

FROM No. 4  
(SEE RULE 42 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No: \_\_\_\_\_ /

Misc Petition No: \_\_\_\_\_ /

Contempt Petition No: \_\_\_\_\_ 35/03 mo.A 260/02

Review Application No: \_\_\_\_\_ /

Applicants: - P. P. Changkakati

Respondents: - Ravi Shankar Prasad

Advocate for the Applicants: - D.K. Das.

Advocate for the Respondents: - C.G.S.C. Govt. of Assam.

- Notes of the Registry Date Title Order of the Tribunal

This Contempt petition has been filed by the counsel for the applicant praying for wilful and deliberate violation of the order dated 21.2.2003 passed in O.A. 260/2002 by this Hon'ble Tribunal.

26.5.2003 Heard Mr. D.K. Das, learned counsel for the applicant.

Put up again on 15.7.2003 for orders in presence of Mrs. M. Das, learned counsel for the State of Assam.

Vice-Chairman

Laid before  
the Hon'ble Court  
for further orders.

15.7.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. N.D. Dayal, Member (A).

Put up again on 24.7.2003 for  
orders.

Member

Vice-Chairman

P.M.

mb

25/6/03  
Section Office

24.7.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

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

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

Put up again on 22.8.2003 for orders.

Member

Vice-Chairman

mb

22.8.2003 Present: The Hon'ble Mr. Justice D.N. Vice-Chairman, Vice-Chairman  
The Hon'ble MR.K.V.Prahaladar  
Administrative Member.

Put up the matter again on 8.9.2003 for further order.

K.V.Prahaladar  
Member

Vice-Chairman

bb

8.9.2003 Put up again on 23.10.2003 for orders.

K.V.Prahaladar  
Member

No reply/objection has been filed.

23.10.2003 There is no Bench today. Adjourned to 28.10.03

NS  
19/11/03

B/0  
mt

Office Note	Date	Tribunal's Order
	20.11.2003	<p>Present: Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman Hon'ble Shri S.K. Naik, Administrative Member.</p> <p>Shri D.K. Das, learned counsel for contempt petitioner in C.P. Mrs. M. Das, learned counsel for alleged contemner/respondent 2 in O.A.260/2002.</p> <p>We are constrained to note that respondents have not cared to file reply affidavit showing compliance of Tribunal's order dated 21.2.2003. Shri D.K. Das, learned counsel has submitted that the respondents have wilfully disobeyed the Tribunal's <u>directions by trying to bring in other subsequent facts</u>, which are irrelevant so far as implementation of Tribunal's order is concerned. He has particularly referred to the suspension order passed by the respondents against the applicant dated 6.10.2003, which has no bearing on <sup>the</sup> implementation of the orders of the Tribunal dated 21.2.2003. Admittedly, at this stage respondents have not filed any writ petition/appeal against the Tribunal's order before the Hon'ble Gauhati High Court and this order has, therefore, become final.</p> <p>As a last opportunity four weeks further time is granted to the alleged contemner to file compliance affidavit, failing which the alleged contemner, Shri Ravi Shankar Prasad, IAS, Secretary to the Department</p>

Office Note	Date	Tribunal's Order
order dated 20/11/03, Sent to D/Section for issuing to both the counsel for the parties.  <i>(ccw)</i> <i>21/11/03.</i>		<p>shall be personally present to show cause why further action under the provisions of Section 17 of the Administrative Tribunal's Act, 1985 read with the provisions of the Contempt of Courts Act, 1971, should not be taken against him in C.P.35/2003.</p> <p>List on 2.1.2004. <i>AS</i></p> <p>Let a copy of this order be issued to both the counsel for the parties.</p> <p><i>Revered M</i> <i>21/11/03</i></p>
No reply has been bilked.	nkm	<p><i>D.K.Das</i> Member</p> <p><i>AS</i> Vice-Chairman</p>
<i>My</i> <i>1.1.04.</i>	20.1.04	<p>Present : The Hon'ble Shri Bharat Bhushan, Judicial Member The Hon'ble Shri K.V.Prah-ladan, Admn.Member.</p> <p>Case taken up today on the request of Mr D.K.Das, learned counsel for the petitioner. It has <sup>been</sup> contended by the learned counsel that the case was and fixed on 2.1.04/pursuant to the direction contained in order dated 20.11.03 the alleged contemner Shri Rabi Shankar Prasad was to appear in person in case the compliance of the Tribunal's order dated 21.2.03 was not done. Learned counsel has contended that the case <sup>earlier</sup> would not be taken up since the Division Bench was <sup>not</sup> sitting <sup>Today</sup> and as such he has prayed <sup>for the</sup>urgency of the matter. In view of the fact, the matter is taken up today. The noting of the order sheet shows that no compliance affidavit has so far been filed by the alleged contemner, so direction is</p> <p><i>as already ordered vide order at 20.11.2003</i></p>

20.1.04 <sup>again</sup> given that the alleged contemner Shri Ravi Shankar Prasad, IAS, Secretary to the Government of Assam shall be personally present to show cause as to why action under the provisions of Section 17 of the ~~Contempt~~ Administrative Tribunal's Act, 1985 read with the provisions of the Contempt of Courts Act, 1971 should not be taken against him.

PL. consider order  
dated 20/1/04.  
List on 26.2.2004 for personal appearance of alleged contemner and for further order.

NS  
21/1/04

for Prahadan  
Member (A)

J  
Member (J)

Order dt. 20/1/04  
Sent to D/Section  
for issuing to both  
the counsel for the  
parties.

22/1/04

No. reply has been  
billed:

25/2/04

Order dt. 26/2/04, sent  
to D/Section for issuing  
to both the parties.

27/2/04

26.2.04 Present: Hon'ble Mr. Shanker Raju, Member Judicial,  
Hon'ble Mr. K. V. Prahadan, Member (A)

The applicant is directed to file an amendment petition impleading Principal Secretary, Department of Environment and Forest, Govt. of Assam within one week from the date of receipt of this order. Thereafter, notices to be sent to Principal Secretary, who shall remain present in the next date of hearing i.e. on 16.3.04.

for Prahadan  
Member (A)

Member (J)

bb

16.3.2004 Mr. P. P. Verma, Principal Secretary to the Govt. of Assam, Deptt. of Forest & Environment, Assam, Dispur, Guwahati was present today.

In view of the order passed in M.P. 16/2004, the aforementioned official is impleaded as party respondent No. 2 in this case. Office to act accordingly.

List the case on 30.3.2004 before

Contd.

Contd.

15.3.2004 Division Bench, on which date also the aforesigned officer shall remain present.

The copy order dated 15/3/04.

AS  
16/3/04

Complaint The order  
Dtd 16.3.04

bb

KV Prahla-  
dan  
Member (A)

No. reply has  
been filed.

29/3/04

30.3.04 Present : The Hon'ble Sri Kuldip Singh, Member (J)  
The Hon'ble Sri K.V.Prahla-  
dan, Member (A)

Pl. copy order dated  
30/3/04.

AS  
31/3/04

order dt. 30/3/04.  
Sent to D/Section  
box issuing both  
to both the parties.

Class  
T4/04

Heard Sri D.K.Das, learned counsel for the applicant and Dr Y.K.Phukan, learned Sr.Government Advocate, Assam. Shri P.P.Verma, Principal Secretary to the Government of Assam, Department of Forest is also present. The learned Sr.Government Advocate submits that Shri Verma has not received the copy of the contempt petition and without that he is unable to file reply. The petitioner is directed to supply a copy of the C.P to Shri Verma immediately. Shri P.P.Verma is also directed to remain present before this Tribunal on the next date.

... List before next available Division Bench.

KV Prahla-  
dan  
Member (A)

KV Prahla-  
dan  
Member (J)

13.5.04

An affidavit has  
been filed by the  
Condemner No. 2.

pg

14.6.2004 Present: Hon'ble Smt Bharati Ray,  
Judicial Member

Hon'ble Shri K.V. Prahladan,  
Administrative Member.

Mr D.K. Das, learned counsel for the applicant and Mr Y.K. Phukan, learned Sr. Government Advocate, Assam and Ms M. Das, learned Government Advocate, Assam are present. Mr P.P. Verma, Principal Secretary, Department of Forest is also present as directed. He prays for three days time to get instructions for the implementation of the order dated 21.2.2002 passed in O.A. No.260/2002. The matter may be posted on 18.6.04.

*KV Prahladan*  
Member (A)

*Member (J)*

18.6.2004 When the matter was called for, Mr. P.P.Verma, Principal Secretary, Deptt. of Forest appeared in person and submits that integrity certificate has already been issued on 16.6.2004 and the matter has been sent to UPSC.

