

50/100  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO. 4  
(See Rule 42)

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

ORDER SHEET

Original APPLICATION NO ... 156.... OF 2001.

Applicant (s) Chanda Mohan Kakoty

Respondent (s) U. O. I. Tom

Advocate for Applicants (s) B.K. Sharma, S.Sarwana, Mrs D. Day

Advocate for Respondent (s) C G S C,

ejort. adrocalē, Assam

Notes of the Registry	Date	Order of the Tribunal
	126.4.01	Heard learned counsel for the parties.
his application is in form 104/2001		Issue notice to show cause as to why the application shall not be admitted. List on 31.5.01 for Admission.
66792262 24.4.2001 Dr. Rakesh		 Member
NS 25/4/01	1m	Vice-Chairman
	30/4/01	
	31.5.01	kkkxxxxx28
4.5.2001		List on 20.6.01 for admission. The respondent may file objection, if any.
Notice is prepared sent to D/Section mb issuing to the 20.6.01 1. to 3. Vice-D/No 2064 166dd 14/6/01 NS 4/5/2001		 Vice-Chairman
		Mr. A. Deb Roy, learned Sr. C.G.S.C. appearing for the respondent No. 1 pray for and granted four weeks time to file written statement. The applicant will
		contd..

20.6.01

(2)  
have two weeks thereafter to file rejoinder. Respondent No. 2 & 3 may also file their written statements during this period.

List this O.A. on 28-8-2001 for admission hearing/final disposal.

No. written statement has been filed.

Zg  
17.8.01

K. IC Sharm  
Member

Vice-Chairman

bb

20.8.01

The respondents are yet to file their respective written statement. Four weeks further time is allowed to the respondents for filing of written statement.

List on 18.9.2001 for written statement and further orders.

No. written statement has been filed.

Zg  
17.9.01

I C Usha  
Member

Vice-Chairman

trd

18.9.01

Mr. A. Deb Roy, learned Sr. C.G.S.C. and Mr. M. Das, learned Advocate for the State of Assam, sought for further time to file written statement. Prayer is allowed.

List on 18/10/01 for order.

No. written statement has been filed.

Zg  
17.10.01

I C Usha  
Member

Vice-Chairman

mb

18.10.01

Four weeks further time is granted to the respondents ~~as per~~ requested on behalf of Mr. A. Deb Roy, Sr. C.G.S.C.

List on 3.12.2001 for further order.

13.11.2001

Reply on behalf of Respondent No. 1 has been submitted.

I C Usha

Member

bb

Reply filed on behalf of the Respondent No. 1.

3.12.2001

Written statement has been filed on behalf of respondent No. 1. Mr. W.K. Phukan, learned Sr. Govt. Advocate, Assam prays for time to file written statement on behalf of respondent No. 2.

Prayer allowed. List on 8.1.2002 for further order.

Zg  
29.11.01

Member (J)

K. IC Sharm  
Member (A)

(3)

3

O.A. 156/2001.

Notes of the Registry Date Order of the Tribunal

8.1.2002

Respondent No.1 has already filed the written statement. Mr.M.Das, learned counsel for the State of Assam, again prayed for time to file written statement. Prayer is allowed. List on 8.2.2002 for order.

No. wts filed by the state of Assam.

22  
7.2.02

mb

I C Usha  
Member

Vice-Chairman

8.2.02

Written statement has already been filed by the Respondent No.1. Other respondents are yet to file written statement though time was granted. Let the matter be listed for hearing on 14.3.2002.

22  
13.3.02

mb

I C Usha  
Member

Vice-Chairman

14.3.2002

On the prayer made by Mr.U.K.Nair, learned counsel for the applicant the case is adjourned and listed for hearing on 28.3.2002.

29.4.2002  
wts submitted  
by the Repdt. No. 2,

I C Usha  
Member

Vice-Chairman

None appears may be due to Holi Festival  
List again on 2.5.2002 for hearing.

I C Usha  
Member

Vice-Chairman

2.5.02

On the prayer of learned counsel for the applicant case is adjourned to 13.5.02 for hearing.

I C Usha  
Member

Vice-Chairman

13.5.02

Heard Mr. U.K.Nair, Learned Counsel for the applicant & Mr. A. Debroy, S.C.C.I.C. on the case Serial No. 1.

Hearing Concluded.

Judgment reserved.

13.5.02  
A.C. 156/2001

4  
4  
O.A. No. 156/2001

Notes of the Registry

Date

Order of the Tribunal

20.5.2002  
AM 3/6

Judgment pronounced in open court,  
kept in separate sheets. The application  
is dismissed. No order as to costs.

K L Sharma

Member

W  
Vice-Chairman

nkm

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 156 of 2001

Date of Decision 20.5.2002

- Shri Chandra Mohan Kakati

Petitioner(s)

Mr B.K. Sharma, Mr S. Sarma and

Ms U. Das

Advocate for the  
Petitioner(s)

• Versus •

The Union of India and others

Respondent(s)

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

Dr Y.K. Phukan, Sr. Government Advocate, Assam

and Mrs M. Das, Government Advocate, Assam.

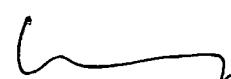
Advocate for the  
Respondent(s)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.156 of 2001

Date of decision: This the 20th day of May 2002

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

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Chandra Mohan Kakati,  
Joint Secretary to the Government of Assam,  
Dispur, Guwahati

And

Managing Director, STATFED,  
Medical College Road, Bhangagarh,  
Guwahati.

