

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 482/01
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SECTION OFFICER (Judl.)

ORDER SHEET

Application No. 482 /2001

Applicant(s) :- N. Ngaraijam MPS

Respondant(s) :- U.O.I. Jais

Advocate for the Applicant :- N. Kumarjit Singh, N. Praendrajit Singh

Advocate for the Respondant :-

A. K. Choudhury, CGST.

G. N. Sahewalla

P. Bora

D. Senapati

} for Respondent No. 2 & 3.

Notes of the Registry

Date

Order of the Tribunal

This is application in form
C. F. for Rs. 50/- deposited

Vide No. 74381411

Dated 22.12.2001

Dy. Registrar

[Signature]

24.12.01

Heard learned counsel for the
applicant.

The application is admitted. Call
for the records.

Issue notice. Returnable by four
weeks.

List on 30.1.2002 for order.

Slips taken Notice taken
and sent to DLS for filing
the Respondent No 1 & 3
by Regd A/D. *[Signature]*
8/1

mb

30.1.02

List on 4.3.2002 to enable the
respondents to file written statement.

[Signature]
Member

[Signature]
Vice-Chairman

mb

4.3.02

List again on 3.4.2002 to enable
the Respondents to file written statement.

[Signature]
Member

[Signature]
Vice-Chairman

mb

[Signature]
29.1.02

Appearance has been filed
by the Respondent Case.

NS
6/2/02

3.4.02

Respondent No.1 has filed the Written statement. Mr. D.Senapati, learned counsel for the Respondent Nos. 2 and 3 pray for time to file written statement. Four weeks time is allowed to the Respondent Nos. 2 and 3 to file written statement.

8.3.2002

W/S Submitted
by the Respondent No. 1.

[Signature]

List on 7.5.2002 for order.

[Signature]
Member

mb

7.5.02

Written statement so far ^{not} filed by the Respondent No.1. Despite opportunity granted Respondent Nos.2 and 3 did not file written statement till today. List the matter for hearing on 18/6/2002. The State Respondents may file written statement if any, within three weeks from today.

[Signature]
Member

[Signature]
Vice-Chairman

mb

19-6-2002

18.6.02

None appears for the applicant.

List the case for hearing on 23.7.02. Office to communicate the date of hearing to the learned counsel for the applicant.

[Signature]
Member

[Signature]
Vice-Chairman

Copy of order Dtd.
18-6-2002 sent to
D. Section for issuing
of the same to the
learned Advocate
for applicant ~~Dtd. 18-6-2002~~ lm
~~Dtd. 18-6-2002~~ Vice P.No-1777
19.6.02.

23.7. Division Bench did not sit today.
The case is adjourned to 22/8/02
m
4/8/02
23.7.

O.A.482/2001

Notes of the Registry

Date

Order of the Tribunal

22.8.2002

None appears for the applicant.
Heard counsel for the respondents.
Judgment delivered in open Court, kept
in separate sheets.

The application is dismissed in
terms of the order. No order as to
costs.

Member

Vice-Chairman

bb

*Judgment dtd 22/8/02
Communicated to the
applicant & the parties
Commnt. by Regd AD.*

Jr.

Notes of the Registry	Date	Order of the Tribunal

Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXX~~.No.482.of.2001..~~xxx~~

DATE OF DECISION.22.8.2002.....

Shri N.Ngaraipam, MPS.....APPLICANT(S)

Mr.N.Kumarjit Singh & N.Surendrajit Singh.....ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

Union of India & Others.....RESPONDENT(S)


Mr.A.K.Chaudhuri, Addl.C.G.S.C. &ADVOCATE FOR THE
Mr.D.Senapati.RESPONDENT(S)

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

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

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

Judgment delivered by Hon'ble Vice-Chairman.



X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.482 of 2001.

Date of Order : This the 22nd Day of August, 2002.

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

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

Shri N.Ngaraipam, MPS
Commandant, Home Guards(V)
Govt. of Manipur.

. . . . Applicant.

By Advocates Mr.N.Kumarjit Singh, N.Surendrajit Singh.

- Versus -

1. The Union of India
Represented by the Secretary to the
Government of India, Ministry of
Human Affairs, New Delhi.
 2. The State of Manipur
Represented by the Chief Secretary
to the Government of Manipur
Imphal.
 3. The Commissioner/Secretary (DP)
to the Government of Manipur
Imphal.
- Respondents.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C. for Respndt. No.1 &
Mr.D.Senapati, counsel for Respndt. Nos.2 & 3.

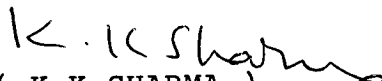
O R D E R


CHOWDHURY J.(V.C.) :

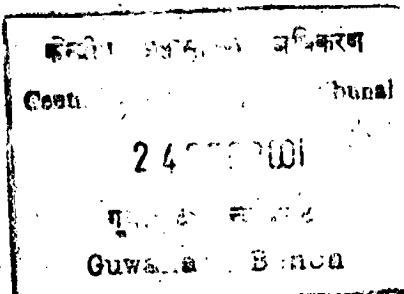
None appears for the applicant to press
the application. This Bench by its order dated 18.6.2002
directed the Office to communicate the date of hearing to the
learned counsel for the applicant. In terms of the order the date
was notified. None appears in pursuance of the order. Accordingly
the matter was taken up for consideration. We have heard
Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondent No.1 and
also Mr. D. Senapati, learned counsel appearing for the respondent
Nos. 2 & 3. The respondents filed its ^{written statement} opposing the application.

