

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 389/2020

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CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO.

389/2000

Sri. Idandawla

Applicant.

versus

Union of India & Ors

Respondents.

For the Applicant(s)

M. S. S. Dey
M. M. Nath

For the Respondents.

C. G. S. C.

NOTES OF THE REGISTRAR

DATE

ORDER

16.11.00 Present : The Hon'ble Mr Justice
D.N.Chowdhury, Vice-Chair-
man.

Heard Mr S.S.Dey, learned coun-
sel for the applicant. Mr B.S.Basu-
matary, learned Addl.C.G.S.C and Mr
D.K.Das, learned Govt.Advocate,
Mizoram are also present.

Application is admitted. Issue
usual notice. Call for the records.

List on 18.12.2000 for written
statement and further orders.

Pendency of this application
shall not stand on the way of the
respondents to consider the case of
the applicant pertaining to fixation
of year of allotment.

Vice-Chairman

pg

16.11.

8.1.01

On the prayer of learned counsel
for the respondents four weeks time
is allowed for filing of written
statement. List on 5.2.01 for orders.

Member

Vice-Chairman

lm

This application is in form
but no Co-ordination
Petition is filed vide
M. P. No. C. F.
for Rs. 50380/-
IPO/B. No. 50380/-
Dated 3.11.2000

Dy. Registrar

Note: Requisition copy
filed.

Roan

Notice prepared and sent to
D/S for cons. the respondent No
1 to 4 vide D/No 2765 to
2768 dtd 23/11/00 by R/M.D.

20/11/00 5-1-2000

Serial input on
Hill awaited.

Roan

① Service report are still awaited.

② No. written statement has been filed.

31
7.2.01

No. written statement has been filed.

31
28.12.01

No. written statement has been filed.

31
30.4.01

8.2.01

List on 1.3.01 to enable the respondents to file written statement.

K. C. Sharma
Member

h
Vice-Chairman

lm

1.3.01

No written statement has been filed by the respondents.

List again on 2.4.01 for order.

K. C. Sharma
Member

h
Vice-Chairman

pg

2.4.2001

Four weeks time allowed to the respondents to file their written statement. List for orders on 1.5.01.

K. C. Sharma
Member

h
Vice-Chairman

nkm

1.5.2001

Mr. M. Nath learned counsel for the applicant submitted that there is some development and for the purpose the parties like to file additional affidavit. Prayer allowed.

List on 8.5.2001 for orders.

4.5.2001

An additional affidavit on behalf of the applicant has been filed.

K. C. Sharma
Member

h
Vice-Chairman

bb

18.5.01

Notes of the Registry	Date	Order of the Tribunal
<p>9.5.201</p> <p>Copy of the order has been sent to the office for security to the L/Adv. for the parties.</p> <p>ST</p>	8.5.01	<p>order thereon as expeditiously as possible, preferably within a period of 3 months from today.</p> <p>The application stands disposed of accordingly. There shall, however, be no order as to costs.</p> <p>It is needless to mention that it will always be open to the applicant to approach this Tribunal again, if he is so advised aggrieved.</p> <p>Member</p> <p>Vice-Chairman</p>
	pg	

24

Notes of the Registry	Date	Order of the Tribunal
	8.5.01	<p data-bbox="703 353 1489 1480">The issue pertains to recasting or re-assigning the year of allotment and the fixation of inter-se-seniority in the IAS. The applicant came earlier before this Tribunal by way of an original application seeking for a direction to review or modify the select list prepared for promotion to IAS. By order dated 7.1.98 the Tribunal after setting aside the selection directed the respondents to make a fresh assessment of the ACRs of the applicant in the light of the observations made therein. Pursuant thereto the Government of Mizoram reconsidered the matter and review the ACR of the applicant for two years i.e. from 1-4-90 to 31.3.91 and from 1.4.91 to 25.11.91 and decide to restore the original grading of the applicant as 'Outstanding' as was given by the reporting/reviewing officer for the period mentioned above.</p> <p data-bbox="703 1507 1489 2417">Heard Mr M.Nath, learned counsel for the applicant at length. Also heard Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents. Upon hearing the learned counsel for the parties and considering the materials on record it would now be appropriate to direct the respondents, namely, respondents No.1 and 2 to recast and reassign the year of allotment and consequent inter-se-seniority of the applicant in the IAS. While doing so the respondents amongst others shall also take note of the communication of the Mizoram Government bearing No.A32013/3/94-P&AR(CSW) dated 18.8.2000, No.A.32013/3/94-P&AR(CSW) dated 18.9.2000 and also Communication No.C.18011/41/2000-P&AR (CSW) dated 10.1.2001 and pass necessary</p> <p data-bbox="1285 2512 1428 2553">contd..</p>

289 14 NOV 2000

DISTRICT : ALZAWL

Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

Title of the Case : Original Application No. 389/2000

21.11.1997

Shri Thanhawla

..... Applicant

007 NON

- Versus -

Central Administrative Tribunal

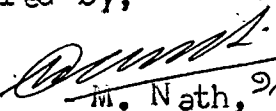
Union of India & ors Respondents

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Filed by,


M. Nath, 9/11/2
Advocate

DISTRICT : AIZAWL

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI.

ORIGINAL APPLICATION NO. 389 /2000

Shri Thanhawla,

son of Late Lalhli~~ga~~,
ga

resident of Kulikawn, Aizawl-796005,

at present working as

Director of Food and Civil Supplies, Mizoram

at Aizawl 796 001, Mizoram

..... Applicant

- VERSUS -

1. Union of India,

represented by the Secretary to the

Government of India,

Ministry of Home Affairs,

North Block, New Delhi. 2

2. Secretary to the Government of India,

Ministry of Personnel, Public Grievances

and Pensions (Deptt. of Personnel and Training)

North Block, New Delhi. 2.

3. State of Mizoram,

represented by the Chief Secretary to the

Government of Mizoram, Aizawl.

Thanhawla

Filed by:
Manabendra
Advocate

4. Secretary to the Government of Mizoram,
Department of Personnel and Administrative
Reforms (Civil Service Wing), Aizawl, Mizoram.

..... Respondents.

DETAILS OF APPLICATION

1. Particulars of order/letter against which the application is made :

(a) F.No.14014/11/2000-AIS(1) dated 17th July, 2000 issued by the Under Secretary to the Government of India, Ministry of Personnel, P.G. and Pensions (Department of Personnel and Training), North Block, New Delhi, inter alia, assigning 1994 as the year of allotment of the applicant in the Indian Administrative Service and consequent fixation of inter-se-seniority.

(b) This application is also directed against the inaction of the Government of Mizoram and its failure to act in terms of letter No.14019/3/99-UTS^{dt- 29.9.99}, issued by the Under Secretary to the Government of India, Ministry of Home Affairs, inter alia, asking the Government of Mizoram to decide the inter-se-seniority of your applicant and the two other officers in the Mizoram Civil Service for the purpose of fixing their respective inter-se-seniority in the Indian Administrative Service.

(c) Inaction of the Secretary to the Government of India, Ministry of Home Affairs as well as the Additional Secretary

Shanbawly

to the Government of India, Ministry of Personnel, Public Grievances and Pensions to act in terms of the recommendations of Government of Mizoram contained in No.A32013/3/94-P&AR(CWS) issued by the Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms as well as letter dated 4.10.2000 issued by the Chief Secretary to the Government of Mizoram respectively, inter alia, requesting the authority in the Government of India to refix the inter-se-seniority of your applicant vis-a-vis the two other officers promoted to Indian Administrative Service along with him. (Copy is not available, hence could not be annexed) @

2. Jurisdiction of the Tribunal :

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

3. Limitations :

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

4. Facts of the case :-

4.1 That the humble applicant is a citizen of India and is a permanent resident of District - Aizawl in the state of Mizoram. Your humble applicant belongs to Mizo

Shankar

Tribe which is recognised as Schedule Tribe. Hence, he is entitled to all the rights, privileges and protections guaranteed to him under the Constitution of India and other laws of the land.

4.2 That the applicant was selected and appointed to the Assam Civil Service in the year 1968. He was precisely appointed to the service with effect from 4.7.1968. In the year 1972 Union Territory of Mizoram was created carving out the Lusat Hills Territories out of the State of Assam. The services of the humble applicant was thereafter taken over by the Union Territory of Mizoram.

4.3 That the Mizoram Civil Service was constituted in the year 1977 by notification No.F.U.14012/7/77-UTS dated 23.12.1977 issued by the Government of India, Ministry of Home Affairs. Your applicant was inducted and appointed to the Mizoram Civil Service by notification No.MAP.117/73/266 dated 29.12.1977. The tentative seniority of your applicant was shown at Serial No.25 in the said notification.

A true copy of the aforesaid notification dated 29.12.1977 is annexed herewith and marked as Annexure-1.

4.4 That, subsequently on 13.2.1981, the Chief Secretary to the Government of Mizoram issued a circular vide No.AAG.4/78/Pt.V showing inter-se-seniority of all the 28 Mizoram Civil Service Officers including your applicant. In

Shankar

the said circular the seniority of your applicant was placed at Serial no.25 while that of one Shri P.K. Bhattacharjee was placed at Serial No.24 and Shri R. Bhattacharjee was fixed just below your applicant i.e. Serial No.26. Subsequently, on 22.4.1982 a notification was issued vide No.AAG.4/78/Pt.V again refixing the inter-se-seniority of Mizoram Civil Service Officers. In this notification also the position of the applicant visa-vis Shri P.K. Bhattacharjee and Sri R. Bhattacharjee remained the same.

A copy of the aforesaid notification dated 13.2.1981 is annexed herewith and marked as Annexure - 2.

4.5 That on 16.12.1983 another notification was issued by the Special Secretary to the Government of Mizoram vide his No.A.23021/1/II/82-APT(A) inter alia finally determining the inter-se-seniority of the MCS Officers. In this notification the position of your applicant was placed at Serial No.25 while Shri P.K. Bhattacharjee and Shri R. Bhattacharjee were placed at Serial No.24 and 26 respectively.

A copy of the aforesaid notification dated 16.12.1983 is annexed herewith and marked as Annexure - 3.

4.6 That on 21.5.1990 the Special Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms was pleased to issue a notification vide his

Shanhsawly

No.A.23018/1/83-APT(A), inter alia, redetermining the inter-seniority of all the officers appointed to Mizoram Civil Service in exercise of powers conferred under Rule 26 of the Mizoram Civil Service Rule, 1977 read with Rule 20(A) of the Mizoram Civil Service (Amended) Rule 1988. In this notification also the seniority position of your applicant visa-vis Shri P.K. Bhattacharjee and Shri R. Bhattacharjee was placed at Serial No.17 followed by your applicant at Serial No.18 and Shri R. Bhattacharjee at Serial No.19.

A copy of the aforesaid notification dated 21.5.90 is annexed herewith and marked as Annexure - 4.

4.7 That the applicant was promoted to the selection grade of Mizoram Civil Service along with three other officers vide notification No.A.32013.2.89-PER(B)/Pt.1 dated 9.4.1992. In the said notification the name of your applicant was shown at Serial No.2, while the name of Shri P.K. Bhattacharjee and Shri R. Bhattacharjee were shown at Serial No.1 and 3 respectively in order of merit.

A copy of the aforesaid notification dated 9.4.1992 is annexed herewith and marked as Annexure - 5.

4.8 That vide letter No.66/A/95-MPSC dated 26.04.96, the Mizoram Public Service Commission recommended the names of Shri R. Bhattacharjee and Shri P.K. Bhattacharjee for promotion to the post of Supertime Scale showing Shri R.

Shankar

Bhattacharjee in the 1st position.

A copy of the aforesaid letter dated 26.04.96 is annexed hereto and marked as Annexure - 6.

4.9 That on the basis of the above recommendation of the Mizoram Public Service Commission, the Government of Mizoram promoted Shri R. Bhattacharjee and Shri P.K. Bhattacharjee to the Supertime Scale of Mizoram Civil Service vide notification No.A.32013/2/80-PERS(N)Pt dated 10.5.1996.

A copy of the order dt- 10.5.96 is annexed herewith as Annexure - 7. (2)

4.10. That meanwhile, the names of Shri P.K. Bhattacharjee, Shri R. Bhattacharjee and the applicant along with others were sent to the Union Public Service Commission for making promotion to the Indian Administrative Service. In that panel, the name of the Applicant was placed just below Shri R.K. Bhattacharjee. However, from that panel, only Shri P.K. Bhattacharjee was promoted to the IAS. The applicant could not get the promotion to the IAS for want of vacancy and the panel had lapsed on expiry of the time prescribed in Sub-regulation (6) of Regulation 5 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955.