.....Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma  
and Ms U. Das.

- versus -

1. The Union of India, represented by  
The Secretary to the Government of India,  
Ministry of Personnel, Public Grievances and Pension,  
Department of Personnel and Training,  
Central Secretariat, New Delhi.

2. The State of Assam, represented by  
The Chief Secretary to the Government of Assam,  
Dispur, Guwahati.

3. The State of Meghalaya, represented by  
The Chief Secretary,  
Meghalaya, Shillong.

.....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,  
Dr Y.K. Phukan, Sr. Government Advocate, Assam  
and Mrs M. Das, Government Advocate, Assam.

.....

O R D E R

CHOWDHURY.J. (V.C.)

The controversy pertains to the process of preparation of a Select List for recruitment to All India Service under the provisions of Indian Administrative Service (Recruitment) Rules, 1954 read with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

2. The applicant belongs to the State Civil Service. His grievance is concerned with his non-selection to the All India Service. In the application the applicant pleaded that his name was included in the Select List of 1996-97 for promotion to the Indian Administrative Service (IAS for short). The Select Committee meeting was held in the year 2000 for consideration and preparation of a Select List. There were vacancies in the year 1996. The Selection Committee took into consideration only four vacancies though there were a number of vacancies in 1996-97 (existing and anticipated) and the applicant was illegally left out. It was also contended that no Select List for the subsequent years were prepared by the respondents though under the law a duty was cast on the authority to prepare a Select List each year. The applicant claimed that had a Select List been prepared in the year 1997 his name would have appeared in that Select List. The applicant contended that in 1996 due to improperly confining the number of vacancies to four, the respondents overlooked the case of the applicant for his legitimate promotion. The applicant also contended that the respondent authority fell into error in not reviewing the triennial cadre review, which finally affected the service career of the applicant. The applicant submitted a representation dated 14.2.2001 before the authority. Failing to get appropriate remedy the applicant moved this application under Section 19 of the Administrative Tribunals Act, 1985.

3. The respondent No.1 submitted its written statement. In the written statement the respondent No.1 stated that the Select List for promotion of Assam Civil Service Officers to the IAS Assam-Meghalaya Joint Cadre were

prepared by the Selection Committee for Assam and approved by the UPSC for all the years, 1996-97, 1998, 1999, 2000 and 2001. According to the UPSC as per the information made available by the State Government to the UPSC, the State Government while sending proposals for convening the selection committee meeting for 1996-97 to the UPSC with a copy endorsed to the Central Government, it was observed that the number of vacancies for which recruitment was to be made in the promotion quota of the Assam Segment of the Joint Cadre during 1996-97 was five in number and the consideration zone would comprise only fifteen officers under the rules. The name of the applicant appeared at serial No.16 of the seniority list and as such his case could not be included by the State Government in the consideration zone. The UPSC in its written statement while denying the allegation of the applicant as to not holding selection committee meetings for the years 1997, 1998, 1999 and 2000 stated that the Select Lists were duly prepared year-wise and the process was duly repeated in respect of the Select List for 1998 to 2001 also.

4. The State Government in its written statement stated that in the Select List that was prepared for the year 1996-97 the applicant did not find his place in the zone of consideration in view of his seniority position. It was stated that the meeting of the Selection Committee for preparation of the Select List for promotion to the IAS were held in the following manner:

1. 1995-96 - 6.2.1996
2. 1996-97 - 30.11.1999
3. 1998 - 4.2.2001
4. 1999 - 4.2.2001
5. 2000 - 4.2.2001
6. 2001 - 4.2.2001



The applicant was in the zone of consideration of the Selection Committee for preparation of the Select List for the year 1995-96 for promotion to the IAS. In the assessment made by the Selection Committee, the applicant earned 'Good'. All other officers finding their places in the Select List of 1995-96 earned the grading 'Very Good' and therefore, the applicant did not find his place in the Select List of 1995-96. The applicant crossed the upper age limit of 54 years and became overaged on 1.5.1997 for being considered by the Selection Committee. Therefore, his case was not considered for the years 1998, 1999, 2000 and 2001. According to the State Government in the year 1995-96 the Selection Committee although considered the case of the applicant he was not found suitable and therefore, did not find his place in the Select List of 1996. Thereafter, in 1996-97, 1998 and subsequent years he did not come in the zone of consideration. Hence there was no question of deprivation of the applicant.

5. We have heard the learned counsel for the parties at length. On consideration of the materials on record it appears that the case of the applicant was considered by the Selection Committee for the year 1995-96, but persons who earned higher grading were picked up for selection. In the year 1996-97, because of his seniority position, the name of the applicant could not be included in the zone of consideration. As per the mandate of Article 16 an officer has a fundamental right to be considered for appointment and selection, but does not have any inherent right to be appointed. The materials on record clearly indicated that the applicant's case was duly considered in

*[Handwritten signature]*

1995-96 and for the year 1996-97 his name could not be included in the zone of consideration because of his seniority position.

