

FORM NO. 42
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. _____
Misc. Petition No. _____
Contempt Petition No. 17/05 in O.A 39/03
Review Application No. _____

Applicant(s) S. Chandany
Respondents U.O.I Gans
Advocate(s) for the Applicant(s) M. Chanda, G.N. Chakraborty,
S. Nath
Advocate(s) for the Respondents CA & A.K. Chindley

Notes of the Registry	Date	Order of the Tribunal
<p>This Contempt petition has been filed by the counsel for the petitioner praying for initiation of a contempt proceeding against the alleged contemners for non-compliance of the order dated 28.7.04 passed by this Hon'ble Tribunal in O.A 39/03.</p> <p>Lead before the Hon'ble Court for further orders.</p> <p><u>Dis.</u> for Section officer.</p> <p><u>Pl. compls order dated 13.4.05</u> <u>NS</u> <u>19.4.05</u></p>	<p>13.4.2005</p>	<p>Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman The Hon'ble Mr. K.V. Prahladan, Member (A).</p> <p>Heard Mr. M. Chandam learned counsel for the applicant.</p> <p>Issue notice to show cause as to why contempt proceedings shall not be initiated.</p> <p>The Respondents are directed to file affidavit within four weeks. Personal appearance is dispensed with for the time being.</p> <p>List on 16.5.2005.</p> <p><u>Member (A)</u> Vice-Chairman</p>

mb

steps taken
on 19/4/05.

16.5.2005

Respondents have not yet been
served. post on 16.6.2005.

K. P. Chaudhuri
Member

W. J. Chaudhuri
Vice-Chairman

bb

Notice & order
sent to D/Section
for issuing to
alleged contemner.

16.6.2005

Post on 17.6.2005.

K. P. Chaudhuri
Member

W. J. Chaudhuri
Vice-Chairman

mb

17.6.2005

Today when the matter came up
for consideration Mr. A.K. Chaudhuri
learned Addl. C.G.S.C. for the res-
pondents has placed before us a
communication dated 10.6.2005 where
it is stated that the Commissioner
Central Excise and Customs vide
letter dated 31.5.2005 recused
the seniority list of the applicant
giving due seniority to him as
claimed in terms of the Tribunal's
order dated 28.7.2004 in O.A.39/03.
In the light of the above, there
is no contempt as alleged. The C.P.
is accordingly closed.

K. P. Chaudhuri
Member

W. J. Chaudhuri
Vice-Chairman

mb

13-5-05

Service Report awaited.

bm

The Hon'ble Mr. K. P. Chaudhuri
Member

Heard Mr. M. Chandan Iyer
counsel for the applicant.
Issue notice to show cause as
to why contempt proceedings shall
not be initiated.

The respondents are
to file affidavits
within 2 weeks.

mb

① Service report are
still awaited.

W. J. Chaudhuri

15.6.05

21.6.05
Copy of the order
has been sent to the
D/Sec. for issue of
the same to the L/Adv.
for the parties.

R. A. Chaudhuri
24/6/05

3

Filed by the petitioner
through Subrata Choudhury.
12.07.05.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 17 of the Administrative Tribunals Act, 1985)

Contempt petition No. 17/05
9/0 12005

In O.A No. 39 of 2003.

In the matter of:

Shri Subrata Choudhury.

---- Petitioner.

-Versus -

Union of India and Others.

----- Alleged Contemnors.

-And -

In the matter of

An application under Section 17 of the Administrative Tribunals Act, 1985 praying for initiation of a Contempt proceeding against the alleged contemnors for non-compliance of the order dated 28.07.2004 passed in O.A.No.39/2003.

-And -

In the matter of

Shri Subrata Choudhury.
Inspector,
Headquarter Audit Unit,
Central Excise,
Bhangagarh, Guwahati.

..... Petitioner.

-Versus-

- 1) Sri Karnail Singh,
Commissioner of Central Excise,
Morellow Compound,
Shillong -793001.

