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

6

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 84/2004
R.A/C.P No.....
E.P/M.A No.....

1. Orders Sheet..... OAPg.....1.....to.....5.....
2. Judgment/Order dtd. 18.8.05Pg. 1.....to.....9 Submitted
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... 84/2004Pg. 1.....to.....32.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W/S W.S.P. No. 1Pg. 1.....to.....16.....
8. W/S R 10829Pg. 1.....to.....6.....
9. 2nd RejoinderPg. 1.....to.....6 to 5.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Shahly
09/11/17

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

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

84/2004

In O.A.

Name of the Applicant(S) Sri Rohini Kuman Bania

Name of the Respondent(S) U.O. 1 & D/S.

Advocate for the Applicant Mr B. Bhowmik, M.Chanda, S. Nath and G.N. Chakrabarty.

Counsel for the Railway/ C.G.S.C. Assoc. W.K. Neer for Repdt-829, Govt. Advocate Assam.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

7.4.2004

Heard Mr.M.Chanda, learned counsel for the applicant. Mr.A.Deb Roy, learned Sr.C.G.S.C. for the Union of India and Mr.Y.K.Phukan, learned Sr. Govt. Advocate for the State of Assam were also present.

The O.A. is admitted. Mr.phukan prays for six weeks time to produce the record.

Prayer allowed. List the case on 27.5.2004 for production of record and further orders.

pendency of the application shall not be a bar on the respondents to consider the reliefs as prayed for.

W.K. Neer
Member (A)

This application is filed/C deposited

No. 119 378768

Dated 22/3/04

[Signature]
Dy. Registrar

NS
6/4/04

Pr. comply order, dated 7/4/04.

NS
7/4/04

Order dt. 7/4/04 and Notice prepared and sent to D/S for issuing the respondent No - 1 to 9 by regd. A/D.

NS
10/5/04

27.5.04

no call record name found by W.K. Neer on 27.5.04 & on 9.6.04

27.5.2004

Mr. U.K. Nair, learned counsel states that he has entered appearance on behalf of the respondent Nos. 8 and 9 and prayed for four weeks time to file written statement.

Mrs. M. Das, learned Govt. Advocate is also present and prayed for time to file written statement.

List on 30.6.2004 for orders.

A/D card return from resp. No. 9.

24/6/04.

13/7/04

Written statement has been filed on behalf of TAO R-1.

13/7/04.

mb

K.V. Prahladan
Member (A)

17.9.2004 present: The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman.

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

Mrs. M. Das, learned Govt. advocate, State of Assam and Mr. U.K. Nair, learned advocate for private respondent nos 8 & 9 seek four weeks time to file written statement.

Time allowed. Matter be listed on 8.11.2004.

K.V. Prahladan
Member (A)

R
Vice-Chairman

- ① W/S to R-1 filed.
- ② ~~no W/S~~ Service awaited from R.N. 2, 3, 4, 5, 6 & 7.
- ③ No reply from Pvt. Respt. read so far.
- ④ no W/S from R-2 to 7. bb

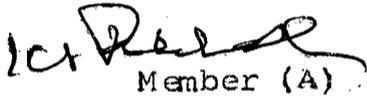
8.11.2004

Mr. M. Chanda, learned counsel for the applicant was present.

Mrs. M. Das, learned Govt. Advocate for the State of Assam and Mr. U.K. Nair, learned Advocate for the private respondents stated that written statement will be filed within ten days from today with copy to the applicant. The applicant may in case it is so desired, file affidavit in rejoinder within four weeks from the receipt of the

R

xXXXXXX

Notes of the Registry	Date	Order of the Tribunal
Contd. 8.11.2004		written statements filed by private respondents and on behalf of State of Assam. Matter be listed for hearing on 10.1.2005.
<u>6.1.05</u> W/s filed by the Respondent Nos. 8 & 9.	bb 10.01.2005	 Member  Vice-Chairman List on 21.2.2005 for hearing.
<u>7.1.05</u>	mb	
The applicant has filed the rejoinder against the written statement filed by the Respond No. 1 & 9 at flag A & B respectively.	21.2.2005	List before the next Division Bench.
mb	17.3.05.	 Member (A) Present: Hon'ble Mr. Justice, G. Sivarajan, vice-Chairman. Hon'ble Mr. K.V. Prahladan, Administrative Member.
<u>12.1.05</u> W/s filed by the Respondent No. 3.	1m	At the request of Mr. M. Chanda learned counsel for the applicant case is adjourned to 5.5.05 for hearing.
<u>21.2.05</u>	5.5.2005	On the prayer made by Mr. M. Chanda, learned counsel for the applicant the case is adjourned to 16.5.2005 for hearing.
Rejoinder filed by the applicant.	bb	 Member  Vice-Chairman

Case is ~~admitted~~

21.2.05
Hearing.

ad

• M

16.5.2005

Name of the learned counsel for applicant shown is not correct. post on 6.6.2005 with the name of the learned counsel properly.

3-6-05

① W/S filed by 1, 3, 5, 8 & 9.

② Rejoinder 2 in W/S filed.

K. P. Das
Member

K. P. Das
Vice-Chairman

bb

6.6.2005

At the request of learned counsel for the parties the case is adjourned to 20.6.2005 for hearing.

10/11

W/S and rejoinder has been filed.

Member

K. P. Das
Vice-Chairman

20.6.2005

Ms. U. Das on behalf of Mrs. M. Das, learned Govt. Advocate, State of Assam submits that she is not keeping well. Mr. M. Chanda and Mr. U. K. Nair, learned Advocates for the other parties have no objection. Post on 26.7.2005.

M
17.6.05

The case is ready for hearing.

K. P. Das
Member

K. P. Das
Vice-Chairman

bb

M
25.7.05

The case is ready for hearing.

26.7.2005

At the request of Mr. M. Chanda, learned counsel for the applicant, the case is adjourned to 2.8.05.

K. P. Das
Member.

K. P. Das
Vice-chairman

nkm

2.8.2005

At the request of Mr. S. Nath, learned counsel for the applicant the case is adjourned to 9.8.2005. The matter may be posted at the top of the list.

M
8.8.05

K. P. Das
Member

K. P. Das
Vice-Chairman

mb

9.8.2005 Heard Mr. M. Chanda, learned counsel for the applicant, Mrs. M. Das, Govt. Advocate for the State of Assam and Mr. U.K. Nair, learned counsel for the respondents No. 8 & 9. Hearing concluded. Orders reserved.

[Signature]
Member

[Signature]
Vice-Chairman

bb

18.8.2005 Judgment delivered in open Court, kept in separate sheets. The application is dismissed. No order as to costs.

[Signature]
Member

[Signature]
Vice-Chairman

mb

[Handwritten note]
25/8/08
ADD. CGSC

26.8.05

[Handwritten note]
Copy of the Judgt
has been sent to the
D/Sec. for receipt
due to the applicant
as well as to the
Govt. Advocate, Assam
and to Mr U.K Nair,
Adv. for Repd Nos
8 & 9.
[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH.

O.A. No. 84 of 2004.

DATE OF DECISION: 18-8-05

Shri Rohini Kumar Bania, IPS

APPLICANT(S)

Shri B.Banerjee, M.Chanda

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Others

RESPONDENT(S)

Shri M.U.Ahmed, Addl.C.G.S.C. for R 1 & 2
Mrs M.Das for respondents 3,5,6 & 7
Shri U.K.Nair for respondents 8 & 9

ADVOCATE FOR THE
RESPONDENT(S)

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

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

- NO
- KA
- BMS
1. Whether Reporters of local papers may be allowed to see the judgments?
 2. To be referred to the Reporter or not?
 3. Whether their Lordships wish to see the fair copy of the judgment?
 4. Whether the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,

Original Application No. 84 of 2004.

Date of order: This the 18th day of August 2005.

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

Shri Rohini Kumar Bania, IPS
Superintendent of Police,
Vigilance and Anti Corruption, Assam,
R.G. Baruah Road, Geneshguri,
Guwahati - 781005.

... Applicant

By Advocate Mr B. Banerjee & M. Chanda

- Versus -

1. The Union of India,
Through the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi.
2. The Union Public Service Commission,
Represented by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi .
3. The Chief Secretary,
Government of Assam,
Dispur, Guwahati - 781006.
4. The Chief Secretary,
Government of Meghalaya,
Shillong.
5. The Commissioner & Secretary,
to the Govt. of Assam, Personnel Department,
Dispur, Guwahati-6, Assam.
6. The Director General of Police,
Assam, Ulubari, Guwahati-7.
7. The Inspector General of Police,
Assam, Ulubari, Guwahati-7.
8. Shri Amarendra Rajkumar,
AIGP(T), APHQ, Ulubari,
Guwahati-7.

9. Shri Paresh Chandra Neog,
Commandant, 10th A.P.Bn,
Kahilipara, Guwahati.

...Respondents

By Mr M.U.Ahmed, Addl.C.G.S.C for respondents No.1 & 2
Mrs M. Das, Govt. Advocate for respondents No.3, 5, 6 &
7 and Mr U.K.Nair for respondents No.8 & 9.

ORDER

K. V. PRAHLADAN, MEMBER (A)

The applicant was selected as a Deputy Superintendent of Police (Probationer) on the basis of an examination conducted by the Assam Public Service Commission (APSC) in the year 1974-75. The list of successful candidates were published in the Assam Gazettee dated 10.12.75. The list also included the names of Private respondents No. 8 and 9. The applicant was confirmed in the junior scale of the Assam Police Service vide their notification of 27.4.82 (Annexure-3). The applicant was confirmed on 19.10.80 and private respondents No.8 and 9 on 1.1.81 and 29.7.81 respectively. The Government of Assam vide notification on 7.5.85, Annexure-4 promoted the applicant alongwith the Private respondents to the Senior Scale of Assam Police Service. The applicant claims that the clause "inter-se-seniority of the above named officers in the Senior Scale will be as per gradation in the select list from which they are promoted", was inserted for the first time. This clause was not inserted when Shri B.R.Das, a scheduled caste candidate got accelerated

promotion over general category candidates. In case of the applicant the above mentioned clause denied him consideration of nomination of his name to the cadre of Indian Police Service, which was discriminatory and violation of Article 14 of the Constitution. The applicant claims that he was placed above the Private Respondents in the select list of 7.5.85. Only insertion of the clause regarding inter-se-seniority has resulted in serious necessary consequences upon his career. The insertion on the position of inter-se-seniority is contrary to the rules of the Government of Assam at that relevant point of time. The applicant has stated that he was confirmed earlier than the Private Respondents and at that relevant point of time confirmation was linked to seniority and therefore the applicant should have been treated as senior to Private Respondents.

2. The applicant claims that the names of Private Respondents 8 and 9 were sent by the State Government to the UPSC and, they were promoted to the Indian Police Service Cadre with effect from 29.12.95. They were allotted seniority of 1989 in IPS. The name of the applicant was neither sent nor therefore considered alongwith Private Respondents No.8 and 9 for promotion to the IPS and this resulted in a hostile discrimination against him. Though the applicant and the Private Respondents belonged to the same batch, the

low

case of the applicant was ignored in violation of the Indian Police Service Regulations 1955.

3. The applicant has claimed that the Government of Assam has in their notification No.HMA154/2002/9 dated 11.4.2002 laid down rules for fixation of seniority of reserved candidates vis-à-vis general candidates in promotional posts to be having retrospective effect from 17.6.95. The applicant was not given benefit of the OM dated 12.3.2002. The applicant claims that on the basis of OM No.20011/1/2001 Est(D) dated 21.1.2002 issued by the Ministry of Personnel, Government of India, which was effective from 17.6.95 his seniority should have been refixed over Private Respondents No.8 and 9.

4. The applicant has among other things prayed for quashing the order of Government of Assam dated 20.11.2003 (Annexure-16), striking down the clause relating to inter-se-seniority in the order of 7.5.85 (Annexure-4), setting aside and quashing the promotion and the year of allotment of Private Respondents No.8 and 9 to the IPS, and the applicant be deemed to have been promoted to the IPS when the Private Respondents No.8 and 9 were promoted to the IPS, the year of allotment to be the same as that of Private Respondents No.8 and 9 and fixing of his seniority above Private Respondents No.8 and 9 with all consequential benefits.

OWD

5. The Respondent No.1, Union Public Service Commission has explained the procedure for selection of State Police Service to the IPS. The selection committee consisting of the Central, State Government and the UPSC assesses each officer on the basis of merit-cum-seniority and assigns appropriate grading to each of them. On the basis of grading and vacancies available, the committee finalises the list of officers for inclusion in the select list. On further observations of the State and Central Governments on the recommendations of the Selection Committee, they approve what becomes the Select List. The respondents has stated that the Government of Assam had intimated two substantive vacancies and two wait listed for unforeseen vacancies. In the select list prepared by the selection committee on the basis of grading respondent No.8 was placed first, respondent No.9 was placed second and the applicant was placed fourth in the select list. Since there were only two substantive vacancies, respondents No.8 and 9 were approved for inclusion in the select list for 1994-95. The applicant was therefore not selected. There were no further proposals for appointment of officers from the select list of 1994-95 so the applicant could not be appointed on the basis of the select list of 1994-95. However, the applicant was included in the select list for 1995-96 and was appointed for promotion to the IPS by

low

Government of India notification dated 19.3.99. The applicant was given 1990 as year of allotment to the IPS. Private Respondents 8 and 9 claim that they were placed above the applicant in the list of 3.12.75. Their seniority was maintained on their confirmation as per rule 18(5) of Assam Police Service Rules 1966. They also claim that seniority determined in 1985 cannot be reopened now and is barred by limitation. They also say that there is no reservation for promotion from State Police Service to the IPS. The Private respondents No.8 and 9 claim that benefit of the OM of 12.3.2002 (Annexure-14) being effective from 17.6.95 cannot be used to reopen inter-se-seniority fixed in 1986 in the State Cadre.

6. Respondents No.3 and 5 representing the State of Assam say that promotion to IPS is on the basis of merit-cum-seniority and rules on reservation does not apply here. Promotion of Shri B.R.Das ahead of general candidates was because, on the basis of roster, he was promoted to APS and ahead of general candidates vide order dated 25.9.2000. The Respondents No.3 and 5 also claim that the promotion of the applicant to the APS Senior Grade II preceded the effective date of implementation of 85th Constitutional amendment and hence he was not eligible for consequential seniority.

bu

7. Heard both the learned counsel for applicant and learned counsel for Respondents. The applicant has

claimed maintenance of seniority on the basis of the list of 7.6.85 without consideration for inter-se-seniority on the basis of list of 3.12.75. He has also claimed seniority over private respondents No.8 and 9 on the basis of being confirmed first as per order of 27.4.82 (Annexure-3). He has also claimed the benefits of the Ministry of Personnel order of 21.1.2002 (Annexure-13).

8. As far as seniority on the basis of the list of 7.6.85, the applicant has not enclosed any official document to support his claim. In so far as confirmation before Private Respondents No.8 and 9 under Assam Police Service Rules 1986, Rule 18(5) says :

"If the confirmation of a member of the service is delayed on account of his failure to qualify for such confirmation, he shall lose his position in the order of seniority vis-à-vis such of his juniors as may be confirmed earlier than he. His original position shall, however, be restored on his confirmation subsequently but any benefits of promotion, etc., shall not accrue to him with retrospective effect on such confirmation."

Therefore, the contention of the applicant for seniority over Private Respondents No.8 and 9 on the basis of earlier confirmation at the Junior Scale of APS is not based on any supporting official documents. In fact Rule 18(5) cited above effectively rebuts any such claim on the part of the applicant. His claim for back dated seniority with effect from 17.6.95 on the

bud

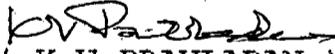
basis of the Ministry of Personnel OM of 21.1.2002 (Annexure-13) does not help his case as his seniority was fixed by the various orders issued by the Government of Assam dated 3.12.75 (Annexure-1), 7.5.85 (Annexure-4) and the gradation list updated upto 1985 (Annexure-5) and gradation list corrected upto 1.10.86 (Annexure-6). In all these Government notifications Private Respondents No.8 and 9 were placed senior to the applicant. All these Government orders are not amenable to the provisions of the Ministry of Personnel order cited above where claim for seniority is effective from 17.6.95. The applicant's seniority in the State Police Service was fixed as far back as 1975, 1985 and 1986. A reference to the Apex Court judgment in B.S.Bajwa and another vs. State of Punjab and others, (AIR 1999 SC 1510) seems most appropriate:

"The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made by B.S.Bajwa and B.D.Kapoor only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter-se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage the others were promoted before B.S.Bajwa and B.D.Kapoor and this position was known to B.S.Bajwa and B.D.Kapoor right from the beginning as found by the Division Bench itself. It is well settled that in

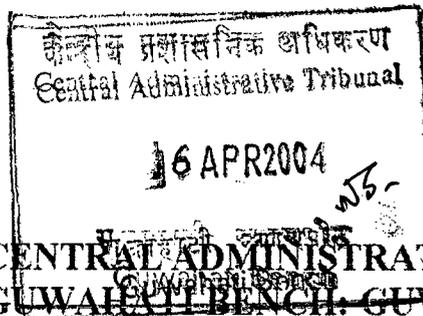
6/2

service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

9. The applicant cannot also claim for selection to IPS since there is no provision for reservation here. The Ministry of Personnel order cited above also will not help the applicant. Considering all the above facts and especially the judgment of the Apex Court cited above, we are of the view that the applicant has no serious as well as legitimate claim for promotion to the IPS as claimed by him. The O.A. is therefore liable to be dismissed and is therefore dismissed. No order as to costs.


 (K.V. PRAHLADAN)
 ADMINISTRATIVE MEMBER


 (G.SIVARAJAN)
 VICE CHAIRMAN



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

O.A. No. 84 /2004

Sri Rohini Kumar Bania.

-VS-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 10.12.1975- Applicant was selected to the post of Deputy Superintendent of Police (Probationary) in the combined examination held during the year 1974-75 by the Assam Public Service Commission. (Annexure-1)
- 03.01.1976- Applicant was appointed to the Assam Police Service in pursuant to the Home Department's letter dated 3.1.76.
- 20.01.1976- Appointment letter dated 20.01.76 issued to the applicant. In the said letter the applicant was directed to join in the Police Training College at Dergoan and accordingly he joined on 06.02.76. (Annexure-2)
- 27.04.1982- Respondents issued a notification confirming the applicant in the Junior scale of APS. (Annexure-3)
- 07.05.1985- Official respondents issued a notification wherein the applicant along with private respondents were temporarily promoted to the senior scale of Assam Police Service. (Annexure-4)
- 1985- In the gradation list updated upto 1985 of APS Officers, the name of the applicant

appeared at serial No.29, however the name of the private respondents No.8 and 9 appeared at serial No.24 and 27 respectively.

(Anenxure-5)

01.10.1986- In the gradation list corrected upto 1st October, 1986 but no change was effected in the gradation list as required under the rule, so far position of the applicant is concerned. (Annexure-6)

14.12.1988- Applicant submitted a representation for non-consideration of his promotion to the cadre of APS Grade I alongwith respondent Nos. 8 and 9, which was duly forwarded by the IGP (SB). (Annexure-7A)

19.12.1995- Batch of the applicant including respondent Nos. 8 and 9 were promoted to the cadre of Indian Police Service w.e.f 29.12.95 but the name of the present applicant was excluded. Respondent Nos. 8 and 9 were promoted to the cadre of IPS and the year of allotment was given from the year 1989 resulting in hostile discrimination with the applicant though he was similarly situated and he deserves consideration being a member of Schedule Caste Community.

16.12.1998- Applicant was promoted from APS Senior Grade-II to Grade I vide notification No. MHA 266/94/42 dated 16.12.1998 issued by the Govt. of Assam, Home (A) Department. (Annexure-7)

18.03.1999- Govt. of India, Ministry of Home Affairs issued a notification dated 18.3.99 appointing the applicant along with other two members to the Indian Police Service on probation and allocating them in the joint cadre of Assam- Meghalay. (Annexure-9)

- 10.03.1999- Applicant joined in the cadre of IPS and he was further promoted to the junior Administrative Grade of IPS w.e.f 1.1.99.
- 04.01.2002- Parliament has amendment the Constitution (Eighty Fifth Amendment) Act, 2001 by which there is an insertion of Article 16 of the Constitution in Clause (4A). (Annexure-12)
- 11.04.2002- The Govt. of Assam, Home (A) Department issued a notification No. MHA 154/2002/9 dated 11.04.02 publishing the provisional gradation list of APS Senior Grade-II officers as reviewed as per O.M No. ABP 59/96/163 dated 12.03.02 of Personnel (B) Dept. Govt. of Assam.
- 04.05.2002- Applicant submitted a representation ✓ objecting the seniority position assigned by the respondents in the APS Grade I but to no result. (Annexure-8)
- 21.01.2002- Govt. of India issued an O.M determining the seniority of SC/ST Govt. servants on promotion by virtue of rule of reservation/roster. (Annexure-13)
- 12.03.2002- Govt. of Assam, Department of Personnel issued an O.M in the light of the O.M dated 21.01.2002, wherein instruction issued under O.M dated 12.06.96 had been withdrawn. (Annexure-14)
- 10.06.2003- Applicant submitted a representation to the ✓ respondent No.5 praying for consideration of his case in the light of O.M dated 12.3.02. (Annexure-15)
- 20.11.2003- Govt. of Assam, Home (A) Department rejected the claim of the applicant for restoration of his seniority. (Annexure-16)

PRAYERS

Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the impugned order /communication being No. HMA> 420/2003/29 dated Dispur, the 20th Nov/2003 issued by the Joint Secretary to the Government of Assam, Home (A) Department be set aside and quashed.
2. That the insertion of clause that "inter-se-seniority of the above named officers in the Sr. Scale will be as per gradation in the select list from which they are promoted" in the notification dated 07.05.1985 be strike down as the said clause was not made applicable to one Shri B.R.Das, a schedule caste candidates.
3. That the promotion of the private respondents to the cadre of Indian Police Service and their seniority fixed and the year of allotment be set aside and quashed being violative of the provisions of Regulations 1955 and 1954 of the Indian Police Service (Appointment by promotion) and recruitment rules 1954.
4. That the applicant shall be deemed to have been promoted to the cadre of Indian Police Service when the private respondent nos. 8 and 9 were promoted to the cadre of Indian Police Service and the year of allotment be fixed with them and the seniority be fixed over the private respondents nos. 8 and 9 with all consequential benefits.

5. That the benefit that has been accrued under the amendment Act of 2001 in respect of Article 16(4-A) which provides promotion with consequential seniority be given to the applicant with all consequential benefits.

6. That the Constitutional Amendment and the benefit subsequent thereto vide office memorandum dated 21.01.2002 and 12.03.2003 be provided to the applicant restoring the seniority over all the private Respondents with retrospective effect along with consequential benefit.

7. That the Constitutional Amendment and in pursuant to the office memorandum dated 21.01.2002 and 12.03.2002, the benefit of reservation and the roster point be maintained and given to the applicant in the cadre of Indian Police Service.

8. Costs of the application.

9. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to make an observations that pending of this application shall not be a bar for the official respondents to consider the claim of the applicant as has been prayed for in this application.

22
Filed by me applicant
through:- Subrata Nath
Advocate
Sukh.
6.4.04

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

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

Title of the case : O. A. No 84 /2004
Shri Rohini Kumar Bania. : Applicant
- Versus -
Union of India & Others : Respondents.

INDEX

SL. No.	Annexure	Particulars	Page No.
01.	----	Application	1-28
02.	----	Verification	-29-
03.	1	Copy of the result published on 10.12.1975.	- 30 -
04.	2	Copy of the appointment letter dated 20.01.76.	-31 -
05.	3	Copy of the notification dated 27.04.1982	-32-
06.	4	Copy of the notification dated 07.05.1985.	33-37
07.	5	Copy of the gradation list upto 1985.	38-39
08.	6	Copy of the gradation list corrected upto 1.10.86.	40-41
09.	7	Copy of the notification dated 16.12.1998.	42-43
10.	7A	Copy of the representation dated 19.12.88	44-45
11.	8	Copy of the representation dated 04.05.2002.	-46 -
12.	9	Copy of the notification dated 18.03.1999.	-47-
13.	10	Copy of the notification dated 23.03.1999	48-49
14.	11	Copy of the notification dated 24.06.1999.	50-51
15.	12	Copy of the amendment published on 04.01.02.	52-54
16.	13	Copy of the office memorandum dated 21.02.02.	55-56
17.	14	Copy of the office memorandum dated 12.03.02	57-58
18.	15	Copy of the of the representation dated 10.06.03.	59-62
19.	16	Copy of the impugned order dated 20.11.03.	-63-
20.	17 (Series)	Copies of certificate and recommendations	64- 82

Date: 06.04.04

Filed by
Subrata Nath
Advocate

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

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

O. A. No. 84 /2004

BETWEEN

Shri Rohini Kumar Bania, IPS.
Superintendent of Police,
Vigilance and Anticorruption, Assam.
R.G. Baruah Road, Ganeshguri,
Guwahati- 781005.

...Applicant.

-AND-

1. The Union of India,
Through the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi.
2. The Union Public Service Commission,
Represented by its Chairman,
Dholpur House,
Shahjahan Road.
New Delhi.
3. The Chief Secretary,
Government of Assam,
Dispur,
Guwahati- 781006.
4. The Chief Secretary,
Government of Meghalaya,
Shillong.
5. The Commissioner & Secretary,

Rohini Kumar Bania

to the Govt. of Assam, Personnel Department,
Dispur, Guwahati-6, Assam.

