

50/100

10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 156/2006.....

R.A/C.P No. 19/06.....

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FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

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

In O.A. 156 of 04

Name of the Applicant(S) Sri Nurul Haque

Name of the Respondent(S) U.O.I & Ors.

Advocate for the Applicant Mr. D.K. Das & U.K. Nair.

Counsel for the Railway/ C.G.S.C. C.G.S.C./Govt. of Assam

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

23.7.04.

Present: The Hon'ble Mr. K.V. Sachi
danandan, Judicial Member
Hon'ble Mr. K.V. Prahladan, Admini-
strative Member.

The grievance of the applicant
is for non promotion to Indian
Administrative Service from the
State Civil Service in view of the
selection for the year 2000, 2001
and 2002. In spite fact that he
was exonerated from the disciplinary
proceeding pending against him. He
has also submitted that the respon-
dents could have adopted sealed
cover proceedings. He also submitted
that the applicant has retired on
29.2.2004. But the relief was not
granted notionally.

Application is admitted. Issue
notice on the respondents. Post the
matter on 27.8.04 for orders.

Member(A)

Member(J)

Extra charge for
resp. No. 6, 7, 10/2

(Rupees ten) only
received vide our
memo No. 1297 dt. 02/8/04
at file "A"
3/8/04

Notice and order sent to D/Section for issuing to resp. Nos. 1 to 7, regd. AD post.

27.8.2004 Present: Hon'ble Shri D.C. Verma

Vice-Chairman

Hon'ble Shri K.V. Prilla
Administrative Member

Mrs M. Das, learned counsel for the respondent Nos. 2 and 4 requested four weeks time to file reply. M. Deb Roy, learned Sr. C.G.S.C. informed that Mr B.C. Pathak, learned Al. C.G.S.C. will appear for respondent Nos. 1 and 3 and prays for time on behalf of Mr B.C. Pathak for filing reply. Registered notices were filed to respondent Nos. 5, 6 and 7 but none of them have been received back. By all the respondents be filed four weeks.

List the matter on 6.9.04 orders.

K.V. Prilla
Member

Vice-Chairman

26/8/04

Received a letter from the Secy. to the Govt. of Assam, Agri. Department vide NO. A&A.317/98/80 dated 25/8/04 with a prayer for fixing another date at 'Play'.

26/8/04

23-9-04

NO-obj's have been filed

nkm

24.9.04

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

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

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

K.V. Prahladan
Member

Vice-Chairman

30/11/04

1) S/R is awaited.

2) NO W/S have been filed.

lm

1.12.2004

Mrs. M. Das, learned counsel for respondent nos. 2 & 4 as well as Mr. B.C. Pathak, learned Addl. C.G.S.C. for respondents 1 & 3 seek and are granted four weeks time to file written statement. Stand over to 17.1.2005.

K.V. Prilla
Member

Vice-Chairman

bb

h.

1) Notice issued.
2) S/R awaited.
3) NO reply filed.

17.1.05

Learned counsel Mr B.C.Pathak states that he is no longer appearing for respondents No.2 and 3 and also written to respondents about it. He also informs that learned Advocate Mrs M.Das telephonically informed him that she is sick. Service on respondents 5 to 7 are awaited. The applicant may in case it is so desire take fresh steps for service on these respondents.

Stand over to 18.2.05.

Notice duly
Served on
resp. Nos. 1 and
4, 5, 6 & 7.

28/01/05.

17-2-05

No. w/s has been
filed.

pg

18.2.05

MKA/KVP.

Member

Vice-Chairman

17-3-05

No. w/s has been filed.
S/R. awaiting

18.03.2005

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

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

Case Adjourned to 18th March 05.

Member (A)

Member (J)

18.3.05

W/s on behalf of
Respondent No. 2 & 4
has been filed.

Heard Mr. D.K. Das, learned
counsel for the applicant and also Ms.
U. Das, learned Addl. C.G.S.C. for the
Union of India.

Mr. Das, learned counsel for
the applicant submits that this matter
is required to be finally heard. Accord-
ingly, post the matter on 03.05.2005
for hearing.

for hearing.

Member (A)

Vice-Chairman

mb

03.05.2005

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

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

Heard Mr. D.K. Das, learned
counsel for the applicant, Mrs. M. Das,
learned Govt. Advocate for the State of
Assam for the Respondents No. 2 and 4
and also Ms. U. Das, learned Addl.
C.G.S.C. for the respondents No. 1 and
3.

We find that notices were sent to
Respondents No. 5 to 7 and same has
been served on Secretary to the
Government of Assam as per
acknowledgement. It is not clear that as
to whether the Secretary to the
Government of Assam who
acknowledged the notices have been
served on actual Respondents No. 5 to 7.
Counsel for the Respondents No. 2 and 4
will ascertain as to whether the notices
were actually sent to Respondents No. 5
to 7 and served. Counsel for the applicant submits
that the Respondent No. 7 is no more.
That is also matter for verification.

Post on 18.05.2005. A copy of the
order will be given to the counsel for the
Respondents No. 2 and 4.

Member

Vice-Chairman

Received for respondent
like case
5/5/05
received on 25.4.05
of Mrs. M. Das
Govt. Advocate
(Kumari) 6.5.05
Copy of order dt 3-5-05
handed over to Ms. U. Das Addl
C.G.S.C. Bon. A-No. 183, on 5-5-05 /mb/
and also to the Govt. Adv. dt
9.5.05 Bon. 2-16-2 & 4 on
6-5-05
Am

Office Notes

Date

Order of the Tribunal

18.5.2005

Counsel for the respondents seeks adjournment on personal grounds. Post on 8.6.2005.

[Signature]
Member

[Signature]
Vice-Chairman

mb

08.06.2005

Ms.U.Das on behalf of Mr.D.K.Das, learned counsel for the applicant seeks for an adjournment. Post on 10.6.2005 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

bb

10.6.2005

Inspite of the direction issued on 3.5.2005 to the counsel for the respondents No. 2 and 4 to ascertain ~~that~~ whether the notices are actually sent to Respondents No. 5 to 7, though two adjournments ^{have} been obtained thereafter it has not been furnished. This is a serious matter. Counsel for the applicant stated that the matter is extremely urgent. In the circumstances the case is adjourned to 14.6.2005 for reporting.

[Signature]
Vice-Chairman

mb

14.06.2005

Ms.U.Das, learned Addl.C.G.S.C. appearing on behalf of the respondent No. 1 seeks for adjournment. Post on 19.7.05 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

bb

W/S 14- been filed.

[Signature]
14-6-05

Pl. comply order dated 10.6.05.

NS
10.6.05

Received by respondent No. 2, 4 or counsel of Mrs. M. Das on 10-6-05. *[Signature]*

13.7.05

Reply affidavit on behalf of Respdt No. 1, 2 and 4, has been filed.
Pat

19.7.2005

Mrs M. Das, learned Government Advocate, Assam, submits that respondent Nos.5 to 7 in the O.A. has been served by the Secretary to the Government of Assam. Hence service is complete.

After hearing Mr D.K. Das, learned counsel for the applicant and Mrs M. Das, learned Government Advocate, Assam and also Ms U. Das, learned Addl. C.G.S.C., we are prima facie of the view that an opportunity must be given to the respondents to explain certain circumstances which have been pointed out to the counsel. For the said purpose the case is adjourned to ^{16.8.05} 16.8.05.

Received
 lisha Das
 Addl C.S.C.
 21/7/05

Received at order
 copy dated 19-7-05
 for D.K. Das advocate
 for the applicant

sent
 25/7/05

MT.
 26/7/05
 cont. of Assam

nkm

16.8.05.

Post the matter for hearing on 17.8.05.

Member
 Member

Vice-Chairman
 Vice-Chairman

lm

17.8.2005

Due to paucity of time the case is adjourned to next Division Bench.

The case is ready for hearing.

20
 12.8.05

Member
 Member

Vice-Chairman
 Vice-Chairman

mb

3.10.05.

Post the matter on 4.10.05.

The case is ready for hearing.

20
 9.11.05

Member
 Member

Vice-Chairman
 Vice-Chairman

Vice-Chairman
 Vice-Chairman

lm

4.10.2005

Post on 10.11.2005.

Member
 Member

Vice-Chairman
 Vice-Chairman

mb

7-

N

14.11.05

An additional affidavit on behalf of the Respondent No. 4 has been submitted.

10.11.2005 post before the next Division Bench.

[Signature]
Vice-Chairman

bb

2.1.2006 Post on 3.1.2006.

[Signature]

[Signature]
Member

[Signature]
Vice-Chairman

bb

3.1.2006 After hearing the counsel for the parties for quite some time we feel that a detailed argument is required. Post before the next Division Bench after two weeks.

The respondents will produce the Vigilance File alleged to have been pending against the applicant at the next hearing. Mrs.M.Das, learned Govt. Advocate for the State of Assam will also ascertain as to whether seal cover is proceeding is applicable to promotion to I.A.S.

Copy of this order be furnished to the counsel for the parties.

[Signature]
Member

[Signature]
Vice-Chairman

bb

06.03.2006 It is stated that Sri D.K. Das, learned counsel for the applicant said to have some personal inconvenience and sought for adjournment. Post on 7.3.2006.

Vice-Chairman (S) Vice-Chairman(A)

mb

Pl. comply order dated 3.1.2006.

W3
4.1.06

Received
Vishu Das.
Addl chsc
5/1/06.

Received by
order date 3.1.06
on behalf of Mrs M Das
counsel for Assam.
W. Kumar Datta
5-1-06.

The case is ready for hearing.

By
3.3.06

(8)

7-3-06

post again for hearing on 8.3.06.

Vice-Chairman (J)

Vice-Chairman (A)

pg

08.03.2006

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

Reserved for orders.

Vice-Chairman (J)

Vice-Chairman (A)

9.5.06.

Judgment delivered in open Court. Kept in
separate sheets. Application is disposed of.
costs.

Vice-Chairman

26.5.06

Copy of the
Judgment handed
over to the L/Adv.
for the applicant.

lm

Received copy
of Judgment for
the Govt. Advocate,
Bengal.

Shri Kumar ch.

Dava

29/5/06

Received
Alsha Das,
Addl. Secy
29/5/06

Affidavit filed by
the Contemners
Nos. 1 & 2.

20
24-11-06.



OA. 156 of 2004

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


Vice-Chairman

Hon'ble Vice-Chairman (I) pl.

I agree


8/5/06


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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA**

O.A. 156 of 2004

Date of Decision : 09.05.2006.

Shri Nurul Haque
.....

Mr. D.K. Das,
.....

Advocate for the petitioner

- VERSUS -

Union of India and Ors.
.....

**Mrs. M. Das, Jr. Govt. Advocate, Assam,
Ms. 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)**

1. Whether reporters of local papers may be allowed to see the judgement ? YS
2. To be referred to the reporter or not ? MC
3. Whether it needs to be circulated to other Benches of Tribunal ? JC

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

O.A. 156 of 2004

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

Nurul Haque

-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), New Delhi.
2. The State of Assam, represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati-6.
3. The Union Public Service Commission, Represented by its Secretary, Dholpur House, New Delhi.
4. The Secretary to the Government of Assam, Department of Personnel, Dispur, Guwahati-6.
5. Shri Seikholian Thadou,
6. Shri Bhaba Gogoi,
7. Shri Rabindra Kumar Das,

Respondent No. 5, 6 and 7 through the Secretary to the Government of Assam, Department of Personnel, Dispur, Guwahati-6.

....Respondents.

For the applicant : Mr. D.K. Das, Advocate.
For the respondents : Mrs. M. Das, Jr. Govt. Advocate, Assam
Ms. U. Das, ACGSC, Advocate

L

Date of order: 09.05.2006

O R D E RPer Mr. B.N. Som, VC

Shri Nurul Haque a retired officer of the Assam State Civil Service has filed this O.A. challenging the inaction of the respondent authorities in not effecting the promotion of the applicant to the cadre of IAS in spite of his selection for promotion against the vacancies available in the years 2000, 2001 and 2002. He has sought for the following reliefs:-

"8.

- 8.1. To direct the respondent authorities to nominate the applicant to the cadre of IAS in terms of his selection for the same by applying the same yardsticks as was applied in case of the private respondents.
- 8.2. To direct the respondents to promote the applicant to the cadre of IAS with effect from the date of promotion of his immediate juniors by applying the principle of Next Below Rule with all consequential benefits flowing therefrom."

