

50/100

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

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Kahals  
07.11.17

FORM NO. @  
(See Rule 42 )  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 310/2005  
Misc. Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicant(s) MR N. C. Maekon

Respondent(S) U.O. 12 008

Advocate for the Applicants MR M. Chanda, S. Nath and  
G. N. Chakrabarti

Advocate for the Respondent(S) M. U. Ahmed Addl CGSC  
Rly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
<p>This application is filed/C.P. for is deposited vide P. DE No. <u>269 317126</u> Dated <u>5.12.05</u></p> <p><i>[Signature]</i> Dy. Registrar</p> <p>No steps within extra Rs 10/- for respondents 6 and 7.</p> <p>Pl. comply order dated 15.12.05.</p> <p><i>[Signature]</i> 15.12.05</p> <p>Recd. notice on behalf of Respondents ① to ⑤</p> <p><i>[Signature]</i> J. Augustine Inspector, Hqs. Genl. Cell, Ghy Central Exise.</p>	<p>15.12.05</p> <p>27.1.06</p>	<p>Heard Mr.M.Chanda, learned counsel for the applicant and Mr.M.U.Ahmed, learned Addl.C.G.S.C. for the respondent.</p> <p>Admit. Issue notice to the respondents. Written statement, if any, with six weeks.</p> <p>Post on 27.1.2006.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>Mr.S.Nath, learned counsel for the applicant is present. A prayer was made on behalf of Mr.M.U.Ahmed, learned Addl.C.G.S.C. for four weeks time to file written statement. Let it be done. Post on 2.3.2006.</p> <p><i>[Signature]</i> Vice-Chairman</p>

**Vice-Chairman**

13.3.2006

Post on 28.3.2006. Counsel for the applicant may file rejoinder, in the meantime.

**Vice-Chairman**

Notice duly  
served on  
resp. Nos. 1 to 5

Cass  
106

25-1-06

On the duty period from 1 to 5.

2. Service awaited for  
R. no 6 & 7.  
3. No. was filed  
by

Notice's ~~have~~ received  
ok as un served  
in a remarkable  
"freeze debt" ser  
nos. 6, 7.

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3-  
CA 310/05

Notes of the Registry	Date	Order of the Tribunal
23.3.06 N/S filed by the Respondent Nos. 1 to 7.  <u>mb</u>	28.03.2006	When the matter came up for hearing Mr. S. Nath, learned counsel for the applicant submits that he would like to file rejoinder to the reply statement filed by the respondents. Post on 27.04.2006.  <u>Vice-Chairman</u>
27-3-06 No Rejoinder has been filed.  <u>mb</u> No Rejoinder has been filed.  <u>mb</u>	27.4.2006	Mr.M.Chanda, learned counsel for the applicant requests for further time to file rejoinder. Let it be done. post on 15.5.2006.  <u>Vice-Chair</u>
12-5-05 No Rejoinder has been filed.  <u>mb</u>	15.05.2006	Learned counsel for the wanted further time to file rejoinder. Let it be done. Post on 07.06.2006.  <u>Vice-Chair</u>
6-6-06 No Rejoinder has been filed.  <u>mb</u>	7.6.2006	Mr.S.Nath, learned counsel for the applicant prays for time to file rejoinder. Let it be done. Post on 29.6.2006.  <u>Vice-Chair</u>
22-6-06 No Rejoinder has been filed.  <u>mb</u>	23.6.2006	post the matter on 11.7.2006 enabling time to Mr.M.Chanda, learned counsel for the applicant to file joinder.  <u>Vice-Chair</u>

4-  
CA 310/05

18.07.2006

Learned counsel for the applicant wanted time to file rejoinder.

Post on 08.08.2006.

Vice-Chairman

mb

27.7.06

8.8.2006

When the matter came up for hearing after hearing counsel for the parties it is considered necessary to produce the records. Hence, Mr. M.U. Ahmed, learned Addl. C.G.S.C. is directed to produce the records concerning the ACRs and other files considered by the DPC.

post before the next Division Bench.

Member (A)

Vice-Chairman

Let the case be posted for hearing on 1.3.07. The counsel for the respondents is directed to produce records by that time.

ce  
Member

Vice-Chairman

None appears for the applicant. Despite fact that many occasions have been given to the respondents to produce ACRs. But the respondents has not been produced the same. The counsel for the respondents is directed to produce the same. If it is not the concerned Officer will be summoned on the next date. post the matter on 25.4.07.

Member

Vice-Chairman

lm

No rejoinder has been filed.

Rejoinder submitted by the Applicant.

The case is ready for hearing.

7-8-06

case is ready for hearing

bb

NS  
27.2.07

28.2.07

Received copy of order  
dt. 28.02.07

15/02/07

pg

The case is ready for hearing.

21.3.07

24.4.07

is filed on behalf of the respondent.

Rejoinder has been filed.

O.A. 310/2005

-5-


5

25.4.2007 Present: The Hon'ble Mr.G.Shanthappa  
Member (J)


The Hon'ble Mr.G.Ray, Member (A).


Heard learned counsel for the parties.  
Order passed kept in separate sheets.

The O.A. is allowed to the extent indicated  
in the order. No costs.

  
Member (A)

/bb/

  
Member (J)

  
4/5/07  
Add. CGSC

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. No.310 of 2005

DATE OF DECISION: 25.04.2007

Shri N.C.Malakar

.....Applicant/s

Mr.M.Chanda

..... Advocate for the  
Applicant/s

- Versus -

U.O.I & Others

.....Respondent/s

Mr.M.U.Ahmed, Addl.C.G.S.C.

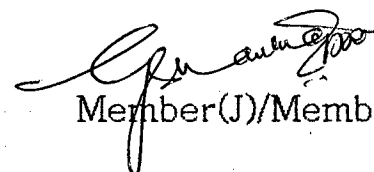
.....Advocate for the  
Respondents

CORAM

THE HON'BLE MR. G.SHANTHAPPA, JUDICIAL MEMBER

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

  
Member(J)/Member(A)

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 310 of 2005.

Date of Order: This, the 25th day of April, 2007.

THE HON'BLE SHRI G. SHANTHAPPA, JUDICIAL MEMBER

THE HON'BLE SHRI GAUTAM RAY, ADMINISTRATIVE MEMBER

Shri Niranjan Chandra Malakar  
Son of Shri Naresh Chandra Malakar  
Inspector, Customs and Central Excise  
O/o Deputy Commissioner  
Customs Division  
Karimganj.

...Applicant.

By Advocates Mr. M.Chanda, Mr.S.Nath & Mr. G.N.Chakraborty.

- Versus -

1. The Union of India  
Represented by the Secretary  
to the Ministry of Finance  
(Department of Revenue)  
Government of India  
North Block  
New Delhi-110 002.
2. The Chairman  
Central Board of Excise & Customs  
North Block, New Delhi -110 004.
3. The Chief Commissioner  
Customs & Central Excise  
N. E. Region  
Crescens Building  
M.G. Road, Shillong-793001.
4. The Commissioner  
Central Excise



Post Box No.8, Morellow Compound  
Shillong.

5. The Additional Commissioner (P&V)  
Customs & Central Excise  
Crescens Building.  
M.G. Road, Shillong-793001.
6. Sri Gopal Chandra Das  
Superintendent Group 'B'  
Central Excise & Customs.  
Commissioner, Central Excise, Shillong.
7. Sri N. N. Das  
Superintendent Group 'B'  
Central Excise & Customs.  
Commissioner, Central Excise, Shillong... Respondents.

By Mr.M.U.Ahmed, learned Addl.C.G.S.C.

### O R D E R (ORAL)

#### SHANTHAPPA, G, MEMBER (J):

This Application has been filed by the Applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

"8.1 That the Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the cadre of Superintend Group 'B' from the date of promotion of his immediate juniors, with all consequential service benefits and monetary benefits including seniority etc. by constituting a Review DPC.

8.2 That the Hon'ble Tribunal be pleased to declare that the DPC is not entitled to take into consideration any downgraded ACR or



ACR recorded below benchmark without providing any opportunity to the applicant."

2. We have heard Mr. M. Chanda, learned counsel for the Applicant and Mr. M. U. Ahmed, learned Addl. C.G.S.C. for the Respondents. After hearing them for quite some time the short question arises for our consideration is as to whether the Applicant is to be considered for promotion by the Review DPC. In the ACR for the year 2000-2001 there were adverse remarks against the Applicant. Applicant submitted his representation against such adverse remarks, which was rejected by the authority. Applicant then filed an appeal on 08.02.2001 and the Appellate Authority considered his appeal and expunged the adverse remarks. Based on the expunction of adverse remarks he made representations before the authority for consideration of his promotion by Review DPC. The first Respondent directed the third Respondent i.e, the Chief Commissioner, Central Excise to convene a Review DPC. The said letter dated 24.06.2004 is annexed at Annexure-13 of the O.A. Subsequently Applicant submitted representation (Annexure-14) to the fifth Respondent on 28.09.2005. Since the said Respondent has not



considered his representation Applicant has approached this Tribunal by way of this O.A.

3. Per contra Respondents have filed a detailed written statement denying the reliefs of the Applicant. Learned counsel for the Respondents has relied on paragraphs 5 and 7 of the written statement filed in this case. At paragraph 5 of the written statement the Respondents contended that in the ACR of the Applicant for the year 2000-2001 in most of the columns the gradings were "JUST ADEQUATE" which is below the benchmark "GOOD" for promotion to the grade of Superintendent Group-B. In the aforesaid ACR adverse entry was recorded only at column No.3 (Industry and conscientiousness) as "POOR" and in other columns, the gradings were recorded as "JUST ADEQUATE" except in column 7(a). Though the said adverse entry was expunged his case is not fit for promotion by way of Review DPC or otherwise due to gradings in other columns. At paragraph 7 of the written statement Respondents contended that the benchmark in the ACR grading for promotion to the grade of Superintendent (Group-B) are good. Applicant's representation was examined in the past on more than one occasion. However,



in terms of para 18.4.1 of the DPC guidelines, the ACR for the period 2000-2001 of the Applicant was thoroughly scrutinized further with a view to whether or not a review of his case by Review DPC was justified or not. On scrutiny it was found that most of the gradings - "JUST ADEQUATE" in the ACR for the aforesaid period were below the benchmark - "GOOD" for promotion.

4. On careful examination of the written statement it is found that the Respondents have not answered anything about Annexure-13 communication dated 24.06.2004 wherein the Chief Commissioner of Central Excise i.e., the third Respondent was requested to direct the fourth Respondent to conduct a Review DPC. For better elucidation, the contents of the said letter is reproduced as under:-

"Sir,

I am directed to refer to your letter C.No.II(20)1/CON/2003/151 dated 25.2.2004 on the above cited subject. Shri N.C.Malakar vide his representation dated 16.6.2003 has stated that inspite of adverse remarks contained in ACR for the year 2000-2001 has been expunged, the competent authority is not holding a review DPC for consideration for promotion to the post of Superintendent. His representation was considered in detailed in consultation with DOP&T and it was requested to CCE, Shillong to hold review DPC vide letter



of even number dated 13.10.2003. CCE Shillong did not follow the Board's instruction and avoided to hold a review DPC on one ground or other.

The decisions to hold review DPC has to be taken by the cadre controlling authority (C.C.E., Shillong). He is unnecessarily trying to complicate the matter and consequently pass on decision making to the Board with attendant delay. As per the rule position, a review DPC has to be held.

You are therefore, requested to direct the CCE, Shillong to hold a review DPC of 30.7.2002 immediately and promote Shri Malakar to the post of Superintendent if he is found fit. A compliance report be also sent to the Board at the earliest.

Yours faithfully,

(S.K.THAKUR)

Under Secretary to the Govt. of India"

Subsequent to that, the Applicant has submitted representation for consideration of his case for promotion to the Grade of Superintendent (Group-B) by a Review DPC. In spite of directions issued vide aforesaid letter dated 24.06.2004 on what reason the Respondents are not holding the Review DPC for considering Applicant's case is not understood from their written statement.

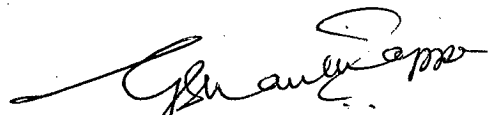


5. After carefully considering the pleadings and submissions advanced by either sides we are of the view that ends of justice will be met if a direction is issued to the third Respondent to conduct a Review DPC based on the observations made in the preceding paragraphs to consider the case of the Applicant for promotion and if found fit to promote the Applicant. Accordingly, third Respondent is directed to convene a Review DPC and consider the case of the Applicant for promotion to the post of Superintendent (Group-B), and if found fit, promote the Applicant from the date of promotion of his immediate juniors with all consequential benefits. The above directions shall be complied with by the concerned Respondent within a period of two months from the date of receipt of a copy of this order.

6. The Original Application is allowed to the extent indicated above. There will be no order as to costs.



(GAUTAM RAY)  
ADMINISTRATIVE MEMBER



(G.SHANTHAPPA)  
JUDICIAL MEMBER

31  
Central Administrative Tribunal

14 DEC 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

O.A. No. 310 /2005

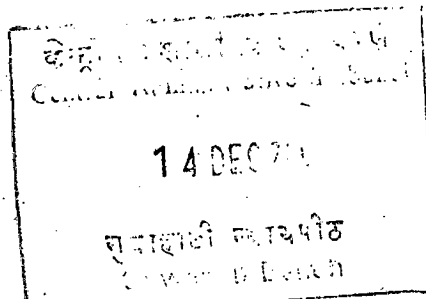
Shri Niranjana Chandra Malakar.