Post the matter before the next ~~Exekution~~ Division Bench. On that day, responsible days will show us the compliance report.

*for Prahladan*  
Member (A)

*Member (J)*

20.7.04. Present: Hon'ble Mr.K.V.Sachidanandan, Judicial Member  
Hon'ble Mr.K.V.Prahladan  
Administrative Member.

The learned counsel prays for adjournment on behalf of Mr.D.K.Das. Learned counsel for the applicant due to his personal difficulty. Prayer is allowed. Post the case on 22.7.04 for orders.

*for Prahladan*  
Member (A)

*Member (J)*

-48-

"24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office Operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

25. In this connection, we may refer to the decision of the Supreme Court in G. Saran (Dr.) V. University of Lukhnow wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus: (SCC p.591)

15....He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee."

26. In P.S. Gopinathan V. State of Kerala this Court relying on the above principle held thus:(SCC p.84, para 44) "44.... Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15.7.1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the ~~appellant~~ is estopped and precluded from questioning the said order dated

22.7.04 When the matter came up for hearing learned counsel for the respondents submitted that there was some development in the matter between the UPSC and the State Government which is under correspondence and prays for short time for compliance. The case may be posted before the next available Division Bench.

*KV Prahlan*  
Member(A)

Member(J)

23.8.04 Hon'ble Mr. D.C. Verma, Vice-Chairman  
Hon'ble Mr. K.V. Prahlan, Administrative Member.

On the prayer of learned counsel for the Respondents case is adjourned to 26.8.04 for orders.

*KV Prahlan*  
Member

*D.C. Verma*  
Vice-Chairman

lm

26.8.2004 Present: Hon'ble Shri D.C. Verma,  
Vice-Chairman  
Hon'ble Shri K.V. Prahlan,  
Administrative Member.

In the course of arguments, Dr Y.K. Phukan, learned counsel for the alleged contemners submits that by a communication dated 25.8.2004 UPSC had desired the State Government to communicate a speaking order. Learned counsel states that there is no provision to send such speaking order as the delay in the matter is because of the UPSC and not because of the State Government. It has been, therefore, submitted that UPSC may be impleaded as party so that the matter may be resolved.

After hearing the learned counsel for the parties we are of the

SN	Name and designation of staff who appeared in the Group-'B' selection of AME/AWM against 30% LDCE held on 03.08.2013 (written examination).	Marks obtained out of 150 (Paper-I)	Marks obtained out of 150 (Paper-II)	Grand total marks obtained by the staff in written +viva-voce +APARs (Out of 350 marks)
137	SHRI BINOD XA/XO (ST), LP/GOODS/KIR	62	51	-
138	SHRI BINOD MANDAL (ST), LP/GOODS/KIR	42	41	-
139	SHRI NAGAENDRA KUMAR SINHA, LP(PASSENGER)/KIR	73	77	-
140	SHRI GYAN SHANKER SINGH, LP(GOODS)/KIR	85	77	-
141	SHRI DEEPAK KUMAR (SC), LP(MAIL EXP.)/KIR	90	85	-
142	SHRI MADHUKAR PASWAN (SC), LP(PASSENGER)/KIR	36	34	-
143	SHRI RAVI RANJAN PRASAD SINGH (ST), LP(GOODS)/KIR	38	45	-
144	SHRI MAHENDRA MANDAL (ST), LP(GOODS)/KIR	77	63	-
145	SHRI ARUN KUMAR, LOCO INSPECTOR/KIR	41	56	-
146	SHRI SANJEEV KUMAR VERMA (SC), CHIEF LOCO INSPECTOR/KIR	65	47	-
147	SHRI MANOJ KUMAR (SC), SSE/C&W/KIR	90	82	-
148	SHRI SHAILENDRA KUMAR SINGH, CHIEF LOCO INSPECTOR/KIR	72	65	-
149	SHRI MUKESH KUMAR SONKAR (SC), CHIEF LOCO INSPECTOR/KIR	67	54	-
150	SHRI SUBISH KUMAR SINGH, CHIEF LOCO INSPECTOR/KIR	67	54	-

The staff mentioned at Sl. No. 1, 2 & 3 have been empanelled against UR vacancies & Sl. No. 5 against SC vacancy for promotion to the posts of AME/AWM (Group-'B') against 30% LDCE in Mechanical Department in order of merit.

01(one) ST post could not be filled up as no ST candidate could pass in the written examination of the said LDCE.

The panel has been approved by General Manager/N. F. Railway on 01.10.2013.

This may please be circulated amongst the staff concerned. One copy of the same may also be pasted in the Notice Board.

P.G. 4.10.13  
 (Mrs. Patee Gogoi)  
 Asstt. Personnel Officer (Gaz.)  
 for General Manager (P)

26.8.2004

Order dated  
26.8.2004, Received  
on behalf of respondents  
Govt. Advocate Mr. Y.K. Phukan.

Sri Kumar Ch. Deka

30.8.2004.

view that correspondence with regard to the delay with an affidavit be filed within ten days so that appropriate order can be passed with regard to UPSC.

List before the next Division Bench.

KV Prahadan  
Member

Vice-Chairman

nkm

16.9.04. Present: Hon'ble Mr. Justice R.K. Batta,  
Vice-Chairman.

Hon'ble Mr. K.V. Prahadan,  
Administrative Member.

An affidavit on behalf  
of the Contender No. 2 has  
been filed.

Mr. D.K. Das, learned counsel for the applicant states that he wants to file affidavit in relation to affidavit dated 9th September, 2004 filed by contemner No. 2. For that purpose he seeks time and hence adjourn. <sup>matter</sup> Matter be listed after Winter vacation on 8.10.04 for orders.

KV Prahadan  
Member

R  
Vice-Chairman

5-11-04  
No affidavit in 1m  
reply has been filed  
by the applicant

8.11.2004

Mrs. M. Das, learned Govt. Advocate for the State of Assam was present.

Mr. I. Ghoshdury, learned Advocate appearing on behalf of Mr. D.K. Das, learned Advocate for the applicant, seeks adjournment in the matter. The matter has already been adjourned once and it is made clear that the matter shall not be adjourned again. In the meantime respondent no. 1 shall find out as to what has happened to the matter in UPSC and inform us the position on the next date. Stand <sup>over to</sup> 14.12.2004.

KV Prahadan  
Member

R  
Vice-Chairman

bb

14.12.2004 Present: Hon'ble Justice Shri R.K. Batta, Vice-Chairman

When this matter was heard it was not pointed out by the learned counsel for the parties that the matter, as per rules, has to be dealt with by Division Bench. It was later noticed by me that as per Rule 6 of Central Administrative Tribunal (Contempt of Court) Rules, 1992, contempt matter is to be dealt with by a Bench of not less than two members. Hence the order which was dictated but not signed is suo moto recalled. The matter may now be listed before the Division Bench on 4.1.2005.

Received by  
Kinner Ch. Deka  
(For Ms. M. Das, Advocate)

Received on

16/12/04

B. Bhuyan

Advocate

nkm

R  
Vice-Chairman

For  
D.K. Das  
Advocate

5.1.2005

Heard Mr. Y.K. Phukan, learned Sr. Govt. Advocate for the State of Assam. List ~~en~~ before the next Division Bench.

Mr. P.P. Verma, Principal Secretary to the Govt. of Assam, Department of Forest and Environment, Assam was present.

4.1.05  
in respect of date 21.2.03

A compliance report  
submitted by the  
Contemnor No. 2.

ICV. Deka  
Member (A)

R/KD

19.1.2005

Letter of absence has been sent by Mr. D.K. Das, learned Counsel for the applicant. Mr. Y.K. Phukan, learned Sr. Govt. Advocate, who is present on behalf of contemnor No. 2, has no objection for adjournment.

Accordingly adjourned to 18.2.2005.

ICV. Deka  
Member

R  
Vice-Chairman

bb

18.2.05

MKA/KVP

Adjourned to 10th March 05.

ICV. Deka  
Member (A)

→ A  
Member (A)

## Orders of the Tribunal

Notes of the Registry Date

10.03.2005

Received COPY  
of Judgement for  
Govt of Assam vs  
Respt. 1 & 2.

Kumar Deba  
28-3-05

24.3.05

copy of the order  
has been sent to  
The D/See. for/consul  
The same to the  
applicant by post

H.S.

mb

*K.V. Prahladar*  
Member (A)

*9/3/05*  
Vice-Chairman

Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

The Hon'ble Mr. K.V.Prahladar  
Administrative Member.

