

30/100

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 70/2000.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet O.A. 70/2000.....Pg. 1.....to 6.....
2. Judgment/Order dtd. 22/11/2001.....Pg. 1.....to 6 allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A. 70/2000.....Pg. 1.....to 18.....
5. E.P/M.P. NIL.....Pg.....to.....
6. R.A/C.P. NIL.....Pg.....to.....
- ☒ 7. W.S.....Pg. 1.....to 3.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 70/2000 OF 199

Applicant(s) Sri Arun Ch: Bora.

Respondent(s) Union of India and ors.

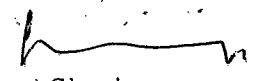
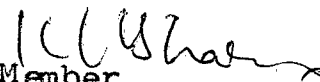
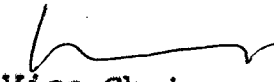
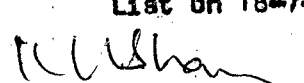

Advocate for Applicant(s) Mr. J. L. Sarma.

Advocate for Respondent(s) Mrs. S. Deeka.

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in and within time C. F. of Rs 50/- deposited vide PO No. 453385 Dated 28.2.99</p> <p>17/2/2000 mk 25/2/2000</p> <p>1 - 3 - 2000</p> <p>Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A.D. vide D.N. No. 644 to 644 P.P. 1 - 3 - 2000.</p>	<p>18.2.00</p> <p>21.3.2000</p> <p>pg</p>	<p>Present : Hon'ble Mr. Justice D.N. Baruah, Vice-Chairman and Hon'ble Mr. G.L. Sanglyine, Administrative Member.</p> <p>Application is admitted. Issue usual notices. Returnable by 21.3.00. List on 21.3.00.</p> <p>Member</p> <p>Vice-Chairman</p> <p>Two weeks time allowed for filing of written statement on the prayer of Mr B.S. Basumatary, learned Addl. C.G.S.C. List on 6.4.2000 for written statement and further orders.</p> <p>Member</p>

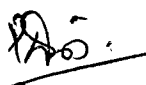
Notes of the Registry	Date	Order of the Tribunal
<p>① Service report are still awaited.</p> <p>② No. written statement has been filed.</p> <p><i>24/5/2000</i></p> <p>Notice duly served on R.No. 273.</p> <p><i>24/9/5/2000</i></p> <p><i>12-5-00</i></p> <p>no order has been passed.</p> <p><i>by</i></p> <p><i>6-11-2000</i></p> <p>Written statement has not filed by the respondents.</p> <p><i>Ross</i></p>	<p>6.4.00</p> <p>trd</p> <p>26.4.00</p> <p>lm</p> <p>15.5.00</p> <p>trd</p> <p>2.6.00</p> <p>27.6.00</p> <p>26.7.00</p> <p>29.8.00</p>	<p>Two weeks further time is allowed for filing of written statement on the prayer of Mr. B.S. Basumatary, learned Addl. C.G.S.C.</p> <p>List on 26.4.2000 for written statement and further orders.</p> <p><i>(2) Member</i></p> <p>On the prayer of Mr. B.S. Basumatary learned Addl. C.G.S.C. two weeks time is allowed for filing of written statement. List on 15.5.00 for filing of written statement and further orders.</p> <p><i>(2) Member</i></p> <p>Learned Addl. C.G.S.C. Sri B.S. Basumatary, prays for two weeks time to file written statement. Prayer is allowed.</p> <p>List on 2.6.2000 for written statement and further orders.</p> <p><i>(2) Member (J)</i></p> <p>There is no Bench today. Adjourned till 27-6-00.</p> <p>There is no Bench today. Adjourned till 26-7-00.</p> <p>There is no Bench. Adjourned till 29-8-00.</p> <p>There is no Bench. Adjourned till 7-11-00.</p>

Notes of the Registry	Date	Order of the Tribunal
No. written statement has been filed. <u>By</u> 4.12.2000	7.11.00	Present: Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman. On the prayer of Mr. B.S. Basumatary, learned Addl. C.G.S.C. four weeks time is allowed for filing of written statement. List on 5.12.00 for filing of written statement and further orders. <u>l</u> Vice-Chairman
No. written statement has been filed. <u>By</u> 3.1.2001	5.12.00	On the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C. four week time is allowed to enable him to file written statement. List on 4.1.2001 for further orders. <u>l</u> Vice-Chairman
No. W/S has been filed. <u>By</u> 18.1.2001	18.1.01	There was a reference list on 19.1.2001. <u>By</u> 4.1.2001
No. written statement has been filed. <u>By</u> 16.1.2001	19.1.01	Four weeks time allowed to enable the respondents to file written statement. List on 19.2.01 for order. <u>l</u> Ushan Member <u>l</u> Vice-Chairman
① Notice duly served on R.No. 2 & 3.	19.2.01	List on 15.3.01 to enable the respondents to file written statement. <u>l</u> Ushan Member <u>l</u> Vice-Chairman
② No. written statement has been filed. <u>By</u> 14.3.01	15.3.01	List on 12.4.01 to enable the respondents to file written statement. <u>l</u> Ushan Member <u>l</u> Vice-Chairman
11-4-01 No written stat. has been filed.	11.4.01	