The materials clearly indicated that the Selection Committee in its meeting selected the applicant in the promotion quota of Manipur segment of Joint Manipur-Tripura IPS Cadre for filling up two substantive vacancies existing as on 1.1.2000 in terms of the provisions containing Indian Police Service (Appointment by promotion) Regulation, 1955. The recommendation of the Selection Committee was approved by the U.P.S.C. on 15.10.2001. In view of the pendency of the criminal proceeding, the name of the applicant was included provisionally in the select list subject to clearance in the criminal case pending against him before the Hon'ble the Hon'ble Court of Special Judge Manipur East. As the inclusion of the applicant was not made unconditional and final, during the period the 2000 Select List remained in force, the applicant could not be appointed.

Admittedly, the case of the applicant was fairly considered and in view of the pendency of the criminal proceeding, the name of the applicant was not made unconditional during the currency of the Select List, the applicant could not be appointed to the All India Service, we do not find any infirmity in the action of the respondents. Accordingly, the application is dismissed. No order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN



Filed by the
applicant through
Counsel - N. Surendranath
Singh, Advocate
24/12/2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

GUWAHATI BENCH

(Application Under Section 19 of the Administrative
Tribunals Act, 1985)

ORIGINAL APPLICATION NO. 482 OF 2001

Shri N. Ngafaipam, MPS,

Commandant, Home Guards, (V),

Govt. of Manipur.

... Applicant;

- VRS -

1. The Union of India and

others.

... Respondents.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

GUWAHATI BENCH

(Application Under Section 19 of the Administrative
Tribunals Act, 1985)

ORIGINAL APPLICATION NO. OF 2001

Between

Shri N. Ngaraipam, MPS,
Commandant, Home Guards, (V),
Govt. of Manipur. ... Applicant;

- VRS -

1. The Union of India represented by
the Secretary to the Govt. of India,
Ministry of Home Affairs, New Delhi.
2. The State of Manipur, represented by
the Chief Secretary to the Govt. of
Manipur, Imphal.
3. The Commissioner/Secretary (DP) to the
Govt. of Manipur, Imphal.

... Respondents.

DETAILS OF APPLICATION

1. This application is directed against the Respondent
No. 1, 2, & 3 for issuance of Promotion order thereby promo-
ting the applicant to Indian Police Service (IPS) Under
Regulation No. 9 of the Indian Police Service (Appoint-
ment by promotion) Regulation, 1955 on the basis of the
Final Select List prepared under sub-Regulation (3) of
Regulation 7 of the same Regulations.

Contd....2/-



2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal as contained under section 14 of the Administrative Tribunals Act, 1985.

3. LIMITATION:

The applicant declares that the present application is filed within the period of Limitation prescribed u/s 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1. That, the applicant is a senior member of the Manipur Police Service (MPS) and is presently posted as Commandant, Home Guards(V), Manipur Imphal.

4.2. That, the applicant, states that as per the provisions of the IPS (Appointment by Promotion) Regulations 1955, the members of the State Police Service are entitled to be promoted to IPS on fulfilment of the Criteria prescribed under the Regulations.

4.3. That, during the year 2000, 2(two) posts of IPS are reserved for appointment by promotion from amongst the MPS Officers. Accordingly in terms of the IPS (Appointment by promotion) Regulations, 1955, a selection Committee Meeting was held on 20/12/2000. After verification of all the service records and after consultation with the Union Public Service Commission (UPSC) as required under Regulation 5 & 6 of the Regulations, 1955, a final Select List is prepared and Published in terms of Regulation 7(3). Thereafter, vide Notification No. 1-14011/14/2000 -IPS 1 dt. 29/10/2001 issued by the Govt.

Contd....3/-



of India, Ministry of Home Affairs, New Delhi, the Final Select List approved by the UPSC under Regulation 7(3) of the IPS (Appointment by promotion) Regulations, 1955 for the year ,2000 has been published.

A true copy of the said Notification dt.

29/10/2001 is annexed herewith and marked as Annexure-A/1.

4.4. That, it is the correct position that a case being Special Trial No. 1 of 2000 is pending against the applicant before the Hon'ble Court of Special Judge, Manipur East for trial. Accordingly, the said final Select List, it has specifically been stated the inclusion of the name of the applicant at Sl.No.1 of the select List is provisional and subject to the clearance in the Criminal Case pending against him before the court of Special Judge, Manipur East.

4.5. That, in terms of the contents at Note No.1 of the said notification dt.29/10/2001, the Govt. of Manipur, Department of Personnel and Administrative Reforms (PD) Vide its Letter No.3/3/98-IPS/EP(Pt) dated 13-12-2001 Communicated the Select List by way of furnishing copy of the said notification dt.29/10/2001 issued by the Govt. of India, Ministry of Home Affairs to the applicant.

A true copy of the said letter dt.13/12/2001 is annexed herewith and marked as Annexure-A/2.

4.6. That, the applicant submits that after the selection and preparation of final select list under Regulation 7(3), the appointment of the selected persons to the post of IPS by promotion are to be made by the Govt. of India, Ministry of Home Affairs, New Delhi on the recommendation to be made by the Govt. of Manipur as Provided under

Regulation (8) & 9 of the IPS (Appointment by promotion) Regulations, 1955.