6. As to the other contention of the learned counsel for the applicant on the Cadre Review it may be pointed out that under Rule 3 of the IAS Cadre Rules, an IAS Cadre is constituted for each State or group of States. The strength and composition of each of the cadres constituted under the Rule is required to be determined by regulations made by the Central Government in consultation with the State Governments under Rule 4. The rule also entrusted on the concerned authority to re-examine the strength and composition of each such Cadre earlier at the interval of every three years. Sub-rule (2) of Rule 4 of the Rules now cast an obligation on the part of the Central Government to redetermine the strength and composition of each cadres at the interval of five years as per the amendment date 10.3.1993. The last cadre review was made in 1999. Materials available did not disclose irregularity in adhering to the statutory exercise of power. No illegality or impropriety on the part of the respondents in the exercise of statutory obligation is discernible calling for our interference under Section 19 of the Administrative Tribunals Act, 1985.

6. The application is accordingly dismissed. There shall, however, be no order as to costs.

  
( K. K. SHARMA )  
ADMINISTRATIVE MEMBER

  
( D. N. CHOWDHURY )  
VICE-CHAIRMAN

केन्द्रीय प्रशासनिक अधिकार निवारण  
Central Administrative Tribunal

25 APR 2001

गुवाहाटी बैच

Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

12  
Filed by  
the applicant through  
Usha Das  
Advocate

Advocate  
24/4/2001

Title of the case :

O.A. No. 156 of 2001

BETWEEN

Shri Chandra Mohan Kakati ..... Applicant.

AND

Union of India & ors. .... Respondents.

I N D E X

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9.	Annexure-7	

Filed by : Usha Das,  
Advocate

Regn. No. :

File : CHANDRA

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

(An application under section 19 of the Central Administrative  
Tribunal Act.1985)

O.A.No. .... of 2001

BETWEEN

Shri Chandra Mohan Kakati,  
Joint Secretary, to the Govt of Assam,  
Dispur Guwahati-6.

And  
Managing Director, STATFED,  
Medical College Road, Bhangagarh Guwahati-5.  
..... Applicant.

VERSUS

1. Union of India,  
Represented by the Secretary to the Govt.of India,  
Ministry of Personnel, Public Grievances and Pension,  
Department of Personnel and Training,  
Central Secretariat New Delhi.
2. The State of Assam,  
represented by the Chief Secretary to the  
Govt of Assam, Dispur Guwahati-781006.
3. The State of Meghalaya, represented by the  
Chief Secretary, Meghalaya, Shillong  
..... Respondents.

PARTICULARS OF THE APPLICATION

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

This application is not directed against any particular order but has been directed against the action of the respondents in not holding the Selection Committee Meeting for promotion to IAS, for the years 1997, 1998, 1999 and 2000, and thereby depriving the applicant for his legitimate claim for promotion to IAS. The applicant became eligible for promotion to IAS and he was very much under the zone of consideration in the year 1996. Thereafter, the respondents have not prepared any select list in the subsequent years 1997 to 2000. The applicant at the time of

Amrit '97

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Ch. Kakati

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preparing the select list of 1996 (January 1996) was 52 years and 8 months and as on January 1997 he was 53 years and 8 months. Since there was no select list in the year 1997, even though there were vacancies and the respondents violating the statutory provision did not convene any select list after 1996 till date. The applicant after 1997 crossed the upper age limit of 54 years and thereafter, his name will not be considered for such promotion to IAS. Had there being select list in the year 1997 and in the event of his inclusion in the said select list, even after his non selection also, his case for promotion to IAS would have considered for the subsequent years i,e, 1998. 1999 and 2000 without insisting his upper age limit. The applicant preferred numbers of representations to the concerned authority but the same is yet to be replied to by the respondents. Having no other alternative, the applicant has come under the protective hands of this Hon'ble Tribunal seeking appropriate relief towards inclusion of his in the select list of 1997 and upon such inclusion to promote him to IAS with all consequential service benefits.

2. IMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

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4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and a permanent resident of Assam and as such he is entitled to all the rights, protections and privileges as guaranteed under the constitution of India and laws framed thereunder.

4.2. That the applicant entered into Assam Civil Service II in the year 1970 after his selection in the Combined Competitive Examination held in the year 1969. During his service career, the applicant served in various capacities, such as, Block development Officer, SDC, Asstt Settlement Officer etc in various Districts. On 7.5.77 the applicant was recruited to the ACS Class-I, after his selection through Competitive Examination and posted as Extra Asstt Commissioner, a post meant for ACS Class-I Officers.

4.3. That the present applicant has got an outstanding and unblemish service career as ACS-I and during his service career he had occasions to work in various responsible posts like EAC Nagaon, EAC and Magistrate 1st Class Hemran (dealing with the judiciary in Karbi Anglong District); Deputy Controller, Civil Defence, Jorhat under Home Department; Secretary, Nagaon Mahkuma Parisad (under P & RD Department); Under Secretary (P & RD Department); Civil SDO, Hojai ; ADC I/C Hojai Sub-Division: ADC, Sonitpur; ADC Border, NAD, Tezpur; OSD IIT (Under Education (CTM) Department) & ADC Development, Nagaon ADC Darrang ; deputy Commissioner I/C Darrang District; Director of Employment & CT Assam; Director Cultural Affairs, Assam ; Deputy Commissioner Morigaon; Deputy Commissioner N.C. Hills, Haflong and presently holding the post of Joint Secretary, Co-operation and Managing Director STATFED.

