

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

153/04

Org. App./Misc Petn/Cont. Petn/Rev. Appl.....

In O.A.....

Name of the Applicant(s) Shri K.K. Kalita

Name of the Respondent(s) C.O.I. & OIS

Advocate for the Applicant MR. K.N. Choudhury, Sr. Adv. MR. J. Choudhury

Counsel for the Railway/CGSC CGSC

Govt. Advocate, Assam

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

22.7.2004 present: The Hon'ble Shri K.V. Sachidanandan Member (J).

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

The grievance of the applicant is for non-consideration of his case to the Indian Administrative Service from the State Civil Services Officers for the year 2002.

When the matter came up for admission, Mr. B.C. Pathak, learned Addl.C.G.S. C. took notice on behalf of the respondents and he submitted that he would like to file a preliminary reply statement before admission. Let it be done.

Mr. K.N. Choudhury, learned Sr. counsel for the applicant, submitted that promotion to I.A.S is made on the basis of merit cum seniority, but the said criteria has not been strictly followed in the present case. Mr. Choudhury pressed for an interim order not to carry forward the vacancy against which Shri N. Haque was provisionally selected, who has already retired and he submitted that for the above vacancy his eligibility can be considered. However, if such prayer is granted, we are apprehending that it will intervene the power of administration and therefore, in the interest of justice, we make it clear

Contd.

Shri N. Haque

1/C Dy. Registrar

21/7/04

Contd.

22.7.2004

that any promotion against the vacancy that may cause due to the retirement of Shri N.Haque, will be subject to the outcome of the O.A.

List on 23.8.2004 for admission.

Member (A)

Member (J)

bb

23.8.04.

Present: Hon'ble Mr. D.G. Verma, Vice-Chairman.

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

Heard learned counsel for the parties.

The learned counsel for the Respondents has no objection in admitting the O.A. The O.A. is admitted. Copy of the application has been sent to the Respondents. Four weeks time is allowed for filing of reply.

List on 24.9.04 for orders.

Member

Vice-Chairman

24.9.04. Present: Hon'ble Mr. Justice R.K. Batta, Vice-Chairman Hon'ble Mr. K.V. Prahladan, Administrative Member.

On the request of learned counsel for the Respondents Stand over to 16th November, 2004 for filing written statement.

Member

Vice-Chairman

lm

23-9-04

No. 215 Law Secy. Bldg.

— 3 —
O.A 153/04

Notes of the Registry

Date

Orders of the Tribunal

27.9.04

01.12.2004

Mr. G. Rahul, learned counsel for the applicant as well as Mrs. M. Das, learned Govt. Advocate for the state of Assam were present.

W/s filed by the Respondent Nos. 2 & 3.

DR

30/11/04

Written statement has been filed by respondents 2 & 3. Mrs. M. Das, learned Govt. Advocate for respondent no. seeks and is allowed ~~six~~ weeks time to file written statement.

Stand over to 17.1.2005.

DR
Member

R
Vice-Chairman

bb

17.1.2005

Learned counsel Mr. B.C. Pathak, on behalf of Mrs. M. Das states that Mrs. Das is ill. In view of this S.O. to 4.2.05 for filing written statement by respondent No. 4.

(i) W/s 2 & 3 filed
others indicated

DR
Member

R
Vice-Chairman

pg

15.2.2005

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

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

No reply has been filed on behalf of respondent no. 4. No one is present on its behalf. In the interest of justice adjourned to 23.3.2005.

DR
Member (A)

R
Member (J)

bb

① W/s has been filed

DR
28.05

U
O.A.153/2004

Notes of the Registry

Date

Orders of the Tribunal

24.3.05

WTS filed by the
Respondent No. 4,

APR

25.4.05

No rejoinder - No. 6 seen.
Served.

12

Notice duly

Served on resp.

No. 1, 4.

1st

2nd

12-5-05

No rejoinder - No. 6 seen.

Served.

12

8

bb

K. V. Prahla
Member

K. V. Prahla
Vice-Chairman

13.5.2005

Mr. G. Rahul, learned counsel
for the applicant seeks further
time to file rejoinder. Post for
hearing on 14.6.2005. Rejoinder, if
any, in the meantime.

K. V. Prahla
Member

K. V. Prahla
Vice-Chairman

14.06.2005

Mr. G. Rahul, learned counsel for
the applicant seeks for adjournment
Post on 14.7.2005 for hearing.

K. V. Prahla
Member

K. V. Prahla
Vice-Chairman

14.07.2005

Counsel for the applicant absent
with notice. Ms. U. Das, learned Addl.
C.G.S.C. submits that respondents 2
& 3 have already filed written state-
ment. 1st respondent has not filed
written statement. Post on 16.8.2005
written statement of 1st respondent,
if any, in the meantime.

K. V. Prahla
Member

K. V. Prahla
Vice-Chairman

12-8-05

8

bb

8

8

K. V. Prahla
Member

K. V. Prahla
Vice-Chairman

08.03.2006 Heard Mr. G. Rahul, learned counsel for the applicant, Ms. U. Das, learned Addl. C.G.S.C. for the Central Government and Mrs. M. Das, learned Government Advocate for the State of Assam.

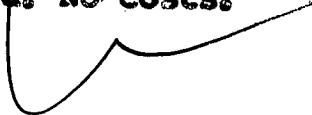
Reserved for orders.

 
Vice-Chairman (J) Vice-Chairman (A)

mb

9.5.06.

Judgment delivered in open Court. Kept in separate sheets. Application is dismissed. No costs.


Vice-Chairman

Received
Usha Das
Addl C.G.S.C
30/5/06
for G.T. Assam
Shri Kumar -
Date
8.5.06
Received copy
of the judgment
has been collected
by the L/Advocate
of the applicant.

2.6.06

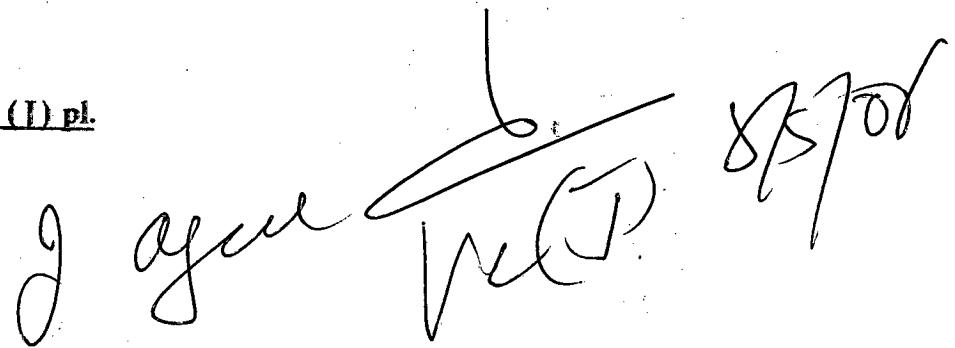
Copy of the judgment
has been collected
by the L/Advocate
of the applicant.

OA. 153 of 2004

Draft order is put up below for perusal
of Hon'ble Vice-Chairman (J)


Vice-Chairman

Hon'ble VC (J) pl.


I agree V.C. 8/5/06

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

O.A. 153 of 2004

Date of Decision : 02.05.2006.

Sri Karuna Kanta Kalita
~~State Bank of India~~

Mr. K.N. Choudhury, Sr. Advocate, Mr. I. Chowdhury, Mr. G. Rahul, Advocates.

Advocate for the petitioner

- VERSUS -

Union of India and Ors.

**Mrs. M. Das, ~~Govt.~~ Advocate, Assam
Mrs. U. Das, ACGSC, Advocate**

Advocate for the Respondents

CORAM

**THE HON'BLE MR. B.N. SOM, VICE - CHAIRMAN
THE HON'BLE MR. K.V. Sachidananda, MEMBER (J)**

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

O.A. 153 of 2004

Present : Hon'ble Mr. B.N. Som, Vice-Chairman.
Hon'ble Mr. K.V. Sachidananda, Vice-Chairman (J)

Sri Karuna Kanta Kalita

-versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Personnel, Public Grievance & Pension (Department of Personnel & Training), North Block, New Delhi.
2. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110 069
Represented by its Chairman
3. The Chairman, Union Public Service Commission, Dholpur House, Shahjahanpur Road, New Delhi.
4. State of Assam,
Represented by the Chief Secretary to the Government of Assam,
Assam Sachivalaya, Dispur, Guwahati-781 006.

For the applicant : **Mr. K.N. Choudhury, Sr. Advocate.** Respondents.
Mr. I. Chowdhury, Mr. G. Bahul, Advocates.
For the respondents : **Mrs. M. Das, Govt. Advocate, State of Assam.**
Ms. U. Das, ACGSC, Advocate.

