

2/100

5

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 100/2004

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SECTION OFFICER (Judl.)

Balika  
09.11.17

FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Org.App/ Misc.Petr/Contn/ Detn/ Rev.Appl.

100/04

In O.A.

Name of the Applicant(S)

Babul Chandra Das.

Name of the Respondent(S)

U.O.I. & ORS.

Advocate for the Applicant

Mr. M. Chanda, G. N. Chakrabarty, S. Choudhury,  
S. Nain

Counsel for the Railway/ C.G.S.C.

C.G.S.C. M. A. Ahmed

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

28.4.2004

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. Issue notice  
to the parties. Returnable by four  
weeks.

List 31.5.2004 for orders.

This application is in form  
is filed/C.F. for Rs. 50/-  
deposited with the  
No. 116 389083.  
Dated 21/4/04

Dy. Registrar

No steps.

27/4/04

Notice & order dt- 28/4/04  
Sent to D/Section for  
issuing to respondent-  
nos 1 to 4, by regd. 31.5.2004  
with A/D post.

List on 30.6.2004 for order since  
Mr. A. Deb Roy, learned Sr. C.G.S.C.  
is on leave.

Member (A)

Member (A)

Memo No-805 from  
802 dt-19/5/04.mb

26/5/04.

postal A/D card  
return from  
respondent No-1.

9/6/04.

21.9.04.

At the request of Mr.A.K.Choudhury,  
learned Addl.C.G.S.C. appearing on  
behalf of Mr.A.Deb Roy, Sr.C.G.S.C.  
stand over to 22.11.04 for filing  
written statement.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

20.9.04

W/s not  
submitted.

lm

22.11.2004

Four weeks time is given to the  
respondents to file written statement.  
List on 23.12.2004 for orders.

*[Signature]*

A/D card not yet  
received except R.  
1 by this Registry.

mb

*[Signature]*  
Member (A)

20/9/04

~~22x12x2222~~

~~22x12x2222~~

23.12.2004

Six weeks time is given to the  
respondents to file written statement on  
the prayer of Mr. A. Deb Roy, learned  
Sr. C.G.S.C. for the respondents.  
List on 8.2.2005 for orders.

22-12-04

10 free duty served  
O.A. 2-10-1  
No W/S for- been filed.

*[Signature]*  
Member (A)

mb

8.02.05.

Present: Hon'ble Mr.M.K.Gupta, Member(J)

None appears for the Respondents.  
Reply has not been filed despite ~~grant~~  
of many opportunities.

Adjourned to 9th March, 05 for  
filing reply.

*[Signature]*  
Member(J)

*[Signature]*

lm

10-1-05

para wise reply  
submitted by the  
Respondents.

7-2-05

W/S has been filed

*[Signature]*

10.5.05.

Brief is completed. However, Mr. M. U. Ahmed learned Addl. C.G.S.C. submits that the rejoinder has received to-day, and he seeks adjournment. Post the matter on 27.5.05.

*Mr. D. R. ...*  
Member

*Mr. ...*  
Vice-Chairman

1m

9.5.05

27.5.05.

Post the matter on 13.6.05.

Rejoinder submitted  
by the Applicant.

1m

*Mr. D. R. ...*  
Member

13.6.2005

Heard learned counsel for the parties. Judgment delivered in open Court, kept in ~~open Court~~ separate sheets.

The O.A. is disposed of in terms of the order.

*Mr. D. R. ...*  
Member

*Mr. ...*  
Vice-Chairman

1m

Case is ready for hearing.

*MCA*  
*13/7/05*  
*Add. C.G.S.C.*

20.7.05

Copy of the order  
has been sent to  
the office for  
issuing the same to  
the applicant by post.  
*H. H.*

Notes of the Registry Date Order of the Tribunal

9.3.2005

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

The Hon'ble Mr. K.V. Prahladan,  
Member (A).

Ms. U. Das, learned Addl. C.G.S.C. for the respondents seeks further time for arguing the matter since she has not received the records from the previous C.G.S.C.

Accordingly post on 21.3.2005. - 9

*K.V. Prahladan*  
Member

*G. Sivarajan*  
Vice-Chairman

bb

21.3.05.

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

Hon'ble Mr. K.V. Prahladan, Admini-  
strative Member.

At the request of learned counsel for the applicant case is adjourned to 12.4.05.

*K.V. Prahladan*  
Member

*G. Sivarajan*  
Vice-Chairman

lm

12.4.05.

Post the matter on 4.5.05. - 9

*K.V. Prahladan*  
Member

*G. Sivarajan*  
Vice-Chairman

lm

4.5.05.

At the request of Mr. M.U. Ahmed learned Addl. C.G.S.C. case is adjourned to 10.5.05.

*K.V. Prahladan*  
Member

*G. Sivarajan*  
Vice-Chairman

lm

No rejoinder has  
been filed

*18.3.05*

11-4-05

*a/s* has been  
filed.

*20*

9-5-05

*a/s* has been  
filed.

*20*

**CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.**

O.A. No. 100 of 2004.

DATE OF DECISION: 13.06.2005

Sri Babul Chandra Das

APPLICANT(S)

Mr. M. Chanda

ADVOCATE FOR THE  
APPLICANT(S)

VERSUS -

U.O.I.. & Ors.

RESPONDENT(S)

Mr. M.U.Ahmed, Addl. C.G.S.C.

ADVOCATE FOR THE  
RESPONDENT(S)

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

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

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

Judgment delivered by Hon'ble Vice-Chairman.

X

**CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.**

Original Application No. 100 of 2004.

Date of Order: This, the 13th Day of June, 2005.

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

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

Sri Babul Chandra Das  
Son of Late Bhabani Prasad Das  
Working as Lower Division Clerk on  
Officiating basis  
Income Tax Appellate Tribunal  
Fancy Bazar, Guwahati - 781 001.

Applicant.

By Advocates S/Shri M. Chanda, S. Nath, G. N. Chakraborty & S.  
Choudhury.

- Versus -

1. The Union of India  
Represented by the Secretary  
to the Government of India  
Ministry of Law and Justice
2. The Registrar  
Income Tax Appellate Tribunal  
Fancy Bazar, Guwahati - 781 001.
3. Assistant Registrar  
Income Tax Appellate Tribunal  
Fancy Bazar, Guwahati - 781 001.
4. Deputy Director  
Income Tax Appellate Tribunal  
Central Govt. Offices Building  
4th Floor, Maharshi Karve Marg  
Mumbai - 400 020.

... Respondents.

By Mr. M. U. Ahmed, Addl. C. G. S. C.

**ORDER (ORAL)**

**SIVARAJAN, J.(V.C.) :**

The applicant was originally appointed as Group 'D' Peon in the year 1973. The applicant was promoted to the post of Duftary in the year 1975. The applicant appeared in the Limited Departmental Examination for promotion to the post of Lower Division Clerk under

9/25

10% quota in the year 1980 and had passed the qualifying examination. He had opted for appointment as LDC in 1980. The applicant again appeared for Limited Departmental Examination for promotion to the post of LDC in the year 1983 and he was again declared as successful candidate in the year 1984 (Annexure-B). Applicant was serial No.11 in the order of seniority. Due to non-availability of sufficient number of vacancy under 10% quota the applicant could not be promoted. The applicant was appointed to officiate as LDC on adhoc basis with effect from 1.10.96 in a vacant post as per order dated 22.10.96(Annexure VI) and is continuing as such till date. The grievance of the applicant is that though the applicant had made representations before the Deputy Registrar, ITAT, Bombay for promotion to the post of LDC on regular basis in the year 1991(Annexure-VII), 1990 and 2000 and though his case was strongly recommended (Annexures VII & IX) he was not promoted to the post of LDC on regular basis. The applicant then filed the O.A.No.392 of 2002 before this Tribunal. It was disposed of by order dated 20.11.03, directing the respondents to consider the case of the applicant within a time frame. The applicant made further representation dated 31.12.2003 pointing out subsequent developments but the same was rejected as per memorandum dated 3.3.2004(Annexure XIII). The said order was under challenge.

2. We have heard Mr. M. Chanda assisted by Mr. S. Nath, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. CGSC appearing for the respondents. The counsel for the applicant submits that the applicant had passed Limited Departmental Examination for promotion to the post of LDC in the years 1980 and 1983, but he was not promoted to the post of LDC due to non-

*lpr*

availability of sufficient number of vacancies under 10% quota. The counsel submits that as per the communication dated 17.9.1985 and 04.03.1999 (Annexure IV & V) the applicant having passed the Limited Departmental Examination of Group 'D' employees for promotion to the post of LDCs, in one year need not appear for the said examination in the subsequent years. It is also stated that in case the applicant was not promoted to the post of LDC in that year, the Respondents are bound to record the passing of the examination in the Service Book of the applicant and further the name of such person must be included in the next years DPC. The counsel further submits that the applicant was promoted to the post of LDC in the year 1996 though on adhoc basis against a substantive post when the vacancy arose on account of promotion of Shri S.C. Saikia, LDC. The counsel submits that the respondents were bound to consider the case of the applicant for promotion to the post of LDC under 10% quota when the vacancy arose in the subsequent years. Counsel further submits that ignoring the claim of the applicant his juniors were promoted to the post of LDC. Counsel further submits that the Respondents failed to consider the case of the applicant on merits in spite of direction issued by this Tribunal in its earlier order. The counsel submits that the only reason stated by the respondents in the impugned order for denying promotion to the applicant is that though the applicant passed the Limited Departmental Examination in 1983 "he could not come up to the stage of merit". He pointed out that this is contrary to the records. He took us to Annexure-B letter where it is stated "a list of Group D employees of Income Tax Appellate Tribunal who have attained the qualifying standard for promotion to the post of Lower Division Clerk" and that the applicant is one of them. The counsel



submits that the Respondents were bound to promote the applicant to the post of LDC under 10% quota when the vacancy arose after 1983 and that direction has to be issued in that regard.

3. Mr. M. U. Ahmed, learned Addl.C.G.S.C. on the other hand submits that the DPC list for promotion to the post of LDC under 10% quota is valid only for one year and that the applicant knowing this position had appeared in the Departmental examination in the year 1983 also. The Standing counsel further submits that the applicant did not come in the merit list and that the list prepared 20 years back cannot be questioned now.

4. We have considered the rival submissions. The applicant while working as Dafttry in the Income Tax Tribunal in the year 1980 had appeared for Limited Departmental Examination for promotion to the post of LDC under 10% quota and had passed the examination. The applicant had further appeared for the said examination in the year 1983 and passed the examination. Though the applicant was eligible for being promoted as LDC under 10% quota, due to non-availability of sufficient number of vacancies under 10 % quota, he was not promoted. However, in the year 1996, that is as per order dated 22.10.1096 he was appointed to officiate as LDC on adhoc basis with effect from 1.10.96 in a vacant post which occurred due to promotion of one Shri S.C.Saikia to the post of UDC until further orders. He is continuing as such. Two communications (Annexure IV & V) issued by the Commissioner of Income Tax, Shillong are relevant. The communication dated 17.9. 1985 (Annexure IV) addressed to the Assistant Registrar, ITAT, Guwahati is stated as follows:

*gpr*

"The information as sought for by you is given below:-

- (a) Departmental Examination for Group "D" Employees for promotion to the LDCs is of "qualifying" nature from February, 1982. A Group 'D' employees who once passes this examination need not appear in the subsequent examination if he is not promoted to that examination.
- (b) A note should be made in the respective service books of such employees to the effect of their passing such employees to the effect of their passing such."

The communication dated 4.3.1999 (Annexure V) mentions the procedure for promotion to the post of LDC amongst the Group D employees who have qualified the Departmental Examination of Group D employees. It is stated that the Rule in force in regard to promotion of Group "D" employees to the post of LDC as follows:-

"Method of promotion:-

The DPC determines the number of vacancies that arise during the year inclusive of the anticipated vacancies. The DPC prepare the panel against the actual number of vacancies only. The qualified candidates who are left out of the panel will find place in the subsequent DPC. The left out candidates need not appear in the same examination."

From the two communications it would appear that a Group "D" employees once passing the Departmental Examination for promotion to the post of LDC need not appear for the said examination again and that passing of the examination has to be recorded in their Service Book. It also shows that the qualifying candidates who are left out of the panel prepared by the DPC will find place in the subsequent DPC. Thus in a case where a qualifying Group D employee could not be promoted to the post of LDC he need not appear for the Departmental Examination again and that in case his name was not included by the DPC for one year his name will find a place in the subsequent DPC until he is promoted under the 10% quota. Here it must be noted that


*Jps*

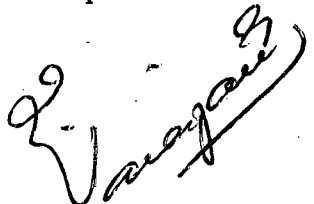
the applicant was appointed to the post of LDC on adhoc basis and he is continuing in service since 1996. Now the stand taken by the Respondents is that though he had passed Departmental Examination he could not come up to the stage of merit. It is not clear either from the impugned order or from the written statement as to what is meant by the expression "could not come up to the stage of merit." Does it mean that the promotion of peon to the post of LDC under the 10% quota is being made on merit only and not on the basis of the seniority? It is not clear as to whether, apart from passing the Limited Departmental Examination for promotion to the post of LDC, any further requirement other than seniority is there under any rules. Or does it mean that vacancy of LDC under 10% quota did not arise to give promotion to the applicant based on his seniority? We are not satisfied with the reasons stated in the impugned order dated 03.03.2004 (Annexure XIII) passed pursuant to the direction issued by this Tribunal in the order dated 20.11.03 in O.A.No.392/03. Here we must note that the applicant has been working as LDC on adhoc basis since 1996. Though it will not confer any right to the applicant for promotion to the said post the fact is that the applicant had served as LDC about 9 years. In such circumstances to say that he did not figure in the merit list cannot be appreciated.

5. In the above circumstances we direct the respondents to consider the applicants' case for promotion to the post of LDC under 10% quota afresh, in accordance with the law and in the light of the observations made herein above and pass appropriate orders within a period of three months from the date of receipt of this order.



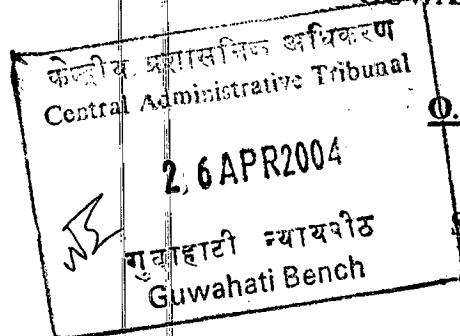
6. The application is disposed of as above. The applicant shall produce this order before the concerned respondents for compliance.