Heard learned counsel for the  
parties. Hearing concluded. Order passed  
in separate sheets. The C.P. is closed  
in terms of the order passed in separate  
sheets.

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Order of the Tribunal

Notes of the Registry] Date

11

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

~~Case No.~~ C.P. No. 35/2003

DATE OF DECISION 10.03.2005.

Sri P.P. Changkakati.....APPLICANT(S)

Sri D.K. Das.....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS -

Sri Rabi Shankar Praasad & Ors.....RESPONDENT(S)

Mr. Y.K. Phukan, G.A., Assam.....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

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

Judgment delivered by Hon'ble Vice-Chairman.

100

Spt  
16.3.05

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Contempt Petition No. 35 of 2003 (O.A.No.260/2002)

Date of Order: This, the 10<sup>th</sup> Day of March, 2005.

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN.

HON'BLE MR.K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri Prasanta Pran Changkakati  
Divisional Forest Officer,  
Kamrup East Division,  
Department of Environment & Forests  
Assam,Guwahati 1.

Petitioner.

By Advocate Mr. D. K. Das.

-VERSUS-

1. Sri Ravi Shankar Prasad, IAS,  
Secretary to the Department of Environment and Forest,  
Govt. of Assam, Dispur,Guwahati-6.

2. Mr. P.P. Verma  
Principal Secretary to the Govt. of Assam,  
Department of Forest and Environment Assam,  
Dispur, Guwahati.

Contemnners.

By Advocate Mr.Y.K. Phukan, Sr. Government Advocate, State of Assam.

ORDER (ORAL)

G. SIVARAJAN, J (V.C):

The Contempt Petition is filed by the petitioner alleging that the directions issued by the Tribunal in the final order dated 21<sup>st</sup> February, 2003 in O.A.No.260/02 has not been complied with by the Respondents even after the expiry of more than two years. This petition is being posted from time to time and in spite of specific direction on that behalf, the Respondents have not complied with the order till date. In this case the Respondents have filed their affidavit one on 9.9.2004 and the other on 3.1.2005.

2. We have heard Mr. D. K. Das, learned counsel for the petitioner and also Mr. Y. K. Phukan, learned Sr. Government Advocate, State of Assam, Mr. P. P.

*[Signature]*

Verma, now Principal Secretary (Planning and Development), Government of Assam who is also present in the Tribunal. The Contempt Petition has been filed alleging non compliance of the order of this Tribunal, dated 21.2.2003 passed in O.A.No.260/2002 which was disposed of with the following directions:-

“ 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.”

3. The Respondents in compliance with the direction issued as above, in the light of the provisions of the Indian Forest Service (appointment by promotion) Regulations 1966, forwarded the records relating to the petitioner to the U.P.S.C for consultation and approval. The said records included the Integrity Certificate dated 16.6.2004 in respect of the petitioner for the period up to 5.11.2001. However, the U.P.S.C stated that the Respondents have to forward the Integrity Certificate for subsequent period also. That apart, the U.P.S.C was of the view that as provided in the Regulations 7(4) of the Promotion Regulations a proposal of the State Govt. with positive recommendation to make the said officer's inclusion in the Select List as unconditional was required to enable the U.P.S.C. to take steps to appoint the officer to I.F.S. The U.P.S.C. accordingly, sent a letter dated 12.7.04 to the Chief Secretary, Government of Assam to forward the recent Integrity Certificate in respect of the petitioner and also unconditional proposal for inclusion of the petitioner in the Select List. It is also stated in the communication that in case no reply is received from the State Govt., it will be presumed that the Assam Government is agreeable for the proposal of the inclusion of the petitioner in the Select List. It was followed by the communication dated 11<sup>th</sup> August 2004

✓  
Gp

(Annexure C) produced alongwith the affidavit dated on 9.9.2004. It is seen from the communication filed alongwith the affidavit dated 9.9.2004 filed by the Respondents that fax reply was sent to the U.P.S.C. stating that the State Government was of the view that the proposal in accordance with the provisions of regulations have already been submitted by them and there was little scope for them to pass any speaking order under the said regulations and also felt that the Commission can proceed with the proposal under the provisions of Regulation (7) including those under regulation 7(2). We find from the communication dated 11.8.04 where the U.P.S.C have stated as follows:

“3.1 It may kindly be recalled that the officer was provisionally included in the Select List of 2001 owing to the pendency of disciplinary proceedings and subject to grant of integrity certificate. The said disciplinary proceedings have been concluded exonerating Shri Changkakati and the State Govt. have now furnished the integrity certificate in respect of Shri Changkakati, as such, the conditions attached to the officer’s provisional inclusion in the Select List are no longer applicable in view of the orders of the Hon’ble Tribunal has also observed that “we cannot agree that his promotion which became due on 05.11.2001, could be inhibited thereafter, by a charge sheet dated 16.8.2002 in a different case. Thus all the respondents are required to implement the orders of the Hon’ble Tribunal and it is thus necessary that the officer’s inclusion in the Select List of 2001 is made unconditional, unless the orders are appealed against and stay orders obtained.

3.2 In these circumstances and in view of the order dated 21.02.2003 of the Hon’ble Tribunal in O.A.No.260/2002, the Commission’s D.O. letter dated 12.07.2004 and the Govt. of India’s observations dated 19.07.2004, it is proposed to treat the State Govt.’s letter dated 22<sup>nd</sup> July, 2004 and integrity Certificate dated 16.06.2004 as a request of the State Govt. under Regulation 7(4) to make Shri Changkakati’s inclusion in the Select list of 2001 as unconditional.”

4. On reading communications dated 11.8.2004 (Annexure C) and dated 25.8.04 (Annexure D) it is clear that the Respondents are of the view that the Integrity Certificate for subsequent period as required by the U.P.S.C., is unnecessary for the purpose of deciding the case of the petitioner. According to the Respondents, the Integrity Certificate for the period up to 2001 alone is

9/24/

required for including the name of the petitioner in the Select List. We also find that the stand taken by the Assam Government is justified. Now since the unconditional recommendation for inclusion of the name of the petitioner in the Select List as was requested by U.P.S.C vide communication dated 11.8.2004 has not yet been received, it will be presumed that the Government of Assam has agreed to the proposal. From the fax message dated 28.7.04 it would appear that the Government of Assam has no serious objection in treating the proposal given by them as unconditional. We find that the U.P.S.C. has rightly observed in Para 3.2 of the communication dated 11<sup>th</sup> August 2004 that in view of the order of the Tribunal dated 21.2.03, the communication dated 12.7.04 and the Government of India observations dated 19.7.04 it is proposed to treat the State Government's letter dated 22<sup>nd</sup> July, 2004 and the Integrity Certificate dated 16.6.04 as a request of the State Government under the regulations 7(4) to include the petitioner's name in the Select List as unconditional. The Government of Assam, it would appear, had no serious objection to the above course. In these circumstances, we are unable to approve the U.P.S.C.'s letter dated 17.11.04, which was sent to the Chief Secretary, Government of Assam insisting for Integrity Certificate for the subsequent period also in respect of the petitioner and in asking for a positive recommendation for inclusion of the petitioner's name in the Select List of 2001 as unconditional.

5. From what is stated above, it would appear that the Government of Assam has done everything which is required for compliance of the directions issued in the order of this Tribunal dated 21.3.03 in O.A.No.260/02 and that it is only because of the unhelpful attitude of the U.P.S.C there is delay in complying with the direction issued by the Tribunal. Taking into account all the circumstances of the case and in view of the inordinate delay of more than two years in the matter of compliance of the directions issued in the O.A., we direct the contemners to

9/24/

send a copy of this order to the U.P.S.C. within two weeks from the date of receipt of the same from this Tribunal to enable the U.P.S.C. to proceed with the matter and to include the name of the petitioner in the Select List for the year 2001 without any further delay. We make it clear that in view of what is stated above, it is not necessary for the respondents to have further correspondence with U.P.S.C in the matter for including the name of the petitioner in the Select List for the year 2001 for promotion to the I.F.S. in compliance with the orders dated 21.2.03 in O.A. No. 260/02 other than forwarding a copy of this order to U.P.S.C. We hope that the U.P.S.C. will take the matter seriously and will pass appropriate orders in compliance of the directions contained in this order, within a period of two months from the date of receipt of copy of the Judgment.

6. Contempt Petition is closed as above.

7. We note that Shri P. P. Verma, Principal Secretary, Forests, was duly present in this Tribunal when the case was called. We also feel that the Officer has done all that is required from his part. Now he stated that he is not presently the Principal Secretary in the Forest Department. Hence no further step against the Secretary is warranted.