Date of order: 09.05.2006

O R D E R

Per Mr. B.N. Som, VC

Shri Karuna Kanta Kalita working as Joint Secretary, WPT & BC and Managing Director, Assam Plains Tribes Development Corporation has assailed the impugned

action of respondent No. 2 in refusing to include his name in the select list prepared for appointment by promotion to the Indian Administrative Service (IAS) for the year 2002.

2. The factual matrix of the case is that in the year 2002 the respondent No. 2 published a gradation list of Assam Civil Service (ACS) officers as on 1.5.2002 in which the name of the applicant finds place at Sl. No. 13. But effectively his name should be at Sl. No. 9 as some persons above him have retired. Respondent No. 2 initially filled up ten vacancies in IAS for the year 2002-03 and 2003-04 from amongst the ACS officers. But later on, it was decided to fill up eight vacancies from amongst ACS officers and two by non-ACS officers. Accordingly, the list of 24 ACS officers was prepared as per seniority and the same was forwarded to the UPSC. In the said list the applicant's name found place at Sl. No. 9. The Select Committee headed by Union Public Service Commission (UPSC) prepared a select list of eight officers. The grievance of the applicant is that the said list was prepared mainly on seniority and merit which took back seat. This aspect would be evident from the fact that the applicant who had an outstanding records of service, should have been placed in the merit list of 8, but that did not happen. Out of eight officers of the select list, against four, departmental proceedings/vigilance enquiry were pending. On the other hand, on 1.1.2004 the applicant on attaining the age of 54 years would be age barred for selection to IAS thereafter. Considering all the aspects of the matter, applicant had submitted a representation to the respondent No. 4 on 20.1.2004 to consider his case for inclusion in the select list, but in vain. Thereafter, applicant submitted representation on 26.3.2004 to respondent No. 4 stating inter-alia that the Govt. of India had not appointed one Shri N. Haque whose name appeared at Sl. No. 2 in the select list on the ground that he had retired from service w.e.f. 29.2.2004 and as such his case could be considered for inclusion in the select list. His case was taken up by respondent No. 4 who requested

respondent No. 1 that the vacancy in the select list caused by retirement of Shri N. Haque may be filled up by the next senior most officer i.e. the applicant in this case.

3. The respondent No. 2 and 3 by filing a detailed reply have opposed the application. Referring to the provisions of Regulation 3 of Indian Administrative Service (Appointment by Promotion), 1955, they have submitted that promotion from the State Civil Service to IAS cadre is to be made strictly in terms of the conditions as laid down in the said Regulations. They have further submitted that as per the uniform and consistent procedure followed by UPSC, the Selection Committee examined the records of each of the eligible officer and after considering the quality of performance of the officers as indicated in the various columns of their ACRs for different years and after detailed deliberation and discussions assessed each eligible officer in accordance with the provisions of the Promotion Regulations. They have further submitted that the Select Committee made its assessment in a fair and objective manner and the Committee assessed the ACR of the applicant as 'Very Good' on a overall relative assessment of his service record. As other eight officers above him were also assessed 'Very Good' on their overall assessment of their service record, there was no occasion for the Select Committee to include his name in the list of eight officers. They have further clarified that the said select list was approved on 28.4.2004. Regarding the request of the applicant to include his name against the vacancy arising out of retirement of Shri N. Haque they have submitted that the proposal of the State Govt. was examined by the Commission and in view of the fact that the IAS (Appointment by Promotion) Regulations do not provide for such a course of action as only officers who were eligible on the 1st January of the select list are considered and the number of officers included in the select list is based on the number of vacancies and the provisions of Regulation 5 of the Promotion Regulations, the proposal was not agreed to. They have, however,

defended the procedure followed by the Select Committee in the ratio of the judgment of the Apex Court in the case of **R.S. Dass Vs. Union of India (AIR 1987 SC 595)**.

4. We have heard ld. counsel for the rival parties and have perused the records placed before us.

5. The sole question to be answered is whether there is a provision of reviewing the select list if any officer whose name is included in the select list retires during the currency of the select list. This question has been amply answered by the respondents referring to the IAS (Appointment by Promotion) Regulations 1955. We have no hesitation to agree with the views expressed by the respondents that the promotion regulations do not envisage a review of the select list once prepared for any such eventualities as contained in the proposal of the State Govt. referred to above. That being the law governing field, this O.A. fails. we order accordingly. No costs.



Vice-Chairman (J)



Vice-Chairman

17
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

Guwahati Bench

O.A. No. 153 of 2004

Sri Karuna Kanta Kalita

... Applicant

-Versus-

The Union of India & Ors.

... Respondents.

LIST OF DATES/SYNOPSIS

28.02.1980

The applicant was appointed to the Assam Civil Service Class – I (Junior Grade) vide Notification No. AAA.18/79/Pt.I/134 and the applicant was in the 5th position in the said notification and later on moved up by two positions. (Annexure – A; Page – 11 to 12).

01.05.2002

A gradation list of ACS Officers was published by the Government of Assam wherein the applicant's name was placed at the 13th position, however, due to retirement etc. his position moved up to the 9th position. (Annexure – B; Page – 13 to 14).

2002 – 2003}
2003 – 2004}

Government of Assam decided to fill up 8 vacancies in IAS from ACS officers. List of 24 officers forwarded to APSC.

20.01.2004

The applicant submitted a representation before the Respondent No. 4 for non-inclusion of his name in the Select List of 8 persons so prepared for the purpose of promoting them to the IAS cadre. (Annexure – C; Page – 15 to 16).

26.03.2004

The applicant submitted another representation before the Respondent No. 4 inter alia praying for inclusion of his name in the Select List on the ground that one Shri N.

Haque was due to retire before the said Select List can be given effect to. (Annexure – D; Page – 17).

30.03.2004

The Chief Secretary to the Government of Assam i.e., the Respondent No. 4 vide letter No. AAA.2/2002/Pt.II/31 recommended to the Respondent No. 3 for inclusion of the applicant's name in the Select List, due to the retirement of Shri N. Haque (Annexure – E, Page – 18).

05.04.2004

The Respondent No. 2 informed the Respondent No. 4 vide letter No. 6/2/2003-AIS that the applicant's name cannot be included in the Select List as it is beyond the purview of the Rules and Regulations. (Annexure – F, Page – 19 to 20).

15.05.2004

The Respondent No. 4 vide D.O. letter dated 15.05.2004, pointed out to the Respondent No. 2 that the proposal for inclusion of the name of the applicant in the Select List was done against one of the previous years vacancies against the person who retired without having his selection finalized and further pointed out that exclusion of the applicant from the current Select List would render him ineligible for promotion to IAS since he would soon cross his age limit for future consideration. (Annexure – G, Page – 21)

31.05.2004

The Respondent No. 2 once again reiterated that the applicant's name cannot be included in the Select List as it was beyond the purview of the Rules and Regulations.

Filed by

(Indraneel Chowdhury)
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 153 of 2004

Sri Karuna Kanta Kalita

-Versus-

The Union of India & Ors.

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File by
Indra

(Mr. Indrajeet Chowdhury)

Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI.

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

T
Filed by
The Applicant
through
Mr. INDRANEEL MISHRA
Advocate
21/07/04

ORIGINAL APPLICATION NO. _____ OF 2004

BETWEEN

Sri Karuna Kanta Kalita
Son of Late Cheni Ram Kalita
Resident of Barnachal, Bamunimaidam
Guwahati – 21.

Presently Serving as Joint Secretary, WPT&BC
And Managing Director, Assam Plains Tribes
Development Corporation

... Applicant.

VERSUS –

1. Union of India, Represented by the Secretary to the Govt. of India, Department of Personnel Training, Ministry of Personnel, Public Grievances and Pension, North Block, New Delhi.
2. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi – 110 069.
Represented by its Chairman.
3. The Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
4. The State of Assam,
Represented by the Chief Secretary to the Government of Assam,
Assam Sachivalaya, Dispur, Guwahati – 781 006.

... Respondents.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

The instant application is directed against the impugned action of the Respondent No. 2 in refusing to include the name of the petitioner in the Select List so prepared for appointment by promotion in the Indian Administrative Service, for the year 2002.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter in respect of which the application is made is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION:

The applicant further declares that the application is filed within the limitation period under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

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

- 4.2 That the applicant was appointed to Assam Civil Service Class – I (Junior Grade) vide notification No. AAA.18/79/Pt.I/134 dated 28.02.1980. In the said notification the name of the applicant finds place at Sl. No. 5. However, subsequently, the applicant's name moved up by two positions since two of the appointees above him on getting appointment elsewhere, resigned from the said service.

A copy of the said notification dated 28.02.1980 is annexed herewith and marked as **ANNEXURE – A.**

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4.3 That on being appointed into Assam Civil Service Grade – I, the applicant immediately joined and since then he has rendered his service with utmost sincerity and dedication to the entire satisfaction of all concerned. The applicant has served in the Assam Civil Services without any blemish in his career till date.

