

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓
O.A/T.A No. 319/01

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Balita
8.12.17

FORM NO. 4

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : : : GUWAHATI.

ORDER SHEET

APPLICATION NO. 319 OF 2001

APPLICANT (S) Binon Datta

RESPONDENT (S) LEO 2015

ADVOCATE FOR APPLICANT(S) Mr B.P. Kata Key

Mrs R.S. Chowdhury

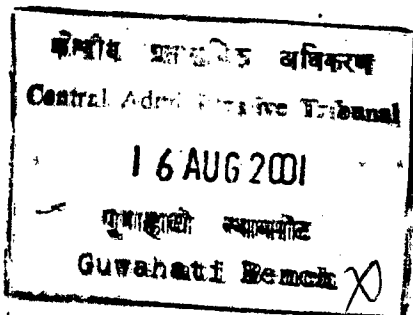
ADVOCATE FOR RESPONDENT(S)

Mr. Y.K. Phukan for Rptd. 224
Ms. M. Das

Notes of the Registry

dated

Order of the Tribunal



17.8.01

Heard counsel for the parties.

Issue notice as to why the application shall not be admitted. Returnable by 2 weeks.

Mr. A. Deb Roy, learned Sr.C.G.S.C. for the respondents, accepts notice on behalf of the respondents no. 1.

List on 31/8/01 for admission.

U. Shaha

Member

Vice-Chairman

mb

31.8.01

List on 11/9/01 for admission.

By order

A. K. Jey
31/8

This application is in form but not in the form of a Petition. It is not filed vide M. P. No. 76 C.F. for Rs. 50/- deposited vide IPO/BD No. 76 548634 Dated 14.8.2001

mb

11.9.01

List the matter on 5/10/01 for admission as prayed for learned counsel for the respondents.

U. Shaha

Member

Vice-Chairman

mb

Requints has been filed.

V.S.
16/8/2001

Notice prepared and sent to D/S for issuing the Respondent No 1 to 4 by Regd AID vide S/No 3215 & 3218 dt 24/8/01

22/8/01.

5.10.01

Heard Mr.S.Sarma, learned counsel for the applicant and also Mr.B.C.Pathak, ADDL. C.G.S.C., Mr. Y.K.Phukan, learned counsel for the State of Assam, Mrs.B.Dutta, counsel for the State of Meghalaya.

Learned counsel for the respondents seeks two weeks time to file reply. Prayer is allowed. List on 13/11/01 for admission.

ICU Sharma

Member

ICU Sharma

Vice-Chairman

mb

13.11.01

List on & 5/12/01 for admission.

ICU Sharma

Member

ICU Sharma

Vice-Chairman

mb

20.11.2001

5.12.01

Wfs on behalf
Respondent No. 2 (State of
Assam) has been filed.

Respondent Nos. 2 and 4 have filed the written statement, Respondent Nos. 1 is yet to file written statement.

Learned counsel for the applicant prays for time to file rejoinder. Prayer is accepted.

List on 3.1.02 for admission.

ICU Sharma
Member(J)

ICU Sharma
Member(A)

10.12.2001

mb

3.1.2002

Reply submitted
by the Respondent No. 1.

List on 10.1.2002 alongwith O.A.
No. 287/2001 for admission.

ICU Sharma
Member

ICU Sharma
Vice-Chairman

mb

No rejoinder has been
filed.

2.1.02

3

D.A. 319/2001

Notes of the Registry

Date

Order of the Tribunal

10.1.02

Present : Hon'ble Mr. Justice D.N. Chowdhury,
Vice-Chairman.
Hon'ble Mr. K.K. Sharma,
Administrative Member.

The matter pertains to conferment of supertime scale. We are however not inclined to pass any order from our end on the ground that the matter can be taken care of by the concerned authority. We are of the view that such matter needs to be looked into by the respondents at the first instance. The applicant has already submitted his representation narrating his grievances. In the set of circumstances, we direct the respondents to dispose of the said representation. Accordingly respondents are directed to consider the representation and pass necessary order thereon. The applicant in addition may also submit a fresh representation highlighting his grievance within four weeks from today. If such representation is filed the same shall also be considered by the respondents in accordance with law within a reasonable time.

The application is disposed of. No order as to costs.

Member

Vice-Chairman

mb

18.1.2002

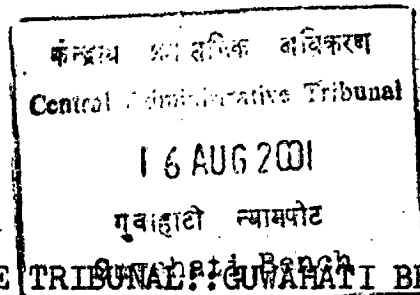
Copy of the
order has been
sent to the
Office for issue
to the applicant
as well as Admin
for the Respondent

18/1/02
30/1/02

Notes of the Registry

Date

Order of the Tribunal



THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH
GUWAHATI

O.A. NO. 319 OF 2001

Shri Biren Dutta

... APPLICANT

-VERSUS-

Union of India & Ors.

... RESPONDENTS

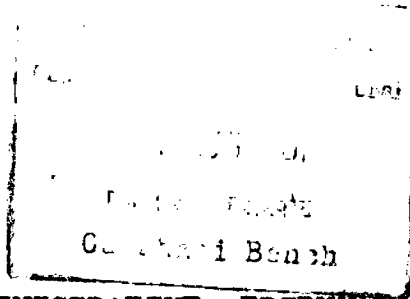
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Filed by :

Advocate

Rakhee
Rakhee Srinath Choudhury



Filed by:
Biren Dutta
X - Applicant
Through: Rajy
R.S. CHANDRASEKAR
Advocate

THE CENTRAL ADMINISTRATIVE TRIBUNAL:::GUWAHATI BENCH
GUWAHATI

(Application under Section 19 of the Central
Administrative Tribunal Act, 1985)

O.A. NO. /2001

BETWEEN

Sri Biren Dutta, IAS,
Secretary to the Govt. of Assam,
Panchayat & Rural Development Department,
Dispur, Guwahati-6

.... APPLICANT

-AND-

1. Union of India, represented by the Secretary to the Govt. of India, Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training), New Delhi.
2. The State of Assam, represented by the Chief Secretary, Govt. of Assam, Dispur, Guwahati-6.
3. The State of Meghalaya, represented by the Chief Secretary, Govt. of Meghalaya, Shillong.
4. The Secretary to the Govt. of Assam, Department of Personnel (Personnel-A), Dispur, Guwahati-6

.... RESPONDENTS

DETAILS OF APPLICATION

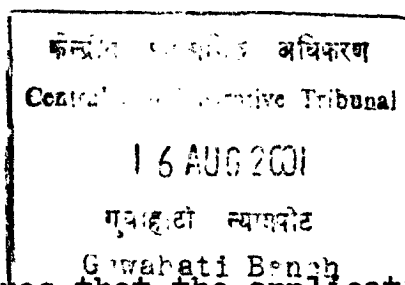
1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The present application is not directed against any order but has been filed making a grievance against denial of promotion to the Applicant to the Super time scale in the IAS.

2. JURISDICTION OF THE TRIBUNAL :

The Applicant declares that the subject matter in respect of which the application is made, is within the jurisdiction of this Hon'ble Tribunal.

Biren Dutta



3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and as such is entitled to all the rights, privileges and protections guaranteed to the citizens of India under the Constitution of India and the laws framed thereunder.

4.2 That the applicant belongs to the Assam-Meghalaya Joint Cadre of IAS and is serving in the Assam wing of the said joint cadre.

4.3 That the applicant originally belongs to the 1975 batch of Assam Civil Services-I Cadre, to which service he was inducted pursuant to a selection for the service by the APSC in the year 1975.

4.4 That after having an illustrious service to his credit in the ACS cadre, the applicant was appointed on promotion to the IAS pursuant to his selection for the same and he has been assigned his year of Allotment as 1987. Be it stated herein that another officer by the name of Sri Manish Johari was also selected along with the applicant for promotion to IAS and he too has been assigned 1987 as his year of Allotment.

4.5 That the applicant, along with 3 other officers Sri M.S. Rao, P. Hazarika and N.G. Barooh was promoted to the Selection Grade with effect from 1.1.2000 by a notification dtd. 29.4.2000. It is pertinent to mention

Given with

(3)

herein that Sri M. Srinivas Rao is on deputation to the Government of Meghalaya and Sri Pradip Hazarika is on Central Deputation to the Govt. of India and as such are ineligible to get the Super Time Scale of pay.

A copy of the said Notification dtd.
29.4.2000 is annexed herewith and marked
as ANNEXURE - A.

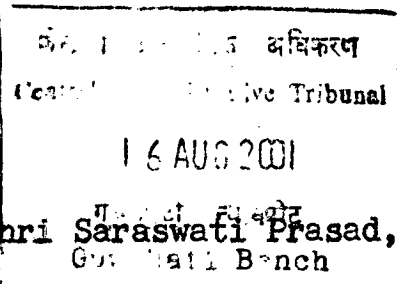
4.6 That in terms of the provisions of the IAS (Pay) Rules, 1954, as it originally stood, an officer was entitled to be promoted to the Super Time Scale after his promotion to the Selection Grade for which eligibility criteria is entry into the 14th year of service from the year of Allotment. However, no length of service was specified for promotion to the Super Time Scale. Subsequently, an ammendment was brought into the provisions of the Rules by a notification No.2001.1/1/99- AIS (II)-A dtd. 5.4.2000, whereby the eligibility criteria has been laid down to be completion of 16 years of service calculated from the year of Allotment. However, it has been provided in the said notification for amending the Rules that an officer can be promoted to the Super time Scale even before completion of requisite length of service with prior approval of the Central Government.

A copy of the said Notification dtd.
5.4.2000 is annexed herewith and marked
as ANNEXURE - B.

4.7 That the Govt. of Assam has been pleased to promote many IAS officers to the Super Time Scale even before completion of 16 years of service.

...4

(4)



(i) Shri Rajib Kr. Bora, IAS, Shri Saraswati Prasad, IAS and Shri Sunil Jeroth, IAS were promoted to Supertime scale vide Memo No. AAI.18/97/113-D dtd. 1.6.2000. They were so promoted on completion of 15 years of service.

(ii) Kumar Sanjay Krishna, IAS and Shri J.P. Saikia were promoted to the Supertime Scale vide Memo No. 18/97/119-B dtd. 28.9.2000. They were so promoted on completion of 15 years of service in the IAS cadre.

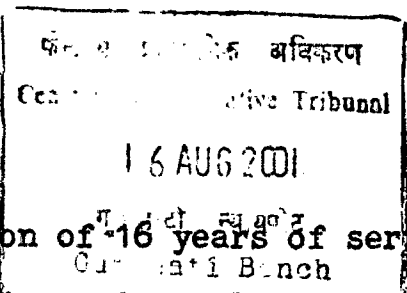
(iii) Shri Ravi Kapoor, IAS, Shri B.K. Gohain, IAS and Shri M.K. Barooh, were promoted to Supertime Scale vide Memo No. AAI.20/2000/3-C. They were so promoted upon completion of 15 years of service in the IAS cadre.