2. The facts of the case are not in dispute. The applicant was charge sheeted by Memo No. AAP.34/98/359 dated 20.10.1998 under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 for certain acts of omission and commission, for utter negligence of duty and violation of Rule 3 of the Assam Civil Services (Conduct) Rules, 1965. The charges pertained to the period when the applicant was posted as Addl. Deputy Commissioner, Sibsagar and was also holding the charge of the post of Deputy Commissioner of Sibsagar. The Disciplinary Authority appointed an Inquiry Officer and a Presenting Officer. The Inquiry Authority submitted his report on 8.11.2002 and in his report none of the charges was proved. After careful examination of the inquiry report and the materials on record, the Disciplinary Authority (Governor of Assam) accepted the inquiry report and exonerated the applicant from all the charges. The order to that

effect was issued on 4.1.2003 in the name of the Governor of Assam under the signature of Commissioner & Secretary to the Govt. of Assam, Personnel (A) Department. In the meantime, the applicant was in the zone of consideration for promotion from the State Civil Services to IAS. However, there was no meeting of the Selection Committee during the years 1998, 1999 and 2000. It was in the year 2001 a joint meeting of the Selection Committee was held which prepared a yearwise panel for the years 1998-99 and 2000-01 (as mandatory) and the said panel was approved and published by the notification dated 27.6.2001 (Annexure-2). The name of the applicant appeared in the select panel for the year 2000 at sl. No. 5 and in the year 2001 at sl. No. 4. However, his name was included in the list subject to obtaining clearance in the disciplinary proceeding pending against him. The grievance of the applicant is that persons junior to him were promoted for the year 2000-01, but no action was taken to grant him promotion, in spite of the order of the Disciplinary Authority dated 4.1.2003 exonerating him of the disciplinary proceeding. The name of the applicant was again included in the panel of 2002 which was prepared by the Select Committee in its meeting held on 29.12.04. The case of the applicant is that his career prospect has been jeopardized by delaying the completion of the disciplinary proceeding drawn up against him on fictitious grounds and he was made to suffer by denying to him his due and legitimate promotion to the cadre of IAS. It is also his plea that had the respondents taken fair and judicious approach, he could have been promoted before he attained the age of 58 years which would have enabled him to retire at the age of 60 years as applicable in the case of IAS officer. He has, therefore, assailed the impugned action of the respondent authorities as arbitrary, illegal and violative of the principles of natural justice and hence liable to be set aside and quashed. It is also alleged that respondents have acted in complete violation of the provision of IAS (Appointment by Promotion) Regulations, 1955 and the instruction

issued by the Govt. of India from time to time laying down the procedure to be followed while considering his case for promotion. It is also his allegation that the condition set in the notification dated May 2004 to the effect that the applicant who was selected as sl. No. 2 against 8 vacancies for the year 2002 would not be entitled for promotion in view of the fact that he had retired from service on 29.04.2002 is in clear violation of the provisions of Regulations 5(3) of the Regulations 1955.

3. Per contra, the official respondents have resisted the application on the ground that the applicant could not be promoted to the cadre of IAS though his name was included in the panel for the years 2000 & 2001 because of pendency for departmental proceeding. Regarding his selection for promotion for the year 2002, they have taken the stand that he could not be appointed as he had retired on 29.2.2004 and that integrity certificate also could not be issued due to pending vigilance case. They have also admitted that they had forwarded the case in respect of the applicant for consideration for promotion for the year 2002 by their letter dated 1.9.2003 indicating the exoneration of the applicant in the departmental proceeding.

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

5. The applicant has relied on the decision of this bench of the Tribunal in O.A. No.260/2002 dated 21.2.2003 in support of case that withholding of promotion on the mere pretence of purported disciplinary proceeding which came to an end on 4.1.2003 is bad in law. In that case also the Tribunal had held that the applicant was in no way responsible for procrastination of the disciplinary proceeding. It also observed that if it is found that purported disciplinary proceeding was stressed out unreasonably only to defeat the right of an individual, the court should intervene in the light of the maxim

2

"nullus commodum capere potest de injuria sua propria" (no one should be allowed to profit from his own wrong).

6. The respondents, on the other hand, have relied on the decision of this bench in R.A. No. 1/99 arising out of O.A. 25/1995 wherein it was held that the promotion of an officer whose name is provisionally included in the select list can be considered provided the select list remains in force.

7. The issue raised by the applicant is that the respondents had illegally denied him the benefit of promotion by foisting a disciplinary proceeding against him which after dragging for five years resulted in total exoneration. The ld. counsel for the applicant repeatedly canvassed before us that the said disciplinary proceeding was nothing but a ploy to harm the service career of the applicant. The reason for delay in enquiring into the matter has not been explained in any way by the respondents in their counter reply which sustains the allegation made by the applicant.

8. To assess the veracity of the allegation levelled by the applicant we called for the file in which the matter regarding allegation against the applicant was processed by the respondents. We have perused the file No. PLA(V)/9/2003 pertaining to Political Department in which certain allegations which appeared in a newspaper called 'Aaj' were processed. The allegations contained in this paper cutting were the same as the acts of omissions and the commissions levelled against the applicant which formed the subject matter of the charge sheet dated 20.10.98. We also found that the same allegation as in the charge sheet dated October 1998 were also enquired into by the Vigilance Cell of the Political Department. We did not receive any satisfactory reply as to what caused delay in conclusion of the enquiry into the allegations levelled against the applicant. No creditable explanation is available why there was delay in finalization of the inquiry report (the report was submitted on 8th November 2002). The final decision

2

in the matter was, however, taken expeditiously by exonerating the applicant by the order of the Disciplinary Authority dated 4.1.2003. But thereafter again for reasons not explained by the respondents, either in the official reply or during oral submissions, why timely action could not be taken to issue integrity certificate in respect of the applicant for his promotion to the IAS in consultation with the Central Government and Union Public Service Commission. It is a fact, as has been pointed out by the applicant, when the Disciplinary Authority exonerated him of all the charges vide his order dated 4.1.2003, the select list 2001 in which also his name was included was available for granting promotion to the applicant. In terms of proviso to sub - regulation 4 of Regulations 7 of IAS (Appointment by Promotion) Regulations, 1955 if the State Government had forwarded the proposal to the Commission immediately after 4.1.2003 for appointment to IAS, the Commission could have decided the matter within a period of 90 days or before the date of meeting of the next Select Committee and the Central Govt. could have considered his appointment under Regulations 9. Non-compliance with the provisions made in the Regulations certainly constitutes infringement of the rules of natural justice. Admittedly, the applicant has been considered meritorious enough to be included in the panels for successive years i.e. for the years 2000, 2001 and 2002. The Enquiry Officer had also found none of the allegations substantiated and that led to the total exoneration of the applicant. In the backdrop of these facts and circumstances of the case, it is difficult to refute the allegation made by the applicant that he was denied the benefit of promotion to IAS in a malafide manner. The allegation also finds support from the fact that although the applicant was exonerated of the charges by virtue of the order dated 4.1.2003 passed by the Disciplinary Authority, the respondents did not furnish integrity certificate in his favour to the Selection Committee which held its meeting on 29.12.2003 as a result of which it was mentioned in the

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notification dated May 2004 that his name has been included in the select list provisionally subject to grant of integrity certificate by the State Government. We are also of the view that in this case not only that there was unexplained delay in concluding the disciplinary action initiated against the applicant what is more regrettable is that after the Disciplinary Authority by his order dated 4.1.2003 exonerated the applicant and the select list of 2001 was available for effecting promotion to the selected officer, the respondent Nos. 2 and 4 were unreasonably tardy in processing his case for promotion and this inertia on the part of the respondents surely smacks of malafide. It is well established dictum that discretionary power cannot be extended to invade upon individual right in the context of justice and fairness. In this connection we would also like to quote from the decision of this Tribunal in O.A. No. 260/2002:-

“ Public interest does not countenance indolence and torpidity in the disciplinary matters. Disciplinary powers are not meant to be used as a vehicle for victimization. In the instant case also no reasons are ascribed as to why the State respondent was limping with a lame proceeding since October 1994. Vigilance enquiry/disciplinary case was lingered for over five years though the Inquiry Officer found allegation not proved in November 2003 and the Disciplinary Authority exonerated him by his order dated 4.1.2002. We, therefore, held that the incomprehensible delay in keeping alive the purported disciplinary proceeding which concluded in exoneration of the applicant cannot be a ground for causing grave injustice to him. It is also a principle of legal policy that law should be just and that the Court's decision should further the ends of justice. It is too trite to restate that courts are always concerned to see that there is no failure of justice and the “well of justice remains clear”. It is also fundamental principle of Jurisprudence that a person should not be penalized except under clear law.”

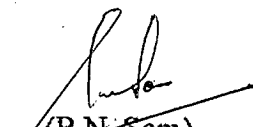
For the reasons as discussed earlier, the reliefs sought by the applicant, we are of the view as merit and deserves our consideration.

9. We accordingly direct the respondents to take necessary action as prescribed in law made in this regard to consider the case of the applicant for promotion to the cadre of IAS with effect from the date his immediate junior in the panel of 2001 was promoted to IAS in the interest of fair play and justice. It is also directed that as a result of our

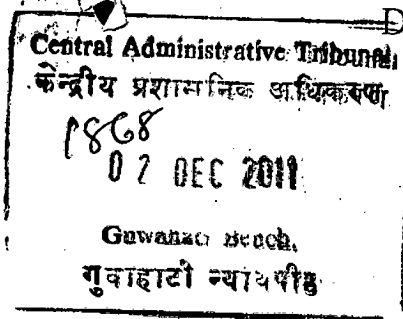
aforesaid order, he will also be entitled to service benefits as due and admissible to the officers of IAS cadre and his actual service benefits to be determined with reference to the benefit derived by his junior in the panel. Needless to say as he had to retire at the age of 58 years because of the delay in effecting his promotion as due and admissible, he will be entitled to full service benefits including that of promotion as if he had served beyond the age of 58 years on superannuation from IAS. Accordingly, the O.A. is disposed of. No costs.



(K.V. Sachidanandan).
Vice-Chairman (J)



(B.N. Som)
Vice-Chairman (A)



GOVERNMENT OF ASSAM
 DEPARTMENT OF PERSONNEL (PERSONNEL ::A)
 ASSAM SECRETARIAT (CIVIL) DISPUR
 GUWAHATI - 781 006

Dated Dispur, the 25th November, 2011

ORDERS BY THE GOVERNOR
NOTIFICATION

No. AAP.105/2004/315 The following order issued by the Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, New Delhi is republished for general information.

ORDER

“WHEREAS Md. Nurul Haque was provisionally included in the Select Lists of 2000 & 2001 for promotion to the IAS of Assam-Meghalaya Joint Cadre (Assam Segment) in the Selection Committee Meeting held on 09-04-2011 subject to clearance in Departmental Proceedings pending against him ;

AND WHEREAS during the validity period of the Select Lists the State Govt. did not forward any proposal to Union Public Service Commission for his unconditional inclusion in the said Select Lists ;

AND WHEREAS aggrieved by non-appointment by to the IAS, Shri Haque filed O.A. No. 156/2004 before Central Administrative Tribunal, Guwahati Bench. Hon'ble Tribunal vide Order dated 09-05-2006 directed as under :

‘We accordingly direct the Respondents to take necessary action as prescribed in made in this regard to consider the case of the applicant for promotion to the cadre of IAS with effect from the date his immediate junior in the panel of 2001 was promoted to IAS in the interest of fair play and justice. It is also directed that as a result of our aforesaid order, he will also be entitled to service benefits as due and admissible to the officers of IAS cadre and his actual service benefits to be determined with reference to the benefit derived by his junior in the panel. Needless to say as he had to retire at the age of 58 years because of the delay in effecting his promotion as due and admissible, he will be entitled to full service benefits including that of promotion as if he had served beyond the age of 58 years on superannuation from IAS. Accordingly, the O.A. is disposed of. No costs’.

AND WHEREAS against the above said Order Govt. of Assam filed W.P(C) No. 4812/2006 before the Hon'ble High Court at Guwahati. Hon'ble High Court vide Order dated 08-01-2010 upheld the impugned Order of the Tribunal and directed as under :

‘11. While examining the impugned challenge to the Tribunal's findings, we have carefully considered the materials placed before us and also the submissions made by the learned State Counsel. According to us, the Learned Tribunal rightly concluded that the applicant has been unfairly denied the benefit of promotion to the cadre of IAS. As regards the solitary submission made by the Learned State Counsel that the applicant was not

Contd. P/2.

- : 2 : -

considered because of a vigilance case, we cannot accept that to be a bonafide explanation as neither the charge nor the status of any such purported vigilance enquiry could be brought to the Court's notice by the Learned State Counsel. Therefore, we also feel that the applicant has been wrongfully denied promotion to the IAS and was unfairly made to retire early (at 58 years) as a State Civil Service Officer. Accordingly, we find no reason to interfere with the impugned order of the Learned Tribunal. The Writ Petition is consequently dismissed.

12. The Order of the Tribunal is now directed to be implemented forthwith will all consequential service benefits to the Respondent No. 1/Applicant.

13. The Writ Petition is disposed of without any order and cost.'

AND WHEREAS UPSC has now in accordance with above direction approved the name of Shri Nurul Haque for inclusion in the Select List of 2000 for promotion to the IAS of Assam Segment of Assam-Meghalaya Joint Cadre as unconditional and final ;

AND WHEREAS, it is observed that Md. Nurul Haque (Date of Birth 28-02-1946) has already retired from the State Civil Service on 29th February, 2004 ;

NOW THEREFORE, in pursuance of the aforementioned directions of the Hon'ble High Court at Guwahati dated 08-01-2010 in W.P.(C) No. 4812/2006 and in exercise of powers conferred by Sub Rule (1) of Rule 8 of the IAS (Recruitment) Rules, 1954 read with Sub Regulation (1) of the Regulation 9 of the IAS (Appointment by Promotion) Regulations, 1955 the President is pleased to appoint Md. Nurul Haque to IAS Cadre of the Assam Segment of Assam-Meghalaya Joint Cadre w.e.f. 28-06-2001, i.e. the date on which his immediate junior in the SCS viz Shri Seikholien Thadou (STH) was appointed to the IAS vide Notification dated 28-06-2001 with all consequential benefits in terms of re-fixation of actual pay, pension, gratuity, seniority, etc. as per eligibility of Md. Nural Haque alongwith retrial benefits admissible to him.

(By order and in the name of the President).

Sd/- S.S. Shukla.

Under Secretary to the Government of India"

Sd/- Rajiv Kr. Bora.

Principal Secretary to the Govt. of Assam
Personnel (A) Department

Memo No. AAP.105/2004/ 315-A Dated Dispur, the 25th November, 2011
Copy to :-

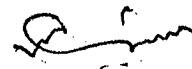
1) The Accountant General (A&E) Assam, Maidamgaon, Beltola, Guwahati-29.

Contd. P/3.