4.4 That in the year 2002, the Government of Assam, published a gradation list of ACS Officers as on 01.05.2002. In the said gradation list the name of the applicant finds place at Sl. No. 13. However, Shri. Haren Bhuyan was in-the-meantime age barred and also retired, Shri Banikanta Pegu expired, Shri Bimal Hazarika and Shri Jyoti Pd. Das also retired. Therefore in effect, for the instant case the applicant infact is at Sl. No. 9.

The relevant portion of the said gradation list is annexed herewith and marked as **ANNEXURE – B**.

4.5 That in terms of the Indian Administrative Services (Appointment by Promotion) Regulation 1955, the Government of Assam initially decided to fill up 10 vacancies in Indian Administrative Service for the year 2002-2003 and 2003-2004 from amongst ACS Officers. However, subsequently, the Government decision was reviewed and it was decided to fill up 8 vacancies from amongst ACS Officers and 2 (two) by non ACS Officers. Accordingly, a list of 24 ACS Officers was prepared as per seniority and the same was forwarded to the UPSC. Be it stated herein that the applicant's name found place at Sl. No. 9 in the said list.

4.6 That the Commission considered the said list of 24 Officers and short-listed 8 Officers to be included in the Select List. The applicant at this stage considers it relevant to state that the said list is required to be finally approved by the Commission to form the Select List of the members of the State Civil Service.

4.7 That the criteria for selection for appointment by promotion to Indian Administrative Service is merit cum seniority. The applicant on having come to learn about the names of the Officers so included in the list so prepared by the UPSC was surprised to find that it was seniority that played a dominant role and merit infact took a backseat. This aspect of the matter would be evident from the fact that the applicant has an

unblemished service career throughout whereas, the service records of some of the selected candidates is not comparable to that of the applicant's. The applicant at this stage respectfully states that a perusal of the service records of the applicant's and the 8 selected candidates would make the position crystal clear.

4.8 That in the meantime the applicant came to learn from various newspaper reports that out of the 8 officers so selected, Departmental proceedings/vigilance inquiry is pending against 4 (four) of them. One of the Officer Shri N. Haque was scheduled to retire on 28.02.2004 before he could be appointed to IAS on promotion. Moreover, on 01.01.2004, the applicant would attain the age of 54 years and therefore, in terms of Regulation 5(3), he would be age barred for the next selection. Considering all the aspects of the matter, the applicant submitted a representation to the Respondent No. 4 on 20.01.2004 to consider his case for inclusion in the Select List.

A copy of the said representation dated 20.01.2004 is annexed herewith and marked as ANNEXURE – C.

4.9 That thereafter the applicant submitted another representation on 26.03.2004 to the Respondent No. 4 stating inter alia that the recommendation of the UPSC were provisional and the same was not given effect to by the Government of India by issuance of a notification till the retirement of Shri N. Haque. As such, the applicant requested the Respondent No. 4 to consider his case and take up the matter with the appropriate authority.

A copy of the representation dated 26.03.2004 is annexed herewith and marked as ANNEXURE – D.

4.10 That the Chief Secretary to the Government of Assam vide letter No. AAA.2/2002/Pt.II/31 dated 30.03.2004 took up the matter pertaining to the applicant for inclusion of his name in the Select List. The relevant portion of the contents of the said letter dated 30.03.2004 is quoted herein below:

“With reference to above, I am to state that in the last sitting of the Selection Committee in December 2003 eight officers were selected for promotion to IAS from ACS. One of the officers viz. Shri N. Haque was in the select list and inclusion of his name for promotion was provisional due to a pending case against him. He retired on 29th February 2004. Consequently, his place has fallen vacant. This vacant place may be filled up by the next senior most officer viz. Shri Karuna Kanta Kalita.

This proposal for promotion of Shri Kalita is submitted on the ground that the officer will never be promoted being barred by age if he is not included in this list. He is an officer of repute in this cadre. Promotion of ACS officers to IAS has gradually stagnated to such extent as officers serving in this cadre for even 24 years and above are not getting the opportunity for promotion.

If desired, UPSC may consider obtaining consent of the members of the Selection Committee through circulation of this agenda as a special case.

The ratings in ACR of Shri Karuna Kanta Kalita are furnished in the enclosed paper for favour of your reference and consideration.”

A typed copy of the said letter dated 30.03.2004 is annexed herewith and marked as ANNEXURE – E.

4.11 That surprisingly the Respondent No. 2 vide letter No. 6/2/2003-AIS dated 05.04.2004 informed the Respondent No. 4 that the State Government's proposal to include the name of the applicant in the select list is beyond the purview of the Rules and Regulations.

A copy of the said letter dated 05.04.2004 is annexed herewith and marked as ANNEXURE – F.

4.12 That thereafter the Respondent No. 4 vide letter dated 15.05.2004, pointed out to the Respondent No. 2 that the proposal for inclusion of the applicant in the Select List was done against one of last year vacancies

which was shown earmarked provisionally for Shri N. Haque who retired on 29.02.2004 without having his selection finalized. The Respondent No. 4 further pointed out that the applicant had to be kept out of the Select List simply to ensure observance of a formality. The Respondent No. 4 further stated that the applicant's exclusion from the current Select List will render him ineligible for promotion to IAS since he would soon cross his age limit for future consideration. Having pointed out the above, the Respondent No. 4 requested the Respondent No. 3 to consider inclusion of an "eminently suitable person" (the applicant herein) left out just to fulfill a formality.

A copy of the said letter dated 15.05.2004 is annexed herewith and marked as ANNEXURE - G.

4.13 That to the utter shock and surprise of the applicant, the Respondent No. 2 under letter No. 6/2/2003-AIS dated 31.05.2004 once again reiterated that the proposal for inclusion of the name of the applicant in the Select List is beyond the purview of the Rules and Regulations.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that the Respondent No. 2 has entirely overlooked the provisions of Regulation 7(3) of the Regulations of 1955 which clearly lays down that only on final approval granted by the Commission to the list prepared by the Selection Committee a Select List as envisaged under the said Regulations shall be formed. As is amply demonstrated in the communications between the Respondent No. 2 and the Respondent No. 4 the Select List in the instant case was yet to be finally approved by the UPSC especially till the retirement of Shri N. Haque. As such, the Respondent No. 2 ought to have included the name of the applicant in the Select List for appointment by promotion into Indian Administrative Service.

5.2 For that it was incumbent upon the Respondent No. 2 to take note of the provisions of Regulation 5(3) in terms of which the applicant would be age barred for all future consideration. As such, the impugned action on the part of the Respondent No. 2 to consider the case of the applicant in

the backdrop of the facts and circumstances in the instant case has seriously prejudiced the applicant and his service career.

- 5.3 For that the Respondent No. 2 entirely overlooked the fact that the Respondent No. 4 proposed the name of the applicant for inclusion in the Select List against one of last year's vacancies which was shown earmarked provisionally for Shri N. Haque who retired on 29.02.2004 without having his selection finalized. The Respondent No. 4 also categorically pointed out to the Respondent No. 2 that the applicant had to be kept out of the Select List simply to ensure observance of a formality. As such, the non-inclusion of the name of the applicant in the Select List is discriminatory unfair and unreasonable.
- 5.4 For that the Respondent No. 2 entirely ignored the fact that the Respondent No. 4 had strongly recommended the name of the applicant keeping in view the impeccable service record of the applicant and also the fact that he will be age barred for future considerations. As such, the impugned action on the part of the Respondent No. 2 in refusing to consider the case of the applicant is grossly illegal, arbitrary and malafide in addition to being violative of Articles 14 and 16 of the Constitution of India.
- 5.5 For that the criteria of promotion to Indian Administrative Service is merit-cum-seniority. Had the said criteria strictly been followed the applicant who was otherwise at Sl. No. 9 as per seniority certainly would have been selected in the Select List. The Respondent No. 3 entirely ignored this aspect of the matter while considering the case of the applicant resulting in grave and serious prejudice being caused to him.
- 5.6 For that the applicant has a strong *prima facie* case in his favour. The applicant shall suffer irreparable loss if the vacancy against which Shri N. Haque was provisionally selected, is allowed to be carried forward as a vacancy for the next year. The balance of convenience is strongly in favour of the applicant. This is therefore, a preeminently fit case where this Hon'ble Tribunal may be pleased to intervene into the matter and issue appropriate interim direction in favour of the applicant.

5.7 For that this application is filed bonafide and in the interest of justice.

6. **DETAILS OF REMEDIES EXHAUSTED:**

The applicant declares that he has no other alternative, equally efficacious remedy available to him except by way of this instant application.

7. **MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:**

The applicant declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. **RELIEF SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and upon perusal of the records be pleased to grant the following reliefs:

8.1 Direct the Respondent No. 2 to include the name of the applicant in the Select List of Indian Administrative Service (Appointment by promotion) for the year 2002.

8.2 Cost of the Application.

8.3 Any other relief(s) that the applicant may be entitled to under the facts and circumstances of the case and/or as this Tribunal may deem fit and proper.