8. Copy of the order be furnished to the learned counsel for the parties urgently.

  
 (K.V. PRAHLADAN)  
 ADMINISTRATIVE MEMBER

  
 (G.SIVARAJAN)  
 VICE-CHAIRMAN

LM

17

Guwahati	Central Admin. Trib.
Guwahati	Guwahati
25 JUN 2003	
<del>Prasanta Pran Changkakati</del>	
Guwahati Bench	

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH AT GUWAHATI

Filed by Petitioner  
Through Debajit ka Dha  
Advocate 25.6.03

CONTEMPT PETITION NO. 35 /2003

IN ORIGINAL APPLICATION NO. 260/2002

IN THE MATTER OF:

An application under Section 17 of  
the Administrative Tribunals Act,  
1985 read with Rule 24 of the C.A.T.  
(Procedure) Rules, 1987.

-AND-

IN THE MATTER OF:

Willful and deliberate violation of  
the judgement and order dated  
21.2.2003 passed in O.A. No.  
260/2002.

-AND-

IN THE MATTER OF:

Sri Prasanta Pran Changkakati  
Divisional Forest Officer,  
Kazirup East Division,  
Department of Environment & Forests  
Assam, Guwahati - 1.

...Petitioner

-VERSUS-

Contd., P/ -

1) Sri Ravi Shankar Prasad, IAS,

Secretary to the Department of  
Environment and Forest,

Govt. of Assam, Dispur, Guwahati-6.

2) \*

....Conteener

Respondent No. 2.

Mr. P.P. Verma  
Principal Secretary  
to the Govt. of Assam,  
Department of Forest  
& Environment Assam,  
Dispur, Guwahati  
Duly pleaded as a  
Respondent No. 2 vide  
order dtd 16.3.04  
passed in MP.16/04.

The humble petition of the  
petitioner abovenamed-

MOST RESPECTFULLY SHEWETH:

1. That the petitioner above named as applicant  
in Original Application No. 260/2002 had approached this  
Hon'ble Tribunal assailing the inaction of the Respon-  
dent Authorities to promote forthwith the applicant to  
the IFS of Assam Meghalaya Joint Cadre (Assam Segment)  
in Terms of the selection dtd. 5.11.2001.

The petitioner crave leave of this Hon'ble  
Tribunal to refer to and rely upon the state-  
ment/averments made in OA No. 260/2002 is so  
required.

2. That the Hon'ble Tribunal heard the parties  
to the proceeding and vide order dated 21.2.2003 dis-  
posed of the said application observing that -

"The Respondents are accordingly directed to  
take up the matter with right earnest for

appointing the applicant to the Indian Forest Service in Terms of the Regulation on the basis of the accommodation made by the Selection Committee held on 5.11.2001 and pass orders forthwith in accordance with law keeping in mind the observations and direction made in the OA".

A copy of the said order dated 21.2.2003 passed in OA No. 260/2002 is annexed herewith as Annexure - A.

3. That the petitioner begs to state that on the day the day of hearing, the counsels for the respondent /contemner herein were duly present in the court and the said order was passed in their presence. Besides, after receiving a certified copy of the order dated 21.2.2003 passed by this Hon'ble Tribunal in OA No. 260/2002, the petitioner vide letter dated 25.2.03 has duly communicated the same to the respondent No.2 herein with a copy of the same to the respondent.

A copy of the aforesaid letter dtd. 25.2.2003 of the petitioner is annexed herewith and marked as Annexure-B.

4. That the respondent/contemner abovenamed despite having received the said representation along

with a copy of the said order dated 21.2.2003 passed by this Hon'ble Tribunal have not implemented the same and no action has been taken for promoting the petitioner to the Indian Forest Service on the basis of selection dtd. 5.11.2001. As such the contemner is liable to be punished for his wilful and deliberate violation and disregard of the Hon'ble Tribunal's order dtd. 21.2.03.

5. That the petitioner states that the order dated 21.2.2003 passed by this Hon'ble Tribunal is very clear and categorical in so far as directions have been issued for holding the selection Committee meeting expeditiously and the contemner ought not to have delayed the implementation of the same. The non implementation of this Hon'ble Tribunal's order dtd. 21.2.03 amounts to wilful and deliberate violation of the same and an appropriate direction needs to be issued to the said contemner to implement the same invoking Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987.

6. That this application is filed bonafide and for the ends of justice.

In the premises aforesaid, it is most respectfully prayed that the Hon'ble Tribunal would be pleased to issue notice upon the respondent/contemner to show cause as to why

Contempt of Court Proceedings shall not be drawn up against him and also as to why necessary orders be not passed invoking the power under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 for effective implementation of the order dated 21.2.02 of the Hon'ble Tribunal passed in Original Application No. 260/2002 and upon hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to pass appropriate orders of punishment of the respondent/contemner and further be pleased to pass appropriate orders towards effective implementation of the aforesaid order of the Hon'ble Tribunal and/or be pleased to pass such further order/orders as the Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case so as to give complete relief to the petitioner.

And for this act of kindness the petitioner as in duty bound shall ever pray.

AFFIDAVIT

I Sri Prasanta Pran Changkakati, Son of Late Bishnu Pran Changkakati, aged about years, at present working as the Divisional Forest Officer, Kamrup East Division, Guwahati in the district of Kamrup, Assam, do hereby solemnly affirm and declare as follows:

1. That I am the petitioner in the instant contempt petition and as such I am fully conversant with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 1 To 6 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this affidavit is made for the purpose of filing contempt petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench for non-compliance of the Hon'ble Tribunal's order dt. 21.2.03 passed in OA No. 260/2002.

And I sign this affidavit on this 25th day of June, 2003 at Guwahati.

Prasanta Pran Changkakati

Identified by me

DEPONENT

DKR

Advocate

Solemnly affirmed and declared

before me by the deponent who is  
identified by DKR

Advocate on this 25th day of June, 03

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati for initiating a contempt proceeding against the alleged Respondent/contemner for wilful and deliberate non compliance of the order of this Hon'ble Tribunal dtd. 21.2.03 passed in O.A. No. 260/2002 and further be pleased to impose punishment upon the alleged respondent/contemner for wilful and deliberate non compliance of the order dtd. 21.2.03 passed in O.A. 260/2002.

ANNEX A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 260 of 2002.

Date of Order : This the 21st Day of February, 2003. - 8 -

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

THE HON'BLE MR S.BISWAS, ADMIISTRATIVE 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, 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.Choudhury, Addl.C.G.S.C  
for respondents No.1 & 4 and Mrs M.Das,  
Govt. Advocate for respondents No.2 & 3.

ORDER

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*

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 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

S.B.

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ex-11

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 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

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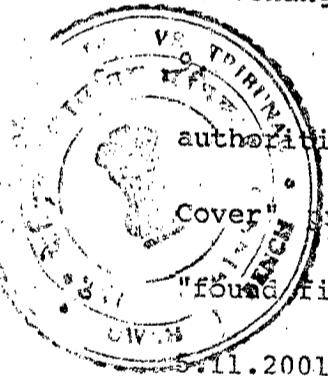
be revived by issue of a fresh charge and deny the overdue promotion. There is very little lacunae in this allegation which we can brush aside now.

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 course of hearing of this case we wanted the learned counsel for the respondents to produce <sup>On</sup> and show the records from where the proposed <sup>matter in</sup> ~~SC~~ 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.

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.

  
 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 11.11.2001, 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

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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 :

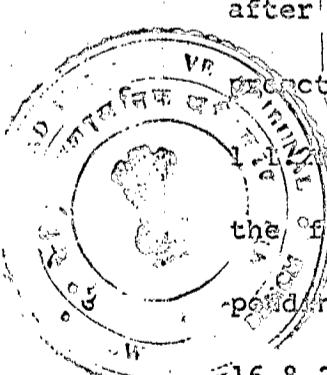
  
"The committee examined the service records of the eligible officers upto the financial year 1999-2000 (as the crucial date of eligibility is 01-01-2001) and on an overall assessment of their service records, assessed them as indicated against their names in the Annexure."

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. B. S.

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 exemption 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 was issued with

*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

*S. Bandyopadhyay, The Advocate, The Calcutta High Court*

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 <sup>provisionally</sup> 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.

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. B. 184

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 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. Jais

did not intend to injustice. "Parliament is presumed to act justly and reasonably" (JRC 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 to 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.

