Haryana High Court. Whatever little doubt remained in regard to that should be deemed to be set at rest with the Supreme Court decision in Civil Appeal No. 2102/78. Accordingly, a supernumerary post was created for the purpose of making appointment of Shri P.B. Das, formerly a member of the State Civil Service of Orissa. In the present case also, the Government could have and ought to have created a supernumerary post to provide accommodation to the officer if the same was required to be done instead of terminating the services of the Applicant from the cadre of IAS.

4.21. That the Applicant states that in whatever angle the impugned order is looked into, same is grossly illegal and arbitrary and the same is known to the authorities. It is for this reason the same has been passed behind the back of the Applicant. Adding insult to the injury, although the order was passed as far back as on 30.7.99, it was not served on the Applicant till 19.1.2000 and even after the same was passed, it was never acted upon by the authority which passed it, which is very much evident from the fact that the

2

Applicant has been appointed as Deputy Director in the LBS Academy as an IAS officer vide order dated 21.12.99 and the entire tenure first as the Professor of Law with effect from 22.12.97 till 21.12.2001 is to be counted as Central deputation under the IAS Rules.

4.22. That the Applicant had earlier represented to the Respondents having come to know about the impugned order although the copy of the order was served on him only on 19.1.2000. In the said representation, the Applicant had highlighted his grievance. The Respondent authorities have apprised him that the impugned order can only be reviewed or recalled only if a post in the quota of SCS officer is there and not otherwise. It has come to the knowledge of the Applicant that the Government of Assam vide their letter No. AAI.46/95/229 dated 26.8.99 has informed the Government of India that the Applicant was appointed to IAS against the vacancy caused due to retirement of Shri L.K. Barua, IAS on 30.6.96 and hence the appointment of the Applicant to IAS has been rescinded the said post has fallen vacant. This position was however not agreed to by the UPSC as well as by the Government of India as the UPSC vide their letter No. 6/2/99-AIB dated 12.10.99 and the Government of India vide their letter dated 10.11.99 sought clarification from the State Government. The State Government in their letter No. AAI.46/95/277 dated 2.11.99 gave a detailed account of all the vacancies in the SCS quota, the date of occurring of such vacancies and as to how each one of such vacancy has been filled up. The Applicant has come

to know that in the said letter, it has been specifically shown that the Applicant was appointed against the vacancy caused by the retirement of Shri L.K. Barua, IAS and Shri Dibakar Saikia was appointed against the vacancy caused by the retirement of Shri Dilip Kumar Borthakur, IAS on 1.5.95 etc. The Applicant states that he has come to know that the Government of Assam vide their letter No. AAI.46/95 dated 25.11.99 has stated that Shri D.N. Saikia was not appointed against the vacancy occupied by Shri Dibakar Saikia and that Shri Dibakar Saikia was also not appointed against the vacancy occupied by the Applicant and that all of them were appointed against clear existing and available vacancies and in view of this, the State Government requested to the Government of India to re-examine the matter of rescinding the order of appointment of the Applicant to IAS.

The Applicant has come to know about the aforesaid factual position upon enquiry in the office. However, he is not in possession of the said communication and accordingly, direction may please be issued to the Respondents to produce the copy of the said letters and to appraise this Hon'ble Tribunal the real position regarding vacancy. If upon recession of the appointment of the Applicant, a vacancy has occurred then in that case, the impugned order is not sustainable leaving aside the other grounds advanced above so far as the stand taken by the Union of India is concerned regarding non-availability of vacancy.

4.23 That the Applicant states that he was under the bonafide impression that in view of the above position reflected by the State of Assam, the Government of India has been kind enough to consider the matter as it was pleased to appoint the Applicant as Deputy Director of LBS National Academy vide O.M. dated 21.12.99 even after the impugned order. However, in view of the fact that the impugned order has been served on the Applicant by the State of Assam by its letter dated 3.1.2000 on 19.1.2000, the Applicant has become apprehensive of losing his status as an IAS officer and it is under these circumstances he has approached this Hon'ble Tribunal for appropriate relief.

4.24 That the Applicant states that against the judgment and order dated 20.3.95, a Writ Appeal was preferred and the same was registered and numbered as Writ Appeal No. 94/95. Same has been dismissed by judgment and order dated 20.12.96 and the Applicant craves leave of the Hon'ble Tribunal to produce the copy of the same at the time of hearing of the Q.A.

4.25 That the Applicant states that in view of the above position, the impugned order is not at all sustainable and liable to be set aside and quashed. Even assuming but not admitting that the impugned order is legally valid, then also as has been shown above, there being clear vacancy, there is no question of issuing the impugned order rescinding the order of appointment of the Applicant to the IAS that too in gross violation of the principles of natural justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that prima facie the impugned order is not sustainable being devoid of any substance in the same.

5.2 For that the impugned order having been issued purportedly on the basis of an order passed on a writ petition which is not existent, same is not sustainable.

5.3 For that the impugned order having been passed on the basis of the orders passed in the Civil Rule mentioned therein and in the Civil Rule, no any direction having been issued towards any review selection, same is not sustainable.

5.4 For that the impugned order having been passed on the basis of revised seniority position and the Applicant having not been served with any copy of such revised seniority, the same is not sustainable.

5.5 For that to the best of knowledge of the Applicant, there being no revision of seniority, the question of any review selection does not come and accordingly, the impugned order is liable to be set aside and quashed.

5.6 For that even if the review selections are held to be correct, there is no question of issuing the impugned order inasmuch as there are vacancies to accommodate the Applicant and even if no vacancy is there, having regard to the facts and circumstances of

the case, supernumerary post ought to have been created.

5.7 For that the impugned order could not have been issued giving retrospective effect to the termination of the services of the Applicant in the IAS.

5.8 For that the impugned order having been passed behind the back of the Applicant without giving him any opportunity of being heard in gross violation of the principles of natural justice and the same being devoid of principles of justice, fair play and equity is not sustainable.

5.9 For that the impugned order having been passed in a most arbitrary and illegal manner with the sole purpose of giving undue benefit to the dearer and nearer of the Respondents and the same having the effect of unsettling the settled position and thereby prejudicially affecting the service career of the Applicant, same is not sustainable in the eye of law.

5.10 For that the Respondents could not have used the judgment of the Hon'ble Gauhati High Court as a tool to give undue advantage to some of the officers and in the process sat over the judgment of the Hon'ble Court towards issuance of the impugned order.

5.11 For that in any view of the matter, the impugned order is not sustainable and liable to be set aside and quashed.

[Signature]

6. DETAILS OF REMEDIES EXHAUSTED :

That the Applicant states that he has got no other efficacious remedy than to approach this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, authority or any other Bench of this Hon'ble 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 this application be admitted, Records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted ; and on perusal of the Records and after hearing the parties on the causes that may be shown, the following reliefs be granted :

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- 8.1 To set aside and quash the impugned letter dated 3.1.2000 communicating the order dated 30.7.99 together with its enclosures (Annexure-5 series).
- 8.2 To set aside and quash the review selections purportedly held for the years 1992-93, 1993-94 and 1995-96 as reflected in the impugned order dated 30.7.99 communicated vide letter dated 3.1.2000 (Annexure-5 series).
- q

8.3. Cost of the application

8.4 Any other relief or reliefs to which the Applicant is entitled and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the O.A., an interim order may please be passed suspending the effect and operation of the impugned order dated 30.7.99 as communicated vide letter dated 3.1.2000 (Annexure-5 series).

10. REMARKS :

The Application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- (i) I.P.O. No. :
- (ii) Date :
- (iii) Payable at : Guwahati

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

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

I, Shri Lall Chand Singhi, IAS, aged about 48 years, son of Shri Surajmal Singhi, presently working as Deputy Director, Lal Bahadur Shastri National Academy of Administration, Mussoorie, do hereby solemnly affirms and verify that the statements made in the accompanying application in paragraphs 1 to 3, 4.1 to 4.4, 4.8, 4.10, 4.12 to 4.18, 4.20 to 4.21, 5 to 12 are true to my knowledge and those made in paragraph 4.5, 4.6, 4.7, 4.9, 4.11 and 4.19 are true as per legal advice. I have not suppressed any material facts.

And I sign this verification on this the 22~~nd~~ day of January 2000 at Guwahati.

Singhi
(L C SINGHI)

ANNEXURE- 1

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL :::A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006
@@@

ORDERS BY THE GOVERNORNOTIFICATION

Dated Dispur, the 3rd January, 1997.

NO. AAI. 32/94/311 : The following notification issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training, New Delhi is republished for general information.

"Notification No.14015/4/96-AIS(I), Dated 30th December, 1996.

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of Regulation 9 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, the President is pleased to appoint the following members of the State Civil Service of Assam to the Indian Administrative Service on probation with immediate effect and to allocate them to the Joint Cadre of Assam-Meghalaya under sub-rule (1) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954 :

<u>Sl.No.</u>	<u>S/Shri</u>
1.	Ananta Kumar Malakar
2.	Kamal Krishna Hazarika
3.	Jones Ingti Kathar
4.	Ritendra Nath Sharma
5.	Laxmi Nath Tamuly and
6.	Lall Chand Singhi

Sd/- R. VAIDYANATHAN
DESK OFFICER "

Sd/- S.R.ISLAM
Deputy Secretary to the Govt. of Assam

Memo No. AAI 32/94/311-A : Dated Dispur, the 3rd January, 1997.
Copy to :-

1. The Accountant General (A&E)/(Audit), Meghalaya, Shillong.
2. The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-28.
3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/ Commissioners & Secretaries/ Secretaries to the Govt. of Assam.

Contd.....

please hand over
all papers addressed to
the S.C., Shri Ingti Kathar
the signature in the register
- 28 -
8/1/97

8/1/97

7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
9. The Agricultural Production Commissioner, Assam, Dispur.
10. All Commissioners of Divisions, Assam.
11. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
12. The Chief Secretary to the Govt. of Meghalaya, Shillong.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
14. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
15. The Desk Officer, Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
16. The Secretary to the Governor of Assam, Dispur.
17. The PPS to Chief Minister, Assam, Dispur.
18. The Spl. Officer to Chief Minister, Assam, Dispur.
19. All Principal Secretaries of the Autonomous Councils.
20. All Deputy Commissioners/ Sub-Divisional Officers.
21. All Heads of Deptt/ All Deptts of Assam Secretariat.
22. The Secretary, State Election Commission, Housefed Complex, Dispur.
23. The Secretary-cum-Registrar, Office of the Lokayukta, Nabinagar, Guwahati.
24. The Supdt., Assam Govt. Press, Bamunimaidan, Guwahati-21 for publication of the above notification in the Assam Gazette.
25. The PS to Chief Secretary, Assam, Dispur.
26. The PS to Addl. Chief Secretaries, Assam, Dispur.
27. All PS to Ministers/ Ministers of State.
28. Officers concerned.

Shri Lal Chand Singh 108.

By order etc.,

Deputy Commissioner.

Dhubari

(S.R. ISLAM)

Deputy Secretary to the Govt. of Assam

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Amraute - 2

NO. AAI. 32/94/443
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL::A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006

ANNEXURE- 2

@@@
Dated Dispur, the 8th January, 1998

To

The Commissioner & Secretary
to the Government of Meghalaya,
Personnel & A.R.(A) Department,
Shillong.

Sub :-

IAS - Fixation of seniority- SCS officers
appointed on the basis of 1995 Select list.

Sir,

I am directed to send herewith a photocopy of
the Govt. of India's letter No. 14014/36/97-AIS(I) dated
22.9.97 by which the year 1990 has been assigned as the year
of allotment of the following officers in IAS for information
and record.

1. Shri M.A. Borbhuyan
2. Shri A.K. Malakar
3. Shri K.K. Hazarika
4. Shri Jones Ingti Kathar
5. Shri Ritendra Nath Sarma
6. Shri Laxmi Nath Tamuli
7. Shri Lall Chand Singhi

Yours faithfully,

(S.R. ISLAM)

Deputy Secretary to the Govt. of Assam

Memo No. AAI. 32/94/443-A:: Dated Dispur, the 8th January, 1998
Copy with a copy of the Govt. of India's above letter to :-

1. The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-28.
2. Shri M.A. Borbhuyan, IAS, Deputy Commissioner, Dhemaji.
3. Shri A.K. Malakar, IAS, Commissioner of Labour, Assam, Guwahati.
4. Shri K.K. Hazarika, IAS, Commissioner, Guwahati Municipal Corporation, Panbazar, Guwahati.
5. Shri J.I. Kathar, IAS, Joint Secretary to the Govt. of Assam, Planning & Development Department and Director, Monitoring & Evaluation, Assam, Kahilipara, Guwahati.
6. Shri Ritendra Nath Sarma, IAS, Joint Secretary to the Govt. of Assam, A.R. & Training Department, Dispur.
7. Shri L.N. Tamuli, IAS, Managing Director, Assam Coop. Apex Bank Ltd., Panbazar, Guwahati-1.
8. Shri Lall Chand Singhi, IAS, Professor, Lal Bahadur Shastri National Academy of Administration, Mussoorie, U.P.

By order etc.,

(S.R. ISLAM)
Deputy Secretary to the Govt. of Assam

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Annexure-2A

ANNEXURE-2A

(COPY)

NO. 14014/36/97-ALS(I)
GOVT. OF INDIA
MINISTRY OF PERSONNEL, PG AND PENSIONS
DEPARTMENT OF PERSONNEL & TRAINING

New Delhi, Dtd. 22.9.97

To

The Chief Secretary
Govt. of Assam,
Department of Personnel(Personnel-A)
Assam Secretariat (Civil),
Dispur
Guwahati-781 006

(Kind attention: Shri S.P.Biswas, U.S.)

Sub :-

IAS- Fixation of seniority- SCS officers appointed on the basis of 1995 Select List.

Sir,

I am directed to say that seven SCS officers of Assam State have been appointed to IAS on the basis of the 1995 Select List. Their names, their dates of appointment to IAS, their completed years of SCS which is reckonable for purposes of fixation of year of Allotment are given below:-

S.No. in the order of Select List.	Names	Date of appointment to IAS.	Completed years of SCS services in the post of Dy. Collect-or equivalent
S/ Shri			
1.	Matahir Ali Borbhuyan.	10.2.1997*	21 years
2.	Ananta Kumar Malakar	30.12.1996	21 years
3.	Kamal Kumar Hazarika	30.12.1996	21 years
4.	Jones Ingti Kathar	30.12.1996	21 years
5.	Ritendra Nath Sharma	30.12.1996	19 years
6.	Laxmi Nath Tamuly	30.12.1996	19 years
7.	Lall Chand Singhi	30.12.1996	19 years

* Note :- Shri Matahir Ali Borbhuyan was appointed to the service on 10.2.1997 but has been assigned deemed date of appointment as 30.12.1996 (being the date of appointment of his immediate junior in the Select List) for the purpose of fixation of year of Allotment and inter-se-seniority.

2. The question of fixation of their years of allotment in accordance with the Rule 3(3)(ii) of the IAS (Regulation of Seniority) rules, 1987, as amended on 18.1.88, has been considered. The last of the SCS officers who was appointed to IAS on the basis of previous Select List. Shri Dibakar Saikia

Contd....

has been assigned 1990 as his year of Allotment. Therefore, none of the seven officers mentioned in the table in Para 1 can be given a year of Allotment earlier than 1990.

3. In view of the position explained above, all the 7 SCS officers (from Sl. No. 1-7) as indicated in table of para 1 are assigned 1990 as their year of Allotment in terms of Rule 3(3)(ii) of the IAS (Regulation of Seniority) Rules, 1987.

4. For the purpose of inter-se seniority in the Cadre, all the seven officers in table of Para 1 shall be placed in the same order immediately below Shri A. Som, IAS(SCS:1990).

Yours faithfully,

Sd/- BHARAT PRASAD
Under Secretary to the Govt. of India
Tele No. 301-2285

Copy to :- AIS(III)/EO(PR)/RO(CM)/NIC, DOF&T/Guard File.

Director (C) 21/12/99
- 31 -

Annexure - 3

IMMEDIATE

No.6/17/99-EO(MM-I)
Government of India
Department of Personnel & Training
(Office of the Establishment Officer)

ANNEXURE-3

New Delhi, dated 21st Dec., 1999

OFFICE MEMORANDUM

Reference letter No. 2/2/97-EST, dated 20th July, 1999 of the LBS National Academy of Administration, Mussoorie.

2. The proposal to appoint Shri L.C. Sinchi, IAS (AM:90) as Deputy Director (Deputy Secretary level) in the LBS National Academy of Administration, Mussoorie against a sanctioned post of Deputy Director (DS level), has been approved for the remaining period of his four years tenure from the date of his taking over charge of the post i.e. up to 21.12.2001 or until further orders, whichever event takes place the earliest. He counts his tenure at the Centre w.e.f. 22.12.1997.

21.12.99
(BHASKAR KHULBE)
DIRECTOR

The LBS National Academy of Administration,
Mussoorie,
(Shri B.S. Baswan, Director)

No.6/17/99-EO(MM-I)

Dated 21st Dec., 1999

A copy each is forwarded to:-

1. The Chief Secretary, Govt. of Assam, Dispur.
2. PS to MOS(PP)/Sr.PPS to Secy.(P)
3. JS (Training)/PS to EO/RO(CM)/PA to Dir.(MM)/Guard file.

21.12.99
(BHASKAR KHULBE)
DIRECTOR



Lalchand Singhi, IAS
Professor of Law

लाल बहादुर शास्त्री
राष्ट्रीय प्रशासन अकादमी

(भारत सरकार)

मुम्बई - 218 179

Lal Bahadur Shastri
National Academy of Administration
(Govt. of India)

Mussoorie - 248179 (INDIA)

No. LCS/1/99

ANNEXURE- 4

Group : / ACADEMY
Telex : 0385-243
EPADX : (0135)-632374, 632489,
632405, 632236, 632367
Extn: 428(O) 526(R)
Direct : 0135-630756 (R)
Fax : (0135)-632350, 632720
Web : <http://www.lbsnaa.emet.in>
E-mail : lsinghi@lbsnaa.emet.in

Dear Sir,

2nd September, 1999

**Sub: Confirmation in Indian Administrative Service under the
IAS (Probation) Rules, 1954**

May I crave your leave to submit that I was appointed in the Indian Administrative Service vide Government of India Notification No. 14015/5/96-AIS(I) dated 30th December, 1996 and accordingly I joined the Indian Administrative Service w.e.f. 30.12.1996.

2. Prior to my appointment in the IAS I was appointed as Joint Secretary to the Government of Assam which is a cadre post of IAS in the Chief Minister's Secretariat, Dispur vide Government of Assam Notification No. AAA.6/91/PT-II/8-B dated 13.1.1995 in addition to the post of Managing Director of Assam State Co-operative Marketing and Consumers' Federation Ltd. (STATFED) and accordingly I joined as Joint Secretary on 19.1.1995 and continued to hold the post of Joint Secretary till 12.2.1996.

3. I was transferred from the post of Managing Director, STATFED and substantively appointed as Joint Secretary to the Government of Assam in the Finance Department vide Government Notification No. AAA.61/95/53 dated 11.12.95 and accordingly I joined as Joint Secretary (Finance) on 22.12.1995. Be it mentioned that this post is a cadre post of the IAS.

4. On my appointment as Deputy Commissioner, Dhubri vide Government Notification No. AAA.1/94/PT-I/33 dated 12.2.1996 I handed over the charge of the Office of the Joint Secretary, Finance Department and Joint Secretary in the Chief Minister's Secretariat on 12.2.1996 and joined as Deputy Commissioner, Dhubri on 15.2.1996 in the forenoon. Be it mentioned that the post of Deputy Commissioner, Dhubri is a cadre post of the IAS under the Indian Administrative Service (fixation of cadre strength) Regulations, 1955 read with Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954.

Contd.2/-

CONFIRMATION REPORT

PHONE NUMBER

0332469050

DATE & TIME DURATION TX/RX PAGE RESULTS
JAN 19 13:21 01/43 TX 02 OK

Annexure 5 (SERIES)

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ANNEXURE- 5

Series

REGISTERED A/D

NO. AAI. 32/94/554
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL:::A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006
@@@@@

Dated Dispur, the 3rd January, 2000

To

✓ Shri Lall Chand Singhi,
Professor of Law
Lal Bahadur Shastri National
Academy of Administration,
Mussoorie - 248 179

Sub :-

Review of Select list of 1995-96.

Sir,

I am directed to forward herewith Govt. of India's Order No. F. 14015/24/98-AIS, dated 30.7.99 alongwith its enclosures and corrigendum thereon No.F. 14015/24/98-AIS(I), dated 7.9.99 receipt of which may kindly be acknowledged.

Yours faithfully,

H.N. Sarma 31/1/2000
(H.N. SARMA)
Under-Secretary to the Govt. of Assam

Attested
[Signature]
(U.K. Nair)
Adm. Conto.

ANNEXURE-5

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IMMEDIATE

Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
North Block, New Delhi

E.14015/24/98-AIS(I)

Dated the 30th July, 1999

ORDER

Consequent to the revision of inter-se seniority of the members of the Assam Civil Service by the Government of Assam pursuant to the directions of the Hon'ble Guwahati High Court dated 23.9.1995 in Civil Rule No. 1079/93(L.N. Tamuly & others Vs. State of Assam), a Review Selection Committee was convened by the Union Public Service Commission to reconsider and review the Select Lists of State Civil Service Officers of Assam for appointment to the Indian Administrative Service Assam-dieghalaya Joint Cadre prepared by the Selection Committees which met on (i) 31.3.1993 to prepare the 1992-93 Select List and (ii) 29.3.1994 to prepare the 1993-94 Select List, respectively.

2. The Review Selection Committee met on 18.9.1997 and prepared the Review Select Lists for the years 1992-93 and 1993-94 as aforesaid in supersession of the earlier Select Lists for the relevant period. The Review Select Lists have been approved by the Commission on 18.11.1997.

3. Pursuant to the Review Select List of 1993-94, the Government of India Notification dated 25.5.1995 by which Shri Dibakar Saikia was promoted to the IAS, was rescinded vide Government of India Notification No. 14015/14/97-AIS(I) dated 16.1.1998. It was further provided that Shri Dibakar Saikia shall be considered for inclusion in the next 1995-96 Select List for promotion to IAS.

4. Accordingly, a Review Selection Committee was convened on 8.3.1999 to review the 1995-96 Select List for consideration of promotion of Shri Dibakar Saikia to IAS therefrom. The Review Selection Committee prepared the 1995-96 Review Select List in place of the earlier Select List for the relevant period. The 1995-96 Review Select List was approved by the Union Public Service Commission on 16.7.1999.

5. The 1995 Select List prepared by the Selection Committee which met on 6.2.1996 comprised of the names of 9 Officers listed in Annexure.I The Review Selection Committee reviewed this Select List and prepared the 1995-96 Review Select List containing the names of 9 Officers as in Annexure.II. S/Shri Ananta Kumar Malakar, Kamal Krishna Hazarika, Jones Injeti Kathar, Ritendra Nath Sarma, Laxmi Nath Tamuly and Lall Chand Singhi included at S.No.2 to 7 of the 1995-96 original Select List were appointed to the IAS vide this Department's Notification No.14015/4/96-AIS(I) dated 30.12.1996. Shri Matahir Ali Borbhuyan included at S.No.1 of this Select List provisionally, was appointed to the IAS vide Union Public Service Commission on 27.5.1996 and appointed to the IAS vide GOI Notification No. 14015/4/96-AIS(I) dated 30.2.1997.

Attested
L. K. Nair
Advocate

2

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2. It is generally clarified that this order and Notifications issued on the basis of this order are in supersession of all previous Orders/Notifications/communications of the Central Government in the matter of appointments from the Select List of 1995-96 for Assam to the IAS Assam-Meghalaya Joint

Attested
Lynn Lantz
(C. K. Nain)
Advocate

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...3...

Cadre and determination of Year of Allotment and inter-se seniority in respect of S/Shri Dibakar Saikia, Ritendra Nath Sarma and Laxmi Nath Tamuly in IAS.

(SUDHIR TRIPATHI)
DIRECTOR

To

S/Shri

1. Dibakar Saikia IAS
2. Lall Chand Singhi IAS
3. Ritendra Nath Sarma IAS
4. Laxmi Nath Tamuly IAS

Through the Chief Secretary, Government of Assam.
Dispur, Guwahati.

Copy to the Chief Secretary, Government of Assam.
Dispur, Guwahati (with 5 spare copies), with the request that the Order and Notifications may kindly be served on all the officers concerned under acknowledgement.

Copy to the Secretary, Union Public Service Commission,
Dholpur House, New Delhi - 110001 (Shri Namasivayam, Under Secretary).

R. Vaidyanathan

R. VAIDYANATHAN

Under Secretary to the Govt. of India

D-78

u/s pu (A)
af

Attended
Laxmi Nath
(U. K. Nair)
Advocate

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ANNEXURE I

<u>S.No.</u>	<u>Name of the Officer</u> <u>(S/Shri)</u>
1.	Matahir Ali Borbhuyan
2.	Ananta Kumar Malakar(SC)
3.	Kamal Krishna Hazarika(SC)
4.	Jones Ingti Kathar(STH)
5.	Ritendra Nath Sarma
6.	Laxmi Nath Tamuly
7.	Lall Chand Singhi
8.	Bimalendu Bhattacharjee

ANNEXURE II

<u>S.No.</u>	<u>Name (S/Shri)</u>
1.	Matahir Ali Borbhuyan
2.	Ananta Kumar Malakar(SC)
3.	Kamal Krishna Hazarika(SC)
4.	Jones Ingti Kathar(STH)
5.	Dibakar Saikia
6.	Ritendra Nath Sarma
7.	Laxmi Nath Tamuly
8.	Lall Chand Singhi
9.	Bimalendu Bhattacharjee

Attested
Luni
(U.K. Nair)
Advocate

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Annexure -III

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

No.F.14015/24/98-AIS(I)

Government of India

Ministry of Personnel, P.G. and Pensions

Department of Personnel & Training

North Block, New Delhi

New Delhi, Dated the 30th July, 1999.

NOTIFICATION

The appointment of the Shri Lall Chand Singh of Assam Civil Service to the Indian Administrative Service in Government of India Notification No.F.14015/4/96-AIS(I) dated 30.12.1996 is hereby rescinded, in terms of Government of India, Ministry of Personnel, Public Grievances & Pensions order No. 14015/24/98-AIS(I) dated the 30.7.1999.

R. Vaidyanathan

(R. VAIDYANATHAN)

Under Secretary to the Govt. of India

To

The Manager,
Government of India Press,
Faridabad (Haryana).

No.F.14015/24/98-AIS(I)

Dated the 30th July, 1999.

1. The Chief Secretary, Government of Assam, Guwahati-781006, with a spare copy for onward transmission to the officer concerned etc.
2. The Accountant General, Assam, Guwahati-781006
3. The Chief Secretary, Government of Meghalaya, SHILLONG.
4. The Secretary, Union Public Service Commission, Chholpur House, New Delhi.
5. E.O. to the Government of India, New Delhi.

R. Vaidyanathan

(R. VAIDYANATHAN)

Under Secretary to the Govt. of India

Attested
Ami
(w.k. nair)
Advocate

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

No.F.14015/24/98-AIS(I)
Government of India
Ministry of Personnel, P.G. and Pensions
Department of Personnel & Training
North Block, New Delhi

New Delhi, Dated the 30th July, 1999.

NOTIFICATION

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, read with sub-regulation (1) of Regulation 9 of the IAS (Appointment by Promotion) Regulations, 1955, the President is pleased to appoint Shri Dibakar Saikia, a member of the Assam Civil Service to the Indian Administrative Service with effect from the 30th December, 1996, on probation, until further orders and to allocate him to the Cadre of Assam-Meghalaya Joint Cadre under sub-rule (1) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954.

R. Vaidyanathan

(R. VAIDYANATHAN)

Under Secretary to the Govt. of India

To

The Manager,
Government of India Press,
Faridabad (Haryana).

No.F.14015/24/98-AIS(I)

Dated the 30th July, 1999.

1. The Chief Secretary, Government of Assam, Guwahati-781006, with a spare copy for onward transmission to the officer concerned etc.
2. The Accountant General, Assam, Guwahati-781006
3. The Chief Secretary, Government of Meghalaya, SHILLONG.
4. The Secretary, Union Public Service Commission, Dhola House, New Delhi.
5. E.O. to the Government of India, New Delhi.

R. Vaidyanathan

(R. VAIDYANATHAN)

Under Secretary to the Govt. of India

Attested
Ami
(U.K. - wair)
Advocate

ANNEXURE-5 Series

IMMEDIATE *u*

- 10 -

Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
North Block, New Delhi

F.14015/24/98-AIS(I)

Dated the 7th September, 1999

CORRIGENDUM

In Government of India order No. F.14015/24/98-AIS(I) dated 30.7.1999 in Annexure-I after S.No.8, the following entry may be added.

"
9. Shri Khagendra Nath Suragochain.
"

R. Vaidyanathan

R. VAIDYANATHAN

Under Secretary to the Government of India

To

S/Shri.

1. Dibakar Saikia IAS
2. Lall Chand Singhi IAS
3. Ritendra Nath Sarma IAS
4. Laxmi Nath Tamuly IAS

Through the Chief Secretary, Government of Assam,
Dispur, Guwahati.

Copy to the Chief Secretary, Government of Assam,
Dispur, Guwahati (with 4 copies). Lr No. AAI-32/99/550 dt. 1.9.99
refers.

Copy to the Secretary, Union Public Service Commission,
Delour House, New Delhi - 110001 (Shri Nagasivayan, Under
Secretary).

