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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 356/2002

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SECTION OFFICER (Judl.)

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI
....

ORDER SHEET

Original Application No : 356/02
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant (s) J.K. Lahiri

Respondent (s) -Vs- H.O.I Joms

Advocate for the Applicant (s) M. Chanda, G.N. Chakrabarty
S. Datta

Advocate for the Respondent(s) CASE

Notes of the Registry	Date	Order of the Tribunal
<p>This is application in form C. F. for Rs. 50/- deposited vide IP 7/80 * 7.5.75.798 Dated 29.10.92 for By, Registrar 21/11/02</p> <p>Steps taken. Ans.</p> <p>Notice prepared and sent to D/O for using the respondent No. 1 to G by Regd. A/D. 21/11</p> <p>D/O No 3169 to 3170 Dtd 26/11/02</p> <p>No show cause has been filed.</p> <p>11.12.02</p>	<p>12.11.02</p> <p>mb</p> <p>12.12.02</p> <p>mb</p>	<p>Heard Mr. M.Chanda, learned counsel for the applicant. Issue notice to show cause as to why the application shall not be admitted. List on 12.12.2002 for admission.</p> <p>K.C. Sharma Member Vice-Chairman</p> <p>Heard Mr. G.N. Chakrabarty learned counsel for the applicant. The application is admitt- ed. Call for the records. List on 13.1.2003 for orders.</p> <p>K.C. Sharma Member Vice-Chairman</p>

13.1.2003 Due to vacation, the case is adjourned to 22.1.2003.

mo
Am

22.1.2003

President:- The Hon'ble Mr. Justice D. N. Chowdhury, Vice-Chairman
The Hon'ble Mr. S. K. Hajra, Administrative Member.

Put up the matter after three weeks.

List the case on 14.2.2003.

Sum

Member

[Signature]
Vice-Chairman

bb

14.2.2003

Mr. A. Deb Roy, learned Sr. C.G.S.C. appearing on behalf of the respondents prays for time to file written statement. Prayer is allowed. List on 17.3.2003 for written statement.

No written statement has been filed.

Sum
13.3.03

[Signature]
Vice-Chairman

mb

17.3.2003

Further four weeks time is allowed to the respondents to file written statement on the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents. List on 21.4.2003 for orders.

31.3.03

U/S Submitted by Repet. No. 2.

Sum

[Signature]
Vice-Chairman

mb

19.5.03

Rejoinder submitted by the applicant.

21.4

Court did not sit today. The case is adjourned to 28/4/2003.

mo
Am

Sum

28.4.2003

Written statement has been filed. The case may now be listed for hearing on 9.6.2003. The applicant may file rejoinder, if any, within two weeks from today.

[Signature]
Vice-Chairman

mb

9.6.2003 Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr. R.K. Upadhyaya
Administrative Member.

Heard at length. The respondents are ordered to place before us the records including the records pertaining to preparation of relevant ACR ^{as well} and as to the disposal of the representation of the applicant.

List the case on 17.6.2003 for further hearing.

[Signature]
Member

[Signature]
Vice-Chairman

bb

17.6.2003

Put up again for hearing on 19.6.03.

[Signature]
Member

[Signature]
Vice-Chairman

nkm

19.6.03

Adjourned. List on 28.7.03 for hearing.

By order.

28/7/03. Heard Mr. M. Chouda, learned Counsel for the appellant & Mr. A. Debroy, S.C. & S.C. for the respondent.
Hearing concluded.
Findings reserved.
[Signature]
A.K. Jha

Order dtd. 9/6/03
Communicated to the
Sr. Case. CAT. Ab-5'

[Signature]
17/6.

The case is ready
for hearing as
regard WtS and
rejoinder.

[Signature]
16.6.03.

1.8.2003

Judgment delivered in open Court kept in separate sheets. The application is allowed with costs Rs. 2500/- with liberty to the respondents to recover the same from the Erring Officer.

ay 18/8

18.8.2003

Copy of the judgment
handed over to the
L/Advocate for the
petition
HB

mb

Member

Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / XXXX No. 356 . . . of 2002

DATE OF DECISION 1st August 2003

Shri Jayant Kumar Lahiri
..... APPLICANT(S).

Mr M. Chanda, Mr G.N. Chakraborty and
Mr S. Dutta.
..... ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and others. RESPONDENT(S).

Mr A. Deb Roy, Sr. C.G.S.C.
..... ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE MR N.D. DAYAL, 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 Ho'ble Vice-Chairman

Yes

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.356 of 2002

Date of decision: This the 15th day of August 2003

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

The Hon'ble Mr N.D. Dayal, Administrative Member

Shri Jayanta Kumar Lahiri
Senior Divisional Accounts Officer,
P.W.D. Division, Pasighat,
Arunachal Pradesh.Applicant
By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr S. Dutta.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Department of Finance, New Delhi.
 2. The Accountant General (A&E)
Meghalaya, Mizoram and Arunachal Pradesh,
Shillong.
 3. The Senior Deputy Accountant General (A&E)
Shillong, Meghalaya.Respondents
- By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R

CHOWDHURY. J. (V.C.)

Back and forth swings the pendulum

O.A. No.147 of 1994 was presented by the applicant before this Tribunal seeking for a direction upon the respondents for his promotion to the post of Divisional Accounts Officer (DAO for short) Grade II with effect from 1.1.1986 and also subsequent promotion to the post of DAO Grade I.

2. In the application the applicant inter alia alleged that while he was working as a Divisional Accountant in the Office of the Executive Engineer, Civil Construction Wing, All India Radio and was posted at

Guwahati, he was served with a communication regarding adverse remarks in his Annual Confidential Reports for the year 1983-84 and 1984-85. He submitted his representation by registered post and posted at Mokokchung Post Office, Nagaland. However, without disposing of his representation, the respondent authority promoted some persons junior to the applicant to the post of DAO Grade II and subsequently further promoted them to the post of DAO Grade I superseding the claim of the applicant.

3. In the written statement the respondent authority disputed the claim of the applicant as to making of representation to the respondents. The Tribunal perused the pleading of the applicant and also perused the certificate issued by the Post Office. The Tribunal by its Judgment and Order dated 31.7.1997 directed the respondents to consider the representation of the applicant and pass an order. Pursuant to the direction of the Tribunal the applicant also submitted a fresh representation on 13.4.1998 and addressed the same to the Senior Deputy Accountant General (A&E) - respondent No.3. The case of the applicant is that in the said representation he had also given his explanation against the adverse remarks communicated during the period 1.4.1983 to 31.3.1984 and also for the period from 1.4.1984 to 31.3.1985 and requested the authority for antedating his promotion to the post of Senior Accounts Officer Grade II with effect from 1.1.1986. The applicant, at para 4.11 of the O.A., pleaded that the Office of the Accountant General received the representation dated 13.4.1998 on 24.4.1998, but his representation.....

representation was not responded to. The applicant accordingly submitted representation dated 13.11.1998 before the respondent No.2 followed by subsequent representations dated 25.9.2000, 30.11.2000, 22.5.2002 and 12.7.2001 praying inter alia for consideration of his promotion to the post of DAO Grade II with all consequential benefits. Failing to get redressal of his grievances, the applicant again moved this Tribunal by way of the present O.A. claiming for promotion as DAO Grade II (Selection Grade D.A.) with effect from 1.1.1986 and as DAO Grade I with effect from the date his juniors were promoted with all service benefits.

4. The respondents submitted their written statement through the respondent No.2. Seemingly, the respondent No.2 submitted the written statement verified by the Senior Deputy Accountant General- respondent No.3. In the written statement the respondents only stated that there was nothing in record of the office indicating that representation against the adverse remarks in his ACRs was received in the office. The respondents also stated that it was not true that the representation of the applicant was not disposed of as yet. The DPC held during 1986-87 had taken note of the adverse entries and indicated that no representation against those adverse entries was received in the office. It was true that the representation of the applicant was not disposed of. The respondents in the written statement also averred that though some posts of Selection Grade Divisional Accountant were vacant from 1980 onwards in the instant the applicant could have been eligible for promotion during 1986 alongwith other eligible candidates had he not.....

not been found unfit for promotion to that grade by the DPC for the promotion year 1986. A few junior officers including Diptendu Kishore Chanda were found fit by the DPC and were promoted antedated promotion with effect from 1.1.1986. All eligible officials awaiting promotion to the post of Selection Grade Divisional Accountant were allowed antedated promotion against available posts between the period from 1.9.1980 to 13.2.1987. In the written statement at para 6 it was averred that the representation against the adverse communication was not received in the office, and therefore, it could not be treated as undisposed. It was also stated that the representation said to be posted in Mokokchong Post Office by registered post despatched in 1986 could not be traced out. In reply to the assertions of the applicant made in para 4.11 of the O.A. wherein he asserted that the Office of the Accountant General received his representation dated 13.4.1998 on 24.4.1998, the respondents did not refute the same. On the other hand it was averred that the applicant submitted his representation dated 13.4.1998 only on 24.4.1998.

5. We have heard Mr M. Chanda, learned counsel for the appliant and Mr A. Deb Roy, learned Sr. C.G.S.C., at length and also perused the records produced by the respondents at the time of hearing.

6. From the C.R. for the year 1983-84 at serial No.41-43 it is seen that while the Reporting Officer has completed the C.R. the remarks of the Reviewing Officer and Sr DAG/DAG do not appear therein. As per the inscription on the CR form the Reviewing Officer was

required.....

required to carefully consider and state whether he accepted the assessment of the Reporting Officer in all respects and give his own views on the assessment of the Reporting Officer as well as give his recommendations on the aspect of promotion of the officer to Selection Grade. Thereafter, the Senior DAG/DAG was required to record his opinion and also with reference to the comment on promotion by the Reviewing Officer. However, remarks of both the officers are not found on this C.R.