It may be mentioned herein that even before issuance of the notification amending the provisions of the IAS (Pay) Rules, 1954 (Annexure - B), there existed Government Instruction, laying down the criteria to be followed for promotion to the Supertime Scale which specified that 16 years of service was required for promotion to the Supertime scale, but inspite of the same, many officers were promoted to the Supertime Scale even before completion of 16 years of service, throughout India including the State of Meghalaya.

Copies of the promotion notification in respect of the above officers are annexed as ANNEXURES - C, D and E respectively.

4.8 That the Applicant states that the examples given above to indicate that the officers are being promoted to the

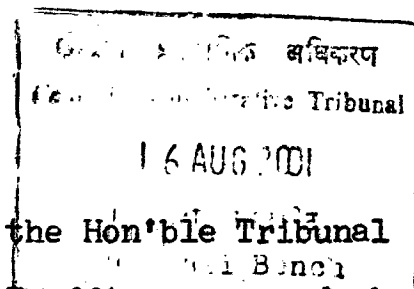
... 5



Supertime Scale even before completion of 16 years of service is only illustrative and not exhaustive. On earlier occasions also many officers in the IAS, viz., Shri A.K. Sachan, Shri J.P. Meena, Shri J.B.L. Vasava etc. were promoted to the super-time scale before completion of 16 years of service. In the case of J.B.L. Sasava, when his pay slip in Supertime scale was withheld by the Accountant General, Assam, on the ground of his promotion being illegal having been made before completion of 16 years of service, this Hon'ble Tribunal came to the rescue of Shri Vasava on his approach to this Hon'ble Tribunal by filing an O.A. and it was ordered that Shri Vasava was entitled to draw his salary in his promotional post in super-time scale.

4.9 That the applicant states that from the instances given above, it is apparent that persons who have not rendered/completed 16 years of service from their year of Allotment have been promoted to the Supertime Scale by the Government of Assam. The applicant states that similarly placed persons having been promoted to Supertime Scale even before completion of 16 years of service, the applicant is also entitled to be considered for promotion to Supertime Scale by the Govt. of Assam in view of the availability of vacancies. However, for reasons best known to the authorities, the applicant was left out and was not promoted resulting in discrimination.

4.10 That as regards the vacancy position it is stated that there are altogether 39 vacancies at the level of Super-time scale which include the deputation reserve quota as well. Presently, out of the said 39 vacancies, only 27 officers are in position. Seven officers are on deputation within the



State. The applicant craves leave of the Hon'ble Tribunal to give the names of the said 27 plus 7 officers as and when required.

4.11 That in view of the above, there are five clear vacancies in the Supertime Scale in addition, 3 more vacancies have arisen in the recent past on retirement of 2 officers, viz. Shri D.C. Barman (retired on 20.2.2001) and Shri N.C. Baruah (retired on 31.5.2001) and Shri K.K. Mittal who has been sent on Central deputation in June, 2001. This gives 8 clear vacancies in the Supertime scale and as against this there are only 4 officers in the Selection Grade to be left out from their promotion to the Supertime scale. Apart from the applicant, the 3 other officers are Shri T.R. Dey, Shri N.G. Barooh and Shri C.K. Sharma.

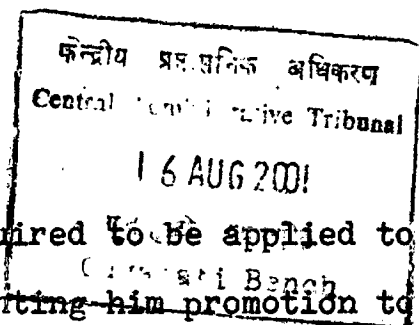
4.12 That the applicant being aggrieved by his non-promotion to the Supertime Scale, had submitted a representation to the Govt. of Assam on 28.6.2001, but the same is yet to be attended to and the Applicant is still in the dark about the outcome of the said representation. In the process, he is still continued to be deprived of his legitimate promotion.

A copy of the said representation dtd.

28.6.2001 is annexed as ANNEXURE - F.

4.13 That the Applicant states that the amended provisions of the IAS (Pay) Rules have not put an absolute bar on promotion to the Supertime scale before completion of 16 years of service which will also be evident from the various promotions given to the IAS officers of which mention has been made above, which include even the officers belonging to 1986 batch. The

(7)



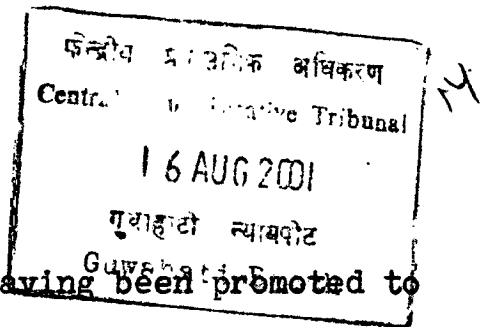
same yardstick and/or criteria is required to be applied to the case of the Applicant towards granting him promotion to the Supertime scale. The competent authority, apart from taking the approval of the Central Government is also vested with the power of relaxation which power cannot be exercised in a discriminatory manner, when there is clear vacancy to accommodate all the four Selection Grade officers, there is no earthly reason as to why the said officers be not promoted to the Supertime scale applying the same yardstick and/or criteria as was applied in respect of all other officers. A rule applicable to all officers, cannot be rigidly applied only in respect of the Applicant.

4.14 That it may be pertinent to mention herein that Shri C.K. Sharma, IAS who has also been deprived of his legitimate promotion to Supertime scale has also approached this Hon'ble Tribunal by way of an Original Application, which has been registered as O.A. No. 287/2001. This Hon'ble Tribunal vide Order dtd. 2.8.2001 while issuing Notice as to why the said application shall not be admitted has further fixed the matter for admission on 20.8.2001.

A copy of the said Order dtd. 2.8.2001 passed by this Hon'ble Tribunal in O.A. No. 287/2001 is annexed herewith as ANNEXURE - G.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that prima facie the action/inaction on the part of the Respondents is not legally sustainable and the Applicant is entitled to the relief sought for in this Original Application.



(8)

5.2 For that all other officers having been promoted to Supertime scale even before completion of 16 years of service from the year of Allotment, the Applicant alone cannot be deprived of such promotion.

5.3 For that the amendment provisions of the IAS (Pay) Rules does not create any absolute bar for promotion to Supertime scale without having 16 years of service from the year of Allotment.

5.4 For that even before the amended provisions of the Rules, Government instructions laying down the criteria of 16 years of service were holding the field and inspite of that officers were promoted to the Supertime scale before completion of 16 years of service throughout India including the State of Meghalaya and thus there cannot be any discrimination only in respect of the Applicant.

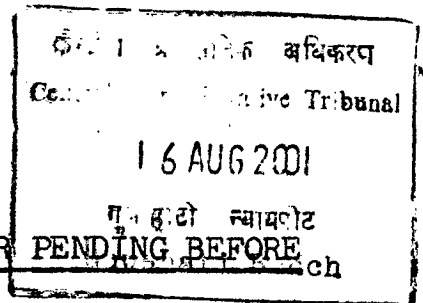
5.5 For that there being clear vacancies to accommodate all the Selection Grade officers, the Applicant is entitled to be promoted, if need be in relaxation of the Rules and/or with the approval of the Central Government.

5.6 For that in any view of the matter the action/inaction towards denial of promotion to the Applicant is not sustainable.

The Applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.



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

The Applicant further declares that no other application, writ application or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To direct the Respondents to promote the Applicant to the Supertime scale of IAS.

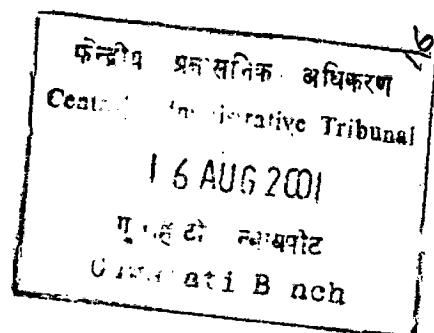
8.2 To grant all consequential benefits upon granting the relief above.

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the Applicant is entitled to under the facts and circumstances of the case and/or as may ^{be} deemed fit and proper considering the facts and circumstances of the case.

Given with

(10)



9. INTERIM ORDER PRAYED FOR :

During the pendency of the O.A. the Applicant prays for an interim order directing the Respondents to consider the case of the Applicant for promotion to Supertime scale.

10. The application is filed through Advocate.

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

(i) I.P.O. No. : 76 548634.
(ii) Date : 14.8.2001
(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Sim *atto*

VERIFICATION

I, Shri Biren Dutta, IAS, son of Late Girish Ch. Dutta, aged about 52 years at present working as Secretary to the Government of Assam, Panchayat & Rural Development Department, Dispur, Guwahati-6, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case. The statements made in paragraphs 1 to 12

— are true to my knowledge and those made in paragraphs — x — are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the day of August, 2001.

Biren Dutta

APPLICANT

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

@@@@@

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 29th April, 2000

NO.AAI.42/88/188: Shri M. Srinivas Rao, IAS (RR-1987) is promoted to officiate in the Selection Grade of IAS, viz. Rs. 15100-400-18300/- P.M. with effect from 1.1.2000.

NO.AAI. 42/88/188-A: Shri Pradip Hazarika, IAS (SCS-1987) is promoted to officiate in the Selection Grade of IAS, viz. Rs. 15100-400-18300/- P.M. with effect from 1.1.2000.

NO.AAI. 42/88/188-B: Shri N.G. Barooah, IAS (SCS-1987) is promoted to officiate in the Selection Grade of IAS, viz. Rs. 15100-400-18300/- P.M. with effect from 1.1.2000.

NO.AAI. 42/88/188-C: Shri Biren Dutta, IAS (SCS-1987) is promoted to officiate in the Selection Grade of IAS, viz. 15100-400-18300/- P.M. with effect from 1.1.2000.

Sd/- H.N.SARMA

Under Secretary to the Govt. of Assam

Memo No.AAI.42/88/188-D :: Dated Dispur, the 29th April, 2000
Copy to :-

1. The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-28.
2. The Chairman, Assam Administrative Tribunal, Guwahati.
3. The Chairman, Assam Board of Revenue, Guwahati.
4. The Chairman, Assam State Electricity Board, Guwahati.
5. All Principal Secretaries/Commissioners & Secretaries/Secretaries to the Govt. of Assam.
6. The Chief Electoral Officer, Assam, Dispur.
7. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
8. The Agriculture Production Commissioner, Assam, Dispur.
9. All Commissioners of Divisions, Assam.
10. The Chief Secretary to the Govt. of Meghalaya, Shillong.
11. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
12. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
14. The Secretary to the Governor of Assam, Dispur.
15. The PPS to Chief Minister, Assam, Dispur.
16. All Principal Secretaries of the Autonomous Councils.
17. The Secretary, State Election Commission, Housefed Complex, Dispur.
18. All Deputy Commissioners/ Sub-Divisional Officers.
19. The PS to Chief Secretary, Assam, Dispur.
20. The PS to Addl. Chief Secretary, Assam, Dispur.
21. All PS to Ministers/ Ministers of State.
22. Officers concerned.
23. Departments concerned.

