

100
CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH

ORDER SHEET

Org. App/Misc. Petn/Cont. Petn/Rev. Appl..... 199/2004

In O.A.

Name of the Applicant(s) C.R. Lotha

Name of the Respondent(s) UOI LOANS

Advocate for the Applicant Sri A.K. Phukoon, S. Samra, U.K. Nair

Counsel for the Railway/C.G.S.C. Case(s) Govt. of Assam
A Deb Roy

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
This application is in form is filed/C.F. T.R. Rs. 50/- deposited vide J.P.C/BD No. 206/14/47 Dated 17/9/04.	2.9.2004	Heard Mr. A.K. Phukoon, learned Sr. counsel for the applicant. The Application is admitted, call for for the record, returnable by four weeks. List on 4.10.2004 for orders.
By Registrar N.S. 17/9/04 NO. 3685	bb 4.10.2004	<p>Present : The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman.</p> <p>The Hon'ble Mr. K.V. Prahladan, Member (A).</p> <p>Mr. U.K. Nair, learned counsel for the applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents were present.</p> <p>Mr. A. Deb Roy, learned Sr. C.G.S.C for the respondents seeks eight weeks time for filing written statement. Since we are giving sufficient time it should be ensured that written state- ment will be filed on the next date and no further adjournment is sought on the same ground. Stand over to 6.12.04.</p>

Notice & Order
Sent to D/Section
for issuing to
resp. Nos. 1 to 7,
by regd. A/D POST.

(See) D/Memo No. 1525 to
1531, Dt. 20/9/04. R

D A/D cards
not yet received by
this registry.

1) S/R is awaited
N/ 11/10/04

Member (A)

① Vice-Chairman

Notice duly served
on resp. Nos. 1, 2, 5, 6 & 7

Clue
2/11/04

3.12.04

W/s don't submitted
by the Respondent
Nos. 3 & 4.

Oppn

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

Mr. U.K. Nair, learned counsel for the applicant is present. None for the Respondents. Written statement has been filed by the Respondents No. 3 & 4 and the other respondents are served, but no written statement has been filed on their behalf. The applicant may in case so desires, file rejoinder within six weeks from to-day with advance copy to the Respondents. Stand over to 18th Jan., 2005.

KV Prahadan
Member.

R
Vice-Chairman

9-12-04

1m

18.1.2005.

The learned counsel for the applicant seeks 10 days time to file rejoinder. Accordingly, rejoinder be filed with advance copy to learned counsel for the Respondents. Stand over to 10th Feb., 2005 for final hearing.

KV Prahadan
Member

R
Vice-Chairman

18-1-05

no adj. s directed

1m

10.2.05.

Adjourned on the request of Mr. U.K. Nair learned counsel for the applicant to 2nd March, 05. Rejoinder if any, be filed in the meantime before the next date of hearing.

ICV Prahadan
Member (A)

J
Member (J)

1m

2.3.2005 present: The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

The Hon'ble M.K.V. Prahadan, Member (A).

At the request of the learned counsel for the applicant adjourned to 4.3.2005.

KV Prahadan
Member

R
Vice-Chairman

Notes of the Registry | Date | Order of the Tribunal

04.03.2005

present: The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Mr. K. V. Prahладан, Member (A).

At the request made by learned counsel for the parties the case is adjourned to 10.3.2005.

K. V. Prahладан
Member

G. Sivarajan
Vice-Chairman

9-3-05
Rejoinder has been
filed by the
applicant

bb

10.3.2005

After hearing Mr A.K. Phukan, learned counsel for the applicant and Mr A. Deb Roy, learned counsel for the respondents in part we felt it necessary to peruse the records regarding the selection to the IAS for the year 2003 maintained by the UPSC. Mr A. Deb Roy is requested to get the selection files urgently. Post the matter on 5.4.2005.

Issue copy of this order to Mr A. Deb Roy, learned counsel for the respondents urgently.

K. V. Prahладан
Member

G. Sivarajan
Vice-Chairman

11/3/05
Pl. comply order
dated 10.3.05.
N/11/3/05

Ans 14/3/05

nkm

5.4.2005

No Division Bench. Adjourned to 4.5.2005 for hearing.

27-4-05
Parawise reply to rejoinder
of the Applicant on behalf
of Resp't. No. 3 & 4.

mb

4.5.05

Ms. U. Das, Addl. C.G.S.C. prays for adjournment on behalf of Mr. A. Deb Roy, counsel for the Respondents.

Post the matter on 9.5.05.

K. V. Prahладан
Member

G. Sivarajan
Vice-Chairman

lm

Notes of the Registry Date

Order of the Tribunal

9.5.2005

Heard Mr. A.K. Phukan, learned Sr. counsel assisted by Mr. U.K. Nair, learned counsel for the applicant and Mr. A. Deb Roy, learned counsel for respondent Nos. 3 & 4.

Heard in fully. Post for orders on

31.5.2005.

19.5.05

WS on behalf
of the Respondent Nos.
2 & 5, has been
submitted.

Aug 23/6

bb

K. D. Basak
Member

Vice-Chairman

31.5.05

Order reserved. List on 14.6.05 for
judgment.

K. D. Basak
Member

Vice-Chairman

28.6.05

Copy of the judgement
handed over to the
L/Advocates for the
parties.

4/6

20.6.2005

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

K. D. Basak
Member

Vice-Chairman

mb

28.6.05

Received copy
ee 5
Deep - 2
MR T. A.O.

Suria
Suria
Suria

29.6.05
Bardana Devi

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CENTRAL ADMINISTRATIVE TRIBUNAL ::GUWAHATI BENCH.

O.A. No 199 of 2004.

DATE OF DECISION: 20.6.2005.

Shri C. R. Lotha,

APPLICANT(S)

Mr. A. K. Phukan, S. Sarma & U. K. Nair

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U. O. I. & Ors.

RESPONDENT(S)

Mr. A. Deb Roy & T. Ao

ADVOCATE FOR THE
RESPONDENT(S)

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

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

No

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

Ans Yes 4. Whether the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Administrative Member.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 199 of 2004.

Date of Order: This the ^{20th} day of June, 2005.

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN
HON'BLE MR.K.V.PRAHLADAN, ADMINISTRATIVE MEMBER

Shri C.R.Lotha,
Son of Late Chothungo, resident of
Para-Medical, Nagaland ... Applicant

By Advocate S/Sri A.K.Phukan, S.Sarma &
U.K.Nair.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Department of Personnel and
Training, North Block, New Delhi.
2. The State of Nagaland, represented by
its Chief Secretary to the Government of
Nagaland, Kohima, Nagaland.
3. The union Public Service Commission,
represented by its Secretary, Dholpur House,
Shahjahan Road, New Delhi.
4. The Selection Committee, (Constituted
for considering the cases of eligible SCS
officers for promotion to the IAS cadre
of Nagaland, against vacancies of the
the year 2003), through the Chairman,
Union Public Service Commission, Dholpur
House, Sahjahan Road, New Delhi.
5. The Secretary to the Government of
Nagaland, Department of Personnel and
Administrative Reforms, Kohima,
Nagaland.
6. Shri M. Yanthan, IAS.
7. Shri K.T. Sukhala,

Respondents No. 6 and 7, through the
Secretary to the Government of Nagaland
Department of Personnel and Administrative
Reforms, Kohima, Nagaland. Respondents

By Advocate Shri A.Deb Roy for respondent No.1
& T. Ao for respondents No.2 to 5.

ORDERK.V.PRAHLADAN, MEMBER(A)

The applicant was inducted into the State Civil Service in 1977. In 1983 he was promoted to Grade-I of the service. In July 2003, the name of the applicant alongwith other eligible officials were forwarded by the Government of Nagaland to UPSC for promotion to the IAS. The procedure for State Civil Service Officers to get promoted to the IAS is governed by the provisions of IAS (Appointment by Promotion) Regulations, 1955 and connected instructions issued by the Government of India. Prior to 1.1.98 ACR in many States, other than Nagaland was written financial year wise, i.e. 1st April to 31st March. With effect from 1.1.98 ACR came to be written calender year wise i.e. 1st January to 31st December as a result of the notification issued by the DOPT dated 31.12.1997 (Annexure-1). This was done in exercise of the powers conferred by Section 3 of the All India Services Act 1951 (61 of 1951). The date of eligibility for inclusion in the Select List of IAS is the 1st January of the calender year. CR's for the preceding five years are taken into account for promotion to IAS. The applicant claims while considering the select list for IAS for the year 2003 was considered by the UPSC, CR's for the year 2002 was not taken into account. CR's for the years 1997 to 2001 was considered. This, the applicant claims, prevented his selection since he had got outstanding CR for the years 2001 and 2002. The applicant has prayed for setting aside and quashing the two notifications dated 19.4.2004 at Annexures 3 where UPSC has approved the Select List of Nagaland cadre for 2003 containing two names against two vacancies, and Annexure-4 where the President has appointed two officers to the Nagaland cadre of IAS. The

(Signature)

applicant has also prayed for constituting a fresh DPC for the year 2003.

2. The respondents say that since the date of eligibility for inclusion in the select list is 1st January, ACR's for the previous five years are taken into account. However, while considering the select list of Nagaland for the year 2003 for promotion to IAS, CR's of the officers for the period 1.1.2002 to 31.12.2002 were not considered. The respondent has tried to justify this decision by pointing out that for the select list of the year 2003 in States where CR's are written financial year wise (1st April to 31st March), CR from 1.4.2001 to 31.3.2002 are taken into account ignoring assessment for nine months from 1.4.2002 to 31.12.2002. In States like Nagaland for the Select List of the year 2003, CR's for the period 1.1.2002 to 31.12.2002 are not generally available. So CR's upto the period 1.1.2001 to 31.12.2001 are taken into account by the DPC. The respondents points out that for States where CRs are written financial year wise assessment for nine months are ignored whereas for States where CRs are written calender year wise CRs for one year are ignored in order to maintain a uniformity between the former and latter. The assessment period differs only to the extent of three years.

3. The respondents claim that a high powered committee consisting of experts evolve their own criteria and grade each officer by scrutinizing not only the entire CR's but also their service records and then only grade each officer. They have cited many judgments of the Apex Court that it is for the DPC consisting of experts in their respective fields to assess the records of each officer before grading him. It is not for the Court or Tribunal to sit in judgment of the gradings awarded by such a DPC.

[Signature]

4. Heard both the learned counsel for the applicant and learned counsel for the respondents. The UPSC, as respondents, claims that "It is manned and presided over by competent and able members to devise norms and yardsticks for evaluation of the ACR's. Such norms are uniformly applied to all States/cadres for induction into the All India Services." The respondents has cited many rulings of the Apex Court in their favour. In Anil Katiyar vs. Union of India & Ors., 1997(1) SLR 153, the Apex Court has held that :

"Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by malafides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by malafides."

In para 7.1.4 of the written statement the respondents has said that "with a view to make assessment of officers in the zone of consideration in terms of the statutory provisions of the IAS Promotion Regulations, the Selection Committee takes into consideration the service records of the officers with special reference to the ACRs of the five years preceding the year of Select List." The respondent has also cited O.A.No.261 of 1995 (Bijaha Kumar Dhal vs. State of Orissa and Union of India & Others) where the Cuttack Bench of this Tribunal has stated that ".... The CRs for the immediately preceding five years are to be given greater importance" in the selection to the IAS from State Civil Service. Both the applicant and the respondents are in agreement that CR for the year 2002 was not taken into account for selection to the IAS from the select list. We

ERF

have no desire or inclination to sit in appeal over the decision taken by a group of experts and who have the autonomy and authority to frame their own criteria in coming to a decision. We do not want to substitute our own decision on a decision taken by a body constituting of experts in their respective fields. However, we are neither barred nor precluded from scrutinizing the decision making process for any infirmity though not the decision itself.

5. The respondents in the present case should have assessed the five preceding CRs. The applicant has claimed in his affidavit that CRs for the year 2002 were sent by the State Government to the UPSC and this has not been rebutted by the latter in either of their two written statements. The IAS (Recruitment) Rules 1954 and the IAS (Appointment by Promotion) Regulations, 1955 have been framed under the proviso to Article 309 of the Constitution. Giving special reference to the preceding five years is an administrative decision to fill up gaps and supplement the rules and regulations. These administrative decisions appear to have been ignored by the Selection Committee. The argument of the respondents is that the CRs for the year 2002 has not been considered in order to maintain uniformity with those States where CRs are written financial year wise leading to ignoring of nine months assessment with effect from 1st April to 31st December. However, this argument does not appear to have much relevance after the Notification of 31.12.1997 (Annexure-1) issued by the DOPT, Government of India where, after consultation with State Governments, it was decided to introduce writing of CRs to be calendar based, i.e. from 1st January to 31st December in all the States. However, in Nagaland the concept of calendar year based CRs was already in vogue even before the above notification dated 31.12.1997.

BCW

Therefore, atleast with effect from 1.1.1998 CRs were calendar year based in all States. So the argument of the respondents for ignoring the CRs for the year 2002 for selection to IAS from the select list of 2003 does not appear to be based on any sound reason. Also the argument of the respondents for ignoring the CR for the year 2002 runs counter to their own assertion in para 7.1.4 of the written statement that CRs of the preceding five years are taken into account.

