

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Sahib
28/11/17

FROM No. 4
(SEE RULE 42)

GENERAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 260/2002

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant(s) P.P. Chongkakhati

-Vs-

Respondent(s) Not 2018

Advocate for the Applicant(s) D.K. Das.

Advocate for the Respondent(s) CGSC, Govt. Adv. Assam
Adv. A.K. Churnsingh

Notes of the Registry	Date	Order of the Tribunal
	19.8.02	Heard Mr. D.K. Das, learned counsel for the applicant. Issue notice to show cause as to why the application shall not be admitted. Returnable by three weeks. List on 12.9.2002 for admission
74 576660 <i>in</i>		<i>M. Das</i> Member
Steps taken without envelope <i>16/8/02</i>	12.9.02	Heard Mr D.K.Das, learned counsel for the applicant. Mrs M.Das learned Govt. counsel for the State of Assam prays for some time to get instruction. Prayer allowed. List on 7.10.02 for order.
Notices prepared and sent to D. Section for issuing of the same to the Respondents through Regd. post with A.P.D. Vide D.No. 2971/62275		<i>Vice-Chairman</i> <i>Vice-Chairman</i>

7.10.02

List on 7.11.02 for orders. In the meantime, the respondents may file written statement.

ICU Shar
Member

Vice-Chairman

No written statement has been filed

1m

7.11.02

2/11/02

Heard learned counsel for the parties. Mr. D.K. Das learned counsel for the applicant has stated that he has received the copy of the written statement to-day and he wants to go through the written statement and he prays for adjournment. Accordingly the matter may be posted for Admission on 18.11.02.

1m

ICU Shar
Member

Vice-Chairman

8.11.02

WJS submitted by the Respondent No. 2.

20.11.02

Rejoinder submitted by the applicant in reply to WJS.

25.11.02

WJS submitted by Respondent No. 1.

18.11.02 Heard Mr. B.K. Sharma, learned Sr. counsel for the applicant and also Mrs. M.Das, learned Govt. Advocate for the State of Assam.

The application is admitted. Pleadings are complete. Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the UPSC stated that UPSC is not filing any separate written statement, it is ^{to be} defended by the concerned authority including State of Assam. The State of Assam has already file the written statement. In that view of the matter the case may now be listed for hearing. List the matter on 28.11.2002 for hearing. If Union of India desires they may also file written statement in the meantime.

ICU Shar
Member

Vice-Chairman

28/11/2002. The hearing was not held today, the case is adjourned to 16/12/2002.

ALJ

16.12.2002. The hearing was not held.

(3)

O.A. No. 260/2002

23.1.2003 Present : The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra, Administrative Member.

Mr. D.K. Das, learned counsel appearing on behalf of the applicant prays for adjournment of the case on the ground that he has received the written statement submitted by the respondent No.1 lately. The case is accordingly adjourned and the matter is posted for hearing on 3.2.2003.

Govt

Member

Vice-Chairman

mb

3.2.2003 Put up again by hearing on 17/2/2003 to enable the lawyer to obtain necessary documents.

17/2/2003. Put up again on 19/2/2003 for another hearing.

*Mrs
Akter*

*Mrs
Akter*

19.2. Heard Mr. D.K. Das, learned Counsel for the applicant & Mrs. M. Das, learned Counsel, Govt. of Assam & Mr. A.K. Chowdhury, Adel C.A & C for the respondent. Hearing Concluded.

Judgment reserved.

*19/2
Akter*

5.3.2003
Copy of the Judgment
has been sent to the
Office for issuing
the same to the applicant
as well as to L/Adv.
for the
Defendant.

LS

21.2.03 Judgment pronounced in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

17/2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / R.A. No. . 260 . . of 2002.

DATE OF DECISION 21-2-2003

Sri Prasanta Pran Changkakati APPLICANT(S).

- VERSUS -

Sri A.K.Choudhury,Addl.C.G.S.C for respondents
No.1 & 4. and Mrs M.Das, Govt. Advocate. . . . ADVOCATE FOR THE
for respondents No.2 & 3. RESPONDENT(S).

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

THE HON'BLE MR S.BISWAS, 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 Hobble Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 260 of 2002.

Date of Order : This the 21st Day of February, 2003.

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

THE HON'BLE MR S.BISWAS, ADMINISTRATIVE MEMBER.

Sri Prasanta Pran Changkakati,
Divisional Forest Officer,
Kamrup East Division,
Department of Forests, Assam
Guwahati-1.
By Advocate Sri D.K.Das.

...Applicant

- Versus -

1. Union of India
represented by the Secretary to the
Govt. of India,
Ministry of Environment & Forests,
New Delhi.
2. The State of Assam,
represented by the Secretary to the
Government of Assam,
Forests Department,
Dispur, Guwahati-6.
3. The Principal Chief Conservator of Forests,
Assam, Rehbari, Guwahati-8.
4. Union Public Service Commission,
represented by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi.
5. Assam Meghalaya Joint Cadre Authority,
Shillong, Meghalaya.

...Respondents

By Sri A.K.Choudhury, Addl.C.G.S.C
for respondents No.1 & 4 and Mrs M.Das,
Govt. Advocate for respondents No.2 & 3.

O R D E R

S.BISWAS, MEMBER (A):

Reliefs : To direct the respondents to promote
forthwith the applicant to the I.F.S of Assam Meghalaya Joint
Cadre (Assam Segment) in terms of selection dated 5.11.2001.

Heard both sides and have gone through the records and
legal points involved in the case.

S.Biswas

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.260 of 2002.

Date of Order : This the 21st Day of February, 2003.

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

THE HON'BLE MR S. BISWAS, ADMINISTRATIVE MEMBER.

Sri Prakash Pran Changkakati
Divisional Forest Officer
Kamrup East Division
Department of Forests, Assam
Guwahati-1.

... Applicant.

By Advocate Mr.D.K.Das.

- Versus -

1. Union of India

Represented by the Secretary to the
Govt. of India
Ministry of Environment & Forests
New Delhi.

2. The State of Assam

Represented by the Secretary to the
Government of Assam
Forests Department
Dispur, Guwahati-6.

3. The Principal Chief Conservator of Forests
Rehabari, Guwahati-8.

4. Union Public Service Commission

Represented by its Chairman
Dholpur House, Shahjahan Road
New Delhi.

5. Assam Meghalaya Joint Cadre Authority
Shillong, Meghalaya.

... Respondents.

By Sri A.K.Chaudhury, Addl.C.G.S.C.
for respondent Nos.1 & 4 and Mrs M.Das,
Govt. Advocate for respondents No.2 & 3.

O R D E R

S.BISWAS, MEMBER (A):

Reliefs: "Promotion to Indian Forest Service."

Heard both sides and have gone through the records
and legal points involved in the case.

S. Biswas

Contd./2

1. The applicant has made allegations of grave inaction and delay on the part of the respondents authority which has prejudiced his career prospects and has further caused civil consequences leading to denial of promotion at appropriate time.

2. Going into the allegations we find that the disciplinary case which was initiated against the applicant on 3.10.94 under the provision of Rule 9 of the Assam Services (Discipline & Appeal) Rules 1964 concluded as late as on 16.7.2002 - that is to say after clear 8 years.

3. The undisputed facts in this case is that the department had also placed him under suspension belatedly thereafter from 29.3.95 for about 7 months and reinstated him again on 20.10.95.

4. One Sri L.D.Adhikary was appointed as an Enquiry Officer ^{early} in the case but for reasons not disclosed the Government of Assam did not act on his findings exonerating the applicant, which were statedly submitted in 1997 itself. Suddenly one Sri V.K.Vishnoi, IFS, Chief Conservator of Forests was asked to make fresh enquiry by an order dated 14.10.99. This aptly gives rise to a presumption that the respondents authority made this arrangement to bypass the outcome of the first and favourable enquiry report submitted by the Enquiry Officer Sri Adhikary in 1997. In other words it took the department another 2 years to only make up its mind for engaging another Enquiry Officer who submitted his report as late as on 14.10.99 on the same set of charges which were initiated

against the charged officer in 1994 i.e. about five years back. Favourable or unfavourable, the first Enquiry Officer had submitted the report in 1997 but still a second Enquiry Officer was engaged without stating why the Disciplinary Authority had to disagree with the first enquiry report. This impliedly amounted to a covert action to upgrade the punishment but without formally disagreeing with the first report.

