

2/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH GUWAHATI.5

ORIGINAL APPLICATION NO. 395/00

Sri S. K. Majumder Applicant.
versus

Union of India & Ors Respondents.

For the Applicant(s) Mr. K.H. Choudhury,
" S. Mukherjee.

For the Respondents. C.G.S.C.

NOTES OF THE REGISTRAR

DATE

ORDER

This application is in form
but not in time condonation
Petition is filed vide
M.P.N. C.F.
for Rs 5/- vide
IPO/BO No 503900
Dated 16.11.2000

Dy. Registrar

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

Heard Mr K.H.Choudhury, learned
counsel for the applicant add Mr
B.C.Pathak, learned Addl.C.G.S.C
for the respondents.

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

List on 21.12.2000 for written
statement and further orders.

During the pendency of the de-
partmental proceeding and this
application the respondents shall
consider the case of the applicant
for promotion to the rank of Assis-
tant Commissioner of Income Tax
in the ensuing DPC and keep the
same DPC proceeding under sealed
cover.

Vice-Chairman

pg

21.12.00 Four weeks time is granted to
file written statement on the prayer
of Mr B.C.Pathak, learned Addl.C.G.S.
List on 23.1.2001 for order.

Member

Vice-Chairman

Requisites along with
envelopes are filed.
Also deposited a sum of
Rs. 5/- for in excess Respond.

Notice prepared and sent to D/Sec.
for issuing the respondent No. 1 to 6
by Regd AID No 4 by hand vide DINo
2972/78 dtd 4/12/2000

Office copy is not submitted from
the D/Sec. to 20/12/00

① Notice served by hand
on R. No. 4, other
respondent are still

(2)

O.A. 395/2000

No. written statement
has been filed.

22
22.1.2001

23.1.01

Four weeks time granted to enable the respondents to file written statement on the prayer of Mr B.C.Pathak learned Addl.C.G.S.C.

List on 22.2.01 for order.

Usha
Member

h
Vice-Chairman

No. written statement
has been filed.

20
20.2.01

pg

22.2.01

List on 20.3.01 to enable the respondents to file written statement.

Usha
Member

h
Vice-Chairman

No. written statement
has been filed.

19
19.3.01

lm

20.3.01

List on 27.4.01 to enable the respondents to file written statement.

Usha
Member

h
Vice-Chairman

No. written statement
has been filed.

26
26.4.01

27.4.2001

Four weeks time allowed to the respondents to file written statement. List for orders on 30.5.01.

Usha
Member

h
Vice-Chairman

nk m

30.5.01

List the matter for hearing on 25-7-2001. The respondents may file written statement, if any, within three weeks from today and the applicant may file rejoinder, if any, within two weeks thereafter.

No. written statement
has been filed.

24
24.7.01

h
Vice-Chairman

bb

25.7.01

On behalf of Mr.B.C.Pathak, learned Addl.C.G.S.C. for the respondents, prayer for adjournment has been made by Mr.A.De Roy, learned Sr.C.G.S.C.

Prayer is allowed. List on 24.8.

2001 for hearing.

Usha



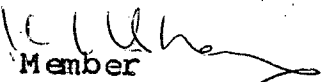





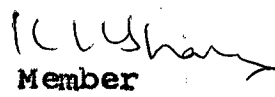

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(3)

O A 395/200

4

| Notes of the Registry | Date | Order of the Tribunal |
|---|---------|--|
| | 24/8 | There is no division bench today. The case is adjourned to 10/9/2001. P/s A.K. Jyoti 24/8 |
| 31.8.2001 W/S Submitted on behalf of Respondent No. 1 to 6. P/s - | 10.9.01 | It has been stated by the learned counsel for the applicant that the written statement that has been filed by the res- pondents is served on the learned counsel for the applicant today and for that purpose he requires to go through the same. The applicant is allowed two weeks time to file rejoinder and list the case after one week after filing of rejoinder. The case is accordingly may be listed on 1.10.2001 for hearing. K. L. Sharma Member Vice-Chairman |
| ① No rejoinder has been filed. P/s 28.9.01 | 1/10 | There is no division bench today. The case is adjourned to 16.10.2001. P/s A.K. Jyoti 1/10 |
| No. Rejoinder has been filed. P/s 6.12.01 | 16.10 | There is no division bench today. The case is adjourned to 7/11/2001. P/s A.K. Jyoti 16/10 |
| | 7.12.01 | Sri S. Mukhtar, learned counsel appearing on behalf of Sri K.H. Choudhury submits that his senior is indisposed who represent this case and seeks for adjournment. Sri B.C. Pathak, learned Addl. C.G.S.C. also heard. The case is adjourned List on 8.1.02 for hearing. B. Member (J) K. L. Sharma Member (A) |
| | | mb |

| Notes of the Registry | Date | Order of the Tribunal |
|-----------------------|---------|---|
| | 8.1.02 | Prayer has been made by Mr.S.Mukhtar learned counsel for the applicant for adjournment of the case. Mr.B.C.Pathak, learned Addl. C.G.S.C. has no objection. Accordingly the case is adjourned. List again on 18.2.2002 for hearing. |
| | mb | <p>  Member </p> <p>  Vice-Chairman </p> |
| W/S has been filed | 18.2.02 | Let this case be listed alongwith O.A.No.383 of 2001 on 26.3.02 for hearing. |
| | lm | <p>  Member </p> <p>  Vice-Chairman </p> |
| | 26.3.02 | Adjourned on the prayer of learned counsel for the applicant. List on 29.4.2002 for hearing alongwith O.A. No. 383 of 2001. |
| | mb | <p>  Member </p> <p>  Vice-Chairman </p> |
| | 29.4.02 | Adjourned on the prayer prayer of learned counsel for the parties. List on 2.5.2002 for hearing. |
| | mb | <p>  Member </p> <p>  Vice-Chairman </p> |
| | 16.5.02 | Adjourned on the prayer of the learned Counsel for the applicant to 16/5/2002. |
| | lm | <p>  Member </p> <p>  Vice-Chairman </p> |

List on 20.6.02 for hearing.

Notes of the Registry

Date

Order of the Tribunal

Order dtd. 20/6/02
Communicated to the
Parties Counsel and the
Applicant

24/6.

20.6.02

Heard Mr.K.H.Choudhury, learned
Sr.counsel appearing on behalf of the
applicant and Mr.B.C.Pathak, learned
Addl.C.G.S.C. for the respondents.
Mr.Choudhury stated that in view of
the Judgment and order passed in O.A
No.383 of 2000 dated 31.5.2002 the
applicant is not pressing the applica-
tion, since the relief ~~is~~ sought for
in this application has already ^{been} obtained.
The application is dismissed as not
pressed.

1 C. U. Sharma
Member


Vice-Chairman

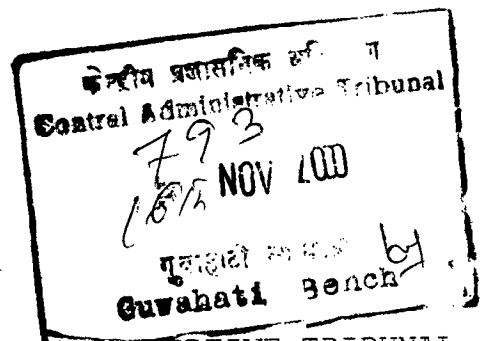
lm

28/11

3

APPENDIX

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL
ACT, 1985



Title of the : Original Application No. 395/2000

I N D E X

| <u>Sl.No.</u> | <u>Description of documents relied upon</u> | <u>Page No.</u> |
|---------------|---|-----------------|
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| 2. | Verification | 33 |
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| 4. | Annexure -A Order dated 10-3-99 | 35 - 38 |
| 5. | Annexure- B Order dated 31-3-99 | 39 - 42 |
| 6. | Annexure- C Office Memorandum dt.14-9-92 | 43 - 44 |

Sahadeb Kumar Majumdar

Signature of the Applicant

For Use in the Tribunal's Office

Date of Filing

Or

Date of receipt by post

Registration No.

Signature for Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
AT GUWAHATI

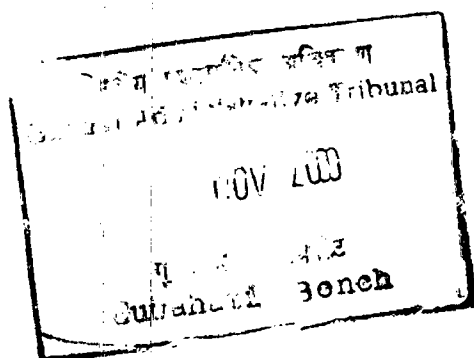
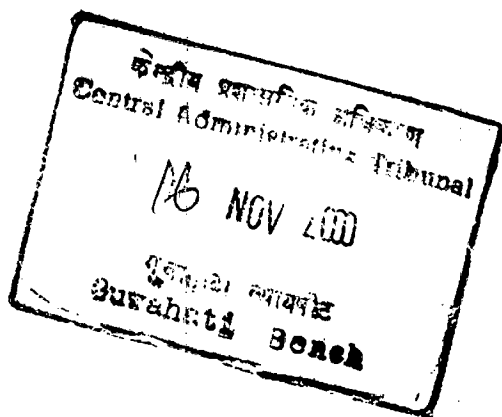
ORIGINAL APPLICATION NO. 395/2000

Sri Sahadeb Kumar Majumder,
Son of Late Naba Kumar Majumder,
Resident of Jalan Nagar(South),
Dibrugarh, P.O. & P.S.Dibrugarh
District- Dibrugarh.

