

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 215/2005

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet. O.A-215/05..... Pg. 1 to 5.....
2. Judgment/Order dtd. 01/08/2006 Pg. 1 to 5..... Disposed
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 215/2005..... Pg. 1 to 20.....
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... Pg..... to.....
7. W.S..... Respondent No - 1 & 2..... Pg. 1 to 3.....
Respondent No - 4..... Pg -
8. Rejoinder..... Pg..... to.....
9. Reply..... Respondent No - 1..... Pg. 1 to 4.....
to 3
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 (JUDI.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 215 / 05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(s): B. P. Rao IPS

Respondent(s): UOI 2078

Advocate for the Applicant(s):- Mr. G.K. Bhattacharyya, B. Choudhury,
D. Goswami.

Advocate for the Respondent(s):- CSC, Govt. Adv. Assam and Govt.
Advocate Meghalya.

Notes of the Registry	Date	Order of the Tribunal
Plaint application is in form is filed/C. P. for Rs. 50/- deposited via A.P.C.D.D No. <u>ZOG 158387</u>	<u>18.8.2005</u>	Present : Hon'ble Mr. G. Sivarajan, Vice Chairman. Hon'ble Mr. K.V. Prahladan, Administrative Member.
Dated <u>13-8-05</u>		Heard Mr. G.K. Bhattacharyya, learned Sr. counsel for the applicant, Mr. G. Baishya, learned counsel for the respondent No. 1 and Mrs. M. Das, learned Govt. Pleader for the State of Assam for the respondents No. 2 and 3.
<u>Quoted</u> Dy. Registrar	<u>17.8.05</u>	Issue notice to all the respondents to show cause as to why the application shall not be admitted. Post on 19.9.2005.
<u>Notice & order Sent to D/Section for issuing to resp. Nos. 1, 2 by regd. A/D post and others resp. Nos. 2 and 3 received by Hand.</u>		<u>B. Choudhury</u> Member

24/8/05. D/No = 1289 to
1287
Dt = 29/8/05

Notice duly served
on resp. Nos. 1, 2 & 3.

mb

19.9.2005

Mr. B. Choudhury, learned counsel
for the applicant is present. Mr. G.
Baishya, learned Sr. C.G.S.C. submits
that instructions have not been
received. Post on 10.11.2005.

21/9/05
21/9/05
Vice-Chairman

10.11.2005

Heard Mr.B.Choudhury, learned counsel for the applicant and Mr.G. Baishya, learned Sr.C.G.S.C. for the respondents.

Admit. Respondents will file written statement within six weeks. Post on 21.12.2005.

Q/A
Vice-Chairman

① Service report are still awaited.

② No reply has been filed.

Notice duly served
on resp. Nos. 1, 2, 3, 4.

10.9.05

21.12.05

Mr.G.Baishya, learned Sr.C.G.S.C. seeks time for filing written statement. Mrs. M.Das learned Government advocate, state of Assam representing for Respondent Nos.2 & 3 also seeks for time for filing written statement. Though notice was served on 4th respondent there is no representation.

Post the matter on 30.1.06
Written statement if any, in the meantime.

Q/A
Vice-Chairman

1. Service completed.
2. No reply has been filed.

1m
30.1.06

None appears for the applicant. Mr.G.Baishya learned Sr.C.G.S.C. seeks for more time to file written statement. No written statement has been filed by the other respondents. Further two weeks time is granted to file written statement as a last chance.

Post the matter on 22.2.06.

Q/A
Vice-Chairman

27-1-06

1m

No. w/s has been filed.

1.2.06

Reply filed by resp.

No. 1.

22.2.2006

When the matter came up for consideration, learned counsel for the respondents are granted three weeks time to ~~fix~~ file statement finally. It is most unfortunate that in such an important issue involved in this case neither the Govt. of Assam nor the Govt. of Meghalaya is filing the statement before this Tribunal. The Registry will send a letter to the concerned Chief Secretaries expressing the concern of the Tribunal in their non-action in helping the Tribunal in the judicial deliberations.

Post on 15.3.2006.

Letter sent to Despatch
Section for issuing to
the chief secretary to the
Govt. of Assam and Meghalaya
with order dated 22-2-05.

N.S. 29.2.06. ①/No. 149, 150
Dt. 29/02/06
27

Vice-Chairman

bb

27.2.06

15.3.2006

Post on 29.3.2006.

WJS filed by Mr
Respondent nos. 293.

Vice-Chairman

29.3.06.

Despite the letter sent to the Chief Secretary, Government of Meghalaya have ~~not~~ either filed the written statement nor there is any representation before this Tribunal. The issue pertains to grant of super time scale to the IPS Officer. It is very sorry state of affairs ^{by} ~~many~~ despite the fact that opportunity was given to the respondents ~~and~~ ^{not} appear

Agarwal ~~Chand~~ Post the matter on 28.4.06.

Post the

Reply filed on behalf
of R. No - 1, 2 & 3,
Reply to R. No - 4 not
yet filed.

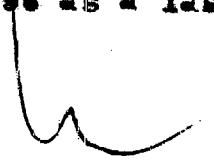
110

Vice-Chairman

29.3.06.

Despite the letter sent to the Govt. Chief Secretary, Government of Meghalaya have neither filed the written statement nor there is any representation before this Tribunal. The issue pertains to grant of super time scale to the IPS officer. It is very sorry state of affairs that despite many opportunities, respondents did not appear.

Post the matter on 28.4.06 as a last chance.


Vice-Chairman

order dt. 24/3/06 sent issuing to D/Section for issuing to the Chief Secretary, Govt. of Meghalaya Shillong.

lm

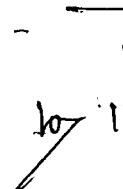

30/3/06. D/No=423
DT=5/4/06.

27-4-06.

No Rejoinder has been filed.



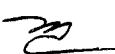
11.5.06


WJS informed
to the Respondent No 4,



1-6-06

No rejoinder has been filed.



16-6-06

No rejoinder has been filed.



31-7-06

No rejoinder has been filed.



28.4.2006

Ms. B. Dutta, learned Govt. Advocate state of Meghalaya submits that reply statement has been filed by respondent No. 4. Applicant is at liberty to file rejoinder, if any, within three weeks.

Post before the next Division Bench.


Vice-Chairman

bb

2.6.2006

Mr. B. Goswami, learned counsel for the applicant submits that no rejoinder will be filed. Pleadings are complete post on 19.6.2006.


Vice-Chairman

bb

19.06.2006

When the matter came up for hearing, learned counsel for the applicant submitted that he does not want to file rejoinder and pleadings may be treated as complete.

Post the matter before the next available Division Bench.


Vice-Chairman

mb

55
6
O.A.No.215/2005

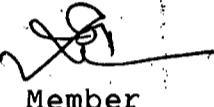
Notes of the Registry | Date | Order of the Tribunal

01.08.2006

Present: Hon'ble Shri K.V.
Sachidanandan, Vice-Chairman

Hon'ble Shri G. Ray,
Administrative Member.

