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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

C.P-42/2002 ordered pg-1 to 12
discharged date-04/11/2011

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O.A/T.A No. 38/2000

R.A/C.P No. 42/2002

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SECTION OFFICER (Judl.)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 38/2000

OF 199

Applicant(s)

Sri N.K. Arjun Kamrajna.

Respondent(s)

Union of India and Ors.

Advocate for Applicant(s)

Mr. J.L. Sarkar
Mrs. S. Deka

Advocate for Respondent(s)

C.G.S.E.

Notes of the Registry	Date	Order of the Tribunal
<p>453629 3-11-98 By 2/2/2000 2/2/2000 10 - 2 - 2000</p> <p>Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A/D. vide D.Nos. 455 to 457 Dtd. 14-2-2000.</p>	<p>4.2.2000</p> <p>pg ms 9/2/2000</p> <p>7.3.2000</p>	<p>Application is admitted. Issue usual notice. Returnable by four weeks.</p> <p>List on 7.3.2000 for written statement and further orders.</p> <p>Member</p> <p>Vice-Chairman</p> <p>Written statement has been submitted. Copy has been received by the counsel of the applicant. Mr.J.L.Sarkar learned counsel for the applicant prays for time to file rejoinder. List for hearing on 15.5.2000.</p> <p>In the meantime the applicant may file rejoinder with copy to the respondents.</p> <p>Member(J)</p> <p>Member(A)</p>

Notes of the Registry	Date	Order of the Tribunal
<p>6-3-2000</p> <p>① Service report are still awaited.</p> <p>② No written statement has been filed.</p>	15.5.00	<p>There is no adj. to 18.7.00.</p> <p>By lm</p>
<p>7-3-2000</p> <p>Neither statement has been filed by the respondents No. 1, 2, 3.</p>	18.7.00	<p>There is no Bench today. Adjourned to 6.11.00.</p> <p>By lm</p>
<p>lets has been filed on R.No. 1, 2 and 3.</p>	6.11.00	<p>No DB. adjourned to 20/2/2001.</p> <p>By A. B. Sen lm</p>
<p>lets has been filed on R.No. 1, 2 and 3.</p>	31.1.01 (Shillong)	<p>Wr-itten statement has been filed. The applicant may file rejoinder, if any within four weeks from today. List on 9.3.01 for order.</p>
<p>No. Rejoinder has been filed.</p>	12.3.01	<p>Written statement has been filed. List for hearing on 27.3.01. In the meantime the applicant may file rejoinder.</p>
<p>No. Rejoinder has been filed.</p>	27.3.01	<p>Adjourned to 1.5.01 on the prayer of the counsel for the applicant.</p>
<p>No. Rejoinder has been filed.</p>	1.5.01	<p>A prayer has been made by Mr. J. L. Sarkar counsel for the applicant for adjournment of the case to obtain necessary instruction from the party. Prayer allowed.</p>
		<p>List on 4.6.2001 for hearing.</p>

Notes of the Registry	Date	Order of the Tribunal
	1.5.01	<p>A prayer has been made by Mr. J.L. Sarkar learned counsel for the applicant for adjournment of the case to obtain necessary instruction from the party. Prayer allowed.</p> <p>List on 4.6.2001 for hearing.</p> <p><i>K. U. Shary</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
bb		
8x7x0x		<p>PRAYER HAS BEEN MADE ON BEHALF OF MR. J.L. SARKAR FOR ADJOURNMENT OF THE CASE. PRAYER IS ALLOWED. LIST ON 31.7.01 FOR HEARING.</p>
	4.6.	<p>Heard in part. Adjourned. List on 6.7.2001 for hearing.</p> <p><i>[Signature]</i> <i>B/o</i></p>
Written statement filed on behalf of respondent No. 1. <i>By</i> <i>30.7.01</i>	6.7.01	<p>Prayer has been made on behalf of Mr. J.L. Sarkar learned counsel for the applicant for adjournment of the case. Prayer is allowed. List on 31.7.01 for hearing.</p> <p><i>K. U. Shary</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
	lm	
	31.7.2001	<p>Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.</p> <p><i>K. U. Shary</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

13.8.2001

Copy of the Judgment has been sent to the Office for setting the time to the Applicant as well as to the A.C.B.C. for the Respondent.

[Signature]

nk m

Notes of the Registry	Date	Order of the Tribunal
<p>1. The first of the three...</p> <p>2. The second of the three...</p> <p>3. The third of the three...</p>	<p>1. 1942</p> <p>2. 1943</p> <p>3. 1944</p>	<p>1. 1942</p> <p>2. 1943</p> <p>3. 1944</p>
<p>4. The fourth of the three...</p> <p>5. The fifth of the three...</p> <p>6. The sixth of the three...</p>	<p>4. 1945</p> <p>5. 1946</p> <p>6. 1947</p>	<p>4. 1945</p> <p>5. 1946</p> <p>6. 1947</p>
<p>7. The seventh of the three...</p> <p>8. The eighth of the three...</p> <p>9. The ninth of the three...</p>	<p>7. 1948</p> <p>8. 1949</p> <p>9. 1950</p>	<p>7. 1948</p> <p>8. 1949</p> <p>9. 1950</p>
<p>10. The tenth of the three...</p> <p>11. The eleventh of the three...</p> <p>12. The twelfth of the three...</p>	<p>10. 1951</p> <p>11. 1952</p> <p>12. 1953</p>	<p>10. 1951</p> <p>11. 1952</p> <p>12. 1953</p>
<p>13. The thirteenth of the three...</p> <p>14. The fourteenth of the three...</p> <p>15. The fifteenth of the three...</p>	<p>13. 1954</p> <p>14. 1955</p> <p>15. 1956</p>	<p>13. 1954</p> <p>14. 1955</p> <p>15. 1956</p>
<p>16. The sixteenth of the three...</p> <p>17. The seventeenth of the three...</p> <p>18. The eighteenth of the three...</p>	<p>16. 1957</p> <p>17. 1958</p> <p>18. 1959</p>	<p>16. 1957</p> <p>17. 1958</p> <p>18. 1959</p>

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXXX No. 38 of 2000

DATE OF DECISION 31.7.2001

Shri N.K. Arjun Kanunjna

APPLICANT(S)

Mr J.L. Sarkar, Mr M. Chanda and

Mrs S. Deka

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

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

ADVOCATE FOR THE
RESPONDENTS.

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

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

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

5.

Judgment delivered by Hon'ble Vice-Chairman



2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.38 of 2000

Date of decision: This the 31st day of July 2001

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

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

Shri N.K. Arjun Kanunjna,
Son of Late Narmada Kr Arjun Kanunjna,
East Khasi Hills.

.....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mrs S. Deka.

- versus -

1. The Union of India, through the
Secretary to the Government of India,
Ministry of Home Affairs,
North Eastern Council Division,
New Delhi.
2. The Secretary,
The North Eastern Council,
East Khasi Hills,
Meghalaya, Shillong.
3. The Union Public Service Commission,
Through its Secretary,
New Delhi.

.....Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

By an order dated 26.4.1983 the applicant, who was Private Secretary to the Chairman of North Eastern Council (NEC for short), was appointed to officiate as Private Secretary to the Chairman in the scale of pay of Rs.1100-1600 subsequently revised to Rs.3000-4500 plus other allowances with effect from 23.4.1983. Consequent upon the approval of the UPSC of the aforesaid appointment of the applicant to the upgraded post of Private Secretary to the Chariman, NEC in the sclae of Rs.3000-100-3500-125-4500, the officiating appointment of the applicant to the post of Private Secretary to the Chairman, NEC

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stood regularised with effect from 23.4.1983. By an order dated 24.9.1990 he was temporarily appointed as Deputy Director (A) on ad hoc basis in the NEC for a period of six months with effect from the date of assumption of charge. By order dated 11.4.1991 the term of ad hoc appointment to the post of Deputy Director (A) was extended for a further period of six months with effect from 8.4.1991 or till the date of receipt of the UPSC's final decision in regard to the eligibility of the applicant for regular appointment to the post. The NEC, subsequently, by its order dated 23.11.1992 cancelled the order dated 28.1.1991 regularising the services of the applicant in the upgraded post of Private Secretary to the Chairman, NEC with effect from 23.4.1983. By the said order it was also held that the applicant was not eligible for consideration of regularisation in the post of Deputy Director (A) and accordingly by the aforesaid order dated 23.11.1992 the applicant was reverted to the post of Private Secretary to the Chairman, NEC. The above order was assailed before this Bench by way of O.A.No.127 of 1993 as unlawful. By Judgment and Order dated 5.2.1998 the Tribunal disposed of the application with direction to the respondents to dispose of the representation of the applicant by passing a reasoned order within the specified period. As per direction of the Tribunal the matter was taken up for consideration by the concerned authority wherein the applicant was also given a personal hearing. By the impugned order the respondents turned down his representation and refused his promotion to the upgraded post of Private Secretary to the Chairman with effect from 23.4.1983 to 12.8.1990 as regular promotion and count the same for the purpose of seniority for promotion to the post of Deputy Director. Hence this application.

2. For proper adjudication of the controversy raised in this application certain basic facts are required to be gone into, more particularly about the appointment of the applicant. As alluded by order dated 26.4.1983 the applicant was appointed to officiate as Private Secretary to the Chairman, NEC. The said order was also forwarded to the Deputy Secretary to the Government of India, Ministry of Home

Affairs.....

Affairs, New Delhi for taking certain formal steps. In the said communication it was informed that the appointment of the applicant was made against the post of Private Secretary to the Chairman, NEC created by NEC order No.NEC.23/75 dated 26.4.1983. The applicant was thus appointed to the post created in 1983. The NEC by order dated 28.1.1991 regularised the services of the applicant from 26.4.1983, consequent upon the approval of the UPSC to the appointment of the applicant to the upgraded post of Private Secretary. A copy of the order dated 28.1.1991 was sent to the Deputy Secretary (NEC), Government of India, Ministry of Home Affairs, New Delhi referring to the Ministry's letter No.7/21/84-NE.II dated 14.1.1991. The Ministry's letter dated 14.1.1991 was not made available before us. However, the fact remains that the applicant was appointed to a post created in 1983. Admittedly, there were no rules in the NEC for recruitment to the post of Private Secretary to the Chairman of the NEC. The Recruitment Rules were approved and notified vide Memo No.5/19/83-NE.II dated 11.3.1985. The said Recruitment Rules insisted eight years regular service in the lower grade and recruitment could be made either by promotion or by transfer on deputation. As per the eligibility criteria a departmental Private Secretary in the scale of pay of Rs.650-1200 was eligible to be considered on completion of eight years regular service in the grade.

3. Mr A. Deb Roy, learned Sr. C.G.S.C. contended that the applicant did not fulfil the requirement for recruitment as per the Recruitment Rules. As mentioned, the post in which the applicant was appointed as Private Secretary to the Chairman, NEC was a post created prior to the emergence of the Recruitment Rules. The Recruitment Rules of 1985 will not apply since the rules are relatable to the existence of the vacancy. The respondents, in the circumstances, fell into gross error in holding that the applicant was not eligible for appointment to the post earlier than the existence of the Recruitment Rules. The cancellation of the regularisation of the applicant for the aforesaid reason from 1983, therefore, cannot be sustained. The order dated 23.11.1992 and the consequent order dated 1.12.1992 in the circumstances

therefore.....

therefore, cannot be sustained and accordingly the same is set aside. Consequently, the order dated 2.12.1998 reverting the applicant to the post of Private Secretary to the Chairman, NEC on the strength of the order dated 23.11.1992 cannot be sustained.