-----APPLICANT

-Versus-

1. The Union of India, through the
Secretary to the Govt. of India,
Ministry of Finance , New Delhi.
2. Central Board of Direct Taxes,
through its Chairman, North Block,
New Delhi-110001.
3. The Director of Income Tax(Vigilance)
Central Board of Direct Taxes, 1st
Floor, Dayal Singh Public Library
Building, 1 Deen Dayal Upadhyay
Marg, New Delhi-110002.
4. The Chief Commissioner of Income
Tax, Christian Bansti, Guwahati.
5. The Commissioner, Income Tax,
Shillong - 793001.
6. Union Public Service Commission
through its Secretary, Dholpur



Filed by the applicant
Sahadeb Kumar Majumder
through Shri Nuktan
16.11.2000

House, Shahjahan Road, New Delhi-
110011.

----- RESPONDENTS.

DETAILS OF APPLICATION

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

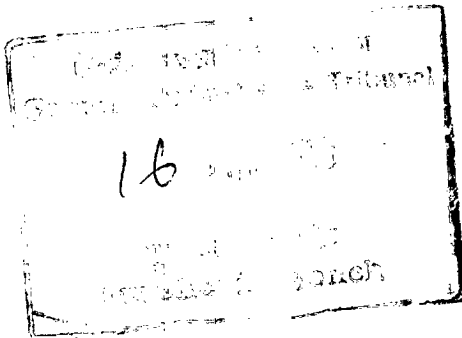
2. Non-consideration of the case of the applicant for promotion to the cadre/ rank of Assistant Commissioner of Income Tax by the earlier departmental promotion committee constituted by the Respondents for consideration of the cases of Income Tax Officers for promotion to the cadre /rank of Assistant Commissioner of Income Tax.

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION :

Sahadul Kumar Majumdar

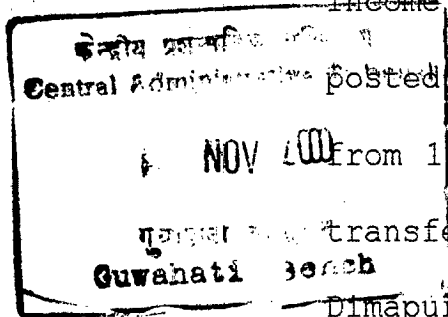


The applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

4(i) That the applicant is a citizen of India and a resident of the district of Dibrugarh, Assam.

4(ii) That the applicant joined the Income Tax Department on 9-9-1960 as a Steno-Typist and considering his dedication, sincerity and honesty in the discharge of his duties, the applicant was promoted to the cadre of Income Tax Officer on 1-3-1985. The applicant was posted as Tax Recovery Officer, Tezpur where he worked from 12-3-85 to 30-6-88. Thereafter, the applicant was transferred and posted as Income Tax Officer, A- Ward, Guwahati bench Dimapur, Nagaland. At present the applicant is working as Income Tax Officer, Ward -1, Dibrugarh , Assam.

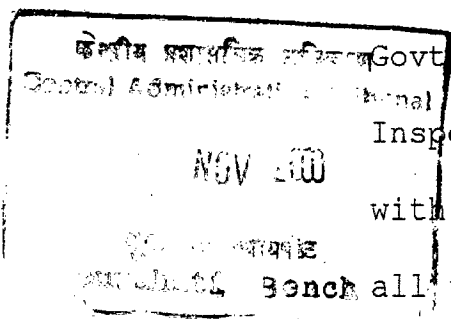


4(iii) That while the applicant was working as Income Tax Officer Ward, Dimapur he suo moto initiated an enquiry for verification of genuineness of some Tax Deduction at Source (TDS) Certificates submitted for refund by some local tribal people who are exempted under Section 10(26) of the Income Tax Act, 1961. Accordingly, on 31-8-89 the applicant wrote a letter to the Income Tax Officer, Ward -II , Shillong mentioning

Sahinul Karim Marjindar

inter alia that Sri A.K. Deb, Inspector of Income Tax of the Office of the applicant was deputed to him for verification of few cases of refund claim of his circle on TDS certificates issued by 4(four) disbursing and deducting authorities of Shillong. It was also mentioned that all the refund claims were made by the local tribal people of his circle who were exempted from Income Tax U/S 10(26) of the Income Tax Act, 1961. Further, it was mentioned that the TDS Certificates were issued by those authorities without office seal and issue number and hence records of those authorities were required to be verified for safe guard of the

Sardar Ruman Majumdar



Govt. revenue. Therefore, requested to depute one Inspector from his office at Shillong with A.K. Deb with necessary authority to verify the genuineness of all the TDS certificates. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said letter dated 31-8-89 at the time of hearing of the case.

4(iv) That the Income Tax Officer, Ward-2, Shillong vide his letter No. Misc. Sal/85-86/537 dated 7-9-89 informed the applicant that the two Inspectors enquired the matter of verification of genuineness of TDS Certificates and as per enquiry report (enclosed with the letter dated 7-9-89) the TDS Certificates furnished in the return of income filed by the assesses as

mentioned by the applicant were false and therefore the question of payment of such TDS to the Govt. Account did not arise. Accordingly, no payment was made by the applicant on those false TDS Certificates. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said letter dated 7-9-89 at the time of hearing of the case.

- 4(v) That the applicant on 12-9-89 wrote a letter vide No. Con./TDS/89-90/1514 to the Commissioner of Income Tax, North Easter Region, Shillong through the Deputy Commissioner of Income Tax, Range -II, Dibrugarh regarding fraudulent claim of refunds by exempted assesses inter alia stating that the applicant during recent months had been receiving a good number of Returns submitted by exempted assesses from Income Tax U/S 10(26) of the Income Tax Act, 1961 and preferred claim of huge refunds by producing TDS Certificates of various natures of contract work issued in their favour by different Govt. Departments mainly situated at Shillong. It was also stated that to avoid any sort of local grievance, the cases of local people were normally attended first come first served to maintain good relations between local people and with the Income Tax Department and thus in 14 Nos. of cases of TDS Certificates, funds were already issued (list enclosed with the letter dated 12-9-89). He also mentioned that

Sahadeb Kumar Majumdar

he conducted an enquiry by deputing Sri A.K. Deb, Inspector of Income Tax and from the Enquiry Report of Inspectors it appears that the TDS Certificates were fake and false. The applicant held up 11 Nos. of such cases and the concerned assesses (being local persons) were pressing hard even threatening to life for issuing refund vouchers and any untoward incident could not be ruled out. Under the above circumstances, the applicant solicited instructions and guidance how to check the said fraud and fraudulent refunds and to treat the matter as most urgent for the interest of Govt. revenue. The applicant craves leave of this Hon'ble

Tribunal to refer to and rely upon the said letter dated 12-9-89 at the time of hearing of the case.

4(vi) That on 14-9-89 the Deputy Commissioner of Income Tax Range-II, Dibrugarh vide his letter No. Con/89-90/Tax-Evas/1204 forwarded the letter dated 12-9-89 written by the applicant, to the Commissioner of Income Tax, North Eastern Region, Shillong suggesting that the matter of fraudulent claim of refund by person exempted U/S 10(26) of the Income Tax Act, 1961 might be entrusted to the intelligence wing of the Department for proper investigation so as to apprehend the brain behind the racket and to retrieve the revenue to the extent possible. In the said letter dated 14-9-89 the applicant was inter alia directed to stop forthwith

Bahadur Kumar Majumdar

issue of refund where the TDS certificates were found to be bogus. The applicant carried out the directions fully. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said letter dated 14-9-89 at the time of hearing of the case.

4(vii) That the applicant in continuation of his earlier letter dated 12-9-89 wrote a letter to Commissioner of Income Tax, North Eastern Region, Shillong through the Deputy Commissioner of Income Tax, Range -II, Dibrugarh regarding fraudulent claim of refund by exempted persons (assesses) U/S 10(26) of the Income Tax Act, 1961, inter alia stating that thorough searching was necessary regarding 6(six) cases where refund vouchers were issued. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said letter dated 18-9-89 at the time of hearing of the case.

4(viii) That while the applicant was working as Income Tax Officer, Central Investigation Branch-cum-Survey, Dibrugarh, suddenly on 22-7-93 the Commissioner of Income Tax, North Eastern Region, Shillong (now redesignated as Commissioner of Income Tax, Shillong) issued two sets of charge -sheet vide (i) Memorandum No. 1/Misc./Con/CT/88-89/Pt.V/ SKM/560 and (ii) Memorandum No. 1/Misc/Con/CT/88-89/Pt-VII/SKM/562 whereby charges (3 charges in the first charge sheet

Baladeb Kumar Majumdar

and 4 charges in the second charge sheet) of gross irregularity and negligence have been levelled against the applicant for his alleged issue of refund against forged and fake TDS Certificates in the names of non-existent and fictitious persons during 1989. Both the Memorandums were issued on the basis of identical and similar charges. The applicant was directed to submit his written statement of his defence within 10 days of receipt of the said memorandums. The applicant received both the said memorandums dated 22-7-93 only on 3-8-93 and accordingly he submitted his written statement of his defence against both the said Memorandums on 11-8-93 denying all the charges. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said Memorandums dated 22-7-93 and the two written statements dated 11-8-93 at the time of hearing of the case.