6. In Union of India & another vs. S.B.Vohra & Ors., (2004) 2 SCC 150, the Apex Court has observed that :

"The broad principles of judicial review as have been stated in the speech of Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service i.e. illegality, irrationality and procedural impropriety, have greatly been overtaken by other developments, as for example, generally not only in relation to proportionality and human rights but also in the direction of principles of legal certainty, notably legitimate expectations."

In Delhi Development Authority and another v. M/s UEE Electricals Engg. (P) Ltd. and another, AIR 2004 SC 2100, the Apex Court has observed that :

"One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The ground is 'illegality' the second 'irrationality' and the third 'procedural impropriety'. These principles were highlighted by Lord Diplock in Council of Civil Unions v. Minister for the Civil Service (1984 (3) All ER 935), (commonly known as CCSU case).

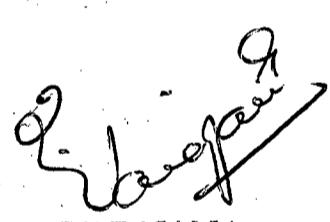
Courts are slow to interfere in matters relating to administrative functions unless decision is tainted by any vulnerability such as, lack of fairness in procedure, illegality and irrationality. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient."

The Apex Court has thus laid down the law of judicial review. We are of the view that ^{by} not considering the CR of the applicant for the year 2002, the respondents committed a procedural lapse which prima

facie appeared to adversely affect the applicant. We are of the considered opinion that by not considering the CR of the applicant for the year 2002, the possibility of the other officials in the select list for 2003 getting an undue advantage over the applicant cannot be completely ruled out.

7. Taking all the above facts into consideration, we direct the respondent No.3 to hold a review DPC within four months from the date of receipt of this order for all the officials in the select list of 2003 and consider the CRs of all the above officials upto the year 2002. However, the promotion to the IAS as per notification No.14015/16/2003-AIS(I)-A issued by the Department of Personnel & Training, Government of India dated 19.4.2004 is left undisturbed and the two officers promoted will continue in their posts. However, the above promotion will be subject to the recommendations of the review DPC. The O.A is therefore disposed of. No order as to costs.


 (K.V.PRAHLADAN)
 ADMINISTRATIVE MEMBER


 (G.SIVARAJAN)
 VICE-CHAIRMAN

नेत्रिय राजाधिकार अधिकारण
Central Administrative Tribunal

- 1 SEP 2004

गुवाहाटी न्यायालय
Guwahati Bench

1243

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

D.A. No. 199 of 2004

Sri C.R.Lotha

... Applicant

- Vs -

The Union of India & Ors.

... Respondents

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Filed by:

U. K. NAIR

Advocate.

THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH
GUWAHATI

O.A. No. 199 of 2004

Sri C.R.Lotha

... 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 Selection Committee, constituted for considering the cases of eligible State Civil Service officers for promotion to the IAS cadre of Nagaland against the vacancies for the year 2003, in proceeding to conduct the said selection by ignoring vital considerations and by applying yardsticks not in accordance with the procedure prescribed for such selection, causing great prejudice to the Applicant. The Selection Committee proceeded to conduct the said selection by ignoring the ACR of the officers in the zone of consideration for the year 2002.

The present application is also directed against the arbitrary and illegal action on the part of the Respondent authorities in issuing notification dated 19.4.2004 (Annexure-3) publishing the select list for the two vacancies identified for the year 2003 and the consequential action in issuing Notification dated 19.4.2004 (Annexure-4) promoting the Respondents No.6 and 7 against the said vacancies.

Filed by:

C. R. Lotha
... Applicant

Through; 6
Unni Krishnan Nair,
Advocate.

THE CENTRAL ADMINISTRATIVE TRIBUNAL: :GUWAHATI BENCH
GUWAHATI

D.A. No. of 2004

BETWEEN

Sri C. R. Lotha,
son of Late Chothungo, resident of
Para-Medical, Nagaland.

... Applicant

- AND -

1. The Union of India, represented by
the Secretary to the Government of
India, Department of Personnel and
Training, North Block, New Delhi.

2. The State of Nagaland, represented by
its Chief Secretary to the Government of
Nagaland, Kohima, Nagaland.

3. The Union Public Service Commission,
represented by its Secretary, Dholpur
House, Sahajahan Road, New Delhi.

4. The Selection Committee, (constituted
for considering the cases of eligible
SCS officers for promotion to the IAS
cadre of Nagaland, against vacancies of
the year 2003), through the Chairman,
Union Public Service Commission, Dholpur
House, Sahajahan Road, New Delhi.

5. The Secretary to the Government of
Nagaland, Department of Personnel and
Administrative Reforms, Kohima,
Nagaland.

6. Shri M. Yanthan, IAS,

7. Shri K.T. Sukhala,

Respondents no.6 and 7, through the
Secretary to the Government of Nagaland,
Department of Personnel and
Administrative Reforms, Kohima,
Nagaland.

... Respondents

DETAILS OF APPLICATION1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The present application is directed against the arbitrary and illegal action on the part of the Selection Committee, constituted for considering the cases of eligible State Civil Service officers for promotion to the IAS cadre of Nagaland against the vacancies for the year 2003, in proceeding to conduct the said selection by ignoring vital considerations and by applying yardsticks not in accordance with the procedure prescribed for such selection, causing great prejudice to the Applicant. The Selection Committee proceeded to conduct the said selection by ignoring the ACR of the officers in the zone of consideration for the year 2002.

The present application is also directed against the arbitrary and illegal action on the part of the Respondent authorities in issuing notification dated 19.4.2004 publishing the select list for the two vacancies identified for the year 2003 and the consequential action in issuing Notification dated 19.4.2004 promoting the Respondents No.6 and 7 against the said vacancies.

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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 by birth and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India and the laws framed thereunder.

4.2 That the Applicant is a Nagaland Civil Service Officer and is presently posted as the Director, Nagaland State Lotteries. The applicant on his selection for the same was inducted into the State Civil Service way back in the year 1977. Thereafter, in the year 1983 he was promoted to Grade-I of the service. The applicant in course of his service has held many important postings and all along has strived to discharge the duties entrusted to him to the best of

his ability and without blemish to any quarter. The applicant has an excellent and outstanding service career.

4.3 That the Applicant states that the Government of India in terms of the provisions of Rule 4(2)(b) of the IAS (Recruitment) Rules, 1954 read with Regulation 5(1) of the IAS (Appointment by Promotion) Regulations, 1955, determined the number of posts in the IAS cadre of Nagaland for recruitment by promotion during the year 2003 as 02. In pursuance to the said determination, the Government of Nagaland, in the Department of Personnel and Administrative Reforms, forwarded in July, 2003 the names of the State Civil Service officers in the zone of consideration to the UPSC for placing the same before the Selection Committee. The name of the applicant also figured in the said list of officers forwarded to the Union Public Service Commission. It may be mentioned here that the name of the applicant had come up for consideration for promotion to the IAS cadre for the first time, against the vacancies available for the year 2003.

4.4 That the Applicant states that the procedure required to be followed for consideration of the cases of eligible State service officers for promotion to the IAS is governed by the provisions of the IAS (Appointment by Promotion) Regulations, 1955 and

instructions issued by the Government of India in this connection. The provisions of the said regulations mandate holding of selection committee meeting for consideration of the cases of eligible SCS officers for promotion against vacancies identified for the year in question. Prior to 1.1.98, 'year' was specified as the period commencing from 1st of April of a year to the 31st of March of the subsequent year and the Committee was required to consider the cases of the eligible officers in the zone of consideration provided they had not completed 54 years of age on the 1st day of April of the year in which the meeting is held. It may be mentioned here that for consideration of the cases of the eligible officers, their ACR's till the year preceding the year for which the meeting is being held is required to be taken into consideration.

4.5 That the Applicant states that , the ACRs of State Civil Service Officers in the State of Nagaland have all along been written on a Calendar year basis i.e for the period from 1st of January of a particular year to 31st of December of the same year. The Central Government in exercise of powers conferred on it under the provisions of Section 3 of the All India Services, Act, 1951 proceeded to amend the provisions of the IAS (Appointment by Promotion) Regulations, 1955, vide notification dated 31.12.1997. In pursuance to the said amendment, the concept of Calendar year has been

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introduced in place of the earlier practice of following the financial year for consideration of various eligibility criteria in connection with promotion of eligible officers to the cadre of IAS. The amendment as effected came into force with effect from 1.1.1998. Therefore, after 1.1.1998, 'Year' means the period from January to December which tallies with the prevalent system of writing ACR's in the State of Nagaland.

A copy of the said notification dated 31.12.1997 is annexed as Annexure-i.

4.6 That the Applicant states that in terms of the provisions of the said Regulations, holding the field, the selection committee constituted for the purpose of considering the cases of eligible SCS officers forwarded to it for promotion against the two vacancies for the year 2003, is required to make their recommendations after assessing the inter-se merit of the officers in the zone of consideration by assessing their respective ACRs for the preceding five years i.e. from 1998 to 2002. The Government of Nagaland while forwarding the names of the eligible officers in the zone of consideration had also sent the ACRs for the period 1998-2002 and had also furnished a statement indicating the accepted remark as obtained by the said officers in their respective ACRs for the years in question.

2

A copy of the said statement is annexed as Annexure-2.

4.7 That the applicant begs to state that for the years 2000, 2001 and 2002 he has been graded as Outstanding in his ACRs and such grading as given to the applicant is fully justified by the remarks made against the relevant columns. Perusal of the observations as made by the various officers involved in the process of writing of the ACR's of the Applicant would lead only to the conclusion as arrived by them in grading the applicant as Outstanding and to no other conclusion. As such the applicant was under the legitimate expectation that he would be recommended for promotion to the cadre of IAS against any of the 2 vacancies available and he would be so promoted.

4.8 That the Applicant begs to state that poised thus he was shocked and surprised to come across a notification dated 19.4.2004 issued by the competent authority of the Government of India publishing the select list, containing the names of the respondents No. 6 and 7 for promotion to the cadre of IAS against the two vacancies available for the year 2003, prepared by the said selection committee in its meeting held on 17.12.2003. The said notification naturally dashed to

the ground the expectation of the applicant for his promotion to the cadre of IAS. The applicant having crossed the age of 54 years, as on 1.1.2004, is now out of consideration for promotion to the cadre of IAS.

A copy of the said notification dated 19.4.2004 is annexed as Annexure-3.

4.9 That the Applicant states that on coming across the said notification, he made enquiries and gathered that the selection committee in its meeting held on 17.12.2003 took into consideration the ACRs of the officers in the zone of consideration upto the year 2001 only and ignored the relevant ACRs for the year 2002. The said action on the part of the selection committee, in ignoring vital considerations, vitiates the whole selection and the recommendation made in pursuance there of is null and void. It has been further gathered by the applicant that vide notification dated 19.4.2004, the Respondents No.6 and 7 have been appointed to the cadre of IAS against the vacancies identified for the year 2003.

A copy of the said notification dated 19.4.2004 is annexed as Annexure-4

The applicant is not in possession of the minutes of the proceedings of the selection committee

meeting and as such craves the leave of this Hon'ble Tribunal for a direction to the respondents for production of a copy of the same for perusal by your lordships.

4.10 That the Applicant states that on coming to learn about the illegality committed by the said selection committee in conducting the selection by applying yardsticks not in accordance to the Regulations holding the field and also in conducting the selection by leaving out considerations relevant for the purpose, he preferred a representation before the cadre controlling authority praying for redressal of his grievances. The applicant in his representation highlighted the illegalities committed by the selection committee in conducting the selection by leaving out considerations relevant for the purpose.

A copy of the said representation dated 22.6.2004 is annexed as Annexure-5

4.11 That the Applicant states that the Selection Committee failed in its duty to conduct the said selection in the manner prescribed and by leaving out the ACR of the officers in the zone of consideration for the year 2002, has ignored a very relevant aspect of the matter and the recommendations made without taking into consideration the said vital aspect

yitiates the whole selection process and the same is liable to be set aside and quashed.

4.12 That in the event the ACRs for the year 2002 of the persons in the zone of consideration were taken into consideration by the Selection Committee, the Applicant would have had three outstanding ACRs out of the five ACRs required to be considered and in such a situation, his merit would have been above the private Respondents No. 6 and 7. In the event the selection was conducted by taking into consideration all the relevant materials, there exist no any ground for denying to the Applicant his due appointment to the cadre of IAS by way of promotion. The illegality committed by the Selection Committee has the effect of depriving the Applicant of his due promotion to the cadre of IAS. The procedure adopted by the selection committee is violative of the relevant provisions of the law and it has caused irreparable prejudice to the petitioner's servicer career.

4.13 That the Applicant states that the selection in question was held for the vacancies available for the year 2003 and in terms of the said Regulations of 1955 all eligibility norms are to be determined with reference to the first day of January, 2003. The selection was held on 17.12.2003. As the ACRs of the Nagaland Civil Service Officers are written on a

calendar year basis, the ACRs of the officers in the zone of consideration upto 2002 were required to be taken into consideration by the said Selection Committee before making any recommendation against the two available vacancies. The State of Nagaland admittedly had forwarded all relevant particulars including the ACRs till the year 2002 to the Selection Committee and as such it was the bounded duty of the Selection Committee to take into consideration the same at the time of assessing the inter-se merit of the officers in the zone of consideration. Non-consideration of the ACR's for the year 2002 therefore is illegal, arbitrary and unfair and this has resulted in excluding the most relevant matter from consideration.