-Versus -

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 1981- Applicant was initially appointed as UDC, under the administrative control of Commissioner, Central Excise, Shillong.
- 07.04.1986- Applicant was promoted to the cadre of Inspector and at present he is continuing in the said period.
- 22.06.2001- Applicant had received certain adverse remarks in his Annual Confidential Report for the period from 01.04.2000 to 31.03.2001 which was communicated vide Commissioner, Central Excise Shillong's letter dated 22.06.01. (Annexure- 1)
- 09.08.2001- Applicant submitted detailed representation against such adverse remarks addressed to the Additional Commissioner (P& V) Shillong. (Annexure- 2)
- 20.11.2001- Authority rejected the representation of the applicant by a cryptic and non speaking order without any discussion or assigning any reason. (Annexure- 3)
- 08.02.2001- Applicant preferred an appeal addressed to the Chairman CBEC, New Delhi against the adverse remarks.
- 20.12.2002- Under Secretary to the Govt. of India informed that the Board has examined the appeal of the applicant and after taking into account the fact available on record it has been decided to expunge the adverse remarks awarded in the ACR of the applicant for the year 2000-2001 and accordingly adverse remarks has been expunged. (Annexure- 4)
- 23.09.2002- Union of India issued order No. 139/2002 promoting 149 Inspectors to the cadre of Superintendent Group 'B'. In the said promotion order many of the juniors to the applicant was promoted in supersession of the claim of the applicant.



- 30.12.2002- Respondent Authority issued another promotion order from the cadre of Inspector to the cadre of Superintendent Gr. 'B' without considering the case of the applicant. (Annexure- 5)
- 16.01.2003- Asstt. Commissioner, Central Excise Division, Silchar vide letter dated 16.01.03 communicated to the applicant that the Board has decided to expunge adverse remarks in the ACR of the applicant. (Annexure-8)
- 06.01.2003- Applicant submitted representation to the Chief Commissioner for review of his case for promotion with retrospectively with regular seniority. (Annexure- 9)
- 16.06.2003, 21.07.03, 29.10.03- Applicant submitted representations praying for review of his case of promotion by holding special DPC with retrospective effect. (Annexure- 10 Series)
- 01.04.2004- Office of the Chief Commissioner, Shillong informed the applicant that on an inquiry, regarding holding of review DPC for promotion it is found that the case of the applicant was still deficient for being considered for review DPC. (Annexure- 12)
- 24.06.2004- Under Secretary to the Govt. of India informed that the case applicant has been consulted with the DOPT in the light of his representation and further requested to hold a review DPC as of 30.07.2002 immediately and promote the applicant to the grade of Superintendent Gr. 'B'. (Annexure- 13)
- 28.09.2005- Applicant again submitted representation addressed to the Addl. Commissioner (P&V) Customs and Central Excise, Shillong praying interalia for holding review DPC and promote him to the grade of Superintendent Gr. 'B' but to no result. (Annexure- 14)

### 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 Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the cadre of Superintendent Group 'B' from the date of promotion of his immediate juniors, with all consequential service benefits



and monetary benefits including seniority etc. by constituting a Review DPC.

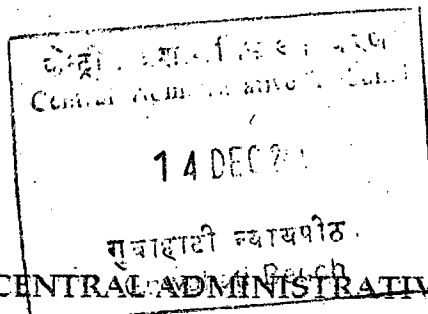
2. That the Hon'ble Tribunal be pleased to declare that the DPC is not entitled to take into consideration any downgraded ACR or ACR recorded below benchmark without providing any opportunity to the applicant.
3. Costs of the application.
4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

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

1. That the Hon'ble Tribunal be pleased to observe that pendency of this application shall not be a bar to the respondents to grant the relief as prayed for.

Ninayan C. Malaka



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 310 /2005

Shri Niranjana Chandra Malakar. : Applicant

Versus -

Union of India & Others: Respondents.

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Filed by

Date

Advocate.

Niranjana C. Malakar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

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

O. A. No. 310 /2005

BETWEEN:

Shri Niranjana Chandra Malakar,

Son of Shri Naresh Chandra Malakar,  
Inspector, Customs and Central Excise,  
O/o- Deputy Commissioner,  
Customs Division,  
Karimganj.

...Applicant.

-AND-

1. The Union of India,  
Represented by the Secretary to the  
Ministry of Finance,  
(Department of Revenue)  
Government of India,  
North Block  
New Delhi- 110002.
2. The Chairman,  
Central Board of Excise & Customs,  
North Block,  
New Delhi-110004.
3. The Chief Commissioner,  
Customs & Central Excise,  
N.E. Region,  
Crescens Building,  
M.G. Road, Shillong- 793001.
4. The Commissioner,  
Central Excise,  
Post Box No. 8, Morellow Compound,  
Shillong.
5. The Additional Commissioner (P&V),  
Customs & Central Excise,  
Crescens Building,

Niranjana Ch. Malakar

35  
1  
Filed by me applicant  
through Subrata Nath  
Advocate  
14.12.05

M.G. Road, Shillong- 793001.

6. Sri Gopal Chandra Das,  
Superintendent Group 'B',  
Central Excise & Customs,
7. Sri N. N. Deka,  
Superintendent Group 'B',  
Central Excise & Customs.

... Respondents.

Respondent No. 6 and 7 are working in N.E Region under the Commissioner, Central Excise, Shillong, therefore, Notices to the Respondent No. 6 and 7 may kindly be served through Respondent No. 4 i.e. Commissioner, Central Excise, Shillong, Morellow Compound, Shillong.

#### DETAILS OF THE APPLICATION

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

This application is made praying for a direction upon the respondents to hold the review DPC to consider promotion of the applicant to the cadre of Superintendent Group 'B' and to promote the applicant at least from the date of promotion of his immediate juniors with all consequential benefit including monetary benefit and seniority in the cadre of Superintendent Group 'B'.

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.

*Niranjana C. Malakar*

The applicant further declares that this application is filed within the period of 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 as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. He belongs to Schedule Caste community.
- 4.2 That your humble applicant is presently working in the cadre of Inspector in the office of the Deputy Commissioner, Custom Division, Karimganj, P.O. Karimganj, Dist- Karimganj, Assam.
- 4.3 That your applicant was initially appointed as UDC in the year 1981 under the Administrative control, of Commissioner, Central Excise, Shillong. Thereafter he was promoted to the cadre of Inspector on 7.4.1986. However, the next promotional avenue of the applicant is Superintendent Group "B".
- 4.4 That your applicant while working as Inspector in the Central Excise Division, Silchar had received certain adverse remarks in his annual confidential report for the period from 1.4.2000 to 31.3.2001 from the office of the Commissioner, Central Excise Shillong through letter No. D.O.C No. II (9) 19/ CON/2001/631-33 dated 22.6.2001. However, on receipt of the adverse remarks, the applicant submitted a detail representation against such adverse remark on 9.8.2001 addressed to the Additional Commissioner, (P& V) Shillong.

Copy of the letter dated 22.6.2001 containing adverse remark and the representation dated 9.8.2001 are enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 1 and 2 respectively.

*Niranjana Ch. Malakar*

- 4.5 That it is stated that the said representation dated 9.8.2001 has been rejected by the authority by a cryptic and non speaking order bearing letter No. C. No. II (9) 19/CON/2001/1282-84 dated 20.11.2001 without any discussion or assigning any reasons against the points raised by the applicant in his representation.

A Copy of the letter dated 20.11.2001 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 3.

- 4.6 That the applicant thereafter preferred an appeal on 08.02.2001 to the Chairman CBEC, New Delhi against the said adverse remark. Be it stated that the reporting authority at any point of time did not point out any sort of deficiency in performance of official duty and also never tender an advice regarding performance of duty of the applicant to enable him to provide an opportunity to improve himself or his performance. It is categorically submitted that the applicant was never given any memo, warning, or reprimand during the period from 2000-2001 and as such there was no ground or occasion arises to make any adverse entry in the ACR of the applicant.

However, by the letter bearing No. F.No A.28018/02/2002-Ad. III A dated 20.12.2002, It is informed by the under Secretary, to the Govt. of India that the board has examined the appeal of the applicant and after taking into account the fact of the case available on record, it has been decided to expunge the adverse remarks awarded in the ACR of he applicant for the year 2000-2001 and accordingly adverse remarks has been expunged.

A Copy of the letter dated 20.12.2002 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 4.

- 4.7 That it is stated that in the meanwhile the respondent Union of India have issued order of promotion of at least 149 Inspectors to the cadre of

Niranjani Ch. Mahajan

Superintendent Group 'B' in the scale of pay of Rs. 6500-200-10,500 until further orders vide establishment order No. 139 of 2002 dated 23.09.2002, in the said promotion order, where many of his juniors have been promoted namely, Shri S. K. Kundu (SC), Mrs. Kironmoyee Das (SC) and Sri G.K. Bayan (SC), Shri Gopal Chandra, Shri N.N. Deka in supersession of the claim of the applicant, however, Sri Gopal Chandra Das and Sri N. N. Deka have been impleaded as private respondent No. 6 and 7, in the instant case of the applicant as an abundant caution.

Be it stated that applicant is also belongs to SC community and as such entitle to privileges guaranteed by the constitution of India. In the aforesaid promotion order dated 23.9.2002 the name of the applicant did not included although names of his juniors have been included. The DPC did not recommend the name of the applicant because of the adverse entry recorded in his ACR for the period from 2000-2001. In this connection it may be stated that when an appeal against the adverse remark in the ACR is pending before the higher authority at that point of time DPC should consider the case of such Govt. employee for promotion without taking into consideration, Such adverse remarks while considering the case for promotion by the DPC, the applicant is placed in the seniority list of Inspectors at serial No. 285, where as private respondent No. 6 and 7 placed at Sl. No. 304 and 307 of the seniority list published as on 01.05.2001, as such the applicant has been adversely effected due to non consideration of his promotion to the cadre of Superintendent on the alleged ground of adverse remarks in the ACR. It is further submitted that in the Deptt. of Central Excise and customs, normally the promotion is made from the cadre of Inspector to the cadre of Superintendent Gr "B" on the basis of seniority cum merit.

Copy of the promotion order dated 23.09.2002 and extract of the seniority list of Inspectors as on 01.05.2001 are enclosed herewith

*Niranjana Ch. Malakar*

for perusal of the Hon'ble Tribunal as Annexure- 5 and 6 respectively.

- 4.8 That your applicant has acquired a valuable and legal rights for promotion to the cadre of Superintendent Gr. 'B', more so in view of the fact that the adverse remarks recorded in ACR for the year 2000-2001 has been expunged by the CBEC, which was communicated by the order dated 20.12.2002 and as such it is obligatory on the part of the respondents to hold the review DPC to consider the case of the promotion of the applicant ignoring the adverse remark recorded in the ACR for the year 2000-2001, but in the instant case of the applicant the respondent did not take any steps for holding review DPC, inspite of the decision of the board expunging adverse remarks and as such applicant is mated out with hostile discrimination in the matter of promotion. It is relevant to mention here that another promotion order from the cadre of Inspector to the cadre of Superintendent has been issued vide establishment order No. 204/2002 dated 30.12.2002, whereby juniors of the applicant were promoted without considering the case of the present applicant.

Copy of the promotion order dated 30.12.2002 is enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 7.

- 4.9 That your applicant begs to say that decision of the board to expunge the adverse remarks communicated to the applicant vide letter No. C. No. II (26) 1/CON/2002/13 dated 16.01.2003. The applicant immediately after receipt of the decision of the Board that the adverse ACR has been expunged informed by the Asstt. Commissioner, Central Excise Division, Silchar, submitted a representation dated 06.01.2003 which was forwarded to the Chief Commissioner for review of the case of promotion of the applicant retrospectively with regular seniority since adverse ACR is expunged.

*Niranjana Ch. Malakar*



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A Copy of the letter dated 16.01.2003, dated 20.12.02, representation dated 06.01.03 are enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 8 & 9 respectively.

- 4.10 That your applicant submitted representation to the Chief Commissioner, Kolkata, praying for review of his case of promotion by holding special DPC with retrospective effect with seniority since adverse ACR has been expunged, finding no response, applicant again submitted representations dated 16.06.03, 21.07.03 and 29.10.03 however Under Secretary to the Govt. of India department of Revenue vide his letter bearing No. F. No. A 32018/38/2003- Ad III A dated 13.10.2003 requested the then Commissioner of Central Excise, Shillong to take necessary action in the light of the DOPT guideline for holding review DPC for consideration of promotion of applicant, since the Board, has expunged the adverse ACR of 2000-2001 but to no result. Situated thus applicant submitted another representation on 16.12.2003.

Copy of the representation dated 16.06.03, 21.07.03, 29.10.03 and Govt. letter dated 13.10.03 are enclosed herewith for perusal of the Hon'ble Tribunal as Annexure- 10 (Series) and 11 respectively.

- 4.11 That it is stated that the Office of the Chief Commissioner, Shillong vide his letter bearing No. C. No. II (3) 21/CCO/SH/2003/9563 dated 01.04.2004 it is informed to the applicant that on an inquiry, regarding holding of review DPC for promotion it is found that the case of the applicant was still deficient for being considered before a review DPC and in such circumstances question of review DPC in the instant case does not arise. It is not understood what was the deficiency in the case of the applicant for not being considered for promotion by holding a review DPC and it is surprising to note here at this stage how the office of the Chief Commissioner could able to find the deficiency for not referring the

Niranjana Ch. Malakar

case for promotion of the applicant before the review DPC. Moreover, no reason has been assigned what was the specific deficiency found in the case of the applicant for non considering of his promotion by holding a review DPC more so in view of the fact that the adverse remarks recorded in the ACR of the applicant for the period 2000-2001 had already been expunged by the Board.