4.11 That as stated above, the applicant was always senior to Shri R. Bhattacharjee in service as per the various inter-se-seniority lists issued from time to time by the Government of Mizoram and referred to hereinabove. Hence, when Shri R. Bhattacharjee was promoted to Supertime Scale

Shankar

superceeding your applicant, your applicant felt aggrieved and subsequently on enquiry came to know that his supercession was due to downgrading of entry in his ACR from 'out-standing' to 'very good' for the period of 1.4.1991 to 25.11.1991, by Shri F. Pahnuna, the erst-while Chief Secretary to the Government of Mizoram. Your applicant submitted representations on 7.6.1996 to the Chief Secretary to the Government of Mizoram against his down grading, but the same was rejected by the Government on the ground that the matter cannot be considered by the Government as there is no provision for re-assessment of ACR. This was communicated to your applicant vide No.A.32013/2/89-PERS(B)/Pt.II dated 15.7.1996. ✓

4.12 That, however, subsequently the name of your applicant was recommended for promotion to the post of Supertime Scale by the Mizoram Public Service Commission on 13.11.1996 vide No.66/A.95-MPSC. Consequently, your applicant was promoted to the Supertime scale of Mizoram Civil Service with effect from 3.12.1996 vide notification No.A.32013/2/89-PERS(B)/Pt.II dated 17.1.1997 issued by the Joint Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms.

A copy of the aforesaid letter dated 13.11.1996 and the notification dated 17.1.1997 is annexed herewith and marked as Annexures - 8 and 9 respectively.

Shankar

4.13 That on 19.2.1997, the Under Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms (Civil Wing) issued a letter to the Deputy Secretary (UTS), Government of India, Ministry of Home Affairs vide his No.A.320/13/3/94/P&AR(CSW) inter alia stating that on the retirement of Shri C. Nag with effect from 28.2.1997. (AN), a vacancy will arise in the Mizoram Segment of AGMU Cadre of the Indian Administrative Service which had to be filled up from the select list officers. Your applicant Shri Thanhawla being the next officer in the select list of 1996, his name was thus proposed for being appointed against the vacancy. Necessary undertaking, performance report, vigilance clearance etc. were also sent to the Government of India along with the letter dated 19.2.1997.

A copy of the aforesaid letter dated 19.2.1997 is annexed herewith and marked as Annexure - 10.

4.14 That in the meantime, the applicant came to learn that fresh recommendation had been made to the Union Public Service Commission for promotion of Mizoram Civil Service Officers to the Indian Administrative Service. The applicant also learnt that in making the recommendation, the Selection Committee constituted under Regulation 3 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955 had placed the name of Shri R. Bhattacharjee at

Thanhawla

the 1st position and that of the applicant at the 3rd position. The Applicant had reason to believe that this had been done only on account of the downgraded entry in the ACRs of the Applicant by the erstwhile Accepting Authority, Shri F. Pahnuna as stated hereinabove.

4.15 That finally on 10.6.1997, the Applicant submitted a representation through proper channel to the Secretary, Ministry of Home Affairs, Government of India stating the detailed facts about the malicious downgrading of his ACRs and about the Representations made in this regard to the Government of Mizoram and making a prayer to cause reassessment of the matter by the Selection Committee for placing the Applicant at the top of the Select List of the Mizoram Civil Service Officers for the purpose of promotion to the Indian Administrative Service.

4.16 That, however, no relief being granted to the applicant by the authorities, he preferred an application before this Hon'ble Tribunal praying for issuing a direction to the Selection Committee and the Government of Mizoram to reconsider the down gradation of your applicant's ACRs for the period 1.3.1990 to 31.3.1991 and 1.4.1991 to 25.11.1991 from outstanding to very good and for further direction to the concerned authorities to review/modify and correct the 1997 select list prepared for promotion of Mizoram Civil Service Officer to the Indian Administrative Service by placing the name of your applicant at the top and for

Shankar

further direction to review/modify/correct the 1997 select list for promotion of Mizoram Civil Service Officers to Indian Administrative service by suitably placing your applicant therein. This application was registered and numbered as O.A. No.158/1997 before this Hon'ble Tribunal.

4.17 That the Original Application No.158/1997 was finally heard and disposed of by this Hon'ble Tribunal vide an order dated 7.1.1998. The Hon'ble Tribunal after hearing all the parties was pleased to hold that lower gradation of your applicant from outstanding to good at the instance of the Accepting Authority was not sustainable in the eyes of law and consequently such down gradation was set aside. It was further ordered that as the two impugned down gradations in the ACRs of your humble applicant was taken into consideration while making the selection of your applicant to the Supertime Scale, the respondents were directed to re-examine the reason for which this down gradation were made and to make appropriate assessment thereof and if the authority finds that the gradation given by the respective authorities were not correct, proper gradations be given giving proper reasoning therefor. Further, specific direction was given vide paragraph-9 of the order as follows :-

" In view of the above, we set aside the selection on the ground that the applicant's case was not properly considered in view of the down gradation which we have not accepted. We, therefore, send the same to the respondents to

Shankar

make a fresh assessment of the ACRs of the applicant in the light of our observations made hereinbefore and pass necessary orders".

A copy of the order dated 7.1.1998 passed by this Hon'ble Tribunal in O.A. No.158 of 1997 is annexed herewith and marked as Annexure - 11 herewith.

4.18 That against the aforesaid order dated 7.1.1998 passed by the Hon'ble Tribunal, two writ petitions were filed before the Hon'ble Gauhati High Court by the State of Mizoram and Shri R. Bhattacharjee. These two writ petitions were registered and numbered as Civil Rule Nos.1089/1998 and 1091 of 1998. By order dated 22.6.1999 both the writ petitions were disposed of by the Division Bench of the Hon'ble High Court inter alia holding and directing that as three vacancies in the IAS Cadre of the State of Mizoram existed at that point of time which was filled up from amongst the selected candidates of 1997, and as the State of Mizoram had taken a stand before the Hon'ble Court through the Learned Advocate General of the state that the existing 3(three) vacancies were to be filled up by the three selectees of the select list of 1997 i.e. your humble applicant, Shri R. Bhattacharjee and Shri Hmingthanzuala, it was not necessary to hear the entire matter on merit since all the three selectees of 1997 selection were to be accommodated against the three existing vacancies. The order dated 7.1.1998 passed by this Hon'ble Tribunal was modified to the extent

Shankar

that the select list of 1997 selection was directed to be acted upon by the authorities in accordance with the relevant rules. With this final order the writ petitions were finally disposed of.

A copy of the aforesaid order dated 22.6.1999 passed by the Hon'ble Gauhati High Court is annexed herewith and marked as Annexure - 12.

4.19 That as both the orders dated 7.1.1998 and 22.6.1999 of the Hon'ble Tribunal and the Hon'ble Gauhati High Court were passed in presence of all the parties including the Central Government, Government of Mizoram and other parties, the respective authorities were in full knowledge of both these orders and the specific directions contained therein. Consequently the authorities were also expected to act in consonance and in terms of the directions contained therein. Infact your applicant also submitted representations to the additional Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms on 25.10.1999 and to the Under Secretary to the Government of India, Ministry of Personnel etc. on 11.8.99 praying for suitable actions from their end for placing the name of the applicant in Serial No.1 in terms of merit for appointment into the Indian Administrative Service.

Copies of the aforesaid representations dated 11.8.99 and 25.10.99 are annexed herewith and marked as

Shankar

Annexures - 13 and 14 respectively.

4.20 That acting on the representations submitted by your humble applicant, the Under Secretary to the Government of India, Ministry of Home Affairs issued a letter to the Chief Secretary to the Government of Mizoram, Aizawl on 29.9.99 vide No. 14019/3/99-UTS inter alia stating that the inter-se-seniority of all the three officers i.e. Shri Thanhawla, Shri R. Bhattacharjee and Shri Hmingthanzuala in the Indian Administrative Service were dependent on the inter-se-seniority in the Mizoram Civil Service. The Government of Mizoram was further required to decide in the first instance the inter-se-seniority of these three officers in the Mizoram Civil Service in the light of the orders passed by the Central Administrative Tribunal and Gauhati High Court. After deciding the inter-se-seniority of the three officers in the Mizoram Civil Service, the Government of Mizoram was requested to refer the matter again to the Government of India.

A copy of the aforesaid letter dated 29.9.99 is annexed herewith and marked as Annexure - 15 herewith.

4.21 That for reasons best known to the authorities of the Government of Mizoram, no reply to the aforesaid letter dated 29.9.1999 was given to the Government of India in time. Meanwhile on 17th July, 2000, the Under Secretary to the Government of India, Ministry of Personnel etc. issued a

Thanhawla

office Memorandum vide F.No.14014/11/2000-AIS(I) inter alia stating that the three Mizoram Civil Service Officers were appointed to the Indian Administrative Service, Mizoram Segment of the joint AGMU Cadre on the basis of 1997-98 select list approved by the Union Public Service Commission, the names of the three officers so appointed were shown as follows :-

S.No. in the order of Select List	Names S/Shri	Date of appointment to IAS	Completed years of SCS services in the post of Dy.Collect. or equivalent
1.	R. Bhattacharjee	20.7.99	22
2.	Hmingthanzuala	20.7.99	14
3.	Thanhawla	20.7.99	19

It was further stated that as Shri P.K. Bhattacharjee the last Mizoram Civil Service Officer appointed from the Mizoram Segment of AGMU to the Indian Administrative Service, was assigned 1991 as his year of allotment, Shri R. Bhattacharjee was being assigned 1991 as his year of allotment, while Shri Hmingthanzuala and Thanhawla were allotted 1994 as their year of allotment. It was further ordered that the inter-se-seniority of Shri R. Bhattacharjee should be placed below Shri P.K. Bhattacharjee holding 1991 as his year of allotment, while the name of Shri Hmingthanzuala and Thanhawla will be placed in the year 1994 below

Thanhawla

one Ms. Rinku Dhugga (RR-1994) and above Ms. Varsha Joshi (RR 1995). This notification was forwarded to the Chief Secretary to the Government of Mizoram by the Under Secretary to the Government of India, Ministry of Home Affairs vide No.14019/3/97-UTS dated 26.7.2000.

Copies of the aforesaid letter dated 26.7.2000 and Office Memorandum dated 17.7.2000 are annexed herewith and marked as Annexure - 16 and 17 respectively.

4.22 That immediately on receipt of the aforesaid information regarding his year of allotment and fixing of inter-se-seniority, your humble applicant filed his representation before the Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms on 3.8.2000. This was followed by another representation submitted to the Joint Secretary to the Government of India, Ministry of Home Affairs (through Proper Channel) on 14.9.2000. While in the representation before the Secretary to the Government of Mizoram, your humble applicant requested the Government to immediately communicate the appropriate authorities in the Government of India regarding the inter-se-seniority of your applicant to be above the two other officers, in his representation before the Government of India, Ministry of Home Affairs, your humble applicant stated that he had completed more than 24 years of service in the State Civil Service before he was promoted to IAS. He being senior to the two other officers, his year of allot-

Shankar

ment should be fixed at 1991 by maintaining inter-se-seniority above Shri R. Bhattacharjee in the IAS.

Copies of the aforesaid representations dated 3.8.2000 and 14.9.2000 are annexed herewith and marked as Annexures - 18 and 19 respectively.

4.23 That acting on the representation dated 3.8.2000 submitted by your applicant, the Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms was pleased to reconsider the entire matter and subsequently issued a letter vide his No.A.32013/3/94-P&AR(CSW) dated 18.8.2000 to the Secretary to the Government of India, Ministry of Home Affairs inter alia stating that the inter-se-seniority of all the three officers having been carefully examined in the light of the orders passed by the Hon'ble Central Administrative Tribunal and Gauhati High Court, it was decided that the inter-se-seniority of the officers in the Mizoram Civil Service prior to their induction to Indian Administrative Service should be in following order :-

- (a) Thanhawla,
- (b) R.Bhattacharjee and
- (c) Hmingthanzuala.

He was further requested that Shri Thanhawla should be listed as 1991 as his year of allotment in the Indian Administrative Service by placing him above Shri R.

Thanhawla

Bhattacharjee in the seniority list.

A copy of the aforesaid letter dated 18.8.2000 is annexed herewith and marked as Annexure - 20.

4.24 That, however, nothing was done by the Government of India to correct the mistake. Consequently, on 18.9.2000, the Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms, issued another letter vide his No.A.32013/3/94-P&AR(CSW) dated 18.9.2000 to the Joint Secretary to the Government of India, Ministry of Home Affairs inter alia forwarding the representation of your humble applicant with a request to rectify the position regarding length of your applicant's service under the MCS. To the knowledge of the applicant even the Chief Secretary to the Government of Mizoram also issued a letter to the Additional Secretary to the Government of India, Ministry of Personnel etc. on 4.10.2000 requesting him to reconsider the entire matter regarding year of allotment and inter-se seniority assigned to the applicant. (copy not available, Hence not annexed) @

A copy of the aforesaid letter dated 18.9.2000 is annexed herewith and marked as Annexures - 21.