4.14 That the Applicant states that as gathered by him, the Selection Committee in its meeting held on 17.12.2003 inspite of noticing the fact that the date of eligibility for the selection is 1.1.2003 and that the ACRs in case of Civil Service Officers of Nagaland are written on calendar year basis, proceeded to consider the service records of the officers in the zone of consideration upto the year 2001, ignoring the ACRs for the year 2002. Such arbitrary action on the part of the Selection Committee has the effect of vitiating the whole selection process. Consequently,

the recommendations as made by the such Selection Committee in favour of the private Respondents and the promotion effected in their case acting upon such recommendation are liable to be interfered with by this Hon'ble Tribunal. If the ACR of 2002 were considered, the selection committee had no option but to recommend the Petitioner for appointment instead of Respondents Nos. 6 and 7.

4.15 That the Applicant states that the instructions as issued by the Government of India as regards the materials to be taken into consideration, by the Selection Committee for the purpose of assessing the suitability of the officers in the zone of consideration mandate the assessment of the service records more specifically the service records of the preceding five years. It has been the consistent practice to take into account the ACR's of the preceding five years. Such a practice has been been with the objective of assessing the current performance of the officer concerned. Such a stipulation is of great importance and cannot be ignored as has been done in the case on hand. The non-consideration of the ACR's of the Officers in the zone of consideration for the year 2002, goes to the very root of the selection and the same stands vitiated.

4.16 That your applicant states that in the facts and

circumstances of the case the illegal action on the part of the selection committee in proceeding to conduct the selection by ignoring the ACR of the persons in the zone of consideration has resulted in improper consideration of the cases of the persons in the zone of consideration. As such the said selection having been vitiated the same is liable to be set aside and quashed.

4.17 That the Applicant states that the said Selection Committee having not conducted the selection in question by applying the yardstick as required to be applied has caused great prejudice to the Applicant and the same has adversely affected his service career. The Applicant has been denied his due promotion to the cadre of IAS due to the illegality committed by the Selection Committee in conducting the said selection in clear violation of the procedure prescribed for such selection.

4.18 That the Applicant submits that mere perusal of the communication dated 28.7.2003 and the Annexure-2 comparative statement of the ACRs of the officers in the zone of consideration for the year 1998-2002 as forwarded by the State of Nagaland to the Selection Committee would amply support the contention of the Applicant that the Selection Committee inspite of

availability of relevant materials before it proceeded to conduct the said selection in clear violation of the procedure prescribed for such selection. The manner and method as adopted by the said Selection Committee for conduct of the said selection in question has caused mis-carriage of justice and has adversely affected the service career of the Applicant. It may be mentioned here that the Selection Committee had departed from the procedure prescribed only with the view to deprive the applicant of his dues.

4.19 That the Applicant states that the final accepted remarks as reflected in his ACRs for the years 1998-2002 more specifically in the ACRs for the year 2000, 2001 and 2002 have been so recorded basing upon the remarks in the relevant columns as given by the officers involved in writing of the same. The gradings as reflected in the ACRs of the Applicant have been so arrived that basing on the remarks as recorded and the gradings are fully justified.

4.20 That under the law the selection committee has to consider the eligible officers "on an overall assessment of their service records" and the said duty mandates the selection committee to take into account all relevant records forwarded to it by the State Government. The State of Nagaland in the instant case

having forwarded the service records of the eligible officers upto the year 2002 and the said selection committee having sat for considering the merits of the officers on 17.12.03, it was incumbent on it to consider the available service records for the year 2002 and by ignoring the same the selection committee not only violated the provisions of Regulation 5(4) of the regulations but also failed to take into account relevant materials which has vitiated the selection process as well as the subsequent impugned appointment of the Respondents No. 6 and 7.

4.21 That the Applicant states that in the facts and circumstances of the case it is a fit case wherein Your Lordships would be pleased to pass an interim direction as has been prayed for failing which the Applicant would suffer irreparable loss and injury. Further the illegality as committed by the said Selection Committee in recommending the name of the private Respondents without, however, considering relevant materials would be continued with.

4.22. That in the event of Your Lordships being pleased to pass an interim direction as has been prayed for, the balance of convenience would be maintained in favour of the Applicant inasmuch as the Selection Committee having not taken into consideration the relevant and vital ACR for the year 2002, the whole

selection process has been vitiated and the recommendations as made in favour of the private Respondents are ab-initio void and cannot stand the scrutiny of law.

4.23 That perusal of the earlier selection proceedings will indicate that the selection committees used to take into account the ACR's of the year preceding the year in question and the applicant seeks a direction from the Hon'ble Tribunal on the Respondents to produce the proceedings of the selection committee meeting held on 21.12.95 for the vacancies indentified for the year 1994-95 in respect of the Nagaland cadre of IAS. The said example is only illustrative and not exhaustive.

4.24. That the Applicant states that immediately on coming to learn about publication of the select list and the consequent promotion of the private Respondents against the two available vacancies for the year 2003, he preferred representations highlighting therein the illegality committed by the Selection Committee, the said representation is yet to be disposed of. The Respondent authorities on receipt of the said representation ought to have taken into consideration the contentions as advanced therein and taken steps for redressal of the grievances of the Applicant by holding a review selection, by taking into consideration the ACRs of the officers in the zone of consideration for

the year 2002. The Respondent authorities inspite of being made aware of the illegality committed by the said Selection Committee in making the said selection, have sat over the matter and allowed the illegality to be continued.

4.25 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 said Selection Committee having conducted the selection in clear violation of the procedure prescribed for such selection and having made recommendations ignoring relevant and vital materials, the whole selection process has been vitiated and the same is liable to be set aside and quashed.

5.3 For that the Selection Committee was required to conduct the selection by taking into consideration the ACRs of the officers in the zone of consideration for the years 1998-2002 inasmuch as the relevant date for ascertaining the eligibility of the officers in the zone of consideration being 1.1.2003. The

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action/inaction on the part of the Selection Committee, in ignoring the ACRs of the officers in the zone of consideration, for the year 2002 has vitiated the selection process. The recommendations made in pursuance to such vitiated selection process are ab initio void and liable to be set aside and quashed.

5.4 For that the selection committee overlooked relevant materials and took into account irrevalant consideration which has resulted in non-application of mind to very relevant materials and as such the impugned process of selection is vitiated and the consequential recommendations and appointment of the Respondents No.6 and 7 are liable to be set aside and quashed.

5.5 For that the fact that the ACRs of the officer in the Nagaland Civil Service are being written on a calendar year basis being noticed by the Selection Committee and the relevant ACRs upto the year 2002 having been furnished to it, the Selection Committee could not have ignored the ACRs of the officers in the zone of consideration for the year 2002 and proceed to conduct the selection by ignoring this vital aspect of the matter.

5.6 For that the arbitrary and illegal action on the part of the Selection Committee in proceeding to conduct the said selection by ignoring the vital and

relevant ACR for the year 2002 has adversely affected the service career of the Applicant and he has been deprived of his due and legitimate promotion to the IAS cadre of Nagaland.

5.7 For that the Applicant having brought to the notice of the Respondent authorities the illegality committed by the said Selection Committee in conducting the said selection by ignoring the vital and relevant ACR for the year 2002, the Respondent authorities ought not to have acted upon the recommendations of the said Selection Committee and ought to have taken steps for holding of a review selection, by removing the illegalities as is available in the selection in question.

5.8 For that the illegal action on the part of the selection committee in conducting the selection by ignoring the ACR's of the officers in the zone of consideration, has resulted in improper consideration and as such the recommendations of the selection committee and the consequential actions taken in pursuance thereof are ab-initio void and liable to be set aside and quashed.

5.9 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 :

8.1 To set aside and quash the recommendation of the Selection Committee constituted for considering the cases of eligible officers of the Nagaland Civil Service for promotion to the IAS cadre of Nagaland for the year 2003.

8.2 To set aside and quash the communication dated 19.4.2004(Annexure-3) and the select list and all other follow up actions taken in pursuance to the recommendation of the said Selection Committee, including the notification (Annexure-4) issued towards appointing the Respondents No. 6 and 7 to the IAS cadre of Nagaland by way of promotion.

8.3. To direct the Respondent authorities to hold review selection for the vacancies for the year 2003 and to consider the cases of the officers in the zone of consideration by taking into account the ACRs for the years 1998-2002.

8.4 Cost of the application.

8.5 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 pass the following interim directions:

9.1 To call for the minutes of the meeting of the said Selection Committee held on 17.12.2003 along with the minutes of the proceedings of the Selection Committees constituted in respect of the IAS cadre of Nagaland for the previous years.

9.2 To stay the effect and operation of the Notifications dated 19.4.2004 (Annexure-3 and 4). 9.3 To direct the Respondents to produce all the relevant records including the minutes of the selection committee proceedings for the year 1994-95 as mentioned in paragraph 4.23.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 20 G. 114143
- ii) Date : 1. 9. 04.
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

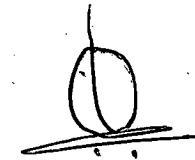
As stated in the Index.

Verification...

VERIFICATION

I, Sri C.R. Lotha, aged about 54 years, son of Late Chothungo, resident of Para-Medical, Nagaland. I do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4.1, 4.2, 4.3 to 4.7, 4.9 (Partly) h 4.10, 4.11, 4.12, 4.13, 4.22, 4.24 and 5 to 12 are true to my knowledge ; those made in paragraphs 4.8, 4.9 (Partly) h 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 23rd day of August, 2004.



DEPONENT

NOTIFIED IN PART II, SECTION 2, OF THE
GAZETTE OF INDIA - PAPER GAZETTE OF INDIA, 1997.

F.N.C. 14015/2/26-A/97-A
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi, the first day of January, 1997.

Notification

G.S.R. 732 (F) - In exercise of the powers conferred by section 3 of the All India Services Act, 1951 (41 of 1951), the Central Government after consultation with the State Governments concerned and the Union Public Service Commission hereinafter makes the following regulations further to amend the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, namely:-

1. (1) These Regulations may be called the Indian Administrative Service (Appointment by Promotion) Amendment Regulations, 1997.

(2) They shall come into force on the first day of January, 1998. 1.1.98

2. In the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the principal regulations), in regulation 2, in sub-regulation (1), for clause (1), the following clause shall be substituted, namely:-

"(1) 'year' means the period commencing on the first day of January and ending on the thirty first day of December of the same year." 11

3. In regulation 5 of the principal regulations,

(i) for sub-regulation (1), the following sub-regulation shall be substituted, namely:-

"(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission." 11
1/3/98

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when,

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of the recruitment rules.

Attested
Anu. for
Advocate.

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(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of the recruitment rules; or

(c) the Commission, on its own or on a proposal made by either the Central Government or the State Government, after considering the facts and circumstances of each case, decides that it is not practicable to hold a meeting of the Committee to make the selection to prepare a select list.

Explanation.— In the case of joint cadres, a separate select list shall be prepared in respect of each State Civil Service.”;

(ii) in sub-regulation (2), and in sub-regulation (3) or the word “April”, wherever it occurs, the word “January” shall be substituted;

(iii) in sub-regulation (3), for the first proviso the following proviso shall be substituted, namely:-

“Provided that a member of the State Civil Service whose name appears in the select list in force immediately before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included provisionally in the select list shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile, attained the age of fifty four years.”;

(iv) after sub-regulation (3), the following sub-regulation shall be inserted, namely:-

“(3A) The Committee shall not consider the case of such member of the State Civil Service who had been included in an earlier select list and —

(a) had expressed his unwillingness for appointment to the Service under regulation 9;

Provided that he shall be considered for inclusion in the select list, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered for appointment to the Service;

(b) was not appointed to the Service by the Central Government under regulation 10.”;

(v) sub-regulation (6) shall be omitted

4. In regulation 7 of the principal regulations. —

(i) for sub-regulation (2), the following sub-regulation shall be substituted, namely:-

“(2). If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State

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Ann. 1/12 Advocate

Government and the Central Government of the concerned State proposed and after taking into account the comments, if any, of the State Government and the Central Government, may approve the list finally with or without modification, if any, as may, in its opinion, be just and proper.";

(ii) for sub-regulation (4), the following substitution shall be substituted, namely:-

"(4) The select list shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or up to sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as "unconditional", to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.

Provided further that in the event of a new service or services being formed by enlarging the existing State Civil Service or otherwise being approved by the Central Government as the state civil service under clause (j) of sub-regulation 1) of regulation 2, the select list in force at the time of such approval shall continue to be in force until a new list prepared under regulation 5 in respect of the members of the new State Civil Service, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2).";

(iii) sub-regulation (5) shall be omitted.