It is relevant to mention here that as per service jurisprudence only DPC is the competent authority to declare whether a Govt. servant is fit or unfit for promotion as such office of the Chief Commissioner has no jurisdiction to declare that the case of the applicant is still deficient for consideration when many of his juniors have been promoted to the cadre of Superintendent Group 'B' namely: Shri S. K. Kundu (SC), Mrs. Kironmoyee Das (SC), Sri G.K. Bayan (SC), Shri Gopal Chandra Das (SC) and Shri N.N. Deka (SC) in supersession of the claim of the applicant.

A copy of the letter dated 01.04.2004 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 12.

- 4.12 That your applicant further begs to say that Under Secretary to the Govt. of India on consideration of representation dated 16.06.2003 with reference to Chief Commissioner letter dated 25.02.2004 it is informed that the case of the applicant has been consulted with the DOPT in the light of his representation and further requested to hold a review DPC as of 30.07.2002 immediately and promote the applicant to the post of Superintendent if he is found fit and a compliance report also directed to send to the Board at the earliest. But surprisingly till date no action has been initiated thereafter for holding of review DPC in the light of the Under Secretary's letter bearing No. F. No. A. 32018/38/2003-AD. III A dated 24.06.2004. The applicant was waiting in anticipation that in terms of the letter dated 24.06.2004 his case for promotion by holding review

Ninayan Ch. Malakar

DPC would be considered by the respondents but to no result for the reasons best known to the authority.

A copy of the letter dated 24.06.04 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 13.

- 4.13 That your applicant again submitted representation dated 28.09.05 addressed to the Addl. Commissioner (P & V), Customs and Central Excise, Shillong praying interalia for holding of review DPC and further stated that question of just adequate recorded in the ACR of 2000-2001, the Board has examined the matter after taking into account facts of the case available in the recorded and it has been decided to expunge the adverse remarks recorded in the ACR for the year 2000-2001 and accordingly expunged the said adverse ACR, therefore, applicant is entitled for promotion to the post of Superintendent Gr. B. However, till date no further reply is received till filing of this application. In the compelling circumstances applicant has no other alternative but to approach before this Hon'ble Court as last resort for consideration of his promotion to the post of Superintendent Group 'B' by holding review DPC in the light of the direction contained in the Govt. letter dated 24.06.2004 and also entitled to the benefit of the promotion w.e.f. the date of promotion of his immediate juniors as indicated in the preceeding paragraph.

A copy of the representation dated 28.09.05 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 14.

- 4.14 That it is stated that the applicant has not been communicated any other adverse ACR for any period, except for the year w.e.f. 01.04. 2000-31.03.2001 as such even assuming if there are any adverse remark recorded in the ACR of the applicant or his grading if downgraded without providing any opportunity to the applicant such downgrading or adverse remarks for the purpose of promotion cannot be taken into

*Nirajan Ch. Malakar*

consideration by the DPC. It is settled position of law that if the grading is below the benchmark for promotion recorded in ACR without communication then the same cannot be taken into consideration by the DPC. The applicant categorically beg to say that he has not received any other adverse remark or any communication regarding downgrading of his ACR, moreover, applicant has never been communicated any memo regarding discharge of his official duties and responsibilities specifying any sort of deficiency in his duties as such even assuming if there are any uncommunicated downgrading found in the ACR same cannot be taken into consideration by the DPC while considering his case for promotion. In this regard the applicant like to rely upon the judgment dated 16.08.2002 passed by the Hon'ble Delhi High Court (FB) in C.W.P No. 350 of 2001 (J.S. Garg -Vs- Union of India & Ors.) and judgment dated 25.05.2004 passed by the Hon'ble CAT, Principal Bench in O.A. No. 2894 of 2002. Be it stated that the promotion from Inspector to the Superintendent Gr. B is based on seniority cum merit; as such the applicant is entitled for promotion to the Superintendent Gr. B with retrospective effect with all consequential benefit.

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

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

5.1 For that, adverse remarks contained in the confidential report for the period from 01.04.2000 to 31.03.2001 vide letter dated 22.06.2001 has been expunged by the Board of Excise and Customs after taking into account the facts of the case available in the record and the said decision was communicated to the Commissioner on 20.12.2002 by the Dept. of Revenue, Govt. of India as such respondents are duty bound to hold the review DPC for further consideration of his case for promotion with

Nirangan Ch. Malaka

retrospective effect at least from the date of promotion of his juniors with all consequential benefit including arrear monetary benefit and seniority.

- 5.2 For that, juniors including Respondent No. 6 and 7 have been promoted to the cadre of Superintendent Gr. B in supersession of the claim of the applicant due to adverse remarks contained in the ACR for the year 01.04.2000 to 31.03.2001.
- 5.3 For that, DPC/review DPC is the sole authority to consider/reconsider or to declare fit or unfit for promotion of an employee from one cadre to another higher cadre in terms of the Govt. of India's instruction issued from time to time as such decision of the Asstt. Commissioner communicated through letter dated 01.04.2004 holding that case of the applicant was still deficient for being considered before a review DPC and as such further decision that the fact situation does not warrant holding of a review DPC is contrary to the rule of law and as such the same is void ab initio.
- 5.4 For that, in consultation with the DOPT the department of Revenue vide its letter dated 24.06.2004 (Annexure- 12) it has been decided to hold the review DPC and accordingly direction was issued to the Chief Commissioner Central Excise, Shillong but to no result.
- 5.5 For that, downgrading of ACR below benchmark without providing any opportunity and also without communication of such downgrading ACR or grading below benchmark is not permissible in view of the series of judicial pronouncement passed by the learned Tribunal as well Hon'ble High Court and Apex Court. In this connection applicant beg to refer the judgment dated 16.08.2002 passed by the Hon'ble Delhi High Court (FB) in C.W.P No. 350 of 2001 (J.S. Garg -Vs- Union of India & Ors.) and judgment dated 25.05.2004 passed by the Hon'ble CAT, Principal Bench in O.A. No. 2894 of 2002.

*Ninayan Ch Malakar*

- 5.6 For that, applicant has submitted series of representation praying interalia for holding of review DPC since the adverse remarks recorded in the ACR during 2000-2001 has been expunged but to no result.
- 5.7 For that decision/direction of the department of Revenue issued through letter dated 24.06.2004 has been deliberately ignored by the Commissionerate in order to defeat the claim of the applicant for further promotion.
- 5.8 For that, applicant has been suffering financial loss each and every month and his seniority to the next higher cadre also effected due to non-consideration of his case for promotion in deliberate violation of rules.
- 5.9 For that, fixation of pay and allowance in the event of promotion to the next higher cadre is also involved with retrospective effect.

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.

3. 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

*Ninayem Ch Malakar*

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):

8.1 That the Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the cadre of Superintendent Group 'B' from the date of promotion of his immediate juniors, with all consequential service benefits and monetary benefits including seniority etc. by constituting a Review DPC.

8.2 That the Hon'ble Tribunal be pleased to declare that the DPC is not entitled to take into consideration any downgraded ACR or ACR recorded below benchmark without providing any opportunity to the applicant.

8.3 Costs of the application.

8.4 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 interim relief: -

9.1 That the Hon'ble Tribunal be pleased to observe that pendency of this application shall not be a bar to the respondents to grant the relief as prayed for.

10. ....

This application is filed through Advocates.

11. Particulars of the I.P.O.

- |      |               |                 |
|------|---------------|-----------------|
| i)   | I. P. O. No.  | 266 317126.     |
| ii)  | Date of Issue | 14.11.05        |
| iii) | Issued from   | G.P.O. Gwahathi |
| iv)  | Payable at    | G.P.O. Gwahathi |

12. List of enclosures.

As given in the index.

*Ninayan C. Malakar*

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VERIFICATION

I, Shri Niranjana Chandra Malakar, S/o Shri Naresh Chandra Malakar, aged about 50 years, presently working as Inspector in the office of Dy. Commissioner, Customs and Central Excise, Karimganj, 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 14<sup>th</sup> day of December, 2005.

Niranjana C. Malakar



OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE::SHILLONG

D.O.C.No.II(9)19/CON/2001/31-33

Dated **22 JUN 2001**

My dear Malakar,

Subject:- Adverse remarks contained in the Confidential Report for the period from 1.4.2000 - 31.3.2001 - Communication of.

.....

The following is an extract from the report on your work during the period from 1.4.2000 - 31.3.2001.

PART - IIIASSESSMENT BY THE REPORTING OFFICER

1. Quality of work(Evaluate with reference to intelligence, knowledge of Law and procedures, attention to relevant details, ability to analyse problems and find solutions, judgment and sense of proportion )  
  
REMARKS:- Shri Malakar is an intelligent but knowledge of Law and procedures is very poor. He can make official correspondence but have less ability to analyse problems and find solutions, judgment and sense of proportion. Specially he has very little knowledge about Central Excise. 'JUST ADEQUATE'
2. Promptness in attending to work(Evaluate with reference to field duties as well as office work and especially with reference to reduction of arrears and preparation and submission of various reports, returns and maintenance of records)  
  
REMARKS:- Shri Malakar is very lazy in attending Office works and field works. Inspite of advice to go in proper way, he will done in his own and he has no personality to work in the field alone. The case's of the Unit are done by collecting intelligence jointly and seizure and other related papers were prepared by other officers as he has no knowledge of Law to prepare C.Excise seizure papers. However, in submission of reports and working correspondence he can done. Over all he is not prompt in attending work. 'JUST ADEQUATE'
3. Industry and conscientiousness.  
  
REMARKS:- He is very lazy in performing duties. 'POOR'
4. Executive abilities displayed (Evaluate with reference to initiative drive and readiness to assume responsibility)  
  
REMARKS:- He cannot take initiative and responsibility in his own without the help of others. 'JUST ADEQUATE'

Contd.....P/2

Affected  
Dr. Advocate

5.

Discipline.

REMARKS:- He is most indisciplined officer. 'JUST ADEQUATE'

6.

Punctuality and attendance.

REMARKS:- Shri Malakar is very irregular in attending office and field work. 'JUST ADEQUATE'

7.

Other observations, if any.

(a) Mention here any other factors worth special mention. e.g. health, family problems, indebtedness, addiction to drink and gambling, temperament, resourcefulness etc. which have a bearing on the officer's performance.

REMARKS:- Shri Malakar's honesty is not beyond doubt and self seeking person. Though he is not addict in drink and gambling but he is very temperamental officer. Health is good. 'GOOD'

(b) Special aptitudes (Mention here special aptitude, if any, such as skill in noting and drafting, tariff classification, valuation, intelligence and investigating work, administrative work, statistical analysis)

REMARKS:- Shri Malakar is skill in noting and drafting but he is very much weak in classification, valuation, investigating work, administrative work etc. 'JUST ADEQUATE'

8.

Integrity.

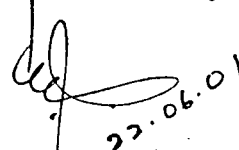
REMARKS:- His integrity is doubtful for anti-evasion unit. This type of officer for this type of sensitive posting is very much harmful for government interest. 'JUST ADEQUATE'

I hope you will endeavour to overcome the shortcomings pointed out.

Representation, if any, in duplicate against the adverse remarks should be made by you within one month from the date of receipt of this letter, failing which no action will be taken on any such representations.

Please acknowledge the receipt of this letter.

Yours sincerely,



( B. THAMAR )

ADDITIONAL COMMISSIONER ( F&V )

To,  
Shri. N.C. Malakar,  
Inspector, C. Excise,  
Silchar Division.

To  
The Additional Commissioner (P & V)  
Customs and Central Excise,  
Morello Compound, Shillong.

(Through <sup>the</sup> Assistant Commissioner Central Excise Silchar)

**Subject :** Representation against the adverse remarks contained in the confidential Report in respect of Sri N. C. Malakar, Inspector A. E. Central Excise, Silchar for the period from 01.4.2000 to 31.3.2001-Regarding.

*Respected Sir,*

Kindly refer to the letter D.O.C. No. II (9) 19/CON/2001/631-33 Dated 22.6.2001. received on 17/7/2001.

Most submissively, I beg to lay before you the following few lines for favour of your kind perusal and *sympathetic* consideration.

That sir, as per my humble reading of the prescribed heading under Part-III, Point 1. assessment by the Reporting Officer is to be evaluated with reference to overall intelligence. In my case, the respected reporting officer admitted that I am an intelligent officer this is being an admitted fact, having required intelligence his follow up remarks / observation that I possess a very poor knowledge of law and procedures, is very much contradictory.

That Sir, I had worked in Hqrs. Law Branch at Shillong for a period not less than five years (as U.D.C. & Inspector) under two respected Superintendents and successfully worked there under their guidance and in no occasion, I had been received any adverse comments relating to knowledge of law and procedures etc.

Again, the respected Reporting Officer certified my capacity

Contd. P/2

*Alexis  
Sub. Malakar*

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to make official correspondence and if that be the fact, it is beyond my reasonable comprehension, how I have less ability to analyse problems and find solutions.

Anti-Evasion works done by me covered the seizure cases valued at Rs. 5,65,685/ (Rupees five lac sixty five thousand six hundred eighty five) only and in all case abandoned caution was taken with my knowledge of law and procedures to plug lacunae and flaw so that the case ends with confiscation. And in fact, these are under process of confiscation.