4.4. That the applicant's name was included in the select list of 1996-97 for promotion to IAS on amongst the officers of

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Assam Civil Service. The said select committee meeting was held in the year 2000 for consideration and preparation of select list for promotion to IAS. In the year 1996 (Jan) the applicant was 52 years and 8 months, and he was well within the zone of consideration. In the year 1996 there were vacancies but the said selection committee held in year 2000 for preparation of select list for 1996-97 and took in to consideration only 4 vacancies, despite there were several vacancies (existing and anticipated) and for which the applicant although was well within the zone of consideration and having an outstanding service carrier could not be included in the said select list of 1996-97.

4.5. That the applicant begs to state that after preparation of 1996 Select List for promotion to IAS for which select committee meeting held in the year 2000, no select list for the subsequent years has been prepared by the Respondents. Under Regulation 5 (1) of IAS (Appointment by Promotion) Regulation, 1955 the respondents are duty bound to prepare list of Selected State Civil Service Officer for promotion to IAS each year and under the 3rd provision of Regulation 5 (2) of IAS (Appointment by promotion) Regulation, 1955, the select committee shall not consider the case of a member of State Civil Service unless on the 1st day Jan. in which it meets. But contrary to the aforesaid provision, since 1955, the select committee meeting held once in the year 2000 for preparation of select list for promotion to IAS. There after no select list has been prepared for subsequent years i.e. 1997, 98 99, 2000.

4.6. That the applicant is going to be superannuated w.e.f. 30.4.2001 after attaining the age of 58 years. As stated above as on Jan 96 he was 52 years and 8 months. As per the Regulation Select Committee meeting is required to be held yearwise, but in the instant case the respondents have violated the same without

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any valid reason. Admittedly, as on Jan 1997 the applicant had there been a select list and in the event of his name being included in the said list, he would have got his promotion to IAS. Even his non-promotion to IAS after inclusion in the said select list, his case for such promotion would have been considered in the subsequent years without insisting on age bar. It is pertinent to mention here that in view of the Regulation 5(3), 3rd proviso of IAS (Appointment by promotion) Regulation , 1955 provides that a member of State Civil <sup>Service</sup> who has attained the age of 54 years on the 1st day of Jan of the year in which the Committee meets, shall be considered by the committee if he was eligible for consideration on the 1st day of Jan. of the year or any of the years immediately proceeding the year in which meeting is held but could not be considered as no meeting of the committee was held during such proceeding year or years.

4.7. That the applicant begs to state that his name appeared in the select list of 1996 but he could not be considered for promotion to IAS because of the Statutory limit purportedly fixed by the respondents, restricting it to only 4 members. Although there were vacancies both existing as well as anticipated but the respondents without taking in to consideration of those vacancies took in to consideration against only 4 vacancies which has resulted violation of various provision and deprived the present applicant from his legitimate claim of promotion. As per rule 4(2) of IAS (Cadre) Rules 1954, it is the duty of the Central Govt. to review the cadre strength at an interval of every 3 years for calculation of vacancies both existing and anticipated. But in the instant case the respondents have not reviewed the cadre strength and the said strength has remained unchanged for a long time. Had there been Triennial Cadre Review regularly, the vacancies which could not be located would come to light and

*Chhatani*

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there would have been more than 4 vacancies as on 1996 and the case of the present applicant could have considered for promotion to IAS.

4.8. That as stated above as per Regulation 5(2) of IAS (Appointment by promotion) Regulation, 1955 it is the duty of the Respondents to convene Select Committee meeting each year but contrary to that, select committee meetings held in the year 2000 for preparation of select list for the year 1996 for promotion to IAS. It is noteworthy to mention here that as on Jan 1996, the applicant was 52 years and 8 months. Had there been yearwise meeting of the said selection committee the case of the applicant would have been considered and included in the Select list of 1997. Even in case of his non-promotion to IAS pursuant to the Select List of 1997, his case would have been considered in the subsequent year without insisting the age bar. On the other hand, the present applicant after his promotion to IAS would have got the benefits of 2 years of service as the age of superannuation after getting promotion to IAS is 60 years.

4.9. That the applicant begs to state that at present there are numbers of vacancies and respondents are bent upon not to hold selection committee meeting without any valid reason. It is further stated that w.e.f. 30.4.2001, the applicant is going to be retired on attaining the age of superannuation and due to non-holding of yearwise Select Committee Meeting and Triennial Cadre Review, his due claim for promotion to IAS has been frustrated.

4.10. That the applicant state that in the year 2000 only the selection committee meeting held for preparation of 1996 select list. Although, he was within the zone of consideration and the Govt. concerned has forwarded his name, but his case could not be considered because of the statutory limit of the panel purportedly fixed by the respondents only for 4 members. In fact

*C.M.Kakati*

the applicant could come to know that there were more than 4 vacancies. Since there has been no Triennial cadre Review, those vacancies could not be located by the respondents. Had there been timely Review of cadre strength as contemplated under the regulation, the case of the applicant could have been considered even prior to 1996.

4.11. That in a nutshell the grievances of the present applicant are namely non inclusion of his name in the Select list prepared for the year 1996, for promotion to IAS, for want of vacancy, non holding of your select committee meeting for the year 1997, 1998, 1999 and 2000 as contemplated under the Regulation and action of the respondents in not reviewing the cadre strength once after 3 years to recalculate/reassess the cadre strength to locate the vacancies (existing and anticipated) and thereby causing hardship to his service career. The applicant highlighting his said grievances preferred a representation to the concerned authority praying for recommendation of his name, but same yielded no result in affirmative.