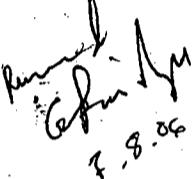
Heard the learned counsel for
the parties. Hearing concluded.
Judgment delivered in open court,
kept in separate sheets. The
application is disposed of. No order
as to costs.


Member


Vice-Chairman

nkmm

9.8.06


Copies of the brief
has been collected
by the Advocate for
the applicant and the
copies of the brief
has been sent to the
Office for issue to
the respondent by
by post.


6
Notes of the Registry Date Orders of the Tribunal

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 215 of 2005.

DATE OF DECISION: 01.08.2006

Shri B.P. Rao, IPS

.....APPLICANT(S)

Mr G.K. Bhattacharyya, Mr B. Choudhury
and Mr D. Goswami.

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

.....RESPONDENT(S)

Mr G. Baishya, Sr. C.G.S.C., Ms M. Das, ADVOCATE(S) FOR THE
Government Advocate, Assam, and Ms B. Dutta, RESPONDENT(S)
Government Advocate, Meghalaya.

CORAM:

THE HON'BLE SHRI K.V. SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE SHRI G. RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment?
2. Whether to be referred to the Reporter or not?
3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench?
4. Whether their Lordships wish to see the fair copy of the Judgment?

Yes/No

Yes/No

Yes/No

Yes/No

3/6/06
Vice Chairman

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 215 of 2005

Date of Order: This the 1st day of August 2006

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman

The Hon'ble Shri G. Ray, Administrative Member

Shri B.P. Rao, IPS,
S/o Late K.N. Rao,
Addl. D.G.P. (CD & HG),
R/o Panbazar, Guwahati-1,
District- Kamrup, Assam.

.....Applicant

By Advocate Mr G.K. Bhattacharyya, Mr B. Choudhury
And Mr D. Goswami

- versus -

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.
2. State of Assam, represented by the
Chief Secretary,
Government of Assam,
Dispur, Guwahati-6.
3. Commissioner & Secretary to the
Government of Assam,
Home and Political Department,
Dispur, Guwahati-6.
4. State of Meghalaya, represented by the
Chief Secretary to the Government of Meghalaya,
Shillong.Respondents

By Advocates Mr G. Baishya, Sr C.G.S.C., Ms M. Das,
Government Advocate, Assam and Ms B. Dutta, Government
Advocate, Meghalaya.

ORDER (ORAL)

K.V. SACHIDANANDAN (V.C.)

The applicant joined the Indian Police Service (IPS for short) in the year 1974 and was assigned to the Assam segment of Assam-Meghalaya Cadre. The applicant claims that he is one of the senior most IPS officers in the said cadre. As per Rule 5(5)(b)(iii) of the IPS (Pay) Rules, 1954, State Government can promote a member of the All India Service to a post in the supertime scale provided all his seniors in the cadre are already promoted or drawing the scale on or before the date of promotion of that person. The contention of the applicant is that his junior in the cadre has been promoted as DGP by the Government of Meghalaya. The applicant has filed representations on 04.04.2005 and 11.07.2005. On earlier occasions, whenever an officer superseded the seniors, the seniors were given the benefit/promotion as per the IPS (Pay) Rules, 1954. In this case nothing transpired and receiving no response from the Government with regard to his promotion the applicant has filed this O.A. seeking the following reliefs:

"It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the applicant shall not be promoted to the rank and scale of D.G.P. from the date his junior in the Assam-Meghalaya cadre was promoted to the said post and after perusing the causes shown, if any and hearing the parties be pleased to allow the application and direct the Respondents to promote the applicant to the rank and scale of D.G.P. from the date his junior in the Assam-Meghalaya cadre was promoted and/or pass such order/orders as Your Lordships may deem fit and proper."

2. The respondent No.1 have filed a written statement contending that promotions are considered by the competent authority on merits of each case and the same cannot be ordered to

be allowed as a matter of course. In para 4 of the written statement the respondent No.1 has stated as follows:

"As mentioned by the applicant in para 7 of the O.A. this respondent submits that after receiving the request from the Govt. of Assam for approval of creation of 4 ex-cadre posts at DGP level consequent upon promotion of Shri W.R. Marbaniang, IPS (AM:75), the matter was considered in consultation with the Department of Personnel & Training who frame the policy in this regard. Finally, this respondent, vide d.o. letter dated 21st December, 2005 (Annexure A-I) has written to Government of Meghalaya and Assam that it was not justifiable to create 4 ex-cadre posts at the apex level against the sanctioned strength of one cadre post so as to accommodate the IPS officers senior to Shri Marbaniang. It has also been clarified that the AIS officers in both the segments of joint cadre may be considered together for promotion as per their combined seniority by the Joint Cadre Authority comprising of the Chief Secretaries of both the segments and other representatives. It has also been clarified that such promotions can be allowed by the JCA on the basis of total vacancies existing in the particular grades on both the sides. After the officers concerned in the order of seniority are so found fit for promotion, they could be posted to either side and adjustments in their postings could be made, wherever necessary. The Govt. of Meghalaya has also been requested to revert Shri W.R. Marbaniang, IPS to the grade of ADGP and then take further necessary action for filling up the post of DGP accordingly."

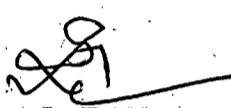
3. The respondent Nos.2 and 3 have also filed detailed written statement contending that the State Government has already moved the Government of India for approving the creation of four ex-cadre posts. However, as per provision of Rule 9(7) of IPS (Pay) Rules, 1954 the Government of Assam has power to create only one ex-cadre post at the level of DGP. Therefore, for effecting the promotions the matter has been referred to the Government of India, which is under process. The respondent No.4- State of Meghalaya has also filed a written statement contending that the State of Assam can consider the case of the applicant subject to the limitations the State of Assam may have with regard to the number of ex-cadre posts which can be created at present. None of the officers who were granted promotions above their seniors in the Joint Cadre, were reverted.

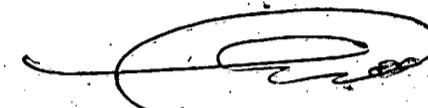
4. Heard Mr G.K. Bhattacharyya, learned counsel for the applicant, Mr G. Baishya, learned Sr. C.G.S.C. for the Union of India and Ms M. Das, learned counsel representing the State of Assam. The learned counsel for the applicant submitted that there were earlier occasions when such contingency came and the Government sanctioned more than one ex-cadre post and such occasions had been accommodated. To pin-point the contention the learned counsel has referred to Annexure-IX dated 01.06.2000 in which three of the officers in the IPS had already been promoted simultaneously as ADGP. Therefore, it is evident that the creation of ex-cadre posts depend upon exigencies warranting the situation and the Government can sanction such posts. The learned counsel for the applicant also argued that the present situation where the applicant has been deprived of his legitimate right to the Super Time Scale of pay and that of promotion is a situation where the Central Government can evaluate and pass appropriate orders sanctioning sufficient strength not restricting to one ex-cadre post. However, when the matter came up for hearing the learned counsel for the applicant submitted that the applicant has already submitted his representation and the Government of Assam has submitted that the representation had already been forwarded with recommendations for sanctioning the post. The learned counsel for respondent No.1 submitted that he has no objection if a direction is given to the respondent No.1 to consider the grievance of the applicant and taking a decision by the respondent No.1 with all attending provisions of law, precedents and rules in considering and granting the relief if that be permitted by the said provisions.