  
(K.V.PRAHLADAN)  
ADMINISTRATIVE MEMBER

  
(G.SIVARAJAN)  
VICE-CHAIRMAN

LM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI



O.A. No. 100 /2004

Sri Babul Chandra Das.

vs.-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- |            |   |
|------------|---|
| 1973       | That the applicant was initially appointed as Group D peon on regular basis in the office of the Register Appellate Tribunal, Guwahati .  |
| 1975       | The applicant was promoted to the post of Duftary.  |
| 1980       | applicant qualified in the limited departmental examination for consideration of promotion to the post of L.D.C under 10% quota.  |
| 10.03.1980 | Willingness sought from the applicant for consideration of his posting for promotion to the post of L.D.C in order of preference.   |
| 11.03.1980 | Submission of option of the applicant intimated to the Head office Bombay.  |
| 9.2.1984   | The applicant again declared qualified in the Limited departmental competitive examination. However could not be considered for promotion due to non-availability of sufficient numbers of vacancies under 10% quota. |

- 17.09.1985 It is clarified by the office of the Commissioner of Income Tax, Shillong that since February 1982 once a group D employee declared qualified in the examination he need not appear in the subsequent examination and entry should be made in the respective service book of such employees to the effect of passing such a examination.
- 4.3.1999 Office of the Commissioner of income Tax on a query it is further clarified that the qualified candidates for promotion under 10% quota to the post of L.D.C who are left out of the panel would find place in the subsequent DPC and they need not appear in the same examination again.
- 22.10.1996.1 Applicant after being found suitable was appointed to officiate as L.D.C on ad-hoc basis with effect from 1.10.1996 in a vacant post which was occurred due to promotion of Sri S.C. Saikia to the post of U.D.C until further orders.  
The applicant is still continuing as ad-hoc L.D.C in the said post.
- 24.1.91, 19.8.99, 2.11.2000 Applicant submitted representations to the register I.T.A.T Bombay for consideration of his promotion to the post of L.D.C.
- 8.3.1999 case of the applicant strongly recommended for promotion from the local office to the head quarter office, Mumbai.
- 20.11.2003 Hon'ble Tribunal disposed of the O.A.No 392 of 2002 filed by the present applicant with a direction to take an appropriate decision in the matter of the claim of the applicant for regular appointment as L.D.C against 10% quota within a period of 4 months.
- 31.12.2003 The applicant submitted another representation to the Register I.T.A.T Mumbai with a copy of the judgment, wherein, in the said representation applicant pointed out that many juniors of the applicant

who subsequently qualified in the L.D.C examination were appointed to the post of L.D.C under 10% quota and also categorically stated that M.C.Tiwari also given promotion to the post of L.D.C under 10% quota vide order dated 11.9.98 in violation of the rule/instruction ignoring and without considering the case of the applicant on priority basis.

3.3.2004 Impugned memorandum issued by the Deputy Register I.T.A.T Mumbai rejecting the claim for promotion of the applicant under 10% quota on the sole ground that applicant could not come upto the stage of merit though passed the examination in the year 1980 and 1983. However the respondent deliberately did not consider the method of recruitment under 10% quota, even though clarified by the office of the Commissioner of Income Tax vide their letter dated 17.9.1985 as well as vide letter dated 4.3.99.

11.9.98 By the order dated 11.9.98 Sri M.C.Tiwari peon and Sri B.Nagrajan Peon of Delhi Bench as well as Chandigar bench of I.T.A.T were promoted under 10% quota deliberately ignoring the case of the present applicant.

2.02.01, the case for promotion of the applicant was taken up by the local office  
14.2.02 with the Head quarter office Mumbai and recommended the case of the applicant for promotion to the post of L.D.C.

#### **PRAYER**

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

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hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the impugned memorandum issued under letter no.F.No.O.A.392/2002 be set aside and quashed.
2. That the respondents be directed to consider the promotion/appointment of the applicant under 10% quota on regular basis at least with effect from the date of appointment of his immediate junior who qualified in the limited departmental examination subsequently with all consequential service benefit including seniority and monetary benefit in the cadre of L.D.C.
3. Costs of the application.
4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

18  
Filed by the applicant  
through advocate Sri  
G. M. Chakraborty on 18  
26-4-04.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH: GUWAHATI**  
(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No 100 /2004

Babul Chandra Das. : Applicant

- Versus -

Union of India & Others: Respondents.

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Date 26.4.2004

Filed by  
*[Signature]*  
Advocate

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

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

O. A. No. 100 /2004

**BETWEEN**

Sri Babul Chandra Das  
Son of Late Bhabani Prasad Das.  
Working as Lower Division Clerk on  
Officiating basis.  
Income Tax Appellate Tribunal.  
Fancy Bazar, Guwahati- 781 001.

...Applicant

-AND-

1. The Union of India.  
Represented by the Secretary to the  
Government of India, Ministry of Law and Justice,  
New Delhi.
2. The Registrar,  
Income Tax Appellate Tribunal,  
Fancy Bazar, Guwahati- 781 001.
3. Assistant Registrar,  
Income Tax Appellate Tribunal  
Fancy Bazar, Guwahati- 781 001.
4. Deputy Registrar  
Income Tax Appellate Tribunal  
Central Govt, offices Building  
4<sup>th</sup> floor, Maharshi Karve Marg  
MUMBAI - 400 020

... Respondents.

*Babul Chandra Das*

DETAILS OF THE APPLICATION

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

This application is made against the impugned memorandum dated 03.03.2004 issued by the Deputy Registrar, Income Tax Appellate Tribunal, Mumbai. Whereby the prayer of the applicant for regular appointment under 10% quota is rejected in total violation of the relevant rules and also in violation of the judgment and order dated 20.11.2003 passed in O.A.No.392/02 and also praying for a direction upon the respondents for regular absorption as L.D.C under the 10% quota w.e.f the date on which other subsequent successful candidate like the applicant were appointed as L.D.C under 10% quota in other offices throughout the Country.

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.

*For And Chandra An.*

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.
- 4.2 That your applicant was initially appointed as Group D peon on regular basis in the year 1973 under the respondents. He passed his matriculation examination in the year 1971 i.e. prior to his appointment to the post of Group D peon in the office of the Income Tax Appellate Tribunal, Guwahati (for short I.T.A.T). the applicant was promoted, to the post of Duftary in the year 1975.
- 4.3 That the applicant while working as group d peon he was allowed to appear in the departmental examination as Group D employee for promotion to the post of Lower Division Clerk in the year 1980 and the applicant in fact came out successfully in the said qualifying examination and thereby attained eligibility for consideration of regular promotion to the post of L.D.C. However, no formal communication was made to the applicant regarding the result of the aforesaid qualifying examination. But the Headquarter office, Bombay (now Mumbai) vide telegram dated 10.03.1980 sought willingness from the applicant along with others for their posting on appointment as L.D.C either at Pune, Ahmedabad, jaipur and the then Bombay in order of

*Babul Chandra Das*

performance. Accordingly the applicant submitted his willingness for posting on promotion to the post of L.D.C outside North Eastern region as desired by the telegram dated 10.03.1980 and the said willingness of the applicant was duly forwarded to the then Headquarter office. Bombay vide Telegram dated 11.03.1980. But unfortunately thereafter no communication was received from the Headquarter office, Bombay regarding the posting and appointment on promotion of the applicant, even in the subsequent years.

Copy of the telegram dated 10.03.1980 and reply Telegram dated 11.03.1980 are **Annexure-I and II** respectively.

- 4.4 That your applicant finding no favourable response from the respondents regarding his appointment to the post of L.D.C. and being disappointed, again appeared in the same the limited departmental competitive examination held in the year 1983 and the applicant further came out successfully in the aforesaid examination along with others. The result of the said examination was published by the respondents vide letter U.O.No. F.171-Ad(AT)/83 dated 9.2.1984 wherein the name of the applicant appeared at serial no.11. It is stated in the said letter dated 9.2.1984 that the name in the list are given in order of merit. It is further stated that selection to the vacancies in the year 1984 in the post of L.D.C were to be filled up against the 10%

*Barlow Chandra Jais*

quota reserved for promotion of Group D employees subject to the reservation to be made to SC/ST/Ex. Servicemen would be made in order of merit from the above list and the list would be operative up to 31.12.1984.

A copy of the letter dated 9.2.1984 is annexed as **Annexure-III**

- 4.5 That it is stated that once an employee qualified in the limited departmental examination of group D employees for consideration of promotion to the post of L.D.C, the said employee need not appear in the same examination anymore for the purpose of his promotion to the post of L.D.C, this fact would be evident from the letter bearing No. F.No.E-6/JDL/85-86/5150 dated 17.9.1985 whereby Commissioner of Income Tax, Shillong on a query clarified the aforesaid position to the Assistant Register, I.T.A.T, Guwahati. Similarly, commissioner of Income Tax further confirmed the aforesaid position in a communication made to the Assistant Register, I.T.A.T, fancy Bazar, Guwahati vide letter bearing No. E-8/Estt/90-91/Ct/21986 dated 4.3.1999. It is further stated in the said letter that the qualified candidates who are left out in the panel will find place in the subsequent departmental promotion Committee.

Copy of the letters dated 17.09.1985 and 4.3.1999 are annexed as **Annexure-IV** and **V** respectively.

*Robert Chandra Das*

4.6 That your applicant thereafter submitted several representation to the Respondents for his appointment to the post of Lower Division Clerk on being qualified in the limited departmental competitive examination twice way back in the years 1980 and 1983 respectively, but to no result.

4.7 That it is stated that only during the year 1996 the applicant was appointed to the post of L.D.C to officiate with effect from 1.10.1996 in the pay scale of Rs. 950-20-1150-EB-25-1500 in the same bench of the I.T.A.T, at Guwahati until further orders against a substantive post occurred due to promotion of Sri.S.C.saikia, L.D.C vide order bearing letter no. F.74/Ad/At/96 dated 22.10.1996. It is stated in the said order of appointment that the appointment of the applicant is purely on ad hoc and as such the same would not be any claim for regular appointment to the post of L.D.C and the service of ad hoc period would not count for the purpose of seniority as well as eligibility for promotion to the next higher grade. Accordingly the applicant started discharging his duties and responsibilities to the post of L.D.C with effect from 1.10.1996.

Copy of the appointment order dated 22.10.1996 is annexed as **Annexure-VI**.

4.8 That it is stated that the applicant was appointed/promoted to the post of lower division clerk with effect 1.10.1996 by the order dated

*Balwant Chandra Das*

22.10.1996 against a regular post of L.D.C which occurred following promotion of one Sri. B.C.saikia, L.D.C. But the said promotion termed as ad hoc for the reasons best known to the respondents. Be it stated that at the relevant time when the aforesaid promotion was effected in favour of the applicant he had the requisite qualification by passing the limited departmental examination. Therefore the said promotion to the post of L.D.C ought to have been made on regular basis in stead of ad hoc basis with effect from 1.10.1996 under 10% quota. In this connection it may be stated that since the applicant has qualified in the limited departmental examination way back in the year 1980 and 1983 respectively therefore there was no impediment on the part of the respondents to grant him promotion to the post of L.D.C under 10% quota on regular basis w.e.f 1.10.1996. Therefore the applicant has acquired a valuable and legal right for consideration of his case for promotion to the post of L.D.C. on regular basis at least w.e.f the date when, other subsequent successful qualified candidates were appointed under 10% quota. It is relevant to mention here that Government instructions also provide that promotion should be made from the date of occurrence of regular vacancy. Therefore the applicant in the instant case is entitled to be promoted to the post of L.D.C on

*Barabati Chandra Das*

regular basis at least w.e.f the date on which the subsequent successful candidates were appointed.

- 4.9 That your applicant begs to state that he had submitted number of representations to the higher authorities for considerations of his promotion to the post of lower division Clerk in the office of the I.T.A.T, Guwahati Bench. In this connection it may be stated that on 24.1.1991 he had made a representation addressed to the Register, Income Tax Appellate Tribunal, Bombay requesting to consider his promotion to the post of L.D.C and also pointed out that he had qualified in the limited departmental competitive examination held in the year 1980 and 1983. The applicant also expressed his willingness to accept his posting and promotion outside the N.E.Region but to no result.

Copy of the representation dated 24.1.1991 is annexed as **Annexure-VII**.

- 4.10 That your applicant state that the Assistant Register, I.T.A.T, Guwahati Bench also wrote a D.O letter to the Register, Mumbai on 8.3.1999 bearing letter no. D.O.No. 5/ATG/98-99/640 whereby the Assistant Register requested the Register, Headquarter Office, Bombay to consider the case of promotion of the applicant to the post of L.D.C. The applicant also submitted a representation on 19.8.1999 addressed to the Hon'ble president, Income Tax Appellate Tribunal, Mumbai. In the said representation the applicant interalia prayed for

*Balul Chandra Das*

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consideration of his promotion of regular basis w.e.f 1.10.1996 against the existing available vacancy of L.D.C. The applicant finding no response from the respondents he again submitted another representation on 2.11.2000 to the Register, Income Tax Appellate tribunal, Mumbai for consideration of his promotion on regular basis to the post of L.D.C with effect from 1.10.1996, but to no result.

Copy of the letter dated 8.3.1999, representations dated 19.8.1999 and 2.11.2000 are annexed as Annexure-VIII, IX and X respectively.

- 4.11. That it is stated that it is a settled position of law when a group D employee came out successful in the qualifying examination under 10% quota, his case should be considered by the DPC for promotion whenever a post under 10% quota is occurred as soon as the qualified incumbent found suitable for promotion under 10% quota should be promoted to the said post of L.D.C on priority basis, in preference to other qualified candidates who had passed the Departmental examination subsequently for promotion under 10% quota. But in the instant case of the applicant the respondents took a different view so far system of promotion under 10% quota are concern. In the instant case of the applicant the respondents U.O.I promoting only those persons under 10% quota who have passed the Departmental examination in a particular year against the vacancies arises from

Babul Chandra Das

the panel of the candidates passed in that particular year without giving any priority and also without considering the candidates who have earlier passed departmental examination for promotion under 10% quota but not accommodated for promotion in the subsequent years, even when vacancies in the cadre of L.D.C. are available. As a result of adoption of such a wrong policy for promotion under 10% quota, the applicant is denied opportunity of regular appointment under 10% quota.

In all central Government offices whenever a group D employee passed the departmental examination under 10% quota for the promotion to the post of L.D.C he need not required to appear any more for the said examination but his case used to be considered on priority basis whenever a future vacancy arises in the cadre of L.D.C in preference to the subsequent successful candidate in the departmental examination. Hence, the respondents made a sharp departure from the settled policy of promotion in the instant case, and there by violated the policy.