6. The Director General of Police,
Assam, Ulubari, Guwahati- 7.
7. The Inspector General of Police,
Assam, Ulubari, Guwahati-7.
8. Shri Amarendra Rajkumar.
AIGP (T), APHQ, Ulubari,
Guwahati- 7.
9. Shri Paresh Chandra Neog.
Commandant, 10th A.P.Bn,
Kahilipara, Guwahati.

... Respondents.

DETAILS OF THE APPLICATION

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

This application is made against the impugned order dated 20.11.2003 issued by the Joint Secretary to the Govt. of Assam, Home (A) Department, Dispur, denying the restoration of seniority in the cadre of Indian Police Service over the respondents by holding that the Office Memorandum dated 12.03.2003 issued by personnel (B) department has no bearing in determining the seniority of the applicant thereby denying benefit of Article 16 (4-A) of Constitution of India and Office

Rohini Kumar Banerjee

Memorandum bearing No. ABP. 59/96/163 dated Dispur the 12th March, 2002 issued by the Commissioner and Secretary to the Govt. of Assam personnel department and the Office Memorandum dated 21.10.2002 issued by the Govt. of India, Ministry of Personnel and Training and hence approaches this Hon'ble Tribunal seeking justice in the matter of determining the seniority between applicant vis-à-vis the Respondents No. 8 to 9 by setting aside the impugned order dated 20.11.2003 issued by the Joint Secretary to Govt. of Assam, Home (A) Department, Dispur, praying for re-fixation of seniority over the Private Respondents with all consequential benefits.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1 That the applicant is a citizen of India and at present is a resident of Guwahati in District of Kamrup and as such he is entitled to get the protection against any arbitrary and illegal decision in the matter of consideration of his case for nomination being a

Robin Kumar Banerjee

Schedule Cast candidate in the cadre of Indian Police Service when the case of Private Respondent were taken up in the year 1995 though the applicant was similarly situated resulting in arbitrary discrimination in the matter of nomination and the allotment of promotion in the cadre of Indian Police Service of Assam segment of joint Assam-Meghalaya cadre.

- 4.2 That the applicant along with the private respondent were selected to the post of Deputy Superintendent of Police (Probationary) in the combined examination held during the year 1974-75 by the Assam Public Service Commission (hereinafter referred to as APSC) and accordingly the applicant was appointed to the Assam Police Service in pursuant to the Home Department's letter dated 03.01.1976. In the said appointment letter the applicant was directed to join in the Police Training College at Dergoan and accordingly he joined on 06.02.1976.

It may be pertinent to mention that the APSC had published a select list in order of preference wherein the name of the applicant vis-à-vis the private respondents had appeared at serial no. 4,8 and 10 respectively.

Copies of result published on 10.12.1975 and the appointment letter dated 20.01.1976 are annexed hereto as Annexure-1 & 2 respectively to this application.

Rishini Kumar Banerjee

4.3 That the applicant along with the private respondents were appointed in different districts of Assam on completion of training as provided under the service rules. The applicant had served in different districts with different designation during the period from 1976 to 1984. The official respondents considering his service rendered including his seniority and dedication as police officer issued a notification confirming him in the junior scale of APS with effect from the dates noted against each vide notification dated 27.04.1982. The said notification would show that he was confirmed earlier to the Respondent nos. 8 and 9.

The applicant craves leave of the Hon'ble Tribunal to direct the Respondents officials produce the confirmation letter of other respondents in order to determine claim of the applicant for nomination in the cadre of Indian Police service.

A Copy of the notification-dated 27.04.1982 is annexed hereto as Annexure-3 to this application.

4.4 That the applicant states that the official Respondents had issued a notification dated 07.05.1985 wherein he along with Private respondents were temporarily promoted to the Senior scale of Assam Police Service. In the notification a clause had been inserted for the first time which reads has follows:

“Inter-se-seniority of the above named officers in the senior scale will be as per gradation in the select list from which they are promoted”

T. Shri. Kames Barua

The said clause was not even subsequently inserted in case of one Shri B.R. Das, a Schedule Caste candidate got his nomination maintaining the roster as required under the law and he has been declared as senior over general category candidates. In case of the applicant the said clause debarred him to get his case considered for nomination to the cadre of Indian Police service, which is discriminating, and violative of Article 14 of the Constitution of India.

The aforesaid arbitrary decision regarding assignment of seniority in the cadre of senior scale of APS has resulted serious necessary consequences upon the service carrier of the applicant. Be it stated that the promotion order in the senior scale of APS issued under notification dated 07.05.1985, placing them in order of merit as per the position of the selection of the selection list of APS senior scale. Applicant being a member S.C community entitled to consequential seniority in the cadre of APS Senior scale. Be it stated that applicant placed above the Respondent no. 8 and 9 in the promotion order dated 07.05.1985 in terms of the select list.

But the change regarding the position of inter-seniority is incorporated in the said order is contrary to the permissible rules of the Govt. of Assam at the relevant point of time, in the instant case of the applicants.

A Copy of the notification-dated 07.05.1985 is annexed hereto as Annexure-4 to this application.

Rohini Kumar Banerjee

4.5. That it is stated that it is also not very clear from the stand of the respondent how they have computed or determined seniority in the APS Grade. In this connection it may be stated that the applicant was confirmed in service earlier than Respondent No.8 and 9 and at the relevant point of time confirmation was linked for the purpose of determining seniority, as such the applicant ought to have been treated as senior than Private Respondents both in the Junior grade of APS and Senior scale of APS grade, but the respondents ignored this aspect, while fixing seniority of the applicant in the cadre of APS, as such action of the respondents is in violation of statutory rule and also in violation of Article 14 of the Indian Constitution.

4.6 That the applicant states that he along with the Private Respondents were holding the post of Additional Superintendent of Police vide notification dated 07.05.1985 and the insertion of the illegal and discriminatory clause fixing the seniority in the feeder cadre of Deputy Superintendent of Police as per notification dated 3rd December, 1975 stipulates the appointment of deputy Superintendent of police in order of preference and hence it did not determine the inter-se-seniority of the incumbents, more so when the applicant was confirmed earlier than the Private respondents and on the basis of the select list dated 03.12.1975, the determination of Seniority without adhering to the roster point reserved for S.C candidate

Rohini Kumar Banerjee

is arbitrary and non-est in the eye of law and the said clause is required to be read-down in the facts and circumstances of the case.

- 4.7 That it is stated that in the gradation list updated up to 1985 of APS officers, wherein the name of the applicant appeared at serial no.29 however name of the private respondent no. 8 and 9 appeared at serial no. 24 and 27 respectively. But surprisingly even after the promotion of the applicant to the senior scale of Assam Police Service the seniority position of the applicant again shown in the gradation list corrected upto 1st October 1986, same as before without effecting any change in the position of the gradation list as required under the rule. It is relevant to mention here that since the applicant have been promoted to the next higher cadre i.e. senior scale of APS along with others and as per select list when his position was assigned at serial No.3 as per merit list in the promotion order as such his seniority ought to have been assigned thereafter above the Respondent No. 8 and 9. But in the gradation list of 1986 the seniority position is shown as before, placing him below the respondent No.8 and 9 as because in the order of promotion dated 07.05.1985 an arbitrary clause was incorporated to the effect that seniority position should be governed in the senior scale as per gradation in the select list from which they were promoted, whereas such clause never incorporated in any other case of promotion of the

Tushar Kumar Barua

similarly circumstanced APS officials and more particularly in the case of Sri Binoy Das, APS Officer of Assam, Meghalaya and thereby applicant is being matted out with hostile discrimination and the said action of the Respondents Union Of India is in violation of Article 14 of the Constitution of India.

Extract of the gradation list updated upto 1985 and gradation list corrected up to 1st October 1986 are enclosed herewith and marked as Annexure-5 and 6 respectively.

- 4.8 That the applicant states that he along with the private respondents belong to joint cadre of Assam and Meghalaya. They are guided and regulated by the provisions of the Indian Police Service (Appointment by Promotion) Regulations 1955. Regulation 2(i) of the regulations deals with State Police Service. Regulation 2(i)(ii) deals with the eligibility criteria. Regulation 5 provides for preparation of a list of suitable officers. Regulation 5 (i) provides that each committee shall prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the service. The select list shall determine the number of substantive vacancies as on 1st day of January of the year. Regulation 5 (ii) provides for inclusion in the list names of members of the State Police Service in order of seniority in that service of a member which is equal to three- times the number referred to in sub-regulation (i). The provision to Regulation 5 (2)

Tushar Kumar Barua

empowers the committee to include the name of a member of State Police Service if he is holding a substantive post and have completed more than 8 years of continuous service in the post of Deputy Superintendent of Police, Regulation 3.4 empowers the committee to classify the eligible officers as "outstanding", "very good" and "good" and order of names inter-se as within each category shall be in the order of their seniority in the State Police Service, Regulation 6 provides for consultation with the Commission. Regulation 7 provides for select list, Regulation 9 provides for appointment to the service from the select list. Rules 9 of the Indian Police Service (Recruitment) Rules 1954 provides for Recruitment by promotion. The applicant craves leaves of the Hon'ble Tribunal to refer the relevant provision of the Regulation and the Rules relevant for the purpose of determining the case.

4.9 That the applicant states that he was holding the post of Additional Superintendent of Police in the year 1985 along with private respondents and completed more than 8 years of service as Deputy Superintendent of Police and he belongs to Schedule Caste community. But the State Govt. had sent the names of Respondents 8, 9 and others for promotion to the post of Indian Police Service without adhering the Regulations 5 of the Regulations 1995 violating all the Provisions and Regulation resulting in promotion under Rule 9 of the Rules 1954 resulting in deprivation of recruitment by

T. Shri. Kumar Bania

promotion to the cadre of Indian Police Service though he was equally eligible and qualified for consideration of promotion along with the aforesaid Respondent Nos. 8 and 9 and others.

4.10 That the applicant states that the case of Respondent Nos.8 and 9 were taken up by the Commission without adhering to Regulation 5 of Regulation 1955 and they were promoted to the cadre of Indian Police Service in the year 1995 and year of allotment was given from the year 1989 resulting in non-consideration of his case violating the provisions of Regulations and Rules and as such their Promotion and Seniority are to be fixed showing the applicant as senior to the Private Respondents and/or set aside their promotion being violative of Article 14 of the Constitution of India.

4.11 That the applicant states that his batch viz, Respondent Nos. 8 and 9 sent to the Commission for recruitment by promoting to the cadre of Indian Police Service in the year 1995 w.e.f 29.12.1995 by excluding the name of the applicant and they were promoted to the cadre of IPS and the year of allotment was given from the year 1989 resulting in hostile discrimination in the matter of consideration of promotion in the cadre. But surprisingly the case of the applicant was not considered, though he was similarly situated, and he deserve consideration being a member of Schedule Caste candidate and hence all promotions relating to

Rohini Kumar Banna

Respondent Nos. 8 and 9 are liable to be set aside and quashed.

4.12 That the applicant states that the successive non-consideration of his case for promotion to the cadre of IPS writ large whereas the name of the Private Respondents were sent for consideration in violation of Article 16 (4 A) and Article 335 of the Constitution of India wherein there is a special provision for the members of the Schedule Caste in order to maintain the efficiency of administration and their claims are to be considered for appointment to Services and Posts in connection with the affairs of the Union or a State. In the instant case the annexures annexed in this application would show that though the applicant and Private Respondents belonged to the same batch, the case of the applicant had been ignored in violation of the Regulation 1955 and as such it requires interference by the Hon'ble Tribunal in the interest of justice.

4.13 That it is stated that the applicant was promoted from APS Senior Grade II to APS Senior Grade I vide notification No. HMA 266/94/42 dated 16.12.1998 issued by the Govt. of Assam, Home (A) Department. However, the applicant vide his representation dated 04.05.2002 also prayed before the respondents for correction of

the Gradation list in the cadre of APS Grade II, in terms of the 85th amendment of the Constitution.

The Govt. of Assam, Home (A) Department issued a notification No. HMA. 154/2002/9 dated 11.04.2002 publishing the provisional gradation list of APS Senior Grade I officers as reviewed as per O.M. No. ABP.59/96/163 dated 12.03.2002 of Personnel (B) Department, Govt. of Assam. The provisional gradation list appears to have been prepared without application of mind arbitrarily keeping names of other officers including the respondents 8 and 9 from the purview of revision in the light of the said Govt. O.M dated 12.03.2002. Had the revision be made in the underlying provision with letter and spirit of the said O.M, the names of the private respondents 8 and 9 would have also ignored in the gradation list of APS Senior Grade I officers similarly as that of the applicant who was also promoted to the IPS in 1999 prior to the notification dated 11.04.2002. The Govt. ought to have reviewed the inter-se-seniority in entirety rather than having restored to revision isolating the other officers including the respondent No. 8 and 9. The O.M dated 12.03.2002 issued in the light of the 85th amendment of the Constitution is encumbered upon the Govt. to have revisioned seniority of the applicant which was so long denied to the applicant since he was promoted following rules of reservation [under Rule 5(2) of the Assam Scheduled Caste and Scheduled Tribes

(Reservation of vacancies in services and posts, Rules, 1983)] vide notification dated 07.05.1985.

Applicant also submitted a representation on 14.12.1988, which was forwarded by the IGP (SB) as early as 1988. Non-consideration of promotion of the applicant to the cadre of APS Grade- I along with Respondent No. 8 and 9 is in violation of Article 14 as well as the said action of the Respondents is in violation of the O.M dated 12.03.2002 issued by the Govt. of Assam.

Be it stated that the applicant submitted a representation objecting the seniority position assigned by the respondents in APS Grade-II and Grade-I also on 04.05.2002 but to no result.

Therefore the Hon'ble Tribunal be pleased to direct the Respondents to grant consequential benefit of promotion and seniority in the cadre of APS Grade-II and APS Senior Grade-I with reference to the Govt. notification dated 07.05.1985 and O.M dated 12.03.2002 at least with effect from promotion of Respondent Nos. 8 and 9 in terms of O.M dated 12.03.2002.

A copy of the notification-dated 16.12.1998 and copies of the representations dated 14.12.1988 and dated 04.05.2002 are enclosed herewith and marked as Annexure- 7, 7A & 8 respectively.

4.14 That the applicant states that however the Govt. of India, Ministry of Home Affairs issued a notification dated 18.03.1999 in exercise of power conferred by Sub-Rule (1) Rule 9 of the Indian Police Service (Recruitment) Rules 1954 read with (sub-regulation) 1 of Regulation 9 of the Indian Police Service (appointment by promotion) Regulations 1955 appointing the applicant along with other two members to the Indian Police Service on probation and allocating them in the joint cadre of Assam-Meghalaya and the appointment will take effect from the date of notification. Thereafter the Govt. of Assam Home (A) Department issued a communication fixing the seniority of the applicant along with other two members. A close scrutiny of the communication dated 24.06.1999 would show that his year of selection was shown as 1996 and year of allotment of IPS was shown from 1990 which would further show that his case for consideration of selection was not taken up along with the Private Respondents in violation of Regulation 5 or Regulation 1955 and the applicant craves leave of the Hon'ble Tribunal to direct the Official Respondents to produce the entire records in respect of Private Respondents right from their initial appointment as Deputy Superintendent of Police to the cadre of IPS in order to determine his entitlement to the cadre of IPS along with Private Respondents 8 and 9.

Tushar Kumar Bania

Copies of the notification dated 18.03.1999, 23.03.1999 and 24.06.1999 are annexed hereto as Annexure- 9, 10 and 11 respectively.

4.15 That the applicant states that he had joined in the cadre of IPS on 10.03.1999 and he was further promoted to the junior Administrative Grade of IPS in the scale of pay of Rs. 12,000-16,500 with effect from 01.01.1999 though his case ought to have sent for selection to the cadre of IPS along with Private Respondents resulting in denial of Promotion along with private Respondents in which he was otherwise entitled in the facts and circumstances of the case.

4.16 That the applicant states that the Parliament has amended the Constitution (Eighty Fifth Amendment) Act, 2001 by which there is an insertion of Article 16 of the Constitution in clause (4A), for the words "in matters of promotion with consequential seniority to any class, the words in matters of promotion with consequential seniority to any class" has been substituted meaning thereby that the applicant is entitled to get the promotion with consequential seniority over the private Respondents.

A copy of the amendment published on 04.01.2002 is annexed hereto as Annexure-12 to this application.

4.17 That the applicant states in view of the amendment of Article 16 of the Constitution of India, the Govt. of India issued an Office Memorandum dated 21.^{01.}~~02~~.2002 ^{nm}

Tushar Kumar Bania

determining the seniority of SC/ST Government servants on Promotion by virtue of the rule of reservation/roster. The above decision has come into effect from the date of 17th June 1995. The said Office Memorandum further decided that the candidates belonging to SC/ST shall be entitled on their promotion by virtue of the order of reservation/roster along with consequential seniority and the seniority shall be revised accordingly. The applicant will refer the clause of the aforesaid O.M at the time of hearing in order to get his seniority over the Private Respondents.

A copy of the Office Memorandum dated 21.01.2002^{mt} is annexed hereto as Annexure-13 to this application.

4.18 That the applicant states that similarly the Govt. of Assam, Department of Personnel has issued one Office Memorandum dated 12.03.2002 in the light of the Office Memorandum dated 21.02.2002^{of mt} issued by the Govt. of India and the benefit has been given to the candidates belonging to SC and ST candidates and the instruction issued under Office Memorandum dated 12.06.1996 had been withdrawn and the applicant is thus entitled to get the seniority on promotion to the cadre of IPS and his seniority will have to be refixed over the Private Respondents.

Pravin Kumar Bania

A copy of the Office Memorandum dated 12.03.2002 is annexed hereto as Annexure-14 to this application.

4.19 That the applicant states that he has submitted a representation on 10.06.2003 to the Respondent No.5 contending interalia the entire facts of his service career vis-à-vis the service career of the Private Respondents along with one Shri Binay Ranjan Das, a candidate belonging to SC community who was placed over the general candidates while fixing the seniority and hence prayed his case being considered in the light of Office Memorandum dated 12.03.2002 and re-fixed his seniority over the Respondent No.8 and 9 by sending the entire matter to the Ministry of Home Affairs Government of India for necessary action.

A copy of the representation dated 10.06.2003 is annexed hereto as Annexure-15 to this application.

4.20 That the applicant states that his representation dated 10.06.2003 has been rejected by the Joint Secretary to the Govt. of Assam, Home (A) Department on 20.11.2003 holding that the question of his restoration of seniority cannot can not be considered in the light of Office memorandum dated 12.03.2002. The fair play in action demands that the rejection of his representation should be a speaking order and his entitlement of restoration of seniority of promotion is a matter of right under Article 16(4A) (as amended) and he cannot be deprived of his legitimate claim in the matter of

Rohini Kumar Banerjee

re-fixation of seniority and denial of same by a non speaking order assumes the character of non application of mind and deserves to be interfered with by the Hon'ble tribunal in exercise of power under section 19 of the A.T. Act, 1985.

A copy of the impugned order dated 20.11.2003 is annexed here to as Annexure-16.

4.21 That the applicant states that the official respondents had adopted pick and choose method in the guise of seniority in the feeder cadre of Deputy Superintendent of police which is not a seniority list and the intention of said clause which made deliberately in order to deprive his case for consideration for selection to the cadre of IPS as required under regulation 1955, where as the said clause was not inserted in case of sri. B.R.Das of schedule caste candidate and hence the insertion of the clause is discriminatory in nature and is liable to be set aside and quashed as non-est or declared as void ab-initio, as the action is in violation of Article 14.

4.22 That the applicant states that regulations of Indian Police Service (appointment by promotion) regulations 1955 provides for certain mandatory provisions in order to prepare a list suitable officers to be promoted to the cadre of Indian Police Service. The said mandatory provisions had not been adhered to while sending the names of suitable officers more so, when the applicant belongs to Schedule caste candidates and similarly

T. K. Kumar Bhandari

situated with the private respondents and as such the applicant was entitled to get his case considered at least along with the private respondent Nos. 8 and 9 and non consideration of his case amounts to denial of promotion along with private respondents though they are similarly situated and hence the promotion of all Private respondents are liable to be set aside and quashed.

4.23 That the applicant states that the amendment of Article 16 (4A) of the constitution of India which came into force with effect from 17.06.1995 entitled him to get the seniority over the private respondents and his seniority should be refixed in the light of the office Memorandum dated 12.01.2002 and he is entitled to get his seniority refixed over the Private Respondents with all consequential benefits in the facts and circumstances of the case by setting aside the seniority list of the private respondents. The applicant craves leave of the Hon'ble tribunal to produce the entire records including the seniority of the private respondents in order to proper adjudication of the case.

4.24 That the applicant states that the entire records would show that the roster has not been maintained meant for S/C and S/T nor his case has been sent for consideration for recruitment for promotion as required under rule 9 of the Rules 1954 and the benefit, which is now available under the amended act of 2001 in

Rohini Kumar Banerjee

respect of Article 16(4-A) read with office memorandum dated 21.1.2002 and 12.03.2003 cannot be denied to him and his entitlement of re-fixation of seniority cannot be denied in the facts and circumstances of the case.

4.25 That the applicant states that on the basis of service record his name was recommended for the award of President's medal for distinguished Service on the occasion of Republic Day 2003. The certificates issued by different authorities and the statement of reward would show that his grading was excellent during the entire carrier and he deserves his case for inclusion in the list of suitable officers as required under regulation 5 of the regulation 1955 and non-consideration of his case amounts to denial of promotion with the private respondents Nos. 8 and 9 and as such the entire case deserves reconsideration and requires restoration of seniority over private respondents.

Copies of the certificates, recommendations in favour of the applicant are enclosed as Annexure-17 (Series)

4.26 That the applicant states that under the service jurisprudence the principle of natural justice, legitimate expectation and speaking order plays a vital role in the ladder of hierarchy and the same having not been adhered to, the promotion and seniority of the private respondents deserves to be set aside and it requires reconsideration of the entire matter and his

Rashmi Kumar Barua

entitlement of promotion and seniority to the grade of APS as well as in the grade of IPS in the public interest in the facts and circumstances of the case.

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

5. Grounds for relief(s) with legal provisions.

5.1 For that the impugned order dated 20.11.2003 issued by the official respondents would show total non-application of mind and the order being not a speaking order the impugned order is liable to be set aside and quashed.

5.2 For that the benefit and the entitlement occurred under the amended provision of Article 16(4-A) of the Constitution of India and the office memorandum dated 21.02.2002 issued by the Govt. of India and the office Memorandum dated 12.03.2002 having not being considered the impugned order dated 20.11.2003 is not sustainable under the law and the same is liable to be set aside and quashed.

5.3 For that the select list in order of preference dated 03.12.1975 would show that their names including the name of the applicant appeared at Sl. No. 4, 8 and 10 respectively and the list cannot be taken to be similar list in the feeder cadre of Deputy Superintendent of Police as has been determined which requires to be strike down, more so, when the said insertion/

Rishabh Kumar Bhandari

application was not there in case of Sri B.R. Das, a S.C candidate, who is an officer of A.P.S cadre. As such same is discriminatory in nature.

5.4 For that admittedly the applicant was confirmed earlier than the respondents nos. 8 and 9 in the junior scale of APS and the notification dated 07.05.85 would show that his name appears at serial no.3 in the promotional list of senior scale of APS whereas the name of private respondents appeared below him and as such the insertion of clause of seniority in the feeder cadre taken to be a determining factor is arbitrary , illegal and without jurisdiction though the list dated 03.12.1975 is a merit list in order of preference and hence cannot be accepted as seniority list.

5.5 For that the Indian Police Service (Appointment by Promotion) Regulation 1955 and the Indian Police service (Recruitment) Rules 1954 provides for certain procedures which is a mandatory in nature and the said provisions having not been adhered to as required under the definition clause, Regulation 5 of the Regulations 1955 and the Rule 9 of the rules 1954, the entire procedure vitiates in promoting the private respondents and as such their promotions and fixation of seniority of the private respondents are liable to be set aside and quashed.

5.6 For that applicant is a Scheduled caste candidates and was within the zone of consideration as required under the provision of regulation 5 of the regulation 1955 along with private respondent nos. 8 and 9 and omission

T. Srinivas Kumar Bhandu

of his name from the preparation of a list of suitable officers is in violation of the aforesaid regulations and as such promotion of private respondents are liable to be set aside and quashed.

5.7 For that similarly the applicant was within the zone of consideration for recruitment by promotion to the Indian Police Service and as such the omission of his name from the list of suitable officers is arbitrary, illegal and in violation of regulation 5 and Rule 9 of the rules and hence the promotions of private respondents and fixation of seniority are liable to be set aside and quashed.

5.8 For that the Parliament has amended the Article 16(4-A) of the Constitution of India and in pursuance thereof two office memorandum have issued on 21.⁰¹~~02~~.2002 and 12.03.2002 by which the benefit of seniority has been provided to the candidates belonging to the S.C and S.T candidates and as such the Constitutional right cannot be denied in the facts and circumstances of the case and his seniority is to be refixed over the Private respondents.