4.25 That in spite of the aforesaid position where the authority to determine the seniority of your petitioner visa-vis other two officers in the Mizoram Civil Service had already requested the Government of India to review the year of allotment and the inter-se-seniority of the three officers in the Indian Administrative service by placing your applicant above the two other officers, the Government of India for reasons best known to it had remained silent and chosen not to act. This is in spite of the fact that under law the year of allotment of a seniority of State Civil

Shankar

Service Officer promoted to Indian Administrative Service is always allotted and fixed as per the recommendation of the appropriate State Government subject to approval of the selection by the Union Public Service Commission. In the instant case all the officers are admittedly selected by the Union Public Service Commission for the purpose of being promoted to IAS and consequently all of them have been in fact promoted to IAS. However, the inter-se-seniority of these officers are not being refixed/re-allotted in terms of the recommendations of the State of Mizoram, belated although. Resultantly, the applicant is being deprived of his due year of allotment and the benefit of fixation of in service inter-se-seniority. Hence, this application.

5. Grounds :

5.1 The applicant submits that in terms of the provisions of Rule 3 of the Indian Administrative Service (Regulation of Seniority) Rule 1987, he is admittedly senior to two other officers, namely, Shri R. Bhattacharjee and Shri Hmingthanzuala and consequently his year of allotment and seniority should be fixed above Shri R. Chakraborty. The factual position regarding the same has already been clarified by the authorities in the Government of Mizoram vide their letters dated 18.8.2000 and 18.9.2000 (Annexure-20 and 21 respectively). Hence, for all intent and purposes your applicant should be allotted 1991 as his year of allotment in the Indian Administrative Service and his seniority should

Shankar

be reckoned on the top of all the three officers promoted and appointed in the Indian Administrative Service as per office memorandum dated 17.7.2000 (Annexure-17).

5.2 That the office memorandum dated 17.7.2000 (Annexure - 17) having shown your applicant against Serial No.3 on wrong assumption of facts, the said office memorandum so far as it relates to assigning 1994 as the year of allotment of your applicant and consequent fixation of inter-se-seniority of your petitioner should be struck down and the respondents are liable to be directed to recast the seniority by placing your applicant against Serial No.1 in the seniority list by assigning him 1991 as his year of allotment and by fixing his seniority accordingly above the two other officers.

5.3 That the assessment of year of allotment of your applicant and the consequential fixation of inter-se-seniority having been done by the Central Government without any basis, the same is liable to be struck down and set aside.

5.4 That the assigning year of allotment of your applicant and fixation of his inter-seniority as done vide the office memorandum dated 17.7.2000 being a product of failure of the appropriate authority of the Government of Mizoram, in as much as, the authorities in the Government of Mizoram failed to respond to the Central Government's letter dated 29.9.1999 (Annexure - 15) in time, the applicant

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should not be made to suffer for the lapses of the respective authorities. Consequently the factual position regarding the seniority of your applicant having been clarified, belatedly although by the Government of Mizoram to the Central Government, the office memorandum dated 17.7.2000 should be suitably modified by the Central Government by assigning 1991 as the year of allotment of your applicant and his inter-se-seniority in the service should also be determined accordingly.

6. Details of remedy exhausted :-

That the final order against which your applicant is aggrieved was passed on 17.7.2000 by the Under Secretary to the Government of India, Ministry of Personnel etc. vide F.No.14014/11/2000-AIS(1). Against this order no statutory appeal lies under the relevant Rules, although your applicant had filed representations against the impugned action contained in the Memorandum dated 17.7.2000 to the Secretary to the Government of Mizoram, Department of Personnel and Administrative Reforms on 3.8.2000 and before the Joint Secretary to the Government of India, Ministry of Home Affairs on 14.9.2000 through proper channel. Action on the representations has since been initiated from the end of the Government of Mizoram although no consequent action has been taken by the final deciding authority i.e. the Central Government. hence, the applicant does not have any other remedy left under the statute or otherwise else than ap-

Shankar

proaching this Hon'ble Tribunal for justice.

7. The applicant further declares that the orders/impugned actions against which the instant application is filed is not subject matter of any previously filed or pending application before any other court.

8. Relief Sought :-

In the premises aforesaid, it is, therefore, prayed that Your Lordships be pleased to admit this petition, call for the necessary records and on hearing the parties be pleased to issue the following order/directions :-

(i) direct the respondents especially Respondent No.1 and 2 to recast/reassign the year of allotment and consequent inter-se-seniority of your applicant in the Indian Administrative Service in terms of the reports and facts contained in the Letter No.A.32013/3/94-P&AR(CSW) dated 18.8.2000 (Annexure-20) and No.A.32013/3/94-P&AR(CSW) dated 18.9.2000 issued by the Secretary to

Shankar

the Government of Mizoram, Department of Personnel and Administrative Reforms (Annexures-20 and 21 respectively),

(ii) direct the Respondents No.1 and 2 to suitably modify the office memorandum contained in F.No.14014/11/2000-AIS(1) dated 7.7.2000 (Annexure-17) by assigning 1991 as the year of allotment of your applicant in the Indian Administrative Service and by fixing his inter-seniority in the said service accordingly;

and/or pass such further or other order (s) as Your Honour may deem fit and proper in the facts and circumstances of the case.

9. Interim Relief :-

In the interim this Hon'ble Court may be pleased to issue a suitable observation to the fact that even in the pendency of this application, appropriate authorities in the Government of Mizoram would be free to take up the matter of

Shankar

assigning 1991 as the year of allotment of your applicant and his consequent fixation of inter-seniority in the Indian Administrative Service with the appropriate authority of the Central Government and that pendency of this application would not be a bar for the Central Government to consider the recommendation of the Government of Mizoram contained in letters dated 18.8.2000 and 18.9.2000 (Annexures 20 and 21 respectively) in accordance with law.

10. Particulars of Indian Postal Orders :

Indian postal order bearing No.2G 503807 dated 3.11.2000 for an amount of Rs.50/- payable in favour of Central Administrative Tribunal, Guwahati Bench is filed along with this application.

Shanhanley

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

I, Thanhawla, son of Late Lalhlira, resident of Kulikawn, Aizawl - 796 005, by profession-Governemnt Servant, and at present working as Director of Food and Civil Supplies, Mizoram do hereby verify that the statements made in this verification and in paragrpahs 1 to 3, 4.1, 4.2, 4.10, 4.11, 4.15, 4.16, 4.19, 4.22, 4.25 and 7 are true to my knowledge while those made in paragraphs 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.12, 4.13, 4.17, 4.18, 4.20, 4.21, 4.23 and 4.24 are true to my information derieved from the relevant records which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And in proof and verification thereof I put my hand on this the 6th day of November, 2000 at Aizawl.


Thanhawla

1.

ANNEXURE -1.GOVERNMENT OF MIZORAM
APPOINTMENT(A) DEPARTMENTNOTIFICATIONDated Aizawl, the 29th ^{December} November, 1977.

No. MAP.117/7 3/2666 :- In exercise of the powers conferred under Rule 15 to the Mizoram Civil Service Rules, 1977, the Lt Governor (Administrator) of Mizoram is pleased to appoint the following officers to the Mizoram Civil Service duly constituted vide Govt of India, Ministry of Home Affairs' Notification No.F.U.1/012/7/77-UTIs dated 23rd December, 1977 in the following order of seniority :-

1. Shri P.L. Nithanga
2. Shri T.Gupta
3. Shri Khuangliana
4. Shri H.Raltawna
5. Shri J. Malsawna
6. Shri Pongchhuana
7. Shri B.T.Sanga
8. Shri H.Hauthuama
9. Shri J.Pazawna
10. Shri K. Zosanga.
11. Shri R.L. Thanzawna
12. Shri D-Purkayastha
13. Shri V.Thangzama
14. Shri Lalthanmawia.
15. Shri C.Nag
16. Shri ^{C.} M/Goswamy.
17. Shri S.L.Gupta
18. Shri L.C.Thanga

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Annexure-I contd.

19. Shri S.R.Choudhury
20. Shri Ringluia
21. Shri A.Bhattacharjee
22. Shri L.R.Laskar
23. Shri M.Dawngliana
24. Shri P.K.Bhattacharjee.
25. Shri Thanhawla
26. Shri R.Bhattacharjee
27. Smti Zodinpuii
28. Shri L.Pachhunga.

2. The Lt Governor(Administrator) is also pleased to appoint the following ex-Emergency Commissioned Officers to the Mizoram Civil Services and their seniority in the Mizoram Civil Service will be determined later :-

1. Shri J.K.Kapoor.
2. Shri B.K.Prothi
3. Shri Sushil Kumar.

3. Seniority as given in this Notification is tentative and any officer feeling aggrieved in this regard may file representation within two months.

Sd. Surendra Nath
Chief Secretary to the Govt of Mizoram.

Memo No. MAP.1777/73/266 Dated Aizawl, the 29th November,77

Copy forwarded to :-

1. Secretary to Lt-Governor, Mizoram, Aizawl.

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Annexure- I contd.

2. P.A. to Speaker, Mizoram Legislative Assembly
3. Private Secretary to the Chief Secretary,
Government of Mizoram.
4. Development Commissioner, Govt of Mizoram, Aizawl
5. Rehabilitation Commissioner, Govt of Mizoram.
6. All Secretaries to the Government of Mizoram.
7. All Administrative Department under Govt of
Mizoram.
8. All Heads of Departments, Govt of Mizoram.
9. All Deputy Commissioners in Mizoram.
10. All Officers concerned.
11. Accountant General, Assam etc Shillong.
12. Director, I&PRT Govt of Mizoram, Aizawl with
five spare copies for publication in the extra-
ordinary issue of Mizoram Gazette.

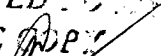
Sd. L.S.Sailo,

Under Secretary to the Govt of Mizoram

Appointment "A" Department.

Tele No. 549.

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Annexure-2.

GOVERNMENT OF MIZORAM
APPOINTMENT 'A' DEPARTMENT

Circular.

Dated Aizawl, the 13th February, 1981.

No.AAG.4/78/Pt-V : A tentative revised seniority list of Mizoram Civil S-service Officers is circulated for the second time in the following order for information of all concerned. Any officer aggrieved in this regard may submit representation within one month of the issue of this circular

1. S hri R.T.Sanga
2. Shri R.Raltawna
3. Shri J.Mulsawma
4. Shri Dengchhuana
5. Shri B.Sanghnuna
6. Shri B.K.Kapoor
7. Shri H. Hauthuama
8. Shri J.K.Khenglawt
9. Shri J. Pasawna
10. Shri K.Zosanga
11. Shri R.L.Thanzawna
12. Shri Purkayastha
13. Shri V.Thangzama.
14. Shri L althanmawia
15. Shri C.Nag.
16. Shri M.C.Goswami
17. Shri B.Lalchhamnabanga
18. Shri S.R.Choudhury
19. Shri Sushil Kumar.
20. Shri Ringlufa
21. Shri A.Bhattacharjee.

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Annexure-2 contd.

22. Shri L.R.Laskar.
23. Shri M.Dawngliana
24. Shri P.K.Bhattacharjee
25. Shri Thanhawla
26. Shri R.Bhattacharjee
27. Smti. Zodinpuil
28. Shri L.Pachhunga.

Seniority as given in this circular is made on the basis of the judgment and order in Civil Rules Nos. 395, 397 and 487 of 1979 dated 5.9.1980 issued by the Gauhati High Court and Notification No.AAG.5/78 dated 23.2.1981 and it replaces previous circular issued vide No.AAG.4/78/Pt.V dated 21.11.1980.

Sd. A.J.Kundan
Chief Secretary to the Govt of Mizoram.

Memo No.AAG.A/78/Pt.V Dated Aizawl, the 18th February, 1981.

1. Secretary to Lt Governor, Mizoram.
2. P.S. to Chief Minister, Mizoram.
3. P.S. to Chief Secretary, Mizoram.
4. Secretary to Govt of Mizoram, Law and Judicial Department.
5. All officers concerned.

(Lalfak Zuala)
Secretary to the Govt of Mizoram
Appointment 'A' Department.

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1981

Annexure-3.

Government of Mizoram
Personnel and Administrative Reforms 'B' Department

NOTIFICATION

Dated Aizawl the 16th Dec, 1983.

No.A. 23021/1.II/82-APT(A) : In supersession of the erstwhile Appointment 'A' Department's Notification No.AAG.4/78/Pt-V dated 22.4.82 the Lt Governor (Administrator) of Mizoram, in exercise of the powers conferred under Rule 26 of the Mizoram Civil Service Rules, 1977, is pleased to determine finally the inter-se seniority of the Officers appointed to the Mizoram Civil Service under Notification No.MAP.117/73/266 dated 29.12.1977 and No.AAGS/78 dated 13.12.1981 as follows :-

1. Shri H.Raltawna
2. Shri J.Malsawma
3. Shri B.T. Sanga
4. Shri Dengchhuana
5. Shri B.Sanghnuna
6. Shri J.KKapoor
7. Shri H.Hauthuama
8. Shri T.K.Khanglawat.
9. Shri J.Pizawna
10. Shri K.Zosanga
11. Shri R.L.Thansawna
12. Shri D.Purkayastha
13. Shri V.Thangzama
14. Shri L althamawia
15. Shri C.Nag
16. Shri M.C.Goswami
17. Shri B Lalchhanthanga.