- 4.12 That it is stated that many of the subsequent qualified candidates under 10% quota who have cleared the departmental examination after 1983 were in fact appointed as L.D.C under 10% quota in the office of the respondents no.3 as well as other appellate Tribunals benches situated in different Regions. Surprisingly even in 1998 promotion was

*Barboul Chandra Das*

also given to one Sri M.C.Tiwari, peon in I.T.A.T in the Income tax Appellate Tribunal, Delhi Bench vide order no. F-171-Ad(AT)/98 dated 11.09.1998 under 10% quota without considering the case of the applicant. It is submitted that the applicant has acquired a valuable and legal right for consideration of his promotion under 10% quota in preference to other successful candidates, who have cleared their departmental examination after 1983, but such right of the applicant is violated due to adoption of wrong promotion policy. In the circumstances the applicant is entitled to be promoted to the post of L.D.C under 10% quota at least w.e.f the date when his immediate junior who was appointed after passing of the Departmental examination after 1983. the aforesaid contention of the applicant regarding promotion policy is further supported and confirmed by the clarification given by the Deputy Commissioner of Income Tax, head Quarter office Shillong vide his letter dated 04.03.1999(Ann-V) on a query made by the Respondent No.3.

In the circumstances stated above applicant entitled to the post of L.D.C with all consequential benefits.

- 4.13 That it is stated that your applicant tried to appear again in the Departmental Examination held on 27.05.1998, but he is not allowed to appear in the said examination on the plea that he is age barred for the said examination since he has crossed the

*Sabot Chandra Das*

age limit of 45 years. This contention of the respondents is also totally wrong as because the age limit is fixed as criterion for attaining eligibility to appear in the Departmental examination which is not applicable in the instant case of the applicant since he had already appeared and qualified in the said examination on two different occasions before attaining 45 years of age, but he is a left out candidate for appointment to the post of L.D.C under 10% quota, as such question of age bar for consideration of his appointment does not arise. Moreover, as per settled position of law the applicant need not appear in the qualifying examination, once again for consideration of his appointment under the 10% quota.

The case of the applicant ought to have been considered by the respondents long back but on a wrong interpretation of rule the respondents had arbitrarily denied the appointment when large numbers of candidate out of 10% quota have already been appointed after 1983, who subsequently came out successful in the examination after the applicant was declared qualified. Hence, the present applicant is entitled to be appointed to the post of L.D.C under 10% quota at least from the date when his immediate junior was appointed to the post of L.D.C.

- 4.14 That it is stated that the present applicant earlier approached this Hon'ble tribunal through O.A.No

*Rabul Chandra Das*

392/02 for regular appointment to the post of L.D.C. However the Hon'ble tribunal after perusal of the materials on records was pleased to disposed to the O.A with a direction given to the respondents to consider the case of the applicants. However in pursuant to the said judgment the applicant submitted a detail representation on 31.12.2003 raising all the grounds for regular appointment of the applicant for the grade of L.D.C under 10% quota, but the respondent issued the memorandum dated 03.03.2004 rejecting the claim of the applicant for the regular appointment to the post of L.D.C., Hence the present application.

A copy of the judgment and order dated 20.11.2003, and as well as a copy of representation dated 31.12.2003 is enclosed herewith as **Annexure-XI** and **XII**.

- 4.15 That it is stated that in the impugned memorandum dated 3.3.2004 the respondent simply delt with the vacancy position during the year 1980 and 1983, but they did not take into consideration the case of the applicant for promotion to the post of L.D.C which were subsequently occurred after 1983 under 10% quota of promotion, although the respondents were quite aware of the fact that since the applicant had qualified in the limited departmental examination under 10% quota on two occasions during the year 1980 and also in 1983, as such his case for

*Debal Chandra Das*

promotion ought to have been considered on priority basis in each recruitment year wherever vacancies are occurred under 10% quota. There is no dispute that a panel is normally prepared for a particular year and the same is expired on expiry on the recruitment year but the respondents Union of India had acted in the instant case on a wrong notion of Law, as it appears from the impugned memorandum dated 3.3.2004 that the respondents are in the impression that once a qualified candidate could not be accommodated under 10% quota in the promotion post, in the particular year, when he was declared successful as a result of non availability of vacancy, his case should not be considered thereafter by the DPC if he is not subsequently appeared and qualified in the limited departmental examination but the said decision of the respondent is contrary to their own records i.e. Annexure-5(letter dated 4.3.99) where in the method of promotion described therein, specifically provided as follows

" The qualified candidates who are left out the panel will find place in the subsequent D.P.C. The left out candidates need not appear in the same examination again"

A mere reading of the above letter it makes abundantly clear that being a qualified candidate applicant ought to have been considered for promotion in each recruitment year against the 10%

*Rabul Chander Das*

vacancies for appointment to the post of L.D.C, but respondent arbitrarily denied the said opportunity to the applicant.

Be it stated that a large number of appointments were made under 10% quota since 1983 without considering the case of the applicant in the subsequent DPC. a few Group 'D' employees were also appointed under 10% quota to the post of L.D.C even in the local office at Guwahati in addition to the appointments made under 10% quota in other regions. Therefore Hon'ble Court be pleased to direct the respondents to produce or furnish the details particulars of the Group "D" employees who were appointed as L.D.C under 10% quota in the local office as well as other benches of the Income Tax Appellate Tribunal after 1983 till date. In this connection it may be stated that vide letter bearing No. F.171-Ad(AT) 98 dated 11.09.1998 one Sri M.C.Tiwari, peon Income tax Appellate Tribunal appointed on regular basis against the 10% quota in the Income Tax Appellate Tribunal, Delhi Bench and Shri V. Nagrajan, peon of Chandigarh bench appointed as L.D.C w.e.f 05.10.1998 until further order against 10% quota in the I.T.A.T at Delhi Bench. However their appointment are subject to condition that until they qualify type writing speed of 30 words per minute, they would not be qualified for quasi-permanency or for confirmation in the grade of L.D.C. From the aforesaid letter dated 11.09.1998 it

*Deboni Andhra Des.*

is quite clear that many appointment has been made under 10% quota after 1983 without considering the case of the present applicant. Be it stated that the applicant is still working in the officiating capacity as L.D.C in a vacant post since 1996 in the local office at Guwahati. Therefore applicant has acquired a valuable and legal right for appointment on regular basis and also on priority basis under 10% quota. Since junior persons who have qualified in the limited departmental examination namely Sri M.C.Tiwari and Sri V.Nagrajan subsequently, have already been appointed as L.D.C under 10% quota. Therefore denial of such benefit to the applicant is highly arbitrary and the said action of the respondents is in violation 14 of the Constitution and on that score alone the impugned memorandum dated 03.03.2004 is liable to be set aside and quashed.

A Copy of the impugned memorandum dated 03.03.2004 and order dated 11.09.1998 are enclosed as Annexure- XIII and XIV respectively.

4.16 That it is stated that so far contention of the respondent raised in paragraph 3 and 4 of the impugned memorandum dated 3.3.2004 are also not tenable in the eye of law in view of the fact that the applicant was appointed way back in the year 1996 after he was duly qualified in the departmental examination long back in the year 1980 and 1983 and on that pretext his case was not considered by the

*Babul Chandra Das*

respondents when vacancy is occurred in other benches on priority basis under 10% quota for regular appointment, therefore applicant has acquired a valuable and legal right for regular appointment to the post of L.D.C under 10% quota. Hence he is also entitled to be regularized in the existing post of L.D.C in the local office. More particularly in view of the fact that the respondents did not follow the instructions, rules for appointment under 10% quota and as result the applicant is denied the regular appointment to the post of L.D.C under 10% quota.

In the facts and circumstances stated above the application is deserves to be allowed with cost.

4.17 That it is stated that the Assistant Registrar, Guwahati Bench, Guwahati wrote letter on 2.2.2001 bearing No. F.IV/6/ATG/80-2000 to the register, I.T.A.T, Mumbai requesting him to regularize the services of the applicant to the post of L.D.C. It is specifically stated in the said letter dated 2.2.2001 that the applicant is continuously working as L.D.C w.e.f 1.10.1996 and also considering the fact that the applicant has come out successfully in the limited departmental examination on two occasions and requested to settle up the matter without further loss of time. It is pertinent to mention here that the Assistant Register, Guwahati Bench, Guwahati while addressing a letter bearing

*Balant Chandra Das*

no. U.O No.F.5/ATG/98 dated 14.2.2002 to the Register, I.T.A.T, Mumbai made a reference of appointment of the present applicant to the post of L.D.C on ad hoc basis w.e.f 1.10.1996 and also made a mention that the present applicant had come out successfully on two occasions in the limited departmental examination in the year of 1980 and 1983 respectively, but his case was not considered for regular promotion till date. In his connection it is also stated by the Assistant Registrar, that the applicant appeared in each and every limited departmental examination without hesitation but due to age bar he was not allowed to appear in the limited departmental examination held on 27.05.1998 even though he applied for condonation of his age limit vide representation dated 7.4.1998 which was duly forwarded to the Head office vide Zonal office letter no. U.O. No F.33/ATG-c/Cal dated 30.4.1998, but to no result. In this connection it is stated that since the applicant passed his limited departmental examination for promotion to the post of L.D.C on two occasions in the year 1980 and 1983 and moreover when the applicant was appointed against a regular vacancy of L.D.C w.e.f 1.10.1996 therefore question of further appearing in the examination does not arise in the instant case and since the order of appointment is made against a regular vacancy therefore he has acquired a valuable right for promotion on regular basis to the post of

*Balwant Chander Das*

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L.D.C w.e.f 1.10.1996 with all consequential service benefits including seniority.

Copy of the letter dated 2.2.2001 and 14.2.2002 are annexed as Annexure-XV and XVI respectively.

4.18 That your applicant urge to rely upon the written statement submitted by the respondent in the Original Application No.392 of 2002 at the time of final hearing of the Original Application.

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

Grounds for relief(s) with legal provisions.

5.1 For that the respondents wrongly interpreted the rule of appointment under 10% quota and the said contention of the respondents is contrary to the clarification received by the office of the Assistant register, ITAT, Guwahati Bench on 4<sup>th</sup> march 1999 from office of the commissioner of the Income tax, Shillong.

5.2 For that, the applicant has qualified in the limited departmental competitive examination way back in the year 1980, as such, he has acquired a valuable legal right for appointment to the post of L.D.C on regular basis.

5.3 For that, the applicant is officiating to the regular post of L.D.C with effect from 22.10.1996 continuously, therefore entitled to be promoted in the existing post of L.D.C holding by the applicant

*Bibul Chandra Das*

with retrospective effect from 22.10.1996 with all consequential benefits.

- 5.4 For that, it is evident from the letter dated 17/09/1985 once the applicant qualified in the limited departmental competitive examination is entitled to promotion/appointment to the post of L.D.C as soon as the vacancy is available.
- 5.5 For that, on consideration of promotion/appointment to the post of L.D.C on regular basis after passing the limited departmental competitive examination in the year 1980 is highly arbitrary, unfair and illegal.
- 5.6 For that, the representation of the applicant was duly recommended by the local authority for regular absorption of the applicant to the post of L.D.C, but no result.
- 5.7 For that, in the facts and circumstances stated above, the applicant is entitled to promotion/appointment to the post of L.D.C on regular basis with effect from 01.09.1996.
- 5.8 For that the applicant acted contrary to the clarification /Rule/instruction communicated by the office of the Income tax and as a result the respondents arbitrarily denied appointment to the post of L.D.C under 10% quota.
- 5.9 For that the group "D" employees who subsequently cleared L.D.C Examination after 1983 have been appointed as L.D.C on regular basis under 10% quota in supersation of the claim of the present applicant

*Babul Chandra Das*

and also in violation of rules as indicated in the clarificatory letter dated 04.03.1999 by the office of the Commissioner of Income Tax, Shillong.

5.10 For that impugned memorandum dated 03.03.2004 has been passed without application of mind and also without taking into consideration the relevant rules and instructions indicated in the letter dated 04.03.1999 so far regular appointment is concerned under 10% quota in the cadre of L.D.C.

5.11 For that the case of the applicant for regular appointment in the cadre of L.D.C under 10% quota ought to have been considered in each recruitment year on priority basis but the respondents made a departure of the rule in the instant case without and justifiable ground.

#### 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 previously filed 392/2002 which was disposed of. However no application or writ petition or suit is now pending before any Court.

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

*Babul Chandra Das*

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 impugned memorandum issued under letter no.F.No.O.A.392/2002 be set aside and quashed.
- 8.2 That the respondents be directed to consider the promotion/appointment of the applicant under 10% quota on regular basis at least with effect from the date of appointment of his immediate junior who qualified in the limited departmental examination subsequently with all consequential service benefit including seniority and monetary benefit in the cadre of L.D.C.
- 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: -

*Babul Chandra Das*

9.1 That the Hon'ble Tribunal be pleased to make an observation that the pendency of this application may not be a bar for consideration of the prayer of the applicant.

10. ....

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	: 11 G 389083.
ii) Date of Issue	: 21.4.04.
iii) Issued from	: G.P.O. Guwahati.
iv) Payable at	: G.P.O. Guwahati.

12. List of enclosures.

As given in the index.

*Babul Chandra Das*

**VERIFICATION**

I, Shri Babul Chandra Das. S/o Shri of Late Bhabani Prasad Das, aged about 50 years, working as Lower Division Clerk on officiating basis, in the office of the Income Tax Appellate Tribunal, fancy Bazar, Guwahati-781001 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 26<sup>th</sup> day of April, 2004.

*Babul Chandra Das*

-26- -14-

Annexure-1

<p>की B K. e. p. ur immediate 12/10/80</p>	<p>प्राप्ति के ब्योरे Received Particulars f. 1/1/80</p>	<p>वीर संख्या Circulation No. 3553</p>	<p>प्रेषण के ब्योरे Sent Particulars 920/8</p>	<p>195 Date Stamp</p>
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X 2125 of 783 Bombay 5 PSI-37

मैत्रीभारती पत्रिका:

- Ascertain from sarvshri Nareshwardass B C Das

R C Medhi Mainuddin Ahmed and Intimate  
Tetgraphically willingness for appointment as  
lower division clerk in pune ahmedabad Jaipur  
Bombay in order of preference

मैत्रीभारती

(18-15,74-PH)

Attested  
Suryit Chaudhary  
Advocate  
on 26.4.09

STATE/ORDINARY

INCOTRIBUNAL

BOMBAY

196

44

REFYOUTEL FIFTH(.) NARESWAR DAS OPTED APPOINTMENT AS LDC  
JAIPUR AHMEDABAD BOMBAY PUNE (.) BABUL CHANDRA DAS JAIPUR  
BOMBAY PUNE AHMEDABAD (.) RAMESH CHANDRA MEDHI BOMBAY PUNE  
JAIPUR (.) MAINUDDIN AHMED AHMEDABAD PUNE JAIPUR

INCOTRIBUNAL

Not to be telegraphed:-

*Musand*  
Assistant Registrar.

Post copy in confirmation forwarded to :- F.I/1/ATQ/79/3122  
ITAT.Cauhati, Dt.11.3.80.  
The Registrar, ITAT.Bombay. The willingness from S/Sri N.Das, B.C.Das,  
R.C.Medhi and M.Ahmad have been obtained. Their willingness are given  
below in order of preference as desired by the Head Office:-

Name of the officials.

Choice of place in order of preference.