5. In view of the above, in the interest of justice we direct the respondent No.1 to consider the representation of the applicant

that has been forwarded by the Government of Assam within a time frame of three months from the date of receipt of this order and pass appropriate order and communicate the same to the Government of Assam.

6. The O.A. is accordingly disposed of. No order as to costs.


(G. RAY)
ADMINISTRATIVE MEMBER


(K. V. SACHIDANANDAN)
VICE-CHAIRMAN

nkm

Central Examinations Board
17 AUG 2005
Guwahati Bench
ORIGINAL APPLICATION NO. 215 OF 2005

Sri B.P. Rao IPS

-Versus -

Union of India & ors.

LIST OF DATES

1974 : Applicant joined IPS and was assigned to the Assam segment of Assam-Meghalaya cadre.

Applicant is one of the seniormost IPS Officer in the Assam-Meghalaya cadre.

Rule 5(5)(b)(iii) of the IPS (Pay) Rules, 1954 a State Government can promote a member of the All India Service to a post in the supertime scale provided all his seniors in the cadre are already promoted or drawing the scale on or before the date of promotion of that person.

14.03.2005 : Sri W.R. Marbaniag, IPS junior to the applicant in the cadre was promoted to the rank of DGP by the Government of Meghalaya.

Annexure-I, Page- 13

04.04.2005 : Representations filed by the applicant

11.07.2005 before the authorities for his due promotion.

Annexure-II, Page- 14
Annexure-III, Page- 15

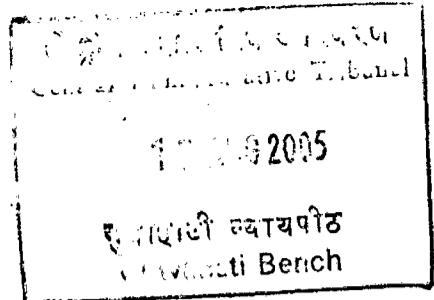
25.10.1999 : On earlier occasion whenever any officers

01.06.2000 who superseded the seniors, the seniors

17.05.2002 were given the benefits/promotion as

01.01.2003 per the IPS (Pay) Rule, 1954.

Annexure-IV, Page- 17



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI

BENCH: GUWAHATI

(An application under section 19 of the
Administrative Tribunals Act, 1985)

O.A NO 215 of 2005

Sri B.P. Rao, I.P.S.,
S/o Late K.N. Rao,
Addl. D.G.P. (CD & HG)
R/o Panbazar, Guwahati-1,
Dist. Kamrup, Assam.

... Applicant

-Versus-

1. Union of India
Represented by the Secretary
to the Government of India,
Ministry of Home Affairs,
New Delhi.

2. State of Assam,
Represented by the Chief
Secretary, Government of
Assam, Dispur, Guwahati-6.

3. Commissioner & Secretary to
the Government of Assam,
Home and Political

Filed by the applicant
Hiranya Bhawan Bilkun
16.8.05
Chowdhury, Advocate

Department, Dispur,
Guwahati-6.

4. State of Meghalaya,
Represented by the Chief
Secretary, Government of
Meghalaya, Shillong.

 ... Respondents

1. PARTICULARS OF THE ORDERS AGAINST WHICH THE APPLICATION IS MADE.

- i. Action of the authorities in not promoting the applicant to the rank of Director General of Police as per Indian Police Service (Pay) Rules, 1954 w.e.f. the date of promotion of his junior in the joint Assam-Meghalaya IPS cadre.
- ii. Appeal/representation dated 4.4.05 filed by the applicant before the Respondent No.2 and which has not been disposed of till date.
- iii. Appeal/Representation dated 11.7.05 filed by the applicant before the Additional Chief Secretary to the Government of Assam and which also has not been disposed of till date.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the order against which he wants


S.P.

redressal/relief is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

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

4. FACTS OF THE CASE :

1. That the applicant is a citizen of India and as such he is entitled to enjoy the fundamental rights and privileges guaranteed under the Constitution of India.

2. That the applicant begs to state that he joined Indian Police Service in the year 1974 and he was assigned to the Assam segment of Assam Meghalaya cadre. Thereafter in consideration of his seniority and service record the applicant got mid-stream promotions and at present he is holding and posted as Additional Director General of Police (Civil Defence & Home Guard), Assam. Since the date of his joining service, the applicant has been carrying out his duties sincerely and to the best of his abilities and there was no occasion when any adverse was ever communicated to him.

3. That Rule 5(5) (b) of the Indian Police Service Pay Rule 1954 provides as follows :

5. Regulation of Increments

5.(b) When a member of the Service, while holding a post outside the cadre including a post under the Central Government, has been granted proforma promotion to a post in the scale of pay above the time-scale of pay specified in rule 3 by the Government of the State on the cadre of which he is borne the period of the service covered by the proforma promotion shall, on his subsequent revision to the cadre and appointment to a post in said scale, count towards initial fixation of pay and increments, subject to the following conditions namely -

- i) the member of the service concerned should have been approved by the State Government for appointment to the said scale during the relevant persion;
- ii) all his seniors (excluding those considered unfit) should have started drawing pay in the super time-scale on or before the date from which the proforma promotion is sought to be granted to him;
- iii) the junior next below the officer (or, if that officer has been passed over by reason of inefficiency unsuitability or because he is on leave or serving outside the ordinary

line or forgoes promotion on this own volition to that grade, the officer next junior to him not so passed over) should also have started drawing pay in that scale from that date and his appointment three to not being fortuitous; and

iv) the benefit should be allowed on one for one basis.

(c) When a member of the Service holds an ex-cadre post in a scale of pay identical with the scale of

4. That the applicant begs to state that as per Rule 5(5) (b) (iii) of the IPS (Pay) Rules, 1954 a State Government can promote a member of the All India Service to a post in the supertime scale subject to conditions, amongst others that all his seniors in the cadre should be drawing pay in the supertime scale on or before the date from which he is sought to be granted the promotion and if he has superseded any senior officer in the cadre then the senior officer is also entitled for promotion to the post in supertime scale from that date.

5. That, as stated above, the applicant belongs to the 1974 IPS batch and he is one of the seniormost officers of the Assam-Meghalaya cadre eligible for promotion to the rank of DGP. As such, he was shocked and surprised when he came to know

2. P

that Sri W.R. Marbaniag, IPS an officer of 1975 batch of Assam-Meghalaya cadre presently serving under the Government of Meghalaya was promoted to the rank of DGP vide notification No. HPL. 38/99/PT.IV/2 dated 14.3.05 in the scale of Rs.24,050/-650- 26,000/-.

A copy of the notification dated 14.3.05 is annexed herewith and marked as Annexure-I.

6. That being aggrieved by the order dated 14.3.05 (Annexure-I), the applicant immediately on 4.4.05 and again on 11.7.05 submitted appeal/ representation before the authorities stating as to how he has been deprived from promotion due to him as per Rules and prayed that necessary action be taken for his promotion, but till date the applicant has not received any response to the same.