5.9 For that the records would show that the reservation/roster has not been maintained by the official Respondents and the quota meant for SC having not been maintained there is an excess quota relating to general category of candidates which is not sustainable under the law and as such the promotions of Private respondents and their seniority over the applicant are liable to be set aside and quashed.

T. Shrin. Kumar Bhande

5.10 For that in any view of the matter coupled with the Provision of regulation 1955 and the Rule 1954, Article 14 and 16 the promotion of the appointment is to be made with retrospective effect when the Respondents nos. 8 and 9 were made and his seniority to be re-fixed over the Private Respondents with retrospective effect with all consequential benefit.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and

Tushar Kumar Banerjee

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

- 8.1 That the impugned order /communication being No. HMA> 420/2003/29 dated Dispur, the 20th Nov/2003 issued by the Joint Secretary to the Government of Assam, Home (A) Department be set aside and quashed.
- 8.2 That the insertion of clause that "inter-se-seniority of the above named officers in the Sr. Scale will be as per gradation in the select list from which they are promoted" in the notification dated 07.05.1985 be strike down as the said clause was not made applicable to one Shri B.R.Das, a schedule caste candidates.
- 8.3 That the promotion of the private respondents to the cadre of Indian Police Service and their seniority fixed and the year of allotment be set aside and quashed being violative of the provisions of Regulations 1955 and 1954 of the Indian Police Service (Appointment by promotion) and recruitment rules 1954.
- 8.4 That the applicant shall be deemed to have been promoted to the cadre of Indian Police Service when the private respondent nos. 8 and 9 were promoted to the cadre of Indian Police Service and the year of allotment be fixed with them and the seniority be fixed over the private respondents nos. 8 and 9 with all consequential benefits.

✓
Tushar Kumar Banerjee

8.5 That the benefit that has been accrued under the amendment Act of 2001 in respect of Article 16(4-A) which provides promotion with consequential seniority be given to the applicant with all consequential benefits.

8.6 That the Constitutional Amendment and the benefit subsequent thereto vide office memorandum dated 21.⁰¹~~02~~.2002 and 12.03.2003 be provided to the applicant restoring the seniority over all the private Respondents with retrospective effect along with consequential benefit.

8.7 That the Constitutional Amendment and in pursuant to the office memorandum dated 21.⁰¹~~02~~.2002 and 12.03.2002, the benefit of reservation and the roster point be maintained and given to the applicant in the cadre of Indian Police Service.

8.8 Costs of the application.

8.9 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to make an observations that pending of this application shall not be a bar for the official respondents to consider the

Prabhu Kumar Bani

claim of the applicant as has been prayed for in this application.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No. : JJG 378768.
ii) Date of Issue : 22.3.04.
iii) Issued from : G. P. O. Guwahati
iv) Payable at : G. P. O. Guwahati

12. List of enclosures.

As given in the index.

Rohini Kumar Barua

VERIFICATION

I, Shri Rohini kumar Bania , aged about 55 years, Superintendent of Police Vigilance and Anti Corruption, Assam, R.G. Baruah Road, Ganeshguri, Guwahati-781005 Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 5th day of April, 2004.

Rohini Kumar Bania

ASSAM PUBLIC SERVICE COMMISSION

The 3rd December 1975

On the result of the Combined Competitive Examination held from 9th December 1974 to 2nd January 1975 and viva-voce test held from 13th September 1975 to 26th September 1975, the Assam Public Service Commission do hereby publish the merit list for Category-II, posts Department/service-wise, in order of preference, for general information.

Superintendent of Taxes

Order of preference	Names	Roll No.
1	Shri Norendra Nath Borah	140
2	" Jyeshtha Chandra Sarmah	5870
3	" Pranab Kumar Chakraborty	5552
4	" Santu Ranjan Dhar	3599
5	" Sitangshu Konungna	4326
6	" Harendra Nath Das (S.C.)	7382
7	" Anandaram Hazarika	3717
8	" Binakal Basumatary (S.T.P.)	8059
9	" Netra Chandra Sarma	6410
10	" Shyamapada Bhattacharjee	6536
11	" Dharendra Nath Saikia	3298
12	" Ramendra Kumar Rajkhowa	6345
13	" Muktar Hussain Ahmed Choudhury	6697
14	" Ranun Kumar Deb Roy	4270
15	" Padmadhor Das (S.C.)	8255
16	" Mrigendra Lal Das	804
17	" Anup Kumar Dutta	2674
18	" Aladat Khan	3031
19	" Paramananda Pegu (S.T.P.)	7682
	" Biren Chandra Medhi	1445
	" Kanu Prasanna Choudhury	4064
	" Kushal Chandra Sarma	1062
	" Kuludhar Gogoi	1066
	" Md. Nizam Uddin Laskar	4341
	" Basanta Phatowaly (S.T.P.)	7768
	" Chandra Kanta Hazarika (S.C.)	7923
	" Prafulla Saikia (S.T.P.)	7786
Assam Police Service		
1	Shri Akhil Kumar Nath	7049
2	" Utpal Kumar Bhattacharyya	407
3	" Promothesh Ranjan Das	663

Order of preference	Names	Roll No.
4	Shri Anarendra Rajkumar	3185
5	" Nripendra Mohan Dutta	280
6	" Deraj Uddin Ahmed	60
7	" Phatik Dutta Goswami	6154
8	" Parsh Chandra Neog	1567
9	" Promodo Chetia	2628
10	" Robini Kumar Bania (S.C.)	8196
11	" Debendra Nath Deka (S.T.P.)	7538
12	" Birendra Kumar Hazarika (S.T.P.)	7549
13	" Sailendra Nath Talukdar	2097
14	" Abdul Kayum	3029
15	" Bibhupada Gupta	6951
16	" Jiban Singh	2014
17	" Nawab Imdad Hussain	2948
18	" Himendra Nath Sarmah	6434
19	" Nabendu Kishore Sinha	1989
20	" Padmadhar Das (S.C.)	8255
21	" Birendra Kumar Doley (S.T.P.)	8315
Superintendent of Excise		
1	Shri Abani Kumar Baruah	2334
2	" Prakashjyoti Sarma	1070
3	" Mrigendra Lal Das	801
4	" Indrajit Kumar Baruah	2406
Assistant Registrar of Co-operative Societies		
1	Shri Jakan Miah Chowdhury	6685
2	" Dipankar Deb Roy	7334
3	" Jiban Singh	2014
4	" Tarini Prasad Talukdar	3346
5	" Birendra Kumar Doley (S.T.P.)	8315
6	" Ghesh Ranjan Chakraborty	6731
7	" Dwipendra Kumar Sarma	1860
8	" Tanu Singh	7204
9	" Dilip Kumar Baruah	3444
10	" Biswajit Das	6789
11	" Kiron Chandra Das	698
12	" Nripendra Prasad Hazarika	2919
13	" Shakil Ahmed	2172
14	" Pradip Baruah	205

17-12-75 Abdul Kayum, L.D. Assistant
H.A. & W.B.C. Deptt. (Development Branch)
Assam, Socio-Economic Division

Attestd
K. K. Choudhury
5/12/75

(COPY)

Annexure-2

Memo No. F/1/14/VOL-II/20 Dated Gauhati the 20th Jan '76.

From: Shri S.K. Chakrabarti, I.P.S.,
Deputy Inspector General of Police, (A)
Assam, Gauhati

To: Shri Rohini Kumar Bania,
Statistical Officer,
Directorate of Economics & Statistics, Arumachal Pradda,
Shillong-3 (Meghalaya).

Sub: Appointment to the A.P.S. as Proby. Deputy Supdt. of
Police.

Ref: Home Department's letter No. HMP-1220/75/11 dt. 3.1.76.

In inviting a reference to the Government letter quoted above, I am directed to say that you should report to the Principal P.T.C., Dergaon on 1.2.76 for training. You should produce the certificate of your medical fitness in the prescribed form to the Principal P.T.C. at the time of your joining after obtaining the same from the Civil Surgeon of the District where you are now residing. Without this certificate, you will not be admitted to the College.

Sd/- Deputy Inspector General of
Police, (A), Assam, Gauhati.

Memo No. F/1/14/VOL-II/18-A Dated Gauhati the 20th Jan '76.

As directed, copy forwarded to :-

1. The Principal, P.T.C., Dergaon for information and necessary action.

He will please intimate this office the date of joining of the candidates for reporting the same to Government for needful.

2. The Secretary to the Government of Assam, Home Department for information with reference to his Memo No. HMP-1220/75/11-A dated 3.1.76.

Sd/- Deputy Inspector General of Police,
Assam, Gauhati.

*Affected
Smt. J. Ananda
5.4.76*

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 27th April, 1982.

No. IMP. 768/82/Pt/7: The following officers are confirmed in the Junior Scale of the AFS with effect from the dates noted against each:-

- 1) Shri Amarendra Rajkumar W.S. from 1-3-81.
- 2) Parash Ch. Neog " from 29-7-81
- 3) " Rohini Kumar Barua " from 12-10-80
- 4) " Nawab Imad Hussain " from 1-3-81
- 5) " Jamanur Haque Ahmed " from 20-8-81.

Sd/- A. Perti,
Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Memo No. IMP. 768/82/Pt/7-A: Dated Dispur, the 27th April, 1982.

Copy forwarded to:-

- 1. The Director General of Police, Assam (Lihari, Gauhati-7). S/Sri Amarendra Rajkumar, Parash Ch. Neog, Rohini Kumar Barua and Nawab Imad Hussain are exempt from the liability of passing the Survey & Settlement Training till 31-12-81 or till they are deputed for the same which is later. The periods of probation of S/Sri A. Rajkumar, P. C. Neog, R. K. Barua, N. I. Hussain and J. H. Ahmed are extended till 31-7-81, 28-7-81, 12-10-81, 31-7-81 and 12-8-81 respectively.
- 2. The Accountant General, Assam, in Long Lakh.
- 3. The Supt. Govt. Press, Assam, Samunaidan for publication in the next issue of the gazette.
- 4. Shri Rohini Kumar Barua AFS, DSP (DSP), Sibsagar.
- 5. Personal file of Shri _____
- 6. Guard file.

By order etc.,

Under Secretary to the Government of Assam,
Home (A) Department.

EKB

27/4/82

Attested
5.4.04

ORDERS BY THE GOVERNOR

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

NOTIFICATION

Dated Dispur the 7th May, 1985.

NO.HMA 2/85/Pt.II/15 : Shri Birendra Kumar Hazarika AFS Deputy

Superintendent of Police, H.Q. Jorhat is temporarily promoted to the Senior Scale of the A.P.S. and appointed to officiate until further orders as Addl. Superintendent of Police, North Lakhimpur vice Shri J. N. Doka AFS transferred.

NO.HMA 2/85/Pt.II/15(a) Shri Tilok Ch. Hazarika AFS Deputy Supdt.

of Police, C.L.D. Guwahati is temporarily promoted to the Sr. Scale of the A.P.S. and appointed to officiate, until further orders, as Addl. Supdt. of Police Jagiroad vice Shri J. N. Kalita AFS transferred.

NO.HMA 2/85/Pt.II/15(b) Shri Rohini Kr. Bania, AFS Sub-divisional

Police Officer, Tinsukia, Digboi is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders, as Addl. Supdt. of Police SB (Zonal) Tezpur vice Shri G. Bhuyan IPS transferred.

NO.HMA 2/85/Pt.II/15(c) Shri Md. Ershadullah AFS Deputy Supdt. of

Police SB H.Q. Guwahati is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate until further orders, as Addl. Supdt. of Police (Security) Guwahati against a newly created post.

NO.HMA 2/85/Pt.II/15(d) Shri Narendra Nath Ojha AFS, Deputy Supdt.

of Police H.Q. Nagaon is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders, as Addl. Supdt. of Police (A) vice Shri K. B. Singh AFS transferred.

Contd... 2/-

*Alleged
SAC
Alwar
S. V. R.*

NO.HMA 2/85/Wt.II/15(e) Shri Sukhendu Bikash Purkayastha AFS, Deputy Supdt. of Police now on deputation to Food Corporation of India, Shillong is allowed promotion temporarily to the Sr. Scale of the AFS against the post of 21/c 1st xxx Assam Police Task Force Bn. Abhayapuri a newly created post and on promotion he is allowed to continue on deputation, until further orders.

NO.HMA 2/85/Wt.II/15(f) Shri Anwar Hussain Hazarika AFS, Deputy Supdt. of Police now on deputation to Meghalaya is allowed proforma promotion temporarily to the Sr. Scale of the AFS against the post of 21/c 3rd. Assam Police Task Force Bn. Itan Makum a newly created post and on promotion he is allowed to continue on deputation until further orders.

No.HMA 2/85/Wt.II/15(g) Shri Brikodar Deka AFS, now on leave, is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders, as 21/c Assam Police Task Force Bn. Abhayapuri vice Shri Sukhendu Bikash Purkayastha allowed to continue on deputation.

NO.HMA 2/85/Wt.II/15(h) Shri Abdul Gafur Hazarika AFS Asstt. Comdt. 8th A.P. Bn. Barhampur is temporary promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders, as 21/c 3rd Assam Police Task Force Bn. Makum vice Shri Anwar Hussain Hazarika allowed to continue on deputation.

NO.HMA 2/85/Wt.II/15(i) Shri Nagendra Nath Saikia AFS Deputy Supdt. of Railway Police, Rangiya is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders, as 21/c 12th A.P. Bn. Jamugurihat vice Shri Ganga dhar Gogoi AFS transferred.

NO.HMA 2/85/Pt.II/15(j) Shri Akhil Kr. Nath AFS Deputy Supdt. of Police North Salmara is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate until further orders, as 2i/c 2nd A.P. Bn. Makum vice Shri P. C. Yain AFS transferred.

NO.HMA 2/85/Pt.II/15(k) Shri Premothesh Ranjan Das AFS, Deputy Supdt. of Police H.Q. Malbari is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders as 2i/c 2nd Assam Police Task Force Bn. Dergaon against a newly created post.

NO.HMA 2/85/Pt.II/15(l) Shri Birendra Kr. Doley AFS, Deputy Supdt. of Police H.Q. Bompeta is temporarily promoted to the Sr. Scale of the AFS and appointed until further orders, as Addl. Supdt. of Police (S) Tezpur vice Shri Dinbeswar Bora AFS transferred.

NO.HMA 2/85/Pt.II/15(m) Shri Amarendra Rajkumar AFS, Sub-divisional Police Officer Hojai is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders as Addl. Supdt. of Police Sonitpur, Tezpur vice Shri N. C. Panjing AFS transferred.

NO.HMA 2/85/Pt.II/15(n) Shri Nripendra Mohan Dutta AFS Deputy Supdt. of Police SB, Barpeta is promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders, as 2i/c 11th A.P. Bn. Dergaon vice Shri Jineswar Gogoi AFS transferred.

This cancels this Deptt. notification
NO. HMA 4/84/Pt. III(a) dt. 25-3-85.

NO.HMA 2/85/Pt.II/15(o) Shri Phatick Dutta Goswami, AFS, Deputy Supdt. of Police, Chandiani Divn. Guwahati is temporarily promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders, as Addl. Supdt. of Police City, Guwahati vice Shri K. N. Das AFS transferred.

NO.HMA 2/85/Pt.II/15(p) Shri Faresh Ch. Meeg, AFS Deputy Supdt. of Police, Dispur Division, Guwahati as temporarily promoted to the Sr. Scale of the AFS and appointed to officiate, until further orders, as Addl. Supdt. of Police H.Q. Guwahati vice Shri Rajiv Mehta AFS transferred.

Inter-seniority of the above named officers in the Sr. Scale will be as per gradation in the select List from which they are promoted.

NO.HMA 2/85/Pt.II/15(q) On relief the Services of Shri Jogendra Nath Doka AFS Addl. Supdt. of Police North Lakhimpur, are placed at the disposal of Home (B) Deptt. for appointed as 2i/c 1st. A.S.R.F. Bn. Guwahati until further orders.

No.HMA 2/85/Pt.II/15(r) On relief Shri Jitendra Nath Kalita AFS, Addl. Supdt. of Police Jagiroad is transferred and appointed, until further orders, as 2i/c 9th A.S.F. Bn. Abhayapuri vice Shri Prabin Ch. Kalita AFS transferred.

No.HMA 2/85/Pt.II/15(s) On relief, Shri Kunja Bihari Singh, AFS, Addl. Supdt. of Police (S) Nagaon is transferred and appointed, until further orders, as Sr. Staff Officer to Chief Controller V.D.O. Guwahati against a newly created post.

NO.HMA 2/85/Pt.II/15(t) On relief, Shri Dimbaswar Bora AFS, Addl. Supdt. of Police (S) Tezpur is transferred and appointed, until further orders, as 2i/c 4th Assam Police Task Force Bn. Barhampur against a newly created post.

NO.HMA 2/85/Pt.II/15(u) On relief, Shri Hatabrata Goswami AFS, Addl. Supdt. of Police Sibsagar is transferred and appointed, until further orders, as Addl. Supdt. of Police, Nalbari vice Shri Azizur Rahman AFS transferred.

No.HMA 2/85/Pt.II/15(v) On relief, Shri Azizur Rahman AFS, Addl. Supdt. of Police Malbari is transferred and appointed, until further orders, as Addl. Supdt. of Police Cachar, Silchar vice Shri Badha Raman Ch. Mury AFS retired.

No.HMA 2/85/Pt.II/15(w) On relief, Shri Kiranmoy Nag AFS, Addl. Supdt. of Police City, Guwahati is transferred and appointed, until further orders, as Di/c 6th A.S. Bu. Kathal, Silchar vice Shri Jashendra Ch. Datta AFS retired.

[Handwritten Signature]
7/7/85

(JATIN HAZARIKA)
Commissioner & Secretary to the Govt. of Assam,
Home Department.

Memo No.HMA. 2/85/Pt.II/15-A, Dated Dispur the 7th May, 1985.

Copy to:-

1. The Director General & Inspector General of Police, Assam, Guwahati - 7.
2. The Accountant General, Assam, Shillong.
3. The Secretary to the Govt. of Meghalaya Home Deptt. Shillong.
4. The Senior Regional Manager, Food Corporation of India, Guwahati.
5. The Zonal Inspector, Govt. of India.
6. All the Range Deputy Inspectors General of Police.
7. The Deputy Commissioners concerned.
8. The Inspector General of Police (Training & Armed Police) Assam, Guwahati.
9. All Officers concerned.
10. The Supdt. of Govt. Press, Bamunimaidan, Guwahati for publication in the next issue of the Gazette and supplying this Deptt. with 50 spare copies.
11. Personal files.
12. Officer-on-special duty to Chief Minister, Assam, Dispur.

By order etc.,

[Handwritten Signature]

(M. Das Borgohain)
Under Secretary to the Govt. of Assam,
Home (A) Department.

N.D.S.

[Handwritten Note]
Alkesh
Balk.
Advocate
5.4.84

Graduation list updated upto 1985
of A.P.S. OFFICERS.

Sl. No.	Name/Home District	Educational qualification	Date of birth	Date of First apptt. in Police	Date of apptt / promotion as Dy.S.P.	Date of confirmation as Dy.S.P.	Present place of posting with date.	Remarks
21.	Shri Nagendra Nath Suikia Nowgong (G)	I.A.	30.9.28	1.4.49	1.8.75	3.2.81	Dy. SRP Rangia	
22.	.. Akhil Kr. Nath Cachar OBC	B.A. LLB	1.6.45	1.2.76	1.2.76	15.6.83	SDPO North Salmara	
23.	.. Promothesh Rn. Das Cachar OBC	M.A.	1.11.51	1.2.76	1.2.76	5.5.79	Dy SP HQ Nalbari	
24.	.. Amarendra Rajkumar Sibsagar OBC	B.A (Hons.)	23.3.50	1.2.76	1.2.76	1.8.81	SDPO Hojai	
25.	.. Nripendra Mohan Dutta Darrang (G)	M.Sc.	5.1.9	1.2.76	1.2.76	29.10.80	DSP DSB Barpeta	
26.	.. Phatik Dutta Goswami Darrang (G)	B.A.	1.9.51	1.2.76	1.2.76	1.8.81	Dy SP Chandmari Division	
27.	.. Paresh Ch. Neog Nagaon OBC	M.A.	1.2.49	1.2.76	1.2.76	29.7.81	Dy SP Dispur Division	
28.	.. Promode Chetia Sibsagar OBC	M.A.	1.1.48	1.2.76	1.2.76	29.10.80	A/C 10th A.P.Bn.	
29.	.. Rohini Kr. Bania Lakhimpur S/C	B.Sc.	1.4.48	6.2.76	6.2.76	29.10.80	SDPO Tinsukia HQ Digboi	
30.	.. Birendra Kr. Hazarika Dibrugarh ST (P) Kachari	B.A.	1.6.1	7.2.76	7.2.76	29.10.80	Dy SP HQ Jorhat	

Approved
S. K. Saha
Advocate
5.4.07

Sl. No.	Name / Home District	Educational Qualification	Date of birth	Date of First appointment in Police	Date of appointment / promotion as Dy. S.P.	Date of Confirmation as Dy S.P.	Present place of posting with date	Remarks
1	2	3	4	5	6	7	8	9
31.	Shri Sailendra Nath Talukdar Kamrup (G)	M.Sc.	1-10-48	1-2-75	1-2-76	29-10-80	Dy S.P. CID.	
32.	.. Abdul Kayum Sibsagar (G)	B.Sc.	24-5-47	18-2-76	18-2-76	30-8-80	SDPO. Hailakandi	
33.	.. Bibhu Pada Gupta Cachar (G)	BA.	1950	1-2-76	1-2-76	29-10-80	Dy. SP. Security Kamrup	
34.	.. Jiban Singh Kamrup (OBC)	M.Sc.	9-7-50	1-2-76	1-2-76	1-2-78	Dy. SP HQ. Kokrajhar	
35.	.. Nowab Imdad Hussain Sibsagar (G)	MA.	1-1-51	17-2-76	17-2-76	1-8-80	SDPO Golaghat	
36.	.. Birendra Kr. Doley Lakhimpur ST(P) Mishing	BA.	1-3-46	1-2-76	1-2-76	15-9-81	Dy. SP. HQ. Borpeta	
37.	.. Nabendu Kishore Sinha Cachar (OBC)	BA.	30-10-50	28-4-76	28-4-76	16-9-78	SDPO Hamren	
38.	.. Ajit Kr. Das Dibrugarh S(P) Kachari	MA.	1-11-47	25-6-76	25-6-76	2-7-81	SDPO Gossaigaon	
39.	.. Upendra Nath Das (OBC)	BA. LLB	30-8-29	17-4-61	24-9-76	3-2-81	DO FSA	
40.	.. Motilal Das Kamrup (G)	IA.	1-10-29	15-6-51	31-8-76	3-2-81	Dy.S.P.(B) Nagaon	

45. " Eashad Ullah, I.A.
Nagaon

15.2.55 24.0.70
1.9.33 25.7.75
7.4.56 26.7.77

15.5.85 Addl. S.P.(S)
Nagaon 4.8.86

Annexure-6

Graduation list of Gazetted Police Officers in Assam & Meghalaya
IPS & Sr. APS only : Connected upto 1st October, 1986,
(17)

Sl. No.	Name Home District.	Date of birth	Date of appt. in APS.	Continuous officiation in the Sr. Scale Confirmation in the Sr. Scale of APS	Present post held.	Date of appt. to the present post.	Remarks.
		First appt. in Police Deptt.	Confirmation as Dy S.P.				
	2	3	4	5	6	7	8
46.	Shri N. N. Ojha, B.A.L.L.B. Darrang	1.4.33	4.8.75	15.5.85	A S.P.(S) Guwahati City	28.7.86	
47.	" S. B. Purkayastha, B.A. (Hon)	7.1.78	25.9.78		Sr. S.O. to the C.C.V.D.O.	10.3.86	Under order of transfer as SSO to IGP(B)
48.	" Answar Hussain Hazarika, B.A. Sibsagar	1.3.32	14.8.75				Meghalaya
49.	" Brikadar Deka, I.A. Kamrup	9.4.56	2.1.77	18.7.85	Addl. S.P. Dibrugarh	18.4.86	
50.	" N. N. Saikia, I.A. Nagaon	1.10.33	18.7.75	7.6.85	2 I/C 12th A.P.Bn.	7.6.85	
51.	" A. K. Nath, B.A. LL.B. Cachar	6.1.58	7.8.76	20.5.85	Addl. S.P. (S) Sonitpur	21.8.85	
52.	" P. R. Das, M.A. Cachar	1.3.30	3.10.75	20.5.85	2 I/C 2nd APTF	20.5.85	
53.	" A. Rajkumar, B.A. (Hon.) Sibsagar	1.6.53	30.11.77	17.5.85	1 S.P. (HO) Sonitpur		
54.	" N. M. Dutta, M.Sc.	30.9.28	1.8.75	24.5.85	Addl. S.P. Bongaigaon	12.8.86	

M. S. D.
S. C.
B. S. D.
5-4-87

Sl. No.	Name Home District.	Date of birth	Date of appnt. in the	Continuous officiation in the	Present post held.	Date of rate to	Remarks.
		First appt. in Police Deptt.	Comm. as Dy Supt.	St. Scale		Confirmation in the State of Assam	
1	2	3	4	5	6	7	8
55.	Shri P. D. Goswami, B.A. Darrang	1.9.51	10.11.76	10.5.85	Addl. S.P. Guwahati City	26.10.85	
		1.2.76	1.8.81				
		1.2.49	1.2.76				
56.	" P. C. Neog, M.A. Nagaon	1.2.76	29.7.81	10.5.85	2 I/C 5th A.P. Bn.	5.2.86	
		1.4.48	6.2.76				
57.	" R. K. Bania, B.Sc. S/C	6.2.76	24.10.80	30.5.85	Addl. S.P.	30.5.85	
		1.6.41	7.2.76				
58.	" B. K. Hazarika, B.A. ST (P)	7.2.76	29.10.80	20.5.85	Addl. S.P. Lakhimpur	20.5.85	
		1.10.48	1.2.76				
59.	" S. N Talukdar, M.Sc. Kamrup	1.2.76	29.10.80	28.8.85	Addl. S.P. Sibsagar	17.2.86	
		24.5.47	18.2.76				
60.	" Abdul Kayum, B.Sc. Jorhat	18.2.76	30.8.80	20.9.85	Addl. S.P. Golaghat	20.9.85	
		1.9.50	1.2.76				
61.	" B. P. Gupta, B.A. Cachar	1.2.76	29.10.80	11.12.85	2 I/C 2nd ASRFBn. Jorhat	21.2.86	
		9.7.50	1.2.86				
62.	" Jiban Singh, M.Sc. Kamrup	1.2.76	1.2.78	21.2.86	Addl. S.P. (S) Lakhimpur	21.2.86	
		1.1.51	17.2.76				
63.	" N. I. Hussain, M.A. Jorhat	17.2.76	1.8.80	28.3.86	2 I/C 8th A.P. Bn.	28.3.86	

Continuous officiation

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

b4

ORDERS BY THE GOVERNOR

NOTIFICATION

✓ Dated Dispur, the 16th December, 1998.