7. A perusal of the C.R. for the year 1984-85 at serial 44-46 of the C.R. file shows the same position as in the case of the C.R. for 1983-84 and the remarks of the Reviewing Officer and Sr DAG/DAG are absent. However, the remarks of the DAG (A&E) dated 29.11.1985 on serial page 45 indicate that para 2(a) (c) and 3(c) were to be communicated and the same was confirmed by an unsigned endorsement dated 3.9.1986. The file of communication of the adverse entries mentioned above indicates that the relevant communication to the official was made accordingly vide DAG (A&E)/CR/166 dated 3.9.1986 at serial 9. In fact remarks in para 2(c), 3(b) and 3(c) of C.R. for 1983-84 was communicated vide Memo No.DAG(A&E)/CR/165 dated 3.9.1986 i.e. on the same date. It is, however, noticed from the C.R. file of the officer that the column for Reviewing Officer and Sr. DAG/DAG has been completed in the C.R. for 1985-86 by the Additional Chief Engineer, PHED, Kohima, Nagaland and Shri K.K. Sharma, DAG (A&E), Kohima, Nagaland. Similarly, the concerned Reviewing Officer's remarks are noticed on the C.R.s for the periods 1987-88, 11.9.1989 to 31.3.1990, 1991-92 to mention a few.

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8. Admittedly, the confidential report is the main step for consideration of confirmation, promotion etc. of an official and as such its writing and maintenance is of utmost importance in the interest of both employee as well as in the interest of service. The Reviewing Officer's remarks after the C.R. has been reported upon are also of crucial importance to ensure that C.R. has been promptly reported upon and if the Reviewing Officer disagrees with any part of the report he can express the same with suitable remarks and also give his own remarks as may be felt necessary. In fact where the Reviewing Officer disagrees and gives his own remarks duly supported by reasons such remarks are treated as valid for being considered by DPC etc. and thus have the effect of superseding to that extent, the remarks of the Reporting Officer. In fact in those cases where reviewing and countersigning officers are prescribed, only such of the entries considered to be adverse are to be communicated as may be accepted by them. Besides, communication of adverse remarks is required to be done within one month of their being recorded. The representation against adverse remarks are required to be expeditiously disposed of by the competent authority within three months.

9. In the notes portion of Personal File No.DA Cell/PC/JKL of the applicant on pages 138-140/N it has been mentioned that the promotion was not considered by the DPC in 1987 and again in 1988 due to the adverse remarks and this was the only reason for non-consideration of his promotion. The orders of this Tribunal in O.A.No.147/1994 were also dealt with stating that the representation of the applicant dated 13.4.1998

and.....

and 20.10.1998 had again not been received but representation dated 25.9.2000, wherein earlier representations were mentioned has been dealt with. It is further suggested that since reasons for non-consideration of his promotion were indicated to the applicant earlier he may perhaps be informed accordingly. This was also submitted by the Sr. DAG(A) to the AG for orders. The AG made an endorsement on the file asking for the findings of the Sr. DAG(A) in this case. While the office and Sr. DAG put up the file on 5.9.2001, the AG's remark is dated 10.9.2001 and thereafter there is no response on file by the Sr. DAG(A) indicating his findings. Instead there is a remark of the same officer who had put up the office note on 5.9.2001 stating to the effect that the file was taken from the room of Sr. DAG(A) on 2.12.2002 in connection with the Court case filed by the applicant in the Tribunal. It is significant that the case was first listed in the Tribunal on 12.11.2002. It thus appears that the case remained with the Sr. DAG(A) from 10.9.2001 onwards without further contribution in compliance with the direction of the AG.


10. In view of the above, the following conclusions maybe arrived at. The entries in the C.R.s for 1983-84 and 1984-85 communicated to the applicant are more in the nature of counselling/advice to an officer by his superior rather than actual C.R. entries which are normally expected to reflect also the result of counselling/advice leading to improvement or otherwise. Further, in the absence of the endorsement by the reviewing and countersigning authorities on those C.R.s it cannot be said that such uncomplimentary observations would.....

would have validity even if they are considered to be adverse.

11. We could not discern any justification and any justifiable ground on the part of the respondents in sitting over the representation of the applicant. As pointed out earlier, the ACR did not indicate any adverse comments against the applicant impelling the authority to hold the applicant unsuitable for promotion. The respondents acted arbitrarily and in a most illegal fashion in not considering the case for promotion of the applicant on the basis of the purported adverse entries in the ACRs and allowed juniors to march over him. The respondents acted in a most contemptuous disregard to the direction issued by the Tribunal in O.A.No.147/1994 to pass appropriate order on the promotion of the applicant. The entire action of the respondents is in derogation of the guarantee conferred by Articles 14 and 16 of the Constitution.

12. In the circumstances we direct the authority to hold a Review DPC and consider the case for promotion of the applicant in the light of the observations made above to the post of Divisional Accounts Officer Grade II with effect from 1.1.1986 and subsequent promotion to Divisional Accounts Officer Grade I from the date his juniors were promoted with all service benefits including the monetary benefits. The respondents are directed to complete the above exercise within two months from the date of receipt of the order.

The application is allowed with cost of Rs.2500/-
(Rupees two thousand five hundred only) and it would be
open to the respondents to recover the same from the
erring officials.

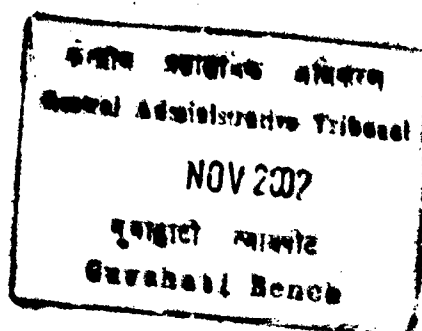


(N. D. DAYAL)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

Title of the case: O.A. No. 356 /2002

Sri Jayanta Kumar Lahiri : Applicant

- Versus -

Union of India & Others: Respondents.

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Date 5-11-2002

Filed by

Lachhokar
Advocate

Jayanta Kumar Lahiri

Filed by the applicant
through Sri G. H.
Chakravarty Advocate
on 5-11-02

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

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

O.A. No. 356 /2002

BETWEEN

Sri Jayanta Kumar Lahiri

Son of Late R.C.Lahiri

Senior Divisional Accounts Officer

P.W.D. Division, Passighat

Arunachal Pradesh.

..... Applicant

--AND--

1. The Union of India,

Represented by the Secretary to the

Government of India,

Department of Finance, New Delhi.

2. The Accountant General (A & E)

Meghalaya, Mizoram and

Arunachal Pradesh, Shillong-1.

3. The Senior Deputy Accountant General (A & E),

Shillong-1

Meghalaya.

..... Respondents.

Jayanta Kumar Lahiri

DETAILS OF THE APPLICATION**1. Particulars of order(s) against which this application is made.**

This application is made praying for a direction upon the respondents to consider the promotion of the applicant to the post of Divisional Accounts Officer, Grade-II with effect from 1.1.1986 with all consequential service benefits including antedated promotion to the cadre of Divisional Accounts Officer Grade I and also praying for a direction to the respondents for re-fixation of pay of the applicant in the next higher scales of pay.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the case.

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

Jayant Kumar Lakshmi

4.2 That the applicant was appointed as Divisional Accountant (for short, DA) under the respondents on probation with effect from 28.6.1973. After passing the required test in September 1974, he was posted as regular Divisional Accountant in the office of the Executive Engineer, Civil Construction Wing, All India Radio, Guwahati. [During his service as a Divisional Accountant under some of the Executive Engineers, he had detected various irregularities committed by his superiors viz., the Executive Engineers. The detection of such irregularities by him caused annoyance to his superiors and it resulted in communication of adverse remarks in ACR for the period from (1.4.1983 to 31.3.1984) and (1.4.1984 to 31.3.1985.)

4.3 That those adverse entries were given without any objective assessment in as much as the communication for two years were given by two letters dated 3.9.1986 and the remarks were also vague. The applicant submitted representation against those adverse communications by his letter dated 23.9.1986 to the Deputy Accountant General, Meghalaya, Shillong, and the same was sent by Registered Post being Registered Letter No. 503 dated 23.9.86 of Mokakchung Post Office. The said representation of the applicant has not been disposed of as yet.

A copy of the representation dated 23.9.1986 is enclosed herewith as Annexure - 1.

Jayanta Kumar Dalin

4.4 That there were posts of Selection Grade Divisional Accountant lying vacant from the year 1980 onwards. But promotions were not given immediately. By order dated 3.6.1991, 49 DAs were promoted to the post of Selection Grade DAs re-designated as DAO Grade-II (for short, DAO Grade-II) and those promotions were antedated with effect from 1.9.1980 onwards.

4.5 That it may be pertinent to mention here that among those 49 DAs, there were persons junior to the applicant who had also promoted, for example, Shri Diptendu Kishore Chanda who was at Sl. No. 28 in the Seniority List of DAs as on 1.9.1996 as against Sl. No. 27 of the applicant, had been given promotions with effect from 1.1.1986 and the other persons who were juniors to the applicant had also been promoted. As already stated, the said promotions for the DAO, Grade-II (erstwhile Selection Grade DA) were given retrospective effect with effect from 1.9.1980 onwards and the Office Order No DA. Cell/4 dated 3.6.1991 gave promotion of 49 officials of the Accountant General (A&E), Meghalaya. It is further stated that all the vacancies were clubbed together, and from 1980 to 1991 no selection process was held and after 1980 promotions were considered only in 1991 and the said office order dated 3.6.1991 was issued, giving antedated promotions.

4.6 That the applicant submitted representations against those irregularities in promotions and seniority and the replies thereto were not correct. It is stated that

Jagata Knew Jatin

his records were not placed before any D.P.C. from 1980 to 1991, and the promotions as DAO Grade-II were given without holding any D.P.C. but the applicant was not given promotion by the order dated 3.6.1991 due to the adverse communications mentioned above. It is further stated that he had given reply to the adverse communications by letter dated 16.9.1993 sent through registered post but he was informed that the reply to communication of adverse entries had not been received by office.