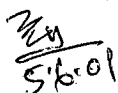
Notes of the Registry	Date	Order of the Tribunal
	12.4.01	<p>No written statement so far filed in spite of several adjournments were granted. One more chance is granted to the respondents for filing of written statement within two weeks from today, failing which the matter shall proceed ex-parte.</p> <p>List on 4.5.2001 for further orders.</p> <p> Vice-Chairman</p>
	trd	
	4.5.01	<p>It has been stated that written statement has been filed. The applicant may file rejoinder, if any, within two weeks.</p> <p>List on 25.5.2001 for orders.</p> <p> Member</p> <p> Vice-Chairman</p>
	bb	
	25.5.01	<p>Two weeks time is allowed to the applicant to file rejoinder.</p> <p>List on 7.6.2001 for order.</p> <p>Member</p> <p>Chairman</p>
	pg	
	7.6.01	<p> Member</p> <p> Vice-Chairman</p>
	mb	

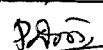
30.4.2001

W/S has been submitted by the Respondent Nos. 1, 2, 3 and 4.



No. Rejoinder has been filed.


5.6.01

By order


Written statement has already been filed. The applicant may file rejoinder, if any. List on 18-7-2001 for order.

5

6

Notes of the Registry	Date	Order of the Tribunal
<p>No. rejoinder has been filed.</p> <p><i>[Signature]</i> 3.9.01</p>	<p>18.7.01</p> <p>bb</p>	<p>Written statement has already been filed. The case is ready as regards pleading. Office now to list the case for hearing on 4.9.2001. In the meantime the applicant may file rejoinder, if any, within 2 weeks from today.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>No. rejoinder has been filed.</p> <p><i>[Signature]</i> 11.10.01</p>	<p>4.10.01</p> <p>lm</p>	<p>There is no Division Bench today. The case is adjourned to 4.10.2001.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>No. rejoinder has been filed.</p> <p><i>[Signature]</i> 16.11.01</p>	<p>12.10.01</p> <p>lm</p>	<p>At the instance of Mr.B.C.Pathak, learned Addl.C.G.S.C. case is adjourned to 12.10.01 for production of records.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>No. rejoinder has been filed.</p>	<p>12-11.01</p> <p>mb</p>	<p>Mr.B.C.Pathak, learned Addl. C.G.S.C. has again sought for little accommodation to place the records before us. Prayer is accepted. List on 12.11.01 to enable the respondents to produce the records, failing which the hearing will proceed without records.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

SA 70/2000

Notes of the Registry	Date	Order of the Tribunal
	19.11.	<p>Heard Mr J. L. Sneyd, learned Counsel for the applicant Mrs A. Deboy, Solicitor for the respondent. Hearing concluded. Judgment reserved.</p> <p><i>Mrs A. Deboy</i> <i>19.11.</i></p>
<p><u>7/12/00</u> Copy of the judgment has been put to the Office for issuing the rule to the applicant as well as to the Dr. GBSL in the Resps.</p> <p><i>JS</i></p>	<p>22.11.01</p> <p>bb</p>	<p>Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order No order as to costs.</p> <p><i>K. L. Sneyd</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

6

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 70 of 2000 of

DATE OF DECISION .22.11.2001....

Sri. Arun. Chandra. Bora APPLICANT(S)

Mr. J. L. Sarkar, Mrs. S. Deka. ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors. RESPONDENT(S)

Mr. A. Deb Roy, Sr. C.G.S.C. ADVOCATE FOR THE RESPONDENTS.

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

THE HON'BLE MR. K.K. SHARMA, MEMBER (A).