5. Regulation 8 of the principal regulations shall be omitted.

6. In regulation 9 of the principal regulations, -

(i) for sub-regulation (1), the following regulation shall be substituted, namely:-

"(1) Appointment of a member of the State Civil Service, who has expressed his willingness to be appointed to the Service, shall be made by the Central Government in the order in which the names of the members of the State Civil Service appear in the select list for the time being in force during the period when the select list remains in force:

*Certified by
A. S. A. S.
A. S. A. S.*

Provided that the appointment of members of the state civil service shall be made in accordance with the agreement arrived at under clause (b) of sub-rule (3) of rule 8 of the recruitment rules in the order in which the names of the members of the state civil service occur in the relevant parts of the select list for the time being in force:

Provided further that the appointment of an officer, whose name has been included or desired to be included in the select list provisionally under the proviso to sub-regulation (5) of regulation 1 or under the proviso to sub-regulation (3) of regulation 7, as the case may be, shall be made within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) of regulation 7:

Provided also that in case a select list officer has expressed his unwillingness for appointment to the Service, he shall have no claim for appointment to the Service from that select list unless he informs the Central Government, through the State Government before the expiry of the validity period of the select list, revoking his earlier expression of unwillingness for appointment to the service."

(ii) sub-regulation (2) shall be omitted.

7. In regulation 10 of the principal regulations, the words "or the recommendations made by the State Government concerned under regulation 9(1)" shall be omitted.

8. Regulation 11 of the principal regulations shall be omitted.

Sd/-

(ARVIND VARMA)
Secretary to the Government of India
[File No. 14015/52/96-AIS(I)-A]

Foot Note:- The Principal Rules were notified vide Notification No. 14/1/54-AIS(II) dated 6.6.1955 and amended vide Notification Nos:-

1.	13/21/56-AIS(III)-C	dated 28.02.1958
2.	13/10/57-AIS(III)-C	dated 29.07.1958
3.	05/02/60-AIS(I)	dated 29.07.1960
4.	27/48/64-AIS(III)	dated 14.12.1964
5.	27/28/64-AIS(III)-A	dated 06.11.1965
6.	14/02/65-AIS(III)	dated 07.02.1966
7.	27/42/64-AIS(III)-A	dated 31.03.1967
8.	13/03/67-AIS(III)	dated 29.12.1967
9.	17/05/68-AIS(III)	dated 24.05.1969
10.	17/19/68-AIS(III)-A	dated 02.06.1969
11.	16/06/68-AIS(III)-A	dated 04.12.1969
12.	16/01/68-AIS(III)-A	dated 08.04.1970
13.	15/05/70-AIS(III)-A	dated 20.09.1971
14.	13/04/71-AIS(I)	dated 11.01.1972
15.	01/01/72-AIS(I)	dated 12.10.1972
16.	11/01/72-AIS(I)-A	dated 22.05.1973
17.	11/02/73-AIS(I)-C	dated 12.09.1973

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Advocate

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18. 11/01/73-AIS(I)-C dated 19.02.1974
19. 11/02/72-AIS(I) dated 21.06.1974
20. 11/03/9/02/75-AIS(I) dated 30.12.1975
21. 11/03/9/02/76-AIS(I)-A dated 20.04.1976
22. 11/03/9/06/75-AIS(I) dated 30.06.1976
23. 11/03/9/07/76-AIS(III) dated 09.11.1976
24. 11/03/9/06/76-AIS(I)-A dated 03.06.1977
25. 11/03/9/21/76-AIS(I) dated 01.06.1978
26. 11/03/9/01/78-AIS(I)-A dated 01.06.1978
27. 11/03/9/01/78-AIS(I) dated 30.06.1978
28. 28/01/3/20/76-AIS(I)-A dated 05.11.1979
29. 11/03/9/04/84-AIS(I) dated 21.11.1984
30. 11/03/9/03/84-AIS(I) dated 21.11.1984
31. 11/03/9/01/87-AIS(I) dated 15.09.1987
32. 11/03/9/02/87-AIS(I) dated 15.09.1987
33. 14/01/5/39/87-AIS(I) dated 02.12.1983
34. 13/01/3/01/89-AIS(I) dated 24.01.1989
35. 14/01/5/04/88-AIS(I) dated 30.03.1989
36. 14/01/5/04/88-AIS(I) dated 01.03.1989
37. 11/03/9/01/89-AIS(I) dated 29.12.1989
38. 14/01/5/45/89-AIS(I)-A dated 07.12.1990
39. 14/01/5/39/92-AIS(I) dated 28.06.1993
40. 14/01/5/33/95-AIS(I) dated 14.07.1995
41. 14/01/5/8/95-AIS(I) dated 02.11.1995
42. 14/01/5/37/97-AIS(I) dated 14.08.1997

R. Vaidyanathan

(R. VAIDYANATHAN)
Desk Officer

To

The Manager,
Government of India Press,
Mayapuri, Ring Road,
New Delhi.

F.No.14015/52/96-AIS(I)-A

Dated the 1st January, 1998.

Copy forwarded for information to:

1. The Chief Secretaries of all the State Governments.
2. The Secretary, Union Public Service Commission, New Delhi with 25 spare copies.
3. Lok Sabha Secretariat (Committee Branch).
4. Rajya Sabha Secretariat (Committee Branch).
5. The Comptroller & Auditor General of India, New Delhi.
6. Ministry of Environment & Forests, Paryavaran Bhawan, CGO Complex, New Delhi (IFS Division) with 5 spare copies.

R. Vaidyanathan

(R. VAIDYANATHAN)
Desk Officer

AIS(III)/AIS(II) Sections with 10 spare cop's.

200 spare copies. *COPY*

14/01/5/37/97-AIS(I)

GOVERNMENT OF NAGALAND
 DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
 (PERSONNEL 'A' BRANCH)

STATEMENT OF ACR GRADING FROM 1998 TO 2002 (FIVE YEARS)

Sl.No	Name	1998	1999	2000	2001	2002	Remarks
1.	Shri M. Yanthan	G/VG	G	VG	VG/VG	VG	
2.	Shri K. Tokugha Sukhalu	VG/OS	OS	OS	VG/VG	VG/OS	
3.	Shri T. Cholongse Sangtam	VG	OS/VG	VG	VG/VG	NA	
4.	Shri Imkongtemsu Ao	VG	VG/VG	VG	NA	VG	
5.	Shri Zhaleo Rio	VG	VG	VG	VG	VG	
6.	Shri I. Meyilemba Ao	VG	VG	VG	VG	VG/VG	Not eligible due to overage
7.	Shri C.R. Lotha	VG	VG	OS	OS	OS	

NOTE

OS = Outstanding.

VG = Very Good.

G = Good.

NA = Not Available.

Sd/- (V.N. GAUR)
 Principal Secy to the Govt. of Nagaland

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

No. 14015/16/2003-AIS(1)-A

Government of India

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

19 APR 2004

New Delhi, April, 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 for the year 2003 for Nagaland Cadre containing the names of the following State Civil Service officers of the State of Nagaland prepared by the Selection Committee in its meetings held on 17th December, 2003 towards filling up 02 (two) vacancies for the year 2003 in the Indian Administrative Service, Nagaland Cadre -

SELECT LIST 2003

<u>S.No.</u>	<u>Name of the officer (S/Shri)</u>	<u>Date of Birth</u>
1.	M. YANTHAN (ST)	01.09.1949
2.	K. TOKUGHA SUKHALU (ST)	04.03.1954


(K.K. Sharma)
Desk Officer

To

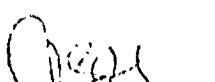
The Manager
Government of India Press
FARIDABAD (HARYANA).

19 APR 2004

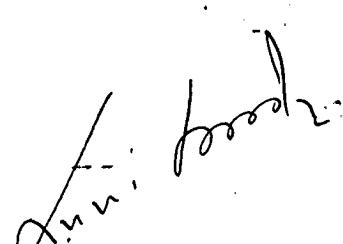
No.14015/16/2003-AIS(1)-A

New Delhi, the April, 2004.

1. The Chief Secretary, Government of Nagaland, Kohima, with 2 spare copies for onward transmission to the officers concerned.
2. The Secretary, Union Public Service Commission, Dholpur House, New Delhi (Sh. Manjit Kumar, Under Secretary).


(K.K. Sharma)
Desk Officer

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





(भारत के राजापत्र के भ.ग.। खंड-2 में प्रकाशित)

मंग्या - 14/01/15/16/2003 - अ.गा. रो (II-6)

भारत-सरकार

कार्मिक, लोक रक्षायत और प्रेरण मंत्रालय

(कार्मिक और प्रशिक्षण-प्रियांग)

गई दिनी, दिनांक 17/01/2003

अधिसूचना

भारतीय प्रशासनिक सेवा (पदोन्नति द्वारा गियुक्ति) विनियम, 1955 के अधिनियम 7 के उप विनियम (3) में विहित उपवंधों के अनुसार, संघ लोक सेवा अधिकारी, भारतीय प्रशासनिक सेवा के नागालैंड संघर्ग में वर्ष, 2003 के रानी में 2 (२) रिक्तियाँ भरने हेतु चयन समिति द्वारा 17 दिसम्बर, 2003 को आयोजित अपनी दैनिक में तैयार की गई नागालैंड राज्य सिविल सेवा के निम्नलिखित अधिकारियों के नामों वाली, वर्ष 2003 की प्रवर सूची को अनुमं देत कर दिया है :-

प्रवर सूची - 2003

क्रम सं.	अधिकारी का नाम (रार्च श्री)	जन्म तिथि
1.	एम. यनथन (अनु.ज.आ.)	01.09.1949
2.	के. तोकुधा सुखालु (अनु. ज.आ.)	04.03.1954

(के. के. शर्मा)
डेस्क अधिकारी

रोपा में,

प्रबंधक,
गारत सरकार मुद्रणालय,
फरीदाबाद (हरियाणा)।

Certified to be true copy
Adarsh

- 31 -

ANNEXURE - 4

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

No. 14015/16/2003-AIS(I)-B

Government of India

Ministry of Personnel, Public Grievances & Pensions

(Department of Personnel & Training)

19 APR 2004

New Delhi, April, 2004.

NOTIFICATION

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 M. YANTHAN (ST) and K. TOKUGHA SUKHALU (ST), members of the State Civil Service of Nagaland Cadre to the Indian Administrative Service against the vacancies of the year 2003 on probation with immediate effect until further orders and to allocate them to the Nagaland Cadre, under sub-rule (1) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954:-

Okay
(K.K. Sharma)
Desk Officer

To

The Manager
Government of India Press
FARIDABAD (HARYANA).

19 APR 2004

New Delhi, the April, 2004.

No. 14015/16/2003-AIS(I)-B

1. The Chief Secretary, Government of Nagaland, with 2 spare copies or onward transmission to the officers concerned.
2. The Secretary, Union Public Service Commission, Dholpur House, New Delhi (Sh. Manjit Kumar, Under Secretary).
3. The Accountant General, Nagaland, Kohima.
4. E.O. to the Government of India, New Delhi.

Okay
(K.K. Sharma)
Desk Officer

Internal Distribution: Under Secretary (S.IV)RO (CM)/D.S. (S-III)/10 Spare Copies.

Okay → *Rs. 23. (PA)* *7/12/04 (PA)*
W.D. *2004*
Certified to be true copy
Amritpal Singh *Amritpal Singh*

To

The Chief Secretary,
to the Govt. of Nagaland,
Kohima.

Subject: Representation relating to Induction by Promotion into IAS during 2003 for the State Civil Service Officers of Nagaland and matter thereof.

Sir,

With due respect and honour, I beg to submit this representation for favour of your kind consideration and necessary action.

That Sir, my name had also been included in the panel of the State Civil Service Officers from Nagaland for consideration for induction into the IAS by promotion during 2003. In this connection, may I place before your honour my humble submission to say that with determination and high hope, right from the joining of my service (Nagaland Civil Service) way back in 1977 and with special reference to the last five preceding years, I have been trying to render my service to the best of my ability wholeheartedly with commitment and dedication which can be borne out well by my service records available with the Government. However, I have been very much disheartened and discouraged to know and confirm that inspite of my outstanding merit of yearly ACRs during the last five immediate preceding Calendar Years (1998/1999/2000/2001/2002) which was expected to be taken into account for consideration for induction into IAS by promotion during 2003 since Government of Nagaland had adopted and taken the Calendar Year for writing yearly ACR for the State Civil Service Officers unlike the IAS Officers whose ACRs are written on Financial Year basis, the Selection Committee had not considered my case by avoiding/leaving out the most relevant, crucial and latest yearly ACR for the Calendar Year of 2002.