Copies of the representations are annexed herewith and marked as ANNEXURE-II & III

7. That the applicant understands that on receipt of the representation from the applicant the Respondent No.2 i.e. the Chief Secretary to the Government of Assam had taken up the matter with Respondent No.1 stating that since a junior officer

29

of the joint Assam-Meghalaya cadre was promoted to the rank of DGP without consulting the State Government. The State Government be permitted to accommodate the 4 senior officers who have been superseded or alternatively promote the seniormost officer to the rank of DGP Meghalaya but till date there has been no response from either the Home Ministry or the State Government.

8. That the applicant begs to state that earlier when Government of Meghalaya promoted Sri B.K. Dey, IPS (1973 batch) to the rank of Addl. DGP & IGP in the scale of pay of Rs. 22,400/-525-24,500/- vide notification No.HPL.52/90/PT/213 dated 25.10.99, the Government of Assam, then by notification dated 1.6.2000 promoted his seniors Sri D.N. Dutt, IPS (1971 batch), Sri G.M. Srivastava, IPS (1972 batch) and Sri R.N. Mathur IPS (1973 batch) to the rank of Additional DGP under the provisions of Rule 5(5) (b) (iii) IPS (Pay) Rules, 1954 by creating three additional ex-cadre posts of Additional DGP in the said scale.

Similarly, again when Sri L. Sailo, IPS (RR 1972) was promoted to the rank of DGP in the scale of Rs.24,050/-650-26,000/- by the Government of Meghalaya vide notification No. HPL 245/86/91 dated 17.5.02, Sri D.N. Dutt, IPS (RR 1971) was promoted to the rank of DGP in the said scale by the Government of Assam vide notification No. MHA.

46

167/94/PT.II/54-A dated 1.1.03 by creating an additional ex-cadre post of DGP under the above rule.

Copies of the above various notifications are annexed herewith and marked as Annexure-IV (series).

9. That the applicant begs to state that he has stated the above instances/facts in detail only to show that whenever a junior officer in the cadre supersedes senior officers in the cadre, the senior officers are given the same benefit/ promotion as envisaged in the IPS (Pay) Rules, 1954.

10. That the applicant begs to state that as he is not receiving any response from Government with regard to his promotion he is approaching this Hon'ble Tribunal for relief which is otherwise due to him.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

I. For that, the action of the authorities in not promoting the applicant to the rank of DGP while officers junior to him have already been promoted is highly illegal, arbitrary and bad in law.

II. For that, the rules provides that an officer can be promoted to a post in the

18

scale of pay above time scale only when all his seniors (excluding those considered unfit) are already drawing the scale on or before the date from which the promotion is sought to be given but the action of the authorities in giving promotion to an officer junior to the applicant without considering his case as per rules is bad in law and liable to be quashed and set aside.

III. For that, on earlier occasion whenever any junior officer were promoted the senior officers were given the same benefit/ promotion but the authorities by not doing the same till date has discriminated the applicant and as such the same is bad in law and liable to be set aside.

IV. For that, in any view, of the matter the impugned action of the authorities is bad in law and liable to be set aside.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant had submitted representation dated 4.4.05 and 11.7.05 praying for his promotion as per IPS (Pay) Rule, 1954 but till date the applicant has not received any response.

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

The applicant further declares that he has not previously filed any application, writ petition

11.8

or suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any such application, Writ petition or suit is pending before any of them.

8. PRAYER:

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the applicant shall not be promoted to the rank and scale of D.G.P. from the date his junior in the Assam-Meghalaya cadre was promoted to the said post and after perusing the causes shown, if any and hearing the parties be pleased to allow the application and direct the Respondents to promote the applicant to the rank and scale of D.G.P. from the date his junior in the Assam-Meghalaya cadre was promoted and/or pass such order/order as Your Lordships may deem fit and proper.

And for this act of kindness, the applicant as in duty bound shall ever pray.

9. INTERIM ORDER :

Does not arise.

10. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN
RESPECT OF THE APPLICATION FEE.

(i) I.P.O No. : 20G158387

(ii) Date. : 13.8.05

(iii) Issued by Guwahati Post Office.

(iv) Payable at Guwahati.

11. LIST OF ENCLOSURES :

As stated in the INDEX

VERIFICATION

I, Sri B.P. Rao, I.P.S. aged about 56 years, son of Late K.N. Rao, presently serving as Additional Director General of Police (CD & HG), resident of Panbazar, Guwahati-1 in the district of Kamrup, Assam do hereby verify that the statements made in Paragraphs No. 1, 2, 4, 6, 7, 9 and 10 are true to my personal knowledge and the statements made in paragraphs No. 3, 5 and 8 are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this the 16th day of August, 2005 at Guwahati.

Place: Guwahati

Date: 16.8.05

B.P. Rao

SIGNATURE

GOVERNMENT OF MEGHALAYA
HOME (POLICE) DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Shillong, the 14th March, 2005.

No.HPL.38/99/PT.IV/2 - Shri W.R. Marbaniang, IPS (RR-75), Addl. Director General of Police (L&O), Meghalaya is hereby promoted to the post of Director General of Police, Meghalaya, in the scale of pay Rs. 24050-650-26000/- with effect from the date of taking over charge until further orders.

(R. V. Suchiang)
Commissioner & Secretary to the Government of Meghalaya
Home (Police) Department.

Memo No.HPL.38/99/PT.IV/2-A
Copy forwarded to:-

Dated Shillong, the 14th March, 2005.

1. The Commissioner & Secretary to the Governor of Meghalaya, Shillong.
2. The Private Secretary to Chief Minister, Meghalaya, Shillong.
3. The Private Secretary to Deputy Chief Minister, Meghalaya, Shillong.
4. The Private Secretary to Minister Home (Police), Meghalaya, Shillong.
5. The Private Secretary to Chief Secretary, Meghalaya, Shillong.
6. The Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi - 110001.
7. The Secretary, Joint Cadre Authority, Assam-Meghalaya and Principal Secretary to the Government of Meghalaya, Personnel & AR(A) Department, Shillong.
8. The Secretary to the Government of Assam, Home (A) Department, Dispur, Guwahati - 781006.
9. The Director General & Inspector General of Police, Meghalaya, Shillong.
10. The Accountant General (A&E), Meghalaya, Shillong.
11. The Director of Printing & Stationery, Meghalaya, Shillong for favour of publication in the Gazette.
12. Shri W.R. Marbaniang, IPS (RR-75), Director General of Police, Meghalaya, Shillong.
13. Personal files/Guard file.

By order etc.,

D. S. Sinha
Deputy Secretary to the Govt of Meghalaya,
Home (Police) Department.

ENO No. C. 6/2005/12

DATED SHILLONG THE 31ST MARCH / 2005

As directed by the DGP, Meghalaya, forwarded to :-
Shri Mohan Kaj, IPS, ADDL DGP (BORDER),
Kamrup, Guwahati, Assam.

✓ Confidential Assistant
to the DGP, Meghalaya.