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

5. Judgment delivered by Hon'ble Vice-Chairman.

1

~~~~~



a

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 70 of 2000.

Date of decision : This the 22<sup>th</sup> day of November, 2001.

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

Hon'ble Mr. K.K. Sharma, Member (A).

Shri Arun Chandra Bora,  
Tax Assistant,  
Customs and Central Excise,  
Government of India,  
Jorhat, Assam.

By Advocate Mr. J.L. Sarkar and Mrs. S. Deka.

...Applicant

-versus-

1. Union of India  
Through the Secretary Govt. of  
India, Deptt. of Revenue,  
Ministry of Finance,  
New Delhi.
2. Commissioner,  
Customs and Central Excise,  
Shillong.
3. Deputy Collector (P & V),  
Customs and Central Excise,  
Shillong.
4. Assistant Commissioner (Hqr)  
Central Excise,  
Shillong.

...Respondents

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

---

ORDER

CHOWDHURY J. (V.C.)

The right to be considered for promotion is the question that has been raised in this application in the following circumstances :

The applicant was appointed as Lower Division Clerk on 1.10.1980. He was thereafter appointed as Upper Division Clerk in the year 1985 on promotion. He was lastly promoted as Tax Assistant. The next promotional avenue is the Inspector of

Central Excise. There is also another avenue of promotion to the post of Deputy Office Superintendent. The said promotion to the post of Deputy Office Superintendent was to be made on the basis of seniority. According to the applicant he was eligible for promotion and his case was considered by the Departmental Promotion Committee on 4th, 5th and 6th September, 1991, but the respondents did not publish the result of Departmental Promotion Committee for promotion to the post of Inspector, Central Excise without any good reason. By Memorandum dated 19.2.1992 the respondents issued a Memo of charge under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules 1965. According to the applicant the charge memo was issued against him unlawfully and for the alleged act the cashier working under the respondents was responsible and referred to the following communication of the Assistant Commissioner, Central Excise, Jorhat addressed to the Assistant Commissioner, Headquarter.

"Sub : Realisation of Misappropriated Govt. money.

Please refer to your letter C. No.II(10)A/CIU-VIG/4/91/1120-21 dated 15.10.1996 on the above subject.

I am to inform you that with the deposit of Rs.2,00/- on 9.6.97 the whole amount of Rs.37,428/- found to be misappropriated by Sri L.C.Gogoi adhoc L.D.C. has completely been deposited by him. I am also inform you that necessary action be initiated by the Quarter to exonerate the then Cashier and the then Adm. Officer who were found not be involved in misappropriating the amount in question.

This is for favour of your information and necessary action.

Sd/- Illegible  
Assistant Commissioner  
Central Excise, Jorhat.

The respondents however failed to act as per the DPC and unlawfully dragged the matter. It was also contended that the departmental proceeding was dragged on unlawfully and withheld his promotion without any just cause.

The respondents submitted its written statement and contended that his case was considered for promotion to the grade of Inspector/D.O.S. II but the findings of the DPC were kept under sealed cover as there was a vigilance case pending against him. In the written statement the respondents also contended that the disciplinary proceeding was finalised on 16.3.2000. At the time of hearing Mr. A. Deb Roy, learned Sr.C.G.S.C. appearing on behalf of the respondents produced a communication sent by the Superintendent (Law), Central Excise, Shillong to the Superintendent (Law), Hqrs. which is reproduced below :

Sub : O.A. No. 70/2000 filed by Shri A.C. Bora-reg.

Please refer to your letter C. No. I(10)4/LAW/GAU/2000 dated 10.11.2001 on the above subject.

The vigilance case in respect of Shri A.C. Bora, T.A. was decided vide order dated 16.3.2000 by the Joint Commissioner (P & V), Customs and Central Excise, Shillong. The order portion is reproduced below :

"It is therefore ordered that the pay of Shri A.C. Bora, T.A. be reduced by 3 (three) stages in the scale of pay of Rs.4500-125-7000 for a period of 1(one) year. It is further directed that Shri A.C. Bora will not earn increments of pay during the period of reduction and with consequential effect of his further increments being postponed accordingly."

Against this order, an appeal was preferred by Sri A.C. Bora, T.A., but the said appeal was rejected accordingly vide order in Appeal No. 01/CIU-VIS/2000 dated 13.06.2000 of the Commissioner (Appellate Authority), Central Excise, Shillong.

The copies of the said 2 (two) orders are enclosed herewith for information & necessary action.

Sd/- Illegible  
Superintendent (Law)  
Central Excise : Shillong."