4. Mr J.L. Sarkar, learned counsel for the applicant, stated and contended that since the applicant was unlawfully reverted from the post of Deputy Director (A), the applicant should get the service benefit of the post, which he would have held till his retirement. Mr Deb Roy submitted that the applicant was considered subsequently in the year 1996 by the DPC for promotion, but the DPC did not find him suitable for promotion to the said post as he failed to attain the prescribed Bench Mark Grading of 'very good'. As per the amended Recruitment Rules of 1990 the applicant was entitled for consideration of promotion to the post of Deputy Director on and from 8.10.1990 and not 1996 as was held by the impugned order dated 22.3.1999. The legitimacy of the action of the respondents in the matter of reverting the applicant from the post of Deputy Director by the order dated 2.12.1992 was also under consideration in O.A.No.127/1993. The action of the respondents in holding DPC during the pendency of the aforesaid O.A. was contrary to the provisions of Sub-section 4 of Section 19 of the Administrative Tribunals Act, 1985.

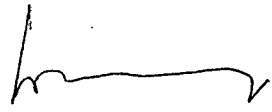
5. For the reasons stated above the impugned orders dated 23.11.1992, 1.12.1992, 2.12.1992 and 22.3.1999 are set aside and quashed. The applicant has already attained his superannuation on 30.4.1996. However, the applicant cannot be deprived of the benefit that he was entitled to during his period service. The respondents are accordingly directed to consider the case of the applicant for promotion to the post of Deputy Director (A) as on 1990 as per law and grant him whatever service benefit he was eligible for under the law. The respondents are directed to complete the above exercise as early

as.....

as possible, preferably within three weeks from the date of receipt of the order and pass consequential order.

6. The application is allowed to the extent indicated. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

In the Central Administrative Tribunal

Central Administrative Tribunal
Guwahati Bench : Guwahati

84 2 FEB 2000

গুৱাহাটী বেঞ্চ
Guwahati Bench

O. A. No. 28 /2000.

Sri N.K. Arjun Kanunjna

-vs-

Union of India & Ors.

I N D E X

Sl. No.	Annexure	Particulars	Pages
1	A	Order dt. 5.6.82	13
2	B	Order dt. 26.4.83	14
3	C	Order dt. 28.1.91	15
4	D	Order dt. 24.9.90	16
5	E	Order dt. 11.4.91	17
6	F	Order dt. 23.11.92	18-19
7	G	Order dt. 1.12.92	20
8	H	Order dt. 2.12.92	21
9	I	Copy of the judgment dt. 5.2.98 in OA 127/93	22-25
10	J	Representation dt. 2.3.98	26-28
11	J-I	Record note of hearing submits by the applicant	29-35
12	K	Order dt. 22.3.99	36-45

Filed by

Mrs. S. Deka.
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

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

B
Filed by the Applicant
through Mrs. J. Devar
Advocate
1.2.2000

O. A. No. 38 /2000

Shri N. K. Arjun Kanunjna

-vs-

Union of India & Others

Between

Shri N. K. Arjun Kanunjna

Son of Late Narmada Kr. Arjun Kanunjna
East Khasi Hills.

. Applicant

-And-

1. Union of India

Through Secretary to the Govt. of
India,

Ministry of Home affairs, North
Eastern Council, Division, New
Delhi - 110001.

2. The Secretary,

The North Eastern Council
East Khasi Hills, Meghalaya ,
Pin - 793001.

Contd . . . 2/-

3. Union Public Service Commission,
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi - 110011.

. . Respondents

DETAILS OF APPLICATION :

1. Particulars for which the application is made :

This application is made against Order No. NEC/ADM/179/73/Vol.IV dated 23.11.92 and NEC/ADM/104/72 Vol. II dated 1.12.92 and Order No. NEC/ADM/170-73 Vol.IV dated 2.12.92 and Order No. NEC/ADM/179/73 Vol.V dated 22.3.99, issued by Secretary, North Eastern Council, Shillong.

Subject : Forfeiture of period of service and reversion.

2. JURISDICTION :

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

3. The applicant declares that the application is within the period of limitation under Section 21 of the Administrative Tribunal Act, 1985.

Contd . . . 3/-

Q. FACTS OF THE CASE :

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

4.2. That the applicant joined the North-Eastern Frontier Agency known as Arunachal Pradesh, as a Grade III Stenographer w.e.f. 5.8.59 and he was subsequently promoted as Grade I stenographer in 1964.

4.3. That the applicant joined the North-Eastern Council (for short NEC) Secretariate on deputation on 1.12.72 as Private Secretary to Chairman of N.E.C. He was asked in writing on 16.9.75 whether he was willing for permanent absorption in N.E.C. and he conveyed his willingness on 27.10.75. On 26.6.76 the Govt. of Arunachal Pradesh conveyed their approval placing the applicant's services at the disposal of the N.E.C. Council for permanent absorption. Thereupon the N.E.C. treated the applicant as their own employee and stopped paying deputation allowances. He was formally permanently absorbed in the N.E.C. as P.S. to the Chairman N.E.C. on 4.6.82 4.6.82 in the scale of 650/- to 1200/- (thereafter revised w.e.f. 1.1.86 to Rs. 2000/- to 3500/-). For this delay in absorption the applicant is not responsible.

Copy of the Order dt. 5.6.82 is enclosed as Annexure - A

(half portion of the order could not be typed being illegible).

4.4. That the post of the Private Secretary Chairman in scale Rs. 1100-1600 was created in April 1993. The applicant was the only available suitable candidate for the said post. Considering the efficient service of the applicant for 10 years in N.E.C. the applicant was promoted to the said post of P.S. to the Chairman (the scale Rs. 1100 - 1600, subsequently revised to Rs. 3000 - 4500) w.e.f. 23.4.83 by office order dt. 26.4.83

This appointment was initially temporary officiating. By an order dt. 28.1.91 this appointment was regularised w.e.f. the initial date i.e. 23.4.83. A copy of the order dt. 28.1.91 was endorsed to the Secretary U.P.S.C. amongst others.

Copy of the Order dt. 26.4.83 and 28.1.91 are enclosed as Annexure B and C respectively.

4.5. That the petitioner was appointed as Deputy Director (A) on adhoc basis in the N.E.C. Secretariate Shillong in the scale of Rs. 3700/- 5000/- for a period of six months from the date the applicant assumed charge which ^{he} assumed on 8.10.90. The said appointment was made by order dt. 24.9.90 which stipulate that the appointment will not confer on him the right to claim regular appointment. Thereafter ^{by} order dt. 11.4.91 his ad-hoc appointment as D.D.A was extended in the exigencies of Public interest for a further period of six months w.e.f. 8.4.91 or till the date of receipt of UPSC's final decision in regard to eligibility of the officer for regular appointment to the post indicating that no right to claim regular appointment

shall accrue.

Copies of the order dt. 24.9.90 and 11.4.91 are enclosed as Annexure D and E respectively.

4.6. That the applicant begs to state that his initial appointment to the up^ograded post of P. S. to Chairman is w.e.f. 23.4.83 and he physically held the post and discharged the duties to the satisfaction of all concerned and he is entitled to be given the benefit of seniority of the post w.e.f. 23.4.83. It is stated that this has been the policy of the respondents in other cases also.

4.7. That one Sri A. B. Paul came on deputation to N.E.C. in 1977 as Asstt. Financial Adviser (for short AFA) Rs. 3000-4500). He was an Accounts Officer in Accountant General's Office (Parent Office) in revised scale to Rs. 2300-3500. He was absorbed on 4.6.82. The Post of AFA was up^ograded as Deputy Financial Adviser (for short Dy. F.A) (Revised scale Rs. 3700 - 5000) and Sri Paul was appointed to officiate against the said up^ograded post w.e.f. 23.4.83. As per the recruitment Rules of 1985 this post was to be filled by deputationist with no provision for promotion with requirement of five years service in the scale of Rs. 3000 - 4500. In 1986 a suitability clause was added to covered his case making requirement of five years service and ⁱⁿ 1986 itself his case was regularised w.e.f. 23.4.83 and the copy of the regularisation order was endorsed to U.P.S.C. and the UPSC

did not raise any objection that Sri Paul was not holding an equivalent, post in his parent Department. Sri Paul did not complete five years service from 4.6.82 in the year 1986 but in his case his promotion was considered as the Rules came in 1985 only. The applicant was also regular holder of a post of P.S. to chairman prior to upgradation of the same to scale Rs. 3000 - 4500. The date of absorption of both the officer is the same. It is not understood why a different treatment was made in the case of the applicant. It is stated that the case of Sri Paul has been correctly decided in conformity with the Law, it is only in the case of the applicant that respondents want to victimise the applicant by differential treatment. Malice in fact and malice in law is explicit in the facts and circumstances of the case.

4.8. That the applicant begs to state that once Sri D. P. Bhagawati, Librarian, was appointed in the N.E.C. in 1984 and during his appointment there was no recruitment rules, when he was under threat of termination applying the recruitment rule made subsequently in 1985 this Hon'ble Tribunal passed order that he should ^{be} ~~not~~ given benefit of confirmation, pay fixation and further promotion, because recruitment Rule had prospective effect. (G.C.No. 166/88). It is stated that same process was followed in case of both Sri Bhagawati and the applicant. In the case of Sri Bhagawati the interview Board did not include the representatives of the UPSC and Home Ministry. The UPSC was not consulted under article 320 of the Constitution of India. The case of the applicant the procedure was followed and after examination

of his ^{placed} past service record by the Secretary NEC, the case was raised before the Chairman who also approved the appointment of the applicant to the upgraded post of P. S. to the Chairman and the applicant continued as the regular holder of the said post and thereafter the applicant was further promoted on adhoc basis as Deputy Director (Administration) as explained above.

4.9. That most unfortunately by an order dt. 23.11.92 issued by the Secretary NEC, the applicant has been reverted from D.D.A. to P. S. to Chairman. The Secretary NEC in the said order dt. 23.11.92 also purportedly cancelled his order dt. 28.1.91 (Annexure C) by which the services as PS stood regularised w.e.f. 23.4.83. All these were done without giving any show cause notice or hearing to the applicant.

Copy of the order dt. 23.11.92 is enclosed as Annexure - F.

4.10. That the NEC later issued another order dt. 1.12.92 in ^{supersession} of the earlier order dt. 28.1.91, appointing the applicant to the upgraded post of P.S. to Chairman w.e.f. 13.8.90 (against 23.4.83 as held by the applicant). This order gives no reason and it is a non-speaking order. Here also no show-cause notice was given.

Copy of the order dt. 1.12.92 is enclosed as annexure - G.

4.11. That another order dt. 2.12.92 has been issued by the NEC purportedly reverting the applicant from the post of D.D.A. This order has been issued with reference to the order dt. 23.11.92. This order is also non speaking and was

issued without issuing any show cause notice.

Copy of the order dt. 2.12.92 is
enclosed as Annexure - H.

4.12. That the applicant submitted ~~members~~ of representations to the N.E.C. and Secretary to the Govt. of India, but in vain. Thereafter the applicant filed an original application before the Hon'ble Tribunal which was registered as OA No. 127/93. The Hon'ble Tribunal was pleased to pass an order dt. 5.2.98 and directed the respondents to consider the matter strictly according to the rules and the relevant laws.

Copy of the judgment in the OA 127/93
is enclosed as Annexure - I.

4.13. That thereafter the applicant submitted a fresh representation dt. 2.3.98 to the Secretary N.E.C.

Cppy of the representation dt. 2.3.98
is enclosed as Annexure - J.