No. HMA. 266/94/42 : The following Assam Police Service, Senior Grade-II Officers are promoted to Assam Police Service, Senior Grade-I in the scale of pay of Rs. 9075-325-11,025-400-11,825-EB-400-14,225/- P.M. with immediate effect against existing vacancies.

1. Shri Rohini Kr. Bania, APS, Superintendent of Police, Barpeta Dist., Barpeta.
2. Shri Birendra Kr. Hazarika, APS, Commandant, R.T.S., Dergaon.
3. Shri Sailendra Nath Talukdar, APS, Special Superintendent of Police, CID, Assam, Guwahati.
4. Shri Abdul Kayum, APS, Commandant, Assam Forest Protection Force, Guwahati.
5. Shri Jihan Singh, APS, Superintendent of Police, Cachar Dist. Silchar.
6. Shri N.I. Hussain, APS, Superintendent of Police, Special, Vigilance Cell, Assam, Guwahati.
7. Shri Nabendu Kishore Sinha, APS, Commandant, 9th APBn., Barhampur, Nagaon.

Sd/- A. Bardoloye,
Deputy Secy. to the Govt. of Assam,
Home (A) Department.

Memo. No. HMA. 266/94/42-A, Dtd. Dispur, the 16th December, 1998.

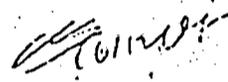
- Copy to :-
1. The Accountant General, Assam, Maidangaon, Beltola, Guwahati-28.
 2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
 3. The Addl. Director General of Police.....
 4. The Inspector General of Police/Deputy Inspector General of Police.....
 5. The Superintendent of Police/Commandant.....

Contd. P/2.

Musto
S. Y. S. S.
Advocate
5.4.04.

- 6. The P.S. to Chief Minister, Assam, Dispur, Guwahati-6.
- 7. The P.S. to Chief Secretary, Assam, Dispur, Guwahati-6.
- 8. The P.S. to Addl. Chief Secretary & Principal Secretary to Home & Political Deptt., Assam, Dispur, Guwahati-6.
- 9. The P.S. to Secretary, Home Deptt., Assam, Dispur, Guwahati-6.
- 10. The P.S. to Secretary, Forest Deptt., Assam, Dispur, Guwahati-6.
- 11. The P.P.S. to Chief Minister, Assam, Dispur, Guwahati-6.
- 12. The Superintendent, Assam Govt. Press, Ramunimaidam, Guwahati-21 for publication.
- 13. Shri

By order etc.,



Deputy Secy. to the Govt. of Assam,
Home (A) Department.

SITAKOK

To

The Director General of Police, Assam,
Ulubari, Guwahati-781 007.

Through proper channel.

Dated Kahilipara the Dec'/1988.

Subject : Interse seniority in the Senior Scale after promotion.

Sir,

I have the honour to invite a reference to the Govt. Notification No. HMA.667/84/194 dt. 30.11.88 on the subject cited above and to submit the following prayer for kind redress by the Govt. of Assam through your good office.

That Sir, I was promoted to the post of Addl. S.P. in the Senior Scale of APS and posted as Addl. S.P. SB, North Zone, Tezpur vide the Govt. Notification No. HMA.2/85/Pt-II/15(B) dated 7th May'85 (photo copy enclosed).

That Sir, I was placed just above Shri Md. Ershad Ullah, APS and others who are placed Junior to Md. Ershad Ullah vide the Govt. Notification mentioned, which contains that " Interse seniority of the above named officers in the senior scale will be as per gradation in the select list from which they are promoted".

That Sir, the restoration of seniority of Shri P. Chetia, APS just above me vide the Govt. Order under reference clearly indicates that the provision under Rule 5(2) of the Assam Scheduled Caste and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983 has not duly been looked into while promoting me to the Senior Scale.

I, therefore, pray that the Govt. of Assam would be kind enough to consider the provisions of the Assam Scheduled Caste and Scheduled Tribes (Reservation of Vacancies in services and Posts) Act, 1978 and the

Contd..2/-

Attested
for
Advocate
S. 4. 074

// 2 //

relevant Rule 5(2) thereunder so that a member officer of the Scheduled Caste Community in the State Police Service of Assam is not deprived of the benefit of "Interse Seniority after promotion", but for which the promotion bears no fruit.

Yours faithfully,

[Handwritten Signature]
19.12.88

(Rohini Kr. Bania)
Superintendent of Police, SB-II,
Assam, Kahilipara, Guwahati-19.

Forwarded by the IGP (103)
vide NO. SBX1/confidential/88
-Misc
dt 19.12.88

NO. I. 14011/12/96-IPS I
 Government of India/Bharat Sarkar
 Ministry of Home Affairs/Grih Mantralaya

New Delhi, the 11th March 1999

NOTIFICATION

In exercise of the powers conferred by sub-rule (1) of rule 9 of the Indian Police Service (Recruitment) Rules, 1954, read with sub-regulation (1) of regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, the President is pleased to appoint the following members of Assam Police Service to the Indian Police Service on probation, and to allocate them to the joint Cadre of Assam-Meghalaya under sub-rule (1) of rule 5 of the Indian Police Service (Cadre) Rules, 1954. These appointments will take effect from the date of issue of this Notification.

S.NO.	Name of the Officer	Date of birth
	S/Shri	
1.	Rohini Kr. Banja	01.04.1948
2.	Birendra Kr. Hazarika	01.06.1941
3.	Sailendra Nath Talukdar	01.10.1948

2. The appointment of the aforesaid officers to the IPS shall be subject to final outcome of C.R. NO. 3628/1998 filed by Shri S.N. Talukdar in Guwahati High Court.

(J.B. KAUSHISH)
 DESK OFFICER
 TEL. NO. 301 4038

NO. I. 14011/12/96-IPS.I

Dated 11/3/99

A copy each is forwarded to:

1. The Chief Secretary to the Govt. of Assam, Dispur (Attn. Sh. M. K. Barooah, Secretary, Home (A) Department) w.r.t. their letter No. HMA.582/95/238 dated 9.2.99 (with 3 spare copies for onward transmission to the officers concerned).
2. The Chief Secretary, Govt. of Meghalaya, Shillong (Attn. Shri Y. Lyngdoh, Deputy Secretary, Home (Police) Department).
3. The Accountant General, Assam, Dispur.
4. The Secretary, UPSC (Attn. Shri N. Namasivayam, Under Secretary), Shahjahan Road, New Delhi.
5. The DG & IGP, Assam, Dispur.

(J.B. KAUSHISH)
 DESK OFFICER

Memo No. FA/1/373/95/158-A, Dated Guwahati, the 18th March/99.

As directed, copy to :-

1. Shri R.K. Banja, IPS, Supdt. of Police, (V&AC-I), Assam, Guwahati.
2. Shri B.K. Hazarika, IPS, Comdt. R.T.S., Dergaon.
3. Shri S.N. Talukdar, IPS, Spl. Supdt. of Police, (CID), Assam, Guwahati.

Asstt. Inspector General of Police, (A),
 Assam :::: Guwahati.

18/3

Asstt. Inspector General of Police, (A),
 Assam :::: Guwahati.
 S.V. 04

FA/6085
 17/3/99
 9/1/99

22/3
 FA
 17/3

7

Annexure-10

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 23rd March, 1999

NO. HM. 583/95/245 : The following Notification No. 1.14011/12/96-IPS.I, dated 10.3.99 issued by the Desk Officer, Ministry of Home Affairs, New Delhi is republished.

"In exercise of the powers conferred by Sub-rule (I) of Rule 9 of the Indian Police Service (Recruitment) Rules, 1954, read with Sub-regulation (I) of regulation 9 of the Indian Police Service (Appointment or Promotion) Regulations, 1955, the President is pleased to appoint members of Assam Police Service to the Indian Police Service on probation, and to allocate them to the joint cadre of Assam-Meghalaya under Sub-rule (I) of rule 5 of the Indian Police Service (Cadre) Rules, 1954. These appointments will take effect from the date of this Notification.

Sl.No.	Name of Officer	Date of birth
1.	Shri Rohini Kr. Bania,	01.04.1948
2.	Shri Birendra Kr. Hazarika,	01.06.1941
3.	Shri Sailendra Nath Talukdar,	01.10.1948

2. The appointment of the aforesaid Officers to the IPS shall be subject to final outcome of C.R. No. 3628/1998 filed by Shri S.N. Talukdar in Guwahati High Court.

Sd/- J.B. Kaushish,
Desk Officer."

Sd/- A. Bardoloy,
Deputy Secretary to the Govt. of Assam,
Home (A) Department.

Contd.....P/2.

Handwritten notes:
A.M. 1/10
S. 4. 5/1

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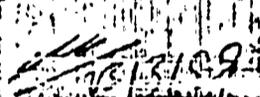
(2)

Memo No. HMA, 583/95/245-A, Dated Dispur, the 23rd March, 1999.

Copy to :-

1. The Accountant General, Assam, Maidangaon, Beltoia, Guwahati-28.
2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
3. The Desk Officer, Government of India, Ministry of Home Affairs, New Delhi-110 001.
4. The Under Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110 011.
5. The Secretary to the Govt. of Meghalaya, Home (Police) Deptt., Shillong.
6. The P.S. to Chief Minister, Assam, Dispur, Guwahati-6.
7. The P.S. to Chief Secretary, Assam, Dispur, Guwahati-6.
8. The P.S. to Addl. Chief Secretary & Principal Secretary to Home & Political Deptt., Assam, Dispur, Guwahati-6.
9. The P.S. to Secretary, Home Deptt., Assam, Dispur, Guwahati-6.
10. The P.P.S. to Chief Minister, Assam, Dispur, Guwahati-6.
11. Shri R.K. Bania, IPS, Superintendent of Vigilance & Anti Corruption, Christian Basti, Guwahati-5.
12. Shri B.K. Hazarika, IPS, Commandant, R.T.S, Dergaon.
13. Shri S.N. Talukdar, IPS, Spl. Superintendent of Police (CID), Assam, Ulubari, Guwahati-7.
14. The Superintendent, Assam Govt. Press, Bamunimaidam, Guwahati-21 for publication of the Notification.
15. Personal file of Shri

By order etc.,


Deputy Secretary to the Govt. of Assam,
Home (A) Department.

SITPAK

NO. I. 15011/17/97-IPS.
 Government of India/Bharat Sarkar
 Ministry of Home Affairs/Grih Mantralaya



New Delhi, the

24 JUN 1999

The Chief Secretary,
 Govt. of Assam,
 Home (A) Department,
 DISPUR.

Sub: Fixation of Seniority/year of allotment of promotee IPS officers of Assam segment of joint Assam-Meghalaya Cadre - regarding.

Sir,
 I am directed to refer to State Govt.'s letter No. 694/82/Pt.I/206 dated 9.6.1999 on the subject mentioned above and to say that seniority of the following IPS officers will be regulated under IPS (Regulation of Seniority) Rules, 1988, as amended vide notification No. 14015/54/96-AIS(I) B dated 31.12.1997.

The details of service in respect of these officers appointed to IPS by promotion are as under:

S.NO	Name of the Officer	Date of apptt. to IPS	Date from which holding rank not below that of Dy.SP or equivalent	Year of select list on the basis of which appointed to IPS	Completed years of service rendered in the rank not below that of Dy.SP or equivalent till 31st day of December of the year immediately before the year in which the SCM was held to prepare the select list on the basis of which the said officer was appointed to IPS (Fractional days, if any, are to be ignored).	Total weight-age in yrs. in terms of the Regulation of Seniority) Rules, 1988 as amended vide notification No. 14015/54/96-AIS(I) B dated 31.12.97.	Year of allotment
------	---------------------	-----------------------	--	--	--	---	-------------------

1.	S/Shri Rohini Kumar Bania	10.03.99	6.02.76	1996	19 Yrs	6 Yrs	1990
2.	S/Shri Birendra Kumar Hazarika	10.03.99	7.02.76	1996	19 Yrs	6 Yrs	1990
3.	S/Shri Sailendra Nath Talukdar	10.03.99	1.02.76	1996	19 Yrs	6 Yrs	1990

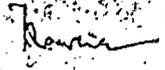
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 10/10/99
 30/11/99
 24/12/99
 P.T.O

Handwritten signature:
 Attested
 Smt. Advocate
 5.4.04

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3. As per Rule 4 of IPS (Regulation of Seniority) Rules, 1988, S/Shri Rohini Kumar Bania, Birendra Kumar Hazarika & Sailendra Nath Talukdar shall be placed enblock below Shri P. Chetia, IPS(SPS:90) in the gradation list of IPS officers of Assam-Meghalaya Cadre in the order in which their names are arranged in paragraph 2 above.
4. The seniority of the aforesaid officers in the IPS shall be subject to final outcome of C.R. No. 3628/1998 filed by Shri S.N. Talukdar in Guwahati High Court.
5. The Concerned officers may kindly be informed accordingly.

Yours faithfully,

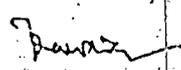
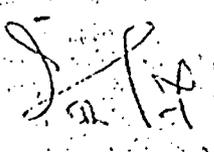


(J.B. KAUSHISH)
DESK OFFICER
TEL. NO. 301 4038

O. I. 15011/17/97-IPS.I DATED 24.07.1999

Copy forwarded for information & necessary action to:

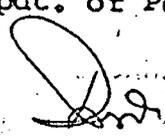
1. Shri A. Bardoloye, Deputy Secretary, Govt. of Assam, Home (2) Deptt., Dispur.
2. The Chief Secretary, Govt. of Meghalaya, Shillong
3. Accountant General, Assam, Dispur.
4. D.G. & I.G.P., Assam, Dispur.
5. Seniority Folder/Dealing hand - Civil List/ACR/IPS.III/IPS.IV



(J.B. KAUSHISH)
DESK OFFICER

Memo No. FA/1/38/vol-II/154-A, Dated Guwahati, the 25th July/99.
As directed, copy for information forwarded to :-

1. Shri R.K. Bania, IPS, Supdt. of Police, (Vigilance & Anti-Corruption-I), Assam, Guwahati.
2. Shri B.K. Hazarika, IPS, Comdt., RTS, Dergaon.
3. Shri S.N. Talukdar, IPS, Spl. Supdt. of Police, (CID), Assam, Ghty.



Asstt. Inspector General of Police, (A),
Assam ::::, Guwahati

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SP2

संस्कृत संख्या-33004/2002

REGISTERED NO. DL-33004/2002



संघात का पत्रिका The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्रकाशित के द्वारा
PUBLISHED BY AUTHORITY

नई दिल्ली, शुक्रवार, जनवरी 4, 2002 / पौष 14, 1923
NEW DELHI, FRIDAY, JANUARY 4, 2002/PAUSA 14, 1923

इस भाग में दिन पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 4th January, 2002/Pausa 14, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 4th January, 2002, and is published for general information:--

THE CONSTITUTION (EIGHTY-FIFTH AMENDMENT) ACT, 2001

[4th January, 2002.]

An Act further to amend the Constitution of India.

Be it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:--

1. (1) This Act may be called the Constitution (Eighty-fifth Amendment) Act, 2001.

Short title and commencement.

(2) It shall be deemed to have come into force on the 17th day of June, 1995.

2. In article 16 of the Constitution, in clause (4A), for the words "in matters of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted.

Amendment of article 16.

SUBHASH C. JAIN,
Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS (FLU), MIHIB ROAD, NEW DELHI
AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2002.

MGIP(FLU)MHND-4507GI-0-1-2002

Handwritten signature and date:
5.4.02

THE CONSTITUTION (NINETY-SECOND AMENDMENT)
BILL, 2001

A

BILL

to amend the Constitution of India.

Enacted by Parliament in the Fifty-second Year of the Republic of India as follows:--

1. (1) This Act may be called the Constitution (Ninety-second Amendment) Act, 2001. Short title and commencement.

(2) It shall be deemed to have come into force on the 17th day of June, 1995.

2. In article 16 of the Constitution, in clause (4A), for the words "in matters of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted. Amendment of article 16

STATEMENT OF OBJECTS AND REASONS

The Government servants belonging to the Scheduled Castes and the Scheduled Tribes had been enjoying the benefit of consequential seniority on their promotion on the basis of rule of reservation. The judgments of the Supreme Court in the case of Vijpal Singh Chhabhan (1995) 6 SCC 684 and Ajit Singh No. 1 AIR 1996 SC 1189, which led to the issue of the O.M. dated 30th January, 1997, have adversely affected the interests of the Government servants belonging to the Scheduled Castes and Scheduled Tribes category in the matter of seniority on promotion to the next higher grade. This has led to considerable anxiety and representations have also been received from various quarters including Members of Parliament to protect the interest of the Government servants belonging to Scheduled Castes and Scheduled Tribes.

2. The Government has reviewed the position in the light of views received from various quarters and in order to protect the interest of the Government servants belonging to the Scheduled Castes and Scheduled Tribes, it has been decided to negate the effect of O.M. dated 30th January, 1997 immediately. Mere withdrawal of the O.M. dated 30th January, 1997 will not meet the desired purpose and review or revision of seniority of the Government servants and grant of consequential benefits to such Government servants will also be necessary. This will require amendment to article 16(4A) of the Constitution to provide for consequential seniority in the case of promotion by virtue of rule of reservation. It is also necessary to give retrospective effect to the proposed constitutional amendment to article 16(4A) with effect from the date of coming into force of article 16(4A) itself, that is, from the 17th day of June, 1995.

3. The Bill seeks to achieve the aforesaid objects.

New Delhi,

VASUNDHARA RAJE

The 19th November, 2001.

NOTES

77

ALL INDIA
SERVICES LAW JOURNAL

2002

Volume Two

JOURNAL SECTION

[1]

Copy of O.M. F. No. 1(13)/97-E: II(B), dated 12.10.2001, Government of India, Ministry of Finance (Department of Expenditure).

Subject : Rates of Dearness Allowance in respect of employees of Central Government and autonomous bodies continue to draw their pay/emoluments in the pre-revised scales of pay—Effective from 1.7.2001.

The undersigned is directed to refer to this Department's O.M. of even number dated 18.5.2001 (Published in Services Law Journal of Feb. 2002 as Sl. No. 30), wherein the Dearness Allowance rates w.e.f. 1.1.2001 in respect of employees of Central Government and autonomous bodies continue to draw their pay and emoluments in the pre-revised scale of pay were intimated, and to say that the revised rates of Dearness Allowance effective in such cases from 1.7.2001 would be as follows:

Date from which Payable	Rates of Dearness Allowance per month		
	Pay upto Rs. 3,500 p.m.	Pay above Rs. 3,500 p.m. and upto Rs. 6,000 p.m.	Pay above Rs. 6,000 p.m.
1.7.2001	262%	196% (Rs. 9170)	170% (Rs. 11760)

Note : Amounts within brackets represent the minimum amount payable per month as Dearness Allowance to employees in the different pay ranges.

2. All other conditions as laid down in the O.M. dated 14.9.2000 will continue to apply.

[2]

Copy of O.M. No 20011/1/2001 Estt. (D), dated 21.1.2002, Ministry of Personnel (Public Grievances and Pensions).

Subject : Seniority of SC/ST Government employees on promotion by virtue of rule of reservation/roster.

The seniority of a person appointed to a post is determined according to the general principle 5(i) contained in MEA O.M. No. 9/15/55-RPS dated 22.12.1959 and 2.2 in DOPT OM No. 22011/1/786-Estt. (D), dated 3.7.1986 and with DOPT OM No. 20011/5/90-Estt. (D) dated 4.11.1992 (copy enclosed). Seniority of such persons is determined by

Alkesh
Govt.
Revenue
5-4-02

the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades is determined in the order of selection for such promotion. Thus as per the aforementioned instructions, person appointed through an earlier selection would be senior to those promoted through subsequent selection.

2. This position was reviewed subsequent to the judgment of the Supreme Court dated 10.10.1995 in the case of *Union of India v. Virpal Singh Chauhan etc.* (JT 1995(7) SC 231) and it was decided vide DOPT OM No. 2001/1/96-Estt. (D), dated 30.1.1997, (Published in *Services Law Journal of July, 1997 as Sl. No. 46*) to modify the then existing policy by addition of the proviso to general principle 5(i) contained in MHA (now DOPT) OM No. 11/55-RPS dated 22.12.1959 and para 2.2 in DOPT OM No. 220/1/7/86-Estt. (D), dated 3.7.1986, which stipulated that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade.

3. The Government have now decided to negate the effects of DOP&T OM dated 30.1.1997 by amending Article 16(4A) of the Constitution right from the date of its inclusion in the Constitution i.e. 17th June, 1995, with a view to allow the Government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation in other words, the candidates belonging to general/OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.

4. Therefore, in pursuance of the aforementioned Constitution (Eighty-fifth) Amendment Act, 2001, it has been decided as follows :

- (i) (a) SC/ST Government servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and
- (b) the above decision shall be effective from 17th June, 1995.
- (ii) The instructions contained in DOPT OM No. 2001/1/96-Estt. (D) dated 30.1.1997 as well as the clarifications contained in DOPT OM No. 2001/1/2/97-Estt. (D) dated 21.3.1997 shall stand withdrawn w.e.f. 30.1.1997 itself.
- (iii) Seniority of Government servants determined in the light of O.M. dated 30.1.1997 shall be revised as if that O.M. was never issued.
- (iv) (a) On the basis of the revised seniority, consequential benefits like promotion, pay, pension, etc. should be allowed to the concerned SC/ST Government servants (but without arrears by applying principle of 'no work no pay').
- (b) For this purpose, senior SC/ST Government servants may be granted promotion with effect from the date of promotion of their immediate junior general/OBC Government servants.
- (c) Such promotion of SC/ST Government servant may be ordered with the approval of Appointing Authority of the post of which the Government servant is to be promoted at each level after following normal procedure of DPC (including consultation with UPSC).
- (d) Except seniority other consequential benefits like promotion, pay etc. (including

ing retirement benefits in respect of those who have already retired) allowed to general/OBC Government servant by virtue of implementation of O.M. dated 30.1.1997 and/or in pursuance of the directions of CAT/Court should be protected as personal to them.

All Ministries/Departments are requested to bring the above decisions to the notice of all concerned for guidance and compliance. Necessary action to implement the decisions contained in para 4(iii) above may be completed within the three months from the date of issue of these instructions and necessary action to implement the decision at para (iv) above may be completed within 6 months from the date of issue of these instructions.

Copy of Cir. No. 301(2)/2001-PA Admn. III/877 to 885, dated 19.11.2001, Government of India (Department of Posts).

Subject : Committee for study on Decentralization of Postal Accounts.

Consequent upon decentralization of accounts after bifurcation from the combined Audit and Accounts set up under the control of Comptroller and Auditor-General with effect from 1.4.1976, the Secretary (Posts) was declared the Chief Accounting Authority for the postal accounts and was made responsible for the preparation of monthly consolidated accounts, annual preparation of appropriation accounts and other accounts which the Government might desire to compile. After bifurcation, the various functions/checks being exercised in the combined set-up, continued to be performed in the accounts set up with effect from 1.4.1976.

2. After departmentalization of accounts, the need has been persistently felt to further decentralize the work from Postal Accounts at the Head Post Office level. For this purpose, decentralization of work relating to compilation of accounts was taken up at Post Office level on an experimental basis in the year 1986. However, consequently in the year 1987, this scheme was dropped. Now, in order to examine the various stage of decentralization of accounts and also to sort out the modalities, etc., it has been decided to set up a Committee for conducting a detailed study and to submit its report for further necessary action. The members of the Committee are :

- I. Shri V. Soundararajan — DA (P), Chennai
- II. Shri K.A.M. Pillai — DDA (P), Trivandrum (Member)
- III. Shri P.S.N. Murthy — ACAO, P.O., Hyderabad
- IV. Shri P.C. Panda — Sr. AO (EA), Postal Dte., (Member - Convener)

3. Director of Accounts (Postal), Chennai may also nominate one Accounts Officer/Senior Accounts Officer from his office for providing necessary assistance to the Committee. The Headquarter of the Committee will be at Chennai. However, they can visit in Postal Directorate/Units if and when required necessary for discussion or otherwise. The relevant information required by the Committee may also be obtained directly from the concerned Units/Headquarters Office.