..... Alleged Contemnor.

The humble petitioner above named-

Most respectfully sheweth:-

1. That your petitioner approached this Hon'ble Tribunal praying for a direction upon the respondents for refixation of his seniority to the cadre of Inspector of Central Excise alongwith the recruitees of 1985 batch for the purpose of his promotion to the next higher grade through O.A. No. 39/2003.
2. That the Hon'ble Tribunal after hearing the contentions of the parties was pleased to dispose of the Original Application vide order dated 28.07.2004 passed in O.A. No 39 of 2003 directing the respondents as follows: -

“ 9. ----- 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 28.02.1988. 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 No.5 to 8 in the seniority list in the cadre of Inspector and extend the consequential benefits that accrue from such refixation of his seniority as per rules.

The application is allowed to the extent indicated above. There shall be no order as to costs.”

(Copy of the Judgment and order dated 28.07.2004 is annexed hereto and marked as Annexure-I).

3. That your petitioner thereafter approached the alleged contemnor for implementation of the Judgment and order dated 28.07.04 passed in O.A. No. 39/2003 through representation dated 06.08.2004, 12.10.2004 and 23.12.2004, wherein the petitioner prayed for early implementation of the Judgment and order dated 28.07.2004 passed in O.A. No 39 of 2003, but to no result.

(Copies of the representations dated 06.08.2004, 12.10.2004 and 23.12.2004 are annexed hereto and marked as Annexure-II, III and IV respectively).

4. That the humble petitioner begs to state that more than 8 (eight) months time have passed since the passing of the order but the alleged contemnor have not initiated any action for implementation of the Judgment aforesaid.
5. That it is stated that the alleged contemnor deliberately and willfully did not initiate any action for implementation of the Judgment and Order dated 28.07.2004 passed by this Hon'ble Tribunal in O.A. No. 39 of 2003 which amounts to Contempt of Court. Therefore the Hon'ble Tribunal be pleased to initiate a Contempt proceeding against the alleged contemnor for willful violation of the order of the Hon'ble Tribunal dated 28.07.2004 in O.A.No.39/2003 and further be pleased to impose punishment upon the alleged contemner in accordance with law.

Under the facts and circumstances stated above,
the Hon'ble Tribunal be pleased to initiate Contempt
proceeding against the Alleged Contemnors for willful non-

compliance of the order dated 28.07.2004 in
O.A.No.39/2003 and be pleased to impose punishment
upon the alleged contemnor in accordance with law and
further be pleased to pass any other order or orders as
deemed fit and proper by the Hon'ble Court.

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

AFFIDAVIT

I, Sri Subrata Choudhury, presently working as Inspector, Headquarter Audit Unit, Central Excise, Bhangagarh, Guwahati, do hereby solemnly declare as follows: -

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statement made in para 1 to 5 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 dated 28.07.2004 passed in O.A. No.39/2003.

And I sign this Affidavit on this 12th day of April' 2005.

Identified by

Sri Rajit Choudhury.
Advocate

Sri Subrata Choudhury

Deponent-

The above named deponent solemnly affirmed and declared before Sri Subrata Nath, Advocate on 12th day of April' 05, who is identified by Sri Sri Rajit Choudhury, Advocate.

Subrata Nath.
Advocate.
12.04.05

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati for initiating a contempt proceeding against the contemnor for willful disobedience and deliberate non-compliance of order of the Hon'ble Tribunal dated 28.07.2004 passed in O.A. No 39/2003 and to impose punishment upon the alleged contemnor for willful disobedience and deliberate non-compliance of order dated 28.07.2004 of the Hon'ble Tribunal.

- 7 -

Annexure - I⁹

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.