In this connection, it is pertinent to mention that the Government of India had shifted the cut off date and year for ascertaining the vacancy position of IAS for induction by promotion of the State Civil Service Officers from 1st April to 1st January of every year making the Calendar Year from 1st January upto 31st December as the basis/period for the purpose under reference. Hence, the decision and recommendation of the Selection Committee meeting held on 17-12-03 for promotion of the State Civil Service Officers to the IAS cadre of Nagaland during the year 2003 by considering the five Calendar Year ACRs from 1997 upto 2001 only by leaving out the latest yearly ACR for the Calendar Year of 2002, is found to be not logical, rational and justified. In this regard, the following relevant and pertinent points/reasons may kindly be looked into and examined once again for reconsideration of my case for induction into the IAS by promotion: -

Contd./-

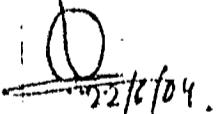
Copy
Certified to be true
Advocate
Anil

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1. It is a fact that the provision for induction into IAS by promotion is basically and exclusively meant for the State Civil Service Officers of the concerned State only. Hence, it is fitting, proper and rational to assess and consider the ACRs of the State Civil Service Officers based on the adopted Calendar Yearly period and pattern of writing ACRs which have been in existence and in practice upto date prior to the induction. Therefore, the Calendar Yearly ACRs for the last five preceding Calendar Years (1998/1999/2000/2001/2002) should have been assessed and taken into account and consideration, however, unfortunately, this was not done. On the other hand, the yearly ACR for one solid latest Calendar Year of 2002 was completely left out and not considered by the Selection Committee although the State Government is reported to have furnished the ACRs of the State Civil Service Officers for the last five preceding years, i.e. 1998 to 2002. Instead, the Selection Committee had considered the ACRs for the Calendar Year from 1997 to 2001 only.
2. It is also a fact that cut off date and year to ascertain the vacancy position of IAS for filling up through induction by promotion for the State Civil Service Officers for the year 2003 was clearly fixed on 01-01-2003 as per the decision of the Government of India as stated above. This clearly and automatically implies and confirms that the period (year) for induction into IAS by promotion for State Civil Service Officers is from 01-01-2003 upto 31-12-2003 which means the Calendar Year of 2003. Hence, the ACR of 2002 Calendar Year for the State Civil Service Officers should have been very crucial, relevant and important to be taken into consideration. Therefore, the decision of the Selection Committee of not considering the latest immediate preceding one solid Calendar Yearly ACR of 2002 was not justified because it clearly reveals/indicates that the latest service records/performance of the State Civil Service Officers, (whether deserving or not deserving) were being treated/taken to be not relevant and important for inducting into the IAS by promotion.

Basing on the relevant and pertinent points/reasons given above, I would, once again, appeal to your kind authority to look into my grievances and reconsider my case by taking into account the latest ACR of 2002 and take favorable action under the provision of the induction into the IAS by promotion for the State Civil Service Officers for which I shall ever remain grateful to you and continue to render my committed and dedicated service to the Government. However, if this genuine representation is not considered as prayed for, may I be allowed to get my grievances redressed through any appropriate/competent authority.

Yours faithfully,


22/7/04.
(C.R. Lotha)

Addl. Secy to the Govt. of Nagaland, (E&S).

&
Director,
Nagaland State Lotteries,
Kohima.

Received
10/23/04
to
Chairman
Nagaland Lotteries

10/23/04
Chairman
Nagaland Lotteries
Kohima
10/23/04

Office of the Chairman
Nagaland State Lotteries
Kohima

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

OA. No. 199 of 2004

C. R. LOTH

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

REPLY STATEMENT ON BEHALF OF UNION PUBLIC SERVICE COMMISSION, RESPONDENT No. 3 AND 4

I, Manjit Kumar, S/o Shri Bujha Ram, serving as Under Secretary in the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi am authorised to file the present reply statement on behalf of Respondent No. 3 and 4. The Deponent is also fully acquainted with the facts of the case as gathered from the records and deposed below:

2. That the deponent has read and understood the contents of the above application and in reply he submits as under:
3. That the Union Public Service Commission being a Constitutional Body under Articles 315 to 323 part XIV (Service under the Union and the States) Chapter II of the Constitution, discharge their functions, duties and Constitutional obligations assigned to them under Article 320 of the Constitution of India. Further, by virtue of the provisions made in the All India Service Act, 1951, separate Recruitment Rules have been framed for the IAS/IPS/IFS. In pursuance of these Rules, the IAS (Appointment by Promotion) Regulations 1955 Promotion Regulations, in short) have been made. The Selection Committee (constituted in accordance with the provisions of the Promotion Regulations, presided over by the Hon'ble Chairman/Member of the Union Public Service Commission makes selection of State Civil Service (SCS, in short) officers for appointment by promotion to the Indian Administrative Service in accordance with the provisions of the Promotion Regulations. Regulation 3 of the Promotion Regulations provides for a Selection Committee consisting of the Chairman of the Union Public Service Commission or where the Chairman is unable to attend, any other Member of the Union Public Service Commission representing it.

1205
1 A. DEB RON/SC
Sr. C. S. C
A. T. Guwahati Bench

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4. Thus in the discharge of their Constitutional obligations, the Union Public Service Commission take a final decision on the recommendations of the Selection Committee after duly considering the views and opinion of the State Govt. and the Govt. of India. The selections are done in a fair and objective manner on the basis of relevant records and following the relevant Rules and Regulations.

CONTENTIONS OF THE APPLICANT

5. The Applicant in the instant OA has mainly contended as under:

- (i) That the Selection Committee which met on 17.12.2003 to prepare the Select List of 2003 for promotion to the IAS of Nagaland cadre, was required to take into consideration the ACRs of the officers in the zone of consideration for the years 1998 to 2002 as the crucial date for the Select List of 2003 is 01.01.2003. However, the Selection Committee considered the ACRs upto 2001 only leaving out the ACRs of 2002. As per Regulations the Selection Committee has to grade the eligible officers "on the basis of an overall assessment of their service records" which mandates the Selection Committee to take into account all relevant records forwarded to it by the State Govt. The action of Selection Committee ignoring the ACR of eligible officers for the year 2002 has vitiated the selection process is thus liable to be set aside.
- (ii) That on earlier occasions when the Select Lists (for example the Select List of 1994-95 prepared on 27.12.1995) were prepared on the financial year basis, the Selection Committee considered the ACRs upto the year preceding the year in question.

(iii) That the Applicant has been graded as "Outstanding" in his ACRs for the years 2000, 2001 and 2002. Had the Selection Committee considered the ACRs of eligible officers upto the year 2002, the Applicant would have been graded as "Outstanding", and as such due to higher merit than the private Respondents 6 & 7, he would have been recommended for promotion to the IAS. The illegality committed by the Selection Committee has deprived the Applicant of his due promotion to the IAS Cadre.

6. FACTUAL POSITION OF THE CASE

6.1 The deponent humbly submits that a Meeting of the Selection Committee for preparation of Select List of 2003 for promotion of State Civil Service officers to the IAS cadre of Nagaland was held on 17.12.2003 for 02 existing vacancies in the promotion quota, as determined by the Govt. of India (Dept. of Personnel & Training). As per the provisions of Regulation 5(2) of the Promotion Regulation the zone of consideration was determined as 06. The name of the Applicant was considered at Sr. No. 6 and on an over all relative assessment of his service records, as provided by the State Govt., the Selection Committee assessed him as 'Very Good'. The Respondent Nos. 6 & 7 viz. S/Sh. M. Yanthan and K.T. Sukhalu were considered at Sl. No.1 and 2 respectively of the eligibility list, and were also graded as "Very Good" by the Selection Committee. On the basis of this assessment the petitioner's name could not be included in the Select List of 2003 due to statutory limit on the size of the Select List, as the Respondent Nos. 6 & 7 were included in the Select List by virtue of being senior to the petitioners. On receipt of observations of the Central Govt., (Dept. of Personnel & Training) and the State Govt. of Nagaland under Regulation 6A and 6 respectively, the Commission approved the Select List of 2003 on 15.04.2004. The officers included in the Select List have since been appointed to the IAS by the Govt. of India (DOP&T), vide their Notification dated 19.04.2004.

6.2 Aggrieved by non-inclusion of name of the Applicant in the IAS Select List of Nagaland for 2003, the instant OA has been filed.

7. REPLY TO THE CONTENTIONS

7.1.1 Regarding the contention made in para 5(i) above, the Deponent submits that the Selection Committee, as per the uniform procedure followed in

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the Union Public Service Commission, examines the service records of each of the eligible officers, with special reference to their performance during the years preceding the years for which the Select List is being prepared, deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then, after a detailed deliberation and discussion, arrives at a classification assigned to each officer. While doing so, the Selection Committee also reviews and determines the overall grading recorded in the CRs to ensure that the overall grading in the CRs is not inconsistent with the grading/remarks under various specific parameters or attributes. The Selection Committee takes into account orders regarding appreciation for the meritorious work done by the officers concerned and also keeps in view orders awarding penalties or any adverse remarks duly communicated to the officer, which, even after due consideration of his representation by suitable forum are not expunged.

7.1.2 It is respectfully submitted that the Committee undertakes the detailed exercise enumerated above with a view to ensure fairness and objectivity, in the selections. Regulation 5(4) prescribes that the Selection Committee will classify the officers into four different categories i.e., 'Outstanding' 'Very Good', 'Good' and 'Unfit', as the case may be, on an overall relative assessment of his service records. It is solely the domain of the Selection Committee manned and presided over by competent and able members to devise norms and yardsticks for evaluation of the ACRs. Such norms are uniformly applied to all States/Cadres for induction into the All India Services. The Selection Committee is, as per Regulations, presided over by Chairman or a Member of the Union Public Service Commission and has due representation of the officers of the Central and State Govt. who have adequate expertise in the matter.

7.1.3 As per the uniform practice followed by the Commission in promotions to the All India Services of various State/UT Cadres, the Selection Committee is required to go through the ACRs of each of the eligible officers with special reference to the ACRs written during the last five years (preceding the year of the Select List). As per the provisions of the IAS (Appointment by Promotion) ~~Regulations, 1955, as amended on 31.12.1997, the crucial date for determining the~~ eligibility list of the SCS officers for inclusion in the respective Select List is 1st January of the year [Regulation 5(2) refers]. The number of substantive

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vacancies available on the 1st day of January of the year is determined by the Govt. of India (DOPT). The Selection Committee Meeting for preparation of the Select List can be held at any time during the calendar year i.e. between 1st January to 31st December of the Select List year. The Promotion Regulation have been further amended on 25.07.2000 to provide for preparation of year-wise Select List where the Selection Committee Meetings could not be convened during the previous years

7.1.4 It is humbly submitted that with a view to make assessment of officers in the zone of consideration in terms of the statutory provisions of the IAS Promotion Regulations, the Selection Committee takes into consideration the service records of the officers with special reference to the ACRs of the five years preceding the year of Select List. As the crucial date for determining the eligibility for the respective Select List is 1st January, the ACRs ending on 31st March of the year preceding the year of Select List are taken into consideration by the Selection Committee in cases where the ACRs are written on a financial year-wise basis. Thus, for preparation of the Select List of the calendar year 2003, for any State/cadre, the ACRs upto the year 2001-02, i.e. **ending on 31st March, 2002 are considered, ignoring the assessment for the 9 months period (01.04.2002 to 31.12.2002) as the ACRs are to be examined in totality** and it would be infeasible to convene the Selection Committee Meeting and make assessment on the basis of a part ACR. This nine months period is included in the ACR for the year 2002-03, which also includes assessment for the period 01.01.2003 to 31.03.2003, which is beyond the crucial date for preparing the Select List of 2003 and hence beyond the scope of consideration.

7.1.5 However, where the ACRs are written on a calendar-year basis, as in the case of Nagaland and Meghalaya, the ACRs ending on the 31st December of the just preceding year are not taken into consideration as these ACRs are not generally written/available as on 1st January of the Select List year and also such an ACR would include an assessment for extra 9 months period (April to December), which is not available in case of ACRs written on a financial year-wise. It is thus evident that the assessment period in such cases vis-a-vis cases where ACRs are written financial year-wise differs only to the extent of three months which is negligible. As such, with a view to maintaining uniformity with

financial year-wise assessment, the ACRs written calendar year-wise ending on 31st December of the financial year preceding the year of the Select List are taken into account. For the sake of clarity, the position regarding the assessment of ACRs has been tabulated below:-

Select List year	Crucial date	Latest ACRs considered (written financial year-wise)	Latest ACRs considered (written calendar year wise)	Remarks
2003	01.01.2003	2001-02	2001	Thus the calendar year-wise ACRs reflect the assessment for effectively 9 months in the reference year as compared to an ACR written on a financial year basis.
2004	01.01.2004	2002-03	2002	- do -

As such, the ACRs upto the year 2001 are taken into consideration for preparation of the Select List of 2003 for promotion to the All India Service in States like Nagaland and Meghalaya where ACRs are written on a calendar year basis. This procedure of consideration of service records thus ensures uniformity between States where ACRs written on financial year basis and State where they are written on calendar year basis. Further, for the Select List of 2003, ACRs of every candidate in the zone were considered only upto December, 2001 for making an overall relative assessments under Regulation 5 (4).

7.1.6 The Commission's practice of assessment of ACRs for the preceding five years has been upheld by various courts. The Hon'ble CAT, Cuttack Bench have held in their judgment in the OA No.261/1995 (Bijaha Kumar Dhal vs. State of Orissa and Union of India & Others) as under:-

"As regards the emphasis given by the Selection Committee on the CRs for the last five years, this cannot be found fault with because five years is a long enough period in the service record of an officer who has come within the zone of consideration and who has some more years to go before superannuation with or without promotion to IAS. To consider suitability of the officer no doubt the entire service record has to be seen, but the last five years service record should be the guiding consideration because if the

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earlier record is good and in the preceding five years record of the officer is indifferent, then obviously he cannot be considered for inclusion in the Select List by virtue of his earlier record which may be good. As a matter of fact, even after inclusion of an officer in the Select List a 'non-deterioration certificate' is to be given before he is appointed by the President of India, to Indian Administrative Service. This is laid down in the proviso to sub-regulation (5) of Regulation 5 of the 1955 Regulations.