9. **INTERIM ORDER PRAYED FOR:**

Pending final decision on the application, the applicant seeks the following interim relief: -

- 9.1 This Hon'ble Tribunal may be pleased to direct the respondents not to carry forward the vacancy against which Shri N. Haque was provisionally selected.
- 9.2 Any other interim relief(s) that the applicant may be entitled to under the facts and circumstances of the case and/or as this Hon'ble Tribunal may deem fit and proper.

This application is filed through advocate.

10. **PARTICULARS OF THE I.P.O.:**

- i) I.P.O. : 20G 112194,
- ii) Date : 21/07/04.
- iii) Payable at : Guwahati,

11. **LIST OF ENCLOSURES :**

As stated in the index.

VERIFICATION

I, Sri Karuna Kanta Kalita, aged about 54 years, Son of Late Cheni Ram Kalita, Resident of Barnachal, Bamunimaidam, Guwahati – 21, do hereby solemnly affirm and verify that I am the Applicant in the instant application and as such I am fully conversant with the facts and circumstances of the case. The statements made in paragraphs 2, 3, 1.3, *s(partly)*, 6, 7, are true to my knowledge and those made in paragraphs 1, 1.1, ~~1.4~~, 1.13, *s(partly)* are true to my information derived from records, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the ~~21~~ ²⁵th day of June, 2004 at Guwahati.

Karuna Kanta Kalita
SIGNATURE OF THE APPLICANT.

ANNEXURE - A

Government of Assam
 Department of Personnel (Personnel -A)
 Assam Secretariat (Civil) Dispur
 Gauhati - 781 006.

ORDERS OF THE GOVERNORNotificationFebruary 28, 1980

No. AAA.18/79/pt.I/134 : The following persons are appointed, on probation to Assam Civil Service Class - I (Jr. Grade) with effect from date of their joining and posted as Extra Assistant Commissioner in the station noted against each.

1. Shri Rafiquz Zaman	- Dibrugarh
2. Shri Hara Mohan Barman	- Tinsukia
3. Syed Iftikhar Hussain	- North Lakhimpur.
4. Shri Khagen Sarma	- Silchar
5. Shri Karuna Kanta Kalita	- Barpeta
6. Shri Sabir Hussain	- Golaghat
7. Shri Apurba Kr. Phukan	- Nowgong
8. Shri Swapnonil Barua	- Gauhati
9. Shri Shrimati Sonmati Bora	- Mongoldoi
10. Shri Shantanoo Thakur	- Dhubri
11. Shri Ganesh Kr. Kalita	- Tezpur.
12. Shri Sailendra Kr. Nath	- Diphu
13. Md. Nawab Mahmood Hussain	- Nalbari
14. Shri Harendra Nath Bora	- Jonai
15. Shrimati Sumitra Das (nee Dutta)	- Goalpara
16. Shri Rajib Lochan Burah	- Karimganj
17. Shri Chitraranjan Kalita	- Barpeta
18. Shri Jiauddin Ahmed	- Haflong
19. Shri Jatin Gogoi	- Hailakandi
20. Shri Mrigen Kalita	- Sibsagar

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INDRAJEEB CHOWDHURY
 Advocate.

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21. Shri Kumud Ranjan Das	- Sadiya
22. Shri Bicken Ch. Sonowal	- Karimganj.
23. Shrimati Mamie Ha.....	- Dhubri
24. Shri Bhupendra Nath Das	- Dhemaji.

Their relative seniority will be determined later on.

Sd/- J. Hazarika
Secretary to the Government of Assam

Memo No. AAA.18/79/Pt.I/134

Dated Dispur, the 28th February, 1980

Copy to:-

1. The Accountant General, Assam, Shillong – 793 001.
2. The Commissioner of Upper Assam Division, Jorhat.
3. The Commissioner of Lower Assam Division, Gauhati.
4. The Commissioner of Hills Division, Gauhati.
5. All persons concerned. They should report for duty within 15 days of receipt of this appointment order.
6. All Deputy Commissioners/Sub-Divisional Officers concerned. They are requested to see that all probationers get chance to learn work of all the branches of their officers.
7. The Supdt. Assam Govt. Press Bamunimaidam, Gauhati – 781 021 for publication of the notification in the next issue of the Assam Gazette.
8. The Secretary to the Governor of Assam, Dispur.

Gradation list of A.C.S. Officers as on 1-5-2002
in pursuance of O.M. No. ABP. 59/96/163 dtd. 12.3.2002.

Sl. No.	Name	Qualification	Date of birth	Home Dist.	Date of entry in ACS	Caste	Remarks
1	2	3	4	5	6	7	8
1.	Shri Gokul Ch. Sarma	M.A.	1-3-48	Jorhat	13.11.75	G.	Subject to out- come of Civil Rule No. 3316/96 filed by him in the High Court.
X2.	Shri Harendra Nath Bhuyan.	M.A.	25.2.46	Lakhi- pur.	1977	G.	
✓3.	Shri Pradip Kr. Das	M.A.	16.3.53	Cachar	1977	G.	
✓4.	Md. Narul Haque	M.A.	28.2.46	Jorhat	1977	G.	
✓5.	A.B. Mahammad Eunus	M.A. LLB.	1.2.53	Kamrup	1977	G.	
X6.	Shri Banikanta Pegu	M.A.	1.10.47	Jorhat	1977	ST(P)	
✓7.	Shri Balendra Basumatary	M.A. LLB.	1.8.48	Bongai- gaon.	7.5.77	(ST(P))	
X8.	Shri Bimal Kr. Hazarika	M.A.	1.3.45	Kamrup	1977	S.C.	
✓9.	Shri Subhash Longmai- lai.	B.A.	23.2.53	N.C. Hills	2.5.77	ST(H).	
X10.	Shri Jyoti Prasad Das	B.A.	1.3.45	Kamrup	1977	S.C.	
✓11.	Dr. Rafiquz Zaman	M.Sc.	1.2.51	Jorhat	21.3.80	G.	
✓12.	Syed Iftikhar Hussain	LLB. Ph.D. M.Sc.	21.9.54	Golaghat	1980	G.	
✓13.	Shri Karuna Kanta Kalita,	B.A.	1.1.50	Kamrup	10.3.80	G.	
✓14.	Md. Subbir Hussain	M.Sc. M.Phil	1.1.55	Dibrugarh	1980	G.	
15.	Shri Apurba Kr. Phukan	M.A. LLB	1.4.52	Dibrugarh	1980	O.B.C.	
16.	Shri Swapnanil Barua	B.A.	21.7.56	Kamrup	8.3.80	G.	
17.	Smti. Sonmai Barua	LLB		Tinsukia	6.2.78	G.	
18.	Shri Santanu Thakur	M.A.	4.11.55	Jorhat	24.3.80	G.	
19.	Shri Ganesh Ch. Kalita	M.A.	3.11.55	Sibsagar	20.3.80	G.	
20.	Shri Bhupendra N Das	M.A. LLB	1.11.48	Sibsagar	1980	SC.	
21.	Shri Sailendra Kumar Nath.	M.Sc.	1.1.54	Barpeta	1980	O.B.C.	

Contd... 2/-

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Advocate.