**Benzing 26/3/03**  
Certified to be true (C.P.)

Sd/ VICE CHAIRMAN  
Sd/ MEMBER (ADM)

Section Officer (I)

Guwahati Bench (Guwahati)

Central Administrative Tribunal

Guwahati Bench, Guwahati

Guwahati Bench, Guwahati

21

GOVERNMENT OF ASSAM  
OFFICE OF THE DIVISIONAL FOREST OFFICER: K.E. BIWN, GUWAHATI :::: 9X

Memo No. B/ Dt. 25/2/03

To,

The Principal Secretary to the Govt. of Assam,  
Forest Department, Bispur.  
Guwahati - 6.

Sub:-

O.A.No. 260 of 2002 Sri Prasanta Pran Chongkakati-  
-Vs- The Union of India and others.

Reft:-

Hon'ble Central Administrative Tribunal, Guwahati Bench  
Order dt. 21.2.2003.

Sir,

With reference to the above, I have the honour to submit herewith a Photostate Copy of the Certified copy of the order dt. 21.2.2003 passed by the Hon'ble Central Administrative Tribunal in O.A.No. 260 of 2002, for favour of your kind information and taking necessary onward action.

Encle:- As above.

Yours faithfully,

( P.P. Chongkakati )  
DIVISIONAL FOREST OFFICER:  
KAMRUP EAST BIWN, GUWAHATI :::

Copy alongwith Copy of the order forwarded to:-

- (1) The Secretary to the Govt. of India, M.O.E.F., New Delhi,
- (2) The Chairman, U.P.S.C. Bhopal House, Sanjana Road,  
New Delhi.
- (3) The Assam Meghalaya Joint Cadre Authority, Shillong,  
Meghalaya,

for their kind information and necessary action.

( P.P. Chongkakati )  
DIVISIONAL FOREST OFFICER:  
KAMRUP EAST BIWN, GUWAHATI :::

Memo No. A/ Dt. 25/2/03

St. 25/2/03

Copy to:-

- (1) The Principal Chief Conservator of Forests, Assam,  
Rohibari, Guwahati-6 for favour of his kind information.

( P.P. Chongkakati )  
DIVISIONAL FOREST OFFICER:  
KAMRUP EAST BIWN, GUWAHATI :::

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3 MA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, AT GUWAHATI

Contempt petition No.35/2003  
in Original Application No. 260/2002

In the matter of :

Sri Prasanta Pran Changkakati,  
Divisional Forest Officer,  
Kamrup East Division,  
Department of Environment and Forest,  
Assam, Guwahati-1.

**Petitioner**

- Versus -

Sri Ravi Shankar Prasad, IAS  
Secretary to the Government of Assam,  
Department of Environment & Forest,  
Dispur, Guwahati -6 and others.

**Contemner**

In the matter of :

An affidavit in opposition on behalf of the  
Alleged contemner No.2.

The humble affidavit in opposition on behalf of opposite party no. 2 ,Sri P. P. Varma is as follows :-

I, Sri Prem Prasad Varma, aged about 50 years, son of (Late) S.P.Varma, by profession service holder, resident of Khanapara, Guwahati, P.S. Basistha, district - Kamrup, Assam do hereby solemnly affirm and state as follows :

1. That I have been impleaded as opposite party no.2 in the above contempt petition. A copy of the same had been served on my advocate. I have perused the same and understood the contents thereof. I do not admit any of the allegations/ averments which are not borne out by records. All the allegations / averments which are not specifically admitted hereinafter shall be deemed as denied by this deponent.
2. That with regard to the statements made in paragraphs 1 & 2 of the contempt petition, the deponent has no comment to make thereon. He however does not admit anything which is not borne out by records and / or is contrary to the records.

Ab  
No-5204  
Executive Magistrate  
Kamrup. Guwahati.

Filed by : -  
Sri P. P. Varma  
in : - Contemner  
through  
D. G. & G. S.  
Manager Dispur  
Central Admin. C.A.T  
Date : 15/12/2003

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3. That on 30.3.04 this deponent was present in the Court room of the Hon'ble Tribunal when by its order dated 30.3.04 passed in contempt petition no. 35/03 arising out of O.A. No.260/02 the petitioner was directed to supply a copy of the contempt petition to this deponent. Accordingly, the learned advocate of the petitioner handed over a Photostat copy of the contempt petition to the deponent. In this contempt petition Sri Ravi Shankar Prasad, IAS had been impleaded as contemner. As Sri Ravi Shankar Prasad is out side India now, this deponent is sought to be impleaded as Respondent No.2 and accordingly a petition was filed by the petitioner on 27.2.04 in this Hon'ble Tribunal. This petition is numbered as Misc. Case No.16/04 in contempt petition No.35/03. A copy of the petition bearing Misc. Case No.16/04 had also been served on me. I am replying to both the petitions ( contempt petition No.35/03 and Misc. Case No.16/04 in contempt petition no 35/03).

4. That the deponent most respectfully submits that he is a law abiding citizens and a responsible officer who has the highest respect for the Rule of Law and for the institution of the Courts. He always carries out the Court's orders as early as possible and with all earnestness and to the best of his ability. The deponent firmly believes that failure to carry out Court's orders would ultimately lead to the collapse of Civil Society. As such the deponent always takes up Court's matters with all seriousness. In the instant case the deponent has played his part properly to comply with the order of the Hon'ble Tribunal. The deponent humbly submits that there is no disobedience, not to speak of any willful disobedience, on the part of the deponent in the instant case and as such the deponent respectfully submits that this Hon'ble Tribunal may be pleased to drop the contempt proceedings drawn against this deponent in connection with the above contempt petition No.35/03.

5. That in regard to the statements made in paragraph 3 of the contempt petition No.35/03, the deponent states that on 21.2.03 he was not in the Forest Department. He had joined in the Department of Environment and Forest as Principal Secretary only on 10<sup>th</sup> November, 2003. However, the matter was brought to the notice of the deponent by his office on 28.11.03.

6. That in regard to the statements made in para-4 of the contempt petition No.35/03, the deponent states that he immediately looked into the matter and took some time as he was not aware of the case in as much as he was not in the Forest Department. And as early as on 3.12.03 the deponent wrote a note to the Chief Secretary to the Government of Assam that the order of the Court has to be complied with. This note is contained in File No.FRE.135/2002/Pt.II. The relevant portion of the office note sent to the Chief Secretary by the deponent is as follows :-

1/1  
Executive 105/2004  
16/12/03, Guwahati  
by the deponent is as follows :-

Jas. Gauwe

"under these circumstances, I find that the order of the Hon'ble CAT has to be complied with and the recommendations of the last Selection Committee have to be implemented. This would however be without prejudice to any action that the Government may like to take on the basis of the out come of the 2<sup>nd</sup> D.P. The compliance of the order would be from retrospective effect as mentioned in the above quoted observations of the order of the CAT.

Chief Secretary may like to advise if action as suggested can be taken. In case it is decided not to comply with the above said order of the CAT, we will have to apprise the Court of our stand which in all probability would not be acceptable to them."

Your deponent begs to produce the above-said note in record addressed to Chief Secretary for compliance of Hon'ble CAT's order dated 20.2.2003 as and when same is asked for.

6(i) This suggestion was then referred to the Legal Remembrancer of Assam on 6.12.03 as suggested by the Chief Secretary, for his opinion. The Legal Remembrancer in his views on 9.12.03 also advised to implement the Court's order.

When the views of Legal Remembrancer were received, the Chief Secretary to the Government of Assam ,on 9.12.03 referred the matter to the Minister of State (Independent), Environment and Forest and the Chief Minister, recommending approval of the suggestion given by the deponent. However, the Chief Minister referred the matter to the Advocate General, Assam for further opinion and the same was received on 24.12.03. On the basis of the opinion of the Advocate General, Assam it was decided by the Government that an appeal is to be filed in the Hon'ble Gauhati High Court against the order dated 21.2.03 passed in O.A. No. 260/2002 by this Hon'ble Tribunal and the same has been filed in the Hon'ble Gauhati High Court on 10<sup>th</sup> February, 2004 and the case was registered as WP(C ) No. 1077 /2004 which is still pending before the Hon'ble Gauhati High Court .

6(ii) The deponent respectfully submits that the deponent has taken all the necessary steps to comply with the order of the Hon'ble Tribunal at his level. However, the Government decided to prefer an appeal against the order of the Hon'ble Tribunl and as such the deponent could not do anything further to comply with the order of the Hon'ble Tribunal.