By order etc.,

H.N. Sarma
29/4/2000
H.N.SARMA

Under Secretary to the Govt. of Assam

Certified to be true copy.

Advocate

29.4.2000

(NOTES PUBLISHED IN THE GAZETTE OF INDIA)

SECTION 3 (1) DATED 27-11-1954

No. 20011/1/99-AIS(I)-A

GOVERNMENT OF INDIA

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSION
(DEPARTMENT OF PERSONNEL AND TRAINING)New Delhi, the 5th April, 2000.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Governments of the States concerned, hereby makes the following rules further to amend the Indian Administrative Service (Pay) Rules, 1954, namely:

(1) Those rules may be called the Indian Administrative Service (Pay) Third Amendment Rules, 2000.

(2) They shall come into force from the date of their publication in the Official Gazette.

In the Indian Administrative Service (Pay) Rules, 1954, in rule 3, in sub-rule (2A), after the proviso, the following proviso shall be added, namely: -

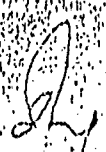
Provided further that no member of the Service shall become eligible for appointment to the Super time scale before completion of six years of service calculated from the year of allotment

Certified to be true copy.

Why
Advocate

- 2 -

assigned to him. Under rule 3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, unless prior approval of the Central Government is obtained for making him so eligible before completion of the requisite length of service in public interest.



(Y.P. DINGRA)

Under Secretary to the Government of India

02-04-54

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

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 1st June, 2000

NO.AAI.18/97/113: Shri Rajiv Kumar Bora, IAS (RR-1985), Secretary to the Govt. of Assam, Finance Department is promoted temporarily and until further order to officiate in the Supertime Scale of IAS and posted as Commissioner & Secretary to the Govt. of Assam, Finance Department.

NO.AAI.18/97/113-A: Shri. Saraswati Prasad, IAS (RR-1985), Secretary to the Governor of Assam is promoted temporarily and until further order to officiate in the Supertime Scale of IAS and posted as Commissioner & Secretary to the Governor of Assam.

NO.AAI.18/97/113-B: On return from leave, Shri Sumeet Jerath, IAS (RR-1985) is promoted temporarily and until further order to officiate in the Supertime Scale of IAS and his services are placed at the disposal of the W.P.T. & B.C. Department for appointment as Principal Secretary, Bodoland Autonomous Council, Kokrajhar with effect from the date of taking over charge.

NO.AAI.18/97/113-C: Shri L. Rynjah, IAS (RR-1974), Commissioner & Secretary to the Govt. of Assam, Agriculture Department and Principal Secretary, Bodoland Autonomous Council, Kokrajhar is relieved of the charge of Bodoland Autonomous Council with effect from the date of handing over charge.

Sd/- DR.B.K.GOHAIN
Secretary to the Government of Assam

Memo No. AAI.18/97/113-D :: Dated Dispur, the 1st June, 2000

Copy to :-

1. The Accountant General (A&B), Assam, Maidamgaon, Beltola, Guwahati-28.
2. The Chairman, Assam Administrative Tribunal, Guwahati.
3. The Chairman, Assam Board of Revenue, Guwahati.
4. The Chairman, Assam State Electricity Board, Guwahati.
5. All Principal Secretaries/Commissioners & Secretaries/Secretaries to the Govt. of Assam.
6. The Chief Electoral Officer, Assam, Dispur.
7. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
8. The Agriculture Production Commissioner, Assam, Dispur.
9. All Commissioners of Divisions, Assam.
10. The Chief Secretary to the Govt. of Meghalaya, Shillong.
11. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
12. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
14. The Secretary to the Governor of Assam, Dispur.
15. The Secretary, Assam Legislative Assembly, Dispur.
16. The PPS to Chief Minister, Assam, Dispur.
17. All Principal Secretaries of the Autonomous Councils.
18. The Secretary, State Election Commission, Housefed Complex, Dispur.
19. All Deputy Commissioners/Sub-Divisional Officers.
20. The PS to Chief Secretary/Addl. Chief Secretary, Assam, Dispur.
21. All PS to Ministers/Ministers of State.
22. Officers concerned.
23. Departments concerned.

By order etc.,

(H.N. SARMA)

Under Secretary to the Govt. of Assam

Certified to be true copy

Advocate

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

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 1st June, 2000

NO. AAI.18/97/114: In continuation of Govt. Notification No. AAI.18/97/113 dated 1.6.2000 and letter No. AAI.15/2000/2 dated 31.5.2000, Shri Rajiv Kumar Bora, IAS (RR-1985) is deemed to have been promoted to officiate temporarily in the Supertime Scale of IAS with effect from 21.12.99, on which date his junior, Shri H. Marwein, IAS (RR-1985) was promoted.

NO. AAI.18/97/114-A: In continuation of Govt. Notification No. AAI.18/97/113-A, dated 1.6.2000 and letter No. AAI.15/2000/3 dated 31.5.2000, Shri Saraswati Prasad, IAS (RR-1985) is deemed to have been promoted to officiate temporarily in the Supertime Scale of IAS with effect from 21.12.99, on which date his junior, Shri H. Marwein, IAS (RR-1985) was promoted.

NO. AAI.18/97/114-B: In continuation of Govt. Notification No. AAI.18/97/113-B, dated 1.6.2000, Shri Sumeet Jerath, IAS (RR-1985) is deemed to have been promoted to officiate temporarily in the Supertime Scale of IAS with effect from 21.12.99, on which date his junior, Shri H. Marwein, IAS (RR-1985) was promoted.

Sd/- DR. B. K. GOMAIN

Secretary to the Government of Assam

Memo No. AAI.18/97/114-C ::: Dated Dispur, the 1st June, 2000

Copy to :-

1. The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-28
2. The Chairman, Assam Administrative Tribunal, Guwahati.
3. The Chairman, Assam Board of Revenue, Guwahati.
4. The Chairman, Assam State Electricity Board, Guwahati.
5. All Principal Secretaries/Commissioners & Secretaries/Secretaries to the Govt. of Assam.
6. The Chief Electoral Officer, Assam, Dispur.
7. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
8. The Agriculture Production Commissioner, Assam, Dispur.
9. All Commissioners of Divisions, Assam.
10. The Chief Secretary to the Govt. of Meghalaya, Shillong.
11. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
12. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
13. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
14. The Secretary to the Governor of Assam, Dispur.
15. The Secretary, Assam Legislative Assembly, Dispur.
16. The PPS to Chief Minister, Assam, Dispur.
17. All Principal Secretaries of the Autonomous Councils.
18. All Deputy Commissioners/Sub-Divisional Officers.
19. The Secretary, State Election Commission, Housefed Complex, Dispur.
20. The PS to Chief Secretary, Assam, Dispur.
21. The PS to Addl. Chief Secretary, Assam, Dispur.
22. All PS to Ministers/Ministers of State.
23. Officers concerned.
24. Departments concerned.

By order etc.,

H.N. Sarma

(H.N. SARMA) 1.6.2000

Under Secretary to the Government of Assam

Pudena

1.6.2000

- 17 -

ANNEXURE-D.

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

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 28th Sept./2000.

No. AAI. 18/97/119 - A : Kumar Sanjoy Krishna, IAS (PR-1985),
Managing Director, Assam Tea Corporation, Guwahati is allowed
proforma promotion in Supertime Scale with effect from the date
of promotion of his immediate junior to Supertime Scale on the
regular line.

On reversion from deputation Kumar Sanjoy Krishna, IAS
will get the benefit of notional fixation of his pay in Supertime
Scale with reference to the date of promotion of his immediate
junior to Supertime Scale on the regular line under rule 5(5)(b)
of the IAS (Pay) Rules.

No. AAI. 18/97/119 - A : Shri J.P. Saikia, IAS (Non-SCS-1985)
Member, Assam Board of Revenue is promoted temporarily and
until further orders to officiate in the Supertime Scale of IAS
with effect from the date of taking over charge.

On promotion to the Supertime Scale, he will continue
to hold the post of Member, Assam Board of Revenue, Guwahati.

Sd/- B.K. Gohain,
Secretary to the Govt. of Assam,
Personnel (A) Department.

Memo. No. 18/97/119-B, Dated Dispur, the 28th Sept./200.

- Copy to:
- 1) The Accountant General, (A&E), Assam, Maidamgaon, Guwahati-28.
 - 2) Shri L. Singh, Deputy Accountant General, (Admn.), Assam.
 - 3) The Chairman, Assam Administrative Tribunal, Guwahati.
 - 4) The Chairman, Assam Board of Revenue, Guwahati.

Gentd. P#2.

Shri
28/9/2000

Certified to be true copy.

Dmy
Advocate

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI : 781 006.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 24th October, 2000.

No.AAI.28/2000/3 : Sri Ravi Kapoor, IAS (RR-86), Project Director (ARIASP), Guwahati and Secretary to the Government of Assam, Agriculture Department, is promoted temporarily to officiate in the Supertime Scale of IAS and is posted as PD, ARIASP, Guwahati and Commissioner & Secretary to the Government of Assam, Agriculture Department to deal with the matters relating to ARIASP with effect from the date of taking over charge.

No.AAI.28/2000/3-A : Dr. B.K. Gohain, IAS(SCS-86), Secretary to the Government of Assam, Personnel, Secretariat Administration & General Administration Deptts., is promoted temporarily to officiate in the Supertime Scale of IAS and is posted as Commissioner & Secretary to the Government of Assam, Personnel, Secretariat Administration and General Administration Deptts. with effect from the date of taking over charge.

No.AAI.28/2000/3-B : Sri M.K. Barooah, IAS (SCS-86), Secretary to the Government of Assam, Home, Political, Border Areas, Passport, Information & Public Relations and Sports & Youth Welfare Deptts. is promoted temporarily to officiate in the Supertime Scale of IAS and is posted as Commissioner & Secretary to the Government of Assam, Home, Political, Border Areas, Passport, Information & Public Relations and Sports & Youth Welfare Deptts. with effect from the date of taking over charge.

H.N.S.

24/10/2000

Sd/- H.N. Sarma,

Under-Secretary to the Government of Assam,
Personnel (A) Department,
Dispur.

Contd... 2.

Certified to be true copy.