4.7. That, the applicant further submits that the name of the applicant is included at Sl.No.1 of the final Select List prepared in order of merit. It is the accepted and correct position that there are 2(two) vacancies in the cadre of IPS to be filled up by promotion from amongst the MPS Officers in the year, 2000 for which the said Select List is prepared after observing all the due requirements of selection for promotion. However, the authorities concerned took a lot of time in making the selection. Even though the Selection Committee Meeting was held on 20-12-2000, the Final Select List was published only on 29/10/2001 and the same was communicated to the applicant only on 13/12/2001. ~~Further, it is the accepted position that the Select List has its validity for a period of 1(One) year only. Over and above these, it is a fact that the vacancy to be filled up is/are of the year 2000 and the Selection process should have been or ought to have been completed long back for giving promotion to the Selected Officers. However, in the instant case, a lot of time was consumed in the selection process and even after selection and preparation of Final Select List for the year 2000, till today no process is made either from the Govt. of Manipur or from the Govt. of India for issuing the appointment order for promotion of the applicant to I.P.S. Cadre.~~ Further, it is the accepted position that the Select List has its validity for a period of 1(One) year only. Over and above these, it is a fact that the vacancy to be filled up is/are of the year 2000 and the Selection process should have been or ought to have been completed long back for giving promotion to the Selected Officers. However, in the instant case, a lot of time was consumed in the selection process and even after selection and preparation of Final Select List for the year 2000, till today no process is made either from the Govt. of Manipur or from the Govt. of India for issuing the appointment order for promotion of the applicant to I.P.S. Cadre.

4.8. That, the applicant having no alternative made a representation to the Chief Secretary, Govt. of Manipur on 15-12-2001 through proper channel for making

Contd....5/-




the necessary recommendation for promotion to I.P.S. cadre on the basis of the final Select list dt. 29/10/2001. However, in spite of such representation no action has been taken up and on the other hand, the year 2001 is also expiring and in no time the validity of the select list may also expire in as much as the Selection Committee meeting was held as far back as on 20-12-2000. In the circumstances, unless the situation is intervened by the Hon'ble Tribunal by way of providing justice to the applicant, directing the Respondants to appoint the applicant to I.P.S. by promotion from the date on which the appointment is due under the I.P.S. (Appointment by Promotion) Regulations 1955, the applicant may lose the chance of getting promotion to I.P.S. in his entire service career as in the subsequent selection which may be held in future his case cannot be considered because of age bar.

A true copy of the representation dt. 15/12/2001 is annexed herewith and marked as Annexure-A/3.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

- 5.1. Because the vacancies for the year 2000 are available and against which the applicant is selected at Merit List No. 1 and the appointment can be made by promotion.
- 5.2. Because, it is not the case of the Respondants that no one will be appointed by promotion to I.P.S. from the M.P.S. Officers.
- 5.3. Because, promotion to higher post is the only life and service of each and every Officer.

 Contd....6/-

5.4. Because the Respondants are bound to honour the recommendation and the Final Selection List.

5.5. Because, the delay in making the process of selection cannot deprive the right of the applicant for promotion to I.P.S.

5.6. Because, giving timely promotion to the duly selected Officers is the normal rule and with-holding of promotion is the exception to the Rule.

5.7. Because, there is no provision for with-holding of promotion under the Regulations on the basis of pendency of Criminal Case.


5.8. Because, the Final Select List is very clear that the Selection is provisional and subject to clearance of the pending criminal case and as such the appointment can be made provisionally subject to the clearance of the pending criminal case.

5.9. Because, there is no ground for with-holding or delaying the promotion on the ground of pendency of criminal case in as much as the case may be pending for many years, even after the retirement of the applicant the case may not be completed as the trial of the case is at the initial stage.

5.10. Because, many persons against whom either Criminal Cases or disciplinary proceedings were pending like the applicant had already been promoted in I.P.S/ L.A.S and as such similar treatment should be given to the applicant.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative and effective remedy except, by way of filing this application. He is seeking an urgent and immediate relief.

 Contd...7/-

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

The applicant declares that no other application, writ or suit in respect of the subject matter of the present application is filed before any court or authority except this application.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays for the following reliefs:-

8.1. The Respondants be directed to appoint the applicant to I.P.S. by promotion in terms of the Final Select List dt. 29-10-2001 w.e.f. the due date entitled to be appointed to the applicant.

8.2. Any other relief or reliefs as the Hon'ble Tribunal deems fit and appropriate in the nature of the case.

8.3. Cost of Application/Litigation.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, the applicant prays for an interim order directing the Respondant No. 2 and 3 to make the recommendation of the name of the applicant for appointment to I.P.S. on promotion under Regulation 8 and 9 of the I.P.S. (Appointment by Promotion) Regulations 1955 and further direct the Respondant No. 1 to issue the necessary appointment order on receipt of the recommendation without delay.

10.

The application is filed through advocate.

Contd...8/-



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

- i) I.P.O. No. : 74 381411
- ii) Date : 22/12/2001
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

1/12

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

I, N.Ngaraipam, MPS, now serving as Commandant, Home Guards (V), Govt.of Manipur, resident of Mantripukhri, District Imphal East, Manipur, do hereby verify that the Statements made in paragraph No.1 to 12 except in paragraph No.5 are true to my knowledge and these statements are made on the basis of records. I further verify that the statements made in paragraph No.5 are also found to be true based on information which I gathered from the records as well as the information received from my counsel which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal and I sign on this verification on this 23rd day of December, 2001 at Imphal.