4(ix) That thereafter the disciplinary proceeding/ Inquiry against the applicant in respect of charge sheet issued vide Memorandum No. 1 Misc/Con/CT/88-89/Pt.VI/SKM/560 dated 22-7-93 was conducted by the Inquiring Authority i.e. O.P. Mishra, Commissioner for Departmental Inquiries, Central Vigilance Commissioner, New Delhi. Sri N.M. Singh, DSP, CBI, SPE, Aizwal was appointed as the Presenting Officer in the said Inquiry. The inquiring authority submitted his inquiry report on 6-

1-97 wherein as per findings Article-I was partly proved, Article -II was substantially proved, Article - III was not proved. In the enquiry report it was observed that the allegation of applicant's negligence was established but the allegation of his lack of absolute integrity was not established. The said inquiry report was communicated to the applicant by the Disciplinary Authority i.e. the respondent No. 54 vide Memorandum F.No. 1/Misc./Con/CT/88-89/Pt-VII/SKM/ 403 dated 10-7-98 giving opportunity to the applicant to show cause why a penalty should not be imposed on the basis of the Inquiry Report within 15 days of receipt

of the said Memorandum.

Similarly, Disciplinary Proceeding Inquiry in respect of the charge sheet issued vide Memorandum No.1/Misc/Con/CT/88-89/Pt-VII/SKM/562 dated 22-7-93 was conducted by the same Inquiry Authority with the same presenting officer. The Inquiry authority submitted his report on 6-1-97 wherein as per findings Article-1 was proved, Article -II was substantially proved, Article III was not proved and Article -IV was proved. The Inquiry Report was also communicated to the applicant by Respondent No. 5 vide Memorandum F. No. 1/Misc/Con/CT/88-89/Pt-V/SKM/402 dated 10-7-98 giving opportunity to the applicant to show cause why a penalty should not be imposed on the basis of the

কেন্দ্রীয় প্রশাসনিক আদালত
Central Administrative Tribunal

NOV 100

গুৱাহাটী আদালত
Guwahati Bench

Sahadeb Kumar Majumdar

Inquiry report within 15 days of receipt of the said Memorandum.

Thereafter, the applicant on 21-7-98 submitted his common written submission in regard to the aforesaid two memorandums dated 10-7-98 as both the Disciplinary Proceedings were started on the same day and on the same subject matter and issue. The applicant submitted that no penalty should be imposed on him because of (i) Incorrectness of findings of Inquiry Authority, (ii) Non applicability of penal action for quasi-judicial functions vis-à-vis principle established by the Hon'ble Supreme Court, (iii) Non-Committance of misconduct as per principle established by the Hon'ble Apex Court and (iv) Totality of fact /conclusions. The applicant , thereafter, on 31-7-98 submitted another written submissions in regard to show cause notice issued under F. No. 1/Misc/Con/CT/88-89/Pt-VI/SKM/403 dated 10-7-98 relying and reiterating the submissions made in his written submissions dated 21-7-98. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said two show cause notices dated 10-7-98 including the two inquiry reports and the written submissions dated 21-7-98 and 31-7-98 at the time of hearing of the case.

Central Administrative Tribunal
Guwahati Bench

NOV 10 1998

Guwahati Bench

Sahadeb Kumar Majumdar

Sahadeb Kumar Shrivastava

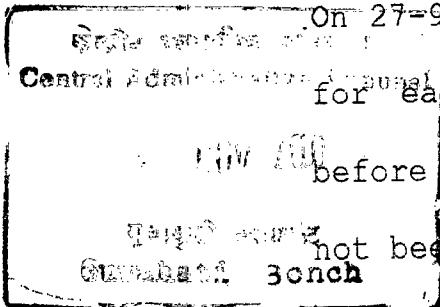
4(X) That the Respondent No. 5 by his order vide F.No. 1/Misc/Con/CT/88-89/Pt-VII/SKM/1638 dated 10-3-99 imposed the penalty of "censure" on the applicant in regard to the 4(four) charges levelled against the applicant vide Memorandum F.No. 1/Misc/Con/CT/88-89/Pt-VII/SKM/562 dated 22-7-93 and the applicant received the said order dated 10-3-99 on 30-3-99. Thereafter the Respondent No. 5 vide his order vide F.No. 1/Misc/Con/CT/88-89/Pt-V/SKM/1771 dated 31-3-99 imposed penalty of "Censure" on the applicant in regard to the 3(three) charges levelled against the applicant vide Memorandum F. No. 1/Misc/Con/CT/88-89/Pt-V/SKM/560 dated 22-7-93 and the applicant received the said order dated 31-3-99 on 26-4-99. The applicant states that in the order of penalty dated 10-3-99, it has been stated as " This Penalty order of 'censure' will remain in force for one year from the date of the order of imposition of penalty" whereas in the other order of penalty dated 31-3-99 it has been mentioned as "This penalty order of 'Censure' will be operative from the 10th day of March, 2000" As such it is apparently clear that the authority has issued two penalty orders against the applicant for said alleged offence and penalty orders will not run concurrently i.e. it will run one after another which is not permissible under the established principles of law.

NOV 100
Guwahati Bench

Copies of the orders dated 10-3-99 and 31-3-99 are annexed hereto and marked as Annexure-A and B respectively.

4(xi) That the applicant on 9-5-99 has submitted an Appeal under Rule -23 of Central Civil Service (C.C.S.) Rules -1965 before the Hon'ble President of India against the said order dated 31-3-99 whereby penalty of 'censure' was imposed on the applicant. Similarly on 10-5-99 he submitted another appeal against the penalty order of 'censure' dated 20-3-99 before this Hon'ble Tribunal.

On 27-9-99 and 5-11-99 the applicant sent two reminders for early disposal of the aforesaid appeals pending before the Hon'ble President of India, but the same has not been yet disposed of.



4(xii) That both the order dated 10-3-99 and 31-3-99 issued by the Respondent No. 5 are identical and same and stereotype orders have been issued mechanically without any application of mind. Instead of rewarding the applicant being the first person to detect the fraud in respect of refund on TDS Certificates, the applicant has been punished for his sincere efforts to save Govt. revenue.

Sahadeo Kumar Majumdar

4(xiii) That the applicant has filed an original application being Original Application No. 1/2000 wherein he has challenged the charge sheet vide Memorandum No. 1/Misc/Con/CT/88-89/Pt-VII/SKM/562 dated 22-7-93, the Inquiry Report issued vide Memorandum No. 1/Misc/Con/CT/88-89/Pt-VII/SKM/402 dated 10-7-98 and order of penalty issued vide No. 1/Misc/Con/CT/88-89/Pt-VII/SKM/1638 dated 10-3-99.

The applicant has filed another original application being Original Applicant No. 2/2000 wherein he has challenged the charge sheet vide Memorandum No. 1/Misc/Con/CT/88-89/Pt-V/SKM/560 dated 22-7-93, the enquiry report issued vide Memorandum No. 1/Misc/Con/CT/88-89/Pt-V/SKM/403 dated 10-7-98 and order of penalty issued vide No. 1/Misc/Con/CT/88-89/Pt-V/SKM/1771 dated 31-3-99. Both the aforesaid Original Applications No. 1/2000 and 2/2000 are pending before this Hon'ble Tribunal.

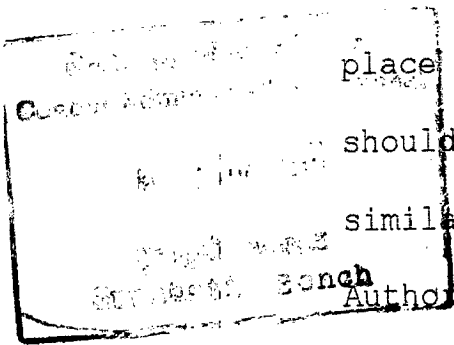
4(xiv) That the Respondent No. 5 again issued a charge sheet vide his Memorandum No. VIG-1/Con/CT/94-95/Pt-II/995 dated 9-9-97 whereby one Charge of gross irregularity and misconduct has been levelled against the applicant on the same matter of issue of refund of income tax claimed by fictitious person on the basis of a false and fake Tax Deduction at Source Certificate and the

Sachin Kumar Mayamdar

Page 13 of 13
Central Board of Secondary Education
New Delhi
Date: 10/11/2011
Page 13 of 13

applicant was directed to submit his written statement of his defence within 10(ten) days from the date of receipt of the same. The applicant received the said Memorandum dated 9-9-97 on 19-9-97. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said memorandum dated 9-9-97 at the time of hearing of the case.

4(xv) That the memorandum dated 9-9-97 was issued on the same, identical and similar matter/charges. If the disciplinary authority wants to draw up disciplinary proceeding against the applicant for the 20(twenty) cases of refund claim on false TDS certificates took place at Dimapur in 1989, the Disciplinary Authority should have issued charge-sheet against all such similar cases together at a time. but the Disciplinary Authority has not done so in as much as two charge-sheets were issued on 22-7-93 and again on 9-9-97 (after 9 years) another charge sheet has been issued on the same matter. As such the Disciplinary Authority /Respondent No. 5 has been issuing one after another charge sheets on the same and identical matter only to harass the applicant in a phased manner affecting the personal liberty of the applicant. The applicant has filed an application against the aforesaid 3rd charge sheet dated 9-9-97 and the consequent inquiry before



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this Hon'ble Tribunal being O.A. No. 187/99 which is now pending.

4(xvi) That the said Original Application No. 187/99 was moved before this Hon'ble Tribunal on 29-6-99 and after hearing the parties the Hon'ble Tribunal was pleased to admit the same by its order dated 29-6-99. Thereafter the authority, as per section 19 of the Administrative Tribunals Act, 1985, stayed the said disciplinary proceeding against the applicant vide letter/order No. F.No. PON-8/J.C.I.T./S.R/D.B.R./371-3 dated 10-8-99 issued by the inquiry officer, Joint Commissioner of Income Tax, Special Range (assessment) Dibrugarh, Assam.

The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the aforesaid bench letter /order dated 10-8-99 at the time of hearing of the case.

