

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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disposed Date- 03/06/03

O.A/T.A No. 29/2003
R.A/C.P No. 17/05
E.P/M.A No. 40/03

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SECTION OFFICER (Judl.)

(RULE - 4)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
.....

ORDER SHEET

Original Application No. 39/03

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (s) Subrata Chandling

- Vs. -

Respondent (s) W.O.P. Tom

Advocate for the applicant (s) M. Chanda, G.M. Chakrabarty

Advocate for the respondent (s) CGSE

Notes of the Registry	Date	Order of the Tribunal
<p>This application is to be put not in the order of the filed for Rs vide 1. 7660833 Dated 25.2.03</p> <p><i>mb</i></p> <p><i>Steps taken without envelopes.</i></p> <p><i>Notice prepared and sent to Dls for inv. the respondent NO 1 to 8 by Regd AD. along with MP. 48/03</i></p> <p><i>2/11/03 DINo 674681 dt 10/4/03</i></p>	<p>12 3.2003</p> <p>21.3.2003</p> <p>3.4.2003</p> <p><i>mb</i></p>	<p>Pass over and put ^{up} again on 21.3.2003 for admission.</p> <p>On the prayer of Mr. M.Chanda, learned counsel for the applicant, the case is adjourned to take necessary steps on the matter. List on 3.4.2003 for admission.</p> <p>List on 6.5.2003 alongwith M.P. 39/2003 for admission.</p>
		<p><i>[Signature]</i> Vice-Chairman</p>
		<p><i>[Signature]</i> Vice-Chairman</p>
		<p><i>[Signature]</i> Vice-Chairman</p>

Respondent No 8.
Notice return due
to "Such name is not
available as mark
by the Deptt."
9/5/03

6.5.2003 Present : The Hon'ble Mr. Justice
D.N. Chowdhury,
Vice-Chairman.
The Hon'ble Mr. S. Biswas
Member (A).

Await service report.
Put up again on 3.6.2003 for
admission.

S. Biswas
Member


Vice-Chairman

mb

3.6.2003 Heard Mr. M. Chanda, learned
counsel for the applicant and also Mr.
A. Deb Roy, learned Sr. C.G.S.C. for
the respondents.

The application is admitted.
Call for the records.

List again on 2.7.2003 for
orders.


Vice-Chairman

mb

No written statement
has been filed.

2.7.2003 On the prayer of Mr. A. Deb Roy,
learned Sr. C.G.S.C. for the respondents,
four weeks time is allowed to the respon-
dents to file written statement. List
again on 8.8.2003 for orders.


Vice-Chairman

mb

11-8-03
N/A submitted
by the Respondents

8.8.2003. Pleadings are complete. The
case may now be listed for hearing
on 16.9.2003. The applicant may
file rejoinder if any within two
weeks.


Member


Vice-Chairman

lm

O.A. 39/2003

Office Note	Date	Tribunal's Order
	16.9.2003	<p>Present : The Hon'ble Sri K.V. Prahaladan, Member (A).</p> <p>No Division Bench is sitting today. Put up the matter again on 23.10.2003 for hearing.</p> <p><i>K.V. Prahaladan</i> Member</p>
<p>6.10.03</p> <p>Rejoinder Submitted by the applicant is reply to W/S.</p> <p><i>mb</i></p>	23.10.03	<p>There is no Bench today. Adjourned to 3.12.03.</p> <p><i>mb</i></p>
	23.12.2003	<p>Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman. The Hon'ble Sri K.V. Prahaladan, Member (A).</p> <p>Mr. M. Chanda, learned counsel appearing for the applicant made a prayer for adjournment as he has some personal difficulties today. Therefore, the matter is adjourned for some other date. Accordingly let it appear on 12.2.2004.</p> <p><i>mb</i></p> <p><i>Member</i> <i>Vice-Chairman</i></p>

Office Note

Date

Tribunal's Order

23.12.2003 Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
The Hon'ble Mr. K.V. Prah-
ladan, Member (A).

Mr. M. Chanda, learned counsel appearing for the applicant made a prayer for adjournment of the case as he has some personal difficulties today. There-
for, the matter is adjourned. Let it appear on 12.2.2004 for hearing.

K.V. Prah-ladan
Member

B
Vice-Chairman

mb

17.6.04

Hearing concluded. Order reserved.

By order
P.M.
17.6.04

28.7.2004

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

ag 16/8

K.V. Prah-ladan
Member (A)

17.8.05

Copy of the judgment has been sent to the office for issuing the same to the applicant by post.

mb

SS

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./RXX.No. 1111 39 of 2003

DATE OF DECISION 28.7.2004

Shri Subrata Chowdhury

.....APPLICANT(S).

Mr M. Chanda and Mr G.N. Chakraborty

.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

Union of India and others

.....RESPONDENT(S)

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

.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MRS BHARATI RAY, JUDICIAL MEMBER

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? yes B
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 Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.39 of 2003

Date of decision: This the 28th day of July, 2004

The Hon'ble Smt Bharati Ray, Judicial Member

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

Shri Subrata Chowdhury.

Inspector,

Headquarter Audit Unit,

Central Excise,

Bhangagarh, Guwahati.

.....Applicant

By Advocates Mr M. Chanda and Mr G.N. Chakraborty.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Chairman,
Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

3. The Commissioner of Central Excise,
Morellow Compound, Shillong.

4. The Regional Director,
Staff Selection Commission,
Rukminigaon, Guwahati.

5. Sri Abdul Kader Zilani (PR),
Anti Evasion Division,
Central Excise, Guwahati.

6. Sri Meitram Indramoni Singh (DR),
Customs Divisional Office,
Imphal, Manipur.

7. Sri Sankar Pratim Deb (DR),
Office of the Commissioner of Customs,
Customs Headquarter,
Shillong.

8. Sri Santosh Seal (PR),
Inspector,
Office of the Commissioner of Customs,
Customs Headquarter,
Shillong.

.....Respondents

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

.....

O R D E RBHARATI RAY, JUDICIAL MEMBER

Heard Mr M. Chanda, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. None appeared for respondent Nos.5 to 8.

2. It is the case of the applicant that he alongwith others appeared in the examination for Inspector of Income Tax, Central Excise, conducted by the Staff Selection Commission in the year 1984 and was called for an interview (Viva) on 17.4.1985 vide letter dated 26.3.1985. The applicant appeared in the viva voce test on 17.4.1985. He was found suitable for the post of Inspector and accordingly selected by the Staff Selection Commission and his name was recommended by the Commission to the office of the Collector now redesignated as Commissioner. Thereafter, the applicant was asked by the Office of the Commissioner, Shillong to appear in the Physical test on 1.10.1985 vide letter dated 13.9.1985. Accordingly, the applicant appeared in in the physical test on 1.10.1985 alongwith the other batch mates. It is the grievance of the applicant that the other candidates who appeared in the interview alongwith the applicant were recruited in the month of October 1985, but the applicant was offered the appointment only in the month of January 1988 after a lapse of more than two years for no fault on the part of applicant. Accordingly, the applicant joined the post of Inspector on 1.3.1988 after completion of all necessary formalities. It is also the grievance of the applicant that respondent Nos.5 to 8 are either direct recruitees of the subsequent batch of the applicant or promoted to the grade of Inspector after the applicant's batchmates were

appointed and all of them were placed above the applicant in the seniority list. As a result, the direct recruitees and the promotees, namey the private respondent Nos.5 to 8 alongwith some others were placed above the applicant and they became appointees in between October 1985 and 28.2.1988. Consequently, the private respondent Nos.5 to 8 have been placed above the applicant in the seniority list of Inspectors published as on 1.5.2001 and placed at serial nos.256 to 259 and other juniors of the applicant have been placed thereafter in the said seniority list, whereas the name of the applicant has been shown at serial No.340. The seniority list published as on 1.5.2001 has been annexed as Annexure-1 to the O.A.