Advocate

Memo No. AAI.28/2000/3-C, Dated Dispur, the 24th October, 2000.

Copy to :

1. The Accountant General(A&E), Assam, Meghalaya, Guwahati-28.
2. Sri L. Singh, Deputy Accountant General(Admin.), Assam, Guwahati-28.
3. The Chairman, Assam Administrative Tribunal, Guwahati.
4. The Chairman, Assam Board of Revenue, Guwahati.
5. The Chairman, Assam State Electricity Board, Guwahati.
6. All Principal Secretaries/Commissioners & Secretaries/Secretaries (to the Government) of Assam.
7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam Bhawan, New Delhi.
9. The Agriculture Production Commissioner, Assam, Dispur.
10. All Commissioner of Divisions, Assam.
11. The Chief Secretary to the Govt. of Meghalaya, Shillong.
12. The Commissioner & Secretary to the Chief Minister, Assam.
13. The Under Secretary to the Government of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
14. The Under Secretary to the Government of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
15. The Commr. & Secretary to the Governor of Assam, Dispur.
16. The Secretary, Assam Legislative Assembly, Dispur.
17. The PPS to Chief Minister, Assam, Dispur.
18. All Principal Secretaries of the Autonomous Councils, Assam.
19. All Deputy Commissioners/Sub-Divisional Officers.
20. All Heads of Departments/All Departments of Assam Secretariat.
21. The Secretary, State Election Commission, Assam.
22. The Deputy Director, Assam Government Press, Bamunimaidan, Guwahati-21 for publication of the Notification.
23. The P.S. to Chief Secretary, Assam, Dispur.
24. The P.S. to Addl. Chief Secretary, Assam, Dispur.
25. All PS to Ministers/Ministers of State, Assam.
26. Officers concerned.
27. Departments concerned.
28. The Nazir, Assam Secretariat(C), Dispur.

By order etc.,

H.N. Sarma

24/10/2000

(H.N. Sarma)

Under Secretary to the Government of Assam,
Personnel (A) Department.

No.BD/P/Service matters/1/2001/1

Dated: 28th June 2001.

From:- Shri Biren Dutta, IAS
Secretary to the Government of Assam,
Health & Family Welfare and
Panchayat & Rural Development Department,
Dispur.

To
The Commissioner & Secretary to the
Government of Assam,
Personnel (A) etc Department,
Dispur.


Sub:- REPRESENTATION

Sir,

I have the honour to inform you that I have completed 14 (Fourteen) years of service in the IAS. Since January 2000 I have been in the Selection Grade. I have learnt that there are 6 / 7 vacancies in the Super Time scale. In view of the vacancies, I request you kindly to promote me to the Super Time scale. In this connection I beg to state that last year also (2000) officers have been promoted to Super Time scale after completion of 14 years of service.

I will remain grateful if my representation is sympathetically disposed off at the earliest.

Yours faithfully,


(BIREN DUTTA)

Certified to be true copy.


Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : : : GUWAHATI.

ORDER SHEET


Original APPLICATION NO. 287 OF 2001

APPLICANT (S) C. K. Sharma

RESPONDENT (S) U. O. I. 9000

ADVOCATE FOR APPLICANT(S) B.K. Sharma, S. Sarma, U.K. Nair

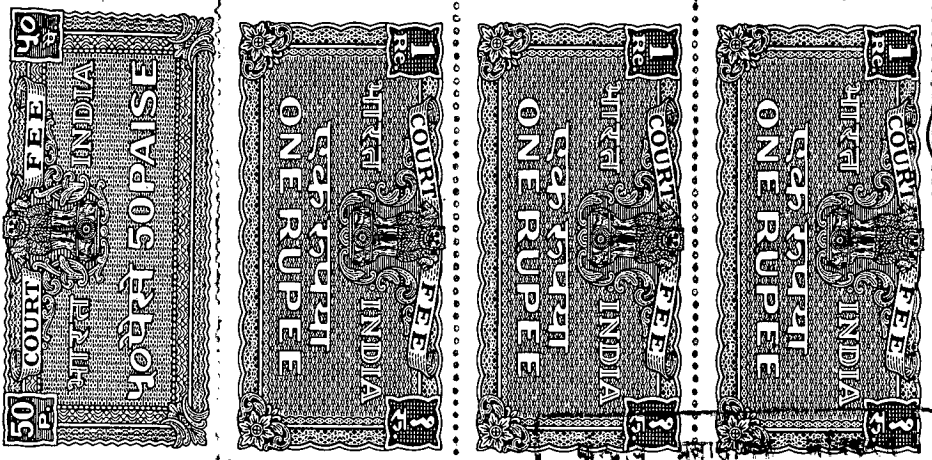
ADVOCATE FOR RESPONDENT(S) C a b e

Notes of the Registry	dated	Order of the Tribunal
<p>TRUE COPY प्रतिलिपि</p> 	2-8-01	<p>Heard Mr. B.K.Sharma, learned Sr. counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted. Returnable by 2 weeks.</p> <p>Mr. B.C.Pathak, learned Addl.C.G.S. C. accepts notice on behalf of respondents no.1 and Mrs. M.Das accepts notice on behalf of respondents nos. 2 and 4. No counsel for the Meghalaya Government.</p> <p>List on 20-8-2001 for admission.</p>

Section Officer (J)
आ. अधिकारी (न्यायिक शाखा)
Administrative Tribunal
आ. न्यायिक अधिकरण
Guwahati, Guwahati
आ. न्यायिक अधिकरण, गुवाहाटी-6

Sd/VICE CHAIRMAN
Sd/MEMBER (Adm)

Certified to be true copy.



Central Administrative Tribunal

20 NOV 2001

গুৱাহাটী বেঞ্চ
Guwahati Bench

Filed by: -
State of Assam
22
Respondent No. 2 and 4
Jal Singh -
Mansingh Das
Jr. Govt. Advt. (st-4 Assam)
CAT 16/11/01

In the Central Administrative Tribunal :
Guwahati Bench.

O.A.NO. 319/01

In the matter of

O.A.NO. 319/01

Shri Biren Dutta,

.....Applicant

- Vs -

Union of India & Others

.....Respondents.

- AND -

In the matter of

Written statement on behalf of
the State of Assam (Respondent
No. 2) and Secretary to the
Govt. of Assam, Personnel (A)
Department (Respondent No. 4)
in the above O.A.No. 319/01.

(Written Statement on behalf of the Respondent
No. 2 and 4).

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

Contd.....P/2.

526-Divisional No. 157200.
GUWAHATI

- 2 -

1. That I am the Under Secretary to the Govt. of Assam, Personnel (A) Department.
A copy of the application of the above case has been served upon ^{the respondents no. 2 and 4} me. I perused the same and understood the contents thereof.
I am acquainted with the facts and circumstances of the case. I do not admit any of the allegations/overments made in the application which are not supported by records. Any statements which are not specifically admitted here under are to be deemed as ^{denied} ~~denied~~. I have been authorised to file this written statement on behalf of Respondent No. 2 ^{and 4} ~~also~~.
10/11/92
2. That in regard to the statements made in paragraphs 2, 3, 4.1, 4.2 and 4.3 of the application, the answering respondents has no comment to make thereon. He, however, does not admit any-thing which is not borne out by records.
3. That in regard to the statement made in paragraph 4.4, of the application, the answering respondent states that it is not correct that Shri M.C. Jauhari was selected for promotion to IAS alongwith the applicant. In fact, Shri Jauhari is a direct recruit to IAS of the year 1987, while the applicant was appointed to IAS by promotion on 16-11-92.

Contd.....P/3.

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4. That in regard to the statement made in paragraph 4.5 of the application, it is stated that all the 3 officers namely Shri M.S.Rao, IAS, Shri P. Hazarika and Shri N.C.Barooah, IAS are the senior to applicant. Further, it is not correct that Shri M.S.Rao, IAS is on deputation. In fact, Shri Rao, IAS, is an IAS officer under the Assam Meghalaya Joint Cadre and at present is serving in Meghalaya wing on the regular line and not on deputation. It is not a fact that Shri Rao, IAS and Shri Hazarika, IAS, are ineligible for promotion to supertime scale on the ground that both the officers are serving in Meghalaya ^{and} on deputation to the Govt. of India respectively. In fact, none of the officers of 1987 batch including the applicant is eligible for promotion to Supertime Scale.

5. In regard to the statements made in paragraph 4.6 of the application the answering respondent begs to state that as per the Govt.of India's earlier guidelines, IAS officers became eligible for promotion to Supertime Scale on completion of 16 years of service. Subsequently an amendment to IAS (Pay) Rules was issued vide notification No.20011/1/99-AIS(II)-A, dated 5-4-2000,

- 4 -

whereby the eligibility criteria has been laid down to be completion of 16 years of service calculated from the year of allotment. Hence, in view of the latest amendment the earlier guidelines in respect of eligibility criteria of 16 years of service for promotion to supertime scale stand non-existent. Further, as per the said amendment to IAS(Pay) Rules, prior approval of the Govt. of India is required for promoting IAS officers to supertime scale before completing 16 years of service.

6. That in regard to the statements made in paragraphs 4.7 and 4.8 of the application, the answering respondent has no comment to make thereon.
7. That in regard to the statements made in paragraph 4.9 of the application, it is stated that the officers who were promoted to supertime scale are seniors to the applicant. Hence, there is no question of discrimination.
8. That in regard to the statement made in paragraphs 4.10 and 4.11 of the application, the answering respondent begs to state that it is not correct that 39 posts/ vacancies are available in supertime scale. It is stated that 19 cadre posts in supertime scale are available under Assam wing of the Joint Cadre (Annexure-I), 25% of 88 (senior posts under State Govt. of Assam) posts i.e. 22 posts are specified

Contd...P/5.

(26)
32

- 5 -

for state deputation reserve. The 12 posts (Annexure-II) are held by IAS officers on deputation within the State and these posts are counted against 22 posts under State deputation reserve. However, sometimes in the interest of Public^{Service}, administrative exigencies and cadre management of IAS these 12 deputation posts may be held by officer of other service(s), sometimes any of the deputation posts is allowed to be held as additional charge for the said reason. Further, it is stated that the creation of Ex-cadre posts in different scales of IAS is permissible to the extent of the 22 numbers of posts under state deputation reserve minus the number of officers on State deputation/Inter State deputation. Therefore, as per rule, 10 ex-cadre posts are permissible in different scales. Even if all the 10 posts are created in supertime scale, the total number of posts in the^{Supertime} scale, cadre and ex-cadre taking together, restrict at 29 but not at 39. Immediately before promotion of Shri R. Capoor, Dr.B.K.Gohain and Shri M.K.Barua, 27 officers in super time scale were in position. Out of 27 two officers namely Shri A.Jain and Shri L.Rynjah were promoted to the scale of Principal Secretary. On promotion of Shri Ravi Capoor, Dr.B.K.