A copy of the said representation dated 14.2.2001 is annexed herewith and marked as ;ANNEXURE-1..

4.12. That the applicant is yet to be inducted to IAS and he is still holding the Class-I state civil service. The age of retirement in respect of state Govt. Service (Assam) is 58 years and accordingly w.e.f. 30.4.2001 he is going to be superannuated. Had he been inducted to IAS, he would have continued up to 30.4.2003 and got his retirement as an IAS officer. Thus on both counts, the applicant has been deprived firstly, he has been deprived of his status as an IAS Officer, Secondly he has been made to retire prematurely. The respondents ought to have

reviewed the cadre strength locating and indicating the vacancies and ought to have prepared the yearwise select list after convening select committee meeting, timely, so that on the count of delay, the officer like applicant are not being denied their legitimate claims.

4.13. That the applicant begs to state that the aforesaid inaction on the part of the respondents have resulted injury to his service career which is required to be remedied by appropriate direction of this Hon'ble Tribunal.

4.14. That this application has been filed bonafide and to secure ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that prima-facie, the present applicant has been deprived of his promotion to IAS and accordingly suitable direction is required to be passed for appointment of the applicant to IAS.

5.2. For that the applicant could not have been deprived of his promotion to IAS by purportedly squizing the size of the select list of 1996, without resorting to hold triennial cadre review as contemplated under the Rules.

5.3. For that the respondents ought to have held triennial cadre review after the interval of 3 years as contemplated under the IAS (Cadre) Rules 1954, before preparing the select list of 1996 for promotion to IAS and having not done so inspite of there being vacancy and the applicant even after his coming to the zone of consideration, his legitimate claim for promotion to IAS rendered meaningless.

5.4. For that had there been timely yearwise meeting of select committee, the case of the applicant would not have been defeated on the ground of age bar.

5.5. For that it was the legitimate expectation of the

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applicant that before his retirement he would be granted his promotion to IAS but same having not done in his case, miscarriage of justice has taken place which is to be required to be remedied by this Hon'ble Tribunal.

5.6. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

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

**6. DETAILS OF REMEDIES EXHAUSTED:**

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

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

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority 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 most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To direct the respondents to constitute a review selection committee to examine in case of the applicant for his induction to IAS from 1996 select list after holding the Triennial cadre Review, with all back wages and service benefits.

*Chhatani*

8.2. To direct the respondents to include his name in the select list of 1997 (and its subsequent lists) and to promote him to IAS with retrospective effect with all consequential service benefits.

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 deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

During the pendency of the OA, the applicant prays for an interim order directing the respondents mainly the state of Assam to allow him to continue in his service on extension, till gets his inductions to IAS.

10. ....

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

1. I.P.O. No. : 66792262
2. Date : 24/4/2001
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

Original

3

VERIFICATION

I, Shri Chandra Mohan Kakati, son of Late Purnananda Kakati, aged about 58 years, at present working as Joint Secretary, to the Govt. of Assam, Co-Operation Deptt and Managing Director, STATFED, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 & 15 to 12 are true to my knowledge and those made in paragraphs 4, 3-4, 6, & 4, 11..... are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 23<sup>rd</sup> day of APRIL of 2001..

Signature.

*Chandra Mohan Kakati*

THE ASSAM STATE CO-OP  
MARKETING & CONSUMERS'  
FEDERATION LTD.

STATFED

H.O. MERCIAL COLLEGE ROAD, BIANGAGARH, GUWAHATI - 781 006

CONFIDENTIAL

NO. MD/CMK/1/2000/2  
Dated February 14, 2001.

To

The Chief Secretary to the  
Government of Assam  
Dispur, Guwahati-781 006

Sub: Prayer for consideration of age for nomination to IAS.

Ref: No. MD/CMK/1/2000/1 dated 09-11-2000 addressed to  
Commissioner & Secretary, Personnel Department.

Sir,

With reference to the subject cited above, I have the honour to inform you that Government was requested to consider my age for nomination to IAS vide my letter under reference. While submitting the above prayer, I had enclosed a brief bio-data of mine soliciting benign consideration of the Government on three grounds. But on my personal query in Personnel Department it is revealed that my prayer has been rejected. As such, I beg to submit this petition again together with a copy of my brief bio-data for review and reconsideration. It may be pertinent to mention in this connection that because of non-holding of Select Committee Meeting for years together i.e. for 1997/1998/1999/2000, the undersigned is deprived of getting due consideration from age point of view despite several vacancies.

I, therefore, beg your good-self to be kind enough to review the matter and pass necessary order recommending my name for nomination to IAS and oblige.

Yours faithfully,

14.02.2001  
( C.M. KAKATI )  
MANAGING DIRECTOR  
STATFED: GUWAHATI

Enclo:- Brief Bio-data of C.M. Kakati  
(in 3 sheets)

Attest

Usha Das

Advocate

13 NOV 2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL Bench  
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO. 156 OF 2001

Shri C.M. KAKATI

.... PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO.1

MOST RESPECTFULLY SHOWETH:

I, R. Vaidyanathan, S/o (Late) T.N. Ramachandran working as Under Secretary in the Department of Personnel and Training, Government of India, North Block, New Delhi, am conversant with the facts of the case and competent & authorised to file this written statement on behalf of respondent No.1.