- : 3 : -


- 2) The Chairman, Assam Administrative Tribunal, Guwahati.
- 3) The Chairman, Assam Board of Revenue, Guwahati.
- 4) The Chairman, Assam State Electricity Board, Guwahati.
- 5) All Principal Secretaries/Commissioner & Secretaries/Secretaries to the Govt. of Assam.
- 6) The Chief Electoral Officer, Assam, Dispur.
- 7) The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
- 8) The Agriculture Production Commissioner, Assam.
- 9) All Commissioners of Divisions.
- 10) The Chief Secretary to the Govt. of Meghalaya, Shillong.
- 11) The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
- 12) The Secretary to the Governor of Assam, Guwahati.
- 13) The Under Secy. to the Govt. of India, AIS(I), Ministry of Personnel, P. G. & Pensions, Department of Personnel & Training, New Delhi.
- 14) The Under Secy. to the Govt. of India, Ministry of Personnel, Public Grievances, Career Management Division, New Delhi.
- 15) The Research Officer, Career Management Division, Department of Personnel & Training, Room No.215, North Block, New Delhi.
- 16) The Secretary, Assam Legislative Assembly, Dispur.
- 17) The P.P.S. to Chief Minister, Assam.
- 18) All Principal Secretaries to the Autonomous Councils, Assam.
- 19) All Deputy Commissioners/Sub-Divisional Officers, Assam.
- 20) The Secretary, State Election Commission.
- 21) All Head of Departments/Departments of Assam Secretariat.
- 22) The Deputy Director, Assam Govt. Press, Guwahati-21 for publication.
- 23) The PS to Chief Secretary, Assam.
- 24) The PS to Chief State Information Commissioner, Assam.
- 25) The P.S. to State Information Commissioner, Assam.
- 26) The PS to Additional Chief Secretaries, Assam.
- 27) The PS to Ministers/Ministers of State, Assam.
- 28) The PS to Adviser to the Chief Minister (I&PR), Assam.
- 29) The OSD (Press & PR) to the Chief Minister, Assam.
- 30) The Registrar, Gauhati High Court, Guwahati-1 for information.
- ✓ 31) The Registrar, Central Administrative Tribunal, Guwahati Bench, Guwahati-5 for information.
- 32) Officers concerned.
- 33) Department's concerned.
- 34) Personal file of the Officer.

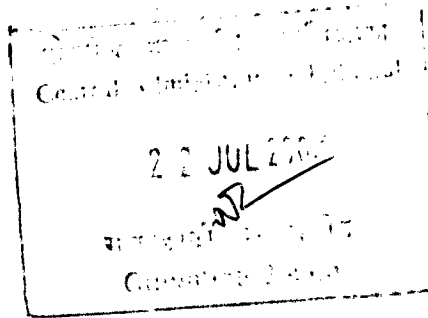
By Order Etc.,



(N.C. Misra)

Joint Secretary to the Govt. of Assam

 Personnel (A) Department



THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH
GUWAHATI

O.A. No. 156 of 2004

Sri Nurul Hoque

... Applicant

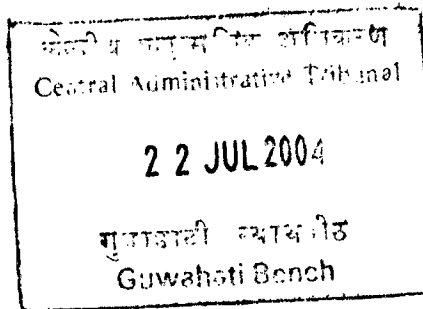
- Vs -

The Union of India & Ors.

... Respondents

SYNOPSIS

The Applicant has preferred this application assailing the arbitrary and illegal action on the part of the Respondent authorities in depriving him of his due promotion to the cadre of IAS in terms of his selection for such promotion in the year 2000, 2001 and 2002 and in promoting persons junior to him. The only reason for denying promotion to the applicant was the pendency of a departmental proceeding against him, but the same was subsequently concluded by dropping the charges framed against him.



25
Filed by applicant
through Deputist, K. Des

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH
GUWAHATI

O.A. No. 156 of 2004

Sri Nurul Haque

... Applicant

- Vs -

The Union of India & Ors.

... Respondents

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Filed by:

W. K. Des

Advocate.

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THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH
GUWAHATI

D.A. No. of 2024

BETWEEN

Nurul Haque
Son of Late Ahmed Ali, resident of
Fakaruddin Ahmed Nagar, Six Mile,
Guwahati-31.

... Applicant

- AND -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training), New Delhi.
2. The State of Assam, represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati-6.
3. The Union Public Service Commission, represented by its Secretary, Dholpur House, New Delhi.
4. The Secretary to the Government of Assam, Department of Personnel, Dispur, Guwahati-6.
5. Shri Seikholian Thadou,
6. Shri Bhaba Gogoi,
7. Shri *Rabendra Ka DAS.* ~~Naba Kumar Chetia~~

Respondent No. 5, 6 and 7 through the Secretary to the Government of Assam, Department of Personnel, Dispur, Guwahati-6.

... Respondents

DETAILS OF APPLICATION

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

The present application is directed against the

Daniel Regus

Respondent authorities in not effecting the promotion of the Applicant to the cadre of IAS in view of his selection for such promotion against the vacancies available in the years 2000, 2001 and 2002, inspite of the fact that the Applicant was exonerated from the departmental proceedings initiated against him, and in promoting persons whose names figure below him in the select lists in question.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and a permanent resident in the State of Assam and as such he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India & the laws framed thereunder.

4.2 That the Applicant is a State Civil Service Officer. The Applicant had during his service held many responsible posts and had all along discharged the duties assigned to him to the best of his ability and

without blemish to any quater.

4.3 That the Applicant states that without ascertaining the actual factual position in the matter and motivated by the heat generated by the issue, the Applicant was served with a charge sheet on 20.10.98, framing as many as 3 charges against him, pertaining to an enquiry that was directed to be conducted by him as regards unauthorised withdrawals being made by the officials of ICDP, Demow without there being any corresponding LOC. The charges pertained to the period when the Applicant was posted as Addl. Deputy Commissioner, Sibasagar and was also holding the charge of the post of Deputy Commissioner, Sibasagar.

A copy of the said charge memo is annexed as Annexure-1.

4.4 That the Applicant states that immediately on receipt of the said charge memo, the Applicant prayed for access to the listed documents for preparing an effective reply to the charges levelled against him. The Applicant submitted his replies to the charges levelled against him. The Applicant had in categorical terms denied the charges framed against him. ~~and after the said charges were levelled against him, the Applicant had in categorical terms denied the charges framed against him. and after the said charges were levelled against him, the Applicant had in categorical terms denied the charges framed against him. and after the said charges were levelled against him, the Applicant had in categorical terms denied the charges framed against him.~~

The Applicant craves the leave of this Hon'ble Tribunal to produce the copies of the written

Daniel Dey

statement filed by him in pursuance to the Annexure-1 charge memo, as and when required of him to do so.

4.5 That the Applicant states that not being satisfied with the replies submitted by the Applicant, the Government of Assam, decided to initiate an enquiry against the Applicant basing on the said charges and in the year 2000 appointed the Inquiry Officer and presenting Office for conduct of the said enquiry. The Applicant participated in the enquiry and fully co-operated in the smooth conduct of the same.

4.6 That the Applicant states that, during pendency of the said departmental proceeding drawn up against him, the cases of persons in the zone of consideration for promotion to the cadre of IAS were being considered. There was no meeting of the selection committee during the years, 1998, 1999 and 2000. As such in the year 2001 a joint meeting was held of the selection committee for the year 1998, 1999, 2000 and 2001 and separate panels, as mandated were prepared for each of the said years. The panels, as approved, for the said years when published vide notification dated 27.6.2001.

A copy of the said notification dated 27.6.2001 is annexed as Annexure-2.

4.7 That the applicant begs to state that as evident from the said notification dated 27.6.2001, the

Pratul Hegde

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selection were made for the following vacancies as existing for the years under consideration:

YEAR	VACANCIES
1998	2
1999	4
2000	4
2001	2

The name of the applicant was included in the select lists prepared for the years, 2000 and 2001 the inclusion of the name of the Applicant was however stated to be on provisional basis subject to his clearance in the disciplinary proceedings.

4.8 That the Applicant begs to state that due to continuance of the departmental proceedings, he was not considered for promotion and vide notification dated ✓ 29.6.2001 alongwith others, persons junior to the Applicant and whose names figured below that of his in the select list prepared for the year 2000 and 2001 came to be promoted.

A copy of the notification dated 29.6.2001 is annexed as Annexure-3.

4.9 That the Applicant states that his case was further considered for promotion to the cadre of IAS against the vacancies available for the year 2002 and he was ✓ selected for such promotion. The name of the Applicant figured at Sl. No. 2 in the select list prepared for 8 vacancies for the year 2002 and notified vide notification dated May, 2004. In continuation of the

Daniel Beg

vindictive attitude adopted against the Applicant, the said notification excluded him from being promoted on the ground of he having retired from service with effect from 29.2.2004.

A copy of the said notification along with its forwarding is annexed as Annexure-4.

4.10 That the Applicant states that after prolonged delay and after lapse of considerable period of time from the date of submission of the enquiry report, the competent authority of the Government of Assam vide order dated 4.1.2003 was pleased to accept the enquiry report submitted by the Inquiry Officer in respect of the charges framed against the Applicant and was further pleased to exonerate the Applicant from the charges levelled against him. It may be stated here that the Inquiry Officer had in his report held that none of the charges framed against the Applicant were proved.

A copy of the order dated 4.1.2003 is annexed as Annexure-5.

4.11 That the applicants states that in pursuance to the annexure-5 order dated 4.1.2003, he vide his representation dated 27.1.2003 requested the authorities for issuance of notification nominating him to the IAS in pursuance to his selection for the same. It was pointed out that persons junior to him have already been nominated to the IAS Cadre.

Daniel Beg

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A copy of the representation dated 27.1.2003 is annexed as Annexure-6.

4.12 That the Applicant states that the procedure as mandated to be followed in case of an officer who is in the zone of consideration for promotion to the cadre of IAS, and against whom a departmental proceeding is pending is that the Selection Committee is required to consider the case of the said officer ignoring the charges pending against the Applicant and in the event the person is found fit for promotion, he is to be so promoted in the event he is exonerated from the charges levelled against him. The said officer is to be considered by the respective selection committees constituted every year till the proceedings pending against the said officer is concluded. On conclusion of such proceedings and exoneration of the officer concerned therein, the officer is required to be promoted/nominated to the IAS cadre in terms of his selection with effect from the date of promotion/nomination of his immediate junior and if required by reverting the junior most officer so promoted/nominated.

4.13 That your Applicant begs to state that in the case on hand he was considered for promotion to the cadre of IAS and his name figured in the select list drawn up for the years 2000, 2001 and 2002. The Applicant having been exonerated from the charges levelled against him and the proceeding so drawn up

Dr. H. K. Hegde

- 8 -

having been concluded, the case of the Applicant was required to be considered for promotion to the cadre of IAS in terms of his selection for the same in the year 2000. In the event for want of vacancy, the Applicant could not be promoted in view of his merit position as obtaining in the select list for the year 2000, he was required to be so considered for the vacancies available in the year 2001 and/or 2002. The case of the Applicant for promotion is required to be considered in terms of the vacancies as available and his merit position as obtaining in the select list prepared for the year in question by considering his case as on the date cases of other persons in the select list in question was so considered.

4.14 That the applicant states that he was empanelled for promotion to the cadre of IAS for the first time in the select list prepared for the four vacancies available in the year 2000 and thereafter his name figured in the select list prepared for the year 2001. The private Respondents whose names figure below that of the Applicant in the said select list were considered for promotion to the cadre of IAS and were so promoted vide issuance of notification dated 29.6.2001. The case of the Applicant was not considered as on that date due to pendency of the said departmental proceeding against him, but with the issuance of the order dated 4.1.2003 the said bar stands removed and the case of the Applicant is required to be considered by applying the same

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yardsticks as was applied in case of the promotees whose name figure in the notification dated 29.6.2001. The Applicant is required to be promoted with effect from the date of promotion of his said juniors and if situation so warrants the junior most amongst them is required to be reverted for promoting the Applicant.

4.15 That the Applicant states that the Respondent authorities in a most arbitrary and illegal manner debarred the Applicant from being promoted against the eight vacancies available for the year 2002 on the ground that he cannot be appointed inasmuch as he had retired on 29.2.2004. Such a reasoning is arbitrary, illegal and discriminatory and the same is not in terms of the IAS (Appointment by Promotion) Regulations, 1955. The name of the Applicant having figured in the select list immediately preceding the selection held for the vacancies of 2002, the case of the Applicant in terms of Regulation 5 (3) is required to be considered by the Selection Committee inspite of the fact that he has by that time crossed the age limit of 54 years.

4.16 That the Applicant submits that he is no way responsible for the delay occasioning in the completion of the departmental proceeding drawn up against him and as such he cannot be made to suffer by denying to him his due and legitimate promotion to the cadre of IAS in terms of his selection for the same with effect from the date persons whose name figured below that of his in the select list in question.

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4.17 That the Applicant states that the action on the part of the Respondents is arbitrary, illegal and violative of the principles of natural justice. It is further stated that the Respondents have acted with a malafide intention only to deprive the Applicant of his legitimate rights.

4.18 That the Applicant submits that the age of retirement of a State Service Officer is 58 years while that of an officer belonging to the IAS cadre is 60 years. As such the Applicant has still got around two years of service left and this aspect of the matter coupled with the fact that the Applicant having been exonerated from the charges levelled against him, he is entitled to be promoted to the cadre of IAS with effect from the date of his selection with all consequential benefits.