R. VAIDYANATHAN

Under Secretary to the Govt. of India

*Attested
Luni Pomb
(u. n. wain)
Associate*

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ANNEXURE 6

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1. Date of application for the copy.	2. Date fixed for notifying the requisite number of stamps and follow.	3. Date of delivery of the requisite stamps and follow.	4. Date on which the copy was ready for delivery.	5. Date of making over the copy to the applicant.
21.3.95	21.3.95	21.3.95	21.3.95	21.3.95

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

CIVIL RULE NO.1079/1993

THE 20TH DAY OF MARCH, 1995

BEFORE

HON'BLE MRS JUSTICE M SHARMA

PETITIONERS

1. Shri Laxmi Nath Tamuly, ACS
S/o-Shri K Tamuly, Director
of Small Savings, Rajgarh
Link Road, Guwahati-24

2. Shri Lalchand Singhi, ACS
S/o-Surajmal Singhi, Director,
Organisation & Method, Assam,
Civil Secretariat, Dispur,
Guwahati-6

INTERVENORS

3. Shri RN Sarma, ACS
Director, MAD, Guwahati-

4. Shri Bimalendu Bhattacharya,
ACS, Managing Director, ASDC
for SC Ltd, Guwahati-6

5. Shri HN Bhuyan, ACS, Director,
Cultural Affairs, Guwahati-

6. Shri KN Buragohain, ACS,
Director of Welfare of Scheduled Caste
Guwahati-6

7. Shri Nandeswar Nath, ACS
Managing Director, ARTFED, Guwahati-1

8. Shri DN Saikia, ACS
Secretary, APSC, Guwahati-5

9. Shri PR Das, ACS
Managing Director, APTDC, Guwahati-5

10. Shri JC Goswami, ACS
Director, Elementary Education,
Guwahati-18

Contd.....2/

93-99

24/3/95

95-96

11. Md Alauddin, ACS
Director, ASCRDA, Guwahati-6

12. Shri N Haque, ACS
Secretary, State Election Commission,
Assam, Guwahati-6

13. Shri S Thadou, ACS
Director, Organisation and Method,
Dispur, Guwahati-6

14. Shri RK Das, ACS
Director of Welfare of Tea and
Ex-Tea Garden Tribes, Guwahati-5

15. Shri Tanu Singh, ACS
Managing Director, AFDC, Guwahati-3

16. Shri Bhaba Gogoi, ACS
Director of Sericulture, Guwahati-6

17. Shri BK Pegu, ACS
Director, Fisheries, Guwahati-1,

18. ABM Eunes, ACS
Director, WPT & BC, Guwahati-5

19. Shri BK Hazarika, ACS,
Director, AIRTSC, Guwahati-22

20. Shri MC Brahma, ACS
MD, AGMC, Guwahati-21

21. Shri Nava Kumar Chetia, ACS
D.L.R. AR, Guwahati-6

By advocates

: Mr PK Goswami,
Mr AK Bhattacharyya,
Mr CK Bhattacharjee,
Mr SN Sarma,
Mr P Prasad,

RESPONDENTS

: 1. The State of Assam,
represented by the Secretary,
Personnel(A) Department,
Dispur, Guwahati-6

2. The Chief Secretary to the
Govt of Assam, Dispur, Guwahati-6

3. The Secretary to the Govt of Assam,
Personnel(A) Department, Dispur,
Guwahati-6

4. The Assam Administrative Tribunal,
Guwahati-1

Contd.....3/

5. Shri Jitendra Nath Goswami, ACS
Director, Border Areas, Assam

6. Shri Keshabananda Dihingia Deka,
Secretary, APSC, Assam, Guwahati

7. Shri Nalini Charan Sarma, ACS
Addl Director, Land Acquisition,
Requisition and Reforms, Jorhat

8. Shri Dharma Kanta Sarma, ACS
Director, Official Language
Implementation, Gauhati Technology
Department, Dispur, Gauhati-6

9. Shri Barun Hom Choudhury, ACS
Officer in Special Duty,
Central University, Silchar,
District Cachar

10. Shri Dinabandhu Bhattacharjee,
ACS, Addl Deputy Commissioner, Dhubri

11. Shri Godeswar Chutiya, ACS
Managing Director, Assam State
Development Corporation for other
Backward Classes, Gauhati

12. Shri Nawab Akramul Hussain, ACS
Deputy Secretary, Town & Country
Planning Deptt, Dispur, Gauhati-6

13. Shri Makhan Lal Nath, ACS
Project Director, DRDA, Haflong,
District NC Hill

14. Shri Mriganka Mohan Das, ACS
Addl Deputy Commissioner, Cachar

15. Shri Tabdul Hussain, ACS
Deputy Secretary, Agriculture Deptt,
Dispur, Guwahati-6

16. Shri Arunoday Choudhury, ACS
Director, Land Requisition, Acquisition
and Reforms, Ambari, Gauhati-1

17. Shri Hari Prasad Chaliha, ACS
Principal Private Secretary to the
Chief Minister of Assam, Janata Bhawan,
Dispur, Guwahati-6

18. Shri Tara Nath Goqoi, ACS
Managing Director, Boitamari
Spinning Mills, Dist-Bongalgaon

19. Shri Trailokya Nath Barkakati, ACS
Addl Deputy Commissioner, Diphu,
Karbi Anglong District, Assam

Contd.....4/

20. Shri Debabrata Chakravarty, ACS
Deputy Secretary, Political Department,
Govt of Assam, Dispur, Gauhati-6

21. Shri Subodh Ranjan Shyam, ACS
Deputy Secretary to the Govt of Assam,
Excise Department, Dispur, Gauhati-6

22. Shri Sushil Kumar Das, ACS
Deputy Secretary to the Govt of Assam,
WPT & BC Department, Dispur, Gauhati-6

23. Shri Dimbeswar Bora, ACS
Deputy Secretary to the Govt of Assam,
Labour Department, Dispur, Gauhati-6

24. Union of India

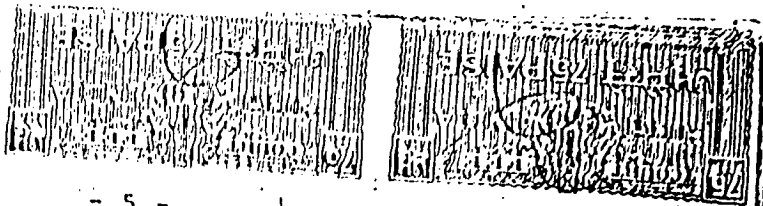
By advocates

: Mr SN Bhuyan, Advocate General, Assam
Mr BK Das,
Dr YK Phukan,
Mr TN Srinivahan,
Mr D Das,
Mr B Banerjee, GA

THIS CIVIL RULE HAVING BEEN HEARD LASTLY
ON THE 24TH DAY OF FEBRUARY, 1995 THE
COURT PASSED THE FOLLOWING:

J U D G E M E N T

This writ petition has arisen against the judgement and order dated 24.3.93 passed by the Assam Administrative Tribunal in Case No.135/ATA/93 dismissing the appeal filed by the petitioners and challenging the notification dated 18th July, 1978 issued by the Secretary to the Govt of Assam, Personnel(B) Department(Annexure-IV), Notification dated 27th May, 1992 issued by the Secretary to the Govt of Assam, Department of Personnel, Dispur (Annexure-XI), Notification dated 29th May, 1992 issued by the Deputy Secretary to the Govt of Assam, Department of Personnel-A, Dispur(Annexure-XII) and against the order dated 1.12.92 issued



by the respondent No.3 under memo No.AAP.102/92/303-A(Annexure-XVII) to the writ petition

2. Both the petitioners belong to Assam Civil Service(Class-I) who were appointed on 20.4.77 and 2.5.77, respectively alongwith 24 other candidates (1977 batch) on probation. Subsequently they were promoted to the Senior Grade of the Assam Civil Service(ACS) as per the provisions of Assam Civil Service Rules, 1960 (for short the Rules, 1960) in March 1986 and presently serving in Senior Grade posts.

3. The respondents No.5 to 23 all initially belonged to the ACS (Class-II) and under the provisions of Rules, 1960 they can be promoted to the ACS(Class-I). During 1977 the Govt of Assam in the Department of Personnel vide notification No.AAA.5/76/87 dated 26.8.77 promoted six officers from ACS(Class-II) to ACS(Class-I)(Junior Grade). During 1978 no officer was recruited to ACS(Class-I) from confirmed members of ACS(Class-II) either by promotion or by direct recruitment. Rule 4 of the Rules, 1960 lays down method of recruitment in the Civil Service which is made by (i) competitive examination conducted by Assam Public Service Commission(APSC), (ii) by promoting confirmed members of ACS(Class-II) and (iii) by selection, in special cases from amongst the persons other than members of ACS(Class-II), (iv) Government is also empowered to adopt such method of recruitment to the service, other than those specified in the above Rules in consultation with the Assam Public Service Commission. The ratio of recruitment was 30% by promotion of the total number of vacancies to be filled in the year. This ratio was made 50% in both direct recruitment and by promotion

by amending Rule 4(1) of the Rules, 1960 vide notification No.ABP.163/69/24 dated 18.7.78 in exercise of powers conferred by the proviso to Article 309 of the Constitution of India with retrospective effect from 1.4.1964(Annexure-IV to the writ petition). After such amendment, in the year 1979 on the recommendation of the selection committee, the Personnel Department vide notification No.AAP.231/77/38 dated 26.9.79 promoted 28 officers belonging to ACS (Class-II) to ACS (Class-I) and placed them on probation with effect from 8.10.79(Annexure-V to the writ petition). There were no direct recruits to the service. In the year 1980 vide notification No.AAP.94/80/20 dated 30.12.80 government initially promoted 32 officers from ACS(Class-II) to ACS(Class-I) but the same was modified vide notification No.AAP.94/80/20 dated 4.4.81 and 35 officers belonging to ACS(Class-II) were promoted to ACS(Class-I)(Junior Grade) and respondent No.23 was also included and accordingly promoted with effect from 30.12.80(Annexure-VI). During 1960 to 1977 total 77 appointments were made by direct recruitment under Rule 4(1)(a) of the Rules, 1960. On the other hand during this period 59 officers from ACS (Class-II) were promoted to ACS(Class-I). It is contended by the petitioners that against the 77 vacancies filled up by direct recruitment upto 1977 only 34 officers should have been recruited by Govt by way of promotion from ACS(Class-II) to ACS(Class-I) which have in the ratio of 30% (ie, $77 = 34\% = 70\% = 30\%$).

4. In addition to the recruitment by promotion from ACS(Class-II) to ACS(Class-I) under Rule 4(1)(b)

contd.....7/

the Govt also promoted officers from ACS(Class-II) to ACS(Class-I)(Jr Grade) on ad hoc basis being 98 in number under the Assam Civil Service (Class-I)(Special Recruitment) Regulations, 1969 (For short the Regulation, 1969).

5. The stand of the petitioners in this case is that being direct recruits in 1977 by virtue of their appointment under Rule 4(1)(a) they are senior to the respondents No.5 to 23 under Rule 19 of the Rules, 1960. Rule 19 of the Rules, 1960 provides for fixing seniority amongst the members of the service in the junior grade which is quoted below:

"19. Seniority-(1) The seniority of members of the service shall be determined according to the order of merit in the list prepared under sub rule(5) of Rule 5 or approved under Rule 8, if the members join their appointments within 15 days of the receipt of the order of appointment." Provided that in case a member is prevented from joining within the said period of 15 days by circumstances of a public nature or for reasons beyond the control, the Government may extend it for a further period of 15 days. If the period is not so extended and the member of the service joins within the period extended under sub rule(2) of Rule 15, his seniority shall be determined in accordance with the date of joining:"

"Provided further that the members of the service recruited in a year under Clauses(b) and (c) of Rule 4 shall be senior to members recruited in the same year and in the same batch under Clause (a) as Rule 4."

"(2)The members of the service recruited on the same date under sub rule(1) of Rule 4 shall be senior to the members of the service recruited under sub rule(2)of the Rule 4."

"(3)If the confirmation of a member of the service is delayed beyond two years of probation on account of his failure to qualify for such confirmation he shall lose his position in the order of seniority vis a vis such of his juniors as may be confirmed earlier than him. His original position shall, however, be restored on his confirmation subsequently."

6. Rule 27 of the Rules, 1960 confers power on the Governor to dispense with any Rules which is quoted below:

"Power of the Governor to dispense with or relax any Rules- Where a Governor is satisfied with the purposes of any of this Rules given undue justice it may be ordered to dispense with or relax the requirement of the Rule to such extent and subject to such condition as it may be considered necessary for holding that the case is a just and equitable manner provided that the case of any person shall not be dealt with any local laws available to him that may be provided by any of the Rules."

7. Apparently the petitioners are direct recruits of 1977 under Rule 4(1)(a) of the Rules, 1960 and respondents are promotees of 1979 (respondent No.23 is a promotee in 1980). The Government (Department of Personnel) by notification No.12/78/1 dated 20.12.78 circulated a provisional seniority/gradation list of

- 45 -

- 9 -

ACS(Class-I) officers as on 1978 and objections were called for(Annexure-VII to the writ petition). In the said list six officers who were promoted in the year 1977(vide Annexure-III) were placed from serial No.246 to 251 and the two petitioners were shown at serial No.257 onwards alongwith other batchmates of 1977. It is pointed out that as the respondents No.5 to 23 were still in the ACS(Class-II) they were not included.

8. Another list published on 29.8.80(Annexure-VIII) in which six promotee officers of 1977 were shown against serial No.240 to 245 and names of the two petitioners alongwith their 1977 batchmates were shown at serial No.251 to 281. In this list the names of the respondents No.5 to 23 were shown much below the petitioners between serial No.286 to 306 as they were all promotees of the year 1977 and 1980. Similar gradation lists were published in 1981 and 1986 showing the two writ petitioners above all the respondents No.5 to 23. Again in the gradation list published on 1.1.87(Annexure-IX to the writ petition) both the petitioners were shown alongwith their batchmates between serial No.132 to 166. Petitioner No.1 Shri Laxmi Nath Tamuly was under suspension during the period from 1983 to 1986. Therefore his name was included in the list of 1987 afterwards. The fact of showing both the petitioners in the same serial No.135 has been clarified by Mr Bhattacharyya, learned counsel for the petitioner by submitting two notifications being notification No.AAA.43/77/Pt/35 dt 3.2.86 and dt 23.4.86 (Memo No.AAA.43/77/Pt/135-A) by which period of suspension/absence with effect from 31.1.83(afternoon) to 4.2.86 was revoked and treated as on duty for all purposes and the same was issued

Contd.....10/

with the concurrence of Finance(Estt-A) Deptt vide their endorsement No.FE.409/86 dt 11.4.86. In this list also name of the respondents were shown much below the names of the two petitioners.

9. By notification No.AAP.25/88/11 dated 21.7.86 again Rule 4(1) was amended substituting the following:

"2.In the principal Rules, in Rule 4-
(a)for clause(b)of sub rule(1),the following shall be substituted, namely :-

(b)by promotion from amongst the ACS(Class-II) officers who have completed 5 years of continuous service in ACS(Class-II) on the first day of January of the year in which recruitment is made.

(b)for the proviso to sub rule(1)the following shall be substituted, namely :-

Provided that the number of persons recruited under Clause(b) in any calender year shall be such as may be determined by the Governor. Provided further that the persons receruted under Clause(c) shall not in any year exceed two and shall not at any time exceed 5 per cent of the total strength of the cadre. "

10. Similarly another list in 1992 was published and in the said list also name of the two petitioners and other direct recruits of 1977 batch were shown between serial No.42 to 70 and the respondents No.5 to 23 were shown at serial No.71 onwards(Annexure-X).

Contd....11/1.

11. By another subsequent notification, being notification No.AAP.173/91/93 dt 27.5.92(Annexure-XI to the writ petition)which, is impugned in the writ petition, respondents No.5 to 23 alongwith seven others were shown to have been promoted from ACS(Class-II) to ACS(Class-I)(Jr Grade) with effect from 31.12.77 and their seniority was directed to be fixed just above Smti Gayatri Baruah, ACS, seniormost officer of 1977 direct recruit batch. The said notification partially modified the earlier Govt notification promoting the private respondents to Class-I. By the said notification retrospective promotion of the officers was made in relaxation of FR 17(i) in FR 5(A). Out of the seven persons apart from the private respondents No.5 to 23 included in the list, one person who came first in the said list had already expired, serial No.2 to 7 and serial No.27 had already retired from service on the date of notification. By another partially modified, notification No.AAP.173/91/36 dt 29.5.92(Annexure-XII) respondents No.5 to 23 were promoted to the Senior Grade of ACS(Class-I) with effect from 18.3.86 in exercise of powers under FR 5A. From the above discussion, it is seen that apparently the respondents No.5 to 22 were all promotees of 1979 and the respondent No.23 was promoted to Class-I only in 1980 by the impugned notification. These private respondents were shown to have been respectively promoted with effect from, 31.12.77 placing them above the petitioners in order of seniority. On enquiry petitioners were informed that the impugned order was passed in pursuance of the High Court's order passed on 15.9.91(Annexure-XIII)in Civil Rule No.3887/91. By this court's order dated

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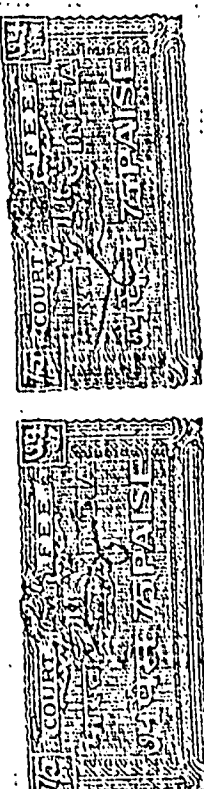
15.9.91 the writ petition was disposed of with direction to dispose of the representation dated 9.8.91 filed by the respondent No.21 and 16 as writ petitioners of that Civil Rule, within a period of two months by a speaking order and apparently petitioners were not parties to that Civil Rule. The respondent No.21 and 16 who were the writ petitioners in the said Civil Rule No.3887/91 challenging the transfer and posting of one Smti Gayatri Baruah, the seniormost officer of 1977 direct recruitment batch as the Director of Language Implementation which is Senior Grade post of 1977 batch of ACS(Class-I) to which the petitioners belonged to. Their case was that though they were promoted to the ACS(Class-I) in 1979 they ought to have been promoted in 1977 and that without fixing the seniority, Govt had appointed said Gayatri Baruah by notification dated 7.8.91 superseding the writ petitioners (respondents No.16 and 21 in the instant case). In the said writ petition their prayer was that they should be treated as promotees of 1977 and be placed above the respondents (the 1977 direct recruit batch). Though the representation was directed to be disposed of within two months from receipt of the High Court's order, the same was disposed of only on 30.5.92, on the basis of prayer by the Govt for extension of time till 30.5.92. It is to be noted that the impugned order/notification of promotion was published on 27.5.92, i.e., three days prior to disposal of the representation. As stated above respondent No.21 Shri Subodh Ranjan Shyam alongwith 27 officers have been given benefit of retrospective promotion from ACS(Class-II) to ACS(Class-I)(Jr Grade), with effect from 31.12.77, with fixation of their seniority just

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above the nonformost direct recruit of 1977(Annexure-XIV). Petitioners being aggrieved submitted appeal before the Governor under Rule 16 of the Assam Services (Discipline and Appeal) Rules, 1964. While the appeal was pending petitioners came to know that a meeting of the selection committee, constituted under Regulation 3 of the Indian Administrative Service(Appointment by promotion) Regulation, 1956 was going to be held in the month of August, 1992 and that officers from the ACS in order of seniority fixed by the impugned order dated 27.5.92(Annexure-XIII) were to be considered and in that view of the impugned notification(Annexure-XIII) the petitioners case would not come within the zone of consideration for their promotion to the IAS. Some of the petitioners of this writ petition ^{of the} 1977 direct recruit batch filed Civil Rule No.1471/92 challenging the retrospective promotion order and fixation of seniority of the private respondents. By order dated 14.7.92 the writ petition was disposed of directing the Govt to take up for consideration the appeals pending before the Governor expeditiously and further direction was given to forward the names of the persons under the zone of consideration to the selection committee for promotion to the IAS only after disposal of the appeal (Annexure-XVI). The appeal was heard and disposed of after hearing both the sides. Petitioners' stand, in the appeal was that the petitioners were all along shown as seniors by the successive gradation list from 20.8.80 to 1.3.92 to which the private respondents did not raise any objection to the seniority list and therefore question of seniority between the petitioners and the private respondents was settled, and that there

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was no justification whatsoever to reopen the matter and place the junior private respondents above the petitioners with retrospective effect. By the order dated 1.12.92(Annexure-XVII) the appeal was rejected. Being aggrieved appeal being No.ATA.135/92 was filed before the Assam Administrative Tribunal and the same was rejected by order dated 24.3.93(Annexure-XVIII).



12. The respondents No.1 to 4 filed affidavit in opposition through Shri RS Chakravorty, Deputy Secretary to the Govt of Assam. The averments made by the respondent are that the writ petition is not maintainable as validity of the notification ADP.163/69/24 dt 18.7.78 has been challenged by the writ petitioners in the year 1993, i.e., after a lapse of 15 years, and on the same ground the challenge of the subsequent notification which were accrued from the said notification cannot sustain. Further averment is that as per amendment of the Rule 4(1), 28 officers should have been initially given the due benefit of promotion and seniority respectively but could not be done due to certain constraints (underline added). Only six officers were promoted in 1977 while the number of direct recruits were 34.

13. further averment is that The respondents No.5 to 23 were promoted to ACS(Class-I) with effect from 8.10.79, that correct position of direct recruitment to the ACS(Class-I)(Jr Grade) were 81 in number from the year 1964 to 1977; that as the private respondents were not initially given due benefit of promotion and seniority, they were treated to be junior to the writ petitioners prior to the retrospective promotion given to them; that no gradation list as claimed by the writ petitioners

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has been published. The ground for not showing the seniority of the private respondents were given by the respondents/ as they were not initially given the due benefit of promotion and seniority ~~XXXXXXXXXXXX~~ Govt is that they were treated to be juniors to the petitioners prior to their respective promotion. Regarding claim of seniority of the petitioners/ ^{Govt} respondents' stand is that seniority of the petitioners vis a vis the private respondents was not settled before their respective promotion; that when the private respondents were promoted with retrospective effect, the inter se seniority of all concerned was settled and in that view of the matter petitioners cannot have any grievance; that the petitioners found their respective places within the zone of consideration of selection committee which met on 31.3.93 for preparation of the select list for appointment to IAS by promotion. Petitioners' allegation have been decried, as while they have expected to be selected to the IAS they should not nurture any grievance against the private respondents. Defending the retrospective promotions, the official respondents have asserted that as it was decided to promote 28 officers retrospectively from ACS(Class-II) to ACS(Class-I)(Jr Grade) with effect from 31.12.77 against direct recruitment of 1977, the three SC officers did not deserve retrospective promotion. The officer who was superseded in promotion from ACS (Class-II) to ACS(Class-I)(Jr Grade) in 1977 and 1979 due to pendency of proceeding was subsequently promoted retrospectively from 1.9.77 on conclusion of the departmental proceeding in his favour. Therefore, 27 officers deserved retrospective promotion against shortfall vacancies in the promotion quota against direct recruit-

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ment of that year. Accordingly 27 officers were promoted retrospectively from 31.12.77. Of them 25 officers belong to unreserved categories out of the 28 officers initially promoted in 1979 and two officers whose names were within the vacancies number in the recommended and approved list of 1979 but were promoted in 1980 due to their elimination in 1979 by the SC officers.

14. Respondent No.20 did not file any affidavit but the Govt has filed an application praying for permission to recommend his name (who is holding the post of Joint Secretary, Political Department) to the Govt of India for appointment in IAS by promotion. Learned Advocate General insisted to allow the Govt to appoint the respondent No.20 provisionally subject to the result of the writ petition. This court has expressed its reluctance on the ground that, as respondent No.20's case cannot be decided separately on the face of the claim of the writ petition, entire matter requires decision on merit. Therefore the writ petition has been taken for hearing.

15. Mr RP Sharma, learned counsel for respondent No.20 in his submission relied on the affidavit of official respondents and filed counter argument also. From the submission of the learned counsel it emerges that promotion is one of the method of recruitment in ACS(Class-I) cadre in the senior grade which is "initial grade". The enhancement of 50% relating to promotion under Rule 4(1)(b) against the total annual vacancies filled up by other method of recruitment. This method was precedent prior to the notification

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No.AAA.25/86/11 date 21.7.87 by which Govt brought more relaxation regarding qualifying years of promotion and number of vacancies to be filled up by Govt. That from 1963 to 1975 the interest of ACS(Class-II) confirmed and otherwise eligible officers' promotional aspect under Rule 4(1)(b) was continuously neglected. That Govt changed the method of recruitment in ACS(Class-II) by resorting different standard of examination unlike combined competitive examination which was prevalent prior to 1975. That Govt resorted to bulk recruitment in ACS(Class-I), which was started from 1975 onwards without resorting to better standard as prevalent before 1975. That due to this bulk appointment an officer recruited in 1964 qualified to be promoted to ACS(Class-I) in 1972, but the Govt kept over the matter resulting huge backlog to accumulate and this prejudiced and effected the interest of the Class-II officer and to mitigate and neutralise the injustice and discrimination, enhanced the promotion quota to 50%. That with a view to mitigate the injustice done to the Class-II officers, the Govt amended the Rule in 1978. It is further submitted that, had they been inducted in the Class-I by the year 1975- they would have been senior to the direct recruits of 1977, ie, the writ petitioners. It is further submitted that the claim of the petitioners - that the officers were given promotion beyond the quota during the period prior to 1977 and that persons appointed to ACS(Class-I) under Rule 4(2) were also promoted from Class-II to Class-I ^{has no basis} but the correct position is that recruitment under Rule 4(2) is distinct and different and cannot be doubted as promotion under Rule 4(1)(b) of the Rules, 1960; that appointment under Rule 4(2) is direct while

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under Rule 4(1)(b) are by promotion and therefore the petitioners' claim is not maintainable.

16. After justifying the retrospective promotion the official respondents have taken the ground that when the private respondents were given their due promotion their seniority in the junior grade had been considered and thereafter they were placed above the petitioners. Attempt has been made to show that this was done to implement this court's order to dispose of the representation. Further, attempt has been made to show that 28 officers' promotion was made against the shortfall of vacancies in the promotion quota against direct recruitment of 1977. Therefore SC/ST officers had to be promoted due to the coming into force of the Assam Scheduled Caste and Scheduled Tribes (Reservation of vacancies in Service and posts) Act, 1979 though they were much below of the seniority list.

17. The private respondents No.5 to 23 have filed their joint counter affidavit which has been sworn by respondent No.5. The gist of their averments is that in view of the amendment raising the quota to 50% backlog vacancies were created from 1964 onwards and it was obligatory on the part of the Govt to effect promotion in those vacancies with necessary correction in the year of promotion and consequent seniority position from the eligible members of ACS(Class-II) and therefore they were entitled to be considered for promotion in those vacancies occurring yearwise from 1964 onwards with fixation of their inter se seniority position. However they were given retrospective promotion in 1979 with effect from 8.10.79 and subsequently given retrospective promotion with effect from 1977 against

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equal number of direct recruits of 1977. The stand of the private respondents is that though they were senior in appointment, were not given their due benefit of promotion and seniority and as such, they were shown junior to the petitioners. They also claim that they were entitled to be promoted much before 1977 but, however, they were given retrospective promotion against the direct recruitment of 1977 and thus they became senior to the petitioners; that they satisfied the criteria for promotion even before 1977 itself and they were duly recommended and approved for promotion by selection committee. Their non promotion in due time was not due to their fault which was also realised by the Govt and therefore cannot be deprived of their benefits.

18. With this backdrop of the case, the point for consideration comes before this court is whether the retrospective promotion of the private respondents by the impugned two notifications has affected and shadowed the right and interest of the petitioners and in that view of the matter, whether the amended Rule 4(1) of the Rules, 1964 required to be struck off.

19. Apparently, the petitioners' claim for seniority above the private respondents comes out from the fact that they were direct recruits of 1977 batch to ACR(Class-I)(Jr Grade) while the private respondents were ACS(Class-II) officers ^{at the relevant time} and by dint of direct recruit above the private respondents they have score seniority over the later and that, actually, that position was

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admitted and accepted position by all concerned authority and this fact is conceded from the provisional seniority lists which were never objected or questioned by any concerned including the private respondents who alleged to be aggrieved and effected, by such seniority list.

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20. Admitted position is that the petitioners were direct recruits of 1977 and there was no recruitment either by promotion from confirmed members of the ACS (Class-II) or direct recruit in 1978. The private respondents were given the promotion in view of the amendment made in 1978. Though by the notification dated 26.9.79 retrospective promotion was given their inter se seniority was not determined, stating that "their inter-se seniority will be determined later on". As stated above as per provisional seniority list the petitioners alongwith other persons of 1977 batch were shown senior to the private respondents being direct recruits. In 1978-79 there was no direct recruit to the service and as stated above the private respondents were promotees of 1979 and respondent No.23 was promotee of 1980.

21. As mentioned above the provisional select list (Annexure-VII to the writ petition) was circulated and objections were called showing the names of the petitioners at Sl No.261 and 262 respectively and likewise similar gradation lists in 1980, 1981 and 1986 petitioners were shown above the respondents No.5 to 22. The next gradation of ACS(Class-I) list was published on 1.1.87(Annexure-IX to the petition) and the petitioners with their batchmates were shown between

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S No.132 to 166, while names of private respondents were shown at SI No.167 and 183 and respondent No.23 was shown at SI No.192. In another gradation list published in 1992(Annexure-X) the name of the petitioners and other direct recruits of 1977 were shown above the private respondents. Though the list was provisional, since 1992 petitioners alongwith other direct recruits of 1977 were shown as senior to the private respondents who were serving under the 1977 direct recruits batch for all purposes. From this it appears that the seniority of the writ petitioners alongwith their batchmates of 1977 were settled long back. Apparently by virtue of their seniority in ACS(Class-I) they were eligible for consideration for appointment to IAS in accordance with Indian Administrative Service(Appointment by promotion) Regulation,1955.

22. As alleged this position was changed in view of issuance of the impugned notification dated No.AAP.173/91/33 dated 27.5.92 by which the earlier notifications No.AAP.231/77/38 dt 26.9.79, No.AAP.94/80/20 dt 30.12.80 and No.AAP.94/80/28 dt 4.4.81 were modified and the private respondents were promoted to ACS(Class-I)(Jr Grade) with effect from 31.12.77 and directing their seniority to be fixed just above the senior most person of 1977 batch. The notification No.AAA 7/91/39 dt 15.5.93, a draft gradation list of ACS(Class-I) officers as on 1.1.93 was published fixing the seniority of the private respondents much above the writ petitioners showing the two petitioners at SI No.58 and 59 whereas private respondents were shown at SI No.30 to 54, and called for objections, if any, from the ACS(Class-I).