4(xvii) That in the relevant year itself i.e. 1-4-89 to 31-3-90, the Reporting Officer had given 3(three) outstanding remarks in 3(three) items including appreciating the detection of TDS fraud done by the applicant and thereafter the Reviewing authority had also accepted the said remarks made by the Reporting Officer. It may be pertinent to mention here that the ACR was provided by the inquiry officer on requisition

by the applicant. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said remarks at the time of hearing of the case.

4(xvii) That the applicant was the first person to detect the fraudulent refund claims made on false and fake TDS certificates and he sou-moto initiated an inquiry for verification of genuineness of the TDS certificates and he informed the said matter immediately to the higher authority for ascertaining the genuineness of the TDS certificates for allowing exemptions under Section 10(26) of the Income Tax Act, 1961, earlier there was no provision or scope for verification of Tribal Certificates for allowing exhibition U/S 10(26) of the said Act, Rules, instructions, circulars issued by the Central Board of Direct Taxes. But instead of giving appreciation and reward the authority has been punishing the applicant in a phased manner by issuing one after another i.e. three(3) sets of charge sheets for the same alleged offence and detected at the same time. As such the entire action of the Respondent authority in issuing the three(3) sets of charge sheets dated 22-7-93 and 9-9-97, 2 Inquiry Reports dated 10-7-98 and the 2 penalty orders dated 10-3-99 and 31-3-99 issued by the Respondent No. 5 are illegal, unjust,

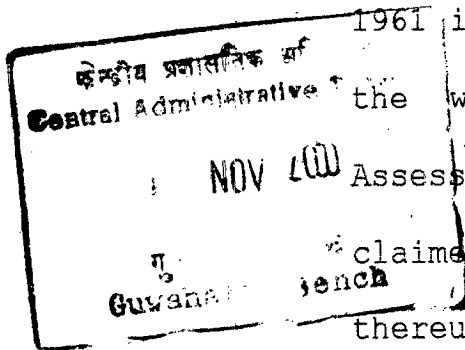
Sahadul Kumar Majumdar

Stamp:
 22-7-93
 9-9-97
 10-7-98
 10-3-99
 31-3-99

unreasonable, arbitrary, violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

4(xviii) That the applicant as Assessing Officer i.e. Income Tax Officer followed the instructions No. 1617 dated 18-5-85 issued by the Central Board of Direct Taxes and subsequently issued by the Respondent No. 5, Circular No. 176 dated 26-8-87 circulated by the Director of Inspection (Audit), New Delhi and subsequently issued by the Office of the Respondent No. 5, the Office Manual and the Section 143(1) of the Income Tax Act herein after referred to as Act,

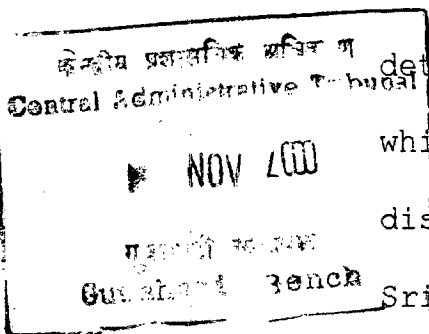
1961 in regard to Summary Assessment Scheme as because the whole subject matter was a case of Summary Assessment regarding the refund of TDS Certificates claimed U/S 10(26) of the Act and rules framed thereunder. There was no malafide, no irregularity and no misconduct on the part of the applicant in granting refunds to the claims made U/S 10(26) of the Act. No charge of corrupt motive or extraneous consideration has been levelled against the applicant in any of the three(3) sets of charge sheets dated 22-7-93 and 9-9-97. As such the entire action of the Respondent authority in issuing the three(3) sets of charge sheets dated 22-7-93 and 9-9-97, 2 Inquiry Reports dated 10-7-98 and the 2 penalty orders dated 10-3-99 and 31-3-99 issued by the Respondent No. 5 are



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illegal, unjust, unreasonable, arbitrary, violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

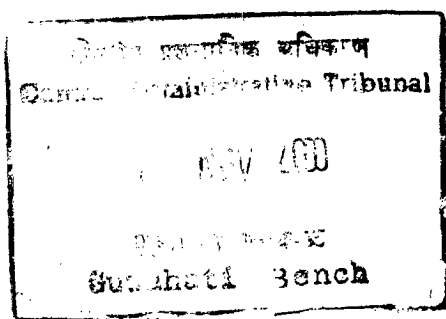
4(xix) That the authorities has issued three (3) sets of different and independent charge sheets for the same charge/offence i.e. for 8(6+1+1) assesses against whom the applicant issued refund while he was working as Income Tax Officer, Ward, Dimapur and out of the three(3) sets of charge sheets two(2) were issued on 1993 and the third was issued on 1997. But in case of many other income Tax Officers the authority has issued only one set of charge sheet against each for their issue of refunds against the alleged forged and fake TDS certificates in the names of all the assesses detected at the same time and issued in the same year, which has not been done in case of the applicant in a discriminatory manner. For instance, in case of one Sri Dipa Jyoti Paul who was working as Income Tax Officer, Ward, Silchar during 1989 the authority has issued only one set of charge sheet vide No. TDS/4/Con/CT/90-91/Pt-III/DJP/557 dated 22-7-93 for his alleged issue of refund against forged and fake TDS certificates in the name of eight(8) alleged assesses during 1989 and the same has been done in which is violative of Articles 14 and 21 of the Constitution of India. case of many other ITOs. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the



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said charge sheet dated 22-7-93 in respect of Sri Dipa Jyoti Paul at the time of hearing of the case

4(xx) That the Ministry of Personnel, Public Grievances, Govt. of India, Department of Personnel and Training issued an Office Memorandum vide No. 22011/4/91-Estt(A) dated 14-9-92 in regard to 'promotion of Government servants against whom disciplinary /Court proceedings are pending or whose conduct is under investigation process and guidelines to be followed' wherein inter alia it has been stated that the D.P.C. shall assess the suitability of the Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending and the assessment of the D.P.C. including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover.



A copy of the said office Memorandum dated 14-9-92 is annexed hereto and marked as Annexure-C.

4(xxi) That though the applicant became eligible for promotion to the cadre of Assistant Commissioner of Income Tax, the authority /Respondents have not placed the case of the applicant who is now working as Income

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Tax Officer for consideration for promotion to the cadre /rank of Assistant Commissioner of Income Tax before the earlier 2/3 Departmental Promotion Committees (DPC in short) constituted by the Respondents for consideration of the cases of Income Tax Officers within the zone of consideration for promotion to the cadre /rank of Assistant Commissioner of Income Tax on the plea of pendency of Disciplinary Proceeding against the applicant. Because of which already 219 Junior Income Tax Officers have superseded the applicant. The next D.P.C. constituted by the Respondents for consideration of the cases of Income Tax Officers within the zone of consideration for promotion to the Cadre/rank of Assistant Commissioner of Income Tax will be held in the last part of November, 2000. The applicant will retire from service on 30-9-2001 and there is no possibility of holding any subsequent such D.P.C. for promotion to the cadre/rank of Assistant Commissioner of Income Tax before his retirement.

4(xxii) That if the case of the applicant is not placed before the D.P.C. to be held in the last part of November, 2000 to be constituted by the Respondents for consideration of the cases of the Income Tax Officers within the zone of consideration for promotion to the cadre /rank of Assistant Commissioner

of Income Tax and if he is not promoted to the cadre/rank of Assistant Commissioner of Income Tax this time also, almost 1000 junior Income Tax Officers will supersede the applicant and he will not get any other D.P.C. for consideration of his case for promotion to the cadre/rank of Assistant Commissioner of Income Tax before his retirement for which he will suffer irreparable loss and injury which can not be compensated by any other means.

4(xxiii) That the position of the applicant is at serial No. 30 of the All India Seniority List of Income Tax Officers as on 1-1-96 published by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi. The positions of Sri Kirti Nath Hazarika, Sri Pijush Kanti Choudhury and Sri Satram Das are at serial No.49 , 427 and 433 respectively in the said Seniority List.

Earlier also 219 junior Income Tax Officers have already superseded the applicant to the rank of Assistant Commissioner of Income Tax, namely, one Sri O.P. Agarwal who is at serial No. 249 in the said seniority list has been promoted to the rank of Assistant Commissioner of Income Tax w.e.f. 6-3-98. In the ensuing Departmental Promotion Committee about 1000 Income Tax Officers who are junior to the applicant will be considered for promotion to the rank of Assistant Commissioner of Income Tax, for instance, one Sri Sudhir Kumar who is at serial No. 1223 of the said seniority list will also be considered for

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promotion to the cadre of Assistant Commissioner of Income Tax in the ensuing Departmental Promotion Committee/next D.P.C. It may be pertinent to say that the applicant is an Income Tax Officer of the 12-3-85 batch and now the authority is going to consider about one thousand Income Tax Officers, who are junior to the applicant, to the rank of Assistant Commissioner of Income Tax including Sri Sudhir Kumar who is of 1-1-91 batch. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the aforesaid Seniority List as on 1-1-96 and one issue of News Letter Vol.VI No.7 February , 1999 published by Central Board of Direct Taxes showing the promotion of Sri O.P. Agarwal at the time of hearing of the case.

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Now the applicant has come to know that some similarly situated persons, who are junior to the applicant as Income Tax Officer, namely (1) Sri Kirti Nath Hazarika, Income Tax Officer posted at Guwahati (2) Sri Pijush Kanti Choudhury, Income Tax Officer posted at Silchar and (3) Sri Satram Das, Income Tax Officer posted at Jorhat were also punished with 'censure' under the same nature of imputation of charge i.e. issue of refunds against forged and fake TDS Certificates submitted in the names of non-existent and fictitious persons, will be considered for promotion to the cadre /rank of Assistant Commissioner of Income Tax by the authority through the ensuing D.P.C. which will be held in the last part of November, 2000. But the authority has not included the name of the applicant for considering

RECEIVED
INCOME TAX OFFICE
GUWAHATI
11/11/2000

his case for promotion to the cadre /rank of Assistant Commissioner of Income Tax through the said ensuing D.P.C. which is illegal , unjust, unreasonable, arbitrary, vitiated by bias and malafide, discriminatory and violative of the said Office Memorandum dated 14-9-92 and violative of Articles 14, 16, 19(11)(g) and 21 of the Constitution of India.