4.14. That the applicant was also given a personal hearing and he made oral submissions in addition to the representations submitted. That the NEC passed order dt. 22.3.99 by which the representations of the applicant have been rejected, Though the order dt. 22.3.99 is a lengthy one it has not given the correct reasons and as such it is an unreasoned

Contd . . . 9/-

order. It does not speak as to why the recruitment rules of 1985 would not be prospective only, and why these have been made applicable to the applicant although he was promoted and regularised in 1983. This order also does not speak out why relevant orders of the Government treating adhoc promotion have not been made applicable to the applicant. Moreover, when as per policy of the NEC others have been correctly regularised applying the rules prospectively applicant has been discriminated. The applicant cited two specific examples viz, those of Sri D.P. Bhagawati and Sri A. B. Paul but these have not been correctly dealt with and evasive order has been passed without giving correct position. The respondents are also aware that their stand is not correct and therefore has taken resort to conjecture and hypothetical views in respect of the promotion of the applicant. It is also stated that the view of UPSC and the Department of personnel and training were taken behind the back of the applicant. No official or representative of these two offices were heard in the presence of the applicant.

The order dt. 22.3.99 has been passed as an eyewashed and only to show compliance of the Hon'ble Tribunal's order. The order dt. 22.3.99 is liable to be set aside and quashed.

Copy of the order dt. 22.3.99 is enclosed as Annexure - K.

5. Ground for Relief with Legal Provision :-

5.1. For that the order dt. 22.3.99 is violative of the principles of natural justice.

5.2. For that the applicant has been discriminated and as such reversion and denial of promotion is violative of the Articles 14 and 16 of the Constitution of India.

5.3. For that the rules made has been arbitrarily applied retrospectively.

5.4. For that the instructions for ad-hoc promotion and regularisation has not been followed.

5.5. For that the reversion from the post of DDA and altering the date of regularisation as P.S. to Chairman has been done violating the provision of Article 311.

6. Details of Remedies Exhausted :-

The applicant states that there is no remedy under any rule and this Hon'ble Tribunal is the only remedy. However, he has represented personally and also has submitted representation.

7. Matter not Pending with any Court :-

The applicant declares that there is no case pending before any other Court/Tribunal.

8. Relief Sought for :-

In the facts and circumstances of the case the applicant prays for the following reliefs :

8.1. The order dt. 22.3.99 (Annexure - K) be set aside and the orders dt. 23.11.92, 1.12.92 and 2.12.92 (Annexure F

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4

(Annexure F, G, and H respectively) also be set aside and quashed.

8.2. Salary of Dy. Director (Administration) from the period after 23.11.92 upto the date of retirement be paid to the applicant.

8.3. Any other reliefs as the Hon'ble Tribunal may consider fit and proper, with cost of the case.

9. Interim relief :-

In the facts and circumstances of the case the applicant has no interim prayer.

10. In the event of application being sent by registered post :-

The application has been filed through lawyer.

11. Particulars of Postal Order :-

I.P.O. No. . . . 06. 45. 36. 29. . .

Date of Issue : . . . 3. 11. 99. . . .

Issued from : . . . Gn.wahali. . .

Payable at : . . . Gn.wahali. . .

12. List of Enclosures :-

As per Index.

VERIFICATION

I, N. K. Arjun Kanunjna, son of Late N. K. A. Kanunjna, resident of Shillong, Meghalaya, aged about 60 years, do hereby verify that the statement made in paragraphs 1, 4, 6, 7, 8, 9, 10, 11 and 12 . . . are true to my personal knowledge and paragraphs 2, 3 and 5 are believed to be true on legal advice and that I have not suppressed any material facts.

Date : 28.1.2000.

Place : Shillong.

(N. K. A. Kanunjna).
(Signature of the Applicant)

NORTH EASTERN COUNCIL
SHILLONG

No. NEC.138/79

Dated, THE 5th June, 1982.

N O T I F I C A T I O N

In pursuance of rule 4 of the North Eastern Council Secretariat, Shillong (Group 'A' & Group 'B' posts) Recruitment Rules, 1977, as amended vide Government of India, Ministry of Home Affairs notification No. III-14028/27/80-NE.II dated 12th April, 1982, in the interest of public service, the under-mentioned persons are appointed substantively on "transfer" basis to the posts held by them in the North Eastern Council Secretariat on deputation on 7.6.1977 i.e. date from which the above mentioned Recruitment Rules came into force, as shown against each with effect from the 4th June 1982.

Name of the person:

Particulars of post to which appointed:

- | | |
|--|--|
| ✓ 1. Shri N.K.A. Kanunjna,
Stenographer Grade-I,
Arunachal Pradesh
Administration | Private Secretary in
the scale of pay of
Rs. 650-30-740-810-35-
880-40-1000-TB-40-1200/-
(General Central Service,
Group 'B' Gazetted). |
| 2. Hareswar Bora,
Stenographer Grade-I,
Government of Assam | -Do- |
| 3. Shri J.B. Sailo,
Superintendent, Office
of the Inspector General
of Police, Mizoram. | Section Officer in the
scale of pay of
Rs. 650-30-740-810-
35-880-40-1000-EB-
40-1200/- (General
Central Service,
Group 'B' Gazetted). |

This issues with the approval of the Government of India, Ministry of Home Affairs vide their Message No. III-14028/27/80-NE.II dated 4th June 1982.

G. CHAND

Attended
24/11/82
Executive Secretary
M. B. C. Shillong

-14-
Annexure - B.
NORTH EASTERN COUNCIL SECRETARIAT
SHILLONG 2

NO.NEC.23/75 Dated : Shillong, the 26th April, 1983.

NOTIFICATION

Shri N.K.A.Kanunja, Private Secretary to the Chairman, North Eastern Council, Shillong is hereby appointed temporarily to officiate as Private Secretary to Chairman, North Eastern Council in the scale of pay of Rs.1100-50-1600/- plus other allowances as may be admissible from time to time under Central Government Rules with effect from the forenoon of 23rd April, 1983 until further orders.

(Authority :- Chairman's, NEC, approval dated 22nd April, 1983).

Sd/-

(S.K.Chakravorty)
Deputy Secretary
North Eastern Council Secretariat,
Shillong.

Memo.No.NEC.23/75-A Dated : Shillong, the 26th April, 1983.
Copy forwarded to :-

1. The Deputy Secretary to the Govt of India, Ministry of Home Affairs, N.E. Division, New Delhi-110001 with request to arrange translation of the notification in Hindi and send it to the Manager, Govt of India Press, Varidabad, Mysore for publication of the same in the Gazetted of India, Part-III, Section I. The appointment of Shri N.K.A.Kanunja is against the post of Private Secretary to the Chairman, NEC created vide Council Secretariat order No.NEC.21/75 dat- 26th April, 1983, copy of which has been endorsed to the Ministry.
2. The Accounts Officer, Regional Pay & Accounts Office (IN), Shillong.
3. The Accounts Branch, N.E.C. Secretariat, Shillong.
4. Shri N.K.A.Kanunja, Private Secretary to the Chairman, NEC, Shillong.
Office Order Book.
Word file. 7. Office copy.

(S.K.Chakravorty)

Deputy Secretary
North Eastern Council Secretariat,
Shillong.

H. V. G. S. Secy
Shillong

- 15 -

Annexure - C.

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH EASTERN COUNCIL SECRETARIAT
SHILLONG : 793001

No. NEC/ADM/104/72/VOL.II Dated Shillong, the 28th January '91.

ORDER

Consequent upon the approval of the Union Public Service Commission to the appointment of Shri N K Arjun Kamunjna to the upgraded post of P.S. to Chairman, North Eastern Council in the scale of Rs. 3000-100-3500-125-4500, the officiating appointment of Shri Kamunjna to the post of P.S. to Chairman in the scale of Rs. 3000-100-3500-125-4500 with effect from 23/4/83, made vide notification No. NEC.23/75 dated 26/4/83, stands regularised.

SA/-

(L. M. MENEZES)
Secretary,
North Eastern Council Sectt.,
Shillong.

Memo No. NEC/ADM/104/72/VOL.II Dt. Shillong, the 28th January '91.

Copy to :-

1. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-11.
2. The Deputy Secretary (NEC), Govt of India, Ministry of Home Affairs, New Delhi-110 001, with reference to Ministry's letter No. 7/21/84-NE.II dated 14/1/91.
3. Shri N K Arjun Kamunjna, Deputy Director (Administration), N.E.C. Sectt., Shillong.
4. The Accounts Officer, Regional Pay and Accounts Office (IB), Shillong.
5. The Assistant Secretary, N.E.C. Sectt., Shillong.
6. Recruitment File.
7. Guard File.
8. Office Copy.

M. R. CHOURHARY
(M. R. CHOURHARY)
Section Officer (Admn.)
North Eastern Council Sectt.,
Shillong.

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH EASTERN COUNCIL SECRETARIAT
SHILLONG : : 793001.

NO NEC/ADM/179/73-Vol.III Dated the 24th September, 1990.

ORDER

Shri N.K.A. Kanunjna, Private Secretary to Chairman, NEC Shillong is temporarily appointed as Deputy Director (A) on ad-hoc basis in the North Eastern Council Secretariat, Shillong in the scale of Rs.3700-125-4700-150-5000/- plus other allowances as admissible under Central Government Rules from time to time for a period of six months with effect from the date he assumed charge.

The appointment will not be confer on him the right to claim regular appointment to the post subsequently.

Sd/-
(L.M. MENEZES)
SECRETARY

Memo NO NEC/ADM/179/73-Vol.III Dated the 24th September, '90
Copy to :-

1. The Accounts Officer, Regional Pay and Accounts Office (IB), Shillong.
2. The Accounts Branch, NEC Sectt., Shillong.
3. Shri N.K.A. Kanunjna, Private Secretary to Chairman, NEC Shillong.
4. Copy for Personal file.
5. Guard file.
6. Office copy.

(P.K. CHOWDHARY)
DEPUTY SECRETARY
NORTH EASTERN COUNCIL SECTT.,
SHILLONG.

Executive Engineer (Civil)
North Eastern Council Secretariat
Shillong
18/9/93
RECEIVED
NORTH EASTERN COUNCIL SECRETARIAT
SHILLONG

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIR
NORTH EASTERN COUNCIL SECRET
SHILLONG : 793001

No.NEC/ADM/179/73-VOL.IV Dated Shillong, the 11th April, 1991.

ORDER

In continuation of this Council Secretariat order ..
No.NEC/ADM/179/73-VOL.IV dated 24th September, 1990 the term
of ad-hoc appointment of Shri N.K.A.Kanunjna as
Deputy Director(Admn.) in the North Eastern Council Secretariat,
Shillong in the scale of pay of Rs.3700-125-4700-150-5000/-
is extended in the exigencies of public interest for a further
period of six months w.e.f. 8th April, 1991 or till the date
of receipt of UPSC's final decision in regard to eligibility
of the officer for regular appointment to the post.

.. The appointment will not confer on him any right to
claim regular appointment to the post subsequently.

Sd/-
(L. M. Menezes)
Secretary,
North Eastern Council,
Shillong.

Memo No.NEC/ADM/179/73-VOL.IV Dt.Shillong, the 12th April, 1991.
Copy to :-

1. The Accounts Officer, Regional Pay & Accounts Office,
(I.B), Laitumkhrah, Shillong.
2. The Accounts Branch, N.E.C.Sectt., Shillong.
3. Shri N.K.A.Kanunjna, Deputy Director(Admn.),
N.E.C. Secretariat, Shillong.
4. Copy for personal file.
5. Guard File.
6. Office Copy.

M. R. Choudhury
(M. R. Choudhury)
Section Officer(Admn.)
North Eastern Council Sectt.,
Shillong.

AKS
AKS
Executive Engineer (Civil)
North Eastern Council Sectt.
Shillong

PKG/12/4/91.

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Annexure - F. 3

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
MINISTRY OF HOME AFFAIRS
SHILLONG 793001.