From the facts stated above it thus emerges that the promotion of the applicant was kept under sealed cover during the pendency of the departmental proceeding and on finalisation of departmental proceeding the respondents could act upon the

✓  
same as per law. The applicant assailed the action of the respondents on two points. It was contended firstly that the respondents fell into obvious error in adhering to the sealed cover procedure so much so that the condition laid down in the Office Memorandum No. 22011/4/91-Estt. (A) dated the 14th September, 1992 were totally absent. The applicant was neither under suspension nor there was any charge sheet issued and the disciplinary proceeding was pending against him, on the date when the DPC was held. There was also no criminal prosecution pending against him at the relevant time. The applicant also contended that in respect of the alleged charge someone other than the applicant was held responsible and therefore the applicant could not have been denied his due promotion on the basis of the alleged charge memo. Lastly the applicant contended as to the prejudice caused due to the abnormal delay in conducting the disciplinary proceeding and submitted that as per norms the respondents ought to have given ad hoc promotion to the applicant. As per the norms it was incumbent on the respondents to hold review of the case of the applicant on the expiry of six months and thereafter to provide ad hoc promotion. Mr. A. Deb Roy, learned Sr. C.G.S.C. contended that in view of the disciplinary proceeding initiated against him the findings of the DPC was kept under sealed cover procedure. and now after conclusion of the disciplinary proceeding the findings of the DPC would be taken into consideration in light of the punishment awarded to him.

We have given our anxious consideration in the matter.  
Procedure to be followed under sealed covered reads as follows:

"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 :-

Contd...

13

(i)

- (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.

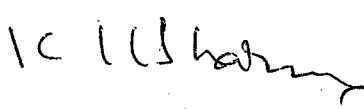
Sealed cover procedure - The DPC shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidate without taking into consideration the disciplinary case/criminal prosecution, pending. The assessment of the DPC, including "Unfit for Promotion", and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed "Findings regardsuitability 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."


Admittedly the departmental proceeding was initiated after completion of the DPC. On the date when DPC was holding its sitting i.e. on 4th, 5th and 6th September, 1991 there was no departmental proceeding pending against the applicant. Therefore the respondents could not have kept the findings of the DPC under sealed cover (Reference Union of India Vs.K.V.Jankiraman (1991) 4 SCC 109, Union of India V. Dr. Sudha Salhan (1998) SCC 204, Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762). Since the disciplinary proceeding was initiated only on 19.2.1992 the result of the departmental enquiry only would be considered for the next DPC and not for the DPC that was held in the year 1991.

In view of our finding made above and also in view of the communication dated 15.11.2001 we are not inclined to accept the other contention of the applicant. The application is allowed in view of our decision at point no.1 and the

respondents are directed to open the sealed cover and to give effect to the result of the DPC held on 4th, 5th and 6th September, 1991 as per law. The findings of the departmental enquiry shall not stand in the way for considering the case of promotion of the applicant on the basis of DPC held in 1991.

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

  
(K.K.SHARMA)  
Member(A)

  
(D.N.CHOWDHURY)  
Vice-Chairman

trd

In the Central Administrative Tribunal

Guwahati Bench : Guwahati

(In application U/S 19 of the Administration Tribunal  
Act, 1985)

O.A. No. 70 /2000.

Sri Arun Ch. Bora

-vs-

Union of India

I N D E X

| Sl.No. | Annexure | Particulars                               | Page No. |
|--------|----------|-------------------------------------------|----------|
| 1      | A        | Copy of the charge sheet                  | 11-15    |
| 2.     | B        | Copy of the letter                        | 16       |
| 3.     | C        | Copy of the letter<br>dt. 20.4.98.        | 17       |
| 4.     | D        | Copy of the representation<br>dt. 4.2.99. | 18.      |

Filed by 1-

Mrs. S. Deva  
Advocate

Central Administrative Tribunal  
Guwahati Bench  
Guwahati

18  
Filed by the Applicant  
through: Mrs. S. Devi  
Advocate  
17.12.2000  
Arun Ch. Bora

O.A No. . . . . 78 . . . . . /2000

Between

Sri Arun Ch. Bora  
Tax Assistant,  
Customs and Central Excise,  
Government of India,  
Jorhat, Assam.

. . . . . Applicant.

-And-

1. Union of India  
Through the Secretary Govt. of  
India. Deptt. of Revenue,  
Ministry of Finance.  
New Delhi.
2. Commissioner,  
Customs and Central Excise.  
Shillong.
3. Deputy Collector (P & V)  
Customs and Central Excise,  
Shillong.