Attested by
Subrata
Advocate

Shri B. P. Rao, IPS

Addl. Director General of Police
(Home Guards & Civil Defence)
Assam, Beltola, Guwahati- 28



Regd. No. : 2301004(O)

Ref. D.O.NO.(CD&HG)1/PF/2004/141

Date. 04-4-2005

Dear Shri Kabilan,

My junior Shri W.R. Marbaniang, IPS (RR-75) of our cadre has been promoted to the rank of Director General of Police in the pay scale of Rs. 24,050-650-26,000/- by Govt. of Meghalaya vide Notification No. HPL.38/99/PT-IV/2 A dtd. 14th March, 2005. Hence, under the rule, I am entitled to be promoted to the said rank with effect from the date of promotion of Shri Marbaniang.

In view of above, I would request you kindly to do the needful at an early date for my promotion to the rank of D.G.P. with effect from the date of promotion of Shri Marbaniang.

With kind regards

Yours sincerely
B.P. RAO
(B.P. RAO)

To,

Shri S. Kabilan, IAS,
Chief Secretary to the
Govt. of Assam, Dispur,
Guwahati-6.

Arrested by
Raoji
Advocate

GOVERNMENT OF ASSAM
OFFICE OF THE DIRECTOR GENERAL OF CIVIL DEFENCE AND
COMMANDANT GENERAL OF HOME GUARDS,ASSAM,BELTOLA,
GUWAHATI - 781028.

Letter No.BPR/(CD&HG) 2/PF/2004/191, Dated Beltola, the 11th July/2005.

From : Shri B.P. RAO,IPS,
Addl.Director General of Police(CD&HG),
Assam,Beltola,Guwahati- 781028.

To : Shri P.C. SARMA,IAS,
Addl.Chief Secretary (1) to the Govt. of Assam,
Home,Political etc. Departments,Dispur,
Guwahati-6.

Subject :- PROMOTION.

Ref :- My representation to the Govt. of Assam for promotion to the rank of DGP submitted vide my D.O. letter No.(CD&HG) 1/PF/2004/141 addressed to the Chief Secretary.

Sir,

With reference to the subject quoted above, I would like to submit as hereunder -

- 1) Shri W.R. Marbaniag,IPS, an officer of 1975 batch (RR) of A-M cadre presently serving under the Govt. of Meghalaya was promoted to the rank of D.G.P. vide Notification No.HPL.38/99/PT.IV/2 Dated 14th March,2005 (Photocopy of the order enclosed) in the scale of Rs. 24050-650-26000/-.
- 2) Shri Marbaniang is junior to me as I belong to 1974 (RR) batch.
- 3) Under the provision of Rule 5, note III,2(3) of IPS (Pay) Rules 1954, I am entitled to be promoted to the rank of D.G.P. in the pay scale of Rs. 24050-650-26000/- w.e.f. the date of promotion of my junior Shri Marbaniang.
- 4) Under the said Rule Shri D.N. Dutt,IPS (RR-1971) was promoted to the rank of D.G.P. in the pay scale of Rs. 24050-650-26000/- by Govt. of Assam vide Notification No.MHA.167/94/Pt.II/54-A dated 1st January,2003 by creating an additional ex-cadre post of D.G.P. consequent upon promotion of his junior Shri L. SAILO,IPS (RR-1972) by GOVT. OF MEGHALAYA vide Notification No.HPL.245/86/91 dated 17th May, 2002 in the said scale.

Contd/-2

Attested by
Dipu
Advocate

-02-

- 5) Shri S.R.MEHRA,IPS (RR-1970), Shri G.M.SRIVASTAVA,IPS (RR-1972) and Shri S.P. RAM,IPS (RR-1974) who have since been on central deputation from ASSAM POLICE were given proforma promotion to the rank of D.G.P./Addl.D.G.P. under the provision of this RULE by GOVT. OF ASSAM (Copies of the orders enclosed).
- 6) Earlier when GOVT. OF MEGHALAYA promoted Shri B.K. DEY,IPS (RR-1973) vide Notification No.HPL.52/90/PT/213 dated 25th October,1999 to the rank of Addl.D.G.P. in the pay scale of Rs. 22400-525-24500/- his senior Shri D.N. Dutt,IPS (RR-1971), Shri G.M. Srivastava,IPS (RR-1972) and Shri R.N.Mathur,IPS (RR-1973) then serving as I.G.P. were promoted to the rank of Addl.D.G.P. by GOVT. OF ASSAM under the provision of this RULE by creating three additional ex-cadre posts of Addl.D.G.P. in the said scale (Photocopy of the orders enclosed).
- 7) Having come to know about the promotion of Shri Marbaniag to the rank of D.G.P., I submitted a representation to the GOVT. OF ASSAM vide my D.O. letter No.(CD&HG)1/PF/2004/141 dated 4th April/2005 addressed to the CHIEF SECRETARY imploring therein for needful for my promotion to the rank of D.G.P. w.e.f. the date of promotion of my junior SHRI MARBANIAG as provided for under this RULE but regrettably even after a lapse more than three months, the Govt.'s response in this regard is still awaited.

In view of above, it is requested that Govt. may kindly do the needful for my promotion to the rank of D.G.P. in the pay scale of Rs. 24050-650-26000/- without further delay for the sake of equity, justice and fair play as provided for under RULE 5, note III,2(3) of IPS (PAY) RULES 1954.

Yours faithfully,

(B. P. RAO)

Addl.Director General of Police,
(CD&HG), Assam, Guwahati-28.

GOVERNMENT OF MEGHALAYA
HOME (POLICE) DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Shillong, the 25th October, 1999

No. HPL. 52/90/Pt/213 - Shri B.K. Dey, IPS(RM-73) Inspector General of Police (IG) Meghalaya is temporarily promoted to officiate as Addl. Director General & Inspector General of Police in the scale of pay of Rs.22400-525-3450/- p.m. plus other allowances as admissible under the rules, against the existing vacancy with effect from the date of taking over charge and until further order.

On taking over charge of the post of Additional Director & Inspector General of Police, Meghalaya Shri B.K. Dey, IPS is allowed to hold the current charge of the duties and functions of the Director General & Inspector General of Police, Meghalaya, Shillong until further orders.

G.P. WNING
Commissioner & Secretary to the
Government of Meghalaya,
Home (Police) Department.

No. No. HPL. 52/90/Pt/213-A

Dated Shillong, the 25th October, 1999.

Copy to :-

1. The Secretary to the Governor of Meghalaya, Shillong.
2. The Principal Secretary to the Chief Minister, Meghalaya.
3. The Private Secretary to Minister Home, Meghalaya.
4. The Private Secretary to Minister of State Home, Meghalaya.
5. The Private Secretary to the Chief Secretary, Meghalaya.
6. The Director General & Inspector General of Police, Meghalaya, Shillong.
7. All Superintendents of Police/Commandants of Police Battalion.
8. The Principal Police Training School, Shillong.
9. The Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
10. The Under Secretary to the Govt. of Assam, Home (A) Department.
11. The Accountant General (AE/ Audit), Meghalaya, Shillong.
12. The Secretary, Joint Cadre Authority, Assam-Meghalaya & Commissioner and Secretary to the Govt. of Assam, Department of Personnel (Personnel-A), Dispur.
13. The Director of Printing & Stationery, Meghalaya, Shillong for favour of publication in the Gazette.
14. The Officer concerned/Personal File/Quards file.