4.19 That this application has been made bonafide and to secure the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the impugned action on the part of the Respondent authorities is arbitrary, illegal and violative of the principles of natural justice and liable to be set aside and quashed.

5.2 For that the Respondents have acted in complete violation of the provisions of the IAS (Appointment by Promotion) Regulations, 1955 and the instructions issued by the Government of India from time to time

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laying down the procedures to be followed while considering the case of the State Service Officer against whom departmental proceeding and/or criminal proceedings are pending on the date of consideration for such promotion.

5.3 For that the Applicant having been provisionally selected subject of his clearance in the disciplinary proceedings pending against him and he having been exonerated from the charges levelled against him, the case of the Applicant is required to be considered for promotion to the cadre of IAS by applying the same yardsticks as was applied in the case of the other persons whose name figure in the select list in question. The case of the Applicant is now required to be considered with effect from the date his juniors were so promoted by applying the principles of Next Below Rule and the seniority of the Applicant is required to be assigned seniority over his immediate junior in the select list in question.

5.4 For that the conditionality prescribed in the notification dated May, 2004 to the effect that the Applicant who was selected as serial No. 2 against 8 vacancies for the year 2002 would not be entitled for promotion in view of the fact that he had retired from service on 29.2.2004, is in clear violation of the provisions of Regulation 5 (3) of the IAS (Appointment by Promotion) Regulations, 1955.

Daniel Reg

5.5 For that in any view of the matter the entire action of the respondent are liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

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

The Applicant further 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. RELIEFS 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 on perusal of the records, be pleased to grant the following reliefs :

Daniel Heg-

8.1 To direct the Respondent authorities to nominate the Applicant to the cadre of IAS in terms of his selection for the same by applying the same yardsticks as was applied in case of the private Respondents.

8.2 To direct the Respondents to promote the Applicant to the cadre of IAS with effect from the date of promotion of his immediate juniors by applying the principle of Next Below Rule with all consequential benefits flowing therefrom.

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the Applicant is entitled to.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of this application, the Applicant prays that Your Lordships would be pleased to direct the Respondents to provisionally appoint the Applicant to the cadre of IAS.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. : 206-112231

i) I.P.O. No. :

ii) Date :

21-7-04

iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification...

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VERIFICATION

I, Nurul Haque, aged about 58 years, Son of Late Ahmed Ali, resident of Fakaruddin Ahmed Nagar, Six Mile, Guwahati-31, do hereby solemnly affirm and verify that the statements made in paragraphs 4.1 To 4.19. _____ are true to my knowledge ; those made in paragraphs 5.1 To 5.5 _____ are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 22th day of July, 2004.

Nurul Haque
DEPONENT

15 - 22

NO. AAP. 34/98/359
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL::A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI- 781006
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CONFIDENTIAL

Annexure - 1

Dated Dispur, the 20th October, 1998

To

✓ Shri Nurul Haque, ACS
Director,
Municipal Administration, Assam,
Hengrabari, Guwahati-6.

You are hereby required to show cause under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 read with Article 311 of the Constitution of India, why any of the penalties prescribed in Rule 7 of the aforesaid Rules, should not be inflicted on you on the following charges based on the statement of allegations attached herewith.-

Charge No. 1:

That while you were holding the post of Addl. Deputy Commissioner, Sibsagar during 1989-92 a report about unauthorised withdrawals of money from the Sibsagar Treasury was received from the Commissioner, Upper Assam Division, Jorhat and this complaint was marked to you by the Deputy Commissioner, Sibsagar and you were entrusted with an inquiry to find out the irregularities in the drawal of money by Animal Husbandry & Veterinary Department especially against the ICDP, Demow. But you did not take immediate step to inquire into the matter, rather, you showed your reluctance in the matter. Due to your reluctance the inquiry could not be completed promptly and timely. Had the inquiry been started and completed immediately and reported to the higher authority, further irregularities in drawal of money from the Sibsagar Treasury could have been averted. But being a senior officer, holding a very responsible post of the Government you never showed any zeal in the matter and by sheer negligence and dereliction of duties facilitated continuation of the fraud. Such activities are not expected on the part of a very senior officer of your status and rank.

You are, therefore, not only charged with utter negligence of duty but also violation of rule 3 of the Assam Civil Services (Conduct) Rules, 1965 and gross indiscipline and misconduct.

Contd....

Charge No. 2:

That while you were holding the post of Addl. Deputy Commissioner, Sibsagar during 1989-92 the Treasury Officers, Sibsagar on several occasions brought to your knowledge that the ICDP, Demow was passing bills for big amounts regularly without any LOC (Letter of Credit) or sanction orders. The Treasury Officers also submitted periodical accounts regarding drawal of huge amounts by ICDP, Demow which were forwarded to the Accountant General, Assam by you, under your signature. These accounts also brought to your knowledge from time to time that abnormally large amount of money were being drawn by the ICDP, Demow and you being the Addl. Deputy Commissioner responsible for all developmental works in district, it was your duty to carry out as the spot inspections to verify, if such construction/ repairing works worth several crores were actually being executed as reported in such periodical accounts. But you intentionally and deliberately avoided such physical verification of developmental works thereby facilitating the fraud. Such activities can never be expected from a senior officer of your status and rank.

You are, therefore, not only charged with utter negligence and dereliction of duties and lack of supervision but also violation of rule 3 of the Assam Civil Services (Conduct) Rules, 1965 and gross misconduct.

Charge No. 3:

That while you were holding the post of Addl. Deputy Commissioner, Sibsagar during 1989-92, you also acted as Deputy Commissioner in-charge of the district during the absence of Deputy Commissioner. While acting as Deputy Commissioner of the district it was your statutory duty to conduct periodical inspections of the Treasuries as per provision of Assam Treasury Rules. But you never bothered to comply with the provision of the Assam Treasury Rules and to conduct such periodical inspections even after knowing the fact fully well that illegal drawals were being made confirmed by the periodical accounts submitted to you by the Treasury Officers from time to time. If you had acted as per statutory duties and with little diligence, illegal withdrawals could have been avoided. You did not take any step to stop the illegal drawal and intentionally and deliberately omitted to

Contd....

make periodical inspections of Treasuries as well as the works for which such money was being drawn and thus facilitated the fraud. Such activities are not expected from a Senior officer of your status and rank.

You are, therefore, not only charged with negligence and dereliction of duties but also violation of rule 3 of the Assam Civil Services (Conduct) Rules, 1965 and gross indiscipline and misconduct.

You should submit your written statement in defence within ten days from the date of receipt of this communication provided you do not intend to inspect the documents which have relevance with the issues under enquiry. In case you intend to inspect those documents you should write to the undersigned for the same within seven days from the date of receipt of this communication and submit your explanation thereafter within ten days from the date of completion of the inspection.

Your written statement stating whether you desire to be heard in person should be submitted to the undersigned within the period specified above.

If the disciplinary authority decides to appoint an Inquiry Officer to inquire into the charges, you will be allowed to present your case, if you so desire, with the assistance of any other Govt. servant approved by the disciplinary authority but will not be allowed to engage a Legal Practitioner for the purpose unless the person nominated by the disciplinary authority, to present the case in support of the charges before the Inquiring Authority is a legal Practitioner or unless the disciplinary authority so permits.

Lists of documents and witnesses proposed to be relied upon for proving these charges and allegations, are also enclosed.

BY ORDER AND IN THE NAME
OF THE GOVERNOR OF ASSAM

(J.P. MEENA) 21/10/98

Commissioner & Secretary to the Govt. of Assam
Personnel (A) Department, Dispur

OK.
20/10/98

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STATEMENT OF ALLEGATIONS

1. Thatwhile Shri Nurul Haque, ACS was holding the post of Addl. Deputy Commissioner, Sibsagar during 1989-92 and also functioning as Deputy Commissioner on various occasions particularly when the Deputy Commissioner was out of the district, once a report about unauthorised withdrawals from the Sibsagar Treasury was received from the Commissioner, Upper Assam Division, Jorhat and this complaint was marked to him by the then Deputy Commissioner, Sibsagar and he was entrusted with an enquiry to find out the irregularities in the drawal of money by Animal Husbandry & Veterinary Department, especially the ICDP, Demow. But due to his reluctance and lack of prompt and timely action the inquiry could not be completed, which was subsequently stopped by the State Government. If Shri Haque had taken immediate steps for conducting the enquiry to which he was entrusted, further irregularities in the drawal of money by the ICDP, Demow could have been averted. Only due to his negligence, dereliction of duty and inaction, Government had to incur a heavy loss of public money.

2. That while Shri Nurul Haque, ACS was holding the post of Addl. Deputy Commissioner, Sibsagar and also functioning as Deputy Commissioner on various occasion particularly when the Deputy Commissioner was out of the district during 1989-92, the Treasury Officers, Sibsagar on several occasions brought to his knowledge that the ICDP, Demow was passing bills for big amounts regularly without any LOC (letter of Credit) or sanction orders. The Treasury Officers also submitted periodical accounts including irregular drawal of huge amounts by ICDP, Demow which were forwarded to the Accountant General, Assam by him under his signature. These accounts had itself brought to his knowledge from time to time that the abnormally large amount of money were being drawn by ICDP, Demow and he being the Addl. Deputy Commissioner responsible for developmental work in the district, abstained from checking on the spot, if such, construction/ repairing works worth several crores were actually being executed as reported in such periodical returns. If Shri Haque had made physical verification of construction/ repair works in the name of which such big amounts were being withdrawn, actual facts would have come to the light and the fraud could have been stopped. But Shri Haque even knowing the facts fully well did not take any step in this matter. His such negligence and lack of supervision,

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facilitated the fraud causing huge loss of Government money.

3. That while Shri Murul Haque, ACS was holding the post of Addl. Deputy Commissioner, Sibsagar during 1989-92 on various occasion particularly when the Deputy Commissioner was out of the district, he acted as Deputy Commissioner, Sibsagar. While he was acting as Deputy Commissioner, Sibsagar it was his statutory duties to conduct periodical inspections of Treasuries as per provision of Assam Treasury Rules. But he never bothered to conduct such periodical inspection of Treasuries. In spite of the fact coming to his knowledge that illegal drawals were being made and confirmed by periodical statements/ returns submitted to him by the Treasury Officers, no steps were taken by him to stop such huge drawal of money. Had he acted as per statutory duties and with little diligence, all these huge withdrawals could have been avoided. But Shri Haque omitted to make inspection and verify the works for which money was being drawn. Thus, he facilitated the fraud.

BY ORDER AND IN THE NAME
OF THE GOVERNOR OF ASSAM

(J.P. MEENA 21/10/98)
Commissioner & Secretary to the Govt. of Assam
Personnel (A) Department, Dispur
...

OK.
20/10/98

Attested
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...

(TO BE PUBLISHED IN THE GAZETTE OF INDIA PART 1 SECTION 2)

No.14015/2/2001-AIS (I)

Government of India

Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi, the 27th June, 2001

NOTIFICATION

In terms of the provisions contained in sub-regulation (3) of Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the Union Public Service Commission has approved the Select Lists of 1998, 1999, 2000 and 2001 containing the names of the following State Civil Service officers of the State of Assam prepared by the Selection Committee in its meeting held on the 9.4.2001, towards filling up two vacancies during 1998, four vacancies during 1999, four vacancies during 2000 and two vacancies during 2001, in the Assam Segment of the Indian Administrative Service Assam-Meghalaya Joint Cadre.

S.No. Name of the officer(S/Shri) Date of Birth

1998

- | | | |
|-----|-------------------|--------------|
| 1. | Abhay Kumar Verma | 27.07.1953 & |
| *2. | Pradip Kumar Das | 16.03.1953 |

1999

- | | | |
|-----|----------------------------|--------------|
| *1. | Gokul Ch. Sharma | 01.03.1948 |
| *2. | Pradip Kumar Das | 16.03.1953 |
| 3. | Longki Phangcho (STH) PS | 20.04.1952 |
| 4. | Joy Chandra Goswami | 25.11.1951 & |
| *5. | Mahat Chandra Brahma (STP) | 31.12.1946 |

2000

- | | | |
|-----|----------------------------|--------------|
| *1. | Gokul Chandra Sharma | 01.03.1948 |
| *2. | Pradip Kumar Das | 16.03.1953 |
| *3. | Mahat Chandra Brahma (STP) | 31.12.1946 |
| 4. | Md. Allaaddin | 31.12.1950 |
| 5. | Md. Nurul Haque | 28.02.1946 |
| *6. | Seikholien Thadou (STH) | 25.09.1948 & |
| 7. | Rabendra Kumar Das | 05.02.1954 |

2001

- | | | |
|-----|----------------------------|--------------|
| *1. | Gokul Chandra Sharma | 01.03.1948 |
| *2. | Pradip Kumar Das | 16.03.1953 |
| *3. | Mahat Chandra Brahma (STP) | 31.12.1946 |
| *4. | Md. Nurul Haque | 28.02.1946 |
| 5. | Bhaba Gogoi | 01.03.1949 & |
| 6. | Naba Kumar Chetia | 01.04.1949 |

* * * The officers have been included in the Select List provisionally subject to their clearance in the disciplinary proceedings pending against them.

Contd.. 2/-

Gokul Chandra Sharma

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The officer has been included in the Select List provisionally subject to grant of integrity certificate by the State Government.

R. Vaidyanathan
(R. VAIDYANATHAN)

Under Secretary to the Government of India

To The Manager
Government of India Press
Faridabad (Haryana)

New Delhi, the 27th June, 2001

No.F.14015/2/2001-AIS(I)

1. The Chief Secretary, Government of Assam, Dispur, GUWAHATI with 12 spare copies for onward transmission to the officers concerned.
2. The Secretary, Union Public Service Commission, Dholpur House, New Delhi. (Ms. Molly Tiwari, Under Secretary)

R. Vaidyanathan
(R. VAIDYANATHAN)

Under Secretary to the Government of India

Internal Distribution: Under Secretary (S.II)//10 spare copie

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Annexure-3

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL:IA)
ASSAM SECRETARIAT::CIVIL::DISPUR
GUWAHATI-781 006
:::

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 29th June/2001.