The deponent further respectfully submits that in order to take action for the appointment of the petitioner to IFS, it is necessary, that (1) the integrity certificate is issued by the competent authority, i.e. the Chief Secretary to the State of Assam , which is not available at present ;(2) the validity of the Select list is extended suitably by UPSC

and (3) the State Government agrees to send proposal to the UPSC and the Govt. of India in respect of Sri P.P. Changkakati, unconditionally.

J. S. Chand

The deponent accordingly took all possible steps for compliance with the Hon'ble CAT's order by processing the case in accordance with the departmental procedure as expeditiously as possible and that there is no disobedience or negligence on the part of the deponent and as such the deponent respectfully prays that the present contempt proceedings against this deponent may kindly be dropped.

7. That in regard to the statements made in paragraph -5 of the contempt petition No.35/03 the deponent states that he had taken all necessary steps as stated earlier in this affidavit to comply with the order of the Hon'ble Tribunal. He took all possible steps at his level but when the Government at the highest level decided to prefer an appeal, the deponent could not do anything and as such the allegation of willful and deliberate disobedience or negligence is denied by this deponent. When this deponent was transferred to the Environment and Forest Department, he immediately looked into the matter and took all necessary steps in this regard. The deponent, however tenders unconditional apology before this Hon'ble Tribunal if any negligence, which is quite unintentional, is detected.

8. That in regard to the statements made in para -4 of the Misc. Case No.16/04 in contempt petition No.35/03 the deponent states that the order dated 21.2.03 passed in O.A. No.260/02 was brought to his notice only on 28.11.03. As stated earlier the deponent has taken all necessary steps in this regard to comply with the order of the Hon'ble Tribunal and as such this deponent is not guilty of any lapse or negligence in this regard.

9. That the deponent respectfully submits that there is no negligence on his part and he has not attracted the provisions of the contempt of the Courts Act and as such he prays that the instant proceedings against him may be dropped.

10. That the statements made in this affidavit and the statements in paragraphs 1,2,3 and 7 (partly) are true to my knowledge and those made in paragraphs 5, 6, 7 (partly)

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and 8 are true to my information based on records which I believe to be true and the rests are my humble submissions made before this Hon'ble Tribunal.

And I sign this affidavit on this Tenth day of May, 2004.

*Abdul Gani*  
Deponent.

Solemnly sworn before me by the  
deponent who is personally known to  
me on this 10th day of May, 2004.



*Abdul Gani*  
10/5/2004

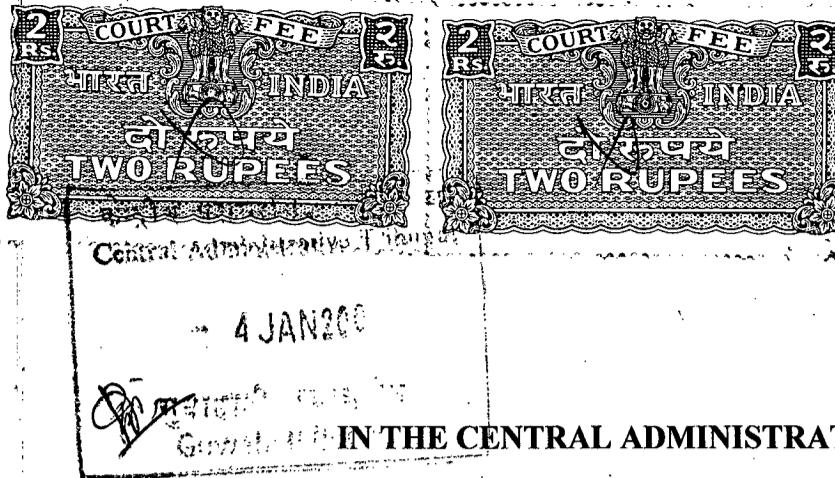
Magistrate.  
Kamrup District, Guwahati  
*Executive Magistrate,*  
*Kamrup, Guwahati,*

elephant - 16-9-2002  
D. P. ended

dropped

P 20

UPSC document-05-11-01  
(1) D. P. to sleep  
height 14' 6"



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**GUWAHATI BENCH : GUWAHATI**

**Contempt Petition No. 35/2003**

**In Original Application No. 260/2002**

**In the matter of :**

Sri Prasanta Pran Changkakati

----- Petitioner

-Versus-

Sri R.S. Prasad and anr.

----- Contemners

-AND-

**In the matter of :**

A compliance report in respect of the order dated 21.2.03 in OA no.260/2002, in the form of an affidavit on behalf of contemner No.2

(The affidavit on behalf of Contemner No.2)

I, Prem Prasad Varma, aged about 51 years, son of (Late) S.P. Varma, by profession service holder, resident of Khanapara, Guwahati P.S. Basistha, in the district of Kamrup, Assam, do hereby solemnly affirm and state as follows :

Filed by : - 53  
S/o P.P. Varma  
Contemner No. 2  
Jagran Singh  
Marina Das  
S/o Lila A. Devi  
eAT - 31/12/2005

54  
J. S. Grewal

1. That this deponent joined in the Department of Environment and Forest as Principal Secretary on 10.11.2003 when the contempt case C.P. 35/03 in O.A. 260/02 had already been filed. As such this Humble deponent was not in authority at the relevant time to comply with the orders of this Hon'ble Tribunal and he was impleaded in the Contempt Case at a later stage in pursuance of the order of this Hon'ble Tribunal dated 26.2.04. However, the matter relating to this case was brought to the notice of this humble deponent by his office on 28.11.2003 and soon thereafter, this deponent took steps for compliance of the said order dated 21.2.03 of the Hon'ble Central Administrative Tribunal.

2. That this deponent has narrated all relevant points in his affidavit-in-opposition filed on 10.5.2004, and also filed an affidavit regarding compliance on 9<sup>th</sup> September, 2004. This affidavit is complementary to these affidavits and has become necessary in view of the communication of UPSC dated 17<sup>th</sup> November, 2004 received recently by this deponent.

A copy of the communication dated 17.11.04 is annexed hereto and marked as Annexure 'A'.

3. That the deponent begs to quote the following portions from the order of the Hon'ble Central Administrative Tribunal dated 21.2. 2003 in OA No.260 / 2002 :-

*" 8. '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*

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Jaswant

*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.*

17. .... *The respondents are accordingly directed to take up the matter with right earnest for appointing the applicant to the Indian Forest 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 O.A.*

4. The deponent begs to state that the Hon'ble Tribunal held that the Integrity Certificate in question could not be held up after 16.7.2000. Accordingly, this deponent, after his joining in the department, placed the matter relating to issue of Integrity Certificate in proper perspective before the Chief Secretary, who is the competent authority to issue such certificates, and the same was issued in respect of the relevant period.

5. The deponent further begs to state that the Hon'ble Tribunal further directed the matter of promotion to be taken up in right earnest **in terms of regulation and pass orders in accordance with law.** The deponent, with the Integrity

to  
J. DeGraw

Certificate so issued, submitted a proposal on 22.7.04, to the UPSC in accordance with the provisions of the Regulation 6 and in particular, the sub regulation 6(iv) of relevant Regulations. May it be mentioned that this deponent has no authority under the regulations to pass any orders in the matter

6. This deponent begs permission to quote the relevant provisions of the Regulation 6 regarding submission of proposal which are as follows--

*“ 6. Consultation with the Commission- The list prepared in accordance with Regulation 5 shall then be forwarded to the Commission by the State Government alongwith –*

*(i) the records of all members of the State Forest Service included in the list;*

*(ii) the records of all members of the State Forest Service who are proposed to be superseded by the recommendations made in the list;*

*(iii) 1[\*\*\*];*

*(iv) the observations of the State Government on the recommendations of the Committee.*

*[6-A. the State Government shall also forward copy of the list referred to in Regulation 6 to the Central Government and the Central Government shall send their observation on the recommendations of the Committee to the Commission.]”*

S/2  
J. B. Gomes

7. That this deponent begs to submit that the proposal referred to above was submitted in accordance with the above said provisions of the Regulations, as directed by the Hon'ble Tribunal. It was necessary and unavoidable to furnish the observation of the state government as required under Regulation 6(iv) for consideration of UPSC.

8. That it is respectfully stated that the State Government has done its part within the scope of the provisions of the Regulations to comply with the order of Hon'ble Tribunal dt.21.2.2003. Further, this humble deponent understands that the order of the Hon'ble CAT has not put any restrictions in regard to the submission of the observations of the State Government based on facts and as are required to be submitted under the Regulations 6(4).