The cases referred to above which required apt handling by application of proper display of mind as to the correct application of Rules & Acts are all related to Central Excise.

That sir, in the heading of point No. 2, assessment of performance is required to be evaluated with reference to field duties and office works plus reduction of arrears.

As regards field works, it is on record, during the period under report, there were only three seizure cases and in two cases, my part was both active and direct, right from collection of intelligence, detection, interrogation of the offenders, obtaining statements, unearthing of incriminating documents relevant to the seizure and finally preparation of text by proper application of Rules & Acts. And in rest one case respected Reporting Officer Directed me to attend office work. Therefore, the remarks made by the reporting officer that I was very lazy in attending field works was absolutely out of context.

As regards his observation that I have no personality to work in field alone, it needs to be pointed out that the respected reporting officer requisitioned my personal service for Anti-Evasion work while I was posted as A.P.R.Q. under the Technical Branch. If I have no ability or personality to work alone, the respected reporting officer would not

have specifically requisitioned my service for Anti-Evasion work amongst many other officer in the Division.

"Therefore, his own action of reposing trust upon belies his remarks that I am lazy in field work.

As regards office work, in one breathe, he reports that I am lazy in attending office work, in another breathe, he admitted that my submission of reports and related correspondence are proper. There is no adverse remarks that there are arrear and pendency in submission of reports & returns etc. from my part. There is also one such remarks that "overall he is not prompt in attending work." In such a position where there are no arrear, it signifies that I am prompt in attending office works also.

Therefore, his remarks in the contrary was out of context and not based on material facts to justify his observation as just adequate.

That sir, the remarks made by the respected Reporting Officer in the heading of Point No. 3 that I am lazy in performing duty has already answered in preceding paras. The respected Reporting Officer had made remarks with pre-determined set of mind to give the adverse remarks without discussing the premises involved.

That sir, the remark made by the respected Reporting Officer in the heading of Point No. 4 is not true and I fervently deny the comment. As a matter of fact I could not take initiative as directed to ful-fil some ugly proposals of the respected Reporting Officer as I felt that such initiatives were detrimental to govt. revenue as well as dignity of the Department as a whole and the departmental officer in the particular area.

It may kindly be appreciated that while my conduct and activities were proved good and not below standard even in the early

stage of the service period passed under many learned superior officers, how every quality suffers overnight loss while it is natural to gain more experience and maturity.

That sir, the remarks made by the respected Reporting Officer under point 5, that "He is most indisciplined officer. Just Adequate is not true, as there is no instance, No record, or no caution cited by the respected Reporting Officer for my indisciplined activity nor called any explanation for my indisciplined behaviour by my respected Reporting Officer or Reviewing officer.

That sir, the remarks made by the respected Reporting Officer in the heading of point No. 6 & 7 are not true. Those are the outcome of ill feeling and motivated mental state of affairs only to do maximum harm to my service carrier. The composition of the sentence is also enough to speak about the mental state of affairs of the respected Reporting Officer.

I never received such adverse comment during my entire service period while many learned and strict disciplined officer were the Reporting Officer.

Moreover, in no occasion I have been advised, directed or cautioned to improve such shortcomings and suddenly reported my conduct by the respected Reporting Officer out of grudge. As such, I fervently, deny the charge and solicit redressal in those matters.

That sir, the respected Reporting Officer remarked in the heading of point No. 7 (a) that my honesty is not beyond doubt is itself a sufficient cause to institute disciplinary proceeding against me as it is the policy of Government not to compromise with the dishonesty and corruption. Therefore, with due respect & regards to the Reporting Officer. I must firmly mention that his remarks were not based on any iota of fact, otherwise he would not have ~~spared~~ me from disciplinary proceedings.

He has certified that my health is good. It is a known fact that a healthy person has healthy mind. A person having frequent bad temperament cannot maintain good health. therefore, his remark is abrupt and not maintainable. As such, I fervently solicit redressal in the matter as in no occasion in the past I received such adverse comment.

On the issue of classification as mentioned in the point No. 7(b), I like to submit that the respected Reporting Officer never pointed out that I am very weak in classification tenable by focusing that because of my incorrect classification the Anti-Evasion. unit had to take any corrective step against my classification to save Govt. revenue. He also did not focus that any of S.S.I. units was availing unlawful exemption because of my wrong classification not covered under exemption.

As regards valuation matter as an Anti-Evasion officer, valuation of sized items are made after due market study or transaction value of the product. During the period under report, there was not a single case where the Reporting Officer had to call explanation either for over valuation or undervaluation.

As regards to investigation, I have already explained in earlier points and no need to repeat. As regards to administrative works, A. E. unit mainly relates to control of sepoys. There is no complain against me on my maladministration either from sepoys whose day today activities are under my watch or from the respected Reporting Officer himself. It is also not a case that the Assistant commissioner had called the Reporting Officer at any point of time to enquire of my administrative capacity.

That sir, it may be cited here that I had worked as an A.P.R.O in the divisional office Silchar in my previous posting and managed and maintained the office work with my administrative capacity and devotion as per direction and full satisfaction of the Higher authority.

There I faced no such adverse comment.

Lastly, in the matter of my integrity remarked in heading of point No. 8 I entreat upon you to consider if I was really bad and dishonest through out most of the year and not by overnight. His non-reporting to higher officer against my dishonest conduct very transparently shows the observations were a out-come of biased set of mind having no foundation with material evidence. Moreover respected Reporting Officer's remarked that "His integrity is doubtful for anti-evasion unit." is a dubious statement as wheather there is any separate meaning of integrity in context of Anti-evasion unit.

While Reporting Officer has every right to report his valued findings confidentially but justice and fairplay should equally be demanded. He should firstly discuss premises touching my dishonest activity and thereafter to come to a judicious conclusion. This has not been done.

Your honour may like to quash his observation / remarks as he has not given any fact finding report.

Further, the respected Reporting Officer has admitted my skill in Noting & Drafting, this itself a proof of my noting and drafting in respect of classification, valuation, investigation and other office works. The "Skill" does not have limited meaning of giving note in good English. it also covers inherent knowledge of the subject matter without which very noting would be meaningless.

Thus it was due to sheer spite that the respected Reporting Officer without proper application of mind laboured much to use his pen against me. It may not be totally out of place to mention here that his write-ups are the manifestation of his down-caste look towards me as I happened to belong to a member of schedule caste community, suffering from mentally tortured because of such write-ups.

That sir, in the above stated facts I beg to pray to your gracious



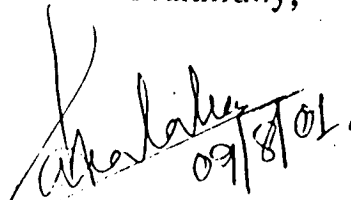
honour to consider sympathetically in the light of my 20 (twenty) years of service carrier, wherein, I had not been faced with such a shockful remarks from any of my superior authority.

That sir, respected Reporting Officer has every right to report his valued findings confidentially but justice and fair play should not be denied. I hope he should firstly discuss the premises touching my activity and as a subordinate officer he may have given me a chance for my draw-backs if any noticed for rectification by way of caution, explanation or notice etc. then he had to come to a judicious conclusion. But in my case these had not been done.

I therefore, pray to you that your benign honour would be kind enough to consider my case in the light of the above facts stated by me for redressal of the same and thus oblige.

Dated, Silchar  
9/15 August: 2001

Yours faithfully,

  
(N. C. Malakar)

Inspector, Anti-Evasion Unit,  
Central Excise Division  
SILCHAR

  
Alex F. Advocate

8/12



GOVERNMENT OF INDIA

**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE**

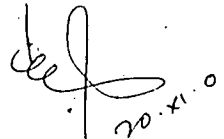
**M.G.ROAD, SHILLONG - 793 001**

C.No.II(9)19/CON/2001/ 1282-84  
Dated Shillong the 20<sup>th</sup> November, 2001

Subject:- Adverse remarks contained in the Confidential Report for the period from 1.4.2000 – 31.3.2001 in respect of Shri. N.C.Malakar, Inspr.

After careful consideration of the representation dated 09.08.2001 submitted by Shri.N.C.Malakar, Inspr. and the subsequent comments of the Reporting Officer on the said representation, the Commissioner Central Excise, Shillong has rejected the same.

✓  
To,  
Shri. N.C.Malakar,  
Inspector,  
Central Excise, Silchar.

  
20.11.01

( B.THAMAR )  
ADDITIONAL COMMISSIONER (P&V)

Attested  
by  
Silchar

F.No.A.23018/02/2002-Ad.IIIA  
Government of India  
Ministry of Finance  
Department of Revenue  
.....

New Delhi, the 20<sup>th</sup> December, 2002

To

The Commissioner  
Central Excise  
Shillong.

Subject:- Appeal made by Shri N.C. Malakar, Inspector against the  
adverse remarks awarded in the ACR for the year 2000-  
2001 regarding.

.....

Sir,

I am directed to refer to your letter C.No.II(26)I/CON/2002/681 dated  
8.5.2002 on the subject cited above.

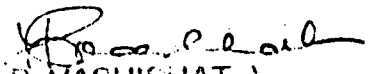
The Board has examined the appeal of Shri N.C. Malakar, Inspector.  
After taking into account the facts of the case available on records, it has  
been decided to expunge the adverse remarks awarded in the ACR of Shri  
N.C. Malakar, Central Excise, Inspector for the year 2000-2001. Shri N.C.  
Malakar may be informed accordingly. ✓

The relevant records of Shri N.C. Malakar, Inspector sent by  
Commissionerate bearing File No.II(9)19(Con)2001 (alongwith folder of  
ACRs are returned herewith.

Receipt of the letter alongwith enclosures may please acknowledged.

Yours faithfully,

Encls: As above

  
( Y.P. VASHISHAT )

Under Secretary to the Govt. of India

*Attested  
for Advocate*



- 26 -

Annexure-5 60

**GOVERNMENT OF INDIA**  
**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE**  
**MORELLO COMPOUND, SHILLONG - 793 001**

**ESTABLISHMENT ORDER NO.139/2002 DATED SHILLONG THE 23<sup>rd</sup> SEPTEMBER 2002**

**Subject : Estt. Promotion, transfer and posting in the grade of Supdt. Gr.'B' - order regarding.**

**PART - I**

**PROMOTION**

The following Inspectors of Central Excise and Customs are hereby promoted to the grade of Superintendent Group 'B' in the scale of pay of Rs. 6500-200-10,500/- with effect from the date they assume charge of the higher post at their places of postings with immediate effect and until further orders.

Sl.No.	Name
1.	Pankajlal Singha
2.	Tarun Kr. Singha
3.	Pannalal Singha
4.	Ashok Kr. Dey
5.	Smt. H. Momcha Devi
6.	Debashish Mazumder
7.	Jamkhogin Haokip(ST)
8.	Smt. Hilda Mary Synrem(ST)
9.	Abdul Mutalib
10.	Sujit Mishra
11.	Syed Taffique Hussain
12.	Dhani Ram Das
13.	Pabitra Katak
14.	Jasabanta Mazumder
15.	Rajkumar Kalita
16.	Dils. Debajyoti Sinha
17.	Ganesh Ch. Sharma
18.	Joydeep Dutta
19.	Homi Prasad Sharmah
20.	Swapan Kr. Nath
21.	Tridip Ch. Roy
22.	Rahul Sinha
23.	Imdadur Rohman
24.	Sagar Kr. Dutta
25.	Dwigendra Mohan Das
26.	Nikendra Singha
27.	Naziruddin
28.	Sudip Kr. Dutta
29.	Hem Chandra Kalita
30.	Debeswar Chandi (ST)
31.	Prafulla Kr. Tayo, (ST)
32.	Thangchuolo, (ST)
33.	Tushar Kanti Sen
34.	Niharesh Nandi, (SC)
35.	Lalho Krelo, (ST)
36.	S. Killong, (ST)
37.	Dilip Kr. Gogoi
38.	Bibhuti Bhusan Borah
39.	Shyamal Kr. Dutta
40.	Ashok Kr. Chakraborty
41.	Khagen Borah
42.	Bijoy Bhusan Baruah,
43.	Phani Bhusan Roy Choudhury
44.	Dipak Kr. Deb
45.	Basudeb Bhattacharjee
46.	Imranul Goni
47.	Subhasish Guha

48.	Dilip Kr. Chettri
49.	Parag Kr. Baruah
50.	Ashit Chakraborty
51.	Binayak Bhattacharjee
52.	Ashish Adhikary
53.	Biswendu Dey
54.	Subir Das
55.	Bikash Ch. Nath
56.	Nihar Ranjan DebRoy
57.	Bhaskar Kanti Bhattacharjee
58.	Pannalal Dutta
59.	Gopeswar Ch. Paul
60.	Ajit Mohan Paul
61.	Mohit Kanti Dey
62.	Mahendra Dutta
63.	Mrinal Kanti Goswami
64.	Sasanka Sekhar Das, (SC)
65.	Md. Muhibur Rahman
66.	Jagadindu Das
67.	Ganesh Ch. Deka
68.	Pijush Banerjee
69.	Md. Hanif Alam Bora
70.	Swapnatur Mahanta
71.	Harapada Roy
72.	Rabindra Kr. Borah
73.	Nijit Kr. Nandi
74.	Dharani Borah
75.	Md. Abdul Muneem
76.	Prahlad Borborah
77.	Rabindra Pathak(SC)
78.	Narendra Ch. Talukdar, (ST)
79.	Lokhendra Nath Sonowal,(SC)
80.	Jitendra Kr. Saikia, (ST)
81.	Balaram Pegu, (ST)
82.	Ratneswar Doley, (ST)
83.	Jogesh Sonowal, (ST)
84.	John Oscar Marak, (ST)
85.	Bishnu Ram Boro, (ST)
86.	Ms. Lalchangliani Sailo(ST)
87.	Dambaro Bhoktiari, (ST)
88.	Paul Peter Kujur, (ST)
89.	Ajit Debnath
90.	Rex Hungzo(ST)
91.	R.K. Darendrajit Singh
92.	Ranabir Chakraborty
93.	Harotosh Kr. Das
94.	Hareswar Goswami
95.	Sanjay Kr. Mazumder
96.	Dipankar Dey
97.	Buddha Pratim Dutta
98.	Rajkumar Debendra Singh
99.	Subir Dutta Choudhury
100.	Ms. Shibani Bhattacharjee
101.	Rajkumar Surchandra Singh
102.	Ms. Rita Rani Bhowmick
103.	Sivaji Chanda
104.	Abhijit Dey (No.1)
105.	Ratnangshu Chakraborty
106.	Ms. Champa Shome
107.	Phanidhar Kakoti
108.	Gobindo Nath Kalita
109.	Jatindra Mohon Bora
110.	Ms. K. Patricia Laloo, (ST)
111.	Ashim Roy
112.	Pallav Lochan Saikia
113.	Nirmal Kr. Das, (SC)