1. Sri N.Das, Jamadar.

(a) Jaipur, ~~Ahmedabad~~ (b) Ahmedabad (c) Bombay and (d) Pune.

2. Sri B.C.Das, Daftry.

(a) Jaipur (b) Bombay (c) Pune and (d) Ahmedabad.

3. Sri R.C.Medhi, Jamadar.

(a) Bombay (b) Pune and (c) Jaipur

4. Sri M.Ahmad, Peon.

(a) Ahmedabad, (b) Pune and (c) Jaipur.

*905-11.3.80*

*Musand*  
Assistant Registrar.  
*by a/c*

Attested  
Surjit Choudhary  
Advocate  
on 26.4.04

( Copy )

Annexure 'B'

INCOME TAX APPELLATE TRIBUNAL  
B O M B A Y

Subject:- Scheme for Departmental Competitive Examination limited to Group 'D' employees in the Income-tax Appellate Tribunal for promotion to the post of Lower Division Clerk.

A list of Group 'D' employees of Income-tax Appellate Tribunal who have attained the qualifying standard for promotion to the post of Lower Division Clerk in the Income-tax Appellate Tribunal held at different stations on 28.12.1983 is given below :-

- |                            |                              |
|----------------------------|------------------------------|
| 1. Shri M.C. Dharmapalan.  | 10. Shri R.B. Khare.         |
| 2. " Rajinder Singh.       | 11. " B.C. Das.              |
| 3. " K.B. Parmar.          | 12. " Rajendra Prasad.       |
| 4. " Balbir Singh.         | 13. " M.S. Rawat.            |
| 5. " Ramesh Chandra Medhi. | 14. " Mainuddin Ahmed.       |
| 6. " K.G. Pahune.          | 15. " Shanker Singh Chauhan. |
| 7. " D.M. Urewar.          | 16. " J.K. Malvia.           |
| 8. " Kanhailal.            | 17. " Sital Prasad.          |
| 9. " A.K. Dutta.           |                              |

The names in the list are given in order of merit. Selection of the vacancies in the year 1984. In the post of Lower Division Clerk to be filled up against the 10% quota reserved for promotion of Group 'D' employees subject to the reservation to be made to SC/ST/Ex-Servicemen etc. will be made in order of merit from the above list. The list will be operative upto 31.12.1984.

Sd/-(G.P. Bajpai.)  
REGISTRAR.

The Deputy/Assistant Registrar, ITAT, Gauhati Bench(es).  
U.O.No.F.171-Ad(AT)/83 dated 9.2.1984.

-000-

*Attested  
Surgit Choudhary  
Advocate  
on 26.4.84*

( Copy )

Annexure I - 'C'

F.No. 8-6/JDL/83-96/5150 /

OFFICE OF THE COMMISSIONER OF INCOME TAX  
NORTH EASTERN ZONE : FORT JLE COMPOUND  
POST BOX NO. 20 : SHILLONG - 793001.

Dated 17 SEP 1985

To  
The Assistant Registrar,  
I.T.A.T., Oriental Building,  
1st Floor, Fancy Bazar,  
Gauhati;

Sub:- Departmental Examination of Group 'D'  
Employees for promotion to LDC -  
Information regarding -

Please refer to your letter No. F.IV/6/  
ATG/80/1197 dated 6.9.85 on the above subject.

The information as sought for by you is  
given below :-

- (a) Departmental examination for Group 'D' Employees for promotion to the LDCs is of "qualifying" nature from February 1982. A Group 'D' employee who once passes this examination need not appear in the subsequent examination if he is not promoted prior to that examination.
- (b) A note should be made in the respective service books of such employees to the effect of their passing such examination.

Sd/- (J.C.Dey )

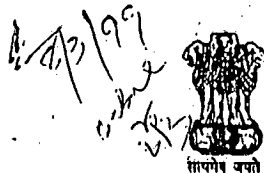
Dt. 17/9/85

Income-tax Officer, Judicial,  
for Commissioner of Income-tax ,

Shillong.

-oOo-

Attested  
Surgit Chakraborty  
Advocate  
on 26.4.84



- 18-30 - *By Speed Post*  
Annexure - 5  
कार्यालय आयकर आयुक्त  
पो० बॉ० सं० 20 शिलांग - 793001 (मेघालय)  
OFFICE OF THE COMMISSIONER OF INCOME TAX  
Post Box 20, Shillong-793001 (MEGHALAYA)  
Telegram - Aaykar  
Office : 223587, Fax : (0364) 223758.

फा० सं०/F. No. E-8/Estt/90-91/CT/21786  
तिथि/Date 4th march, 1999.

To  
Shri T.C.Goswami,  
Assistant Registrar,  
Income-tax Appellate Tribunal,  
Guwahati Bench, Oriental Building,  
1st Floor, Fancy Bazar,  
GUWAHATI - 781 001.

Sir,

Sub: Procedure for promotion to the  
post of Lower Division Clerk amongst  
the Group-D employees who have  
qualified the Departmental Examination  
of Group-D employees - Information  
Regarding -

\*\*\*\*\*

Kindly refer to your letter F.No.5/ATG/98 dated  
18-12-98 on the above subject.

I am directed to inform you that the rules in  
force in regard to promotion of Group- 'D' employees to  
the post of L.D.C. is as below :-

Method of promotion:-

The DPC determines the actual number of vacancies  
that arise during the year inclusive of the anticipated  
vacancies. The DPC prepare the panel against the actual  
number of vacancies only. The qualified candidates who  
are left out of the panel will find place in the subsequent  
DPC. The left out candidates need not appear in the same  
examination again.

Yours faithfully,

( S. KHARPUR )

Deputy Commissioner of Income-tax, Hqrs.  
for Commissioner of Income-tax,  
SHILLONG

*Attended  
Sangit Choudhary  
Advocate  
on 26.4.09*

18/10/96

48

Dated the 22nd October, 1996.

\* O R D E R \*

1. Shri B.C.DAS, Daftary, Income-tax Appellate Tribunal, Gauhati Bench, Gauhati is appointed to officiate as Lower Division Clerk on ad-hoc basis with effect from the forenoon of 1st October, 1996 in the pay scale of Rs.950-20-1150-EB-25-1500 in the same Bench until further orders vice Shri S.C.Saikia, LDC promoted.
2. Shri D.C.Sharma, Peon, Income-tax Appellate Tribunal, Gauhati Bench, Gauhati is appointed to officiate as Senior Peon on ad-hoc basis with effect from the forenoon of 1st October, 1996 in the pay scale of Rs.775-12-871-EB-14-1025 in the same Bench until further orders vice Shri M.C.Chakraborty, Sr. Peon promoted.
3. Shri T.C.Boro, Chowkidar, Income-tax Appellate Tribunal, Gauhati Bench, Gauhati is appointed to officiate as Peon on ad-hoc basis with effect from the forenoon of 1st October, 1996 in the pay scale of Rs.750-12-870-EB-14-940 in the same Bench until further orders vice Shri D.C.Sharma, Peon promoted.

The above appointments are on ad-hoc basis and as such it will not bestow on them any claim for regular appointment in the grade as mentioned above. Further the services rendered on ad-hoc basis in the grade would not count for the purpose of seniority in the grade as well as for eligibility for promotion to next higher grade.

This issues with the approval of the Hon'ble President, Income-tax Appellate Tribunal.

*Sd/-*  
(S. PRASAD)  
DEPUTY REGISTRAR.

Copy to:-

1. The Pay & Accounts Officer, Ministry of Law & Justice, Department of Legal Affairs, New Delhi.
2. The Deputy Registrar, I.T.A.T., Calcutta Benches, Calcutta.
3. The Assistant Registrar, I.T.A.T., Gauhati Bench, Gauhati with reference to his U.O.No.F.5/ATG/1994 dated 3.10.96 is requested to intimate the joining of duty in the post of Daftary by Shri M.C.Chakraborty, Senior Peon, so that the formal Orders can be issued in his favour.
4. Shri B.C.Das, Lower Division Clerk, I.T.A.T., Gauhati Bench, Gauhati.
5. Shri D.C.Sharma, Senior Peon, I.T.A.T. Gauhati Bench, Gauhati.
6. Shri T.C.Boro, Peon, I.T.A.T., Gauhati Bench, Gauhati.
7. Personal file.
8. Hindi Section, I.T.A.T., Mumbai.
9. Guard file.

*Kishan Rao*  
DEPUTY REGISTRAR.

*Attended  
Sangit Choudhary  
Advocate  
on 26.9.04.*

( Copy )

To

The Registrar,  
Income-tax Appellate Tribunal,  
Central Govt. Offices Building,  
4th Floor, 101, Maharshi Karve Marg,  
Bombay:- 400 020.

(Through Proper Channel)

Sir,

Sub:- Prayer for promotion to the post of  
Lower Division Clerk in the Office of the  
ITAT, Gauhati Bench, or any other Benches  
of the Tribunal.

-----

With due respect and humble submission, I beg to  
lay before your honour the following few lines for favours  
of your kind and sympathetic consideration :-

1. That Sir, I am a Group 'D' employee worked as Peon from 13-3-1972 to 16-3-1975 and afterwards, I was promoted to the post of Daftry w.e.f. 17.3.1975 and since then, I am working in the same capacity.
2. That Sir, I have passed the H.S.L.C. Examination in the year 1971 under the Board of Secondary Education, Assam, Guwahati and I appeared for the Pre-University Final Examination under the Gauhati University with due permission of the Department.
3. That Sir, I have got Diploma in English Typewriting with a speed of 41 words per minute from the Govt. recognised School.
4. That Sir, I was appointed as L.D. Clerk on ad-hoc basis in this Bench, w.e.f. 16.4.79 (A.N.) until further orders in lower cadre against the post of U.D. Clerk vacated by Sri T.C. Goswami Vide Head Office order No. F.96-Ad(AT)/79 dated 26.6.79 and was reverted to my original post of Daftry w.e.f. 10.8.79 (A.N.).
5. That Sir, I have appeared and passed twice in the Departmental Competetive Examination for promotion to the post of L.D. Clerk held in 1980 and 1983 as communicated vide Head Office Telegram dt. 5th March, 1980 and U.O. No. 171 Ad(AT)/83 dated 9.2.1984 respectively (copy enclosed marked Annexure 'A' & 'B'). In this connection, reference is invited to F.No. E.6/JDL/86-86/5150 dated 17.9.1985 address to the Assistant Registrar, ITAT, Gauhati Bench, Guwahati by the Income-tax Officer, Judicial, for Commissioner of Income-tax, Shillong (copy enclosed marked Annexure 'C') wherein it has been clarified by the Income-tax Deptt. that Group 'D' employees who passed the Departmental Examination need not appear in the subsequent Examinations.
6. That Sir, I have completed more than 18 years service in the Tribunal and though I am eligible for promotion to the post of L.D. Clerk I am still

contd.....2/-

Attassted  
Surgit H. S. S. S. S.  
Advocate  
on 26.4.04.

( 2 )

In the Group 'D' post for the last 18 years.

In view of the above facts and circumstances, I humbly request your honour to fervently consider my case for promotion to the post of Lower Division Clerk in the Income-tax Appellate Tribunal, Gauhati Bench or any other Benches of the Tribunal and for this act of your kindness I shall ever pray.

Yours faithfully,

Sd/- (Babul Chandra Das.)

Dt. 24/1/91

Daftry,

Income-tax Appellate Tribunal,  
Gauhati Bench, Guwahati-1.

( Copy )

From :  
T.C.Goswami,  
Assistant Registrar.

D.O.No.5/ATG/98-99/640  
Income-tax Appellate Tribunal,  
Gauhati Bench, Oriental Building,  
1st Floor, Fancy Bazar,  
Guwahati:-781001.

Dated :- 3.3.1999.

Respected Sir,

With reference to my D.O. letter of even number dated 30.6.98 and as per your telephonic instructions a reference was made to the Commissioner of Income-tax, N.E. Region, Shillong on the matter of Departmental procedure being followed in respect of promotion of Group 'D' Staff to the post of L.D.C. who could qualify in the Departmental Competitive Examination.

In this connection, a photocopy of letter No.E.8/Estt/90-91/CT/21986, dated 4.8.99 received from the Dy. Commissioner of Income-tax, Shillong, Headquarters, Office of the Commissioner of Income-tax, Shillong is sent herewith for your kind information and also to examine the issue to be considered to adopt similar procedure in our I.T.A.T. also on the light of the above said letter in the interest of administration.

Hope, request of Shri D.C.Das, who had qualified in the Departmental Competitive Examination for promotion the post of L.D.C. in different occasions held earlier but could not accommodate him for non-availability of vacancy, may now be considered sympathetically.

With respectful regards,

Yours Sincerely,

Sd/- (T.C.Goswami)

To  
Shri N.M.Nayak,  
Registrar,  
I.T.A.T.,  
Mumbai:-20.

Attached  
Sd/-  
Advocate  
on 26.4.09

To  
Respected  
Hon'ble President,  
Income-tax Appellate Tribunal,  
Mumbai.

Dated: Guwahati, the 19th  
August, 1999.

Subject:- Appointment as L.D.Clerk on regular  
basis - Prayer for -

Respected Sir,

With due respect I would like to draw kind attention  
of your honour to the following facts for your information,  
sympathetic consideration and favourable orders.

- 1) That Sir, as a candidate sponsored by the Employment Exchange I was selected and appointed to the post of Peon/Daftry in the I.T.A.T., Gauhati Bench, Guwahati, w.e.f. 13.3.72/17.3.75 vide Registrars' Order No. F. 84-Ad(AT)/72 dated 16-4-72 and No. F. 86-Ad(AT)/74 dated 13-3-75.
- 2) That Sir, since I read upto Pre-University Course and also having Diploma in Typewriting (English), the authority has been pleased to appoint me in the post of L.D.Clerk in various occasions at Guwahati against the leave vacancies and discharged my duty to the best satisfaction of my superiors.
- 3) That Sir, I appeared in the Departmental Competitive Examination amongst the Group 'D' employees for promotion to the post of L.D.Clerk and passed such examinations twice held in 1980 and 1983 as communicated by the Head Office vide Telegram dated 5.3.80 and U.O.No.F. 171-Ad(AT)/83, dated 9.2.84 respectively. (copy enclosed). But, I have not been promoted to the post of L.D.Clerk by the Head Office stating that no vacancy exist during the period under consideration and hence my eligibility has not been considered subsequently for such promotion.
- 4) That Sir, giving promotion to the post of L.D.C. amongst the eligible Group 'D' employees after observing necessary formalities is followed by all Central Govt. Departments as per instructions issued by the Government. To know the procedure followed by the Income Tax Department in such cases, a reference was made to the Commissioner of Income Tax, Shillong, who has clarified vide his letter F.No.E-6/JDL/85-86/5150, dated 17.9.85 (copy enclosed) as under :
  - (a) Departmental Examination for Group 'D' Employees for promotion to the LDCs is of "Qualifying" nature from February 1982. A Group 'D' employee who once passes this examination need not appear in the subsequent examination if he is not promoted prior to that examination.
  - (b) A note should be made in the respective Service Books of such employees to the effect of their passing such examination.
- 5) That Sir, in view of the above, I appealed to the Registrar, ITAT, Mumbai vide my application dated 24.1.91 (copy enclosed) to consider my promotion to the post of L.D.C. as and when vacancy arise, but my request has not been excused to and thereby I am deprived of my claim.