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
22.	Nawab Mahmood Hussain	M.A.	1.1.54	Jorhat	March/80	G.	
23.	Shri Harendra Nath Bora.	M.A.	19.9.54	Sonitpur	20.3.80	G.	
24.	Shri Bhupendra Nath Mahanta.	M.A.	1.2.49	Bongai-	16.8.77	G.	gaon.
25.	Smti Marmie Hagher Barman.	M.A.	13.10.54	N.C.Hills	9.5.83	ST(H).	
26.	Smti Sumitra Das	MA,BT	1.1.53	Cachar	21.3.80	G.	
27.	Shri Rajeeb Losan Duara.	M.A.	1.10.53	Dibrugarh	March/80	G.	
28.	Shri Chitta Ranjan Kalita.	M.A.	30.6.52	Nagaon	March/80	G.	
29.	Md.Jiauddin Ahmed	M.Sc.	21.1.53	Nalbari	1980	G.	
30.	Shri Jatin Gogoi	M.Sc.	1.1.49	Sibsagar	1980	OBC	
31.	Shri Mrigendra Kalita	M.A.	1.9.50	Kamrup	23.5.77	G.	
32.	Shri Dipak Kr.Goswami	M.A.	1.12.50	Jorhat	1980	G.	
33.	Shri Pranab Chakraborty	M.A. LLB	9.1.53	Dibrugarh	1980	OBC	
34.	Shri Kamalasen Goswami	M.Sc.	9.11.52	Kamrup	1980	G.	
35.	Smti Binata Rynjah	M.A.	1.1.54	Kamrup	16.5.77	G.	
36.	Shri Jyotirmoy Chakraborty.	M.A.	1.2.53	Kamrup	1980	G.	
37.	Shri Dilip Kr.Baruah					OBC	
38.	Shri Anil Kr.Baruah	M.A.	1.6.49	Jorhat	1.8.80	G.	
39.	Smti Nilufar Alam Hazarika.	M.A.	6.4.55	Kamrup	1980	G.	
40.	Shri Nityananda Borkakoty.	M.Sc. LLB	30.12.54	Nagaon	26.9.80	OBC	
41.	Shri Amarendra Nath Bora.	M.Sc.	30.12.54	Nagaon	22.9.80	G.	
42.	Shri Rabindra Nath Misra.	MA,LLB	1.9.44	Sibsagar	28.11.83	G.	
43.	Shri Jagadish Ch. Choudhury.	MA,LLB	15.10.46	Kamrup	5.10.70	G.	
44.	Shri Subhan Ch.Bhuyan	MA	28.1.46	Golaghat	10.5.70	G.	
45.	Shri Prasanta Kr.Barua	M.A.	22.2.46	Jorhat	11.8.71	G.	
46.	Shri Maheswar Das	B.Sc.	1.1.45	Kamrup	1970	G.	
47.	Shri Chouhan Doley	BT B.A.	1.7.58	Lakhimpur	1983	ST(P).	
48.	Smti Larlyne Ingti		7.3.55	Karbi	1983	ST(H).	Anglong.
49.	Shri Tirtheswar Saikia	MA,LLB	1.3.47	Lakhimpur	1983	ST(P)	
		P.hd.					
50.	Shri Carol Narzary	M.A.	4.10.50	Bongaigaon	1983	ST(P)	
51.	Jiten Bargayari	B.A. LLB	1.2.54	Kokrajhar	1983	ST(P)	
52.	George Basumatary	M.A.	12.1.54	Goalpara	1983	ST(P)	
53.	Lalramlien Joute	M.A.	1.9.46	N.C.Hills	1983	ST(H).	

Contd... 3/-

ANNEXURE - C

To

Dated Guwahati the 20th January, 2004.

The Honourable Chief Secretary,
Government of Assam,
Dispur.

SUB.: Prayer For Recommendation For Promotion To IAS Cadre.

Sir,

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

That Sir, I am an ACS I officer of 1980 batch and my serial number is 3. It is learnt that there are 10 nos. of vacancies for promotion of state service officers to IAS cadre for the year 2002 and 2003, out of which 2 nos. vacancies are ear-marked for non-ACS officers, leaving the remaining 8 nos. vacancies for ACS officers. It is further learnt that a list of 24 ACS officers against the said 8 nos. of vacancies was sent to UPSC for consideration for promotion. Out of these 24 ACS officers, one belongs to 1976 batch, five officers belong to 1977 batch and rest 18 officers belong to 1980 batch. My serial number in the list of 24 ACS officers was 9. Recently the Selection Committee meeting was held in New Delhi. It reveals from newspaper report (Asomiya Pratidin Dated 15th) that 8 officers upto serial no. 8 of the list of 24 officers have been selected for promotion. My name being at serial no. 9, I was not considered for promotion. Further, as per the said newspaper report (Paper cutting enclosed), out of these 8 nos. of officers, departmental proceeding/vigilance enquiry is continuing against 4 officers and 4 vacancies against these 4 officers are decided to be kept under sealed cover.

That Sir, I have devoted almost 24 years of service in ACS and have attained the age of 54 years on 31.12.03. I have good service record through my service career. As per IAS promotion rules, I am time-barred from 01.01.04 and will not be considered for promotion. It is uncertain that the officers against whom four vacancies have been reserved, will get the benefit of these vacancies but it is quite certain that since I am time-barred from 01.01.04, I will be deprived of future promotion inspite of my good service record unless I am considered for selection in the present chance.

It is also learnt that Sri Gokul Sharma, an ACS officer of 1976 batch who has been selected for promotion was awarded punishment by stopping increment benefit and

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Advocate.

debarring promotion in a departmental proceedings drawn against him in connection with issue of gun license. Moreover, another officer Sri N. Haque of 1977 ACS batch for whom a vacancy is decided to be kept under sealed cover (as per newspaper report) will retire on 28.02.04. As the vigilance enquiry is unlikely to be cleared within February 2004 Sri Haque will perhaps not get the benefit of the vacancy reserved for him. From the newspaper report it appears that in the matter of selection for promotion only seniority was stressed upon and merit or service record was relegated to secondary importance although the criterion for selection is 'merit' cum 'seniority'. My service record being good throughout my service career and my age being 54 years, I deserve special consideration for selection in preference to any of the 8 selected officers irrespective of seniority, whose service records are not as good as mine. There are also previous instances here junior officers were selected for promotion in consideration of good service record irrespective of seniority, namely, Srimati Gayatri Baruah, present DC, Sibsagar, Sri B. Hagier, Commissioner & Secy. WPT & BC and Sri D.N. Saikia, Secy. SAD but there is not instance of an ACS officer having being good service record and holding a top merit position being deprived of promotion to IAS cadre.

That Sir, promotion to IAS cadre is the ultimate aspiration of an ACS officer. As already mentioned I have devoted 24 years of dedicated service in ACS without any blemish and came within the zone of consideration within time. If I am deprived of this chance for promotion, it will be a great injustice to me.

It is, therefore, humbly prayed that your honour would be kind enough to sympathetically consider my case and take appropriate action to give me justice, for which benign act of yours, I will remain ever grateful.

Yours Faithfully,
Sd/ Illegible
(K.K. Kalita, ACS)
D.C., Hailakandi

To,

The Hon'ble Chief secretary,
Govt. of Assam, Dispur.

Sub : Prayer for recommendation for promotion to IAS cadre.

Sir,

In continuation of my earlier representation dated 20th January, 2004 for recommendation of my name for promotion to IAS cadre, I further beg to state that Sri Narul Haque, an ACS officer of 1977 batch who was provisionally recommended by the Selection Committee for promotion to IAS cadre along with 7 other ACS officers (Up to Sl. 8 of the list of the 24 ACS officers who came under the zone of consideration) already retired in February, 2004 before issue of notification by Govt. of India. Since the recommendation of the selection committee for promotion of Sri Haque was provisional and recommendation was not given effect to by Govt. of India by issue of notification till retirement of Sri Haque, he, perhaps, does not have any claim for promotion against the vacancy provisionally earmarked for him nor the vacancy is carried forward to the next year. As the Govt. of Assam decided to fill up 8 vacancies for the year 2002-2003 and 2003-2004 by promotion of ACS officers, another suitable ACS officer will perhaps be considered for promotion to IAS cadre in place of Sri N. Haque. I, being the next seniormost ACS officer of the list of 24 ACS officers and my service records being good throughout my service career, I have a legitimate claim for consideration for promotion to IAS cadre against the vacancy earmarked for Sri N. Haque.

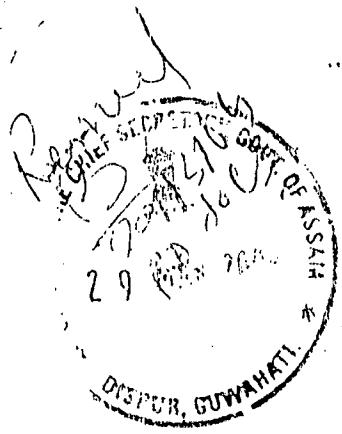
It is, therefore, humbly prayed that, your honour would be kind enough to consider my case and take up the matter with appropriate authority, for which benign act of yours, I shall remain ever grateful.

Dated 26th March, 2004

Yours faithfully,



(K. K. Kalita, ACS)



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INDRANEEL CHOWDHURY
Advocate.

ANNEXURE - E

GOVERNMENT OF ASSAM
PERSONNEL (A) DEPARTMENT

No. AAA.2/2002/Pt.-II/31

Dated Dispur the 30th March, 2004.

From: Shri J.P. Rajkhowa, IAS
Chief Secretary to the Government of Assam
Dispur :: Guwahati – 6.

To The Chairman
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi – 110 011.

Sub.: Promotion of Shri Karuna Kanta Kalita, Assam Civil Service to IAS.

Sir,

With reference to above, I am to state that in the last sitting of the Selection Committee in December 2003 eight officers were selected for promotion to IAS from ACS. One of the officer viz. Shri N. Haque was in the select list and inclusion of his name for promotion was provisional due to a pending case against him. He retired on 29th February 2004. Consequently, his place has fallen vacant. This vacant place may be filled up by the next senior most officer viz. Shri Karuna Kanta Kalita.

This proposal for promotion of Shri Kalita is submitted on the ground that the officer will never be promoted being barred by age if he is not included in this list. He is an officer of repute in this cadre. Promotions of ACS officers to IAS has gradually stagnated to such extent as officers serving in this cadre for even 24 years and above are not getting the opportunity for promotion.

If desired, UPSC may consider obtaining consent of the members of the Selection Committee through circulation of this agenda as a special case.