3. The applicant submitted a detailed representation on 10.1.2002 addressed to the Commissioner of Central Excise, praying inter alia for fixation of his seniority as per the merit list of 1985 panel with all consequential benefits. In the said representation he has also stated that a large number of direct recruits as well as promotee Inspectors including some of the Inspectors who were empanelled for recruitment in the year 1988 have been placed above the applicant in the seniority list published as on 1.5.2001. Reminders was also sent by the applicant on 8.3.2002 and 17.5.2002 praying for correct fixation of his seniority in the cadre of Inspectors placing him above the respondent Nos.5 to 8 in the seniority list published as on 1.5.2001. The applicant further submitted that the respondents without replying to the representation made by the applicant issued another seniority list of Inspectors as on 1.4.2002, wherein the name of the private respondent Nos.5 to 8 have been placed above the applicant at serial Nos.250 to 253 and the other juniors of the applicant.....

applicant have also been placed above the applicant in the impugned seniority list published as on 1.4.2002. In the same seniority list the applicant is placed at serial No.334. Being aggrieved by the wrong fixation of seniority of the applicant in the cadre of Inspectors, the applicant approached the authority for redressal of his grievance, but finding no favourable response from the respondents he has approached this Tribunal seeking the following reliefs:

1. To direct the respondents to refix the seniority of the applicant placing him above the respondent Nos.5 to 8 in the cadre of Inspectors and to further direct the respondents to count his seniority alongwith the recruitees of 1985 batch for the purpose of his promotion to the next higher grade.
2. To direct the respondents to recast the seniority list of Inspectors published as on 1.5.2001 and the subsequent seniority list if published placing the applicant above the respondent Nos.5 to 8.
4. The respondents have contested the application by filing counter reply. It is the case of the respondents that in the year 1988, 102 candidates were called for physical test out of which 82 appeared and ultimately 62 candidates could qualify the physical test. The applicant who qualified the written as well as the viva voce test alongwith the others failed to meet the chest measurement conducted by the North Eastern Police Academy and his case for appointment was rejected. Subsequently, the Dossiers of the rejected candidates who failed to qualify the physical test were forwarded to the Board in May 1986. Immediately on receipt of the dossiers, the Board issued revised guidelines vide letter dated 10.9.1986 on the physical.....

physical standard test with direction to the Commissioner, Central Excise, Shillong to review in the light of such instructions issued by the Board of all such rejected cases. Thereafter the case of the rejected candidates were reviewed, out of which five candidates including the applicant were found fit for appointment which was forwarded to the Board on 14.8.1987. The Board vide letter dated 16.11.1987 approved their appointments provided they were found fit in all respects as per the instructions of the Board. The appointment letter was issued to the applicant on 6.1.1988 and the applicant joined on 1.3.1988. It is, therefore, the contention of the respondents that in these circumstances when the applicant who, prima facie did not have a chance of appointment got the offer of appointment on exceptional circumstances in 1988 whereas the private respondents although selected on the basis of subsequent examination were offered appointment in 1985 and onwards. Hence the applicant could not claim seniority over the private respondents and the application deserves to be dismissed.

5. The learned counsel for the applicant strenuously argued that the seniority of the applicant had been fixed arbitrarily below his batch mates who were subsequently recruited directly to the post of Inspector as well as on promotion. It is the contention of the learned counsel for the applicant that the settled position of law is that seniority is required to be fixed on the basis of select list/recruitment year. xxxxxxxxx

xx It is his contention that seniority of a selected candidate of an earlier batch cannot be fixed below the recruitees of subsequent batch

as.....

as per the relevant rule. In this context, the learned counsel for the applicant mentioned the provisions contained in D.P. & A.R. O.M. No.9/23/7/E & A (1) dated 6.6.1978, according to which the applicant is entitled to be placed above the respondent Nos.5 to 8 in the seniority list in the grade of Inspector. The learned counsel for the applicant has drawn our attention to the relevant rules of Seniority of Direct Recruits and Promotees, i.e. para 2.1 and 2.2 enclosed as Annexure-6 to the O.A. Paras 2.1 and 2.2 are reproduced below:

"2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

2.2 Where promotions are made on the basis of selection by a DPC, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him."

The learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Dalilah Sojah Vs. State of Kerala and others, reported in (1998) 9 SCC 641, wherein it was held that the select list that was prepared earlier and was still alive when vacancies arose, the applicant could not be made to suffer on account of delay in her appointment and since she was selected earlier she has to be ranked senior to those who were selected subsequently. He has also relied upon the judgment of the Central Administrative Tribunal, Full Bench, Jaipur in O.A.No.121 of 1991 decided on 16.7.1996, wherein.....

wherein it was held that refusal to grant the benefit of seniority to those officials who passed the examination in an earlier year is illegal and in violation of Articles 14 and 16 of the Constitution.

6. We have given our anxious consideration to the arguments put forth by the learned counsel for the parties. We have also gone through the materials placed before us and the judgments relied upon by the learned counsel for the applicant.

7. It can be seen from para 3 of the counter reply that the process of selection of Inspectors consists of three stages, i.e. (i) Written test, (ii) Viva voce test and (iii) Physical test including walking, cycling etc. It is not in dispute that the applicant qualified in the written test as well as in the viva voce test, but the applicant was not found fit in the physical test first time for selection to the post of Inspector. But, subsequently he was found fit in the physical test as per the revised guidelines issued on 10.9.1986. Thereafter the applicant was offered appointment on 6.1.1988 and he joined on 1.3.1988. It is not the case of the respondents that the applicant was subjected to appear in the written test and viva voce test in the subsequent selection proceedings. As mentioned above, there are three stages in the entire selection proceeding and it concludes when one qualifies in the three tests. The applicant was found suitable and was given appointment only when he was found fit in the three stages, i.e. after he qualified in the physical test. Therefore, there is no dispute that the applicant was appointed from the select list of 1984-85. That being the position, in no way the applicant can be said to have been appointed from the subsequent select list.....

8,


list, i.e. select list prepared in between 1985 and 1988.

8. As per the rule of recruitment, the seniority of direct recruits and promotees are determined by the order of merit in which they are selected for such appointment on the recommendation of the Union Public Service Commission or any other selecting authority, the persons appointed as a result of an earlier selection being senior to those being appointed as a result of a subsequent selection. The applicant was not responsible for the delay in reviewing his physical fitness. As stated earlier, the applicant was selected and appointed from the 1984-85 selection. In this context we have seen that this Tribunal in O.A.No.264 of 1998 (Shri S.S. Purkayastha Vs. Union of India and others) decided on 25.1.2001, referred to by the learned counsel for the applicant, had considered the above rules of recruitment/seniority and also ^{that} that the applicant was not responsible for the delay in sending the nomination, held that there was no justifiable reason for not giving the applicant therein the benefit of seniority as per the date of selection. The relevant paragraph of the above judgment is reproduced below:

"From the facts alluded above, it emerges that the applicant was a candidate recruited on the basis of the 1987 selection. Undoubtedly, there was delay in sending the nomination by the SSC so far the applicant was concerned, for which the applicant could not be blamed. According to the respondents also the applicant did not have any hand in the delay. In the circumstances there was no justifiable reason for not giving the applicant the benefit of the rule as per the date of selection since the applicant is one of the nominee selected on the basis of the 1987 Select List and considered his case for promotion before considering the promotion of the subsequent batch and seniority was also to be refixed on the basis of the earlier selection."

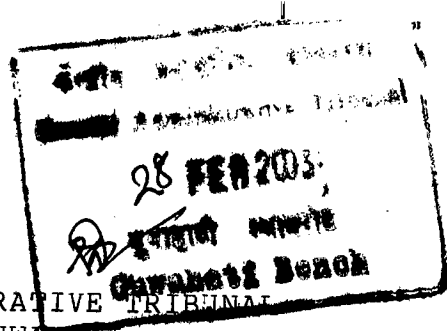
9. In view of the above facts and circumstances of the case and the judgments referred to above, we hold that the respondents were not justified in placing the applicant in the seniority list below respondent Nos.5 to 8, who, admittedly became appointees between October 1985 and 28.2.1988. Herein, in this case the applicant also cannot be held responsible for the delay in reviewing his physical fitness. We, therefore, direct the respondents to fix the seniority of the applicant by placing him above respondent Nos.5 to 8 in the seniority list in the cadre of Inspector and extend the consequential benefits that accrue from such re-fixation of his seniority as per rules.

The O.A. is allowed to the extent indicated above. However, there shall be no order as to costs.


(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(BHARATI RAY)
JUDICIAL MEMBER

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



17
Filed by the applicant
through advocate
G. N. Chakravarty

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

O.A.No.....39...../2003

Shri Subrata Chowdhury

-Vs-

Union of India and others

26.3.1985 : The applicant was called for an interview (Viva) following his appearance in the examination for Inspector of Income Tax, Central Excise etc. conducted by the Staff Selection Commission in 1984.

17.4.1985 : Applicant appeared in the Viva-Voce test and was found suitable and his name was recommended by the SSC.

13.9.1985 : Applicant was asked to appear for Physical Test on 1.10.1985.

1.10.1985 : Applicant appeared in the Physical Test.
13.9.1985 with his other batchmates on 13-9-1985.

October 1985: That similarly situated candidates who appeared alongwith the applicant in the examination were recruited to the

.....contd/-

18

: 2 :

post of Inspector under the then
Collectorate of Shillong in the month of
October 1985.

6-1-1988 : That the offer of appointment letter was
issued to the applicant in the month of
January 1988 after a lapse of more than
2 years without any fault on the part of
the applicant.

1-3-1988 That the applicant joined in service on
1-3-1988 after completion of necessary
formalities.