114	Lobendu Sekhar Das(SC)
115	Dipen Ch. Bania, (SC)
116	Kshitendu Kr. Malakar, (SC)
117	L.L. Mate Gangte, (ST)
118	Lalkhoneh Simte (ST)
119	Kaizadal, (ST)
120	Jayanta Kr. Pathak, (SC)
121	Laltawnlana, (ST)
122	Gautam Ch. Mandal, (SC)
123	Stringsing Nongbet (ST)
124	Benu Ranjan Sutradhar, (SC)
125	R. Valentine Basaiawmoit, (ST)
126	Swapan Das, (SC)
127	Ms. Zarina Khan Shadap, (ST)
128	Tapan Kr. Rajkhowa, (SC)
129	Tapan Ch. Gayan, (SC)
130	Anthony Pohthmilong, (ST)
131	K. Hmar, (ST)
132	Hiramba Basumatari, (ST)
133	Ms. Ledyia Dutta, (ST)
134	Premananda Saikia, (ST)
135	N.R.Das(SC)
136	Jyotish Ch.Das(SC)
137	B.B.Karmakar (SC)
138	Gautam Das (SC)
139	Sribash Dhar (SC)
140	J.K.Hiwali (SC)
141	S.K.Roy (SC)
142	M.L.Choudhury(SC)
143	N.C.Sutradhar(SC)
144	G.N.Hakoi (SC)
145	Golap Ch. Das (SC)
146	N.N.Deka(SC)
147	S.K.Kundu (SC)
148	Ms Kiranmoyee Das (SC)
149	G.K.Bhuyan (SC)

The seniority of the officers will be fixed in the order shown above.

The officers promoted vide this order are hereby asked to exercise options within one month from the date of promotion as to whether their initial pay should be fixed in the higher post on the basis of FR22(I)(a) (1) straightway without any further review on accrual of increment in the pay scale of the lower post or their pay on promotion should be fixed initially in the manner as provided under FR22 (a) (i) which may be refixed under the provisions of FR 22(I) (a) (1) on the date of accrual of next increment in the scale of pay of lower post. Option once exercised shall be final.

In the event of refusal of promotion they would be debarred from promotion for a period of one year.

#### PART - II

#### TRANSFER AND POSTING

On promotion the above mentioned officers are retained in their present places of postings. The postings of these officers in the grade of Superintendent will be decided at a later date.

#### NOTE:

1. In the event of reversion of any officer(s) to Central Excise Commissionerate, Shillong, who is(are) on deputation, the junior most officer (s) in the above promotion order will be reverted as Inspector.

Sd/-

(Z.TOCHHAWNG)  
COMMISSIONER  
CENTRAL EXCISE  
SHILLONG.

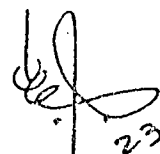
C.No. II(3)28/ET.III/2000/34608-34788

Dated:


23 SEP 2002

Copy forwarded for information & necessary action to :-

1. The Joint Secretary (Admn.), Central Board of Excise & Customs, North Block, New Delhi 110 002. This has reference to the Ministry's letter dated 23<sup>rd</sup> Sept, 2002 issued under F.No.A-60012/23/2002/Ad.II(B).
2. The Chief Commissioner (EZ), Central Excise & Customs, 15/1, Strand Road, Customs House, Calcutta - 700 001. This has reference to the Ministry's letter dated 23<sup>rd</sup> Sept, 2002 issued under F.No.A-60012/23/2002/Ad.II(B).
3. The Commissioner of Customs NER, Shillong.
4. The Additional Director General, Directorate General of Revenue Intelligence, 'D' Block, I.P. Bhawan, (7<sup>th</sup> Floor), I.P. Estate, New Delhi - 110 002. Copies meant for the concerned officers are enclosed.
5. The Commissioner (Appeals), Customs & Central Excise, Guwahati.
6. The Additional Commissioner (Tech.), Central Excise Hqrs. Office, Shillong.
7. The Additional Director, Directorate General of Audit, Room No-172, 107, C.R. Building, I.P. Estate New Delhi.
8. The Deputy Development Commissioner, Noida Export Processing Zone, Noida Dadri Road, Phase-II, Noida-201 305. Copy meant for the concerned officer is enclosed.
9. The Regional Director, Narcotics Control Bureau, Imphal Regional Unit, Paona Bazar, Imphal - 795 001.
10. The Deputy Director, DRI Regional Unit, Shillong Oak Hall, Oakland, Shillong - 793 001.. Copies meant for the concerned officers is enclosed.
11. The Dy./Asstt. Commissioner of Central Excise/Customs \_\_\_\_\_ Division. The copy meant for the concerned officer is enclosed.
12. The CAO/PAO, Central Excise & Customs, Hqrs. Office, Shillong.
13. The S.I.O. DRI, Intelligence Cell, Silchar Normal School Road, (Adjacent to Chakraborty Medical Centre) Tarapore, Silchar.
14. Shri/Smt. \_\_\_\_\_ for compliance.
15. Accounts I & II/ET I & II/ Confdl. Br./CIU-cum-VIG Br. Of Hqrs. Office, Shillong.
16. The General Secretary, Gr. 'B' / 'C' Executive Officers' Association, Customs & Central Excise, Shillong.
17. Guard File.

  
23.9.02

(B. THAMAR)  
ADDITIONAL COMMISSIONER (P&V)  
CENTRAL EXCISE & CUSTOMS  
SHILLONG.

  
Advocate

(Extract)

**SENIORITY LIST OF INSPECTOR AS ON 01.05.2001.**

Sl.No.	Name & Educational Qualification	Date of Birth	Date of - Apptt. in Govt. service	Date of - confirmation in Govt. service	Date of appointment as Inspector	Whether DR/PR as Inspector	Remarks
S/Slr							
01	02	03	04	05	06	07	08
1	Siba Prasad Neog, B.A.	29.08.52	22.07.76	10.10.81	22.07.76	DR	
2	Bikash Kumar Saikia, (ST), B. Com.	01.01.57	08.03.82	13.05.87	08.03.82	DR	
3	Chandan Kr. Chanda, B.A.	10.12.55	25.01.77	13.05.87	18.01.82	DR	
4	Chandan Biswas, B.Sc.	24.07.57	01.04.82	13.05.87	01.04.82	DR	
5	Dibakar Choudhury, B.Sc.	07.10.57	09.07.82	13.05.87	09.07.82	DR	
6	Sudip Kr. Nandi, B.Sc.	01.02.51	07.09.77	01.12.82	16.11.82	PR	
7	Amit Kr. Deb, Matric	01.10.41	06.04.74	01.12.82	16.11.82	PR	
8	Smt. Hilda Shangpliang, (ST), B.A.	27.01.52	03.02.74	01.12.82	16.11.82	PR	
9	Pankajal Singha, B.A.	28.01.60	13.05.87	20.06.83	20.06.83	DR	
10	Tarun Kr. Singha, B. Sc	01.02.57	22.10.83	13.05.87	22.10.83	DR	
11	Pannalal Singha, B.Com	30.01.58	20.06.83	13.05.87	20.06.83	DR	
12	Ashok Kr. Dey, B.A.	10.06.53	10.04.78	01.08.83	15.07.83	PR	
13	Smt. H. Memcha Devi, B.Sc.	01.12.57	05.05.83	13.05.87	05.05.83	DR	
14	Debashish Mazumder, B.Com	22.01.57	02.05.83	13.05.87	02.05.83	DR	
15	Jamkhogin Haokip, (ST), B.A.	01.03.60	30.05.83	13.05.87	30.05.83	DR	
16	Smt. Hilda Mary Synrem, (ST), PU	07.12.50	14.02.78	01.08.83	05.07.83	PR	
17	Abdul Motalib, B.Sc	01.01.57	31.12.80	13.05.87	07.07.83	DR	
18	Sujit Mishra, B.Sc	17.01.59	08.09.83	13.05.87	08.09.83	DR	
19	Syed Taffique Hussain, B.Sc	20.09.58	06.10.83	30.05.87	06.10.83	PR	
20	Dhani Ram Das, PU	07.02.50	26.02.78	01.08.83	22.07.83	PR	
21	Pabitra Katak, B.Sc	25.12.57	02.05.83	13.05.87	02.05.83	PR	
22	Jasabanta Mazumder, B.Sc	03.01.61	18.05.83	13.05.87	18.05.83	DR	
23	Rajkumar Kalita, B.Sc	15.10.56	05.05.83	13.05.87	05.05.83	DR	

Attested  
for  
Advocate



01	02	03	04	05	06	07	08
24.	Dils. Debajyoti Siraha, M.A	10.01.58	15.06.83	13.05.87	15.06.83	DR	
25.	Ganesh Ch. Sharma, B.Sc	01.03.59	04.08.83	13.05.87	04.08.83	DR	
26.	Joydeep Dutta, B.Com	01.09.56	01.09.83	13.05.87	01.09.83	DR	
27.	Hom Prasad Sharma, B.A	20.01.57	22.10.83	13.05.87	22.10.83	DR	
28.	Swapan Kr. Nath, B.Sc	01.01.58	07.09.83	13.05.87	07.09.83	DR	On Deputation with DRI, New Delhi
29.	Tridip Ch. Roy, B.Sc	18.01.57	30.08.83	13.05.87	30.08.83	DR	
30.	Rahul Sinha, B.Sc	29.11.58	13.05.83	13.05.87	13.05.83	DR	On Deputation with DRI, Silchar
31.	Imdadur Rehman, M.Sc	03.01.58	07.09.83	13.05.87	07.09.83	DR	
32.	Sagar Kr. Dutta, B.Sc	31.08.57	11.07.83	13.05.87	11.07.83	DR	
33.	Dwigendra Mohan Das, B.A	01.09.57	19.09.83	13.05.87	19.09.83	DR	
34.	Nikendra Singha, M.A	02.09.58	02.05.83	13.05.87	02.05.83	DR	
35.	Naziruddin, B.Sc	04.10.56	20.06.83	13.05.87	20.06.83	DR	
36.	Sudip Kr. Dutta, B.A	31.12.58	10.05.83	13.05.87	10.05.83	DR	On Deputation with DRI, Silchar
37.	Hem Chandra Kalita, B.Sc (H)	01.01.57	07.09.83	13.05.87	07.09.83	DR	
38.	Dambaru Borah, (ST)	01.07.55	08.06.83	13.05.87	08.06.83	DR	
39.	Debeswar Chandi (ST), B.A	01.03.58	17.09.83	13.05.87	17.09.83	DR	
40.	Prafulla Kr. Taye, (ST), B.A	01.10.58	06.10.83	13.05.87	06.10.83	DR	
41.	Thangchuilo, (ST), B.A	01.03.52	16.05.83	13.05.87	16.05.83	DR	
42.	Tushar Kanti Sen, B. Com (H)	15.01.57	16.09.83	13.05.87	16.09.83	DR	
43.	Nihareish Nandi, (SC), B.A	01.11.56	10.11.83	13.05.87	10.11.83	DR	
44.	Larho Krelo, (ST), B.A	01.03.60	12.10.83	13.05.87	12.10.83	DR	
45.	Sakkam Kilong, (ST), B.A	04.08.59	01.10.83	13.05.87	01.10.83	DR	
46.	Dilip Kr. Gogoi, B.Sc	01.09.56	11.11.83	13.05.87	11.11.83	DR	
47.	Bibhuti Bhusan Borah, B.Sc	01.03.57	06.10.83	13.05.87	06.10.83	DR	
48.	Shyamal Kr. Dutta, B.Sc	25.01.57	01.11.83	13.05.87	01.11.83	DR	
49.	Ashok Kr. Chakraborty, B.Sc	01.11.58	01.02.84	13.05.87	01.02.84	DR	
50.	Khagen Borah, B.Sc	01.01.59	01.11.83	13.05.87	01.11.83	DR	
51.	Bijoy Bhusan Baruah,	01.09.53	07.09.83	13.05.87	07.09.83	DR	
52.	Phani Bhusan Roy, B.Sc	01.09.56	05.09.83	13.05.87	05.09.83	DR	
53.	Dipak Kr. Deb, B.Sc	16.01.58	06.09.83	13.05.87	06.09.83	DR	
54.	Basudeb Bhattacharjee, M.A	23.02.58	26.09.83	13.05.87	26.09.83	DR	
55.	Imranul Goni	11.10.56	24.10.83	13.05.87	24.10.83	DR	
56.	Subhasish Guha, B.Com	03.03.60	06.10.83	13.05.87	06.10.83	DR	
57.	Dilip Kr. Chettri, B.Sc	01.03.57	19.02.83	13.05.87	25.05.83	DR	
58.	Parag Kr. Baruah, B.A.	12.10.58	10.11.83	13.05.87	10.11.83	DR	On Deputation with DRI, New Delhi