By:- *Surendrajit Ssl*
Advocate


SIGNATURE OF THE APPLICANT.

(N. Ngaraipam)

No. I-14011/14/2000-IPS.I
Government of India / Bharat Sarkar
Ministry of Home Affairs / Grlh Mantralaya

New Delhi, the October, 2001

NOTIFICATION

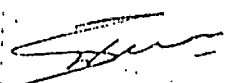
29 OCT 2001

In exercise of the provisions contained in sub-regulation (3) of Regulation 7 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, the Union Public Service Commission has approved the 2000 Select List containing the names of the following members of the State Police Service of Manipur, prepared by the selection committee in its meeting held on 20.12.2000, towards filling up 2 substantive vacancies in the Manipur segment of the Joint Manipur - Tripura IPS Cadre during 2000.

Sl. No.	Name (S / Shri)	Date of Birth
1.	* N. Ngaraipam (ST)	05.03.47
2.	* L. K. Haokip (ST)	01.03.53

* The name at Sl. No. 1 has been included in the list provisionally subject to clearance in the criminal case pending against him before the Hon'ble Court of Special Judge Manipur East. The name at Sl. No. 2 has been included in the list provisionally subject to clearance in the disciplinary proceedings pending against him and grant of integrity certificate by the State Government.

Roll
21.11.2001


(S.P. Verma)


Under Secretary to the Government of India
Tele No. 301 1527

New Delhi, the October, 2001

29 OCT 2001

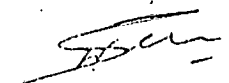
1. The Chief Secretary, Government of Manipur, IMPHAL. (Attn. Shri H Gyan Prakash, Deputy Secretary-DP) with 2 spare copies with the request that the officers concerned may be intimated of their status in the Select List alongwith a copy of the Notification.

2. The Secretary, Union Public Service Service, Dholpur House, Shahjahan Road, NEW DELHI. (Attn. Sh. Manjit Kumar, Under Secretary, AIS) for Information.


28/11/2001


28/11




(S.P. Verma)

Under Secretary to the Government of India

No. 3/3/98-IPS/DP(Pt)
GOVERNMENT OF MANIPUR
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
(PERSONNEL DIVISION)

Imphal, the 13th December, 2001.

To

1. Shri N. Ngaraipam, MPS
Commandant, Home Guards,
Manipur.
2. Shri L.K. Haokip, MPS
Supdt. of Police/CID(CB),
Manipur.

Subject:- Status position in the
Select List of 2000.

Sir,

I am directed to send herewith a copy of Notification No. I-14011/14/2000-IPS. I dated 29-11-2001 from Shri S.P. Verma, Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi regarding the status position in the Select List, 2000 of the following MPS Officers for information:-

- (1) Shri N. Ngaraipam (ST), MPS
- (2) Shri L.K. Haokip (ST), MPS.

Encl. :- As above.

Yours faithfully,

(The Dhananjay Singh)
Under Secretary(DP), Government of
Manipur.

Copy to:-

- (1) Shri S.P. Verma,
Under Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi.
- (2) The Director General of Police,
Manipur.

---:(BK):---

To,

The Chief Secretary,
Govt. of Manipur

Through Proper Channel

Sub:-PROMOTION/APPOINTMENT OF STATE POLICE TO I.P.S.

Sir;

With due respect and honour, the undersigned lay the following few facts to the kind notice of the respectable Chief Secretary Manipur for perusal and necessary action.

For the year 2000, there are 2 vacancies in the Cadre of I.P.S. which is to be filled up from the Manipur Police Service, for which the necessary Selection Committee meeting was held and after observing all the due formalities, the final select List was prepared and published under Regulation 7(3) of the I.P.S. (Appointment by Promotion) Regulation 1955 vide Govt. of India, Ministry of Home Affairs, New Delhi Letter No. 1-14011/14/2000-I.P.S.1 dt. 29-10-2001. A copy of the final select List is also Communicated to me vide Govt. of Manipur, Department of Personnel & Administrative Reforms (PL) Letter No. 3/3/98-IPS/LP(Pt) dt. 13-12-2001.

In this regard, the undersigned may be permitted to submit that as per Regulation 9 of the I.P.S. (Appointment by Promotion) Regulation 1955 the State of Manipur should make a recommendation to the Central Govt. for appointment and on the basis of such recommendation the appointment is to be made by the Central Govt.

Contd....2/-



-:2:-

It is also most important to submit that the Select List is of the year 2000 and the same is valid only for one year i.e. upto 31-12-2001 and to-day being 15th December 2001, if immediate action is not taken up the stipulated period shall be expired; before getting the appointment.

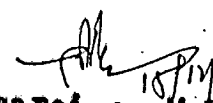
It is, therefore, requested that a recommendation for appointment of the undersigned to I.P.S. by promotion as stipulated under Regulation 9 of the I.P.S. (Appointment by Promotion) Regulation 1955 may kindly be made in time to the Central Govt. i.e. Ministry of Home Affairs, Govt of India.

For your kind action I shall ever remain thankful to you.

Enclosed:-

1. Letter dt. 13-12-2001.
2. Notification dt. 29/10/2001.

Yours faithfully,

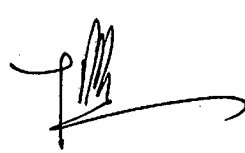

(N. Ngaraipam, M.P.S.)

Commandant Home Guards,
Manipur.