2. That I have read a copy of the application filed by the applicant herein and have understood the contents therein. I hereby deny the contentions made therein, unless the same are expressly and specifically admitted by me herein.
3. That before replying the contentions of the applicant in the OA the answering respondent craves leave of this Hon'ble Tribunal to make the

R. Vaidyanathan

25/11/01  
Filed by  
A. DEB ROY

(A. DEB ROY)  
Sr. C. G. S. C.  
C. A. T., Guwahati Bench

following preliminary submissions.

4. That Parliament in accordance with Article 309 of the Constitution of India read with 312 of the Constitution of India has enacted the All India Services Act, 1951 for the purposes of regulating the Recruitment and conditions of the service of persons belonging to the Indian Administrative Service and the Indian Police Service.

5. 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 Administrative 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 Regulation of recruitment and conditions of service of persons appointed to an All-India Service....."

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

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a) The Indian Administrative Service (Recruitment) Rules, 1954

(hereinafter referred to in short as the Recruitment Rules)

b) The Indian Administrative Service (Appointment by Promotion)

Regulations, 1955 (hereinafter referred to in short as Promotion

Regulations).

7. A person is recruited to the Indian Administrative Service under Rule 4 of the Recruitment Rules by one of the three sources given hereinbelow :-

a) through competitive examination (i.e. direct recruitment);

b) by promotion of substantive member belonging to the State Civil Service; or

c) by selection of officers who hold in a substantive capacity gazetted posts in connection with the affairs of the State and belong to the services other than State Civil Services.

8. That the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in the Government of India administers the provisions contained in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter called the "Promotion Regulations") and hence is directly concerned with the application and interpretation of any of the statutory provisions laid down in the said Regulations. The Ministry of Personnel, Public Grievances and Pensions are concerned in the application of the said provisions in the matter of recruitment

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to the Service from among State Civil Service Officers as the Cadre Controlling Authority in respect of the Indian Administrative Service.

9. It is submitted that the State Government and the Union Public Service Commission are primarily concerned with reference to case for consideration of the applicant for promotion to IAS on the basis of an overall relative assessment of his service records maintained by the State Government and assessed by the Selection Committee under the Promotion Regulations. The Respondent Union of India is concerned only to the extent of functional exercise of the powers envisaged on it as the Cadre Controlling Authority in respect of the Indian Administrative Service to which the applicant has sought promotion from the State Civil Service under the Promotion Regulations.

10. It is submitted that the zone of consideration comprising the names and number of State Civil Service Officers to be forwarded to the Selection Committee by the State Government, the procedure followed by the Selection Committee for preparation of the Select List and further process thereon are contained in Regulations 5 to 7 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 published in All India Manual Part-II Sixth Edition which may kindly be referred to. In terms of the provisions contained in the Promotion Regulations the Selection Committee convened by the Union Public Service Commission is entirely concerned in regard to the overall relative assessment and grading made in respect of each State Civil Service

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Officer by the Selection Committee. It is the Union Public Service Commission who finally approves the proceedings of the Selection Committee meeting and determines the Select List that is the subject matter of the grievance by which the Original Application has been preferred by the Applicant.

11. Further to the formulation of the Select List by the UPSC, the answering Respondent as Cadre Controlling Authority in respect of the Indian Administrative Service is concerned in the matter only in making appointments of the Select List officers to IAS subject to and in accordance with the provisions contained in Regulation 9 of the Promotion Regulations.

12. That the process of the Select List is that initially the list of names of State Civil Service Officers are forwarded by the State Government to the Commission for consideration by the Selection Committee, the select list prepared by the Committee is forwarded by the State Government to the Commission alongwith its observations on the recommendations of the Committee, the observations of the Central Government are also forwarded to the Commission thereon and the final approval to the Select List is conveyed by the Commission to the Central Government. Thereafter on receipt of appointments are considered by the Central Government from the select list on receipt of unconditional willingness for appointment to the IAS from the select list officers accompanied with a declaration of marital status and also

*Renu*

consent for termination of lien in the PCS in the even of substantive appointment to the IAS in due course.

13. It is submitted that in the instant case the applicant was not considered by the selection committee of 1996-97 for Assam on account of non-inclusion of his name in the consideration zone prepared and placed by the respondent State of Assam before the selection committee. The respondent State of Assam is entirely concerned on the issues in regard to non-inclusion of the applicant in the consideration zone framed by that Respondent to be placed before the 1996-97 Committee for Assam, ostensibly due to operation of the normal provisions in this regard. It is, however, submitted that right of the applicant to be considered for promotion to IAS is conditional subject to fulfilment of all the eligibility criteria and size of the zone of consideration as prescribed in the rules.

#### PARA-WISE REPLY

PARA-1: The select lists for promotion of Assam Civil Service Officers to the IAS Assam- Meghalaya Joint Cadre were prepared by the selection committee for Assam and approved by the UPSC for all the years 1996-97, 1998, 1999, 2000 and 2001. The Date of Birth of the applicant is 1.5.1943 and in terms of Regulation 5(2) of the Promotion Regulations, the applicant was eligible to be considered upto 1996-97 list, as he crossed 54 years of age from 1.1.1998 onwards. The consideration of his case could be made by the selection committee only if he is included in zone of consideration with reference to his inter-se position in the seniority list of the ACS officers, besides fulfilment of other eligibility criteria and the zone of consideration framed by the State Government with reference to the number of vacancies against which recruitment was made from year to year. The Respondent State of Assam is

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entirely concerned in the framing of the consideration zone in accordance with the relevant provisions in the regulations. As per information made available by the State Government while sending proposals for convening the selection committee for 1996-97 to the UPSC and copy endorsed to the Central Government, it is observed that the number of vacancies for which the recruitment was to be made in the promotion quota of the Assam Segment of the Joint Cadre during 1996-97 was 5 in number and the consideration zone would comprise of only 15 officers under the rules. The name of the applicant appeared at S.No. 16 of the seniority list and as such his name could not be included by the State Government in the consideration zone.