The applicant craves leave of this Hon'ble Tribunal to produce the copies of the representations and replies thereto, if and when called for, in addition to those annexed hereto.

Copies of Accountant General's letter dated 19.5.1993, representation dated 6.7.1993 and Sr. A.O's letter dated 6.9.1993 are enclosed herewith as Annexure - 2, 3, and 4 respectively.

- 4.7 That after receipt of the letter dated 6.9.1993, the applicant contacted the Mokokchung Post Office who has confirmed the delivery of the registered letter No. 503 on 23.9.1986 to Shillong. It is therefore clear that the respondents had taken a false plea of non-receipt of reply to the communications in ACRs to deny the applicant his entitlements. Nevertheless, against the contention of letter dated 6.9.1993, issued by the Sr.

Jayanta Kumar Acharya

A.O., the applicant submitted representation dated 16.9.1993 followed by corrigendum dated 18.9.1993.

Copies of the letters dated 16.9.1993 and 18.9.1993 are enclosed herewith as Annexure - 5 and 6 respectively.

4.8 That in the meanwhile, the applicant had been promoted as DAO Grade-II with effect from 11.9.1989. But due to the delay in his promotion as DAO Grade-II, he has been promoted as DAO Grade-I with effect from 16.3.1994 although before this date his juniors had been promoted as DAO Grade-I ignoring his entitlement.

4.9 That being highly aggrieved by the circumstances stated above, the applicant approached this Hon'ble Tribunal through OA No. 147/94 praying, inter alia, for consideration of his promotion to the post of DAO Grade-II with effect from 1.1.1986 and as DAO Grade-I, at least from the date when his immediate junior was promoted, with all consequential service benefits including the promotion to the post of DAO Grade-I. The aforesaid application was filed mainly on the ground that the representation against the adverse remarks were pending at the relevant time and the promotion of the applicant was denied arbitrarily in violation of Article 14 and 16 of the Constitution and also on the ground that his juniors were promoted to the cadre of DAO Grade-II with retrospective effect from 1.1.1986.

Jayanta Kumar Lahiri

4.10 That the said OA was duly contested by the present respondents and the Hon'ble Tribunal was pleased to dispose of the said OA No. 147/94 on 31.3.1997 with direction to the Respondents to consider the representation of the applicant and to pass an order. It was provided that if the authority found the applicant entitled to be promoted prior to the promotion of his juniors, that should be done as early as possible at any rate within a period of 3 months from the date of receipt of this order. This Hon'ble Tribunal also observed that since the respondents had denied receipt of the representation from the applicant, the applicant might file a fresh representation within one month from that day.

A copy of the judgment and order dated 31.7.1997 is annexed as Annexure - 7.

4.11 That the copy of the judgment and order dated 31.7.97 bearing dispatch No. 2829 dated 27.8.1997, in fact, was received by the applicant on 6.4.1998 from this Hon'ble Tribunal and immediately thereafter on 13.4.1998 he submitted a representation addressed to the Senior Deputy Accountant General (A & E) Meghalaya, Shillong. In the said representation, he had also given his explanation against the adverse remarks communicated for the period from 1.4.1984 to 31.3.1984 and also for the period from 1.4.1984 to 31.3.1985 and further requested for antedating his promotion to the post of

Jaganta Kumar Laiter

Senior Accounts Officer Grade-II w.e.f. 1.1.1986. The office of the Accountant General received the said representation dated 13.4.98 on 24.4.1998.

A copy of the representation dated 13.4.1998 is annexed as Annexure - 8.

4.12 That applicant did not receive any response on the said representation dated 13.4.1998 and as such he again submitted another representation on 13.11.1998 addressed to the respondent no. 2 through the Executive Engineer, P.W.D., Passighat. That was followed by the subsequent representations submitted by him on 25.9.2000, 30.11.2000, 22.05.01 and 12.07.01 praying, inter alia, for consideration of his promotion to the post of DAO Grade-II with all consequential service benefits. But unfortunately no reply has been received from the Respondent No. 2 so far and the respondents, particularly the Respondent No. 2, did not take any action deliberately in terms of the judgment and order dated 31.7.1997 for antedating the promotion of the applicant to the post of DAO Grade-II with effect from 1.1.1986 with all consequential service benefits.

Copies of the representations dated 13.11.1998, forwarding letter dated 20.11.98, representations dated 25.9.2000, 30.11.2000, 22.5.2001 and 12.7.2001 are annexed herewith as Annexure - 9.10.11.12.13. and 14 respectively.

Jayanta Kumar Lohin

4.13 That it is a settled position of law that when a representation against the adverse remarks is pending before the competent authority at the relevant time when D.P.C. is also constituted, the said adverse remarks in ACR ought not to be taken into consideration by the concerned D.P.C at the time of consideration of the case of the person concerned. But in the instant case, the D.P.C had taken into consideration the adverse entries which were recorded in the ACR of the applicant during the year 1983-84 although representations against them were pending before the authority. The respondents made a departure from this settled position of law and as such they were duty bound to hold a review D.P.C to consider the promotion of the applicant in terms of the judgment and order dated 31.7.1997 without taking into consideration the aforesaid adverse remarks recorded in the ACR. But the respondents ignored the case of the applicant for antedating his promotion to the cadre of DAO Grade-II and acted in total violation of the judgment and order dated 31.7.1997.

4.14 That due to non-consideration of promotion of the applicant to the cadre of DAO Grade-II at the relevant time when his juniors were promoted with retrospective effect, he has incurred huge financial loss as a result of non-fixation of his pay in the higher grade with retrospective effect i.e. w.e.f. 1.1.1986. On the other hand, his juniors who were promoted during the year

Jayanta Kumar Sahin

1989 to the cadre of DAO Grade-II with consequential benefits with effect from 1.1.1986, were placed in the higher pay scale and as a result they got the financial benefits as well as the increment benefits with effect from 1.1.1986. In these circumstances, the applicant is incurring huge financial loss each and every day due to non-fixation of his pay in the higher scale with effect from 1.1.1986 and as such the cause of action is a recurring one and it rises on each and every day and every month and the cause of action will continue till the matter is settled.

4.15 That in the above narrated circumstances the applicant finding no alternative, is again approaching this Hon'ble Tribunal praying, inter alia, for a direction upon the respondents to consider his promotion to the post of DAO Grade-II with effect from 1.1.1986 and as DAO Grade-I, at least from the date when his immediate junior was promoted, with all consequential service benefits including the promotion to the post of DAO Grade-I.

4.16 That this application is made bonafide and for the cause of justice.

5. **Grounds for relief(s) with legal provisions.**

5.1 For that, the respondents have deliberately ignored the case of antedating promotion of the applicant to the

Jayanta Kumar Adhikari

cadre of DAO Grade-II in total violation of judgment and order dated 31.7.1997 passed in OA No. 147/94.

5.2 For that, the representation of the applicant against the adverse remarks were pending with the authorities at the relevant time when D.P.C. was held for consideration of promotion of applicant and his juniors to the cadre of DAO Grade-II and as such the adverse remarks in ACR of applicant should not have been taken into consideration by the D.P.C.

5.3 For that, the applicant submitted representations before the respondents in terms of the judgment and order dated 31.7.97 but to no result.

5.4 For that, due to non consideration of his case for antedated promotion to the grade of DAO Grade-II, the applicant is incurring loss in emolument and also loss in promotional prospects in each and every month as a result of non fixation of his pay in the higher scale along with juniors and as such cause of action in the instant case is continuous one.

5.5 For that, non promotion and non-fixation of pay of the applicant in the higher scale with effect from 1.1.1986 is a continuous wrong and as a result he has been incurring financial loss each and every day and every month and the cause of action arises in each day and every month and it will continue till the matter is decided.

Jayanta Kumar Lahiri

5.6 For that, denial of promotion to the to the applicant from the due date i.e. with effect from 1.1.1986 has resulted into denial of next higher fixation in the higher pay scale is a recurring cause of action.

6. **Details of remedies exhausted.**

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. **Matters not previously filed or pending with any other Court.**

The applicant declares that he had previously filed an original application being OA No. 147/94 and the same was disposed of on 31.7.1997 with a direction upon the respondents to consider his case within a specified period but no action had been taken by the respondents in favour of the applicant. The applicant further declares that no Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, is pending before any of them.

8. **Relief(s) sought for:**

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the

Jayanta Kumar Sin

case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the applicant be promoted as DAO Grade-II (erstwhile selection Grade D.A.) with effect from 1.1.1986, and as DAO Grade-I, from the date when his junior had been promoted, with consequential service benefits including monetary benefits.

8.2 Costs of the application.

8.3 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. **Interim order prayed for.**

During subsistence of this application, the applicant prays for the following relief: -

9.1 That the applicant be promoted as DAO Grade-II and DAO Grade-I from the date when his juniors have been promoted.

The above relief has been sought for on the grounds stated in paragraph 5 of this application.

Jaganta Kumar Sahin

10.

This application is filed through Advocates.

11. **Particulars of the I.P.O.**

i) I. P. O. No. : 7G 575798
ii) Date of Issue : 29.10.02
iii) Issued from : G.P.O., Guwahati.
iv) Payable at : G.P.O., Guwahati.

12. **List of enclosures.**

As given in the index.

Jayanta Kumar Saha

VERIFICATION

I, Shri Jayanta Kumar Lahiri, working as Divisional Accounts Officer-I, under Accountant General (A & E), Mehalaya, at present resident of Imphal, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 5th day of ~~August~~^{Nov}, 2002.