It is, therefore, clear that the CRs for the immediately preceding five years are to be given greater importance and there is nothing wrong on the part of the Selection Committee to consider the service record of the officer with special reference to the CRs for the preceding five years."

7.1.7 The deponent humbly submits that for preparation of the Select List of 2003, the Selection Committee met on 17.12.2003. The Committee noted that for preparation of the Select List of 2003, the ACRs of officers up to the year 2001-2002 are taken into consideration, as the crucial date of the eligibility is 01-01-2003. However, in respect of Nagaland, the ACRs are written on calendar year basis. Accordingly the Committee examined the service records of eligible officers up to the year 2001 and on an overall relative assessment of their service records, assessed the officers in the zone of consideration.

7.1.8 In view of the submissions made above, the deponent humbly submits that the assessments have been made by the Selection Committee strictly as per the provisions of IAS Promotion Regulations and the uniform practice followed by the Commission in respect of promotion to the All India Services. The contention of the applicant that the Selection Committee shall take into account all relevant records forwarded to it by the State Govt. is misleading and due to the Applicant's ignorance of the factual position and hence not tenable.

7.2 As regards the contention in para 5(ii) above, it is submitted that prior to amendments dated 31.12.1997 in Promotion Regulations, the Select Lists were required to be prepared on financial year basis with the crucial date for determining the eligibility as on 1st April of the year of Select List. As the vacancies to be taken into account for preparation of the Select List included the substantive vacancies anticipated in the course of the period of 12 months

commending from the date of preparation of the Select List, the Selection Committee Meetings were usually held in the month of March of the financial year of the Select List. In most of the States, the ACRs are maintained on financial year basis. Thus, for preparation of Select List for promotion to All India Services, the ACRs up-to the year preceding the year of Select List were taken into consideration by the Selection Committee. For the State of Nagaland, the Selection Committee, which met on 25.03.1995 and reconvened on 21.12.1995 prepared the Select List of 1994-95 for promotion to the IAS Cadre. For the Select List of 1994-95, the ACRs upto the year 1993-94 were required to be considered by the Selection Committee. The Committee noted that **the ACRs in the State of Nagaland were written on calendar year basis and that there was no separate part ACR for the period January 1994 to March 1994.** As such, the Selection Committee considered the ACRs upto the year 1993 i.e. period ending 31.12.1993. This procedure is uniformly followed in similar cases to maintain parity in the selection process for promotion to All India Services in respect of various State cadre. Accordingly, the Selection Committee had considered the ACRs of eligible officers of Nagaland upto the year 1993 for preparation of Select List of 1994-95. However as submitted in reply to para 5(i) above, with the coming into force of the amendments dated 31.12.1997, the Select Lists are now prepared calendar year-wise and the practice of considering the ACRs has accordingly been modified. This contention of the applicant is, therefore, due to ignorance of facts and hence not tenable.

7.3.1 As regards the contention of the Applicant at para 5(iii) above, the Deponent submits that the Applicant is substituting his own judgement to that of the statutorily constituted high-powered Selection Committee. He is presuming that he would have been graded as "Outstanding" had the Selection Committee considered his ACRs for the year 2002 also. As submitted elsewhere, the Selection Committee is not guided merely by the overall grading that may be recorded in the ACRs but in order to ensure justice, equity and fair play makes its assessment on the basis of deep examination of service record of eligible officers, deliberating on the quality of the officer on the basis of the performance as reflected under various columns recorded by the Reporting/Reviewing officer/Accepting Authority in ACRs for different years and then finally arrives at the classification to be assigned to each eligible officer in accordance with the provisions of Promotion

Regulations. While making an overall assessment the Selection Committee takes in to account orders regarding appreciation for meritorious work done by the concerned officer. Similarly, the Selection Committee also keeps in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation have not been completely expunged.

7.3.2 The Deponent further submits that the Committee undertakes the detailed exercise enumerated above solely with a view to ensure fairness and objectivity in the selections. Regulation 5(4) of the Promotion Regulations provides that the Selection Committee will classify the officers into four different categories i.e., 'Outstanding' 'Very Good', 'Good' and 'Unfit', as the case may be, on an overall relative assessment of his service records. It is not provided in the Promotion Regulations as to how to make the assessments by the Selection Committee. Thus, it is solely the domain of the statutorily constituted Selection Committee manned and presided over by competent and able members to devise its own norms and yardsticks for evaluation of the ACRs. The Selection Committee is, as per Regulations, presided over by Chairman or a Member of the Union Public Service Commission who have got adequate expertise in the field. Each Committee adopts uniform and consistent norms or yardsticks for evaluation, which are applied to all States/Cadres to ensure uniformity in assessments. The averment of the Applicant is based on his own presumption and thus not tenable.

7.3.3 The matter relating to assessments made by the Selection Committee has been contended before the Hon'ble Supreme Court in number of cases. In the case of UPSC vs. H.L. Dev and others Hon'ble Supreme Court have held as under: -

‘How to categorise in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The jurisdiction to make the selection is vested in the Selection Committee.’

[AIR 1988 SC 1069]

7.3.4 In the case of Dalpat Abasaheb Solanke Vs. B.S. Mahajan, the Hon'ble Supreme Court have held as under:

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“It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject.

[AIR 1990 SC 434]

7.3.5 In the case of Smt. Anil Katiyar Vs. UOI & others, the Hon’ble Supreme Court have held as under:-

“Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not set in judgement over the selection made by the DPC unless the selection is assailed as being vitiated by malafides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by malafides.”

[1997 (1) SLR 153]

7.3.6 The Hon’ble Tribunal would kindly appreciate that in view of the aforementioned authoritative pronouncements of the Hon’ble Supreme Court, the assessments made by the Selection Committee constituted under Regulation 3 of the Promotion Regulations are final.

7.3.7 It is further submitted that the applicant has based his contention on a statement annexed as Annexure –2 to the OA. The statement of gradings alleged to be prepared by the State Govt indicates the gradings of the ACRs of the respective years whereas the Selection Committee makes its own assessment of the ACRs and other records after deep examination of the records and the parameters recorded in the ACRs and by applying uniform yardsticks as elaborated above. Thus, the overall gradings awarded by the Selection Committee might be at variance from the overall gradings indicated in the ACRs for the respective years. The Hon’ble Tribunal would kindly appreciate that had the Selection Committee not been vested with such powers of selection to the All

India services, there would have been no need for such a high powered Selection Committee . Thus, this contention of the applicant is not tenable.

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

9. That taking into consideration the submissions made in the preceding paragraphs and also taking into consideration the detailed reply filed by the State Government & Central Government, the Hon'ble Tribunal may be pleased to dismiss the instant OA.



DEPONENT

VERIFICATION

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

Verified this on the 25th day of November, 2004 at New Delhi.



DEPONENT

- 9 MAR 2005

गुवाहाटी बैच 13
Guwahati Bench

File by
The Applicant,
Through;
Unni Krishnan Nair 51
Advocate, 4.2.05.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

D.L.O. No. 192 DE 2004

SHRI C.R.LOTHA

... APPLICANT

- Versus -

UNION OF INDIA & ORS

... Respondents

REJOINDER ON BEHALF OF THE APPLICANT TO THE REPLY
STATEMENT FILED BY THE RESPONDENT NO. 3 AND 4

1. That I have gone through the copy of the Reply statement filed by the Respondents No.3 and 4 and I have understood the contents thereof. Save and except the statements which are specifically admitted to hereinbelow, other statements made in the reply statement are categorically denied.
2. That with regard to the statements made in paragraph 3 of the Reply statement, the applicant states that the same are matters of record and denies anything contrary to and/or inconsistent with the records of the case.
3. That with regard to the statements made in paragraph 4 of the reply statement, your applicant states that the yardstick as adopted by the Selection Committee for the purpose of selection of officers for

- 2 -

inclusion in the Select list for the year 2003 has caused prejudice to the applicant and the same has vitiated the whole selection process. The yardstick as adopted for the purpose of the selection is totally extreaneous to the cause.

4. That with regards to the statement made in paragraphs 5.1, 5.2 and 5.3 of the reply statement, your deponent states that the same are matters of records and reiterates and re-affirms the averments as made in the Original Application.

5. That with regard to the statements made in paragraphs 6(I), 6(II) of the reply statement, your deponent while reiterating and reaffirming the statements made in the OA, states that the failure on the part of the Selection Committee to take into consideration the ACR's of the officers in the zone of consideration for the year 2002 has resulted in relevant materials being ignored leading to the whole selection process being vitiated. The recommendation for appointment and consequential appointment of respondent No. 6 and 7 made in pursuance to such a vitiated selection process is null and void.

6. That with regard to the statements made in paragraph 7.1.i, the respondent 'No 3 and 4 have admitted the contentions of the applicant that for the purpose of selection for appointment by promotion to the Cadre of IAS, the Selection Committee is required to examine the service records of the each of the

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officers in the zone of consideration, with special reference to their performance during the years immediately preceding the year for which the select list is being prepared. In the case on hand the select list in question was prepared for the year 2003 and the service records of the officers in the zone of consideration with special reference to the service records for the year 1998-2002 was required to be mandatorily considered by the Selection Committee. Failure on the part of the Selection Committee to take into consideration the ACR's of the officers in the zone of consideration for the year 2002, inspite of the same being available before it, has vitiated the whole selection process. Any appointment effected in pursuance to such vitiated selection is void-ab-initio.

7. That with regard to the statement made in 7.1.2 of the reply statement, your deponent states that the same are matters of records and denies anything that is inconsistent and/or contrary to the records. It is stated that it is not open for the Selection Committee to adopt an yardstick, basing on its whims and caprices, which is unreasonable and/or does not have a nexus with the objective being sought to be achieved.

8. That with regard to the statements made in paragraph 7.1.3 the applicant states that respondent NO. 3 & 4 have admitted the fact that the Selection Committee is required to examine the ACR's of each of the eligible officers with special reference to their ACR's written during the last 5 years (preceding the

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year of the select list). The eligibility for inclusion in the select list being required to be considered as on the 1st of January of the year for which the select list is being prepared and the Selection Committee meeting being prescribed to be held between the 1st of January and 31st December of the select list year, the Selection Committee is mandatorily required to consider the ACR's of the officers in the zone of consideration upto the year preceeding the year for which the select list is being prepared, moreso in cases of officers whose ACR's are written on calender year basis. In Nagaland, the ACR's of civil service officers are written on a calender year basis and the State Government had while forwarding the names of the eligible officers for consideration of their cases for inclusion in the select list of 2003 also had forwarded the service records of the officers in the zone of consideration alongwith the ACR's for the year 1998-2002. As such it was incumbent upon the Selection Committee to take into consideration the ACR for the year 2002 while preparing the select list for the year 2003. Non-consideration of the ACR for the year 2002 has resulted in the selection being conducted by ignoring relevant materials and the same has resulted in the whole selection process being vitiated. No appointment could have been effected in pursuance to such vitiated selection process.

9 That with regard to the statements made in paragraph 7.1.4 of the reply statement your applicant states that the contention as made therein pertain to the States

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where the ACR's are written on the financial year basis. In case of States were ACR's are written on calender year basis, the stipulation "with special reference to the ACR's for the last five years" would mean the ACR written upto the 31st of December of the year preceeding the year for which the select list is being prepared . As such the last five preceeding years in connection with the select list of 2003 should be from 2002 down to 1998 (on calender Year basis and not financial year basis). The ACRs of the State Civil Service (SCS) officers of Nagaland are written on Calender Year basis and it is not understood as to why Financial Year - wise system of the other States have been enforced upon the eligible SCS officers of the Nagaland. Moreso, when the selection effected in respect of different cadres of IAS have got no nexus with each other. Selection for appointment by way of promotion to a particular cadre is restricted to the officers in the zone of consideration in the particular State to which the cadre belongs. In fact, it would be most appropriate and fitting to consider the calender Year ACRs for the eligible SCS officers of Nagaland seperately instead of clubbing or grouping them together with the SCS officers of the other States, where Financial Year system of writing ACRs are in vogue, particularly when such grouping is not permissible. Further, when the ACRs for the period 1998-2002 was very much available before the Selection Committee on the date of selection, it could not have refused to take into consideration the same. It may be stated here

that the yard stick as adopted by the selection committee is in clear violation to the amendment as effected in the IAS(Appointment by Promotion) Regulations, 1955, vide Notification dated 31.12.97(Annexure-1 to the Original Application).

10. That with regard to statement made in 7.1.5 of the reply statement, the applicant denies the same and states that the selection pertaining to a particular cadre of IAS cannot be clubbed with that of another separate and independent cadre and there is no question of maintaining uniformity with regard to State where ACR's are written on financial year basis and those where the same is written on calendar year basis. Such an analogy has been adopted only with a view to justify the illegality committed by the Selection Committee in ignoring the ACR's for the year 2002 while preparing the select list for the year 2003. Such a omission on the part of the Selection Committee, inspite of fact that the ACRs of the officers in the zone of consideration for the year 2002 was available before it, has vitiated the whole selection process. It may be stated here that Government of Nagaland had furnished to the Selection Committee the service records of the officers in the zone of consideration including their ACRs for the year 1998-2002. Further, the action/inaction of the Selection Committee in ignoring the ACRs of the officers in the zone of consideration for the year 2002 has vitiated the selection process and as such the recommendation made pursuant to such

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vitiated selection process are ab-initio void and liable to be set-aside and quashed.