Contd.....2/.

Attested  
Surgit Choudhary  
on 26.9.09

( 2 )

- 6) That Sir, I am rendering continuous service for more than 27 years and presently attending the age of 47 years.
- 7) That Sir, although I submitted my willingness to appear in the last Competitive Departmental Examination held on 27.4.98, I have not been allowed to sit in said examination considering my age bar even after my submission of written application dated 7.4.98 ( copy enclosed ).

Nevertheless, to do justice for me with the similar procedure followed by the Income Tax Department the Asstt.Registrar, ITAT, Guwahati was kind enough to make a further reference to the Registrar, ITAT, Mumbai vide his D.O. letter No.5/ATG/98-99/640, dated 8.3.99 ( copy enclosed ) for the settlement of my legitimate claim but no order has yet been received from the Head Office.

That Sir, in this connection, I would like to inform that your honour was kind enough to promote me to the post of L.D.C. on adhoc basis w.e.f. 1.10.96 vide Head Office order No.F.74-Ad(AT)/96, dated 22.10.96 and since then I am discharging my duties as L.D.C. to the best satisfaction of all my superiors.

In view of my above submissions, there left no other alternative but to approach your honour to look into the matter so that I may not be deprived of my claim at this old age and may be appointed to the post of L.D.C. on regular basis against the existing vacancy available at Guwahati.

And for this act of kindness I together with my poor family members will remain ever grateful to your honour and oblige.

Enclo: As above.

Yours faithfully,

*19/8/99*  
( Babul Chandra Das )  
L.D.C. (Adhoc)  
I.T.A.T., Gauhati Bench,  
Guwahati:- 781001.

51

( Copy )

STATE : EXPRESS

X 2125 01 783

BOMBAY 5 P 81-37

INCOTRIBUNAL GAUHATI

ASCERTAIN FROM SARVASHRI NARESWAR DAS B. C. DAS  
R. C. MEDHI MAINUDDIN AHMED AND INTIMATE  
TELEGRAPHICALLY WILLINGNESS FOR APPOINTMENT AS  
LOWER DIVISION CLERK IN FUNE AHMEDABAD JAIPUR  
BOMBAY IN ORDER OF PREFERENCE

INCOTRIBUNAL  
BOMBAY  
-----

( Copy )

STATE ORDINARY

INCOTRIBUNAL BOMBAY

REFYOURTEL FIFT (.) NARESWAR DAS OPTED APPOINTMENT AS  
L D C JAIPUR AMMEDABAD BOMBAY PUNE (.) BABUL CHANDRA DAS  
JAIPUR BOMBAY PUNE AMMEDABAD (.) RAMESH CHANDRA MEDHI  
BOMBAY PUNE JAIPUR (.) MAINUDDIN AHMED PUNE  
JAIPUR

Date : 11-3-1980

INCOTRIBUNAL  
GAUHATI

( Copy )

INCOME TAX APPELLATE TRIBUNAL : GAUHATI BENCH : GUWAHATI.

SUB : Forwarding of application dated 24-01-1991 of  
Shri B.C.Das, Daftary prayer for promotion to  
the post of L.D.C. in the Income-tax Appellate  
Tribunal, Benches.

.....

Application dated 24-01-1991 received from  
Shri B.C.Das, Daftary, Income-tax Appellate Tribunal,  
Gauhati Bench, Guwahati requesting for promotion to the  
post of L.D.C. is forwarded in duplicate.

The above noted application was placed before  
the Sr. Member and his comments are reproduced below :-

" In this Representation, matter  
relating to promotion is involved.  
Considering the background,  
qualifications, past services and  
experience acquired by the incumbent,  
the representation is forwarded to  
H.C. through Z.O. The case deserves  
favourable consideration, at the  
earliest.

Sd/-  
( R. Singh )  
Sr. Member  
28.1.91.

Encls: As above.

Sd/- (S.K.Biswas)  
dt. 30/1/91  
Assistant Registrar.

The Deputy Registrar, ITAT, Calcutta.  
U.O. No.F. IV/6/446/20-89 dated 30.01.1991.

.....

Attended  
Simpliciously  
Advocate  
on 26.1.91

To  
The Registrar,  
Income-tax Appellate Tribunal,  
Central Govt. Offices Building,  
4th Floor,  
101, Maharshi Karve Marg,  
MUMBAI - 400 020.

( Through Proper Channel )

Subj:- Prayer for regularisation in the  
post of L.D.C. in the I.T.A.T., Gauhati  
Bench, Guwahati - regarding.

Sir,

With due respect and humble submission, I beg to lay  
before your honour the following few lines for favour of your  
kind and sympathetic consideration.:

1. That Sir, I am working as L.D.Clerk and have  
completed more than 4 years as L.D.Clerk on adhoc  
basis w.e.f. 1.10.1996. Previously, I also worked  
as L.D.Clerk on adhoc basis in 1979 ( i.e. from  
16.4.79 to 10.8.79 ) vide Head Office Order Nb.  
F.96-Ad(AT)/79, dated 26.6.79.
2. That Sir, I have appeared and passed the Departmental  
Examination for promotion to the post of L.D.Clerk  
in the year 1980 and as such the Head Office sought  
willingness for appointment as L.D.Clerk as per  
Head Office telegram dated 5.3.1980 ( copy enclosed  
as Annexure 'A' ) and accordingly I opted for appoint-  
ment as L.D.Clerk in one of the Benches of the  
Tribunal as per telegraphic intimation sent to the  
Head Office vide this Office telegram dated 11.3.1980  
( copy enclosed for ready reference as Annexure 'B' )  
but I was not given the benefit of my passing the  
Departmental Examination of Group 'D' Employees in  
the year 1980 in spite of my willingness even outside  
the Gauhati Bench.
3. That Sir, again in the year 1983 I have duly passed  
the Departmental Competitive Examination of the  
Group 'D' Employees for promotion to the post of  
L.D.Clerk in I.T.A.T. held on 28.12.1983 as per  
intimation sent to this Office vide Head Office  
U.O.No.F.171-Ad(AT)/83, dated 9.2.1984 ( copy enclosed  
for ready reference as Annexure 'C' ). But at this  
time also I was not given any opportunity for  
promotion to the post of L.D.Clerk even though I  
was willing to go outside Gauhati Bench on promotion.
4. That Sir, I have qualified twice in the Departmental

Contd.....2/-

Attested  
Signature of  
Advocate  
on 26.4.94

( 2 )

Competitive Examination of Group 'D' Employees for promotion to the post of L.D.Clerk.

I understand that an employee once qualified for Departmental Examination for promotion to the next higher grade is to be kept in the penal of the subsequent D.P.C. to consider his promotion and he need not appear in the same examination again and again. In this connection, your kind attention is drawn to the two separate letters F.No.E-6/JDL/85-96/5130 dated 17.9.1985 and F.No.E-8/Estt./90-91/CT/21986, dated 4.3.99 of the C.I.T., N.E.R., Shillong. ( Copy enclosed for ready reference as Annexure 'D' and Annexure 'E' respectively ).

5. That Sir, I have completed about 29 years service in the Tribunal and I am eligible to get two promotion during the period of 24 years of my service. Considering this point also, I am entitled to get Assured Career Progression (A.C.P.) as per O.M.No.35034/1/97-Estt.(D) dated 9th August, 1999 issued by the Ministry of Personnel, and Public Grievances and Pension (Department of Personnel and Training). In this connection, my service particulars in prescribed proforma duly filled in was sent to the Head Office vide this Office U.O. No.F.5/ATG/94-99, dated 3.11.99 but nothing has so far been heard from the Head Office.
6. That Sir, Sri S.C.Saikia, L.D.Clerk was promoted as U.D.Clerk in Gauhati Bench vide Head Office U.O.No. F.84-Ad(AT)/97-98 dated 10.3.1998 and Sri N.Das, L.D.Clerk was also promoted as U.D.Clerk in Gauhati Bench vide Head Office U.O.No.F.84-Ad(AT)/98 dated 17.8.1999 and consequently two posts of L.D.Clerk are still lying vacant in Gauhati Bench till date.

PRAYER :

In view of the foregoing facts and circumstances, I fervently request your honour that considering my 29 years service rendering in I.T.A.T. including 4 years as L.D.Clerk w.e.f. 1.10.1996 ( on adhoc basis ) I may kindly be regularised in the post of L.D.Clerk w.e.f. 1.10.1996 in which I am working on adhoc basis against the existing vacant post of L.D.Clerk in the Gauhati Bench and enable me to get service benefit and redress my mental anxiety.

And for this act of your kindness I together with my poor family members will remain ever grateful to your honour and oblige.

Enclo:- As above.

DATED:- 2-11-2000.

Yours faithfully,

( B.C. Das )  
L.D. Clerk (Adhoc)  
Trib. Gauhati Bench, Gau.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.392 of 2002

Date of decision: This the 20th day of November 2003

The Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman

The Hon'ble Shri S.K. Naik, Administrative Member

Shri Babul Chandra Das  
S/o Late Bhabani Prasad Das  
Working as Lower Division Clerk  
on officiating basis,  
Income Tax Appellate Tribunal,  
Guwahati.

.....Applicant

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

- versus -

1. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Law and Justice,  
New Delhi.

2. The Registrar,  
Income Tax Appellate Tribunal  
Central Government Offices Building,  
4th Floor Maharshi Karve Marg,  
Mumbai.

The Assistant Registrar  
Income Tax Appellate Tribunal,  
Guwahati.

.....Respondents

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

.....

ORDER (ORAL)

SMT LAKSHMI SWAMINATHAN (V.C.)

The applicant has submitted that the respondents are not considering his case for regular appointment as Lower Division Clerk (LDC) with effect from 22.10.1996 i.e. the date from which he has been appointed in that post on ad hoc basis.

18/11/03  
Affidavit  
Sworn by Chandra Das  
Advocate  
on 26.9.04.

2. The brief relevant facts are:

The applicant had appeared in the Limited Departmental Competitive Examination (LDCE) held by the respondents in 1974, 1980 and again in 1983 against the 10% quota reserved for Group 'D' employees. The respondents in their reply affidavit have submitted that the applicant had appeared in the LDCE for 1980 and 1983 and was placed at serial 7 and 11, in the order of merit, respectively. According to them, since only 10% quota of vacancies was available in a particular year under this category i.e. for promotion of Group 'D' employees who were successful in the examination, the applicant could not be appointed in the year 1980 since only two posts of LDCs were available in that quota. The same thing appears to have happened after the applicant had appeared in LDCE in 1983, ~~also~~. The respondents have stated that the applicant has been appointed as LDC on ad hoc basis as a stop gap arrangement till the Staff Selection Commission sponsored a candidate for regular appointment. This has been done with effect from 1.10.1996 vice Shri S.C. Saikia, LDC who was promoted as UDC. They have submitted that the applicant has no right to claim for regular promotion to the post of LDC de hors the rules, as he is appointed in that post on ad hoc basis as a stop-gap arrangement.

3. Shri M. Chanda, learned counsel for applicant has submitted that from 1.10.1996 till date the applicant is continuing in the higher post of LDC, even though it may be on ad hoc basis, without any break. He has, therefore, submitted that there is no reason why respondents ought not to consider regularisation of the applicant's posting

as.....

as LDC. In this regard he submits that the applicant has made several representations, including the representation placed at Annexure-X, which is stated to be dated 2.11.2001. We note that the applicant has narrated the relevant facts as mentioned above, praying that his services may be regularised, as according to him, there is also a vacant post at Guwahati Office of the respondents. Learned counsel has submitted that no reply has been given by respondents to this representation. We also note that there is no impugned order in this O.A. excepting the non-action of the respondents in not considering the claim of the applicant for regular appointment as LDC against the 10% quota reserved for promotion of Group 'D' employees.

In the facts and circumstances of the case, after hearing the learned counsel for parties and perusing the relevant documents on record, we dispose of the application with the following directions:

- 1) The respondents shall take an appropriate decision in the matter of the claim of the applicant for regular appointment <sup>as</sup> LDC, against 10% quota <sup>for</sup> promotion to that post from Group 'D' employees, in accordance with law, relevant rules and instructions and shall pass a reasoned and speaking order, <sup>which</sup> shall be done within four months from the date of receipt of a copy of the order.

No order as to costs.

Sd/ VICE-CHAIRMAN  
Sd/ MEMBER (A)

TRUE COPY  
प्रतिलिपि

Section Officer (J)

C.A. T. GUWAHATI BARER

Guwahati-781005

8/12

To.

The Registrar,  
Income- Tax Appellate Tribunal,  
Central Govt. Offices Building,  
4<sup>th</sup> Floor,  
101. Moharshi Karve Marg,  
Mumbai- 400 020.

(Through Proper Channel)

Sub: - Judgment and Order dated 20.11.2003 in O.A.No. 392 of  
2002 of CAT, Guwahati; regularization in the post of  
L.D.C.

Sir,

Most respectfully I beg to enclose herewith the judgment and order dated 20.11.2003 in O.A.No. 392/2002 passed by the Hon'ble CAT, Guwahati Bench resting on my promotion/ regularization in the post of L.D.C w.e.f. 01.10.1996, and beg to lay the following few lines before your honour for your kind considerations.

That Sir, I have been serving in this Tribunal since last 30 (thirty) years and worked mostly in Group 'D' posts until I was promoted to officiate as Lower Division Clerk (LDC) on adhoc basis w.e.f. 01.10.1996 vice Shri S.C.Saikia, LDC, promoted.

That Sir, my promotion as LDC w.e.f. 01.10.1996 was against a regular post vacated by Sri S.C.Saikia and I was duly qualified and entitled to get the promotion on regular basis, but unfortunately my promotion was given on ad-hoc basis instead of regular basis, for the reasons best known to the authorities. Thereafter regular appointments were made to the post of LDC but my case has not been considered on the plea of non-appearing in the departmental examination.

That Sir, I beg to state that I had appeared in the Departmental examination in 1980 and came out successful and was entitled to get the regular promotion as LDC. I had requisite qualification and was senior and as such quite eligible for getting the regular promotion against 10% quota for Group 'D' employees, but my case was not considered in 1980. As per recruitment rules of the department, since I could not be promoted in 1980, my name should automatically find place in the panel of the subsequent DPC as a left out candidate of the earlier panel and it is evident from the letter No. E-8/Estu/90-91/C1/21986 dated 04.03.1999 of the Commissioner of Income Tax, Shillong addressed to Assistant Registrar, ITAT, Guwahati (copy enclosed).