Jayanta Kumar Lahiri

Annexure I

Regd. post

32

To

The Deputy Accountant General (AGE)
Moghlaya,
SHILLONG

Recd. No. 503
MKG PO

SUB: CONFIDENTIAL REPORT - REPRESENTATION THEREOF

Sir,

While receiving your Memorandum No. DAG(A&E)/CR/166 dt. 3.9.86 and DAG(A&E)/CR/165 dt. 3.9.88 communicating the remarks of the confidential report for the period 1.4.84 to 31.3.85 and 1.4.83 to 31.3.84 respectively, I have the honour to state that the remarks made by the reporting Officer were not based on fact as during the period as mentioned above, I was quite regular and punctual in attendance in office and for the above period I received my full salary and the service has been duly verified by the Executive Engineer. Further, in order to authenticate the remarks made by the reporting officer for the period in question I shall humbly request your good office to verify the same from the report received by the reporting officers prior to this period or after the period. I, being the same employee, if regular, industrious and able man to manage the Divisions where I was posted earlier and later to this period, it is not at all correct that the same person shall become irregular, uninterested in the particular period.

Attended
Jen
Advocate

Secondly, I have the honour to state that in item No. 3(b), 3(c) and 2(c), the reporting officer suggested that I need lot of initiative and interest in performing my duties. In this connection I would with due apology, like to say that these remarks are to be treated as a challenge against the decision of the Accountant General, Assam Shillong who recruited me through the competitive examination and I passed the DTE only in first attempt in 1974 and I have been posted by the Accountant General after undergoing prescribed training in Audit Office and CPWD office at Gauhati and after considering me a competent person to manage the division independent

Thirdly, I have the honour to bring the

Ctd....p/2

Attended
C. C. Choudhary

fact to your kind notice that the Executive Engineer under whom I worked during the period under report was in a habit of committing irregularities and he did not allow the Divisional Accountant to have any opportunity of becoming conversant with day to day transaction and mostly the papers were not allowed to be routed through the Divisional Accountant and as such I was compelled to bring the fact to his notice which invited such confrontation. In order to fulfill his malicious desire, he stopped disbursing my legitimate and bonafide salary in the month of Oct '83 out of his whims for which I had to live half-starved during these days. I brought the fact by representing the same on 12.11.83, the copies of which are enclosed herewith for your kind perusal. The action of the unnecessary and intentional withholding of my salary shall obviate his malicious and malignant attitude toward me.

Therefore, in view of the fact stated above, the remarks of the reporting officer is nothing but a coup-le-grace against his sub-ordinate and I would pray your goodself may kindly verify the correctness or otherwise of the report so that the adverse remarks may be waived.

Yours faithfully,

608/54/9

(JAYANTA KUMAR LAHIRI)
Divisional Accountant, to
PHE Division: MOKOKCHUNG
(Nagaland)

Dated, the 23rd.
Sept '86

6666 66

REGISTERED

OFFICE OF THE ACCOUNTANT GENERAL () MEGHALAYA:ETC:
SHILLONG.

No.DA Cell/FC/JKL/661

Dated: 19 MAY 1993

To

✓ Shri J.K.Jahiri,
Divisional Accounts Officer, Grade-II
Churachampur Division (199)
Churachandpur,
Manipur.

Subject : Justice for (i) advancing the date of enjoying
the Scale of B. 1640-60-2600-EB-75-2900/=
(ii) effecting the promotion as Divisional
Accounts Officer, Grade-II to the Juniors than
the Seniors

Reference: Your representation dated 22.3.93

With reference to your representation dated 22.3.93 on the subject cited above, you are hereby informed that your case has again been reviewed. In this connection it is stated that no promotion to the higher posts (i.e. DA O-Grade-II/DA O-Grade-I) can be considered without holding a D.P.C. All the officials (including Shri D.K.Chanda) who were allowed promotion/antedated promotion to the post of S.G.D.A (now called D.A.O.-Grade-II) vide E.O.No. DA Cell/4 dt. 5.6.91 were found fit by the D.P.C. for their promotion. Your contention for raising the question of D.P.C. in your promotion case only is not correct. Your case had been placed before the D.P.C. from time to time along with other cases (i.e. both Senior and Junior to you) for consideration of promotion/antedated promotion to the post of S.G.D.A (now called D.A.O. Grade-II). You were not found fit by the D.P.C. for promotion to the post of S.G.D.A (now called D.A.O. Grade-II) upto the promotion year 1993 due to the adverse

*Noted
Dec.
Advocate*

*11.1.94
(1) 1.94*

19
Annexure B (Encl)
2

- 2 -

remarks in your confidential reports for the year 1983-84 and 1984-85. The adverse comments recorded in your Annual Confidential Reports were communicated to you vide this office letter No. DAG(A&E)/CR/165-166 dated 3.9.86. Your Junior (i.e. in the cadre of Divisional Accountant/qualified Divisional Accountant upto November 1981 examination) were found fit by the D.P.C. for promotion to the post of S.G.D.A (now called DAO-Grade-II) earlier than you and accordingly they were promoted as

S.G.D.A earlier than you; whereas you were found fit by the D.P.C during the promotion year 1989 and you took over charge as S.G.D.A on 11.9.89. As such those who were found fit by the D.P.C and promoted as S.G.D.A (now called DAO-Grade-II) earlier than you had been promoted to the post of D.A.O. Grade-I as they were senior to you in the cadre of DAO Grade-II and also found fit for promotion to the post of DAO-Grade-I by the D.P.C.

[Signature]
19.5.97
Sr. Accounts Officer,
1/c DA Cell.

29

Annexure - 3 36

To
The Accountant General (A.G.),
Meghalaya, Shillong

SUB : JUSTICE for (1) advancing the date of enjoying the scale of Rs. 1640-60-2600-EB-75-2900/- and (2) effecting the promotion as Divisional Accounts Officer Grade-II to the JUNIORS than the SENIORS.

REF : Your letter No. DA Coll/PC/JKL/661 dated 19.5.93

Sir,

With reference to your letter as cited above, I have the honour to lay the following lines for your kind perusal and consideration.

1. That Sir, the adverse remarks in my confidential report for the year 1983-84 and 1984-85 were duly replied with proper ~~justification~~ clarifications vide my representation dated 23.9.86 i.e., within 20(twenty) days of your communication dated 3.9.86 and thereafter the seniority list as on 1.9.86 for all temporary and permanent Divisional Accountants were prepared.
2. That Sir, as per seniority list of temporary and permanent Divisional Accountants prepared as on ~~xxxx~~ 1st. September, 1986 circulated to all concerned vide your No. WM I/DA Coll/88 dated 24.10.86/20.11.86, Sri Diptendu Kishore Chanda was junior to me as my name was just above against Sl. No. 27 of the said list.
3. That Sir, as stated under para No. 3 above, though Sri D. Chanda and others were junior to me, they have been enjoying the Scale of Rs. 1640-2900/- in the cadre of Divisional Accounts Officer, Grade-II with effect from 1.1.1986 whereas I have been enjoying the same scale with effect from 11.9.89, thus service value of 3 years 8 months and 10 days have been snatched away at initial stage which will finally deprive me a lot during retirement.

Therefore. I would further appeal to your honour to look into the matter for PROPER JUSTICE by allowing me the antedated promotion in the same norms/principles as adopted in case of others juniors.

Yours faithfully,

(J.A. Lahiri)

Dated, Mayang Imphal
the 6th July, 1993

Divisional Accounts Officer, G-II
Highways South Division No. II,
PWD, Manipur, Mayang Imphal.

No. DA Cell/PC/JKL/1143

16 SEP 1993 Dated :

To,

Shri J.K.Lahiri
Divisional Accounts Officer Grade-II
Highway South Division No. II (RWB)
P.O. Mayang, Imphal
Manipur.

Subj: JUSTICE for (1) advancing the date of enjoining the Scale of Rs. 1000-60-2000-EB-75-2900/- and (2) effecting the promotion as Divisional Accounts officer Grade-II to the JUMIGS than the S.MIGS.

Ref: This Office letter No. DA Cell/PC/JKL/661 dtd. 19.5.93

2) Your Representation dated 6.7.93

With reference to your representation dated 6th July 1993 on the subject cited above, you are hereby informed again that your case has been thoroughly reviewed and the position is as follows :

(i) The Reply relating to communication of adverse entry in your CR for the year 1983-84 and 84-85 had not been received in this office. More-over, it is brought to your notice that the preparation/issuing of seniority list have got no link with the CR/Adverse entry communication/Reply etc.

(ii) The promotion to higher grade (s) is based on seniority-cum-fitness, but you were not found fit by the DPC for promotion to the post of SCDA/DAO Grade-II upto the promotion year 1988. You are found fit by the DPC for promotion to the post of DAO Grade-II during the promotion year 1989 only and accordingly you were promoted in that year.

RECEIVED
16/9/93
DA Cell

A.H. C. Lal
DA Cell
16/9/93

Sr. Accounts Officer
i/c DA Coll.

To
The Accountant General (A&E),
Meghalaya, Shillong

Sub: JUSTICE for (a) advancing the date of enjoying the scale of Rs. 1640-60-2600-EB-75-2900/- and (b) effecting promotion as Divisional Accounts Officer Grade-II to Juniors than Seniors.

Ref: My representation dated 6.7.93 and your letter No. DA Cell/PC/JKL/1143 dated 6.9.93

Sir,

With reference to your letter as cited above, I have the honour to appeal to your goodself to consider the following fact for establishing proper JUSTICE.

That Sir, as stated in the para No. I of your letter preparation of seniority in service is having no link with ACR/Adverse entry etc. and as such I was senior to Sri D.K. Chanda, who was allowed antedated promotion with effect from 1.1.86 and thereby enjoying the scale of SGDA (Divisional Accounts Officer Grade-II). But in my case, in particular, the same norms/principles were not adopted even though I was senior to him as on 1.1.86.