Dated / 29/12/2001

File 15/12/2001

-:000:-



**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

O.A.NO. 482 OF 2001

SHRI N. NGARAIPAM

:

APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

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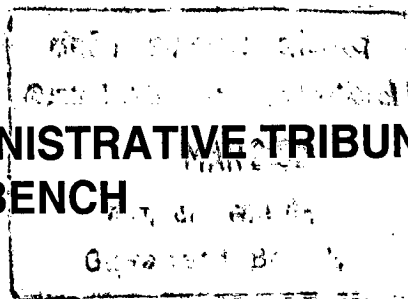
RESPONDENTS

WRITTEN STATEMENT ON BEHALF OF RESPONDENT NO.1

MOST RESPECTFULLY SHOWETH:

I, S.P. Verma, s/o late Shri G.D. Verma, working as Under Secretary to the Government of India, Ministry of Home Affairs, do hereby solemnly affirm and state as under:

1. I am conversant with the facts of the case and competent and authorized to file this written statement on behalf of Respondent No.1.
2. That I have read a copy of the OA filed by the applicant herein and have understood the contents thereof. I hereby deny the contentions made therein, unless the same are expressly and specifically admitted by me herein.
3. That the applicant has filed the present OA praying for directions to appoint him to the Indian Police Service (IPS) by promotion on the basis of provisional inclusion of his name in the Select List of 2000 of the State Police Service (SPS) Officers of Manipur for promotion to the IPS.
4. That at the outset it is submitted that the State Government, Union Public Service Commission and the Central Government are the three agencies involved in the process of recruitment by promotion of State Police Service Officers to the IPS. **The UPSC has, however, not been impleaded as a respondent by the applicant. The OA, therefore, suffers from the defect of non-joinder of necessary party and as such deserves to be dismissed on this count alone.**



Filed by:-
Pratap Kumar Choudhary
Addl. Contn'l Coun.
Standing Council
8.3.02
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Sd/-
(Sd/-)
S.P. Verma
Under Secretary
Ministry of Home Affairs
28/1/02
New Delhi.

5. That before replying to the contentions of the applicant in the OA, the answering respondent craves leave of this Hon'ble Tribunal to make the following preliminary submissions.

6. That it is humbly submitted that **contentions** made by the applicant in this OA are not in accordance with the provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955, as amended from time to time, (hereinafter called the Promotion Regulations) governing the promotion of State Police Service Officers to the Indian Police Service.

7. Under the All India Services Act, 1951, more particularly Section 3 of the said Act, the Central Government is empowered to make rules to regulate the recruitment and conditions of the service of persons appointed to the Indian Police Service. The relevant provisions of Section 3 read as under: -

"3(1) The Central Government may, after consultation with the Governments of the State concerned, (including the State of Jammu & Kashmir) (and by notification in the Official Gazette) make Rules for the Regulations of recruitment and conditions of persons appointed to an All-India Service....."

8. In pursuance of Section 3(1) of the All India Service Act, 1951 the Central Government has framed the following rules relevant for the purpose of the present OA: -

- (a) The Indian Police Service (Recruitment) Rules, 1954 (hereinafter referred to in short as the Recruitment Rules); and
- (b) The Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to in short as the Promotion Regulations).

9. A person is recruited to the Indian Police Service under Rule 4 of the Recruitment Rules by one of the two sources given hereinbelow: -

- (a) through competitive examination (i.e. direct recruitment)
- (b) by promotion of substantive member belonging to the State Police Service.

(स. प. सेवा)
(S. P. Service)
अधीनस्थ अधिकारी
Under Secretary
जल संसाधन विभाग
Ministry of Home Affairs
New Delhi.

10. That the following provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955, as amended on date, are relevant in the context of the contentions made by the applicant in the present OA: -

Regulation 5 Preparation of a list of suitable officers:

"5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the Selection shall be determined by the Commission".

"5(5) The List shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good', and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service:

Provided that the name of any officer so included in the list shall be treated as provisional if the State Government, withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.

Explanation I: The proceedings shall be treated as pending only if a chargesheet has actually been issued to the officer or filed in a Court, as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the Service shall be treated as having come to the notice of the State only if the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State

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 Ministry of Home Affairs
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Government have a bearing on the suitability of the officer and investigation thereof is essential."

Regulation 6 Consultation with the Commission-

"The list prepared in accordance with regulation 5 shall then be forwarded to the Commission by the State Government alongwith -

- (i) the records of all members of the State Police Service included in the list;
- (ii) the records of all members of the State Police Service who are proposed to be superseded by the recommendations made in the list;
- (iii) the observations of the State Government on the recommendations of the Committee."

"6(A) The State Government shall also forward a copy of the list referred to in regulation 6 to the Central Government and the Central Government shall send their observations on the recommendations of the Committee to the Commission."

Regulation 7 Select List

"7(1) The Commission shall consider the list prepared by the Committee alongwith: -

- (a) the documents received from the State Government under regulation 6;
- (b) the observations of the Central Government and unless it considers any change necessary, approve the list.

7(2) If the Commission consider it necessary to make any changes in the list received from the State Government the Commission shall inform the State Government and the Central Government of the changes proposed and after taking into account the comments, if any, of the State Government and the Central Government may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

[Signature]
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 (B. P. Verma)
 Under Secretary
 Ministry of Home Affairs

7(3) The list as finally approved by the Commission shall form the Select List of the members of the State Police Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge sheet or a charge sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional.

7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulations (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as "unconditional" to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force."