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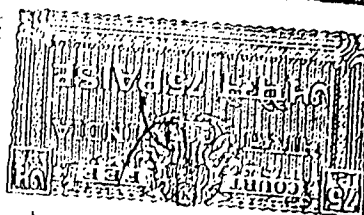
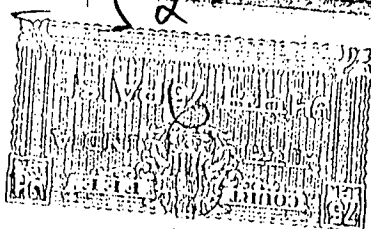
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officers before 30.6.93 and accordingly petitioners filed objection.

23. Challenging the Constitutional validity of the amendment of Rules, 1960 Mr Bhattacharyya, learned counsel for the petitioners submitted that two notifications promoting and fixing seniority of the private respondents over the 1977 batch of direct recruits to ACS(Class-I), including the petitioners, in purported exercise of power under amended Rule 4(1) of the Rules (Annexure-IV) is constitutionally and legally invalid in view of the fact of further amendment made to the aforesaid rule by notification dated 21.7.86 No.AAA.25/86/11). That by 1986 amendment the fixation of quota of promotion of ACS(Class-II) officers to ACS(Class-I) was left to the determination of the Governor and thereby quota of 50% of promotion in ACS(Class-II) officers to ACS(Class-I) repealed and that therefore, 1978 amendment of Rule 4(1) of the Rules was no longer in the statute book on 27.5.92 and 29.5.92, i.e, the dates of issuing notifications promoting the private respondents. That this action of the respondent Govt has demolished the very foundation and towerstone of the "Civil Service" concept as envisaged in part-XV under the caption "service under the Union and the States".

24. Section 27 of the Rules as discussed has conferred undisputable power on the Governor to dispense with or relax any rule where he is satisfied that the operation of any of these rules causes undue hardship in any particular case. The long pending grievances of the private respondents were found cogent who satisfied

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the criteria for promotion even before 1977 itself and they were duly recommended for promotion by the selection committee and apparently bulk recruitment by direct appointment from 1976 onwards to the ACS (Class-I) blocked their avenue to promotion. So far as the question of suitability or any injustice is concerned, the decision entirely rests with the Government. Govt is the sole judge to decide as to whether injustice and hardship be neutralised by amending the service rule with retrospective effect. For discharging this responsibility it is open to the govt to take assistance by amendment of particular service rule. In such a case High Court is not justified to sit as an appellate court and call for the records for reappreciating the notings made in the records. It is settled position of law that where there is no complaint of mala fide on the part of the govt the interference of a writ court in the matter of promotion etc made by the govt is uncalled for. Petitioners' grievance has not emanated from the amended Rule 4(1) of the Rule. Certainly the amended rule was inserted to mitigate the injustice done to the private respondents and it is within the competency of the Governor under the law. In view of the above reason I find no ground to strike of the amendment.

25. In the case of MC Roy -vs- State of Tripura, (1988) 2GLJ 201, legality of promotion of some judicial officers had been raised before this court challenging the retrospective effect of the Tripura Judicial Service (Determination of Seniority) Rules, 1981. It was held by this court that the Rules were framed under Article 309 of

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the Constitution of India authority can alter or modify the conditions of service of govt servants unless it prejudices the service condition of a govt-servant.

26. In the case of Union of India -vs- TR Mahanty & Ors, (1994) 5SCC 450, question was raised regarding promotion given to the persons of reserved category who were superseding the aggrieved petitioner who belonged to general category, by amending Rule 13 of the Rules, Indian Statistical Service (Amendment) Rules, 1989. The persons of reserved categories were promoted against the vacancies reserved for the SC/ST under instructions issued by the Govt of India from time to time. Their promotion was challenged on the ground that under the reservation, in respect of appointments to the service by promotion was not permitted under Rules. The Central Administrative Tribunal allowed the appeal of the respondents holding that the reserved category persons (respondents 2 to 9) in supersation of the claim of the respondent was against the rule but promotion already given was not disturbed but directed that the respondent be deemed to have been promoted to Gr-III from the same date when the reserved category persons were promoted and placed above the respondents in the seniority list of Gr-III. The Apex Court in appeal held that the legislature and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of Executive when a person is deprived of an accrued right vested on him under a statute or under the Constitution

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and successfully challenge the same in court, the legislature cannot take away the said right and the relief obtained by enacting retrospective legislation.

27. In a ~~series~~ series of decisions, the Apex Court ~~which~~ reiterates the legislative competency of the Government to make amendments with retrospective effect. But any deviation which affects the accrued and vested right of the person concerned; judicial review is necessary to set at right such deviation. From the backdrops of the case, as discussed above this court require to review the order of promotion of the private respondents vide notification dated 27.5.92 (Annexure-XI) by which they were promoted with retrospective effect from 31.12.77 from ACS(Class-II) to ACS(Class-I) fixing their seniority above the petitioners. The admitted position is that even in the provisional gradation list dated 1.3.92 the petitioners were shown at Sl No.40 to 72 while private respondents' Serial number was from 71 onwards. But ~~the~~ the impugned notification dated 27.5.92 changed the entire position of seniority of ^{from publishing the last list.} the petitioners which was done within less than three months. The question arises that all the gradation lists all along were provisional, but admittedly being not final they were published for general information subject to objection, if any, from the concerned affected officers. Without finalisation of the seniority list, the impugned notification was published, when the petitioners were under reasonable belief and impression that they were senior to the private respondents. Further this court's direction in Civil Rule No.3887/92 dated 15.9.92 directed the respondent govt to dispose of the representation of

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the respondent No.16 and 21(writ petitioner in the above mentioned Civil Rule) which was disposed of belatedly on 30.5.92, i.e., after issuance of the impugned notifications dated 27.5.92 and 29.5.92. This procedure adopted by the respondent govt speaks of its deviation from the administrative fairness. The allegation of mala fide regarding promotion by amending the Rule in 1978 on the part of the govt may not be tenable from the consideration of the grievances of the private respondents, but allegation of lack of administrative fairness and arbitrariness have its cogent reason to believe from the conduct of the respondent govt by which impugned notifications were issued taking the advantage of the amended Rule. The petitioners were shown senior to the private respondents under Rule 19. The petitioners were promoted to ACS(Class-I)(Sr Grade) in March, 1986. Notification dated 26.8.77 promoted six persons from ACS(Class-II) to ACS(Class-I)(Jr Gr) and similarly the private respondents were promoted to Class-I(Jr Grade) subsequently after such promotion of the petitioners.

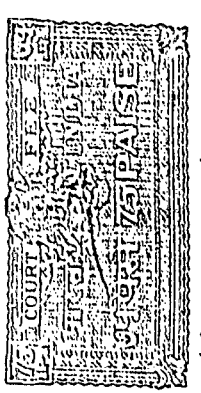
28. In State of Bihar -vs- Akhori Sachindra Nath (AIR 1991 SC 1244) similar point was raised for consideration of the Apex Court. In this case the respondents(writ petitioner in the High Court) challenged the retrospective seniority conferred on the respondents (before the High Court) as arbitrary action, illegal and inoperative. It was held by the Apex Court that person can ^{not} be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely effect others. It was settled that amongst members of the same grade seniority is recorded from

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the date of their initial entry into the service. Apparently, in the case in hand when the petitioners were recruited directly on that date the private respondents were not borne in the service in the same status and category and status/ ^{of the petitioners} was fixed as direct recruits. There is force in the case of the petitioners that the impugned notification/order was purported to affect the seniority of the petitioners in the service for which they cannot come to the zone of consideration for promotion for the IAS. This impugned notification has given the priority to the promotees/private respondents to the prejudice of the petitioners.



29. However, from the counter affidavit of the private respondents and submissions made on behalf of respondent No.20 it is attempted to establish that they have a cogent grievance for promotion which was considered by the government and they were accordingly promoted with retrospective effect. Mr Bhattacharyya, learned counsel who insistently submitted that seniority has to be reckoned amongst the officials working as ACS(Class-II) of promotees from the date of their appointment to the said service; that on the ground of mitigation of injustice under rule 19 govt cannot deviate from the mandatory provisions of law; that resorting on the power and competency to amend the Rules by giving retrospective promotion, respondent govt cannot utilise the impugned notifications for the arbitrary purpose which has affected the vested, accrued rights of the petitioners and these submissions have sufficient force in the light of the decisions of the Apex Court.

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30. In the case of Akhori Sachindra Nath (Supra), the Apex Court in definite terms held that the order of promotion given by the govt to the private appellants (private respondents in the writ petition) retroactively by fixing seniority could not be given under any circumstances, over the directly recruited respondents.

31. In BS Yadav -vs- State of Haryana, (1980) Supple SCC 524 the Apex Court held that since the Governor exercises the legislative power under the proviso of Article 309 of the Constitution, it is open to him to give retrospective operation to the Rules made under that provision. But the date from which the rules are made to operate must be shown to bear either from the face of the rules or by extensive evidence, reasonable nexus with the provisions contained in the Rules, especially when the retrospective effect extends over a long period.

32. In State of Gujrat -vs- Ramanlal Keshablal Soni, (1983) 2SCC 33, wherein question of retrospective appointment was dealt with, the Apex Court held that:

"We are concerned with today's right not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 year's ago and ignored the march of events and the constitutional rights accrued in the course of 20 years. That would be most arbitrary, unreasonable and a negation of history. "

33. The submission of learned Advocate General reiterating the averments made in the counter affidavit that, private respondents could not be given promotion

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to ACS(Class-1) due to some constraints and for which to mitigate the injustice the retrospective seniority above the petitioners were given, that the seniority lists were all draft seniority lists which cannot give effect to the rights of the petitioners, are not sustainable. From 1977 to 1.3.93 petitioners' seniority was admitted without any objection. As no final list till 1993(15.5.93) was published, with a stroke of pen, instantly this position cannot be disturbed by the impugned notification. The respondent govt failed to establish their case by supporting retrospective seniority of the private respondents above the petitioners. Further, submission of the learned Advocate General that petitioners' case was considered for promotion to IAS by the selection committee and therefore they cannot claim that they did not fall in the zone of consideration for promotion to IAS. petitioners' grievance cannot be brushed aside that due to retrospective seniority given by the impugned notifications their interest for consideration of promotion to IAS cannot get priority over the private respondents. Admitted long seniority being direct recruits prior to the promotion of the private respondents cannot be disturbed. Constitutional right, obligations and consequences cannot be tampered with that way.

34. In the case of BS Yadav(Supra) the Apex Court further held that a law which if made today, would be plainly invalid as offending constitutional provisions, in the context of the existing situation, cannot become valid by being made retrospection. Respectfully relying on these decisions of the Apex Court I am of the view that the fixation of seniority of

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the private respondents above the petitioners, that is, direct recruits of 1977 batch relying on the amendment of the Rules, 1960, is not sustainable by which petitioners and similarly situated other persons of the batch have been prejudiced and their interest and seniority has been affected. The challenge of the amendment of the Rules by the notification dated 18.7.78 by the petitioners ^{likewise,} is not sustainable, as discussed above, the Governor has power and competency under Article 309 of the Constitution to amend rules with retrospective effect as is done in the case of private respondents. Apparently the amended rule has been made purporting to undo to injustice caused to the private respondents who were otherwise qualified to their promotion at that relevant time. But the purpose of the amended rule has been utilised to deprive the inter se seniority of the direct recruits of 1977 for which respondent govt failed to justify its action. Sympathetic consideration for promotion of the private respondents is welcomed but the hostile consideration cannot be entertained when it affects the interest of others whose seniority cannot be brushed aside. In that view of the matter the amendment of the rule under the notification is sustained; but the impugned notification NO.AAP.173/91/93 dt 27.5.92, the notification No.AAP.173/91/36 dt 29.5.92 and notification No.AAP.102/92/303-A dt 1.12.92 are quashed. The petitioners and similarly situated persons of the 1977 batch shall maintain their seniority above the private respondents and their promotion shall be considered accordingly. However, as decided in a series of cases, seniority cannot be a right for promotion, but such persons have right to be in the zone of consideration by virtue of their seniority. Consideration for

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promotion is always with the govt; court's only duty is to review, in appropriate case, where allegation of arbitrariness and mala fide, injustice is alleged which affects the accrued and vested right of a person.

35. Mr RP Sarma, counsel for the respondent No.20 has challenged the maintainability of the writ petition on the ground that the writ petitioners while challenging the notifications dated 27.5.92, 29.5.92 and 1.12.92 and amended rules have made their grievance relating to their consideration for promotion to IAS. That the interim order of this court dated 5.5.93 clearly spelled out the intention and purpose of the writ petition in view of the matter the writ petition is not maintainable and the Central Administrative Tribunal is the proper forum to entertain this petition. The submission of the learned counsel is misconceived and not sustainable as the writ petitioners never claim promotion to IAS, but claim their fixation of seniority and their inclusion in the zone of consideration for promotion to IAS which has been alleged to be vitiated by the impugned notifications. Similarly the non maintainability of the writ petition on the ground of res judicata is not sustainable as the Civil Rule No.1471/92 was not decided on merit, only disposed of with direction to dispose of the representation/appeal of the writ petitioners. Further the Misc case filed by a batch of 19 similarly situated persons of 1977 batch to implead them in the instant Civil Rule alongwith the writ petitioners was allowed. It is argue that one of these 19 added writ petitioners Shri DN Saikia was the plaintiff in the Title suit No.295/92. In Civil revision No.91/93 the maintainability of the suit was questioned and

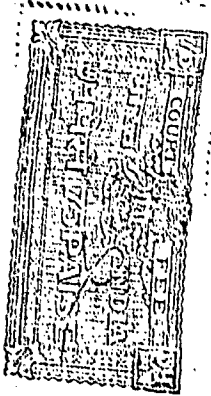
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this court held that the suit was not maintainable. This order of non-maintainability of the Title suit on the nature of the suit cannot bar the intervenor petitioners to invoke court's jurisdiction for challenging the reversion of seniority and their right of inclusion in the zone of consideration for promotion. Apparently the Misc case for impleading them as intervenor petitioner was filed with a view to minimise the flood gate of litigations which has been avoided by allowing them to be included as intervenor writ petitioners with the principal writ petitioners in this case.

36. The Misc petition No.170/95 in this writ petition filed by the govt has been considered in the light of the decision arrived by this court in this Civil Rule. The reasons set out in this misc application is that in view of the order dated 5.5.93 passed by this court govt approached this court to take permission before giving promotion to the private respondents. As the Department of Personnel and Training, North Block, New Delhi by letter No.14015/12/94/AIS(I) dt 20.10.94 informed the Chief Secretary, Govt of Assam regarding approval of the select list of ACS officers of Assam segment of joint cadre of Assam and Meghalaya containing names of seven persons for appointment to IAS by promotion, the name of respondent No.20 has found the place at Sl No.1 in the select list approved by the Union Public Service Commission, court required to give permission for his promotion. This court^{has} allowed the writ petition for maintaining the seniority of the direct recruits of 1977 batch above the private respondents. Apparently, this court cannot restrict the govt to issue direction not to consider the promotion

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of the respondent No.20 as seniority cannot be only criteria for promotion. All the private respondents alongwith the writ petitioners of 1977 batch have the right to be considered for promotion though claim for promotion to the IAS is not a vested right for all of them. The application is rejected. The respondent govt shall reconsider the promotion matter to the IAS, giving opportunity to all the contenders on seniority basis so that they can come to the zone of consideration for promotion.



37. In the result the impugned notifications dated 27.5.92, 29.5.92 and 1.12.92 are quashed. The writ petition is allowed. No costs.

Sd/- M. Sharma
Judge

Deputed to be true copy
21/3/95
Superintendent (Custody)
RAIPUR HIGH COURT
Authorized U/s 74 Act 1 of 1974

In
21/3/95

APPENDIX - I

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AUTHORISED CADRE STRENGTH OF THE INDIAN ADMINISTRATIVE SERVICE (AS ON 1.1.1997)

Amicus - 4

Sl. No.	Cadre	Senior Posts under State Govt. (SDP)	Posts under Central Govt. (CDR) (@ 40% of SDP)	State Deputation Reserve (SDR) (@ 20% of SDP)	Leave, Training Reserve & Junior Post (OR) (@ 20% of SDP)	Direct Recruitment Posts (DR) (SDP+CDR+SDR+OR-PQ)	Promotion Posts (PQ) (33 1/3 % of SDP+CDR)	Number of Officers in Position			
								Total Authorised Strength (Col. 7 + 8) (TAS) (DR+PQ)	Direct Recruitment	Promotion	Total Col. (10)+(11)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1.	Andhra Pradesh	159	64	60	31	240	74	314	252	75	327
2.	Arunachal Pradesh - Goa-Mizoram-Union Territories	126	50	31	25	174	58	232	186	55	241
3.	Assam-Meghalaya	110	44	31	22	156	51	207	164	52	216
4.	Bihar	212	85	53	42	294	98	392	285	61	346
5.	Gujarat	116	46	51	23	182	54	236	175	50	225
6.	Haryana	115	46	28	23	159	53	212	162	34	196
7.	Himachal Pradesh	71	28	18	14	98	33	131	94	34	128
8.	Jammu & Kashmir	61	24	15	12	70	42	112	72	37	109
9.	Karnataka	127	51	50	25	194	59	253	202	58	260
10.	Kerala	93	37	23	18	128	43	171	141	21	162
11.	Madhya Pradesh	204	82	51	40	282	95	377	303	94	397
12.	Maharashtra	180	72	60	36	264	84	348	269	85	354
13.	Manipur-Tripura	107	43	27	21	149	49	198	114	47	161
14.	Nagaland	28	11	7	5	38	13	51	35	14	49
15.	Orissa	108	43	27	21	149	50	199	155	45	200
16.	Punjab	99	40	35	19	147	46	193	148	47	195
17.	Rajasthan	132	53	41	26	191	61	252	188	49	237
18.	Sikkim	27	11	7	5	38	15	53	27	12	39
19.	Tamilnadu	175	70	43	35	242	81	323	239	78	317
20.	Uttar Pradesh	271	108	94	54	401	126	527	422	113	535
21.	West Bengal	158	63	40	31	219	73	292	224	73	297
	TOTAL	2679	1071	792	528	3815	1258	5073	3857	1134	4991

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AUTHORISED CADRE STRENGTH OF THE INDIAN ADMINISTRATIVE SERVICE (AS ON 1.1.1998)

Authorised Cadre Strength										No. of Officers in Position		
Sl. No	Cadre	Senior Posts under State Govt. (SDP)	Posts under Central Govt. (CDR) (@ 40% of SDP)	State Deputation Reserve (SDR) (@ 25% of SDP)	Junior Post Reserve & Leave Reserve (OR) (@ 16.5% of SDP)	Training Reserve (TR) (@ 3.5% of SDP)	Direct Recruitment Posts (DR) (SDP+CDR+SDR+OR+TR-PQ)	Promotion Posts (PQ) (33 1/3 % of SDP+CDR+SDR+TR)	Total Authorised Strength (Col. 8+9) (TAS) (DR+PQ)	Direct Recruitment	Promotion	Total Col. (11)-(12)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1	Andhra Pradesh	170	68	42	28	6	219	95	314	242	81	323
2	Arunachal Pradesh -Goa-Mizoram- Union Territories	126	50	31	21	4	162	70	232	179	63	242
3	Assam-Meghalaya	110	44	31	18	4	144	63	207	162	49	211

5.	Gujarat	116	46	51	19	4	164	72	236	168	54	222
6.	Haryana	115	46	28	19	4	148	64	212	155	30	185
7.	Himachal Pradesh	71	28	18	12	2	92	39	131	92	34	126
8.	Jammu & Kashmir	61	24	15	10	2	78	34	112	68	35	103
9.	Karnataka	127	51	50	21	4	176	77	253	200	59	259
10.	Kerala	95	37	23	15	3	119	52	171	132	38	170
11.	Madhya Pradesh	204	82	51	33	7	263	114	377	299	98	397
12.	Maharashtra	190	76	47	31	7	245	106	351	262	96	358
13.	Manipur-Tripura	107	43	27	17	4	138	60	198	115	50	165
14.	Nagaland	35	14	8	6	1	45	19	64	32	15	47
15.	Orissa	108	43	27	18	3	139	60	199	151	46	197
16.	Punjab	99	40	35	16	3	134	59	193	143	51	194
17.	Rajasthan	141	56	35	23	5	181	79	260	188	50	238
18.	Sikkim	27	11	7	4	1	35	15	50	18	19	37
19.	Tamilnadu	175	70	43	29	6	225	98	323	230	88	318
20.	Uttar Pradesh	271	108	94	45	9	367	160	527	415	113	528
21.	West Bengal	158	63	40	26	5	204	88	292	214	74	288
	TOTAL	2716	1085	756	446	91	3551	1543	5094	3745	1197	4942

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**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH,
CALCUTTA**

REPLY STATEMENT ON BEHALF OF

RESPONDENT NO. 2

IN

~~O.A. NO. 296/20~~
O.A. ~~TA~~ NO. 811 OF 2002

IN

ORIGINAL APPLICATION No. 25 OF 2000

IN THE MATTER OF :

L.C. SINGHI

...

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

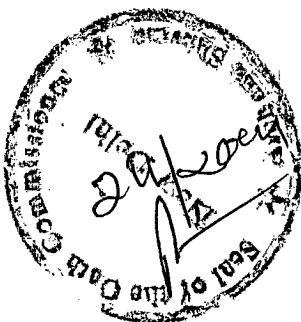
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RESPONDENTS

Reply Statement of (Ms.) Molly Tiwari posted as Under Secretary in
the Union Public Service Commission, New Delhi.

I solemnly affirm and state as under:

That I am an officer in the Union Public Service Commission,
Dholpur House, Shahjahan Road, New Delhi and am authorised to file the
present Reply Statement on behalf of Respondent No. 2. I am fully
acquainted with the facts of the case stated below:



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That I have read and understood the contents of the above application and in reply submit as under.

2. At the outset, it is submitted that the Union Public Service Commission, being a Constitutional body, under Articles 315 to 323 Part XIV (Service under the Union and the States) Chapter-II of the Constitution, has to discharge its functions, duties and constitutional obligations assigned to it under article 320 of the Constitution. Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for IAS/IPS/IFS. In pursuance of these rules, IAS (Appointment by Promotion) Regulations 1955 have been made. In accordance with the provisions of the said Regulations, the Selection Committee, presided over by the Chairman/Member of the Union Public Service Commission makes selection of State Civil Service officers for promotion to the Indian Administrative Service.

3.1 The application has been filed against letter dated 3.1.2000 of the Govt. of Assam forwarding Govt. of India's order dated 30.7.1999 by which the appointment of the applicant to IAS by promotion was rescinded.

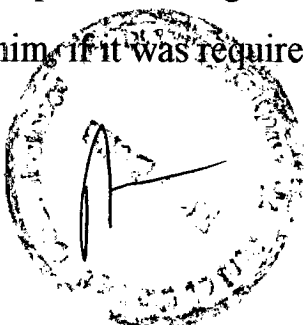
3.2 The applicant has also alleged that the said order has been passed purportedly with a view to implement the direction of the Hon'ble Guwahati High Court dated 23.9.1995 passed in Civil Rule No. 1079/93 filed by him alongwith Shri L.N. Tamuli. According to the applicant, there is no direction in the said judgement for any revision of seniority of the members of the Assam Civil Service so as to prejudicially affect the applicant or any member of the Assam Civil Service belonging to 1977 batch of Assam Civil Service; further there is no direction in the said judgement to review the Select Lists of 1992-93, 1993-94 & 1995-96.



3.3 The applicant has also stated that the permission sought by the Govt. of Assam to promote Respondent No. 20 in the Civil Rule i.e. Shri Debabrata Chakravorty, was refused by the Hon'ble Court since the said Respondent along with others were sought to be given seniority over the Writ Petitioners and the interveners by the impugned orders. The Hon'ble Court set aside the impugned orders holding that the writ petitioners and interveners belonging to 1977 batch of ACS would maintain their seniority over the private respondents. According to the applicant, on the face of such refusal by the Hon'ble Court, one Shri Dibakar Saikia was appointed in place of Shri Debabrata Chakravorty. Thus, there is no question of review of 1992-93 Select List and the consequential review of 1993-94 and 1995-96 Select Lists. The revision of these Select Lists was never an issue in the said Civil Rule and there was also no decision regarding any such review by the Hon'ble Court.

3.4 The applicant has further contended that he was appointed to the IAS from the Select List of 1995-96. In the earlier Select Lists prepared for the years 1993-94 & 1995-96, the case of Shri D.N. Saikia was also considered but he was not included in the Select List since he was not found suitable. According to him, Shri D.N. Saikia was not within the zone of consideration for the Select List of 1992-93. As against the seniority position of the applicant at S.No. 5, Shri Saikia's position was at S.No. 10 and therefore he was junior to the applicant. Further the SCM for preparation of the 1995-96 Select List was held almost a year after the judgement of the Hon'ble High Court and as such, the question of reviewing the Select Lists of 1992-93, 1993-94 or 1995-96 did not arise.

3.5 The applicant has also stated that the number of posts to be filled by promotion in respect of Assam-Meghalaya Joint Cadre should be held to be 53 since the year 1994 and not 51. He has also contended that the respondents ought to have created a supernumerary post to accommodate him, if it was required.



A handwritten signature in dark ink, consisting of a series of loops and strokes, likely belonging to the applicant or a representative.

4.1 It is most respectfully submitted that the factual position is that a meeting of the Selection Committee was held on 31.3.1993 for preparation of a Select List for promotion of State Civil Service officers to the Indian Administrative Service of Assam-Meghalaya Joint Cadre, Assam Segment during 1992-93. This Committee considered 30 eligible State Civil Service officers and prepared a Select List of 10 names against eight vacancies reported by the State Government. The applicant was considered at S.No. 28 of the eligibility list and was assessed as 'Very Good' by the Selection Committee. However, he was not recommended for inclusion in the select list owing to the statutory limit on the size of the select list. Shri Dibakar Saikia was considered at S.No. 16 of the Eligibility List and was assessed as 'Very Good'. He was also not recommended for inclusion in the Select List owing to the statutory limit on the size of the Select List. Shri D. N. Saikia was not considered by this Selection Committee as he was not included in the eligibility zone.

4.2 The next Selection Committee met on 29.3.1994 to prepare a Select List for promotion of State Civil Service officers to the Indian Administrative Service of Assam-Meghalaya Joint Cadre, Assam Segment during 1993-94. This Committee considered 21 eligible officers of the State Civil Service and prepared a Select List of seven names against five vacancies reported by the State Government. The applicant was considered by the Selection Committee at S.No. 21 of the Eligibility List and was assessed as 'Very Good'. However, he was not recommended for inclusion in Select List owing to the statutory limit on the size of the Select List. Shri Dibakar Saikia was considered at S.No. 9 of the Eligibility List and was graded as 'Very Good'. On the basis of this grading, he was recommended to be included at S.No. 7 of the Select List of 1993-94. Shri D.N. Saikia was not included in the Eligibility Zone and therefore was not considered by the Selection Committee.



4.3 The Selection Committee met next on 6.2.1996 to prepare a Select List for promotion of State Civil Service officers to the Indian Administrative Service of Assam-Meghalaya Joint Cadre, Assam Segment during 1995-96. (There was no Selection Committee Meeting for the year 1994-95). This Committee considered 28 eligible officers of the State Civil Service and prepared a Select List of nine officers against seven vacancies. The applicant was considered at S.No. 9 of the Eligibility List and was assessed as 'Very Good'. On the basis of this grading, he was recommended for inclusion in the Select List at S.No. 7.

4.4 Meanwhile, one Shri L.N. Tamuly & others (Direct Recruit State Civil Service officers) had filed Civil Rule No. 1079/93 before the Hon'ble High Court, Guwahati Bench challenging the seniority of some State Civil Service officers over direct recruit State Civil Service officers of the 1977 batch. The Hon'ble High Court vide their judgement dated 20.3.1995 disposed of the Civil Rule and directed as under:-

“... This Court has allowed the Writ Petition for maintaining the seniority of the direct recruits of 1977 batch above the private respondents. Apparently, this Court cannot restrict the Govt. to issue direction not to consider the promotion of the respondent No. 20 as seniority cannot be the only criteria for promotion. All the private respondents along with the writ petitioners of 1977 batch have the right to be considered for promotion though, claim for promotion to the IAS is not a vested right for all of them. The application is rejected. **The respondent govt. shall reconsider the promotion matter to the IAS, giving opportunity to all the contenders on seniority basis so that they can come to the zone of consideration for promotion.**” (Emphasis supplied)



A handwritten signature in black ink, appearing to be "L. N. Tamuly".

4.5 Thereafter, one Shri T.N. Goswami & others filed a Writ Appeal No. 94/95 against the aforementioned order of the Hon'ble High Court. The Hon'ble High Court vide their order dated 20.12.1996 dismissed the Writ Appeal.

4.6 Before Shri D. Chakravorty who was included at S.No. 1 of the Select List of 1993-94 could be appointed, the Hon'ble High Court of Guwahati vide their order dated 20.3.1995 quashed the State Govt.'s Notification dated 27.5.1992 by which Shri D. Chakravorty was promoted to SCS Class-I w.e.f. 31.12.1977 and his seniority was fixed above the seniormost person of 1977 batch. As a result, he lost seniority among the officers considered by the Selection Committee on 29.3.1994. Therefore, the Govt. of Assam requested this Respondent to carry out a Special Review (under Regulation 7(4) of the Promotion Regulations) of the said Select List to delete the name of Shri Chakravorty from there. They also sought the approval of the Commission for appointment of Shri Dibakar Saikia who was at S.No. 7 of the said Select List. This Respondent considered the matter at length and observed that Regulation 7(4) could be invoked only if a specific case of grave lapse in the conduct or performance of an officer was made out. Therefore, this Respondent informed the State Govt. vide letter dated 12.5.1995 that a Special Review under Section 7(4) was not warranted in the case.