The ratings in ACR of Shri Karuna Kanta Kalita are furnished in the enclosed paper for favour of your reference and consideration.”

Yours faithfully,
Sd/- Illegible
(J.P. Rajkhowa)

Chief Secretary to the Government of Assam
Dispur, Guwahati

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INDRANEEL CHOWDHURY
Advocate.

ANNEXURE - F

Gram : UNISERCOM
Telex : 031-62677
FAX : 011-23782049

Most Immediate

No. 6/2/2003-AIS
UNION PUBLIC SERVICE COMMISSION
(SANGHLOK SEVA AYOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD
New Delhi - 11- 069

the 5th April, 2004.

To

The Chief Secretary,
Govt. of Assam
Dispur.

(Attn. Shri H.N. Sharma, Under Secretary)

Subject: - SCM for promotion to the IAS of Assam-Meghalaya Joint Cadre, Assam Segment for the year 2002 – Regarding.

Sir,

I am directed to refer to your letter No. AAA.2/2002/Pt.II dated 30.03.2004 on the subject and to say as follows:-

2. The Selection Committee that met on 29.12.2003 drew up a list of suitable officers for promotion to the IAS of Assam-Meghalaya Joint Cadre, Assam Segment during the year 2002. The State Govt. vide their letter dated 16.02.2004 and the Govt. of India vide letter dated 09.03.2004 furnished their observations on the recommendations of the Selection Committee. However, further necessary action could not be taken by the Commission on the selection as the State Govt. have not yet furnished their comments on the representation submitted by Shri R. Sen. In this context, DO letter of even number dated 01.01.2004 and subsequent reminder dated 11.03.2004 and 29.03.2004 may kindly be referred to.

3. The State Govt.'s proposal to include the name of Shri Kalita in the list of 2002 in place of Shri N. Haque has been examined. It is observed that the IAS (Appointment by Promotion) Regulations do not provide for such a course of action as officers who are eligible on the 1st of January of the Select List year are considered and the number of officers included in the Select Lists is based on the number of vacancies and Regulation

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Jy
INDRANEEL CHOWDHURY
Advocate,

5. As such, the vacancy arising out of the retirement of Shri N. Haque has to be reckoned by Govt. of India in accordance with the Rules and with which the State Govt. are also well aware. The State Govt. may kindly appreciate that their request in this regard is beyond the purview of the Rules and Regulations.

4. It is, therefore, requested that the State Govt. may kindly expedite their observations on the representation of Shri R. Sen to this office so that a final decision can be taken by the Commission on the Select List of 2002.

Yours faithfully,

Sd/- Illegible

(Molly Tiwari)

Under Secretary (AIS)

Union Public Service Commission

Tel No. 23382724

File No. 6/2/2003-AIS

New Delhi

Dt. 05.04.2004

Copy to:

- (i) The Chief Secretary, Govt. of Assam, Dispur (Attn. Sh. H.N. Sharma, US)
- (ii) The Secretary to the Govt. of India, Min. of Personnel, Public Grievances & Pensions, Deptt. of Personnel & Training, North Block, New Delhi. (Kind Attn. : Shri T. Jacob, Director).

(Molly Tiwari)

Under Secretary (AIS)

Union Public Service Commission

Tel No. 23382724

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INDRANEEL CHOWDHURY
Advocate,

Chief Secretary
মুখ্য সচিব, অসম



Ph. No. : 261120, 262258(O)

261585(R)

Fax : 900, 261607

অসম চৰকাৰ

অসম প্রতিমালা

বিশ্বনৃপু, ওয়াগাটী - ৭৮১০০৬

GOVERNMENT OF ASSAM

Assam Secretariat, Dispur,

Guwahati - 781006.

D.O. No. : 035.2/2002/CS/

15/5/04

৩৬

Dear Shri Mata Prasad,

I would refer to your No. 06.02.2003-AIS of 05 April, 2004 and say that the State Government's comments on the representation of one Shri R Sen, referred to us by your office, have been furnished separately.

I would also refer to the question of considering Shri K K Kalita, ACS for inclusion in the current select list of ACS officers for promotion to the IAS. A proposal to that effect had been placed before the commission vide No. AAA-2/2002/PI-II dated 30.03.2004. I would, in this context point out again that Shri Kalita's inclusion in the select list is proposed against one of last year's vacancies which was shown earmarked provisionally for Shri N Haque, ACS, who retired subsequently on February 29 last without having his selection finalised. Shri Kalita had to be kept out of the select list simply to ensure observance of a formality.

It is seen from the records that Shri Kalita's exclusion from the current select list will render him ineligible for promotion to the IAS since he soon crosses the age limit for future consideration. That, I am afraid, will be extremely unkind.

I would hence request you kindly to consider even a slight deviation from the procedure, if necessary, in the interest of natural justice and fairplay and to consider inclusion of an eminently suitable person left out just to fulfil a formality.

With Kind regards

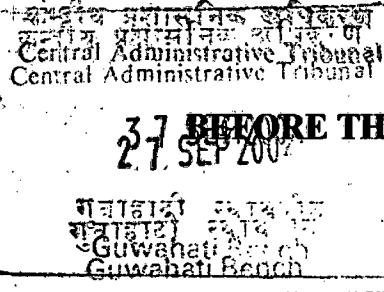
Yours sincerely

(J P Rajkhowa)

Shri Mata Prasad
Chairman, Union Public Service Commission.
Dholpur House, Shahjahan Road,
New Delhi - 110 069

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INDRANEE CHOWDHURY
Advocate.



22 -

3.7 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
27 SEP 2004

GUWAHATI BENCH, GUWAHATI

OA No. 153/2004

Filed
Recd
B.C. Pathak
27/9/04
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

BETWEEN:

SHRI K.K. KALITA

APPLICANT

AND:

UNION OF INDIA & OTHERS

RESPONDENTS

WRITTEN STATEMENT FILED ON BEHALF OF RESPONDENTS No.2 & 3

Written Statement of G C Yadav posted as Deputy Director in the Union Public Service Commission, New Delhi.

2. I solemnly affirm and state that I am an officer in the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi and am authorised to file the present Written Statement on behalf of Respondents No. 2 & 3.

3. That I have read and understood the contents of the above Application and in reply I submit as under:

4.1 At the outset, it is submitted that the Union Public Service Commission, being a Constitutional body, under Articles 315 to 323 Part XIV (Services under the Union and the States) Chapter-II of the Constitution, discharge their functions, duties and Constitutional obligations assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for the IAS/IPS/IFS. In pursuance of these Rules, the IAS (Appointment by Promotion) Regulations, 1955 [Promotion Regulations, in short] have been made. In accordance with the provisions of the Promotion Regulations, the Selection Committee presided over by the Chairman/Member of the Union Public Service Commission, makes selection of

Grammy
G. C. YADAV
Union Public Service Commission
All India Services
Promotion Regulations
1955
Under the Constitution of India
Central Government of India

State Civil Service [SCS, in short] officers for promotion to the Indian Administrative Service.

4.2 Thus, the Union Public Service Commission, after taking into consideration the records received from the State Government under Regulation 6 and observations of the Central Government received under Regulation 6A of the Promotion Regulations, take a final decision on the recommendations of the Selection Committee in accordance with the provisions of Regulation 7 of the aforesaid Regulations. The selections are made in a fair and objective manner on the basis of relevant records and following the relevant Rules and Regulations.

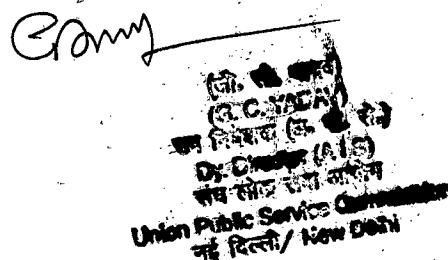
PRELIMINARY SUBMISSIONS:

5.1 It is most respectfully submitted that the selection of State Civil Service Officers for promotion to the IAS are governed by the IAS (Appointment by Promotion) Regulations, 1955. Regulation 3 of the said Regulations provides for a Selection Committee consisting of the Chairman of the Union Public Service Commission or where the Chairman is unable to attend, any other Member of the Union Public Service Commission representing it and in respect of the joint Cadre of Assam-Meghalaya, the following officers as members: -

- (i) Chief Secretary, Govt of Assam ;
- (ii) Chief Secretary, Govt of Meghalaya ;
- (iii) Chairman, Board of Revenue, Govt. of Assam;
- (iv) Commissioner of Division, Govt. of Meghalaya;
- (v) Two nominees of the Government of India not below the rank of Joint Secretary.

The meeting of the Selection Committee is presided over by the Chairman/Member, UPSC.

5.2 In accordance with Regulation 5(4) of the said Regulations, the aforesaid Committee duly classifies the eligible SCS officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be,



on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(5) of the said Regulations, the Selection Committee prepares a list by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Civil Service.