4. Assistant Commissioner (Hqr)  
Central Excise,  
Shillong.

. . . Respondents.

Details of the Application :

1. Particulars of the Order against which the  
Application is made:

The application is made for opening the sealed cover in respect of the applicant after D P C held on 4th, 5th and 6th September 1991 for promotion as Inspector and for quashing the charge sheet issued under memorandum dt. 19.2.92 and/or for promotion to the post of Deputy Office Superintendent (D O S)

2. Jurisdiction of the Tribunal :

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

3. Limitation :

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

*Amich. Bora*

Pranab. Bora

4. Facts of the Case :

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

4.2. That the applicant was appointed as Lower Division Clerk w.e.f. 1.10.80 and posted as Shillong Customs and Central Excise Office. He was thereafter promoted as Upper Division Clerk in the year 1985. He was again promoted as Tax Assistant (Pay scale) Rs. 1350 - 2200).

4.3. That from the Tax Assistant the applicant has avenue of promotion to the post of Inspector of Central Excise. The applicant has another avenue of promotion to the post of Deputy Office Superintendent ( for short, DOS). This promotion is made on the basis of Seniority.

4.4. That a Departmental Promotion Committee (DPC for short) held on 4th, 5th and 6th September, 1991 for the consideration of the promotion to the post of Inspector and the applicants case was also considered by the said DPC.

4.5. That a memorandum of charge sheet was issued on 19.2.92 relating to matters for the period from 4.10.88. The enquiry of the said disciplinary proceeding has been completed but copy of the inquiry report has not yet been given to the applicant.

Copy of the memodendum of the charge sheet is enclosed as Annexure - A.

LDC  
UDC  
Tax Asst  
1  
Dy OS  
Ins & Ex  
1991 DPC  
19.2.92  
Charge Sheet  
for the  
period 1988

4.6. That it is stated that the D.P.C. was held on 4th, 5th and 6th, September, 1991 for the promotion of the applicant to the post of Inspector of Central Excise. The charge sheet was issued on 19.2.92. But in violation of all norms most arbitrarily the result of the D P C was kept in sealed cover. The respondents have malice against the applicant and as such they did not publish the result of DPC for promotion of the applicant to the post of Inspector of Central Excise.

4.7. That the applicant had filed an original Application before this Hon'ble Tribunal stating the facts and the Hon'ble Tribunal was pleased to disposed this application (OA 26/96) by an order dt. 30.6.97. It is stated that even after the said order the respondents did not give him ad-hoc promotion.

4.8. That is is stated that on the allegation of the charges the applicant is not responsible and another employee Sri L. C. Gogoi, L.D.C. was responsible and he deposited the money in question. In this connection letter No. C No. 11/24/3/ET -I/95 - NIL (Signed on 23.6.9 ) was issued by the Asstt. Commissioner Central Excise, Jorhat, to the Asstt. Commissioner (Hqr) Central Excise, Shillong informing the fact that the amount was misappropriate by Sri L.C. Gogoi, ad-hoc, L. D.C who completely deposited the money and to exonerate the Chashier and the Administrative Officer who were found not to be involved in misappropriating the amount in question. It is stated that the applicant was the chashier during that period.

Copy of the letter is enclosed as  
Annexure - B.

*Amr Ch. Bora*

4.9. That the applicant has submitted representation for his promotion and disposal of the charge sheet but nothing has been done as yet.

4.10. That as back as on 1.11.96, the applicant was advised by the Asstt. Commissioner (Hqr) Customs and Central Excise, Shillong that regarding the outcome of his selection or non-selection it could be intimated only when the appeal was exhausted in near future. The applicant submitted a representation dt. 20.4.98 praying for early decision of the case. But his case has not yet been decided.

Copy of the letter dt. 20.4.98 is enclosed as Annexure - C.

4.11. That the applicant submitted another representation on 4.2.99 to the Asstt. Commissioner (Hqr) Central Excise, Shillong, but this also could not elicit any action from the respondents.

Copy of the representation dt. 4.2.99 is enclosed as Annexure - D.

4.12. That the applicant begs to state that the charge sheet was issued to the applicant without any basis and without any fact finding enquiry and ultimately it came to light that another employee was responsible who deposited the money, and the applicant ought to be exonerated. The respondents also committed a mistake by keeping the D P C result of the applicant in 1991. They also illegally denied promotion of the applicant to the post of D A O. The respondents are therefore sleeping over the disciplinary proceeding. The Hon'ble Tribunal is

requested to call for the records of the Disciplinary Proceedings.