4. The terms of the reference of the Committee are :

- (a) The item of the work which can be decentralized, from postal accounts at the level of Head Post Office/Division/Regional level with detailed justification with reference to merits/demerits.
- (b) The item of work which cannot be decentralized, with detailed justification on merits/demerits.

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL ::: PERSONNEL (B)
DISPUR ::: GUWAHATI

No. ABP. 59/96/163

Dated Dispur, the 12th March, 2002.

OFFICE MEMORANDUM

Subject : FIXATION OF SENIORITY OF RESERVED CANDIDATES
vis-a-vis
GENERAL CANDIDATES IN PROMOTIONAL POSTS

Consequent upon the amendment of Article 16(4A) of the Constitution of India by the Constitution (Eighty fifth) Amendment Act 2001 it has been decided that the following principle of fixation of seniority of reserved candidates vis-a-vis general candidates in promotional posts shall be followed :-

Scheduled Castes/Scheduled Tribes Government servants shall on their promotion by virtue of rule of reservation/roster be entitled to consequential seniority also and the above decision shall be effective from 17th June, 1995.

On the basis of the revised seniority, consequential benefits like promotion, pay, pension etc. shall be allowed to the concerned Scheduled Castes/Scheduled Tribes Government servants (without arrears by applying principle of no work no pay). For this purpose, senior Scheduled Castes/Scheduled Tribes Government servants may be granted promotion with effect from the date of promotion of their immediate junior General/Other Backward Classes Government servants. Such promotion of Scheduled Castes/Scheduled Tribes Government servant may be given with the approval of the appointing authority of the post to which the Government servant is to be promoted at each level after following normal procedure of Departmental Selection Committee and with the approval of Assam Public Service Commission.

Except seniority, other consequential benefits like promotion, pay etc. (including retiral benefits in respect of those who have already retired), allowed to General/Other Backward Classes Government servant by virtue of implementation of Office Memorandum No. ABP. 59/96/17 dated 12-6-96 and/or in pursuance of the direction of Assam Administrative Tribunal/Court, should be protected as personal to them. The instructions contained in this Department's Office Memorandum No. ABP. 59/96/17 dated 12-6-96 stand withdrawn with effect from 12-6-96 it-self and seniority

contd...P/2

*Checked
SAC
Approved
5.4.02*

-(2):-

of Government servant determined in the light of Office Memorandum dated 12-6-96 shall be revised as if that Office Memorandum was never issued.

(J.P. Saikia)
Commissioner & Secretary to the Government
of Assam, Personnel Department

Memo No. ABP. 59/96/163-A : Dated Dispur, the 12th March, 2002.

Copy to :-

- 1) Commissioner & Secretary to the Governor of Assam, Dispur.
- 2) Commissioner & Secretary to the Chief Minister, Assam.
- 3) The Chief Secretary to the Government of Assam, Dispur.
- 4) The Additional Chief Secretary to the Government of Assam.
- 5) The All principal Secretaries to the Government of Assam.
- 6) The All Commissioner & Secretary/Secretary to the Government of Assam.
- 7) All Deputy Commissioner/Sub-Divisional Officers (Civil).
- 8) All Administrative Departments.
- 9) All Heads of Departments.
- 10) PS to Ministers/Ministers of State, Assam.

By order etc.,

Deputy Secretary to the Government
of Assam, Personnel (B) Department

9

From: Shri Rohini Kumar Bania, IPS
Supdt. Of Police, V & A.C., Assam,
R.G. Baruah Road, Ganeshguri,
Guwahati - 781005

To: The Commissioner and Secretary,
(Home and Political) to the Govt. of Assam,
Dispur, Guwahati - 781006.

Through proper channel.

Subject: Seniority of SC/ST, Govt. Servants on promotion by virtue of rule of reservation/roster.

- References:
- i) Assam Govt. O.M. No. ABP. 59/96/163 dt. 12.3.02
 - ii) Govt. of India DOPT O.M. No. 20011/1/2001 Est(D) dt. 21.1.2002

Sir,

I have the honour to invite reference to the Govt. O.M. on the subject cited above and to submit the following prayer for favour quick redress and necessary action.

1. That Sir, I represented vide my communication No. DGVA/922 dt. 4.5.2002 for review of my seniority in the light of the state Govt. O.M. No. ABP 59/96/163 dt. 12.3.2002 to the Govt. and my representation has not been disposed till date.
2. That Sir, I was promoted to the senior scale of Assam Police Service in the year 1985 vide Govt. Notification No. HMA 2/85/Pt-II/15 dt. 7.5.85 (photocopy enclosed for ready reference) and was placed above my senior in the initial selection list appointing me to the post of Deputy Superintendent of Police being a member officer belonging to the SC community (Bania) of Assam.

*Attended
Rohini
S. 4. 01*

3. That Sir, I was placed at 'b' in the alphabetical order above the presently serving officers in the said promotion at j, k, m, n, o, and p, viz. Shri Akhil Kr. Nath, Shri Promotes Ranjan Das, Shri Amarendra Rajkumar, Shri Nripendra Mohan Dutta, Shri Phatick Dutta Goswami, and Shri Paresh Ch. Neog respectively following the rule of roster for promotion of SC/ST Govt. Servant as stated above.
4. That Sir, all these officers with alphabetic order j, k, m, n, o, and p have been promoted to selection grade post of IPS. and officers at alphabetic order j, n, and o, viz. Shri Akhil Kr. Nath, Shri Nripendra Mohan Dutta, and Shri Phatick Dutta Goswami respectively have further been promoted to the post of DIGP.
5. That Sir, paragraph 4 of the Govt. of India DOPT O.M. referred to above in the matter of revision of seniority, consequential benefits like promotion, pay, pension etc. is a speaking order and is clear as to the Govt. of India's decision to grant consequential seniority in service.
6. That Sir, similar decision has also been taken by the Govt. of Assam as mentioned above following the amendment of Article 16 (4A) of the Constitution of India by the Constitution (Eighty fifth) Amendment Act 2001 fixing of seniority of reserved candidates vis-à-vis general candidate in promotion post vide O.M. No. ABP.59/96/163 dt.12.3.2002 referred to above.
7. That Sir, there is instance where an officer of SC community has been promoted to the senior grade of Assam Police Service by rule of reservation/roster vide the Govt. Notification No. HMA.292/87/Pv/7 dt. 15.9.87 and seniority to the officer in the senior scale APS. has not been denied unlike me and as a result of which the officer has also been appointed to the IPS. subsequently with the same seniority as was enjoyed in the promotional post in the Sr. scale of Assam Police Service.

8. That Sir, the SC. officer Shri Binay Ranjan Das who was below Shri Ramanidhar Barua in the initial recruitment list as Dy SP. was placed above Shri Barua in the promotion to senior grade of APS. Shri Das has also been appointed to the IPS. and is also above Shri Barua.
9. That Sir, there couldn't be two different treatments from the same set of rules of reservation/roster and I became victim of discrimination and denied seniority in promotion.
10. That Sir, I represented for considering consequential seniority in the promotional post in the senior grade of APS. vide communication No. SB.XI/Confidential - Misc/88 dt. 19.12.88 and my represented has not been disposed.
11. That Sir, the services I have been rendering since inception are no less scintillating than that of above mentioned officers who have now been in higher position.
12. That Sir, I was officiating in the charge post of S.P. twice as S.P.(Special Branch) North Zone, Tezpur and S.P.(Special Branch)III at Special Branch HQ. Guwahati during the tenure of Addl. S.P. from 1985 to 1987 except for a brief stint as Addl. S.P. Mangaldoi which was also taken over having been specially assigned for conducting a General Election in a troublesome district of Darrang in 1985. Thereafter also all the assignments were of solemn importance in the district postings as S.P. Darrang, S.P. Borpeta, S.P. SB II, S.P. SB Zonal, Commandant 16th A.P. I.R. Battalion (at initial training and grooming stage), S.P. Vigilance and AntiCorruption and Dy. S.P. D.S.B. at Dibrugarh and Tinsukia Districts in the tumultuous days of Assam Agitation on Foreigners issue from 1979 to 1984.
13. That Sir, consequential seniority in promotion as entitled to me is no way likely to affect the services of the state or central Govt. to be rendered by me in view of facts stated in the preceding paragraphs, having an unblemished career all throughout my service period till now.

14. That Sir, the delay in fixation of my seniority by virtue of the Govt. O.M. as referred to above granting consequential seniority by promotion would deprive me of the benefits of pay and allowances which is a great financial loss to me.

I therefore pray that the Govt. may take a considered view in the light of the above quoted Memoranda and the case of Shri Binoy Ranjan Das as stated and grant me seniority above Shri Akhil Kr. Nath making an urgent reference to the Ministry of Home Affairs, Govt. of India, for taking necessary action to promote me accordingly. I shall ever remain grateful.

Yours Faithfully

Rohini Kr. Bania (S.P. V&A.C.)

Copy to the Chief Secretary to the Govt. of Assam, Dispur for favour of kind consideration and the early disposal of the prayer, which was submitted on June 10th 2003.

Advance copy for information to:

1. The Addressee,
2. Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi,
3. Deputy Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi.

Rohini Kr. Bania



- 63 -

Annexure-16

85

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

No.HMA. 420/2003/29, Dtd.Disour, the 20th Nov./2003.

From : SHRI P.P. BAROOAH, ACS
JOINT SECY. TO THE GOVT. OF ASSAM,
HOME (A) DEPARTMENT.

To : Shri R.K. Bania, IPS
Superintendent of Police,
Vigilance & Anti-Corruption,
Assam, R.G. Barua Road, Guwahati.

Sub : SENIORITY OF SC/ST GOVT SERVANT ON PROMOTION
BY VIRTUE OF RULE OF RESERVATION/ROSTER.

Ref : Your representation dtd. 10/6/03.

Sir,

In inviting a reference to above, I am directed to say that your prayer for restoration of seniority could not be considered as per O.M. issued by Personnel (B) Department vide No.ABP.59/96/163, dtd. 12/3/2002.

Yours faithfully,

[Signature]
20/11/03
Joint Secy. to the Govt. of Assam,
Home (A) Department
....

TD/

[Handwritten notes]
Must be
sent.
Admitted
5.4.04



S.V.Subramanian, IPS

আবক্ষী মহানিৰ্দেশক, অসম
Director General of Police, Assam
Ulubari : Guwahati - 781 007
D.O.No.C.106/92/190
The 16th December '92.

My dear *Ban-*

I am happy to place on record my sincere appreciation for discharging the onerous duty, conscientiously by you and all officers under you during the visit of the President of India on 17th/18th October, 1992 and hope that you would continue to put in devoted service with same zeal in the future also.

Yours *onard*
S.V.Subramanian

(S.V.Subramanian)

Shri R.K.Bania, APS
Supdt. of Police, SB(Zonal),
Guwahati.

*Musted
R.K.B.
Advocate
5.4.04*

-65-

Annexure-17 (series)

CONFIDENTIAL

87

OFFICE OF THE ADDL. DIRECTOR GENERAL OF POLICE, (BORDER), ASSAM,
KHANAPARA, GUWAHATI-22.

Memo No. ADGP(B)/C.323/IPM/2002/ 474

Dated 09.10.2002.

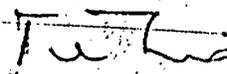
To : Shri U. Kumar, IPS
Deputy Inspector General of Police, (Admn)
Assam, Ulubari, Guwahati-7

Sub: Award of the Police Medal for Meritorious Service on the occasion of Republic
Day- 2003.

Sir,

With reference to your letter No. C.120/2002/22 dated 4.10.2002 on the subject cited
above, I am to send herewith my citation as per format together with 04 copies of recent
passport size photographs for favour of perusal and necessary action.

Yours faithfully,



10-10-2002

(Rohini Kumar Bania)
Superintendent of Police, (B)
Assam, Khanapara, Guwahati-22

Enclosed : As stated.

Pass

*Assam
Sub.
reimburse
5.4.02*

RECOMMENDATIONS FOR THE AWARD OF PRESIDENT'S POLICE MEDAL FOR DISTINGUISHED SERVICE ON THE OCCASION OF REPUBLIC DAY - 2003

1	Name (In capital words)	Surname	Middle Name	First Name
		BANIA	KUMAR	ROHINI
2	Initial Appointment	Year	1976	
		Rank	Dy.S.P.	
		Service	Assam Police Service	
		Cadre	Assam Police	
3	Total Police Service as on 26.01.2003	Year 26	Month 11	Day 20
4	Date of Birth	Day 01	Month 04	Year 1948
5	Age as on 26.01.2003	Year 54	Month 09	Day 25
6	Whether belong to SC/ST/OBC	S C		
7	Present posting	Designation	Superintendent of Police (Border), Assam.	
		Place	Guwahati, Assam.	
		Date	September 11 th 2002	
8	Rewards	Nos	Total Amount in Rs.	
	(A) Cash	Nil		
	(B) Others			
	(i) Commendation	Nil		
	(ii) Appreciation	8 (Eight)		
	(iii) Good Service entries	Nil		
	(iv) Any other rewards (Specify)	Nil		
9	Year of award Police Medal for meritorious service.	Does not arise		
10	Punishment (s)	Nil		
11	Details of enquiries pending, if any	Nil		
12	Details of disciplinary proceedings, if any	Nil		
13	Details of Court case pending, if any	Nil		
14	ACR grading for last 10 year			
15	Citations	As per format at Appendix - 'A'		

Signature of Recommending Authority

Name G. BHUYAN, IPS

Designation: I.G. of Police, (B), Assam

Date 9.10.2002.

Inspector General of Police (A)
Assam, Khanspara, Guwahati-28

N.B. :- 04 Copies passport photographs are in a separate envelope. Negative should be given in case of recommendation is for President's Police medal for Distinguished Service.

Handwritten signature and date:
Rank. Subordinate
5.11.02

RECOMMENDATION FOR AWARD OF PRESIDENT'S POLICE MEDAL FOR MERITORIOUS SERVICES ON THE OCCASION OF THE REPUBLIC DAY, 2003

Name and rank of the officer with parentage and home address.	Statement of service for which decoration has been conferred.
<p>SHRI ROHINI KUMAR BANIA, IPS Superintendent of police, Border, Assam, Guwahati.</p> <p>S/O : Late Soneswar Bania. P.O. : Dhalpur. P.S. : Bihpuria. Dist. : Lakhimpur State : Assam</p>	<p>Shri Rohini Kumar Bania joined Assam Police as probationary Dy.S.P. on February 6th, 1976 at Police Training College Dergaon, Assam. Shri Bania came to notice of his superiors as a young and active officer of considerable promise.</p> <p>Since joining in Assam Police, Shri Bania, a silent worker, has distinguished himself as a very hard working, intelligent and resourceful officer with great devotion</p>

to his duty and high sense of dedication and commitments. He has been uniformly serving the police organization with a high level of efficiency covering various areas of police investigation, law and order, communal harmony and Police Public relations etc. of which the following deserve special mention:

Shri Bania exhibited great deal of interest and zeal to Police Work as a probationary Dy.S.P. while under going district police training in Nagaon district in 1977. He took active role in anti-dacoity operation in the crime prone areas of the district and apprehended veteren criminals with booties. He equally excelled in law and order duty in communally sensitive areas of Nagaon district and was entrusted as Constituency duty officer in General Election held in 1978 even during his probationary tenure. Shri Bania also took keen interest in Police and Public Welfare activities as a probationary ^{officer} and showed exemplary instances. Shri Bania succeeded in averting a serious breach of an embankment at Jakhlabondha with police personnel when the local E & D officials deserted the site apprehending public outrage to their failure and protected a vast areas including Nagoan District HQ township from ravage of flood in 1977.

During 1978, depredatory activities by Mizo underground operating under banner of banned MNF who were carrying an insurgency activities for liberation and

secession of Mizoram from India increased considerably in Cachar - Mizoram Border areas causing great terror and panic among the local population. Shri Bania, who was posted as Asstt. Commandant 6th A.P. Bn. Cachar, was specially deputed to contain the illegal activities of Mizo underground and restore normalcy in the area. Shri Bania who camped in the disturbed area for long span of time, not only was successful in containing the illegal activities of the Mizo underground within a record time, he was also credited with bringing the normalcy and restoring confidence among the local people. While achieving these desired results Shri Bania was displaying exemplary courage, leadership and high sense of devotion to duty.

Shri Bania was inducted into a very hyper sensitive Panchayat Election duties in Sonai constituency in 1979 barely in the midnight before the election day closing him from interior Assam-Mizoram Border post apprehending serious breach of peace and large scale election disturbances. Shri Bania was able to ensure conduct of the election in the most difficult areas of Cachar district by firmly handling several incidents of arsons, pitch battle between supporters and opponents of the political parties culminating into injuries to scores of them, attacks on booths and election officials through-out the election day. Shri Bania with his lone police man taking great risk to his life rescued a polling party detained and was about to be set on fire by hooligans in the night hours from a School building at 'Kachudaram' under Sonai Circle of the district.

Between the period 1978-85 the entire State of Assam was embroiled in large scale disturbances in the context of anti-foreigners' movement spearheaded by AASU, AAGSP and also some other offshoot militant group. Shri Bania was specially picked up for intelligence work as Dy.S.P. DSB Tinsukia which was at that time one of the most adversely affected areas by the disturbances. During his tenure as Dy.S.P. DSB Tinsukia Shri Bania made remarkable contribution by furnishing valuable information which enabled the authorities to neutralize the activities of the extremist elements who were on a rampage in the entire Tinsukia Sub division and the neighbouring areas. Shri Bania displayed exemplary courage and leadership and was immediately responsible in identifying and apprehending three hardcore NSCN activists who were on their way from Myanmar to Nagaland via Assam bordering Tinsukia Sub division (Lakhapani). The apprehension of three NSCN activists also led to the recovery of number of cache of arms and ammunitions including U.S Carbine, two Thomson Machine Guns and 8 M-20 pistols with a large quantity of ammunitions.

During the June 1979, Shri Bania averted a spiky situation of the Assam Arunachal Border by collecting timely information regarding the conspiracy hatched by some extremist elements and to create great disturbances in the context of visit of

the then Arunachal Chief Minister to the bordering areas. Shri Bania took immediate steps under his personal leadership and guidance and was successful in defusing the explosive situation without any trail of blood which caused him high praises from his superiors. For his special knock, Shri Bania was transferred to Dibrugarh DSB at the district HQ which was one of the most worst affected areas, on special assignments and during his tenure as Dy.S.P DSB, Dibrugarh Shri Bania was personally responsible for recovering of following arms and ammunitions from a group of AASU militant, from their hideouts in Digboi: 06 Nos of .36 Hand grenades and 03 Nos of .303 rifles and one .303 rifle from Dighaltarang village under Doom Dooma P.S. and one sten gun and explosives at Dibrugarh HQ town.

In the year 1982, Shri Bania was similarly successful in busting a gun-manufacturing factory along with the illegal manufacturer and recovered several hand made guns with tools and assorted spares from a remote village under Tingkhong bordering Nagaland with risk to his life.

Largely owing to proactive intelligence and ingenuity displayed by Shri Bania as Dy.S.P. DSB, Tinsukia and Dibrugarh, out break of serious communal disturbances at the industrial townships of Tinsukia, Digboi, Duliajan, Namrup could be averted by the district administration during his tenure from 1979 to 1983.

In the year 1985, Shri Bania was picked up to Northern Zone as S.P. (S.B. Zonal) and posted to Tezpur on special assignment. During his tenure he was successful in furnishing valuable information of various extremist elements including the APLA (Assam Peoples' Liberation Army) who were creating great terror and panic in Sonitpur Dist. by indulging in large communal violence and other illegal activities. Shri Bania was also personally responsible for recovering of arms and ammunitions including 3 sten guns, and 1 LMG from the possession of some of hardcore and key leaders of the outfit.

During 1985 General Elections Shri Bania was posted as Addl. S.P. Darrang with H.Q. at Mongaldoi barely 12 days ahead of the election due to his proven ability and acumen in handling law and order situation. Immediately after the conclusion of General Elections and before the declaration of election results, a rumour was floated by some interested quarters that a particular political party in collusion with some elements of the district administration were conspiring to manipulate the ballot papers during the counting process. Following this rumour, a large crowd of several thousand strength equipped with lethal weapons surrounded the Strong Room of the Election Department where the counting process is going on and the development led to the serious law and order situation. Immediately on receipt of the information, Shri Bania who was on duty of different places rushed to the P.O. and

he handled the situation in such tactful manner and great personal risk that the entire counting process passed off smoothly without any violence.

In the year 1986, a group of extremist elements belonging to a local under ground outfit attacked the armoury of Orang Forest Range Office, decamped with the 3 Nos of 315 rifles, 6 shot guns along with a huge number of ammunitions. Shri Bania who was in the charge of the investigation team took great pains in apprehending all the accused persons and recovered the entire looted arms and ammunitions within seven days.

During November 1986 a group of ULFA activist committed dacoity in the Central Bank located at Tongla and looted away Rs. 2 lakh from the Bank after killing the lone security guard. On receipt of the information Shri Bania took immediate steps to launch a combing operation against the extremist elements and was successful in apprehending all the accused persons within an hour time. In achieving his objective he displayed exemplary courages, personal leadership, tactful planning and great presence of mind.

At the on set of agitation spearheaded by the All Bodo Students Union (ABSU) for separate Bodo land in 1987 which witnessed wide spread violent situation in the state, Shri Bania was re-inducted into the intelligence work at Special Branch HQ in June 1987. He could meet the expectations of the Organization by dint of his diligence, perseverance having a well knit intelligence network and contributed significantly to pro-active intelligence bringing leadership at various levels to the negotiating table with the Govt. in early part of 1989.

During the year 1989, Shri Bania was specially picked up and posted as Superintendent of Police of Darrang District in the context of the prevailing highly surcharged and volatile situation created by ULFA and Bodo militants who were agitating for a separate State of Bodo land took such an ugly turn that every alternate day there were reports of murder, loot, arson, ethnic clashes and communal violence from various part of the district. Shri Bania, in fact, took over the violence - torn district under the murky sky stained by billowing smokes from hundred of burning houses following an out break of ethnic conflicts of very serious order in the district. Shri Bania as S.P. Darrang restored normalcy in the disturbed areas within a short span of a week time, which speaks volumes of high level of efficiency with which he achieved the objectives.

During September 1989, a police party which were proceeding to Puthimari in Darrang District from Kalaigaon P.S. about 12 kms North East of Kalaigaon P.S. came under the hot ambush of large group of Bodo militants and they were heavily

outnumbered. On receipt of the information, Shri Bania rushed to the P.O. located at a distance of 34 kms. From Mongaldoi along with a police party. A bitter and heavy encounter took place lasting more than two hours. After that the militant elements were compelled to withdraw and retreated from the area leaving behind their arms and ammunitions. The police party also under the leadership of Shri Bania successfully apprehended 14 Nos. of militants and recovered several number of improvised cannons. This had paved the way for restoring law and order in the district by boosting the sagging morale of the District Police.

In 1994, Shri Bania was specially called out and entrusted with raising a new India Reserve Battalion when the battalion suffered at the teething stage. He could maneuver the trouble with his leadership qualities and organized imparting of 500 odd recruits in a makeshift arrangement with a non-conventional training methodology and shaped the 16 IR battalion which came in handy in the insurgency affected districts of Tinsukia and Dibrugarh in 1996-97. Shri Bania is credited with devoting himself in various instructional areas during the training sessions of the battalion and shared his experiences gained particularly from VIP and VVIP security duties to the officers and recruits of the Force. As a result, two Cays of 16 I R Bn soon after completion of their basic training were deployed in Guwahati City Police for taking up security duties of various nature and magnitude and the Force is continuously on the deployment till date due to their suitability and efficiency.

During the year 1997 Shri Bania was specially picked up as S.P. Barpeta district. During that time militant extremist outfit, like NDFB, BLT and ULFA were operating their activities from their safe sanctuary in Bhutan Foot Hills and the world heritage Manas Wild Life Sanctuary causing great terror and panic among the local population and wild-life staff. There were reports of large-scale extortion and highly surcharged atmosphere prevailed in that district. Shri Bania was highly successful in neutralizing a large number of militants / extremists and containing the volatile situation with high level of efficiency succeeded in flushing out the militants from Manas Wild life Sanctuary. Shri Bania restored the confidence of the people in the district.

After completion of his tenure, in Barpeta District Shri Bania has been transferred as S.P. Vigilance & Anti Corruption Organization, Assam in the month of January/99. Shri Bania has brought about positive changes in the Vigilance and Anti Corruption works and infused a sense of logically sound enquiries and investigations by the Field officers and HQ Staff. He has been instrumental to enforcing performance appraisal by the Field Officer and bringing out annual and periodical reviews of performance of the Directorate of Vigilance and Anti

Corruption acti-vating the inbuilt mechanism of creditability among the enquiry and investigating officers leading to spectacular achievements. Shri Bania successfully guided investing officers in several old and complicated cases and thus contributed to the achievement of comparatively higher disposal rate with positive results during his tenure from 1999 to June 2002.