February, : That the respondent Nos.5 to 8 who were
1988 recruited in between October 1985 and 28
February 1988 i.e. prior to the date of
joining of the applicant declared senior
to the present applicant and they are
placed in between serial Nos.256-259 and
other juniors of the present applicant
have been placed thereafter in the said
seniority list published as on 1-5-2001
whereas the name of the applicant has
been shown at serial No.340 in the said
list of seniority list. As per the
relevant Seniority Rules a selected
candidate of an earlier batch cannot be
fixed below the recruitees of subsequent

.....contd/-

batch, the said provisions are contained in DPCAR O.M.No.9/23/7/E&ACD) dated 6-6-1978 similar issues decided by this Tribunal in O.A.No.264/1993 (S.S. Purkayastha Vs. Union of India and others). Therefore, the seniority of the applicant is liable to be fixed above respondent Nos.5 to 8 and other juniors who were directly recruited or promoted prior to joining of the applicant.

12-4-1994 : Similar issue of seniority was decided by the respondents in the case of Shri P. Deb, Inspector.

10-1-2002 : That the applicant submitted
8-3-2002 representations in the light of the O.M.
17-5-2002 dated 6-6-1978 and 3-7-1986 for correct fixation of his seniority above the respondent Nos.5 to 8 but to no result.

Prayer :

- 8.1 That the Hon'ble Tribunal be pleased to direct the respondents to re-fix the seniority of the applicant placing him above the respondent nos.5 to 8 in the cadres of Inspectors and further be

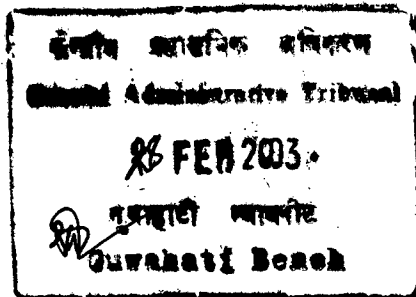
.....contd/-

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: 4 :

pleased to direct the respondents to count his seniority along with the recruitees of 1985 batch for the purpose of his promotion to the next higher grade.

- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to recast the seniority list of Inspectors published as on 1.5.2001 and the subsequent seniority list if published placing the applicant above the respondent nos.5 to 8.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

Title of the case : O. A. No. 39 /2003
Sri Subrata Chowdhury : Applicant
- Versus
Union of India & Others: Respondents.

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Date 27-2-2003

Filed by

G.M. Chakraborty
Advocate

Subrata Chowdhury

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

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

O. A. No. 39 /2003

BETWEEN

Sri Subrata Chowdhury
Inspector
Headquarter Audit Unit
Central Excise,
Sethi Trust Building,
4th Floor, Bhangagarh,
Guwahati-781005

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance, Department of Revenue
New Delhi.
2. The Chairman,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.

Subrata Chowdhury

3. The Commissioner of Central Excise
Morellow Compound,
Shillong-793001
4. The Regional Director
Staff Selection Commission
Rukminigaon,
Guwahati.
5. Sri Abdul Kader Zilani(PR)
Anti Evasion Division,
Central Excise, Guwahati.
6. Sri Meitram Indramoni Singh(DR)
Customs Divisional Office
Imphal, Manipur.
7. Sri Sankar Pratim Deb,(DR)
Office of the Commissioner of Customs,
Customs Headquarter,
Shillong.
8. Sri Santosh Seal (PR)
Inspector,
Office of the Commissioner of Customs,
Customs Headquarter,
Shillong.

...Respondents.

DETAILS OF THE APPLICATION

Patata Choudhury

1. Particulars of order(s) against which this application is made.

This application is made not against any particular order but due to non consideration of the prayer of the applicant for re fixation of his seniority in the cadre of Inspector above the private respondents in terms of the D.O.P.T. Office Memorandum No.No. 22011/7/86-Estt.(D) dated 3.7.1986 and also praying for a direction upon the respondents to consider the case of the applicant ⁶⁰² re fixing the seniority above the [?] respondent nos. 5 and 6 with all consequential service benefits.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

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

4. Facts of the Case.

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

Pankaj Choudhary

4.2 That your applicant is presently working as Inspector, in the office of the Headquarter, Audit Unit, Central Excise, Guwahati under the administrative control of Commissioner, Central Excise, Shillong.

4.3 That your applicant appeared in the examination for Inspectors of Income Tax, Central Excise, etc. conducted by the Staff Selection Commission in the year 1984 and was called for an interview (Viva) on 17.4.1985 vide their letter dated 26.3.1985. The applicant accordingly appeared in the viva voce test on 17.4.1985 and was found suitable for the post of Inspector and accordingly selected by the Staff Selection Commission and his name was recommended by the Commission to the office of the Collector now re designated as Commissioner. However, thereafter the applicant was asked by the office of the Commissioner, Shillong to appear in the Physical test on 1.10.1985 in Shillong vide letter C.No.II (31) 23/ET-II/85/25827 (0) dated 13.9.1985. The applicant accordingly appeared in the physical test on ~~13.9.1985~~ ^{1.10.1985} along with the other batch mates but surprisingly the other candidates (Direct Recruit) who appeared in the interview along with the applicant were recruited in the month of October, 1985 but the present applicant was offered his appointment only in the month of January, 1988 after a ⁶⁻¹⁻⁸⁸ lapse of more than two years without any fault on the part of the applicant and accordingly ^{he} ~~the~~ joined the

Subrata Choudhury

post of Inspector on 1.3.1988 after completion of all necessary formalities.

- 4.4 That it is stated that the other candidates who were also appeared in the physical test on 1.10.1985 along with the applicant were offered appointment immediately and they joined the department as Inspector in October, 1985 itself. However, the applicant was not offered any appointment along with the other batch mates for the reasons best known to the respondents. It is pertinent to mention here that respondents nos. 5 to 8 are either direct recruitee of subsequent batch of the applicant or promoted to the grade of Inspector after the applicant's batchmates were appointed and all of them were placed above the applicant in the seniority list. Thus respondent nos. 5 to 8 along with S/Sri Prabir Kumar Sen, Nakibur Rahman, Tarak Chandra Mazumdar, Ratul Chandra Das, Debashis Banerjee, Audesh Kr. Singh, all have been shown as senior to the applicant. As a result some of the direct recruits and promotees namely the respondent nos 5 to 8 along with others named above became the appointee in between October 1985 and 28th February, 1988 either by way of direct recruits or by way of promotion and their seniority accordingly given from the date of their respective date of appointment i.e. in between October 1985 and 28th February 1988 i.e. from the date of their respective date of joining in the cadre of Inspector. As a result the respondent nos. 5 to 8 and other

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Inspectors whose names are indicated above became senior to the present applicant in the cadre of Inspector. In this connection it may be stated that from the seniority list of Inspector published as on 1.5.2001 it would be evident that respondent nos. 5 to 8 have been placed at serial no. 256 to 259 and other juniors to the applicant have been placed thereafter in the said seniority list whereas name of the present applicant has been shown at serial no. 340 in the said list of seniority.

A copy of the extract of seniority list published as on 1.5.2001 is annexed as **Annexure-1**.

- 4.5 That it is stated that most surprisingly the applicant given the offer of appointment in the month of January, 1988 by the then Collectorate now re-designated as Commissionerate, Customs and Central Excise Shillong vide letter bearing No. C.No. II(31)1/ET-II/86/11-13(C) dated 6.1.1988. In pursuant to the aforesaid offer of appointment letter the applicant joined the post of Inspector on 1.3.1988 after completion of all the necessary formalities. Due to belated appointment without any fault on the part of the applicant he cannot be made sufferer by fixing wrong seniority position. The seniority of the applicant has been fixed arbitrarily below his batch mates who were subsequently recruited directly to the post of Inspector as well as on promotion. It is a settled position of law that seniority is required to be fixed

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subsequently recruited directly to the post of Inspector as well as on promotion. It is a settled position of law that seniority is required to be fixed on the basis of select list/recruitment year. Seniority of a selected candidate of an earlier batch cannot be fixed below the recruitees of subsequent batch as per the relevant rule holding the filed at present. It is pertinent to mention here that as per provisions contained in D.P & A.R. O.M. No. 9/23/7/E & A (D) dated 6.6.1978 is applicable in the instant case of the applicant and accordingly the applicant is entitled to be placed in the seniority list above the respondent nos. 5 to 8 in the grade of Inspector. Similar issue was also raised before the Hon'ble Tribunal in O.A. 264/1998 (Sri S.S. Purkayastha & Ors. Vs. Union of India & Ors.) and the said O.A. was finally decided by this Hon'ble Tribunal in favour of that applicant.

The applicant urge to produce the judgment and order passed in O.A. No. 264/1998 before the Hon'ble Tribunal at the time of hearing.