5. The applicant had to knock the door of the Hon'ble High Court so that a decision is expedited in the case and it is only following an order dated 12.9.2001 passed by the Hon'ble High Court that the department took about another 10 months to conclude the case on 16.7.2002 and the applicant was found finally innocent and the charges dropped. By this inordinate delay caused at two stages of enquiry, and two years for administrative pondering a presumption~~s~~ regarding prejudice against the applicant has become inescapable. Had the first enquiry report submitted by Sri Adhikary been accepted, the same outcome in the case would have probably emerged exonerating the applicant as early as in 1997-98 and then his promotion in 2001 or earlier would have been smooth. The applicant has therefore tried to make out his case on the ground that because of this unconscionable delay on the part of the respondents authority his career prospect has severely suffered and this delay has been used for cooking up further allegations so that the need for further vigilance clearance which had automatically ended after the order dated 16.7.2002 could

be revived by issue of a fresh charge and deny the overdue promotion. There is very little lacunae in this allegation which we can brush aside now.

6. We therefore, find that there is lot of force in this argument in as much as it has taken the department maleficiently near about 8 years to decide the case and no record was kept by the disciplinary authority why the first enquiry report was not acted upon. Clean five years has taken after the first enquiry report was submitted but illegally overlooked.

7. We have also gone through the plea of the respondents authority that the applicant could not be promoted after exoneration on 16.7.2002 as because in the meantime another disciplinary proceeding was blotched up against him vide letter No.A-22/Misc/2001 dated 9.7.2002. On scrutiny of this letter it shows that this is a mere probing communication of the Principal Chief Conservator of Forests to the Principal Secretary, Government of Assam forwarding a draft charge sheet against the applicant in response to a letter dated 21.1.2001 as it was so desired by the latter. The File produced in this behalf by the learned counsel for the respondents bearing No. FRE.109/94 | Pt.I does not contain the ^{matter in} course of hearing of this case we wanted the learned counsel for the respondents to produce ^{or} and show the records from where the proposed ^{SL} integrity certificate was processed or withheld. This file is different. We are not able to understand why the relevant vigilance file could not be produced before us if, it is there.

S. Choudhury

8. Having gone through this file we further find that no such vigilance matter is dealt from this file by the Government of Assam. In the draft note prepared for the Select Committee Meeting, it was merely noted, "the integrity certificate in respect of P.P.Changkakati has been withheld due to pendency of the departmental proceeding which is in final stage". Obviously this relates to the past case which was dropped on 16.7.2002. As no more vigilance report or integrity certificate was warranted to be issued from this file, the applicant had become automatically eligible from 16.7.2002 itself or even retrospectively if any of his juniors were promoted from the panel meanwhile now that the pending case was withdrawn and the DPC findings for posts/vacancy arising from 1.1.2001 was available. In page 159 of the file note sheet the Deputy Secretary to the Govt. of Assam followed it up by a letter date 1.8.2001 and it had been stated that no further vigilance case was pending or contemplated against P.P.Changkakati, DFO.

9. It is evident in this case that the respondent authorities had for all practical purposes observed a "Seal Cover" procedure and therefore though the applicant was "found fit in all respects", by the Selection Committee on 5.11.2001, he could not be promoted immediately pending the disciplinary case. The said disciplinary case was dropped, fully exonerating the applicant on 16.7.2002. As held in both Union of India vs. K.V.Janakiraman, 1991(2) Scale S.C 423 and Union of India & Ors. vs. Dr.(Smt.) Sudha Salhan, 1998(2) SLJ 265 it is obvious that if the officer against

S. Biju

whom departmental proceedings were initiated is ultimately exonerated, the seal cover containing the recommendation of the DPC would be opened and recommendation be given effect to. The case of the applicant should have been opened or taken up on 16.7.2002 itself when he was exonerated and given promotion immediately or with effect from the date when his junior, from the panel were promoted. No further formality is required to be observed by way of calling for another vigilance report and so on. In our considered view it was not necessary from 16.7.2002 ~~to~~ till 16.8.2002, when the second charge sheet was not served. Prior to serving of the charge sheet, no further disciplinary case can be presumed to be pending, as per judicial pronouncement, ruling the field.

10. However, we have also considered the submission of the respondents authorities that fresh charges against the applicant had statedly been received from the PCCF on 9.7.2002 regarding certain irregular appointments. The correspondence, which we have perused shows that in reply to a letter dated 21.1.2002 from the Principal Secretary, Government of Assam the said draft charge was made out. In other words the Principal Secretary desired that the PCCF send the draft charge sheet. We get the impression that if it was drafted as desired by the Principal Secretary and if this was done some time in July 2002 correspondence that the disciplinary proceeding was pending at the drafting stage, we cannot accept that the decision was taken to

S. Basu

issue charge sheet before it was done actually on 16.8.2002 i.e. long after exoneration of the applicant on 16.7.2002. The applicant should have been promoted during this time. In other words in our view no charge sheet was contemplated till 16.8.2002 though there was probing correspondences between the PCCF and the concerned Principal Secretary and the material decision could not be taken prior to 16.8.2002. In Janakiraman's case Hon'ble Supreme Court already held that nothing short of issue of charge sheet would be construed as the crucial date when disciplinary action may be said to have started.

11. We also find that in para 4 of the Minutes certain observations are recorded by the Selection Committee that met on 5th November, 2001 which are reproduced below :

"The committee examined the service records of the eligible officers upto the fyear 1999-2000 (as the crucial date of eligibility is 01-01-2001) and on an overall assessment of their service records, assessed them as indicated against their names in the Annexure."

and the applicant was found suitable by the Committee in all respects for promotion to the Indian Forest Service during the year. The inclusion of the name of the applicant in Select List was made against one clear vacancy in the promotion quota of the State Cadre as was determined by the Central Government in terms of Rule 4(3) (b) of the IFS (Recruitment) Rules 1966 read with regulation 5(1) of the IFS (Appointment by Promotion) Regulations, 1966 as amended

S. Bns

from time to time. The Committee also observed that the inclusion of the name of the applicant was provisional one subject to his clearance in the disciplinary proceeding pending against him and subject to the State Government certifying the integrity. The Union Public Service Commission in the instant case approved Select list on 30.5.2002 vide its letter No.10/2/2001-AIS dated 30.5.2002. On the own showing of the respondent No.2 the Select List was valid upto 29.7.2002 in terms of sub-rule 4 of Rule 7 of the Regulations. No valid reasons were ascribed by the respondent No.2 and did not act as per the proviso of sub-rule of Rule 7 of the Regulation and forwarded the proposal to the concerned authorities to declare the name of the applicant in the Select List of 2001 as unconditional, though the applicant was exonerated from the charges and proceedings stood dropped vide order dated 16.7.2002.

12. In our considered view therefore the subsequent charge sheet was contemplated or have been issued much after the period for which the applicant was eligible for promotion i.e. 1999-2000 and naturally the crucial date is 1.1.2001 to take cognisance of the vigilance report. Except the first disciplinary case no other vigilance case was pending or contemplated against the applicant till 16.8.2002. In fact admittedly the disciplinary case which was pending against charged officer on 1.1.2001 was dropped and the charged officer was fully exonerated. Therefore the so called vigilance certificate which merged with the

S. Dinesh

and the charged officer was fully exonerated. Therefore the so called vigilance certificate which merged with the disciplinary action pending stood completely dropped or annulled by virtue of the eventual dropping of the case. Soon thereafter when the panel was ready the applicant was fit to be promoted. We are convinced in this case that on 1.1.2001 there was no case against him after the dropping of the pending disciplinary case and also on 5.11.2001 there was nothing. The second case was only under correspondence and a material decision was taken only on 16.8.2002 when the second charge sheet was issued. This development was intimated to UPSC on 23.8.2002 by the Government of Assam but failed to clarify why no action to promote the applicant was taken before 29.7.2002.

13. The respondents authority has only delayed certain action which acted as impediment to timely promotion of the applicant. We are unable to take cognizance of the searching correspondence as a good evidence to accept that the material decision to proceed against the applicant was taken before 16.8.2002 when only the charge sheet was issued. In the situation no further vigilance clearance was required to promote the applicant as he became fit for promotion in all respects with effect from 5.11.2001 and the so called second and belated charge sheet was formalised on 16.8.2002. Long before that he was cleared by the DPC for promotion. The vigilance clearance in such case could be held back only after effective issue of the charge

sheet. The noting on the Select Committee's minutes, is palpably misleading. Factually we are not convinced that a second case was effectively contemplated before 16.8.2002 or taken on record in the minutes. The minutes became *of provisionality*, clear when the first case was dropped on 16.7.2002 and the applicant became entitled to be promoted soon thereafter. We cannot agree that his promotion which became due on 5.11.2001 could be inhibited thereafter by a charge sheet dated 16.8.2002 in a different case.

14. Article 16 embodies basic guarantee that there shall be equality in the matter of employment of the State. Article 14 and 16 strike at arbitrariness in the said action and ensure fairness and equality. What is unjust and unreasonable is also arbitrary and violative of equality clause. Arbitrary exercise of discretionary power is incorporated with the rule of law or power has its legal limitations. Arbitrary exercise of discretionary power which is not countenanced by law. Statutory powers are meant to be exercised fairly, reasonably and in good faith for proper purposes only in conformity with the law. Statutory powers for public purposes is reposed on trust to exercise in right perspective.