27
33

- 6 -

Gohain and Shri M.K.Barua the number of officers in super time scale rose to 28. Thereafter one officer, namely Shri K.K. Mittal, IAS went on Central deputation and 2 officers namely Shri N.C.Barua, IAS and Shri D.C.Barman, IAS, retired. Again Shri M.G.V.K.Bhanu, IAS has reverted prematurely and on his reversion the number of officers in supertime scale stands at 26, which has again come down to 25 as Shri A.K.Thakur, IAS has recently been released on Central deputation. Shri K.D. Tripathi, IAS since reverted from Central deputation and with his reversion 26, officers are in supertime scale now in position. Reversion from Central deputation of Shri K.D.Tripathi, IAS, Shri R.Yadav, IAS, Shri D.Jhingran, IAS and Shri A.Chaturvedi, IAS due in this year for promotion to supertime scale. They are senior to the applicant including two other officers serving under the Govt. namely, Shri C.K. Sarma and Shri T.R.Dey. As accommodation in super time scale is required for the officers coming from Central deputation, there is no scope to promote any more officer.

The photocopies of the list of cadre posts and list of deputation posts are annexed herewith and marked as annexure-I and II respectively.

Contd.....P/7.

(28)
34

- 7 -

9. That in regard to the statements made in paragraph 4.12 of the application, it is stated that the applicant's representation dated 28-6-2001 is under examination.
10. That in regard to the statements made in paragraph 4.13 of the application, the humble answering respondent beg to state that as per amendment to IAS (Pay) Rules, promotion to supertime scale can be made before completion of 16 years of service only after obtaining approval from the Govt. of India. Further, it is stated that in view of above posts/vacancy position, as mentioned above, the state Govt. is not in a position to promote the applicant to super time scale.
11. That in regard to the statements made in paragraph 4.14 of the application the answering respondent has nothing to make comment on it as that matter is subjudiced/pending before this Hon'ble Tribunal.
12. That the answering respondent respectfully submits that none of the grounds mentioned in the application is valid ground of law and the application is liable to be dismissed.

And I sign this affidavit on this 7th
day of November, 2001 at Guwahati.

Hirendra Nath Sarmah.
Deponent.

— Sworn and Signed before me.
[Signature]

ANNEXURE-1.

CADRE POSTS IN SUPERTIME SCALE.

Commissioner of Divisions	4 posts.
Commissioner & Secretary for Agricultural Production & R.D. & Spl. Secretary to the Govt.	1 post
Chairman, Board of Revenue	1 post
Commissioner & Secretary to Government.	11 posts
Resident Commissioner	1 post
Chief Electoral Officer and Ex-officio Commr. & Secretary to Government.	1 post
Total	19 posts.

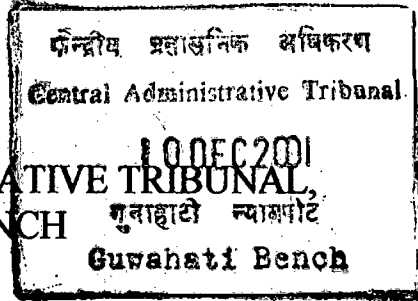
ANNEXURE-II.

DEPUTATION LIST FOR THE FILL UP THE STATE OF ASSAM TO BE
LOCATED AGAINST 22 POSTS UNDER STATE DEPUTATION RESERVE.

1.	Principal Secretaries, Nodoland Autonomous Council.	-	1 post.
2.	Project Director, ARIASB	-	1 post.
3.	Project Director, Assam Tea Corporation.	-	1 post.
4.	Principal Secretary, Karbi Anglong Autonomous Council.	-	1 post.
5.	Principal Secretary, N.C. Hills Autonomous Council.	-	1 post.
6.	Member (Personnel) ASST.	-	1 post.
7.	Managing Director, Apex Bank	-	1 post.
8.	Commissioner, N.C.C.	-	1 post.
9.	Secretary, Nodoland Autonomous Council.	-	1 post.
10.	Project Director, FVIAK DEFP.	-	1 post.
11.	Managing Director, AHC	-	1 post.
12.	Managing Director, AHC	-	1 post.

Total : 12 posts

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH
GUWAHATI



O.A. No. 319 of 2001

In the matter of :

SH. BIREN DUTTA

.....

Applicant

Versus

Union of India & Others

.....

Respondents

REPLY OF RESPONDENT NO. 1 : UNION OF INDIA

<u>Index</u>	<u>Pages</u>
Brief reply to the O.A. on behalf of Respondent No. 1	1 - 4
Annexure R-I - Copy of letter No. 11030/20/75-AIS(II), dated 27.12.75.	5 - 7
Annexure R-II - Copy of letter No. 20011/4/92-AIS(II), dated 28.03.2000.	8 - 26
Annexure R-III - Copy of Notification No.20011/1/99-AIS(II), dated 5.4.2000.	27 - 28

New Delhi

Dated : 21.11.2001.

Central Government Addl. Standing Counsel

Union of India
Through

(यश जींगरा)
(Y. P. JINGRA)

अवर सचिव
Under Secretary

कर्मिक और प्रशिक्षण विभाग
Deptt. of Personnel & Trg
भारत सरकार
Govt. of India

Filed by

29/11/01 37
(A. DEBROY)
Sr. C. G. S. C.
C. A. T. Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLICATION NO. 319 OF 2001

SH. BIREN DUTTA

.....

Applicant

Versus

Union of India & Others

.....

Respondents

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENT NO.1

MAY IT PLEASE THE HON'BLE TRIBUNAL :

At the outset, this Respondent submits that the applicant in this application is praying for the following reliefs :

- (a) To direct the Respondents to promote the Applicant to the Supertime Scale of IAS.
- (b) To grant all consequential benefits upon granting the relief above.
- (c) Cost of the application.
- (d) Any other relief/reliefs to which the Applicant is entitled to under the facts and circumstances of the case and/or as may deem fit and proper considering the facts and circumstances of the case.

2. This respondent most respectfully submits that guidelines were issued for promotion of IAS officers in different grades on 27th December, 1975 (Annexure R-I) where it was laid down in para III(2) that an IAS officer would become eligible for promotion in the Supertime Scale on his completing 16 years' service. These instructions were reiterated in March, 1982 also. As these were only the guidelines in the form of executive instructions having no statutory effect, it was found that many State Governments were not following the same and were promoting their IAS officers in the Supertime Scale before completion of 16 years' service. With a view to plug this loophole, the IAS (Pay) Rules, 1954 were

formally amended vide this respondent's notification dated 5.4.2000 (Annexure R-III) and the said 16 years' service condition was given a statutory effect by formally incorporating the same in the said Pay Rules. This amendment says that "no member of the IAS shall become eligible for appointment to the Supertime Scale before completion of 16 years of service calculated from the Year of Allotment unless prior approval of the Central Govt. is obtained for making him so eligible before completion of the requisite length of service in public interest." Prior to this, on 28.03.2000 also, this respondent had reiterated the 16 years' condition for promotion of IAS officers in the Supertime Scale, by also laying down, inter-alia, that grant of promotion in this grade would also be subject to availability of vacancies in this grade. The letter dated 28.03.2000 is marked as Annexure R-II and the relevant guideline is contained in para IV, Annexure-I of this letter.

3. It would be evident from the above that it is only after an IAS officer serving in a state cadre completes 16 years' service calculated from his Year of Allotment that he becomes eligible for promotion in the Supertime Scale of his Service. The State Governments are now left with no powers to themselves promote their IAS officers in this grade before completion of the requisite service unless this respondent in the Central Govt. is approached for relaxing the said condition for a justifiable reason. Despite the said position, however, it has been contended in the present O.A. that the other respondent, viz. the State Govt. of Assam, are still not following the said condition incorporated as a statutory rule vide the notification dated 5.4.2000 (Annexure R-III) and have been promoting their IAS officers in the Supertime Scale before completion of 16 years' service. The State Govt. has promoted its 1985 batch officers in June and September, 2000 when the officers concerned had put in only 15 years' service. Their 1986 batch officers are also found to have been promoted in this grade from October, 2000 when they had only 14 years' service to their credit. This entire action has been done without getting the prior approval of this respondent as required under the above stated Statutory Rule. This action is therefore irregular and needs to be rectified. This respondent has as such separately taken up the matter with the other respondent, viz. the State Govt. of Assam, for the needful. The Accountant General concerned has also been requested to make recoveries of overpayments from the officers erroneously promoted in the Supertime Scale before completion of 16 years' service.

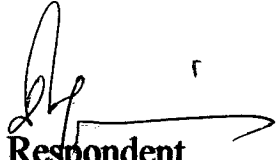
4. Taking a cue from the wrong action taken by the other respondent, however, the applicant in this case has also demanded promotion in the Supertime Scale even though he belongs to 1987 batch and has so far completed only 14 years' service. In his support, he has stated that promotions in the Supertime Scale are vacancy-based and since vacancies in this grade in Assam segment of the combined Assam-Meghalaya cadre of the IAS are available, he should also be so promoted like the 1985 and 1986 batch officers serving under the Govt. of Assam.

5. As submitted above, the action of the Govt. of Assam to have promoted their 1985-86 batch IAS officers in the Supertime Scale before completion of 16 years' service was totally irregular for which this respondent's prior approval was also not obtained as required under the notification as at Annexure R-III. This Respondent has already separately taken up the matter with the other respondent for cancelling the promotions of 1985 and 1986 batch IAS officers of Assam before completion of 16 years of service and the A.G. concerned has also been requested to recover the overpayments thus made. There is thus no question of this respondent agreeing to the request made by the applicant in his present O.A. and to agree to the grant of promotion to him in the Supertime Scale before completion of 16 years' service.

The applicant having 1987 seniority, would become eligible for promotion in the Supertime Scale only in the year 2003 and that too, if vacancies are found to be available in this grade at that time.

6. It is also submitted that the applicant in fact has not challenged the validity of this Respondent's notification dated 5.4.2000 as at Annexure R-III whereby the 16 years' service condition has been laid down for promotion of IAS officers in the Supertime Scale. He has merely contended that since the officers working in the Assam segment of the joint Assam-Meghalaya cadre of the IAS and belonging to 1985 and 1986 batches have been promoted by the other respondent in the Supertime Scale before completion of 16 years' service, he should also be similarly promoted in this grade before completion of the requisite service especially when vacancies in this grade are available. This respondent has made the necessary submissions as above and the other respondent would also be making necessary submissions before the Hon'ble Tribunal in this regard whereby the contentions made in the present application are to be opposed.


7. In view of these submissions, this Respondent reiterates that there is no case for agreeing to the request made by the applicant for promoting him in the Supertime Scale of the IAS before completion of 16 years' service calculated from his YOA. His YOA being 1987, he would become eligible for this grade only in the year 2003, and not before. There are no merits in his contentions and the Hon'ble Tribunal are requested to kindly dismiss this case with costs.