4(xxiv) That as per the said Office memorandum dated 14-9-92 the applicant is legally entitled to be considered for promotion to the cadre/rank of Assistant Commissioner of Income Tax by the authority through the D.P.C. constituted for the said purpose. Since the applicant became eligible for promotion to the cadre/rank of Assistant Commissioner of Income Tax, 2/3 meetings of D.P.C. were held but the authority did not include the name of the petitioner for consideration of D.p.C. for promotion to the cadre/rank of Assistant Commissioner of Income Tax. Though the Respondents have legal duty and obligation for consideration in earlier 2/3 D.P.C. meetings as well as the ensuing D.P.C. meeting in the last part of November, 2000, the Respondents have not included the name of the applicant for consideration of the ensuing D.P.C. for promotion to the cadre /rank of Assistant Commissioner of Income Tax which is illegal, unjust, unreasonable, arbitrary, discriminatory,

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vitiated by bias and malafide and the same has been done in colourable exercise of power for collateral purpose by taking extraneous and irrelevant considerations by overlooking the relevant considerations and violative of the said Office Memorandum dated 14-9-92 and violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

4(xxv) That the applicant is on the verge of retirement and if he is not considered this time for promotion to the cadre /rank of Assistant Commissioner of Income Tax through the ensuing D.P.C. constituted for the said purpose, the applicant will not get any other opportunity for such promotion. As per the said office Memorandum dated 14-9-92 the applicant is legally entitled to be considered for promotion to the cadre/rank of Assistant Commissioner of Income Tax through the ensuing /next D.P.C. constituted for the said purpose and otherwise also the applicant is entitled for consideration for such promotion as per said Office Memorandum dated 14-9-92 and as it will be the last opportunity for the applicant to be considered for promotion to the said cadre/rank of Assistant Commissioner of Income Tax through D.P.C. As the applicant has not been considered for promotion to the next higher cadre/rank through D.P.C., now the applicant has been working under the officers who were

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earlier junior and subordinate to him which is a matter of great humiliation for the applicant. As such the entire action of the Respondents in not promoting the applicant to the cadre of Assistant Commissioner of Income Tax and in not including the name of the applicant this time also for consideration of the ensuing /next D.P.C. for promotion to the cadre /rank of Assistant Commissioner of Income Tax is out and out illegal, unjust, unreasonable, arbitrary, discriminatory, violative of the said Office Memorandum dated 14-9-92 and violative of Articles 14, 16 , 19(1)(g) and 21 of the Constitution of India.

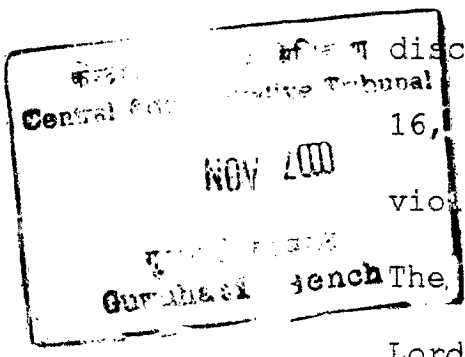
4(xxvi) That the applicant has submitted a number of representations before the concerned Respondents for many years to consider his case for promotion to the cadre/ rank of Assistant Commissioner of Income Tax through the D.P.C. constituted by the Respondents for the said purpose. On 14-3-2000 also the applicant submitted an application before the Respondents No. 1, 2 and 4 for considering his case for promotion to the cadre/ rank of Assistant Commissioner of Income Tax through the next D.P.C. constituted for the said purpose. But the respondents have not disposed of any of the representations filed by the applicant in this regard till today. Even the two appeals dated 9-5-99

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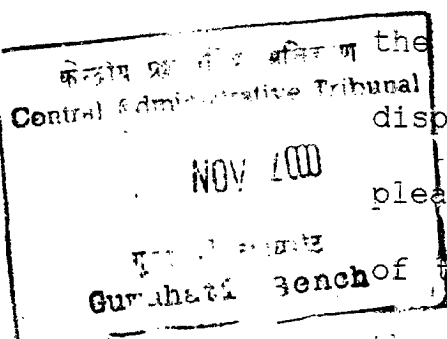
and 10-5-99 against the penalty orders dated 31-3-99 and 10-3-99 respectively are yet to be disposed of by the authority and on being dissatisfied with such inaction the applicant has approached this Hon'ble Tribunal (O.A. No. 1/2000 and 2/2000) for quashing the said penalty orders which are now pending before this Hon'ble Tribunal. Hence this application has been filed before this Hon'ble Tribunal. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said representation dated 14-3-2000 at the time of hearing of the case.

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4(xxvii) That from the facts and circumstances of the case as stated above, it is apparently clear that the entire action of the authority in not including the name of the applicant for consideration for promotion to the cadre/rank of Assistant Commissioner of Income Tax this time also through the ensuing D.P.C. to be constituted by the Respondents for the said purpose to be held in the last part of November, 2000 is illegal, unjust, unreasonable, arbitrary, discriminatory, malafide and violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India and violative of the said Office Memorandum dated 14-9-92. The applicant states that it is a fit case where your Lordships may be pleased to direct the Respondents to consider the case of the applicant for promotion to



the cadre/rank of Assistant Commissioner of Income Tax through the ensuing D.P.C. constituted by the Respondents for promotion to the cadre/rank of Assistant Commissioner of Income Tax to be held in the last part of November, 2000/ next D.P.C. and to promote the applicant to the cadre/rank of Assistant Commissioner of Income Tax. The applicant is on the verge of retirement and if this time also the name of the applicant is not considered for promotion to the cadre/rank of Assistant Commissioner of Income Tax through the ensuing D.P.C. , the applicant will not get any other opportunity for promotion to the cadre/rank of Assistant Commissioner of Income Tax before his retirement. And as such the balance of convenience is in favour of the applicant. If the Respondents are not directed to include the name of the applicant for consideration for promotion to the cadre/rank of Assistant Commissioner of Income Tax through the ensuing D.P.C. to be held in the last part of November, 2000/ next D.P.C. Pending disposal of this application, the legal and fundamental rights of the applicant is seriously jeopardised. Pending disposal of this application, Your Lordships may be pleased to direct the Respondents to include the name of the applicant for consideration for promotion to the cadre/rank of Assistant Commissioner of Income Tax through the ensuing D.P.C. constituted by the

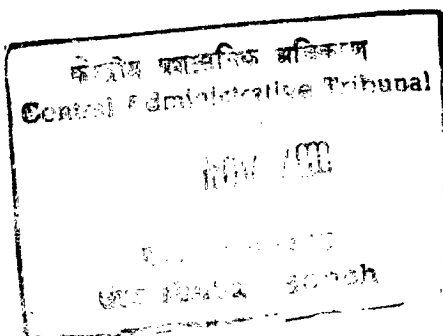


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Respondents for the said purpose to be held in the last part of November, 2000/ next D.P.C. And if the aforesaid interim order as Prayed for is not passed, the applicant shall suffer loss and injury which can not be compensated by any other means and the whole application shall become infructuous.

5. **GROUND FOR RELIEF WITH LEGAL PROVISION**

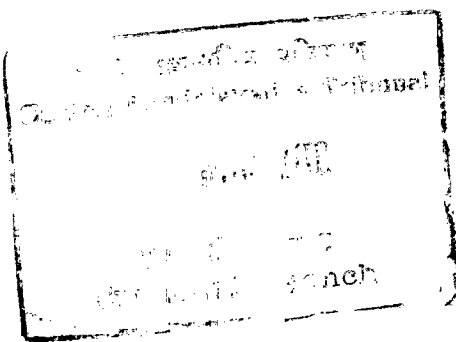
- A. For that as per the said Office Memorandum dated 14-9-92 the applicant is legally entitled to be considered for promotion to the cadre/rank of Assistant Commissioner of Income Tax through the ensuing D.P.C. to be held in the last part of November, 2000. The applicant is on the verge of retirement and he has already been superseded by 240 Income Tax Officers who were junior to the applicant which infringes his fundamental rights guaranteed under Articles 14, 16, 19(1)(g) and 21 of the Constitution of India and if this time also the case of the applicant is not considered for promotion to the cadre/rank of Assistant Commissioner of Income Tax through the ensuing D.P.C. and not promoted to the said cadre/rank, he will be superseded by almost 700 Income Tax Officers who are junior to him and now the applicant is working under the officers who were



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earlier his junior and subordinate which is a matter of great humiliation for the applicant. As such the entire action of the Respondents in not promoting the applicant to the cadre of Assistant Commissioner of Income Tax and in not including the name of the applicant this time also for consideration of the ensuing /next D.P.C. for promotion to the cadre /rank of Assistant Commissioner of Income Tax is out and out illegal, unjust, unreasonable, arbitrary, discriminatory, violative of the said Office Memorandum dated 14-9-92 and violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

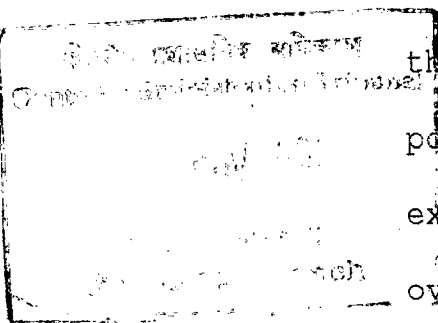
- B. For that the authority has included the names of 4 income Tax Officers, who are similarly situated with the applicant as they are also punished with same penalty of 'censure' for same charge. For consideration for promotion to the Cadre of Assistant Commissioner of Income Tax through the ensuing D.P.C. to be held in the last part of November, 2000. But the authority has not included the name of the applicant for such consideration for promotion to the cadre / rank of Assistant Commissioner of Income Tax through the said D.P.C. As such the entire action of the Respondents in not including the name of the applicant this time



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also for consideration of the ensuing /next D.P.C. for promotion to the cadre /rank of Assistant Commissioner of Income Tax is out and out illegal, unjust, unreasonable, arbitrary, discriminatory, violative of the said Office Memorandum dated 14-9-92 and violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

- C. For that Though the Respondents have legal duty and obligation for considering the case of the applicant for promotion to the cadre of Assistant Commissioner of Income Tax through the earlier 2/3 D.P.C. meetings as well as the ensuing D.P.C. meeting in the last part of November, 2000, the Respondents have not included the name of the applicant for consideration of the ensuing D.P.C. for promotion to the cadre /rank of Assistant Commissioner of Income Tax which is illegal, unjust, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable exercise of power for collateral purposed by taking extraneous and irrelevant considerations by overlooking the relevant considerations and violative of the said Office Memorandum dated 14-9-92 and violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.