Attested  
Surgit Choudhary  
Advocate  
on 26.4.94

- 46 -

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That Sir it is also mentioned in the said letter dated 04.03.1999 that the left out candidates need not appear in the same examination again. As such I am not required to appear in the Departmental examination any more for my promotion to the post of LDC since I had already qualified the same examination earlier in 1980. But as an abundant caution, I had appeared in the Departmental examination again in 1983 and came out successful for the second time. In spite of being a pretty senior Group 'D' employee and in spite of having requisite qualification and passing of Departmental examination twice, my case for regular promotion to the post of L.D.C was not considered.

That Sir, being disappointed, when I tried to appear again in the Departmental examination held on 27.05.1998, I was not allowed to appear on the plea that I was age barred for the examination since my age was more than 45 years. It is relevant to mention here that this age limit was fixed as a criterion for eligibility to appear in the Departmental examination which is not applicable in my case since I had already appeared and qualified this examination twice prior to completion of my 45 years age and was a left out candidate only for which no age bar is applicable as per instant rules as stated above. As such the provision of age bar has been misconstrued and wrongly applied in my case.

That Sir, I have been serving against a regular post of LDC for over 7 (seven) years w.e.f 01.10.1996 but on ad-hoc basis only which is not being regularized as a regular appointment, thus depriving me of my legitimate and valuable right, although I am discharging the duties and responsibilities of LDC over these years. It is pertinent to mention here that I had also served as L.D.C on ad-hoc basis earlier for a short spell during the period from 16.04.1979 to 10.08.1979 vice Shri T.C.Goswami.

That Sir, since 1980, promotions have been given to Group 'D' employees including my juniors to the post of L.D.C on many occasions against 10% quota ignoring my case inspite of my requisite qualification, seniority, experience, passing departmental examinations etc. and my case was kept aside which ought to have found place as a left out candidate as per the rules. Surprisingly, even in 1998 when promotion to L.D.C was given to Shri M.C.Tiwari, peon ITAT, Delhi Bench vide order No. F-171-Ad (AT)/98 dated 11.09.1998, my case has not been considered although I was already holding the post of L.D.C on ad-hoc basis since years past and my case was recommended for promotion on earlier occasions.

-47-

64

Under these circumstances, I would now fervently pray your honour kindly to consider my case in terms of the directions given in judgment and order dated 20.11.2003 in O.A.No. 392/2002 passed by the Hon'ble CAT, Guwahati and grant me regular promotion as I.D.C with effect from 01.10.1996 with all consequential benefits and for this act of your kindness I shall remain ever grateful to you.

Yours faithfully

Date: 31/12/2003

Encls: -

(1) Copy of the judgment and order

Dated 20.11.2003

(2) Letter No. E-8/Est/90-91/CT/21986

Dated 04.03.1999.

(BABUL CH. DAS)

L.D.C. (cadre)

I.T.T., Guwahati Bench.

Guwahati - 1.

F. No.O.A.-392/2002.

Income Tax Appellate Tribunal,  
Central Govt., Offices Building,  
4<sup>th</sup> floor, Maharshi Karve Marg,  
MUMBAI - 400 020.

Dated:- 03.03.2004.

MEMORANDUM

The Hon'ble Central Administrative Tribunal, Guwahati Bench vide their order dated 20.11.2003 have since directed the Respondents to take appropriate decision in the case of Shri B.C. Das, Lower Division Clerk (Adhoc) for his regular appointment as Lower Division Clerk against 10% quota of promotion to the post of Group 'D' in accordance with law and relevant rules and instructions or shall pass a reasoned speaking Order within four months from the date of receipt of 'Central Administrative Tribunal' Order.

2. The applicant, Shri B.C. Das appeared in the Limited Departmental Competitive Examination held in the years 1980 and 1983 and was placed at Sl. No. 7 & 11 respectively in the order of merit. Since only 10% quota against the vacancies arising in a particular year is reserved for promotion of Group 'D' employees who are successful in the examination, the applicant could not be accommodated in the year 1980 as only two posts of LDCs were earmarked for the merit quota and the candidates at Sl. No. 1 & 2 were appointed as LDC at ITAT, Ahmedabad and Pune respectively. Further, the fact that the panel prepared would be valid for a period of one year as per the scheme of the examination and this fact was well known to the applicant as he again, appeared at the Departmental Competitive Examination in the year 1983 but could not come upto the stage of merit though passed the examination.

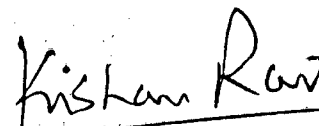
Contd....2.

Attended  
Sangita Choudhary  
Advocate  
on 26.4.04

3. Further, the applicant, Shri B.C. Das was appointed as Lower Division Clerk with effect from 01.10.1996 on *ad hoc* basis as a stop gap arrangement till the Staff Selection Commission sponsored a candidate for regular appointment vice Shri S.C. Saikia, L.D.C., who was promoted as U.D.C., subject to the condition which was accepted by the applicant, that the appointment is only *ad hoc* and will not bestow on the applicant any right to claim for regular appointment in the grade of L.D.C. and the service rendered on *ad hoc* basis in that grade would not count for the purpose of seniority in the grade.

4. After considering all the facts and circumstances of the case, and keeping in view the entire scheme of the examination in accordance with law, relevant rules and instruction, it has been found not feasible to accede to the request of Shri B.C. Das, LDC (*ad hoc*) for his regular appointment as Lower Division Clerk.

This issues with the approval of the Competent Authority.

  
(KISHAN RAO)  
DEPUTY REGISTRAR

✓ Shri B.C.Das  
Lower Division Clerk (*ad hoc*)  
Income Tax Appellate Tribunal  
Guwahati Bench, Guwahati.

Copy forwarded for information and necessary action to:-

1. The Deputy Registrar, Income Tax Appellate Tribunal, Kolkata Benches, Kolkata.
2. The Assistant Registrar, Income Tax Appellate Tribunal, Guwahati Bench, Guwahati.

DEPUTY REGISTRAR

Dated the 11th Sep., 1998.

\* ORDER \*

1. Shri M.C.Tiwari, Peon, Income-tax Appellate Tribunal, Delhi Benches, New Delhi who is officiating as Senior Peon, Income-tax Appellate Tribunal, Delhi Benches, New Delhi on ad-hoc basis is appointed to officiate as Lower Division Clerk on regular basis against the quota reserved for Group 'D' employees in the Income-tax Appellate Tribunal, Delhi Benches, New Delhi with effect from the forenoon of 5th October 1998, until further orders.
2. Shri V. Nagrajan, Peon, Income-tax Appellate Tribunal, Chandigarh Benches, Chandigarh with Headquarters at Delhi is appointed to officiate as Lower Division Clerk on regular basis against the quota reserved for Group 'D' employees in the Income-tax Appellate Tribunal, Delhi Benches, New Delhi with effect from the forenoon of 5th October, 1998, until further orders.

The above officials will be on probation for a period of 2 years. As per this office records Shri M.C.Tiwari and Shri V. Nagrajan do not possess the minimum speed of 30 words per minute in type-writing as prescribed for appointment to the post of Lower Division Clerk under the Income-tax Appellate Tribunal (Group 'C' Posts) Recruitment Rules, 1984. As such their appointments are subject to the condition that they shall not be eligible for drawing increment in the pay scale and shall not qualify for quasi-permanency or for confirmation in the grade till they acquire a minimum speed of 30 words per minute in typewriting.

( N.N.NAYAK )  
REGISTRAR

Copy forwarded to:

1. The Pay & Accounts Officer, Ministry of Law & Justice, Deptt. of Legal Affairs, New Delhi.
2. The Deputy/Assistant Registrar, ITAT, Delhi Benches, New Delhi.
3. The Assistant Registrar, ITAT, Chandigarh Benches, Chandigarh.
4. Shri M.C.Tiwari, Senior Peon, ITAT, Delhi Benches, New Delhi.
5. Shri V. Nagrajan, Peon, ITAT, Chandigarh Benches, Chandigarh with Headquarters at Delhi.
6. Hindi Section, ITAT, Mumbai.
7. Guard file.

REGISTRAR

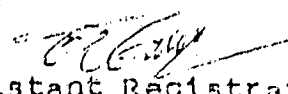
*Attended  
Savitri Chaudhary  
Advocate  
on 16.4.09*

INCOME TAX APPELLATE TRIBUNAL : GAUHATI BENCH : GUWAHATI.

Subject :- Regularisation of the service of Shri B.C. Das,  
L.D.C. appointed on adhoc basis.

It may be stated that Shri B.C. Das, Dufray has been appointed as L.D.C. on adhoc basis with effect from 01-10-1996 vide the Head Office order No.F.74-Ad(AT)/96 dated 22.10.1996. Since then Shri B.C. Das is working continuously as L.D.C. against this Bench and his service has not yet been regularised in the post of L.D.C. In this connection the Head Office is being requested from time to time for taking necessary steps to regularise the service of Shri B.C. Das in the Grade of L.D.C. considering the fact that Shri B.C. Das has come out ~~amk~~ successfully in the Departmental Promotion Examination ~~amk~~ twice as well as the age of the ~~Goverment~~ ~~amk~~ service so that he can get the benefit of the services rendering in the post.

In this connection, the application dated 2.11.2000 of Shri B.C. Das, L.D.C. (adhoc) alongwith its enclosures forwarded to the Head Office with the approval of the Hon'ble Vice-President, Kolkata Zone under U.O. No.F.33/ATC(C2)/2000 dated 20-11-2000 may also be taken into account so that the matter may be finalised accordingly without further loss of time.

  
Assistant Registrar.

*Issued  
(11/2/2001)*  
The Registrar, I.T.A.T., Mumbai-20.

U.O. No.F.IV/6/ATG/80-2000 dated 02-02-2001.

*Attended  
Surgically  
Adm. Cell  
on 26.4.04*

INCOME TAX APPELLATE TRIBUNAL:GUWAHATI BENCH:GUWAHATI.

- Sub:- 1) Scheme for Competitive Examination limited to the Lower Division Clerks in the Office of the Income-tax Appellate Tribunal for promotion to the Grade of Upper Division Clerks in the Tribunal according to Income-tax Appellate Tribunal(Group 'C'posts), Recruitment Rules, 1984. &
- 2) Departmental Competitive Examination for filling up the vacancies in the Lower Division Clerks grade from among the Group 'D' employees working in the Office of the Income-tax Appellate Tribunal (Class-III posts ) Recruitment Rules. - Informaton regarding.

- Ref:- 1) Head Office,U.O.No.F.123-Ad(AT)/2002,dated 21.1.2002,&
- 2) Head Office,U.O.No.F.171-Ad(AT)/2002,dated 18.1.2002.

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With reference to the above, the information about the willingness or otherwise from the eligible employees of this Office for appearing in the Departmental Competitive Examination for promotion to the post of U.D.Cs scheduled to be held tentatively in the 2nd week of March,2002 are furnished below:

Sl.No.	Name of the employees with designation.	Whether willing to appear in the Competitive Examination.	Signature of employees concerned.
1)	Shri R.C.Medhi,U.D.C. (Ad-hoc)	As he is on leave, his willingness will be sent after his joining.	
2)	Shri M. Ahmed,L.D.C.	I am willing to appear in the Competitive Examn. to be held on March, 2002.	Maimuddin Ahmed 14.2.2002

So far as the information about the willingness or otherwise from the eligible Group 'D' employees of this Office concerned, it may be stated that though Shri B.C.Das,L.D.C. (Ad-hoc) is willing to sit for the Departmental Competitive Examination, but he is not permitted to sit for aforesaid Departmental Competitive Examination in view of para of the I.T.A.T.(Class-III posts)Recruitment Rules-1967 for Competitive Examination in respect of Class-IV employees as he has crossed the upper age limit relaxed upto 45 years for General candidates. His date of birth is 22-8-1952 and as such his age is 49 years as on the date of Examination.

It may further be stated that Shri Das has been working continuously as L.D.C. on adhoc basis w.e.f. 1-10-1996 vide Head Office Order No.F.74-Ad(AT)/96, dated 22-10-1996 for above 5 years 4 months without break upto 14-2-2002. Previously, he worked as L.D.C. on adhoc basis w.e.f. 16-4-1979(A.N.) to 9-8-1979(A.N.) (above 4 months) vide Head Office Order No.F. 96-Ad(AT)/79, dated 26-6-1979 and authority has been pleased to appoint him in the post of L.D.C. in various occassions at Guwahati Bench against the leave vacancies and discharged his duties to the best satisfaction of the superiors. Shri Das

Contd....2/-

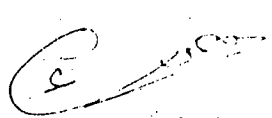
*Approved  
Signature of  
Advocate  
on 26.4.02*

has passed the written Departmental Examination, securing 2nd position out of 3 candidates at Guwahati Bench for promotion to the post of L.D.C. held during the year in 1974. But he did not get the promotion in that year. Again he passed the Departmental Competitive Examination held during the year in 1980 and 1983 as communicated by <sup>Vide</sup> Head Office ~~vide~~ Telegram dated 5th March, 1980 and U.O.No.F.171-Ad(AT)/83, dated 9-2-1983. Unfortunately, Shri Das did not get the promotion to the post of L.D.C. on regular basis at that time also. Although Shri Das appeared in each and every such Departmental Examination without any hesitation but due to age bar he was not permitted to sit for the Departmental Examination held on 27-5-1998, even though Shri Das has applied for condonation of age limit vide his application dated 7-4-1998 duly forwarded to the Head Office vide Zonal Office U.O.No.F.33-ATC-(C)/Cal, dated 30-4-1998. Almost all typing works of this Office as well as orders of the Guwahati Bench are done by him as and when required by the Hon'ble Members and superiors to their full satisfaction.

In view of the above, there is no Group 'D' employees of this Office entitled to sit for the aforesaid Departmental Competitive Examination for promotion to the post of L.D.C. as none of the remaining Group 'D' employees has passed the Matriculation Examination or equivalent Examination.

It is, therefore, requested to kindly send the question papers and other instructions to be followed accordingly.

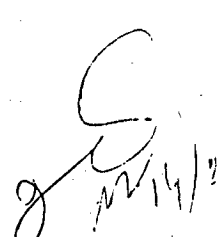
This is with the approval of Member.

  
Assistant Registrar.

The Registrar, I.T.A.T., Mumbai-20.  
U.O.No.F.3/ATG/98, dated 14-02-2002.

BCD/

-oOb-



भारतीय डाक  
GUWAHATI GENERAL POST OFFICE  
SP EE788646317IN  
Counter No:1, OP-Code: BABUL  
To: REG I T A T,  
MUMBAI, PIN: 400  
From: I T A T, GH  
Wt: 20grams,  
PS: 50.00, 14/02/2002, 17:41:24

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI.

27 JAN 2004

O.A.NO.100/2004

Shri.Babul Chandra Das

Applicant

V/s.