NO. NEC/ADM/179/73/VOL. IV

NOVEMBER 23, 1992

ORDER

Shri N.K.A. Kanunjna, Private Secretary to Chairman, NEC, Shillong was temporarily appointed as Deputy Director (Administration) on ad-hoc basis in the North Eastern Council Secretariat, Shillong on 24.09.1990. A proposal was sent to the U.P.S.C. on 06.02.1991 for the holding of Departmental Promotion Committee for considering the promotion of Shri N.K.A. Kanunjna to the post of Deputy Director. U.P.S.C. was informed that Shri Kanunjna was the only candidate eligible for promotion to the post. In their letter dated 11.3.1991 the U.P.S.C. pointed out that Shri Kanunjna was recommended by the Commission for appointment to the up-graded post of P.S. to Chairman only 08.01.1991 consequent to the amendments of RRs notified on 13.08.1990. Hence, he is not eligible for promotion. The U.P.S.C. advised that the post may be filled up by the alternate method laid down in the RRs namely, 'Transfer on Deputation'. In another letter dated 12.03.1991 U.P.S.C. further pointed out that our Office Order dated 28.01.1991 regularising the services of Shri Kanunjna in the post of P.S. to Chairman w.e.f. 23.04.1983 is not in order. It once again pointed that the Commission had recommended the appointment of Shri N.K.A. Kanunjna to the up-graded post of P.S. to chairman in the NEC at the initial constitution, which means that he may be appointed on a regular basis only with effect from the date of notification of amended RRs or from the date of his recommendation to the post. It confirmed that Shri N.K.A. Kanunjna is not eligible for appointment to this post earlier than the date of notification of amended RRs, i.e. 13.08.1990.

It was decided to take up the case once again with the U.P.S.C.. Meanwhile, the adhoc appointment of Shri N.K.A. Kanunjna as Deputy Director (Administration) was extended for a further period of 6 (six) months from 08.04.1991 or till the date of receipt of UPSC's final decision with regard to eligibility of the Officer for regular appointment to the post.

A detailed note was sent to the U.P.S.C. once again on 26.04.1991. Meanwhile, the case was examined in great detail by the Planning Adviser, NEC who is also the Chairman of the Establishment committee. The case was discussed by the Planning Adviser, NEC with Shri Kajla, Under Secretary, U.P.S.C. during his visit to Shillong in October 1992. The Under Secretary confirmed that the service of Shri N.K.A. Kanunjna in the feeder post of P.S. to Chairman cannot be regularised as proposed by NEC.

In the interest of carrying on the work pertaining to Administration in the NEC Secretariat the ad-hoc appointment of Shri N.K.A. Kanunjna was continued for a long period. The case was finally discussed by Secretary, NEC with the Additional Secretary, U.P.S.C. on 17.11.1992 at Delhi. The Additional Secretary once again confirmed that the order regularising the service of Shri N.K.A. Kanunjna in the up-graded post of P.S. to Chairman from 1983 is irregular, that he can be regularised only on a date subsequent to the notification of the relevant RRs i.e. 13.08.1990, that the

Commission had recommended his appointment to the up-graded post on 08.01.1991 only and that he is not eligible for consideration for the post of Deputy Director.

This Office Order No.NEC/ADM/104/72-Vol.II dated 28th January 1991 in respect of Shri Kanunjna's regularization in the post of P.S. to Chairman from 1983 was based on a wrong interpretation of the UPSC's orders and stands cancelled forthwith.

In view of the above, Shri N.K.A. Kanunjna stands reverted to the post of Private Secretary to Chairman with immediate effect. The work of the Deputy Director (Administration) will be looked after by the Deputy Secretary, Shri P.B.O. Warjri as from today.

(Signature) 23/11/92
(L M Menezes)

Secretary
North Eastern Council
Shillong.

Memo No.NEC/ADM/179/73/VOL.IV Dated November 23, 1992.

Copy to :-

1. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi 110 011.
2. The Director(NE), Ministry of Home Affairs, Govt. of India, New Delhi 110 001.
3. Shri N.K.A. Kanunjna, Private Secretary to Chairman, NEC Secretariat, Shillong.
4. Shri P.B.O. Warjri, Deputy Secretary, NEC Secretariat, Shillong.
5. The Accounts Officer, Regional Pay & Accounts Office (IB) MHA, Laitumkhrah, Shillong 793 003.
6. Recruitment File.
7. Guard File.
8. Office Copy.

(Signature) 23/11/92
(L M Menezes)

Secretary
North Eastern Council
Shillong.

*Disputed
Adm
Sd/-*

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH EASTERN COUNCIL SECRETARIAT
SHILLONG 793001.

NO.NEC/ADM/104/72-Vol.II

Dated 01 Dec., 1992.

O R D E R

Consequent upon the approval of the Union Public Service Commission to the appointment of Shri N.K. Arjun Kanunjna to the upgraded post of P.S. to Chairman, North Eastern Council, Shillong in the pay scale of Rs. 3000-100-3500-125-4500, Shri Kanunjna is hereby appointed to the post of P.S. to Chairman, NEC in the scale of Rs.3000-100-3500-125-4500 w.e.f. 13.8.1990.

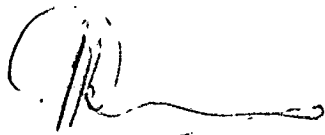
This order supersedes this office Order No. NEC/ADM/104/72-Vol.II dated 28th January, 1991. ✓

Sd/-(L.M. Meneses)
Secretary
North Eastern Council
Shillong.

Memo No.NEC/ADM/104/72-Vol.II Dated Dec. 04, 1992.

Copy to :-

1. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi 110 001 with reference to his letter No.F.4/24(1)/90-AU dated 12.3.91.
2. The Director (NEC), Government of India, Ministry of Home Affairs, New Delhi 110 001 with reference to Ministry's letter No.7/21/84-NE.II dated 14th January 1991.
- ✓ 3. Shri N.K. Arjun Kanunjna, PS to Chairman, NEC.
4. Accounts Officer, RPAO(IB), Laitumkhrach, Shillong-3.
5. Assistant Secretary, NEC, Shillong.
6. Recruitment File.
7. Guard File.
8. Office Copy.


(P.B. O'Flynn Warjri)
Director
North Eastern Council Sectt.,
Shillong.

Attested
J. Dem
Daw

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH EASTERN COUNCIL SECRETARIAT
SHILLONG 793001

No.NEC/ADM/179/73-VOL.IV

DEC. 02 , 1992.

O R D E R

With reference to this Council Secretariat order No.NEC/ADM/179/73-VOL.IV dated 11th April, 1991 and in continuation of this Council Secretariat order of even number dated 23.11.1992 the ad hoc appointment of Shri N.K. Arujun Kanunjna as Deputy Director (Admn.) in the NEC Secretariat, Shillong is terminated w.e.f. 23.11.92 and he stands reverted to the post of P.S. to Chairman w.e.f. 23.11.1992.

Sd/-

(L M Menezes)
Secretary
North Eastern Council
Shillong.

Memo No.NEC/ADM/179/73-VOL.IV Dated Dec. 02 , 1992.

Copy to :-

- 1) The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi 110001 for information.
- 2) The Director (NEC), Ministry of Home Affairs, Government of India, New Delhi 110 001.
- 3) Shri N.K. Arjun Kanunjna, P.S. to Chairman, NEC.
- 4) The Accounts Officer, RPAO (IB), Laitumkhrah, Shillong 793 003.
- 5) Assistant Secretary, NEC, Shillong.
- 6) Guard File.
- 7) Office copy.



(P B Oflyn Warjri)
Director
North Eastern Council Sectt.,
Shillong.

*Disseminated
Adm.
Adm.*

2. Facts for the purpose of disposal of application are:

The applicant, at the material time, was appointed on deputation to the post of Private Secretary to the Chairman, North Eastern Council (NEC for short) in the scale of Rs.650-1200. Thereafter by Annexure B Notification dated 26.4.1983 the applicant was appointed temporarily to officiate as Private Secretary to the Chairman, NEC, in the scale of pay of Rs.1100-1600 plus other allowances with effect from 23.4.1983. At that time there were no recruitment rules framed by the authority. By Annexure C order dated 24.9.1990 the applicant was temporarily appointed Deputy Director (A) on adhoc basis in the NEC in the scale of pay of Rs.3700-5000 plus other allowances as admissible under Central Government Rules from time to time. On the strength of Annexure C order the applicant was holding the post of Deputy Director (A) though on temporary adhoc basis and was discharging his duties as such. Thereafter by Annexure D order dated 28.1.1991 the applicant's appointment to the post of Private Secretary to the Chairman, NEC, as per Annexure B order, was regularised with effect from 23.4.1983. By Annexure E order dated 11.4.1991 the applicant's promotion to the post of Deputy Director (A) on adhoc basis which was about to expire was extended for a period of six months in the exigencies of public interest with effect from 8.4.1991 or till the date of receipt of UPSC's final decision in regard to eligibility of the officer for regular appointment to the post. This Annexure E order also indicates that the appointment of the officer in the post of Deputy Director (A) was required to be regularised and accordingly the authority sent the same to the UPSC.

-22-
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annexure-I

Original Application No. 127 of 1993

31

Date of decision: This the 5th day of February 1998

The Hon'ble Mr Justice D.K. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri N.K. Arjun Kanungjha,
Cr.No.II, Raj Bhavan,
Shillong, Meghalaya.

.....Applicant

By Advocates Mr J.L. Sarkar and Mr M. Chanda.

- versus -

1. The Union of India
Through the Secretary to the
Government of India,
Ministry of Home Affairs,
North Eastern Council, Division,
New Delhi.
2. The Secretary,
North Eastern Council,
Shillong, Meghalaya.
3. The Union Public Service Commission,
Through its Secretary, Dholpur House,
New Delhi.

.....Respondents

By Advocate Mr S. Ali, Sr. C.G.S.C.

.....

O R D E R

BARUAH. J. (V.C.)

In this application the applicant has challenged Annexure F order dated 23.11.1992 giving details why the applicant was not found eligible for appointment to the post of Private Secretary earlier than the date of notification of amended Recruitment Rules, i.e. 13.8.1990, Annexure G order dated 1.12.1992 superseding the Annexure D order dated 28.1.1991 and the subsequent Annexure H Order of reversion dated 2.12.92.

On 23.11.1992 Annexure F order was issued whereby it was shown that the applicant was not even eligible for the post of Private Secretary to the Chairman, NEC, which was granted by Annexure B order, and accordingly the applicant's promotion to the post of Private Secretary was regularised with effect from 13.8.1990. Therefore, the applicant was not eligible for promotion to the next higher post of Deputy Director (A) which was granted by Annexure C order dated 24.9.1990. By Annexures E and G orders Annexures B and D orders were cancelled, however, without giving any opportunity of hearing to the applicant. Hence the present application.

3. We have heard Mr J.L. Sarkar, learned counsel for the applicant and Mr S. Ali, learned Sr. C.G.S.C. Mr Sarkar submits that at the time when Annexure B order dated 26.4.1983 was issued there were no recruitment rules and the recruitment rules were made only on 11.3.1985. Therefore, the appointment though on adhoc basis was not irregular and this was confirmed by Annexure D order dated 28.1.1991. The authority unilaterally cancelled the said appointment without given any opportunity to the applicant. According to Mr Sarkar this was not only arbitrary, but also violative of the principles of natural justice. Mr Ali, on the other hand, supports the action of the respondents. He submits that as the regularisation was done in the year 1991 and the Recruitment Rules came into force before that, therefore, the applicant was given promotion through inadvertence. As the mistake was detected the appointment given by Annexures B and D orders had been cancelled.

4. On hearing the learned counsel for the parties we find that the authority had not spelt out why the

promotion was not regularised before the amended rules of 1990 were framed and why the authority took the eligibility criteria rules which were framed much later? These things need detailed consideration.

5. Mr Sarkar submits that several representations had been filed, but the authority did not care to dispose of the representations.