**PARA-2:** The applicant may be put to strict proof on the averments made in these paragraphs.

**PARA-3:** The answering Respondent does not dispute the jurisdiction of the Hon'ble Tribunal in the matter.

**PARA-4.1:** Comments of this respondent are not called for on this paragraph.

**PARA-4.2 & 4.3:** Concerns the Respondent State of Assam, whose reply may be referred to.

**PARA-4.4:** The Respondent State of Assam is concerned with the determination of vacancies in the promotion quota against which recruitment could be considered during the select list year 1996-97. In terms of the information given by the State Government and reckoned with by the selection committee, the select list was prepared towards filling up 5 vacancies in the IAS Joint Cadre during the year 1996-97. The averments made otherwise are denied.

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**PARA-4.5:** The select lists have been prepared year-wise to fill up the vacancies in the promotion quota of the Assam Segment of the IAS Assam-Meghalaya Joint Cadre for the years 1996-97, 1998, 1999, 2000 and 2001 in terms of the provisions in the Promotion Regulations as amended from time to time. The averments made to the contrary are denied.

**PARA-4.6:** The Respondent State of Assam is concerned with the averments made in this paragraph. It is, however, submitted that the applicant is not entitled to be automatically considered for promotion to IAS merely because he is below the age of 54 years. The right of consideration is essentially subject to the seniority position of the officer and the size of zone of consideration permissible in terms of Regulation 5(2) of the Promotion Regulations. However much an officer may be senior, if his inter-se position in the seniority list is such that his name could not be covered within the statutory limit on the zone of consideration in a year, he has no right to be considered for promotion during that year outside the scope of the relevant provisions.

**PARA-4.7:** The recruitment by promotion in the Assam Segment was proposed against 5 substantive vacancies and the zone of consideration worked out to 15 in all. The name of the applicant figured at S.No. 16 in the seniority list and as such, his name could not come up to be considered by the selection committee.

**PARA-4.8:** As already submitted, there was no failure to prepare the select lists year-wise. as for consideration of the applicant for the year 1996-97, the reply submitted by the respondent state government may be referred to.

**PARA-4.9 & 4.10:** The averments are denied. It is also submitted that though there was delay in convening the meeting of the selection committee by the UPSC in respect of the 1995-96 and 1996-97 select lists, the select lists were

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duly prepared year-wise and the process was duly repeated in respect of the select lists for 1998 to 2001 also.

**PARA-4.11:** The revision of Cadre Strength is done in accordance with the provisions contained in Rule 5(2) of the IAS (Cadre) Rules, 1954 by the Cadre Controlling Authority periodically. The averments made by the respondent State of Assam on the facts of the cadre position may be referred to.

**PARA-4.12:** The averments are denied.

**PARA-4.13 & 4.14:** In view of the factual and rules position explained above, the applicant is not entitled to the reliefs prayed for in the OA. The applicant cannot be said to have been inflicted with an injury merely because he is not benefited in a particular matter due to unintentional operation of the normal rules about which he is already aware of.

**PARA-5:** The grounds raised by the applicant are repetition of the issues raised in the preceding paragraph. In view of the factual position explained in the para-wise reply above, all the grounds raised by the applicant are denied.

**PRAYER:**

In view of the submissions made in the preceding paragraphs, 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 Original Application accordingly.

**PLACE: NEW DELHI FOR AND ON BEHALF OF RESPONDENT NO.1**

**DATED:**

*Rishay*

**DEPONENT**

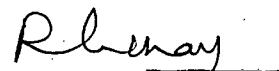
**VERIFICATION**

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I, R.Vaidyanathan s/o (late) Shri Ramchandran, do hereby declare that the contents of the above Written Statement are believed by me to be true based on the records of the case. No part of it is false and nothing has been concealed therefrom.

**PLACE: NEW DELHI FOR AND ON BEHALF OF RESPONDENT NO.1**

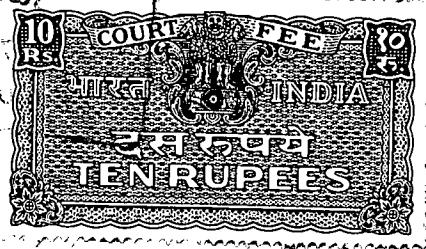
**DATED:**



**DEPONENT**

**THROUGH**

**(ARUNESH DEB ROY)  
SR. CENTRAL GOVT. STANDING COUNSEL**



Filed by : -  
The State of Assam  
Rupchandran  
Ghoshal  
Mangal  
Smt. Govt. Advocate  
State of Assam

2.3/est T  
X - Hirendra Nath Sarma

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : GUWAHATI  
O.A.NO. 156/01.