That Sir, the assessment of an officer is made on fair, just and non-discriminatory evaluation of the OAs for the preceding five years or years equal to the required qualifying service. The remarks in my ACRs for '83-'84 and '84-'85 were properly replied and sent by post from Nokok Chung (Nagaland) post office on 23.9.86 (registered post) i.e., within 20 days of your communication dated 3.9.86. The photostat copy of the reply is sent herewith for your ready reference. In the said reply, I challenged the remarks of the Reporting Officer, which were not based on facts as well as those were against the decision of the Accountant General, Meghalaya, Shillong on the ground that (a) I was appointed as Direct Divisional Accountant (direct recruit) by the A.G., Assam and after successful completion of the period of probation for 2 years, I was posted as regular Divisional Accountant. Meanwhile I passed the Divisional Test Examination in 1974 with good marks and in single attempt. (b) I was not awarded any penalty or administered displeasure of superior authority or reflected in confidential Report or remarks against the column 'Integrity'.

That Sir, I requested to verify the correctness of the above mentioned reports and compare with those submitted by the Accounts Officer (Inspecting) and those received from the earlier Executive Engineers under whom I worked prior to the above reporting officer. I also challenged the reports and stated that those were nothing but an outcome of some arguments/differences/confrontation and objection not allowing him to commit any financial irregularities in the division and thus those are nothing but a coup-de-grace against his subordinates.

That Sir, The Accountant General, Meghalaya, Shillong being satisfied, having regards to the quality of the work conduct and character, found me suitable and thus appointed me in the permanent cadre of the Divisional Accountants vide No. DA Coll/176 dated 22.12.89 with effect from 1.04.90. This date of declaration of permanency in the cadre obviously falls within the preceding five years of evaluation of CAs. as required under rules.

In view of the above facts, the question of UNFIT in the particular case of promotion "SENIORITY-CUM-FITNESS" did not arise in the method of selection and promotion and therefore, I further appeal to your honour to waive the penalty like withholding of promotion and inflicted on me without any fault or reason.

Yours faithfully,

Ends - As stated

Dated, the 16th Sept/90.

J.K. Lahiri
16/9/90

(J.K. Lahiri)

Divisional Accounts Officer (II)
Highways South Division No. II,
P.O. Manipur, P.O. Mayang Imphal
— MANIPUR —

Copy to : The Secretary General, All India Federation of Divisional Accountants' Association, Allahabad for information & he is requested to take the matter seriously so that harassment to innocent DAOs may be stopped for ever.

The General Secretary, Divisional Accountants' Association, Agartala, Tripura for information. It is a matter of great regret that inspite of regular intimation regarding the whims of the A.G., Shillong and injustice and maladministration of the A.G. regarding promotions, transfer & posting etc, no action has been taken nor any reply sent and it is presumed that the Association is now unable to function or to provide sufficient safeguard to the interest of its members.

J.K. Lahiri
16/9/90
(J.K. Lahiri)
Divisional Accounts Officer
Highways South Division No. II, PH D
P.O. Mayang Imphal (Manipur)

Annexure - 5
REGISTERED

To
The Accountant General (A&E),
Meghalaya, Shillong

Sub: JUSTICE for (a) advancing the date of enjoying the scale of Rs. 1640-60-2600- EB- 2900/- and (b) effecting promotion as Divisional Accounts Officer Grade-II to junior than SENIORS --- CORRIGENDUM thereof.

Ref: My representation dated 16.9.93

Sir,

With reference to the above, please read "That Sir, The Accountant General (A&E), Meghalaya, Shillong, having regard to the quality of the work, conduct and character, found me suitable and thus appointed me in the permanent cadre of the Divisional Accountant vide No. DA Call/176 dated 22.12.89 with effect 1.04.1990" in lieu of 1.04.90 as appeared in my representation dated 16.9.93 due to typographical mistake in para No. 5 Page No. 2.

In addition to the facts already stated in my representation as stated above, I beg to add further in the same para of my representation as follows:

"Moreover the adverse entry in ACR is established and communicated if despite the warning etc., the official concerned has not been improved (Rule 11, G.I.D's 11 to 13), but such warning or otherwise and its records thereof, the adverse remarks may not be taken into account."

Yours faithfully,

(J.K. Lahiri)

Divisional Accounts Officer-II
Highways South Division No. II, FWD
P.O. Mayang Imphal (Manipur)

Copy to :

- 1) The Secretary General, All India Federation of Divisional Accountants' Association, Allahabad-2 for information and necessary action.
- 2) The General Secretary, Divisional Accountants' Association, Tripura for information and necessary action.

(J.K. Lahiri)

Divisional Accounts Officer-II
Highways South Division No. II, FWD
P.O. Mayang Imphal (Manipur)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 147 of 1994.

Date of decision : This the 31st day of July, 1997.

Hon'ble Justice Shri D.N.Baruah, Vice-Chairman.

Hon'ble Shri G.L.Sanglyine, Administrative Member.

Shri Jayanta Kumar Lahiri

D.A.O/I

Highways South Division No. II, P.W.D.

P.O.Mayang,

Imphal (Manipur)

Applicant

By Advocate Mr. J.L.Sarkar.

-versus-

1. Union of India,
Secretary,
Govt. of India,
Ministry of Finance,
New Delhi.

2. Accountant General (A&E),
Meghalaya
Shillong.

Respondents

By Advocate Mr. G.Sarma, Addl. C.G.S.C.

O R D E R

BARUAH J.(V.C.).

In this application the applicant is seeking directions from this Tribunal to the respondents for his promotion to the post of Divisional Accounts Officer Grade II with effect from 1.1.1986 and also subsequent promotion to the Divisional Accounts Officer Grade I. The facts of the case are :

the applicant at the material time was working as Divisional Accountant in the office of Executive Engineer, Civil Construction Wing, All India Radio and was posted at Guwahati. While working as such he received communications regarding his adverse remarks for the years 1983-84, 1984-85.

*Attested
Secy.
Advocate*

25/7/97

On receipt of those communications the applicant submitted representation by registered post. The registered letter was posted at Mokokchung Post Office, Nagaland bearing receipt No. 503. The registered letter was sent by giving correct address of the concerned authority. However without disposing the said representation some junior persons to the applicant had been promoted to the post of Divisional Accounts Officer Grade II and subsequently further promoted to Grade-I. According to the applicant this was arbitrary, unfair and unreasonable.

In due course the respondents have entered appearance and filed written statement. In the written statement the respondents have disputed the claim of the applicant to the effect that he had ever sent any representation to the respondents by registered post. In paragraph 1 of the application, the applicant has categorically stated that the representation was sent by registered post bearing Postal Receipt No. 503 dated 23.9.86 from Mokokchung Post Office and a certificate issued by the said Post Office has also been placed before us. By placing the certificate Mr. J.L.Sarkar submits that the authority ought to have considered and disposed of the representation before promoting the other persons who were junior to the applicant.

2. We have also heard Mr. G.Sarma, learned Addl.C.G.S.C. On hearing both the counsel of the parties we dispose of the application with a direction to the Respondents to consider the representation of the applicant by the Respondents

and pass an order. If the authority finds that the applicant is entitled to be promoted prior to the promotion of his juniors, this shall be done as early as possible at any rate within a period of 3 months from the date of receipt of this order. As the respondents have denied that they have received the representation from the applicant, the applicant may file a fresh representation within one month from today.

3. Considering the entire facts and circumstances of the case, however we make no order as to costs.

Sd/-VICE CHAIRMAN
Sd/-MEMBER (A)

TRUE COPY
sluam

sluam

Respectful Secretary (G)
Central Administrative Tribunal
Kuvabati Boudh

To,
The Sr. Deputy Accountant General (A & E)
Meghalaya, Shillong.

Sub: Prayer for antedated promotion to the post of Divisional Accounts Officer gr-II prior to the promotion of the juniors.

Ref : Central Administrative Tribunal's Judgement and its direction vide no. 2829 dated 27.8.97 (O/A No. 147/94)

Sir,

With due respect, I beg to lay before you the following points for your kind perusal and steps to promote me to the post of Divisional Accounts officer, Grade-II with retrospective effect that is w.e.f 1.1.86.

At the very outset, I beg to draw your kind attention to the fact that I received the true copy of the CAT's judgement on 6.4.98 as because it had been lying unserved in the office of the CAT, Guwahati Bench, Guwahati since 23.9.97 (Photocopy enclosed).

In support of my claim, I say that -

1. Your benign self will kindly take ~~kindly~~ sincere steps to redress the wounds I have had in service life as regards the deprivation of promotion in due time. This is in fact a PRAYER of a crying soul who but for your help will have to sacrifice long years of active, sincere and honest services under you who always extend sympathetic hands to the subordinates in need.
2. The adverse reports of the Reporting officer (Executive Engineer) in ACR's brought before the DPC were as follows :-

(For the period from 1.1.83 to 31.3.88)

Item No.	Remarks
2(a) Ability to manage the division competently	<u>Needs more initiative</u>
3(b) Capability to control these working under him and get the last one them	<u>Needs more attention</u>
3(c) Interest in training those working under him in their duties	<u>Needs more attention</u>

*Attested
Jen-
Adv. & Co.*

(2)

(For the period from 1.4.84 to 31.3.85)

- 2(a) Regularity and Punctuallity in attendance : Irregular. ✓
- 2(c) Ability to manage the Division competently: Needs lot of initiative & interest
- 3(c) Interest in training those working under him in their duties : Not satisfactory

In this regard, I beg your leave to say that the remarks of the Reporting Officer under item no. 2(c), 3(b) and 3(c) of 1983-84 are ambiguous. The word "more" relates to a comparison in respect of "ability", "capability" and "interest". Very humbly, I let you know the comparative "more" does not testify to my lack of "initiative" and "attention". Rather credit should go in my favour for without having "more" initiative and more attention, I could run the division well as wanted in item no 2(c),3(b) and 3(c).

As regards remark of the Reporting Officer under 2(a) during the reporting year 84-85, I beg your leave to say that the item of "Regularity and Punctuallity" in attendance, the remarks was "Irregular". My services varified by the Reporting Officer and entered by him in the service book which bears no such evidence.