4.7 Thereafter the State Government forwarded a proposal vide letter dated 5.2.1997 for a review of the Select Lists of 1992-93 & 1993-94 in pursuance of the direction of the Hon'ble High Court dated 20.3.1995. The Commission agreed to review the Select Lists of 1992-93 & 1993-94 and a Review Selection Committee Meeting was held on 18th September, 1997 to review the said Select Lists.



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4.8 The Review Selection Committee first took up the Select List prepared on 31.3.1993 for 1992-93 and reviewed it on the basis of the revised Seniority List. The Committee noted that the names of six officers who were considered on 31.3.1993 were excluded from the Eligibility List on the basis of the revised Seniority List and six officers who were earlier not in the Eligibility List were included in the Eligibility List in place of six officers who were excluded. This Review Selection Committee, therefore, assessed these six new officers afresh and after adopting the assessment made by the Selection Committee which met on 31.3.1993 in respect of the remaining officers, prepared a Select List consisting of ten officers against eight vacancies. The name of the applicant was included at S.No. 22 of the Eligibility List for the year 1992-93 and he was assessed as 'Very Good'. On the basis of this assessment, his name was not included in the Select List as officers with better grading were available and because of the statutory limit on the size of the Select List. However, Shri D.N. Saikia, who was included at S.No. 27 of the Eligibility List, was assessed as 'Outstanding'. On the basis of this grading, he was included in the Review Select List at S.No. 2.

4.9 The Review Selection Committee then reviewed the Select List of 1993-94 prepared on 29.3.1994. The Committee noted that the names of six officers who were considered on 29.3.1994 for 1993-94 were excluded from the Eligibility List on the basis of the revised Seniority List and six more officers were included in the Eligibility List in their place. This Review Selection Committee, therefore, assessed these six officers afresh and after adopting the assessment made by the Selection Committee which met on 29.3.1994 in respect of the remaining officers, prepared a Select List consisting of seven officers against five vacancies. The name of the Applicant was included at S.No. 16 of the Eligibility List for the year 1993-94 and he was assessed as 'Very Good'. On the basis of this assessment, his name was not included in the Select List as officers with better grading were available and because of the statutory limit on the size of the Select List.



Shri Dibakar Saikia who was included at S.No. 10 of the Eligibility List was assessed as 'Very Good' and was included at S.No. 7 of the Select List.

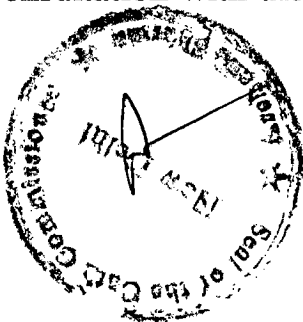
4.10 As a result of the Review of the above Select Lists, Shri D.N. Saikia who was not included in the original Select List of 1992-93 or 1993-94 was included in the Review Select List of 1992-93 whereas Shri Dibakar Saikia who was included in the 1993-94 Select List and was appointed to the IAS from that Select List was excluded from the Review Select List of 1993-94. As he was appointed to the IAS from the 1993-94 Select List, Shri Dibakar Saikia was not considered by the Selection Committee which met on 6.2.1996 to prepare the Select List of 1995-96. Therefore, another Review Selection Committee met on 8.3.1999 to review the Select List prepared on 6.2.1996 for promotion to the Indian Administrative Service of Assam-Meghalaya Joint Cadre, Assam Segment to consider inclusion of Shri Dibakar Saikia. This Committee noted that Shri D.N. Saikia, who was considered on 6.2.1996, was included in the Review Select List of 1992-93 prepared on 18th September 1997. The name of Shri Dibakar Saikia, who was excluded from the Select List of 1993-94 as a result of the Review held on 18.9.1997, was included in the revised Eligibility List for 1995-96. The Review Selection Committee therefore assessed this officer afresh and after adopting the assessment made by the Selection Committee which met on 6.2.1996 in respect of the remaining officers, prepared a Select List consisting of nine officers against seven vacancies. The name of Shri Dibakar Saikia was included at S.No. 5 of this Select List. The name of the Applicant was included at S.No. 10 of the Eligibility List and he was assessed as 'Very Good'. On the basis of this assessment, his name was included in the Select List at S.No. 8. However, since only seven officers from the Select List of 1995-96 was appointed to the IAS, the appointment of the applicant to the IAS was rescinded by the Govt. of India vide Order dated 30th July 1999. Thereafter, the applicant was considered for the Select



A handwritten signature in black ink, appearing to be "D. N. Saikia".

List of 1996-97 by the Selection Committee which met on 30.11.1999 and he was included at S.No. 2 of the Select List of 1996-97.

5.1 As regards the Applicant's contention that the number of vacancies in the promotion quota taken into account while preparing the impugned Select List was not correct, it is most respectfully submitted that the vacancies as reported by the State Government while furnishing a proposal to this Respondent for convening a Selection Committee Meeting are taken into account by this Respondent while preparing the Select List. It is most respectfully submitted that at the time of preparing the 1996-97 Select List, the State Government had reported four vacancies including one vacancy already taken into account by the Selection Committee which met on 6.2.1996 (Select List of 1995-96). Since this vacancy was already taken into account, the State Government were asked vide our letter dated 16.11.1999 to intimate the correct position regarding the number of vacancies available for the Select List of 1996-97. Since no satisfactory explanation was forthcoming from the State Government regarding this vacancy, this Respondent decided not to take this vacancy into consideration for preparation of the Select List of 1996-97 and the State Government were informed accordingly. Further, in our letter dated 15.12.1999, the State Government were asked to indicate the dates and manner of occurrence of vacancies taken into account while preparing the Select Lists for the years 1992-93, 1993-94 and 1995-96. They were also asked to indicate if any vacancy occurring in the promotion quota during the period 1992-93 to 1995-96 was not taken into consideration by the Selection Committee during the said period. The State Government vide letter dated 12.05.2000, stated that no vacancy was left out of the purview of the Selection Committees of that period. Further, it is most respectfully submitted that any increase in the promotion quota is determined by the Central Government in consultation with the State Government. As such, the submissions made in



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this respect by the Central Government as well as the State Government may kindly be seen by the Hon'ble Tribunal in this context.

5.2 As regards the applicant's contention that his appointment to the IAS could not have been rescinded retrospectively, it is most respectfully submitted that the appointment of an officer included in the Select List and the cancellation of such appointment falls under the purview of the Govt. of India.

6. That on the facts and circumstances stated above and also the detailed reply filed by the Central Government and the State Government, the Hon'ble Tribunal may pass appropriate orders in the interest of justice.

RESPONDENT

VERIFICATION

I, (Ms.) Molly Tiwari, do hereby declare that the contents of the above Written Statement are believed by me to be true based on the records of the case. No part of it is false and nothing has been concealed therefrom.

Verified at New Delhi on 13 day of February, 2004.
Identify the Executant/Deponent
has signed my presence

RESPONDENT



certified that the deponent
Shri. Ms. Molly Tiwari
S/o Shri. V. P. Singh
R/o V.P. Singh
Identified by Shri. [Signature]
has solemnly affirmed to me at New
Delhi on 13/2/04, the contents
of the affidavit read over
and explained to him are true & correct
to his knowledge.

Joint Commissioner, New Delhi

13/2/04

advised by
to Mr. [Signature]
B. [Signature] (97-
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11/11/08

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

ADDITIONAL REPLY STATEMENT ON BEHALF OF
RESPONDENT NO. 02

IN
O.T.A. NO. 811 OF 2002

IN
O.A. No. 25 of 2000

IN THE MATTER OF:

L.C. SINGHI

.....

APPLICANT

VERSUS

UNION OF INDIA & ORS.

.....

RESPONDENTS

I, N.T. Paite, solemnly affirm and state that I am working as Under Secretary in the office of the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi and am authorised to file the present reply statement on behalf of Respondent No. 2 (Union Public Service Commission). I am acquainted with the facts of the case as gathered from records and deposed below:

2.1 That I have read and understood the contents of the Memo in the above Original Application and in reply I submit as under:

2.2 It is submitted that this Respondent is filing this reply statement for the limited purpose of bringing certain important and relevant facts on record of this Hon'ble CAT, Calcutta Bench. Hence this Respondent is not dealing with the facts of the Memo in the Original Application in detail. The non-dealing with the facts of the Memo in the Original Application in detail may not be construed as admission on the part of the Respondent. However, this Respondent craves leave of this Hon'ble Tribunal to file further and detailed reply statement, if found necessary, at a later stage of the proceedings.

(सुनीत टोपाय)
(N. T. PAITE)
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

3. It is respectfully submitted that the respondent has already filed a reply statement in the instant Original Application detailing the facts of the case and provisions of the Promotion Regulations. This respondent submits that Applicant has placed some documents which he could not place at the time of filing the Application. This respondent has no comments to offer on these documents at this stage.

4. That save those points which have expressly been admitted hereinabove, others may be deemed to have been denied by the answering respondent.

5. That taking into consideration the submissions made in the preceding paragraphs and also taking into consideration the reply filed by the State Government and the Central Government, the Hon'ble Tribunal may be pleased to pass appropriate orders in the Original Application.

DEPONENT

(एन टी पाटे)
(N. T. PAITE)

अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

VERIFICATION

I, the deponent named above, do hereby declare that the contents of the above Reply Statement are believed by me to be true and based on records of the case. No part of it is false and nothing material has been concealed therefrom.

Verified this on the 31st day of October, 2008 at New Delhi.

Manasi Bhattacharyya
Advocate
Prepared in my office

To
The Registrar.
CAT,
Kolkata Bench.
Kolkata.

DEPONENT

(एन टी पाटे)
(N. T. PAITE)

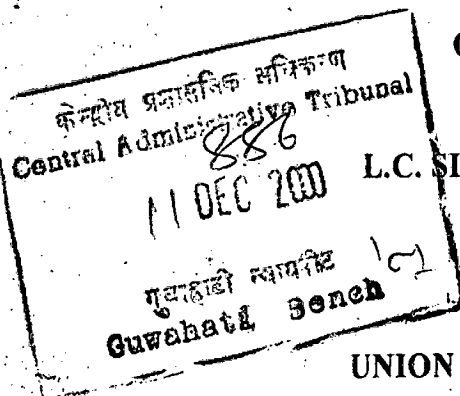
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

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24/8/2000
Prof. C. Pathak
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

ORIGINAL APPLICATION NO. 25 OF 2000



L.C. SINGHI

PETITIONER

VERSUS

UNION OF INDIA

RESPONDENT

WRITTEN STATEMENT ON BEHALF OF RESPONDENT NO.1

I, R. Vaidyanathan, S/o (Late) TN Ramachandran working as Under Secretary in the Department of Personnel & Training, Government of India, North Block, New Delhi, . solemnly affirm and state as under:

That I am conversant with the facts of the case and competent and am authorized to file this written statement on behalf of respondent No.1

2. That I have read a copy of the Original Application filed by the petitioner herein and have understood the contents thereof. I hereby deny the contentions made therein, except those as are expressly and specifically admitted by me herein. I crave the leave of this Hon'ble Tribunal to make the following preliminary submissions before replying to the OA para-wise.

3.. At the outset it is submitted that the appointment by promotion of the State Civil Service officers of the Indian Administrative Service (IAS) is governed by provisions contained in Rule 4(1)(b) read with Rules 8(1) and 9(1) of the IAS (Recruitment) Rules, 1954 (Recruitment Rules) and the provisions of IAS (Appointment by Promotion) Regulations, 1955 (Promotion Regulations) framed pursuant to Rule 8(1) of the

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Recruitment Rules. The rules and regulations relating to recruitment by promotion were comprehensively amended with prospective effect from 1.1.1998 and the case of the applicant for promotion to IAS Assam-Meghalaya is governed by the above-mentioned rules and regulations as they stood prior to 1.1.1998. The maximum number of posts in the State IAS Cadre that could be filled by promotion and selection is prescribed in Rule 9(1) of the Recruitment Rules. The selection and appointment of the officers to the IAS is done every year with the select list of each year kept in force till the coming into force of select list of the subsequent year on its approval by the Union Public Service Commission.

4. That in the IAS Andhra Pradesh Cadre, in view of revision of seniority of many officers in the State Civil Service, and in pursuance of the directions of the CAT, Hyderabad Bench, a review selection committee was convened in the year 1992 to prepare the review select list of the year 1987 for promotion to the State IAS Cadre. The original select list of 1987 stood prepared and operated against 13 vacancies and comprised of 26 names, as the size of the select list was double the size of the vacancies, in terms of the then existing regulations. After the review, 14 more names were added to the select list that became entitled for promotion to IAS interpolated between first 13 officers of the 1987 select list already promoted from that list. This resulted in a position, in which 27 officers were included in the select list and promoted to IAS from a single year, after creation of supernumerary posts in their favour by the Central Government, in order to comply with the judgement of the Tribunal and their being assigned 1984 as the Year of allotment. When the action was challenged in appeal by the Direct Recruit officers before the Supreme Court in **Gudur Kishan Rao Vs. Suthirtha Bhattacharya and Others (JT 1998 (2) SC 90)**, the Apex Court held thus:-

“.....any regulation merely increasing the number of posts in Item-3 without corresponding increase of Item 1 and 2 (of the Cadre Strength Regulations) on the face of it would be violative of the very mandate of the regulation, under any rate it would violate Rule 9 of the Recruitment Rules....
.....Having considered the provisions of the Recruitment Rules, the Cadre Rules and the Cadre Strength Regulations, we have no hesitation to come to the

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conclusion that the impugned Notification dated 15th December, 1993 contravenes Rule 9 of the Recruitment Rules and under the scheme of the Act, rules and regulations, it is not possible to sustain the Notification in question by giving any harmonious construction to the provisions....."

".....In view of the integrated scheme of the rules and regulations as discussed earlier, and under the provisions in question since only 13 persons would have been promoted to the Indian Administrative Service from amongst the officers belonging to the State Civil Service during 1987, the select list would have been prepared for only 26 persons and the Union Government would have promoted only 13 out of them. The directions of the Tribunal in favour of the officers belonging to the State Civil Service who were excluded from consideration while drawing up the original select list for the year 1987 merely conferred a right of reconsideration and could not confer a right of promotion to the Indian Administrative Service which would be contrary to the relevant provisions of the integrated scheme. On the basis of the revised select list of the year 1987, the Central Government could have promoted only the first 13 of the list as the number of posts which could be filled up from amongst the officers belonging to the State Civil Service in the year 1987 was only 13. But, instead of following the aforesaid method, the State Government and the Union Government proceeded to recruit by promotion of those who were included in the select list of the year 1987. Such Act on the part of the Central Government and the State Government is contrary to the provisions of the integrated scheme of the rules and regulations governing the service conditions of the officers belonging to the IAS....." (emphasis supplied)

".....This can be achieved by treating only the first 13 officers of the review select list which contains the names of the total 40 officers in order of merit would be treated to be the officers promoted on the basis of 1987 select list and their Year of Allotment may accordingly be determined. So far as the officers from S.No. 14 to 40 are concerned, of the said review select list of the year 1987, while they would be permitted to continue in IAS, such continuance will not confer on them the right to count their seniority and Year of Allotment but their cases will have to be adjusted in the subsequent years depending upon the number of vacancies and the posts available for such promotees, and their Year of Allotment would be redetermined accordingly....."

5. That the sum and substance of the verdict of the Apex Court in the above-mentioned case is that notwithstanding the review of the select list of a year subsequently, on account of revision of seniority in State Civil Service and in pursuance of the directions of a Court of law, if it becomes necessary to interpolate fresh names in the select list of the year under review, the strength of the select list and the number of

officers who could be promoted from the review select list should invariably confine and be restricted to the size and appointments made to IAS from the original select list only and those officers ejected out of the list will have to be adjusted / considered for appointment to the IAS, subject to the availability of vacancies in the select list of the subsequent years. In terms of regulation 5(4) and 5(5) of the Promotion Regulations the inter-se position of every officer included in the suitability list prepared by the selection committee for appointment to IAS, should conform to the updated merit grading of such officer as assigned by the Committee on an overall relative assessment of his service records upto the select list year in which he is considered for inclusion in the list. Thus, on account of the above-mentioned review in case it becomes necessary to interpolate names in the review select list, the additional names of that list cannot be simply pushed down to the select list of the subsequent year, without ascertaining his relative merit for inclusion in the list of the subsequent year on the basis of his ACRs upto that year. It is therefore submitted that the concerned officers are considered for placement in the subsequent year list by an overall relative assessment of their service records by the selection committee by a review of the subsequent select list and so on.

6. That in the case of Assam, consequent to the revision of *inter se* seniority of the State Civil Service officers of Assam by the Government of Assam in pursuance of the directions of the Hon'ble Guwahati High Court dated 20.3.1995 (and not 23.9.1995 as incorrectly indicated in the impugned order dated 16.1.1998 on account of typing error) in Civil Rule No. 1079/93, a review selection committee for Assam was convened by the Union Public Service Commission on receipt of proposals to that effect from the respondent Government of Assam to reconsider and review the 1992-93 select list and 1993-94 select list for promotion to IAS Assam-Meghalaya Joint Cadre. The process of review was carried out by the selection committee strictly in terms of the ratio of the judgement of the Supreme Court in *G.K.Rao's* case discussed above and on approval to the review select lists of 1992-93 and 1993-94 by the respondent Union Public Service Commission, speaking orders were passed by this Respondent vide Order No.14015/14/97-AIS(I) dated 16.1.1998 (Annexure to the OA).

7. In terms of the principles of preparation of review select lists detailed above, Shri Dhirendra Nath Saikia, ACS, was to be included afresh at S.No. 2 of the 1992-93 select list and the cascading effect of such inclusion resulted in ejection of Shri Dibakar Saikia, the last officer appointed to IAS from the original select list of 1993-94 out of the review select list of that year for promotion to IAS. The select list of Assam did not meet during 1994-95. The subsequent 1995-96 original Committee did not consider Shri Dipakar Saikia since at that time he stood promoted to IAS from the original list of 1993-94. A review selection committee was, therefore, to be convened to review the 1995-96 select list to consider case for promotion of Shri Dibakar Saikia from the 1995-96 select list for Assam. On the basis of the recommendations of the review selection committee for 1995-96 that met on 18.9.1997 and which was approved by the Union Public Service Commission on 16.7.1999, Shri Saikia was included afresh at S.No. 5 of the 1995-96 review select list and was due to be promoted to IAS therefrom. This had the cascading effect in the matter of appointment in respect of the applicant who was included at S.No.7 of the original select list 1995-96 and had moved to S.No. 8 of the review select list of 1995-96. As the original select list of 1995-96 was prepared towards filling up and operated against only 7 vacancies in the promotion quota of the State Cadre and the officer included at S.No. 8 of the original list did not become entitled for appointment to IAS from that select list, the applicant too did not become entitled to be promoted to IAS from the review select list of 1995-96.

8. That in regard to the question of vacancies for which the select lists were prepared and operated by the respondent State Government from time to time, it is submitted that the original select list of 1992-93, 1993-94 and 1995-96 were prepared towards filling up 8 vacancies, 5 vacancies and 7 vacancies and the maximum size of the select list in terms of the Promotion Regulations in respect of these years was, 10, 7 and 9, respectively. The 1992-93 select list was operated by the State Government and appointments notified by the Government of India on the recommendations of the State Government in terms of Regulation 9 (1) of the Promotion Regulations only upto S.No. 7 of the original select list. As such the officers at S.No. 8 to 10 of the original

list as also the review select list of that year did not become entitled for appointment to IAS and were therefore liable to be considered for inclusion in the subsequent 1993-94 list. The 1993-94 select list was operated by the State Government in full and the officers at S.No.2 to S.No. 7 in the original select list of 1993-94, excepting the officer at S.No.1, Shri D. Chakravorty, who was declared ineligible for promotion, were promoted and appointed to IAS on the recommendations of the State Government against the 5 vacancies for which the select list was prepared plus one unforeseen vacancy that came due to declaration of ineligibility of the officer included at S.No. 1 of the original select list by the Commission. These 6 appointments were made from the 1993-94 original select list and same number of appointments were notified from the corresponding dates from the review select list of 1993-94. Shri Dibakar Saikia included at S.No. 7 of the review list of 1993-94 was, therefore, to be considered for inclusion and promotion to IAS from the 1995-96 review select list.

9. The 1995-96 selection committee to consider promotion to IAS Assam-Meghalaya Joint Cadre from the Assam Segment met on 6.2.1996 and prepare a select list towards filling up 7 vacancies during the period of 12 months from that date of meeting of the selection committee in terms of Regulation 5(1) of the Promotion Regulations. The details of vacancies according to the information furnished by the Respondent State Government of Assam are as under:-

<u>S.No</u>	<u>Date of vacancy</u>	<u>Due to retirement of (S/Shri)</u>
1.	1.5.1995 (existing)	D.C. Barthakur IAS on 30.4.1995
2.	1.2.1996 (existing)	A.K. Choudhury IAS on 31.1.1996
3.	1.2.1996 (existing)	O.M. Maheshree IAS on 31.1.1996
4.	1.3.1996 (anticipated)	R.K. Barua IAS on 29.2.1996
5.	1.4.1996 (anticipated)	D.C. Pathak IAS on 31.3.1996
6.	1.6.1996 (anticipated)	S.P. Das IAS on 31.5.1996
7.	1.7.1996 (anticipated)	L.K. Barua IAS on 30.6.1996

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As regards the anticipated vacancy falling during the relevant period due to retirement of Shri Hirendra Kumar Barua, IAS (SCS:86) on 13.12.1996, the State Government decided to fill up the vacancy by selection from among Non-State Civil Service officers in the State. Accordingly, the original selection committee for 1995-96, which met on 15.2.1996, considered the case of Non-State Civil Service officers of Assam for appointment to IAS by selection, prepared the select list containing the name of Shri Badal Mitra Mazumdar, which was approved by the Commission on 2.5.1996. The 7 State Civil Service officers included in the original select list of 1995-96 for appointment to IAS by promotion upto Shri L.C. Singhi excepting Shri M.A. Borbhuyan at S.No. 1 who was provisionally included in the select list subject to expunction of adverse remarks / clearance of disciplinary proceedings pending against him and grant of integrity certificate by the State Government, were considered on the recommendations of the State Government and appointed to the IAS by Notification dated 30.12.1996. The case of S/Shri Bimalendu Bhattacharjee and Khagendra Nath Buragohain included at the wait-listed part of the select list at S.No. 8 and 9 did not become entitled for promotion to IAS from the 1995-96 select list, as no vacancy occurred in the promotion quota of State Cadre during the relevant period for which the 1995-96 select list was prepared. In the review select list of 1995-96, due to inclusion of Shri Dibakar Saikia at S.No.5 thereof, S/Shri Ritendranath Sharma, Laxmi Nath Tamuly, Lall Chand Singhi (applicant) and Bimalendu Bhattacharjee came to be included at S.No. 6,7,8, and 9 of the review select list, respectively. By virtue of inclusion of the applicant at S.No.8 of the review list, as in the case of the incumbent of the original select list at S.No.8, the applicant also did not become entitled for promotion to IAS from the review select list. Accordingly, the Notification dated 30.12.1996 appointing him earlier to IAS was rescinded by way of implementation of the review select list of 1995-96 vide speaking order dated 30.7.1999.

10. That while sending proposals to the Union Public Service Commission for preparation of 1996-97 select list for promotion of ACS officers, the Government of Assam indicated that the promotion of Shri Dhirendra Nath Saikia to the IAS for the

period from 9.3.1994 upto 10.2.1997 was adjusted against the retirement vacancy of Shri N.K. Dass IAS (SCS:83) who retired on 31.3.1994 and this vacancy was filled up later by promotion of Shri M.A. Borbhuyan, whose promotion to IAS was notified on 10.2.1997 and as such creation of an Ex-Cadre post under Rule 9(1) of the Cadre Rules was resorted to for small periods to sustain the appointment of the said promotee officer in IAS.

11. It is respectfully submitted that as seen from the proposals of the State Government relating to operation of the review select list of 1992-93, the appointment of Shri Dharendra Nath Saikia at S.No.2 of the review select list was recommended by the State Government with effect from 9.3.1994. Whenever the select lists of the previous years are reviewed on grounds of revision of seniority / Court directions, the officers selected in the review select lists, approved by the Commission swap places with those officers in the original select list in the order and with reference to the *inter se* position in the lists, upto the number of vacancies for which the respective select list was operated by the State Government and appointments notified from the original select list. Accordingly the 1992-93 select list for Assam was operated by the State Government upto S.No.7 only, though it was prepared towards filling up 8 vacancies during the relevant period. Thus, the officers included in the review select list of 1992-93 could also be promoted to IAS only against the vacancies utilized for appointment to IAS from the corresponding S.No. in the original list. In this manner, Shri Dharendra Nath Saikia was promoted to IAS from 9.3.1994 against the vacancy against which Shri Patreshwar Basumatry, who was at S.No.2 of the original list of 1992-93, was promoted on 9.3.1994. In this view of the matter, the action of the State Government in adjusting the appointment of Shri Dharendra Nath Saikia to IAS by recourse to creation of ex-cadre post does not follow from the application of normal rules; especially so, for reason that a State Civil Service officer could be considered for promotion to IAS only against substantive vacancies occurring in the promotion quota and not in any other manner, in terms of the statutory provisions in the Promotion Regulations. Thus, the appointment of Shri Dharendra Nath Saikia with reference to his position at S.No.2 of

the review select list of 1992-93 from 9.3.1994 did have the cascading effect of adjustment and utilization of vacancies upto the last vacancy that was filled by promotion (viz.) the vacancy dated 1.7.1996 due to retirement of Shri L.K. Barua on 30.6.1996. The position was clarified to the Union Public Service Commission by this Respondent vide letter No. 14015/40/99-AIS(I) dated 25.11.1999 (Annexure).

10. In view of the factual position explained in the preceding paragraphs, the applicant is not entitled to the relief prayed for by him under the Rules.

PARA-WISE REPLY:

Paras-4.1 to 4.4:- It is submitted that the Respondent State of Assam is wholly concerned, whose reply may be referred to.

Paras-4.5 and 4.6:- It is submitted that the appointment of the applicant to the IAS was notified by this Respondent with reference to his position in the 1995-96 original select list and on the recommendations of the Government of Assam, in accordance with Regulation 9(1) of the Promotion Regulations. On such appointment, his seniority in IAS was regulated in terms of the provisions contained in IAS (Regulation of Seniority) Rules, 1987, as amended from time to time.

PARA-4.7:- It is submitted that the averments are matters of fact and hence need no reply.

PARA-4.8:- It is submitted that the case for confirmation of the applicant in IAS after satisfactory completion of service is governed by the provisions in the IAS (Probation) Rules, 1954, after following the procedure laid down therein. The copy of the representation dated 2.9.1999 stated to have been submitted by the applicant was not received by this Respondent forwarded the State Government.

Para-4.9:- It is submitted that the circumstances in which the GOI orders and Notification No. 14015/24/98-AIS(I) dated 30.7.1999 came to be issued were duly incorporated in the speaking orders issued by this Respondent. The order dated 30.7.1999 is a sequel to the earlier orders and Notification No. 14015/14/97-AIS(I) dated 16.1.1998 (Copy enclosed as Annexure-R.I). The select list of 1992-93 onwards, promotions to IAS Assam-Meghalaya Joint Cadre from among the State Civil Service officers of Assam were reviewed by convening a review selection committee by the Union Public Service Commission, consequent to the revision of *inter se* seniority of members of the Assam Civil Services in pursuance of the directions of the Hon'ble Guwahati High Court dated 23.9.1995 in Civil Rule No. 1079/93 (L.N. Tamuly Vs. State of Assam). The seniority in State Civil Service is the foundation and backbone based on which the suitability list is prepared by the selection committee for promotion to IAS in terms of Regulation 5(2), 5(4) and 5(5) of the Promotion Regulations and which becomes the select list of that year when finally approved by the Commission under Regulation 7(3) of the said regulations. The averments made by the applicant in this paragraph may be seen from the background of the facts given herein above.

PARA-4.10:- It is submitted that the averments made in this paragraph are not related to the cause of action with which the applicant is aggrieved under consideration in this OA.

Para-4.11:- It is submitted that the Respondent State of Assam is concerned with regard to the issues raised in this paragraph regarding the seniority of the State Civil Service officers of Assam and the Writ Petition filed before the Hon'ble Guwahati High Court in that connection by the applicant and other members of the State Civil Service. For the veracity of the statements made in this Paragraph, the reply filed by the Respondent State Government to the OA may be referred to.

PARA 4.12, 4.13 & 4.14:- As already submitted, in reply to the averments in these paras it is submitted that the revision of seniority in the Assam Civil Service as a sequel

to the judgement of the Hon'ble Guwahati High Court was reported by the State Government to the respondent Union Public Service Commission as the basis for the review of promotions to IAS Assam-Meghalaya Joint Cadre (Assam Segment) from the 1992-93 select list in the initial instance, which resulted in the review of the subsequent select lists of 1993-94 and 1995-96. As for the averment in this para that the judgement of the Hon'ble High court is not binding as he was not impleaded as a party to that petition in LN Tamuly's case, it is submitted that the Hon'ble Supreme Court in **General Manager South Central Railway Vs. A.V.R. Siddhanti (1974 (4) SCC 335)** held as under:-

“ The employees who were likely to be affected as a result of readjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision were, at the most proper parties and not necessary parties, and the non-joinder could not be fatal to the Writ Petition”.

Thus, the claim of the applicant that he was not a party to the litigation in L.N. Tamuly's case before the Guwahati High Court is not fatal or no way affects the consequences of the decisions of the High Court in that case. It is submitted that it is clear that the title of the applicant for benefits of promotion from his service is not delinked or independent of that of his seniors in the State Civil Service and not being party to the court cases affecting the seniority of his seniors in the Service cannot imbue the applicant with benefits which do not flow to him under the operation of normal service rules.