15. We have already indicated the manner in which the disciplinary proceeding was initiated as far back 23.10.92 was unreasonably dragged on until the High Court came into the picture and finally the proceeding was formally

S. Bains

closed on 16.7.2002. The applicant was in no way responsible for procrastination of the disciplinary proceeding. In the light of the maxim "nullus commodum capere potest de injuria sua propria" (no one should be allowed to profit from his own wrong), the purported disciplinary proceeding was stressed out unreasonably to only to defeat the right of an individual. Discretionary power cannot be extended to invade upon individual right in the context of justice and fairness. Fair procedure also contemplate reasonable measure within reasonable time.

16. Public interest does not countenance indolence and torpidity in the disciplinary matters. Disciplinary powers are not ~~be~~ meant to be used as a vehicle for victimisation. No reasons are ascribed as to why the State respondent was limping with a lame proceeding since October 1994, though the Enquiry Officers successively exonerated the Government officer in 1997 and 1999. The State Government finally by order dated 16th July 2002 acted upon the Enquiry report submitted by the two successive Enquiry Officers as far back as 29.11.1997 and 14.10.99 respectively. There is no ostensible logic for lingering over the matter for about 33 months from the submission of the report of the second Enquiry Officer. The incomprehensive delay in keeping alive the purported disciplinary proceeding which concluded in exoneration of the applicant cannot be a ground for causing grave injustice to him. A primary aim of legal policy is to do justice - it is assumed that the rule making authority

S. B. IAS

did not intend to injustice. "Parliament is presumed to act justly and reasonably" (IRC V Hinchy (1959 AIR 512)). It is also a principle of legal policy that law should be just and that the Court's decision should further the ends of justice. It is too trite to restate that Courts are always concerned to see that there is no failure of justice and the "well of Justice remains clear". It is also fundamental principle of Jurisprudence that a person should not be penalised except under clear law.

17. For all the reasons stated above we are of the opinion that the respondents acted unlawfully by withholding the promotion of the applicant in terms of the Regulation on the mere pretence of purported disciplinary proceeding which formally ended on 16.7.2002. The respondents are accordingly directed to take up the matter with right earnest for appointing the applicant to the Indian Forests Service in terms of Regulation on the basis of recommendation made by the Selection Committee held on 5.11.2001 and pass appropriate orders forthwith in accordance with law keeping in mind the observations and directions made in the O.A.

The application is thus allowed. There shall, however, be no order as to costs.

S.Biswas
(S.BISWAS)
ADMINISTRATIVE MEMBER

D.N.CHOWDHURY
VICE CHAIRMAN

16th 9
THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH
GUWAHATI

O. A. NO. 260 OF 2002

Prasanta.
Sri ~~Ramash~~ Pran Changkakati

.... APPLICANT

-VERSUS-

Union of India & Ors.

.... RESPONDENTS

I N D E X

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1. ...	Application 1 to 11
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5. ...	Annexure - C

Filed by :

OK Das
Advocate

THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

GUWAHATI

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

O.A. NO. 260 /2002

BETWEEN

Sri Prakash Pran Changkakati,
Divisional Forest Officer,
Kamrup East Division,
Department of Forests, Assam,
Guwahati - 781 001

..... APPLICANT

- AND -

1. Union of India, represented by the Secretary to the Govt. of India, Environment & Forests, New Delhi.
2. The State of Assam, represented by the Secretary to the Govt. of Assam, Forests Department, Dispur, Guwahati-781 006
3. The Principal Chief Conservator of Forests, Assam Rehbari, Guwahati - 781 008
4. Union Public Service Commission, Represented by its Chairman, Dholpur House, Shahjahan Road, New Delhi.
5. Assam Meghalaya Joint Cadre Authorities, Shillong, Meghalaya.

..... RESPONDENTS

.....2

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Filed by Appellant
through Debaji & Ka Sa
16/8/02

DETAILS OF APPLICATION

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

The present application is not directed against any Order but has been filed making a grievance against denial of promotion to the Applicant to the I.F.S. Cadre of Assam-Meghalaya Joint Cadre (Assam segment).

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

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

4. FACTS OF THE CASE :

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

4.2 That the Applicant joined service in the Forest Department, Government of Assam as Assistant Conservator of

Forest (ACF) in the year 1981 persuant to his selection into the Assam Forest Service (Class-I), by the Assam Public Service Commission and was posted and attached to the Conservator of Forest, R&E, Guwahati. Thereafter, the Applicant was posted in various Forest Divisions under the Department of Forest, Government of Assam from time to time.

4.3 That in the year July, 1990, the Applicant was posted as Divisional Forest Officer (D F O) in-charge, Kamrup West Division which post the Applicant held up till December, 1993 and thereafter joined as D.F.O., Forest Resources Survey Division with effect from 4.1.1994. At present the Applicant is holding the post of D.F.O., Kamrup East Division, Guwahati.

4.4 That in the year 1994 while the Applicant was holding the post of D.F.O. Forest Resources Survey Division, Assam, a departmental proceeding was drawn up against the Applicant vide Government Show-Cause Notice issued under memo No. FRE. 127/81/85 dated 3.10.1994 under the provision of Rule - 9 of the Assam Services (Discipline and Appeal) Rules, 1964 based on certain charges framed against the Applicant on the basis of the statement of allegations. In the aforesaid Notice dated 3.10.1994 three charges in total were levelled against the Applicant. Be it stated herein that all the three charges levelled against the Applicant by the aforesaid Show-Cause Notice dated 3.10.1994 pertains to certain expenditures purportedly made by the Applicant while he was holding the post of the Divisional Forest Officer, Kamrup West Division, Kamrup which were allegedly in excess of the funds released by the

Principal Chief Conservator of Forest, Assam for the relevant purpose.

4.5 That while the Applicant was awaiting a communication from the Government in respect to his letter dated 27.10.1994 praying for inspection of relevant documents, to his utter dismay, the Applicant was placed under suspension vide Government Order No. FRE.127/81/94 dated 29.3.1995. However, within a period of seven months from the date of suspension, the Applicant was reinstated back to service vide Govt. Order No. FRE. 127/81/105 dated 20.10.1995.

4.6 That one Sri L. D. Adhikari was appointed as the Inquiry Officer to enquire into the charges framed against the Applicant and the said Inquiry Officer had conducted a detailed enquiry into the charges framed against the Applicant and submitted his report of finding to the Government of Assam way back in the year 1997. Be it stated herein that the Applicant has come to know from reliable sources that the Inquiry Officer did not find the Applicant guilty in respect of any of the charges levelled against the Applicant and accordingly in his report submitted to the Respondent Authorities, the said Inquiry Officer had categorically recommended that the Applicant be exonerated honourably.

4.7 That the Respondent Authorities, however, did not exonerate the Applicant as per the recommendation made by the Inquiry Officer Sri L.D. Adhikary in his in his aforesaid enquiry Report submitted to the Government of Assam nor did they assign any reason whatsoever for not doing so. Instead, several months after the submission of the Inquiry

Report by Sri L. D. Adhikary, the Respondent No. 1 vide Notification No. FRE.127/81/229 dated 27.10.1998 appointed Sri V. K. Vishnoi, I.F.S., Chief Conservator of Forests, Assam as Inquiry Officer to make a fresh enquiry into the charges drawn up against the Applicant vide letter No. FRE. 127/81/85 dated 3.10.1994.

4.8 That Sri V. K. Vishnoi, I.F.S. made a thorough enquiry into the charges levelled against the Applicant and submitted his enquiry report to the Government of Assam on 14.10.1999. It is pertinent to state herein that the Applicant has learnt from reliable sources that even on this occasion none of the charges levelled against the Applicant could be proved.

4.9 That despite the fact that the report of the second Inquiry conducted by Sri V. K. Vishnoi into the same set of charges was submitted to the Government on 14.10.1999, yet the Respondent Authorities had neither accepted the Inquiry Report submitted by the said Inquiry Officer nor did they cite any reasons for not doing so till the year 2001, as a result of which the Departmental proceeding which was drawn up against the Applicant way back in the year 1994 remained pending for a period of 8 (eight) long years.

4.10. That being aggrieved by the inaction of the Respondent Authorities and the inordinate and unexplained delay in the acceptance of the Inquiry Report, the Applicant approached the Hon'ble Gauhati High Court by way of a Writ Petition which was registered and numbered as W.P.(C) No.

6433/2001 praying inter-alia for quashing the charges levelled against the Applicant and the Hon'ble High Court after hearing the parties, while issuing notice of Motion on 12.9.2001 directed the Respondent State to take immediate decision on the Inquiry Report submitted by the Enquiry Officer without further loss of time.

A copy of the Order dated 12.9.2001 is annexed herewith and marked as ANNEXURE-A.