9. That thereafter a letter from UPSC was received by the Chief Secretary to the Govt. of Assam wherein it was stated that it is proposed to treat the State Government's letter dated 22.7.2004 and integrity certificate dated 16.6.04 as a request of the State Government made under Regulation 7(4) to make Sri Changkakati's inclusion in the select list of 2001 as unconditional. This letter further pointed out that the State Government may forward its comments on this proposal immediately and within 28.8.2004 failing which the Commission will presume that the State Government agrees with its proposal.

10. Thereafter, the deponent sent a fax message dt.25.8.2004 to the UPSC informing that the Commission can proceed with the proposal under the provisions of Regulation (7) including those under Regulation 7(2). The deponent begs to quote the Regulation 7(2) which reads as follows:

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

11. That this humble deponent begs to submit that the above quoted provision gives exclusive powers to the Commission to consider the views of the State and the Central Governments, modify the list if need be and finally approve the list as deemed just and proper.

12. That this deponent humbly begs to state that UPSC is insisting on submission of an unconditional proposal to declare the name of the applicant in the select list of 2001. In this context the humble <sup>deponent</sup> ~~petitioner~~ begs to submit that he has not attached any condition to the proposal though he has conveyed the observation of the State Government as permissible under regulation 6(iv). The suggestion of UPSC is <sup>not in agreement with the</sup> provision 6(iv) of the regulation and

L.G  
Jagdish

*the proposal submitted by this deponent  
is in accordance with the said  
provision. Moreover the observation of the State government  
are significantly relevant to the issue of promotion and it would  
not be proper to suppress the information contained in these  
observations.*

13. This humble deponent begs to submit that an unconditional proposal could have been submitted earlier before the adverse circumstances, as contained in the observations of the State Government, arose. As of now and since the joining of this deponent as Principal Secretary in the Forest Department on 10.11.2003, the circumstances have changed and several adverse events have taken place which are relevant to the conduct of the petitioner and this deponent has a bounden duty to report such events to the UPSC and the Central Government, in accordance with the provisions of the regulation 6(4) for appropriate decision in the matter. Accordingly, the proposal submitted by this deponent has included observation relating to these events along with the views of the State Government to which this deponent is entitled and which ought to be informed to UPSC and the Central Government for arriving at a just decision. Needless to mention that the regulations provide power to UPSC to accept or reject these views as they may consider just and proper.

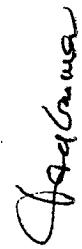
14. UPSC, in their letter of 17.11.2004, has also asked for a recent Integrity Certificate from the State Government. This

Jeebhawal

deponent begs to submit that in view of the contents of the observations of the State Government, no Integrity Certificate can be issued covering the present period, unless the adverse circumstances contained in these observations disappear. Moreover, the regulations do not provide for any such subsequent Integrity Certificate pertaining to period beyond the relevant period of selection for considering any case.

15. This deponent further begs to clarify that the notification regarding appointment of the officers of the State Forest Service to the Indian Forest Service is issued by Government of India in exercise of the powers conferred under Indian Forest Service (Recruitment) Rules, 1966 and the Indian Forest Service (Appointment by Promotion) Regulations, 1966. A copy of such an order issued on 28.2.2000, in an earlier case is enclosed as Annexure 'C' to substantiate this point. The State Government only reproduces in its official Gazette, the notification so issued by the Govt. of India. A copy of a notification dated 13.2.2001 issued by the State Government, which reproduces the notification of the Govt. of India dated 8.2.2001, is enclosed as Annexure 'D'.

16. It is submitted that the deponent having taken the steps as stated above, has now very little to do in the matter and it is for the UPSC to finalize the list and Govt. of India to issue a notification, as they may decide, which would be reproduced by the deponent as and when it is received by him. This deponent begs to submit that UPSC has the exclusive

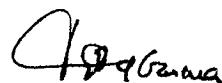


powers now to finalize the list as deemed just and proper by them and the Central Government can issue the notification accordingly thereafter.

17. That the deponent respectfully states that he had taken all necessary steps to comply with the Hon'ble Tribunal's order and there is no negligence or willful defiance at all on his part.

18. That the statements made in this affidavit and the statements made in paragraphs <sup>and 17</sup> 1, 7, 8, 11, 12, 15, are true to my knowledge; those made in paragraphs 2, 4, 5, 9 and 10 are true to my information based on records which I believe to be <sup>parts 13 and 16 after provisions of law</sup> true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this the 3rd January  
2005



..... Deponent  
(PREM PRASAD VARMA)

Solemnly sworn before me by the deponent who

is personally known to me on this  
the 3rd day <sup>Jan'</sup> 2005

03/1/2005

RECORDED  
03/1/2005

Gram : UNISERCOM  
Telex : 031-62677  
FAX : 011-23782049  
Email : upsc@vsnl.net.

- 10 -

Annexure 'A'

Most Immediate  
Court Case

File No.10/2/2004-AIS  
UNION PUBLIC SERVICE COMMISSION  
(SANGH LOK SEVA AYOG)  
DHOLPUR HOUSE, SHAHJAHAN ROAD  
New Delhi - 110 069

the 17<sup>th</sup> November, 2004

To

The Chief Secretary,  
Govt. of Assam,  
Dispur,  
Guwahati - 781 006.

[Kind Attn. : Shri P P Varma, Principal Secretary (Forests)]

Subject :- Inclusion of the name of Shri P P Changkakati in the  
Select List of 2001 for promotion to the IFS in compliance  
with the Orders dated 21.02.2003 of the Hon'ble CAT,  
Guwahati Bench in OA No.260/2002 - Regarding....

\* \* \* \* \*

Sir,

I am directed to refer to your FAX message dated 25.08.2004 (*the original letter has not been received so far*) on the subject.

2/40  
20/11/2004  
2. It may kindly be recalled that vide the State Govt's letter No. FRE.135/2002/Pt-III/26 dated 03.03.2004 (copy enclosed), it was informed that the State Govt have preferred an appeal against the Order dated 21.02.2003 of the Hon'ble CAT, Guwahati Bench in OA No.260/2002 filed by Shri P P Changkakati. The State Govt further informed, vide letter No. FRE. 109/94/Pt-III/174 dated 24.06.2004, that stay orders have not yet been obtained. The Commission, in its letter dated 29.09.2004, had requested the State Govt to furnish a copy of this Writ Petition which may kindly be forwarded to this office urgently by special messenger. The present status of the Writ Petition and on the stay orders, if any, may also kindly be furnished to this office.

3.1 Regarding implementation of the orders of the Hon'ble CAT dated 21.02.2003, the State Government have stated in their two letter Nos. FRE.135/2002/Pt-II dated 18.06.2004 and 22.07.2004 that on the basis of the conduct of the officer and the departmental proceedings against the officer, subsequent to the recommendations, they are of the considered opinion that Shri Changkakati is not at all suitable for appointment to the IFS.

25/10  
25/11/04

and now  
on 25/11/04  
will be  
done  
by  
then  
done

Suppl. E&F

Pl. discuss in 29/11

Doc C  
23/11

3.2 The State Government would be aware of the provisions of the Promotion Regulations for making an officer unconditional under Regulation 7(4) and this was made clear in the Commission's letter dated 12.07.2004. With reference to the instant case in hand, the following documents are required to be furnished to the Commission:-

- (i) The recent Integrity Certificate in respect of the officer proposed to be made as unconditional, duly signed by the Chief Secretary of the concerned State Govt.
- (ii) A proposal from the State Government under Regulation 7(4) of the Promotion Regulations with a *positive recommendation* to make the officer's inclusion in the Select List as unconditional so that the Govt. of India can take steps to appoint the officer to the IFS.

3.3 In the aforementioned letters of the State Govt dated 18.06.2004 and 22.07.2004, the State Government have only forwarded an Integrity Certificate relevant to the period for the Selection Committee held on 05.11.2001 and not as on date. The State Government have also not forwarded a proposal with a positive recommendation to include the officer unconditionally in the Select List of 2001.

3.4 It is thus evident that neither have the State Govt complied with the orders of the Hon'ble Tribunal by sending appropriate proposals in accordance with the provisions of the Promotion Regulations nor have they obtained stay orders in the Hon'ble High Court.