As for the facts of the case of Shri D. Chakravorty, the reply of the respondent State Government may be referred to. It is submitted that due to his ineligibility for appointment to IAS as a result of Court verdict, the vacancy against which the name of Shri D.Chakravorty was included in the original list of 1993-94 was made available to consider the appointment of Shri Dibakar Saikia, the wait-listed officer down in the

original list of 1993-94. The issue pertains to the select list of the previous year and the applicant cannot dispute and call it in issue, as these are not relevant for the purpose of recruitment of the applicant for appointment to IAS from the 1995-96 select list.

PARA-4.15:- As already submitted, the review of the select lists for promotion from State Civil Service of Assam for the year from 1992-93 onwards was necessitated admittedly due to revision of seniority of the ACS officers, as per the proposal sent by the Respondent State Government to the Commission, in accordance with law.

PARA-4.16:- It is denied that the impact of the review was imposed on the applicant with retrospective effect since the services rendered in IAS by the applicant till the date of the order was required to be treated as officiating appointment by a Non-Cadre officer to the Cadre post under Rule 9(2) of the IAS (Cadre) Rules, 1954 and all his claims regulated accordingly.

PARA-4.17:- In reply to the averment made in this para it is submitted that the increase in the promotion posts of the State IAS Cadre with corresponding decrease in the posts that may be filled by direct recruitment by Notification dated 31.12.1997 by amendment to the IAS (Fixation of Cadre Strength) Regulations, 1955, have already come into force from 1.1.1998, consequent to a policy decision taken by the Central Government for the three All India Services in this regard. The judgement of the Jabalpur Bench of this Hon'ble Tribunal was applicable only to the Indian Forest Service Cadre of Madhya Pradesh but the matter was considered by the Respondent Government of India and a policy decision in respect of the IAS and IPS also for computation of the promotion quota taking into account the State Deputation Reserve and Training Reserve in addition to the existing components of Senior Duty Posts and Central Deputation Reserve had been decided by the Central Government and necessary amendments enabling an increase in the promotion quota with corresponding decrease in the Direct Recruitment quota was envisaged from 1.1.1998. The decisions were with prospective effect and its implementation was staggered over a period of three years from 1998, by

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recovering the excess posts in the Direct Recruitment quota on which direct recruit officers were in position by a process of attrition. The claim of the applicant for promotion to IAS relates to the period prior to 1.1.1998 and he has already been included in the 1996-97 select list for promotion to IAS approved by the Commission, against the vacancies of that select list year. In view of this, the averments in this para relating to vacancies in the promotion quota that were enabled after 1.1.1998 are not material or relevant for the purpose of the present OA.

PARA-4.18:- In reply to the averment made in this para it is submitted that in terms of the definition of the term, "year" in Regulation 2(1)(i) of the Promotion Regulations, the vacancies of June and October, 1996 belongs to the 1995-96 select lists and the vacancies dated 31.7.1997 are anticipated vacancies of the 1996-97 select list year. The Respondent State of Assam is concerned with the exact date of occurrence of the vacancies in the promotion quota and therefore the reply of the State Government may be referred to. As far as Union of India is concerned, in terms of the provisions in the Regulation 5(1) of the Promotion Regulations, the recruitment was to be made against the vacancies existing and anticipated over a period of 12 months from the date of meeting of the selection committee, and that was the only criterion for determining the size of the select list by the Commission and the select list for promotion of ACS officers from 1992-93, 1993-94, 1995-96 and 1996-97 for Assam had been prepared by the selection committee and approved by the Union Public Service Commission based on the information in regard to vacancies as furnished by the Respondent State of Assam and in accordance with the statutory provisions in this regard.

PARA-4.19 & 4.20:- In reply to the averment made in this para it is submitted that the claim of the applicant for promotion to IAS is contingent upon the number of vacancies available in the promotion quota in the Assam Segment of the IAS Assam-Meghalaya Joint Cadre from year to year. The incumbency or the number of posts in the Direct Recruitment quota is not directly related to this cause of action, nor it is the case of the applicant that he should be appointed against a post included in the Direct Recruitment

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quota. It is respectfully submitted that the averments made by the applicant in this para are irrelevant and out of context in regard to the substantive claims of the applicant at issue in the OA for promotion to IAS. In view of the specific provisions of Rule 9(1) of the Recruitment Rules, defining the number of posts upto which promotion may be made from the State Civil Service it is also not possible to create supernumerary posts in respect of the posts filled by recruitment under the IAS (Recruitment) Rules, 1954 in terms of the law settled by the Supreme Court in **Gudur Kishan Rao Vs. Suthirtha Bhattacharya and Others (JT 1998 (2) SC 90)**. The averments are, therefore, denied as baseless and untenable.

PARA-4.21:- In reply to the averment made in this para, it is denied that the impugned order is illegal and arbitrary and the same is known to the authorities. The Respondent State of Assam is concerned with the averments relating to the belated communication of the order to the applicant. As already submitted, the impugned order is only a logical and sequential outcome of the review of the select list of 1992-93 for Assam which had a cascading effect on the subsequent 1993-94 and 1995-96 select lists from which the applicant was originally considered for promotion to IAS.

PARA-4.22:- The averments made by the applicant in this paragraph are not supported by any documents / records. The correspondence between the Union Public Service Commission, the Central Government and the Government of Assam had the object of ascertaining from the State Government the details of the vacancies against which the review select list of 1992-93, 1993-94 and 1995-96 were prepared and operated. In reply to the query raised by the Union Public Service Commission and in the context of Government of Assam Letter No. AAI.46/95/277 dated 2.11.1999, a detailed communication was sent by this respondent to both the authorities on 25.11.1999, a copy of which is annexed to this reply as Annexure-R.I. As explained in Para-4 of this communication, the confusion in computing the vacancies arose because of the action of the respondent State Government showing in their records the appointment of Shri Dhirendranath Saikia at S.No. 2 of the review select list of 1992-93 against an ex-Cadre

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post and temporary post created by the State Government under the Cadre Rules, which was inadmissible under the relevant rules and did not reflect in the records of the Central Government. It was further pointed out in the communication of this respondent that the appointment by promotion of State Civil Service officers could be made only against regular substantive vacancies in the promotion quota of the State IAS Cadre under the statutory provisions of Regulation 5(1) of the Promotion Regulations. It was observed that the Respondent State of Assam in their records adjusted Shri Dhirendranath Sakia for the period from 9.3.1994 upto 0.2.1997 against the vacancy caused by retirement of Shhri N.K. Dass, IAS (SCS:83) who retired only on 31.3.1994, and this vacancy was later filled by promotion of Shri M.A. Borbhuyan from 10.2.1997 to 28.2.1997 in order to accommodate the promotee officer. The action of the Respondent State Government was in violation of and contravening the provisions of the statutory rules and regulations relating to appointment by promotion of State Civil Service officers of IAS and therefore had no place in the orders dated 16.1.1998 notifying the appointment of Shri D.N.Saikia to IAS from 9.3.1994. As already submitted, this Respondent went by the vacancy position reported by the State Government to the original selection committee of 1992-93, 1993-94 and 1995-96 while operating the review select lists for these years on their approval by the Commission. The action of the Respondent State Government in reporting a different number of vacancies at the time of preparation of subsequent 1996-97 select list was liable to upset the review select lists already prepared by the Union Public Service Commission for the previous years.

PARA 4.23:- In reply to the averment made in this para, it is submitted that as the Cadre Controlling Authority for the Service, the Government of India has to ensure the application of the normal rules and regulations in regard to the recruitment to the IAS by promotion only with reference to the ceiling imposed by Rule 9(1) of the Recruitment Rules on the promotion quota and the actual vacancy position and material records as furnished by the State Government to the Union Public Service Commission and the Government of India.

PARA 4.24:- The averment made in this Para do not call for the comments of this Respondent.

PARA 4.25:- It is denied that the impugned order is not sustainable and liable to be set aside. It is denied that the impugned order is not legally valid. It is denied that the applicant is entitled to appointment to the service without reference to the application of the normal rules and regulations applicable to such matter.

REPLY TO GROUNDS:

PARA 5.1:- It is denied that the impugned order is not sustainable being devoid of any substance.

PARA 5.2 & 5.3:- The Respondent State of Assam is concerned. It is, however, denied that the impugned order is not sustainable on these grounds.

PARA 5.4:- The Hon'ble Supreme Court in **General Manager South Central Railway Vs. A.V.R. Siddhanti (1974 (4) SCC 335)** held as under:-

“ The employees who were likely to be affected as a result of readjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision were, at the most proper parties and not necessary parties, and the non-joinder could not be fatal to the Writ Petition”.

Thus, the claim of the applicant that he was not a party to the litigation in **L.N.Tamuly's** case before the Hon'ble Guwahati High Court is not fatal or no way affects the consequences of the decisions of the High Court in that case. In view of this, the grounds made in this para are not tenable.

PARA 5.5:- Absence of information on the part of the applicant in regard to the revision of seniority of ACS by the Respondent State Government is no ground for denying the consequences of the operation of normal rules and regulations governing his case for promotion to IAS.

PARA 5.6:- It is not denied that in terms of the scheme of the Promotion Regulations, the select lists are to be prepared every year and the vacancies occurring during such years forms the subject matter of the select lists prepared by the selection committee for those years. However, the applicant has no title to be considered for appointment against the vacancy of the subsequent select list year with reference to his inter se position in the select list of the previous year, which was not operated by the State Government from the original select list of 1995-96. If the applicant is to be considered for promotion to IAS from the 1995-96 review list against the vacancies which are in the purview of the subsequent 1996-97 list, his junior, Shri Khagendranath Buragohain, at S.No.9 of 1995-96 review list is also liable to be accorded a similar benefit, which is not in conformity with the relevant regulations. It is submitted that the subsequent select list for 1996-97 has already been prepared by the Commission and any change in the status of the applicant with reference to the 1995-96 review select list is liable to upset the subsequent 1996-97 select list, which has not been stayed or quashed by this Hon'ble Tribunal and in which the applicant has been included at S.No.2 of the list. As already submitted creation of supernumerary posts in the promotion quota is untenable in terms of the judgement of the Supreme Court in *G.K. Rao's case*.

PARA 5.7:- The grounds are denied.

PARA 5.8:- The grounds are denied.

PARA 5.7:- It is denied that the impugned order has been passed in arbitrary and illegal manner with the sole purpose of giving undue benefit to the dearer and nearer of the Respondents.

PARA 5.10:- The grounds are denied.

PARA 5.11:- The grounds are denied.

PARA 6 & 7 : No comments

PARA 8:- In view of the submissions made in the preceding paragraphs, the applicant is not entitled to any of the reliefs prayed for in Para-8 of the OA.

PRAYER

In view of the submissions made above, this Hon'ble Tribunal, in the interest of justice may be pleased to dismiss the OA as devoid of merit and pass such other order or orders as may be deemed fit in the facts and circumstances of the case.

VERIFICATION

I, R.Vaidyanathan s/o (late) Shri Ramchandran, do hereby declare that the contents of the above Written Statement are believed by me to be true based on the records of the case. No part of it is false and nothing has been concealed therefrom.

PLACE: NEW DELHI

FOR AND ON BEHALF OF RESPONDENT NO.1

DATED: 22.08.2000



DEPONENT

89

FAX: 378 2044
AIS SA

19

ANNEXURE RT

MOST IMMEDIATE/BY FAX

2. C.S. ASSAM

Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
North Block, New Delhi

No. F.14015/40/99-AIS(I)

Dated the 25th November, 1999

To The Secretary
Union Public Service Commission
Dholpur House
NEW DELHI

(Kind Attn: Shri S.K. Srivastava, Additional Secretary]

Subject:- Selection Committee Meeting to the IAS of Assam-Meghalaya Joint Cadre, Assam Segment during the year 1996-97 - Representation received from Shri L.C. Singhi.

Sir,

I am directed to refer to Union Public Service Commission Letter No. 6/2/99-AIS dated 16.11.1999 on the above subject and to say as follows.

2. It is observed that the Commission has highlighted certain issues on the basis of representation of Shri L.C. Singhi, ACS as under:-

(i) Shri L.C. Singhi has stated that he was holding a cadre post of IAS even prior to his appointment to IAS by Government of India Notification dated 30.12.1996. Since his period of probation is already over, he does not have any lien in the ACS. Thus, rescinding of the appointment Notification has affected his confirmation in service from the date of appt. to the service; and

(ii) That he may be adjusted in the State IAS Cadre on 30.12.1996 against the vacancies caused by the retirement of Direct Recruit officers, Shri A. Bhattacharya (DR:1962) on 31.10.1996 or Shri R.V. Pillai (DR:1962), failing which against the vacancy caused on 30.4.1997 due to retirement of Shri A. Malik, IAS(SCS), regularising the interregnum between 30.12.1996 and 30.4.1997 by creating a supernumerary post, so that his confirmation in service is not disturbed.

3.1 In this connection the comments of the GOI on the above are furnished as under:-

(i) Confirmation is an incidence of service subsequent to appointment and is regulated subject to and in accordance with Rule 3(2) of the IAS (Probation) Rules, 1954. Unless and until an officer is confirmed in the IAS by Notification from this Department, his lien in the substantive post in S remains unaffected.

(ii) Shri L.C.Singhi is a member of the State Civil Service of Assam and his appointment to the IAS with reference to his position in the review select list of 1995-96 for Assam can be considered only against a substantive vacancy in the promotion quota occurring during the validity period of that select list. Evidently, in this background the officer cannot be 'adjusted' against the vacancies caused by retirement of Direct Recruit officers during 1996.

(iii) The vacancy caused by retirement of Shri A. Malik, IAS(SCS) on 30.4.1997 was outside the purview of the 1995-96 Selection Committee for Assam which met on 6.2.1996. This vacancy clearly falls within the purview of the 1996-97 select list for Assam which is yet to be prepared. That being so, Shri Singhi is not entitled to be considered for appointment against that vacancy.

(iv) As the Commission is already aware, the practice of creation of supernumerary posts in matter incidental to recruitment is long since been discontinued by the AIS-II Desk as per the judgement of the CAT, Hyderabad Bench in Suthirtha Bhattacharya's case, which was upheld by the Supreme Court also.

3.2 It may be recalled that earlier there came a proposal from the Government of Assam for appointment of Shri Bimalendu Bhattacharjee who was at S.No.8 of the original select list of 1995-96 (the position acquired by Shri L.C.Singhi in the review select list of 1995-96) and the proposal could not be accepted by the GOI for want of vacancy in the promotion quota during the relevant period. The detailed communication vide Lr.No.F.14015/4/96-AIS(I) dated 21.4.1997 addressed to the State Govt. and copy endorsed to the UPSC would recall. Prima facie, as the Commission is aware, whenever the select lists of the past are reviewed on grounds of revision of seniority / court directions etc., the officers selected in the review select lists approved by the Commission swap places with those officers in the original select lists in the order and with reference to the inter se position in the lists, upto the number of vacancies for which the respective select list was operated by the State Govt. and appointments made earlier from the original list. Shri L.N.Tamuly at S.No.7 of the 1995-96 review select list was adjusted and appointed only against the 1.7.1996 vacancy utilised earlier for appt. of Shri Singhi to IAS.

4. With reference to the State Government Lr.No.AAI.46/95/277 dated 2.11.1999 and copy endorsed to GOI, it may be stated the statement made in pages 4-5 of that letter is factually incorrect. As may be seen from the proposals relating to operation of review select list of 1992-93, the State Govt. recommended appt. of Shri D.N.Saikia at S.No.2 of the review select list with effect from 9.3.1994. In terms of the policy explained in the preceding para, the 1992-93 original and review lists for Assam were operated only upto S.No.7 though it was prepared for 8 vacancies and the officers in the review list were promoted to IAS against the vacancies utilised for appointment from the corresponding S.No. in the original list. As such, Shri

D.N.Saikia was promoted against the vacancy against which S.No.2 officer in the original list (viz) Shri Patreshwar Basumataray, was promoted on 9.3.1994. In case the appointment of Shri D.N.Saikia to IAS was adjusted in any other manner by creating ex-cadre posts etc., it is a mis-statement of fact for the reason that the promotion of State Civil Service officer could be made only against substantive vacancies in the promotion quota of the State IAS Cadre under the statutory provisions. In view of this, the statement that the appt. of Shri D.N.Saikia from 9.3.1994 from 1992-93 select list did not result in cascading effect of adjustment and utilisation of vacancies upto the last vacancy (viz) the vacancy dated 1.7.1996 due to retirement of Sh.L.K.Barua on 30.6.1996, is absolutely incorrect, in terms of the statutory and factual rules position explained above.

5. The Selection Committee to consider and prepare the 1996-97 Select List for Assam is scheduled to be held on 30.11.1999 and Shri L.C. Singhi is due to be considered for promotion to IAS therefrom. In case of his inclusion in that select list Shri Singhi is likely to be reappointed to the IAS by promotion from the due dates as also be conferred the year of allotment in IAS on that basis accordingly.

6. In the circumstances it is requested that the Commission may proceed to prepare the select list of 1996-97 as scheduled without any change.

Yours faithfully,

R. Vaidyanathan

R. VAIDYANATHAN

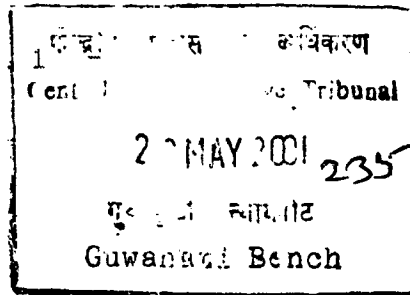
Under Secretary to the Govt. of India

Copy for information to the Chief Secretary, Government of Assam, Dispur, Guwahati-781006 (Shri B.K. Gohain, Secretary).

R. Vaidyanathan

R. VAIDYANATHAN

Under Secretary to the Govt. of India



Filed by:
The Applicant
through
Ujjwal Kr. Goswami
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A. NO. 25/2000

L.C. Singhi

Vs.

Union of India & Ors.

Rejoinder to the written statement filed
by the Respondent No. 1.

The applicant begs to state as follows:-

1. That the applicant has gone through the copy of W.S. filed on behalf of the respondent no. 1 and has mentioned the contents thereof.
2. That, save and except the status which are specifically cited here below other statement made in the W.S. are categorically denied.
3. That with regard to the to the statements made in paragraph 2 of the written statement, the applicant does not admit anything contrary to the relevant records.
4. In reply to the contents of para 3 of the

written statement it is most respectfully submitted that the Rule 4 (1) (b), Rule 8 (1) and Rule 9 (1) of the IAS (Recruitment) Rules, 1954 or the provisions of IAS (Appointment by Promotion) Regulations, 1955 do not provide for preparation of an year-wise 'Select List'. The Regulation, in fact, provides that the Selection Committee should ordinarily meet at an interval not exceeding one year. It should prepare Select List taking into account the number of substantive vacancies anticipated in the course of next 12 months commencing from the date of preparation of the Select List. It would be pertinent in this context to quote the relevant Regulation 5 (1) of IAS (Appointment by Promotion) Regulations, 1955, which runs as under :

"Each committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service, as are held by them to be suitable for promotion to the service. The number of members of the State Civil Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months, commencing from the date of preparation of the list, in the posts available for them

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under rule 9 of the Recruitment Rules plus twenty percent of such number or two, whichever is greater".

In actual practice also select lists have been prepared without taking into account the year-wise vacancies. Sometimes it has left vacancies unaccounted and sometimes even vacancies occurring beyond the period of 12 months have been filled up and the persons appearing in the Select List meant for the previous year have been appointed to the IAS. Neither the Government of India nor the State of Assam had ever adhered to the Rules and Regulations. The following cases which your humble applicant begs to cite would prove this fact :-

(i) Shri Sasadhar Nath and Shri Ashutosh Sengupta were appointed against the vacancies caused on 1.3.1993 even though these vacancies were not taken into account while preparing the Select List for 1991-92.

(ii) Shri T.Hussain and Shri D.B. Chetri and Shri S.B.Medhi were appointed to IAS and their appointment was notified by Government of India in 1989 even though the vacancies against which they were appointed were not taken into account while preparing the concerned select list.

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(iii) Even the Select List of 1993-94 did not take into account the vacancy caused due to retirement of Shri D.C.Barthakur but still Shri Dibakar Saikia was appointed to IAS vide Government of India Notification No. 14015/12/95-AIS(I) dated 25.5.1995.

(iv) The Select List for 1996-97 ought to have been and has been prepared taking into account three vacancies and accordingly it contains 5 names, but even the person at Sl. 4 of the laid select list i.e. Shri Khagendra Nath Buragohain has already been appointed to IAS by Govt. Notification No. 14015/5/97-AIS(I) dated 3.3.2000.

5. In reply to the contents in paragraph 4, 5, 6 and 7 of the written statement your humble applicant most respectfully submits that the case of Shri G.K.Rao Vs. Suthirth Bhattacharya and others deals with a totally different matter as the dispute therein was between the direct recruited IAS Officers and officers promoted from the State Civil Service. The circumstances concerning that case were all the more different because the Government wanted to appoint 14 State Civil Service

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Officers in excess of the authorized cadre strength by taking recourse to an amendment to the Cadre Strength Regulations but the case of the applicant is totally different. Your humble applicant has already submitted in para 4.18 and 4.19 that at no point of time the promoted officers have ever exceeded their quota. On the other hand the direct recruits to the IAS have always been in far excess of their quota. Your humble applicant has clearly mentioned that even as on 1.1.1997 in the Assam Meghalaya Joint cadre there were 164 direct recruit offices as against the authorized strength of 156. As on 1.1.1998 there were 162 direct recruit offices in Assam-Meghalaya joint cadre as against the authorized strength of 144 whereas there were only 49 promoted officers as against the authorized strength of 63. Like the answering respondent your humble applicant also begs to refer to the following observations of their Lordships in Gudukrishnan Rao Vs. Suthirth Bhattacharyya & Ors :-

".....any regulation merely increasing the number of posts in item 3 without any corresponding increase of item 1 and 2 on the face of it would be violative of the very mandate of the Regulation and at any rate it would violate Rule 9 of the Recruitment Rules. ----- the impugned Notification increasing the number of

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posts only for the State Civil Service Officers to be promoted contravenes Rules 8 and 9 of the Recruitment Rules as well as contravenes the mandate of the Regulation itself". (Emphasis added).

Your humble applicant most respectfully submits that in the instant case the excess recruitment has been of the direct recruits and not of the officers promoted from the State Civil Service. Even the State of Assam has also informed the Government of India that every SCS officer including your humble applicant has been appointed against clearly available existing vacancies. it is also submitted that in the instant case, there is no dispute either between the direct recruits and promoted officers or between the promoted officers themselves. Your humble applicant submits that your applicant was appointed to IAS against a clear available vacancy and in any case, your humble applicant was appointed to IAS on 30.12.1996 and was entitled to be confirmed in IAS with effect from the date of his appointment to IAS in view of proviso to Rule 3 of the IAS (probation) Rules 1954 and that there is no legal power vested in the Government to terminate the appointment by passing the impugned order rescinding the order of appointment in the year, 2000 and that too in violation of the principles of Natural Justice and Service Jurisprudence.

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6. In reply to the contents in para 6 and 7 of the written statement your humble applicant most respectfully submits that the Civil Rule No. 1079/93 was filed by your humble applicant along with Shri L.N.Tamuly and it never related to review of any Select List for promotion to IAS. The Government of Assam approached the Hon'ble High Court in that Civil Rule for allowing them to appoint one Shri Debbrata Chakravorty, Respondent No. 20 in the said case to IAS whose name figured at Sl. No. 1 of the Select List pertaining to 1993-94. The Hon'ble High Court rejected the petition of the State Government and directed the Government to reconsider the promotion matter to IAS giving opportunity to all the contenders on seniority basis. This order was passed by Hon'ble High Court on 20th day of March, 1995. In pursuance of the said High Court order the then existing select list prepared for the year 1993-94 was reviewed and the name of Shri Debbrata Chakravorty was deleted from the select list and in his place Shri A.K.Daolagupu was appointed to IAS whose named figured below Sri Bhudev Basumatari and who would not have been appointed to IAS had the select list then existing would not have been reviewed in pursuance of the said order passed by the Hon'ble High Court in Civil Rule No. 1079/93 filed by your humble applicant along with Sri L.N.Tamuly. While the appointment of (i) Ms. Gayatri Barua (ii) Shri Santanu Bhattachaya (iii) Ms. Sunanda

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Sen. Gupta and (iv) Shri A.K.Daolagapu was notified by Notification No. 14015/12/94 dated 24.3.1995 i.e. four days after the receipt of the order of the Hon'ble High Court passed in Civil Rule no. 1079/93, Shri Dibakar Saikia was appointed to the IAS vide Notification No. 14015/12/95-AIS(I) dated 25.5.95 i.e. after almost 65 days of the Hon'ble High Court's order. Be it mentioned that the 1993-94 i.e. after almost 65 days of the Hon'ble High Court's order. Be it mentioned that the 1993-94 select list was prepared taking into account only 5 vacancies and there were 7 persons in the select list but as mentioned above Shri Dibakar Saikia who was at the bottom of the select list of 1993-94 was appointed against the vacancy of Shri D.C.Barthakur which was not taken into account while preparing this select list.

Shri Bhudev Basumatary was appointed to the IAS vide Notification dated 5.2.1996 one day prior to the meeting of the Selection Committee and almost a year later than the Judgement and order passed in Civil Rule No. 1079/93 by the Hon'ble High Court. The selection committee for 1995-96 met on 6.2.1996 almost one year after the Judgement and the appointment order of your humble applicant was issued on 30.12.1996 i.e. after more than 21 months. From this it is very clear that the Hon'ble High Court never directed to review any select list and the select lists of 1992-93, 1993-94 and 1995-

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96 have not been reviewed in pursuance of any High Court order but it has been done only with a view to appointing Shri Dhirendra Nath Saikia to the IAS.

Your humble applicant also submits that the case of Shri Dhirendra Nath Saikia was considered along with your humble applicant when the select list for the year 1995-96 was prepared and he was at that time classified as "Very Good" and being junior to your humble applicant he was not included in the select list. It is interesting to note that Shri Dhirendra Nath Saikia was also considered when the select list of 1993-94 was prepared on 31.3.1993 in pursuance of the directions of this Hon'ble Tribunal in O.A. No. 61/94 and at that time also he was not classified as "outstanding" and accordingly he was not included in the said select list. A person who was concise twice and was not included in the select list prepared for the year 1993-94 and 1995-96 was classified as "outstanding" and included in the Review Select List of 1992-93 and your humble applicant has reason to believe that the select list of 1992-93 was reviewed only with a view to appointing him to the IAS by whatever means and this was engineered by the respondents by taking recourse to a nonest order of the Hon'ble High Court, using it mischievously and by ensuring his classifications "Outstanding" and then appointing him to IAS with retrospective effect in the year

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1998. This was all done meticulously, mischievously and by putting at naught the whole of the services Jurisprudence, Rules and Regulations. Whatever has been done in alleged obedience to the High Court order, has been done with a view to giving illegal and undue benefit to a particular person.

Your humble applicant also submits that there was no direction from the Hon'ble High Court to re-cast the seniority and no such seniority in the Assam Civil Service has been re-casted by Government of Assam. Had it been so, the State Government of Assam ought to have taken into account the objections submitted by your humble applicant on 28.6.1993 whereby your humble applicant claimed seniority under Rule 19 (4) of the ASSAM Civil Service (Clause I) Rules, 1960. Your humble applicant is not aware of any revision of seniority effected by Government of Assam in the Assam Civil Service. As a matter of fact your humble applicant submitted another application praying for determination of his inter-se seniority in the Assam Civil Service under Rule 19 (4) of the Assam Civil Service Rules, 1960 on 8.11.2000. Your humble applicant prays that the Hon'ble Tribunal be pleased to direct the Government of Assam to review the seniority in the Assam Civil Service after duly considering the petition filed by your humble applicant firstly on 28.6.1993 and then on 8.11.2000.

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A copy of each of both of these applications is annexed hereto and marked as ANNEXURES-1 & 2 respectively.

The applicant was never made aware of any revision of seniority and of any review selection adversely affecting his service career. No review selection was called for all alleged. The whole exercise allegedly carried not behind the back of the applicant is palpably wrong.

6. In reply to the contents in para 8 of the written statement it is most respectfully submitted that the facts narrated therein are misleading and does not project a true picture. From the contents it appears as if the select lists are prepared and operated by the Sate Government and not by the Government of India. It is mischievous to tell that an unforeseen vacancy was created due to ineligibility of Shri D.Chakravorty who was at Sl. No. 1 of the original select list of 1993-94. A vacancy is created in respect of a person appointed to the service. It is not understood as to how a vacancy could have been created by ineligibility of an officer who was never appointed to IAS. The detection of the name of Shri D.Chakravorty in pursuance of the order of the Hon'ble High Court was a result of the review of the select list of 1993-94 which was then existing and it can not be treated as a vacancy, seen or unforeseen.

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7. In reply to the contents in para 9, 10 and 11 of the written statement your humble applicant most respectfully submits that the contents therein are misleading and mischievous and in all probability false. Your humble applicant submits that the details of vacancies cited by the Government of India are not correct. Your humble applicant most respectfully submits that when Shri Dibakar Saikia was appointed against the vacancy caused by the retirement of Shri D.C. Barthakur that vacancy naturally could not have been taken into account when the Selection Committee met for finalizing the select list of 1993-94. The details furnished in para 9 are nothing but an after thought. Your humble applicant submits that let the Government of India be directed to produce relevant documents which would establish that the statements made in para 9 are not correct. The contradictions in the submissions of Government of India are writ-large, as on the one hand they are submitting that the Select lists are prepared on the basis of the vacancy position as intimated by Government of Assam and the Select List are also operated by the Government of Assam and on the other hand in para 9 they are contending as to which are the vacancies which were taken into account while preparing the list for the year 1995-96. Had it been so the Government of Assam would never have written that all persons including your humble applicant were appointed against clearly availa-

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ble existing vacancies. Your humble applicant also submits that the contents in these paras are far from true and did not bear any co-relation with the course of action actually taken recourse to by the answering respondent Government. Your humble applicant most respectfully submits that the impugned order is a whimsical, arbitrary and egoistic order passed by an executive authority which usually first decides the matter on the basis of whims, caprices, prejudices and egos in an arbitrary and whimsical manner and then takes recourse to find reasons to justify the same by all means, fair or foul.