Regulation 9 - Appointments to the Service from the Select List:-

"9(1) Appointment of a member of the State Police Service, who has expressed his willingness to be appointed to the Service, shall be made by the Central Government in the order in which the names of the members of the State Police Service appear in the Select List for the time being in force during the period when the select list remains in force"

Second proviso to Regulation 9(1) reads as under:

"Provided further that the appointment of an officer, whose name has been included or deemed to be included in the select list provisionally, under proviso to sub-regulation (5) of regulation 5 or under the proviso to sub-

Signature
 C. P. Vaidya
 Under Secretary
 Ministry of Home Affairs
 New Delhi

regulation (3) of regulation 7, as the case may be, shall be made within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) of regulation 7."


FACTS OF THE CASE:

11. That the facts of the case are that the Select List of 2000 of State Police Service Officers of Manipur was prepared towards filling up 2 substantive vacancies existing as on 1.1.2000 in the promotion quota of Manipur Segment of the Joint Manipur-Tripura IPS Cadre. The meeting of the Selection Committee was convened by the UPSC on 20.12.2000. After considering the recommendations of the Selection Committee, records received from the State Government and the observations of the Central Government, the UPSC conveyed their approval on 15.10.2001 in terms of the provisions of Regulation 7(3) of the Promotion Regulations. The Select List of 2000, as approved by the UPSC on 15.10.2001, comprised of following 2 names in accordance with the provisions of the Promotion Regulations:

<u>S.No.</u>	<u>Name of the Officer</u>	<u>Date of Birth</u>
	(S/Shri)	
1.	N. Ngaraipam (ST)	05.03.1947
2.	L.K. Haokip (ST)	01.03.1953

12. That the name at S.No.1(applicant) was included in the list provisionally subject to clearance in the criminal case pending against him before the Hon'ble Court of Special Judge Manipur East. The name at S.No. 2 (Shri Haokip) was included in the list provisionally subject to clearance in the disciplinary proceedings pending against him and grant of integrity certificate by the State Government.

13. That thereafter the Select List, as approved by the UPSC on 15.10.2001, was published in the Gazette of India by this respondent vide Notification No.I-14011/14/2000-IPS.I dated 29.10.2001. Since both the officers in the 2000 Select List were included provisionally in the Select List, their appointment to the IPS could have been considered by the Central Govt. only after their inclusion was made unconditional and final by the UPSC on receipt of proposal from the State Government, after clearance of the criminal case/disciplinary proceedings pending against them, during the period when the select list was in force. As their inclusion was not made unconditional and final by the UPSC during the period the 2000 Select List remained in force, none of them could be appointed to the IPS by the Central Government. **The Select List of 2000 of Manipur**


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 Under Secretary
 Ministry of Home Affairs
 New Delhi

remained in force till 13.12.2001 i.e. upto sixty days from the date of approval of the Select List by the UPSC viz 15.10.2001.

REPLY TO CONTENTIONS:

14. That right from the date of approval to the 2000 Select List by UPSC, during the entire period when the 2000 Select List for promotion of SPS Officers of Manipur to the IPS remained in force, one post remained ready for the applicant but the answering respondent could not consider his appointment to the IPS for the reason that the inclusion of the applicant continued to remain provisional in the Select List during the period it remained in force. It is submitted that the provisional inclusion of the name of the applicant in the 2000 Select List was based on the statutory provisions contained in the proviso to Regulation 5(5) of the Promotion Regulations and the answering respondent was prevented from considering his promotion to IPS from the Select List under the second proviso to Regulation 9 (1) of the regulations.

15. That it is submitted that the scheme of the Promotion Regulations provide for promotion of provisionally included officer to the IPS, in case the circumstances that led to such provisional inclusion in the list cease to exist and the name is made unconditional in the Select List by the UPSC on the recommendations of the State Government, during the period the Select List remains in force.

16. That it is submitted that the validity period of the Select List for promotion to IPS prepared and approved by the UPSC during the year, is prescribed in sub-regulation (4) of Regulation 7 of the Promotion Regulations. From 1.1.1998 the Select Lists are prepared on calendar year basis against the vacancies existing in the promotion quota as on 1st January of the year for which the Select List is prepared. The size of the Select List is determined by the Central Government in consultation with the State Government subject to the maximum of the vacancies existing in the promotion quota of the State IPS Cadre as on 1st January of the year for which the Select List is prepared. Regulation 7(4) of the Regulations prescribes the validity period of the Select List as 31st day of December of the year in which the meeting is held or 60 days from the date of approval to the Select List by the Commission, whichever is later. Regulation 9(1) mandates the Central Government to consider appointment of unconditionally included officers in the Select List approved by the UPSC to the IPS within a period of 60 days after approval by UPSC to the list.

(सुबोधन कुमार)
(B. P. V. S. A.)
अवर सचिव
Under Secretary
गृह मंत्रालय
Ministry of Home Affairs
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N. W. Delhi.