For order etc.,

Under Secretary to the Govt. of Meghalaya,
Home (Police) Department.

Attested by
R. D. Dowl
Advocate

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENTORDERS BY THE GOVERNORNOTIFICATION

Dated Dispur, the 1st June, 2000.

NO. HMA. 146/98/79 : Shri D.N. Dutta, IFS (RR-71), Inspector General of Police (OSD), Assam is promoted to the rank of Addl. Director General of Police in the pay scale of Rs. 22,400-525-24,500/- with effect from 25.10.99 and posted as O.S.D. in the rank of Additional Director General of Police, Assam with effect from the date of taking over charge and until further orders against the newly created post.

NO. HMA. 146/98/79 (a) : Shri G.M. Srivastava, IFS (RR-72), Inspector General of Police (Operational), Assam is promoted to the rank of Additional Director General of Police in the pay scale of Rs. 22,400-525-24,500/- with effect from 25.10.99 and posted as Additional Director General of Police (Operations), Assam with effect from the date of taking over charge and until further orders against the newly created post.

NO. HMA. 146/98/79 (b) : Shri R.N. Mathur, IFS (RR-73), Inspector General of Police (Admn.), Assam is promoted to the rank of Additional Director General of Police in the pay scale of Rs. 22,400-525-24,500/- with effect from 25.10.99 and posted as Additional Director General of Police (Admn.), Assam with effect from the date of taking over charge and until further orders against the newly created post.

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

Memo. No. HMA. 146/98/79-A, Dated Dispur, the 1st June, 2000.
Copy to:-

1. The Accountant General, Assam, Maidanigaon, Beltola, Guwahati-29.
2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
3. The Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
4. The Secretary to the Govt. of Meghalaya, Home (P) Deptt., Shillong.
5. The All. Director General of Police/Insp. General of Police/Insp. General of Police.
6. The Superintendent of Police/Commandant
7. Shri
8. The P.S. to Chief Minister, Assam, Dispur, Guwahati-6.
9. The P.S. to Chief Secretary, Assam, Dispur, Guwahati-6.
10. The P.S. to Addl. Chief Secretary, Assam, Dispur, Ghy-6.
11. The P.S. to Secretary, Home Deptt., Assam, Dispur, Ghy-6.
12. The P.P.S. to Chief Minister, Assam, Dispur, Guwahati-6.
13. The Superintendent, Assam Govt. Press, Bomdialdham, Guwahati-21 for publication.

By order etc.,

16.6.2000
Deputy Secretary to the Govt. of
Home (A) Department.

SITAKI

Attested by
Ranowar
Advocate

GOVERNMENT OF MEGHALAYA
HOME(POLICE) DEPARTMENT

37

ORDERS BY THE GOVERNORNOTIFICATIONDated Shillong, the 17th May, 2002

No.HPL.245/86/91 - Shri L.Sailo, IPS (RR 72) Addl.DGP, Meghalaya is hereby promoted to the post of Director General-cum-Inspector General of Police, Meghalaya in the scale of Rs. 24050-650-26000/- w.e.f. the date of taking over charge until further orders

No.HPL.245/86/92 - Shri W.R.Marbaniang, IPS (RR.75) Director Civil Defence and Commandant General Home Guards, Meghalaya (IGP rank) is hereby promoted to the post of Addl.Director General of Police, Meghalaya in the scale of Rs.22400-525-24500/- w.e.f. the date of taking over charge. He will however continue to hold the post of Director Civil Defence and Commandant General Home Guards, Meghalaya until further orders.

(G.P.Wahlang)
Commissioner & Secretary to the Govt of Meghalaya,
Home (Police) etc. Departments.

Memo.NO.HPL.245/86/92-A

Dated Shillong, the 17th May, 2002

Copy forwarded to:-

1. The Principal Secretary to the Governor, Meghalaya, Shillong.
2. The Principal Secretary to the Chief Minister, Meghalaya, Shillong.
3. The Private Secretary to the Deputy Chief Minister, Meghalaya, Shillong.
4. The Private Secretary to the Minister Home(Police), Meghalaya.
5. The Private Secretary to the Chief Secretary, Meghalaya.
6. The Accountant General(A&E), Meghalaya, Shillong.
7. The Under Secy., to the Govt of India, Ministry of Home Affairs, New Delhi.
8. The Secretary, Joint Cadre Authority, Assam-Meghalaya and Commissioner Secretary to the Govt. of Meghalaya, Personnel & A.R.(A) Deptt.
9. The Secretary to the Govt of Assam, Home(A) Deptt. Dispur, Guwahati -78100
10. The Director General of Police, Meghalaya, Shillong.
11. The Director of Printing & Stationery, Meghalaya for favour of publication in Gazette.
12. Shri L.Sailo, IPS, DGP-cum-Inspector General of Police, Meghalaya.
13. Shri W.R.Marbaniang, IPS, Director Civil Defence and Commandant General Home Guards, Meghalaya, Shillong.
14. Personal file/Guard file.

By order etc.,

R.S. (D.Syiem)
Deputy Secretary to the Govt of
Meghalaya, Home(Police) Deptt.

Attested by
Ranwa
Advocate

GOVERNMENT OF ASSAM
HOME (A) DEPARTMENT

ORDINED BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 3rd April/2003.

No. HMA. 167/94/Pt. II/56 : Shri G.M. Srivastava, IPS (AM-72) now on deputation to Govt. of India is allowed proforma promotion to the rank of Director General & Inspector General of Police in the pay scale of Rs. 24050-650-26000/- with immediate effect under Rule-5, note-III, 2(3) of the IPS (Pay) Rules, 1954.

Shri G.M. Srivastava, IPS (AM-72) is entitled to his pay in the above scale from the Govt. of Assam only with effect from the date of his reversion from Central deputation with notional fixation of his pay with effect from the date of promotion to the above scale on the regular line.

Sd/- P.P. Barooah,
Joint Secy. to the Govt. of Assam,
Home (A) Department

Memo No. HMA. 167/94/Pt. II/56-A, Dtd. Dispur, the 3rd April/2003.

Copy to :-

- 1) The P.P.S. to Chief Minister, Assam, Dispur, Guwahati-6.
- 2) The P.S. to Chief Minister, Assam, Dispur, Guwahati-5.
- 3) The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29.
- 4) The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
- 5) The Under Secy. to the Govt. of India, Ministry of Home Affairs, New Delhi.
- 6) The Addl. Director General of Police/Inspector General of Police/Deputy Inspector General of Police. (A.), Dispur, Guwahati-7.
- 7) The Supdt. of Police/Commandant.
- 8) Shri.....
- 9) The P.S. to Chief Secretary, Assam, Dispur, Guwahati-6.
- 10) The P.S. to Addl. Chief Secretary, Assam, Dispur, Guwahati-6.
- 11) The P.S. to Commissioner & Secretary, Home, Assam, Dispur, Guwahati-6.
- 12) The P.S. to Commissioner & Secretary to Chief Minister, Assam, Dispur, Guwahati-6.
- 13) The P.S. to Secretary, Home, Assam, Dispur, Guwahati-6.
- 14) The Supdt. Assam Govt. Press, Bamunimaidan, Guwahati-21.