NO. AAI.34/2000/148 : The following notification of India, Ministry of Personnel, Public Grievances & Pensions, Deptt. of Personnel & Training, New Delhi is republished for general information.

" Notification NO.14015/2/2001-AIS(I)
dated 28th June/2001

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of Regulation 9 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Rule 3 of the Indian Administrative Service (Probation) Rules, 1954, the President is pleased to appoint S/Shri (1) Abhay Kumar Verma (2) Longki Phangcho, (3) Joy Chandra Goswami, (4) Md. Allauddin, (5) Seikhollah Thadou, (6) Rabendra Kumar Das, (7) Bhaba Gogoi and (8) Naba Kumar Chetta, members of the State Civil Service of Assam to the Indian Administrative Service on probation with immediate effect until further orders and to allocate them to the Joint Cadre of Assam-Meghalaya under Sub-rule (1) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954.

Sd/- R. VAIDYANATHAN)
Under Secretary to the Govt. of India"

Sd/- H.N. SARMA.
Under Secretary to the Govt. of Assam

Handwritten signature
Memo NO. AAI.34/2000/148-A:::Dated Dispur, the 29th June/2001.

- Copy to:-
1. The Accountant General (A.G.) Assam, Maidamgaon, Beltola, Ghy-29.
 2. The Chairman, Assam Administrative Tribunal, Guwahati.
 3. The Chairman, Assam Board of Revenue/Assam State Electricity Board, Guwahati.
 4. All Principal Secretaries/Commissioners & Secretaries/Secretaries to the Govt. of Assam.
 5. The Chief Electoral Officer, Assam, Dispur.
 6. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
 7. The Agricultural Production Commissioner, Assam, Dispur.
 8. All Commissioners of Divisions, Assam.
 9. The Commr & Secretary to the Chief Minister, Assam, Dispur.
 10. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Deptt. of Personnel & Training, New Delhi.
 11. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
 12. The Commr & Secretary to the Governor of Assam, Dispur.
 13. The Secretary, Assam Legislative Assembly, Dispur.
 14. The PFS to Chief Minister, Assam, Dispur.
 15. All Principal Secretaries of the Autonomous Councils.
 16. The Secretary, State Election Commission, House of Complex, Dispur.
 17. The Deputy Commissioners/Sub-Divisional Officers.
 18. All Heads of Deptts./All Deptts of Assam Sectt.
 19. The PS to Chief Secretary, Assam, Dispur.
 20. The PS to Adml. Chief Secretary, Assam, Dispur.
 21. All PS to Ministers/Ministers State.
 22. Officers concerned.
 23. Deptts. concerned.

By order etc.,

25/6/2001

Under Secretary to the Govt. of Assam
Deptt. of Personnel

23-
Annexure - 2
4/16
NO.AAI.2/2002/Pt/24

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A)
ASSAM SECRETARIAT (CIVIL)
DISPUR : : GUWAHATI-6

Dated Dispur, the 31st May, 2004.

To : ✓ Shri Muzul Haque, ICS (Retd.)
Fakharuddin Ali Ahmad Nages, 6/15 Mile, Guw-37

Sub : Selection of SCS Officers for appointment to the IAS.

Sir,

I am directed to forward herewith a copy of Notification issued by the Govt. of India, Ministry of Personnel, Public Græevances & Pensions, Deptt. of Personnel & Training, New Delhi, under No.14015/06/2003-AIS(I)-A dtd. May, 2004 for favour of information.

Yours faithfully,

(N.C. MISRA)
DEPUTY SECRETARY TO THE GOVT. OF ASSAM,
PERSONNEL (A) DEPARTMENT.

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Attested

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

24
No. 14015/06/2003-AIS(I)-A

Government of India

Ministry of Personnel, Public Grievances & Pensions

(Department of Personnel & Training)

New Delhi, May, 2004

NOTIFICATION

In terms of the provisions contained in Sub-regulation (3) of Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the Union Public Service Commission has approved the Select List of 2002 for the Assam segment of the joint Assam-Meghalaya Cadre, containing the names of the following State Civil Service officers of the State of Assam, prepared by the Selection Committee in its meeting held on 29th December, 2003, towards filling up 8 (eight) vacancies during 2002 in the Indian Administrative Service :-

SELECT LIST 2002

<u>Sl. No.</u>	<u>Name of the Officer (S/Sh.)</u>	<u>Date of Birth</u>
1	Pradip Kumar Das	16.03.1953
2	Md. Nurul Haque	28.02.1946
3	A.B. Md. Eunus	01.02.1953
4	Balendra Basumatary (STP)	01.04.1948
5	Subhash Ch. Longmaillet (STH)	23.02.1953
6	Gokul Ch. Sarmua	01.03.1948
7	Rafique Zaman	01.02.1951
8	Syed Mikhlar Hussain	21.09.1954

The names at S. No. 1 and 2 have been included in the Select List provisionally subject to grant of integrity Certificate by the State Government. The officer at S. No. 2 cannot be appointed as he has retired on 29th February, 2004.

The name at S. No. 6 has been included in the Select List provisionally subject to grant of Integrity Certificate by the State Government and his clearance in the disciplinary proceedings pending against him.

(Signature)
(K.K. Sharma)
Desk Officer

To

The Manager
Government of India Press
FARIDABAD (HARYANA)

(Signature)

B Das
25/5/04

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No. 14015/06/2003-AIS(I)-A

New Delhi, the May, 2004

1. The Chief Secretary, Government of Assam, Dispur, with eight spare copies for onward transmission to the officers concerned.
2. The Secretary, Union Public Service Commission, Dholpur House, New Delhi. (Ms. Molly Tiwari, Under Secretary).

K.K. Sharma
(K.K. Sharma)
Desk Officer

Internal Distribution : US(S-II)/RO(CM)/D.S.(S-III)/10 Spare Copies.

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Annexure - 5

Dated Dispur the 4th January/03

ORDERS BY THE GOVERNOR OF ASSAM

Whereas a departmental proceeding against Shri Nurul Haque, ACS the then Director Municipal Administration, -Assam was drawn-up vide show cause notice No.AAP.34/98/359 dtd. 20-10-1998 for his alleged negligence and dereliction of duties during his tenure as Additional Deputy Commissioner, Sivasagar; and

Whereas, Shri Nurul Haque, ACS the then Joint Secretary to the Govt. of Assam, Social Welfare Department submitted his written statement in defence vide his letter Memo.No.MISC. 1/99/69 dtd. 30/11/99 and No.MISC.1/99/43 dt. 12-4-99 wherein he denied the charges framed against him ; and

Whereas, after careful examination of the written statement in defence dt. 30-11-99 and dtd. 12-4-99 submitted by Shri Nurul Haque, ACS and the materials on record it was decided not to accept the written statement in defence submitted by him and to hold an enquiry into the charges by appointing Shri P.C. Sharma, IAS, Commissioner & Secretary to the Govt. of Assam, Pension & Public Grievance etc., Department as Inquiring Authority and Shri Nareesh Ch. Misra, ACS as ~~presenting~~ presenting officer and accordingly they were appointed vide order No.AAP. 34/98/397 dt. 3-6-2000 and No.AAP.34/98/395 dtd. 23-3-2000 and;

Whereas the Inquiring Authority vide his letter dtd. 8-11-2002 submitted his enquiry report after conducting detailed enquiry into the charges against Shri Nurul Haque, ACS; and

Whereas, on perusal of the enquiry report it is found that none of the charges was proved; and

Whereas, after careful examination of the enquiry report and the materials on record, it has been decided to accept the findings of Inquiring Authority and to exonerate Shri Nurul Haque, ACS from all the charges framed against him.

Accordingly, the Governor of Assam is pleased to accept the enquiry report submitted by Inquiring Authority vide letter dtd. 8-11-2002 in respect of departmental proceeding

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against Shri Nurul Haque, ACS Secretary, Assam State Election Commission, Dispur and to exonerate Shri Nurul Haque, ACS from all the charges framed against him and thus, the proceeding if finally disposed of.

By order in the name of the
Governor of Assam,

sd/
(J.P. SAIKIA)

Commissioner & Secy. to the Govt. of Assam
Personnel (A) Department.

Memo No. AAP. 34/98/469-A Dated Dispur the 4th January/02
Copy to:-

1. The Commissioner & Secy., to the Govt. of Assam, Political (VC) Department for information with reference to their letter No. PLA(V) 61/93/108, dtd. 19-3-98.
2. The Secretary to the Governor of Assam, Dispur, Ghty-6.
3. The P.P.S. to Chief Minister of Assam, Dispur, Ghty-6.
4. The P.S. to Chief Secretary to the Govt. of Assam, Dispur.
5. The Commissioner Upper Assam, Division, Jorhat.
- ✓ 6. Shri Nurul Haque, ACS, Secretary Assam State Election Commission, Housefed Complex, Dispur, Guwahati-6.

By orders etc.,

J. Reiker
04/01/03
Commissioner & Secy. to the Govt. of
Assam, Personnel (A) Department.
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Dr. Haque

ASSAM STATE ELECTION COMMISSION
DISPUR: GUWAHATI-6

No. SEC 18/2001/42

Dated Dispur the 27th Jan, 2003

To

The Commissioner & Secretary to the Govt. of Assam,
Personnel (A) Deptt. Dispur.

Sub: Nomination to the Cadre of IAS.

Sir,

With due respect, I have the honour to say that the Selection Committee for nomination to IAS, in its last sitting, selected some of the officers including myself for nomination to IAS.

After selection, the name of selected candidates were sent to the Govt. of India, after observing other formalities, for issuance of necessary notification nominating the officers to the IAS. Unfortunately, though my name was recommended by the Selection Committee for nomination to the IAS, my name was not sent to the Govt. of India along with the names of officers senior and junior to me due to the fact that a departmental proceedings was pending against me during that relevant period. The name of officers senior and junior to me sent to the Govt. of India, were already nominated to the IAS during the year 2000.

The Departmental proceedings against me has since been finalised and I was fully exonerated from the charges vide Govt. order No. AAP.34/98/469 dt. 4th Jan, 2003.

As I was fully exonerated from the charges, my name may kindly be sent to the Govt. of India immediately for issuance of notification nominating me to the IAS.

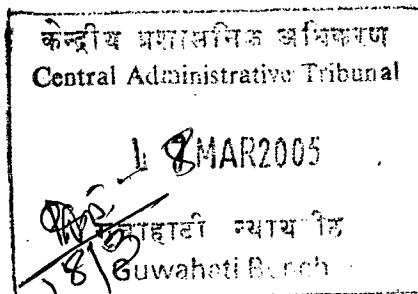
An early action will be highly appreciated.

Yours faithfully

N. Haque
(N. Haque)
Secretary

Assam State Election Commission
Dispur

Attended
A



54 -
Filed by :
The State of Assam & ors
--- Respondent No. 2 & ors
Manjinder Das
Sr. Govt. Advocate
(State of Assam)
CAT 17/3/2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

In the matter of :

O.A.NO.156/2004

SHRI N.HAQUE applicant.

-Vs-

Union of India & Ors.

..... Respondents.

-AND-

In the matter of :

Written statement on behalf
of the Respondent No.2 (Chief
Secretary to the Govt. of Assam)
and Respondent No.4 (Secretary
to the Govt. of Assam, Department
of Personnel).

(Written Statement on behalf of Respondent No.2 and
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.
The copies of the aforesaid application have been
served upon Respondent No.2 & 4. I have gone through

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the same and have understood the contents thereof. I have been authorised to file this written Statement on behalf of the Respondent Nos.2 & 4. I do not admit any of the averments which do not specifically submitted herein after and the same are deemed as denied.

2. That the Statements made in paragraph 4.1 of the application the answering respondent has nothing to make comment on it. He however does not admit any statement which are contrary to records.

3. That with regard to the Statements made in paragraph 4.2 of the application the answering respondent begs to state that there was a departmental proceeding initiated against the applicant for negligence and dereliction on duty while he was holding the post of Additional Deputy Commissioner, Sibsagar during the year 1989-92 vide Govt. Order No. AAP.34/98/359, Dated.20-10-98.

4. That with regard to the statements made in paragraphs 4.3 to 4.9 of the application, the humble deponent begs to state that the applicant was provisionally selected for promotion to the post of Indian Administrative Service for the year of 2000 and 2001 vide letter Dated.27-6-2001 shown against the serial No.5 and 4 respectively in the list, subject to the clearance in the departmental proceeding pending against him. However, the said departmental proceeding was disposed of vide order dated. 4-1-2003. Hence, the applicants promotion to IAS cannot be considered during the year 2000 and 2001.

(Contd.P/3)

Further, the applicant was again provisionally selected for IAS for the year 2002 vide notification Dated, May 2004 subject to grant of Integrity certificate. In that notification, Govt. of India, specifically stated that the applicant cannot be appointed as he has retired on 29-2-2004. It is to be stated here that the Integrity certificate could not be issued due to the pending of vigilance case.

5. That with regard to the Statements made in paragraph 4.10 of the application, the humble deponent begs to state that the enquiry report into the charges framed against the applicant was received by the Govt. on 8-11-2002. After careful examination of the enquiry report and the materials on record ~~that~~ the applicant was exonerated from the charges vide Govt. Order Dated, 4-1-2003.