4.11 That after a lapse of almost 10 (Ten) months, the Respondent No. 2, vide his Order dated 16.7.2002 issued under memo No. FRE. 127/81/368 was pleased to convey that after careful consideration of both the Reports of Inquiry Officers, the charges against the Applicant could not be proved and he is, therefore, exonerated from all the charges.

A copy of the Order dated 16.7.2002 of the Respondent No. 2 is annexed herewith and marked as ANNEXURE - B.

4.12. That the Applicant states that in the meantime, the Applicant came to learn through reliable sources that the Selection Committee constituted under Regulation - 3 of the Indian Forest Service (Appointment by promotion) Regulations, 1996 for preparing a list of members of the State Forest Service who are suitable for promotion to the I.F.S. of Assam-Meghalaya Joint Cadre (Assam segment) held its meeting on 5.11.2001 and on the basis of assessments made, selected

the Applicant as suitable in all respects for promotion to the Indian Forest Service during the year 2001. However, it has come to the knowledge of the Applicant that his selection was provisional subject to his clearance in the disciplinary proceedings pending against him.

4.13 That the Applicant states that despite the fact that he has been exonerated from all charges after a long delay of almost 8 (eight) years, he is now being denied his legitimate due because of the inaction of the State Authorities concerned.

4.14. That the Applicant states that in this regard he had also made a representation before the State Authorities concerned for promoting him to the I.F.S. especially in view of the fact that he has already been selected by the Selection Committee. However, the representation of the Applicant dated 20.7.02 is yet to be attended to and the Applicant is still in the dark about the outcome of the said representation. In the process, he is still continued to be deprived of his legitimate promotion.

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

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS

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

5.2 For that the Applicant is entitled to be promoted to the post of I.F.S. and the inaction of the Respondent Authorities in this regard has caused grave prejudice to the Applicant and the same is illegal, arbitrary and discriminatory.

5.3 For that the impugned inaction on the part of the Authorities is in clear violation of the settled principles in this regard in service jurisprudence as propounded by the Appex Court. Further, the same is a manifest colourable exercise of power vested in the Authorities.

5.4 For that the select list being valid only upto 5.11.2002, if the Authorities concerned do not take any positive action towards promoting the Applicant to the I.F.S. Cadre, the same would amount to gross injustice being meted out to the Applicant besides having adverse effects on his service career.

5.5 For that the impugned action on the part of the Authorities of not promoting the Applicant to the I.F.S. Cadre despite the fact that he has been exonerated of all charges, is in violation of the provisions of Articles 14 and 16 of the Constitution of India in addition to being in clear violation of the law in this regard as propounded by the Apex Court.

5.6 For that in any view of the matter, the action/inaction towards denial of promotion to the Applicant to the

I.F.S. Cadre is not sustainable.

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

6. DETAILS OF REMEDIES EXHAUSTED :

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

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

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

8. RELIEF SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to Show Cause as to why the reliefs sought for in this application

Dy

should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To direct the Respondents to promote forthwith the Applicant to the I.F.S. of Assam-Meghalaya Joint Cadre (Assam Segment) *in Terms of Selection dt 5.11.2001.*

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

8.3 Cost of the Application.

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

9. INTERIM ORDER PRAYED FOR :

During the pendency of the Original Application, the Applicant prays for an interim Order directing the Respondents to consider the case of the Applicant for promotion to the I.F.S. of Assam-Meghalaya Joint Cadre, (Assam Segment) *in Terms of Selection dt 5.11.2001.*



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(11)

10. The Application is filed through Advocate.

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

(i) I.P.O. No. :

(ii) Date :

(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

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(12)

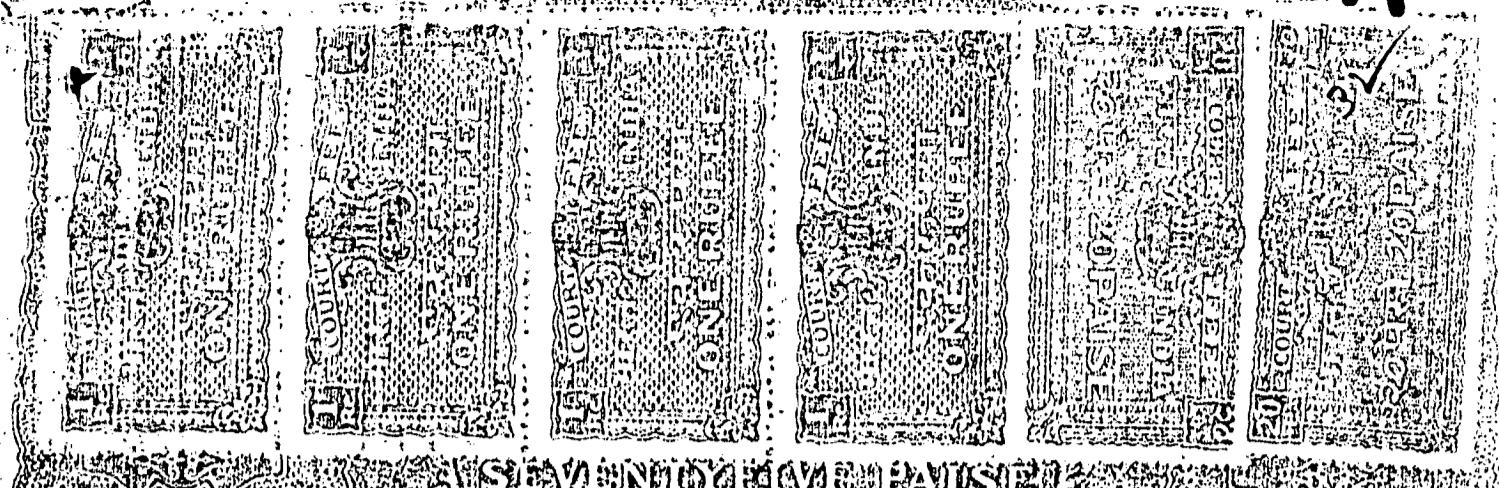
VERIFICATION

I, Sri ^{Prasanta} Prakash Pran Changkakati, D.F.O. , son of Late Bishnu Pran Changkakati, aged about 46 years, at present working as D.F.O., Kamrup East Division, Guwahati in the Department of Forest, Govt. of Assam do hereby. solemnly affirm and verify that I am the Applicant in this instant application and conversant with the facts and circumstances of the case. The statements made in Paragraphs 1, 2, 3, 4, 5, 6 to 12 _____ are true to my knowledge and those made in paragraphs 4, 14 4.11 4.10 are true to my information derived from the records and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this Verification on this the 16th day of August, 2002.

Prasanta Pran Changkakati

APPLICANT



SUIT IN WRIT PETITION

प्रतिलिपि के लिए आवेदन की तिथि। Date of application for the copy.	स्टाम्प और फॉलोजो की आवेदित रात्या सूची करने की तिथि। Date fixed for notifying the requisite number of stamps and folios.	आवेदित स्टाम्प और फॉलोजो देने की तिथि। Date of delivery of the requisite stamps and folios.	काली, जारी करने की तिथि। Date on which the copy was ready for delivery.	आवेदन को प्रतिलिपि के लिए तारीख। Date of making over the copy to the applicant.
13-9-01	13-9-01	13-9-01	13-9-01	13-9-01

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA MANIPUR TRIPURA
MIZORAM & ARUNACHAL PRADESH)

W.P. (C) NO. 6433/2001

Sri Prasanta Pran Changkakati,
Son of Late Bishnu Pran Changkakoti,
resident of Rehbari, Guwahati-8
in the district of Kamrup.

... Petitioner.

-Vs-

1. The State of Assam,
represented by the Secretary and
Commissioner to the Govt of Assam,
Department of Forest, Dispur, Guwahati- 6.
2. Joint Secretary to the Government
of Assam, Department of Forest,
Dispur, Guwahati- 6.
3. Principal Chief Conservator
of Forest, Assam, Rehbari, Guwahati-8.

... Respondents.

PRESENT.

THE HON'BLE MR JUSTICE D. BISWAS
FOR THE PETITIONER : Mr. A. Roy, Sr. Advocate,
Mr. D. K. Das,
Mr. I. Shyam, Adv.

FOR THE RESPONDENTS : G. A., Assam.