6. Considering the entire facts and circumstances we are of the opinion that the matter requires consideration of the authority strictly in accordance with the rules. Therefore, we dispose of the application with direction to the respondents to dispose of the representation by giving a reasoned order strictly in accordance with the rules and the relevant laws. For the convenience of the respondents the applicant may file yet another representation giving details of his case within one month from today and the authority shall dispose of the matter within three months thereafter. If the applicant claims a personal hearing the authority may also give a personal hearing to the applicant.

7. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.

Sd/VICECHAIRMAN
Sd/MEMBER (A)

TRUE COPY

23/2/98

[Signature]
23/2/98

23/2/98

From : Shri N.K.Arjun Kanunjna, Advocate
C/o Shri N. K. Arjun,
Raj Bhavan, Shillong.

To : The Secretary,
North Eastern Council,
Shillong.

Ref : O.A.No.127/93 - Shri N.K.Arjun Kanunjna,vs
UOI and ors.

Sir,

I have the honour to submit the following before your good and kind self for your very kind and sympathetic consideration :-

1. That, Sir, I have been informed by my Counsel that the above-mentioned case has been remanded by the Hon'ble Central Administrative Tribunal at Guwahati to your honour for consideration.

2. That I have not yet received a copy of the judgment but as I understand I submit the following in terms of the judgment for your very kind and sympathetic consideration.

3. That this representation is made before the august authority of the Secretary, North Eastern Council in continuation of my earlier representations dated 30/11/92, 31/12/92, 8/1/93, 25/1/93, 25/1/93, 10/3/93 and 21/4/93.

4. That my promotion to the upgraded post of Private Secretary to Chairman was given vide Order No.NEC.23/75 dated 26/4/83 against a post created by the NEC Secretariat vide Order No.NEC/23/75 dated 26/4/83 with effect from 23/4/83, and that the Recruitment Rules for promotion as on that date, that is 23/4/83, was applicable in case of my promotion; and by the application of this standard of Recruitment Rules as on the date of promotion on 23/4/83 my promotion was regularised with effect from 23/4/83 vide Order No.NEC/ADM/104/72/Vol.II dated 28/1/91.

.....2/-

5. That, Sir, in this connection I take the liberty of quoting below an extract from the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training Office Memo.No.39021/5/83-ESTT(B) dated 9th July, 1985 (Swamy's complete Manual on Establishment & Administration (Third Edn.Chapt. 16 P.149) "Ad hoc appointments and promotions, para 2(1) - Absence of Recruitment Rules" -

"Ad hoc appointments are frequently resorted to on the grounds that Recruitment Rules for the post are in the process of being framed. In this Department's O.M. No.39021/5/83-ESTT.(B) dated 9th July, 1985, all Ministries/Departments have been advised that if there are overriding compulsions for filling any Group 'A' or Group 'B' post in the absence of Recruitment Rules, then they may make a reference to the Union Public Service Commission (UPSC) for deciding the mode of recruitment to that post. Further action to fill the post may be taken according to the advice tendered by the UPSC. All such appointments will be treated as regular appointments"

6. That, Sir, under the above provisions of law, my promotion to the upgraded post of PS to Chairman with effect from 23/4/83 was a regular promotion which was also regularised by UPSC, even if the regularisation was not given formally but under the above O.M. as in para 5 above, my promotion with effect from 23/4/83 was a regular one, and I am entitled to the seniority to the post with effect from 23/4/83 for my next promotion to the post of DDA.

7. That, Sir, I beg to submit this Representation before your Honour with all humility kindly to consider my seniority to the upgraded post of PS to Chairman with effect from 23/4/83 and regularise my promotion to the post of DDA with effect from 8/10/90 in terms of the judgment of the Hon'ble Central Administration Tribunal, Guwahati.

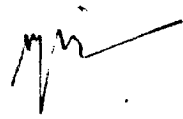
.....2/-

8. In conclusion, Sir, I shall be grateful if you are kind enough to give me a personal hearing before taking a final decision in the matter in terms of the Central Administration Tribunal judgment.

And for this act of kindness, I shall, Sir, remain ever grateful to your magnanimity.

Yours faithfully,

Dated, Shillong
the 2nd March, 1998.



(N.R. Arjun Kanunjna)

.....

RECORD NOTES OF THE HEARINGS PRESENTED BY SHRI N.K. ARJUN
KANUNJNA, EX-PRIVATE SECRETARY TO THE CHAIRMAN TO THE
SECRETARY, NORTH EASTERN COUNCIL AT THE SECRETARY'S
CHAMBER ON 02.06.1998 AT 10.30 A.M.

At the very outset, Shri N.K. Arjun Kanunjna, Ex-P.S. to Chairman, NEC expressed his sincere thanks to the Secretary, NEC for presenting his case in person in front of the Secretary, NEC.

1. He stated that the crux of the problem is whether the promotion given to him to the up-graded post of P.S. to Chairman w.e.f. 23.4.83 is to be effective w.e.f. 23.4.83 for the purpose of seniority for his next promotion to the post of Dy. Director (Admn). In this connection, he explained his position in the Council Secretariat prior to 23.4.83 and also after 23.4.83.

2. Position before 23.4.83 : Having come on deputation, not of his own, but, on a personal selection of the then Chairman, NEC, Shri B.K. Nehru, he was brought on deputation to the Council Secretariat w.e.f. 1.12.72. On completion of initial period of deputation which was for 2 years, he was asked on 16.9.75 whether he would be willing for permanent absorption. He has conveyed his willingness on 27.10.75. On 17.5.76 the post of P.S. to Chairman was made permanent. And on the same day, NEC sought clearance of the Govt. of Arunachal Pradesh.

3. On 25.5.76, NEC Sectt. submitted a proposal for permanent absorption to the Ministry of Home Affairs and on 16.12.76 the MHA approached the UPSC for clearance of his permanent absorption in the Council Secretariat.

4. On 26.6.76, the Govt. of Arunachal Pradesh conveyed their approval placing his services at the disposal of the Council Secretariat for permanent absorption with immediate effect.

5. After giving his willingness for permanent absorption on 16.9.75, which he did on 27.5.75, NEC Sectt. never asked for his willingness for extending the period of deputation.

6. He also stated that from 1976 onwards without deputation allowances, NEC Sectt unilaterally started extending the period of deputation without ever taking the consent of the applicant. Not only that, the NEC Sectt. vide its letter No.NEC.104/72 dated 9.8.78 addressed to the Secretary (GA), Govt of Arunachal Pradesh decided to release the applicant from the Council Sectt. w.e.f. 30.11.78 (AN) and be placed at the disposal of the Govt of Arunachal Pradesh. A copy of which also marked to the individual applicant. (Copy of the letter placed at Flag-A)

7. It is crystal clear that delay in the issue of absorption order for a period of 10 years from 1972 to 1982 was not the fault of the applicant and he cannot be deprived of the seniority during the period from 1972 to 1982, or, at least from the initial period of deputation of P.S. to Chairman after 4 years.

8. Postion After 23.4.83 : He stated that he was not representing to the NEC Authority for his promotion to the upgraded post of P.S. to Chairman. It was the collective wisdom and the considered views of the NEC to upgrade the post of the P.S. to Chairman and to promote him and it was also not known to him that whether there was any Recruitment Rules.

9. When the file went up to the Chairman for approving the creation of the post and appointment of the P.S. to Chairman in the upgraded post the Chairman, NEC observed that the "abnormal delay in absorption cannot be attributed to the individual concerned". Therefore, all out efforts should be made by the Council Secretariat to regularise his appointment to the upgraded post of P.S. to Chairman.

10. In this connection, the judgement of the Hon'ble C.A.T., Guwahati Bench in the case of Shri Durga Prasad Bhagawati Vs. Union of India that the Recruitment Rules unless specifically notified can have only prospective effect (Copy of the Judgement placed at Flag-B). may be referred to for comparison of the Applicant's promotion to the upgraded post of P.S. to Chairman. He,

therefore, maintains that the R&S made in 1985 for the post of P.S. to Chairman (Upgraded Post) cannot be applied to the promotion given to him on 23.4.83 retrospectively. He also referred DOPT's O.M. No. 39021/5/83-ESTT(B) dated 9.7.85 and stated as follows :

"Ad-hoc appointment are frequently resorted to on the grounds that Recruitment Rules for the post are in the process of being framed. In this Department's OM No.39021/5/83-ESTT(B) dated 9.7.85, all Ministries/ Departments have been advised that if there are overriding compulsions for filling any Group "A" or Group 'B' post in the absence of Recruitment Rules, then they may make a reference to the Union Public Service Commission (UPSC) for deciding the mode of recruitment to that post. Further action to fill the post may be taken according to the advice tendered by the UPSC. All such appointments will be treated as regular appointments....."

Under the above provisions of law, ~~may~~ promotion to the upgraded post of PS to Chairman with effect from 23.4.83 was a regular promotion which was also regularised by UPSC, even if the regularisation was not given formally but under the above O.M. as in para 5 above, his promotion with effect from 23.4.83 was a regular one, and he is entitled to the seniority to the post with effect from 23.4.83 for his next promotion to the post of D.D.A."

In this connection, he submitted that even if a view is taken that the Recruitment Rule of 1985 was applicable and he was not eligible, then a termination order ought to have been issued.

11. The applicant also submitted that simultaneously with the R&S of 1985, the Home Ministry sent a letter to the NEC Sectt (if not in 1985, it was in early 1986) that in respect of the cases of Shri T. Roy and Shri Kanunjna, an amendment proposal may be sent to consider their cases. Also, a second letter came in respect of Shri A.B. Paul pointing out that his case cannot be considered. It may be mentioned in respect of all three of these posts were upgraded on the same day and all of them were promoted on the same terms

and conditions. But no action was taken in respect of the letter received from MHA concerning Shri Kanunjna and Shri T. Roy. But for Shri A.B. Paul the R's were amended and his case was regular with effect from 23.4.83.

12. With reference to the cases of Shri T. Roy, Ex-D.D.A and Shri A.B. Paul, Ex-D.F.A. he submitted the following :

Shri T. Roy was on deputation to NEC from Arunachal Pradesh to the post of Asstt. Secretary in NEC. His scale of pay in the parent Dept was Rs 900-1400, the scale in Deputation post to NEC was Rs 1100-1600. He was also absorbed on 4.6.82. The post of Asstt. Secretary was upgraded to that of Deputy Director of Administration keeping the lower post in abeyance. He was also allowed to officiate to that post of DDA w.e.f. 23.4.83. He was allowed to retire with all the benefit at the fag end of 1985 without being subjected to Rules framed in 1985. He was also not holding the equivalent post.

Shri A.B. Paul came on deputation to NEC in 1976-77. He was an Accounts Officer in AG's Office where his pay scale was Rs 840-1200 (revised to Rs 2300-3500). NEC's pay scale to the post of Asstt. Financial Adviser was Rs 1100-1600 (Rs 3000-4500). He was also absorbed on 4.6.82. The post of Asstt. Financial Adviser was upgraded to that of Deputy Financial Adviser in scale of Rs 1500-1800 (Rs 3700-5000) and Shri Paul was appointed to officiate on 23.4.83. The requirement of this post is five years service from scale of Rs 3000-4500. In fact, in the approved RRs of 1985, there was no provision for promotion. It was kept only for deputationists. Subsequently, suitability clause was added and Shri Paul's case was regularised in 1986 with effect from 23.4.83.

Shri Paul was not holding an equivalent post in his parent department. Therefore his five years would have been from the date of absorption only in June 1987, as made out in the case of the applicant - difference being one of degree not of kind between these two cases.