8. That with regard to the statements made in para 10 (sic) it is stated taht the applicant is entitled to the reliefs sought for in the O.A.

9. That with regard to the reply in respect of para 4.1 to 4.11, while denying the contentions raised therein, your humble applicant begs to refer to the Rule 3 of the IAS Probation Rules, 1954 which fixes the period of probation as one year: The proviso of the said Rule further prescribes taht any period for which a person has been appointed to a cadre post may be counted as the period of probation and it i sin view of this that your humble applicant has requested for confirma-tion to the Indian Administrative Service w.e.f. the date of his appointment to the IAS as he was holding the

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care post since much earlier and relevant averments in this O.A. have neither been denied nor controverted by any of the respondents. It may also be mentioned that the Proviso 2 of Rule 3 empowers the Central Government to reduce the period of probation. The Clause 3 of the said Rule although empowers the Central Government to extend the period of probation but in that case also the maximum period upto which it can be extended has been fixed as one year. The legal position in this regard is absolutely clear and a series of decisions from the Hon'ble Apex Court would establish that once the maximum period prescribed is over a probationer is deemed to be confirmed. In case of your humble applicant the concept of "deemed confirmation" has to be interfered in view of the settled legal position in this regard.

10. In respect of the reply to paragraph 4.12, 4.13, 4.14, 4.15 and 4.16 submitted by the answering Respondent your humble applicant begs to submit that the Answering Respondent (Union of India) has not only read the order passed by the Hon'ble Gauhati High Court in Civil Rule No. 1079/93 they have also not read the O.A. Your humble applicant has never stated that he was not impleaded as a party. On the other hand your petitioner has submitted that he was himself a writ petitioner along with Shri L.N.Tamuly in the said Civil Rule No. 1079/93.

Contd.../-

11. In respect of the reply to the contents in para 4.17 it is most respectfully submitted that the Government scheme in pursuance of the decision of Jabalpur Bench of this Hon'ble Tribunal was circulated by Government letter dated 9.9.1996 and the petitioner was appointed to IAS vide Notification dated 30.12.1996 i.e. almost four months after the scheme was formulated and circulated. In any case with the rejection of the SLP by the Hon'ble Supreme Court, the Respondents were duty bound to implement the decision with effect from the date of the order of the Jabalpur Bench of this Hon'ble Tribunal.

12. In respect of the reply to paragraphs 4.18 and 4.20, your humble applicant begs to state that the Government of Assam has already made it clear that your humble applicant as well as Shri Dibakar Saikia and Dharendra Nath Saikia were appointed against clear existing available vacancies and in view of this, Government of Assam has requested the Government of India to re-consider the decision, but inspite of this, the Government of India has taken an adamant and egoistic attitude. In fact when your humble applicant met the Additional Secretary and explained the matter especially the vacancy position he was convinced and assured your humble applicant to review and rescind the impugned order. Your humble applicant was absolutely sure that it will be done so, but instead of doing what was assured

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the Government of India did nothing and ultimately the Government of Assam had to issue the impugned order knowing it very well that the impugned order is not only un-reasonable and arbitrarily but also illegal.

13. That with regard to the reply submitted in respect of para 4.21 to 8 while denying the contentions raised therein the applicant re-iterates and reaffirms the statement made hereinabove and in the Original Application.

14. That the applicant submits that there being no proper verification of the WS, the same is liable to be ignored. Further, for a proper decision in the matter, the respondents may be directed to produce the relevant records more particularly the minutes of the review selection alleged revised seniority list etc. relevant for the case.

15. That under the facts and circumstances of the case, the O.A. deserves to be allowed by setting aside the impugned order and granting the prayer made in the O.A.

Contd.../

VERIFICATION

I, Shri

son of

aged about

resident of

do hereby verify that the statements made in paragraphs

No. are true to my personal

knowledge and the statements made in paragraphs No.

are believe to be true on legal advice and
that I have not suppressed any material facts.

Place :

Date :

Signature of the Applicant

Contd.../-



BY REGISTERED POST.

PHONE : OFF.
RES.

सं/No. CAT/CHY/JUDL/63/1

केन्द्रीय प्रशासनिक अधिकरण,
गुवाहाटी न्यायपीठ, गुवाहाटी,
राजगढ़ रोड, गुवाहाटी-५
Central Administrative Tribunal
Guwahati Bench,
Rajgarh Road, Bhangagarh,
GUWAHATI-781005

दिनांक/Date 22.04.2002.

To

The Deputy Registrar,
Central Administrative Tribunal,
Kolkata Bench,
Kolkata.

Sub:- Case records in O.A. 100/98 with M.P. 266/2001,
O.A. 383/2000, O.A. 25/2000 with M.P. 196/2001 and
M.P. 53/98 (O.A. 63/94). & OA 331/2000

Ref:- P.B. letter No. 13/1/95(JA) dated 5.9.2001.

Sir,

I am directed to send herewith the original case records of above mentioned O.A. and M.P. with ~~existing~~ connected letters in M.P. 266/2001(O.A. 100/98) relating to Gauhati Bench for placing it before the Hon'ble Administrative Tribunal, Calcutta Bench for further necessary orders.

Kindly acknowledged the receipt.

Yours faithfully,

I/C DEPUTY REGISTRAR.

Copy for information to:-

1. The Deputy Registrar, Principal Bench, New Delhi for information.
2. Office copy.

Enclo:

1. M.P. 266/2001 with O.A. 100/98 (A+C) = 3 Nos.
2. O.A. 383/2000 (A+C) = 2 nos.
3. O.A. 25/2000 (A+C) = 3 Nos.
4. M.P. 53/98 with O.A. 63/94 (A+C) = 4 Nos.

Total 12 Nos file.

I/C DEPUTY REGISTRAR.

7/5/2002
D R (J) Secy

SOJ
m/s
2/5

OA 331/2000



13/1/95-JA/307/A
केन्द्रीय प्रशासनिक अधिकरण

CENTRAL ADMINISTRATIVE TRIBUNAL

प्रधान न्यायपीठ, नई दिल्ली
Principal Bench, New Delhi

Faridkot House, Copernicus Marg,
New Delhi - 110 001

Dated : 14.01.2002

The Dy. Registrar,
Central Administrative Tribunal,
Guwahati Bench.
GUWAHATI.

Sub.: Constitution of Bench in O.A.100/98, O.A.226/97, x
O.A.139/98 with >P.153/01, O.A.178/98 and M.P.53/98 in
138/98 x O.A.63/94. x

Sir,

I am directed to refer to your letter No.CAT/GHY/1/4/86/JUD/1321 dated 10.12.2001 on the above mentioned subject and to state that the matter was placed before Hon'ble the Chairman and His Lordship has ordered as below :-

"No orders at present"

Yours faithfully,

(A.K. Ajmani)
Deputy Registrar (JA)

50(5)

16/1/02

The above cases to
now being sent to
Culella bench on
pendis in this bench.
14/01/02

46/N

136

A draft letter prepared and put up
for kind approval.

~~DR~~

Noted.

10/12/01

DFA-related below is submitted for kind
approval, pl.

~~DR~~
10/12/01

Honble Member
Akhoy,
11/12/01

Sr (T)
11/12/01

NO. 13/1/95/JA/307/4 dated 14.01.2002
Received from P.B. New Delhi regarding-

the following cases is pending as case
Nos. CA 383/2000, MP. 53/98 (CA 63/94), 100/98 MP
MP. 266/2001 & 25/2000. As per P.B. letter above
he may perhaps transfer case to the
Honble Calcutta Bench (C.A.T.).

Therefore I request you kindly
pass an order to transfer the above
cases to the C.A.T. Calcutta Bench.

Submitted.

~~DR~~

Noted.

The Principal Bench vide its office letter dt 10/12/2001 was
requested to place the matter before Honble Chairman for further directions
as to whether the cases are to be transferred to Calcutta Bench
or to be heard by the Spl. Bench at Guwahati. The Principal Bench has
informed vide their letter dt 14/1/02 that the Honble Chairman passed
the following order:-

"No order at present."

In view of the order of Honble Chairman, we may keep the above
cases pending at Guwahati Bench for the present.

~~DR~~
17/1/02

Honble Vice-Chairman

~~DR~~
17.1.

Sr (T)
17/1/02

17/1/02

sent by 17.1.2002

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

WRITTEN STATEMENT ON BEHALF OF
RESPONDENT No. 2

IN

ORIGINAL APPLICATION No. 25/2000

L C SINGHI

: APPLICANT

Vs.

UNION OF INDIA & OTHERS

: RESPONDENTS

Written Statement of (Ms.) Molly Tiwari, posted as Under Secretary in the office of Union Public Service Commission. New Delhi.

I, solemnly affirm and state as under :

That I am an officer in the office of Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi and am authorised to file the present Written Statement on behalf of Respondent No. 2. I am also fully acquainted with the facts of the case stated below:

That I have read and understood the contents of the above Application and in reply submit as under.

2. At the outset, it is submitted that the Union Public Service Commission, being a Constitutional body, under Articles 315 to 323 Part

Filed by
Debatad
6/3/2000
(B.C. PATTHAK)
Addl. Commr. (Adm.)
Central Administrative Tribunal
Guwahati Bench
Guwahati.


(Ms.) Molly Tiwari
Under Secretary
सर्व लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

XIV (Services under the Union and the States) Chapter-II of the Constitution, have to discharge their functions, duties and Constitutional obligations assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for IAS/IPS/IFS. In pursuance of these Rules, IAS (Appointment by Promotion) Regulations, 1955 have been made. In accordance with the provisions of the said Regulations, the Selection Committee, presided over by the Chairman/Member of the Union Public Service Commission makes selection of State Civil Service officers for promotion to Indian Administrative Service.

3.1 The Application has been filed against letter dated 3.1.2000 of the Govt. of Assam forwarding Govt. India's Order dated 30.7.1999 by which the appointment of the Applicant to IAS by promotion was rescinded.

3.2 The Applicant has also alleged that the said Order has been passed purportedly with a view to implement the direction of the Hon'ble Guwahati High Court dated 23.9.1995 passed in Civil Rule No.1079/93 filed by him alongwith Shri L N Tamuli. According to the Applicant, there is no direction in the said Judgement for any revision of seniority of the members of the Assam Civil Service so as to prejudicially affect the Applicant or any member of the Assam Civil Service belonging to 1977 batch of Assam Civil Service; further there is no direction in the said Judgement to review the Select List of 1992-93, 1993-94 & 1995-96.

3.3 The Applicant has also stated that the permission sought by the Govt. of Assam to promote Respondent No.20 in the Civil Rule i.e. Shri Debabrata Chakravorty, was refused by the Hon'ble Court since the said


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Respondent alongwith others were sought to be given seniority over the Writ Petitioners and the interveners by the impugned Orders. The Hon'ble Court set aside the impugned Orders holding that the Writ Petitioners and interveners belonging to 1977 batch of ACS would maintain their seniority over the private Respondents. According to the Applicant, on the face of such refusal by the Hon'ble Court, one Shri Dibakar Saikia was appointed in place of Shri Debabrata Chakravorty. Thus, there is no question of review of 1992-93 Select List and the consequential review of 1993-94 and 1995-96 Select Lists. The revision of these Select Lists was never an issue in the said Civil Rule and there was also no decision regarding any such review by the Hon'ble Court.

3.4 The Applicant has further contended that he was appointed to the IAS from the Select List of 1995-96. In the earlier Select Lists prepared for the years 1993-94 & 1995-96, the case of Shri D N Saikia was also considered but he was not included in the Select List since he was not found suitable. According to him, Shri D N Saikia was not within the zone of consideration for the Select List of 1992-93. As against the seniority position of the Applicant at S. No.5, Shri Saikia's position was at S. No.10 and therefore he was junior to the Applicant. Further, the SCM for preparation of the 1995-96 Select List was held almost a year after the judgement of the Hon'ble High Court and as such, the question of reviewing the Select Lists of 1992-93, 1993-94 or 1995-96 did not arise.

3.6 The Applicant has also stated that the number of posts to be filled by promotion in respect of Assam-Meghalaya Joint Cadre should be held to be 53 since the year 1994 and not 51. He has also contended that the




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Respondents ought to have created a supernumerary post to accommodate him, if it was required.

4.1 It is most respectfully submitted that the factual position is that a meeting of the Selection Committee was held on 31.3.1993 for preparation of a Select List for promotion of State Civil Service officers to the Indian Administrative Service of Assam-Meghalaya Joint Cadre, Assam Segment during 1992-93. This Committee considered 30 eligible State Civil Service officers and prepared a Select List of 10 names against eight vacancies reported by the State Govt. The Applicant was considered at S. No.28 of the Eligibility List and was assessed as 'Very Good' by the Selection Committee. However, he was not recommended for inclusion in the Select List owing to the statutory limit on the size of the Select List. Shri Dibakar Saikia was considered at S. No.16 of the Eligibility List and was assessed as 'Very Good'. He was also not recommended for inclusion in the Select List owing to the statutory limit on the size of the Select List. Shri D N Saikia was not considered by this Selection Committee as he was not included in the Eligibility Zone.

4.2 The next Selection Committee met on 29.3.1994 to prepare a Select List for promotion of State Civil Service officers to the Indian Administrative Service of Assam-Meghalaya Joint Cadre, Assam Segment during 1993-94. This Committee considered 21 eligible officers of the State Civil Service and prepared a Select List of seven names against five vacancies reported by the State Govt. The Applicant was considered by the Selection Committee at S. No.21 of the Eligibility List and was assessed as 'Very Good'. However, he was not recommended for inclusion in Select List owing to the statutory limit on the size of the Select List. Shri Dibakar



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Saikia was considered at S. No.9 of the Eligibility List and was graded as 'Very Good'. On the basis of this grading, he was recommended to be included at S. No.7 of the Select List of 1993-94. Shri D N Saikia was not included in the Eligibility Zone and therefore was not considered by the Selection Committee.

4.3 The Selection Committee met next on 6.2.1996 to prepare a Select List for promotion of State Civil Service officers to the Indian Administrative Service of Assam-Meghalaya Joint Cadre, Assam Segment during 1995-96. (There was no Selection Committee Meeting for the year 1994-95) This Committee considered 28 eligible officers of the State Civil Service and prepared a Select List of nine officers against seven vacancies. The Applicant was considered at S. No.9 of the Eligibility List and was assessed as 'Very Good'. On the basis of this grading, he was recommended for inclusion in the Select List at S. No.7.

4.4 Meanwhile, one Shri L N Tamuly & Others (Direct Recruit State Civil Service officers) had filed Civil Rule No.1079/93 before the Hon'ble High Court, Guwahati Bench challenging the seniority of some State Civil Service officers over direct recruit State Civil Service officers of the 1977 batch. The Hon'ble High Court vide their judgement dated 20.3.1995 disposed of the Civil Rule and directed as under:-

"..... This Court has allowed the Writ Petition for maintaining the seniority of the direct recruits of 1977 batch above the private respondents. Apparently, this Court cannot restrict the Govt. to issue direction not to consider the promotion of the respondent No.20 as


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seniority cannot be the only criteria for promotion. All the private respondents alongwith the writ petitioners of 1977 batch have the right to be considered for promotion though, claim for promotion to the IAS is not a vested right for all of them. The application is rejected. The respondent Govt. shall reconsider the promotion matter to the IAS, giving opportunity to all the contenders on seniority basis so that they can come to the zone of consideration for promotion." (Emphasis supplied)

4.5 Thereafter, one Shri T N Goswami & Others filed a Writ Appeal No.94/95 against the aforementioned Order of the Hon'ble High Court. The Hon'ble High Court vide their Order dated 20.12.1996 dismissed the Writ Appeal.

4.6 Before Shri D Chakravorty who was included at S. No.1 of the Select List of 1993-94 could be appointed, the Hon'ble High Court of Guwahati vide their Order dated 20.3.1995 quashed the State Govt.'s Notification dated 27.5.1992 by which Shri D Chakravorty was promoted to SCS Class-I w.e.f. 31.12.1977 and his seniority was fixed above the seniormost person of 1977 batch. As a result, he lost seniority among the officers considered by the Selection Committee on 29.3.1994. Therefore, the Govt. of Assam requested this Respondent to carry out a Special Review (under Regulation 7(4) of the Promotion Regulations) of the said Select List to delete the name of Shri Chakravorty from there. They also sought the approval of the Commission for appointment of Shri Dibakar Saikia who was at S. No.7 of the said Select List. This Respondent considered the matter at length and observed that Regulation 7(4) could be invoked only if


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a specific case of grave lapse in the conduct or performance of an officer was made out. Therefore, this Respondent informed the State Govt. vide letter dated 12.5.1995 that a special Review under Section 7(4) was not warranted in the case.

4.7 Thereafter, the State Govt. forwarded a proposal vide letter dated 5.2.1997 for a review of the Select List of 1992-93 & 1993-94 in pursuance of the direction of the Hon'ble High Court dated 20.3.1995. The Commission agreed to review the Select Lists of 1992-93 & 1993-94 and a Review Selection Committee Meeting was held on 18th September, 1997 to review the said Select Lists.


4.8 The Review Selection Committee first took up the Select List prepared on 31.3.1993 for 1992-93 and reviewed it on the basis of the revised Seniority List. The Committee noted that the names of six officers who were considered on 31.3.1993 were excluded from the Eligibility List on the basis of the revised Seniority List and six officers who were earlier not in the Eligibility List were included in the Eligibility List in place of six officers who were excluded. This Review Selection Committee, therefore, assessed these six new officers afresh and after adopting the assessment made by the Selection Committee which met on 31.3.1993 in respect of the remaining officers, prepared a Select List consisting of ten officers against eight vacancies. The name of the Applicant was included at S. No.22 of the Eligibility List for the year 1992-93 and he was assessed as 'Very Good'. On the basis of this assessment, his name was not included in the Select List as officers with better grading were available and because of the statutory limit on the size of the Select List. However, Shri D N Saikia, who was


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included at S. No.27 of the Eligibility List, was assessed as 'Outstanding'. On the basis of this grading, he was included in the Review Select List at S. No. 2.

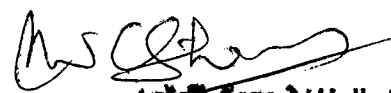
4.9 The Review Selection Committee then reviewed the Select List of 1993-94 prepared on 29.3.1994. The Committee noted that the names of six officers who were considered on 29.3.1994 for 1993-94 were excluded from the Eligibility List on the basis of the revised Seniority List and six more officers were included in the Eligibility List in their place. This Review Selection Committee, therefore, assessed these six officers afresh and after adopting the assessment made by the Selection Committee which met on 29.3.1994 in respect of the remaining officers, prepared a Select List consisting of seven officers against five vacancies. The name of the Applicant was included at S. No.16 of the Eligibility List for the year 1993-94 and he was assessed as 'Very Good'. On the basis of this assessment, his name was not included in the Select List as officers with better grading were available and because of the statutory limit on the size of the Select List. Shri Dibakar Saikia who was included at S. No.10 of the Eligibility List was assessed as 'Very Good' and was included at S. No.7 of the Select List.

4.10 As a result of the Review of the above Select Lists, Shri D N Saikia who was not included in the original Select List of 1992-93 or 1993-94 was included in the Review Select List of 1992-93 whereas Shri Dibakar Saikia who was included in the 1993-94 Select List and was appointed to the IAS from that Select List was excluded from the Review Select List of 1993-94. As he was appointed to the IAS from the 1993-94 Select List, Shri Dibakar Saikia was not considered by the Selection Committee which met on 6.2.1996 to prepare the Select List of 1995-96. Therefore, another


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Review Selection Committee met on 8.3.1999 to review the Select List prepared on 6.2.1996 for promotion to the Indian Administrative Service of Assam-Meghalaya Joint Cadre, Assam Segment to consider inclusion of Shri Dibakar Saikia. This Committee noted that Shri D N Saikia, who was considered on 6.2.1996, was included in the Review Select List of 1992-93 prepared on 18th September, 1997. The name of Shri Dibakar Saikia, who was excluded from the Select List of 1993-94 as a result of the Review held on 18.9.1997, was included in the revised Eligibility List for 1995-96. The Review Selection Committee therefore assessed this officer afresh and after adopting the assessment made by the Selection Committee which met on 6.2.1996 in respect of the remaining officers, prepared a Select List consisting of nine officers against seven vacancies. The name of Shri Dibakar Saikia was included at S. No.5 of this Select List. The name of the Applicant was included at S. No.10 of the Eligibility List and he was assessed as 'Very Good'. On the basis of this assessment, his name was included in the Select List at S. No.8. However, since only seven officers from the Select List of 1995-96 was appointed to the IAS, the appointment of the Applicant to the IAS was rescinded by the Govt. of India vide Order dated 30th July, 1999. Thereafter, the Applicant was considered for the Select List of 1996-97 by the Selection Committee which met on 30.11.1999 and he was included at S. No.2 of the Select List of 1996-97.

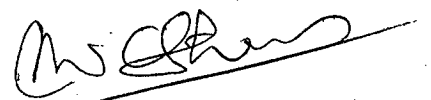
5.1 As regards the Applicant's contention that the number of vacancies in the promotion quota taken into account while preparing the impugned Select Lists was not correct, it is most respectfully submitted that the vacancies as reported by the State Govt. while furnishing a proposal to this Respondent for convening a Selection Committee Meeting are taken into account by this Respondent while preparing the Select List. It is most


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respectfully submitted that at the time of preparing the 1996-97 Select List, the State Govt. had reported four vacancies including one vacancy already taken into account by the Selection Committee which met on 6.2.1996 (Select List of 1995-96). Since this vacancy was already taken into account, the State Govt. were asked vide our letter dated 16.11.1999 to intimate the correct position regarding the number of vacancies available for the Select List of 1996-97. Since no satisfactory explanation was forthcoming from the State Govt. regarding this vacancy, this Respondent decided not to take this vacancy into consideration for preparation of the Select List of 1996-97 and the State Govt. were informed accordingly. Further, in our letter dated 15.12.1999, the State Govt. were asked to indicate the dates and manner of occurrence of vacancies taken into account while preparing the Select Lists for the years 1992-93, 1993-94 and 1995-96. They were also asked to indicate if any vacancy occurring in the promotion quota during the period 1992-93 to 1995-96 was not taken into consideration by the Selection Committees during the said period. So far, no reply has been received from the State Govt.

Further, it is most respectfully submitted that any increase in the promotion quota is determined by the Central Govt. in consultation with the State Govt. As such, the submissions made in this respect by the Central Govt. as well as the State Govt. may kindly be seen by the Hon'ble Tribunal in this context.

5.2 As regards the Applicant's contention that his appointment to the IAS could not have been rescinded retrospectively, it is most respectfully submitted that the appointment of an officer included in the Select List and



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the cancellation of such appointment falls under the purview of the Govt. of India.

6. That on the facts and circumstances stated above and also the detailed reply filed by the Central Govt. and the State Government, the Hon'ble Tribunal may pass appropriate orders in the interest of justice.

VERIFICATION

I. (Ms.) Molly Tiwari, do hereby declare that the contents of the above Written Statement are believed by me to be true based on the records of the case. No part of it is false and nothing has been concealed therefrom.

Verified at New Delhi on this 1st day of March, 2000.

Attested

Subby

1/3/2000

(सुभाष आहुजा)
(S. C. AHUJA)
सहायक सचिव/Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
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RESPONDENT

(मॉली तिवारी/Molly Tiwari)
अवर सचिव-/Under Secretary
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Union Public Service Commission
नई दिल्ली/New Delhi

ylb
O.A. No. 811/02 (OA 25/2000)
Copy/Rejoinder/Supp. Appl/Suppl. Record
Vakalatnama/Affidavit of Service
Filed on 21/4/05
In Registry/Court
Not Verified
N. Sukeel

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

IN THE MATTER OF

O.A. No. 811/02 (OA 25/2000 of Guwahati Bench)

L.C. Singhi

Applicant

Vs.

Union of India and Others

Respondents

The Rejoinder to the Written Statement filed by the Respondent No. 2

The humble applicant most respectfully begs to state as follows:-

1. That the applicant has gone through the copy of the written statement filed on behalf of the Respondent No. 2 and noted the contents thereof.
2. That save and except the facts which are specifically admitted hereinbelow, all other statements made in the written statement are categorically denied.
3. That the contents in paragraph 1 and 2 need not be commented upon and the contents in paragraph 3 are recitals from the O.A.

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filed by your humble Applicant and as such no comments need be made.

4. In reply to the contents in paragraph 4.2 it is most respectfully submitted that the contents therein are not correct. As a matter of fact the Union Public Service Commission was directed by the Guwahati Bench of this Hon'ble Tribunal to consider the case of Shri Dhirendra Nath Saikia vide orders passed on 25.3.1994 in O.A. No. 61/94 and as such the Selection Committee which met on 29.3.1994 did and must have considered Shri Dhirendra Nath Saikia. The contention of the Respondent that Shri Dhirendra Nath Saikia was not considered by the Selection Committee is contrary to the directions of the Guwahati Bench of this Hon'ble Tribunal in the said O.A. No. 61/94.

A copy of the order Dated 25.3.94 passed by the Guwahati Bench of this Hon'ble Tribunal in the said O.A. is enclosed as *Annexure -1.*

5. In reply to the contents in Paragraph 4.3 it is most respectfully submitted that a Constitutional Authority like Union Public Service Commission has not stated the whole truth and suppressed certain facts by not placing those facts before this Hon'ble Tribunal. It is most respectfully submitted that the Selection Committee which met on 6.2.1996 to prepare the Select List for the year 1995-96 considered 28 eligible officers of the State Civil Service and prepared a Select List of 9 officers against 7 vacancies. The Union Public Service Commission

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had suppressed this fact that amongst these 28 eligible officers Shri Dhirendra Nath Saikia was also one of them and he was duly considered and he must have been assessed as "Very Good". He could not find his place in the Select List because he was junior to your humble Applicant. The Union Public Service Commission being an august Constitutional body ought to have explicitly stated this fact. Your humble Applicant begs to submit that Shri Dhirendra Nath Saikia was considered by the Selection Committee which met on 6.2.1996 and he was assessed as "Very Good". The same Dhirendra Nath Saikia was categorised as "Outstanding" in the Review Selection Committee which met on 18.9.1997 on the basis of the proposal submitted by the State Government vide letter dated 5.2.1997. Your humble Applicant has reason to believe that this whole review was done with a view to promoting Shri Dhirendra Nath Saikia by getting him categorised as "Outstanding and to give him retrospective promotion to the Indian Administrative Service. It is surprising that the Selection Committee which met on 6.2.1996 assessed Shri Dhirendra Nath Saikia as "Very Good" but the Review Selection Committee which met on 18.9.1997 assessed him as "Outstanding". It is pertinent to take a note of the changes, which have taken place in the State at political as well as Administrative Level in between 6.2.1996 (when the Selection Committee met and did not categorise Shri Dhirendra Nath Saikia as "Outstanding" even after considering him and consequently did not place him in the Select List) and on 5.2.1997, when the State Government gave the proposal to review the Select Lists already finalised and the Union Public

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Service Commission taking a turn-around and agreeing to review the finalised Select Lists on the basis of State Government's proposal. Be it mentioned that in between this period Shri Dharendra Nath Saikia became the Joint Secretary to the Chief Minister, Assam.

6. In reply to the contents in paragraph 4.4 it is most respectfully submitted that Civil Rule No. 1079/93 was disposed of on 20th March, 1995 and whereas the Selection Committee met on 6.2.1996 for preparing the Select List for 1995-96. The very use of the word "Meanwhile" in the beginning of paragraph 4.4. is incorrect, wrong and shows non-application of mind. The Civil Rule No. 1079/93 was disposed of on 20th March, 1995 and as such much before the Selection Committee met on 6.2.1996.
7. Your humble applicant begs to submit that when the select list for the year 1992-93 was under the process of preparation your humble applicant alongwith his other batch-mates filed a Civil Rule in Gauhati High Court being Civil Rule No. 1471 of 1992. In this Civil Rule the Hon'ble High Court was pleased to order that the Respondent State Government of Assam shall dispose of the appeals filed by your humble applicant and other batch-mates before forwarding the names of the eligible officers for consideration by the Selection Committee. A copy of the said order dated 24.07.1992 in the said Civil Rule was also ordered to be given to the Chairman of the Selection Committee. The issue of Select List of 1992-93 was, therefore, an issue in this Civil Rule i.e. Civil Rule No. 1471 of 1992. Be it stated that Shri

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Dhirendra Nath Saikia was not a writ petitioner in this Civil Rule. The Select List of 1992-93 got finalized after the appeals filed by your humble applicant and his other batch-mates were rejected by the Government. We never agitated the 1992-93 Select List as it did not contain the names of private Respondents in the Civil Rule and contained the names of 1970 and 1975 batch officers with whom we have had no dispute as regards the seniority. Thus, no one agitated the 1992-93 Select List as then prepared and no Court including High Court of Gauhati ever directed to revise and re-open the 1992-93 Select List.

A copy of the order dated 24.07.1992 disposing of Civil Rule No. 1471 of 1992 is enclosed hereto and marked as *Annexure-2* of this rejoinder.

8. Your humble applicant further begs to state that Shri Dhirendra Nath Saikia was not a party to the said Civil Rule No. 1471 of 1992 and instead he fought an unsuccessful battle which finally resulted in rejection of his claim by the Hon'ble Gauhati High Court in Civil Revision No. 41 of 1993. Thus, there was no order from any Court or judicial authority to review the Select List of 1992-93 prepared and finalised on 31.03.1993.

A copy of the order dated 30.03.1993 passed by Hon'ble High Court in Civil Revision NO. 41/93 in the case of Shri Dhirendra Nath Saikia is annexed hereto and marked as *Annexure-3*.