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Annexure- 3 contd.

18. Shri S.B. Chowdhury
19. Shri Susil Kumar
20. Shri Ringluia
21. Shri A. Bhattacharjee
22. Shri L.R. Laskar
23. Shri M.Dawngliana
24. Shri P.K. Bhattacharjee
25. Shri Thanhawla
26. Shri R. Bhattacharjee
27. Shri L. Pachhunga.

Sd/- Lalfakzuala

Special Secretary to the Govt. of Mizoram

Memo No. A. 23021/1.II/82-Pt(A) Dated Aizawl the 16th Dec.83.

Copy to -

- 1) Deputy Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi for information with reference to Govt. of India's letter No. U.14019/381-UTS dt.25.11.83.
2. Secretary to the Lt. Governor of Mizoram.
3. Secretary to Chief Minister, Mizoram.
4. P.As to Minister/Speaker/Dy. Speaker, Mizoram.
5. P.S to Chief Secretary to the Govt. of Mizoram.
6. All Officers concerned.
7. Controller of Printing and Stationaries with 5 spare copies for publication in Mizoram Gazette.
8. Personnel File of Officers concerned.
9. Guard File.
10. File No. AAG.4/78

Sd/- Hmingliana

Under Secretary to the Govt. of Mizoram.

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Annexure-4.

GOVERNMENT OF MIZORAM
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
CIVIL SERVICE WING

NOTIFICATION

Dated Aizawl, the 21st May, 90

No.A.23018/1/83-APT(A) : In partial modification of this Department's Notification No. AAG.A/72/Pt.V dated 22.4.82 and even No. dt. 27.10.89 and in the exercise of the powers conferred under Rule 26 to the Mizoram Civil Service Rules, 1977 read with Rule 20A of the Mizoram Civil Service (Amendment) Rules, 1988, the Government of Mizoram is pleased to re-determine the inter-se-seniority of the officers appointed to Mizoram Civil Service under Government's Notification No. MAP.117/73/266 dated 29.12.1977 and No.AAG.5/78 dt. 13.12.81 excluding those officers who are no longer in the service as follows :

1. Pu B.L.Thanzawma
2. Pu B. Sanghnuna
3. Pu N. Dawngliana
4. Pu J.K.Kapoor
5. Pu J.Pazawna
6. Pu P . Purkayastha
7. Pu V.Thangama
8. Pu Lalghanmawia
9. Pu C.Nag
10. Pu N.C.Goswami
11. Pu B. Lalchhamthanga
12. Pu S.R.Chowdhury
13. Pu Sushil Kumar.
14. Pu Ringluia

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- 15. Pu A.Bhattacharjee
- 16. Pu L.R.Laskar
- 17. Pu P.K.Bhattacharjee
- 18. Pu Thanhawla
- 19. Pu R.Bhattacharjee.

Sd. H.Lal Thlamuana
Special Secretary to the Govt of Mizoram.

Memo No.A. 23018/1/83-APT(A) Dated Aizawl, the 21st May'90.

Copy to :-

- 1. Secretary to Government (Security and Administration) Mizoram.
- 2. PS to Chief Minister, Mizoram.
- 3. PS to Speaker/Dy Speaker, Mizoram
- 4. PS to all Ministers/Minister of State, Mizoram.
- 5. PS to Chief Secretary, Govt of Mizoram.
- 6. Vice-Chairman, Planning Board, Mizoram.
- 7. All Administrative Department, Mizoram.
- 8. All Heads of Departments, Mizoram.
- 9. All Officers concerned.
- 10. Chief Controller of Accounts, Mizoram.
- 11. Controller, Printing and Stationery with 6 spare copies for publication in the Mizoram Gazette.
- 12. Guard File.

Sd. Lalnghinglova,
31.5.90
Under Secretary to the Govt of Mizoram.

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ANNEXURE -5.

Government of Mizoram
Department of Personnel & Administrative Reforms
Civil Service Wing.

NOTIFICATION.

Dated Aizawl, the 9th April, 1992.

No.A. 32013/2/89-Pers(B)/Pt.I : In exercise of the power conferred under Rule 3 read with rule 21(1) and 25 to the Mizoram Civil Service Rules, 1988 as amended upto date and in the interest of public service, the Governor of Mizoram is pleased to appoint on officiating basis the following MCS Officers of Junior Administrative Grade to Selection Grade of MCS in the scale of pay of Rs. 4500-150-5700/- p.m. plus all other allowances as admissible under the rules from time to time with immediate effect and until further orders in the following orders of merit.

Sl.No. Name.

1. Pu P.K.Bhattacharjee.
2. Pu Thanhawla
3. Pu R.Bhattacharjee
4. Pu B. Lalhema.

2. The Governor of Mizoram is further pleased to order that the above mentioned officers namely, Pute Thanhawla, R.Bhattacharjee and B.Lalhoma on their appointment on officiating basis to the selection grade shall continue to function at their respective Headquarters until further orders and they will draw their pay and allowances in Selection Grade.

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Annexure-5 contd.

3. The Governor of Mizoram is further pleased to order that Pu P.K.Bhattacharjee, Addl DC Lunglei on his appointment to the Selection Grade is posted as Deputy Commissioner, Lunglei with immediate effect and until further orders.

Sd. H.Lal Thalmuana
Commissioner and Secy to the Govt of
Mizoram

Memo No.A. 31012/3/82-APT(A) Dated Aizawl, the 9th April'92.

Copy to :-

1. Secretary to Governor, Mizoram.
2. PS to Chief Minister, Mizoram
3. PS to Speaker/ Dy Speaker Mizoram Legislative Assembly
4. PS to Minister, Minister of State, Mizoram.
5. PS to Chief Secretary, Govt of Mizoram.
6. All Commissioners/Secretaries, Govt of Mizoram.
7. All Heads of Departments, Mizoram.
8. Chief Controller of Accounts, Mizoram, Aizawl
9. Treasury Officer, Aizawl/Lunglei
10. Controller of Printing & Stationery with 6 spare copies for publication in the Mizoram Gazette.
11. Offices concerned.
12. Personnel File of the officers concerned.
13. Guard file.

Sd. R.Lalzama
Deputy Seereetary to the Govt of Mizoram.

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Annexure-6.

Confidential.

MIZORAM PUBLIC SERVICE COMMISSION
AIZAWL

No. 66/A/95-MPSC Dated Aizawl, the 26th April, 1996.

To

The Secretary to the Government of Mizoram
Department of Personnel and Administrative Reforms.

Sub: Recommendation for promotion to the post of
supertime scale of MCS

Ref : Your letter No.32013/2/89-PERS (B)/Pt.

Sir,

With reference to the letter No. indicated above,
I am directed to convey herewith the recommendations of the
Mizoram Public Service Commission for promotion to the post
of supertime scale of MCS as below:

1. Pu R.Bhattacharjee.
2. F.K. Bhattacharjee.

A panel is maintained and may be asked for
if necessity arises in the near future.

I am returning ACRs and Agenda papers herewith.

Yours faithfully,

Sd. N. Zokunsa
Secretary
Mizoram Public Service Commission
Aizawl.

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Annexure-7.

GOVERNMENT OF MIZORAM
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
CIVIL SERVICE WING

NOTIFICATION

Dated Aizawl, the 10th May, 1996.

On the recommendation of the Mizoram Public Service Commission and in the interest of Public Service the Government of Mizoram is pleased to promote the following Selection Grade of MCS Officers to Supertime scale of MCS in the scale of pay of Rs 5100-150-6300-6700/- pm. plus all other allowances as admissible from time to time with immediate effect.

1. R.Bhattacharjee
2. P.K.Bhattacharjee

On their promotion to Supertime scale the above officers will continue to hold their respective posts until further orders.

Sd. xxx
Deputy Secretary to the
Govt of Mizoram.

Memo No. A. 32013/2/82-Pers(B)/Pt Dated Aizawl the 10.5.96

Copy to :-

1. Secretary to Governor of Mizoram.
2. Secretary to Chief Minister, Mizoram
3. PS to Chief Minister, Mizoram.
4. PS to Speaker/Dy Speaker Mizoram Legislative Assembly
5. PS to Vice Chairman, Printing Board, Mizoram.
6. PS to Chief Secretary, Govt of Mizoram.
7. All Commissioner/Secretaries Govt of Mizoram.
8. Accountant General Mizoram, Shillong.
9. All Administrative Departments Govt of Mizoram.
10. All Heads of Departments Govt of Mizoram.
11. Officers concerned.

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14.


Annexure-7 contd.

12. Officers concerned.
13. Director, Accounts and Treasuries, Mizoram.
13. Treasury Officer, Aizawl,
14. Controller, Printing and Publication with 6 spare copies for publication in the Mizoram Gazette.
15. Personnel file of officers concerned.
16. Guard file.

Sd. xxx

Deputy Secy to the Govt of Mizoram.

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15.

Annexure-3.

MIZORAM PUBLIC SERVICE COMMISSION : AIZAWL

No.66/A.95-MPSC

Dated Aizawl, the 13th Nov/96.

To

The Under Secretary to the
Government of Mizoram,
Mizoram Aizawl.

Subj: Recommendation for promotion to the post of
Supertime scale of MCS

Ref: Your letter No. A.32013/2/89-Pers(B)/Pt.II
dated 6.11.96.

Sir,

With reference to the letter No.indicated above,
I am directed to convey herewith the recommendation of the
Mizoram Public Service Commission for promotion to the
post of S-upertime scale of MCS as below :


Pu Thanhawla.

Yours faithfully,

Sd. xx 13.11.96

Mizoram Public Service Commission
Aizawl.

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Annexure-9.

Government of Mizoram
Department of Personnel and Administrative Reforms
Civil Service Wing.

NOTIFICATION

Dated Aizawl the 17th Jan'97

In the interest of Public Service and on the recommendation of the Mizoram Public Service Commission, the Governor of Mizoram is pleased to allow proforma promotion to Pu Thanhawla, MCS, Selection Grade Officer, presently on deputation to Cooperation Department, Govt of Mizoram as Managing Director, Mizoram Cooperative Apex Bank to supertime scale of MCS(Non-functional) in the scale of pay of Rs.5100-15 0-6300-200-6700/- p.m. plus all other allowances as admissible under the Rules until further orders and with effect from 3.12.96.

Sd. Rajeev Verma
Joint Secretary to the Govt of Mizoram.

Memo No.A.32013/2/89-Pers(B)/Pt.II Dtd. Aizawl, the 17.1.
1997.

Copy to :-

1. Secretary to Governor, Mizoram.
2. Secretary to the Chief Minister, Mizoram
3. PS to Speaker/Dy Speaker, Mizoram.
4. PS to all Ministers/Ministers of State, Mizoram.
5. PS to Vice -Chairman, Planning Board, Mizoram
6. PS to Chief Secretary, Govt of Mizoram.
7. All Commissioner/Secretaries, Govt of Mizoram.
8. Accountant General, Mizoram etc Shillong.
9. All Administrative Departments, Govt of Mizoram.

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Contd....


Annexure-9 contd.

10. All Heads of Departments, Govt of Mizoram
11. Officers concerned.
12. Director, Accounts and Treasuries, Mizoram Aizawl
13. Treasury Officer, Aizawl/Lunglei/Saiha.
14. Controller, Printing & Stationery with 6 spare
copies for publication in the Mizoram Gazette.
15. Guard file.

Sd. xxx

Under Secretary to the Govt of
Mizoram.

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13.

Annexure-10. (Confidential)

No.A.3201303/94;P&AR(SW)
Government of Mizoram
Department of Personnel & Administrative Reforms
Civil Service Wing.

Dated Aizawl, the 19th February, 1997.

To

The Deputy Secretary (UTS)
Govt of India,
Ministry of Home Affairs,
North Block, New Delhi-1.

Subject: Appointment to Select List Officer to IAS
from Mizoram segment of AGMU Cadre.

Sir,

I am directed to state that Shri C.Nag, IAS
(AGMU :85) will retire on superannuation w.e.f. 23.2.97.
Release order to this effect has been issued vide this
Department's No.A.19013/14/80-APT(A) dt. 6.2.97 (copy
enclosed).

The retirement of Shri C.Nag w.e.f. 23.2.97
(AN) will cause a vacancy in the Mizoram Segment of
AGMU Cadre which has to be filled up from the Select
List Officer. Since Shri Thanhawla is the next officer
in the select list of 1996, it is proposed that Shri
Thanhawla, a State Civil Service Officer presently
posted as Managing Director, Mizoram Apex Bank be
appointed against the said vacancy.

Undertaking, performance report and Vigilance
Clearance are sent herewith for favour of immediate
action.

Encl. As stated.

Yours faithfully,

Sd. xxxx

(Hemingthan Chama)

Under Secretary to the Govt of Mizoram.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.158 of 1997

Date of decision: This the 7th day of January 1998

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

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

Shri Thanhawla,
Managing Director,
Mizoram Cooperative Apex Bank Limited,
Aizawl, Mizoram.