12.9.2001

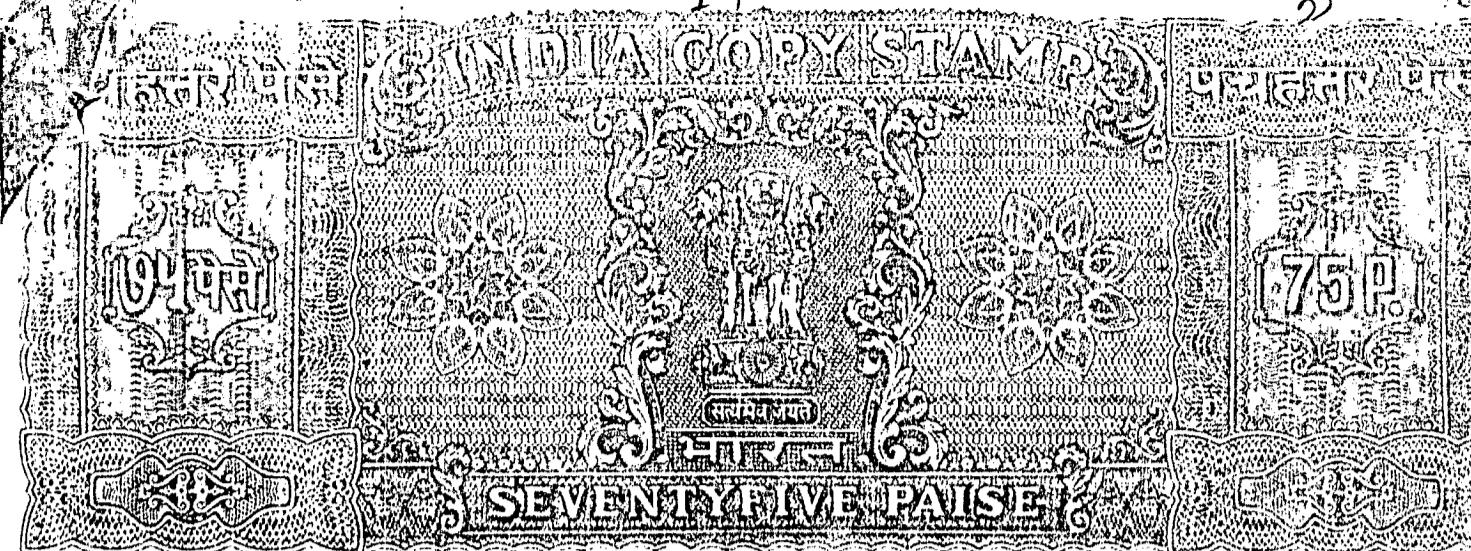
ORDER

Heard Mr. A. Roy, learned senior counsel for the writ petitioner.

Issue notice of motion.

Returnable within 3 weeks.

Contd. 2



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलिओ की अपेक्षित रास्ता सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलिओ देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक पर प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.

2.

Mr. NC Phukan, learned State counsel accepts notice on behalf of all the respondents.

Also heard Mr. Roy on interim prayer.

Prayer for stay of the letter dated 3.10.94 (Annexure I) is rejected.

However, the respondent State is directed to take immediate decision on the inquiry report submitted by the Enquiry Officer after completion of the departmental proceedings against the writ petitioner without further loss of time.

Pendency of this writ petition will not be a bar for the authority to pass appropriate orders on the enquiry report submitted by the Enquiry officer.

Sd/- D. BISWAS

JUDGE.

Registered No. of Petition.....16207
Photostate by/Type by.....
Read by..... 13/9/2001
Compered by..... 13/9/2001

CERTIFIED TO BE TRUE COPY
Date 3/11/2001
Superintendent (Copyist)
Gauhati High Court
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GOVERNMENT OF ASSAM
FOREST DEPARTMENT 31
DISPUR

NO. FRE-127/01/368,

Dated Dispur, the 16th July, 2002.

ORDERS BY THE GOVERNOR- ORDER -

Whereas a departmental proceeding was drawn up against Shri P.R. Changkakati, the then Divisional Forest Officer, Kamrup West Division vide Govt. Order No. FRE-127/01/85, dtl. 3-10-1994 on the charges of financial irregularities;

And

Whereas, Shri L.D. Alhikary, IFS, Conservator of Forests (now Retd.) was appointing Enquiry Officer to enquire into the charges. The Enquiry Officer submitted report vide his letter No. FG-22/CAC, dated 29-11-1997;

And

Whereas, the disciplinary authority was not satisfied with the enquiry report, and appointed Shri V.K. Vishnoi, IFS, Chief Conservator of Forests to enquire into the charges afresh. The Enquiry Officer submitted report vide his letter No. FE-267/REWP/Enquiry, dtl. 14-10-1999.

After careful consideration of both the reports of Enquiry Officers alongwith other relevant records, it is seen that the charges against the delinquent officer could not be proved. The Governor of Assam is therefore, pleased to order for dropping the departmental proceeding drawn up against Shri P.R. Changkakati, Deputy Conservator of Forests. He is exonerated from all the charges. The period from 29.3.95 to 26.10.95 spent under suspension shall be treated as on duty for all purposes.

By order etc. and in the name of Governor.

Sd/- B.B. Haqser,
Secretary to the Govt. of Assam,
Forest Department, Dispur

Dated Dispur, the 16th July, 2002.

Memo No. FRE-127/01/368-A,
Copy to :-

1. The Principal Chief Conservator of Forests, Assam, Rehbari, Guwahati-8.
2. The Accountant General(A&E) Assam, Beltola, Guwahati-29.
3. The Chief Conservator of Forests (Territorial) Assam, Guwahati-1.
4. The Conservator of Forests, Central Assam Circle, Guwahati-1.
5. P.S. to Minister of State Forests (Independent charge) for information of the Minister.
6. Shri P.R. Changkakati, Divisional Forest Officer, Kamrup East Division, Guwahati-1.
7. Personal file of the officer.

By order etc.

Addl. Secretary to the Govt. of Assam,
Forest Department, Dispur

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To,

The Principal Secretary,
Govt. of Assam, Forest Department,
Dispur, Guwahati-6.

(Through proper channel)

Sub:- Nomination to the rank of I.F.S. Cadre.

Ref:- Govt. Notification FIE. 127/81/368 dt. 16/7/2002.

Sir,

I have the honour to lay before you the following in response to the Govt. Notification cited under reference for favour of your kind necessary action.

That Sir, the proceeding against my service ~~against~~ for which I have been placed under seal cover for nomination to the rank of Indian Forest Service during the Joint Cadre Selection meeting held in New Delhi on dt. 5-11-2001 has already been cleared. Since it was already delayed the rules also has been under time framed, therefore, I request your kind honour to expedite the case so that the Integrity Certificate from the Hon'ble Chief Secretary kindly be accorded in time to clear the seal cover, so that the Promotion to the rank of I.F.S. cadre can be accorded at the earliest.

This is for favour of your kind consideration and necessary action.

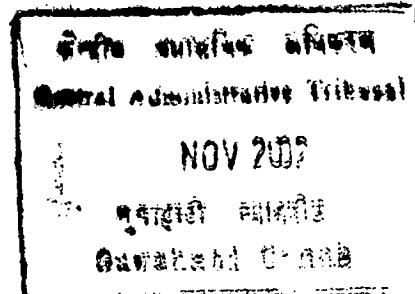
Yours faithfully,

20/7/02
(P.P. Changkakati.)
DIVISIONAL FOREST OFFICER:
KAMRUP EAST DIVN. GUWAHATI:

Copy in Advance to the Principal Secretary to the Govt. of Assam, Forest Department, Dispur-6 for favour of information and necessary action.

20/7/02
(P.P. Changkakati.)
DIVISIONAL FOREST OFFICER:
KAMRUP EAST DIVN. GUWAHATI:

of 4
16/7/02
20/7/02



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

D.A. No. 260/2002

38
Filed by
The State of Assam
Respondent No. 2
Mammar Das
Advocate
Jr. Govt. Advocate
(st. of Assam)
e.A.T 7/11/02

IN THE MATTER OF :

D.A. No. 260/2002

Sri P.P. Changkakati

..... Applicant

-VERSUS -

UNION OF INDIA & Ors.

.... Respondents.

- AND -

IN THE MATTER OF :

Written statement on behalf of ○
the State of Assam, respondent
No. 2, represented by the Secre-
tary to the Govt. of Assam, Forest
Department.

(Written statement on behalf of Respondent No. 2
to the application filed by the Applicant)

I, Sri S.K. Chouhan, ACS, Deputy Secretary
to the Govt. of Assam, Forest Department do here-
by solemnly state as follows :-

1. That I am the Deputy Secretary to the Govt.
of Assam, Forest Department. A copy of the

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application of the above case had been served on the Department. I perused the same and understood the contents thereof. I am acquainted with the facts and circumstances of the case. I have also been authorised to file this written statement before this Hon'ble Tribunal. I do not admit any of the allegations/averment made in the application which are not supported by records. Any statements/averment which are not specifically admitted hereinafter are to be deemed as denied.

2. That in regard to the statements made in paragraphs 4.1, 4.2 and 4.3, the answering respondent has nothing to make comment on it, as they are being matters of records. He, however, does not admit anything which is not borne out by records.

3. That with regard to the statements made in paragraph 4.4 of the application, it is stated that a departmental proceeding was drawn up against the applicant on certain charges of financial irregularities during his tenure as Divisional Forest Officer, Kamrup West Division.