Respondent
On behalf of :
Secretary

Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel and Training)

New Delhi


Dated 21st November, 2001.


(Y. P. DHINGRA)
अवर सचिव
Under Secretary
कर्मिक और प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
भारत सरकार
Govt. of India

Verification

I, Y.P. Dhingra, S/o Late Sh. Thakur Dutt, at present working as an Under Secretary in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, do hereby state that what is stated above is true as per information derived from official records.

Verified at New Delhi the 21st Day of November, 2001.


DEPONENT
(य. पी. धिंगरा)
(Y. P. DHINGRA)
अवर सचिव
Under Secretary
कर्मिक और प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
भारत सरकार
Govt. of India

Confidential

No.11080/20/75-AIS (II)
Government of India/Bharat Sarkar
Cabinet Secretariat/Mantrinmandal Sachivalaya
Department of Personnel & Administrative Reforms
(Karmik Aur Prashasnik Sudhar Vibagh)

.....
New Delhi, the 27th December, 1975.

To

Shri
Chief Secretary to the
Government of

Subject:- Indian Administrative Service - promotion to
the senior scale and the super time scale -
guidelines regarding -

.....

Sir,

I am directed to say that the question of setting up of a suitable machinery and formulating guidelines for selecting the members of the Indian Administrative Service for promotion to the Senior Scale, Selection Grade and the Super time scale has been under the consideration of the Central Government for some time now. It has now been decided that Screening Committees should be set up and guidelines, as in the annexure, should be followed by the State Governments in regard to the promotion/selection of members of the Indian Administrative Service to the various grades of the Service. The action taken by the State Government in regard to the setting up of the Screening Committee etc. may be communicated to this Department in due course.

2. These instructions are in super-session of the instructions contained in the D.O. letter No.1/92/65-AIS (II), dated the 19th November, 1966.

Sd/-

(R.L. AGGARWAL)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA

No.11081/20/75-AIS (II)

New Delhi, dated 27th Dec., 1975

Copy to:-

1. Shri
Secretary to the Government of India
Ministry/Department of

2. The Establishment Officer to the
Government of India, Deptt. of Personnel & A R.
New Delhi.

Sd/- (R.L. AGGARWAL)

UNDER SECRETARY TO THE GOVT. OF INDIA

ANNEXURE TO DEPARTMENT OF PERSONNEL & A.R.
LETTER NO. 11030/20/75-AIS(II), dated 27th
DECEMBER, 1975.

.....

I. PROMOTION TO SENIOR SCALE POSTS.

The Chief Secretary to the State Government may evaluate the performance of the members of the Indian Administrative Service in the junior scale of the Indian Administrative Service for deciding on their suitability for promotion to the senior scale posts.

II. PROMOTION TO THE SELECTION GRADE.

A Committee consisting of the Chief Secretary and two other senior officers of the State Government may screen the members of the Indian Administrative Service in the senior scale of the Indian Administrative Service for promotion to the Selection Grade on the basis of 'merit with due regard to seniority'.

III. PROMOTION TO SUPERTIME SCALE POSTS.

(1) Composition of the Screening Committee.

The Screening Committee may consist of three officers - the Chief Secretary and two officers in the State at the level of Additional Secretary to the Government of India. If there is only one Additional Secretary level Officer, the senior most officer in the super time scale (Rs. 2500-2750) may be included. The Screening Committee for the Joint Cadre of Union Territories should consist of Home Secretary as Chairman and Secretary, Department of Personnel and Administrative Reforms, and a nominee of the Cabinet Secretary, who could nominate either the Additional Secretary, Ministry of Home Affairs dealing with the Union Territories or an officer of the Joint Cadre of the Union Territories, depending on the exigencies of the situation, as Members.

(2) Zone of consideration.

The zone of consideration may consist of all the members of the Indian Administrative Service who have completed 16 years in the service.

(3) Method of selection.

(i) Selection should be based on merit with due regard to seniority as provided in sub-rule 2(A) of Rule 2 of the Indian Administrative Service (Pay) Rules, 1954.

(ii) Suitability of officers to hold super-time scale posts may be judged by evaluating their character roll record as a whole, and general assessment of their work.

contd.....

CONFIDENTIAL

(iii) An officer against whom a vigilance or departmental inquiry has been started should also be assessed and the assessment placed in a sealed cover. The question of including him in the panel should be considered when the result of the inquiry is known.

(iv) The reasons for supersession may be indicated in the case of officers who are not included in the panel.

(v) An officer who has not been included in the panel in the first instance should be eligible for reconsideration after earning two more reports.

(vi) Special review may be done in cases where adverse remarks in the Officers' annual confidential reports are expunged subsequently as a result of their representations.

(4) Period of validity of the panel.

(1) A fresh panel may be prepared as soon as all the officers on the previous panel have been provided.

(ii) If a vigilance or departmental enquiry has been started against an officer on the panel after a preliminary enquiry establishing charges prima facie, the said officer shall not be promoted to the super-time scale and will be deemed to have been excluded from the list, pending the result of the enquiry.

(iii) Subject to exigencies of service, the appointments to the super-time scale may be made in the order in which names appear in the panel.

.....

No. 20011/4/92-AIS(II)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

.....
New Delhi, dated 28 March, 2000.

To

The Chief Secretaries of all the
State Governments and Union Territories.

Subject : Indian Administrative Service - promotion
to various grades - guidelines regarding.

...

Sir,

I am directed to say that Central Government has issued detailed guidelines for functioning of Departmental Promotion Committees (DPCs) and for promotion of members of the Indian Administrative Service to the Senior Scale and Supertime Scale from time to time. These instructions, inter alia, lay down guidelines for determining the eligible officers' suitability for different grades in the Service, crucial dates of promotion in these grades, composition and working of the DPCs, procedures to be adopted in cases of officers against whom disciplinary/court proceedings are pending or whose conduct is under investigation etc.

In view of the multiplicity of these instructions, it has been decided to consolidate the same at one place and also modify them to take care of the changes which have since taken place in the structure of the Service. Accordingly, the relevant instructions for the Indian Administrative Service as contained in Annexures I and II are being issued for guidance of all concerned. The relevant rules/instructions have been indicated as footnotes.

It is requested that in the interest of uniformity and objectivity, these instructions may be followed strictly, while granting promotion to the members of the Indian Administrative

Service in different grades. Members of the DPCs may also be suitably briefed on these instructions at the time their meetings are held. Should any deviation from any of these guidelines is required to be made in exceptional circumstances, prior approval of the Central Government must be sought.

Yours faithfully,



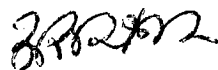
(A.K. Sarkar)
Director

Copies forwarded to all Ministries and
Departments of the Government of India.

Separate copies with 10 spare copies each to :-

1. MHA, Police Division, with the request that they may consider being suitable changes in the Promotion Guidelines issued in respect of the Indian Police Service, vide their letter No. 45020/11/97-IPS.II, dated 15.1.99.
2. MHA, UTS.
3. Ministry of Environment & Forests, Forests Division, with the request that similar instructions may be considered for issue in respect of the Indian Forest Service, early.

Spare copies - 500.



(A.K. Sarkar)
Director

ANNEXURE - I

**PRINCIPLES REGARDING PROMOTION OF MEMBERS OF
THE INDIAN ADMINISTRATIVE SERVICE AND
COMPOSITION OF DEPARTMENTAL PROMOTION
COMMITTEES**

I. APPOINTMENT TO SENIOR TIME SCALE

An officer is eligible for appointment to the Senior Time Scale on completion of 4 years' service, subject to the provisions of rule 6 A of the IAS (Rectt.) Rules, 1954¹. A Committee consisting of the Chief Secretary and two officers of atleast Supertime Scale level of the State Government concerned shall evaluate the performance of the eligible officers for deciding their suitability for promotion to posts in the Senior Time Scale². Subject to availability of posts, this scale can be allowed from or after 1st January during the relevant year in which officers become eligible for this scale³.

II. APPOINTMENT TO THE JUNIOR ADMINISTRATIVE GRADE

An officer is eligible for appointment in the Junior Administrative Grade on completing 9 years of service¹. This grade is non-functional and shall be admissible without any screening, as a matter of course, to all the officers of the Senior Time Scale from 1st January of the relevant year⁴, except in cases where any disciplinary/criminal proceedings are pending against the officer.

III. APPOINTMENT TO THE SELECTION GRADE

An officer of the Junior Administrative Grade shall be eligible for appointment to the Selection Grade on completion of 13 years of service as per the proviso to rule 3(2A) of the IAS (Pay) Rules, 1954. A Committee consisting of the Chief Secretary and two officers of the concerned State Government, in the Supertime

¹ Rule 3, IAS (Pay) Rules, 1975.

² DP&T's Letter No. 11030/20/75-AIS(II), dt. 27.12.75.

³ DP&T's Letter No. 11030/15/97-AIS(II), dt. 15.10.97.

⁴ DP&T's Letter No. 11030/22/91-AIS(II), dt. 16.3.93.

Scale or above, shall screen the eligible members of the Service for promotion in this grade². This grade will be available from or after 1st January of the relevant year subject to availability of vacancies in this grade³.

IV. PROMOTION IN THE SUPERTIME SCALE

The members of the Service who are working in the Selection Grade and have completed 16 years of service² shall be eligible for appointment in the Supertime Scale *at any time during the year* of their eligibility, subject to availability of vacancies in this grade. The Screening Committee to consider officers for promotion in this scale would consist of the Chief Secretary as Chairman and 2 officers working in the grade of Principal Secretary within the State Government concerned, as members.

If, however, there is only one officer working in the grade of Principal Secretary to the Government available in the cadre, the senior-most Supertime Scale officer available in the cadre may be included in the Committee.

V. PROMOTION IN THE FIRST ABOVE SUPERTIME SCALE i.e. PRINCIPAL SECRETARY TO THE STATE GOVERNMENT

The zone of consideration for promotion in this grade may consist of the Supertime Scale level officers who have completed 25 years' service. Promotion of officers thus cleared could be made *at any time during the relevant year*, provided vacancies in this grade are available. The Screening Committee to consider officers for promotion in this scale will consist of the Chief Secretary as Chairman and one senior-most officer each working in the grades of Chief Secretary to the Government and Principal Secretary to the Govt. respectively in the cadre, as members. If an officer of the grade of Principal Secretary to the Govt. is not available in the cadre, the senior-most officer of the same level of the cadre working in the Government of India may be taken as a member.

VI. PROMOTION IN THE GRADE OF CHIEF SECRETARY

The zone of consideration for promotion in this grade would consist of all the members of the Service who have completed 30 years of service. Appointment in this grade would be made from amongst the officers thus cleared, *at any time during the relevant year* and subject to the provisions of rule 9(7) of the I.A.S. (Pay) Rules, 1954. The Screening Committee for this purpose shall consist of the Chief Secretary concerned, one officer working in this grade in the cadre and another officer of the cadre serving in Government of India in the same grade.