5.3 The ACRs of eligible officers are the basic inputs on the basis of which eligible officers are categorised as 'Outstanding', 'Very Good', 'Good' and 'Unfit' in accordance with the provisions of Regulation 5(4) of the Promotion Regulations. As per the uniform and consistent procedure and practice followed by the Union Public Service Commission, the Selection Committee examines the service records of each of the eligible officers, with special reference to the performance of officers for the five years preceding the year in which the Selection Committee meets, deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then after detailed deliberation and discussion, arrives at a classification to be assigned to each eligible officer in accordance with the provisions of the Promotion Regulations. The Selection Committee makes its assessment in a fair and objective manner and the procedure adopted by the Selection Committee in preparing the Select Lists is uniformly and consistently applied for all States and Cadres for induction into the All India Services.

CONTENTIONS OF THE APPLICANT

6. The Application has been filed by the Applicant against the action of Respondent No.2 in refusing inclusion of the name of the Applicant in the Select List of 2002 for promotion to the IAS of Assam-Meghalaya Joint Cadre, Assam Segment. The main contentions of the Applicant are as follows :-

- (i) That in terms of the IAS (Appointment by Promotion) Regulations, the Govt. of Assam initially decided to fill up 10 vacancies in the Indian Administrative Service for the years 2002-2003 and 2003-

C. R. V. V.

(Mr. C. R. V. V.)
 (C. C. VACAN)
 अधिकारी (संसदीय)
 Dr. Chandra V. V.
 अधिकारी (संसदीय)
 Union Public Service Commission
 नई दिल्ली / नोव्हें डिल्ली

2004. Subsequently, the Govt.'s decision was reviewed and it was decided to fill up eight vacancies from ACS officers and two vacancies from Non-ACS officers. Accordingly, a list of 24 ACS officers was forwarded to the UPSC and the Applicant's name was at S. No.9. The Commission considered the said List and short listed eight officers to be included in the Select List.

(ii) That the criteria for Selection for appointment to the Indian Administrative Service is merit-cum-seniority. However, in the list prepared by the UPSC, it was seniority that played a dominant role and merit took a back seat.

(iii) That departmental proceedings were pending against four out of the eight officers selected by the Selection Committee and one of the said officers namely, Shri N Haque, was scheduled to retire on 28.02.2004. The Applicant would attain the age of 54 years on 01.01.2004 and as such, he would be age barred for the next selection. In view of this, he represented to the State Government to consider his selection in preference to any of the eight selected officers. The State Govt. made a proposal to the UPSC to include the Applicant in the Select List in place of Shri N Haque who retired in February, 2004. Respondent No. 2 overlooked the provisions of Regulation 7(3) of the Regulations of 1955 which clearly lays down that only on final approval granted by the Commission to the list prepared by the Selection Committee a Select List as envisaged under the said Regulations shall be formed. As is amply demonstrated in the communications between the Respondent No. 2 and the Respondent No. 4 the Select List in the instant case was yet to be finally approved by the UPSC especially till the retirement of Shri N Haque. As such, the Respondent No. 2 ought to have included the name of the applicant in the Select List.

(iv) That Respondent No. 2 entirely ignored the fact that the Respondent No. 4 had strongly recommended the name of the Applicant keeping in view his impeccable service record and also the fact that he would

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 (G. C. YACAV)
 (G. C. YACAV)
 Dr. Chandra (A.I.S.)
 Dr. Chandra (A.I.S.)
 Union Public Service Commission
 75, P. O. H. New Delhi

be age barred for future consideration. As such, the impugned action on the part of the Respondent No. 2 in refusing to consider the case of the applicant is grossly illegal, arbitrary and malafide in addition to being violative of Art 14 and 16 of the Constitution of India.

(v) That the Applicant has a strong *prima facie* case in his favour. The Applicant shall suffer irreparable loss if the vacancy against which Shri N Haque is provisionally selected is allowed to be carried forward as a vacancy for the next year.

FACTS OF THE CASE

7.1 A meeting of the Selection Committee was held on 29th December 2003 for preparation of the year-wise Select Lists of 2002 and 2003 for promotion to the IAS of Assam-Meghalaya Joint Cadre (Assam Segment) against 8 vacancies determined by the Govt of India, for 2002 and NIL vacancies determined for the year 2003. This Committee considered 25 officers [24 officers in accordance with Regulation 5(2) which lays down that the zone of consideration shall consist of officers three times the number of vacancies and 01 officer under the 1st proviso to Regulation 5(3)]. The Applicant Shri K K Kalita was considered at S. No. 09 in the eligibility list. The Committee assessed him as 'Very Good' on an overall relative assessment of his service records. On the basis of this grading, his name could not be included in the Select List of 2002 due to the statutory limit on the size of the Select List. In accordance with the proviso to the Regulation 5(5), four (04) officers including Shri Nurul Haque were included provisionally in the Select List subject to grant of integrity certificate and / or clearance in the disciplinary proceedings. Out of the four officers included provisionally, the name of one officer namely Shri Subhash Ch. Longmailei was made unconditional in the Select List after the State Govt. subsequently furnished his integrity certificate. The Select List of 2002 was approved on 28.04.2004. The Govt of India had determined 'Nil' vacancy for the year-2003 and as such no Select List was prepared for the year 2003.

7.2 The State Govt vide letters dated 30.03.2004 and 15.05.2004 had requested the Commission to include the name of Shri Kalita, Applicant, in the Select List of

(Signature)
 (G. C. VASU)
 जन सेवक दल (कांगड़ा)
 Dy. Chairman (AIS)
 संघ लोक सेवा आयोग
 Union Public Services Commission
 नई दिल्ली

2002 against the vacancy arising out of the retirement of Shri N Haque [who was included provisionally in the Select List of 2002] on 29.02.2004. The proposal of the State Govt. was examined by the Commission and it was observed that the IAS (Appointment by Promotion) Regulations did not provide for such a course of action as only officers who are eligible on the 1st of January of the Select List year are considered and the number of officers included in the Select List was based on the number of vacancies and the provisions of Regulation 5 of the Promotion Regulations. As such, any vacancy arising out of the retirement of an officer included in a Select List has to be reckoned by the Govt. of India in accordance with the provisions of the relevant Rules and Regulations. In view of this, the request of the State Govt could not be acceded to by the Commission as it was not in accordance with the Promotion Regulations to include officers beyond the statutory size of the Select List.

REPLY TO THE CONTENTIONS

8.1 In reply to the contention of the Applicant made in Para 6 (i) above, it is most respectfully submitted that Regulation 5(1) of the IAS (Appointment by Promotion) Regulations 1955 lays down the method of preparation of a list of suitable officers for promotion to the IAS. The said Regulation reads as follows :

“5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the recruitment rules.”

In view of the above, the vacancies available in respect of a particular Select List are determined by the Central Government in consultation with the State Government. As such, their submissions may kindly be seen in this regard.

Copy
 (ल. व. वर्मा)
 (B. C. VARGA)
 अ. विवरण (ल. व. वर्मा)
 Dr. C. VARGA (A.I.S.)
 सरकारी सेवा विभाग
 Union Public Service Commission
 नई दिल्ली/लाल दरवाजा

8.2 In reply to the contention made in para 6(ii) above, it is most respectfully submitted that **selection is primarily made on the basis of merit**. In accordance with the provisions of Regulation 5(4) of the said Regulations, the Committee classifies the eligible State Civil Service officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(5) of the said Regulations, the Selection Committee prepares the list by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Civil Service. The procedure followed by the Selection Committee has been upheld by the Hon'ble Supreme Court in the case of **R.S. Dass (AIR 1987 SC 593)** which reads as under:

"The amended provisions of Regulation 5 have curtailed and restricted the role of seniority in the process of selection as it has given priority to merit. Now the committee is required to categorise the eligible officers in four different categories viz. 'Outstanding', 'Very Good', 'Good' or 'Unfit' on overall relative assessment of their service records. After categorisation is made the Committee has to arrange the names of the officers in the Select List in accordance with the procedure laid down in Regulation 5(5). In arranging the names in the Select List, the Committee has to follow the inter-se seniority of officers within each category. If there are five officers who fall within 'Outstanding' category, their names shall be arranged in the order of their inter-se seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the officers falling in the category of 'Very Good' and 'Good'. Similarly, if a junior officer's name finds place in the category of 'Outstanding' he would be placed higher in the Select List in preference to a senior officer finding place in the 'Very Good' or 'Good' category. In this process a junior officer having higher grading would supersede his seniors. This cannot be helped. Where selection is made on merit alone for promotion to a higher service, selection of an officer though junior in service in preference to senior does not strictly amount to super-session."