.....Applicant

By Advocates Mr A.K. Bhattacharyya, and
Mr P.C. Borpujari.

-versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
2. The Union Public Service Commission, represented by its Chairman, Dholpur House, New Delhi.
3. The Mizoram Public Service Commission, represented by its Chairman, Aizawl, Mizoram.
4. The State of Mizoram, represented by the Chief Secretary to the Government of Mizoram, Aizawl.
5. The Special Secretary to the Government of Mizoram, Aizawl, Mizoram.
6. The Commissioner and Secretary to the Government of Mizoram, Department of Personnel & Administrative Reforms, (Civil Service Wing), Government of Mizoram, Aizawl.
7. Shri R. Bhattacharjee, Additional Secretary to the Government of Mizoram, Aizawl, Mizoram.
8. Shri Hmingthanzuala, Joint Secretary to the Governmen of Mizoram, Aizawl, Mizoram.

.....Respondents

By Advocates Mr S. Ali, Sr. C.G.S.C.,
Mr A.K. Choudhury, Addl. C.G.S.C.,
Mr D.P. Chaliha, Government Advocate, Mizoram,
Mr N. Dutta and Mr D.K. Das.

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O R D E RBARUAH.J. (V.C.)

In this application the applicant has prayed for direction to the Selection Committee and the Government of Mizoram not to consider the downgradation of the applicant's Annual Confidential Reports (ACR for short) for the period from 1.4.1990 to 25.11.1991 from 'outstanding' to 'very good', made by the then Chief Secretary, Mizoram, and also for direction to review/rectify/modify/correct the 1997 Select List prepared for promotion to the Indian Administrative Service (IAS for short) from the officers of the Mizoram Civil Service (MCS for short) on the basis of the gradation made by the Reporting Authority and confirmed by the Reviewing Authority. Facts for the purpose of disposal of the case are:

The applicant was inducted to the Assam Civil Service in the year 1968, on the basis of a competitive examination conducted by the Assam Public Service Commission. At that time the State of Mizoram was one of the districts of the State of Assam. In the year 1972 the status of Union Territory was conferred on Mizoram and the service of the applicant came under the Union Territory of Mizoram. Thereafter, the Mizoram Civil Service was constituted in the year 1977 by the Government of India by Notification No.F.U.14012/7/77-UTS dated 23.12.1977 issued by the Ministry of Home Affairs. By Annexure A/1 Notification dated 29.12.1977 the applicant was inducted and appointed to the MCS alongwith some other officers. In the said Annexure A/1 Notification the applicant's name was shown at serial No.25 in order of seniority. But the said seniority was tentatively. In Annexure A/1 Notification one Shri P.K. Bhattacharjee was placed just above the applicant and

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the respondent No.7, Shri R. Bhattacharjee was placed just below the applicant in order of seniority. On 13.2.1981, Annexure A/2 Circular was issued showing the interse seniority of the twentyeight MCS officers including the applicant, Shri P.K. Bhattacharjee and respondent No.7, Shri R. Bhattacharjee. As per the said circular the seniority positions of the applicant, Shri P.K. Bhattacharjee and Shri R. Bhattacharjee remained the same. On 22.4.1982, the interse seniority of the officers of MCS was refixed by another notification. In the said notification also the parties' seniority remained the same and the seniority list was later on issued by Annexure A/3 Notification dated 16.12.1983. The said notification was issued by the 5th respondent- the Special Secretary to the Government of Mizoram. In that seniority list the applicant's position was at serial No.25 while the position of P.K. Bhattacharjee and the respondent No.7, Shri R. Bhattacharjee were at serial Nos.24 and 26 respectively. In 1988 the MCS Rules were framed and came into effect from 15.7.1988. On the date of publication of the said Service Rules in the Mizoram Gazette, and thereupon, the MCS Rules stood repealed. The rules of 1988 were amended from time to time by the Mizoram Civil Service (Amendment) Rules, 1988, the Mizoram Civil Service (Amendment) Rules, 1990 and the Mizoram Civil Service (Amendment) Rules, 1993. As per the MCS Rules 1988 (unamended) the MCS was categorised into four grades, namely, Selection Grade, Junior Administrative Grade, Senior Grade and Junior Grade. By amending Rules of 1993 another grade, namely, 'Supertime Scale' was also added as the highest grade. As per the said rule, officers completing not less than 5 years of service in the Selection Grade became eligible for consideration for promotion to the Supertime Scale. By Annexure A/5 Notification dated 22.1.1990, the Government of Mizoram prescribed the procedure to.....

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to be observed by the State Selection Committee/Departmental Promotion Committee in matters of appointment, promotion, etc. to various categories of posts in the service. Under the procedure, the suitability of the officers for promotion was to be assessed by the State Selection Committee/Departmental Promotion Committee on the basis of service records of the officers with particular reference to ACRs and further that the assessment should be independent of the overall grading recorded in the ACRs.

2. The seniority position of the MCS officers appointed as per Annexure A/1 Notification was redetermined by Annexure A/6 Notification dated 21.5.1990. As per the said notification the applicant was placed in the 18th position just below Shri P.K. Bhattacharjee and just above the respondent No.7, Shri R. Bhattacharjee. In 1991, the applicant was posted as Additional Deputy Commissioner at Lunglei. The applicant's ACR from 1.4.1991 to 25.11.1991 was initiated by the Reporting Officer who awarded the grading of 'outstanding' and the said remark was also confirmed by the Reviewing Authority. The grading of 'outstanding' given by the Reporting and Reviewing Officers was downgraded to 'very good' without recording any reason indicating that there was no objective assessment and dispassionate approach of the Accepting Authority. The applicant was appointed to the Selection Grade of MCS alongwith three other officers including Shri P.K. Bhattacharjee and the respondent No.7, Shri R. Bhattacharjee. By Annexure A/8 Notification dated 26.4.1996 the 3rd respondent- the Mizoram Public Service Commission (MPSC for short) recommended the name of Shri P.K. Bhattacharjee and respondent No.7, Shri R. Bhattacharjee for promotion to the post of Supertime Scale showing the respondent No.7, Shri R. Bhattacharjee, in the first position. Pursuant to the recommendation of the MPSC the Government of Mizoram promoted the respondent No.7 and

Shri P.K.....

Shri P.K. Bhattacharjee of MCS by Annexure A/9 Notification dated 10.5.1996. Meanwhile, the names of Shri P.K. Bhattacharjee, R. Bhattacharjee and the applicant alongwith some other officers were sent to the Union Public Service Commission (UPSC for short) for recruitment to the IAS. In that panel the name of the applicant was placed just below Shri R. Bhattacharjee. However, from that panel only Shri P.K. Bhattacharjee was promoted to the IAS. The applicant could not be promoted to the IAS for want of vacancy and the panel had lapsed on expiry of the time prescribed in Sub-regulation (6) of Regulation 5 of the IAS (Appointment by Promotion) Regulations, 1955. However, though the respondent No.7 was all along been shown as junior to the applicant, the applicant became aggrieved on the promotion given to respondent No.7 to the Supertime Scale superseding the applicant. On making enquiry, the applicant came to know that the supersession was on the basis of the downgrading of the entry in the ACR of the applicant from 'outstanding' to 'very good' by the Chief Secretary to the Government of Mizoram. Being aggrieved, the applicant submitted Annexure A/10 representation dated 7.6.1996 to the Chief Secretary, Government of Mizoram, making a prayer for recasting his ACR for the period in question. The authority, however, did not consider the representation on the ground that the same could not be considered by the Government as there was no provision for such reassessment of the ACR at that stage. This was intimated by Annexure A/11 letter dated 15.7.1996 by the Under Secretary to the Government of Mizoram, Personnel and Administrative Reforms Department.

On 13.11.1996, the 3rd respondent- The MPSC, recommended the name of the applicant for promotion to the Supertime Scale by Annexure A/12 dated 13.11.1996. In the month of October 1996, the applicant came to know that the

Government was considering to recommend the name of

respondent No.7.....

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respondent No.7- Shri R. Bhattacharjee, for promotion to the IAS. On coming to know about it the applicant submitted Annexure A/13 representation dated 29.10.1996 making a request, interalia, not to change or alter the seniority list although the officer junior to the applicant was in the meantime promoted to the Supertime Scale, inasmuch as it would be violative of the existing rules and the decisions of the court. Meanwhile, the applicant was promoted to the Supertime Scale of MCS by Annexure A/14 Notification dated 17.1.1997. By Annexure A/15 letter dated 19.2.1997 issued by the Under Secretary to the Government of Mizoram in the Department of Personnel and Administrative Reforms, Civil Service Wing to the Deputy Secretary, Government of India, Ministry of Home Affairs, intimated that the Government of Mizoram proposed the name of the applicant for appointment to the IAS in the Mizoram Segment of AGMU Cadre mentioning therewith the fact that the applicant was the next officer in the select list of 1996.

3. On 8.4.1997 the applicant submitted a representation to the Chief Secretary complaining about the unfair and unjust downgrading from 'outstanding' to 'very good' of the entry in the ACR of the applicant for the periods from 1.4.1990 to 31.3.1991 and 1.4.1991 to 25.11.1991. By Annexure A/17 letter dated 25.4.1997 issued by the applicant to the Chief Secretary to the Government of Mizoram, the applicant requested the Chief Secretary to take immediate steps and to intimate the applicant about the action taken on the applicant's representation dated 25.4.1997 within fifteen days. However, the applicant, thereafter, came to learn that a fresh recommendation had been made to the UPSC for promotion of MCS officers to the IAS. The applicant also came

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to learn that in making the recommendation, the Selection Committee, constituted under Regulation 3 of the IAS (Appointment by Promotion) Regulation, 1955, placed the name of the respondent No.7- Shri R. Bhattacharjee, at the first position and the applicant was placed at the third position. According to the applicant he had every reason to believe that this had been done on account of the downgraded entry in his ACR, which was made illegally and contrary to the rules. On 10.6.1997, the applicant submitted yet another representation to the Secretary, Ministry of Home Affairs, Government of India, stating the details about the downgrading of his ACRs. According to the applicant this was done with malice. The then Reporting Authority, Shri R.L. Thanzawna, issued Annexure A/19 certificate dated 7.7.1997 stating the reasons why he graded the applicant as 'outstanding'. However, without giving any reason the applicant's grading was downgraded to 'very good'. According to the applicant this was done with a malafide intention to deprive the applicant and to boost up the promotional scope of Shri B. Sanghnuna to the IAS. According to the applicant it was incumbent upon the Accepting Authority to record reasons for such downgrading on the personal file of the officer concerned. It was also legally required to inform the change in his ACR in the form of advice. The Accepting Authority while downgrading the applicant on two occasions from 'outstanding' to 'very good' did not record any reason, for so doing, in the personal file of the applicant. According to the applicant he was not even informed about the downgradation by the Accepting Authority on either of the occasions. According to the applicant the two downgradation from 'outstanding' to 'very good' had adversely and prejudicially affected his promotional scope and avenues.

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This aspect is clearly evident from the fact that the two downgradations were taken into account at the time of promoting the applicant to the Supertime Scale of MCS and also at the time of selecting the incumbents for promotion to the IAS by the Statutory Selection Committee in 1996 and 1997. The applicant further states that if the two 'outstanding' gradations were not downgraded to 'very good' gradations, the applicant would have been promoted to the Supertime Scale of MCS much earlier than respondent No.7.

4. We heard the learned counsel for the parties. Mr A.K. Bhattacharyya, learned Sr. counsel appearing on behalf of the applicant submitted that the 8th respondent- Shri Hmingthanzuala was junior to the applicant and also Mr R. Bhattacharjee. By Notification dated 29.12.1977 the seniority between the applicant and Shri R. Bhattacharjee was fixed. The name of the applicant was found at serial No.25 and that of Shri R. Bhattacharjee at serial No.26. Thereafter, even by circular dated 13.2.1981, seniority of the MCS officers was fixed on the basis of the judgment of the Hon'ble Gauhati High Court dated 5.9.1980 passed in Civil Rule Nos.395, 396 and 487 of 1979. In the revised seniority list of 1981 the applicant's name was found at serial No.25 and that of Mr R. Bhattacharjee at serial No.26. By yet another Notification dated 16.12.1983, the interse seniority of the MCS officers was decided, wherein the name of the applicant was shown at serial No.25 and that of Mr R. Bhattacharjee at serial NO.26. Again by Notification dated 21.5.1990 the interse seniority of the MCS officers was fixed under Rule 26 of the MCS Rules, 1977 read with Rule 20A of the MCS (Amendment) Rules, 1988. The name of the applicant was shown at serial No.18 whereas, the name of Mr R. Bhattacharjee was shown at serial No.19. By yet another order dated 9.4.1992, four MCS officers were promoted.....