In this connection, it may be clarified and stated that as far as it is known from the past last five years experience, the Selection Committee has never held its sitting before the Month of September every year which can be seen as given below :-

- a. For the year 1998, the Selection Committee met on 8th December 1998.
- b. For the year 2000, the Selection Committee met on 28th October 2000.
- c. For the year 2001, the Selection Committee met on December 2001.
- d. For the year 2002, the Selection Committee met on 5th September 2002.
- e. For the year 2003, the Selection Committee met on 17th December 2003.

11. That with regard to the statement made in the paragraph 7.1.6 the applicant begs to state that the judgement as referred to therein also prescribes that in the matter of selection for appointment to the Cadre of IAS, the ACRs for the immediately preceding 5 years are to be given greater importance, which precisely is the case of the applicant in the OA.

12. That with regard to the statement made in paragraph 7.1.7, the applicant begs to state that the Selection Committee which met on 17.12.2003 for preparation of the select list for 2003 could not have

restricted the selection to examination of the ACRs upto the year 2001. The ACR of the year 2002 having been made available by the State Government, it was not open for the Selection Committee to ignore the same.

In this connection it is stated that prior to 1997 the "Year" under the IAS (Appointment by promotion) Regulation, 1955 was prescribed as 1st of April to 31st of March and the eligibility of an officers for inclusion in the list was to be reckoned as on the 1st of April of the year for which the select list was being prepared. The ACRs of the officers was considered upto the preceeding Financial Year. For Example, for preparation of the select list for the year 1994-95 the ACRs upto the year 1993-94. were taken into consideration.

Adopting the said analogy, after 1997 with the prescription of "Year" to mean the calender year, the ACRs that is now required to be considered would be the one written upto 31st of December of the Year preceeding the year for which the select list is being prepared. Moreso, in case of States wherein the ACRs of the State Civil Service Officers are written on Calender Year basis.

13. That as regard to the statement made in paragraph 7.1.8 the applicant denies the same and reiterates and re-affirm the statements as made in the Original Application and in the forgoing paragraphs of this Rejoinder. The failure on the part of the Selection Committee to conduct the selection by applying the

yardstick as required to be applied and without taking into consideration materials relevant for the purpose has caused prejudice to the applicant and has further vitiated the selection process.

14. That with regard to the statement made in paragraph 7.2 the applicant denies the same and states that with the change of the prescription as regards "Year" with the coming into force of the Indian Administrative Service (Appointment by Promotion) Amendment Regulation, 1997, the contentions as raised in the paragraph under reply have got no force. The prescription of year in the regulations being the calendar year and the ACR's of the State Civil Service Officer of Nagaland being also written on calendar year basis, it was incumbent upon the Selection Committee to take into consideration the ACR of the officers in the zone of consideration for the purpose of inclusion into the select list of 2003, upto the year 2002 which happens to be the immediately preceding year. The contention of the Respondents about following the financial year basis for the purpose of considering the ACR's for promotion to the cadre of IAS with a view to maintain uniformity in respect of various state cadres is a misplaced one inasmuch as the promotion to the various Cadres of IAS do not have any nexus with each other and promotion to each and every Cadre of IAS is limited to the officers of the State to which the cadre of IAS is allotted. Further such a contention is in clear violation of the provisions of the Rules holding

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15. That with regard to the statements made in paragraph 7.3.1, your deponent denies the same and states that it is the case of the applicant in the Original Application, that by leaving out from consideration of the ACR of the officer in the zone of consideration, for the year 2002, the Selection Committee has ignored a very relevant aspect of the matter and this has the effect of the whole selection process being vitiated. It is further stated that it has been the consistent practice to take into account the ACR's of the immediately preceeding five years. Such a practice has been with the objective of assessing the current performance of the officer concerned. And the same is of great importance and cannot be ignored as has been done in the case on hand. The manner and method as adopted by the said Selection Committee for conduct of the said selection in question has caused mis-carriage of justice and has adversely affected the service career of the Applicant. It may be mentioned here that the Selection Committee has departed from the procedure prescribed only with the view to deprive the applicant of his dues. It may also be pertinent to mention that the ACR for the year 2002 is very crucial and important because it was reported upon by an authority not less than the then Addl. Chief Secretary to the Chief Minister of Nagaland which was subsequently/duly reviewed by the then Chief Secretary and finally accepted by the then Chief Minister of Nagaland. The remarks as made there in, have been so

made with due and proper justification.

16. That with regard to the statements made in paragraph 7.3.2 your deponent denies the same and reiterates and reaffirms the statements made in the foregoing paragraphs of this rejoinder. It is stated that, it is not open to the Selection Committee to adopt a yardstick which is extraneous to the purpose as has been done in the case on hand. The Selection Committee having overlooked relevant materials and having taken into account irrelevant considerations while preparing the select list in question, the selection process stands vitiated and the consequential recommendations have been rendered null and void.

17. That with regard to the statement made in paragraph 7.3.3, 7.3.4, 7.3.5 and 7.3.6 your deponent craves leave of this Hon'ble Court to advance legal submissions at the time of hearing of the application.

18. That with regard to the statements made in paragraph 7.3.7, your deponent denies the same and states that the Annexure-2 statement was prepared by the Government of Nagaland and was forwarded to the Selection Committee much before the Selection Committee had deliberated on the preparation of the select list in question. While the said statement indicates the final accepted gradings of the officers in the zone of consideration, it also establishes the contention of the applicant that the ACR's of the officers in the zone of consideration for the period 1998-2002 (i.e.,

the ACR's for the immediately preceding five years from the select list year) was made available to the Selection Committee, much before the date of its meeting to consider the cases of eligible officers for inclusion in the select list in question.

19. That in view of the facts and circumstances stated herein above and in the Original Application, the applicant has succeeded in making out a *prima facie* case requiring the interference of this Hon'ble Tribunal in the matter.

..... VERIFICATION/-

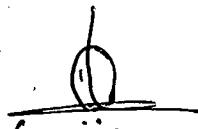
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VERIFICATION

I, Sri C.R.Lotha, aged about 54 years, son of Late Chothungo, resident of Para-medical, Nagaland, the applicant in O.A.No.199 of 2004, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 3, 4, 5, 6, 7, 8 (Partly), 9, 10, 11, 12, 13, 14, 15 and 16 of the accompanying reply statement are true to the best of my knowledge; those made in paragraphs 8 (Partly) and 18 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 28th day of February, 2005.


(C.R. LoTHA)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

27 APR 2004
GUWAHATI BENCH
Guwahati Bench
AT GUWAHATI

IN OA No. 199/2004

File No 12574/05
Advocate
Gyanu

IN THE MATTER OF:

C. R. LOTHIA

APPLICANT

Versus

UNION OF INDIA & Ors.

RESPONDENTS

Parawise Reply to Rejoinder of the Applicant, on behalf of Union Public Service Commission (Respondent No. 3 and 4)

I, G. C. Yadav, S/O Shri Kamal Singh Yadav, solemnly affirm and state that the Deponent is working as Deputy Director, in the office of Union Public Service Commission, New Delhi, and is authorised to file the present para-wise reply statement to the Rejoinder of the applicant. The answering respondent has already filed a detailed Reply Statement, which may kindly be referred to in this regard. The answering Respondent denies the assertions made by the applicant in the Rejoinder as detailed below :-

Para 1 & 2 The contents of paras 1 & 2 are formal and as such need no reply.

Para 3. In reply to para 3 of the rejoinder, the Deponent submits that the Union Public Service Commission is a Constitutional body under Articles 315 to 323 Part XIV Chapter-II of the Constitution and in discharge of their Constitutional obligations the Commission make selections of SCS officers for inclusion in the Select Lists for promotion to the IAS Cadre. The selections are done in a fair and objective manner in accordance with the rules and regulations governing the selections. The power of making assessment of the eligible officers has been upheld by the

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Hon'ble Supreme Court in its various pronouncements in the matters of **R. S. Dass versus Union of India & Others** (AIR 1987 SC 593), **Nutan Arvind Vs. UOI & Ors.** [(1996) 2 SUPREME COURT CASES 488], **Durgadevi and another Vs. State of Himachal Pradesh & Ors.** [1997-SCC(L&S)-982], **UPSC Vs. H.L. Dev and Others** [AIR 1988 SC 1069], **Madhya Pradesh Vs. Shrikant Chapekar**, [JT 1992 (5) SC 633], **Dalpat Abasaheb Solunke Vs. B.S. Mahajan** [AIR 1990 SC 434], and **Smt. Anil Katiyar Vs. UOI & Others**, [1997(1) SLR 153]. As submitted in the main Reply Statement of the Answering Respondent No. 3 and 4, the Select List of 2003 was prepared strictly in accordance with provisions of the IAS Promotion Regulations.

Para 4. The contents of Para 4 are formal and as such need no reply.

Para 5 In reply to Para-5, the Deponent respectfully submits that in the Selection process for promotion to the All India Service cadre the Selection Committee follows a uniform procedure in all the State Cadres where ACRs are maintained in calendar year basis. The Deponent reiterates the reasons for non-consideration of the ACR of the Applicant for the year 2002, as already explained in para 7.1.3 to 7.1.5 of their Reply Statement.

Para 6 to 8 In para 7.1 of Reply Statement of the Answering Respondent it has been averred that the Union Public Service Commission, examines the service records of each of the eligible officers, with special reference to their performance during the **years preceding the years** for which the Select List is being prepared and **not during the years immediately preceding the year** for which the Select List is being prepared. Thus the averment made by the Applicant is incorrect. As regards the contention of the Applicant that the Selection Committee has vitiated the Selection process for the year 2003 due to non-consideration of ACRs of the eligible officers for the year 2002 i.e. immediately preceding

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the year for which the Select List is prepared, the Deponent respectfully submits that the crucial date for determining the eligibility for the respective Select List is 1st January of the Select List year. For preparation of the Select List of the calendar year 2003, for any State, where ACRs are maintained in the financial year basis, the ACRs upto the year 2001-02, i.e. **ending on 31st March, 2002 were considered, ignoring the assessment for the 9 months period (01.04.2002 to 31.12.2002) as the ACRs are to be examined in totality.** This nine months period is included in the ACR for the year 2002-03, which also includes assessment for the period 01.01.2003 to 31.03.2003, which is beyond the crucial date for preparing the Select List of 2003 and hence beyond the scope of consideration. However, where the ACRs are written on a calendar-year basis, as in the case of the State of Nagaland, the ACRs ending on the 31st December of the just preceding year are not taken into consideration because such ACR would include an assessment for extra 9 months period (April to December), which is not available in case of ACRs written on a financial year-wise. It is thus evident that the assessment period in such cases vis-a-vis cases where ACRs are written on a financial year-wise basis differs only to the extent of three months, which is negligible. As such, **with a view to maintain uniformity with financial year-wise assessment, the ACRs written calendar year-wise ending on 31st December of the financial year immediately preceding the year of the Select List are taken into account.** Thus the assertions made by the applicants are denied.

Para 9&10 As regards the contention of the Applicant that States having ACRs written on a financial year-wise system should be grouped differently to the States like Nagaland who have a calendar year-wise system of recording ACRs, the Answering Respondent respectfully submits that such grouping has not been made arbitrarily. This has been done in order to maintain uniformity in assessment period in respect of the eligible SCS officer of all the

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State Care for their promotion to the IAS Cadre which in itself is uniform throughout the country and is distinct from DPCs where promotions take place within the same cadre. This aspect has been detailed in the reply statement of the Answering Respondent.

Para 11 As mentioned in the Reply Statement in respect of State where ACRs are written on financial year basis 9 months ACRs is being ignored and in respect of the State where ACRs are written on calendar year basis in order to maintain uniformity ACR for a period of 12 months has to be ignored because for the year 2003 the crucial date of eligibility is 01.01.2003 and on this date although the ACR for the year 2002 became due but the same was not available on the crucial date of eligibility. This procedure is uniformly followed in respect of all the States where ACRs are written on calendar year basis.

Para 12 The Answering Respondent denies the same and reiterates their averments made in para 7.2 of their Reply Statement.

Para 13 The averment in reply to para 6 to 8 above may kindly be referred to.

Para 14 In most of the States the ACRs are maintained on financial year basis and for such State Cadres prior to amendment of Promotion Regulations when the Select Lists were prepared on the financial year basis for promotion to All India Service Cadre, the Selection Committee were considering the ACRs up-to the financial year just prior to the crucial date for the Select List i.e. 01st April of financial year for which Select List is prepared. In this procedure none of the period of ACR falls beyond the crucial date. For the state of Nagaland the Selection Committee, were considering the ACRs upto the calendar year immediately preceding to the financial for which the Select List was prepared, which is short of only 03 months period vis-a-vis other states. Hence even prior to

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the amendment of Promotion Regulations the Selection Committee were adopting the procedure, which ensured the uniformity in the selection procedure in the all the State Cadre. The Select List are now prepared on a calendar year basis and the practice of considering the ACRs has accordingly been modified and this procedure is in synchronisation with provisions of the Promotion Regulations.