E. G. Dass

(महाराष्ट्र)
(E. G. DASS)
महाराष्ट्र (ए. जे. डॉ.)
Dr. Dass (A.I.S.)
संघ सेवा एवं विद्या
Union Public Service Commission
नई दिल्ली

As submitted in para 7.1 above, the Applicant was considered at S. No. 09 in the eligibility list for the year 2002. The Committee assessed him as 'Very Good' on an overall relative assessment of his service records. On the basis of this grading, his name could not be included in the Select List of 2002 due to the statutory limit on the size of the Select List. Thus the Selections have been made strictly in accordance with the provisions of the Promotion Regulations. The contentions of the Applicant are therefore without any merit and hence denied.

8.3.1 In reply to the contention of the Applicant made in Para 6 (iii) and 6(iv) above, it is most respectfully submitted that Regulation 5(2) of the IAS (Appointment by Promotion) Regulations 1955 lays down the condition of eligibility for consideration of State Civil Service officers by the Selection Committee which reads as follows:

"5(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Civil Services in the order of seniority in that service of a number which is equal to three times the number referred in sub-regulation (1).

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers;

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded;

Provided also that the Committee shall not consider the case of a member of the State Civil Service unless on the first day of January of the year for which the Select List is prepared, he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

E. D. M.
 (S. No. 134)
 G. C. YADAV
 राजस्थान (राज. सर.)
 Dr. Chander (A.I.S.)
 सरकारी एजेंसी
 Union Public Service Commission
 नई दिल्ली (संघरक्षणी)

8.3.2 As such, when year-wise Select Lists are prepared, the crucial date for determining the eligibility of officers is taken as the 1st of January of the Select List year and the notional date for the meeting of the Selection Committee is taken as the 31st December of the Select List year. In the instant case also, the Selection Committee was to prepare year-wise Select Lists for 2002 and 2003 against 8 and 0 (NIL) vacancies respectively. For the year 2002, thus the crucial date for determining the eligibility of the officers was reckoned from 01.01.2002 and as there were NIL vacancies for 2003, no Select List was required to be prepared for 2003.

8.3.3 The case of Shri Nurul Haque was considered at S. No.2 in the Eligibility List of 2002 by the Selection Committee Meeting and he fulfilled the conditions of eligibility for consideration as laid down in the above provisions of the Promotion Regulations. The Committee assessed Shri Haque as 'Very Good' and on the basis of this assessment, his name was included at S.No. 2 in the Select List of 2002. However, the officer's inclusion in this Select List was provisional subject to grant of integrity certificate by the State Govt. The Commission approved the recommendations of the Selection Committee on 28.04.2004 after all the relevant information was received from the State Government and the Central Government.

8.3.4 It is also reiterated that while preparing the Select List for any previous year, the eligibility is reckoned from the 1st January and the notional date for the SCM is taken as 31st December of the Select List year. As such, all the officers in the zone have a right for consideration and based on the recommendations of the Committee and the provisions of Regulation 5(4) and 5(5) the selected officers are included in the list of suitable officers which gives rise to the Select List under Regulation 7. It is only these selected officers that have a right for appointment. In the present case, the Applicant was duly considered by the Committee, but could not be included in the Select List due to the statutory size of the Select List, his overall relative assessment and inter-se position in the Seniority List.

8.3.5 Further, the vacancy, if any, arising out of the retirement of Shri N Haque has to be reckoned by the Govt. of India in accordance with Rule 4(2)(b) of the IAS (Recruitment) Rules, 1954 read with Regulation 5(1) of the Promotion Regulations

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 (रामजी)
 (G. C. YADAV)
 रामजी (G. C. YADAV)
 Dr. Chintan (A. I. S.)
 सचिव (A. I. S.)
 Union Public Service Commission
 रामजी (G. C. YADAV)

1955. As such, the submissions being made by the Govt of India in this regard may also kindly be referred to. It is, however, submitted that the Regulations do not provide for the exclusion of officers from a Select List if they were otherwise eligible as on the 1st January of the Select List year and were available for promotion on the 31st December of the Select List year. In this case also, for the Select List year 2002, Shri N Haque was eligible as on 01.01.2002 and was available for promotion on 31.12.2002 and was thus rightly included in the Select List of 2002.

8.3.6 The State Government requested the Commission, vide letter dated 30.03.2004, to include the name of the Applicant in the Select List of 2002 in place of Shri N Haque. The request of the State Govt. could not be acceded to by this Respondent as there is no provision in the Promotion Regulations to include officers beyond the size of the Select List. In fact, the State Govt. should not have made this request as it was beyond the purview of the Promotion Regulations to have given relief to the Applicant vis-à-vis the claims of the other eligible offices in the zone of consideration. This contention of the Applicant is, thus, baseless.

8.4 In reply to the contention made in para 6(v) above, it is most respectfully submitted that the selection process for the years 2002 and 2003 is now complete and that for subsequent years, the determination of vacancies pertain to the domain of the Government of India and as such, the submissions made by them may kindly be referred to.

9. That save those points, which have expressly been admitted hereinabove others may be deemed to have been denied by the answering Respondent.

10. In view of the facts and circumstances stated above, the Hon'ble Tribunal may be pleased to dismiss the OA.

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DEPONENT

G. C. YADAV
Ex-Officer (E. & M.)
Dr. Elizabth (A. & M.)
Smt. Sunita (A. & M.)
Union Public Service Commission
31-20

VERIFICATION

I, G C Yadav, do hereby declare that the contents of the above Reply Statement are believed by me to be true based on records of the case. No part of it is false and nothing has been concealed therefrom.

Verified at New Delhi on the 20th day of September, 2004

G C Yadav
DEPONENT

(G. C. YADAV)
DR. G. C. YADAV
Union Public Service Commission
New Delhi
20/09/2004

23 MAR 2004

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO.153/2004

Shri Karuna Kanta Kalita

.... Applicant

- Vs -

Union of India & Ors.

- AND -

In the matter of :

Written statement on behalf of the
Respondent No.4 (State of Assam,
Represented by the Chief Secretary
to the Govt. of Assam).

(Written Statement on behalf of the Respondent No. 4
to the application filed by the applicant)

I, Shri N.C. Misra, Son of Late Basudev
Misra, presently working as Deputy Secretary to the Govt.
of Assam, Personnel (A) Department, Dispur, Guwahati-6
do hereby solemnly affirm and state as follows :-

1. That I am the Deputy Secretary to the Govt.
of Assam, Personnel (A) Department, Dispur, Guwahati-6

Contd..... 2/-

File No: Assam
The State of Assam
Respondent No.4
Shri N.C. Misra
Personnel (A) Department
Guwahati-6
22/3/2005

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2. That a copy of the aforesaid application has been served upon the Respondent No.4. I have gone through the same and have understood the contents thereof. I have been authorised to file this written statement on behalf of the Respondent No.4. I do not admit any of the averments which are not specifically admitted herein after and the same are to be deemed as denied.

3. That with regard to the statements mad in paragraphs 4.1, 4.2 and 4.3 the answering respondent has nothing to make comment on it. He however does not admit any statement which are contrary to records.

4. That with regard to the statement made in paragraph 4.4 of the application the answering respondent begs to state that the gradation list of ACS officers published on 27/2002 and the applicant's name appears at Sl. NO.13.

5. That with regard to the statements made in 4.5. of the application the answering respondent begs to state that the Govt. has forwarded the proposal to UPSC in respect of 25 Nos of eligible ACS Officers including the petitioner whose name appeared in Sl. No. 9 for 8 vacancies for the year 2002 vide Govt. letter No. AAI/2/2002/319, Dated, 28/11/2003.

6. That with regard to the statements made in paragraphs 4.6 and 4.7 the answering respondent has nothing to make comment on it.

(Contd. P/3.)

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7. That with regard to the statements made in paragraphs 4.8, 4.9 and 4.10 of the application it is stated that the applicant submitted representation Dated 20-1-04 to the Chief Secretary to the Govt. of Assam and the Govt. thereafter sent a letter to UPSC, New Delhi with a request to consider the case of the applicant.

8. That with regard to the statements made in paragraphs 4.11 and 4.12 of the application the answering respondent begs to state that the State Govt. has requested the UPSC to consider the case of the applicant in the interest of natural justice and fair play.

9. That with regard to the statements made in paragraph 4.13 of the application the answering respondent has nothing to make comment on it as the UPSC will reply to that.

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VERIFICATION

I, Shri N. C. Misra, son of Late Basudev Misra, Deputy Secretary to the Govt. of Assam, Personnel (A) Department, Dispur, Guwahati-6 do hereby state that the statements made paragraphs 1, 2, 3, 6 to 9 are true to my knowledge, those made in paragraphs 4, 5 are being matter of records of the case derived there from which I believe to be true and the rest are humble submissions before this Hon'ble Tribunal.

I have not suppressed any material fact and I have signed this verification on this the day 18. of March .. 2005.

Naren L Chandra Misra
Signature.

Signed in my presence

18/3/05

-000-

Executive Magistrate
Kamrup (Metropolitan) ...
GUWAHATI.