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promoted to the Selection Grade of MCS. The name of the applicant was shown at serial No.2 and that of Mr R. Bhattacharjee at serial No.3. By an amendment made in 1993 to the MCS Rules, 1988 (unamended), a new higher grade of Supertime Scale was created. By order dated 10.5.1996, the 7th respondent- Shri R. Bhattacharjee and Shri P.K. Bhattacharjee were promoted to the aforesaid Supertime Scale. By yet another Notification dated 17.1.1997 the applicant was promoted to the Supertime Scale. The learned counsel for the applicant further submitted that though Shri P.K. Bhattacharjee was senior to the 7th respondent, while promoting these two officers to the Supertime Scale, the name of the 7th respondent was shown above the name of Shri P.K. Bhattacharjee. However, the interse seniority of the Supertime Scale grade of the MCS officers had not yet been fixed by the Government. The seniority fixed by Annexure A/6 Notification dated 21.5.1990 fixing seniority of MCS officers had been maintained till date. The contention of the learned counsel for the applicant is that the position of the applicant was brought down only because the two entries of 'outstanding' in his ACR were downgraded by the accepting authority. If this had not been done the applicant would have been senior to the other officers and there would have been no scope for superseding him.

5. Mr A.K. Choudhury, learned Addl. C.G.S.C., appearing on behalf of the Union of India, on the other hand, supported the impugned action. According to him there was nothing wrong in it.

6. On the rival contention of the parties, it is now to be seen whether the impugned order can sustain in law. According to the learned counsel for the applicant the down gradation.....

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gradation of the applicant from 'outstanding' to 'very good' by the Accepting Authority was contrary to the rules. The records have been produced before us. We have gone through the same. In the ACR of the applicant for the period from 1.3.1990 to 31.3.1991 the Reporting Officer assessed him as 'outstanding', which was down graded to 'very good' by the Reviewing Officer. However, no reason was assigned and the Accepting Authority accepted the same without considering why the gradation given by the Reporting Officer was brought down to 'very good'. No reason had been assigned. Similarly, for the period from 1.4.1991 to 25.11.1991 the Reporting Officer as well as the Reviewing Officer graded him as 'outstanding', but the Accepting Authority brought it down to 'very good'. The learned counsel for the applicant has challenged this down gradation. According to him without recording any reasons, the Reviewing Authority or the Accepting Authority had no jurisdiction to down grade and even if it is done it ought to be brought to the notice of the applicant so that he can make representation by showing reasons. In this connection the learned counsel for the applicant had relied on certain decisions of the Apex Court. These are:

1. U.P. Jal Nigam and others -vs- Prabhat Chandra Jain and others, reported in (1996) 2 SCC 363.
2. State Bank of India -vs- Kashinath Kher, reported in AIR (1996) SC 1328.
3. State of U.P. -vs- Yamuna Shankar Misra, reported in (1997) 4 SCC 7.

In U.P. Jal Nigam and others (Supra), the employee was downgraded at a certain point of time to which the Service Tribunal gave a correction. The petitioners' (the Nigam) plea before the High Court was that downgrading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same to the employee.....

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employee and attract a representation. However, this argument was turned down by the High Court on the ground that confidential reports were assets of the employee since they weigh to his advantage at the promotional and extensional stages of service. The High Court gave an illustration that if an employee had earned an 'outstanding' report in a particular year which, in a succeeding one and without his knowledge, is reduced to the level of 'satisfactory' without any communication to him, it would certainly be adverse and affect him at one or other stage of his career. The Apex Court observed thus:

".....The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an enquiry."

It was urged before the Apex Court by the Nigam that when the nature of the entry did not reflect any adverseness that was not required to be communicated. The Apex Court observed thus:

".....As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected

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by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

In State Bank of India -vs- Kashinath Kher (Supra), the Apex Court observed thus:

"It would appear that the confidential reports and character rolls are being prepared by the officers of the same rank in the same MMGS-II working in the establishment department over the same cadre officers working elsewhere and the reporting officers are the same. Ms Nisha is right and the High Court is well justified in holding that such a procedure is violative of the principles of natural justice. Such procedure and practice is obviously pernicious and pregnant with prejudices and manipulative violating the principles of natural justice and highly unfair. The object of writing confidential report is two fold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in Delhi Transport Corporation's case (AIR 1991 SC 101) pointed out pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectively, impartially and fair assessment without any prejudices whatsoever with highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by superior officer of high rank, who are such high rank officers is for the appellant to decide. The appellants have to prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form basis of consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust."

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Again in State of U.P. -vs- Yamuna Shankar Misra (Supra), the Apex Court emphasised the importance of Confidential Reports. In para 4 of the said judgment, the Apex Court observed thus:

".....It is needless to emphasise that the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer would be put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible for the superior or controlling officers to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officers or to improve the efficiency in service. At the same time, the subordinate employee/officer should dedicate to do hard work and duty; assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service....."

7. From the above decisions it is very clear that the officers entrusted to write the ACR are required to make proper assessment. The Accepting or Reviewing Authority have, no doubt, the right to change the grading if the Reporting Officer and/or the Reviewing Authority give higher grading. The Accepting Authority may lower the gradation for just and proper cause, but in such cases it is always necessary to give reasons of the downgradation. If the reasons are plausible and acceptable such downgradation may be regarded as just and reasonable. An ACR

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OPERATIVE PORTION OF CAT. ORDER
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for an employee is sacrosanct in his service career. If for certain reasons the Accepting Authority finds that the gradation given by the Reporting Authority or Reviewing Authority is not just and proper, he should give the reasons at the time of lowering the gradation. It is also necessary to communicate the same to the officer concerned so that in future he may improve his quality of work. Gradation, sometimes, may amount to adverse remarks, say for instance, downgrading from 'outstanding' to 'very good'. But to be fair to the employee concerned this should also be communicated to him. In the present case at least the ACR gradations for the period from 1.4.1990 to 31.3.1991 and from 1.4.1991 to 25.11.1991 were downgraded. In one case it was downgraded by the Reviewing Authority which was accepted by the Accepting Authority. In the other period the gradation given by the Reporting Authority as 'outstanding' was approved by the Reviewing Authority, but the Accepting Authority lowered the gradation without recording any reasons. This, in our opinion, in view of the decisions of the Apex Court, is not at all sustainable. Therefore, such down gradation is liable to be set aside. Accordingly we do so. As these two down gradations were taken into consideration while making the selection, in our opinion, this was not just and proper. Therefore, we direct the respondents to re-examine the reasons for which these down gradations were made for the periods by the Reviewing Authority and the Accepting Authority. The Officers entrusted to this job shall make proper assessment and if either the Reviewing or Accepting Authority finds that the gradation given by the Reporting and Reviewing Officers are not correct the authority shall have the right to lower the gradations, but in such a case proper reasons have to be given.

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8. Mr A.K. Bhattacharyya, learned counsel for the applicant also submitted that the Accepting Officer made these downgradings out of malice and just to help his own candidate. From the averments made in the application and the written statement we find no such malafide intention. Accordingly we do not agree with the submission of Mr Bhattacharyya in this regard.

9. In view of the above, we set aside the selection on the ground that the applicant's case was not properly considered in view of the down gradation which we have not accepted. We, therefore, send the same to the respondents to make a fresh assessment of the ACRs of the applicant in the light of our observations made hereinbefore and pass necessary orders.

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

Sd/-VICE-CHAIRMAN.
Sd/-MEMBER(A)

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(Signature)
ADVOCATE

certified to be true
प्रमाणित प्रतिलिपि

(Signature) 16/11/98
Sd/-MEMBER(A)
Sd/-MEMBER(A)
Sd/-MEMBER(A)

16/11

Annexure-12

IN THE GAUHATI HIGH COURT

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

BEFORE

22.6.1999

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

ORDER

BRIJESH KUMAR, C.J.:

The matter relates to recruitment to the cadre of Indian Administrative Service by promotion from amongst the officers of Mizoram Civil Service, the selection for which was held in the year 1997.

Three officers have been selected : One is the petitioner Shri Ranjit Bhattacharjee and the other two are Shri Thanhawla and Shri Hmingthanguala, the Respondent in the appeal.

Learned counsel for the parties viz. Sri B.K. Sharma, Sri A.K. Bhattacharjya and Shri B.D. Das are present including the learned Advocate General for the State of Mizoram and Mr D. Nur, learned Central Government Standing Counsel.

It is indicated that presently three vacancies in the IAS cadre of the State of Mizoram exist

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Annexure-12 contd.

which are to be filled up from amongst the Select List of 1997, selection of which was held in respect of one, the then, existing vacancy and two anticipated vacancies. Learned Advocate General for the State of Mizoram states that three existing vacancies are to be filled up by three selectees of the select list of 1997.

That being the position there is an agreement amongst the parties and the learned counsel states that it would not be necessary to hear the matter on merit since all the three selectees of 1997 selection are to be accommodated against the existing vacancies. We therefore provide that the select list of 1997 selection shall be acted upon in accordance with the Rules.

The impugned order of the Central Administrative Tribunal stands modified as indicated above and the writ petition stands ~~disposed of~~ finally disposed of. Interim order, if any, stands discharged.

Sd. Brijesh Kumar,
Chief Justice.

Sd. P.G. Agarwal,
Judge.

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ANNEXURE - 13

The Under Secretary to the Government of India
Ministry of Personnel, Public Grievances & pensions
(Department of Personnel & Training)

date - 11.8.99

Subject : Appointment of Shri R. Bhattacharjee, Shri Hmingthanzuala and Shri Thanhawla Members of Mizoram State Civil Service to the Indian Administrative Service-fixation of inter-se-seniority regarding.

Ref : Govt. of India Notification No.14015/04/97-AIS(1) dated 20th July'99.

Through the Chief Secretary to the Govt. of Mizoram, Aizawl.

Dear Sir,

With reference to the subject and the notification mentioned above, I have the honour to state the following few lines as my grievance for your kind consideration and favourable action.

1. That I was inducted into the Assam Civil Service in the year 1968 on the basis of competitive examination conducted by the Assam Public Service Commission. The inter-se-seniority was based on the merit and I was placed above Mr. R. Bhattacharjee who also was recruited in the same year. At that time, the state of Mizoram was one of the Districts in the State of Assam. In the year 1972 Mizoram District attained the status of Union Territory and the services of Assam Civil Service officers were borne into the services of Mizoram Union Territory by order of the Govt. of India, Ministry of Home Affairs No.14038/4/74-MZ(ii) dt. 20.1.75 alongwith other officers in the service of Mizo District in other departments. As per Notifications of

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inter-se-seniority issued in 1977, 1981, 1990, I was all along placed senior to Mr. R. Bhattacharjee and the inter-se-seniority has not been finally refixed thereafter.

2. In 1988 the MCS Rules were framed and came into effect from 15.7.1988. On the date of publication of the said Service Rules in the Mizoram Gazette, and thereupon, the MCS Rules stood repealed. The rules of 1988 were amended from time to time by the Mizoram Civil Service (Amendment) Rules, 1988, the Mizoram Civil Service (Amendment) Rules, 1990 and the Mizoram Civil Service (Amendment) Rules, 1993. As per the MCS Rules, 1988 (Unamended) the MCS was categorised into four grades, namely, Selection Grade, Junior Administrative Grade, Senior Grade and Junior Grade. By amending Rules of 1993 another grade, namely, Supertime Scale was also added as the highest grade. As per the said rule, officers completing not less than 5 years of service in the Selection Grade became eligible for consideration for promotion to the Supertime Scale.


3. The seniority position of the MCS officers appointed as per Notification dated 29.12.1977 was redetermined by a notification dated 21.5.1990. As per the said notification my name was placed above the name of Mr. Bhattacharjee. The Govt. of Mizoram by the notification date the Govt. of Mizoram prescribed the procedure to be observed by State Selection Committee/Departmental promotion committee in the matters of appointment, promotion, etc. to various categories of posts in the Service. Under the procedure the suitability of the officers for promotion was to be assessed

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by the State Selection Committee/Departmental promotion committee on the basis of service records of the officers with particular reference to ACRs.

4. In my case the ACR gradations for the period from 1.4.90 to 31.3.1991 and from 1.4.1991 to 25.11.1991 were down graded. During both the periods, the gradation given by the Reporting Authority was "OUTSTANDING", but it was down-graded to 'very good'. On both the occasions, the down gradation was done without giving any reasons. Even though my inter-se-seniority list was not changed by the Govt. of Mizoram till date. Mr. R. Bhattacharjee promoted to Super-time Scale before I was promoted to the Supertime Scale as the Selection Committee relied on the illegal down-gradation of my ACRs for two years.

5. Aggrieved by the illegal down-gradation and the selection based on the down-graded ACR, I approached the Central Administrative Tribunal, Guwahati Bench for redressal of my grievances in the interest of justice. After hearing the counsels for all the parties, the CAT, Guwahati bench passed an order. As per the said order the down gradation of for the period from 1.4.1990 to 31.3.1991 and from 1.4.1991 and 25.11.1991 were set aside. By virtue of the said order the down-graded ACRs were reverted back to the original grading made by the reporting officer, i.e. 'OUTSTANDING'. In fact, in the said order the CAT, Guwahati had set aside the selection based on my down-graded ACRs. The operative portion of the order is reproduced and it runs as follows :- "In view of the above, we set aside the selection

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on the ground that the applicant's case was not properly considered in view of the down-gradation which we have not accepted. We, therefore, send the same to the respondents to make a fresh assessment of the ACRs of the applicant in the light of our observations made hereinabove and pass necessary orders." Had my ACR grading been corrected by the Govt. of Mizoram as per order of the CAT, I should have definitely been awarded overall grading of outstanding and being senior-most among the candidates, I should have been placed at the top of the select list which is undeniable.