In the matter of :

O.A.NO. 156/01

Shri C.M.Kakati

.....Vs.....Applicant

Union of India & Others

.....Respondents

- AND -

In the matter of :

Written statement on behalf  
of the Respondent No.2 (State  
of Assam; represented by the  
Chief Secretary to the Govt.  
of Assam) in the above case.

Written Statement on behalf of the Respondent No.2  
to the application filed by the applicant

I, Shri Hirendra Nath Sarma S/O Late R.Sarma  
presently working as Under Secretary to the Govt. of Assam,  
Personnel (A) Department, Dispur, Guwahati-6 do hereby  
solemnly state as follow :-

1. That I am the Under Secretary to the Govt.  
of Assam, Personnel (A) Department. A copy of the above  
case had been served upon the Respondent No. 2. I  
perused the same and understood the contents thereof.  
I am competent to file this written statement as I have  
been authorised to file the same before this Hon'ble  
Tribunal. I do not admit any of the allegations /

averments which are not specifically admitted hereinafter are to be deemed as denied.

2. That with regard to the statements made in paragraph 4.1, 4.2 and 4.3 of the application the answering respondent has nothing to make comment on it. He, however, does not admit any statement which are contrary to records.

3. That the statements made in paragraph 4.4 of the application are not correct. It is stated that the Selection Committee meeting for preparation of Select list for 1996-97 was held on 30-11-99 and not in the year 2000 as stated by the applicant. Further, the select list for the year 1996-97 was prepared against three (3) vacancies and the applicant did not find his place in zone of consideration of the selection committee for preparation of 1996-97 select list.

That the statements made in paragraph 4.4 of the application are not correct. In fact the meeting of the Selection Committee for preparation of Select lists for promotion to IAS were prepared as follows :

1. 1995-96	-	6-2-96
2. 1996-97	-	30-11-99
3. 1998	-	4-2-2001
4. 1999	-	4-2-2001
5. 2000	-	4-2-2001
6. 2001	-	4-2-2001

The applicant found his place in the zone of consideration of the selection committee

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for preparation of list for the year 1995-96 for promotion to IAS. In the assessment made by the Selection Committee the applicant earned " Good". As all the officer finding their places in the Select list earned the grading "Very Good", the applicant did not find his place in the select list.

The applicant crossed the upper age limit of 54 and became over aged on 1-5-97 for being considered by the selection Committee, his date of birth being 1-5-43. Therefore, he did not deserve consideration of the Selection Committee on the subsequent occasions for preparation of the Select lists for the year 1998, 1999, 2000 and 2001.

5. That with regard to the Statements made in paragraphs 4.6 and 4.7 of the application it is stated that as the applicant did not come in the zone of consideration of the Selection Committee for preparation of select list of 1996-97, the question of inclusion of his name in the select list did not arise. Further the review of IAS cadre has to be done at the interval of 5 years. As the last cadre review of IAS was done in 1999 , the next review is not due.

6. That with regard to the statements made in paragraphs 4.8 and 4.9 of the application it is stated, that the select list for the year 1995-96, 1996-97, 1998, 1999, 2000, 2001 were prepared.

7. That the statements made in paragraph 4.10 of the application are not correct. In fact, the applicant did not come into the zone of consideration of the selection committee for preparation of select list, 1996-97. As he was not included in the select list of 1996-97, the question of his promotion to IAS from the said select list does not arise. The review of IAS cadre has to be done at the interval of 5 years. As the last cadre review of IAS was made in 1999. The next cadre review is due in 2004.

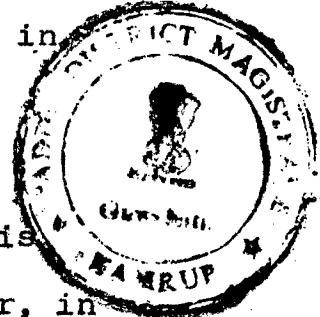
8. That with regard to the statements made in paragraph 4.11 of the application it is stated that the case of applicant was considered by the selection committee for the year 1995-96 but he did not find his place in the select list prepared on 6-2-96. He did not come in the zone of consideration of the selection committee for preparation of the select list of 1996-97. Thereafter he became overaged on 1-5-97. The contention of the applicant regarding availability of vacancies and triennial review is not correct.

9. That with regard to the statements made in paragraphs 4.12 and 4.13 of the application the answering respondent begs to state that in 1995-96, the selection committee although considered the case of the applicant he was not found suitable and hence did not find his place in the select list of 1996. Thereafter, in 1996-97, 1998 and subsequent years he did not come in zone of consideration. Hence, there is no question of deprivation of the applicant for benefit of promotion of IAS.

Hirindra Nath Banerjee

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N/15/09  
19/14  
SACRED BIBLE  
ANSWERED BY



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VERIFICATION.

I, Shri Hirendra Nath Sarma S/O Late R. Sarma, presently working as Under Secretary to the Govt. of Assam, Personnel (A) Department, Dispur, Guwahati-6, do hereby solemnly state that the statements made in paragraphs 1, 2, 5, 6, 7, 8 and 9 are true to my knowledge ; those made in paragraphs 3 and 4 are true to my information being matters of records of the case derived therefrom which I believe to be true.. No material facts have been suppressed.

I, sign this verification on this  
19th day of April, 2002 at  
Guwahati.

Signature. *Hirendra Nath Sarma*

Sworn before me

*Alslom* 19/4/2002  
DISTRICT JUDGE  
GUWAHATI, ASSAM