01	02	03	04	05	06	07	08
281	Chandra Kanta Baruah, B.Sc.	01.03.55	23.11.81	01.03.84	25.04.86	PR	
282	Smt. Sushila Lyngdoh(ST), HSLC	29.12.56	29.09.75	01.03.84	07.04.86	PR	
283	Supriyo Chakraborty, P.U.	12.04.55	10.11.75	01.03.84	07.04.86	PR	On Deputation with DRI, Kolkata
284	Girindra Nath Haloi (SC), B.Sc. <i>PREVIOUS</i>	29.02.56	26.09.81	01.03.84	19.12.86	PR	
285	Niranjana Ch. Malakar, (SC), B.A. <i>✓</i>	12.09.55	28.09.81	01.03.84	07.04.86	PR	
286	Nur Mohammed Sheikh, B.A.	01.01.55	21.10.76	01.03.84	11.04.86	PR	
287	Smt. K.M. Syiemlieh, (ST), M.A.	19.05.56	27.07.81	01.03.84	07.04.86	PR	
288	Mukunda Ram Das, HSLC	20.01.55	12.08.76	01.03.84	11.11.86	PR	
289	Bidhan Hazarika, (ST), B.Sc.	01.01.53	04.12.81	01.03.84	10.02.86	PR	
290	Smt. Sibani Lanong(ST), B.A.	01.05.55	01.02.82	01.03.84	07.04.86	PR	
291	Md. Abdur Rouf, B.A.	25.03.52	13.08.76	01.03.84	15.04.80	PR	
292	Bikash Kar, M.A.	22.05.58	26.06.81	13.12.81	22.04.87	PR	
293	Subir Kr. Dasgupta, B.A.	05.03.51	05.12.74	13.12.81	22.04.87	PR	
294	Lalit Chandra Doley, (ST) P.U.	01.01.50	07.06.74	01.02.82	27.04.87	PR	
295	Babul Chandra Borq(ST), B.A.	01.01.59	29.09.81	01.03.84	29.04.87	PR	
296	Dimbeswar Pegu, (ST), B.Com.	05.04.55	16.10.81	01.03.84	23.04.87	PR	
297	Dipak Kr. Dey, B.Sc.	20.04.56	28.09.81	02.03.84	21.04.87	PR	
298	Manindra Kumar Karmakar, B.A.(H)	01.12.58	19.01.82	02.03.84	21.04.87	PR	
299	Lila Phukan, B.Sc.	01.09.59	16.11.81	02.03.84	28.04.87	PR	
300	Ramesh Chandra Sharma, B.A.(H)	01.10.59	02.11.81	02.03.84	21.04.87	PR	
301	Girindra Kalita, B.A.	01.01.58	03.12.81	21.08.85	21.04.87	PR	
302	Lakhi Kanta Lora, (ST), HSLC	01.08.55	19.03.76	21.07.84	24.04.87	PR	
303	Pradip Gohain, BA	29.11.55	18.11.81	21.07.84	27.04.87	PR	
304	Golap Ch. Das, (SC), B.Com. <i>✓</i>	01.04.54	16.08.76	21.07.84	27.04.87	PR	
305	Kumud Ch. Bhuyan, B.Sc.	27.01.56	01.10.81	21.07.84	27.04.87	PR	
306	Someswar Baruah, P.U.	10.03.48	23.03.76	21.07.84	27.04.87	PR	
307	Nripendra Nath Deka, (SC), BA(H) <i>✓</i>	01.03.58	26.05.82	21.07.84	21.04.87	PR	
308	Kuladhar Shyam, (ST), HSLC	01.01.54	17.08.76	21.07.84	29.04.87	PR	
309	Samir Kumar Kundu, (SC), B.Sc. <i>✓</i>	29.10.51	22.01.82	21.07.84	24.04.87	PR	
310	Kripal Ch. Phukan, PU	01.01.56	24.02.76	21.07.84	27.04.87	PR	
311	Balendra Nath Uzir, (ST), BA	30.06.54	23.01.82	21.07.84	21.04.87	PR	
312	Dulal Kr. Das, HSLC	30.12.55	28.12.76	12.08.84	26.06.87	PR	
313	Ms. Daimond Mawthoh, (ST), PU	27.08.50	10.05.76	21.07.84	24.09.87	PR	
314	Ms. Neiphal Bhattacharjee, PU	01.03.59	14.07.79	01.08.81	10.02.88	PR	
315	Sanjoy Chettri, BA	12.03.65	03.06.88	03.06.90	03.06.88	DR	
316	Ramendra Prasad Chanda, B.A.	15.01.53	13.08.76	02.03.84	06.06.88	PR	
317	Kapil N. Sharma, B.A. (Ex.S)	01.03.53	23.06.88	23.06.90	23.06.88	DR	

01	02	03	04	05	06	07	08
318.	Ng R.K. Singh, B.Sc.	01.09.61	02.06.88	23.06.90	02.06.88	DR	
319.	Mukul Mahanta, BA	01.03.62	14.06.88	23.06.90	14.06.88	DR	
320.	Ms. Kiranmoyee Das (SC), HSLC	26.12.56	05.08.76	21.07.84	02.06.88	PR	
321.	L.J. Synrem, (ST), B.Com.(H)	03.10.64	22.06.88	23.06.90	22.06.88	DR	
322.	Gautam Kr. Bhuyan, (SC), B.Com.	26.09.59	28.06.88	28.06.90	28.06.88	DR	
323.	Andrew Nongrum, (ST) BA	01.03.56	29.07.82	03.12.84	02.06.88	PR	
324.	Biren Bhattacharjee, B.Sc.	01.01.60	26.12.88	26.12.90	26.12.88	DR	
325.	Muktipada Acharjee, B.A.	01.03.58	19.11.82	19.11.84	02.06.88	PR	
326.	Kh. Marjit Singh, B.A. (H)	01.03.64	22.12.88	26.12.90	22.12.88	DR	
327.	Nirmalendu Bhattacharjee, PU	26.07.57	01.03.83	01.03.85	16.06.88	PR	On Deputation with DRI, Imphal
328.	Sangkhuma Mualchin, (ST) HSLC	23.12.58	20.05.83	21.05.85	03.06.88	PR	
329.	Bidhu Bhusan Nath, HSLC	01.07.58	26.04.83	21.05.88	06.06.88	PR	
330.	Swapan Kr. Debnath, B.Sc.	08.01.58	05.09.83	05.09.85	08.06.88	PR	
331.	Tapan Bora, PU	01.12.50	27.01.77	05.09.85	08.06.88	PR	
332.	Jagadish Ch. Das, (SC) PU	15.01.56	27.01.77	05.09.85	06.06.88	PR	
333.	Debasish Bose, B.Com. (H)	16.01.62	08.02.83	05.09.85	06.06.88	PR	
334.	Jayanta Kr. Hazarika, B.A.	27.11.57	27.11.77	05.09.85	06.06.88	PR	
335.	Nakibur Rehaman, PU	01.02.52	14.03.77	05.09.85	08.06.88	PR	
336.	Tarak Ch. Majumder, BA	01.03.57	28.01.83	05.09.85	06.06.88	PR	
337.	Ratul Ch. Das, B.Sc. LLB	01.12.57	11.11.82	08.01.86	06.06.88	PR	
338.	Debasish Banerjee, B.Sc.	29.12.60	11.05.88	16.12.90	14.05.88	DR	On Deputation with C.S.I. Airport
339.	Audesh Kr. Singh, B.Sc.	01.01.61	25.08.88	16.12.90	25.08.88	DR	
340.	Subrata Choudhury, BA	29.09.61	01.03.88	26.12.90	01.03.88	DR	
341.	S.K. Choudhury, B.Sc.	11.04.60	20.01.88	26.12.90	28.01.88	DR	
342.	Bijon Kr. Das, (SC), B.Com.	04.10.59	20.01.88	26.12.90	21.01.88	DR	
343.	Agar Ali Mullah, B.Sc.	30.10.56	18.12.81	02.03.84	10.01.89	PR	
344.	Debojyoti Bhattacharjee, B.Sc.(H)	19.06.67	20.02.89	20.02.91	20.02.89	DR	
345.	A. Thomas Livingstone, BA	12.02.66	09.03.89	11.04.91	09.03.89	DR	
346.	Lalthangkung Hmar, (ST) BA	02.08.66	24.01.89	20.02.91	24.01.89	DR	
347.	Smt. Thalei Gashnga, (ST) BA	01.07.59	02.03.82	24.08.86	06.01.89	PR	
348.	Ashok Kr. Bezborah, BA (Ex.S)	01.03.52	02.01.89	20.02.91	02.01.89	DR	
349.	R.N. Doley, (ST) BA	24.10.60	11.04.89	11.04.91	11.04.89	DR	
350.	Samir Kr. Majumdar, B. A., EXS	04.01.53	02.01.89	11.04.91	02.01.89	DR	
351.	Sarathi Bhusan Roy, B. Sc.	01.07.64	15.03.89	11.04.91	15.03.89	DR	
352.	Swapan Kr. Das, B. Sc (H)	29.10.64	12.04.89	12.04.91	12.04.89	DR	
353.	Jagadish Choudhury, M. Com	22.01.61	16.11.89	16.11.91	16.11.89	DR	
354.	Gurucharan Deb Barman, (ST), B. Com.	02.01.55	22.01.77	03.12.84	09.01.89	DR	



**OFFICE OF THE COMMISSIONER OF CENTRAL  
MORELLO COMPOUND, SHILLONG**

Annexure-7

G.O. No.  
31/12

GOVERNMENT

**ESTABLISHMENT ORDER NO 204 /2002**

**DATED SHILLONG THE 30<sup>th</sup> DECEMBER, 2002**

**Subject :** Estt. Promotion, transfer and posting in the grade of Supdt. Gr. 'B' - order

**PART - I**

**PROMOTION**

The following Inspectors of Central Excise and Customs are hereby promoted to the Superintendent Group 'B' in the scale of pay of Rs. 6500-200-10,500/- with effect from the date they assume charge of the higher post at the place of posting shown against their names in the order with immediate effect and until further orders.

Sl. No	Name
01	T.C.mahanta
02	Chakrendu Baruah
03	Pranab Kumar Phukan
04	Pankaj kr Bhattacharjee
05	Santosh kr Chakraborty
06	Mrd Ali Mazor Bhuyan
07	Bhagirath Baruah
08 ✓	Bikash Chakraborty
09 ✓	Nabendu narayan Roy
10 ✓	Asish Roy
11	Sonal kr Saha
12	K.N.Choudhury
13	Kailash barmian
14	Tafuruddin Ahmed
15	Binoj Krishna Sharma
16	Dharmeswar Deka (ST)
17	Liladhar Pait (ST)
18	Smt T.Tshering Bhutan (ST)
19	Rownel Martin Chyne (ST)
20	U.K.Das (SC)

The seniority of the officers will be fixed in the order shown above.

The officers promoted vide this order are hereby asked to exercise options within a period of one month from the date of promotion as to whether their initial pay should be fixed in the higher post on the basis of FR 22 (I) (a) (1) straightway without any further review on accrual of increment in the higher post or the lower post or their pay on promotion should be fixed initially in the manner as provided in FR 22 (a) (I) which may be refixed under the provisions of FR 22 (I) (a) (1) on the date of accrual of increment in the scale of pay of lower post. Option once exercised shall be final.

In the event of refusal of promotion they would be debarred from promotion for a period of one year.

Subsequent Estt order No 137/2003 Dtd. 18/6/03

Has been promoted to Supdt. Gr. 'B' on 18/6/03

By: Ranjit kr. Datta, No. 1

*Signature*  
Ranjit

6/10/2002  
28.12.2002

PART - II

# TRANSFER AND POSTING

On promotion the above mentioned officers are retained in their present place of posting. The posting of these officers as Superintendent will be decided at a later date.

## NOTE:

1. In the event of any deputationist(s) being reverted to parent Commissionerate, the most officer (s) in the above promotion order will be reverted as Inspector.

(Z. TOCH)  
COMM  
CENTRAL

C.No. II(3)28/ET.III/2000/44189-44238

Dated:

30 DE

Copy forwarded for information & necessary action to:-

1. The Joint Secretary (Admn.), Central Board of Excise & Customs, North Block, New Delhi - 110 002.
2. The Chief Commissioner, Kolkata Central Excise & Customs, 15/1, Strand Road, Calcutta - 700 001.
3. The Commissioner of customs NER, Shillong. The copies meant for the concerned officer are enclosed.
4. The Commissioner (Appeals), Customs & Central Excise, Guwahati.
5. The Additional Commissioner (Tech.), Central Excise Hqs. Office, Shillong.
6. The Joint Commissioner, Dibrugarh C.Ex. Commissionerate.
7. The Dy./Asstt. Commissioner of Central Excise/Customs \_\_\_\_\_ Division. The copy for the concerned officer is (are) enclosed.
8. The CAO/PAO, Central Excise & Customs, Hqs. Office, Shillong.
9. Shri/Smt. \_\_\_\_\_ for compliance.
10. Accounts I & II/ET I & II/ Confdl. Br./CIU-cum-VIG Br. Of Hqs. Office, Shillong.
11. The General Secretary, Gr.'B' /'C' Executive Officers' Association, Customs & Central Excise, Shillong.
12. Guard File.