D. For that as per the said office Memorandum dated 14-9-92 the applicant is legally entitled to be considered for promotion to the Cadre/rank of Assistant Commissioner of Income Tax Officer by the authority through the ensuing D.P.C. constituted for the said purpose to be held in the last part of November, 2000 and other wise also the applicant is entitled to be considered for the said promotion to the cadre/rank of Assistant Commissioner of Income Tax through the said ensuing D.P.C. as the applicant will not get any other opportunity for promotion to the cadre/rank of Assistant Commissioner of Income Tax. As such the entire action of the Respondents in not including the name of the applicant this time also for consideration of the ensuing /next D.P.C. for promotion to the cadre /rank of Assistant Commissioner of Income Tax is out and out illegal, unjust, unreasonable, arbitrary, discriminatory, violative of the said Office Memorandum dated 14-9-92 and violative of Articles 14, 16 , 19(1)(g) and 21 of the Constitution of India.

Bahadur Kumar Majumdar

6. DETAILS OF THE REMEDIES EXHAUSTED :

The applicant declares that he has availed all the remedies available to him.

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

The applicant further declares that this matter was not filed earlier and no application has been filed before any bench of the Tribunal as such at present no application is pending before any tribunal or court of law.

8. **RELIEFS SOUGHT:**

In view of the facts mentioned in the paragraph 4 and grounds mentioned in paragraph 5 above, the applicant prays for the following reliefs :

(A) To direct the respondents to include the name of the applicant for consideration for promotion to the cadre/rank of Assistant Commissioner of Income Tax through the ensuing Departmental Promotion Committee to be held in the last part of November, 2000/ next Departmental Promotion Committee constituted by the Respondents for promotion to the cadre/rank of Assistant Commissioner of Income Tax.

(B) To direct the Respondents to promote the applicant to the cadre/ rank of Assistant Commissioner of Income Tax.

Sahadeb Kumar Majumdar

(C) The cost of the case

(D) Any other relief to which the applicant is entitled under the law.

9. **INTERIM ORDER IF ANY PRAYED FOR :**

pending final decision on the application, the applicant humbly prays for following interim order :

To direct the respondents to include the name of the applicant for consideration for promotion to the cadre/rank of Assistant Commissioner of Income Tax through the ensuing Departmental Promotion Committee to be held in the last part of November, 2000/ next Departmental Promotion Committee constituted by the Respondents for promotion to the cadre/rank of Assistant Commissioner of Income Tax.)..

10. **PARTICULARS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION :**

- (1) No. of Indian Postal Order : 26 503900
(2) Name of the issuing post Office: Main P.O., Guwahati.
(3) Date of issue of Postal Order: 16.11.2K
(4) Post office at which payable: Guwahati Head post Office:

11. **LIST OF ENCLOSURES:**

As per Index.

Sahabul Kumar Majumdar

VERIFICATION

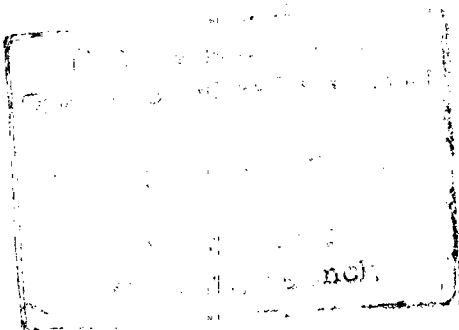
I, Sri Sahadeb Kumar Majumder, Son of Late Naba Kumar Majumder, aged about 59 years, by profession Service, resident of Jalan Nagar(South) , Dibrugarh, P.C. & P.S.- Dibrugarh, District- Dibrugarh, Assam do hereby verify that the contents of paragraphs 4(i), 4(xi), 4(xii), 4(xv), 4(xviii), 4(xix), 4(xxi), 4(xxii) , 4(xxiii), 4(xxiv), 4(xxv) 4(xxvi) and 4(xxvii) are true to my knowledge and those made in paragraphs 4(ii) to 4(x), 4(xiii), 4(xiv), 4(xvi), 4(xvii), 4(xviii) and 4(xx) being matters of record are true to my information and the rest are my humble submissions made before this Hon'ble Tribunal and that I have not suppressed any material fact.

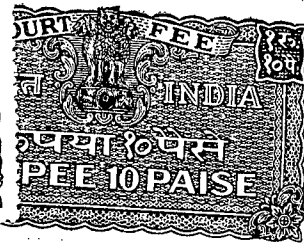
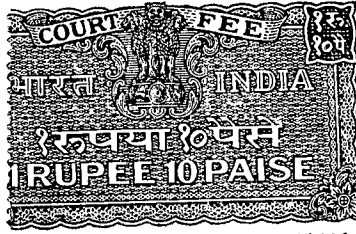
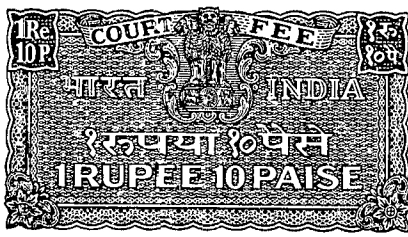
Place: Guwahati.

Sahadeb Kumar Majumder

14.11.2000

Signature of the Applicant.





IN THE COURT OF JUDICIAL MAGISTRATE AT GUWAHATI

A F F I D A V I T

I, Sri Sahadeb Kumar Majumder, Son of Late Naba Kumar Majumder, aged about 59 years, by profession Service, resident of Jālan Nagar(South) , Dibrugarh, P.O. & P.S.- Dibrugarh, District- Dibrugarh, Assam do hereby solemnly affirm and declare as follows:

1. That I am the applicant of the enclosed Original Application and as such I am well acquainted with the facts and circumstances of the case.
2. That the statement made in this affidavit and in paragraphs 4(i), 4(xi), 4(xii), 4(xiii), 4(xiv), 4(xv), 4(xvi), 4(xvii), 4(xviii), 4(xix), 4(xx), 4(xxi), 4(xxii), 4(xxiii), 4(xxiv), 4(xxv), 4(xxvi) and 4(xxvii) are true to my knowledge and those made in paragraphs 4(ii), 4(iii), 4(xviii) and 4(xx) being matters of record are true to my information derived therefrom which I believe to be true and the rest are my humble submissions made before this Hon'ble Court and I sign this affidavit on this 14th day of November, 2000 at Guwahati.

Sahadeb Kumar Majumder

Deponent

Identified by me
Sheikh Muktar
Advocate

Solemnly affirmed and declare before me by the deponent who is identified by Sheikh Muktar, Advocate on this 14th day of November, 2000 at Guwahati.

Date: 14.11.2K

14/11/2000
MAGISTRATE GUWAHATI.

20-2-99

Dated, Shillong the 10th March, 1999.ORDER under Rule 15 of the CCS(CCA) Rules, 1965.

Disciplinary proceeding was initiated against Shri Sahadev Kumar Mazumdar, Income-tax Officer(Gr.B), hereinafter referred to as the CO (Charged Officer) in the Income-tax Department, NER, under Rule, 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the articles of charge framed against the CO in respect of which inquiries were held are as follows:-

ARTICLE OF CHARGES2. ARTICLE-I

That the said Shri S.K. Mazumdar while functioning as an Income-tax Officer, Ward, Dimapur under the charge of the Commissioner of Income-tax, North Eastern Region, Shillong during the year 1989 entertained returns of income alongwith statements of accounts and forged and fake Tax Deduction at Source (TDS) Certificates submitted in the names of non-existent and fictitious persons, processed the said returns and issued refunds to the tune of Rs.5,32,987/- without verifying the genuineness of the TDS Certificates causing wrongful loss to the Govt. and has, therefore, committed gross irregularity and negligence in the discharge of his official duties violating the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Sahadev Kumar Mazumdar failed to send refund orders of amount exceeding Rs.2,500/- by Registered Post and has, therefore, contravened Board's Instruction No.1815 communicated under F.No.225/244/88-ITA/II dated 12.4.89 as well as the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Sahadev Kumar Mazumdar has issued refund orders without verifying the fact of credit of the 2 percent tax deducted at source to the Govt. accounts and has, therefore, committed gross irregularity and negligence in the discharge of his official duties contravening the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

Contd.....2.....