4. That the statements made in the paragraph 4.5 and 4.6 of the application are admitted by the answering respondent.

5. That with regard to the statements made in paragraph 4.7 of the application it is stated that the disciplinary authority was not satisfied with

the enquiry report submitted by Sri L.D. Adhikary, IFS (now Rtd.) as such decided to order fresh enquiry. Sri V.K. Vishnoi, IFS, Chief Conservator of Forests was appointed as Enquiry Officer to enquire into the charges afresh.

6. That the statement made in the paragraph 4.8 of the application are admitted by the answering respondent.

7. That with regard to the statements made in paragraphs 4.9 and 4.10 of the application, the humble answering respondent begs to state that on receipt of the Enquiry report of Sri Vishnoi the Department requested the Accountant General and other concerned offices to furnish some information to examine the case. Further, the applicant filed a case before the Hon'ble High Court being Case No. W.P.(C) No. 6433/2001.

8. That with regard to the statements made in paragraph 4.11 of the application, it is stated that after consideration of reports of Enquiry Officers and other relevant documents, the charges against the applicant could not be proved and the departmental proceeding was dropped exonerating him from all the charges.

9. That with regard to the statements made in paragraph 4.12 of the application, it is stated that the applicant was selected and recommended by

the Selection Committee held on 5.11.2001 for being appointed to Indian Forest Service by way of promotion, subject to clearance of the disciplinary proceeding pending against him and subject to the State Govt. certifying his integrity.

A copy of the minutes dated 5.11.2001 is annexed hereto and marked as Annexure-I.

10. That with regard to the statements made in paragraph 4.13 and 4.14 of the application, the answering respondent begs to state that though the departmental proceeding which was pending against the applicant had been dropped vide order dated 16.7.2002, but a fresh set of charges against him have been received from the Principal Chief Conservator of Forests vide letter No. FE. 22/Misc/2001 dated 9.7.2002. As a result the State Govt. could not certify the integrity in respect of the applicant. A fresh departmental proceeding was also initiated against him vide letter No. FRE. 1/2002/72 dated 16.8.2002 and served upon him. The departmental proceeding is still pending. The matter was intimated to the Union Public Service Commission vide Govt. letter No. FRE. 109/94/Pt.I/212, dtd. 23.8.2002.

Further it is stated that as per sub regulation 4 of Regulation 7 of the Indian Forest Service (Appointment by promotion) Amendment Regulations, 1997, the select list remain valid

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till 31st December of the year in which the Selection Committee Meeting is held or upto 60 (sixty) days from the date of approval of the select list by the Commission, whichever is later. In the instant case the Union Public Service Commission approved the select list on 30.5.2002 vide their letter No. 10/2/2001-AIS, dtd. 30.5.2002. Therefore the select list of 5.11.2001 remain valid upto 29.7.2002 and not upto 5.11.2002.

Copies of the Principal Chief Conservator of Forests letter dtd. 9.7.2002, show cause notice dtd. 16.8.2002, letter to Union Public Service Commission dtd. 23.8.2002 and Union Public Service Commission's letter dtd. 30.5.2002 are annexed herewith and marked as Annexure- II, III, IV and V respectively.

11. That the answering respondents humbly submit that there is no violation of any Articles of the Constitution of India. The promotion of the applicant to Indian Forest Service could not be made due to drawal of fresh departmental proceeding and hence the applicant has no case at all and the application is liable to be rejected.

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VERIFICATION.

I, Shri S.K. Chouhan, ACS, Deputy
Secretary to the Govt. of Assam, Forest Department
do hereby state that the statements made in para-
graphs 1, 3 to 8 are true to my knowledge and
those made in paragraphs 2, 9 and 10 are being
matters of records of the case are true to my
information derived therefrom which I believe to
be true and the rests are humble submissions
before this Hon'ble Court.

I have not suppressed any material fact
and I have signed this verification on this the

7th November, 2002.

Surbil Kumar Chouhan

Signature.

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Minutes of the meeting of the Selection Committee constituted under Regulation 3 of the Indian Forest Services (Appointment by Promotion) Regulations, 1966, to prepare a List of members of the State Forest Service who are suitable for promotion to the IFS of Assam-Meghalaya Joint Cadre, (Assam Segment) during the year 2001.

The Selection Committee met at New Delhi on 05th November 2001, at 1700 hours. The following were present:

Date Nov 2001
Principal Secy Forests

i) Dr. Om Nagpal : President
Member,
Union Public Service Commission

ii) Shri P.K. Bora : Member
Chief Secretary,
Government of Assam.

iii) Shri K N Dev Goswami : Member
Principal Chief Conservator of Forests,
Government of Assam.

iv) Shri R Chandramohan : Member
Joint Secretary,
Min. of Environment & Forests,
New Delhi

2. The Committee were informed that the maximum number of State Forest Service Officers who may be included in the Select List is 01 (one) against the 01 (one) existing vacancy in the Promotion Quota of the State Cadre as determined by the Central Government in terms of Rule 4(3)(b) of the IFS (Recruitment) Rules 1966 read with regulation 5(1) of the IFS (Appointment by Promotion) Regulations, 1966 as amended from time to time.

(Signature)

Hand
(29)
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3. The Committee were informed that disciplinary proceedings are pending against Shri P.P. Changkakoti at S.No. 2 in the eligibility list.

4. The Committee examined the service records of the eligible officers for the year 1999-2000 (as the crucial date of eligibility is 01-01-2001) and on an overall assessment of their service records, assessed them as indicated against their names in the Annexure. While assessing their suitability, the Committee did not take into consideration any adverse remarks in the Annual Confidential Reports of the officers, which were not communicated to them.

5. On the basis of the above assessment, the Committee selected Shri P. P. Changkakoti (D.O.B. 01-02-1956) as suitable in all respects for promotion to the Indian Forest Service during the year 2001. The inclusion of Shri Changkakoti in the Select List is provisional subject to his clearance in the disciplinary proceedings pending against him and subject to the State Govt. certifying his integrity.

9 - 25 Annexure - II

GOVERNMENT OF ASSAM
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS ::
ASSAM :: GUWAHATI::

Dated Guwahati the 9th July 2002

No. PL 22/Misc/2001

To.

The Principal Secretary,
Govt. Of Assam,
Forest Department, Dispur.

*See my Part
M
TJ/2002*

Sub : Illegal appointments in Genetics Cell Division, Guwahati.

Ref : Your Office Letter No. FRE.1/2002/63 dated 21-1-2002.

Sir,

With reference to the above please find enclosed herewith the draft charges along with the statement of allegations and list of exhibits against Shri. P.P. Changkakaty, Deputy Conservator of Forests for your onward necessary action.

Yours faithfully,

Enclos. - As above.

*9/6
15/7/02*
Principal Chief Conservator of Forests
Assam, Guwahati.

*6406
16.7.2002*

9/7

*by. des
for 2 des*

26
GOVERNMENT OF ASSAM
FOREST DEPARTMENT DISPUR

NO.FRE-1/2002/72,

Dated Dispur, the 16th August, 2002.

TO

Shri P.P.Changkakoti,
Deputy Conservator of Forests,
Kamrup East Division, Guwahati-1.

You are hereby required to show cause under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 read with Article 311 of the constitution of India, why any of the penalties prescribed in Rule 7 of the aforesaid Rules should not be inflicted on you for the following charges, based on the statement of allegations attached herewith.

Charge No.1 : While you were in-charge of Divisional Forest Officer, Genetic Cell Division, you had illegally appointed 7(Seven) number of your chosen and favoured persons in various posts under Genetic Cell Division in violation of Govt. instructions issued from time to time, without following any rules and in violation of provision of Article 16 of the constitution of India.

You are therefore charged with gross misconduct and misuse of office power for making the illegal appointments in violation of Govt. instructions, rules and provision of Article 16 of the constitution of India.

Charge No.2 : While you were in-charge of Divisional Forest Officer, Genetic Cell Division, you had illegally appointed 7(Seven) number of your chosen persons in various posts under Genetic Cell Division in violation of Govt. instructions issued from time to time and rules and provision of Article 16 of the constitution of India as a result of which there is continuous financial loss of Govt. in the form of payment of salary and other expenses to these illegal appointees.

You are, therefore, charged with gross misconduct, misuse of office power and violation of Rule 3 of the Assam Civil Service (Conduct) Rules, 1965 for financial loss of Govt. in making payment of salary and other expenses to these illegal appointees.

You should submit your written statement within 10(ten) days from the date of receipt of this communication, provided you do not intend to inspect the documents, which have

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relevance with the issues under enquiry. In case you intend to inspect these documents you should write to the undersigned for the same within 7(seven) days from the date of receipt of this communication and submit your explanation thereafter within 10 (ten) days from the date of completion of the inspection.

Your written statement stating whether you desire to be heard in person should be submitted to the undersigned within the period as specified above.