ADDITIONAL COMMISSIONER  
CENTRAL EXCISE & CUSTOMS

FAX

CONFIDENTIAL

Annexure-8



GOVERNMENT OF INDIA

**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE**  
**MORELLO COMPOUND, SHILLONG - 793 001**

C.No.II(26)I/CON/2002 /13

Dated:- 16 JAN

To,  
 The Assistant Commissioner,  
 Central Excise Division,  
 Silchar- 788 001

**Subject:-** Appeal made by Shri. N.C.Malakur, Inspector against the  
 adverse remarks awarded in the ACR for the year 2000-2001  
 -Regarding.

Enclosed please find herewith a copy of Ministry's letter F.No.28918/02/2001  
 Ad.IIIA dated 20.12.2002 on the above subject. The same may handed over to Shri. N.  
 Malakar, Insp. for information. A dated receipt may be obtained from the concerned office  
 on delivery and forward the receipt so obtained to this office for records.

Encl:- As above.

Forwarded Copy

15.01.03

(B. THAMAR)

ADDITIONAL COMMISSIONER (P&Y)

Malakar  
 17/1/03  
 (N.C. Malakar)  
 Inspector CEs  
 SILCHAR

Attested  
 Shri.  
 Advocate

Annexure-2 9.

To  
The Assistant Commissioner  
Central Excise Division  
Silchar.

Sir, Subj:- Prayer for forwarding of Representations  
Through proper channel.



Enclosed please find the representations  
addressed to the Hon'ble Chief Commissioner, Commissioner  
and Addl. Commissioner, in the matter of  
"Review of case of promotion retrospectively with  
regular seniority of Sri N.C. Malakar, on expunction  
of Adverse A.C.R. by the Board by holding  
a special D.P.C." for favour of further  
submission through proper channel to the  
concern higher authority and thus oblige.

Encls:- Dt. 6th Jan., 2003.

- 1). Chief Commr. 4 (four) sheets.  
Kolkata  
Representation of 26/12/02 & 02.1.03.
2. Commr. C.E. Shg. 5 (five) sheets.  
Representation dated  
24.12.02, 26.12.02 & 02.1.03.
3. Addl. Commr. C.E. Shilling, 3 (three) sheets.  
Representation of 24.12.02 & 2.1.03.

Yours faithfully,

*(Signature)*  
(N.C. Malakar)  
Inspector C.E.  
Silchar.

Attested  
Ins.  
Schwartz

ADVANCED COPY

To,  
The Chief Commissioner,  
Central Excise, N. E. R.  
Shillong.

Through proper channel

Sub: - Prayer for review of case of promotion retrospectively with regular seniority of Sri. N. C. Malakar, on expunction of Adverse A. C. R. by the Board; by holding a Review D.P.C. for the purpose of extending natural justice.

Sir,

Most submissively, I beg to request your good self to be kind enough to hold a Review D. P. C. to promote the deprived subordinate officer with regular seniority to save the benign applicant from recurring pecuniary losses and to serve natural justice to him.

Copies of the earlier correspondences are enclosed herewith for favour of your ready reference.

I, therefore, fervently pray to your gracious honour to be sympathetic enough to kindly to consider the boon prayed for and for this act of which I shall remain grateful to you.

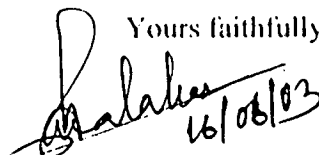
Encls : -

Copies of the prayer made to -

- i) The Commissioner of Central Excise, Shillong dtd. 24.12.02 with Min. F. No. A. 28018/02/2002 - Ad. III A, expunging the Adverse Remarks.
- ii) The Chief Commissioner, Central Excise, Kolkata Zone dtd. 26.12.02.
- iii) The Commissioner, Central Excise, N.E.R., Shillong dtd. 02.01.03.
- iv) The Chief Commissioner, Central Excise, Kolkata Zone.
- v) Reminder of the above to the Commissioner, Central Excise, Shillong.
- vi) Reminder of the same to the Chief Commissioner, Central Excise, Kolkata Zone.

Encls:- Total 9(nine) sheet.

Yours faithfully,

  
(NIRANJANA CHANDRA MALAKAR)  
INSPECTOR  
CUSTOMS & CENTRAL EXCISE  
KARIMGANJ DIVISION.

Attested  
Ins.  
Advocate

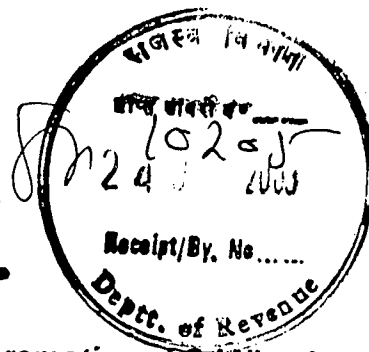


Sno 1

To  
The Hon'ble Chairman,  
Central Board of Excise & Customs,  
North Block Central Secretariat,  
New Delhi-110004.

Hon'ble Sir,

Dy. No. 26919  
J. S (Admn.) CBEC  
Date 25/2



R-4811-M(P&V)  
25/7/03

Sub : Prayer for Review of promotion of Sri Niranjan Ch. Malakar, following total expunction of adverse remarks (in A.C.R. for the year 2000-2001) vis-a-vis proper fixation of (i) Seniority and (ii) pay under FR-27 - paras 18.4.3 of Govt. of India's O.M. No. 22011/5/86-Estt. (D), dated 10-04-1989 as amended by O.M. 22011/5/91- Estt. (D) dated 27-03-1997.

Most submissively, I beg to pray to your gracious honour to be kind enough to consider sympathetically for redressal of mental as well as pecuniary sufferings of the deprived subordinate benign applicant.

That Sir, in normal course I was very much eligible for promotion on 23rd September, 2002 when inspectors Junior to me secured promotion under Estt. order No. 139/2002 dt. 23-09-2002 passed by the Commissioner of Central Excise, Shillong. But at that point of time my appeal against unjust adverse remarks in A.C.R. for 2000-2001 was pending with the Board for kind consideration of expunction of such remarks. It was for this technical reason there has been a procedural delay in placing my name for consideration by the D.P.C. which had its sitting immediately before 23-09-2002.

That Sir, the Board is perhaps aware that after due examination of the facts of my appeal against adverse remark awarded in my A.C.R. relating to the year 2000-2001, if the Board has communicated its final decision to the commissioner Central Excise, Shillong. Relevant portion of the Boards letter F.No. A28018/02/Ad-III A. dt. 20-12-2002 is reproduced below for ready perusal.

"The Board has examined the appeal of Sri N.C. Malakar, Inspector. After taking into account the facts of the case available on records, it has been decided to expunge the adverse remarks awarded in the A.C.R. of Sri N.C. Malakar, Central Excise Inspector for the year 2000-2001. Shri N.C. Malakar may be informed accordingly".

That Sir, your honour would perhaps appreciate that as per well recognised settled legal position with such expunction of adverse remarks from my A.C.R. 2000-2001 by the Apex Body having prestigious status. The uncalled for taint, stigma and demerit etc. stand as NON-EST in the matter of getting my rightful place in the department's seniority list. In such a situation justice that has been

Contd. .. ( P/2 )

( P/2 )

delayed in placing my name in the list of Inspectors eligible for promotion for consideration by the D.P.C. during last September, 2002 as stated above needs in all fairness be restored by holding a REVIEW D.P.C. as permissible under Departmental set-policy.

That Sir, the Board having communicated its esteemed and well thought decision to expunge all the adverse remarks in my A.C.R. ibid to the Commissioner on 20-12-02 had all the genuine hopes and aspiration that during next D.P.C. held on 26-12-02 (i.e. after receipt of the Board Expunction letter ibid by the commissioner Central Excise, Shillong) my name would be placed before the D.P.C. for review the case of promotion arising out of expunction of adverse remark ibid that so long stood in the way of securing promotion. But very unfortunately my name was not placed before the D.P.C. for the reason best known to the Department. It is on record that following the D.P.C. held on 26-12-2002, 20(twenty) Nos. of Inspectors were promoted to Superintendent Group - 'B' excluding me vide Estt. Order No. 204/2002, dtd. 30-12-2002.

That Sir, it needs to be stated that prior to the holding of D.P.C. on 26-12-02 I had represented to the Commissioner Central Excise, Shillong for review of my promotion case following expunction of adverse Remarks in A.C.R., 2000-01 by the Board. A photo copy of self contained representation, dt. 24-12-02 (received by P.A. to the commissioner Central Excise on 24-12-02) enclosed. I took the privilege of meeting personally both the Commissioner & Addl. Commissioner Central Excise, Shillong. But other than giving me a patient hearing there was no iota of any passive indication that proper justice would be shown as per Departmental policy.

That Sir, as per express provision of procedural law framed by the Govt. of India vide O.M. No. 22011/5/86 Estt (D), dt. 10-04-89 and even No. dt. 27-03-1997 there is scope for holding a Review D.P.C. in my case. The scope provides that *"A Review D.P.C. should consider only those persons who were eligible as on the date of meeting of original D.P.C. That is, persons who became eligible on a subsequent date should not be considered. Such case will, of course, come up for consideration by a subsequent regular D.P.C. Further, the review D.P.C. should restrict its scrutini to the C.Rs. for the period relavent to the first D.P.C. The C.Rs. written for the subsequent periods should not be considered. If any adverse remarks relating to the relavent period were toned down or expunged, the modified C.Rs. should be considered as if the original adverse remarks did not exist at all"*.

It is submitted that in my case I was very much eligible for my promotion at the time of promotion of Inspectors under Estt. order No. 139/02 dt. 23-09-02 by virtue of my position in the seniority list of Inspectors' (as on 01-05-2001) where my seniority serial No. stands at 285 where as those stands at lower serial nos. in the same seniority list viz. Sl.Nos. 304, 307, 309, 320 & 322 secured promotion.

It need no emphasis that where Departmental policy containing both favourable and unfavourable condition both these conditions need to be kept in

Contd. ... ( P/3 )

25

- 41 -

( P/3 )

view as the situation warrants. In my case but for adverse remarks in the A.C.R. I was eligible for promotion right on 23-09-02 when promotion order of 149 Inspectors was passed by the Commissioner Central Excise, Shillong.

Departmental policy and procedure has specifically provides scope for institution of Review D.P.C. to restore the delayed justice since my A.C.R. stood cleared retrospectively by virtue of Boards expunction of adverse Remarks relating to the material period.

That Sir, added to the above injustice my detailed representation dt. 02-01-03 & 16-06-03 to the Chief Commissioner praying for review of case of my promotion due to expunction of adverse remarks from the impugned A.C.R. has gone on stray in as much as my case for promotion has not even been reviewed during D.P.C. held on 16-06-03 when another set of Inspectors junior to me secured promotion vide Estt. order No. 137/2003 dt. 18-06-03.

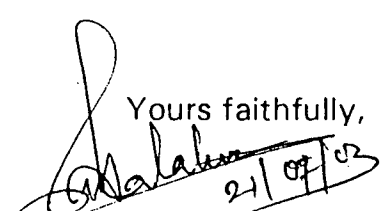
That Sir, failing to get any consideration what-so-ever in the matter of getting meaningful JUSTICE, I solicit the favour of Board's intervention to set the matter right as per Departmental set policy by fixing my seniority as well as pay under FR-27 as per para 18.4.3 of Chapter 53 of the Swamy's Complete Manual on Establishment and Administration, Eighth Edition-2000. Vide O.M. No. 22011/5/86-Estt. (D), dtd. 10-04-1989 as Amended by O.M. No. 22011/5/91-Estt. (d), dtd. 27-03-1997 reproduced below.

*18.4.3 If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy, the juniormost person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under FR 27 at the stage it would have reached, had he been promoted from the date of officers immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by DPC. If in any such case a minimum period of qualifying service is prescribed for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade, should be reckoned towards the qualifying period of service for the purpose of determining his eligibility for promotion to the next higher grade.*

For this act of your kindness I as in duty bound shall ever pray.

Encls:- 11 (Eleven Sheets)

Date : 21.07.2003.

Yours faithfully,  
  
(NIRANJAN CHANDRA MALAKAR)  
Inspector, Customs & Central Excise,  
Shillong Commissionerate,  
Karimganj Division.

### Scope and procedure

18.2 A Review DPC should consider only those persons who were eligible as on the date of meeting of original DPC. That is, persons who became eligible on a subsequent date should not be considered. Such cases will, of course, come up for consideration by a subsequent regular DPC. Further, the review DPC should restrict its scrutiny to the CRs for the period relevant to the first DPC. The CRs written for subsequent periods should not be considered. If any adverse remarks relating to the relevant period were toned down or expunged, the modified CRs should be considered as if the original adverse remarks did not exist at all.

18.3 A Review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should neither change the grading of an officer without any valid reason (which should be recorded) nor change the zone of consideration nor take into account any increase in the number of vacancies which might have occurred subsequently.

### Cases where adverse remarks have been expunged or toned down

18.4.1 In cases where the adverse remarks were toned down or expunged subsequent to consideration by the DPC, the procedure set out herein may be followed. The appointing authority should scrutinize the case with a view to decide whether or not a review by the DPC is justified, taking into account the nature of the adverse remarks toned down or expunged. In cases where the UPSC have been associated with the DPC, approval of the Commission would be necessary for a review of the case by the DPC.