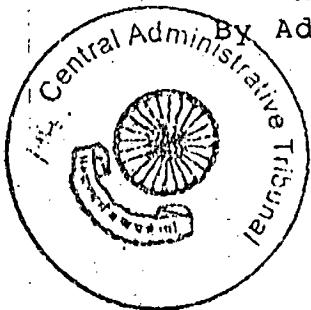
- versus -

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.

.....



*True Copy
for
Advocate*

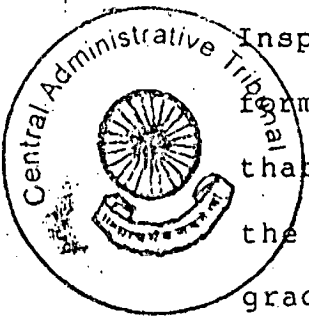
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O R D E R

BHARATI 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.

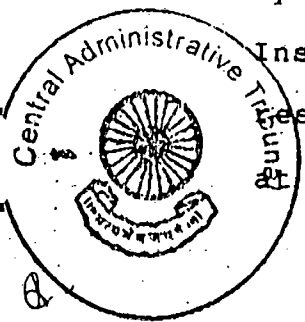
2. It is the case of the applicant that he alongwith others appeared in the examination for Inspector of Income Tax, Central Excise, conducted by the Staff Selection Commission in the year 1984 and was called for an interview (Viva) on 17.4.1985 vide letter dated 26.3.1985. The applicant appeared in 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 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



True

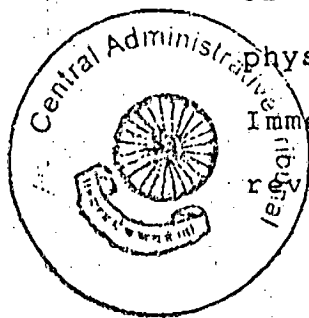
appointed and all of them were placed above the applicant in the seniority list. As a result, the direct recruitees and the promotees, namey the private respondent Nos.5 to 8 alongwith some others were placed above the applicant and they became appointees in between October 1985 and 28.2.1988. Consequently, 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.....

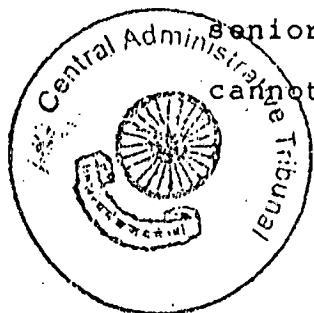


physical standard test with direction to the Commissioner, Central Excise, Shillong to review in the light of such instructions issued by the Board of all such rejected cases. Thereafter the case of the rejected candidates were reviewed, out of which five candidates including the applicant were found 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. xxxxxxxxxxxx

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.....



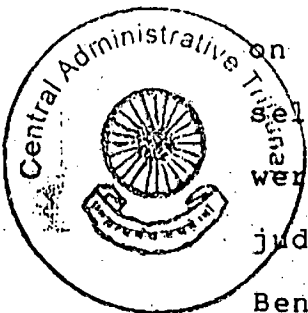
as per the relevant rule. In this context, the learned counsel for the applicant mentioned the provisions contained in D.P. & A.R. O.M. No.9/23/7/E & A (1) dated 6.6.1978, according to which the applicant is entitled to be placed above the respondent Nos.5 to 8 in the seniority list in the grade of Inspector. 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,

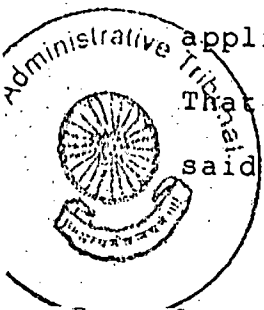
wherein.....



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.

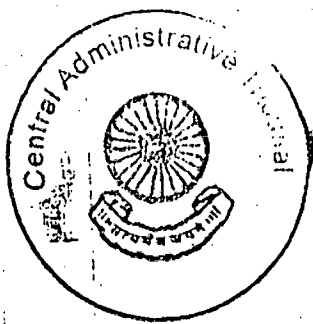
7. It can be seen from para 3 of the counter reply that the process of selection of Inspectors consists of three stages, i.e. (i) Written test, (ii) Viva voce test and (iii) Physical test including walking, cycling etc. It is not in dispute that the applicant qualified in the written test as well as 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.....