17. It is submitted that the genesis behind prescribing the validity period of the Select List in the scheme of the Promotion Regulations is that unlike promotions to higher posts/grades within the same Department and in the same hierarchy, the Promotion Regulations deal with a scheme of induction of the State Police Service Officers at Senior Class-I level under the services of the State Government in the All India Services under the control of the Central Government. Unlike the panels for promotion prepared by the DPC in the same Department, movement of the officers from the State Government to the Central Government and again back to the State Government Services is not provided under the extant rules. Further, such movement back and forth between the All India Service and the State Civil Service frequently is liable to upset settled positions of seniority and postings of the All India Service officers in the State AIS Cadres, leading to administrative difficulties in manning the Cadre posts in the State and hence is against larger public interest. As per rule, a promotee officer in the All India Services cannot normally be reverted to the State Service except where his continuance in the AIS is found unsuitable in terms of the provisions contained in Rule 12 of the IPS (Probation) Rules, 1954. In view of this and also in order to achieve finality to the selections and appointments made from the approved panel towards achieving the object of Regulation 5(1) to prepare Select Lists for promotion to IPS every year, the validity period of the Select List stands prescribed in the Promotion Regulations as 31st day of December of the year in which meeting is held or 60 days from the date of approval of the Select List by the UPSC, whichever is later. Unless the status of the officers included in the Select List is finally settled within a time limit, the respondents cannot embark upon the process of preparation of Select List for next year [i.e. 2001, in the instant case] which in turn affects the chances of being considered for promotion against vacancies of 2001 in respect of other SPS Officers down the line in the SPS. **An officer not appointed from the earlier Select List due to provisional inclusion, is invariably considered for promotion to IPS from the subsequent Select List.**

18. In terms of Regulation 7(4) of the Promotion Regulations, the 2000 Select List of Manipur remained valid till 13.12.2001 [i.e. upto 60 days from the date of approval to the List by the UPSC viz. 15.10.2001]. Since no proposal was received by the UPSC from the State Government to declare the name of the applicant as 'unconditional' in the list (as the criminal case was pending before a Court of Law), the name of the applicant could not be made 'unconditional' and final by the UPSC in the 2000 List. Consequently the applicant could not be considered by the answering respondent for promotion to IPS, on his provisional inclusion in the 2000 Select List, in accordance with the provisions of the Promotion Regulations. The Promotion Regulations envisage a scheme to

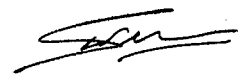
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 Under Secretary
 to Government
 Ministry of Home Affairs
 N. S. D. S.

prepare Select Lists for promotion to the IPS for every year. It was not possible to indefinitely extend the validity period of the select list lest there will be no finality to the Select List and promotion for the subsequent year will be blocked on that count. The applicant will invariably be considered for inclusion in the subsequent Select List for promotion to IPS Jt. Manipur-Tripura Cadre, as he was included in the list of 2000 and the right of consideration cannot be forfeited on account of criminal case pending against the officer.

19. In view of the above submissions, the contentions made by the applicant are devoid of merit and the prayer to appoint him to the IPS on the basis of provisional inclusion in the 2000 Select List is against the rules and regulations and thus untenable in accordance with law.

20. That in view of the detailed factual and rules position submitted in the preceding paragraphs, it may be observed that the case of the applicant for appointment by promotion to the IPS could not be considered primarily because on account of the pendency of a criminal case against him the State Government did not recommend his case to the UPSC for unconditional inclusion of his name in the Select List for promotion to the IPS, when the Select List of 2000 in which his name was included remained in force. It is submitted that the matter relating to promotion of the applicant to the IPS was processed only in accordance with the statutory provisions in the Promotion Regulations, as amended from time to time, as far as the answering respondent is concerned.

21. In view of the submissions made in the preceding paragraphs, it is humbly submitted that the applicant is not entitled to get any of the reliefs/interim relief prayed for by him and the instant OA deserves to be dismissed with costs being devoid of merit. It is prayed that this Hon'ble Tribunal may be pleased to pass appropriate orders in the interest of equity and justice and dismiss the OA accordingly.



(DEPONENT)

(एल. पी. वर्मा)
(L. P. Varma)

अवर सचिव
Under Secretary

गृह विभाग
Ministry of Home Affairs
ई 1 2 3
New Delhi.

New Delhi,
Dated, 1st March, 2002.

VERIFICATION

I, S.P. Verma, son of Late Shri G.D. Verma, presently posted as Under Secretary to the Government of India in the Ministry of Home Affairs, New Delhi do hereby verify that the facts stated above herein are true to my knowledge, information and belief derived from relevant files and records and nothing has been concealed.

Verified at New Delhi on this 1st day of March, 2002.


(DEPONENT)

(S. P. VERMA)
अवर सचिव
Under Secretary
गृह मंत्रालय
Ministry of Home Affairs
नई दिल्ली
New Delhi.

GUWAHATI BENCH

.....Applicant.

... Respondents ...

Written statements on behalf of
Respondents 1, 2 and 3.

I, Th. Dhananjoy Singh, son of Late Th. Tomba Singh
aged about 55 years, resident of Top makha Leikai, Imphal East
functioning as Under Secretary(DP) do hereby solemnly
affirm and say as follows :

1. That I am the Under Secretary(DP) of Govt. of Manipur and I am acquainted with the facts and circumstances of the case and on being authorised I am competent to swear this on behalf of the respondents No. 2 to 3.

2. That a copy of the original application was served upon me and I have gone through the same and understood the contents thereof.

Commissioner of Affidavits
Gauhati High Court
Imphal Banch, Manipur

Filed by:-
Respondents 2 & 3 through
Dr. Jagjit Singh, Advocate
22/5/02 33

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3. That save and except the statements which are not specifically admitted here below and which are contrary/inconsistent to the records shall be deemed to have been denied by this deponent.

4. That with regards to the statement made in paragraph 1 of the application the deponent begs to state that the application is received after having expiry of the life of the panel for the promotion of the I.P.S for the year 2000 and as such on the ground alone, the application is liable to be dismissed.