If in the case of Shri Paul, the view is taken that he was the regular holder of the post of Asstt. Financial Adviser, and that post has been upgraded to that of Deputy Financial Adviser, it is not understood from what date Shri Paul was the regular holder of the post of Asstt. Financial Adviser; was it from the very date of his deputation or from the date of his absorption. Perhaps, the view was taken that he was holding it on regular basis from the date of his deputation. If so, why the same view is not taken in the case of the applicant, who had more than 10 years spent on so-called deputation continuously. Shri Kanunjna was also the regular holder of the post of PS to Chairman in the scale of Rs 2000-3500 prior to upgradation of the same post in the scale of Rs 3000-4500. The date of absorption of both the officers is the same. Then why a different provision is made in the case of Shri Kanunjna.

Therefore, in view of the above, he does not personally agree that the RRs 1985 and subsequent amendment to regularise his appointment is applicable to his case. In this connection, he says that 1985 R's talk of 8 years regular services but suitability clause ~~was~~ brought out in 13.6.90 does not talk of regular service but it talks about 8 years qualifying service.

13. **Definition of Qualifying Service :** (Explained in the CSR Rule 13, Vol.II, 13th Edition, 1986, Page 192).

"Subject to the provision of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively, or on officiating or temporary capacity' provided that officiating or temporary service is followed without interruption by a substantive appointment in the same or another service or post."

According to this rule, if the view is taken that the Applicant was appointed on an officiating basis to the upgraded post of PS to Chairman in the scale of Rs 1100-1640 (revised to Rs 3000-4500) on 23.4.83, and this continued without interruption till 1990 when it was followed by substantive appointment,

the qualifying service commenced from 23.4.83. For the post of DDA it requires 5 years regular service, which is qualifying service, and the Applicant's five years is completed on 22.4.88, as he is in the feeder grade.

14. Between 30.11.92 and 21.4.93 he submitted representations to the Secretary, NEC and also to the Government of India but not a line of reply was given to him. Incidentally, the Ministry of Home Affairs ^{replied} vide their letter No.7/21/84-NE.II dated 10.12.92 addressed to the Secretary, NEC informed that Shri Kanunjna has submitted a representation against his reversion order of 23.11.92 and desired the comments of the Secretary, NEC to send to the Ministry early. It is not known to him whether any comments were sent or not.

15. In the end, he submitted that considering the abnormal delay of more than 10 years in "absorption" keeping the individual on deputation without payment of deputation allowance beyond the 4th year; after taking his consent and the agreement of his parent department for permanent absorption with immediate effect in 1975-76; and then after his promotion on 23.4.83, to keep him hanging over a period of 7 years, it becomes the rarest of rare case in the history of Civil Service, and the incumbent deserves special consideration from the Secretary, NEC for counting of his entire period of service in NEC for promotion to the post of DDA which was given to him on 8.10.90 but taken arbitrarily after 2 years one month. He submitted that the Central Government is supposed to be model employers and they should not take a stand which is unfair. The delay of more than 10 years in absorption and again 7 years after promotion, the stand taken by the Central Government that my seniority in the post of P.S. to Chairman is not from 23.4.83 but from some date in 1990 being oblivious of the fact that for more than 7 years in the upgraded post of P.S. to Chairman, he had discharged the functions of the higher post to the satisfaction of all concerned. Denial of such long period of service for the purpose of seniority when everything else has been given is an unjustified and arbitrary act. After all he said that he was not daily wage labourer where he has been paid but denied the seniority ostensibly for the purpose of promotion alone.

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16. Lastly, he submitted and sincerely hoped that the Secretary, NEC will be kind enough to consider the case and give him as per the submissions made before his Honour by the Applicant. And again he expressed his gratefulness to the Secretary for sparing his valuable time inspite of his indiposition.

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GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH EASTERN COUNCIL SECRETARIAT
SHILLONG

NO.NEC/ADM/179/73 VOL.V

MARCH 22, 1999

O R D E R

1. Shri N.K. Arjun Kanunjna holding a post of Stenographer Gr.I (in the Scale of Rs.425-1100 of Government of Arunachal Pradesh revised to Central Government Pay Scale of Rs.650-1040 w.e.f. 01-01-1973) was initially appointed in consultation with Union Public Service Commission (UPSC) as Private Secretary to the Chairman, North Eastern Council in the Scale of Rs.350-900 (Revised to Rs.650-1200 in 01-01-1973) on deputation basis w.e.f. 01-12-1972. He was absorbed permanently in the post w.e.f. 04-06-1982 with the approval of the UPSC vide letter No. F.4/24(1)81-AU. IV dated 04-06-1982.
2. The post of PS to Chairman, NEC was upgraded to the Pay Scale of Rs.1100-1600 w.e.f. 23.04.1983, and Shri Kanunjna was appointed temporarily to officiate in the upgraded post w.e.f. the date of upgradation vide order No. NEC/23/75 dated 26.04.1983.
3. A proposal was sent to the Ministry of Home Affairs, Government of India by NEC vide letter No. NEC/ADM/104/72 VOL. II dated 03-02-1988 for regularization of the appointment of Shri Kanunjna as PS to the Chairman, NEC in the scale of Rs. 1100-1600 (Revised to Rs. 3000-4500) w.e.f. 23-04-1983 on the ground that Shri Kanunjna has completed more than 10 years service without interruption as PS to the Chairman, NEC in the scale of Rs.350-900 (revised to Rs.650-1200 w.e.f. 01-01-1973) on the date of his temporary appointment to the upgraded post on 23-04-1983 though he was absorbed in the NEC Secretariat on 04-06-1982 only. The Ministry of Home affairs, Government of India examined the proposal and found that Shri Kanunjna was not entitled to the benefit of O.M. No. 20020/7/80-Estt. (D) dated 29-05-1986 issued by the Department of Personnel and Training, Government of India (which allows counting of seniority w.e.f. the date of deputation if the incumbent has held on regular basis a post equivalent to the

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post held on deputation in his parent organization prior to deputation) as he was holding a regular post in his parent organization whose pay scale was lower than that of the post of PS to the Chairman, NEC. Therefore, he is entitled to seniority for the purpose of promotion to higher post in NEC Secretariat w.e.f. date of his absorption (04-06-1982) only and not from the date of his appointment on deputation (01-12-1972).

4. The Recruitment Rules for the upgraded post of PS to the Chairman, NEC was notified vide No. 5/19/83-NE.II dated 11-03-1985 of Ministry of Home Affairs, New Delhi. According to this Recruitment Rules, departmental Private Secretary in the Scale of Rs.650-1200 (revised to Rs.2000-3500 in 1986) with 8 years regular service in the grade will also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion. As per this Recruitment Rules, Shri Kanunjna was not eligible to be promoted to the upgraded post of PS to the Chairman, NEC. Afterwards NEC Secretariat moved a proposal to the Ministry of Home Affairs vide letter No.NEC/ADM/14/86 dated 23-03-1989 for amendment of the Recruitment Rules of PS to the Chairman, NEC for inclusion of suitability clause in the Recruitment Rules. The suitability clause was accordingly included in the Recruitment Rules vide amendment Notification No. 5/19/83-NE.II VOL.I dated 13-08-1990 of the Ministry of Home Affairs which read as follows :

The suitability of the regular holder of the post of PS to the Chairman, NEC in the Scale of Rs.2000-3500 prior to upgradation of the post in the scale of Rs. 3000-4500 possessing 8 years qualifying service will be initially assessed by the Commission for appointment to the upgraded post. If assessed suitable, he shall be deemed to have been appointed to the post at the initial constitution. If assessed not suitable, he shall continue in the scale of Rs. 2000-3500 and his case will be reviewed every year.

5. Another proposal was, therefore, sent by North Eastern Council Secretariat to the Ministry of Home Affairs vide letter No. NEC/ADM/104/72 VOL.II dated 06.07-1990 for regularization of the appointment of Shri Kanunjna to the upgraded post of PS to

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Chairman, NEC. The Ministry of Home Affairs took up the matter with the UPSC and conveyed that the UPSC has recommended the appointment of Shri Kanunjna to the post of PS to Chairman in the pay scale of Rs.3000-4500 at the initial constitution. Taking the term "initial constitution" as meaning the date of up gradation of the post of PS to Chairman i.e., 24-03-1983, the NEC Secretariat issued an Order No. NEC/ADM/104/72 Vol. II dated 28-01-1991 regularizing the appointment of Shri Kanunjna to the post of PS to Chairman in the scale of Rs.3000-4500 w.e.f. 23-04-1983. However, the UPSC intimated vide letter No. F.4/24(1)/90-AU.2 dated 12-03-1991 that the order of NEC Secretariat regularizing the appointment of Shri Kanunjna to the upgraded post of PS to Chairman is not in order and clarified that the initial constitution means that he can be appointed to the post on regular basis only w.e.f. the date of notification of the amended recruitment rules or from the date of his recommendation for appointment to the post. The UPSC further stated that the date of regular appointment to the post in respect of Shri Kanunjna cannot be any date earlier than 13-08-1990, i.e. date when the Recruitment Rules were formally amended consequent to the upgradation of the post.

6. On the basis of the recommendation of the UPSC the Secretary, NEC issued Order No. NEC/ADM/104/72 Vol. II dated 01-12-1992 appointing Shri Kanunjna to the post of PS to the Chairman in the scale of Rs.3000-4500 w.e.f. 13-08-1990 by superseding the earlier order of even number dated 28-01-1991.

7. While the question of regularization of appointment of Shri Kanunjna to the upgraded post of PS to Chairman remained unsettled, he was appointed to the post of Deputy Director (Admn.) in the scale of Rs. 3700-5000 on adhoc basis vide Order No. NEC/ADM/179/73 Vol. III dated 24-09-1990. Subsequently, a proposal was sent to the UPSC by the NEC vide letter No. NEC/ADM/179/ 73 Vol. IV dated 06-02-1991 for considering the case of Shri Kanunjna for promotion to the post of Deputy Director (Admn.). However, the UPSC vide their letter No. F.1/24 (5)/91-AU.2 dated 11-03-1991 informed the NEC Secretariat that Shri Kanunjna is not eligible for promotion to the post of Deputy Director (Admn.) as his seniority in the upgraded post of PS to Chairman cannot be counted w.e.f. 23-04-1983. The UPSC also advised that since none of the officers in the feeder grade is eligible for promotion for the post of Deputy Director

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(Admn.), the post may be filled by alternative method of recruitment laid down under the Recruitment Rules i.e. transfer on deputation. On the advice of the UPSC Shri Kanunjna was reverted to the post of PS to the Chairman, NEC vide Order No. NEC/ADM/179/73 Vol. IV dated 23.11.1992 and the adhoc appointment of Shri Kanunjna to the post of Deputy Director (Admn.) was terminated w.e.f. 23.11.1992 vide order of even number 02-12-1992.

8. Therefore, Shri Kanunjna filed original application No. 127/93 in the Central Administrative Tribunal (CAT), Guwahati Bench challenging the orders of Secretary, NEC No. NEC/ADM/179/75 Vol. IV dated 23.11.1992 reverting him from the post of Deputy Director (Admn.) to the post of PS to Chairman and order No. NEC/ADM/179/73 Vol. IV dated 02-12-1992 terminating his adhoc appointment to the post of Deputy Director (Admn.), and order No. NEC/ADM/104/774 Vol. II dated 01-02-1992 regularizing his appointment to the post of PS to Chairman, NEC in the scale of Rs.3000-4500 w.e.f. 13-8-1990 by superseding the earlier order of even number dated 28-01-1991 which regularise, by mistake, his appointment to the post of PS to Chairman, NEC in the scale of Rs.3000-4500 w.e.f. 23-04-1983.