6. That with regard to the Statements made in paragraph 4.11 of the application the answering respondent begs to state that the representation Dated, 27-1-2003 made by the applicant was processed and accordingly the proposal for preparation of Select ^{for} list of SCS Officers, promotion to IAS by selection for 2002 was forwarded to Union Public Service Commission, New Delhi vide letter Dated, 1-9-2003 indicating the conclusion and exoneration of Departmental proceeding against the applicant.

A copy of the aforesaid letter Dated, 1-9-2003 is annexed herewith and marked as Annexure-A.

9. That with regard to Statements made in paragraphs 4.12 to 4.15, the answering respondent begs to state that the disciplinary proceedings against the applicant was drawn up in the year, 1998 and pending upto 4-1-2003. Hence the promotion of the applicant to the IAS by appointment, by promotion for the year 2000 and 2001 cannot be considered. Again he was provisionally selected for the year 2002 but his integrity certificate was withheld by the State Govt. due to vigilance case pending against him. Further, the select list prepared in the meeting held on 29-12-2003 contains the name of the applicant and his position is found at Sl.No.2. However, as he retired on 29-2-2004 he was not appointed for promotion to IAS.

8. That the answering respondent respectively submits that the none of grounds set forth in the application are good grounds and valied in law.

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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 in paragraphs 1, 2, 3, 5 and 7 are true to my knowledge; these made in paragraphs 4 and 6 are ~~not~~ being matters of records of the case are true to my information which I believe to be true and the rests 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 of 16th March 2005.



Nareesh Chandra Misra
Signature.

Signed before me
16/3/05
Executive Magistrate
Kamrup (Metropolitan District)
GUWAHATI.

Annexure A

34-
INT. WIFE-VI

NO. AAI.2/2002/139

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A.)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI, 781006

Dated Dispur, the 1st Sept./2003.

To : The Secretary, U.P.S.C.,
Shri Dholpur House, Sahjahan Road, New Delhi-110069.
(Attention : Ms. Molly Tiwari, Under Secretary).

Sub : Proposal for preparation of Select list of SCS
officers for promotion to IAS by Selection
for 2002.

Ref : Your letter No.11/39/2003-AIS dtd. 20-5-2003.

Sir, Election Commission on 27-3-2001.

With reference to the above, I am directed to say that the last meeting of the selection committee of the U.P.S.C. was held on 9-4-2001 when 4 select lists of SCS officers under this State Govt. for the following years were prepared for vacancies shown against each.

1998 2 vacancies
1999 4
2000 4
2001 2
It may be mentioned that the seniority list of 1993 batch in the hon'ble Gauhati High Court of the above 12 vacancies 9(nine) have been filled up by promotion of select list officers. The inclusion of the following 2 officers in the respective select lists still continues to be provisional as the cases pending against them have not been finalised. No. 4739/2002. The copy of the aforesaid list is enclosed.

Name of officers

- There was another case No. OA No. 20/2003 in the Hon'ble Court. 1) Shri Praadip Kumar Das, 2) Mr. Nurul Haque.

However, it may be mentioned here that Departmental proceeding against Shri P.K. Das and Mr. Nurul Haque have been concluded recently and they are exonerated from the charges framed against them.

These 3 vacancies kept unfilled and in view of provisional inclusion, these 2 officers will again come in the zone of consideration of the selection committee for preparation of the select list for 2002.

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In addition to the three vacancies as mentioned above, seven vacancies in the promotion quota of IAS have occurred during the period after 1-1-2001 due to retirement etc. of the following officers.

1. Shri N.C. Barooah, IAS (SCS:83) - Retired on 31-5-2001
2. Shri D.C. Barman, IAS (SCS:84) - Retired on 28-2-2001
3. Shri Patreswar Basumatary, - Retired on 31-3-2001
4. Late N.K. Chetia, IAS (SCS:89) - Expired on 21-7-2001
5. Shri N.G. Barooah, IAS (SCS:87) - Retired on assuming the charge of State Election Commission on 27-8-2001.
6. Late Jiban Ch. Pegu, IAS - Expired on 11-2-2002
7. Shri A.K. Verma, IAS - Expired on 26-9-2002.

As J.C. Pegu, IAS died in February, 2002 and A.K. Verma, IAS expired in Sept., 2002 these two resultant vacancies will have to be considered by the selection committee at the time of preparation of select list of 2003 by the Govt. of Assam, Personnel (A) Department.

It may be mentioned that the seniority list of ACS officers published by Govt. on 2-7-2003 was challenged by a group of ACS officers of 1983 batch in the Hon'ble Gauhati High Court and the Court issued direction to the State Govt. not to act upon the said seniority list. However, the Gauhati High Court clarified that the pendency of the writ petition shall be no bar for promotion of the respondents in the misc. case No. 1400/2002 of WP(C) No. 4739/2002. The copy of the aforesaid Misc. case is enclosed. Copy to the Govt. of Assam, Personnel (A) Department.

There was another case No. CA No. 20/2003 in the Hon'ble Central Administrative Tribunal, Guwahati Bench which has since been disposed of (copy of the order dtd. 2-4-2003 in O.A. No. 20/2003 is enclosed).

It has been decided by this State Govt. to fill up 2(two) vacancies by appointment of non-SCS officer through separate proposal.

In view of the above position, a proposal for filling up 6(six) vacancies for SCS officers appointment by promotion to IAS is forwarded herewith. The proposal included the following :

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A list of 24 eligible officers in order of seniority.

A statement showing the position of ACRs of 24 eligible officers.

Certificate regarding non-communication of adverse remarks.

Certificate regarding communicated adverse remarks in ACRs against which no representation has been received and the time for submission of representation is over.

Certificate regarding submission of representation against adverse remarks in ACRs but Govt. decision thereon is yet to be taken.

Certificate regarding departmental proceedings.

List of IAS(SCS) officers now in position.

Integrity certificate will be submitted later on.

Yours faithfully,

(J.P.SAIKIA).

Commissioner & Secretary to the Govt. of Assam, Personnel (A) Department.

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Memo.No.AAI.2/2002/139-A, Dated Dispur, the 14th Sept./2003.

Copy to :-

1. The Secretary to the Govt. of India, Ministry of Personnel, P.C. & Pension, Deptt. of Personnel & Training, New Delhi.
2. The Chief Secretary to the Govt. of Meghalaya, Shillong.

By order etc.,

Commissioner & Secretary to the Govt. of Assam, Personnel (A) Department.

COMMISSIONER & SECRETARY TO THE GOVT. OF ASSAM, PERSONNEL (A) DEPARTMENT.

14 NOV 1964
গুৱাহাটী প্ৰশাসনিক
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.NO.156/04.

In the matter of :-

Sri N. Haque

..... applicant

-Vs-

Union of India & Others.

..... Respondents.

-and-

In the matter of :-

An Additional affidavit on behalf of the Respondent No.4 (The Secretary to the Govt.of Assam, Department of Personnel) to the above application.

— ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT NO.4 —
—

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

1. That I am the Deputy Secretary to the Government of Assam, Personnel (A) Department, Dispur, Guwahati-6. I have been authorised to file this additional affidavit on behalf of the Respondent No.4.

2. That the aforesaid application was heard in part by this Hon'ble Tribunal and during the hearing the Hon'ble Tribunal was pleased to make some query as to why the applicant was not promoted inspite of disposal of the departmental proceeding on 4-1-63.

(Contd.P/2)

Filed by :-
The State
Respondent
Shri N.C. Misra
Manoj Kumar
for G.A. Assam
Narain Chandra Misra
62 8/11/64

3. That in the above aspect, I respectfully beg to state that the State Government withheld the integrity Certificate on the basis of the report of the political (Vigilance Cell) Department issued vide letter No. PLA(V)6/99/Pt-II/17, Dated. 15-11-03.

A copy of the report dated. 15-11-03 is annexed herewith and marked as Annexure-A.

4. That, I further beg to state that as the integrity Certificate of the applicant could not be granted, the applicant was thus selected provisionally for promotion to IAS.

5. That, I further beg to state that the applicant sought for the promotion from the select list dated. 27-6-01 which, in fact, not in existence. The validity of the select list remains till the next select list published. Hence, the subsequent select list was published on May, 2004. Hence, no appointment to the IAS from the select list dated. 27-6-01 can be made on or after the date of the next selection meeting held.

It is pertinent to mention here that the instant application was filed on July, 2004 which appears to have filed long after the earlier select list expired.

6. That, the deponent respectfully begs to submit that the applicant was retired on 29-2-04 and he filed the application after his retirement that too for promotion to IAS from the select list dated. 27-6-01 and May, 2004. If he had any grievances he ought to have approached before this Hon'ble Tribunal in appropriate time. The Apex Court in Various cases held that once retired is retired.

7. That the Statements made in paragraphs 1, 2, 4, 5 are true to my knowledge ; those made in paragraphs 3 are being matter of record of the cases derived therefrom which I believe to be true and rest are my humble submission before this Hon'ble Tribunal.

63
Norek Chandra Mishra

I have not suppress any material facts
and I sign this affidavit on this 5th day
of ~~November~~, 2005 at Guwahati.

Narek Chandra Mina
DEPONENT

Solemnly affirmed and declared
before me
Advocate, on the 5th the day
of ~~November~~, 2005 at Guwahati.

MAGISTRATE. *Bans*

EXECUTIVE MAGISTRATE
GUWAHATI

-0000-

Retm

Annexure - A

CONFIDENTIAL

GOVERNMENT OF ASSAM
POLITICAL :::(A)::: DEPARTMENT
(VIGILANCE CELL)
EEE

NO.PLA(V)6/99/Pt.II/78 : Dated Dispur, the 15th Nov/03.

From : Shri K.R. Deb,
Deputy Secretary to the Govt. of Assam,
Political (Vigilance Cell) Department.

To : The Deputy Secretary to the Govt. of Assam,
Personnel (A) Department,
Dispur.

Sub : Vigilance Report.

Ref : Your letter NO.AAI.2/2002/151, dated 9.9.03.

Sir,

In inviting a reference to your letter quoted above, I am directed to say that there is no vigilance case/enquiry pending against the following ACS officers in this Department at present :

- |1| Shri A.B. Md. Eunus, ACS.
- |2| Shri Balendra Basumatary, ACS.
- |3| Dr. Rafique Zaman, ACS.
- |4| Syed Iftikhar Hussain, ACS.
- |5| Shri Karuna Kt. Kalita, ACS.
- |6| Shri Apurba Kr. Phukan, ACS.
- |7| Shri Swapnanil Baruah, ACS.
- |8| Smti. Sonmai Barua, ACS.
- |9| Shri Santanu Thakur, ACS.
- |10| Shri Ganesh^{ch} Kalita, ACS.
- |11| Shri Bhupendra Nath Das, ACS.
- |12| Shri Nawab Mahmood Hussain, ACS.
- |13| Shri Harendra Nath Bora, ACS.
- |14| Shri Bhupendra Nath Mahanta, ACS.
- |15| Smti. Marmie Hagjer Barman, ACS.
- |16| Smti. Sumitra Das, ACS.
- |17| Shri Rajib Losan Duara, ACS.
- |18| Shri Chitta Ranjan Kalita, ACS.

Contd...2.

DA
A. J. P. S.
15/11/03

GSIS
15/11/03.

-5- b.b

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In respect of the following officers
vigilance/other enquiries/cases are pending against
them at present :

- |1| Shri Pradip Kr. Das, ACS
 (SVC Case).
- ✓|2| Md. Nurul Haque, ACS,
 (Vigilance & Anti-Corruption enquiry).
- |3| Shri Subhash Ch. Longmailai, ACS,
 (Vigilance & Anti-Corruption).
- |4| Shri Sabbir Hussain, ACS,
 (Vigilance & Anti-Corruption).
- |5| Shri Sailendra Kr. Nath, ACS,
 (Who has been placed under suspension by
 Personnel (A) Department recently, However,
 no ACB or SVC enquiry is pending or
 contemplated against him).
- |6| Md. Jiauddin Ahmed, ACS,
 (CBI case, involved in LOC Scam of
 Veterinary Department).

Yours faithfully,

15-11-83
Deputy Secretary to the Govt. of Assam,
Political (Vigilance Cell) Department.
...

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37 -
Central Administrative Tribunal
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

13 JUN 2005
GUWAHATI BENCH
গুৱাহাটী কেন্দ্রীয়
Guwahati GUWAHATI

ORIGINAL APPLICATION NO. 156 OF 2004

SRI NURUL HAQUE

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1

MOST RESPECTFULLY SHOWETH:

I, Jagan Lal, S/o late Sh. Mange Ram, working as Under Secretary in the Department of Personnel and Training, Government of India, North Block, New Delhi, am conversant with the facts of the case and competent & authorised to file this written statement on behalf of respondent No. 1.

2. That I have read the copy of the O.A. filed by the applicant herein and have understood the contents therein. I hereby deny the contentions made therein, unless the same are expressly and specifically admitted by me herein.

3. That before replying to the contentions of the applicant in the O.A. the answering respondent craves leave of this Hon'ble Tribunal to make the following preliminary submissions.

4. That the process for appointment of State Civil Service officers to the Indian Administrative Service under Indian Administrative Service (Appointment by Promotion) Regulations, 1955 is initiated by the State Government with determination of year-wise vacancies. Once the vacancies are determined, the State Government is required to make available the relevant service records of eligible State Civil Service officers who fall within the zone of consideration to the Union Public Service Commission.

Filed by
the Respondent No. 1
through
Usha Das -
Addl C.S.C. 7/7/05

The Commission convenes a meeting of the Selection Committee. The role of Union of India in finalizing the selection is restricted to the functional requirement of nominating two Joint Secretary level officers as its representatives. After the Select List is approved by the Union Public Service Commission, only thereafter the appointments of those State Civil Service officers who are included unconditionally in the Select List are notified by Government of India.