ANNEXURE II

GENERAL GUIDELINES FOR PROMOTION ETC. AND FUNCTIONING OF SCREENING COMMITTEES⁵

1. FUNCTIONS OF SCREENING COMMITTEES

It should be ensured while making promotions that suitability of candidates for promotion is considered in an objective and impartial manner. For this purpose, Screening Committees (hereafter referred to as Committees) as mentioned in Annexure I should be formed for different grades whenever an occasion arises for making promotions/confirmations etc. The Committees so constituted shall adjudge the suitability of officers for :-

- (a) Promotions in various grades, including ad-hoc promotions in cases where disciplinary proceedings/criminal prosecutions are prolonged;
- (b) Confirmation; and
- (c) Assessment of the work and conduct of probationers for the purpose of determining the suitability for retention in service or their discharge from service or extending their probation.

The committee shall also undertake the three-monthly review cases which have been placed in the Sealed Cover, as prescribed in para 19 supra.

2. FREQUENCY AT WHICH COMMITTEES SHOULD MEET

Meetings of the Committees should be convened at regular intervals to draw panels for filling up vacancies arising during the course of a year. For this purpose, it is essential for the concerned State Government to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like ACRs, integrity certificates, seniority list etc. for placing before the

⁵ DP&T's OM No. 22011/5/86-Estt.(d), dt 10.4.89.

Committees. Meetings of the Committees may be convened every year on a predetermined date e.g. 1st of May or June. All the cadres should lay down a time schedule for holding the Committee meetings and the Secretary-in-charge of the Personnel Department of the State Government shall ensure that they are held regularly. Holding of these meetings should not be delayed or postponed on one or the other administrative ground or on the ground that the necessary material for placement before the Committees is not ready. The requirement of convening regular meetings of the Committees can be dispensed with only after a certificate has been issued by the Secretary-in-charge of the Personnel Deptt. to the effect that there are no vacancies to be filled by promotion or no officers are due for promotion/confirmation during the year in question.

3. DETERMINATION OF VACANCIES

It is essential that the number of vacancies in respect of which a panel is to be prepared should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a grade due to death, retirement, resignation, promotions and deputation. As regards *vacancies arising due to deputation, only those cases of deputation for periods exceeding one year* should be taken into account, taking due note of the number of deputationists likely to return to the cadre. Purely short term vacancies arising as a result of the officers proceeding on leave, training or on deputation for a short-term period or as a result of *overutilisation of the sanctioned State Deputation Reserve not approved by the Central Government, should not be taken into account* for the purpose of preparation of a panel. In cases where there has been delay in holding the Committee meetings for a year or more, vacancies should be indicated year-wise separately, by also including the names of officers in the zone of consideration who would have been eligible and available for consideration had the meeting(s) of the DPC taken place in time⁶ but have since retired or expired.

⁶ DP&T's OM No. 22011/4/98-Estt. (D), dt. 12.10.98.

4. PAPERS TO BE PUT UP FOR CONSIDERATION BY COMMITTEES

4.1 The proposals should be completed and submitted to the Committee well in time. No proposal for holding a Committee meeting should be sent until and unless at least 90% of the up-to-date and complete ACRs are available. Every effort should be made to keep the ACR dossiers up-to-date lest this aspect is advanced as the reason for not holding the Committee meetings in time. The officer referred in para 2 above would be responsible for monitoring and the completion of the ACR dossiers as per the extant instructions in this regard. In respect of cases relating to confirmation and assessment of the work and conduct of probationers, he would ensure the timely submission of the Assessment Reports etc.

4.2 The folder of ACRs/Assessment Reports should be checked to verify whether the ACRs for individual years/relevant periods are available. If the ACR for a particular year/particular period is not available and for valid/justifiable reasons it cannot be made available, a certificate should be recorded to that effect and placed in the folder.

4.3 The integrity certificate on the lines indicated below should be furnished to the Committees constituted to consider cases for promotion or confirmation :-

"The records of service of the following officers who are to be considered for promotion/confirmation in the grade have been carefully scrutinised and it is certified that there is no doubt about their integrity."

If there are names of persons in the list of eligible candidates, whose integrity is suspect or has been held in doubt at one stage or the other, the fact should specifically be recorded by the officer-in-charge of the Personnel Department and brought to the notice of the Committee. The integrity certificate would be withheld only in cases where one or the other contingencies as indicated in para 11.1 supra has arisen. It should be ensured that the information thus furnished is factually correct and complete in all respects. Cases where incorrect information has been furnished should be

investigated and suitable action taken against the person responsible for it.

5. CONSIDERATION OF OFFICERS ON DEPUTATION ETC.

The names of officers who are on deputation for a period exceeding one year shall also be included in the list submitted to the Committee for consideration for promotion/confirmation in case they fulfil the prescribed eligibility conditions. In cases where a certain number of years of service in the lower grade is prescribed as a condition for becoming eligible for consideration for promotion to the higher grade and/or for confirmation, the period of service rendered by an officer on deputation should be treated as comparable service in his cadre for the purposes of promotion as well as confirmation. This is subject to the condition that the deputation is with the approval of the competent authority and it is certified that but for deputation, the officer would have continued to be in the relevant grade in his cadre. The same would apply in cases of officers who are on leave/study leave duly sanctioned by the competent authority or training under the various training schemes which are treated as duty for all purposes.

6. PROCEDURE TO BE OBSERVED BY COMMITTEES

Each Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. While merit has to be recognised and rewarded, advancement in an officer's career should not be regarded as a matter of course. It should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential report and based on strict and rigorous selection process. The misconception about "Average" performance also requires to be cleared. While "Average" may not be taken as adverse remark in respect of an officer, it cannot also be regarded as complimentary to the officer. Such performance should be regarded as routine and undistinguished. Nothing short of above-average and noteworthy performance should entitle an officer to recognition and suitable rewards in terms of career progression.

7. CONFIDENTIAL REPORTS

7.1 The Annual Confidential Reports are the basic inputs on the basis of which assessment is to be made by each Committee. The evaluation of ACRs should be fair, just and non-discriminatory. The Committee should consider ACRs for equal number of years in respect of all officers falling within the zone of consideration for assessing their suitability for promotion. Where one or more ACRs have not been written for any reason, the Committee should consider the available ACRs. If the Reviewing Authority or the Accepting Authority as the case may be, has overruled the Reporting Officer or the Reviewing Authority respectively, the remarks of the Accepting Authority should be taken as the final remarks for the purposes of assessment. While making the assessment, the Committee should not be guided merely by the overall grading that may be recorded in the ACRs but should make its own assessment on the basis of the overall entries made in the ACRs.

7.2 In the case of each officer, an *overall grading* should be given which will be *either "Fit" or "Unfit"*. There will be *no benchmark* for assessing suitability of officers for promotions.

7.3 Before making the overall grading, the Committee should take into account whether the officer has been awarded any major or minor penalty or whether any displeasure of any higher authority has been conveyed to him. Similarly, the Committee would also take note of the commendations received by the officer during his service career. The Committee would also give due regard to the remarks indicated against the column of integrity.

The list of candidates considered by the Committee and the overall grading thus assigned to each candidate would form the basis for preparation of the panel for promotion.

8. PREPARATION OF YEAR-WISE PANELS WHERE THE COMMITTEE HAVE NOT MET FOR A NUMBER OF YEARS

8.1 Where for any reasons beyond control, the Committee has not met in a year(s) even though vacancies arose during that year(s), the first Committee that meets thereafter should follow the procedures indicated below.

(a) Determine the actual number of vacancies that arose in each of the previous year(s) immediately preceding and the actual number of vacancies proposed to be filled in the current year separately.

(b) Consider in respect of each of the years only those officers including the officers who have retired/died in the meanwhile, who would be within the zone of consideration with reference to the vacancies of each year starting with the earliest year onwards.

(c) Prepare a panel by placing the panel of the earlier year above the one for the next year and so on.

8.2 Where a Committee has already met in a year and further vacancies arise during the same year, the following procedure should be followed :-

(a) For vacancies due to death, voluntary retirement, new creations etc. belonging to the category which could not be foreseen at the time of placing the facts and the matter before the Committee, another meeting of the Committee should be held for drawing up a panel for the vacancies thus arising. If for any reason, the Committee cannot meet for the second time, the procedure of drawing up of yearwise panel, as indicated above, may be followed when it meets next for preparing panels in respect of vacancies that arise in the subsequent year.

(b) In cases of non-reporting of vacancies due to error or omission, since the wrong whereby such an error artificially restricted the zone of consideration cannot be undone, a Review DPC should be held taking into consideration the total vacancies in the year.

(c) For the purpose of evaluating the merit of the officers while preparing yearwise panels, the scrutiny of the record

of the service of the officer should be limited to the records that would have been available had the Committee met at the appropriate time. However, if on the date of such meeting, departmental proceedings against an officer are in progress and the sealed cover procedure is to be followed, such procedure should be observed even if departmental proceedings were not in existence in the year to which the vacancy related. The officer's name should be kept in the sealed cover till the proceedings are finalised.

(d) While promotions will be made in the order of the consolidated panel, such promotions will have only prospective effect if it is in a functional grade, involving higher duties and responsibilities, even in cases where the vacancies relate to earlier years. In cases of promotions in non-functional grades, not involving higher duties and responsibilities, promotions may be allowed from the due dates retrospectively.

9. CONFIRMATION

In the cases of confirmation, which is now a one-time affair during one's entire service, the Committee should not determine the relative merit of officers but it should assess the officers as "Fit" or "Not Yet Fit" for confirmation in their turn on the basis of their performance as assessed with reference to their records of service. In case the Committee finds a probationer 'Not Yet Fit', it shall record reasons for the same.

10. PROBATION

In the case of probation, the Committee should not determine the relative grading of officers but only decide whether they should be declared to have completed the probation satisfactorily within the meaning of the IAS (Probation) Rules, 1954. If the performance of any probationer is not satisfactory, the Committee may advise whether the period of probation should be extended or whether he should be discharged from service, within the meaning of these Rules.

11. PROCEDURE TO BE FOLLOWED IN RESPECT OF

OFFICERS AGAINST WHOM DISCIPLINARY/COURT PROCEEDINGS ARE PENDING OR WHOSE CONDUCT IS UNDER INVESTIGATION

11.1 At the time of consideration of the cases of officers for promotion, details of such officers in the zone of consideration falling under the following categories should be specifically brought to the notice of the concerned Screening Committees :-

(a) Officers under suspension; (b) Officers in respect of whom a chargesheet has been issued and disciplinary proceedings are pending; (c) Officers in respect of whom prosecution for criminal charge is pending.