3.5. It is further observed from the letter of the Govt. of Assam, dated 27.08.2004 addressed to Smt. Manjula Das, Junior Govt. Advocate, that the State Government have taken the following stand:

*"It is clear that the State Government has done its part under the provisions of the Regulations in order to comply with the Hon'ble CAT's Order dated 21.02.2003. The remaining part to comply with the Order is to be undertaken by the UPSC and the Central Government, both of which are not under any control of the State Government. The Regulations also do not provide any authority to the State Government to take any step beyond the scope of Regulation 6."*

3.6 As such, the above stand of the State Government is not in congruity with either the orders of the Hon. CAT in O.A. No. 260/2002 (P.P. Changkakati's case) or with the scheme of the Promotion Regulations. *Regulation 6 which is mentioned by the State Govt in their letter dated 25.08.2004 is not relevant to the case at this stage.*

3.7 As already stated these orders of the Hon'ble CAT are to be complied with unless appealed against and stay orders obtained.

4. In view of the above, and in absence of the required proposal from the State Govt, the Commission is not in a position to consider the case of Shri Changkakati for his unconditional inclusion in the Select List of 2001 in accordance with the provisions of the IFS (Appointment by Promotion) Regulations, 1966.

5. In this context, it may also be recalled that the SCM for 2004 has not been held so far as the orders of the Hon. CAT in O.A. No. 260/2002 has not yet been complied with. The State Govt's attention is also drawn to the order dated 26.03.2004 of the Hon. CAT Guwahati Bench in Contempt Petition No. 14/2004 in O.A. No. 337/2002 filed by Shri M. Kalita regarding the delay in preparing the Select Lists of 2002 onwards. The Tribunal in these orders have stated as follows:-

*"The facts given above and some more facts given in the reply of Respondent No. 4 shows that the Selection Committee could not proceed in the matter due to various reasons for which the UPSC cannot be held responsible... .... the main delay is caused because of the delayed action of the State Government."*

6. Thus in view of what has been stated above, it is evident that the orders in O.A. No. 337/2002 (M Kalita's case) to convene the SCM for the IFS Assam Cadre cannot be implemented unless the orders in O.A. No. 260/2002 (P.P. Changkakati's case) are implemented or stayed. This assumes importance since the State Government have also included Shri Changkakati's name in the eligibility list for 2002 and onwards and this may lead to further legal complications.

7. In view of the two orders of the Hon. CAT in OA Nos. 337/2002 and 260/2002, it would be necessary for the State Government to obtain stay orders in P.P. Changkakati's case from the Hon'ble High Court urgently, in the first instance. This may kindly be accorded Priority as the next date of hearing in the Contempt Case C.P. No. 35/2003 is understood to be on 14.12.2004.

8. The State Government may kindly keep the Commission apprised of the developments in the Contempt Case as also the Writ Petition.

Yours faithfully,



(Molly Tiwari)  
Under Secretary (AIS)  
Union Public Service Commission  
Tel.23382724

(TO BE PUBLISHED IN PART-I SECTION 2 OF THE GAZETTE OF INDIA)

F. No. 17013/02/99-IFS-II

Government of India

Ministry of Environment and Forests

Parivaran Bhavan,  
CGO Complex, Lodhi Road,  
New Delhi - 110003

Dated, the 28th February, 2000.

NOTIFICATION

In exercise of the powers conferred by sub-rule(1) of rule 8 of the Indian Forest Service (Recruitment) Rules, 1966 read with sub-regulation (1) of regulation 9 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, the President is pleased to appoint the undermentioned seven officers of the State Forest Service of Assam to the Indian Forest Service with immediate effect and to allocate them to the Assam-Meghalaya Joint Cadre of the Indian Forest Service under sub-rule (1) of rule 5 of the Indian Forest Service (Cadre) Rules, 1966.

S.No.	Name of the officer	Date of Birth
01.	Sh. Nagen Das.	01.06.1943
02.	Sh. N.K. Sarma	01.05.1947
03.	Sh. H.K. Saikia	01.02.1947
04.	Sh. P.S. Das	02.12.1952
05.	Sh. S. Nayak	19.02.1955
06.	Sh. P.N. Bordoloi	17.02.1955
07.	Sh. A.S. Laskar	01.03.1954

Commission Points

01.	Sh. Nagen Das.	01.06.1943
02.	Sh. N.K. Sarma	01.05.1947
03.	Sh. H.K. Saikia	01.02.1947
04.	Sh. P.S. Das	02.12.1952
05.	Sh. S. Nayak	19.02.1955
06.	Sh. P.N. Bordoloi	17.02.1955
07.	Sh. A.S. Laskar	01.03.1954

Office of the Secretary  
Government of Assam  
Forest Department  
Guwahati  
Assam  
Dated: 28.2.2000  
Signature  
8/3

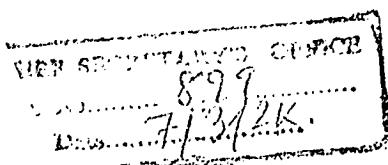
*CSA*  
(R. Sanehwal)  
Under Secretary to the Govt. of India

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The Manager,  
Govt. of India Press,  
Fardibabad (Haryana)

Distribution:

1. The Chief Secretary, Government of Assam, Dispur.
2. The Secretary, Forest Department, Government of Assam, Dispur.
3. The Principal Chief Conservator of Forests, Assam, Guwahati with a spare copy for the officer concerned.
4. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
5. The Accountant General, Assam, Dispur.
6. Guard File.



9/6/2000  
8/3/2000

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT :::: DISPUR

## ORDERS BY THE GOVERNOR

## NOTIFICATION

Dated Dispur, the 13th February/2001.

NO.FRE:109/94/Pt.I/116 : The following Notification of Govt. of India is reproduced for general information.

"Notification No.17013/02/2000-IFS-II, dtd.8th February, 2001, issued by the Govt. of India, Ministry of Environment and Forests.

## NOTIFICATION

In exercise of the powers conferred by sub-rule(1) of Rule 8 of the I.F.S.(Recruitment)Rules,1966 read with sub-regulation(1) of Regulation 9 of the IFS(Appointment by Promotion)Regulations,1966, the President is pleased to appoint with immediate effect the undermentioned three officers of the State Forest Service of Assam to the Indian Forest Service against existing vacancies and to allocate them to the Assam-Meghalaya Joint Cadre of the Indian Forest Service under sub-rule (1) of Rule 5 of the IFS(Cadre)Rules,1966.

S.No.	Name of the officer	Date of Birth
01	Shri P. Kotoky	01-11-1952
02	Shri R. Bhattacharjee	18-05-1952
03	Shri S. Ahmed	23-03-1959

Sd/- R. Sanchwal,  
Under Secretary to the Govt. of India.

Sd/- Md. Eunus,  
Joint Secretary to the Govt. of Assam,  
Forest Department, Dispur.

Memo No.FRE:109/94/Pt.I/116-A, Dated Dispur, the 13th February/2001.

Copy to :-

1. The Accountant General(A&E) Assam, Beltola, Maidamgaon, Guwahati-28.
2. The Principal Chief Conservator of Forests, Assam, Rehbari, Guwahati-8.
3. The Principal Secretary to the Govt. of Meghalaya, Forest and Environment Department, Shillong.
4. The Principal Chief Conservator of Forests, Govt. of Meghalaya, Shillong.
5. The Under Secretary to the Govt. of India, Ministry of Environment and Forests, C.G.O. Complex, Lodhi Road, New Delhi-110003.
6. The Chief Conservator of Forests (Social Forestry) Assam, Guwahati-24.

MARK. - ( 2 )

7. The Chief Conservator of Forests (Wildlife) Assam, Rehbari, Guwahati-8.
8. The Chief Conservator of Forests (Territorial) Assam, Panbazai, Guwahati-1.
9. The Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati-24.
10. The Director, Indra Gandhi National Forest Academy, Dehradun, P.O. Newkheri, Pin-248036.
11. The Director, Lal Bahadur Shastri National Academy of Adminn., Mussoorie.
12. The Conservator of Forests.
13. Personnel (A) Department, Dispur, Guwahati-6.
14. Shri P. Kokoky, DCF, Instructor, North East Forest Rangers' College, Jalukbari, Guwahati-14.
15. Shri R. Bhattacharjee, D.F.O., Assam State Zoo Division, Guwahati-5.
16. Shri S. Ahmed, D.F.O., Logging Division, Guwahati.
17. The P.S. to the Chief Minister, Assam, Dispur for information of the Chief Minister.
18. The P.S. to Minister of State Forests, Assam, Dispur for information of the Minister.
19. The P.S. to Chief Secretary, Assam for information of the Chief Secretary.
20. The Deputy Director, Assam Govt. Press, Bamunimaidam, Guwahati-21 for publication of the Notification in the next issue of the Assam Gazette.
21. Personal file of the officers.

By order etc.,

( A.P. Md. Eunus )  
Joint Secretary to the Govt. of Assam,  
Forest Department, Dispur.