- 4.6 That your applicant begs to state that due to belated appointment the applicant became much junior to his batch mates who appeared and came out successfully in the examination for recruitment to the post of Inspector in the year 1984-85 conducted by the Staff Selection Commission during the year 1984-1985 as well as a large number of promotees who were promoted to the

Purkayastha Chandhury

4.7 That your applicant being highly aggrieved for wrong fixation of seniority in the cadre of Inspector approached the competent authorities on several occasions for correct fixation of his seniority in the cadre of Inspector treating him the qualified candidate for the 1984-85 batch along with the other direct recruit candidates. In this connection it may be stated that the applicant submitted a detail representation on 10.1.2002 addressed to the Commissioner of Central Excise, praying inter alia for fixation of his seniority as per the merit list of 1985 panel with all consequential benefits. In the said representation he has also stated that a large number of direct recruits as well as promotee Inspectors including some of the Inspectors who were empanelled for recruitment in the year 1988 have also been placed above him in the seniority list published as on 1.5.2001.

The applicant finding no response submitted representations on 8.3.2002, 17.5.2002 praying inter alia for correct fixation of his seniority in the cadre of Inspector placing him above the respondent nos. 5 to 8 in the seniority list published as on 1.5.2001, but to no result.

Copy of the representations dated 10.1.2002, 8.3.2002, and 17.5.2002 are annexed as Annexure 2,3, and 4 respectively.

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4.8 That most surprisingly the respondents did not take any steps on the prayer of the applicant for correction of his seniority in the list as stated above but surprisingly the respondents have issued another seniority list of Inspectors working under the Commissionerate of Customs in the North Eastern Region as on 1.4.2002 wherein the name of the private respondent nos. 5 to 8 have been placed above the applicant at serial nos. 250 to 253 and the other juniors of the applicant whose names have been indicated in the preceding paragraphs have also placed above the applicant in the impugned seniority list published as on 1.4.2002. Be it stated that the applicant is placed in the impugned seniority list at serial no. 334. Being aggrieved by the wrong fixation of seniority of the applicant in the cadre of Inspector he had approached the authority for redressal of his grievances but finding no favourable response from the respondents the applicant in the compelling circumstances approaching the Hon'ble Tribunal for redressal of his grievances, more particularly for setting aside the impugned seniority list published as on 1.5.2001 as well as on 1.4.2002 and also praying for a direction upon the respondents to re fix his seniority by placing him above the respondent nos. 5 to 8 treating him the direct recruit candidate of 1985 batch otherwise it will cause irreparable loss and injury to the service career of the applicant more particularly in the matter of promotion to the next

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higher post and as such cause of action in the case arises in each day, month and the same will continue till the correct fixation of his seniority is made.

- 4.9 That in the similar facts and circumstances the office of the Commissionerate of Customs and Central Excise, Shillong re fixed the seniority of Inspectors who were selected in the year 1983 but appointed during the year 1986 whereas 1984 batch of Inspectors were appointed at the relevant time prior to appointment of 1983 batch of selected candidates vide Commissionerare letter bearing No. C.No. II(34)10/ET-I/93/4964-69(A) dated 12.4.1994. It is pertinent to mention here that in a similar situation, the seniority of Sri Swapnatur Mahanta, Inspector whose name appear at Sl. No. 75 of the seniority list dated 1.4.2002, who belonged to 1983 batch but joined on 29.7.1985 was fixed as per the merit list of 1983. Therefore it is a fit case where the respondents ought to have re-fixed the seniority of the applicant treating the selected and qualified candidate of 1985 batch but the respondents arbitrarily did not take any step for correction of seniority of the applicant. Therefore it is a fit case for the Hon'ble Tribunal to interfere and protect the rights and interests of the applicant by passing an appropriate order upon the respondents for correction of the seniority of the applicant in the seniority list published on 1.5.2001 as well as 1.4.2002.

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- 5.1 For that, the applicant was selected for appointment in the 1985 batch as such his seniority is required to be fixed along with his batch mates of 1985 in terms of the D.O.P.T Office Memorandum dated 3.7.1986.
- 5.2 For that, offer of appointment letter to the applicant was issued by the respondents after a long lapse in the month of January, 1988 without any fault on the part of the applicant, however the applicant immediately on completion of formalities joined the department on 1st March, 1988, as such the applicant is entitled to re-fix his seniority along with the 1985 batch of selected candidates.
- 5.3 For that, the applicant had no hand in issuing the offer of appointment letter in his favour as such seniority cannot be fixed below the subsequent recruits of Inspectors i.e. respondent nos. 5 to 8.
- 5.4 For that, fixation of seniority is made by the respondents in total violation of the relevant provision contained in the D.O.P.T. Office Memorandum dated 3.7.1986.
- 5.5 For that, the applicant repeatedly approached the authorities for redressal of his grievances but to no result.
- 5.6 For that, due to wrong fixation of seniority the applicant likely to suffer irreparable loss and injury in the matter of promotion and service prospect.

Pankaj Chaudhary

6. Details of remedies exhausted.

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

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

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to direct the respondents to re-fix the seniority of the applicant placing him above the respondent nos. 5 to 8 in the

Prabata Choudhury

cadre of Inspectors and further be pleased to direct the respondents to count his seniority along with the recruitees of 1985 batch for the purpose of his promotion to the next higher grade.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to recast the seniority list of Inspectors published as on 1.5.2001 and the subsequent seniority list if published placing the applicant above the respondent nos. 5 to 8.

8.3 Costs of the application.

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

9. Interim order prayed for.

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

Hon'ble Tribunal be pleased to make an observation that the pendency of this application shall not be a bar for the respondents to recast the seniority of the applicant placing him above the respondent nos. 5 to 8.

9.1 That the Hon'ble Tribunal be pleased to restrain the respondents

10.

This application is filed through Advocates.

Prateek Chaudhary

11. Particulars of the I.P.O.

i)	I. P. O. No.	:	76 605833
ii)	Date of Issue	:	25-2-2003
iii)	Issued from	:	G.P.O, Guwahati
iv)	Payable at	:	G.P.O, Guwahati

12. List of enclosures.

As given in the index.

Subrata Choudhury

VERIFICATION

I, Sri Subrata Chowdhury, working as Inspector, Headquarter Audit Unit, Central Excise, Sethi Trust Building, 4th Floor, Bhangagarh, Guwahati-781005, applicant in the instant Original Application do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 24th day of February, 2002.

Sri Subrata Chowdhury

M. S. Sanchandany 11/12/01
Annexure - 1

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SENIORITY LIST OF INSPECTOR AS ON 01.05.2001.

SL.No.	Name & Educational Qualification	Date of Birth	Date of Apptt. in Govt. service	Date of confirmation in Govt. service	Date of appointment as Inspector	Whether DR/PR as Inspector	Remarks
	S/Shri						
01	02	03	04	05	06	07	08
1.	Siba Prasad Neog, B.A	29.08.52	22.07.76	10.10.81	22.07.76	DR	
2.	Bikash Kumar Saikia, (ST), B. Com.	01.01.57	08.03.82	13.05.87	08.03.82	DR	
3.	Chandan Kr. Chanda, B.A	10.12.55	25.01.77	13.05.87	18.01.82	DR	
4.	Chandan Biswas, B.Sc	24.07.57	01.04.82	13.05.87	01.04.82	DR	
5.	Dibakar Choudhury, B.Sc	07.10.57	09.07.82	13.05.87	09.07.82	DR	
6.	Sudip Kr. Nandi, B.Sc	01.02.51	07.09.77	01.12.82	16.11.82	PR	
7.	Amit Kr. Deb, Matric	01.10.41	06.04.74	01.12.82	16.11.82	PR	
8.	Smt. Lilyda Shangpliang, (ST), B.A	27.01.52	03.02.74	01.12.82	16.11.82	PR	
9.	Pankajlal Singha, B.A	28.01.60	20.06.83	13.05.87	20.06.83	DR	
10.	Tarun Kr. Singha, B. Sc	01.02.57	22.10.83	13.05.87	22.10.83	DR	
11.	Pannalal Singha, B.Com	30.01.58	20.06.83	13.05.87	20.06.83	DR	
12.	Ashok Kr. Dey, B.A	10.06.53	10.04.78	01.08.83	15.07.83	PR	
13.	Smt. H. Memcha Devi, B.Sc	01.12.57	05.05.83	13.05.87	05.05.83	DR	
14.	Debashish Mazumder, B.Com	22.01.57	02.05.83	13.05.87	02.05.83	DR	
15.	Jamkhogin Haokip, (ST), B.A	01.03.60	30.05.83	13.05.87	30.05.83	DR	
16.	Smt. Hilda Mary Synrem, (ST), PU	07.12.50	14.02.78	01.08.83	05.07.83	PR	
17.	Abdul Mutalib, B.Sc	01.01.57	31.12.80	13.05.87	07.07.83	DR	
18.	Sujit Mishra, B.Sc	17.01.59	08.09.83	13.05.87	08.09.83	DR	
19.	Syed Taffique Hussain, B.Sc	20.09.58	06.10.83	30.05.87	06.10.83	DR	
20.	Dhani Ram Das, PU	07.02.50	26.02.78	01.08.83	22.07.83	PR	
21.	Pabitra Kataki, B.Sc	25.12.57	02.05.83	13.05.87	02.05.83	PR	
22.	Jasabanta Mazumder, B.Sc	03.01.61	18.05.83	13.05.87	18.05.83	DR	
23.	Rajkumar Kalita, B.Sc	15.10.56	05.05.83	13.05.87	05.05.83	DR	