6. Aggrieved by the order of the CAT, Guwahati Bench, Mr. R. Bhattacharjee had filed an appeal before the Guwahati High Court. The Honourable Guwahati High Court had disposed of the case on the basis of the agreement amongst the parties only to the effect appointment of IAS that be given to all the three persons namely Mr.R.Bhattacharjee, Mr.Hmingthanzuala and myself together. However, the Honourable High Court has not set aside the order passed by the CAT, Guwahati, which has set aside down-gradation of my ACRs for two years. It may be noticed that the Honourable Guwahati High Court has only modified the CAT order to the extent only that the three selectees be given appointment without endorsing the order of merit whatsoever. Hence, according to the grading in the ACRs and as per the inter-seniority list made by the Govt. of Mizoram on the basis of the CAT order, I should rightfully be placed at serial No.1 in order of merit in the appointment made by the notification referred above.

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Therefore, I request you to kindly look into the matter in the light of order of the CAT, Guwahati Bench and the order of the honourable High Court of Guwahati and in the light of the arguments put forth above and place my name in the serial No.1 in order of merit above the names of Mr.R. Bhattacharjee and Mr. Hmingthanzuala in the Appointment into the Indian Administrative Service.

And for this act of kindness I shall be ever grateful.

Yours faithfully,

Sd/-

(THANHAWLA)

Director of Food and Civil Supplies
Mizoram, Aizawl.

1. Advance copy forwarded to :

The Under Secretary to the Govt. of India,
Ministry of personnel, Public Grievances &
Pensions (Department of Personnel & Training).

Sd/-

(THANHAWLA)

Director of Food and Civil Supplies
Mizoram, Aizawl.

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ANNEXURE - 14

DIRECTOR OF FOOD AND CIVIL SUPPLIES
MIZORAM :: AIZAWL

No.DFCS/PB/1/99 : Dated Aizawl, the 25th October, 1999

To

The Additional Secretary
to the Govt. of Mizoram,
D.P. & A.R. Department,

Subj. Retrospective promotion to the MCS Supertime Scale
and maintenance of inter-se-seniority in the M.C.S
regarding.

Sir,

Most humbly, I beg to submit herewith my petition
for favour of your kind consideration and favourable action
in the interest of justice.

1. It is undesirable fact that the M.P.s.C., while
clearing my case for promotion to M.C.S. Supertime Scale
from Selection, placed my position below Mr. R.Bhattacharjee
and Mr.P.K. Bhattacharjee, based their decision on my illeg-
ally down graded ACRs which was explicitly not accepted by
the Central Administrative Tribunal in its order (Copy of
which is enclosed).

2. As already mentioned in my petition submitted to
the Home Ministry, Govt. of India, the Hon'ble High Court
has only modified the order passed by the CAT to the extent
only that the three selectees should be appointed to the
I.A.S. against the three vacancies. The order of the CAT
regarding downgradation of my A.C.Rs had neither been
quashed nor superceded nor over-ruled. Since the CAT has
specifically set aside downgradation of my ACRs from out-
standing to very good, it clearly implies that the grading

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of outstanding by the Reporting Officer has been fully restored. Besides, from the writing of the Reporting Officer (copy enclosed) no change in the grading given by Reporting Officer shall be possible. Thus, any conformity with the decision of the CAT and also the written statement of the Reporting Officer my downgraded two ACTs of the period should be restored to "outstanding" on the basis of which decision may be made by the Govt. of Mizoram. Copy of my petition is enclosed herewith for your kind perusal.

3. I have submitted my objections and submission regarding provisional inter-se-seniority placing me below Mr.R. Bhattacharjee. My petitions have not been considered nor have I been given chance to be heard in person thereby violating the judgment of the Supreme Court in the case of Mahider Singh Vrs. Union of India 1982(I) SLR 242 (P&H). Downgrading my position in the inter-se-seniority list was arbitrary and violative of Apex Court decisions as clearly pointed out in my petitions, copies of which is enclosed again for your kind perusal.

I may reiterate in this respect that as I have already mentioned in my petition, promotion from Selection Grade to Supertime Scale MCS can in no way be considered as substantive promotion as no one has been allowed to enjoy the scale of supertime scale. Since seniority should be fixed against substantive posts only as per order of the Supreme Court which was already quoted in my earlier petition. There is no legal possibility to fix my seniority below Mr.R.Bhattacharjee even without restoration of my

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downgraded ACRs. This fact may kindly be noted also.

During my official tour to New Delhi in September this year, I was informed that inter-se-seniority in the IAS will be determined on the State Govt. decision. Accordingly, in conformity with the decision of CAT, Guwahati as well as the facts pointed out in my petitions, I beg to plea in the interest of justice that -

1) In view of the decision of the CAT, Guwahati restoring my downgraded ACR; from 'very good' to 'outstanding' for two years which has not been over-ruled by the Hon'ble High Court, I should be given retrospective promotion to the supertime Scale of MCS on the same date as was given Mr. P.K. Bhattacharjee and Mr.R.Bhattacharjee, any financial benefits. Creation of post is not necessary as I was on deputation to MCAB Ltd. As such, proforma promotion only would serve the purpose. Further, reference to the MPSC is not necessary as my case was cleared alongwith my other colleagues mentioned above. This act shall not only fulfill the order of the CAT but also set right the injustice done to me in illegally down grading my A.C.Rs.

2. My seniority in the MCS which has not been changed by any final order or notification should remain at the top thereby rectifying the first provisional list issued by the Govt. of Mizoram, D.P. & A.R.

I pray that my humble submissions may be considered immediately so that I may not have to seek justice in the Court of Law.

I am enclosing herewith copies of my petitions

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submitted and other relevant documents for favour of your
kind perusal.

Yours faithfully,


Sd/-

(THANHAWLA)

Director of Food & Civil Supplies,

Mizoram : Aizawl.

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ANNEXURE - 15

No.14019/3/99-UTS
Government of India
Ministry of Home Affairs

New Delhi, the 29.9.99

To

The Chief Secretary,
Government of Mizoram,
Aizawl.

Subject : Representation submitted by Shri Thanhawla regarding his inter-se-seniority vis-a-vis S/Shri R. Bhattacharjee and Hmingthanzuala.


Sir,

I am directed to refer to Government of Mizoram's letter No.A.32013/3/94-P&AR(CSW) dated 16th August, 1999 on the subject mentioned above and to say that inter-se-seniority of the three officers including Shri Thanhawla, in the IAS shall be dependent on their inter-se-seniority in the Mizoram Civil Service. The Government of Mizoram have therefore, in the first instance, to decide the inter-se-seniority of these three officers in the Mizoram Civil Service in the light of the orders passed by the CAT and as modified by the Guwahati High Court. The matter may thereafter be referred to the Government of India after deciding the applicant's inter-se-seniority in the Mizoram Civil Service.

Yours faithfully,

Sd/- K.K. Kalra
Under Secretary to the Govt. of India

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ANNEXURE - 16

No.14019/3/97-UTS
Government of India
Ministry of Home Affairs

New Delhi-1, the 26.7.2000

To

The Chief Secretary
Government of Mizoram
Aizawl.

Subject : Fixation of year of allotment in IAS in respect
of SCS officers -AGMU Cadre - Mizoram Segment.

Sir,


I am directed to say that the Department of Personnel and Training have fixed the year of allotment of S/Shri R. Bhattacharjee, Hmingthanzuala and Thanhawla vide their OM No.14014/11/2000-AIS(1) dated the 17th July, 2000 (copy enclosed). It is requested that all the three officers may be informed accordingly.

Yours faithfully,

Sd/-

(K.K. Kalra)
Under Secretary to the Govt. of India

Encl. As above.

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ANNEXURE - 17

Government of India
Ministry of Personnel, PG and Pensions
Department of Personnel & Training
North Block, New Delhi

F.No.14014/11/2000-AIS(I)

Dated, the 17th July, 2000

OFFICE MEMORANDUM

Subject : Fixation of year of allotment in IAS in respect of
SCS officers - AGMU cadre - Mizoram Segment.

I am directed to say that 3 State Civil Service officer of Mizoram State Civil Service have been appointed to Indian Administrative Service Mizoram segment of the Joint AGMU Cadre on the basis of the 1997-98 Select List approved by the Union Public Service Commission. Their names, their dates of appointment to Indian Administrative service, their completed years of State Civil Service reckonable for purposes of fixation of Year of Allotment are given below :-

S.No. in the order of Select List	Names S/Shri	Date of appointment to IAS	Completed years of SCS services in the post of Dy.Collect. or equivalent
1.	R. Bhattacharjee	20.7.99	22
2.	Hmingthanzuala	20.7.99	14
3.	Thanhawla	20.7.99	19

2. The question of fixation of their year of allotment has been considered in accordance with the Rule

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3(3)(ii) of the Indian Administrative Service (Regulation of Seniority) Rules, 1987, as amended on 31.12.1997. The last State Civil Service Officer appointed from the Mizoram segment to the Indian Administrative Service, AGMU Cadre on the basis of previous Select List, Shri P.K. Bhattacharjee has been assigned 1991 as his year of allotment. Therefore, none of the 3 officers mentioned above can be given a year of allotment earlier than 1991.

3. Shri R. Bhattacharjee is assigned 1991 as his year of allotment in terms of Rule 3(3)(ii) of the Indian Administrative Service (Regulation of Seniority) Rules, 1987 as amended on 31.12.1997. S/Shri Hmingthanzuala and Thanhawla (S.No. 2 and 3) are assigned 1994 as their year of allotment in terms of the above rules.

4. For purposes of inter-se-seniority in the cadre, Shri R. Bhattacharjee shall be placed below Shri P.K. Bhattacharjee, IAS(SCS 1991) and above Shri Vijay Kumar, IS (RR: 1992) S/Shri Hmingthanzuala and Thanhawla shall be placed in the same order below Ms. Rinku Dhugga, IAS (RR:1994) and above Ms. Varsha Joshi, IAS (RR:1995).

Sd/-

(Smt. Shankari Murali)

Under Secretary to the Govt. of India

TO

MINISTRY OF HOME AFFAIRS UTS (SHRI K.K.KALRA, U.S.
NORTH BLOCK, NEW DELHI.

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ANNEXURE - 18

DIRECTORATE OF FOOD & CIVIL SUPPLIES
MIZORAM :: AIZAWL

No.DFCS/1/99

Dated Aizawl, the 3rd Aug/2000

To

The Secretary to the Govt. of Mizoram,
D.P. & A.R., Aizawl.

Subj. Grievances against fixation of year of allotment
in the I.A.S.

Sir,

I beg to state that I have come to learn with deep regret from a reliable source that I have been given 1994 as year of allotment for I.A.S. whereas my batch mate and junior is given 1991. The year of allotment given to me totally ignores the commitment of Govt. of India, Ministry of Home Affairs vide letter No.14019/3/99-UTS dated 29.9.99 in which it is specifically mentioned that "inter-seniority" of the three officers including Shri Thanhawla, in the I.A.S. shall be dependent on their inter-se-seniority in the Mizoram Civil Service." Since my junior in the MCs viz-Mr. Bhattacharjee is given 1991 year of allotment, it is injustice to give my year of allotment 3 years below.

In this respect I beg to state that the Home Ministry's letter referred to above was in response to my representation submitted to the Govt. of India, Ministry of Home Affairs (through proper channel) duly endorsed and forwarded by the Govt. of Mizoram.

The most logical action in the interest of justice

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
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should have been informing the Ministry of Home Affairs that I was the senior most in the MCS as per the inter-se-seniority list published by the Govt. of Mizoram, the last being 1990 (copy enclosed). There has not been any final fixation of inter-se-seniority thereafter.

It is most probable that because of the concerned Department refusal to communicate to the Govt. of India about the fact that even by the last notification regarding final fixation of inter-se-seniority, I was placed senior to Mr. R. Bhattacharjee in the MCS and that there has not been any final inter-se-seniority fixation in the MCS after 1990. Had this fact been communicated immediately when the letter of the Govt. of India, Ministry of Home Affairs Dt. 29.9.99 was received, it is quite definite that I should be given my rightful place in the IAS year of allotment. It has been learnt from reliable sources of Delhi that the Govt. of India did not take decision about the year of allotment for a long time awaiting for the communication from the Govt. of Mizoram. But even after lapse of ten months, no facts have been communicated to the Govt. of India which is extremely detrimental to my carrier and I feel that high injustice has been done to me. It is further obvious that in absence of any response from the Govt. of Mizoram the Govt. of India has fixed the inter-se-seniority in the normal way ignoring my petition and decision of CAT and the High Court which favoured my petition.