Para 15&16 As submitted in para 7.1.1 and 7.1.2 of the Reply the Selection Committee, as per the uniform procedure followed in the Union Public Service Commission, examines the service records of each of the eligible officers, with special reference to their performance during the years preceding the years for which the Select List is being prepared. The Selection Committee manned and presided over by competent and able members follow norms that are uniformly applied to all States/Cadres for induction into the All India Services. The Selection Committee is, as per Regulations, presided over by Chairman or a Member of the Union Public Service Commission and has due representation of the officers of the Central and State Govt. who have adequate expertise in the matter. For the Selection Committee, the service records of the eligible officer is important to arrive at the assessment assigned to the officers. The Selection Committee does not directly take into account the views of the Reporting/Reviewing or Accepting authority rather the Selection Committee after deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then, after a detailed deliberation and discussion arrives at a classification assigned to each officer. In order to maintain uniformity in assessment period in the all the State Cadre the Selection Committee took in to considerations the ACRs of all the eligible officers of Nagaland upto the year 2001 while considering them for promotion to the IAS Cadre for the year 2003. The Selection Committee applied this practice to all the

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officer in the zone of consideration. Hence the assertion of the Applicant is baseless.

Para 17 The contents of paras 17 are formal and as such need no reply.

Para 18 Submission made in para 7.3.7 of the Reply Statement are reiterated.

Para 19 The contents of paras 19 are formal and as such need no reply.

2. That taking into consideration the facts and circumstances of the case, detailed reply filed by the Answering Respondent and the Reply filed by the Central Government and the State of Nagaland, the Hon'ble Tribunal may be pleased to dismiss the Original Application as devoid of merits.



DEPONENT

VERIFICATION

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

Verified this on the 31st day of March, 2005 at New Delhi.



DEPONENT

1. 9 MAY 2001

Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH : GUWAHATI

Filed by the
Advocate : T. A.
Goutam
Dated : 5.6.2001

IN THE MATTER OF

Original application No 199/2004

Shri. C.R. Lotha

..... Applicant

-versus-

Union of India & Ors.

..... Respon-
dent.

-And-

IN THE MATTER OF

Written Statement on behalf of
Respondent No. 2 and 5 in the afore-
said application.

The written statement on behalf of
the Respondent No. 2 and 5.

MOST RESPECTFULLY BEGS TO STATES:

1. That at the outset this deponent begs to state that the application is not maintainable and liable to be rejected in as much as the matter has no merit on facts as well as in law.
2. That with regard to the statement made in paragraph 1 to 3 of the application the answering deponent have nothing to comment as these are submission made by the applicants.
3. That with regard to the statements made in paragraph 4.1 to 4.6 of the application are being matters of record.

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This answering respondent do not admit anything which are beyond record.

4. That with regard to the statements made in paragraph 4.7 of the answering respondent does not admits anything beyond records and says that the applicant cannot claim for any legitimate expectations as promotion to the cadre of IAS selection has its due process laid down under Rules.

5. That with regard to the statements made in paragraph 4.8 to 4.9 of the application the answering respondent does not admit anything which are not borne out by records. Further the answering respondents begs to state that the minutes of the Selection Committee dated 17.12.03 indicated that for preparation of select list of 2003, ACRs of State Civil Service Officers of Nagaland is different, being based on calender year and not financial year. The Committee had decided to take into account of ACRs of the Officers upto 31.12.01, since the crucial date of eligibility for preparation of select list of 2003 being 1.1.03 and the ACRs of the Officers for the calender year 2002 i.e. upto 31.12.2002 were not written and not available on 1.1.03, as such the Committee decided to take into consideration the ACRs of Officer upto 2001 i.e. 31.12.01.

6. That with regard to the statement made in paragraph 4.10 to 4.11 of the application the answering respondent begs to state that the action and procedure followed by the Selection Committee in considering the norms of the officers for promotion to the IAS cadre was done in due

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process as recorded. As such the answering respondent does not admit anything that are beyond records. Further, the averments stating that the Selection Committee had committed illegality in not conducting the selection process by applying the yardstick as per the regulation is totally denied as all the Officer ACRs upto 2001 was taken into consideration for the purpose of selection to IAS cadre of that relevant years.

7. That with regard to the statements made in paragraph 4.12 to 4.20 of the application this answering respondent admits specifically to the extent of the provision in terms of the regulation of 1955. Moreover, the answering respondent categorically begs to state that as per the Selection Committee Minutes dated 17.12.03 it is indicated that for the preparation of select list of 2003. The ACRs of the officers upto the year 2001-02 (i.e. from April 2001 to March 2002) are to be taken as per rules. However as the system of writing ACRs for the State of Nagaland is different which are being based on calendar year and not financial year.

The Committee decided to take into account the ACRs upto 31.12.2001, as the crucial date of eligibility for the preparation of select list of 2003. The ACRs of the officers upto the year 2001-2002 i.e. from April 2001 to March 2002 are to be taken as per the Rules. However, since the system of writing ACRs for the State Civil Service officers of Nagaland are based on the calendar year basis. The Selection Committee decided to take into account the

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ACR's upto 31.12.2001. Since the crucial date of eligibility for preparation of the select list of 2003 being 1.01.03 and as the ACR's for the calendar year 2002 (upto 31.12.02) were not yet written or available as on 1.1.03, the committee decided to take into consideration the ACRs of officers upto 2001 (i.e. upto 31.12.2001).

It is further stated that in fact the ACRs for the year 2002 would be written by the Reporting Officer within the first three or four months of the year 2003 and considering the time normally taken for review and acceptance the ACRs for 2002 would not be available during the appropriate time when normally the selection committee were to be held in the early part of 2003 or the later part of 2002 for the preparation of select list for 2003. Thereby the select list of 2002 could not have been take into consideration. In view of this factor, the Selection Committee took a principled decision to take into account the ACRs upto 31.12.2001. However the meeting of the Selection Committee was unduly delayed and was held towards the end of the calendar year for which the select list had to be prepared by that time. The ACR of 2002 has become available on the date of sitting of the committee i.e. 17.12.03. But if the Committee were to take into consideration the ACRs of 2002 for the preparation of select list of 2003. It might set a wrong precedent to the system and which would not be possible to be followed in the subsequent years as when the Selection Committee meets in normal (undelayed) time which should usually be the later part of the previous year or early part of the concerned year and in view of this factor the Selection Committee had taken a decision to take into account of ACRs upto

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31.12.2001 in the instant case as such all the allegations meted out in the instant application is denied in whole. Be it submitted that the Selection Committee had taken a correct, principled decision in taking into consideration of the Officer's ACR upto 2001 (31.12.2001) for preparation of Select List for 2003.

Photocopy of the Minute dated 17.12.03 of the said Selection Committee which is self-explanatory is annexed and marked as Annexure-I

8. That with regard to the statements made in paragraph 4.21 to 4.25 of the application the answering respondents does not offer any comment in as much as these are submissions made by the applicant and were based on assumption alone. Be it further stated that the applicant had served for many years at different capacities to the fullest and there is no question as to whether he will suffer irreparable loss and injury. It is also stated that all the Officers recommended for promotion to IAS cadre at the relevant time have been treated at par using the same yardstick as their ACRs were considered upto 2001.

9. That with regard to the grounds made in paragraph 5.1 to 5.9 of the application, these averments being repeated have already been replied in the aforementioned paragraph of this Written Statement. The answering deponent denied of having infringed the Applicants' right in any manner as alleged. As such this application is not tenable either in law or on facts and the application is liable to be rejected.

G. Limburg

10. That with regard to paragraph 6 and 7 of the application, those averments being submission of the applicants, this answering respondent does not admit anything as the same is based on assumptions.
11. That with regard to paragraph 8 & 9 of the application those averments being prayer of the applicant. The answering respondent says that the applicant is not entitled to relief sought for and as such liable to be rejected.
12. That this deponent respectfully submits that all the records pertaining to his Selection of the State Civil Service officers are frequently required for taking appropriate actions at appropriate time and most of his records are inter connected with one another.

It is therefore humbly prayed that filing of original record may be dispensed with by this Hon'ble Tribunal. However this deponent respectfully submits that the respondent no. 2 and 5 are willing to produce the records before this Hon'ble Tribunal as and when this Hon'ble Tribunal directs to do so.

g.lindsay

VERIFICATION

I, Sri T. Limsong aged about 54 years, son of Late. Laljapao Limsong, serving as Additional Secretary, in the department of Personnel & Administrative Reforms (Personnel 'A' Branch), Kohima do hereby verify that the contents of paragraph 1 to 12 of this written statements are true to my knowledge derived from the records which I believe to be true.

And I verify the same by putting my signature on this the 22nd day of April, at Guwahati.

T. Limsong
Deeerd

Signature

CONFIDENTIAL

U. P. S. C FILE No. 6/13/2003-AIS

Minutes of the meeting of the Selection Committee constituted under Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, to prepare a list of such members of the State Civil Service who are suitable for promotion to IAS cadre of Nagaland during the year 2003.

The Selection Committee met at Kohima on 17th December, 2003 at 1430 hrs. The following were present:-

i)	Dr.(Smt.) Prakashwati Sharma Member, Union Public Service Commission	President
ii)	Shri R. S. Pandey Chief Secretary, Govt. of Nagaland	Member
iii)	Shri V. N. Gaur Principal Secretary Govt. of Nagaland	Member
iv)	Shri Lalhuma Development Commissioner-cum-Secretary Planning and Community Development Govt. of Nagaland,	Member
v)	Shri T. N Mannen Commissioner Govt. of Nagaland	Member
vi)	Shri K.R. Kishore Chairman, Vishakhapatnam Port Trust Vishakhapatnam Govt. of India	Member

Alphonsus
17/12/03

Yaseef

Yaseef

Admitted

Patil
19/12/03
Admitted

2. The Committee were informed that the maximum number of State Civil Service Officers who may be included in the Select List is 02 (Two) against the 02(Two) existing vacancies in the Promotion quota of the State Cadre as determined by the Central Government in terms of Rule 4(2)(b) of the **IAS (Recruitment) Rules 1954** read with Regulation **5(1) of the IAS (Appointment by Promotion) Regulations, 1955.**

3. It has been brought to the notice of the Committee that no Criminal or Disciplinary proceedings are pending against any of the Members of State Civil Service who are in the zone of consideration.

4. The Committee were informed that for preparation of the Select List of 2003, the ACRs of officers up to the year 2001-2002 are taken into consideration, as the crucial date of the eligibility is 01-01-2003. However the Committee noted that, in respect of Nagaland, the ACRs are written on calendar year basis. Accordingly the Committee examined the service records of eligible officers up to the year 2001 and on an overall relative assessment of their service records, assessed them as indicated against their names in the Annexure. The Committee did not take into consideration the adverse remarks in the ACRs of the officers which have not been communicated to them while assessing their suitability.

5. On the basis of the above assessment, the Committee selected the officers whose names are mentioned below, as suitable for promotion to the Indian Administrative Service and placed them in the following order:

<u>S.No.</u>	<u>Name (S/Shri)</u>	<u>Date of Birth</u>
1.	M. Yanthan(ST)	01.09.1949
2.	K. Tokugha Sukhalu(ST)	04.03.1954

Y on 2nd and 2nd

6. The Committee were satisfied from the remarks in the confidential reports of the officers selected for inclusion in the list that there was nothing against their integrity.

V. N. Gaur
(V. N. Gaur)

R. S. Pandey
(R. S. Pandey)

Dr. Prakashwati Sharma
(Dr. Prakashwati Sharma)

K. R. Kishore
(K. R. Kishore)

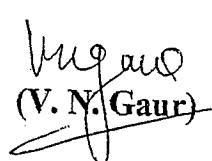
T. N. Mannen
(T. N. Mannen)

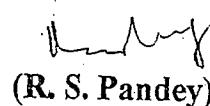
Lalhuma
(Lalhuma)

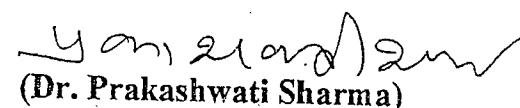
ANNEXURE
CONFIDENTIAL

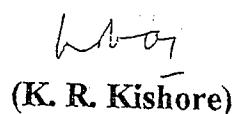
F. No. 6/13/2003-AIS

<u>S.No</u>	<u>Name of Officer (S/Shri)</u>	<u>Date of Birth</u>	<u>Overall Relative Assessment</u>
1.	M. Yanthan(ST)	01.09.1949	Very Good
2.	K. Tokugha Sukhalu(ST)	04.03.1954	Very Good
3.	T. Cholongse Sangtam(ST)	01.03.1955	Very Good
4.	Imkongtemsu Ao (ST)	01.03.1949	Very Good
5.	Žhaleo Rio (ST)	01.03.1953	Very Good
6.	C.R. Lotha (ST)	01.11.1949	Very Good


(V. N. Gaur)


(R. S. Pandey)


(Dr. Prakashwati Sharma)


(K. R. Kishore)


(T. N. Mannen)


(Lalluma)