After his successful tenure of three years and six months in the Directorate of Vigilance and Anti-corruption, Shri Bania has joined the Border Police Organization, Assam in September 2002 and is working as Superintendent of Police (Border) at present.

Therefore, in view of his uniformly brilliant track record, I strongly recommend Shri Rohini Kumar Bania, IPS for awarding Presidents Police Medal for his continuous unblemished, spotless and dedicated meritorious service on the occasion of Republic Day, 2003.

Signature of recommending authority

Name : G. BHUYAN, IPS

Designation I.G. of Police, (B), Assam

Date 9.10.2002.

Inspector General of Police (B)
Assam, Khanapara, Guwahati-20

*Accepted
R. V.
Admiral
5.11.02.*

APPENDIX - 'B'

STATEMENT SHOWING THE REWARD IN RESPECT OF SHRI ROHINI KUMAR BANIA, IPS S.P., BORDER OF DISTT./UNIT/ORGN.

Sl. No.	Nature of reward	Year	Reason in brief	Awarding authority
1	2	3	4	5
1	Money reward	Nil	Nil	-
2				
3				
4	Commendation	Nil	Nil	-
5				
6				
7				
8	Apprcciation	1978	I.D.Parade Commanding at Silchar	Golam Osmani, Minister, Assam.
		1982	Recovery of Arm/ Explosives at Dibrugarh	S.K.Das, IPS. D.G.P. Spl. Branch, Assam
		1986	Recovery of looted Arm & ammunitions at Orang Forest, Darrang, Assam	Chief Conservator of Forest, Assam Guwahati
		1992	VVIP Security Duty	S.V. Subramanian, IPS. D.G.P. Assam
		1995	VVIP Security Duty	R.N.Mathur, IPS, IGP, Law & Order, Assam
		1998	Parliamentary Election 1998	N. Ramachandran, IPS. IGP (SB)
		1998	Action against ULFA	B.B. Mishra, IPS. DIG (Western Range) Kokrajhar
		2000	Good work at Vigilence and Anti- corruption, Assam	B.C.Kalita, IPS. IGP, Vigilance & Anti- corruption, Assam
9				
10	Good Service Entry	Nil	Nil	Nil

APPENDIX - 'C'

STATEMENT SHOWING THE PUNISHMENT, IN RESPECT OF SHRI ROHINI KUMAR BANIA, IPS, S.P., BORDER OF DISTT./UNIT/ORGN.

Sl. No	Nature of Punishment	Year	Details of the punishment & Reason in brief	Awarding authority
1	2	3	4	5

1. Major
2. Minor

Nil
Nil

Statement of performance for last 10 (Ten) years in respect of Shri Rohini Kumar Bania, IPS of Assam Police Border Organisation.

Year	Outstanding	Very Good	Above Average	Average	Below Average	Poor
1992						
1993						
1994						
1995						
1996						
1997						
1998						
1999						
2000						
2001						

Signature of the Recommending Authority

76 -

98

INTEGRITY CERTIFICATE

Certified that the integrity of Shri Rohini Kumar Bania, IPS, Superintendent of Police, (Border), Assam is above suspicion and that he had neither incurred censure nor was concerned in proceedings that were censured in the Court of Law. It is further certified that in respect of the conduct of the nominee underlying the present recommendation, no judicial proceedings are pending.


Signature of recommending authority

Name : G. BHUYAN, IPS

Designation I.G. of Police, (B)
Assam.

Date 9.10.2002.

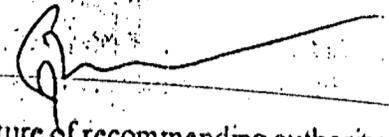
Inspector General of Police (B)
Assam, Khanapara, Guwahati-20

Accepted
Smt. Advocate
5.11.02

- 77 -

AUTHENTICITY CERTIFICATE

It is certified that the information furnished in respect of Shri Rohini Kumar Bania, IPS Superintendent of Police, (Border), Assam has been checked with reference to the original records and their authenticity is hereby confirmed.



Signature of recommending authority

Name G. BHUYAN, IPS

Designation I.G. of Police, (B)
Assam.

Date 9.10.2002.
Inspector General of Police (B)
Assam, Khanapara, Guwahati-21

- 78 -

Annexure-17 (series)

100



ADDL. DIRECTOR GENERAL OF POLICE
C. I. D. ASSAM
ULUBARI, GUWAHATI - 7

D.O. NO. CB/CID/103-97/377

The 5th Dec. / 2003

My dear *Bania*,

I am writing to convey my thanks to you for all the help offered by you to us in organising and conducting the Workshop on Gender Sensitization for police officers held by us last month. The report submitted by you to us on proceedings of this Workshop was also very apt and I have sent the same to the NCW since then. Your contribution to it went a long way in ensuring the success of Workshop. I hope you will continue to work like this in future also.

A copy of this is being marked to DGP, Assam for his perusal.

With Best wishes.

Yours *Sincerely,*
[Signature]
(R.N. MATHUR)

Shri R.K. Bania, IPS,
Superintendent of Police,
Vigilance & ACB, Assam,
Guwahati.

*Alister
RAG
Adwinte
5.4.04*



B.B. MISHRA, IPS,
Deputy Inspector General of Police
Western Range
Assam, Kokrajhar

101

- 79 -

O. No.

Date 23.2.98.

My Dear *Bania*,

On 19.2.98 an encounter took place between the personnel of Assam Police and a group of armed militants of ULFA in which one militant was killed, two other are suspected to be of the same group were seriously injured and large quantity of arms and explosives have been seized. The success was achieved due to accurate information that you managed to obtain. My congratulations to you for your effort to reactivate the intelligence machinery. If we successfully collect intelligence, more of operational success will be there for us in future.

I wish you the very best for your endeavour.

With regards

Yours *Sincerely*
B.M.

(B.B. Mishra)

To
Shri R.K. Bania, APS,
Supdt. of Police,
Barpeta.

PHONE KOKRAJHAR (03661) (O) 70720, FAX : 70589, (R) 70704

*Shri R.K. Bania
Barpeta
5.4.04*

- 80 -

B.C. KALITA, IPS

102

আবক্ষী মহাপরিদর্শক
ছনৌতি নিবন্ধন, নিবারণ বিভাগ
অসম, গুৱাহাটী
Inspector General of Police,
Vigilance & Anti-corruption Deptt.
Assam, Guwahati

No. DGVA/Appreciation/2000/59
Dated the 1/3/2000.

Dear Shri Bania,

I wish to place on record my sincere appreciation for the hard work and leadership provided by you in guiding and motivating the investigating staff belonging to the Vigilance and Anti-Corruption Organisation, Govt. of Assam, in fulfilling their targeted objectives assigned during the year 1999. Such leadership and guidance has not only inspired the staff under you to devote wholeheartedly to their assigned task but these will also act as guiding spirit for their future performance.

Please accept my congratulations.

With best wishes,

Yours sincerely,

B.C. Kalita
(B.C. KALITA)

Shri R.K. Bania, IPS.,
Superintendent of Police,
Vigilance & Anti-Corruption,
Assam, Guwahati-5.

*Attested
R.K. Bania
5.4.04*



- 81 -

N. RAMACHANDRAN
IPS

INSPECTOR GENERAL OF POLICE

Assam, Kahilipara, Guwahati-781019
Tel.: (0361) 560184 (O), 561351 (R)

103

No. SB.XI/C/19/98/3

Dated February 17, 1998

My dear Bania,

I write to place on record my deep appreciation of the excellent work done by you and your team of dedicated officers and staff during the last few weeks, culminating in the successful and peaceful conduct of the Parliamentary Elections, in spite of the relentless efforts made by the terrorist outfits to unleash violence and disrupt the democratic process. The hard work, dedication to duty and the courage exhibited by you and your staff in dealing with the situation, deserves commendation.

Adol SP

Pse convey
secdy

Please convey my deep appreciation to all officers and staff working under you. I am sure that you will not rest on your laurels and will continue to strive for maintaining peace and order in the District.

With best wishes,

Yours sincerely,

(N. Ramachandran)

R.L.
22/2/98
SP

Shri R.K. Bania, APS,
Superintendent of Police
Barpeta District,

OFFICE 540452
RESID 540709



MANAGING DIRECTOR
ASSAM POLICE HOUSING CORPORATION LTD.

I.G.P. Law & Order

LUBARI 781007

D.O.No. APHC/CON/LO/51

Date 29.11.95

My dear Bania

I am writing to convey my appreciation and thanks to you for the excellent manner in which you carried out the duties assigned to you in the sterile Area behind the rostrum during the VIP duty at Dibrugarh recently. The same was appreciated by everyone and the S.P.G. was specially happy to see the tight access control, which is what it should be, as per rules. Needless to say, the duty passed off peacefully because of it. Please accept my congratulations for it.

I am sending a copy of this to the Director General of Police, Assam, also for favour of his information.

With Best wishes

Yours Sincerely,

(Signature)

(R. N. MATHUR)

To
Shri R.K. Bania, APS
C.O. 16th I. R. Bn
Makum.

*Approved
Sent
Admitted
()*

Central Administrative Tribunal
13 JUL 2004
Guwahati Bench

83

Filed by
57/04
105

(A. DEB ROY)
Sr. C. G. S. C.
A. T., Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO. 84/2004

SHRI ROHINI KUMAR BANIA : APPLICANT

VERSUS

UNION OF INDIA & OTHERS : RESPONDENTS

WRITTEN STATEMENT ON BEHALF OF UNION OF INDIA
(RESPONDENT NO. 1)

I, Y.P. Dhingra, son of late Shri Thakur Dutt, aged 51 years, working as Under Secretary in the Ministry of Home Affairs, Government of India do hereby solemnly affirm and state as follows: -

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

2. That the applicant has filed the instant Original Application praying for the following reliefs:-

(i) That the impugned order / communication bearing No. HMA. 420/2003/29 dated 20th Nov /2003 issued by the Joint Secretary to the Government of Assam, Home (A) Department be set aside and quashed;

(ii) that the insertion of the clause that "inter-se-seniority" of the above named officers in the Sr. Scale will be as per gradation in the select list from which they are promoted " in the notification dated 07.05.1985 be struck down as the said clause was not made applicable to one Shri B.R. Das, a schedule caste candidate;

(iii) that the promotion of the private respondents to the cadre of Indian Police Service and their seniority fixed be set aside and quashed, being violative of the provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955 and Recruitment Rules, 1954;

(यश दींगरा)
Y. P. DHINGRA
अधर सचिव
Under Secretary
गृह मंत्रालय
Ministry of Home Affairs
नई दिल्ली
New Delhi

- 84 -

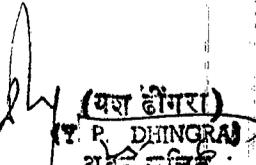
- (iv) that the applicant be deemed to have been promoted to the cadre of Indian Police Service when the private respondent nos. 8 and 9 were promoted to the cadre of Indian Police Service and the seniority be fixed over the private respondents nos. 8 and 9 with all consequential benefits;
- (v) that the benefit that has accrued under the amendment Act of 2001 in respect of Article 16 (4-A) which provides promotion with consequential seniority be given to the applicant with all consequential benefits.
- (vi) that the constitutional amendment and the benefit subsequent thereto vide officer memoranda dated 21.01.2002 and 12.03.2002 be provided to the applicant, restoring the seniority over all the private respondents with retrospective effect alongwith consequential benefits and
- (vii) that the constitutional amendment and in pursuance of the office memoranda dated 21.01.2002 and 12.03.2002, the benefit of reservation and the roster point be maintained and given to the applicant in the cadre of Indian Police Service.

CONTENTIONS OF THE APPLICANT.

3. That the main contention of the applicant is that he should have been given seniority in State Police Service above respondents no. 8 and 9 pursuant to the Eighty- fifth Constitutional Amendment allowing reservation in promotion in the Services. Consequently, he should have been appointed by promotion to Indian Police Service above respondent nos. 8 and 9. He has based his case to that of Sh. Binay Ranjan Das, a candidate belonging to SC Community who, according to the applicant, was placed over the general category candidates while fixing seniority.

PRILIMINARY OBJECTIONS

4. That at the outset, it is humbly submitted that the subject matter of the case related to this respondent pertains to appointment by promotion from State Police Service to the Indian Police Service. It is submitted that such appointments are solely governed by the statutory provisions of the Indian


 (T. P. DHINGRA)
 अवर सचिव
 Under Secretary
 गृह मंत्रालय
 Ministry of Home Affairs
 नई दिल्ली
 New Delhi

Police Service (Appointment by Promotion) Regulations, 1955, framed pursuant to the All India Service Act, 1951 under Article 312 of the Constitution. There is no provision of reservation in promotion from State Police Service to the Indian Police Service.

5. That the Office memoranda dated 21.01.2002 and 12.3.2002 issued by the Department of Personnel and Training, Government of India, pursuant to the Constitution's 85th amendment relates to giving benefit of seniority in promotion to the candidates belonging to SC /ST categories but is only applicable to persons belonging to Central Services, and not to the persons belonging to the All India Services, the conditions of service of whom are governed solely by the All India Service Rules and Regulations framed under the All India Services Act, 1951.

6. That before giving parawise reply to the averments made by the applicant in the present OA, this respondent may please be permitted to make following preliminary submissions.

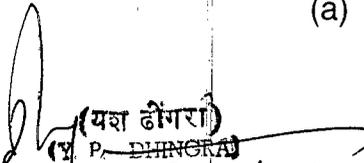
PRELIMINARY SUBMISSIONS

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

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

8. It is further submitted that in pursuance of Section 3(1) of the All India Service Act, 1951, the Central Government has framed the following rules relevant for the purpose of the present OA: -

(a) The Indian Police Service (Recruitment) Rules, 1954 (hereinafter referred to in short as the Recruitment Rules); and


(यश दींगरा)
(Y. P. DHINGRA)
अधर सचिव 6.04
Under Secretary
गृह मन्त्रालय
Ministry of Home Affairs
नई दिल्ली
New Delhi

- (b) The Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to in short as the Promotion Regulations).

9. It is submitted that a person is recruited to the Indian Police Service under Rule 4 of the Recruitment Rules by one of the two sources given hereinbelow: -

- (a) through competitive examination (i.e. direct recruitment)
 (b) by promotion of substantive member, belonging to the State Police Service.

10. It is submitted that the following statutory provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955, as existing at the relevant point of time and also relevant in the context of the contentions made by the applicant in the present O.A are as under: -

5 Preparation of a list of Suitable officers:-

5(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service, as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of preparation of the list in the posts available for them under rule 9 of the recruitment rules plus twenty percent of such number or two whichever is greater.

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

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

(यशो वींगरा)
 (Y. P. DEINGRA)
 अवर सचिव
 Under Secretary
 गृह मंत्रालय
 Ministry of Home Affairs
 नई दिल्ली
 New Delhi.

5(3) The Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of April of the year in which it meets:

5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their Service records.

5(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service:

Provided that the name of any officer so included in the list, shall be treated as provisional, if the State Government, withholds the integrity certificate in respect of such an officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.

6. Consultation with the Commission:

The list prepared in accordance with regulation 5 shall then be forwarded to the Commission by the State Government along with-

- (i) the records of all members of the State Police Service included in the list
- (ii) the records of all members of the State Police Service who are proposed to be superseded by the recommendations made in the list;
- (iii) [deleted].
- (iv) the observations of the State Government on the recommendations of the Committee.

6A The State Government shall also forward a copy of the list referred to in regulation 6 to the Central Government and the Central Government shall send their observations on the recommendations of the Committee to the Commission.

7. Select List: -

(सह सचिव)
 P. P. DHINGRA
 अवर सचिव
 Under Secretary
 गृह मन्त्रालय
 Ministry of Home Affairs
 नई दिल्ली
 New Delhi.

- (1) The Commission shall consider the list prepared by the Committee along with-
- (a) the documents received from the State Government under regulation 6;
- (b) the observations of the Central Government and, unless it considers any change necessary, approve the list.
- (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 Government and the Central Government of the changes proposed and after taking into account the comments, if any, of the State Government and the Central Government, may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.
- (3) The list as finally approved by the Commission shall form the Select List of the members of the State Police Service.
- (4) The Select List shall ordinarily be valid until its review and revision, effected under sub-regulation (4) of regulation 5 is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2);

Provided that no appointment to the service under regulation 9 shall be made after the meeting of the fresh committee to draw up a fresh list under Regulation 5 is held.

9. Appointments to the Service from the Select List.-

- (1) Appointment of members of the State Police Service to the Service shall be made by the Central Government on the recommendations of the State Government in the order in which the names of the members of the State Police Service appear in the Select List for the time being in force

That, it is further submitted that the Indian Police Service (Appointment by Promotion), Regulations, 1955 envisage distinct roles to be played in respect of the State Government, the Union Public Service Commission and the Central Government, with specific mandates in the process of preparation of the select

list of State Police Service officers for promotion to the Indian Police Service, right from the stage of drawing the list of eligible officers by the State Government to finally making appointments to the Service from the select list by the Central Government. Whereas the State Government has the exclusive role in regard to drawing of the consideration zone of the eligible State Police Service Officers to be placed before the Selection Committee in terms of seniority of these officers in the State Police Service, the UPSC is wholly concerned with reference to the select list prepared and approved under Regulation 7(3) on the basis of the grading made by the Selection Committee and with the aid of observations of the State and Central Government is entirely concerned as the authority concerned in making appointments from the select list on the recommendations of the State Government and in the order in which the names of the members of the State Police Service appear in the select list for the time being in force during the period when the select list remains in force.

11. That it is further submitted that the State Government being the sole custodian of service records of State Police officers, is required to furnish a proposal for convening the meeting of the Selection Committee, along with a list of eligible State Police Service officers and their service records, integrity certificates etc. direct to the Union Public Service Commission for consideration of eligible State Police Service officers for their inclusion in the select list for their subsequent appointment by promotion to the Indian Police Service. The Commission scrutinizes the said proposal / records and fixes the meeting of the Selection Committee. The Central Government nominates its nominee on the Selection Committee as and when the Commission fixes the meeting. The Selection Committee consisting of members of State Government, Central Government and UPSC assesses the eligible SPS officers on the basis of their service records and adopting the merit cum seniority principle assigns appropriate grading to them. Finally on the basis of grading assigned to the officers vis-à-vis the no. of vacancies available, the Committee finalizes a list of officers to be recommended for inclusion in the Select List and to be appointed by promotion to IPS therefrom. The State Government and the Central Government subsequently furnish their individual observations on the said recommendations of the Selection Committee to the Commission. The Commission after taking into consideration, the observations of the State Government and the Central Government, decides in the matter of approving the Select List. The list as approved by the Union Public Service Commission forms the Select List. Finally and specifically in terms of regulation 9(1) of IPS

(यु. पी. डी. ग्रा. ए. ए.)
 (Y. P. D. G. A. E.)
 अवर सचिव
 Under Secretary
 गृह मंत्रालय
 Ministry of Home Affairs
 नई दिल्ली
 New Delhi.

(Appointment by Promotion) Regulations, 1955, appointment to the IPS of such members of the State Police Service who are included unconditionally in the Select List approved by the UPSC is made by the Central Government on the recommendations of the State Government and in the order in which their names appear in the Select List for the time being in force during the period when the select List remains in force. It may thus be observed that the main part played by the Union of India in the entire process of recruitment is limited to only effecting appointment to IPS of eligible SPS officers included in the Select List duly approved by UPSC.

PARAWISE REPLY :

1. That the averments made by the applicant in this para and pertaining to the State Government are to be replied by the State Government. As such, the submissions made by the State Government may please be referred to.

As regard, the contention of the applicant craving to be given the benefit of OM No. 21.10.2002 issued by the Govt. of India, Ministry of Personnel and Training over and above the private respondents, it is submitted that the said O.M. is applicable to officers belonging to the Central Services whereas officers of All India Services are solely governed by the All India Service Rules.

2 and 3. The averments made by the applicant in these paras are open for the Hon'ble Tribunal to decide upon;

4.1 That as regards the averments made by the applicant in this para it is humbly submitted that for effecting recruitment by promotion of eligible Assam Police Service officers to Joint IPS Assam-Meghalaya Cadre during 1994-95, the Government of Assam had intimated two substantive vacancies anticipated to be filled by promotion of State Police Service officers to Indian Police Service. Accordingly in terms of Regulation 5(1) of the IPS (Appointment by Promotion) Regulations, 1955 existing at the relevant point of time, the Select List of 1994-95 consisting of four names (two anticipated plus two waitlisted for unforeseen vacancies occurring during the period of twelve months commencing from the date of preparation of the list) was prepared by the Selection Committee in its meeting held on 27.3.1995. While respondents no. 8 and 9 were included at Sl. No. 1 and 2 in the zone of consideration, the applicant was placed at Sl. No. 4 therein. On the basis of assessment of service

(यशवीर सिंह)
(Y. P. BHINGRA)
अधर सचिव
Under Secretary
गृह मन्त्रालय
Ministry of Home Affairs
नई दिल्ली
New Delhi.

records of the officers, the Committee selected four names and placed them in the following order:-

<u>S. No.</u>	<u>Name (S/Shri)</u>	
1.	Amarendra Rajkumar	(respondent no. 8 herein)
2.	P.C. Neog	(respondent no. 9 herein)
3.	Promod Chetia	
4.	R.K. Bania (SC)	(applicant herein)

The Select List of 1994-95 was approved by Union Public Service Commission on 25.10.1995.

Thereafter in terms of Regulation 9(1) of the IPS Promotion Regulations, the State Government furnished a proposal for appointment by promotion to IPS of first two officers included in the Select List of 1994-95 (viz. respondents no. 8 and 9 herein) against two substantive vacancies that occurred during 1994-95 due to retirement of Sh. S.N. Mazinder Baruah, IPS (SPS) on 28.2.1995 and Sh. R. Biswas, IPS (SPS) on 30.11.1995 respectively. Based on this proposal appointment of first two officers included in the Select List of 1994-95 namely S/Sh. Amarendra Raj Kumar and P.C. Neog was notified by Government of India vide Notification No. I-14011/16/95-IPS.I dated 29.12.1995.

In terms of Regulation 7(4) of the IPS Promotion Regulations existing at the relevant point of time, a Select List was supposed to be in force until its review or revision. As the next Selection Committee Meeting to prepare the 1995-96 Select List met on 28.2.1996 and no fresh proposal for appointment of officers from 1994-95 Select List was furnished by the State Government till that date, no further appointment was effected from the 1994-95 Select List. Thus the applicant being included at Sl. No. 4 in the Select List of 1994-95 could not be appointed to IPS. Further submissions made by the State Government and the Union Public Service Commission may kindly be referred to in this regard.

The next Selection Committee met on 28.2.1996 and further on 30.7.1996 to prepare the 1995-96 Select List. As per Regulation 5(1) of the Promotion Regulations existing at the relevant point of time, the size of the 1995-96 Select List was fixed as six against four substantive vacancies anticipated to occur during the course of the period of twelve months commencing from 28.2.1996. The name of the applicant was

(कमल शर्मा)
 (K. P. DEINGRA)
 लघु सचिव
 Under Secretary
 गृह मन्त्रालय
 Ministry of Home Affairs
 नई दिल्ली
 New Delhi.

duly considered by the Committee and placed at Sl. No. 4 in the Select List. The Select List was approved by UPSC on 17.03.1997. Thereafter on the basis of proposal furnished by the State Government, the applicant alongwith other officers included in the Select List was appointed by promotion to IPS vide Government of India's Notification No. I-14011/12/1996-IPS.I dated 19.03.1999. Further submissions, made by the State Government and UPSC may kindly be referred to in this regard.

- 4.2 That the averments made by the applicant in this para are a matter of record. However as the subject matter is the prime concern of the State Government, submissions made by them in this regard may kindly be referred to.
- 4.3 That the averments made by the applicant in this para fall under the ambit of the State Government. As such, submissions made by them in this regard may kindly be referred to.
- 4.4 As regards the averments made by the applicant in this para, it is humbly submitted that the notification dated 7.5.1985 was issued by the State Government of Assam. Moreover, inter-se-seniority of State Police officers is maintained by the State Government. As such, submissions made by them in this regard and specifically with regard to comparison made with Sh. B.R. Das may kindly be referred to.
- 4.5,4.6 and
- 4.7 That the averments made by the applicant in this para fall under the ambit of the State State Government. As such, submissions made by them in this regard may kindly be referred to.
- 4.8 That the applicant in this para has narrated the relevant provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955 as amended on 31.12.1997. However as the applicant is contesting his case from the Select List of 1994-95 and 1995-96, for the sake of convenience, the rules before the amendment

25.6.97
 (मनो हींगरा)
 (Y. P. DHINGRA)
 अवर सचिव
 Under Secretary
 गृह मन्त्रालय
 Ministry of Home Affairs
 नई दिल्ली
 New Delhi.

4.9 That as regard the averments made by the applicant in this para, it is humbly submitted that the State Government being the sole custodian of service records of State Police Service officers prepares and forwards the list of eligible officers in the order of seniority and subject to the size of the Select List as prescribed in the IPS (Appointment by Promotion) Regulations, 1955, directly to the Union Public Service Commission for enabling the Selection Committee to prepare the Select List of officers to be appointed by promotion to the IPS. Therefore, any appointment to IPS is dependent upon the seniority list / eligibility list furnished by the State Government. As regards the factual position of the case, the same has already been explained in detail at para 4.1 of this reply. The same may please be referred to.