11.2 The Screening Committee shall assess the suitability of the officers coming within the purview of the circumstances mentioned above, alongwith other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution which is pending. The assessment of the Committee including "Unfit for Promotion" and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed "FINDINGS REGARDING THE SUITABILITY FOR PROMOTION TO THE SCALE OFIN RESPECT OF SHRI.....NOT TO BE OPENED TILL THE TERMINATION OF THE DISCIPLINARY CASE/CRIMINAL PROSECUTION AGAINST SHRI....." The proceedings of the Committee need only contain the note "THE FINDINGS ARE CONTAINED IN THE ATTACHED SEALED COVER." The same procedure will be adopted by the subsequent Screening Committees till the disciplinary case/criminal prosecution against the officer concerned is concluded.

12. ADVERSE REMARKS

12.1 Where adverse remarks in the Confidential Report of the officer concerned have not been communicated to him, this fact should be taken note of by the Committee while assessing the suitability of the officer for promotion/confirmation. In a case where a decision on the representation of an officer against adverse remarks has not been taken or the time allowed for submission of representation is not over, the Committee may defer the

consideration of the case until a decision on the representation is arrived at.

12.2 An officer whose increments have been withheld or who has been reduced to a lower stage in the time-scale, cannot be considered on that account to be ineligible for promotion as the specific penalty of withholding promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the Committee as and when occasions arise. They will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of overall service records of the officer and the fact of the imposition of the penalty, he should be considered for promotion or not. Even where the Committee considers that despite the penalty the officer is suitable for promotion, the officer may be promoted only after the currency of the penalty.

13. VALIDITY OF THE COMMITTEE PROCEEDINGS WHEN ONE MEMBER IS ABSENT

In such cases and provided that the Chairman was not absent, the proceedings of the Committee shall be legally followed and can be acted upon. It should, however, be ensured that the member was duly invited but he absented himself for one reason or the other and there was no deliberate attempt to exclude him from the Committee's deliberations and provided further that the majority of the members constituting the Committee are present in the meeting.

14. PROCESSING OF RECOMMENDATIONS OF THE COMMITTEES

14.1 The recommendations of the Committee are advisory in nature and should be duly placed before the State Government for approval. There may, however, be occasions when the State Government may find it necessary to disagree with the recommendations. In any case, however, the decision to agree or disagree with the recommendations should be taken within a period of 3 months from the date the Committee forwards its recommendations.

14.2 Where the State Government proposes to disagree with the recommendations of the Committee, it may refer the matter again to the Committee for reconsideration of their earlier recommendations. If the Committee reiterates its earlier recommendations giving also the reasons in support thereof, the State Government shall take a decision either to accept or to vary the recommendations of the Committee, by giving reasons to be recorded in writing, and such a decision shall be final.

15. VIGILANCE CLEARANCE WHILE IMPLEMENTING THE COMMITTEE RECOMMENDATIONS

A clearance from vigilance angle should be available before making actual promotion or confirmation of officers approved by the Committee to ensure that no disciplinary proceedings are pending against the officers concerned.

16. ORDER IN WHICH PROMOTIONS TO BE MADE

The officers placed in the approved panels for promotion are to be considered for appointment to higher grades in the order of their inter-se position in the respective panels, except in cases where disciplinary/court proceedings are pending against an officer. The procedure to be adopted in cases of officers against whom disciplinary/court proceedings are pending has been laid down in the succeeding paragraphs.

17. PROMOTION OF OFFICERS ON DEPUTATION

If a panel contains the name of an officer who is away from the cadre and is on deputation in public interest for a period exceeding one year, including an officer who has gone on study leave/training, the officer shall be eligible for his regaining the temporarily-lost promotion in the higher grade on his return to the cadre. It has to be borne in mind that seniority of members of Indian Administrative Service which is initially fixed, is not to undergo any change throughout their career and early or late promotion of an officer vis-a-vis other officer(s) in a particular grade is to have no impact on their seniority. Therefore, such an officer need not be reconsidered by a fresh Committee, if subsequently held, while he

continues to be on deputation/study leave/training. This would be irrespective of the fact whether or not he has got the benefit of proforma promotion under the 'Next-Below Rule'.

18. SEALED COVER CASES - ACTION AFTER COMPLETION OF DISCIPLINARY/CRIMINAL PROSECUTION⁷

18.1 If the proceedings of the Committee for promotion contain findings in a sealed cover, on conclusion of the disciplinary case/criminal prosecution, the sealed cover or covers shall be opened. In case the officer is completely exonerated, the due date of his promotion will be determined with reference to the findings of the Screening Committee kept in sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such findings. The officer shall be promoted even if it requires to revert the junior-most officiating person. Such promotion would be with reference to the date of promotion of his junior and in these cases, the officer will be paid arrears of salary and allowances.

18.2 If a penalty is imposed on the officer 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 Screening Committee in the normal course, having regard to the penalty imposed on him. In such cases, the question of arrears may be decided by taking into account all the facts and circumstances of the disciplinary/criminal proceedings. Where arrears of salary or a part thereof are denied, the reasons for doing so shall be recorded.

19. THREE MONTHLY REVIEW OF SEALED COVER CASES

It is necessary to ensure that the disciplinary case/criminal prosecution instituted against an officer is not unduly prolonged and all efforts to expeditiously finalise the proceedings are taken so that the need for keeping the cases of officers in sealed cover/covers is limited to the barest minimum. The concerned State Governments shall comprehensively review such cases on

the expiry of three months from the date of convening of the first Screening Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also after every three months. The review shall, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and further measures required to be taken to expedite their completion. The material/evidence collected in the investigations would also be scrutinised to determine in cases involving suspension whether there is a prima-facie case for initiating disciplinary action or sanctioning prosecution against the officer. If as a result of such a review, the State Govt. comes to a conclusion that there is prima facie no case, the sealed cover would be opened and the officer concerned would be given his due promotion with reference to the position assigned to him by the DPC.

Same procedure is to be followed in considering the cases of confirmation.

20. AD HOC PROMOTIONS IN CASES WHERE DISCIPLINARY PROCEEDINGS/CRIMINAL PROSECUTIONS ARE PROLONGED

As appointment of the members of the Indian Administrative Service to various grades is made on regular basis and the provision of one-time confirmation exists in their cases, the concept of grant of ad hoc promotion is alien to them. Unlike Central Government servants, ad hoc promotions are not to be allowed in their cases even if the disciplinary cases/criminal prosecutions instituted against them are found to have been prolonged. In their cases, only three-monthly review of their disciplinary/criminal cases is to be undertaken and efforts are to be made to expedite their completion.

21. SEALED COVER PROCEDURE APPLICABLE TO OFFICERS IN WHOSE CASES CONTINGENCIES OF PARA 11.1 SUPRA ARISE BEFORE ACTUAL PROMOTION⁷

In the case of an officer recommended for promotion by the Screening Committee where any of the circumstances mentioned in para 11 above arise before actual promotion, sealed cover procedure would be followed. The subsequent

Committee shall assess the suitability of such officers along with other eligible candidates and place their assessment in sealed cover. The sealed cover/covers will be opened on conclusion of the disciplinary case/criminal prosecution. In case the officer is completely exonerated, he would be promoted as per the procedure outlines in para 18 above and the question of grant of arrears would also be decided accordingly. If any penalty is imposed upon him 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 shall not be acted upon, as outlined in para 18.2 above.

22. VALIDITY OF THE PANEL²

A panel for promotion recommended by the Committee and approved by the State Governments shall be valid till all the officers placed in the panel have been promoted. This will, of course, exclude officers who are away on deputation but they do not opt to rejoin the cadre in the higher post or are on study leave or training.

23. REVIEW COMMITTEE MEETING

23.1 The proceedings of any Committee may be reviewed only if the Committee had not taken all the material facts into consideration or if material facts were not brought to their notice or if there were grave errors in the procedure followed by them. Special review may also be done in cases where adverse remarks in an officer's ACRs are expunged or modified. The Review Committee would consider only those officers who were eligible as on the date of meeting of the Original Committee. They would also restrict their scrutiny of the ACRs for the period relevant to the first Committee meeting. If any adverse remarks relating to the relevant period were toned down or expunged, the modified ACRs should be considered as if the original adverse remarks did not exist at all. Before doing so, the appointing authority would scrutinise the relevant cases with a view to decide whether or not a review by the Committee is justified, keeping in mind the nature of the adverse remarks toned down or expunged. While considering a deferred case or review of the case of a superseded officer, if the Committee

finds the officer fit for promotion/confirmation, it would place him at the appropriate place in the relevant panel after taking into account the toned-down remarks or expunged remarks, as the case may be.

23.2 If the officers placed junior to the above-said officer have been promoted, the latter should be promoted immediately and if there is no vacancy, the junior-most person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed at the stage it would have reached had he been promoted from the date the officer immediately below him was so promoted, but no arrears for the past periods would be admissible. In the case of confirmation, if the officer concerned is recommended for confirmation on the basis of a review, he should be confirmed from the due date.

24. AVAILABILITY OF VACANCIES

Whenever promotions are vacancy based, while computing the available vacancies for filling up the same by promoting officers placed in the panel, care should be taken to ensure that the *total ex-cadre posts created in various grades for the purpose do not exceed in sum the permissible quota of State Deputation Reserves* indicated in the respective Cadre Schedules. *Provisions of rule 9(7) of the IAS (Pay) Rules, 1954 would also require to be followed while making promotions in the highest grade of the Service.*

25. SUPERSESSION OF OFFICERS

If an officer has not been included in the panel for promotion to any of the grades, the detailed reasons for his supersession may be recorded in writing. Such officers would be eligible for reconsideration after earning two more reports, except in the case of promotion *in the grade of Chief Secretary*, in which case *an officer would be eligible for reconsideration after earning only one more report.*

No. 20011/1/99-AIS(II)-A
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL AND TRAINING)

New Delhi, the 5th April, 2000.

NOTIFICATION

G.S.R. 149..... In exercise of the powers conferred by sub section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Governments of the States concerned, hereby makes the following rules further to amend the Indian Administrative Service (Pay) Rules, 1954, namely :-

1. (1) These rules may be called the Indian Administrative Service (Pay) Third Amendment Rules, 2000.

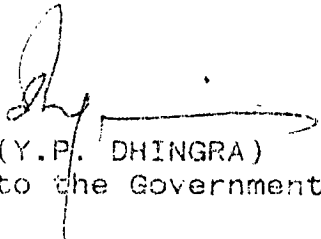
(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Indian Administrative Service (Pay) Rules, 1954, in rule 3, in sub-rule (2A), after the proviso, the following proviso shall be added, namely:-

"Provided further that no member of the Service shall become eligible for appointment to the Supertime Scale before completion of sixteen years of service, calculated from the year of allotment

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assigned to him under rule 3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, unless prior approval of the Central Government is obtained for making him so eligible before completion of the requisite length of service in public interest."


(Y.P. DHINGRA)

Under Secretary to the Government of India