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9. In reply to the contents in paragraph 4.5, 4.6 and 4.7 it is submitted that Select List prepared by the Selection Committee on 29.3.1994 was reviewed on the basis of the order of Hon'ble High Court in Civil Rule No. 1079/93 and accordingly the name of Shri D. Chakravorty was deleted and Shri Dibakar Saikia was appointed in place of Shri D. Chakravorty. The matter was therefore over in so far as the implementation of the orders of the Hon'ble High Court was concerned. Your humble Applicant begs to submit and re-iterate that the review of the Select List of 1992-93 was not in pursuance of order of the Hon'ble High Court dated 20.3.1995 but it was in pursuance of the proposal of the State Government dated 5.2.1997. The Union Public Service Commission in paragraph 4.6 has stated that no review was warranted in pursuance of the High Court order but then they have conducted the review on the basis of the State Government proposal of dated 5.2.1997 your humble applicant submits that the whole exercise of review was malicious and with a view to favour one and single person i.e. Shri Dharendra Nath Saikia.

10. In reply to the contents in paragraph 4.8 to 4.10 it is most respectfully submitted that the whole Review Exercise was unwarranted and Union Public Service Commission already so decided in 1995 that no review is at all necessary in pursuance of the order of the Hon'ble High Court in Civil Rule NO. 1079/93 passed in March, 1995. As a matter of fact the review of the Select List of 1992-93 was never an issue in the Civil Rule No. 1079/93 and no such order was ever passed by Hon'ble High

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Court to review the Select List of 1992-93. The dispute related to the appointment of Shri D. Chakravorty, whose name figured in the Select List of 1993-94 prepared on 29.3.1994. Since the State Government wanted to appoint him to IAS, they moved a Misc Petition before the Hon'ble Gauhati High Court praying for permitting them to appoint Shri D. Chakravorty, whose name appeared in the Select List of 1993-94 prepared on 29.03.1994 and approved by Government of India on 21.10.94 and as such the observations of the Hon'ble High Court to reconsider the promotion matter to IAS was only in the context of appointment of Shri D. Chakravorty, the Respondent No. 20 in that Civil Rule and it never was a fact in issue in main Civil Rule No. 1079/93, and the Hon'ble High Court never ordered review of any previously finalized Select Lists. In this context, it would be pertinent to quote the entire paragraph No. 36 dealing with the Misc. Application No. 170/95 filed by the State Government in Civil Rule No. 1079/93:-

"The Misc. petition No. 170/95 in this writ petition filed by the government has been considered in the light of the decision arrived by this court in this Civil Rule. The reasons set out in this misc application is that in view of the order dated 5.5.93 passed by this court govt approached this court to take permission before giving promotion to the private respondents. As the Department of Personnel and Training, North Block, New Delhi by letter No. 14015/12/94/AIS(I) dt 20.10.1994 informed the Chief Secretary, govt. of Assam regarding approval of the select list of ACS officers of Assam segment of joint cadre of Assam and Meghalaya containing names of seven persons for appointment to IAS by promotion, the name of respondent No. 20 has found the place at Sl. No. 1 in the select list approved by the Union Public Service Commission, court required to give permission for his promotion. This court has allowed the writ

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petition for maintaining the seniority of the direct recruits of 1977 batch above the private respondents. Apparently, this court can not restrict the government to issue direction not to consider the promotion of the respondent No. 20 as seniority can not be only criteria for promotion. All the private respondents alongwith the writ petitioners of 1977 batch have the right to be considered for promotion though claim for promotion to the IAS is not a vested right for all of them. The application is rejected. The Respondent govt shall reconsider the promotion matter to the IAS giving opportunity to all the contenders on seniority basis so that they can come to zone of consideration for promotion" (emphasis added)

Your humble applicant begs to submit that the observations of the Hon'ble High Court related only and only to the Select List prepared on 29.03.1994 and finalized by the Government of India, Department of Personnel and Training vide letter No. 14015/12/94/AIS (I) dated 20.10.1994 containing the name of Shri D. Chakravorty. These observations therefore, did not relate to the fact in issue in the Civil Rule No. 1079/93 and these observations were never made in the context of review of the Select List prepared and finalized years before. The last line of these observations of the Hon'ble High Court has been picked up after about 23 months and used by the State government for the purpose of giving undue benefit to one single individual.

11. In reply to the contents in paragraph 5.1 it is most respectfully submitted that the Union Public Service Commission has virtually supported the contention of your humble Applicant. Your humble Applicant further asserts that the appointment of your humble Applicant as well as the appointment of both Shri Dharendra Nath Saikia and Shri Dibakar Saikia was against clear

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existing vacancies and as such the impugned order of the Central Government is absolutely unjustified, unwarranted and has been issued most illegally without taking into account either the legal provisions or the factual position.

12. That under the facts and circumstances of the case the O.A. deserves to be allowed by setting aside the impugned order and granting the prayers made in the O.A.


VERIFICATION

I, Shri Lall Chand Singhi, aged about 51 years S/o Shri Surajmal Singhi, Applicant in O.A. No. 25/2000 do hereby verify and state that the statement made in paragraph 1 is true to my knowledge and those made in paragraph 2-11 being matters of records are true to my information derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 9th Day of August 2003 at Mussoorie.

Place : Mussoorie

Date : 9.08.2003


Applicant

Sri D.N.Saikia And . . . Applicant.
Vrn.
U.O.I.Gora Respondents.

PRESENT

THE HON'BLE MR. JUSTICE N. RAJ, VICE CHAIRMAN
THE HON'BLE MEMBER SRI G.L. SAHULYING, ADMN.

OFFIC

For the Applicant, Mr. P.K. Goswami
Mr. J. Chutia, Advocate.

For the Respondents, Mr. A.K. Choudhury, Addl. C.G.S.C.
G.A. Assam.

25.3.94

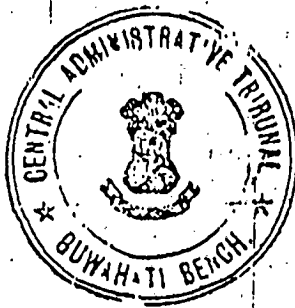
Heard learned Senior Advocate Mr. P.K. Goswami on behalf of applicant Shri Dharendra Nath Saikia, ACS. Perused the statements of grievances and reliefs sought for in this application. Also heard learned Sr. Govt. Advocate, Assam Mr. Y.K. Phukan and Addl. C.G.S.C. Mr. A.K. Choudhury.

This application is admitted Issue notice on the respondents under Registered Post. Mr. Phukan and Mr. Choudhury prays for six weeks time to file counter. Time allowed as prayed for.

List on 23.5.1994 for counter and further orders.

Heard counsel of the parties on interim relief prayer. In view of allegations that 7 (seven) officers of the Assam Civil Service attaining age of 54 on first day of April, 1994 have been recommended/forwarded by the State Government for consideration by the Selection Committee for preparation of select list for promotion to IAS against vacancies for the year 1994-95 in the Assam Meghalaya Joint Cadre, we consider it just and expedient to pass the interim order as under :-

Respondent No. 3, Government of Assam is directed to recommend and forward the name of applicant Shri Dharendra Nath Saikia, ACS alongwith his records immediately to the Selection Committee for consideration.



OFFICE NOTE

DATE

C.M. 1/3 ORDER

25.3.94

while preparing select list for promotion to the IAS for the year 1994-95 Assam Maghalaya Joint Cadre. The respondent No.2, Union Public Service Commission and respondent No.4, Selection Committee, are directed to proceed in the matter of selection having regard to the Regulation 5(3) of the IAS (Appointment by Promotion) Regulation, 1955 and to consider Shri Dharendra Nath Saikia, ACS alongwith eligible candidates already recommended. Inform all concerned immediately.

SD/ S.HAQUE,
VICE CHAIRMAN
SD/ G.L.SANGLINE
MEMBER (ADMIN)

Dt. 25/3/94

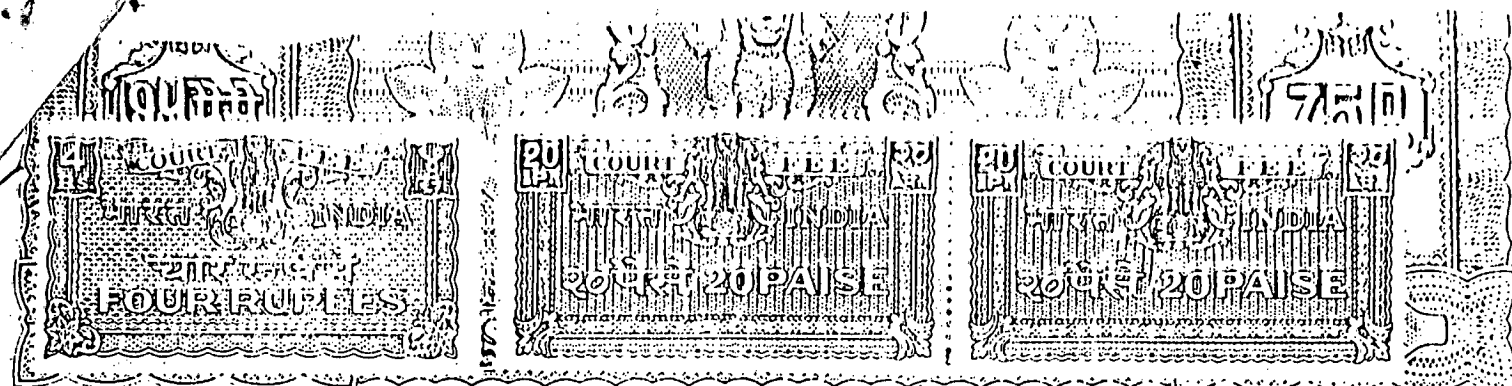
Memo No:-

Copy for information and necessary action to -

- 1) The Secretary, Govt. of India, Ministry of Personnel & Public Grievances & Pension, Dept. of Personnel & Training, New Delhi.
- 2) The Chairman, U.P.S.C. Dhoolpur House, Shahjahan Road, New Delhi.
- 3) The Chief Secretary, Govt. of Assam, (State of Assam) Dispur, Guwahati-6.
- 4) Mr. J. Chutia, Advocate, C.A.T. Guwahati Bench.
- 5) Mr. A.K. Choudhury, Addl. C.G.S.C. -do-
- 6) Mrs. M. Das, Advocate, G.A. Assam -do-

[Signature]
25/3/94
DEPUTY REGISTRAR (JUDL)

Bm
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प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
24.7.92	25.7.92	25.7.92	27.7.92	27.7.92

IN THE GAUHATI HIGH COURT

Annexure - 'N'

(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:
MIZORAM AND ARUNACHAL PRADESH)

CIVIL APPELLATE SIDE

Civil Rule No. 1471 of 1992

Smt. Gayatri Barua & 18 others. ::::::::::: Petitioners.

- Versus -

State of Assam and 21 others. ::::::::::: Respondents.

P R E S E N T

HON'BLE THE CHIEF JUSTICE MR U.L. BHAT

HON'BLE JUSTICE SMT. M. SHARMA.

For the petitioners : Mr. D.N. Choudhury,
Mr. G. Bhattacharjee,
Mr. S.N. Sarmah, Advocates.

For the respondents: Dr GOVT. Advocate, Assam.
Mr. N.M. Lahiri,
Mr. R.P. Sarma,
Mr. G. Dasgupta,
Mr. S.C. Dutta Roy, Advocates.

DATEO R D E R

24.7.92

Bhat, C.J.

Copies of the writ petition are served on Sri S.A.

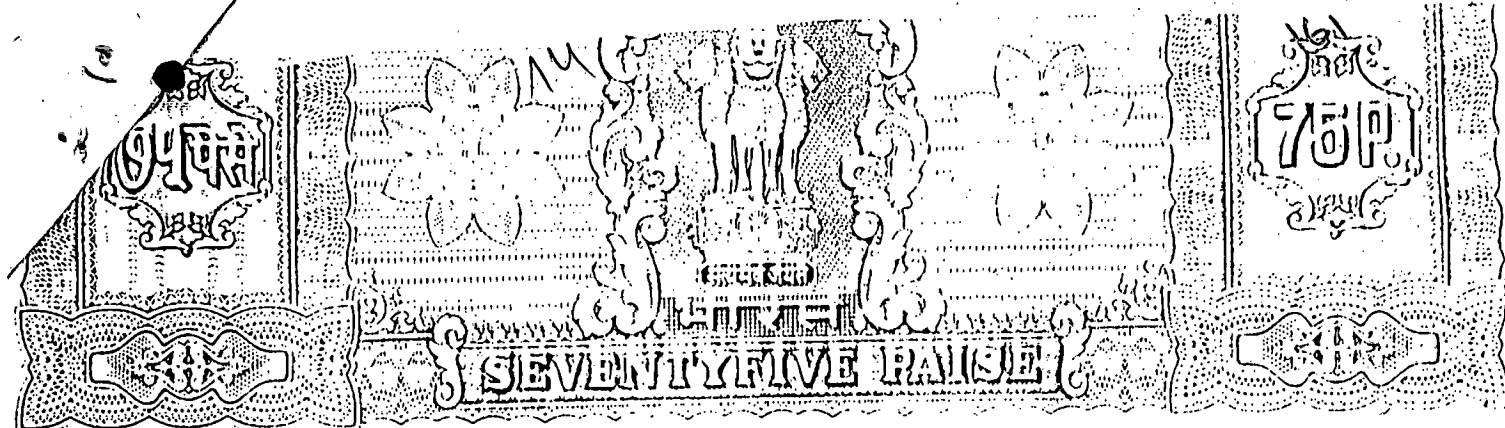


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respondents 1 to 3 and Sri. R.P. Sharma, learned counsel appearing for respondents 4 to 22. We have heard all the learned counsel appearing in the case.

Petitioners were selected as Class-I, Junior Grade Officers of the Assam Civil Service in 1977 and duly appointed. Respondents 4 to 22, who were officers in Class-II were promoted to Class-I (Junior Grade) in 1979 and subsequently. It is said that under the relevant Rules, 30 per cent of the vacancies (in 1978 this was increased to 50 per cent) are to be filled up by promotion. The remaining vacancies should go to direct recruits except that maximum of 2 vacancies could be filled up by selection. According to the petitioners all of them are seniors to respondents 4 to 22 and the gradation lists upto 1992 reflects this position correctly. Their grievance is about Government order dated 27.5.1992 (Annexure-J) granting retrospectivity with effect from 31.12.77 to the promotion given earlier to respondents 4 to 22 and treating them as senior to petitioners in relaxation of F.R. 17 (i) and also Annexure-II order dated 29.5.1992. It appears that those orders have been



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Date of application for
the copy.

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संख्या सूचित करने की निश्चित
तारीख
Date fixed for notifying
the requisite number of
stamps and folios.

अपेक्षित स्टाम्प और फोलियो
देने की तारीख
Date of delivery of the
requisite stamps and
folios.

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Date of making over the
copy to the applicant.

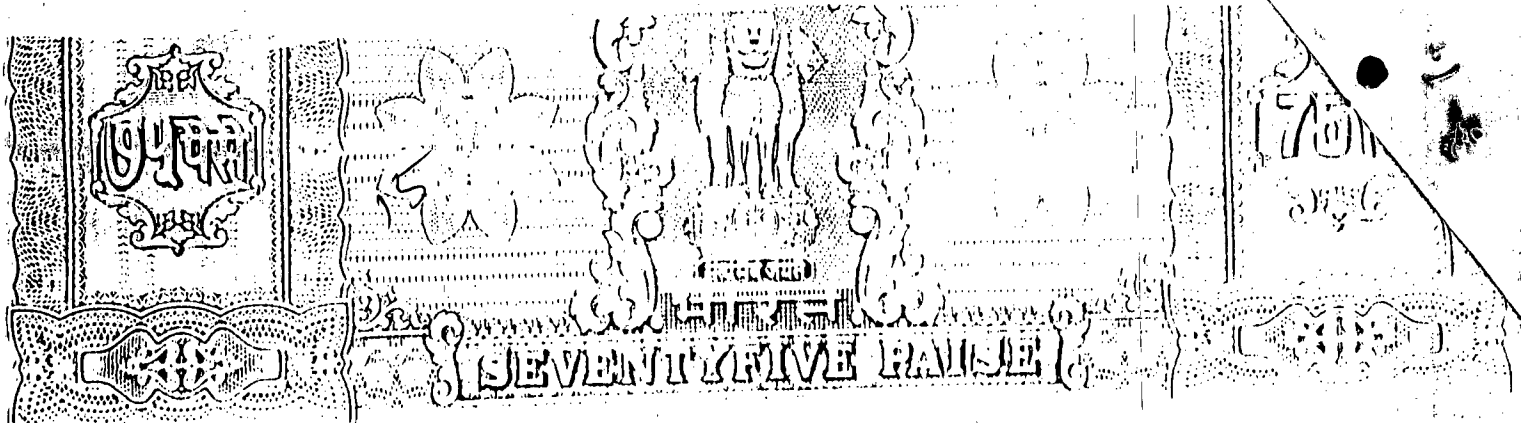
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passed as a result of the orders passed by this court in Civil Rule 2087/91 directing the State to consider the representations submitted by two among the respondents. Being aggrieved by the Government order dated 27.5.92 and 29.5.92, one of the petitioners has filed a statutory appeal before the Governor. Annexure-M is a copy of the Memorandum of Appeal dated 6.6.1992. It is said that 8 other petitioners have filed similar appeals and all of them are pending before the Government.

petitioners have now rushed to this court since the Selection Committee which has been constituted under Regulation 3 of the I.A.S. (Appointment by Promotion) Regulations, 1955 is to commence deliberations in August, 1992. As a result of the impugned orders the petitioners are regarded as juniors to respondents 4 to 22 and the petitioners apprehend that they will not be within the zone of consideration.

In view of what is indicated above, it is necessary that the appeals preferred by some of the petitioners should be disposed of expeditiously before the Selection Committee

commences....



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commences the selection process.

We, therefore, dispose of the writ petition directing the first respondent to take up for consideration Annexure-M appeal and similar other appeals preferred by other petitioners and dispose of the same by passing an order in accordance with law. This shall be done after giving opportunity of hearing to the petitioners and respondents 4 to 22 and other persons situated similarly to the petitioners and respondents 4 to 22, and as expeditiously as possible.

A copy of this order must be communicated to the Chairman of the Selection Committee. The State Government will forward the names of persons in the zone of consideration to the Selection Committee only after an order is passed disposing of the appeals.

Sd/-M. Sharma,
Judge.

Sd/- U L Bhat,
Chief Justice.

Certified to be true Copy

Typed by.....

Read by.....

Asstt. Registrar (Judl.)

Attention for copy.

1. Date fixed for notifying the requisite number of stamps and fees.	2. Date of delivery of the requisite stamp and fees.	3. Date on which the copy was ready for delivery.	4. Date of making over the copy to the applicant.
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IN THE GAUHATI HIGH COURT

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

Civil Revision No.41 of 1993

(From the judgment and order dated 1.2.93 passed by the learned Assistant District Judge No. 1 in Misc. Appeal No. 1 of 1993).

Sri Jitendra Nath Goswami and anr. ... Petitioners
vs.

Dhirendra Nath Saikia & ors. ... Opp. parties

BEFORE

THE HON'BLE MR. JUSTICE S.H. PHUKAN

For the petitioners : Mr. B.K. Goswami,
Mr. B. K. Das,
Mr. R.P. Sarma,
Mr. A.K. Ray,
Mr. G. Dasgupta.
Advocates

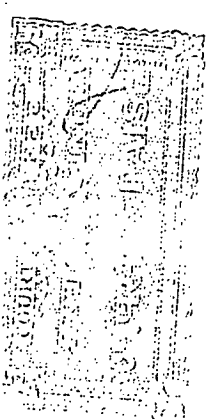
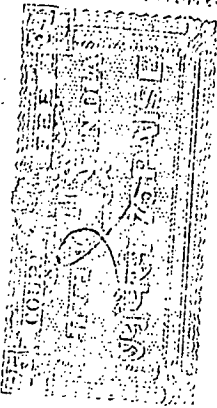
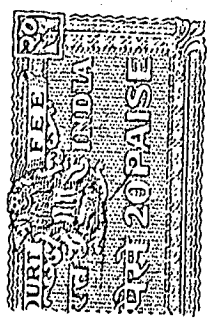
For the opp. parties : Mr. J.N. Sarma,
Mr. S.P. Roy,
Mr. S.S. Sarma,
Mr. G.N. Debnath,
Mr. M. Ali, Advocates
Mr. A.C. Buragohain,
Govt. Advocate.

Date of hearing : 15.2.93

Date of judgment : 30.3.93

JUDGMENT AND ORDER

This petition under Section 115 read with Section 151 C.P.C. is directed against the judgment and order dated 1.2.93 passed by the learned Assistant District Judge No.1 Gauhati in Misc. Appeal No. 1 of 1993. By the said order, the learned lower appellate court affirmed the order of ex-interim injunction dated 11.12.92 passed by the learned



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Munsiff No. 3, Gauhati in Misc.(J) Case No.86/92 arising out of T.S. No.295 of 1992. Being aggrieved by the two orders, the present petition has been filed by defendant title nos. 3 and 21 of the main/suit.

2. The suit was laid by the respondent no. 1 for declaration and also for injunction against the State of Assam and Secretary, Personnel(A) Department and as many as 21 private defendants who are all the members of Assam Civil Service Senior Grade as per provisions of Assam Civil Service (Class - I) Rules, 1960. Plaintiff is also a member of the said service. According to the plaintiff he was recruited and appointed as member of Assam Civil Service - 1 (junior grade) in the year 1977 and posted as Extra Assistant Commissioner. Subsequently, he was promoted to the senior grade of the said Civil Service in the year 1986. Defendants nos. 3 to 20 were originally members of the Assam Civil Service Class - II and were promoted to Assam Civil Service (Junior Grade) in the year 1979 and defendant no. 21 who was also a member of the class - II was promoted to the above junior grade in the year 1980. Plaintiff has alleged that Government published a gradation list dated 1.3.92 and the plaintiff was shown senior to the above private defendants nos. 3 to 21. By Government notification dated 27.1.92 the seniority of the defendants nos. 3 to 21 and seven other officers were shown in the seniority list just above the plaintiff though plaintiff claims to be the senior. By another notification dated 10.6.92 in modification of the earlier notification promoted defendant nos. 3 to 21 to senior Grade - I on different dates, namely, 16.1.87, 18.8.87, 27.1.89, 28.6.89 and 10.11.89. Plaintiff has pleaded that this notification is

10.11.89, Plaintiff has pleaded that this notification is illegal and is liable to be set aside. Plaintiff also prayed for an interim injunction which was granted. It may be stated that though the State Government has made a party, notice under Section 80 C.P.C. was not served.

3. Heard Mr. B.K. Goswami and Mr. B.K. Das, learned counsel for the defendants-petitioners and Mr. J.N. Sarma, learned counsel for the opp. parties. Heard also Mr. A.C. Buragohain, learned Govt. Advocate.

4. Main point to be decided is whether the civil court has jurisdiction to entertain the present civil suit in view of provisions contained in ^{Section 9 of the} Assam Administrative Tribunals Act, 1977. It may be stated that a point has been urged to make a distinction between maintainability and ^{entertainment} of a civil suit by a civil court as according to Mr. Sarma, learned counsel for the plaintiff-opp. parties, the present question is regarding maintainability of the suit which can be determined only after filing of the written statement and framing of an appropriate issue. Before I consider this point, let me first examine whether the above Section 9 bars either expressly or impliedly the jurisdiction of a civil court. ~~Let me quote the relevant portion of Section 9. It may be stated that the said Section 9 was amended recently by Assam Administration Tribunal (Amendment) Act, 1992 (Assam Act III of 1992).~~

contd...4.

I quote below the amended Section 9 which runs as follows :

"9. Finality of decision and bar of suit, powers of review of its own order and transfer of pending proceedings.- (1) (a) The order of the Tribunal passed in any appeal under the provisions of the Act shall be final.

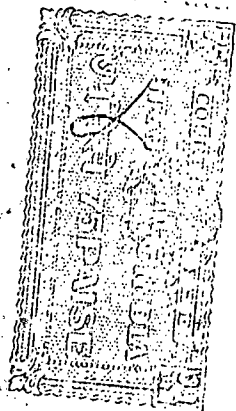
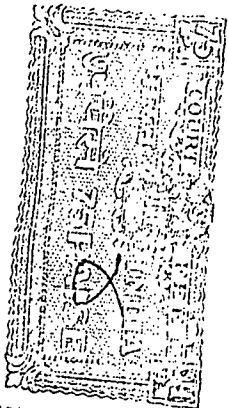
(b) Notwithstanding anything contained in sub-section (1) (a) above, the Tribunal may, on the application of any of the parties, review its own decision or order in any case and may pass such order as it thinks fit :

Provided that no such decision or order shall be reviewed unless notice has been given to the opposite parties to appear and to show cause why such order or decision should not be reviewed :

Provided further that an application for review under sub-section (1) (b) shall be made within thirty days from the date of decision or order of the Tribunal.

(2) Notwithstanding anything contained in any law, no civil court or other authority shall entertain any civil suit or other proceedings with respect to any matter relating to any condition of service of any civil servant or question in any form any order passed by the Tribunal in any appeal or review with respect to any matter or with respect of any other matter which arises out of the exercise of powers under the Act.

(3) Notwithstanding anything contained in any law, all suits or other proceedings with respect of any matter relating to any condition of service of any civil servant and which are pending before any civil court or other authority on the date of coming into force of this Act, shall stand transferred to the Tribunal and the civil court or other authority before whom such a suit or proceeding is pending shall transfer all relevant and connected papers and records to the Tribunal and thereupon the Tribunal shall decide the suit and proceedings in the same



5. The statement of objects and reasons of the amending bill which may be relevant is quoted below :

"Though the intention behind establishing the Assam Administrative Tribunal under the Assam Administrative Tribunal Act, 1977 appears to have been to create a separate judicial appellate forum for service matters and simultaneously to bar jurisdiction of civil courts in such matters (ref Section 9(3)), due to the interpretation given by the Gauhati High Court in (1981) Gauhati Law Reports 241 of Section 9(2) of the Assam Administrative Tribunal Act, uncertainty has arisen about the exclusion of civil court's jurisdiction in service matters. Hence, to put this matter beyond doubt, addition of a third and clause to Section 2(e) and substitution of the existing Sections 9(2) and 9(3) are necessary".

6. It may be stated that by Section 2 of the amending Act, the following sub-clause was inserted as sub-clause (3) after sub-clause (2) of Clause (e) of Section 2. The said sub-clause is as follows :

"(3). All matters arising out of application of the Fundamental Rules and Subsidiary Rules."

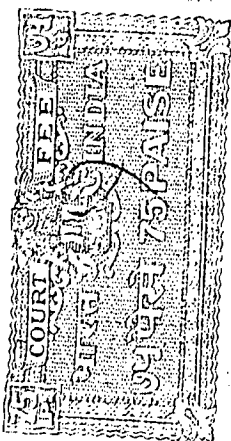
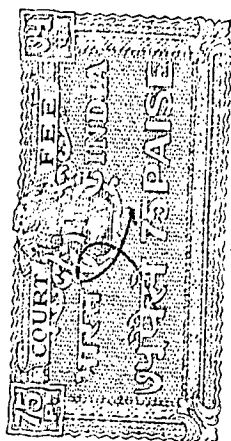
7. In Chief Secretary to the Govt. of Assam Vs. P.C. Mananta (1981) 1 G.L.R. 241/^{as} has referred to in the statement of objects and reasons, this court decided in a civil revision, the jurisdiction of the civil court vis-a-vis Assam Administrative Tribunal Act, 1977. A civil suit was filed by the General Secretary of the Assam Sahitya Akademi on behalf of Government

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Employees for a declaration that two orders mentioned in the judgment were invalid, illegal and inoperative. By these two orders, the period of absence of Govt. servants ^{was} ~~were~~ regarded as un-authorised and it was ordered that no pay be given for the said period to persons who remained absent without satisfactory explanation. The learned Munsiff passed an injunction against which this court was approached on the ground that Munsiff had no jurisdiction to entertain the suit. This court held that the suit was not barred and the civil court had jurisdiction to entertain it and accordingly, the petition filed by the Govt. of Assam was dismissed. It was laid down that except where provisions to Section 4 (2) of the Act is attracted, the Tribunal has no original jurisdiction in matters relating to conditions of service of the civil servants.



8. It may be stated that the present dispute regarding seniority came before this court twice. By order dated 16.9.91 passed in Civil Rule No.3887/91, a Division Bench of this court after hearing the learned counsel for the petitioner and also the learned Govt. Advocate noted that the grievances of the petitioners were non-preparation of the gradation list of A.C.S. Grade-I officers as per Rule 19 of the Assam Civil Service (Class - I) Rules, 1960. As the petitioners in that petition were under the apprehension that they ^{the petition was filed and the court} may be superseded by junior officers/~~and~~ directed the State Government to dispose of the representations pending before the Government and with that direction

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2. The petition which was registered as Civil Rule No.1471/92 was disposed of by a Division Bench of this Court by order dated 24.7.92. In that case the petitioners ~~xxxx~~ were selected and appointed in the year 1977 in the Junior Grade of Assam Civil Service Class I and respondents 2 to 14 ~~xx~~ who were officers of Class - II, were promoted to Class - I (Junior Grade) subsequently in the year 1979. The Court noted that under the relevant rules vacancies in Class I were to be filled up by promotion from Class II. The percentage was initially 30% which was increased to 50% in the year 1977 and the remaining vacancies would be filled up by direct recruitment. In the said writ petition, the petitioners claimed that they were senior to respondents 4 to 22 and it was properly reflected in the gradation list prepared up-to 1992. The grievance of the petitioners in that case was that the Government by order dated 27.5.92 promoted respondents 4 to 22 retrospectively w.e.f. 31.12.77 thereby treating them senior to the petitioners in relaxation of F.R. 17(1). This order dated 27.5.92 was passed by the State Government in view of Order of this court passed in the earlier writ petition registered as Civil Rule No.3887/91, gist of which has been quoted. The court noted that the petitioner ~~were~~ filed an appeal dated 6.6.92 which was pending. Court also recorded that the petitioners rushed to this court as the Selection Committee which was being constituted under Regulation 3 of the I.A.S. (Appointment by Promotion) Regulation, 1955 was to consider the cases for promotion and in view of the

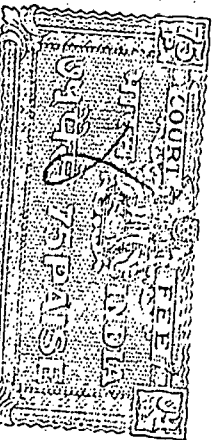
subsequent orders passed on 27.5.92, the writ petitioners apprehended that their cases will not come within the zone of consideration as they were juniors to the private respondents. This court disposed of the writ petition with a direction to the respondents to first consider all the appeals and dispose of these appeals in accordance with rules and thereafter shall forward the names to the Chairman of the Selection Committee.