4.10 The averments made by the applicant in this para are denied in totality. The appointment by promotion to IPS of respondents no. 8 and 9 from the Select List of 1994-95 Select List as well as the appointment by promotion to IPS of the applicant from the Select List of 1995-96 were made strictly adhering to the statutory provisions of the IPS (Appointment by Promotion) Regulations, 1955 as applicable at the relevant point of time.

As regards the grant of year of allotment / seniority of aforementioned officers consequent upon their promotion to IPS, it is humbly submitted that seniority is an incidence of service and follows the appointment. The seniority of a promotee IPS officer is governed by IPS (Regulation of Seniority) Rules, as amended from time to time. At the time of appointment of respondent Nos. 8 and 9, (viz. 29.12.1995), IPS Seniority Rules as amended on 1988 were in force. Therefore, in terms of Rule 4 of those Rules, respondents No. 8 and 9 were given 1989 as the year of allotment. At the time of appointment of the applicant (viz. 10.03.1999 IPS Seniority Rules, 1988 as amended on 31.12.1997 had come ~~were~~ in force. Therefore, in terms of Rule 4 of IPS (Regulation of Seniority) Rules, 1988 as amended on 31.12.1997, the applicant was given 1990 as year of allotment in IPS.

4.11 The averments made by the applicant in this para are denied in totality. As already submitted in para 4.1 above, the applicant was duly considered for promotion to IPS from the Select List of 1994-95 alongwith respondents No. 8 and 9 and also included in the Select List.

25.6.04
 (यश दींगरा)
 (Y P DHINGRA)
 अवर सचिव
 Under Secretary
 गृह मंत्रालय
 Ministry of Home Affairs
 नई दिल्ली
 New Delhi

The said Select List was prepared against 2 anticipated substantive vacancies plus 2 waitlisted ones. Respondent Nos 8 and 9 were included at Sl. Nos. 1 and 2 whereas the applicant was included at Sl. No. 4 therein. At the relevant point of time appointments by promotion of officers included in the Select List were to be done by the Central Government on the basis of the proposal furnished by the State Government, giving details of the vacancy occurring and during the validity period of the Select List which was till its review or revision. The next Selection Committee Meeting to prepare the 1995-96 Select List met on 28.2.1996 and except for the proposal of appointment of respondents No. 8 and 9 from the 1994-95 Select List, no fresh proposal for appointment of officers from 1994-95 Select List was furnished by the State Government till that date. As such, no further appointment was effected from the 1994-95 Select List. The applicant was again included in the 1995-96 Select List and as the State Government proposed his appointment this time, he was appointed to IPS. Further submissions made by the State Government and UPSC in this regard may kindly be referred to.

- 4.12 That the averments made by the applicant in this para are denied in totality. As has already been explained in the preceding paras, the applicant was duly considered for promotion to IPS in terms of IPS Promotion Regulations. His non-appointment / appointment to IPS was however subject to furnishing of such proposal from the State Government based upon the availability of vacancy:

As regards the contention of the applicant that he was denied promotion to IPS despite being a Schedule Caste member and against the provisions of Articles 16 (4A) and 335 of the Constitution of India, it is humbly submitted that there is no provision of reservation in appointment by promotion from State Police Service to Indian Police Service. There are two modes of recruitment to Indian Police Service viz. by direct recruitment through competitive examination and by promotion. While making recruitment by competitive examination which involves original induction into the service at its entry level, adequate representation to all the classes is ensured in accordance with the Constitutional provisions. The mode of recruitment by promotion involves lateral induction of State Police Officers to the Indian Police Service on merit. State Police Officers are allowed the benefit of reservation under the Constitutional Provisions

(सचिव)
(Y : BHANGRA)
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New Delhi.

at the time of their initial appointment to the State Police Service and they can obtain still higher posts in the State Police Services in accordance with the extant instructions in vogue in the State Government on the subject. At the time of their consideration for appointment to the Indian Police Service, the State ~~Police Service~~ ^{Govt} ~~Officers invariably~~ forwards the names of those SPS Officers who hold Group 'A' posts in the State Government. If included in the Select List and subject to availability of vacancies, they are appointed by promotion to Senior time-scale posts (Group A) in the I.P.S. in the Central Government. This policy has been adopted uniformly in all the three All Indian Services, viz, IAS, IPS and IFS and is in vogue since its very inception and has stood the test of time and scrutiny of law. As there is no provision for reservation in recruitment by promotion from State Police Service to the Indian Police Service, the contentions made by the applicant in this regard do not hold good.

The object of induction of State Police Service Officers by promotion to the Indian Police Service is to achieve the ultimate objective of utilizing the experience and skill of State Police Service officers in the Indian Police Service and to give adequate representation to that experience and skill in the Indian Police Service.

- 4.13 That the averments made by the applicant in this para fall under the ambit of the State Government. As such, submissions made by them in this regard may kindly be referred to.
- 4.14 That as regard the averments made by the applicant in this para, submissions made by this respondent in para 4.1 may please be referred to. It is further submitted that as respondents No. 8 and 9 were promoted to IPS from the Select List of 1994-95, they were not considered for promotion from the subsequent Select List of 1995-96. As the applicant was not selected from the Select List of 1994-95 Select List and as he was eligible and was considered from the subsequent Select List of 1995-96 Select List, he was appointed to IPS therefrom and based upon the proposal furnished by the State Government. Further submissions made by the State Government and UPSC may kindly be referred to in this regard.

(यश दीग्रा)

(Y P DHINGRA)

अवर सचिव

Under Secretary

गृह मन्त्रालय

Ministry of Home Affairs

नई दिल्ली

New Delhi.

- 4.15 As regards the averments made by the applicant in this para it is humbly submitted that appointment by promotion to IPS of respondent Nos. 8 and 9 was from the Select List of 1994-95 against the appointment of the applicant from the Select List of 1995-96. As such their further promotion in IPS would definitely be mutually independent. However as promotion of SPS Officers within their Service falls under the domain of the State Government, submissions made by them in this regard may kindly be referred to.
- 4.16 That the contents of this para are a matter of record and hence not denied.
- 4.17 That the contents of this para are a matter of record and hence not denied. It is however submitted that the OM No. 21.01.2002 issued by Government of India thereby providing for the benefit of reservation for the SC/ST candidates in the matter of promotion applies to officers of Central Services whereas service matters of IPS officers are governed by statutory rules framed under the All India Services Act 1951. As already submitted in the preceding paras, there is no provision in the Indian Police Service (Appointment by Promotion) Regulations, relating to reservation in promotion from State Police Service to Indian Police Service. The explanation for the same has been submitted in para 4.12 of this reply. The same may please be referred to.
- 4.18 That the averments made by the applicant in this para fall under the domain of the State Government. As such submissions made by them may kindly be referred to in this regard.
- to 4.20
- 4.21 That the averments made by the applicant in this para are denied in totality. As regards the case of Sh. B.R. Das, it is submitted that the name of Sh. B.R. Das was included unconditionally by the Selection Committee at Sl. No. 2 in the Select List of 2002 which was approved by the Union Public Service Commission on 27.1.2003. He was not given any benefit of reservation while appointing him into IPS from the State Police Service. At that relevant point of time, Regulation 9(1) of the IPS (Appointment by Promotion) Regulations, 1955 as amended on 31.12.1997 stated as under:-

9. Appointments to the Service from the Select List.-

(यश दीपरा)
 Y. P. DEINGRA
 अवर सचिव
 Under Secretary
 गृह मंत्रालय
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 New Delhi.

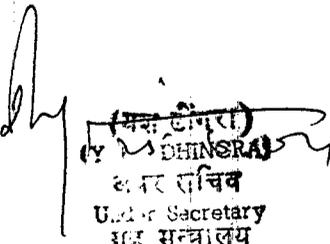
(1) Appointment of a member of the State Police Service, who has expressed his willingness to be appointed to the Service, shall be made by the Central Government in the order in which the names of the members of the State Police Service appear in the Select List for the time being in force during the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

In terms of the aforesaid Regulation, appointment of Sh. B.R. Das alongwith other unconditionally included officers in the Select List of 2002 was made vide Government of India's Notification No. I-14011/3/2002-IPS.I dated 03.02.2003. However, as the inclusion of Sh. B.R. Das in the Select List of 2002 was based upon the recommendations of the Selection Committee which is convened by UPSC and also based upon the eligibility list / seniority list in SPS which is prepared and furnished by the State Government, necessary submissions made by them in this regard may kindly also be referred to.

4.22 That the averment made by the applicant in this para are denied in totality. Necessary explanations in this regard have already been submitted at para 4.1 and 4.21 of this reply. The same may kindly be referred to.

4.23 & 4.24 As regard the averments made by the applicant in this para submissions made by the answering respondent at para 4.12 above may kindly be referred to.

4.25 Through the averments made by the applicant in this para, the applicant has invited attention to his distinguished service record and has craved for his appointment to IPS alongwith respondents No. 8 and 9. In this regard it is humbly submitted that it is the State Government that maintains the service records of State Police Service Officers such as ACRs etc and furnishes them before the Selection Committee, who in turn assesses these records and finally prepares a list of suitable officers on the basis of merit cum seniority, subject to the size of the Select List. Finally the appointments of officers included unconditionally in the Select List approved by UPSC are made by the Central Government on the basis of requisite proposal furnished by the State Government. Necessary submissions made by the State Government and the UPSC may also kindly be referred to in this regard.


 (सचिव) (DHINERA)
 सचिव
 Under Secretary
 गृह मंत्रालय
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 New Delhi

-98- 12°

4.26 As regards the averments made by the applicant in this para, it is humbly submitted that the objective of inducting officers of State Police Service to the Indian Police Service is not to provide specific benefit to any individual but with the objective to utilize the experience of State Police Service officers in the Indian Police Service. The rules governing recruitment by promotion to IPS have thus to be applied to all the officers equally as well as impartially. If there is no provision for reservations in recruitment by promotion from State Police Service to the Indian Police Service in the Promotion Regulations, it has been followed so in all the State IPS Cadres equally and impartially.

4.27 That in view of the submissions made by the answering respondent in the preceding paras, averments made by the applicant in this para are denied.

12. That in view of the submissions made above, it is most respectfully submitted that Original Application filed by the applicant is devoid of any merits and deserves to be dismissed in limine. It is accordingly prayed that the Honble Tribunal may kindly ~~be~~ pass appropriate orders in this matter in the interest of justice.

NEW DELHI:
DATED: 25.6.04.

VERIFICATION

I, Y.P. Dhingra, son of late Shri Thakur Dutt, aged 51 years, presently posted as Under Secretary to the Government of India in the Ministry of Home Affairs, New Delhi do hereby verify the facts stated above herein as true to my knowledge, information and belief derived from relevant files and records Nothing substantial to the issue raised by way of the present O.A. has been concealed.

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


(DEPONENT)
(यश दींगरा)
(Y. P. DHINGRA)
अधर सचिव
Under Secretary
गृह मन्त्रालय
Ministry of Home Affairs
नई दिल्ली
New Delhi.


(DEPONENT)
(यश दींगरा)
(Y. P. DHINGRA)
अधर सचिव
Under Secretary
गृह मन्त्रालय
Ministry of Home Affairs
नई दिल्ली
New Delhi.

6 JAN 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GAUHATI BENCH

Filed by:
The Respondent No
Through:
Anni Krishnan Naik

O.A. No : 84 of 2004

Rohini Kumar Baria

-VS-

Union of India & Others.

**WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS No. :-
8 & 9.**

The answering Respondents beg to state as under:

1. That the answering Respondents have gone through the copy of the Original Application and have understood the contents thereof. Save and except the statements, made in the original Application, that are specifically admitted to herein below, all the averments made in the O.A are categorically denied. Further, the statements, which are not borne on records, are also denied.

2. PRELIMINARY OBJECTIONS

a) That the relief as prayed for by the applicant for re-determination of his seniority in the State Police Service cannot be agitated before this Hon'ble Tribunal, inasmuch as this Hon'ble Tribunal has not been vested with the jurisdiction to entertain matters pertaining to Police Services under the State Government. As such the O.A. has been filed without jurisdiction and is liable to be dismissed.

b) That the O.A. is barred by limitation and is also hit by the principles of waiver, estoppel and acquiescence. There is also unexplained

gross delay and laches on the part of the applicant in praying for redressal of the grievances as raised in the Original Application.

c) That the O.A. is bad for non-joinder of necessary parties, inasmuch the relief as sought for by the applicant for re-fixation his seniority in the Senior grade of the state service, would affect other officers, who have not been impleaded as party respondents. The absence of the other officers over whom the applicant is claiming re-fixation of his seniority would hinder disposal of the OA. As such in their absence the OA is liable to be dismissed.

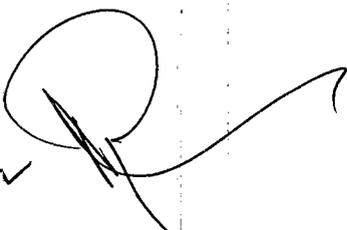
d) That the OA is not maintainable being not based on any cause of action and/or on a single cause of action. In this connection Rule 10 of the CAT (procedure) Rules, may be referred to.

That before proceeding with the merit of the case, the above preliminary objections raised by the respondents may be considered and decided first.

PARAWISE REPLY

3. That with regard to the statements made in paragraph 2 of the Original application under reply, the answering respondents deny the same and state that the nature of the relief/s as sought for by the applicant, this Hon'ble Tribunal does not have jurisdiction for entertaining the application.

4. That with regard to the statements made in paragraph 3 of the Original application under reply, the answering respondents deny the same and state that the OA is barred by limitation. The applicant has by way of this application prayed for re-determination of his seniority in the State cadre as of 1985 which prayer, in addition to being not entertainable by this Hon'ble Tribunal on the ground of jurisdiction, is not maintainable in terms of section 21 of the Administrative Tribunals Act 1985. Belated representation and entertainment of the same can not extend the period of limitation. Further, the



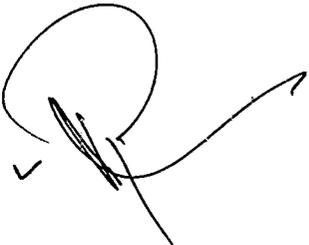
applicant has sought for retrospective promotion w.e.f. 1995 to the cadre of Indian Police Service which prayer is also not maintainable being barred by limitation.

5. That with regard to the statements made in paragraph 4.1 of the O.A under reply, the answering respondents deny the contentions of the applicant that he was entitled to be considered as a Schedule Caste candidate for promotion to the Indian Police Service for the vacancies as identified for the Assam segment of the Assam-Meghalaya cadre of IPS for the year 1994-95. It is the admitted position that the Indian Police Service (Appointment by Promotion) Regulations, 1995 do not provide for reservation in the matter of promotion from the State Police Service to the Indian Police Service. As such the O.A has been filed without there being any cause of action and is liable to be dismissed in limine.

6. That with regard to the statements made in paragraph 4.2 of the Original application under reply, the answering respondents state that the same are matters of record and deny anything contrary to and/or inconsistent with the records of the case. It is clarified that the name of the answering respondents figured at serial no. 4 and 8 respectively in the select list dated 3.12.1975, whereas the name of the applicant figured at serial no. 10.

7. That with regard to the statements made in paragraph 4.3 of the Original application under reply, your answering respondents state that the same are matters of record and deny anything contrary and/or inconsistent to the records of the case. It is stated that the services of the answering respondents were also confirmed in the junior scale of Assam Police Service vide notification dated 27.4.1982. On their confirmation in their respective services, in terms of Rule 18(5) of the Assam Police Service Rules 1966, they continued to maintain their respective seniority positions as determined in terms of the select list from which they were appointed to the service.

8. That with regard to the statements made in paragraph 4.4 of the Original application under reply, your answering respondents deny the same.

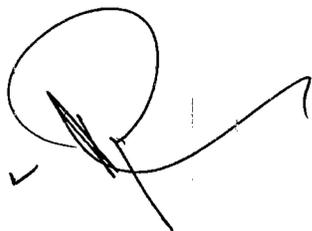


The notification dated 7.5.85 and the stipulation therein as regards fixation of the inter-se seniority of the officials promoted to the senior grade, was so made strictly in terms of the Rules holding the field. The applicant in view of the manner and method in which the promotions to the senior grade were effected, was not entitled to consequential seniority. The contentions of the applicant are totally misplaced inasmuch as the stipulation had been so incorporated in the notification dated 7.5.1985 strictly in terms of the provisions of Rule 18(6) of the Assam Police Service Rules 1966.

9. That with regard to the statements made in paragraph 4.5 of the Original application under reply, your answering respondents deny the same and state that the inter-se seniority of the applicant and the answering respondents were correctly determined by the authorities and the same was done strictly in accordance with the provisions of Assam Police Service Rules 1966. The applicant and the answering respondents were confirmed in their respective service vide the same notification. The effective date of confirmation in service is inconsequential for the purpose of determination of seniority. The applicant now cannot be permitted to agitate matters pertaining to the service as rendered by him in the State Service, before this Hon'ble Tribunal inasmuch as, this Hon'ble Tribunal is not vested with jurisdiction over the same.

10. That with regard to the statement made in paragraph 4.6 of the O.A under reply, your answering respondents deny the same and state that the statements made therein are vague to the core and contradictory to each other. The applicant cannot claim seniority over the answering respondents whose names figured above that of the applicant in the list from which the promotion to the senior scale was effected. It is stated that the "Roster points" cannot be treated as seniority position. Moreover, the applicant cannot at this distant point of time raise grievances as regards matters already settled and which have attained their finality.

11. That with regard to the statements made in paragraph 4.7 of the Original application under reply, your answering respondents deny the same



and state that the assignment of seniority position of the applicant and answering respondents in the gradation list at Annexure -5 &6 to the O.A, have been so assigned strictly in accordance with the Rules holding the field. The whole case of the applicant as evident is that his seniority in the senior grade is required to be re-determined by extending to him the benefits of reservation and his name having been placed in the notification dated 7.5.1985 ahead of the answering respondents in view of the "Roster Position" for SC candidate having occurred ahead of the "Roster Position" for the general category candidates held by the answering respondents, he is entitled to the consequential seniority. Such contentions of the applicant are totally misplaced and unfounded and the same have been made only with the case in view. The seniority positions as assigned to the applicant and the answering respondents have attained finality and cannot be reopened/agitated at this distinct point of time.

12. That with regard to the statements made in paragraph 4.8 of the Original application under reply, your answering respondents states that the same are matters of record and deny anything contrary to and/or inconsistent with the records of the case.

13. That with regard to the statements made in paragraph 4.9, 4.10, 4.11 and 4.12 of the Original application under reply, your answering respondents deny the same and state that for the year 1994-95, the Govt of India had determined 2 substantive vacancies for the Assam segment of the Assam Meghalaya cadre of IPS and the names of the answering respondents and the applicant were forwarded to the selection committee for consideration of their cases against the said two vacancies. The selection committee on assessment of the service records of the officers in the zone of consideration, recommended the name of the answering respondents at Sl. No. 1 & 2 respectively and in pursuance to the approval of the said select list by the UPSC, the answering respondents were appointed on promotion to the cadre of IPS vide notification under No: - 1-14011/ 16/95 - IPS - 1 dated: - 29.12.1995. The applicant has conveniently suppressed the fact that his case was also considered along with the cases of the answering respondent for inclusion in

the select list prepared for the vacancies identified for the year 1994-95. The applicant has suppressed vital material facts and has proceeded to level wild and baseless allegations only with a view to make out a case before this Hon'ble Tribunal. The applicant having not approached this Hon'ble Tribunal with clean hands, the original application is liable to be dismissed with costs.

The applicant a promotee to the cadre of IPS from a subsequent select list prepared for the vacancies identified for the year 1995-96 cannot claim for re-determination of his seniority over the answering respondents who are promotee's from an earlier select list

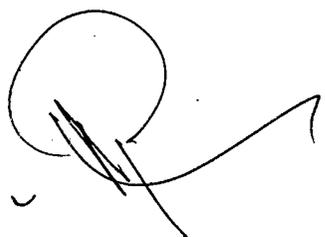
It is categorically denied that the cases of the answering respondents were considered in isolation for inclusion of their names in the select list prepared for the vacancies identified for the year 1994-95. The applicant having not assailed the promotion of the answering Respondents to the cadre of IPS, at the relevant point of time, the same has attained its finality cannot be assailed at this distant point of time. It is stated that no provision for reservation having been provided for under the provisions of the IPS (Appointment by Promotion) Regulation, 1995, the applicant cannot claim for the benefit of reservation in the matter of promotion to the cadre of Indian Police Service and therefore, there is no violation of Article: - 16(4) A and 335 of the Constitution of India.

14. That with regard to the statements made in paragraph 4.13 of the Original application under reply, your answering respondents deny the same and state that the applicant is not entitled to the benefits of the Office Memorandum dated 12.3.2002 (Annexure - 14). Further, assuming though not admitting that the said office memorandum dated: - 12.3.2002 is applicable to the case on hand, it is stated that the same having been made effective only from 17.6.1995, the same cannot be used to reopen the inter-se seniority positions fixed as way back as of 1986 and that too in the State Cadre. As such the original application has been preferred without there being any cause of action. Further, as stated hereinabove, there exists no provision for grant of reservation in vacancies to SC/ST candidates for the purpose of promotion to the IPS cadre.

15. That with regard to the statements made in paragraph 4.14 and 4.15 of the O.A under reply, the answering respondents categorically deny the contentions made therein and state that it is not a fact that the case of the applicant was not considered along with the case of the answering respondents for the vacancies identified for the year 1994-95. The selection committee had considered the case of the applicant and on consideration of the inter-se merit of the person in the zone of consideration had recommended the name of the answering respondents at Sl. No. 1 & 2 respectively in the select list in question. The applicant has misconstrued the provisions in the Rules relating to assignment of the year of allotment to incumbent promoted to the IPS cadre from State Police Service.

16. That with regard to the statements made in paragraph 4.16 of the Original application under reply, the answering respondents deny the same and state that the amendment as effected vide the Constitution (Eighty Fifth) Amendment Act 2001, is of consequence in so far as the inter-se seniority positions of the applicant and the answering respondents are concerned. The position of law as it stands after the amendment does not clothe the applicant with the right of raising a demand for the recasting of his seniority position vis-à-vis that of the answering respondent.

17. That with regard to the statements made in paragraph 4.17 and 4.18 of the O.A under reply, the answering respondents deny the same and state that no provision for reservation having been provided for in the matter of recruitment by promotion from the State Police Service to the Indian Police Service, the provisions of the office memorandums referred to in the paragraphs under reply, have got no application to the case on hand. It is reiterated that the applicant cannot claim for recasting of his seniority in the IPS cadre over the answering respondents basing on the provisions of the said office memorandum inasmuch as the same has got no application in the case on hand. Further the applicant was not promoted to the cadre of IPS on consideration of his case as a Scheduled Caste candidate.

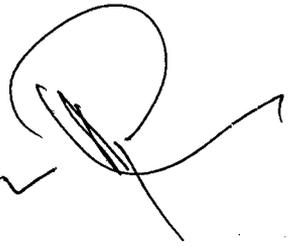


18. That with regard to the statements made in paragraph 4.19 and 4.20 of the Original application under reply, the answering respondents deny the same and state that the applicant had no cause of action for preferring the representation dated 10.6.03 (Annexure - 15 to the OA) and the authorities rightly rejected the same. The rejection of the said representation of the applicant, has not infringed upon any of his legal and/or fundamental rights. Further, the communication dated 20.11.2003 cannot in any manner be considered to have given to the applicant a cause of action for the purpose of assailing seniority matters long settled and which have attained its finality.

19. That with regard to the statements made in paragraph 4.21 and 4.22 of the O.A under reply, the answering respondents deny the same and reiterate and reaffirm the statements made herein above. It is stated that the seniority of the applicant vis-à-vis others including the answering respondents were fixed strictly in terms of the Rules holding the field and no any grievance can exist as regards such fixation of seniority from any quarter. The applicant has sought by way of this application, basing on untenable and unfounded ground, to disturb matters of quite some time past which has since been settled and had attained their finality.

20. That the answering respondents deny the correctness of the statements made in paragraph 4.23 and 4.24 of the original application under reply and reiterate and reaffirm the statements made herein above. It is stated that there being no provisions under the Rules holding the field providing for reservation to SC/ST communities in the matter of promotion from the State Police Service to the Indian Police Service, the amendment as effected in Article 16(4) A of the Constitution of India, is of no consequence and has got no application to the case on hand.

It is denied that the case of the applicant was not considered along with the case of the answering respondents in the year 1995. There being no provision for reservation in the matter of promotion from the State Police Service to the Indian Police Service, the Office Memorandums as relied upon by the applicant are of no consequence and have got no application in the case



on hand. As such the question of effecting promotions to the cadre of the Indian Police Service basing on roster does not arise.

21. That with regard to the statements made in paragraph 4.25 of the original application under reply the answering respondents deny the same and state that it is incorrect to say that the case of the applicant was not considered along with their cases for inclusion in the select list prepared for the year 1994-95. It was on examination of the inter-se merit of the person in the zone of consideration including the applicant and the answering respondents, the names of the answering respondents were included at serial no: - 1 and 2 in the select list as prepared for the vacancies identified for the year 1994-95 and were accordingly appointed on promotion to the IPS cadre vide notification dated 25.10.95. The applicant cannot now raise grievances in respect of matter of quite sometime past which have since been settled and attained their finality.