5. That Parliament in accordance with Article 309 of the Constitution of India read with Article 312 of the Constitution of India has enacted the All India Services Act, 1951 for the purposes of regulating the recruitment and conditions of the service of persons belonging to the Indian Administrative Service and the Indian Police Service.

6. Under the All India Services Act 1951, more particularly section 3 of the said Act, the Central Government is empowered to make rules to regulate the recruitment and conditions of the service of persons appointed to the Indian Administrative Service. The relevant provisions of section 3 read as under :-

" 3(1) The Central Government may, after consultation with the Governments of the State concerned, (including the State of Jammu & Kashmir) (and by notification in the Official Gazette) make Rules for the Regulation of recruitment and conditions of service of persons appointed to an All-India Service....."

7. In pursuance of Section 3(1) of the All India Services Act, 1951 the Central Government has framed the following rules relevant for the purposes of the present OA :-

- a) The Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to in short as the Recruitment Rules)
- b) The Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to in short as Promotion Regulations).

- c) The Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as Selection Regulations).

8. A person is recruited to the Indian Administrative Service under Rule 4 of the Recruitment Rules by one of the three sources given hereinbelow :-

- a) through competitive examination (i.e. direct recruitment);
- b) by promotion of substantive member belonging to the State Civil Service; or
- c) by selection of officers who hold in a substantive capacity gazetted posts in connection with the affairs of the State and belong to the services other than State Civil Service.

9. That the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in the Government of India administers the provisions contained in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter called the "Promotion Regulations") and is, therefore, concerned with the application in the matter of recruitment to the Civil Service from amongst State Civil Service officers and interpretation of any of the statutory provisions laid down in the said Regulations as the cadre controlling authority in respect of the Indian Administrative Service.

10. It is submitted that the State Government and the Union Public Service Commission are primarily concerned with reference to case for consideration of the applicant for promotion to the IAS. The suitable State Civil Service officers who are included in the Select List are eligible for appointment to the IAS as per provisions of the IAS (Appointment by Promotion) Regulations, 1955.

11. In the process of preparation of the Select List by the UPSC, the answering Respondent, as Cadre Controlling Authority in respect of the Indian Administrative Service, is concerned with determination of vacancies and nomination of two officers not below the rank of Joint Secretary as members of the Selection Committee and thereafter in making appointments

of the officers included in the Select List to the IAS subject to and in accordance with the provisions contained in Regulation 9 of the Promotion Regulations.

12. That the process of preparation of the Select List for vacancies already determined begins with the list of names of State Civil Service Officers being forwarded by the State Government to the Commission for consideration by the Selection Committee. The Select List prepared by the Committee is forwarded by the State Government to the Commission alongwith its observations on the recommendations of the Committee. The observations of the Central Government are also forwarded to the Commission thereon and the final approval to the Select List is conveyed by the Commission to the Central Government. Thereafter on receipt of Select List, appointments are considered by the Central Government from the Select List on receipt of unconditional willingness for appointment to the IAS from the officers included in the Select List, accompanied with a declaration of marital status and also consent for termination of lien in the State Civil Service in the event of substantive appointment to the IAS.

13. As regards contentions of the applicant for appointment to IAS consequent upon the inclusion of his name in the Select List of 2002, it is submitted that while issuing Notification No. 14015/06/2003-AIS(I) dated 25th May, 2004 of the Select List as approved by the Union Public Service Commission, it was made clear that the applicant cannot be appointed as he had retired from State Civil Service on 29th February, 2004. This is keeping in view the statutory provisions of Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955, which clearly stipulates that only the willing Select List officers who are members of the State Civil Service are to be appointed to IAS. Hence, a retired State Civil Service officer who is no more a member of such service cannot be appointed to IAS.

R 9(1)

14. It is further submitted that retirement of a State Civil Service officer from the State Service results in severance of all jurat connections between himself and the concerned State Government and, therefore, he becomes ineligible to be appointed to the IAS by promotion.

15. As regards approval of the Select List, the role of the answering respondent is limited to determination of year wise vacancies and in the event of Union Public Service Commission fixing a meeting of the Selection Committee, nominating two officers of the level of Joint Secretary to the Government of India as members of the Selection Committee to represent the Department. In this case the Select List was finally approved by the Union Public Service Commission on 28th April, 2004. When the occasion for the answering respondent for appointment of the applicant to IAS, after approval of the Select List by the Commission arose on 28.04.2004, the applicant had already retired from SCS and thus was not eligible for appointment to IAS under Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955.

PARA-WISE REPLY

Paras 1 - 3 : No comments.

Para 4.1 : No comments.

Paras 4.2 - : Concerns Respondent No. 2 and hence no comments.
4.5

Para 4.6 : Concerns Respondent No. 2 & 3, hence no comments.

Para 4.7 : Being matter of record, require no comments.

Para 4.8 : Concerns Respondents No. 2 & 3, hence no comments.

Para 4.9 : Admitted. It is submitted that the applicant was included in the Select List of 2002 and figured at Sl. No. 2 of the Select List of 2002. Further his name was included in the Select List provisionally by the Union Public Service Commission subject to grant of integrity certificate by the State Government. It is further submitted that after approval of the Select List by the Commission on 28.04.2004, the applicant ceased to be a member of the State Civil Service and hence was not eligible for appointment to IAS.

Paras 4.10 : Concerns Respondent No. 2 and hence no comments.

& 4.11

Para 4.12 : Not admitted. The consideration of an eligible State Civil

Service officer for promotion to IAS is a fundamental right whereas the appointment is not. The promotion of the SCS officers to IAS is governed by the statutory provisions of the IAS (Appointment by Promotion) Regulations, 1955 which provide that the appointment of a State Civil Service officer who is included in the Select List provisionally can be made only if his name is made unconditional by the Union Public Service Commission during the validity period of Select List. The applicant ceased to be a member of the SCS on the date of approval of the Select List by the Commission on 28.04.2004 and thus otherwise also became ineligible for appointment to IAS, apart from his name remaining conditional in the Select List.

Para 4.13 : Not admitted. Only those SCS officers who are included in the Select List unconditionally can be appointed to IAS under the statutory Promotion Regulations.

Para 4.14 : Not admitted. The applicant's name was not made unconditional in the Select List of the earlier year during the validity period of the Select List, therefore, he was not appointed to the IAS. The fact of exonerating him of the charge by the State Govt. in a disciplinary case cannot be a ground for giving him promotion prior to the date of exonerating him of the charge.

Para 4.15 : Not admitted. Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955 enjoins upon the authorities to appoint only a member of the SCS who had been included in the Select List unconditionally. The Select List for the year 2002 was approved by the Commission on 28.04.2004 and when the occasion for applicant's appointment to the IAS arose, he ceased to be a member of the State Civil Service and thus became ineligible for appointment to IAS under statutory regulations.

Paras 4.16 & 4.17 : Not admitted. The process of preparing the Select List starts from a proposal from the State Government to determine the vacancies and thereafter the State Govt. are

- 7 -
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required to make available the relevant records to the Union Public Service Commission, who fix up the date of the Selection Committee Meeting. On receipt of observations of the State Govt. and that of the Central Govt. on the minutes of the meeting of the Selection Committee, the Select List is finally approved by the Commission. In this case, the Select List was finally approved by the Union Public Service Commission on 28.04.2004, by that time the applicant had retired from SCS. It is further submitted that this statutory provision of the Promotion Regulations is uniformly followed in respect of all IAS cadres of the States.

Para 4.18 : Not admitted. As per regulation 5(3) of the IAS (Appointment by Promotion) Regulations, 1955 the members of the State Civil Service who have attained the age of 54 years on the first day of January for which the Select List is prepared are not eligible for consideration for promotion to IAS. Therefore, to say that because of the retirement age of IAS being 60 years, the applicant would have been appointed to IAS is not correct and it goes against the statutory provisions of the Promotion Regulations.

Para 4.19 : No comments.

GROUND FOR RELIEF WITH LEGAL PROVISIONS :

Paras 5.1 & 5.2 : Not admitted. The answering respondent has issued Notifications dated 25th May, 2004 strictly in accordance with the IAS (Appointment by Promotion) Regulations, 1955.

Paras 5.3 & 5.4 : Not admitted. After his retirement from SCS on attaining the age of superannuation, the applicant apart from being included in the Select List conditionally, ceased to be the member of the State Civil Service and there was no jural relation between himself and the State Government. Thus,

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he became ineligible for appointment to IAS.

Para 5.5 : It is submitted that the replying respondent has issued orders strictly in accordance with the statutory provisions of the IAS (Appointment by Promotion) Regulations, 1955.

Para 6-12 : No comments.

In the light of the reply to the above paras, it is submitted that the applicant was included in the Select List conditionally, subject to grant of integrity certificate by the State Government and in the meantime when the occasion for appointment of the applicant to IAS after approval of the Select List by the Union Public Service Commission on 28.4.2004 arose, he ceased to be a member of the State Civil Service after his retirement on superannuation on 29.02.2004. The applicant thus became ineligible for appointment to IAS in terms of Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955. The question of his appointment to the IAS, therefore, does not arise. The application is devoid of merit and hence is liable to be rejected. It is prayed accordingly.

Jagan Lal
(JAGAN LAL)
Under Secretary DEPONENT
Deptt. of Personnel & Trg.
Govt. of India

VERIFICATION

I, Jagan Lal, S/o late Sh. Mange Ram, do hereby declare that the contents of the above Written Statement are believed by me to be true based on the records of the case. No part of it is false and nothing has been concealed therein.

FOR AND ON BEHALF OF RESPONDENT NO. 1

Place :

Dated :

Jagan Lal
(JAGAN LAL)
Under Secretary
Deptt. of Personnel & Trg.
Govt. of India

DEPONENT

(Advocate)

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LIST OF DATES

- 1981: The applicant joined the Forest Department as an Assistant Conservator of Forests.
- 1994: A departmental proceeding was hoisted on him basing on false and frivolous grounds.
- 29-03-95: The applicant was placed under suspension..
- 20-10-95: The order of suspension of the applicant was revoked and he was reinstated in service.
- 14-10-99: A fresh enquiry was directed into the same charges against the applicant.
- 2002: The applicant being aggrieved by the prolong proceeding of the said departmental approached the Hon'ble High Court for justice.
- 16-07-02: The proceedings against the applicant was concluded and he was exonerated from the charges.
- 05-11-01: The applicant was selected by the selection committee for promotion against the vacancies in the Assam segment of the IPS, Assam, Meghalaya Joint Cadre but his selection was made conditional to his exoneration in the said departmental proceedings as pending against him at that relevant point of time.
- 09-07-02: Further fresh departmental proceeding was contemplated.
- 2002: The applicant approached this Hon'ble Tribunal by way of filing O.A No. 260/2002, inter-alia, praying for his

V B

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promotion to the Assam segment of the IPS Assam -
Meghalaya Joint Cadre in terms of his selection on 05-11-
2001 against the vacancies as assessed on 01-01-2001.

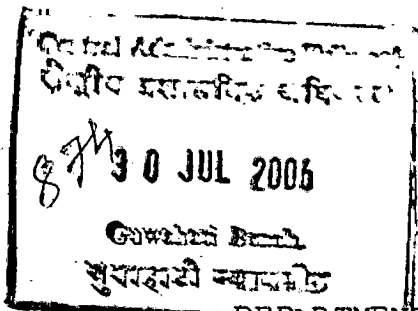
21-02-03: The Hon'ble Tribunal disposed of the said O.A No. 260/2002, inter-alia holding the subsequent charge sheet was contemplated and was issued much after the period under consideration i.e. 1999-2000 for the purpose of inclusion of select list of 2001 and that the same cannot have any relevance for effecting his appointment in terms of his selection to the cadre of IPS for the year 2001 and the so-called vigilance certificate which merged with the disciplinary proceeding pending stood completely dropped or annulled by virtue of dropping of the case.

10-02-04: The Government of Assam in the Environment and Forest Department filed an appeal against the order dated 21-02-2003 before the Hon'ble Gauhati High Court which was registered and numbered as W.P.(C) No. 1077/2004 but subsequently it was dismissed.

2003: The applicant preferred a contempt petition being numbered 35/03 as the Hon'ble Tribunal Order dated 21-02-2003 was not implemented.

17-11-04: A communication was issued by the Union Public Service Commissioner wherein it was stated that in absence of a proposal from the State Government, the case of the applicant for his unconditional inclusion in the select list of 2001 was not considered.

Filed by,



45-

COURT CASE.
MOST URGENT

NO.AAP.105/2004/80

By Special Messenger

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A)
ASSAM SECRETARIAT (CIVIL)
DISPUR : : GUWAHATI-6

Dated Dispur the 14th July, 2005.

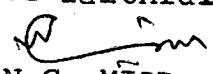
To : ✓ The Sr. Govt. Advocate,
Central Administrative Tribunal,
Guwahati Bench, Guwahati-5
(Kind attention : Mrs. M. Das, Jr. Govt. Advocate,
Central Administrative Tribunal, Guwahati Bench).

Sub : O.A. No.156/2004-Shri Nurul Haque-Vs-Union of
India and others.

Sir,

With reference to above, I am directed to forward herewith a copy of letter No.22012/77/2004-AIS(I) dt. 15-6-2005 alongwith its enclosures received from the Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Deptt. of Personnel & Training, New Delhi for favour of ready reference and guidance if any.