In this context, it can be said that the service book was not brought to the perusal of the hon'ble A.G. before sitting of D.P.C. If it were brought to the perusal of the hon'ble A.G., the Reporting Officer must have been called for giving satisfactory direct explanation in support of his remarks. The distortion and total concealment of fact can never stand in my case of promotion.

As regards remark under 2(c) during 84-85, I beg to say that "needs lot of initiative and interest" is irrelevant and vague. If there were no "initiative" and "interest" the Accounts, Reports, Returns, Internal check of initial account, vouchers etc. would remain pending and as such I would be called for written warning/explanation etc.

As regards item no. 3(c) of "84-85" wherein "Not Satisfactory" was the remarks to the item of "Interest in Training those working under him in their duties". This remarks is quite baseless. Would they not be properly trained, how was it possible on my part to carry on works and keep the accounts threadbare. If there were any flaw or irregularity the hon'ble A.G. might have mentioned it in audit report (inspection report) of the particular period.

*Attested
for
Advo cat*



Dated, the 13th April, 1998.

Encl :-

1. Photocopy of judgement with note thereon by Section officer.
2. Photocopy of letters:-
 - (a) DAG (A&E)/CR/166 dt.3.9.86
 - (b) DAG (A&E)/CR/165 dt.3.9.86
 - (c) E.O.No. WMI/DA Cell/88 dt. 20.11.86
 - (d) DA Cell/176 dt 1.1.90
 - (e) DA Cell/91 dt. 10.8.92
3. Photocopies of representations date 21.9.92, 21.9.92, 17.10.92, 18.12.92 , 22.3.93, 23.9.86, 6.7.93, 16.9.93 & 18.9.93..
4. Photocopies of letters
 - (a) DA Cell/4 dt.3.6.91.
 - (b) DA Cell/PC/JKL/661 dt. 19.5.93.
 - (c) DA Cell/PC/JKL 1143 dt.6.9.93.
 - (d) DA Cell/PC/JKL 2302 dt.8.1.93.
 - (e) DPC dt. 22.4.91.

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To,

The Accountant General (AGE),
Meghalaya etc.,
Shillong.

Sub:- Prayer for antedated promotion to the post of
Divisional Accounts Officer Grade-II prior to
the promotion of the juniors.

Ref:- 1) Central Administrative Tribunal's judgement
and its direction vide No. 2829 of 27.3.97
(O/A No. 147/94).
2) My representation dated 13.4.98.

Sir,

I have the honour to inform you that I have not
been informed of the fate of my appeal for promotion to post
of Divisional Accounts Officer Grade-II with retrospective
effect i.e. with effect from 1.1.86 submitted to you on
13.4.98.

Therefore, I would further appeal to your honour
for your kind consideration so that I may not be deprived of
my service value of 3 years 8 months and 10 days and oblige.

Yours faithfully,

Dated, the 13th
November '98.

J.K. LAHIRI
(J.K. LAHIRI)
Sr. Divisional Accounts Officer,
Pasighat P.W. Division,
(Arunachal Pradesh).

9/c

Attested
J.K. LAHIRI
Advocate

GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE EXECUTIVE ENGINEER : PW DIVISION PASIGHAT
:::PASIGHAT - 791102 ::: (AP):::

NO.PE/PF-705/98-99/

Dtd.Pasighat _____/98.

To,

The Accountant General (A&E),
Meghalaya & Arunachal etc.
Shillong.

Sub:-

Representation for antedated Promotion to the
Post of Divisional Accounts Officer, Gd-II
prior to the Promotion of the Juniors.

Sir,

Please find herewith a self explanatory
representation received from Shri J.K. Lahiri, Sr.Divisional
Accounts Officer for redressal of promotion to the post of
Divisional Accounts Officer, Gd-II wef 1-1-86 which is
forwarded and recommended for favour of necessary action
from your end please.

Encl:- As stated above.

Yours faithfully,

Executive Engineer,
Pasighat P.W.D. (A.P.),
Pasighat.

NO.PE/PF-705/98-99/10032-33 Dtd.Pasighat 21/11/98.

Copy to:-

1)

Shri J.K. Lahiri, Sr. DAO Pasighat Division.

*Attested
for
Record*

[Signature]
Executive Engineer,
Pasighat P.W.D. (AP),
Pasighat.

/M.T./

To

The Accountant General (A&E),
Meghalaya, Shillong.

Dated, Pasighat, the 25th September/2000.

Sub :- Prayer for antedated promotion to the post
of Divisional Accounts Officer, Grade-II prior
to the promotion of the juniors.

Ref :- 1) Central Administration Tribunal's judgement
and its direction vide No. 2829 dtd. 27/08/97
(O/A No. 147/94).

11) My representative dated 13/04/98 and
dated 20/10/98.

Sir,

With due respect, I beg to draw your kind
attention to the above representations submitted along-
with all related papers for your kind consideration.
But ill-fated I am as the prayer of a crying soul failed
to attract any attention because no sympathetic hands
to the sub-ordinates were extended nor sincere steps to
redress the wounds were taken by your benign self for
last two and half year and as a result I have been deprived
of the promotion and the active sincere and honest service
value of 3(three) years 8 months and 10 days have been
snatched away.

Therefore, I would again appeal to your honour
to look into the matter for my antedated promotion to the
post of Divisional Accounts Officer, Grade-II with effect
from 01/01/86 and oblige.

Yours faithfully,

Jayanta Kumar Lahiri
(Jayanta Kumar Lahiri) 27/9/20
Sr. Divisional Accounts Officer,
P.W. Division, Psqt.
P.O. - Pasighat,
District - East Siang(A.P).

Encl :- 1. The photo-
copy of the
1st representa-
tion.

*Alleged
Advocate*

To

The Accountant General (A&E),
Meghalaya etc., Shillong

Dated, Pasighat, the 30th. November, 2000

Sub: Prayer for antedated promotion to the post of
Divisional Accounts Officer, Grade-II, prior to
the promotion of the juniors

Ref: i) Central Administrative Tribunal's judgement and
its direction vide No 2829 dated 27.03.97

ii) My representations dated 13.04.98, dated 20.10.98
and dated 21.09.2000.

Sir,

With due respect, I beg to draw your kind attention
to the above representations submitted alongwith all related
papers for your kind consideration. But till date, no sym-
pathetic action has been taken from your benign self to
redress the grievances and as a result, I have been deprived
of the promotion and the active service with sincere and
honest effort for a period of 3(three) years 8(eight) months
and 10(ten) days have been snatched away.

Therefore, I would again appeal to your honour
to look into the matter for my antedated promotion to the
post of Divisional Accounts Officer, Grade-II with effect
from 01.01.86 and oblige.

Yours faithfully,

(Signature)
(Jayanta Kumar Lahiri)
Sr. Divl. Accounts Officer,
P.W. Division, Pasighat
Arunachal Pradesh

*Accepted
J. K. Lahiri
Advt. Officer*

REMINDER NO. 4

To

The Accountant General (A&E),
Meghalaya etc., Shillong

Dated, Pasighat, the 22nd. May, 2001

Sub: Prayer for antedated promotion to the post of
Divisional Accounts Officer, Grade-II, prior
to the promotion of the juniors.

Ref: 1. Central Administrative Tribunal's judgement and
its direction vide No. 2829 dated 27.08.97
2. My representations dated 13.04.1998, dated
20.10.1998, dated 21.09.2000 and dated 30.11.2000

Sir,

With due respect and humble submission, I beg
to draw your kind attention to the above representations
submitted alongwith all related papers for your kind perusal
and consideration. But till date, no sympathetic action has
been taken from your benign self to redress the grievances
nor any reply has been received so far and as a result,
I have been deprived of the promotion and the active service
with ~~EXHIBIT~~ sincere and honest effort for a considerable
period of 3(three) years, 8(eight) months and 10(ten) days
of my service have been snatched away without any benefit.

Therefore, I would again appeal to your honour
to look into the matter for my antedated promotion to the
post of Divisional Accounts Officer, Grade-II with effect
from 01.01 1986 and regularise the rest of my service and
oblige.

Yours faithfully,

Jayanta Kumar Lahiri
(Jayanta Kumar Lahiri)

Sr. Divisional Accounts Officer,
P. W. Division, Pasighat
P.O. Pasighat (Arunachal Pradesh)

*Atty. Gen.
Shri. S. S. Chatterjee*

To

The Accountant General (A & E),
Meghalaya, Arunachal Pradesh etc.,
SHILLONG

Dated, Pasighat, the 12th. July'
2001

- SUB: Prayer for antedated promotion to the post of Divisional Accounts Officer, Grade-II, prior to the promotion of the juniors.
- REF: 1. Central Administrative Tribunal's judgement and its direction vide No. 2829 dt. 27.08.97
2. My representations dated 13.04.98, 20.10.98, 21.09.2000, 30.11.2000 & 22.05.2001

Sir,

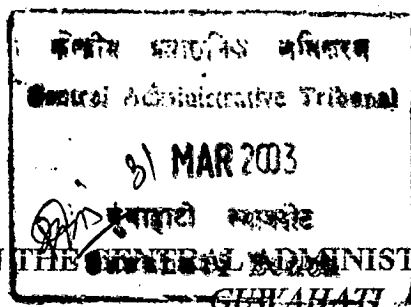
With due respect and humble submission, I beg to draw your kind attention to the above representations submitted alongwith all related papers for your kind perusal and consideration, but till date no sympathetic action has been taken from your benign self to redress the grievances nor any reply has been received so far and as a result I have been deprived of the promotion and the active service with sincere and honest effort for a considerable period of 3(three) years 8(eight) months and 10(ten) days of my service have been snatched away without any benefit.

Therefore, I would again appeal to your honour to look into the matter for my antedated promotion to the post of Divisional Accounts Officer, Grade-II with effect from 01.01.1986 and regularise the rest of my service and oblige.