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:

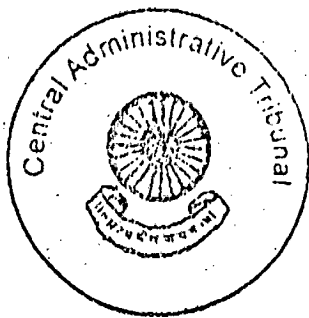
"From the facts alluded above, it emerges that the applicant was a candidate recruited on the basis of the 1987 selection. Undoubtedly, there was delay in sending the nomination by the SSC so far the applicant was concerned, for which the applicant could not be blamed. According to the respondents also 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 refixation 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.

Sd/MEMBER(J)
Sd/MEMBER(A)



nk m

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20/9/04

Section Officer (J)
C.A.T. GUWAHATI BANCHII
Guwahati-781005

-16-

18
Annexure - II

To
The Commissioner of Central Excise,
Morellow Compound,
Shillong - 793001.

Dated, Guwahati, the 6th. August, 2004

(Through Proper Channel)

Sir,

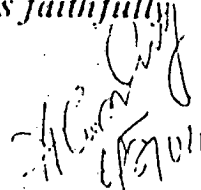
Subject: Implementation of Judgement and Order Dated
28/07/2004 in O. A. No. 39/2003 - regarding.

Most respectfully, I am enclosing herewith a copy of the Judgement and Order Dated 28/07/2004 passed by the Hon'ble Central Administrative Tribunal(CAT), Guwahati Bench in O. A. No. 39/2003 pertaining to the refixation of seniority of the applicant and extending the consequential benefits accrue from such refixation of seniority. The Judgement is self detailed.

This is for your kind implementation of the Judgement and Order referred to above, for which act of your kindness, I shall remain ever grateful to you.

Encl: Copy of Judgement Dt. 28/07/2004.

Yours faithfully



(SUBRATA CHOUDHURY)

INSPECTOR
HQRS. AUDIT UNIT
CENTRAL EXCISE
GUWAHATI

True Copy
for
Advocate

To
The Commissioner of Central Excise,
Shillong Commissionerate,
Morellow Compound,
Shillong - 793001. (Through Post Channel)

Sir,

Subject: Implementation of Judgment and Order
Dated 28/07/2004 in O. A. No. 39/2003 - regarding.

Kindly refer to my earlier letter dated. 06/08/2004 on the above subject.

In this connection, I request your-honour to please implement the afore-mentioned Order of the Hon'ble Central Administrative Tribunal, Guwahati Bench for which, I shall remain grateful to you.

Yours faithfully,

Handwritten signature
12/10/04

(SUBRATA CHOUDHURY)
INSPECTOR
HQRS. AUDIT UNIT
CENTRAL EXCISE
GUWAHATI

True Copy
for Advocate

TO
THE COMMISSIONER,
CENTRAL EXCISE,
SHILLONG COMMISSIONERATE.

(Through Proper Channel)

Dated, Guwahati, the 23rd December, 2004.

Sir,

Subject: Implementation of Judgement & Order dt. 28/07/04 in
O. A. No. 39/2003 - regarding

Kindly refer to me earlier letters dt. 06/08/2004 and 12/10/2004 on the above mentioned subject.

In this connection, I request your good-self to please implement the above mentioned Order of The Hon'ble Central Administrative Tribunal at an early date for which I shall remain grateful to you.

Yours faithfully,

Subrata Choudhury
23/12/04

(SUBRATA CHOUDHURY)
INSPECTOR
HQRS. AUDIT UNIT
CENTRAL EXCISE
GUWAHATI

True copy
Advocate