*Attended
Sahadev Kumar
Advocate*

that during the aforesaid period and while functioning at the aforesaid office, the said Shri S.K. Mazumdar issued refund orders without considering the taxability of the income where the returns and the claims for refund were not supported by the Tribal Certificates. Some of the returns on the basis of which refunds were granted by Shri S.K. Mazumdar, Income-tax Officer do not bear the signatures of the assessee. Shri Sahadev Kumar Mazumdar, has therefore, failed in discharge of his official duties and violated the provisions of Rules 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

3. The CO was informed of the charges framed against him vide this office Memorandum No.1/Misc/Con/CT/88-89/Pt.VII/SKM/562 dated 22.7.93 which was served on him on 3.8.93. He was given an opportunity to submit a written statement of his defence and also to state whether he desired to be heard in person. He was also informed that an inquiry will be held only in respect of those articles of charge as are not admitted.

4. The CO submitted a written statement of his defence wherein he had categorically denied the charges framed against him.

5. Considering the replies given by the CO, it was felt necessary to hold a regular inquiry for which Shri O.P. Mishra, Commissioner for Departmental Inquiries, CVC, New Delhi was appointed as Inquiring Authority hereinafter referred to as I.O. vide this office F.NO.1/MISC/Con/CT/98-99/Pt.VII/SKM/984-987 dated 7/19th September, 1994.

6. The I.O. conducted the inquiry and his findings were as under -

Article - I

- Partly Proved.

Article - II

- --- Substantially proved as discussed.

Article - III

- Not Proved.

Article - IV

- Proved as discussed.

7. The copy of the inquiry report was given to the CO and through Memorandum dated 10th July 1998 served on him on 15th July, 1998, he was given an opportunity to show cause why a minor penalty should not be imposed on him on the basis of the I.O.'s report.

8. The CO has submitted a note of compliance in which he has not accepted the proposed imposition of a minor penalty.

9. The submission of the CO have carefully been considered and it is observed that since the refunds were claimed as per the existing provisions laid down in the Act, the CO could have been more careful in checking the accuracy of the Tribal Certificates or particularly, authenticated copy of the certificates could have been insisted upon. To that extent, the CO is not free from

Contd.....P/3.

Attested
Shri S.K. Mazumdar
Signature

from blemishes. Taking into account the totality of the facts on the basis of the IO's report, it is considered necessary to levy a minor penalty of "Censure" on Shri Sahadev Kumar Mazumdar - the CO.

10. The undersigned, accordingly under Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 hereby imposes on said Shri Sahadev Kumar Mazumdar - the CO, the minor penalty of "Censure" as enunciated in clause (i) of Rule 11 of the said Rules. A record of this penalty be kept in the confidential roll of Shri Sahadev Kumar Mazumdar, Income-tax Officer - the CO.

11. This penalty order of "Censure" will remain in force for one year from the date of the order of imposition of penalty.

(V. TOCHHAWNG)
Commissioner of Income-tax,
SHILLONG

(Disciplinary Authority)

✓ Shri Sahadev Kumar Mazumdar,
Income-tax Officer,
Ward-I, Dibrugarh.

Attended
Shri K. Mukherjee
Advocate

-38-
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1. The Director of Income-tax, (Vigilance), Central Board of Direct Taxes, 1st floor, Dayal Singh Public Library Building, 1, Deen Dayal Upadhyay Marg, New Delhi-110 002 for favour of kind information with reference to the Directorate's letter F.No.DP/G/790/Vig/93/3447 dated 27.11.98.
2. The Chief Commissioner of Income-tax, Patna for favour of kind information with reference to his letter No.CCIT/PAT/VIG/VIII-30/93-94/539 dated 11/14.12.98.
3. The Deputy Inspector General of Police, Central Bureau of Investigation, N.E. Region, Chennikut Hill Side, Guwahati-781 003 for information alongwith a copy of Board's letter dated 24.8.1998. This refers to case No.RC-3(A)/90-SLC.
4. The Superintendent of Police, Central Bureau of Investigation, SPE, Silchar Division, Panchayet Road, Near G.C.College, Silchar-788 004, for information alongwith a copy of Board's letter dated 24.8.1998. This refers to case No.RC-3(A)/90-SLC.
5. The Additional Commissioner of Income-tax Dibrugarh Range, Dibrugarh (By name) for information and necessary action. He is requested to get the enclosed order served on Shri S.K.Mazumdar, ITO, Ward-1, Dibrugarh and send back the acknowledgement slip to this office for record.
6. The Presenting Officer, Shri N.M.Singh, Dy. Supt. of Police, CBI/SPE, Silchar Division, Silchar.
7. The C.R. file of concerned officer.

(S.KHARPOR)

Deputy Commissioner of Income-tax, (Vig.)
for Commissioner of Income-tax,
SHILLONG

Attested
Sheikh Muktar
Advocate

F.No.1/MISC/Con/CT/88-89/Pt.V/SKM/1771
OFFICE OF THE COMMISSIONER OF INCOME TAX
POST BOX NO.20::SHILLONG-793 001.

19.5.99

Dated, Shillong the 31st March, 1999.

ORDER under Rule 15 of the CCS(CCA) Rules, 1965.

Disciplinary proceeding was initiated against Shri Sahadev Kumar Mazumdar, Income-tax Officer (Gr. 'B'), hereinafter referred to as the CO (Charged Officer) in the Income-tax Department, NER, under Rule, 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the articles of charge framed against the CO in respect of which inquiries were held are as follows:-

ARTICLE OF CHARGES.

ARTICLE- I

That the Shri Sahadev Kumar Mazumdar, while functioning as Income-tax Officer, Ward, Dimapur under the charge of the Commissioner of Income-tax, North Eastern Region, Shillong during the year 1989 entertained returns of income along with statements of accounts and forged and fake Tax Deduction at Source (TDS) certificates submitted in the name of non-existent and fictitious person, processed the said returns and issued refunds to the tune of Rs.87,269/- without verifying the genuineness of the TDS certificates causing wrongful loss to the Govt. and has, therefore, committed gross irregularity and negligence in the discharge of his official duties violating the provisions of Rule 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE- II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri S.K. Mazumdar failed to send refund orders of amount exceeding Rs.2500/- by Registered Post and has, therefore, contravened Board's Instruction No.1815 communicated under F.No.225/244/88-ITA/II dt.12.4.89 as well as the provisions of Rules, 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE- III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri S.K. Mazumdar has issued refund orders without verifying the fact of credit of the 2 percent tax deducted at source to the Govt. accounts and has, therefore, committed gross irregularity and negligence in the discharge of his official duties contravening the provisions of the Rules 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

Contd.....P/2.

Attested
Sheikh Murtaza
Advocate

The CO was informed of the charges framed against him vide this office Memorandum No.1/Misc/Con/CT/88-89/Pt.V/560 dated 22.7.93 which was served on him on 3.8.93. He was given an opportunity to submit a written statement in his defence and also to state whether he desired to be heard in person. He was also informed that an inquiry will be held only in respect of those article of charge as are not admitted.

4. The CO submitted a written statement of his defence wherein he had categorically denied the charges framed against him.

5. Considering the replies given by the CO, it was felt necessary to hold a regular inquiry for which Shri O.P.Mishra, Commissioner for Departmental Inquiries, CVC, New Delhi was appointed as Inquiring Authority hereinafter referred to as I.O. vide this office F.No.1/Misc/Con/CT/88-89/Pt.V/SKM/980-983 dated 7/19th September, 1994.

6. The I.O. conducted the inquiry and his findings were as under -

| | |
|-------------|---|
| Article - I | - Proved to a limited extent as mentioned in para 4.11 of the report. |
|-------------|---|

| | |
|--------------|-------------------------|
| Article - II | - Substantially proved. |
|--------------|-------------------------|

| | |
|---------------|---------------|
| Article - III | - Not proved. |
|---------------|---------------|

7. The copy of the Inquiry report was given to the CO and through Memorandum dated 10th July, 1998 served on him on 15th July, 1998, he was given an opportunity to show cause why a minor penalty should not be imposed on him on the basis of the IO's report.

8. The CO has submitted a note of compliance in which he has not accepted the proposed imposition of a minor penalty.

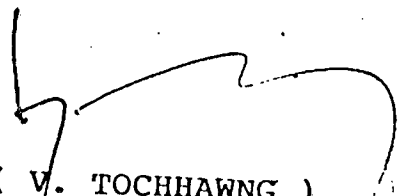
9. The submission of the CO have carefully been considered and it is observed that the C.O. was responsible for lacking prudence in examining the returns and the attached documents. Ordinary prudence demands that the certificates submitted alongwith the return(s) should be original and not attested/unattested photocopies and the C.O. could have been insisted upon production of an authenticated copy. This was not done and the fact remains that certain degree of carelessness has definitely been observed by the C.O. Taking into account the totality of the facts on the basis of the IO's report, it is considered necessary to levy a minor penalty of "Censure" on Shri Sahadev Kumar Mazumdar - the C.O.

10. The undersigned, accordingly under Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 hereby imposes on said Shri Sahadev Kumar Mazumdar - the CO, the minor penalty of "Censure" as enunciated in clause (i) of Rule 11 of the said Rules. A record of this penalty be kept in the confidential roll of Shri Sahadev Kumar Mazumdar, Income-tax Officer - the CO.

Attested
Shri Sahadev Kumar
Admiral

Contd.....P/3

10. This penalty order of "Censure" will be operative from the 10th day of March, 2000.


(V. TOCHHAWNG)
Commissioner of Income-tax,
SHILLONG
(Disciplinary Authority)

Shri Sahadev Kumar Mazumdar,
Income-tax Officer,
Ward - I, Dibrugarh.