Yours faithfully,



(N.C. MISRA)
DEPUTY SECRETARY TO THE GOVT. OF ASSAM,
PERSONNEL (A) DEPARTMENT



Mr. Datta
NS
29.7.05

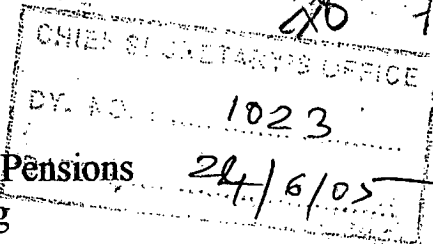
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46 -
No. 22012/77/2004-AIS(I)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training



New Delhi,

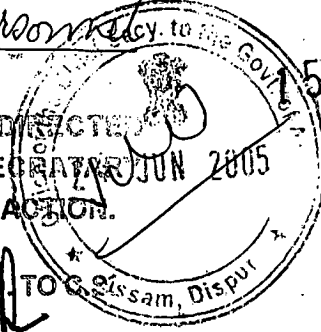
June, 2005.

To

Sh. Arunesh Deb Ray
Sr. Central Govt. Standing Counsel,
Guwahati High Court,
Hengrabari Housing Colony,
LIG 3 (Top Floor),
Guwahati - 781006,

FORWARDED AS DIRECTED
BY THE CHIEF SECRETARY
FOR NECESSARY ACTION.

S.D. TO G. Assam, Dispur



DS Per(A)
JO

Subject : OA No. 156/2004 filed by Sh. Nurul Haque Vs. Union of India & Others in the CAT, Guwahati Bench - Reg.

Sir,

I am directed to the above subject and to forward herewith one copy of the reply affidavit duly sworn and signed for being filed before the CAT, Guwahati Bench. Three spare copies of the reply affidavit are also enclosed. It is requested that the reply affidavit may kindly be filed and this Department be kept informed of the developments of the case from time to time.

Yours faithfully,

sd/ (Jagan Lal)

Under Secretary to the Government of India

Copy along with a copy of the reply affidavit forwarded for information to :

- ✓ 1. The Chief Secretary, Govt. of Assam, Dispur.
2. The Secretary, Union Public Service Commission, Dholpur House, New Delhi.

Office of the Commr. & Secretary
to the Govt. of Assam
Personnel, P.D. & Soil
Conservation Department
Dispur, Guwahati-6.
By, No. 216
Date 27/6/05

Under Secretary to the Government of India

Jagan Lal
(Jagan Lal)

B. Das
28/6/05

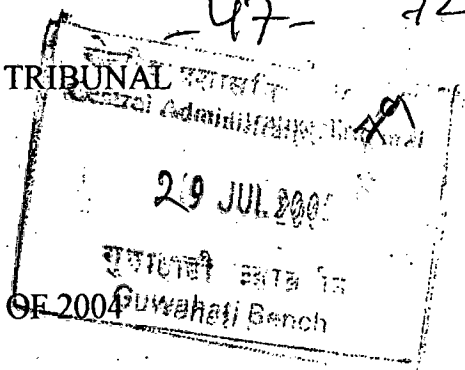
324.
29/6/05

47- 72
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

GUWAHATI

ORIGINAL APPLICATION NO. 156 OF 2004



SRI NURUL HAQUE

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1

MOST RESPECTFULLY SHOWETH :

I, Jagan Lal, S/o late Sh. Mange Ram, working as Under Secretary in the Department of Personnel and Training, Government of India, North Block, New Delhi, am conversant with the facts of the case and competent & authorised to file this written statement on behalf of respondent No. 1.

2. That I have read the copy of the O.A. filed by the applicant herein and have understood the contents therein. I hereby deny the contentions made therein, unless the same are expressly and specifically admitted by me herein.

3. That before replying to the contentions of the applicant in the O.A. the answering respondent craves leave of this Hon'ble Tribunal to make the following preliminary submissions.

4. That the process for appointment of State Civil Service officers to the Indian Administrative Service under Indian Administrative Service (Appointment by Promotion) Regulations, 1955 is initiated by the State Government with determination of year-wise vacancies. Once the vacancies are determined, the State Government is required to make available the relevant service records of eligible State Civil Service officers who fall within the zone of consideration to the Union Public Service Commission.

The Commission convenes a meeting of the Selection Committee. The role of Union of India in finalizing the selection is restricted to the functional requirement of nominating two Joint Secretary level officers as its representatives. After the Select List is approved by the Union Public Service Commission, only thereafter the appointments of those State Civil Service officers who are included unconditionally in the Select List are notified by Government of India.

5. That Parliament in accordance with Article 309 of the Constitution of India read with Article 312 of the Constitution of India has enacted the All India Services Act, 1951 for the purposes of regulating the recruitment and conditions of the service of persons belonging to the Indian Administrative Service and the Indian Police Service.

6. Under the All India Services Act 1951, more particularly section 3 of the said Act, the Central Government is empowered to make rules to regulate the recruitment and conditions of the service of persons appointed to the Indian Administrative Service. The relevant provisions of section 3 read as under :-

" 3(1) The Central Government may, after consultation with the Governments of the State concerned, (including the State of Jammu & Kashmir) (and by notification in the Official Gazette) make Rules for the Regulation of recruitment and conditions of service of persons appointed to an All-India Service....."

7. In pursuance of Section 3(1) of the All India Services Act, 1951 the Central Government has framed the following rules relevant for the purposes of the present OA :-

- a) The Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to in short as the Recruitment Rules)
- b) The Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to in short as Promotion Regulations).

- c) The Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as Selection Regulations).

4

8. A person is recruited to the Indian Administrative Service under Rule 4 of the Recruitment Rules by one of the three sources given hereinbelow :-

- a) through competitive examination (i.e. direct recruitment);
- b) by promotion of substantive member belonging to the State Civil Service; or
- c) by selection of officers who hold in a substantive capacity gazetted posts in connection with the affairs of the State and belong to the services other than State Civil Service.

9. That the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in the Government of India administers the provisions contained in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter called the "Promotion Regulations") and is, therefore, concerned with the application in the matter of recruitment to the Civil Service from amongst State Civil Service officers and interpretation of any of the statutory provisions laid down in the said Regulations as the cadre controlling authority in respect of the Indian Administrative Service.

10. It is submitted that the State Government and the Union Public Service Commission are primarily concerned with reference to case for consideration of the applicant for promotion to the IAS. The suitable State Civil Service officers who are included in the Select List are eligible for appointment to the IAS as per provisions of the IAS (Appointment by Promotion) Regulations, 1955.

11. In the process of preparation of the Select List by the UPSC, the answering Respondent, as Cadre Controlling Authority in respect of the Indian Administrative Service, is concerned with determination of vacancies and nomination of two officers not below the rank of Joint Secretary as members of the Selection Committee and thereafter in making appointments

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of the officers included in the Select List to the IAS subject to and in accordance with the provisions contained in Regulation 9 of the Promotion Regulations.

12. That the process of preparation of the Select List for vacancies already determined begins with the list of names of State Civil Service Officers being forwarded by the State Government to the Commission for consideration by the Selection Committee. The Select List prepared by the Committee is forwarded by the State Government to the Commission alongwith its observations on the recommendations of the Committee. The observations of the Central Government are also forwarded to the Commission thereon and the final approval to the Select List is conveyed by the Commission to the Central Government. Thereafter on receipt of Select List, appointments are considered by the Central Government from the Select List on receipt of unconditional willingness for appointment to the IAS from the officers included in the Select List, accompanied with a declaration of marital status and also consent for termination of lien in the State Civil Service in the event of substantive appointment to the IAS.

13. As regards contentions of the applicant for appointment to IAS consequent upon the inclusion of his name in the Select List of 2002, it is submitted that while issuing Notification No. 14015/06/2003-AIS(I) dated 25th May, 2004 of the Select List as approved by the Union Public Service Commission, it was made clear that the applicant cannot be appointed as he had retired from State Civil Service on 29th February, 2004. This is keeping in view the statutory provisions of Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955, which clearly stipulates that only the willing Select List officers who are members of the State Civil Service are to be appointed to IAS. Hence, a retired State Civil Service officer who is no more a member of such service cannot be appointed to IAS.

14. It is further submitted that retirement of a State Civil Service officer from the State Service results in severance of all jural connections between himself and the concerned State Government and, therefore, he becomes ineligible to be appointed to the IAS by promotion.

15. As regards approval of the Select List, the role of the answering respondent is limited to determination of year wise vacancies and in the event of Union Public Service Commission fixing a meeting of the Selection Committee, nominating two officers of the level of Joint Secretary to the Government of India as members of the Selection Committee to represent the Department. In this case the Select List was finally approved by the Union Public Service Commission on 28th April, 2004. When the occasion for the answering respondent for appointment of the applicant to IAS, after approval of the Select List by the Commission arose on 28.04.2004, the applicant had already retired from SCS and thus was not eligible for appointment to IAS under Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955.

PARA-WISE REPLY

- Paras 1 - 3 : No comments.
- Para 4.1 : No comments.
- Paras 4.2 - 4.5 : Concerns Respondent No. 2 and hence no comments.
- Para 4.6 : Concerns Respondent No. 2 & 3, hence no comments.
- Para 4.7 : Being matter of record, require no comments.
- Para 4.8 : Concerns Respondents No. 2 & 3, hence no comments.
- Para 4.9 : Admitted. It is submitted that the applicant was included in the Select List of 2002 and figured at Sl. No. 2 of the Select List of 2002. Further his name was included in the Select List provisionally by the Union Public Service Commission subject to grant of integrity certificate by the State Government. It is further submitted that after approval of the Select List by the Commission on 28.04.2004, the applicant ceased to be a member of the State Civil Service and hence was not eligible for appointment to IAS.
- Paras 4.10 & 4.11 : Concerns Respondent No. 2 and hence no comments.
- Para 4.12 : Not admitted. The consideration of an eligible State Civil

Service officer for promotion to IAS is a fundamental right whereas the appointment is not. The promotion of the SCS officers to IAS is governed by the statutory provisions of the IAS (Appointment by Promotion) Regulations, 1955 which provide that the appointment of a State Civil Service officer who is included in the Select List provisionally can be made only if his name is made unconditional by the Union Public Service Commission during the validity period of Select List. The applicant ceased to be a member of the SCS on the date of approval of the Select List by the Commission on 28.04.2004 and thus otherwise also became ineligible for appointment to IAS, apart from his name remaining conditional in the Select List.

Para 4.13 : Not admitted. Only those SCS officers who are included in the Select List unconditionally can be appointed to IAS under the statutory Promotion Regulations.

Para 4.14 : Not admitted. The applicant's name was not made unconditional in the Select List of the earlier year during the validity period of the Select List, therefore, he was not appointed to the IAS. The fact of exonerating him of the charge by the State Govt. in a disciplinary case cannot be a ground for giving him promotion prior to the date of exonerating him of the charge.

Para 4.15 : Not admitted. Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955 enjoins upon the authorities to appoint only a member of the SCS who had been included in the Select List unconditionally. The Select List for the year 2002 was approved by the Commission on 28.04.2004 and when the occasion for applicant's appointment to the IAS arose, he ceased to be a member of the State Civil Service and thus became ineligible for appointment to IAS under statutory regulations.

Paras 4.16 & 4.17 : Not admitted. The process of preparing the Select List starts from a proposal from the State Government to determine the vacancies and thereafter the State Govt. are

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required to make available the relevant records to the Union Public Service Commission, who fix up the date of the Selection Committee Meeting. On receipt of observations of the State Govt. and that of the Central Govt. on the minutes of the meeting of the Selection Committee, the Select List is finally approved by the Commission. In this case, the Select List was finally approved by the Union Public Service Commission on 28.04.2004, by that time the applicant had retired from SCS. It is further submitted that this statutory provision of the Promotion Regulations is uniformly followed in respect of all IAS cadres of the States.

Para 4.18 : Not admitted. As per regulation 5(3) of the IAS (Appointment by Promotion) Regulations, 1955 the members of the State Civil Service who have attained the age of 54 years on the first day of January for which the Select List is prepared are not eligible for consideration for promotion to IAS. Therefore, to say that because of the retirement age of IAS being 60 years, the applicant would have been appointed to IAS is not correct and it goes against the statutory provisions of the Promotion Regulations.

Para 4.19 : No comments.

GROUND FOR RELIEF WITH LEGAL PROVISIONS :

Paras 5.1 & 5.2 : Not admitted. The answering respondent has issued Notifications dated 25th May, 2004 strictly in accordance with the IAS (Appointment by Promotion) Regulations, 1955.

Paras 5.3 & 5.4 : Not admitted. After his retirement from SCS on attaining the age of superannuation, the applicant apart from being included in the Select List conditionally, ceased to be the member of the State Civil Service and there was no jural relation between himself and the State Government. Thus,

he became ineligible for appointment to IAS.

Para 5.5 : It is submitted that the replying respondent has issued orders strictly in accordance with the statutory provisions of the IAS (Appointment by Promotion) Regulations, 1955.

Para 6-12 : No comments.

In the light of the reply to the above paras, it is submitted that the applicant was included in the Select List conditionally, subject to grant of integrity certificate by the State Government and in the meantime when the occasion for appointment of the applicant to IAS after approval of the Select List by the Union Public Service Commission on 28.4.2004 arose, he ceased to be a member of the State Civil Service after his retirement on superannuation on 29.02.2004. The applicant thus became ineligible for appointment to IAS in terms of Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955. The question of his appointment to the IAS, therefore, does not arise. The application is devoid of merit and hence is liable to be rejected. It is prayed accordingly.

Jagan Lal
(JAGAN LAL)
Under Secretary
Deptt. of Personnel & Trg.
Govt. of India
DEPONENT

VERIFICATION

I, Jagan Lal, S/o late Sh. Mange Ram, do hereby declare that the contents of the above Written Statement are believed by me to be true based on the records of the case. No part of it is false and nothing has been concealed therein.

FOR AND ON BEHALF OF RESPONDENT NO. 1

Place :

Dated :

Jagan Lal
(JAGAN LAL)
Under Secretary
Deptt. of Personnel & Trg.
Govt. of India
DEPONENT
(Advocate)