*Attended
for
Adro call*

01	02	03	04	05	06	07	08
244.	Bidhu Bhusan Karmakar, (SC) BA	01.02.61	14.10.85	01.04.88	14.10.85	DR	
245.	Gautam Das, (SC) B.Com	08.05.64	14.10.85	01.04.88	14.10.85	DR	
246.	Nandeswar Basumatary, (ST) BA	16.08.60	14.10.85	01.04.88	14.10.85	DR	
247.	Sribas Dhar, (SC), B.Sc.	30.09.62	14.10.85	01.04.88	14.10.85	DR	
248.	Jayanta Kr. Hiwari, (SC) B.Com.	01.07.60	20.10.85	01.04.88	20.10.85	DR	
249.	Swapan Kr. Roy, (SC) B.Com.	20.11.56	20.10.85	01.04.88	20.10.85	DR	
250.	Rajkumar Bhumijoy Singh B.Sc.	01.07.60	20.10.85	01.04.88	20.10.85	DR	
251.	Paokhokhai Neisial, (ST), BA	01.01.58	28.10.85	01.04.88	20.10.85	DR	On Deputation with D.R.I., Imphal
252.	Hawlun Haokip, (ST), B.Sc.	01.03.59	28.10.85	01.04.88	28.10.85	DR	
253.	Manik Lal Choudhury, (SC), B.Com	08.01.61	28.10.85	01.04.88	28.10.85	DR	
254.	Shehtinmong Sithou, (ST), BA	01.03.61	28.10.85	01.04.88	28.10.85	DR	
255.	Suminhang Pulante, (ST) BA	01.03.61	28.10.85	01.04.88	28.10.85	DR	
256.	Abdul Kadar Zilani, B.Sc.	10.01.54	06.10.80	13.12.81	07.04.87	PR	
257.	Meitram Indramoni Singh, B.Sc.	01.03.61	10.03.86	01.04.88	10.03.86	DR	
258.	Sankar Pratim Deb, B.A.	01.09.58	05.01.87	05.01.89	05.01.87	DR	
259.	Santosh Sil, B.A.	04.01.56	10.07.81	13.12.81	29.12.86	PR	
260.	Prabir Kr. Sen, B.Com.	08.01.60	10.03.86	05.01.89	10.03.86	DR	On Deputation with DGCEI, Regional Unit, Shillong
261.	Manabendra Banik, M.Com.	16.10.59	07.05.86	05.01.89	07.05.86	DR	
262.	Sujit Bhattacharjee, M.Sc.	28.12.58	12.03.86	05.01.89	12.03.86	DR	
263.	Bhajahari Dutta, B.A.	06.11.58	31.07.81	13.12.81	10.04.86	PR	
264.	Ngairanghan Sanalal Singh, B.Sc.	01.03.60	10.03.86	01.04.89	10.03.86	DR	
265.	Dolan Ch. Choudhury, B.Com.	01.01.60	10.03.86	05.01.89	10.03.86	DR	
266.	Th. Madhai Singh, B.Sc.	03.01.61	10.03.86	05.01.89	10.03.86	DR	
267.	Dulal Ch. Sharmah, P.U.	01.09.51	01.06.74	13.12.81	11.08.86	PR	
268.	Debasish Chakraborty, B.Com (Hons.)	29.04.59	10.03.86	05.01.89	10.03.86	DR	
269.	Basudev Bhattacharjee-II, B.Com.	09.03.56	27.07.81	13.12.81	17.03.87	PR	
270.	Sudhir Ch. Barman, (ST), HSLC	01.04.50	14.03.74	13.12.81	21.04.86	PR	
271.	Kartik Sarkar, B.A.	31.01.56	27.07.81	13.12.81	18.04.86	PR	
272.	Nirmal Ch. Sutradhar (SC), B.A.	07.07.48	03.06.74	13.12.81	11.04.86	PR	
273.	Ajit Bora, B.Sc.	01.11.56	14.10.81	13.12.81	14.04.86	PR	
274.	Sankar Sengupta, B.Com.	08.03.57	01.02.82	01.02.82	10.04.86	PR	
275.	Lakhinath Gogoi, B.Sc.	11.06.57	12.08.81	24.06.82	11.04.86	PR	
276.	Khirozuddin Ali Ahmed, B.A.	01.12.54	10.12.74	25.06.82	10.04.86	PR	
277.	Deba Prasad Bora, B.Sc.	01.12.55	04.09.81	01.07.82	10.04.86	PR	
278.	Surath Ch. Kalita, HSLC	01.03.52	11.03.74	01.07.83	16.04.86	PR	
279.	Kabin Borkataki, B.A.	01.07.56	19.08.81	01.10.83	11.04.86	PR	
280.	Jayanta Kr. Purkayastha, P.U.	01.03.57	26.09.75	01.03.84	07.04.86	PR	

01	02	03	04	05	06	07	08
281	Chandra Kanta Baruah, B.Sc.	01.03.55	23.11.81	01.03.84	25.04.86	PR	
282	Smt. Sushila Lyngdoh(ST), HSLC	29.12.56	29.09.75	01.03.84	07.04.86	PR	
283	Supriyo Chakraborty, P.U.	12.04.55	10.11.75	01.03.84	07.04.86	PR	On Deputation with DRI, Kolkata
284	Girindra Nath Haloi (SC), B.Sc.	29.02.56	26.09.81	01.03.84	19.12.86	PR	
285	Niranjan Ch. Malakar, (SC), B.A.	12.09.55	28.09.81	01.03.84	07.04.86	PR	
286	Nur Mohammed Sheikh, B.A.	01.01.55	21.10.76	01.03.84	11.04.86	PR	
287	Smt. K.M. Syiemlieh, (ST), M.A.	19.05.56	27.07.81	01.03.84	07.04.86	PR	
288	Mukunda Ram Das, HSLC	20.01.55	12.08.76	01.03.84	11.04.86	PR	
289	Bidhan Hazarika, (ST), B.Sc.	01.01.53	04.12.81	01.03.84	10.04.86	PR	
290	Smt. Sibani Lanong(ST), B.A.	01.05.55	01.02.82	01.03.84	07.04.86	PR	
291	Md. Abdur Rouf, B.A.	25.03.52	13.08.76	01.03.84	15.04.86	PR	
292	Bikash Kar, M.A.	22.05.58	26.06.81	13.12.81	22.04.87	PR	
293	Subir Kr. Dasgupta, B.A.	05.03.51	05.12.74	13.12.81	22.04.87	PR	
294	Lalit Chandra Doley, (ST) P.U.	01.01.50	07.06.74	01.02.82	27.04.87	PR	
295	Babul Chandra Boro(ST), B.A.	01.01.59	29.09.81	01.03.84	29.04.87	PR	
296	Dimbeswar Pegu, (ST), B.Com.	05.04.55	16.10.81	01.03.84	23.04.87	PR	
297	Dipak Kr. Dey, B.Sc.	20.04.56	28.09.81	02.03.84	21.04.87	PR	
298	Manindra Kumar Karmakar, B.A.(H)	01.12.58	19.01.82	02.03.84	21.04.87	PR	
299	Lila Phukan, B.Sc.	01.09.59	16.11.81	02.03.84	28.04.87	PR	
300	Ramesh Chandra Sharma, B.A.(H)	01.10.59	02.11.81	02.03.84	21.04.87	PR	
301	Girindra Kalita, BA	01.01.58	03.12.81	21.08.85	21.04.87	PR	
302	Lakhi Kanta Lora, (ST), HSLC	01.08.55	19.03.76	21.07.84	24.04.87	PR	
303	Pradip Gohain, BA	29.11.55	18.11.81	21.07.84	27.04.87	PR	
304	Golap Ch. Das, (SC), B.Com.	01.04.54	16.08.76	21.07.84	27.04.87	PR	
305	Kumud Ch. Bhuyan, B.Sc.	27.01.56	01.10.81	21.07.84	27.04.87	PR	
306	Someswar Baruah, P.U.	10.03.48	23.03.76	21.07.84	27.04.87	PR	
307	Nripendra Nath Deka, (SC), BA(H)	01.03.58	26.05.82	21.07.84	21.04.87	PR	
308	Kuladhar Shyam, (ST), HSLC	01.01.54	17.08.76	21.07.84	29.04.87	PR	
309	Samir Kumar Kundu, (SC), B.Sc.	29.10.51	22.01.82	21.07.84	24.04.87	PR	
310	Kripal Ch. Phukan, PU	01.01.56	24.02.76	21.07.84	27.04.87	PR	
311	Balendra Nath Uzir, (ST), BA	30.06.54	23.01.82	21.07.84	21.04.87	PR	
312	Dulal Kr. Das, HSLC	30.12.55	28.12.76	12.08.84	26.06.87	PR	
313	Ms. Daimond Mawthoh, (ST), PU	27.08.50	10.05.76	21.07.84	24.09.87	PR	
314	Ms. Neiphal Bhattacharjee, PU	01.03.59	14.07.79	01.08.81	10.02.88	PR	
315	Sanjoy Chettri, BA	12.03.65	03.06.88	03.06.90	03.06.88	DR	
316	Ramendra Prasad Chanda, B.A.	15.01.53	13.08.76	02.03.84	06.06.88	PR	
317	Kapil N. Sharma, B.A. (Ex.S)	01.03.53	23.06.88	23.06.90	23.06.88	DR	