By Order Etc.,

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

TD/

Attested by
R. D. D.
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO. 215 OF 2005

SHRI B.P. RAO

APPLICANT

Vs

UNION OF INDIA & OTHERS

RESPONDENTS

SHORT REPLY ON BEHALF OF UNION OF INDIA, i.e.
RESPONDENT NO. 1

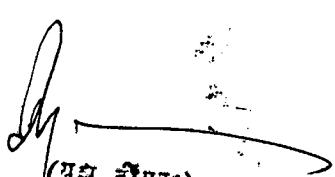
MAY IT PLEASE THIS HONOURABLE TRIBUNAL :

Without prejudice to the submissions made in the following paragraphs and to one another, the Respondent says that promotion is not a matter of right and it is also not a condition of service but an incidence of service, to be earned by virtue of continued good and efficient service. Consequently, promotion is considered by the competent authority on merits of each case and the same cannot be ordered to be allowed as a matter of course.

2. The relief sought for by the applicant is to admit this application, call for the entire records of the case, show cause to the respondents as to why the applicant shall not be promoted to the rank and scale of DGP from the date his junior in the Assam-Meghalaya cadre was promoted to the said post and after perusing the causes shown, if any and hearing the parties be pleased to allow the application and direct the respondents to promote him to the rank and scale of DGP from the date his junior in the Assam-Meghalaya cadre was promoted.

3. It is submitted that this respondent being the Cadre Controlling Authority for the IPS, has issued promotion guidelines in respect of IPS officers of all the State Cadres to establish a uniform procedure for promotion of IPS officers in different grades throughout the country, vide letter dated 15.1.1999.

.... 2/-


(नव दीपरा)
N. P. DHINGRA
मंत्री सचिव
Under Secretary
मुख्यमंत्री
Ministry of Home Affairs
New Delhi

35
Filed by
the respondents
through Gabinete
30.1.06
S. C. G. S. C.

4. As mentioned by the applicant in para 4.7 of the O.A. this respondent submits that after receiving the request from the Govt. of Assam for approval of creation of 4 ex-cadre posts at DGP level consequent upon promotion of Shri W.R. Marbaniang, IPS (AM:75), the matter was considered in consultation with the Departmental of Personnel & Training who frame the policy in this regard. Finally, this respondent, vide d.o. letter dated 21st December, 2005 (Annexure-A-I) has written to Government of Meghalaya and Assam that it was not justifiable to create 4 ex-cadre posts at the apex level against the sanctioned strength of one cadre post so as to accommodate the IPS officers senior to Shri Marbaniag. It has also been clarified that the AIS officers in both the segments of joint cadre may be considered together for promotion as per their combined seniority by the Joint Cadre Authority comprising of the Chief Secretaries of both the segments and other representatives. It has also been clarified that such promotions can be allowed by the JCA on the basis of total vacancies existing in the particular grades on both the sides. After the officers concerned in the order of seniority are so found fit for promotion, they could be posted to either side and adjustments in their postings could be made, wherever necessary. The Govt. of Meghalaya has also been requested to revert Shri W. R. Marbaniang, IPS to the grade of ADGP and then take further necessary action for filling up the post of DGP accordingly.

5. The Respondent further submits that all the averments contained in the O.A. have been gone through and it has been found that the reliefs sought for pertain to the applicant's promotion in the rank of Director General of Police in his State Cadre. The subject matter of promotion of IPS officers in different grades primarily falls within the purview of the State Governments concerned. This respondent has also since written to both the State Governments of Assam and Meghalaya, explaining the rule position and advising them to follow the relevant rules and instructions. Further, the facts pertaining to the case of the applicant are available with the State respondent. This Respondent, therefore, requests that the reply of the State respondent filed in the present matter may kindly be referred to for forming a view.

DEPONENT
(यश ढिंगरा)
Y. P. DHINGRA
मंत्री सचिव
Under Secretary
मुख्य मंत्रालय
Ministry of Home Affairs
नई दिल्ली,
New Delhi.... 3/-

VERIFICATION

I Y.P. Dhingra, S/o late Shri Thakur Datt, aged 52 years working as Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi, do hereby solemnly affirm and declare that what is stated hereinabove is true to my knowledge and that I have not suppressed any material facts. I am duly authorized to file this reply on behalf of the Respondent No. 1.

This verification is signed by me at New Delhi on this 9th day of January, 2006.


DEPONENT
for RESPONDENT NO. 1

(यश ढींगरा)
(I.Y. P. DHINGRA)
कावर सचिव
Under Secretary
पुरुष सचिव
Ministry of Home Affairs
नई दिल्ली,
New Delhi

Written Statement drawn by :



(Shri Gautam Baishya)
Sr.G.G.S.C.

To

The Hon'ble Registrar
Central Administrative Tribunal,
Guwahati Bench, Guwahati.



V.N. Gaur,
संयुक्त सचिव
JOINT SECRETARY (Police)
Telefax No. 23094927

4.

सौड पोस्ट फॉर
SPEED POST

D.O. NO. I-11012/6/2005-IPS.I

भारत सरकार

GOVERNMENT OF INDIA

गृह मंत्रालय

MINISTRY OF HOME AFFAIRS
North Block, New Delhi

36

Dated, the 21st December, 2005

Dear Shri Bazeley,

The States of Assam and Meghalaya form a joint cadre of the All India Services. It is learned that the State Government of Meghalaya has promoted Shri W.R. Marbaniang, IPS (AM:75) as DGP of Meghalaya. Hence the State Government of Assam has requested this Ministry for its approval for creation of 4 ex-cadre posts at the apex level for 4 officers who are senior to Shri W.R. Marbaniang. However, it is not justifiable to create 4 ex-cadre posts at the apex level against the sanctioned strength of one cadre post.

2. The proper course of action in these circumstances is that the AIS officers in both the segments of joint cadre, may be considered together for promotion as per their combined seniority by the Joint Cadre Authority comprising of the Chief Secretaries of both the segments and other representatives. Such promotions can be allowed by the JCA on the basis of total vacancies existing in the particular grades on both the sides. After the officers concerned in the order of seniority, are so found fit for promotion, they could be posted to either side and adjustments in their postings could be made, wherever necessary. As both Assam and Meghalaya form a joint cadre of All India Services, posting of officers from one segment to another should not pose any difficulty.

3. In view of the above position, it is considered imperative to strengthen the institution of the Joint Cadre Authority and place all cases of promotion before it for its consideration. The Government of Meghalaya may like to revert Shri W.R. Marbaniang to the grade of ADGP and then take further necessary action for filling up the post of DGPs as outlined.

With regards,

Yours sincerely,

(V.N. GAUR)

Shri P.J. Bazeley,
Chief Secretary,
Government of Meghalaya,
Shillong.