9. The Hon'ble Central Administrative Tribunal, Guwahati Bench after hearing learned Counsel for the applicant and learned Senior Central Government Standing Counsel passed an order dated 05-02-1998 directing the Respondents to dispose of the representation of Shri Kanunjna by giving a reasoned order strictly in accordance with the rules and relevant laws. The Hon'ble CAT, Guwahati Bench further ordered that, for the convenience of the Respondents the applicant may file yet another representation giving details of his case within one month and the authority shall dispose of the matter within three months thereafter, and that if the applicant claims a personal hearing, authority may also give a personal hearing to the applicant.

10. Pursuant to the order of the Hon'ble Central Administrative Tribunal, Guwahati Bench Shri Kanunjna submitted a representation to the Secretary, NEC on 02-03-1998 before receipt of the order of Hon'ble CAT, Guwahati Bench which was subsequently

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received on 10-03-1998. In his written representation dated 02-03-1998 shri Kanunjna contended that -

- (a) his promotion to the upgraded post of PS to the Chairman w.e.f. 23-04-1983 was a regular promotion;
- (b) he is entitled to the seniority to the post w.e.f. 23-04-19983 for the purpose of counting his seniority for promotion to the post of Deputy Director (Admn.);
- (c) and therefore requested that his promotion to the post of Deputy Director (Admn.) be regularized w.e.f. 08-10-1990.

11. As requested by Shri Kanunjna in his written representation dated 02-03-1998, he was given a personal hearing by the Secretary, NEC on 02-06-1998 where he made various arguments in respect of his claims and request.

11(2) Regarding his claim that his promotion to the upgraded post of PS to Chairman w.e.f. 23-04-1983 was a regular promotion, Shri Kanunjna quoted O.M. No. 39021/5/83-Estt. Dated 09-07-1985 of Department of Personnel and Training, Government of India which states that "adhoc appointments are frequently resorted to on that ground that Recruitment Rules for the posts are in the process of being framed. If there are over-riding compulsions for filling any Group A or Group B posts in the absence of Recruitment Rules, the Ministries / Departments may make reference to the UPSC for deciding the mode of recruitment to that post. Further action to fill the post may be taken according to the advice tendered by the UPSC. All such appointments will be treated as regular appointments ". On this basis, Shri Kanunjna claims that his appointment to the upgraded post of PS to Chairman was a regular appointment. Further, Shri Kanunjna argued that the Recruitment Rules notified in 1985 cannot be applied to the promotion given to him on 23-04-1983 retrospectively by quoting the Judgement of the Central Administrative Tribunal, Guwahati Bench in the case of Shri D.P. Bhagawati - vs - Union of India that 'Recruitment Rules unless specifically notified can have only prospective effect'.

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12. In this respect it is to be seen whether the appointment of Shri Kanunjna to the upgraded post PS to Chairman can be termed as regular appointment under the O.M. dated 09-07-1985 quoted in the preceding para. The crucial test for this purpose are -

- i) whether the UPSC has been consulted for his appointment to the said post as required under Article 320 (3) of the Constitution of India, and
- ii) whether the appointment of Shri Kanunjna was done in accordance with the advice tendered by the UPSC or not.

12(2) The replies to these two questions are in the negative. Therefore, Shri Kanunjna cannot get the benefit of O.M. No. 39021/5/83-Estt (B) dated 09-07-1985 for having his officiating appointment treated as regular appointment. Besides, when proposal for regularizing the officiating appointment of Shri Kanunjna to the upgraded post of PS to Chairman w.e.f. 23-04-1983 was sent to UPSC in February 1991, the later raised objection vide letter No. F.4/24/1/90-AU.2 dated 12.3.1991 stating that the appointment cannot be treated as regular appointment and informed that the date of regular appointment of Shri Kanunjna to the said post cannot be any date earlier than 13-08-1990. The Department of Personnel and Training, Government of India which was consulted have only agreed, on file of Ministry of Home Affairs, to treat the period of his service as P.S. to Chairman NEC between 23.4.1983 and 12.8.1990 as adhoc in order to avoid hardship to him and also in view of the facts and circumstances of the case by way of relaxing the Recruitment Rules. Therefore, the appointment of Shri Kanunjna to the upgraded post of PS to Chairman, NEC w.e.f. 23-04-1983 cannot be treated as a regular appointment.

12(3) Regarding the argument that the Recruitment Rules notified in 1985 cannot be applied to the promotion given to him on 23.4.1983 retrospectively, it is to be seen whether parallel can be drawn between the case of Shri Bhagawati vs Union of India and the case of Shri Kanunjna. In the former case, Shri Bhagawati was appointed as Librarian in the NEC Secretariat after holding personal interview pursuant to the advertisements circulated for the post to be filled on permanent transfer basis. Due process was followed in selection of Shri Bhagawati for the post of Librarian. Shri Bhagawati tendered technical resignation from his post under Government of Arunachal

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Pradesh before joining the post of Librarian and he was therefore, under threat of being rendered jobless if the Recruitment Rules notified subsequent to his appointment were made applicable to his appointment. Whereas Shri Kanunjna was given temporary officiating appointment to the upgraded post of P.S. to Chairman, NEC and no procedure required for making regular appointment was followed. Besides, the Recruitment Rules notified subsequently did not put him under threat of being rendered jobless; it however, did not make him eligible to hold the said post on regular basis. Besides, as indicated at para 3 of this order, Shri Kanunjna was not eligible to hold the upgraded post of PS to Chairman as per the extant relevant rules and Government Orders even if the Recruitment Rules notified subsequent to his officiating appointment are not taken as the criteria for deciding his eligibility for the post in question. Therefore, parallel cannot be drawn between the two cases.

12(4) It is relevant to mention here that Shri Kanunjna was appointment temporarily in officiating capacity to the upgraded post of P.S. to Chairman with effect from the date of upgradation and action was taken soon after for framing Recruitment Rules. However, according to the Recruitment Rules notified on 11.3.1985, he was not eligible for promotion to the said post. A proposal was therefore made to amend the Recruitment Rules for including a suitability clause with the sole purpose of regularizing the officiating appointment of Shri Kanunjna to the post. The amended Recruitment Rules were therefore, notified vide notification No.5/19/83-NE II (Vol.I) dated 13.8.1990 and the appointment of Shri Kanunjna to the upgraded post of P.S.Chairman was regularised w.e.f. 13.8.1990. Even before the notification of the amended Recruitment Rules on 13-08-1990, the question of regularization of his officiating appointment to the upgraded post as PS to Chairman was considered; but the same could not be regularized as he was not eligible in terms of the extant relevant rules / Government Orders as indicated at para 3 of this order.

13. The claim of Shri Kanunjna that he is entitled to the seniority in the said post w.e.f. 23-04-1983 for his next promotion to the post of Deputy Director (Admn.) is also directly linked to the question as to whether his appointment to the upgraded post of PS

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to the Chairman w.e.f. 23-04-1983 is a regular appointment. Since this appointment is not a regular appointment, this contention of Shri Kanunjna does not hold good.

14. The request of Shri Kanunjna to regularize his promotion to the post of Deputy Director (Admn.) w.e.f. 08-10-1990 has to be examined with reference to the following tests :

- i) What is the nature of promotion of Shri Kanunjna to the post Deputy Director (Admn.) w.e.f. 08-10-1990;
- ii) whether Shri Kanunjna was eligible for promotion to the said post at the relevant time; and
- iii) whether such promotion can be regularized w.e.f. the date of such promotion.

14 (2) With regard to nature of promotion, according to order No. NEC/ADM/179/73 Vol. III dated 24.9.1990, Shri N.K. Arjun Kanunjna was temporary appointed as Deputy Director (Admn.) on adhoc basis with specific stipulation that this appointment will not confer on him the right to claim regular appointment to the post subsequently. Therefore, the appointment was temporary and adhoc.

14(3) With regard to the eligibility, the original Recruitment Rules notified vide Notification No. 5/19/93 NE.II dated 11-03-1985 have only Assistant Secretary of the NEC Secretariat with 5 years regular service in the grade as eligible for promotion to the post of Deputy Director (Admn.). However, this was modified by including PS to the Chairman through an amendment notification No.5/19/83 NE.II Vol. II dated 30-01.1990. Shri Kanunjna had not fulfilled 5 years regular service in the post of PS to Chairman in the scale of Rs.3000-4500 as on 08-10-1990 as his appointment to the upgraded post of PS to Chairman w.e.f. 23.04.1983 was only in officiating capacity. Besides the UPSC also did not consider him eligible as indicated by it vide letter No. F.1/24(5)/91-AU.2 dated 11-03-1991.

14(4) Regarding point no. iii, Para XI (2) of O.M. No. 22011/6/75 Estt. (D) dated 30-12-1976 of Department of Personnel and Administrative Reforms, Ministry of Home

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Affairs, Government of India reads thus – “whenever an appointment is made on adhoc basis, the fact is that adhoc is adhoc and such appointment will not bestow on the person any claim for regular appointment and that the adhoc service rendered would not count for the purpose of seniority in that grade for eligibility for promotion and confirmation.....”. Therefore, the adhoc appointment of Shri Kanunjna to the post of Deputy Director (Admn.) cannot be regularized as requested by him.

15 Shri Kanunjna represented during the personal hearing on 02-06-1998 that his officiating appointment to the upgraded post of PS to Chairman on 23-04-1983 was subsequently followed by regularization w.e.f. 13-08-1990 without any break in between and therefore this period also count for qualifying service in terms of definition given in the CSR Rules Vol. II, 13th Edition 1986; and therefore his service as PS to Chairman w.e.f. 23-04-1983 should be considered for determining his eligibility for promotion to the post of Deputy Director (Admn.). However, in view of para XI (2) of O.M. No. 22011/6/75 Estt. (D) dated 30-12-1976 of Department of Personnel and Administrative Reforms indicated in para 14(4) read with the decision of the Department of Personnel and Training, Government of India in the file of Ministry of Home Affairs indicated at para 12(2), the service of Shri Kanunjna for the period from 23-04-1983 to 13-08-1990 cannot be counted for seniority for the purpose of promotion to the post of the Deputy Director (Admn.).

15(2) It may be pointed out that, even if the service of Shri Kanunjna in the upgraded post of PS to Chairman w.e.f. 23-04-1983 is counted for seniority for the purpose of promotion to the post of Deputy Director (Admn.), he cannot claim promotion merely on the ground of eligibility. A Departmental Promotion Committee have to assess his suitability and only if found suitable, he can be promoted to the post of Deputy Director (Admn.) in the scale of Rs.3700-5000. Subsequently, when Shri Kanunjna was considered to have fulfilled the eligibility criteria as per the amended Recruitment Rules for the post of Deputy Director (Admn.) notified on 30-01-1990, a Department of Promotion Committee under the Chairmanship of the Chairman, UPSC met on 18-03-1996 to consider his case for promotion to the said post. The DPC did not find him

M. S. A. to Mr. 15(2)

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suitable for promotion to the said post as he failed to attain the prescribed bench mark grading of "very good".

16. After careful consideration of all the above facts and information with reference to the rules and the relevant laws, the representations of Shri Kanunjna cannot be acceded to. Therefore, the representations of Shri Kanunjna to treat his promotion to the upgraded post of Private Secretary to the Chairman, NEC w.e.f. 23-04-1983 to 12-08-1990 as regular promotion and count the same for the purpose of his seniority for promotion to the post of Deputy Director.(Admn.); and to regularized his adhoc promotion to the post of Deputy Director (Admn.) w.e.f. 08-10-1990 is accordingly rejected and disposed of.

This order has been issued after taking into consideration the views of the Union Public Service Commission, the Department of Personnel and Training, Government of India and the Ministry of Home Affairs, Government of India, New Delhi.

Sd/-
(T. Ringu)
Secretary

NO.NEC/ADM/179/73 Vol.V

March 22, 1999.

Copy to :

1. ✓ Shri N.K. Arjun Kanunjna, Advocate,
C/o. Shri N.K. Arjun,
Raj Bhavan, Shillong -1.
2. The Home Secretary,
Ministry of Home Affairs,
Government of India, New Delhi-1.
3. The Secretary,
Union Public Service Commission,
Dholpur House, New Delhi.