10. After the above order was passed by this court in the subsequent writ petition, State Government disposed of all the appeals by a speaking order and thereafter determined the seniority of the promotees from Class - II to Class - I basing 1977 as recruitment year. It may be stated that ^a the batch of direct recruitment filed an appeal before the Assam Administrative Tribunal and the appeal has been admitted in respect of seniority and promotion. The Tribunal held that the question of nomination to I.A.S. was out-side the jurisdiction of the Tribunal, the prayer for stay was also rejected. The present plaintiff-opp.party did not join in the appeal before the Administrative Tribunal and filed the present suit after stay order was rejected by the Administrative Tribunal.

11. I have stated these facts only to show that the direct recruits to A.C.S. Class - I of which the present plaintiff was also a member are fight^{ing} several rounds of battle to claim seniority over promotees from Class - II regarding inter se seniority mainly for the purpose of

12. As stated above from the copy of the plaint - which has been annexed as Annexure - II to the petition I find that the plaintiff prayed for a decree that the three notifications issued by the Government dated 27.5.92, 29.5.92 and 1.12.92 annexed as Annexures - B, D and F to the present petition are illegal, void and without jurisdiction and also for permanent injunction restraining the State of Assam from giving effect to the said notifications. By notification dated 27.5.92 Government in the Personnel Department in relaxation of F.R. 17 under F.R. 5A fixed the seniority of the defendants who were promotees from A.C.S. Class - II to Class - I w.e.f. 31.12.1972 above Smti. Gayatri Baruah who was promoted directly to the A.C.S. Class - I. By notification dated 29.5.92 and in modification of the earlier notification and in relaxation of F.R. 17 under F.R. 5A some of the promotee officers who are defendants were given promotion w.e.f. an earlier date. The order dated 1.12.92 was passed by the Government pursuant to the orders passed by this court on 16.9.91 in Civil Rule No.3887/91. The appeal filed by Smti. Gayatri Baruah and others who were recruited directly to A.C.S. Class I was dismissed. This appeal was regarding giving retrospective promotion of A.C.S. Class - II officers to Class - I.

13. Thus from the prayer made in the plaint, it would be clear that the present dispute before the Civil Court is regarding seniority between the officers appointed directly to A.C.S. Class - I and

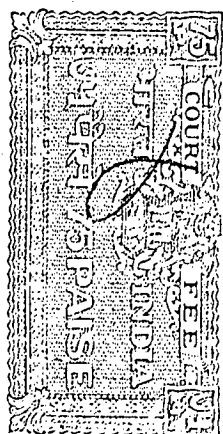
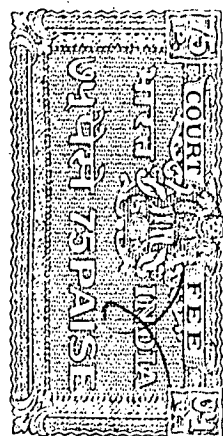


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officers promoted from Class - II to Class - I. Though it has been urged that as a consequence of fixation of seniority plaintiff is being deprived from consideration of his case for nomination to I.A.S. this matter is not directly an issue before the civil court.

14. Section 4 of the Assam Administrative Tribunal Act defines jurisdiction of the Tribunal which, inter alia, provides that the Tribunal shall have jurisdiction to entertain and dispose of appeals preferred by civil servant against any order passed by the competent authority in respect of conditions of service. In my opinion fixation of seniority is a condition of service and as such there cannot be a second opinion that the present dispute is not within the jurisdiction of the Administrative Tribunal. I have already quoted the amended Section 9 of the Act along with the statement of objects and reasons.

15. By the amended Section 9, the jurisdiction of the civil Court and other authority in any matter relating to any condition of service of any civil servant is barred. By the said sub-section (2) of Section 9, a person cannot also file a civil court questioning in any form any order passed by the Tribunal in any appeal or review. Thus, it appears that there is an express bar of the jurisdiction of the civil Court in respect of any matters regarding conditions of service of a civil servant. I am fortified, in



coming to the above conclusion from the statement of objects and reasons, quoted above to the bill by which Section 9 of the Act was amended. This amendment was necessary to put an end to the question of exclusion of jurisdiction of civil court in respect of any matters which are within the exclusive jurisdiction of the Tribunal in view of decisions of this court as mentioned above. Therefore, I have no hesitation to hold that the jurisdiction of a civil court is expressly barred in respect of present dispute and in view of Section 9 C.I.C. the present suit cannot be entertained.

16. It has been urged before this court that as written statement has not been filed, the question regarding exclusion of jurisdiction cannot be determined and for that purpose a proper issue has to be framed.

17. I may state here that the jurisdiction does not depend on the defence taken by the defendants in the written statement and this point has to be decided on the allegation made in the plaint. (See A.I.R. 1985 S.C. 577) Therefore, the contention of non-filing of written statement has no force.

18. As stated above, it has been urged on behalf of plaintiff's parties that the question of maintainability has to be decided after filing of written statement and framing of issues. A lot of debate was generated during argument regarding the words "entertainment" and

"maintainability" and in this connection decisions of the Apex Court, Kerala High Court as well as this court were cited. (A.I.R. 1968 S.C. 488, A.I.R. 1991 Kerala 253). In my opinion this point need not detain me as the law has been laid down by the Apex Court.

19. In Chandrika Vs. Baiyalal, A.I.R. 1973 S.C. 2391 it was held that where the court is inherently lacking in jurisdiction, the plea as to jurisdiction may be raised at any stage. In the case in hand that the civil court has no jurisdiction in respect of the present dispute is so clear as stated above, ~~that~~ ^{so} it is not necessary to frame an issue after filing of written statement and thereafter decide the question of jurisdiction. To remove any misapprehension, it is made clear that there may be cases where facts are disputed regarding jurisdiction of a civil court or maintainability of a suit and in such cases, it may be necessary to allow the defendants to file written statement and thereafter frame an issue and take it up as preliminary one. But in the case in hand facts are not disputed and ^{in my opinion} also the law applicable.

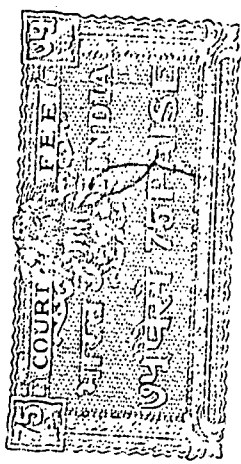
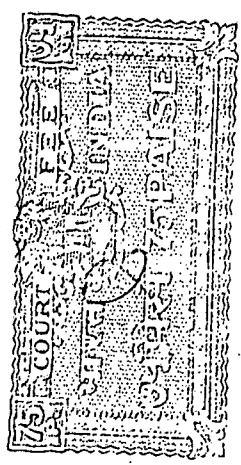
20. Mr. Goswami, learned counsel has urged that by the impugned order of injunction, two legally constituted authorities are prevented from proceeding with the matter, namely, the Administrative Tribunal before whom some of the similarly situated persons like the present petitioner have filed an appeal against the orders passed by the State Government and secondly by the injunction

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the entire process of selection for nomination to IAS under a statutory rules is being held up. In this connection, learned counsel has relied on a decision of the Apex Court in Cotton Corporation of India Limited Vs. United Industrial Bank Limited, A.I.R. 1983 S.C. 1272. Prima facie I find force in the contention of Mr. Gonsami, but I need not examine this point in ^{have} detail as I already held that the jurisdiction of the civil court is excluded expressly by law. Attention of this court has been drawn to a decision of the Apex Court in Raja Ram Kumar Bhargava Vs. Union of India, A.I.R. 1975 S.C. 752. In that case the Apex Court, ^{right} inter alia, held that pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the jurisdiction of the civil court, then both the common law and the statutory remedies might become concurrent remedies leaving upon an element of election to the persons. This ratio is not applicable to the case in hand inasmuch as the jurisdiction of civil court has been expressly barred as stated above.

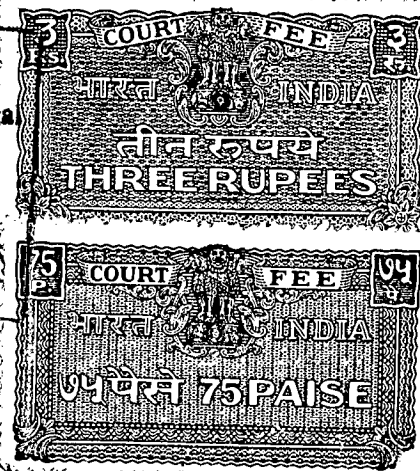
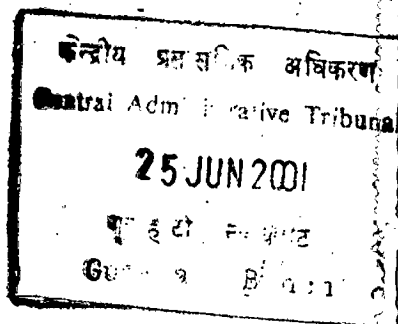
21. Mr. Sarma, learned counsel for the plaintiff-app. party has urged that even if the jurisdiction of a civil court is barred, the civil court has jurisdiction to examine as to whether the provisions of any statute has been complied with or not or whether the statutory tribunal under the said statute has acted in conformity



with the fundamental principle of judicial procedure. In this connection, learned counsel has placed reliance in Gurbax Singh Vs. the Financial Commissioner, A.I.R. 1991 S.C. 435. In paragraph 19 of the judgment, the Apex Court reiterated the above law as laid down by the Privy Council in Secretary of State Vs. Mask and Company, A.I.R. 1940 P.C. 105. This law was reiterated by the Apex Court in the earlier decision, also.

22. But the above ratio is not applicable in the case in hand inasmuch as the Statutory Tribunal, namely, the Administrative Tribunal has not disposed of any appeal and that apart the orders of the State Government which have been challenged in the civil suit are under examination by the Administrative Tribunal.

23. It may be stated that while admitting the appeal filed by the similarly situated persons, the Administrative Tribunal held that question of preparation of a penal to nomination of I.A.S. is out-side the jurisdiction of the Tribunal and accordingly directed the appellants before the Tribunal to seek remedy in the appropriate Forum. The order of the Tribunal dated 5.12.92 has been annexed as Annexure - III to the affidavit-in-opposition filed by the plaintiff-respondents before this court. In view of the above fact Mr. Sarma has urged that the plaintiff cannot approach the Central Administrative Tribunal as he is not a member of the I.A.S. and as such civil court is the appropriate authority.



Filed by :- 137
State of Assam
Respondent
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

G.A.No. 25/2000

In the matter of :

G.A.No. 25/2000

Shri L.C.Singhi ... Applicant

- VS -

U.O.I. & Others Respondents

AND

In the matter of :

Written statement on behalf of State
of Assam (Respondent No.3) to the
application filed by the applicant.

(Written statement on behalf of Respondent No. 3).

I, Shri H.N.Sarma, Under Secretary to the Govt. of
Assam, Department of Personnel (A) Dispur, Guwahati-6, do
hereby solemnly state as follows :

1. That I am the Under Secretary to the Govt. of
Assam, Personnel (A) Department. A copy of the application
had been served upon the respondent No.3, I have gone
through the same and have understood the contents thereof
I have been authorised to file this written statement on

Sub-Divisional Magistrate,
GUWAHATI.

Contd....

behalf of the respondent No.3 and the competent to do so, I do not admit any of the allegations/averments made in the application which are not based on records. Any statement/averments which are not specifically admitted hereinafter are to be deemed as denied.

2. That in regard to the statements made in paragraphs 4(1) to 4(4) of the application the answering respondent has no comment to make thereon, as they are matters of records. He, however does not admit anything which is not borne out by records.

3. That in regard to the statements made in paragraph 4(5) and 4(6) of the application it is stated that the Govt. of India's Notification dated 30-12-1996 whereby promoted the applicant to IAS was subsequently rescinded due to the position appeared in the Review Select list of 1995 - 96.

4. That in regard to the statement made in paragraph 4(7) of the application the answering respondent has no comment to make thereon as they are matters of records.

5. That in regard to the statements made in paragraph 4(8) of the application the answering respondent begs to state that the applicant was posted as Deputy Commissioner, Dhubri vide order dated 12-2-1996 as a State Civil Service officer, so he has no claim for officiating benefit.

Sub-Divisional Magistrate,
GUWAHATI.

Contd.....3

6. That in regard to the statements made in paragraphs 4(9) to 4(11) of the application, it is stated that as the seniorities of direct recruits were allowed by the Hon'ble Gauhati High Court in the Writ petition filed by the direct recruits, the original select list of 1993 and 1994 *had to be reviewed and the review of those two select lists necessitated* ~~became necessary to review~~ of 1995-96 select list and in *the* review Select list of 1995-96 the applicant found his place against sl. No.8. As there were only 7 vacancies at that relevant time the applicant did not deserve his promotion to IAS. Therefore his promotion to IAS made from 1995-96 original select list was rescinded.

7. That in regard to the statements made in paragraphs 4(12) and 4(13) of the application it is stated that as the 6 officers belonging to promoted group who found their places in the zone of consideration of the Selection Committee in its meeting held in 1993 and 1994 according to their seniority which was quashed by the Hon'ble High Court it became necessary to review the select lists.

8. That in regard to the statements made in paragraph 4(14) of the application, it is stated that in pursuance of judgement of Hon'ble Gauhati High Court whereby quashed the seniority of Shri Debabrata Chakravorty, the promotion case of Shri D.Chakravorty to IAS could not be considered although his position was in top in the 1994 Select List. ~~On~~ the same ground it became necessary to review the select lists.

Sub-Divisional Magistrate,
GUWAHATI.

Contd.....4

9. That in regard to the statements made in paragraph 4(15) of the application it is stated that although Shri D.N.Saikia did not find his place in the select list of 1995-96 he found his place at Sl.No.2 in 1992-93 review select list. The review of 1992-93, 1993-94 and 1995-96 became necessary to comply with the judgement of the Hon'ble High Court. Hence the allegation made by the applicant's are hereby denied.

10. That in regard to the statements made in paragraph 4(16) of the application it is stated that in compliance of Court's order the select lists were reviewed.

11. That in regard to the statements made in paragraphs 4(17) and 4(18) of the application, the answering respondent has no comment to make thereon.

12. That in regard to the statements made in paragraph 4(19) of the application the answering respondent has not comment to make thereon as they are answerable by the Govt. of India. He, however, states that state civil service officers have been promoted to IAS against the posts made available in the promotion quota.

13. That in regard to the statements made in para 4(20) of the application, the answering respondent begs to state that after preparation of 1995-96 Review select list, the original select list of that year was nonexistence. As the

Sub-Divisional Magistrate,
CUTTACK

Contd....5

applicant was not entitled to his promotion from 1995-1996 Review select list, the question of creating a supernumerary post to accommodate the applicant in IAS does not arise.

14. That in regard to the statements made in paragraph 4(21) of the application the answering respondent begs to state that as the applicant was not entitled to his promotion to IAS from the Review Select list of 1995-96, his allegations are denied. As the Govt. of India's order dated 30-7-1999 regarding rescission of promotion of the applicant contained some mistake, it was necessary to correct the same and thereafter the corrigendum dated 7-9-1999 was issued by the Govt. of India and accordingly same was served upon the applicant on ~~28-12-99~~ 3-1-2000.

15. That in regard to the statements made in paragraph 4(22) of the application the answering respondent has no comment to make thereon.

16. That in regard to the statements made in paragraph 4(23) of the application, it is stated that the applicant does not deserve the benefit of promotion to IAS on any date earlier ^{than} that the date of his promotion from 1996-97 select list.

17. That in regard to the statements made in paragraphs 4(24) of the application the answering respondent has no comments to make thereon.

18. That in regard to the statements made in paragraph 4(25) of the application, it is stated that, the applicant is not entitled to be promoted to the post of IAS w.e.f. 30-12-1996 in pursuance of his position in the Review Select list 1995 - 96. Hence the order of rescinding his promotion made w.e.f. 30-12-1996 is in accordance with law.

19. That the answering respondent respectfully submits that none of the grounds mentioned in the application are the valid grounds and hence the application is liable to be dismissed.

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Sub-Divisional Magistrate:
GUWAHATI

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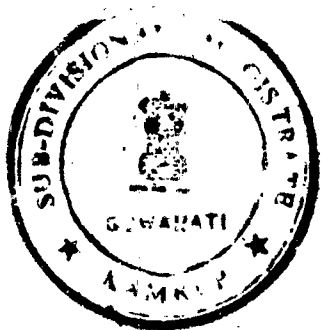
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V E R I F I C A T I O N

I, Shri H.N.Sarma, Under Secretary to the Government of Assam, Department Personnel(A), Dispur, Guwahati - 6 do hereby state that the statements made in paragraphs 1, 2 and 5 to 17 are true to my knowledge and those made in paragraphs 3 and 4 are true to my information derived there from which I believe to be true and the rests are my humble submissions before this Hon'ble Court.

I have not suppressed any materials fact. I have signed this verification on this the 22nd day of June, 2001.

Harendra Nath Sarma.
Signature. 22/6/2001.



Seen before me

22/6/2001

-000-

Sub-Divisional Magistrate,
GUWAHATI.

O.A. No. 811/02 (OA 25/2000)
P.A. M.A./P.A./C.P.O., No.
Copy/Rejoinder/Suppl. Appl/Suppl. Memo
Vakalatnama/Affidavit of Service
Filed on 21/4/05
In Registry/Court
Content not Verified
W. S. Kulkarni

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

IN THE MATTER OF

O.A. No. 811/02 (OA 25/2000 of Guwahati Bench)

L.C. Singhi

Applicant

Vs.

Union of India and Others

Respondents

The Rejoinder to the Written Statement filed by the Respondent No. 3

The humble applicant most respectfully begs to state as follows:-

1. That the applicant has gone through the copy of the written statement filed on behalf of the Respondent No. 2 and noted the contents thereof.
2. That save and except the facts which are specifically admitted hereinbelow, all other statements made in the written statement are categorically denied.
3. In reply to the contents in paragraph 5 of the written statement it is most respectfully submitted that the post of Deputy Commissioner and the post of Joint Secretary to the Government of Assam are the cadre posts of IAS under the

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Indian Administrative Service (Cadre) Rules 1954 and the IAS cadre should include all superior administrative posts of and above the rank of district officers under the well established guidelines of the Government of India and under Rule 9 of the IAS (Cadre) Rules 1954. A cadre post in a State can not be filled by a person who is not a cadre officer except for temporary period. However, if there is a Select List in force the State Government may appoint the officers in the Select List to the IAS cadre posts. Your humble applicant most respectfully begs to submit that when he was appointed as Deputy Commissioner, Dhubri he was already in the Select List prepared and finalized on 6.2.1996 and as such the period during which he has been holding the cadre post of IAS should be treated towards his period of probation under proviso to Rule 3 of the IAS (Probation) Rules 1954. In this connection, it is pertinent to refer to the decision of the Apex Court in Union of India Vs. G.N. Tiwari and Others (AIR 1986 SC 348) wherein the Hon'ble Supreme Court has clearly ruled that the period of continuous officiating can not be ignored on the ground that the appointment was not specifically approved by the Central Government or that there was no vacancy in the promotion quota of cadre officers.

4. In reply to the contents in paragraphs 6 to 18 of the written statement your humble applicant most respectfully submits that the contents therein are not only incorrect but they are contrary to the records. The answering respondent Government is misleading this Hon'ble Tribunal either by making statements which

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are known to be contrary to the records or by willfully suppressing the material facts. In regard to the matter concerning the review of the already finalized Select List of the year 1992-93 and 1993-94 your humble applicant begs to state that the review of the said Select List did not take place in pursuance of any order from any Court. The order dated 20th March, 1995 passed by the Hon'ble Gauhati High Court in Civil Rule No. 1079/1993 did not contain any direction to review the Select List of 1992-93.

As a matter of fact the review of the Select List of 1992-93 was never an issue in the Civil Rule No. 1079/93 and no such order was ever passed by Hon'ble High Court to review the Select List of 1992-93. The dispute related to the appointment of Shri D. Chakravorty, whose name figured in the Select List of 1993-94 prepared on 29.3.1994. Since the State Government wanted to appoint him to IAS, they moved a Misc Petition before the Hon'ble Gauhati High Court praying for permitting them to appoint Shri D. Chakravorty, whose name appeared in the Select List of 1993-94 prepared on 29.03.1994 and approved by Government of India on 21.10.94 and as such the observations of the Hon'ble High Court to reconsider the promotion matter to IAS was only in the context of appointment of Shri D. Chakravorty, the Respondent No. 20 in that Civil Rule and it never was a fact in issue in main Civil Rule No. 1079/93, and the Hon'ble High Court never ordered review of any previously finalized Select Lists. The observations of the Hon'ble High Court have been picked up and used by the respondent

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governments to give benefit to a single individual. In this context, it would be pertinent to quote the entire paragraph No. 36 dealing with the Misc. Application No. 170/95 filed by the State Government in Civil Rule No. 1079/93:-

"The Misc. petition No. 170/95 in this writ petition filed by the government has been considered in the light of the decision arrived by this court in this Civil Rule. The reasons set out in this misc application is that in view of the order dated 5.5.93 passed by this court govt approached this court to take permission before giving promotion to the private respondents. As the Department of Personnel and Training, North Block, New Delhi by letter No. 14015/12/94/AIS(I) dt 20.10.1994 informed the Chief Secretary, govt. of Assam regarding approval of the select list of ACS officers of Assam segment of joint cadre of Assam and Meghalaya containing names of seven persons for appointment to IAS by promotion, the name of respondent No. 20 has found the place at Sl. No. 1 in the select list approved by the Union Public Service Commission, court required to give permission for his promotion. This court has allowed the writ petition for maintaining the seniority of the direct recruits of 1977 batch above the private respondents. Apparently, this court can not restrict the government to issue direction not to consider the promotion of the respondent No. 20 as seniority can not be only criteria for promotion. All the private respondents alongwith the writ petitioners of 1977 batch have the right to be considered for promotion though claim for promotion to the IAS is not a vested right for all of them. The application is rejected. The Respondent govt shall reconsider the promotion matter to the IAS giving

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opportunity to all the contenders on seniority basis so that they can come to zone of consideration for promotion" (emphasis added).

Your humble applicant begs to submit that the observations of the Hon'ble High Court related only and only to the Select List prepared on 29.03.1994 and finalized by the Government of India, Department of Personnel and Training vide letter No. 14015/12/94/AIS (I) dated 20.10.1994 containing the name of Shri D. Chakravorty. These observations therefore, did not relate to the fact in issue in the Civil Rule No. 1079/93 and these observations were never made in the context of review of the Select List prepared and finalized years before. The last line of these observations of the Hon'ble High Court has been picked up after 23 months and used by the State government for the purpose of giving undue benefit to one single individual.

5. Your humble applicant begs to submit that when the select list for the year 1992-93 was under the process of preparation your humble applicant alongwith his other batch-mates filed a Civil Rule in Gauhati High Court being Civil Rule No. 1471 of 1992. In this Civil Rule the Hon'ble High Court was pleased to order that the Respondent State Government of Assam shall dispose of the appeals filed by your humble applicant and other batch-mates before forwarding the names of the eligible officers for consideration by the Selection Committee. A copy of the said order dated 24.07.1992 in the said Civil Rule was also ordered to be given to the Chairman of the Selection Committee. The issue of Select List of 1992-93 was, therefore, an issue in this

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Civil Rule i.e. Civil Rule No. 1471 of 1992. Be it stated that Shri Dhirendra Nath Saikia was not a writ petitioner in this Civil Rule. The Select List of 1992-93 got finalized after the appeals filed by your humble applicant and his other batch-mates were rejected by the Government. We never agitated the 1992-93 Select List as it did not contain the names of private Respondents in the Civil Rule and contained the names of 1970 and 1975 batch officers with whom we have had no dispute as regards the seniority. Thus, no one agitated the 1992-93 Select List as then prepared and no Court including High Court of Gauhati ever directed to revise and re-open the 1992-93 Select List.

A copy of the order dated 24.07.1992 disposing of Civil Rule No. 1471 of 1992 is already enclosed as *Annexure-1* of the rejoinder to the written statement of Respondent No.2.

6. Your humble applicant further begs to state that Shri Dhirendra Nath Saikia was not a party to the said Civil Rule No. 1471 of 1992 and instead he fought an unsuccessful battle which finally resulted in rejection of his claim by the Hon'ble Gauhati High Court in Civil Revision No. 41 of 1993. Thus, there was no order from any Court or judicial authority to review the Select List of 1992-93 prepared and finalised on 31.03.1993.

A copy of the order dated 30.03.1993 passed by Hon'ble High Court in Civil Revision No. 41/93 in the case of Shri Dhirendra Nath Saikia has already been annexed with the Rejoinder to the written statement of Respondent No.2 as *Annexure-2*.

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7. Your humble applicant begs to submit that it is also not true that the revision of the 1995-96 Select List became necessary as a result of review of earlier Select Lists. The review of the Select List was done because of egoistic attitude of respondent No. 1 and other two respondents never felt that it was necessary. As a matter of fact the State Government vide their letter dated 19th June, 1998 wrote to the Government of India that the revision of 1995-96 Select List is not necessary. It was also made clear to the Central Government in the said letter that on previous occasions also, officers in Select List were appointed to IAS, even though vacancies were not taken into account while finalizing the Select List. In support of their contention the State Government cited the examples of appointment of Shri T. Hussain, Shri D.B. Chhetri and Shri S.B. Medhi who were appointed from the Select List of 1988 in excess of the number of vacancies for which the Select List was originally made. Infact the State Government apprehended that if the 1995-96 Select List is reviewed it may also necessitate the review of Select List right from 1988.

Your humble applicant begs to cite the cases of appointment of Shri Sasadhar Nath and Shri Ashutosh Sengupta who were appointed to IAS, even though the vacancies against which they were appointed, were not taken into account while preparing the Select List of 1991-92. Shri Dibakar Saikia was appointed against the vacancy of Shri D.C. Barthakur which was not taken into account while preparing the Select List of 1993-94. Shri

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Khagendra Nath Buragohain has been appointed vide Government Notification No. 14015/5/97-AIS (I) dated 3.3.2000, even though his name was at serial No. 4 and the Select List was prepared for 3 vacancies.

8. Your humble applicant most respectfully begs to submit that the contention of the respondent Government that there were no vacancies is incorrect. As a matter of fact the State Government has categorically stated that your humble applicant as well as Shri Dibakar Saikia and Shri Dhirendra Nath Saika were all appointed against clear available vacancies and as a matter of fact the vacancy against which your humble applicant was appointed has been again notified as vacant by the State Government in their letters dated 26th August, 1999 and 22nd November, 1999. As a matter of fact the State Government gave a detailed account to the Government of India about the date of occurrence of vacancy and as to how and by whom it was filled up in their letter dated 22nd November, 1999. The State Government also requested the Government of India to re-examine the matter of rescinding the appointment of your humble applicant vide their letter dated November 25, 1999. It is astonishing and shocking that all these material particulars have been suppressed from this Hon'ble Court by the State Government and they have submitted an affidavit which is nothing but false. The State Government in the year 2000 also has re-iterated the same position giving a detailed account that the Selection List for 1992-93 was prepared in respect of 8 vacancies but only 7 persons were appointed; the Select List for

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1993-94 was prepared for 5 vacancies but all the 6 persons in the Select List after deleting the name of Shri D. Chakravorty were appointed. This list includes the name of Shri Dibakar Saikia in respect of the vacancy of Shri D.C. Barthakur even though that vacancy was not taken into account when the Select List was prepared. The Select List for 1995-96 was prepared for 7 vacancies and it contained 9 persons and 7 of them were appointed including your humble applicant.

9. Your humble applicant also submits that there was no direction from the Hon'ble High Court to re-cast the seniority and no such seniority in the Assam Civil Service has been re-casted by Government of Assam. Had it been so, the State Government of Assam ought to have taken into account the objections submitted by your humble applicant on 28.06.1993 whereby your humble applicant claimed seniority under Rule 19 (4) of the Assam Civil Service (Clause I) Rules, 1960. Your humble applicant is not aware of any revision of seniority effected by Government of Assam in the Assam Civil Service. As a matter of fact your humble applicant submitted an another application praying for determination of his inter-se seniority in the Assam Civil Service Rules, 1960 on 8.11.2000. Your humble applicant prays that the Hon'ble Tribunal be pleased to direct the Government of Assam to review the seniority in the Assam Civil Service after duly considering the petition by your humble applicant firstly on 28.06.1993 and then on 8.11.2000.

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A copy of each of both of these applications has already been annexed as Annexure-1&2 respectively with the Rejoinder to the written statement of Respondent No.1.

10. That your humble applicant begs to submit that the respondent government has willfully suppressed the material facts and they have not come before your lordships with clean hands. As such the written statement submitted by them is not the statement in the eye of law and the same is liable to be discarded in totality.
11. That under the facts and circumstances of the case, the O.A. deserves to be allowed by setting aside the impugned order and granting the prayers made in the O.A.

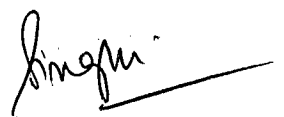
VERIFICATION

I, Shri Lall Chand Singhi, aged about 51 years S/o Shri Surajmal Singhi, Applicant in O.A. No. 25/2000 do hereby verify and state that the statement made in paragraph is true to my knowledge and those made in paragraph 4-9 being matters of records are true to my information derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 9th Day of August 2003 at Mussoorie.

Place : Mussoorie

Date : 9.08.2003


Applicant