4.13. That the applicant is made victim for the negligence of the respondents.

4.14. That the applicant deserves promotion to the post of Inspector from the date others have been promoted as a result of the 1991 D P C.

4.15. That the applicants promotion on seniority is also due on seniority basis because many of his juniors have also been promoted.

5. Grounds and Legal Provisions :

5.1. For that the keeping the result of DPC for promotion to Inspector of Central Excise when there was no charge sheet issued against the applicant is illegal. ✓

5.2. For that the promotion of the applicant as Inspector has been withheld illegally.

5.3. For that the charge sheet was issued in 1992 for matters relating from 1988. Even after passage of time and mordinate delay the Departmental proceeding has not been finalised .

5.4. For that the finalisation of departmental proceeding is being delayed to cause harassment to the applicant and deny him promotion.

5.5. For that even the matter of the allegation in the charge sheet the person responsible for the offence has been ascertained and the applicant and the applicant has been recommended for exoneration.

5.6. For that the applicant has also not been promoted as Deputy Office Superintendent under the system of promotion on seniority basis.

5.7. For that withholding of promotion in the name of sealed cover procedure illegally is arbitrary and offence Article 14 and 16 of the Constitution of India.

5.8. For that keeping the disciplinary proceeding pending unreasonably for a very long period is capricious and the proceeding deserve to be quashed and set aside.

5.9. For that even applicant's case has not been reviewed six monthly and ad-hoc promotion has not been given.

5.10. For that the applicant deserves promotion as Inspector/DOS.

5.11. For that malice in law and malice in fact is explicit in the case.

6. Details of remedies Exhausted :

That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

7. Matters not pending in any other Court:-

That the applicant declare that any application, writ petition or suit is not pending before any other court.

23

*Amal Bora*8. Reliefs Sought For :

Under the facts and circumstances explained above the applicant prays for the following reliefs :

- 8.1. The sealed cover of D P C held on 4th, 5th and 6th September, 1991 for promotion of Inspector be opened.
- 8.2. The applicant be promoted as Inspector/Deputy Office Superintendent.
- 8.3. The Departmental proceeding under charge sheet dated 19.2.1992 be set aside and quashed.
- 8.4. The promotion as in prayer 2 above be given retrospective effect with all consequential benefits including pay allowances etc.
- 8.5. The cost of the case.

9. Interim Reliefs Prayed For :

During the pendency of the case the applicant prays for the following reliefs :

- 9.1. The sealed cover for the D P C held on 4th, 5th & 6th September, 1991 for promotion as Inspector, of the applicant be opened.

The above interim relief is prayed for on the grounds explained above.

10. Application is Filed Through Advocate.

*Pranch. Bern*

11.

Particulars of I.P.O. :

I.P.O. No. 4533 & 5

Date of Issue 28-9-29

Issued from Guwahati

Payable at Guwahati.

12.

List of Enclosures :

As stated above.

Verification . . . . .



VERIFICATION

I, Arun Bora, son of Late Jibon Ch.  
Bora, aged about 41 yrs. resident of Jorhat, working  
as Tax Assistant Jorhat do hereby verify that the  
statements made in paragraphs 1, 4, 6, 7, 8, 9, 10,  
11, and 12 are true to my knowledge and those made  
in paragraphs 2, 3 and 5 are true as per legal advice  
and that I have not suppressed any material facts.

Guwahati

Date 16-2-2000

*Arun Ch. Bora*

Deponent

CONFIDENTIAL

OFFICE OF THE COLLECTOR OF CUSTOMS AND CENTRAL EXCISE : : : : :  
B H I L L O N G .

MEMORANDUM.

C.NO. 11 (10) A/CIV-VIC/4191 150

Dated Shillong, The 19th Feb. 1992.

The Under signed proposes to hold an inquiry against Shri .... A.C. Bora, Cashier ..... under Rule 14 of the Central Civil services (Classification, Control & Appeal) Rules 1865, The substance of the imputation of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure I). A Statement of the imputations of mis-conduct or mis-behaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

2. Shri .... A.C. Bora, Cashier ..... is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and ~~also~~ also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those article of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri .... A.C. Bora, Cashier ..... is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuse to comply with the provisions of Rule 14 of the C.C.S. (C.C.A.) Rules 1965 or the orders/directions issued in pursuance of the said Rule the inquiring authority may hold the inquiry against him exparte.

BL/-

Contd....P/2.....

5. Attention of Shri... A.C. Bora, Cashier... is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri ..... A.C. Bora, Cashier..... is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S (Conduct) Rules, 1964.