Union of India (M/O Law-ITAT)  
& others

Respondents

PARAWISE REPLY OF THE RESPONDENTS

Para 1: The Respondent respectfully submits that in pursuance of the Hon'ble High Court order dated 20.11.2003 directing the Respondents to take an appropriate decision for regular appointment as LDC against 10% quota by promotion to that post from Group 'D' employees, in accordance with law, relevant Rules and instructions and to pass a reasonable speaking order. Accordingly, memorandum dated 3.3.2004 was issued to Shri B.C.Das stating that it has been found not feasible to accede to the request of Sri B.C.Das, LDC (*ad hoc*) for his regular appointment as Lower Division Clerk.

Para 2: Needs no comments.

Para 3: The applicant's appeal is time barred, since the examination was conducted in the year 1983 in which the applicant appeared, hence there is a delay of more than 20 years in filing this application before the Hon'ble CAT, the O.A deserves to be dismissed on this ground alone. The Respondents rely on the decision of the Hon'ble CAT, Chandigarh Bench in O.A No. 167/HR of 1999 in which the Hon'ble CAT has observed that the decision on a representation which is made after the period of the limitation would not review the limitation.

Paras 4.1 & 4.2 : Pertains to the office records, needs no comments.

... 2/-

Filed by  
Z. Roy 21/1/05  
(A. DEB ROY)  
Sr. C. G. S. C.  
A. T. Guwahati Bench

✓ Paras 4.3 & 4.4 : The Respondents respectfully submit that the applicant appeared at the Limited Departmental Examination in the Years 1980 and 1983 and was placed at Sr.No. 7 & 11 in the order of merit in the year 1980 and 1983 respectively. Since only 10% quota against the vacancies arising in a particular year is reserved for promotion of Group 'D' employees who were successful in the examination and the applicant could not be accommodated in the year 1980 as only two posts of LDC were earmarked for the merit quota and the candidates at Sr.No. 1 & 2 S/Shri S.N.Sarkar, Peon and L.,R.Mandal, Jamadar, I.T.A.T., Kolkata were appointed as LDCs in I.T.A.T., Ahmedabad and Pune respectively vide order dated 31.03 1983 and 24.03.1980 respectively. It is also submitted that the panel prepared would be valid for a period of one year. These facts are well known to the applicant as he again appeared for the Departmental Examination in the year 1983 but could not come up to the stage of merit though he passed the examination. The applicant was appointed as LDC on *ad hoc* basis as a stop-gap arrangement till Staff Selection Commission sponsored a candidate for regular appointment with effect from 01.10.1996 vice Shri S.C.Saikia, LDC promoted as UDC. The applicant has accepted the condition that the appointment made on *ad hoc* basis will not bestow upon him any right to claim for regular appointment in the grade of LDC. Further the service rendered on *ad hoc* basis in the grade would not count for the purpose of seniority in the grade.

✓ Paras 4.5 & 4.6 : The circular quoted by the applicant is applicable in the Income Tax Department only.

Paras 4.7, 4.8 & 4.9 : The Respondents respectfully submit that the vacancies of LDC have been reported in the year 1996 to the Staff Selection Commission for sponsoring candidates for the post of LDC in I.T.A.T., Guwahati Bench, Guwahati. The Staff Selection Commission has nominated a handicapped candidate for appointment in I.T.A.T., Guwahati vide their letter dated 20.12.2002. Accordingly, an offer of appointment dated 2.1.2003 was issued to Shri Ashwini Kumar Singh with a direction to report for duty as LDC by 3.2.2003 in I.T.A.T., Guwahati Bench, Guwahati (copies of the letter dated 20.12.2002 and offer of appointment dated are hereby annexed and marked as Exhibit R1 collectively). Shri Ashwini Kumar Singh did not report for duty, hence his dossier was

... 3/-

returned to the Staff Selection Commission to nominate another candidate in place of Shri Ashwini Kumar Singh vide letter No. F.152-Ad/AT/2003 dated 17.12.2003. Accordingly, another candidate Shri Rakesh Kumar was nominated for the post of LDC in I.T.A.T., Guwahati Bench, Guwahati and accordingly offer of appointment was issued to Shri Rakesh Kumar vide Memorandum dated 22.03.2004 to report for duty at I.T.A.T., Guwahati. A copy of the Memorandum is hereto annexed and marked as Exhibit R2. Hence, the applicant cannot claim for promotion to the post of LDC on regular basis with effect from 01.10.1996 as the order itself says that it will not bestow on him any claim for regular appointment in the grade of Lower Division Clerk. Further the services rendered on *ad hoc* basis in the grade would not count for the purpose of seniority as well as for eligibility for promotion to the next higher grade.

The Respondents rely on the decision of Supreme Court of India in CWP No. 593 of 1990 in the case of Nisha Walia and others Vs High Court of H.P and others reported in AILCC volume 1, page 739.

The Respondents say and submit that the vacancy occurred due to promotion of Shri S.C.Saikia, LDC as UDC does not fall under the category of merit quota as wrongly alleged by the applicant.

Paras 4.10, 4.11 & 4.12: The Respondents respectfully submit that the Departmental Examination of Group 'D' employees in the I.T.A.T for promotion to the post of LDC was conducted in the year 1998 and at that point of time the applicant was overaged according to the scheme of Departmental Examination and thus he was not allowed to appear before the Limited Departmental Competitive Examination held on 22.05.1998. A copy of the scheme is hereto annexed and marked as Exhibit R3. ✓

The Respondents respectfully submit that Shri M.C.Tiwari, Peon, I.T.A.T whose date of birth is 10.01.1962 and appeared in the examination on 22.05.1998, was within the prescribed age limit and was successful in the examination.

✓ The Respondents respectfully submit that the circular quoted by the applicant is applicable in the Income Tax Deptt. only.

✓ Paras 4.13, 4.14, 4.15, 4.16, 4.17, 4.18 & 4.19 : The Respondents respectfully submit that simply qualifying the Limited Departmental Competitive Examination does not bestow any legal right on the applicant for appointment to the post of LDC unless his name is in the merit list for filling up the vacancies available. The appointment of the applicant is purely on *ad hoc* basis and a stop-gap arrangement till the Staff Selection Commission candidates join and hence the question of continuing the applicant even on *ad hoc* basis would not arise once the Staff Selection Commission sponsored candidate reports for duty.

Paras 5.1, 5.2, 5.3, 5.4 & 5.5 : Already clarified in the above paras. The Respondents deny and do not admit the contention of the applicant.

Paras 5.6, 5.7 & 5.8 : The Respondents respectfully submit that the applicant can not be appointed on regular basis as per the existing recruitment rules of Lower Division Clerk in I.T.A.T.

Paras 5.9, 5.10 & 5.11 : The circular quoted by the applicant is applicable in Income Tax Department only.

The Respondents respectfully submit that the Memorandum dated 03.03.2004 issued to Shri B.C.Das, after considering all the facts and circumstances of the case and keeping in view the entire scheme of the Examination in accordance with law, relevant rules and instructions and thus it has been found not feasible to accede to the request of Shri B.C.Das for his regular appointment as LDC.

Paras 6 & 7 : The Respondents beg to offer no comments.

✓ Paras 8, 8.1, 8.2, 8.3 & 8.4 : The Respondents respectfully submit that the applicant is not entitled to any relief sought for as the applicant's case is a time-barred case, and deserves to be dismissed in limine. 6

Para 9 : The Respondents respectfully submit that the applicant is not entitled to any interim relief prayed for in the present petition.

Dated:

By the Respondent through

Govt. Standing Counsel


6

7/10

VERIFICATION

I Shri T.C. Goswami, working as Assistant Registrar // in the office of the  
Income-tax Appellate Tribunal, Guwahati Bench, Guwahati being authorized, do hereby  
solemnly affirm and verify that the statements made in paragraphs 1(one) to 9(nine)  
are true to my knowledge and the statements made in paras 1, 3 & 4.7 are true  
to my information and I have not suppressed any material fact.

And I sign this verification on this 28th day of October, 2004.

  
( **T. C. Goswami** )  
DECLARANT  
*Assistant Registrar,*  
*Income-Tax Appellate Tribunal,*  
*Guwahati Bench, Guwahati-1.*

Dated the, 2nd January, 2003.

**\* MEMORANDUM \***

On recommendation from the **Staff Selection Commission, North-  
Eastern Region** it has been decided to offer to ~~K. S. / Shri~~ **Ashwini Kumar**

**Singh** the post of **Lower Division Clerk** which belongs to the General Central Service (Group 'C' Non-Gazetted) in the **Income-tax Appellate Tribunal** at **Gurgaon** Bench/es in the scale of Rs.3050-75-3950-80-4590/- plus usual allowances at the rates admissible to Central Govt. officers of his/her category under and subject to condition laid down in the rules and orders governing the grant of such allowances in force from time to time. His/her appointment will be subject to the following terms and conditions :-

1. I) The appointment is temporary and will be governed by the Central Civil Service(Temporary Service) Rules, 1965.
- II) He/She is liable to serve anywhere in India.
- III) He/She will have to comply with the requirements of the Central Civil Service (Conduct) Rules, 1964. All rules or orders already in existence or issued from time to time regarding attendance, duties, discipline, conditions of service etc. will automatically be applicable to him/her.
- IV) If he/she belongs to a Scheduled Caste and professes the Hindu/Sikh religion, he/she should report any change of religion to the appointing authority immediately such change takes place.
- V) He/she should give a declaration of his/her home town for the purpose of Leave Travel Concession within 6 months from the date of entry into service.
2. He/She should produce, for verification, the following certificates in original and attested copies thereof to the Deputy/Assistant Registrar while reporting for duty.
  - a) Matriculation or its equivalent examination in support of age and certificates of educational qualification etc.
  - b) Degree Certificates conferred at the time of convocation.

Without production of the above mentioned certificates, appointment will not be considered. He/She should also submit the following documents with his/her letter of acceptance.

- I. Certificate of Character in the form enclosed from the head of the educational institution last attended of in case such a certificate cannot be obtained, a certificate in the same form from a Gazetted Officer (in both cases duly attested by stipendiary I class Magistrate, District/Sub-Divisional Magistrate). This certificate should have reference to the two years immediately preceeding.

उत्स-2/1/03  
2/1/03  
प्राप्त किया  
अनुभाग .....  
भा. अ. अ., मुंबई

P.T.O.....

- II. Attestation form, in triplicate, in the enclosed proforma duly completed.
- III. A declaration that he/she has not more than one wife/husband.
- IV. No Objection Certificate from his/her present employer and release order accepting his/her resignation from that service.
- V. Displaced person certificate from a Govt. Office of the Central Govt. or from a District Magistrate and/or eligibility certificate issued by the Govt. of India or citizenship certificate as a proof of registration as an Indian Citizen.
3. This offer of appointment is further subject to his/her being found medically fit for Govt. service by a Civil Surgeon of Govt. Hospital, Lucknow.  
A letter addressed to Superintendent Government Hospital Lucknow. is enclosed.
4. This offer of appointment is also subject to his/her taking an oath allegiance to the Constitution of India.
5. No T.A. will be paid for joining the appointment.
6. If the offer is accepted by him/her, he/she should report for duty to the Deputy/Assistant Registrar, Income-tax Appellate Tribunal, Oriental Building, 1st Floor, Fancy Bazar, Gorakhpur - 751 001.

by 03.02.2003, alongwith the documents mentioned above. In case, no reply is received by the stipulated date this offer of appointment will stand cancelled.

To,

Shri Ashvini Kumar Singh,  
C/o Shri S. L. Singh,  
Kothi No. 1, Digrai Bazaar,  
Jhapling Road,  
LUCKNOW (CP) - 226001.

E - 1/340, Vinay Khand - 1,  
Gomti Nagar,  
Lucknow (U.P.) - 10

( K. RAMESH RAO )  
DEPUTY REGISTRAR

**Copy forwarded to :-**

1. The Regional Director, Staff Selection Commission, (North-eastern Region), P.O. Assam Secretariat, Sukmini Nagar, Guwahati-781006.
2. The Deputy/Assistant Registrar, I.T.A.T., Gorakhpur Bench, Gorakhpur.

( K. RAMESH RAO )  
DEPUTY REGISTRAR

(8)

No.F.300-Ad/AT/2004  
**INCOME TAX APPELLATE TRIBUNAL,**  
Central Govt. Offices Building,  
4<sup>th</sup> Floor, Maharshi Karve Marg,  
**MUMBAI 400 020**

**Exhibit R2**

29

REGISTERED A.D.

Dated the, 22nd March, 2004.

**\* MEMORANDUM \***

On recommendation from the **Staff Selection Commission, North Eastern**  
**Region** it has been decided to offer to **Kul/Sri/Shri Rakesh Kumar**

the post of **Lower Division Clerk**  
which belongs to the General Central Service (Group 'C' Non-Gazetted) in the  
**Income-tax Appellate Tribunal** at **Guwahati** Bench/es in the scale of  
Rs.3050-75-3950-80-4590/- plus usual allowances at the rates admissible to Central  
Govt. officers of his/~~her~~ category under and subject to condition laid down in the  
rules and orders governing the grant of such allowances in force from time to time.  
His/~~her~~ appointment will be subject to the following terms and conditions :-

1. I) The appointment is temporary and will be governed by the Central Civil  
Service(Temporary Service) Rules, 1965.

I(a) \*\*\*

II) He/~~She~~ is liable to serve anywhere in India.

III) He/~~She~~ will have to comply with the requirements of the Central Civil Service  
(Conduct) Rules, 1964. All rules or orders already in existence or issued from  
time to time regarding attendance, duties, discipline, conditions of service etc.  
will automatically be applicable to him/~~her~~.

IV) If he/~~she~~ belongs to a Scheduled Caste and professes the Hindu/Sikh  
religion, he/~~she~~ should report any change of religion to the appointing  
authority immediately such change takes place.

V) He/~~she~~ should give a declaration of his/~~her~~ home town for the purpose of  
Leave Travel Concession within 6 months from the date of entry into service.

2. He/~~She~~ should produce, for verification, the following certificates in original and  
attested copies thereof to the ~~Deputy~~/Assistant Registrar while reporting for duty.

a) Matriculation or its equivalent examination in support of age and certificates of  
educational qualification etc.

b) Degree Certificates conferred at the time of convocation.

Without production of the above mentioned certificates, appointment will not  
be considered. He/~~She~~ should also submit the following documents with his/~~her~~  
letter of acceptance.

I. Certificate of Character in the form enclosed from the head of the educational  
institution last attended of in case such a certificate cannot be obtained, a  
certificate in the same form from a Gazetted Officer (in both cases duly  
attested by stipendiary I class Magistrate, District/Sub-Divisional Magistrate).  
This certificate should have reference to the two years immediately  
preceeding.

P.T.O.....

I(a)21\* He/she will be governed by the pension scheme as per the  
notification no.5/7/2000-2001 dated 22.12.2000 of the Ministry  
of Finance, Dept. of Economic Affairs, Govt. of India.