In this connection I may state that it can be presumed that by considering my case it was probably pre-

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sumed by some officials of our Govt. that it would have adverse effect on my colleagues. The present fixation of order of allotment also clearly indicate that it would not have any effect on the position of my colleagues and their position would remain the same even if my case was considered. I may mention that I have been fighting for justice all along without any desire or intention to cause any harm to any of my colleagues right from the beginning. This was not probably understood.

I sincerely pray that you may take immediate action to communicate that fact about the interse-seniority in the MCS about me and my colleagues to the Govt. of India, Ministry of Home Affairs with a request to rectify the defect in the fixation of year of allotment in my case. I further pray that I may be given 30 days for rectification and thereafter I may be allowed to go to the Court for justice so that I may no longer be denied of my rightful claim because if no rectification is done my carrier shall be ruined permanently.

All communicated documents regarding my earlier petitions to the Govt. of India, response of the Govt. of India along with copy of CAT and High Court judgment are also enclosed for ready reference.


Yours faithfully,

Sd/-

(THANHAWLA)

Director of Food & Civil Supplies,
Mizoram, Aizawl.

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ANNEXURE - 19

To

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

Through : Proper Channel.

DATE: 12-9-2000

Subj : Grievances against the Govt. of Mizoram, DP & AR
for submission of wrong information in respect of
Mr. Thanhawla's past service.

Sir,

With reference to office Memorandum issued by the Govt. of India, Ministry of Personnel, PG and Pension, Department of Personnel and Training, North Block, New Delhi vide No.F.No.14014/11/2000-AIS(I) dt. 17.7.2000 I beg to state that it is obvious that my case regarding my past services had been misrepresented by the Govt. of Mizoram, D.P. & A.R. in the past because the completed year of SCS service in the post of Dy. Collector or equivalent mentioned in the Office Memorandum of Govt. of India referred to above is absolutely incorrect. The correct information, if not available in the record of the Govt. of Mizoram can easily be furnished.

I joined the ACS in the capacity of SDC on 4th July, 1968, I was promoted to EAC which is ACS-I post-equivalent to Dy. Collector status in the year 1975 and joined in the office of Deputy Commissioner, Aizawl as EAC, Thereafter, I was promoted to the ranks of Selection Grade and Super Time Scale MCS. I had completed more than 24 years of SCS service in the post of Dy. Collector or equivalent and above by the time I was promoted to IAS. This fact can be

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clearly ascertained from by service records which is available with the Govt. of Mizoram.

In this connection, I would like to mention that when the informations were submitted to the Govt. of India for consideration of the Selection Committee for promotion to IAS sometime in 1997, the wrong list of seniority in MCS was furnished deliberately in which (even though I was senior most) I was shown as No.2 in the seniority list. After Selection Committee made decision about the select list and when it was already too late, corrigendum was again submitted at the instruction of the then Chief Secretary.

This two instances of submission of wrong information to the concerned authorities of the Govt. of India have seriously damaged my career. Since I had no knowledge at the time of submission, there was no opportunity for me to raise objection to rectify the defect.

I, therefore, beg to request you to make necessary rectification of the defects and make good the damage done to my service career by refixing the year of allotment in the IAS similar to my batch mate like Mr.R. Bhattacharjee and Mr.P.K. Bhattacharjee i.e. 1991 and also maintaining my interse-seniority above Mr.R.Bhattacharjee.

I humbly pray that my submission may kindly be given due consideration.

Yours faithfully,

Sd/- (THANHAWLA)

Director of Food & Civil Supplies,

Mizoram, Aizawl.

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ANNEXURE - 20

No.A32013/3/94-P&AR(CSW)
GOVERNMENT OF MIZORAM
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
(CIVIL SERVICE WING)

Dated Aizawl, the 18th August, 2000

To

The Secretary to the Govt. of India,
Ministry of Home Affairs.

Sub :- Rectification of the year of allotment given to
Shri Thanhawla, IAS (Promotee)

Ref : The Govt. of India MHA letter No.14019/3/99-UTS
dated 29.9.99.

Sir,

It is deeply regretted that due to inadvertent delay on the part of the Government of Mizoram to communicate the facts about the inter-se-seniority of Shri Thanhawla and two other officers (recently promoted to IAS) in the Mizoram Civil Service prior to their promotion to I.A.S. vide your Notification No.14019/3/99-UTS dated 26.7.2000 without consideration of his seniority approved by the Government of Mizoram as well as by the Union Public Service Commission and also the provide for fixation of inter-se-seniority as envisaged in your letter referred to above.

2. Mention may be made that the Ministry vide their letter No.14019/3/99-UTS dated 29.9.99 also made it very clear that inter-se-seniority of the officers in the IAS should depend on the approved inter-se-seniority of the officers in the Mizoram Civil Service.

3. It shall be presumed that year of allotment of the

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promotees was decided prior to receipt of the Government of Mizoram, Department of Personnel & Administrative Reforms letter No.A.32013/3/94/P&AR dated 28.7.2000.

4. In this regard, Shri Thanhawla has submitted representation requesting modification of the order claiming that he should in the inter-se-seniority be placed above Shri R.Bhattacharjee and similar to the year of allotment of IAS. His claim is examined and considered to be justified.

5. In continuation of the communication already made in the matter, it may be reiterated that the inter-se-seniority among three officers it has always been in the following order and after careful examination of the inter-se-seniority in the light of the orders passed by the CAT and as modified by the Gauhati High Court, the position cannot be changed and it is accordingly decided that the inter-se-seniority of the following officers in the MCS prior to their induction into IAS should be as follows :-

- (a) Thanhawla
- (b) R. Bhattacharjee
- (c) Hmingthanzuala

6. The order of merit in the IAS select list which was challenged and duly disqualified by the Court of CAT, can no longer stand in view of the order of CAT and the judgment of Guwahati High Court. As such, the decision of the Government of India, Ministry of Home Affairs as mentioned in para 2 above regarding fixation of inter-se-seniority in the IAS be based on the inter-se-seniority in the Mizoram Civil Service (MCS) prior to their promotion to IAS,

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is considered rightful and just decision to solve the issue.

7. It is, therefore, requested that Shri Thanhawla may be given 1991 year of allotment in the IAS and be placed above Shri Bhattacharjee in seniority in the interest of justice.

8. It is further requested that immediate action may kindly be taken in the matter.

Yours faithfully,

(L.R. Laskar)
Secretary to the Govt. of Mizoram

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ANNEXURE - 21

No.A.32013/3/94-P&AR(CSW)
GOVERNMENT OF MIZORAM
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
(CIVIL SERVICE WING)

Dated Aizawl, the 18th Sep 2000

To
The Joint Secretary to the government of India,
Ministry of Home Affairs,
New Delhi.

Sub : IAS (AGMUT) Request for rectification of date of
holding the post of Dy. Collector or equivalent
in respect of Shri Thanhawla.

Ref : Ministry O.M. issued No.14014/11/2000 AIS(I)
Dt. 17.7.2000.

Sir,

I am directed to enclose herewith a representation
by Shri Shri Thanhawla which is self explanatory for favour
of necessary action at your end.

2. It is clarified that while submitting the proposal
to the U.P.S.C. vide our letter No.A.32013/3/94-CSW dated
16.11.96 with a copy to the Jt.Secretary MHA, the year of
holding the post of Deputy Collector or equivalent post in
respect of Shri Thanhawla against column No.7 was wrongly
shown as 1978 whereas the actual year of continuous holding
of the post was 1975. This was the same period when Shri R.
Bhattacharjee and others were promoted and Shri Thanhawla
was always senior to Pu R. Bhattacharjee.

3. It is, therefore, requested that the Ministry may
kindly rectify the completed year of service in the status
of Deputy Collector in respect of Shri Thanhawla as it
should be 22 years and not 19 years as mentioned in Minis-

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ADVOCATE

try's O.M. under reference.

4. With regard to Para 3 of Shri Thanhawla's representation, mistake made in the inter-se-seniority was corrected later as would be evident from ministry's letter No.14016/28/96 dt. 14/7/97.

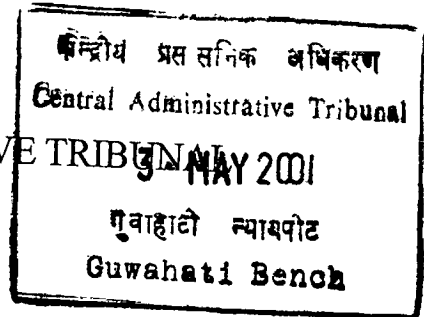
Yours faithfully,

Sd/- L.R. Laskar
Secretary to the Govt. of Mizoram

ATTESTED TO BE
TRUE COPY

4.2.10.2.1.1.1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Branch



Filed by:-
Manabendra Nath
Bhattacharya

In the matter of :-

Original Application No. ³⁸⁹ of 2000
Shri thanhawla vs. U.O. J
opposite parties

and

In the matter of :-

An additional affidavit on behalf of the
applicant
(Additional Affidavit)

I Shri Thanhawla, son of Late Lalhlira, resident of Kulikawn,
P.O. Kulikawn, Aizawl. In the District of Aizawl within the state of Mizoram,
aged about 55 years do hereby solemnly affirm and say as below :-

Thanhawla

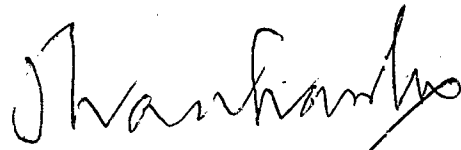
1. That I am the applicant in aforesaid original application.
2. That the aforesaid applicant has been filed, having been aggrieved by the inaction of the Government of Mizoram to correct my A.C.R. grading for the relevant years on the basis of which my name in the I.A.S. select list was shown at serial No.3 and I was given I.A.S. year of allotment only 1994, whereas, the year of allotment of Pu R. Bhattacharjee, I.A.S. has been given 1991 without correcting my ACR as per CAT's judgement and order dated 7.1.1998.
3. That after the interim order of the Hon'ble CAT in the aforesaid original application, the Govt. of Mizoram by an order dated 10.1.2001 reviewed my ACR for two years i.e. with effect from 1.4.1990 to 31.3.1991 and from 1.4.91 to 25.11.1991 and decided to restore my original grading of "outstanding" given by the Reporting / Review officer. ✓

A copy of the order dated 10.1.2001 is annexed and marked at Annexure 1.

3. That in view of above, the Central Government may now be directed by this Hon'ble Tribunal to show my year of allotment as 1991, in as much as, taking into account the restored "Outstanding" grading in my ACR, I am above Shri R. Bhattacharjee, whose year of allotment is 1991.

VERIFICATION

I, Pu Thanhawla, the applicant above named solemnly affirm and verify that the statements made in the paragraphs 1 to 4 are true to my knowledge


(THANHAWLA)

3.
Amun. 1.
No.C.18011/41/2000-P&AR(CSW)

GOVERNMENT OF MIZORAM

DEPARTMENT OF PERSONNEL & ADMINISTRATION REFORMS
CIVIL SERVICE WING

O O D E R

Aizwal, the 10th Jan, 2001.

Whereas in the select list for IAS for the year 1997 Pu Thanhawla was shown below Pu R. Bhattacharjee and Pu Hmingthanzuala by the Selection Committee on the basis of the performance report of these Officers. Pu Thanhawla challenged the order of merit in the select list stating that he was placed at Sl. No. 3 as his ACRs were downgraded by the Reviewing and Accepting authorities arbitrarily and filed a case before the Central Administration Tribunal.

Whereas the Central Administrative Tribunal on accepting his petition set aside the select list of IAS observing that the down-gradation of the ACR of Pu Thanhawla was arbitrary and illegal and therefore directed the Government for review of the ACR vide order dated 07-01-1998.

When central Administrative Tribunal decision was subsequent challenged and was under consideration by the Hon'ble High Court all the candidates arrived at a compromise as there were 3 vacancies in the IAS for their appointment against these vacancies. Hon'ble High Court accepted the compromise petition and modified the order of the Central Administrative Tribunal to the extent that all these 3 selectees should be appointed against the existing 3 vacancies without examining the merit of the case with regard to the order of merit in the select

Contd....(2).

Accepted by
Bui C.B.
C.A. Adhikari

-(2)-

list and downgradation of the ACR of Pu Thanhawla. Thus , the Central Administrative Tribunal order for a review of the ACR to change or alter the order of merit in the select list was not superseded by the Hon'ble High Court.

Now, in view of the direction of the Central Administrative Tribunal the Government of Mizoram reviewed the ACR of Pu Thanhawla for two years i.e., from 01-04-90 to 31-03-1991 and from 01-04-1991 to 25-11-1991, taking into account all relevant points and decided to restore the original grading of "Outstanding" given by the Reporting/ Reviewing Officer for the periods mentioned above.

By order and in the name of the Governor.

Sd/-

(LALMALSAWMA)

Secretary to the Govt. of Mizoram