Enclo :-

1. Statement of Allegations-
Annexure-I.

2. List of documents-
Annexure-II.

T. J. Narayan
Secretary to the Govt. of Assam,
Forest Department, Dispur

— 12 — 26
ANNEXURE 1
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STATEMENT OF ALLEGATIONS

Charge No.1 :

While you were in-charge of Divisional Forest Officer, Genetic Cell Division, Guwahati, you had illegally appointed the following 7(seven) number of your chosen and favoured persons under Genetic Cell Division.

- (1) Shri Sankai Kalita, Forest Guard vide Office Order No.25, dtd. 1-4-99.
- (2) Shri Lakai Nate, Mali vide Office Order No.27, dtd. 1-4-99.
- (3) Smti. Beby Baruah, Forester-i vide Office Order No.66, dtd. 1-10-99.
- (4) Shri Phukan Ch. Das, Mali vide Office Order No.67, dtd. 12-10-99.
- (5) Shri Pranab Bhuyan, Dak Runner vide Office Order No.68, dtd. 12-10-99.
- (6) Shri Shuban Dutta, Peon vide Office Order No.69, dated 17-11-99.
- (7) Shri Biney Das, Forest Guard, vide Office Order No.70, dtd. 17-11-99.

There were clear instructions from the Government of Assam, vide Government of Assam, Department of Personnel, Personnel(B) Office Memorandum No. ABP.74/96/1, dated, Dispur, the 30th May, 1996 regarding ban on recruitment by ad hoc appointment. The aforesaid Office Memorandum clearly states that

"the Government of Assam have decided that all direct recruitments should be made by way of regular appointment by following the concerned service rules or relevant rules/circulars for making regular appointment and henceforth, there shall be no direct recruitment by way of ad hoc appointment under any department of any organization under the control of any department or organization under the State Government. All Departments and authorities under the State Government are directed to comply with this Government decision.

This instruction comes into force with immediate effect and will remain in force until further orders".

The Government of Assam Finance(Budget) Department, Office Memorandum No. BB.36/96/204, dated Dispur, the 11th Nov/1996, regarding ban on appointment on leave vacancy states that

"After careful consideration of all aspects, it has been decided that, henceforth, no leave vacancy shall be filled up."

Further vide Government of Assam, Finance (Establishment) Department, Office Memorandum No. PEG.8/94/67, dated Dispur, the 16th Dec/1996 there was a ban on appointment of persons against leave vacancies, vacancies arising due to deputation, study leave, training etc. of Government servants. The aforesaid Office Memorandum clearly states that

"After careful consideration of all aspects of the matter, the Governor of Assam is pleased to decide that henceforth no person shall be appointed even temporarily to a resultant vacant post arising due to deputation/study leave/ Training etc. Appointment to leave vacancies has already banned vide Finance (BT) Deptts. O.M.No.BB.56/96/204, dtd. 11-11-96, which should strictly be adhered to."

The Government of Assam, Department of Personnel, Personnel(B) , Office Memorandum No.ABP.74/96/43, dtd.,Dispur, the 30th December, 1996 states that

After careful consideration of all aspects of the matter it has been decided that no such leave vacancies shall be filled-up by any authority henceforth.

The above instructions shall come into force with immediate effect and non-compliance of the instructions will be viewed seriously."

Also the Constitution of India Article-16 states that

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of, any employment or office under the State.

You have not taken care of the above mentioned provisions of the constitution while making the appointments.

As you had made illegal appointments of your chosen and favoured persons despite Government ban, ignoring prescribed rules and procedure, your actions are arbitrary, biased, with ulterior motives in violation of the principles enshrined in Article-16 of the constitution of India and in absolute violation of Government of Assam orders issued under cover of their office memos cited above. These appointments have resulted in recurring financial loss to the state exchequer by way of payment of salary and other expenses to the illegal appointees.

You are, therefore, charged with gross misconduct and misuse of officer power for making the illegal appointments in violation of Govt. instructions, rules and provisions of Article 16 of the constitution of India.

Charge No.2 :

That while you were posted as Divisional Forest Officer, Genetics Cell Division you had illegally appointed 7(seven) of your chosen and favoured persons in your Division. The Government of Assam, Department of Personnel, Personnel(B), Office Memorandum No.ABP.74/96/1, dated 30th May, 1996 banned recruitment by ad hoc appointment.

The Government of Assam, Finance(Budget)Department, Office Memorandum No.BB.56/96/204, dated 11th Nov/1996, banned appointment on leave ~~vacancy~~ vacancy.

Government of Assam, Finance (Establishment)Department Office Memorandum No.FEG.8/94/67, dated the 16th Dec/1996 banned appointment of persons against leave vacancies, vacancies arising due to deputation, study leave, training etc. of Government servants.

The Government of Assam, Department of Personnel, Personnel(B), Office Memorandum No.ABP.74/96/43, dated 30th December, 1996 stated that no leave vacancies shall be filled-up by any authority.

It was your duty to comply with the Government instructions cited above and rules including rules of natural justice and constitutional provisions of Article-16 but you failed to do so, exhibiting your insubordination to superiors. This has resulted in continuing loss to the Government by way of payment of salary and other expenses to the illegal appointees.

You are, therefore, charged with gross misconduct, misuse of office power and violation of Rule 3 of the Assam Civil Service (Conduct) Rules, 1965 for financial loss of Govt. in making payment of salary and other expenses to those illegal appointees.


Secretary to the Govt. of Assam,
Forest Department, Dispur

LIST OF DOCUMENTS

(1) Government of Assam, Department of Personnel, Personnel(B),
'A' Office Memorandum No.ABP.74/96/1, dated,Dispur, the 30th
May, 1996.

(2) Government of Assam, Finance (Budget) Department, Office
Memorandum No.BB.56/96/204, dated 11th Nov/1996.

(3) Government of Assam, Finance (Establishment)Department,
Office Memorandum No.FEG.8/94/67, dated, the 16th Dec/1996
and

(4) Government of Assam, Department of Personnel, Personnel(B),
Office Memorandum No.ABP.74/96/43, dtd.30th December, 1996.

(5) Genetic Cell Division's Office Order No.25, dtd.1-4-99.

(6) Genetic Cell Division's Office Order No.27, dtd. 1-4-99.

(7) " " " Office Order No.66, dtd.1 -10-99

(8) " " " Office Order No.67, dtd.12-10-99.

(9) " " " Office Order No.68, dtd.12-10-99.

(10) " " " Office Order No.69, dtd. 17-11-99.

(11) " " " Office Order No.70, dtd.17-11-99.

Tommy

NO. D.F.R.E.: 109/94/Pt.I/212, Dated Dausa, the 23rd August, 2002.

From 80 Shri B.B. Majur, IAS,
Secretary to the Govt. of Assam.

T

The Under Secretary (AIS)
Union Public Service Commission,
Dholpur House, Shah Jahan Road,
New Delhi - 110011

Sub : I.F.S. - S.G.M. For promotion to Assam
Segment of Assam-Meghalaya Joint Cadre
during 2004.

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With reference to the above, I am directed to say that name of Shri P.P. Changkakotl was provisionally included in the select list of 2001 subject to examination of disciplinary proceeding pending against him and subject to certify of his integrity by the State Govt. The State Govt. is not in a position to certify the integrity in respect of Shri Changkakotl due to drawal of a fresh disciplinary proceeding against him.

Young, Faithfully,

Trinity
Secretary to the Board of Education,
Former Department, Bilepuas.

FAX 011-3385345

17-33 Annexure-V

No. 10/2/2001-AIS
UNION PUBLIC SERVICE COMMISSION
DHOLPUR HOUSE, SHAHJAHAN ROAD,
NEW DELHI - 110 011.

30th May 2002

P. Secy. (For 10)

FORWARDED AS DIRECTED
BY THE
FOR PROMOTION OF STAFF
S. O. TO C.B.

To,

The Secretary to Government of India,
Min. of Environment & Forests,
Parivaran Bhawan,
New Delhi.

(Attn. Shri G. Devnani, Under Secretary)

Subject: IFS - SCM for promotion to Assam Segment of Assam-Meghalaya Joint Cadre during 2001.

Sir,

I am directed to refer to your letter No. 17013/02/2001-IFS.II dated 22-04-2002 and the Government of Assam letter No. 109/94/PT-I/206 dated 17-05-2002 on the subject mentioned above. The Government of India, Min. of Environment & Forests, vide their letter No. 17013/2/2001-IFS.II dated 20-06-2001 determined the number of posts as 1 for which recruitment by promotion was to be made during the year 2001. Accordingly the Selection Committee which met on 05-11-2001 prepared a Select List consisting of 1 name in accordance with the provisions of the said Regulations.