01	02	03	04	05	06	07	08
318.	Ng R.K. Singh, B.Sc.	01.09.81	02.06.88	23.06.90	02.06.88	DR	
319.	Mukul Mahanta, BA	01.03.62	14.06.88	23.06.90	14.06.88	DR	
320.	Ms. Kiranmoyee Das (SC), HSLC	26.12.56	05.08.76	21.07.84	02.06.88	PR	
321.	L.J. Synrem, (ST), B.Com.(H)	03.10.64	22.06.88	23.06.90	22.06.88	DR	
322.	Gautam Kr. Bhuyan, (SC), B.Com.	26.09.59	28.06.88	28.06.90	28.06.88	DR	
323.	Andrew Nongrum, (ST) BA	01.03.56	29.07.82	03.12.84	02.06.88	PR	
324.	Biren Bhattacharjee, B.Sc.	01.01.60	26.12.88	26.12.90	26.12.88	DR	
325.	Muktipada Acharjee, B.A.	01.03.58	19.11.82	19.11.84	02.06.88	PR	
326.	Kh. Marjit Singh, B.A. (H)	01.03.64	22.12.88	26.12.90	22.12.88	DR	On Deputation with DRI, Imphal
327.	Nirmalendu Bhattacharjee, PU	26.07.57	01.03.83	01.03.85	16.06.88	PR	
328.	Sangkhuma Mualchin, (ST) HSLC	23.12.58	20.05.83	21.05.85	03.06.88	PR	
329.	Bidhu Bhusan Nath, HSLC	01.07.58	26.04.83	21.05.88	06.06.88	PR	
330.	Swapan Kr. Debnath, B.Sc.	08.01.58	05.09.83	05.09.85	08.06.88	PR	
331.	Tapan Bora, PU	01.12.50	27.01.77	05.09.85	08.06.88	PR	
332.	Jagadish Ch. Das, (SC) PU	15.01.56	27.01.77	05.09.85	06.06.88	PR	
333.	Debasish Bose, B.Com. (H)	16.01.62	08.02.83	05.09.85	06.06.88	PR	
334.	Jayanta Kr. Hazarika, B.A.	27.11.57	27.11.77	05.09.85	06.06.88	PR	
335.	Nakibur Rehaman, PU	01.02.52	14.03.77	05.09.85	08.06.88	PR	
336.	Tarak Ch. Majumder, BA	01.03.57	28.01.83	05.09.85	06.06.88	PR	
337.	Ratul Ch. Das, B.Sc. LLB	01.12.57	11.11.82	08.01.86	06.06.88	PR	
338.	Debasish Banerjee, B.Sc.	29.12.60	11.05.88	16.12.90	14.05.88	DR	On Deputation with C.S.I. Airport
339.	Audesh Kr. Singh, B.Sc.	01.01.61	25.08.88	16.12.90	25.08.88	DR	
340.	Subrata Choudhury, BA	29.09.61	01.03.88	26.12.90	01.03.88	DR	
341.	S.K. Choudhury, B.Sc.	11.04.60	20.01.88	26.12.90	28.01.88	DR	
342.	Bijon Kr. Das, (SC), B.Com.	04.10.59	20.01.88	26.12.90	21.01.88	DR	
343.	Agar Ali Mullah, B.Sc.	30.10.56	18.12.81	02.03.84	10.01.89	PR	
344.	Debojyoti Bhattacharjee, B.Sc.(H)	19.06.67	20.02.89	20.02.91	20.02.89	DR	
345.	A. Thomas Livingstone, BA	12.02.66	09.03.89	11.04.91	09.03.89	DR	
346.	Lalthankung Hmar, (ST) BA	02.08.66	24.01.89	20.02.91	24.01.89	DR	
347.	Smt. Thalei Gashnga, (ST) BA	01.07.59	02.03.82	24.08.86	06.01.89	PR	
348.	Ashok Kr. Bezborah, BA (ExS)	01.03.52	02.01.89	20.02.91	02.01.89	DR	
349.	R.N. Doley, (ST) BA	24.10.60	11.04.89	11.04.91	11.04.89	DR	
350.	Samir Kr. Majumdar, B. A., EXS	04.01.53	02.01.89	11.04.91	02.01.89	DR	
351.	Sarathi Bhusan Roy, B. Sc.	01.07.64	15.03.89	11.04.91	15.03.89	DR	
352.	Swapan Kr. Das, B. Sc (H)	29.10.64	12.04.89	12.04.91	12.04.89	DR	
353.	Jagadish Choudhury, M. Com	22.01.61	16.11.89	16.11.91	16.11.89	DR	
354.	Gurucharan Deb Barman, (ST), B. Com.	02.01.55	22.01.77	03.12.84	09.01.89	DR	

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Pls find
Adm. cat

To,

The Commissioner of Central Excise, - 22 -
Shillong Commissionerate,
Shillong : Meghalaya.

Annexure - 2

43

Through Proper channel.

Sir,

Sub : My seniority as Inspector - fixation of - regarding.

With due respect, I beg to approach before your good-self with the following points in regard to the above stated subject for favour of your consideration and necessary action.

That Sir, my seniority as per the seniority list of the Inspectors of Shillong Commissionerate as on 1.5.2001 has been fixed at sl.no. 340 which necessiated my giving this representation to your good-self for your kind perusal.

That Sir, I sat for the Examination for Inspectors of Income-Tax, Central Excise etc., conducted by the Staff Selection Commission in the year 1984 and was called for an interview(viva) on 17/4/85 vide their letter dated 26.3.85.

That, I appeared in the viva on 17/4/85 and was obviously selected by the Commission and my name was recommended by them to this department for appointment as per indent of the deptt. to the Commission. As a result of the recommendation, I was called by the deptt. to appear in physical test on 1/10/85 in Shillong vide letter C. No. II(31)23 /ET-II / 85 / 25827(o) dt. 13.9.85. Accordingly, I appeared in the physical test on 1/10/85.

That, the persons who appeared in the physical test alongwith me were offered appointment immediately and they joined the deptt. as Inspectors in October'85 itself. I was, however, not offered appointment with the other officers of my batch.

That, in January, 1988, I got an appointment letter C. No. II(31)1 / ET-II / 86 / 11-13(c) dt. 6.1.88 from the deptt. and joined as Inspector on 1/3/88.

That, after the one in 1984 as mentioned above, I did not sit for Staff Selection Commission Examination again and hence, my appointment in this deptt. has got to be on the basis of that examination, that viva and subsequent physical test on 1/10/85. It only means that though I was selected for appointment in 1985 and though my batch-mates were appointed immediately after the physical test, I was not appointed with them for unknown reasons. Instead, I was offered appointment only in 1988 after officers of subsequent batch, who were actually juniors to me, were appointed. It may be mentioned here that when

*Attested
Signature
Advocate*

Contd...2

I was selected for appointment in 1985, officers of the subsequent batches were even not selected or recommended by the Staff Selection Commission. I was, therefore, made junior to my juniors apart from facing financial losses for no fault of mine. 2

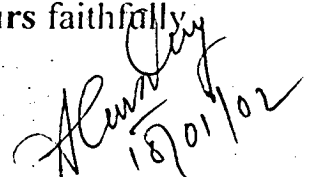
That, what is even more puzzling is the fact that in the seniority list of the Inspectors of Shillong Commissionerate, my name has been placed below some of the officers of the 1988 batch whereas the whole 1988 panel joined long after my joining. I joined on 1/3/88 when the 1988 panel was not in existence as their viva was taken on 29.2.88 by the Staff Selection Commission, just a day before my joining and the 1988 panel was formed after my joining.