22/3/04

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- II. Attestation form, in triplicate, in the enclosed proforma duly completed.
- III. A declaration that he/she has not more than one wife/husband.
- IV. No Objection Certificate from his/her present employer and release order accepting his/her resignation from that service.
- V. Displaced person certificate from a Govt. Office of the Central Govt. or from a District Magistrate and/or eligibility certificate issued by the Govt. of India or citizenship certificate as a proof of registration as an Indian Citizen.
3. This offer of appointment is further subject to his/her being found medically fit for Govt. service by a Civil Surgeon of Govt. Hospital, Meerut (U.P.).  
A letter addressed to Superintendent Government Hospital Meerut (U.P.) is enclosed.
4. This offer of appointment is also subject to his/her taking an oath allegiance to the Constitution of India.
5. No T.A. will be paid for joining the appointment.
6. If the offer is accepted by him/her, he/she should report for duty to the Deputy/Assistant Registrar, Income-tax Appellate Tribunal, Oriental Building, 1st Floor, Fancy Bazar, Guwahati - 781 001.

by 23.04.2004, alongwith the documents mentioned above. In case, no reply is received by the stipulated date this offer of appointment will stand cancelled.

( KISHAN RAO )  
DEPUTY REGISTRAR

To,  
Shri Rakesh Kumar,  
S/o Shri Hari Dutt Ram,  
H.No.523 Behind Anurag Cinema,  
New Devpuri,  
MEERUT (U.P.) - 250 002.

Copy forwarded to :-

1. The Regional Director, Staff Selection Commission, North Eastern Regional Office, Kukmini Nagar, P.O. Assam Sachivalaya, Guwahati-781006.
2. The Deputy/Assistant Registrar, I.T.A.T., ~~Chandigarh~~ Kolkata/Guwahati Bench(es).

DEPUTY REGISTRAR

Dated the, 22nd July, 2004.

The attention of Shri Rakesh Kumar is invited to this office Memorandum dated 22.03.2004 offering the post of Lower Division Clerk in the Income-tax Appellate Tribunal, Guwahati Bench, Guwahati. He has been directed thereunder to report for duty on or before 23.04.2004, failing which the offer of appointment will be treated as cancelled. Since, no reply has received from him till date, he is given another chance to report for duty to the Assistant Registrar, I.T.A.T., Oriental Building, 1st Floor, Fancy Bazar, Guwahati-781 001 by 06.08.2004. If no reply is received from him about the acceptance of the aforesaid post and if he does not report for duty by 06.08.2004, it will be presumed that, he is not interested for appointment as Lower Division Clerk in the Income-tax Appellate Tribunal and his dossier will be returned to the Staff Selection Commission for nomination of the another candidate, which may please be noted.

To,  
Shri Rakesh Kumar,  
S/o Shri Hari Dutt Ram,  
H.No.523, Behind Anureg Cinema,  
New Devpuri,  
MEERUT (U.P.)-250 002.

Copy forwarded to the Assistant Registrar, I.T.A.T.,  
Guwahati Bench, Guwahati for information.

DEPUTY REGISTRAR

१. विद्या  
२. विद्या .....  
३. विद्या, विद्या, विद्या

(10)

Scheme for Departmental Competitive Examination for filling up vacancies in the Lower Division Clerk's grade from among the class IV employees working in the office of the Income-Tax Appellate Tribunal (Class III Posts) Recruitment Rules, 1967.

\*\*\*\*\*

A Competitive Examination of the eligible class IV employees in the Income-tax Appellate Tribunal for promotion to the posts of Lower Division Clerks (ordinary Grade) against 10 % of the vacancies in the latter grade, as laid down in the Income-tax Appellate Tribunal (Class III Posts) Recruitment Rules, 1967 will be held once every year or on the occurrence of the vacancy/vacancies in that grade in the same quota whichever is later.

2. At their own option, all class IV employees in the Income-tax Appellate Tribunal who have passed matriculation or equivalent examination and whose age limit does not exceed 40 years (45 years for Scheduled Caste and Scheduled Tribe Employees) on the date fixed for such examination and who have put in at least 5 years of service in class IV grade will be eligible to appear in the examination.

3. Provided that for the first two examinations to be held under this scheme, the upper age limit shall be relaxed upto 45 years (50 years the case of Scheduled Caste/Scheduled Tribes.)

4. If there are any candidates belonging to the Scheduled Caste/Scheduled Tribes, they will be appointed against the usual number of vacancies to be reserved for them. If such candidates are not available from among the class IV employees for appointment in the vacancies reserved for which qualified Scheduled Caste/Scheduled Tribe candidates are not available, will be filled by candidate of the other communities but the reservation will be carried forward to subsequent examinations according to the general instructions for carrying forward of reserved vacancies for Scheduled Castes/Scheduled Tribes.

5. Reservation will be determined by working out anticipated vacancies in calendar year and 10 % of such vacancies will be reserved for class IV employees. When 10 % of the such vacancies works out to a fraction and if the fraction is more than 0.5, one vacancy will be reserved subject to suitable adjustment from among the future vacancies. The vacancies thus worked out will be shown in the 200 point roster prescribed for the purposes of determining the vacancies to be reserved for Scheduled Castes/Scheduled Tribes in direct recruitment made on all India basis by open competition.

6. The decision of the Registrar of the Tribunal as to the eligibility or otherwise of a candidate for admission to the examination shall be final.

7. The papers for the examination will be set by the Registrar, Income-tax Appellate Tribunal at Mumbai and the evaluation of the papers will be arranged by the orders of the Registrar, Income-tax Appellate Tribunal, Mumbai. The papers for the examination and the maximum marks assigned to each paper will be as indicated below :-

a)	Short Essay	100 Marks
b)	General English	200 Marks
c)	General Knowledge including Geography of India.	100 Marks

T O T A L : 400 Marks

Note :- The Candidates will have the option to answer item(s) 8. in Hindi or in English. Item (b) will have to be answered in English. The option will be for a complete paper and not for different questions in the same paper.

8. The syllabus for the examination will be as under:-  
General English and Short Essay.

- (a) Short Essay - An essay to be written on one of the several specified subjects.
- (b) General English - Candidates will be tested in the following:
  - 1) Drafting
  - 2) Précis writing
  - 3) Applied Grammar
  - 4) Elementary tabulation (to test candidates ability in the art of compiling, arranging and presenting data in a tabular form.

General Knowledge including Geography of India.

Knowledge of current events and of such matters of every day observation and experience in their scientific aspects as may be expected of an educated person who has not made a special study of any scientific subjects. The paper will include questions on geography of India.

9. On the results of the examination a consolidated list will be prepared in order of merit of qualified candidates who have attained the qualifying standard (i.e. who have secured 40 % or above of the total marks - 30 % marks in the case of Scheduled Castes/Scheduled Tribes for vacancies reserved for them and nominations of the candidates to the extent of the available reserved vacancies will be made.

10. No fees will be charged for the examination.

11. The class IV employees who are appointed to the class III post of Lower Division Clerks will be treated as direct recruitment and will be on probation for the period specified in the recruitment rules. They will also have to pass a typing test at 30 words per minute prescribed for regular direct recruitments before they are considered for confirmation.

12. The relative seniority of class IV employees who are appointed to the post of Lower Division Clerk on the basis of the Departmental Examination shall be determined by the order of merit in which they are selected for such appointment, persons appointed on the result of an earlier examination being senior to those appointed as a result of subsequent examination.

13. The relative seniority of the class IV employees as Lower Division Clerks through the Departmental Examination will be determined with reference to the date of commencement of the result.

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## INCOME TAX APPELLATE TRIBUNAL, MUMBAI.

Subject:- Departmental Competitive Examination for filling up vacancies in the Lower Division Clerks grade from among the Class IV employees working in the Income-tax Appellate Tribunal according to the I.T.A.T., (Class III Posts) Recruitment Rules - reg.

Reference: Head Office U.O.No.F.171-Ad(AT)/98 dated 20.3.98 & 22.4.98

With reference to the above, it is intimated that the following Group 'D' Officials are permitted to appear in the ensuing Departmental Competitive Examination for filling up the vacancy out of the quota reserved for such employees in the Lower Division Clerks grade. The examination will be conducted on 22nd May, 1998.

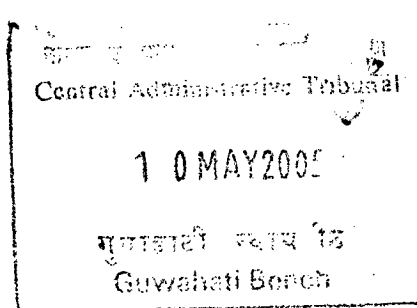
The Deputy/Assistant Registrar is requested to intimate the person concerned of his Bench/es accordingly. The question papers are sent separately.

S.No.	NAME	DESIGNATION	BENCH/ES
1.	S/Shri		
1.	Hiralal (S/C)	Senior Peon	Delhi
2.	S.Muthu	Senior Peon	Chennai
3.	M.C.Tewari	Senior Peon	Delhi
4.	B.S.Soni (S/C)	Senior Peon	Ahmedabad
5.	Vinod Kumar	Senior Peon	Amritsar
6.	K.K.Shukla	Senior Peon	Ahmedabad
7.	Haridas Santhre(S/C)	Senior Peon	Delhi
8.	G.S.Kamble (S/C)	Daftary	Mumbai
9.	Ashok Singh	Peon	Jabalpur
10.	V.Nagarajan	Peon	Delhi
11.	Sunil Salvi	Peon	Mumbai
12.	Madan Lal (S/C)	Chowkidar	Jabalpur
13.	B.N.Damodare (S/C)	Safaiwala	Mumbai

REGISTRAR

The Deputy/Assistant Registrar, I.T.A.T., Mumbai/Delhi/Chennai/ Ahmedabad/Amritsar & Jabalpur Bench/es.  
U.O.No.F.171-Ad(AT)/98 dated the 14th May, 1998.

Issued  
14-5-98



Filed by me applicant  
George Subrata Nath  
Advocate  
10.05.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No.100/2004

Shri Babul Chandra Das.

-Vs-

Union of India and Ors.

-And-

In the matter of:

Rejoinder submitted by the Applicant  
against the written statement.

The applicant above named most respectfully begs to submit as follows: -

1. That your applicant categorically denies the statements made in paragraph 1, 3 and also against paragraph 4.3 and 4.4 and further beg to say that there is no dispute that the quota is restricted upto 10% for promotion to the post of LDC from Group 'D' employees, the question of limitation also does not arise in view of judgment and order dated 20.11.2003, passed by the Learned Tribunal in O.A. 392/2002 (Annexure-XI of the O.A), where a specific direction has been issued to take an appropriate decision in the matter of promotion of the applicant to the post of LDC under 10% quota. It is pertinent to mention here that, once the applicant clears the departmental examination under 10% quota applicant need not further subject to appear in the same qualifying examination for consideration of his appointment to the post of LDC in view of the specific clarification given by the office of the Commissioner of the Income Tax vide their letter dated 04.03.1999,

(Annexure-V of the O.A), wherein it is specifically clarified that once an incumbent passed the qualifying examination he need not require to appear in the said examination but his case is liable to be considered by the DPC against the future vacancies, as such question of 20 years delay in filing the original application for promotion under 10% quota is totally vague, baseless, and more so in view of the fact that the applicant has been appointed on adhoc basis to officiate as LDC since October 1996, moreover, written statement is silent about the clarification given by the Office of the Commissioner of Income Tax on 04.03.1999, as such it will be presumed that the said clarification dated 04.03.1999 is still valid in Law and nothing contrary could be shown by the respondents against the said clarification and in fact in all the Central Govt. organization recruitment under 10% quota are governed in the light of the said clarification. It can emphatically be said that in the office of all the Accountant General under the Comptroller and Auditor General of India recruitment under 10% quota for Group 'D' employee to the post of LDC are governed in the similar manner as clarified by the office of the Commissioner of Income Tax in their letter dated 04.03.1999, therefore question of delay does not arise, rather case of the applicant is liable to be considered for promotion by the DPC each and every year whenever vacancies arise to the cadre of LDC occurred under the 10% quota for promotion, hence the decision of Chandigarh Bench in O.A No. 167/HR of 1999 is irrelevant in the instant case of the applicant. As per clarification dated 04.03.1999 the case of the applicant cannot be confined either in 1980 or in the year 1983 rather the applicant is entitled to be considered for promotion to the cadre of LDC in each and every DPC whenever vacancies occurred under 10%

quota as stated above. As such contention of the respondent raised against Para 4.3 and 4.4 is contrary to the rule.

2. That with regard to the statements made against Paragraphs 4.5 to 4.9 the applicant denies the correctness of the same and further begs to say that applicant is concerned his promotion under the 10% quota and he has acquired and valuable legal right for such consideration in view of the fact that one Shri M.C. Tiwari, Peon and Shri B. Nagrajan, who have passed the qualifying examination at a later point of time than the applicant but they have been appointed under 10% quota to the post of LDC even without considering the case of the applicant by the said DPC in violation of rule, instructions and more particularly the clarification given by the office of the Commissioner of Income Tax, therefore the applicant has acquired a valuable right for regularization of his service in the cadre of LDC, more so when similarly circumstanced juniors have been appointed to the post of LDC under 10% quota in suppression of the claim of the applicant.
3. That with regard to the statements made in Paragraph 4.10 to 4.19, the applicant categorically denies the correctness of the contentions of the respondents that the applicant was over aged according to the scheme of departmental examination and therefore he was restrained to appear in the LDCE examination held on 22.05.1998, the aforesaid contention and conception of the respondents is totally wrong, as because the age limit has been fixed for appearing in the LDC examination but the applicant in the instant case has cleared the LDC examination way back in the year 1983 therefore the applicant is not required to appear in the LDC examination in 1998 for consideration of his promotion to the post of LDC under 10% quota even in 1998 when the vacancies are available in the said quota,

therefore non-consideration of case of the applicant in 1998 is highly arbitrary, illegal and unfair and contrary to the provisions of the rule as well the same is contrary to the clarification given by the office of the Commissioner of Income Tax. It is categorically submitted that the service conditions of the employees of the Appellate Tribunal are governed by the same set of rules which follows for the employees of the office of Income Tax Commissioner.

4. That your applicant denies the contention of the respondents raised against the ground No. 5.1 to 5.11 and the Memorandum dated 03.02.2004 has been issued rejecting the claim of the applicant for promotion under 10% quota but the decision of the respondents communicated through impugned memorandum dated 03.02.2004 is in contravention of rule and as such same is liable to be set aside and quashed.

In the facts and circumstances stated above the original application deserves to be allowed with cost.

### **VERIFICATION**

I, Shri Babul Chandra Das, S/o Shri of Late Bhabani Prasad Das, aged about 51 years, working as Lower Division Clerk on officiating basis, in the office of the Income Tax Appellate Tribunal, Fancy Bazar, Guwahati-781001, 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 10<sup>th</sup> day of March, 2005.

*Babul Chandra Das*