2. The Government of India, the Government of Assam and the Joint Cadre Authority have sent their observations on the recommendations of the Selection Committee. The recommendations of the Selection Committee, views of the State Government and the Joint Cadre Authority, received under Regulation 6 and observations of the Central Government received under Regulation 6 A were placed before the Commission for their consideration.

3. The Union Public Service Commission have approved the recommendations of the Selection Committee as contained in the minutes of its meeting held on 05-11-2001.

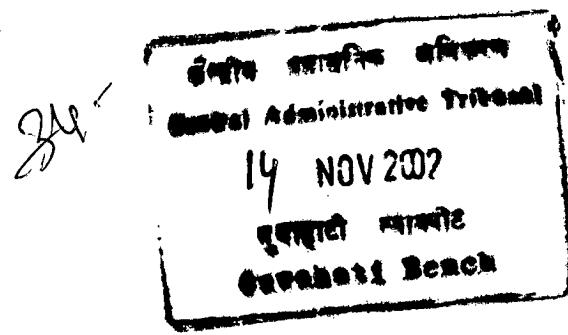
Yours faithfully,

(MOLLY TIWARI)

UNDER SECRETARY (AIS)

UNION PUBLIC SERVICE COMMISSION

TELE. No. 338 2724



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI

In the matter of :

O. A No. 260/2002

Sri Prasanta Pran Changkakati,

... Applicant.

- Versus -

Union of India & ors.

... Respondents.

- AND -

IN THE MATTER OF :

Rejoinder submitted by the
applicant in reply to the written
statement filed by the Respondent.

The applicant most respectfully beg
to state as under :-

1. That with regard to the statements made in
Paragraphs 6, 7 and 8 of the written statement, the appli-
cant states that the answering respondents have admitted
that the Charges levelled against the applicant could

not...

Filed by applicant
through Debajit to this
Advocate 13/11/2002

not be proved. The applicant further reiterates that inspite of the ~~exoneration~~ of the applicant by the Enquiry officer, the departmental proceeding against the applicant, continued for almost ~~nine~~ eight years. This Government in action/arbitrariness has resulted in the applicant being denied his right to be considered for promotion to the Indian Forest Service on earlier occasions as well. The powers vested with the authorities cannot be exercised in an arbitrary and unfair manner and hence the inordinate delay in taking action by the Respondent authorities is a gross violation of Article 16 of the Constitution of India.

It is further pertinent to mention herein that inspite of the Hon'ble High Courts order dated 12.9.2001 passed in W.P.(C) No. 6433/2001, wherein directions were issued to the Respondent authorities to take an immediate on the Enquiry Report, the Government failed to take any decision and committed, grave illegality and gross injustice was meted out to the applicant by denial of the "Integrity Certificate". It was only though on earlier occasion also he was also within the zone of consideration for IFS. When the applicant filed contempt proceedings against the authorities concerned, that the Departmental proceeding was dropped on 16.7.2002. The applicant had once again filed a

contd..

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representation, before the authorities concerned on 20.7.2002 (Annexure - C to the O.A.) but the authorities concerned deliberately with a malafide intention to deprive the applicant his legitimate due of promotion to the IFS cadre did not consider the same. The authorities therefore cannot turn around and victimize the applicant for their own lapses, by taking the stand that the select list has elapsed on 29.7.2002.

3. That with regard to the statements made in Paragraph 10 of the written statement the applicant states that a fresh departmental proceeding contemplated against the applicant cannot deprive him of his promotion to IFS since the same relates to the period subsequent to dropping of his earlier departmental proceeding. Besides the

Hon'ble Gauhati High Court has stayed the subsequent departmental proceeding vide order dated in W.P.(C) NO. 6187/02.

4. That the applicant most humbly submits that the authorities/answering respondents cannot victimize the applicant in an arbitrary manner. Even assuming that the select list has already expired, the applicants case may be considered by the Respondent authorities under the relevant rules relating to Relaxation of the same furthermore this Hon'ble Tribunal in exercise of its

exercise of its jurisdiction can interfere in the matter and give adequate relief to the applicant by allowing the application.

VERIFICATION

I, Sri Prakash Pran Chang Kakati, son of Phasautu, Late Bishu Pran Chankakati, aged about 46 years at present working as D.F.O, Kamrup East Division, Guwahati in the Department of Forest, Govt. of Assam, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the Facts and Circumstances of the case. The statements made in paras 1 To 4. are true to my knowledge and those made in paragraphs x x are true to my information derived from the records and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this day of November, 2002.

Prakash Pran Chang Kakati

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Original Application No. 260/2002
IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA 260/02
Guwahati Bench
Applicant

Shri P P CHANGKAKATI

Addl. Central Govt.
Standing Committee

Shri K. K. Chaudhury
25/11/02

File of Jay

Vs.

Union of India & Others

Respondents

Reply on behalf of the Respondent No. 1

I, Ashok Kumar, aged 46 years S/o Late Shri L D Kalra, working as Under Secretary in the Ministry of Environment & Forests, Government of India, Paryavaran Bhawan, New Delhi do hereby solemnly affirm and say as under: -

2. That I am Under Secretary in the Ministry of Environment & Forests, Government of India, New Delhi and having been authorised, I am competent to file this reply on behalf of Respondent No. 1. I am acquainted with the facts and circumstances of the case on the basis of the records maintained in the Ministry of Environment & Forests. I have gone through the Application and understood and contents thereof. Save and except whatever is specifically admitted in this reply, rest of the averments will be deemed to have been denied and the Applicant should be put to strict proof of whatever he claims to the contrary.
3. The applicant is a State Forest Service Officer of Assam cadre and has made out a grievance against denial of promotion to the applicant to the Indian Forest Service cadre of Assam-Meghalaya cadre. Most of the averments made in the OA relate to Government of Assam (Respondent No.2) and their reply statement in this regard may kindly be referred to. The answering respondent is therefore submitting a short reply to the averments in so far as these relate to the answering respondent.

(अशोक कुमार/Ashok Kumar)
अवर सचिव/Under Secretary
पर्यावरण मंत्रालय
Ministry of Environment & Forests
भौतिक विषय, नई दिल्ली
Govt. of India, New Delhi

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4. In response to para 4.1 to para 4.11 it is submitted that as the averments made therein relate to Respondent No.2, the answering respondent has no comments and the reply statement of Respondent No.2 in this regard may kindly be referred to.
5. In response to para 4.12, it is submitted that the name of the applicant was included in the Select List of 2001 prepared in terms of Rule 5(1) of the IFS(Appointment by Promotion) Regulations, 1966 which is extracted below:

"5. Preparation of a list of suitable officers :-

(i) **Each Committee shall ordinarily meet every year and prepare a list of such members of the State Forest Service as are held by them to be suitable for promotion to the Service. The Number of members of the State Forest 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 :"**

6. For the year 2001 there was one vacancy in the promotion quota of Assam segment of Assam-Meghalaya cadre as on 1.1.2001. Further it is submitted that the inclusion of the name of the applicant in that Select List was provisional as some court case is pending against him.

In this regard proviso to sub rule (4) of Rule 7 of the IFS(Appointment by Promotion) Regulations is extracted below:

"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."

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(अर्णव कुमार/Arnav Kumar)
अधरपत्र अधिकारी, स�राय
राजस्थान राज्य संग्रालय
Ministry of Environment & Forests
राजस्थान, भारत
Govt. of India, New Delhi

7. As per this proviso, the appointment of the applicant, who is a provisionally included officer in the Select List of 2001, can be considered by the Central Government only after the UPSC, on the basis of a proposal from the concerned State Government to declare the name of applicant in the select list of 2001 as "unconditional", declares the inclusion of the applicant in the Select List as unconditional and final before the date of meeting of next selection committee. Since the name of the applicant has not so far been made unconditional and final by the UPSC he has not been appointed to IFS.

P R A Y E R

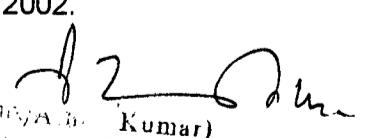
In view of the foregoing paragraphs, it is abundantly clear that there is no cause of grievance by the applicant against Respondent No.1 and the present Application is devoid of any merit and deserves to be dismissed forth with and the Respondent prays accordingly.


 (अशोक कुमार/A. Kumar)
 अमर सचिव संवर्धन सचिवालय
 पर्यावरण एवं संवर्धन मंत्रालय
 Ministry of Environment & Forests
 भवन संख्या 1, नई दिल्ली
 Govt. of India, New Delhi

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

I, Ashok Kumar, Under Secretary to the Government of India having my office at Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi - 110 003, do hereby verify that the contents stated above are true and correct to the best of my knowledge, belief and information and that nothing has been suppressed there from.

Verified at New Delhi on this 15th day of November 2002.


 (अशोक कुमार/A. Kumar)
 अमर सचिव संवर्धन सचिवालय
 पर्यावरण एवं संवर्धन मंत्रालय
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 Govt. of India, New Delhi