Yours faithfully,

Jayanta Kumar Lahiri
(Jayanta Kumar Lahiri)
Sr. Divisional Accounts
Officer,
P W Division, Pasighat,
Arunachal Pradesh

*Attested
J. K.
Adm. cat.*



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

IN THE MATTER OF
O.A. 356/2002

SHRI J.K.LAHIRI

Vrs

UNION OF INDIA AND OTHERS

AND IN THE MATTER OF

1. Written Statement made in paragraphs 1,2,and 3 of the Application the Respondent No.2 humbly submits that they have no comment to offer.
2. That with regard to the statement made in Paras 4.(1) of the Application, the Respondent No.2 humbly submit that they have not comments to offer, the same being matter of records.
3. That with regard to the Statement made in Paragraphs 4.2 of the application the Respondents No.2 humbly submit that the applicant was appointed as Divisional Accountant on probation w.e.f. 28.6.1973 and was posted as regular Divisional Accountant w.e.f. 3.9.1974.
4. As per the fact submitted by Shri J.K.Lahiri in para 4.2 it is stated that the facts brought out are not totally relevant in the case. [Shri Lahiri who made the detection of irregularities causing annoyance to some of the Executive Engineers which results in the adverse remarks in the Confidential Report for the year 1983-84 and 1984-85. The remarks given by the Reporting Officer indicated the short comings in the performance of the officer which was communicated to the officer concerned after the ACRs were reviewed and executed by the Dy.Accountant General in the office of the Accountant General (A&E),Meghalaya. There is nothing in the record of this office which indicates that the representation against these adverse remarks in the A.C.R.s was received in this office and it is not true that the representations of Shri Lahiri has not been disposed off as yet. The D.P.C. held during 1986-87 has taken note of the adverse remarks and

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1986-87 DPC

also indicated that no representations against these adverse remarks were received in this office and it is not true that the representations of Shri Lahiri has not been disposed off as yet. (The D.P.C. held during 1986-87 has taken note of the adverse remarks and also indicated that no representations against these adverse remarks were recorded.)

5. That with regard to the statements made in paragraphs 4.3 and 4.5 of the applications the Respondents submit that the promotion from the post of Divisional Accountant to the post of Selection Grade Divisional Accountant (now called Divisional Accountants Officer Grade-II) was based on eligibility criteria of 10 (ten) years of Service of a regular Divisional Accountant (prior to 14.10.1996) on Seniority Cum fitness basis against the available vacancies i.e. 20% of the total strength of the Divisional Accountants. Although some posts of Selection Grade Divisional Accountants were vacant from 1980 onwards in the instant case the applicant would have been eligible for promotion during 1986 alongwith other eligible candidates with reference to their general seniority in the cadre of Divisional Accountants had he not been found unfit for promotion to that Grade by the D.P.C. for the promotion year 1986. A few junior officials including the Diptendu Kishore Chanda (Sl.No.27 of the Seniority list of 1.9.86) were found fit by the D.P.C. and were promoted antedated promotion w.e.f. 1.1.1986, where as the case of the applicant for promotion to the post of Selection Grade Divisional Accountant was not considered for promotion from the date after review of his ACR for the relevant period by D.P.C. as the ACR entertained adverse entries. (All the eligible officials awaiting promotion to the post of Selection Grade Divisional Accountant were allowed antedated promotion against available posts between the period from 1.9.80 to 13.2.87) as per seniority cum fitness reference to relevant rules in force vide this office E.O. DA Cell/4 dated 3.6.1991.

(Letter dated 3.6.1991 is annexed as Annexure -I)

The Respondent submit that the case of antedated promotion were allowed in term of the instructions issued by the C&AG of India vide letter No. 36-N.2/12-91 dated 5.2.91.

J.
Diptendu Kishore
Chanda
1.1.86

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6. That with regard to submission made in para 4.6 of the application the Respondent have to state that the facts indicated in the para are not true. It is not correct that the promotion were made without holding of any DPC. The Applicant passed the Departmental Examination for the Divisional Accountants in the year 1974 (Sept) and completed 10 years of service as regular Divisional Accountant in Sept 1984 and thus he was eligible for consideration for the higher post in the panel year 1985 (completing the required number of service) as on 1.10.84. From 1986 the percentage of selection grade Divisional Accountant were increased and a D.P.C. was constituted to consider the officer for promotion. The case of applicant was also placed before the D.P.C. alongwith the other eligible officers. He was not found fit for promotion by D.P.C. for the panel year 1986. The increased in the number of post of Selection Grade Divisional Accountant in 1986 was implemented in 1991 with the people being considered on the basis of the eligibility from the year 1986. The applicant was considered and found unfit by the committee. (The representation against the adverse communication was not received in this office and hence it cannot be treated as undisposed,

For the panel year 1988 the applicant was found unfit and only in the year 1989 the D.P.C. found him fit and empanelled him for promotion as S.G.D.A (Now called DAO Grade-II) and he took over the charge on 11.9.1989.

It is true that the Applicant fulfilled the eligibility criteria for the promotion to the post of Selection Grade Divisional Accountant in the year 1986. He was considered but he was found unfit by the DPC while preparing the panel for the year 1986 and officers junior to him as found fit by the D.P.C. were promoted. Thus in the later year the applicant cannot compare himself to be senior to those officer already promoted in panel year 1986.

That with regard to the statement made in para 4.7, the applicant had commented that the Mokokochang Post office from where the said Register letter despatched in 1986 cannot be traced

8. The submission made by the Applicant in para 4.8 has already been clarified in the preceeding paras.

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9. That with regard to the statement made in para 4.9 of the application, the Respondent humbly submit that the applicant was promoted and had taken over the charge in Sept.1989, he has to complete three years as Selection Grade Divisional Accountant (Now DAO Grade-II) to become eligible for promotion to the post of D.A.O. Grade-I. The applicant completed the three years of service as the crucial date (1.10.1992) and become eligible for consideration for promotion during the year 1993. When the DPC met for preparation of the panel for the year 1993 there were only two vacancies, one was unreserved and other was reserved for SC candidate. Since the officer senior to the applicant was found fit by the D.P.C. he was empanelled against the reserved vacancy and the second vacancy was filled up by the SC officer who was available within the same zone of consideration. The first vacancy was taken by the officer senior to the applicant and hence the applicant cannot claim to have been superseded by his juniors. The second vacancy was reserved for the SC officer who was available and was found fit by the DPC since the post was reserved. It is submitted that there is no violation of Art. 14 and Art. 16 of the Constitution.

10. That with regard to the statement made in paras 4.10, and 4.11 of the application the Respondent submit that the Hon'ble Tribunal in its judgement dated 31.6.1997 directed to consider that if the authority finds that applicant is entitled to be promoted of his junior, this shall be done as early as possible at any rate within the three month from the date of receipt of this order and also the applicant may file a fresh representation within one month from to day. The Respondent No.2 submit that the applicant submitted the representation dated 13.4.98 only on 24.4.98.

10. A In reply to 4.12 it is submitted that applicant's representation has no merit.

11. That submission made by the applicant in para 4.13 and 4.14 has already been clarified in the preceding paragraphs. It is further submitted that O.A. is badly barred by limitation and is liable to be dismissed.

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Reliance is placed in on Supreme Court decision in the case of Ramesh Chand Sharma Vs Udhem Singh Kamal (1999) 8 SCC 304.

12. That with regards to the paras 4.15 and 4.16 the Respondent No.2 submits that the applicant is not entitled to promotion to the post of DAO Grade II w.e.f. 1.1.1986.

13. That with regards to the statements made in paragraphs 5 of the application the respondents submit that the applicant cannot be promoted as DAO Grade-II (erstwhile SGDA) w.e.f.1.1.86 and as DAO Grade-I from the date of his junior has been promoted with service benefits including monetary benefits on the following grounds:-

(i) As the applicant was not found fit by the DPC/cadre controlling authority for consideration of his promotion during the promotion during the promotion year 1986, 1987 and 1988.

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(ii) The applicant took over charge as SGDA (DAO Grade-II) on 11.9.1989 and completed 3 years of SGDA on 11.9.92 and thereby fulfilled the eligibility criteria of 3 years on the relevant crucial date i.e. 1.10.92 for consideration of promotion to the post of DAO Grade-I in 1993 but the applicant could not be accommodated during that years due to non-availability of Post in the cadre of DAO Grade-I under unreserved category, and as such the applicant was promoted in the year 1994.

It is submitted that in the case of R.L. Butail Vs Union of India (1930 2 SCC 876) Hon'ble Supreme Court held that non-promotion of a Govt. Servant after consideration of his case is not a penalty.

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Further in the case of Anil Katujar, Hon'ble Apex Court held that Court does not sit in appeal over the decision of D.P.C.

14. That with regards to the statement made in para 6 & 7 of the statement the Respondent No.2 has no comments to offer.

15. As regards relief sought for, the Respondents submit that the applicant is not entitled to any one of the relief sought for and as such the application is liable to be dismissed. The Respondent further submit that

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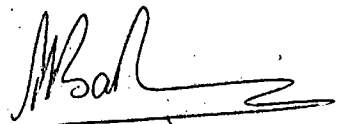
none of the grounds mentioned in this paras is maintainable in law as well as in fact and hence the application is liable to be dismissed with costs.

16. That with regards to the statement made in paragraphs 9 of the application the Respondents submits they have not comments to offer.

VERIFICATION

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I, Shri S.A.Bathew, Sr.Dy. Accountant General O/o the Accountant General (A&E) Meghalaya, Mizoram, And Arunachal Pradesh, Shillong do hereby solemnly declare that the statements made above in the Written Statements are true to my knowledge and belief and information and I sign the verification on the _____ 2003. at Shillong.



DEPONENT.

Identified by

Advocate

Solemnly affirmed and sworn before me this day the _____ 2003 by the deponent above named on being identified by Shri _____ Advocate, Shillong.