That, a number of promotee Inspectors, who joined well after me have also been placed above me. In the process, my seniority as fixed has been superseded by 27(twenty seven) Inspectors who joined after me. This is in addition to the direct and/or promotee Inspectors who joined in 1986 and 1987. In total, my seniority, counting from 1985 when I was actually selected, has been superseded by at least 85(eighty five) Inspectors and this because for unknown reasons, I was not appointed when I should have been.

Under the above stated facts and circumstances, I would request your honour to kindly fix my seniority as per the merit list of 1985 panel with consequential benefits for which, I shall remain grateful to you.

With Thanks, I remain

Yours faithfully,



(Subrata Choudhury)

Inspector,
Hqrs. Audit Unit,
Central Excise,
GUWAHATI

To
The Commissioner of Central Excise,
Shillong Commissionerate.
Shillong: Meghalaya

Through Poores Channel.

Sir,

Sub: My seniority as Inspector fixation of pay

With due respect and in connection with the above stated subject, I beg to state that I had submitted one representation to your honour in this respect on 10/01/02. The copy of which is enclosed herewith for your ready reference.

In view of the ensuing implementation of Cadre review, your honour is requested to kindly take up the matter urgently and decide the issue so that the incumbent does not get deprived of due promotion, if any, arising out of the ensuing cadre review implementation.

I most sincerely hope that your good self would be kind enough to take up the matter immediately and oblige.

encl. copies of the letters
as mentioned above.

Yours faithfully

[Signature]
08/02/02

(Subanta Choudhury)
Inspector
Hq. Audit Unit
Central Excise
GUWAHATI

Attested
[Signature]
Advocate

To
The Commissioner,
Central Excise,
Shillong Commissionerate,
Shillong: Meghalaya

Through Proper Channel.

Sir,

Sub: My seniority as Inspector - fixation
of - regarding

Kindly refer to my representation dated 10/1/02 and subsequent letter dated 8/3/02 on the above subject.

In this connection, I would request your honour to kindly take up the matter urgently and decide the issue so that I may not be deprived of promotion, if any, arising out of the ensuing Cadre review implementation.

I most sincerely hope that your honour would be kind enough and take up the matter immediately and oblige.

encl: earlier representation
CEPIS - 2 Nos.

Attested
As per call

Yours faithfully
17/5/02
(Subrata Choudhury)
Inspector
Hqrs. Audit Unit
Central Excise
GUWAHATI

OFFICE OF THE DEPUTY COLLECTOR OF CENTRAL EXCISE, SHILLONG

F.No. 134/10/ET-I/93/

149/10-05 (R)

Dated :- 12/4/94

47

Assistant Collector of Central Excise,
Central Excise Division (AEL).

12/4/94

Assistant Collector of Customs,
Customs Division (AEL).

Branch-in-Charge of
Office, Shillong.

Subject :- Re-fixation of Seniority of
Inspectors of 1983 (Reserve list) and
1984 batch - regarding.

The Inspectors of 1983 batch (Reserve list) under normal circumstances, would have been appointed prior to the Inspectors of 1984 batch, were appointed in this department in 1986 whereas, the Inspectors of 1984 batch were appointed in 1985. The delay in appointing them was due to the decision to give the life of the reserve panel of 1983 batch by the staff selection Commission and the Board only after the declaration of the result of 1984 batch. Accordingly, the Inspectors appointed from 1983 batch (Reserve list) were placed below the Inspectors of 1984 batch in the seniority list of Inspectors.

However, considering a representation of Shri P. Deb, one of the Inspectors of 1983 batch (Reserve list), the Board vide letter F.No.A-23020/4/93. Ad.IIIA. dated 30.03.93 has now observed that Shri Deb, Inspector, being appointed from the panel of earlier examination i.e. 1983, should be senior to the Inspectors (D.Rs) appointed from the panel of subsequent examinations i.e. 1984.

In view of the Board's letter mentioned above, it would follow that the Inspectors of 1983 batch (Reserve list) should now be placed above the Inspectors of 1984 batch. Accordingly, the seniority of Inspectors of both 1983 batch (Reserve list) and 1984 batch will now be re-fixed.

The Inspectors of 1983 batch (Reserve list) and 1984 batch (names enclosed), working under your charge, may be informed accordingly.

cc:- As above.

E. H. Hynniewta

(EVA M.R. HYNNEWTA)
DEPUTY COLLECTOR (P & V)
CUSTOMS AND CENTRAL EXCISE,
SHILLONG.

*Attended
Jen.
Adro cal*

LISTS OF INSP. OF 1983 BATCH (RESERVE PANEL)
S/SHRI

- | | |
|----------------------------|------------------------------|
| 1. Probir K. Sen | 2. Manabendra Sanik |
| 3. Sujit Bhattacharjee | 4. Ngairanghan Sanalal Singh |
| 5. Dolan Ch. Choudhury | 6. Th. Madhai Singh |
| 7. Debasish Chakravorty | 8. Sankar Pratim Deb |
| 9. Meitram Indramoni Singh | |

LISTS OF INSP. OF 1984 BATCH

- | | |
|-------------------------------|------------------------------------|
| 1. Tarun Kumar Dutta | 2. Sisir Dey |
| 3. Swapan Roy | 4. Tapas Bhattacharjee |
| 5. Amitava Bhattacharjee | 6. Syed Ahmed Shah |
| 7. Bijoy Thapa | 8. Abdus Salam Rukunuddin |
| 9. Uttam Kumar Dey | 10. Ratan Chandra Das |
| 11. Asish Kumar Handi | 12. Dilip Kumar Sarma |
| 13. Ananda Chandra Roy | 14. Sheikh Anzad Hussain |
| 15. Hiranmoy Dutta | 16. Kamaniya Bhattacharjee |
| 17. Abhijit Bhuyan | 18. Bijen Lyngdoh |
| 19. Jahar Kar | 20. Atanu Roy Choudhury |
| 21. Utpal Bhattacharjee | 22. Smti. Tshering Tohnu Bhutaiani |
| 23. Ashwini Kumar Daisya | 24. Nibash Ranjan Das |
| 25. Rownel Martin Chyn | 26. Manindra Sarania |
| 27. Nehru Paga | 28. Prouap Kumar Daimary |
| 29. Uttam Kumar Das | 30. Jyotish Das |
| 31. Bighu Bhushan Karmacharya | 32. Gautam Das |
| 33. Nandeeswar Dasgupta | 34. Sribas Dhar |
| 35. Jayanta K. Riwalli | 36. Swapan K. Roy |
| 37. Rajkumar Bhuminjoy Si | 38. Paokhokhai Neisial |
| 39. Hawlun Haokip | 40. Manik Lal Choudhury |
| 41. Shehnamong Sitiye | 42. Suninthang Pulamte |
| 43. Subrata Choudhury | 44. S. Z. Choudhury |
| 45. Bijan Dr. Das | |

* * *

Sl No. in Section 1 of 1993
Sl. 1993 (Continued)

II

A. Consolidated Orders on seniority

Instructions issued from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government have been consolidated in this Office Memorandum. The original communications consolidated here are reproduced (items I to VII) at the end of this OM.

Seniority of Direct Recruits and Promotees

2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

✓ 2.2 Where promotions are made on the basis of selection by a DPC, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

2.3 Where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall [would be determined by the order indicated at the time of initial appointment and not according to the date of confirmation].

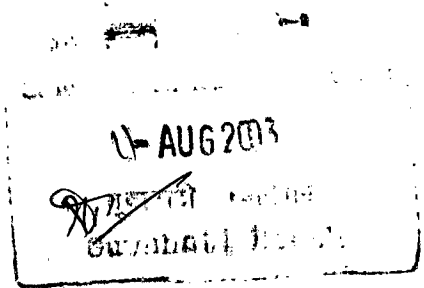
2.4.1 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

✓ 2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.

In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position up to which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct

1. Modified vide G.I., Dept. of Per. & Trg., O.M. No. 2001/5/90-Est. (D), dated the 4th December, 1992.

Attested
for
Adm. cell



52
Filed by
27/8/03
(A. DEB ROY)
Sr. C. E. C.
G. A. T. Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 39 OF 2003

Shri Subrata Choudhury.

..... Applicant.
-Vs-

Union of India & Ors.

..... Respondents.

- And -

In the matter of :

Written Statement submitted by the
respondents.

The humble respondents beg to submit the para-wise
written statement as follows :-

1. That with regard to para 4.1 and 4.2, of the
application the respondents beg to offer no comments.
2. That with regard to the statement made in para 4.3,
of the application the respondents beg to state that the
contention of the applicant is not correct. As the Hon'ble
CAT, is not aware of the factual position during the material
period, it may be well assumed that the Tribunal has been
kept in the dark by the applicant and so the application
filed. It may be stated that in the year 1985, 102 candidates
were called for physical test out of which 82 appeared and
ultimately 62 candidates could qualify the physical test.