6. The receipt of this memorandum may be acknowledged.

( D.D. 14/7 )  
ADDITIONAL COLLECTOR (P & V),  
CUSTOMS & CENTRAL EXCISE : SHILLONG.

BL/-

To

Shri A.C. Bora, Cashier, (T.A)  
Customs & Central Excise,  
Jorhat Division,  
Jorhat.

Annexure - 1 (Contd.).

Division respectively, to Shri L.C. Gogoi, LDC & for disbursement. No undertaking or any sort of intimation was received from the said officers for payment of SDA by Jorhat Division.

That, investigation reveals that Shri J.C. Das, Supdt. (Retd.) has drawn the arrear SDA of Rs. 18,433/- from Agartala Division and Shri S. Dutta, Supdt. (Retd.) has drawn Rs. 13,753/- from Silchar Division executing written undertaking.

That Shri Bora deposited an amount of Rs. 37,428 to SBI, Jorhat on 7.8.91 under Ch. No. 36 from the cash money in hand which resulted a shortage of Rs. 37,428/- in cash of Jorhat Division. In this regard, an explanation was called from Shri Bora by the Asstt. Collector, Customs and Central Excise, Jorhat vide C. No. 41/COM/1Cj/91/187 dated 27.8.91. Shri Bora in his reply dated 28.8.91 admitted the facts. Hence it appears that Shri Bora has committed an offence of gross irregularity and negligence in the discharge of official duties.

Thus by the above acts, Shri A.C. Bora, Cashier exhibited lack of integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened the provisions of Rule 3(1)(i)(ii) & (iii) of the CCS (Conduct) Rules, 1964.

ANNEXURE - III.

List of Documents by which the article of charge framed against Shri A.C. Bora, Cashier Customs & Central Excise Jorhat are proposed to be sustained.

1. Bill No. 173/CD/SDA/91 dated 15.7.91.
2. Cash Book of Jorhat Dist. office,
3. Service Books of Shri Sukhamoy Dutta and Shri J.C. Das, Retd. Supdts.
4. Written undertaking of Shri Sukhamoy Dutta and Shri J.C. Das, Retd. Supdts.
5. Letter C No. 41/COM/91/187 dated 27.8.91.

Annexure - 1 (Contd.).

Division respectively, to Shri L.C. Gogoi LLC for disbursement. No undertaking or any sort of intimation was received from the said officers for payment of SDA by Jorhat Division.

That, investigations reveal that Shri J.C. Das, Supdt. (Retd.) has drawn the arrear SDA of Rs. 18,433/- from Agartala Division and Shri S. Dutta, Supdt. (Retd.) has drawn Rs. 13,753/- from Silchar Division executing written undertaking.

That Shri Bora deposited an amount of Rs. 37,428 to SBI, Jorhat on 7.8.91 under Ch. No. 36 from the cash money in hand which resulted a shortage of Rs. 37,428/- in cash of Jorhat Division. In this regard, an explanation was called from Shri Bora by the Asstt. Collector, Customs and Central Excise, Jorhat vide C. No. 41/COM/PCJ/91/187 dated 27.8.91. Shri Bora in his reply dated 28.8.91 admitted the facts. Hence it appears that Shri Bora has committed an offence of gross irregularity and negligence in the discharge of official duties.

Thus by the above acts, Shri A.C. Bora, Cashier exhibited lack of integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened the provisions of Rule 3(1)(i)(ii) & (iii) of the CCS (Conduct) Rules, 1964.

ANNEXURE - III.

List of Documents by which the article of charge framed against Shri A.C. Bora, Cashier Customs & Central Excise Jorhat are proposed to be sustained.

1. Bill No. 173/CO/SD/91 dated 15.7.91.
2. Cash Book of Jorhat Dist. office,
3. Service Books of Shri Sukhmay Lutta and Shri J.C. Das, Retd. Supdts.
4. Written undertaking of Shri Sukhmay Lutta and Shri J.C. Das, Retd. Supdts.
5. Letter C No. 41/COM/91/187 dated 27.8.91.

6.....

- 15 -  
- 23 -

Annexure - I (Contd.).

6. Explanation dated 23.8.91 of Shri A. C. Bora, Cashier, Customs & Central Excise, Jorhat.
7. Letter C. No. 41/CON/ACJ/91/197 dated 13.9.91.

ANNEXURE - IV.

List of witnesses by whom the articles of charge framed against Shri A. C. Bora, Cashier Customs & Central Excise, Jorhat are proposed to be sustained.

1. Shri J. C. Das, Supdt.
2. Shri Sukhamoy Lutta, Jtd. Supdt.
3. Shri N. D. Das, J.C., Customs & Central Excise, Jorhat.
4. Shri L. Gogoi LDC., Customs & Central Excise, Jorhat.

—

CENTRAL EXCISE:: JORHAT.

Annexure - B

C.No. II/24/3/ET-1/95

Date:-

To,

The Assistant Commissioner(Hqr.),  
Central Excise,  
Shillong.

Subject:- Realisation of misappropriated  
Govt. money.

Please refer to your letter C.No. II(10)A/  
CIU-VIG/4/91/1120-21 dated 15.10.96 on the above subject.

I am to inform you that with the deposit of  
Rs. 2,00/- on 9.6.97 the whole amount of Rs. 37,428/- found  
to be misappropriated by Sri L.C. Gogoi adhoc L.D.C. has  
completely been deposited by him. I am also inform you that  
necessary action be initiated by the Head Quarter to  
exonerate the then Cashier and the then Adm. ~~Officer~~ Officer  
who were found not to be involved in misappropriating the  
amount in question.

This is for favour of your information and  
necessary action.

( J.N. BAITHORY. )  
Assistant Commissioner,  
Central Excise, Jorhat.

Annexure - C.

To,

The Commissioner,  
Central Excise,  
Shillong.

Subject:- Prayer for early decision of  
vigilance case.