OFFICE OF THE ACCOUNTANT GENERAL (AEE) MEGHALAYA ETC SHILLONG

E.O. NO.DA Cell/4

Dated : ~~26.4.91~~ 3.6.91

In terms of Head quarters letter No. 36-N2/12-91 dated 5.2.91 read with letter No. 113-N2/12-91 dated 25.3.91 the promotion of the following officials to the post of Selection Grade Divisional Accountant (now designated as Divisional Accounts Officer Grade-II) have been allowed/antedated with effect from the date(s) indicated against each. In case the official(s) was/were on leave on the noted date of antedated promotion to the post of Selection Grade Divisional Accountant, his/their date of antedated promotion to the post of Selection Grade Divisional Accountant will be effective from the date of resumption of duties on expiry of his/their leave.

Sl.No.	Name	Date of antedated promotion to the post of SGDA
	S/Shri	
1. ✓ P.K.Banik	-	1.9.80
2. Jadabeswar Bhattacharjee	-	1.9.80
3. Sanat Kumar Bose	-	1.9.80
4. Kamalapada Bhattacharjee	-	1.9.80
5. Aswini Kumar Das	-	1.9.80
6. A.Mathewson	-	1.1.80
7. Bishunpada Mukherjee	-	1.6.82
8. S.Birachandra Singh	-	1.7.82
9. S.Kar Purkayastha	-	1.7.82
10. Krishna Kana Das	-	16.7.82
11. S.R.Choudhury	-	1.10.82
12. Arun Kumar Sarkar	-	4.3.83
13. ✓ A.K.Bhattacharjee	-	1.7.83
14. A.Haloi	-	1.7.83
15. M.L.Paul	-	1.3.84
16. P.R.Deb	-	1.4.84
17. Birajendu Chakravorty	-	1.7.84
18. Kanhaiya Pandey	-	1.7.84
19. Pradyut Kumar Choudhury	-	1.7.84
20. Asit Baran Bhattacharjee	-	1.7.84

Sl. No.	Name	Date of antedated promotion to the post of S.G.D.A.
21.	S. Shri Shri Deb	1.7.84
22.	J.P. Sinha	1.7.84
23.	Mukul Ch. Das	1.7.85
24.	Hari Kumar Nath	1.7.85
25.	Amarendra Das Gu	1.7.85
26.	P.C. Borah	1.7.85
27.	T.K. Kar	1.7.85
28.	U.N. Sarkar	1.1.86
29.	Srimati. M. Sumer	1.1.86
30.	Shri Diptendu Kishore Chanda	1.1.86
31.	Shyamalendu Nag	1.1.86
32.	Subhash Ch. Kundu	1.1.86
33.	K. Megho Singh	1.1.86
34.	Dilip Baidya Choudhury	1.1.86
35.	K.C. Bhattacharjee	13.2.87
36.	Sushil Kumar Choudhury	13.2.87
37.	Amalendu Das	13.2.87
38.	Prasanta Madha Deb	13.2.87
39.	R.R. Dutta	13.2.87
40.	B.R. Gogoi	13.2.87
41.	N.K. Bhattacharjee	13.2.87
42.	D.C. Das	13.2.87
43.	Abinash Ch. Das	13.2.87
44.	Ashoke Kumar Roy	13.2.87
45.	S.R. Mazumdar	13.2.87
46.	N.C. Choudhury	13.2.87
47.	S.P. Syiemlieh	13.2.87
48.	S.K. Bhattacharjee	13.2.87
49.	J.C. Doley	13.2.87

2. No arrear of pay and allowances is admissible from the date of antedated promotion. The arrears of pay and allowances will be admissible only from the date of their actual functioning in the promotional post of Selection Grade Divisional Accountants and not from the date of antedated promotion to the post of Selection Grade Divisional Accountants.

[Authority:- AG's orders dt. 23.4.89 at P/1^N of file No. Sr.DAG(Admn)DA Cell/90-91/8

Promotion
D.A.

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Memo No. DA Cell/1-1/50-61/Vol-III/101-221/

Dated:

Copy forwarded to :-

1. The Accountant General (AcE) Tripura
Agartala for Information.
2. The Executive Engineer Electrical Division No-VI
Udaipur, Tripura for information.
and necessary action. He is further requested to forward the
Service Book of Shri. **Diptendu Kishore Chanda**
D.A.O. Grade-II immediately for fixation of pay of the official
from this end.
3. Shri. **Diptendu Kishore Chanda**
D.A.O. Grade-II, O/o the **Executive Engineer, Electrical**
Division No-VI, Udaipur, Tripura.
4. P.C. File concerned
5. E.O. File
6. S.C. File
7. File No. DA Cell/2-39/89-90.....

M. L. Sanyal
Accounts Officer,
DA Cell
O/o the Accountant General (AcE),
Meghalaya, etc, Shillong.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

In the matter of :

O.A. No. 356 of 2002

Shri Jayanta Lahiri

-VS-

Union of India & Ors.

And

In the matter of

Rejoinder submitted by the applicant in
reply to the written statement submitted
by the Respondents.

The applicant above named most humbly and respectfully begs
to state as under :

1. That the applicant categorically denies the statements
made in para 5,6,7,8, and 12 of the written statement
and begs to state that the applicant, having been
informed of his adverse ACRs, submitted representation
against those adverse remarks to the Deputy Accountant
General, Meghalaya, Shillong through Registered post
under Postal Receipt No. 503 dated 23.9.1986 of
Mokakchung Post office. Surprisingly, the Adverse ACR
of the applicant was acted upon without disposing of
his representation aforesaid and the applicant was
excluded arbitrarily by the DPC from being selected for
promotion to the post of Selection Grade Divisional
Accountant (now called Divisional Accounts Officer Grade

Filed by the applicant
through advocate Sri
G.N. Chakravarty on
19-5-2003.
62

II) and the persons junior to the applicant were promoted ignoring the case of the applicant. The applicant also gave reply against the adverse ACR by letter dated 16.9.1993 sent through Registered post but his case was not considered since his ACR from 1980 to 1991 were not placed before the concerned DPC although he was eligible for promotion for the promotion year 1986 whereas his juniors were given antedated promotion with effect from 1.1.1986 on the basis of recommendation of DPC held in 1991. Eventually, the applicant was promoted as Divisional Accounts Officer Gr.II w.e.f. 11.9.89 only instead of from 1.1.1986 as given to his juniors.

2. That the applicant emphatically denies the contentions made in para 9 and 10 of the written statement and further begs to state that the applicant was denied promotion to the post of DAO Grade-II w.e.f. 1986 on the plea of Adverse ACR which was acted upon without taking his representation into consideration in an unjust, unfair and arbitrary manner as a consequence of which his promotion as DAO Grade II was delayed/deferred till 1989. Had he been promoted as DAO Gr. II in 1986 as per his entitlement, he would have completed the three years of service in 1989 as required under rules for promotion to the rank of DAO Grade I and could be promoted to the rank of DAO Gr. I when his juniors were promoted. As such the contention of non-eligibility of the applicant in the panel for the year 1993 as contended by the respondents is

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irrelevant since the applicant acquired the eligibility for promotion to the rank of DAO Gr. I as back as in 1989.

Further, the copy of the judgment and order dated 31.7.1997 in O.A. No. 147/94 passed by the Hon'ble CAT bearing the dispatch No. 2829 dated 27.8.97 was received by the applicant only on 6.4.1998 and immediately thereafter the applicant submitted fresh representation as directed by the Hon'ble CAT on 13.4.1998 to the Senior Deputy Accountant General (A & E), Meghalaya, Shillong. He also submitted representations on 13.11.1998, followed by subsequent representations dated 25.9.2000, 30.11.2000, 22.05.2001 and 12.07.2001 praying inter alia for antedating his promotion to the post of DAO Gr. II w.e.f. 1.1.1986 with all consequential service benefits but with no result whatsoever.

The representations are full of merit but the respondents have not been taking any action deliberately in terms of the judgment and order dated 31.7.1997 of the Hon'ble CAT.

3. That in reply to para 11 of the written statement, the applicant begs to submit that the instant O.A. is not barred by limitation as contented by the Respondents and the Supreme Court's decision in Ramesh Chand Sharma Vs. Udhem Singh Kamal (1999) 8 SCC 304 as relied upon by the respondents are not relevant to the instant case.

(48)

of the applicant since the said decision pertains to a completely different subject matter. The case of the applicant here, pertains to antedating of promotion and fixation of pay and benefits thereof which is a continuous wrong giving rise to a recurring cause of action every month on the occasion of payment of salary and hence not time barred. The question of limitation in such case has been dealt with by the Hon'ble Supreme Court threadbare in M.R.Gupta Vs. U.O.I. & Ors. (1995) 5 SCC 628 and the law has been laid down therein.

4. That the applicant categorically denies the statements made in para 13 of the written statement and begs to submit that applicant is very much entitled to promotion to the rank of DAO Gr. II w.e.f. 1.1.1986 and as DAO Gr. I from the date when his juniors were promoted with all consequential service benefits since he fulfilled the eligibility criteria for promotion as DAO Gr. II way back in 1986 and for DAO Gr. I as back as in 1989 as required under rules. The plea of finding the applicant unfit by the DPC on the ground of Adverse ACR is not tenable in the eye of law since those ACRs were acted upon without disposing of the representation submitted by the applicant against the adverse ACRs in question.
5. That the applicant categorically denies the statement made in para 15 of the written statement and submits that all the reliefs sought for by the applicant in the instant case and the grounds stated thereof are

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sustainable in law as well as in facts and as such the application deserves to be allowed with costs.

6. That in the facts and circumstances stated above, the application deserves to be allowed with costs.

VERIFICATION

I, Shri Jayanta Kumar Lahiri, working as Divisional Accounts Officer-I, under Accountant General (A & E), Mehalaya, at present resident of Imphal, do hereby verify that the statements made in Paragraph 1 to 6 of this rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 19th day of May, 2003.

Jayanta Kumar Lahiri