The applicant has also appeared, the ~~the~~ reasons best known to him. That the applicant is well aware of, that he failed to meet the chest measurement conducted by the North Eastern Police Academy and hence his case for appointment was rejected by this office. Subsequently, the Dossiers of the rejected candidates who failed to qualify the physical test were forwarded to the Board on May, 1986.

Immediately on receipt of the dossiers, the Board (C.B.E.C.) has issued a revised guidelines vide letter dated 10.9.1986 on the physical standard test with a direction to Commissioner, Central Excise, Shillong (the then Collector) to review in the light of such instructions issued by the Board of all such rejected cases. This office took an earnest move and requested the Board on 23.9.86 to Identify and forward the dossiers of the rejected ones to review their cases for appointment as Inspector where the applicant also figured in that rejected list.

On receipt, the rejected candidates have been reviewed out of which 5 candidates including the applicant have been found fit for appointment which was forwarded to the Board on 14.8.87. The Board vide their letter dated 16.11.87 has approved to offer appointments provided they are found fit in all respects as per the instruction of the Board. The attestation form of the above 5 candidates have been forwarded immediately to the concerned District Deputy - Commissioners or previous employer for verification of

-3-

of character and antecedent. However, the appointment letter was issued to the applicant on 6.1.1988 who was directed to join within 15 days but the applicant sought extension of joining time till 1st week of March, 1988 which was granted and Sri Choudhury (the instant applicant) joined on 1st March, 1988.

Hence, the present application is without any merit and as such, same is liable to be dismissed.

3. That with regard to the statement made in para 4.4, of the application the respondents beg to state that in this regard the process of selection of Inspectors is 3 tier test viz. (i) Written test (ii) Viva-Voce & (iii) Physical Test including Walking, Cycling etc.

That recommendees/selectees of SSC on the basis of written & viva-voce test are given appointment as Inspectors of Central Excise provided they pass the mandatory physical standard test. So final phase of selection is done through the said physical test. A recommendee/selectee of SSC is not selected for appointment unless he passes the mandatory Physical Standard Test. Now when the applicant had failed to qualify the mandatory Physical Standard Test he could not presume himself to be selected for appointment and given seniority over the persons who were in service when the candidate himself was not appointed in this Department. It is in these circumstances that the

applicant who, prima-facie, would not have a chance of appointment got the offer of appointment on exceptional circumstances in 1988 whereas the private respondents although selected on the basis of subsequent examination were offered appointment in 1985 and onwards. Hence, the present application is misconceived of law and ill-conceived of facts.

& 4.6

4. That with regard to para 4.3 ~~& 4.6~~ of the application the respondents beg to state that as already discussed in para 4.3 & 4.4.

5. That with regard to the statement made in para 4.7, of the application the respondents beg to state that the applicant is not well aware of the "Seniority Rules". Para 4.4 is relevant in this aspect.

6. That with regard to the statement made in para 4.8, of the application the respondents beg to state that as already discussed at para 4.3 & 4.4.

7. That with regard to the statement made in para 4.9, of the application the respondents beg to state that the case of Shri S. Mahanta relates to the fixation of inter-se-seniority between direct recruit Inspectors of 1983-84 batch. Shri Mahanta, Inspector joined the Department in the year 1985. Ministry of Home Affairs O.M. No. 9/11/55-APS dated 22.12.59 may be referred to where the practice followed in the office as per the prevailing Instructions in force was to keep the slots meant for DRs and RRs which could not be filled up, vacant and when DRs or PRs were available through later examination or selection, such

-5-

persons occupied these vacant slots thereby becoming senior to some of the officers already in position. Hence, it is thus clear that this issue is totally independent and mutually different.

8. That with regard to the statement made in para 4.10, of the application the respondents beg to state that this office is not aware of the Hon'ble Tribunal's judgement in O.A. No. 264 of 1998. The Hon'ble Tribunal may kindly direct the applicant to supply a copy of the said judgement for further action in this regard. The said judgement is ^{not} also annexed as annexure in the O.A.

9. That with regard to para 4.11, 4.12 and 4.13, of the application the respondents beg to offer no comments.

Verification.....

-6-

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

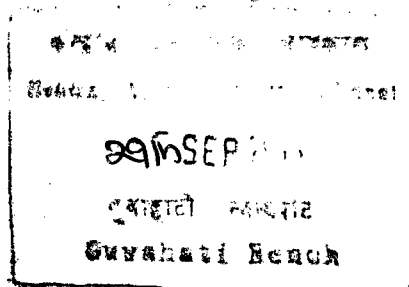
I, Shri Shubhveangshu Dole, , presently
 working as Superintendent, (Hqs. law. cell), C. Ex, Gwalior, being duly
 authorised and competent to sign this verification, do hereby
 solemnly affirm and state that the statements made in para
 are true to my knowledge and belief and
 those made in para being matter of records, are
 true to my information derived therefrom and the rest are
 my humble submission before this Hon'ble Tribunal. I have
 not suppressed any material fact.

And I sign this verification on this 6 th day
 of ^{August} ~~July~~, 2003.

Shubhveangshu Dole.

Deponent.

SUPERINTENDENT
 HQS LAW CELL
 CENTRAL PRISON
 Gwalior.



56
Filed by:- Subrata Choudhury
Through:- Saivajit Choudhury
Advocate
on 29.9.2003

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

In the matter of :

O.A. No. 39 of 2003

Shri Subrata Choudhury

-vs-

Union of India & Ors.

-And-

In the matter of

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

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

1. That the applicant categorically denies the statements made in paragraphs 2,3,4,5 and 6 of the written statement and begs to state that the applicant appeared in the physical test on 01.10.1985 along with his other batch mates where three tests were carried out. In the first instance, the chest measurement was taken and having found fit, the subsequent tests i.e. the running and cycling tests were carried out and the applicant qualified in all those tests. The contention of the

respondents that the applicant failed to meet the chest measurement was not made known to the applicant at that time. Even thereafter, when the applicant submitted successive representation, the respondents did not inform this thing to the applicant and were silent until they received notice from the Hon'ble Tribunal. Only after receiving the notice against the instant O.A, the respondents found out this false plea of chest measurements and tried to mislead the Hon'ble Tribunal. In this connection, the Hon'ble Tribunal may be pleased to call for the records of physical tests for all the candidates of the said batch for ascertaining the factual position.

Further, the respondents stated that candidature of the applicant was rejected on the ground of chest measurement conducted in 1985 but surprisingly they issued the appointment letter of the applicant in 1988 on the basis of the same test conducted in 1985 only, without conducting any further test in 1988 for this purpose and as such their statements are inconsistent. Therefore, the applicant was in fact, appointed from the select list of 1984-85 and hence his position in the seniority lists ought to have been fixed accordingly and his name should have been placed along with his other batch mates of 1984-85, above the names of the subsequent recruitees who were recruited in between 1985 to 1988, since the belated issuance of the appointment letter to the applicant is in no way attributable to the applicant. In this context, the

2p

"Seniority Rules" laid down by the Government is crystal clear which have been quoted in para 4.11 of the instant O.A.

2. That the applicant denies the statement made in para 7 of the written statement and further begs to state that Shri Mahanta belongs to 1983 panel of direct recruit Inspectors. He joined on 29.07.1985 i.e. almost two years after his batch mates joined and even after the recruits of 1984 panel joined the service, which means that recruits of the select list of 1983 and 1984 joined earlier than Shri Mahanta but in spite of that Shri Mahanta's appointment was from the select list of 1983 although he joined in 1985 only. Under the same analogy, this applicant also ought to have been made senior to those who joined as Inspector between 1985 to 1988, although the applicant joined in 1988, since he was recruited from the select list of 1984-85.

Further, the statement that in case of Shri Mahanta, one slot was kept vacant for him and he was appointed later on against that slot and as such his seniority was reckoned retrospectively is misleading. There was no impediment for the respondents to keep a slot vacant for the applicant also in the same manner. The respondents thus acted arbitrarily and gave a discriminatory treatment to the applicant.

3. That in reply to the statements made in para 8 of the written statement, the applicant begs to state that a

similar issue was decided by this Hon'ble Tribunal in O.A No.264/1998 (S.S.Purkayastha Vs Union of India and others.) whereby the respondents were directed to refix the seniority of the applicant along with his batch mates although he was belatedly appointed.

4. That under the facts and circumstances, the applicant humbly submits that he is entitled to the reliefs sought for, and the O.A deserves to be allowed with costs.

VERIFICATION

I, Sri Subrata Chowdhury, working as Inspector, Headquarter Audit Unit, Central Excise, Sethi Trust Building, 4th Floor, Bhangagarh, Guwahati-781005, applicant in the instant rejoinder do hereby verify that the statements made in paragraph 1 to 4 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the ²⁹th day of ~~October~~ ^{Sept}, 2003.

Subrata Chowdhury