Copy to the Chief Secretary, Government of Assam, Guwahati.

(V.N. GAUR)



2 FEB 2006

गुवाहाटी न्यायालय
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH.

O.A.NO.215/2005

In the matter of:

O.A. NO.215/2005

Sri B.P. Rao IPS

...Applicant

-Versus-

Union of India and ors.

...Respondents

-AND-

In the matter of:

Written statement on behalf of the Respondent No.1
(The Chief Secretary to the Govt. of Assam, Dispur
Guwahati-6) and Respondent No.2 (Commissioner and
Secretary to the Govt. of Assam, Home and Political)

[Written statement on behalf of the respondent Nos 1 and 2 to the application filed by the applicant.]

I, Sri Pranab Baruah, son of Dr. Nalin Baruah
Aged about 49 years, presently working as Deputy Secretary to the Govt. of Assam,
Home Department, Dispur, Guwahati-6, do hereby solemnly affirm and state as follows:-

- That I am the Deputy Secretary to the Govt. of Assam, Home (A) Department, Dispur, Guwahati-6. Copies of the aforesaid application have been served upon the Respondent Nos.1 and 2. I have gone through the same and have understood the contents thereof. I am conversant with the facts and circumstances of the case. I have been authorized to file this written statement on behalf of the respondent Nos.1 and 2. I do not admit any of the averments which do not specifically admitted hereinafter and the same are to be deemed as denied.
- That with regard to the statements made in paragraphs 4.1, 4.2 and 4.3 of the application the answering respondent has nothing to make comment on it.

File No: 122
The State of Assam Case
Response No 122
Shri B.P. Rao IPS
Dr. B.P. Baruah
Guwahati Bench
Date: 30/11/05

3. That with regard to the statements made in paragraphs 4.4 and 4.5 of the application, the answering respondent begs to state that the Govt. of Assam, has effected the promotion of IPS officers in accordance with the provisions of IPS (PAY) Rules 1954. However so far the promotion of Sri W.R.Marbaniang, IPS of 1975 batch is concerned the case of 4 officers working in Assam belonging to 1973 and 74 batch were not considered.

4. That with regard to the statements made in paragraphs 4.6 and 4.7 of the application, it is stated that on receipt of representation dated 11.07.05 made by the applicant the same has been referred to Govt. of India for approval for the creation of 4 posts in the rank of Director General of Police to accommodate the aggrieved officers.

Further it is stated that on receipt of approval from Govt. of India the State Govt. will make immediate steps for effecting the promotion of officers.

5. That with regard to the statements made in paragraphs 4.8, 4.9 and 4.10 of the application, the answering respondent begs to state that the Govt. of India has already been moved for approval to the creation of 4 ex-cadres posts. However as per provision of Rule 9(7) of IPS (PAY) Rules 1954 the Govt. of Assam has power to create only one ex-cadre post at the level of DGP. Hence for effecting the promotions the matter is referred to the Govt. of India which is under processed.

VERIFICATION

I, Shri. Pranab Baru son of Dr. Nalin Baru

aged about years, Deputy Secretary to the Govt. of Assam, Home department, Dispur, Guwahati-6, do hereby state that the statements made in paragraphs 1,2,3,5 are true to my knowledge, those made in paragraph 4 are being matter of records of the case derived there from which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

I have not suppressed any material facts and I have signed this verification on this the 30th day of November, 2005 at Guwahati.


Signature Pranab Baru

Deputy Secretary to the Govt. of Assam
Home Department, Dispur, Guwahati-6

केन्द्रीय व्रशास्त्रीय नियमित Central Actu. 2005, 1st batch
गुवाहाटी न्यायपीठ Guwahati Bench
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :GUWAHATI BENCH GUWAHATI.

2
Filed by
Shri A. Meghalaya
-- Respondent No. 4
Through
Smti. Binita Datta
Advocate
28/4/06

In the matter of :

OA No. 215 of 2005

Sri B.P. Rao.

.... Applicant

-Versus-

Union of India & Ors.

.... Respondents.

Written Statement on behalf of the Respondent No. 4.

- 1) That the instant Original Application is not maintainable against the instant Respondent in as much as the Applicant has neither challenged the notification dated 14.3.2005 issued by the Commissioner and Secretary to the Government of Meghalaya, Sikkim Home (Police) Department, Shillong, whereby Sri W.R. Marbaniang, IPS, was promoted to the Post of Director General of Police, Meghalaya, nor any relief sought for against the instant Respondent.
2. That it would be further evident from the instant Original Application of the Applicant that the Applicant was fully aware that he did not intend to challenge the Promotion Order of Sri W.R. Marbaniang dated 14.3.2005 and he has deliberately not impleaded Sri W.R. Marbaniang as a Party Respondent and in that view of the matter, the question of interfering the Promotion Order of Sri W.R. Marbaniang in the instant case, does not arise.

Contd....

3. That with regard to the statements made in paragraph 5 of the Original Application, I state that Sri W. R. Marbaniang belongs to the 1975 batch of Indian Police Service. He has all along been serving in Meghalaya Segment of the Joint Assam and Meghalaya Cadre with distinction. He being the Senior most Police Officer and having 30 years of continuous service, was eligible for promotion to the Post of Director General of Police and as such he was accordingly promoted as Director General of Police by notification No. HPL.38/99/Pt-VI/2 dated 14.3.2005 as per earlier conventions, which has not been declared illegal, arbitrary or even discriminatory by any authority, including the Central Government.

4. That in this connection I state that Sri W. R. Marbaniang has been holding the post of Director General of Police since March, 2005, the question of reverting Sri W. R. Marbaniang as this belated stage does not arise at all, more so, as nothing adverse has been noticed against his manner of functioning as the Director General of Police of Meghalaya.

5. That it would be further evident from paragraph 8 of the Original Application that the Applicant has already indicated the manner in which promotion has been effected earlier, in the State of Assam when-ever a junior Officer has been granted promotion in the State of Meghalaya. In view of the precedents which have been indicated by the Applicant in the matter of promotions, the State of Assam can certainly consider the case of the Applicant, subject of course to the limitations that the State of Assam may have with regard to the number of ex-cadre posts which can be created at present. It is

uM

3.

also pertinent to point out that none of the Officers who were granted promotions above their ~~juniors~~ ^{Seniors} in the Joint Cadre, were ~~ever~~ reverted.

P.S.

6. That I submit that if this Hon'ble Tribunal passes any adverse Order against Sri W.R. Marbaniang without he having been impleaded, it would cause irreparable injury to the said Sri W.R. Marbaniang, who was otherwise eligible to be promoted to the post of Director General of Police.

7. That I submit that the instant application is liable to be dismissed as against the instant Respondent as being not entertainable.

Verification

I, Deilinia Syiem, D/o late H. Nongrum, aged about 50 years, a permanent resident of Shillong, by occupation, Officer on Special Duty to the Government of Meghalaya, Home (Police) Department, do hereby verify that the statements made in paragraphs 2, 3, 4 + 5 are true to my knowledge and belief.

And I sign this Verification on this the 27th day of April, 2006 at Guwahati.

Deilinia Syiem
Signature.