5. That with regard to the statement made in paragraph 2 and 3 of the application the deponent has no comment to offer.

6. That the statement made in paragraph 4,4.1,4.2 and 4.3 are being matters of record and the deponent denies and dispute all those statement which are not borne out of records.

7. That with regard to statements made in paragraph 4.4, 4.5, 4.7 of the application, the deponent begs to state that the case of petitioner and the case of Shri L.A. HAOKIP were considered by the selection Committee along with other officers who are within the zone of consideration and accordingly Shri L.A. HAOKIP and the petitioner were included provisionally in the IPS select list 2000 in respect of


Commissioner of Affidavits
Gauhati High Court
Imphal Bench, Manipur

Manipur segment of joint Manipur-Tripura Cadre during the year 2000.

The deponent further begs to state that the case of the petitioner as well as of L.A. Maokip were provisionally included in the IPS select list which indicated with the certain observation in the notification dated 29.10.2001 issued by Govt. of India which read as follows:

The name at Serial No. 1 has been included in the list provisionally subject to the clearance in the criminal case pending against him before the HOn^{ble} Judge, Manipur East. The name at Serial NO. 2 has been included in the list provisionally subject to clearance in the disciplinary proceeding pending against him and grant of integrity certificates by the State Govt. It is seen from the notification that the serial No. 1 has been included in the list provisionally subject to the criminal case pending against him and the case is still pending as prosecution sanction has been accorded by the Govt. vide Govt. Order No. 18/293/2999-P/dp dated 22.8.2000. It is relevant to state herein that the petitioner as the Commandant 2nd MR. and two other AC, -^{Hav.} Quarter Master and Store-in-Charge of the 2nd M.R., during the year 1990 to 1993 entered into criminal conspiracy in the matter of misappropriation of uniform items of the Director General of Police, Manipur's pool worth Rs. 55, 003, 605.94/-

8. The deponent further begs to state that the exclusion of the name of the petitioner for the select list of

the year 2000 was prepared against two substantive vacancies existing in the promotion quota as on 1.1.2000 alongwith L.K. HAKIP was provisional and the appointment of these two provisionally excluded officer to IPS could be considered by the Central Govt. only after the names were made unconditional & final by the Union Public Service Commission on receipt of proposal from the State Government during the validity period of the Select list. In the instant case, the State Govt. was not in a position to certify the integrity of the petitioner as the same is subject to the outcome of the Criminal Trial pending against the petition. Moreover, as the life of panel for the promotion of the post of IPS before has expired, the question of selection for promotion does not arise at all.

9. That with regard to the statement made in paragraph 4.6 of the Application, the deponent begs to state that the period of IPS list for the year 2000 has already been expired and the validity of the select list has been provided in regulation 7(4) of the promotion regulation and the said regulation is as follows.:

"The select list shall remain in force till the 31st day of December, of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto 60 days from the date of approval of the Select List by the Commission under sub-regulation (1) or as the case may be finally approved under Sub-Regulation (2) whichever is later."

In the instant case the approval of the commission to the recommendation of the selection committee made on 20.12.2000 was conveyed to the Govt. of India and the Govt. of Manipur on 15.10.01 and as such the life of the select list lapse on 15.12.2001. Hence the select list of 2000 is no longer valid in view of regulation 7(4) of the promotion regulation.

10. That with regard to paragraph 4.8 of the application, the deponent begs to state that the application is filed after the expiry of the select list of the IPS of year 2000. And as such the question of moving the U.P.S.C. for unconditional and final of the provisional inclusion of the petitioner does not arise at all for which the petitioner case has no legs to stand. And as such the same is liable to be dismissed with costs.

11. That with regard to the submissions and allegation made in para 5, the same are denied by the deponent. The deponent states that the life of the select list having already expired and it being infeasible and unpracticable to certify the integrity of the petitioner in view of the pendency of the criminal trial, the unconditional and final of the provisional exclusion of the petitioner does not arise at all and as such the instant application is liable to be dismissed.

The deponent further denies that any person against whom either criminal case or disciplinary proceeding are

pending has been promoted as alleged by the petitioner.

12. That with regard to paragraph 8 and 9 of the application the deponent begs to state that there is no merit in consideration of the application being filed after the lapse of the life of the select list prepared under the appropriate provision of the regulation and in view of the pending criminal trial against, the petitioner. Moreover the answering deponent begs to state that no case was made out for the grant of relief as prayed for by the Applicant. It is further stated that there is no merit in the application and as such the application is liable to be dismissed.

VERIFICATION

I Shri Th. Dhananjoy Singh, son of Late Th. Tomba Singh aged about 55 years, resident of Top makha Leikai, Imphal East functioning as Under Secretary(DP) do hereby verify and states as that the statement made in paragraph 1, 2, 3, 4, 5, 6, 10, 11 & 12 are true to my knowledge and those made in paragraphs 7, 8 & 9 are matter of records.

And I sign this verification on this 28th day of June, 2002 at Manipur.

28th June, 2002 at 11:30 a.m.

The declarant is identified by Th. Dhananjoy Singh (H.E.)

personally known to me

I certify that I read over and explained the contents to the declarant and that the declarant signed perfectly in understanding

Th. Dhananjoy Singh
(TH. DHANJOY SINGH)
Deponent

28/6/2002
Commissioner of Affidavits
Gauhati High Court
Imphal Bench, Manipur