22. That with regard to the statements made in paragraph 4.26 and 4.27 of the original application under reply, your answering respondents deny the same and state that the O.A has been filed without their being any cause of action. There is gross delay in preferring the instant application and the contentions as made therein are vague and indefinite. Further the O.A is not maintainable in as much as this Hon'ble Tribunal has not been conferred with the jurisdiction to entertain grievances raised by the applicant pertaining to the services as rendered by him in the State Police Service.

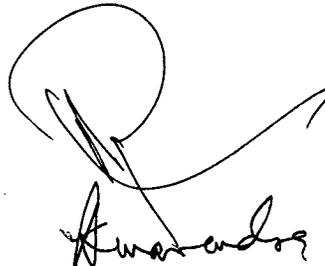
23. That in view of the above, none of the grounds as urged by the applicants are tenable and the applicant is not entitled to any relief as has been claimed by him. Consequently the O.A. is liable to be dismissed with cost

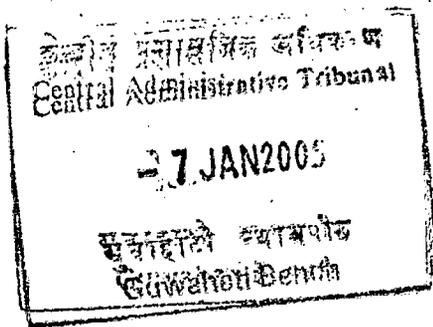
...Verification

VERIFICATION

I, Shri Amarendra Raj Kumar, aged about 54 years, son of Late Sarbanada Raj Kumar, the Respondent No.8 in O.A. No. 84 of 2004, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, and 22 of the accompanying written statement are true to the best of my knowledge; those made in paragraphs 11, 13 and 14 being matters of record are true to my information as derived therefrom and the rest are my humble submissions before this Hon'ble Tribunal. I have been duly authorised by the Respondent No.9 to swear this affidavit on his behalf and as such competent to swear this affidavit.

And I sign this verification on this 13 day of December 2004 at Guwahati.


Amarendra Raj Kumar
DEPONENT



Filed by the applicant
through: Subeeta Nath
Admitted
15/07/04

DISTRICT : KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

IN THE MATTER OF :

O.A.No. 84 of 2004

Shri Rohini Kumar Bania

..... Applicant

-Versus -

Union of India & Others.

.... Respondents.

-AND -

IN THE MATTER OF :

Rejoinder to the original application
and against the Written Statementt
filed by Respondent No.1.

The applicant abovenamed most humbly and respectfully
begs to state as under :

1. That with regard to the statements made in
paragraph 4 of the Written statement, the applicant states
that the provisions of the Indian Police Service (Appointment
by promotion) Regulations 1955, has been violated. The
Respondent Nos 8 and 9 have been promoted without adhering
to Regulation 5 of the Regulation 1955 and his entitlement
and / or eligibility crieteria has not been considered
which is discrimanatory in nature and hence their promotion

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and seniority are liable to be set aside in the facts and circumstances of the case.

2. That with regard to statements made in paragraphs 5 of the written statement, the applicant states that the Ministry of Home Affairs is a department under the Central Government and the office Memorandum dated 21.1.2002 relates to all departments irrespective of Service Rules. Moreover the 85th amendment of the Constitution is very specific which do not exclude the posts under All India Services Act, 1951.

The applicant further states that the Constitutional amendment has been made applicable to all services and consequent upon the amendment the office Memorandum dated 12.3.2002 has been issued by the Personnel Department Government of Assam which stipulated that the State of Assam ~~which~~ should review and revise the seniority of the reserved category and the ~~applicant~~ applicant who was denied his consequent seniority on his promotion to the post of Senior scale of Assam Police Service (Additional S.P) vide Notification dated 7.5.1985. The said notification would show that his seniority position had been revised and his case was due for consideration of promotion to the Indian Police Service before the Respondents No . 8 and 9 and the official Respondents including the Union Public Service Commission failed to consider his case resulting in deprivation of promotion to the cadre of IPS.

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The applicant further states that the select lists are subject to revisions as provided in Regulations 5(4) and 7(4). Moreover under the Scheme of Regulations each select list is independent of the other and his case was reserved to be reviewed by the Respondents authority.

3. That with regard to the statements made in paragraphs 7,8,9,20 and 11 of the written statements the applicant states that these are matters of record and any statements made therein which are contrary to and inconsistent with the records shall be deemed to have been denied.

4. That with regard to ~~para~~wise reply in paragraph 1 of the written statement, the applicant would rely on the statements made in paragraph 2 of this rejoinder and his entitlement of seniority on promotion cannot be denied in view of 85th amendment of the Constitution.

5. That with regard to the statement made in paragraph 4.1. of the Written statement the applicant states that the record would reveal that he was selected and placed at serial No.4 on the basis of service records and the seniority which governs the position in the Zone of consideration. The name of the applicant should have been placed at serial No.1 in the Zone of consideration in view of the 85th amendment of the Constitution. Even assuming that his position was placed at Sl.No.4 without consequent seniority due to the benefit of 85th amendment should have been promoted to the IPS from the select list of 1994-95 itself.

...4....

The applicant further states that the record would show that the select list was prepared on 27.3.1995 and the U P S C approved it on 25.12.95 and invalidated the said list on 28.2.96 with holding of a next selection Committee meeting without any reason through a select list is valid for a year. Moreover, the applicant whose position was in the 4th position in the select list was due for promotion to the IPS in the resultant vacancy due to retirement of Sri K .N.Sarma Barua who retired on 1.3.1996, just a day after the select list became in operative from 28.2.1996. The malafide in the deprivation of promotion to the applicant would be more glaring when the select list for 1995-96 could not be prepared on 28.2.96 and a second seating on 30.7.96 was held after a gap of 5 months with a notice best known to the concerned Respondents/authorities. Had there been no increase in the vacancies to six for 1995,96 select list, the officers as position No.1 and 2 could not have come in the Zone of consideration at all for preparation of the select list.

The applicant craves leave of the Hon'ble Tribunal to direct the Respondent No.1 and 2 to produce the entire records relating to the preparation of select list during the year 1994-95, 1995-96, including invalidated on 28.2.96 for perusal.

6. That with regard to the statements made in paragraphs 4.8,4.9,4.10,4.11,4.12,4.14,4.15,4.16,4.17,4.22,4.25,4.26 and 4.27 of the Written Statements the applicant states that his

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entitlement to the promotion and his consequential seniority cannot be denied in view of 85th amendment of the Constitution. The promotion to the cadre of IPS having been given to him his consequential seniority shall be given effect to from 17.6.1995 and notional seniority be given and hence be pleased to direct the Respondents to re-determine his seniority position because the 85th amendment did not exclude the benefit to IPS by setting aside the impugned order dated 20.11.2003 and as such his re-fixation of seniority cannot be denied in the facts and circumstances of the case.

7. That with regard to the statements made in paragraph 4.21 of the written statement the applicant states that there cannot be two regulations for one set of employee under the Regulations 1955. In case of Sri B.R.Das, he was included unconditionally by the Selection Committee as averred whereas in case of the applicant the select list where his name appears was invalidated on 28.2.96 and no reason has been assigned by the Respondent No.1 and the discrimination writ large on the face of it and the relief sought for cannot be denied to him.

8. That with regard to the submissions made in paragraph 12 of the written statement, the applicant submits that the benefit of 85th amendment cannot be denied to him and consequent upon the 85th amendment his promotion and seniority must be refixed and the original application deserves to be allowed as prayed for in the original application by setting aside the impugned order dated 20.11.2003 in the facts and circumstances of the case.

.....Verification-...

VERIFICATION

I, Sri Rohini Kumar Baruah, aged about 56 years, Superintendent of Police, vigilance and Anti-Corruption, Assam, R.G.Baruah Road, Ganeshguri, Guwahati -5, Assam, do hereby verify the statements made in paragraphs _____ are true to my knowledge and those made in paragraphs _____ are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this ^{5th} the day of January 2005.

Rohini K. Baruah

the Hon'ble Tribunal has the jurisdiction to resolve the disputes raised in the original application,

The applicant craves leave of the Hon'ble Tribunal to produce the office Memorandum dated 21.1.2002 in order to determine the issue.

2. That with regard to the statements made in paragraph 2(b) of the written statement, the applicant disputes the correctness of the same and states that the re-fixation of seniority on promotion having been denied on 20.11.2003 by the Respondents authority, the application and the relief sought for is within the time prescribed under Section 21 of the Administrative Tribunals Act, 1985, more so, the question of limitation loses its force when the application is admitted by the Hon'ble Tribunal.

3. That with regard to the statements made in paragraph 2(c) of the written statement the application states that the question of non-joinder of necessary parties as raised are redundant. The benefit of seniority if reviewed and restored in compliance of office Memorandum with effect from the cut of date immediately after which the Respondents No. 8 and 9 were promoted to IPS are the necessary parties and they have been rightly made parties in the original application.

4) That with regard to the statements made in paragraphs 3, 4 and 5 of the written statements the applicant disputes the correctness of the same and reiterates the statements made in paragraphs 2, 3 and 4.1

of the application and states that the benefit of fixation of inter-se-seniority having been denied in violation of 85th amendment of the Constitution of India and the consequent of the office Memorandum which gave the cause of action and jurisdiction to seek redress before the Hon'ble Tribunal.

5) That with regard to the statements made in paragraph 6 of the written statement the applicant states that the select lists are subject to revision as provided in Regulation 5(4) and 7(4) and a particular select list will be in force only until review and revision is made Accordingly reviewed on 7.5.1985 which is independent of the other and the Respective Position of the Respondent Nos 8 and 9 and the applicant ought not have considered with reference to the previous select list and the insertion of the clause has been made deliberately in order to give ~~per~~ preference to the Respondent Nos 8 and 9 which is arbitrary, illegal and without jurisdiction.

6) That with regard to the statements made in paragraphs 7 and 8 of the Written Statements, ~~and~~ the applicant reiterates the statements made in paragraphs 4.3 and 4.4 of the application and states that after the 85th amendment of the Constitution of India and the cut off date as notified, he is entitled to get his ~~seniority~~ refixed on review and revision which has been denied to him.

7) That with regard to the statements made in paragraphs 9, 10 and 11 of the Written Statement, the applicant ~~disputes~~ disputes the correctness of the same and reiterates

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- 4 -

the statements made in paragraphs 4.5,4.6 and 4.7 of the application and states that his position in the senior grade was assigned at serial No. 3 and should have been assigned over the Respondents No. 8 and 9 ~~and~~ in order to come within the zone of consideration and the assignment of seniority without adhering to the roster poing reserved for S.C. candidates is arbitrary.

The applicant further states that he would refer the case of Shri B.Das as stated in paragraph 4.2 of the Written Statement of the Respondent No. 1 which would show the discrimination ~~is~~ writ large in the matter of fixation of seniority. His position on promotion and the benefit of subsequent office Memorandum after 85th amendment has been denied which is arbitrary, illegal and he is entitled to get his seniority refixed in the facts and circumstances of the case.

8) That with regard to the statements made in paragraphs 13 and 14 of the Written Statement the deponent reiterates the statements made in paragraphs 4.9,4.10,4.11, 4.12 and 4.13 of the application and states that he has come to know for the first time that his case was considered for promotion to IPC from the Written Statement filed by the Respondent No. 1. In regard to refixation of seniority both the official Respondents have issued the office memorandum but failed to act for review and revision as indicated in the aforesaid office Memorandums resulting in denial of revixation of seniority in the facts and circumstances of the case.

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119 - 141

9) That with regard to the statements made in paragraphs 15,16,17 and 18 of the Written Statement the deponent would rely and reiterates the statements made in paragraphs 4.14,4.15,4.16,4.17 and 4.18 of the application and states that had his seniority was reviewed and restored he would have been in the zone of consideration much before the Respondent Nos 8 and 9 and the official Memorandum having not been considered by the official Respondents, the Hon'ble Tribunal may direct to re-determine his seniority in pursuance to the office Memorandum issued after the 85th amendment.

10) That with regard to the statements made in paragraphs 19,20,21,22 and 23 of the Written Statement the applicant would rely and reiterates the statements made in paragraphs 4.19,4.20,4.21,4.22,4.23,4.24,4.25, 4.26 and 4.27 of the application and states that his entitlement for review and revision cannot be denied in view of O.M. issued by the Official Respondents issued after the 85th amendment and as such a direction is required to revix his seniority and notional seniority be assigned to him in order to do justice in the facts and circumstances of the case.

...Verification....

6

VERIFICATION

I, Sri Rohini Kumar Baruah, aged about 56 years, Superintendent of Police, Vigilance and Anticorruption, Assam, R.G. Baruah Road, Ganeshguri, Guwahati - 5 Assam do hereby verify the statements made in paragraphs are true to my knowledge and those made in paragraphs are true to my legal advice and I have not suppressed any material fact.

And I sign this Verification on this the day of January, 2005.

Rohini K. Baruah

10 JAN 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

O.A. No. 84/2004

In the matter of :

Shri R.K. Bania - Applicant

-Vs-

Union of India & Ors - Respondent,

AND

In the matter of :

Written statement on behalf of the Respondent
No. 3 (The Chief Secretary to the Government
of Assam) and No. 5 (The Commissioner &
Secretary to the Government of Assam, Home
Department) to the above application.

(Written statement on behalf of Respondent No. 3 and 5 to the application filed by
the applicant)

I Shri, B.C. Borah

Deputy Secretary to the Government of Assam, Home Department, Dispur,
Guwahati-6, do hereby solemnly affirm and state as follows :-

1. That I am the Deputy Secretary to the Government of Assam, Home
Department, Dispur, Guwahati-6. The copies of the aforesaid application
have been served upon the respondent Nos. 3 and 5, I have gone through the
same and have understood the contents thereof. I have been authorised to file
this written statement on behalf of the respondent No. 3 and 5. I do not admit
any of the averments which do not specifically admitted herein-after and
same are to be deemed as denied.

Filed by :-

The State of Assam & Ors

--- Respondents 3 and 5

Shrough - 193

Manjula Das

For - M.A. - Advocate

1st of Assam
CAT 7/11/2005

2. That with regard to the statements made in paragraph 4.1 of the application the answering respondent begs to state that for promotion to Indian Police Service is made on the basis of merit-cum-seniority and the special preference by virtue of Rule of Reservation/Roster (Reservation of vacancies in service and post Rules) is not applicable here. There was not at all discrimination in the matter of nomination and allotment of promotion in the cadre of IPS.
3. That the statements made in paragraph 4.2 of the application the answering respondent has nothing to make comment on it.
4. That with regard to the statements made in paragraphs 4.3 of the application the answering respondent begs to state that the respondent Nos 8 and 9 were well confirmed in the service prior to their promotion to APS Senior Grade-II. The prior confirmation with reference to his batch-men does not have any connection with promotion to IPS.
5. That with regard to the statements made in paragraph 4.4 of the application the answering respondent begs to state that the applicant was promoted to APS Senior Grade-I along with others on 16.12.98 against Roster Point from Sl. 20 to 26. In the select list from where he promoted to Senior Grade-I his position was 2nd, Shri P. Chetia was in the 1st position. After promotion of P. Chetia to the Cadre of IPS Shri R.K. Bania (applicant) with others were promoted to APS Senior Grade-I and his position was at the top. Hence his position remains unaltered. Whereas Shri B.R. Das another Officer whose case has been mentioned in the para was placed at R.P.No. 38. At the time of his promotion to Senior Grade-I vide order 25.9.2000 was under consideration covering eight Officers against 9 vacancies from R.P. No. 32 to 40 . One post was kept for one officer due to pending of vigilance enquiry. The R.P.No. 32 is being the reserved post of SC, he was promoted to APS Senior Grade-I against the Roster point and was placed ahead of other general candidates. The promotion situation of Shri B.R. Das was not similar to that of the applicant.

- 6. That with regard to the statements made in paragraphs 4.5 and 4.6 of the application, the humble deponent reiterate and re-affirm the statements made in paragraph 4 of the written statement.
- 7. That with regard to the statements made in paragraph 4.7 of the application, the answering respondent begs to state that the applicant was junior to the respondent No. 8 and 9 since his joining in the stream of Police Service. Further he was not promoted against Roster Point/Rule of Reservation. So he cannot claim his seniority over the private respondents.
- 8. That with regard to the statements made in paragraphs 4.8 to 4.12 the answering respondent have nothing to make comment on it as they are being records of the case and provision of Rules as administered under the law. The selection for promotion to IPS cadre was made by UPSC by following all relevant norms.
- 9. That with regard to the statements made in paragraph 4.13 of the application the answering respondent reiterate and re-affirm the statements made in paragraphs 2 and 4 of the written statement. Further, the answering respondent begs to state that the promotion of applicant to APS Senior Grade-II was prior to the cut off date fixed in 85th amendment of the Constitution and hence not eligible for consequential seniority.
- 10. That with regard to the statements made in paragraphs 4.14 and 4.15 of the application the answering respondent begs to state that promotion to Indian Police Service is made according to the availability of vacancies from amongst eligible candidates strictly on the basis of merit-cum-seniority.
- 11. That with regard to the statements made in paragraphs 4.16 and 4.17 the answering respondent ~~was~~ nothing to make comment on it as they are being matters of records of the case and are provisions of law.

12. That with regard to the statements made in paragraphs 4.18 of the application the deponent reiterate and re-affirm the statements made in paragraph 2 of written statement.
13. That with regard to the statements made in paragraph 4.19 of the application the answering respondent reiterate and re-affirm the statements made in paragraph 5 of the written statement.
14. That with regard to the statements made in paragraph 4.20 of the application the answering respondent begs to state that the applicant was promoted to APS Senior Grade-II from APS Junior Grade on 7.5.85. His promotion was prior to 85th amendment of the Constitution wherein it was stated that the decision shall be effective from 17th June, 1995 and accordingly the seniority of the Government servants were fixed. Hence the applicant cannot claim the benefit of the amendment of Article 16(4A) of Constitution.
15. That the answering respondent denies the correctness made in paragraph 4.21 of the application.
16. That with regard to the statements made in paras 4.22 to 4.24 the answering respondent reiterate and re-affirm the statements made in paragraph 2 of the written statement.
17. That with regard to the statements made in paragraph 4.25 to 4.26, the answering respondent begs to state that awarding medals for distinguished service of Police does not score excellent ACR grading.
18. That the grounds set forth in application are not the good grounds for interference by this Hon'ble Tribunal and the application is liable to be dismissed.

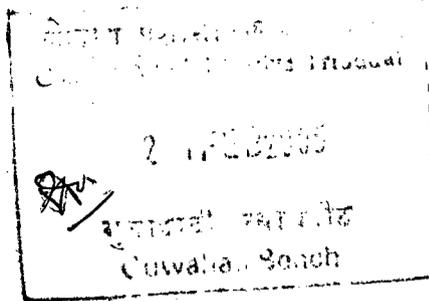
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VERIFICATION

I Shri B. C. Borah....., Deputy Secretary to the Government of Assam, Home Department, Dispur, Guwahati-6 do hereby verify that the statements made in paragraphs 4:1, 4:3 to 4:7, 4:13 to 4:15, 4:18, to 4:26.....are true to my knowledge, these made in paragraphs 4:2, 4:8 to 4:12, 4:16, 4:17.....being matter of records of the case derived therefore which I believe to true and the rests are humble submissions before this Hon'ble Tribunal.

I have not suppressed any material facts and I have signed this verification on this the day of 7th January 2005.

asmb
7.1.2005
Signature
Deputy Secretary to the
Government of Assam
Home (A) Department
Assam, Dispur.



148
Filed by The Applicant
Through Shri Sanjit Choudhury
Advocate
on 21.2.05

DISTRICT : KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

IN THE MATTER OF :

O.A.No. 84 of 2004

Shri Rohini Kumar Bania

.... Applicant

-Versus -

Union of India & Others

..... Respondents

-AND -

IN THE MATTER OF :

Rejoinder to the original
Application and against the
Written Statement filed by
Respondent Nos 3 and 5.

The applicant abovenamed most humbly and respectfully
begs to state as under:

1. That with regard to the statement made in paragraph
4 of the Written statement, the applicant disputes the
correctness of the same and reiterates the statement made in
paragraph 4.3 of the Original Application and states that
the Notification dated 27.4.1982 has a direct bearing in
the matter of promotion to the Indian Police Service. At
the relevant period of time the confirmation was linked
with seniority confirmation was the determining factor of

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149

Seniority. Since the applicant was confirmed earlier than the above Private Respondents, the seniority would always be above over the Private Respondents in the grade I of APS and eventually would be senior while considering the case of promotion to the post of IPS. The said seniority having been denied arbitrarily to the applicant resulting in deprivation of promotion to the post of IPS and hence the Private Respondents should be brought down below the applicant.

2. That with regard to the statement made in paragraph 5 of the Written Statement the applicant disputes the correctness of the same and states that the record of maintaining the roster as indicated in the Written Statement may be directed to be placed before the Hon'ble Tribunal wherein it would reveal that roster point was not adhered to as required to be maintained under the law. In regard to Shri B.R.Das the applicant would refer paragraph 4.21 of the Written Statement of the Respondent No. 1 which is contrary to statements made by the Respondent Nos 3 and 5. The record would further show that the applicant ought to have been promoted to the cadre of IPS in the year 1986 alongwith one Shri A.K.Nath & others, if the roster was maintained and the clause if not inserted ~~arbitrarily~~ arbitrarily in case of the applicant. Moreover, being a Schedule Caste candidate the benefit of O.M. dated 21.1.2002 issued by the Government of India providing the benefit of reservation for SC/ST candidate cannot be

15

denied to him in the facts and circumstances of the case. The statements made therein are contrary to the statements made ~~therein~~ by the Respondent NO.1 which require Scrutining of the Hon'ble Tribunal.

3. That with regard to the statements made in paragraph 6 of the Written Statement, the applicant disputes the correctness of the same and reiterates the statement made in paragraph 4.3 of the applicant and states that the applicant was deprived the ~~same~~ seniority arbitrarily resulting in non-consideration of his case for promotion to the cadre of IPS which require interference by this Hon8ble Tribunal.

4. That with regard to the statement made in paragraph 7 of the Written Statement, the deponent disputes the correctness of the same and states that the statements are contradictory . The Notification dated 27.4.1982 would show that confirmation was the basis of fixing the seniority at the relevant period of time and the applicant was senior to the private Respondents and if the seniority was adhered to he ought to have been promoted earlier than the Private Respondents which has been denied to him and hence it is a fit case where your Lordhsips would interfere in order to subserve the cause of justice.

5. That with regard to the statements made in paragraph 8 of the Written Statement, the applicant disputes the correctness of the same and states that he would refer

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the statement made in paragraph 4.1 of the Respondent No. 1 which would show the indifferent attitude adopted by the State Government in case of the applicant which is discriminatory in nature even in regard to promotion to the Cadre of IPS.

6. That with regard to the statement made in paragraph 9 of the Written Statement, the applicant disputes the correctness of the same and states that in view of the 85th amendment of the Constitution, the consequential seniority in the matter of promotion to any class and the force of the amendment is deemed to have come into effect with effect from 17.6.1995 vide Notification published on 4.1.2002. The said amendment is very clear for giving effect to the seniority of the applicant amongst the officers born on the promotion order as the cut off date and the applicant would automatically be senior over the Private Respondents.

In this context the case of Shri B.R.Das is relevant. The seniority of Shri B.R.Das over his general category officer in his promotion to Sr. Grade -II APs. Shri Das was promoted to Sr. Grade II with seniority which has been restored in the year 1987 prior to the cut off date and hence the applicant is entitled to get the same benefit in the facts and circumstances of the case.

7. That with regard to the statement made in paragraph 10 of the Written Statement the applicant states that had the seniority been adhered to on the date of confirmation which was linked with seniority, he ought to have been

promoted to the cadre of IPS earlier than the Private Respondent and the seniority having not been adhered to he has been deprived from consideration for promotion to the cadre of IPS. The applicant would rely on the averments made by the Respondent No.1 which would show the indifferent attitude adopted by the Respondents No.3 and 5 in case of the applicant viv-a-vis the Private Respondents and the benefit of amendment (85 th) of the Constitution cannot be denied to him since it relates to restoration of Seniority on promotion.

8. That with regard to the statement made in paragraph 14 of the Written Statement, the applicant states that promotion made prior to amendment has been restored with restrospective effect. The amendment is very clear in regard to promotion with consequential benefit of seniority should be resoted in respect of reserved category of candidates and the ~~six~~ said amendment is strictly required to be adhered to and the benefit of amendment cannot be denied to the applicant in the facts and circumstances of the case and the Original Application deserves to be allowed and the relief sought for should be granted considering the discrimination writ large on the face of t he record.

....Verification....

VERIFICATION

I, Sri Rohini Kumar Baruah, aged about 56 years, Superintendent of Police, vigilance and Anti- Corruption Assam, R.G.Baruah Road, Ganeshguri, Guwahati -5, Assam, do hereby verify the statements made in paragraphs 1, 3, 4, 5, 6, 7, 8 are true to my knowledge and those made in paragraph 2 is true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the day of February 2005.

Rohini K. Baruah