(T. Ringu)
Secretary

*Attested
Ringu
Dow*

GUWAHATI

7 MAR 2000

In the matter of
O.A.No.38/2000.

Shri N.K.Arjun Kanunjna

-VS-

Union of India & Others

In the matter of

Written statements submitted by
Respondents No.1, 2 and 3.

WRITTEN STATEMENTS:

The Respondents submit their written
statements as follows:

1. Shri N.K. Arjun Kanunjna was promoted as Deputy Director(Admn) on ad-hoc basis by Secretary, North Eastern Council. As per Rules the ad-hoc appointment was referred to Union Public Service Commission for regularisation. However, he was not found eligible by UPSC who advised to take recruitment action by transfer on deputation as the alternative method. Therefore Shri N.K.Arjun Kanunjna was reverted back to the grade of Private Secretary to Chairman, NEC.

In this connection it may be noted that reversion to the original grade of Private Secretary does not amount to forfeiture of the past service.

2. The Respondents have no comments.

3. The Respondents have no comments.

4.1. The Respondents have no comments.

4.2. The Respondents have no comments.

4.3. Shri N.K.Arjun Kanunjna was holding the post of Stenographer Grade I in the North East Frontier Agency Secretariat(NEFA) at the time of initial appointment to the post of PS to Chairman in NEC Sectt. on 1.12.72. The post of Stenographer Grade I in NEFA Secretariat was not equivalent to the post of PS to Chairman as the pay scale was lower than that of the PS to Chairman, NEC.

He was subsequently absorbed permanently in the post of PS with the approval of UPSC on 4.6.82 i.e. after continuous period of deputation for more than 10 years. This period of deputation cannot be counted for seniority in accordance with the Rules and principles governing seniority at the relevant point of time i.e. MHA O.M.No.9/11/55-RPS dated 22.12.59 as amended from time to time. For all purposes his seniority and qualifying services for the purpose of promotion in NEC Sectt. can be counted only from the date of absorption i.e. 4.6.82. The delay in his absorption cannot be accepted as a ground for relaxation of qualifying service for promotion as no rules provide for such. It may also be pointed out that there was no provision for transfer in the original Recruitment Rules of PS to Chairman but the UPSC/DOP&T agreed to the proposal for making transfer on 4.6.82 only (copy enclosed at Annexure-I).

The payment of deputation (duty) allowance was discontinued on completion of 4 years deputation as per extant rules and not because he was treated as employee of NEC.

4.4. The post of PS to Chairman in the pay scale of Rs.650-1200/- was kept in abeyance and a new post in the pay scale of Rs.1100-1600/- was created on 23.4.83 and Shri Kanunjna was appointed temporarily against the newly created post w.e.f. the same date. This appointment itself was irregular as Shri Kanunjna was suddenly appointed without consultation with Union Public Service Commission and without any Recruitment Rules. The Recruitment Rules for the upgraded post of PS to Chairman was notified under MHA No.5/19/83-NE.II dt. 11.3.85. According to this Recruitment Rules, the departmental PS to Chairman in the pay scale of Rs.650-1200/- would become eligible for consideration to the grade of Rs.1100-1600/- after completion of 8 years' regular service in the lower grade. As the term regular service in respect of Shri Kanunjna counts only from the date of absorption i.e. 4.6.82, he became eligible for promotion to this grade Rs.1100-1600/- only on 4.6.90 and therefore he could not be appointed to the upgraded post on 23.4.83 on a regular basis.

The proposal for regularisation of the case of Shri Kanunjna w.e.f. 23.4.83 was not approved by the UPSC. The UPSC vide its letter No.F.4/24(1)/90-AU.2 dt. 12.3.91 clarified that the term initial appointment means the date

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of notification of the amendment of Recruitment Rules or from the date of recommendation of the UPSC. The UPSC further clarified that the date of regular appointment of Shri Kanunjna cannot be earlier than 13.8.90 when the amendment of Recruitment Rules were notified. The order dated 28.1.91 regularising the appointment of Shri N.K.Arjun Kanunjna to the upgraded post of PS to Chairman was erroneous as it was based on misunderstanding of UPSC's recommendation, and when the mistake was realised it was cancelled. Therefore Shri Kanunjna cannot claim the benefit of the erroneous order which was subsequently cancelled

4.5. The Respondents have no comments as this is a matter of records.

4.6. Shri Kanunjna was appointed on regular basis to the upgraded post of PS to Chairman w.e.f. 13.8.90. Therefore the benefit of seniority and qualifying service for the purpose of further promotion can be counted only from the date of regular appointment as approved by UPSC. The irregular appointment without consultation with UPSC w.e.f. 23.4.83 till 13.8.90 could not be counted for the purpose of promotion.

4.7. The case of Shri A.B.Paul was different. The Recruitment Rules for the post of Deputy Financial Adviser provided for five years service in the scale of Rs.3000-4500/- as eligible for consideration for appointment to this post. Shri A.B.Paul was found suitable as per the Recruitment Rules and therefore he was given promotion in accordance with the provisions of the Recruitment Rules. Shri Kanunjna was also given promotion in accordance with the provision of Recruitment Rules for the post of PS to Chairman. Recruitment under two different Recruitment Rules cannot be compared.

4.8. Shri D.P. Bhagawati was appointed to the post of Librarian through open advertisement and by following normal selection procedure, whereas the promotion of the Petitioner was done initially without following the prescribed procedure. Therefore the two cases cannot be placed on the same pedestal.

4.9. The Petitioner was appointed to the post of Deputy Director(Admn) purely on ad-hoc basis and which the UPSC considered him ineligible for this post, he was reverted back to the post of PS to Chairman. There is no provision under any rule for giving show cause notice for this reversion.

4.10. The order dated 1.12.92 was issued on the advise of UPSC whose consultation was mandatory under article 320 of the Constitution of India for this level post. The question of Show Cause Notice to the concerned Officer does not arise.

4.11. The order dated 2.12.92 was a speaking order. The circumstances leading to the reversion of Shri Kanunjna from the post of Depgty Director(Admn) to that of PS to Chairman have been indicated in the order itself and there was no question of issuing a Show Cause Notice in this case.

4.12. The Respondents have no comments as it is a matter of record.

4.13. The Respondents have no comments as it is a matter of record.

4.14. The Secretary, NEC after careful consideration of the Petitioner's written and verbal representation, strictly in accordance with the rules and relevant laws, found the representation untenable and passed a speaking order dated 22.3.99 rejecting the Petitioner's claims. *Speaking order dtd 22/3/1999 is annexed in C.A. as ANNEXURE-K.*

5.1. The speaking order No.NEC/ADM/179/73-Vol.V dt. 22.3.99 was issued after careful consideration of the facts and circumstances of the case strictly according to Rules covering seniority, promotion and prescribed Recruitment Rules. Therefore there is no violation of the principles of natural justice.

5.2. Reversion to the original post from the post of Deputy Director(A) held on ad-hoc basis does not amount to discrimination but it was strictly according to Rules and Laws governing ad-hoc appointment. After completion of the prescribed qualifying service as per Recruitment Rules a Departmental Promotion Committee Meeting under the Chairmanship of the Chairman, UPSC was convened to consider the promotion case of the Petitioner from the post of PS to Chairman, NEC to the post of Deputy Director(A) on 18.3.96. However the DPC did not find him suitable for promotion to the post of Deputy Director(A) as he was failed to attain the prescribed bench mark. Eligibility on the basis of length in service is not the sole criteria for promotion. The Petitioner is required

to fulfill both eligibility and fitness criteria. Since he was not found fit by the DPC for promotion to the post of Deputy Director(Admn) he was not given promotion. This in no way violate Article 14 and 16 of the Constitution of India.

5.3. The Petitioner enjoyed all the financial benefits attached to the upgraded post of PS to Chairman w.e.f. 23.4.83 though the appointment between 23.4.83 to 12.8.90 was erroneous. Even if his service for this period had been counted for the purpose of seniority for promotion, he could not ^{be} given promotion to the post of Deputy Director(A) as he did not fulfill the fitness criteria. Therefore, whether his appointment to the upgraded post of PS to Chairman w.e.f. 23.4.83 is treated as regular or irregular is immaterial so far as his claim for promotion to the post of Deputy Director(A) is concerned.

5.4. The rules for regularisation of ad-hoc promotion has been strictly followed in this case as already stated in para 1 and 4.5 and that the Petitioner was reverted to the post of PS to Chairman accordingly.

5.5. As stated earlier under para 4.5, reversion from the post of Deputy Director(A) to that of PS to Chairman does not amount to violation of article 311 of the Constitution of India. Similarly cancellation of the erroneous order on the advise of the UPSC does not amount to violation of article 311 of the Constitution of India.

6. The Respondents have no comments.

7. The Respondents have no comments.

8.1. The Respondents beg to state that under the facts and circumstances stated in the preceeding paragraphs the order dated 22.3.99, 23.11.92, 1.12.92 and 2.12.92 are made in accordance with the rules and relevant laws and therefore, they may be upheld.

8.2. The Respondents beg to state that under the facts and circumstances stated in the preceeding paragraphs the question of payment of salary of Deputy Director(A) to the Petitioner from 23.11.92 to the date of retirement does not arise as he did not discharge the duties of the Deputy Director(A).

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8.3. The Respondents beg to state that in view of the facts and positions explained in the preceeding paragraphs no reliefs are admissible to the Petitioner.



Respondent

Deputy Secretary
SEC, Govt of India,
Shillong.

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

I, Shri L. Chuaungo, Deputy Secretary, North Eastern Council Secretariat, Shillong, fully conversant with the facts and circumstances of the case, solemnly declare that the statements made above are true to my knowledge, information and belief and I sign the verification on this day of 2000 at Shillong.

L. Chuaungo

Respondent.
Deputy Secretary
NEC, Govt. of India,
Shillong.

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UNISERCOM

संघ लोक सेवा आयोग

धौलपुर हाउस

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UNION PUBLIC SERVICE COMMISSION

(SANGH LOK SEVA AYOG)

DHOLPUR HOUSE

SHAHJAHAN ROAD

F.4/24(1)/81-AUTV

नई दिल्ली-110011, 4-6-82

New Delhi-110011,

सेवा में,
To

The Secretary to the Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi.

Attention : Miss Noeru Nanda, Deputy Secretary)

Sub:- Absorption of certain categories of officers in North
Eastern Council, Shillong.

Sir,

I am directed to refer to the correspondence ending with
your letter No. III-14028/27/80-NE.II dated 3.5.1982 and to say
that the Union Public Service Commission after perusing the
particulars and record of service made available to them of the
following officers recommend their appointment on transfer in the
North Eastern Council, Secretariat against the posts indicated
against each:-

S.No.	Name of the Officer	Name of the Post
1.	Shri T. Roy	Assistant Secretary
2.	Shri A.D. Paul	Assistant Financial Adviser
3.	Shri H.K.A. Kanunjna	Private Secretary
4.	Shri H. Bora	Private Secretary
5.	Shri J.L. Saito	Section Officer

The date of appointment on transfer basis of the above
officers in the North Eastern Council, Secretariat will be w.e.f.
the date of issue of this letter vis 4.6.82. Copy of notification
issued in this regard may kindly be made available to this office
in due course. The CR dossiers of the officers mentioned above
are returned herewith, the receipt of which may kindly be
acknowledged.

Yours faithfully

//

(K.C. Ratawal)

Under Secretary

Tele.No. 339344

(K.C. Ratawal)

Under Secretary

Copy to Secretary, NEC Secretariat, Shillong

Conveyed vide
* MHA W.T.
Dt. 4.6.82
h 149C