Sir,

Kindly refer to my early letter dated 19.1.98  
on the subject cited above.

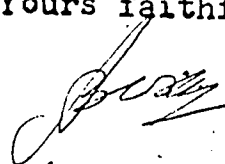
In this connection I am to inform your honour  
that I have not received any reply regarding the fate of  
my case from your end.

Further, I am to enclose a letter C.No.II(24)/3/  
Et-I/95 dated 23.5.97 of Assistant Commissioner, Central Excise,  
Jorhat for favour of your perusal and necessary action please

An early reply on the matter is requested.

Yours faithfully,

Encls:- one

 20/4/98  
( A.C. BORA.),  
Tax Assistant, Central  
Excise, Jorhat.



Annexure - D

33

To,

The Assistant Commissioner(Hqr.),  
Central Excise,  
Shillong.

(Through the Assistant Commissioner, Central  
Excise, Jorhat.)

Sir,

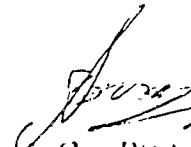
Kindly refer to your letter C.No.II(26)2/con/36/  
Pt-1/1633 dated 1.11.96 addressed to the Assistant Commis-  
sioner, Central Excise, Jorhat on the above subject.

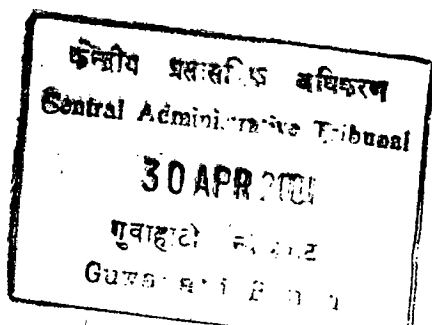
As per para 111 of the above letter it was  
stated that the outcome of my promotion could be intimated  
only when the panel is exhausted in near future.

But, Sir, I have not yet received any intimation  
regarding the same since December,1996.

Now I pray your honour to enlighten me regarding  
the present position of my case as well as the exhaustion  
of the said panel considering the sufferings caused to me  
since July,91. And since then I have lost my promotion for  
last 8 years to the grade of Inspector. This makes an  
untolerable mental anxiety.

Yours faithfully,

  
(A.C. BORKH.) 29/2/99  
Tax Assistant, Central  
Excise, Jorhat.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

O.A. NO. 70/2000.

Sri A. C. Bora ..... Applicant.

- Vs -

Union of India & Others.

..... Respondents.

IN THE MATTER OF.

Written statement submitted by  
the Respondents No. 1,2,3 & 4.

WRITTEN STATEMENT.

The humble respondents beg to submit their  
Written statement as follows :

1. That with regard to para 1 to 4.1 the respondents beg to offer no comment.
2. That with regard to para 4.2 the respondents beg to state that the applicant joined as L.D.C. on 1.10.80 and he was promoted to the grade of U.D.C. in the year 1986 (not in the year 1985). He was again promoted in the year 1986 as Tax Assistant.
3. That with regard to para 4.3 and 4.4. the respondents beg to state that the D.P.C. has considered his name for promotion to the grade of Inspector/D.O.S.II but the findings of the D.P.C. were kept under sealed cover as there is a vigilance case pending against him.

Contd...2..

4. That with regard to para 4.5 the respondents beg to state that since Sri Amun Ch Bora (applicant) while posted as cashier in Jorhat Central Excise Divisional Office was charge sheeted alongwith 2 (two) other Officers for embezzlement and misappropriation of Govt. money to the tune of Rs. 37,428/- from Cash of Jorhat Central Excise Divisional Office.

The Disciplinary authority in the case of Group C employee is the Deputy Commissioner (then Deputy Collector). Copy of the inquiry report was not given to the charged officer as the Inquiry Officer in this case was the Disciplinary Authority i.e Deputy Commissioner ( Joint Commissioner now ) vide Govt. of India's Instruction No. 7 under Rule 15 of C.C.S.(CCA) Rules 1965. The disciplinary proceedings on the outcome of the Departmental Inquiry Report has since been finalised on 16.3.2000.

5. That with regard to para 4.6 the respondents beg to state that the statement made in this para are same as stated in para 4.3.

6. That with regard to para 4.7, the respondents beg to state that 3 Officers including one Gazetted Officer are involved in the case. For initiation of disciplinary proceedings against Gazetted Officers, 1st stage advice is necessary which was ~~xxxxxxxx~~ obtained from C.V.C. in the instant case. After inquiry report was received 2nd stage advice was ~~xxxxxxxx~~ again sought from the C.V.C. However, the case has since been finalised on 16.3.2000.

7. That with regard to para 4.8 to 5.7 the respondents beg to state that the disciplinary proceedings have since been finalised based on the findings of the Inquiry Report and other material documents. Memorandum of Charge Sheet was issued against the 3 (three) Officers on 19.2.92 as stated in Para 1 and 4.5 of the application to CAT, by Sri A.C.Bora.

Contd...3..

8. That with regard to para 5.8 to 5.10, the respondents beg to state that the statement made in this para are same as stated in para 4.7. ✓

9. That with regard to para 6 to 12, the respondents beg to offer no comment.

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

I, Shri A. Hussain, Assistant Commissioner, Central Excise, Guwahati do hereby solemnly declare that the statements made in this written statement are true to my knowledge and information and no material fact has been suppressed.

And I signed this verification on this 19th day of April 2001.

*Ahwan Hussain*  
DEPONENT.

Identified by.

Advocate.

....