Attested
Shrih Muktar

to :-

1. The Director of Income-tax, (Vigilance), Central Board of Direct Taxes, 1st floor, Dayal Singh Public Library Building, 1, Deen Dayal Upadhyay Marg, New Delhi-110 002 for favour of kind information with reference to the Directorate's letter F.No.DP/G/790/Vig/93/3447 dated 27.11.98.
2. The Chief Commissioner of Income-tax, Patna for favour of kind information with reference to his letter No.CCIT/PAT/VIG/VIII-30/93-94/539 dated 11/14.12.98.
3. The Deputy Inspector General of Police, Central Bureau of Investigation, N.E. Region, Chennikut Hill Side, Guwahati-781 003 for information alongwith a copy of Board's letter dated 24.8.1998. This refers to case No.RC-4(A)/90-SLC.
4. The Superintendent of Police, Central Bureau of Investigation, SPE, Silchar Division, Panchayet Road, Near G.C.College, Silchar-788 004, for information alongwith a copy of Board's letter dated 24.8.1998. This refers to case No.RC-4(A)/90-SLC.
5. The Additional Commissioner of Income-tax Dibrugarh Range, Dibrugarh (By name) for information and necessary action. He is requested to get the enclosed order served on Shri S.K.Mazumdar, ITO, Ward-1, Dibrugarh and send back the acknowledgement slip to this office for record.
6. The Presenting Officer, Shri N.M.Singh, Dy. Supdt. of Police, CBI/SPE - Silchar, Dist. Chelhar (Assam).
7. The C.R.file of concerned officer.

(S.KHARPOR)

Deputy Commissioner of Income-tax, (Vig.)
for Commissioner of Income-tax,
SHILLONG

Attested
Sheikh Muktar
Advocate

No.22011/4/91-Estt.(A)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel & Training

North Block, New Delhi - 110001

Dated, the 14th Sept., 1992.

OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose Conduct is under investigation - Procedure and guidelines to be followed.

The undersigned is directed to refer to Department of Personnel & Training OM No.22011/2/06-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgement dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of in respect of Shri (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri'. The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of 'censure' should be imposed.

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be

Attached
Sheikh Husein
Advocate

Six Monthly review of
'Sealed Cover' cases.

O.M.No.
39/3/89-Estt.A dt.31.8.80
7/28/83-Estt.Adt.22.12.84
22011/3/77-Estt.A
dt.14.7.77
22011/1/79-Estt.A
dt.31.1.82
22011/2/86-Estt.A
dt.12.1.88
22011/1/91-Estt.A
dt.31.7.91.

Cases of Government
Servants to whom Sealed
Cover Procedure will be
applicable.

Procedure to be followed
by DPC in respect of
Government servants
under cloud.

Procedure by subsequent
DPCs.

Action after completion of
disciplinary case/criminal
prosecution.

done subsequently also every six months. The review should, *inter alia*, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

Procedure for ad-hoc promotion.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/ criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

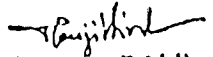
5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

6. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions have been issued after consultation with the Comptroller and Auditor General of India.

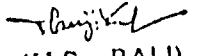
9. Hindi version will follow.


(M.S. BALI)
DIRECTOR

To
All Ministries and Departments of the Government of India with usual number of spare copies.
No. 22011/4/91-ESII(A) Dated the 14th Sept., 1992.

Copy forwarded for information to:-

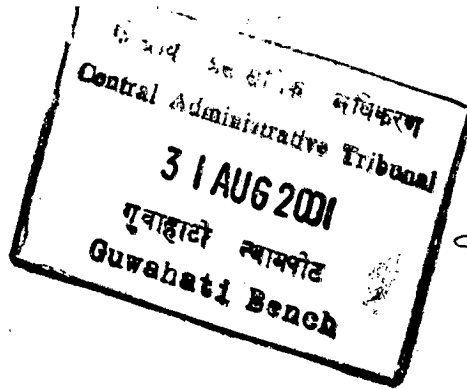
- 1. Central Vigilance Commission, New Delhi.
- 2. Central Bureau of Investigation, New Delhi.
- 3. Union Public Service Commission, New Delhi.
- 4. Comptroller and Auditor General, New Delhi.
- 5. President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat and Prime Minister's Office.
- 6. Chief Secretaries of All States and Union Territories.
- 7. All Officers and Administrative Sections in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.


(M.S. BALI)
DIRECTOR

Attested
Sheikh Mukhtar
Advocate

Sealed cover procedure for confirmation.

Sealed cover procedure applicable to officers coming under cloud after holding of DPC but before promotion.



filed by:

Debnath

(B.C. Path. K.)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench, Guwahati
54

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO. 395 OF 2000

Shri S.K. Mazumdar

..... Applicant.

- Vs -

Union of India & Ors.

..... Respondents.

(Written Statements on behalf of the
respondent No. 1 to 6).

The written statements of the abovenoted
respondents are as follows :

1. That the copy of the O.A. No. 395/2000
(referred to as "application") has been served on the
respondents. The respondents have gone through the same
and understood the contents thereof. The interest of all
the respondents being similar, common written statements
are filed for all of them.
2. That the statements made in the application
which are not specifically admitted, are hereby denied
by the respondents.
3. That with regard to the statements made in para 1
of the application, the respondents state that the statements
are not correct. In fact, the case of the applicant was
considered by all the DPCs held in 1997, 1998 and 2000 and
the recommendations of the said DPCs have been kept in

in sealed cover for want of vigilance clearance.

4. That with regard to statements made in para 2 and 3, the respondents state that the respondents have no comments to offer .

5. That with regard to statements in para 4(i) to 4(vii), the respondents state that these are matter of records, hence any averments contrary to records are denied.

6. That with with regard to para 4(viii), the respondents state that these are all matter of record. However, it is clarified that the charges contained in two memoranda pertain to different cases and involve different amounts. It is denied that the charges are identical in the two memoranda.

7. That with regard to statements made in para 4(ix) and 4(x), the respondents state that these are also matter of record. There is no such prohibition in law about the penalty running after the other if the charges are different.

8. That with regard to statements made in para 4(xi), the respondents state that the appeal filed by the applicant under examination by the competent authority in consultation with other agencies as required under the prescribed rules.

9. That with regard to para 4(xii), the respondents deny the allegation as baseless. The orders were passed with due application of mind. The quantum of penalty was determined keeping in mind the totality of the facts of the case as well as the negligence on the part of the ~~ex~~ C.O. (here applicant) as a responsible supervisory officer.

10. That with regard to para 4(xiii) and (xiv), the respondents state that these are all matter of records and nothing is admitted beyond the records.

11. That with regard to para 4(xv), the respondents state that the statements are misleading. It is denied that different charge sheets have been issued for identical defaults. The cases and the amounts involved in the 2 (two) cases are different. Moreover, charge sheets are filed only after proper investigation and bringing all material evidence on record. The Investigation Agencies take their own time in completing this task and, therefore, there is a time lag between completion of different cases and consequently the issue of different charge sheets.

12. That with regard to the statements made in para 4(xvi), the respondents state that these being matter of records, nothing is admitted beyond these records.

13. That with regard to para 4(xvii) and (xviii) the respondents state that the officer was appreciated for the good work done by him in respect of verification of genuineness of the TDS certificates in certain cases. Similarly, whenever the conduct of the officer was found deficient, proper punishment has been awarded. The action of the Disciplinary Authority has been very reasonable and logical. Thus, it is denied that the action of the authorities is unreasonable or arbitrary.

14. That with regard to para 4(xix), the respondents

14. That with regard to para (xix), the respondents state that the facts of the case relating to Shri D.J. Paul as referred to by the applicant in this para are different in so far as the completion of the investigations by the Investigating Agencies was concerned. The charge sheet in the case of Shri D.J. Paul and the applicant could be issued only after the investigation reports were received from the Investigating Agencies, which happened at different times. It is, therefore, denied that there has been any discrimination against the applicant.

15. That with regard to para 4(xx), the respondents have no comments to offer.

16. That with regard to para 4(xxi) to (xxvii), the respondents state that the name of Shri S.K. Majumdar was considered by all the DPCs held in 1997, 1998 and 2000 and recommendations of DPCs have been kept in sealed cover for want of vigilance clearance. As regards the second appeal filed by the applicant against the two penalty orders dated 10.3.99 and 31.3.99, it is submitted that these appeals are under examination by the Competent Authority in consultation with other agencies as required under the prescribed rules. It is submitted that these appeals have not been finally disposed of as yet.

17. That with regard to the statements made in para 5A to 5D, the respondents state that the grounds as shown by the applicant are no grounds in the eye of law

and such ground cannot sustain under the facts of the instant case. Therefore there is no violation of any law or fundamental right under the Constitution of India as alleged by the applicant. There is no discrimination ~~meted~~ meted out against the applicant. Hence, the application is liable to be dismissed with cost.

18. That with regard to the statements made in para 6 and 7 of the application, the respondents have no comments to offer. However, the appeals preferred by the applicant are yet to be disposed by the respondents.

19. That with regard to the statements made in para 8A to 8D and 9 of the application, the respondents state that in view of the above facts of the case and the provisions of law and rules, the applicant is not entitled to any relief whatsoever as prayed for and hence the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after, hearing the parties and perusing the records, shall further be pleased to dismiss the application with cost.

Verification.....

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

I, Shri VANLALVUANA TOCHHAWNG , presently working as the *Chief Commissioner of Income-tax, Guwahati*, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 1 to 19 are true to my knowledge and belief, those made in para _____ being matter of records are true to my information derived therefrom and the rest are humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 30 th day of August, 2001, at Guwahati.



Deponent.

Chief Commissioner of Income Tax,
Guwahati.