18.4.2 While considering a deferred case, or review of the case of a superseded officer, if the DPC finds the officer fit for promotion/confirmation, it would place him at the appropriate place in the relevant select list/list of officers considered fit for confirmation or promotion after taking into account the toned down remarks or expunged remarks and his promotion and confirmation will be regulated in the manner indicated below.

18.4.3 If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy, the

junior most person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under FR 27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by DPC. If in any such case a minimum period of qualifying service is prescribed for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade, should be reckoned towards the qualifying period of service for the purpose of determining his eligibility for promotion to the next higher grade.

To,

**The Chief Commissioner,**  
Customs and Central Excise (Shillong Zone),  
Crescens Building,  
Mahatma Gandhi Road,  
Shillong -793001.

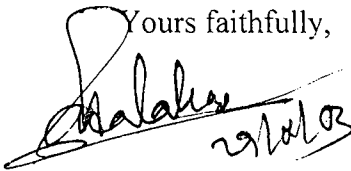
**Subject: Prayer for review of case of promotion retrospectively with regular seniority of Sri N. C. Malakar on expunction of Adverse ACR by the Board, by holding a Review D.P.C. for the purpose of extending natural justice.**

Madam,

Most submissively, I beg to request your good self to be kind enough to hold a Review D.P.C. to promote the deprived subordinate officer with regular seniority to save the benign applicant from recurring pecuniary losses and to provide natural justice.

In this connection, my earlier representations dated 27.03.03 and 16.06.03 may kindly be referred to and thus oblige.

Dated; Shillong  
29th, Oct; 2003

Yours faithfully,  


<sup>CH</sup>  
(NIRANJANA MALAKAR)  
INSPECTOR  
Customs Division,  
Karimganj.

7c

  
Niranjana Malakar

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F.No.A.32018/38/2003-AdIIIA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

78  
Annexure-11

New Delhi, the 13th October, 2003

To

Shri Z. Tochwang  
Commissioner of Central Excise  
Post Box No.8  
Morellow Compound  
Shillong.

**Subject :** Prayer for review of promotion of Sh. Niranjan Ch. Malakar for total expunction of adverse remark (in ACR for the year 2000-2001) vis-a-vis proper fixation of seniority and pay under FR -27 - case regarding.

Sir,

I am directed to refer to your office letter C.No.II(25)1(Con)2003/1444 dated 27.8.2003 on the above cited subject. The matter was considered in consultation with DOP&T who have opined that the representation of Shri N.C. Malakar for holding of review DPC may be considered in terms of para 18.4.1 of DPC guidelines (enclosed). DOP&T has opined that "in terms of para 18.4.1 of the DPC guidelines, where an adverse remark has been expunged after date of holding of DPC, it is for appointing authority to scrutinize the case with a view to decide whether or not a review of his case by a review DPC is justified taking into consideration the nature of the adverse remark toned down or expunged. In other words, it is not automatic that in every such case where adverse remarks are expunged subsequent to the holding of DPC, a review DPC is a must. It all depends on the nature of the remarks and judgement of the appointment authority whether keeping in view the nature of the remarks expunged, it can make a material difference in the assessment and the grading of the officer by the Review DPC."

2. You are therefore requested to take necessary action in the light of these guidelines urgently under intimation to the Board.

Yours faithfully

Encls: As above

(S.K.THAKUR)

Under Secretary to the Govt. of India

*Accepted  
for signature*

18.3 A Review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should neither change the grading of an officer without any valid reason (which should be recorded) nor change the zone of consideration nor take into account any increase in the number of vacancies which might have occurred subsequently.

**Cases where adverse remarks have been expunged or toned down**

18.4.1 In cases where the adverse remarks were toned down or expunged subsequent to consideration by the DPC, the procedure set out herein may be followed. The appointing authority should scrutinize the case with a view to decide whether or not a review by the DPC is justified, taking into account the nature of the adverse remarks toned down or expunged. In cases where the UPSC have been associated with the DPC, approval of the Commission would be necessary for a review of the case by the DPC.

18.4.2 While considering a deferred case, or review of the case of a superseded officer, if the DPC finds the officer fit for promotion/confirmation, it would place him at the appropriate place in the relevant select list/list of officers considered fit for confirmation or promotion after taking into account the toned down remarks or expunged remarks and his promotion and confirmation will be regulated in the manner indicated below.

18.4.3 If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the juniormost person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under FR-27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by DPC. If in any such case a minimum period of qualifying service is prescribed for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade, should be reckoned towards the qualifying period of service for the purpose of determining his eligibility for promotion to the next higher grade.

18.4.4 In the case of confirmation, if the officer concerned is recommended for confirmation on the basis of review by the DPC, he should be confirmed and the seniority already allotted to him on the basis of review should not be disturbed by the delay in confirmation.

Annexure-12



**OFFICE OF THE CHIEF COMMISSIONER  
CENTRAL EXCISE & CUSTOMS  
SHILLONG ZONE  
NORTH EASTERN REGION**

3rd Floor, Crescens Building, MG Road, Shillong - 793001,

Phone: 0364-2500131. Fax: 0364-2224747.

REGISTERED

C. No. II(3)21/CCO/SH/2003 / 9563

Dated:-

15-1 APR 2004

To

Shir Niranjan Chandra Malakar, Inspector  
Customs Divisions  
Karimanganj  
Assam

Subject :- Review Promotion - reg.

Refer to your representation dated 15-03-2004 on the above subject.

I am directed to refer to your representation dated 15-03-2004 on the above subject, and to inform you that on an enquiry on the subject, it has been reported that your case was still deficient for being considered before a review D.P.C

In the circumstance, a review D.P.C in the instant case does not arise.

*Apal*  
31.3.2004  
(A. Das)  
Assistant Commissioner

*Allesha  
Advocate*



Speed Post

F.No.A.32018/38/2003-AD.IIIA  
Government of India  
Ministry of Finance  
Department of Revenue

New Delhi, the 24th June, 04

To

Shri J.S.R. Khathing,  
Chief Commissioner,  
Central Excise,  
Post Box No.8, Morellow Compound,  
Shillong.

Subject:- Prayer for review of promotion of Shri N.C. Malakar for  
total expunction of adverse remark (in ACR for the year  
2000-2001) vis-à-vis proper fixation of seniority and pay  
under FR-27 – Case regarding.


Sir,

I am directed to refer to your office letter C.No.II(20)1/CON/2003/151 dated 25.2.2004 on the above cited subject. Shri N.C. Malakar vide his representation dated 16.6.2003 has stated that inspite of adverse remarks contained in ACR for the year 2000-2001 has been expunged, the competent authority is not holding a review DPC for consideration for promotion to the post of Superintendent. His representation was considered in detailed in consultation with DOP&T and it was requested to CCE, Shillong to hold review DPC vide letter of even number dated 13.10.2003. CCE, Shillong did not follow the Board's instruction and avoided to hold a review DPC on one ground or other.

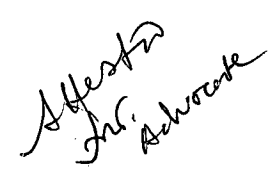
The decisions to hold review DPC has to be taken by the cadre controlling authority (C.C.E., Shillong). He is unnecessarily trying to complicate the matter and consequently pass on decision making to the Board with attendant delay. As per the rule position, a review DPC has to be held.

You are therefore, requested to direct the CCE, Shillong to hold a review DPC of 30.7.2002 immediately and promote Shri Malakar to the Post of Superintendent if he is found fit. A compliance report be also sent to the Board at the earliest.

Yours faithfully,

  
(S.K. THAKUR)

Under Secretary to the Govt. of India



To  
the Additional Commissioner (P & V)  
Customs & Central Excise  
Shillong

(Through proper channel)

Sub : Prayer for review of promotion of Sri N.C. Malakar, following total expunction of adverse remarks (in A.C.R for the year 2000-01) Vis-a-vis proper fixation of seniority and pay under F.R.27 with retrospective effect.

Hon'ble Sir,

Please refer to my representation dated 05-09-2005 submitted personally to you on 21-09-2005.

That Sir, in my appeal to the Hon'ble Chairman, CBEC, New Delhi, I categorically replied in my defence against the each "**Just Adequate**" remarks under column Part-III, Sl. No. 1, 2, 4, 5, 6, 7 (b) & 8 and poor against Sl. No. 3 awarded by respected reporting officer which were communicated by the Hon'ble Addl. Commissioner (P&V) vide DOC No.-II (9) 19/CON/2001/631-33 dated 22-06-2001.

That Sir, I appealed to the Hon'ble Chairman, CBEC, New Delhi seeking justification of all the barden of **Just-Adequate** awarded by the reporting officer, as mentioned above. The CBEC New Delhi has examined my appeal and decided to expunge the adverse remarks i.e. all the barden of just-adquate etc. Vide Ministry's letter F. No. 28018/02/AD-III-A dated 20-12-2002 stated that "The Board has examined the appeal of Shri N.C. Malakar, Inspector. After taking into account the facts of the case available on records, it has been decided to expunge the adverse remarks awarded in the ACR of Shri N.C. Malakar, Central Excise, Inspector for the year 2000-01."

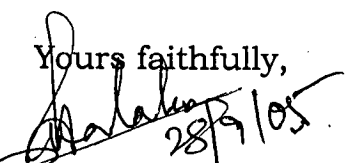
That Sir, aforesaid remarks of the Hon'ble Board Contained meaning thereby i.e. all the adverse remarks without any exception whatsoever have been expunged.

In view of the above my promotion to the grade of Supdt. which is long over due may kindly be considered by holding a review D.P.C.

For this act of which I shall remain ever grateful to you.

dated Badarpur  
the 28-09-2005

Yours faithfully,

  
(Niranjana Chandra Malakar)

Inspector

C.P.F, Badarpur  
Custom Division, Karimganj

*Attested  
As  
Advocate*

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IN THE CENTRAL ADMINISTRATIVE  
GUWAHATI BENCH

IN THE MATTER OF:

O.A.No. 310/2005

Shri N.C.Malakar

..... Applicant

- Versus -

Union of India & Others.

..... Respondents

- AND -

IN THE MATTER OF:

Written statement submitted by the

Respondents No. 1 to 7.

WRITTEN STATEMENT

The humble answering respondents

submit their written statements as

follows :

1.(a) That I am Shri Bhabani Prasanna Sinha,  
Deputy Commissioner of Central Excise, Guwahati

I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement, the contentions and

statements made in the application may be deemed to have been denied. I am competent and authorized to file the statement on behalf of all the respondents.

(b) The application is filed unjust and unsustainable both on facts and in law.

© That the application is bad for non joinder of necessary parties and misjoinder of unnecessary parties.

(d) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(e) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

## 2. BRIEF FACTS OF THE CASE OF THE APPLICANT/PETITIONER

which may be treated as the integral part of this written statement.

a) Shri N.C.Malakar joined this Commissionerate in 1981 as UDC and was promoted to the grade of Inspector on 7.4.1986.

b) While posting as Inspector in Silchar Central Excise Division, Shri Malakar received certain adverse remarks in his ACR for the period of 2000-01. Being communicated the adverse remarks, Shri Malakar submitted representation against the adverse remarks on 9.8.2001, which was rejected, vide letter C.No.II(9)19/CON/2001/1282-84 dated 20.11.2001.

© He then, preferred an appeal to the Chairman, CBEC, New Delhi on 8.2.2001. The Board allowed the appeal and expunged the adverse remarks

in the ACR of 2000-01 vide letter F.No.A.28018/02/2002-Ad.IIIA dated 20.12.2002.

(d) After the cadre restructuring, there was a mass promotion of Inspectors (149 Inspectors) to the grade of Superintendent vide Estt. Order No.139/2002 dated 23.9.2002.

(e) Shri N.C.Malakar, Inspector belongs to S.C category. Some Inspectors, junior to him in the same category of SC e.g Shri Golap Ch. Das, Ms Kiranmoyee Das and shri Gautam Kr. Bhuyan got promotion to the grade of Superintendent vide Estt. Order No. 139/2002 dated 23.9.2002. His case was not considered due to some adverse remarks in his ACR of 2000-2001.

(f) After the expunge of the adverse remark in the ACR of 2000-2001, Shri Malakar submitted representations for review of the case of his promotion retrospectively since adverse remark was expunged.

(g) For promotion from Inspector to the grade of Superintendent (Group B), the bench mark of ACR gradings are "Good". The representation of Shri N.C.Malakar for Review DPC was examined in the past on more than one occasion. However, in terms of Para 18.4.1 of the DPC guidelines, the ACR for the year 2000-2001 of Shri Malakar was thoroughly scrutinized further with a view to decide whether or not a review of his case by a review DPC is justified. The scrutiny of his ACR reveals that in most of the columns of the report of ACR of 2000-2001, the gradings were "JUST ADEQUATE", the gradings, therefore, were below the benchmark "Good" for promotion to the grade of Superintendent

Group B. It may be mentioned here that adverse entry was recorded only in one column i.e. column No.3 (Industry conscientiousness) as "POOR" and in other columns, the gradings were recorded as "JUST ADEQUATE" except in column 7(a). Though the said adverse entry in column No.3 as mentioned above was expunged, but due to gradings recorded in other columns of the ACR, his case is not fit for promotion to the grade of Superintendent by way of review DPC or otherwise.

3. That with regard to the statements made in paragraphs 1, 2, 3, 4.1, to 4.4, 4.5, 4.6, 4.8 of the application, the answering respondents do not admit anything except those are in record. The applicant's is put to strictest proof thereof.

4. That with regard to the statements made in para 4.7 of the application, the answering respondents beg to submit that the matter has been thoroughly examined in terms of para 18.4.1 of the DPC guidelines, whereby the adverse remarks has been expunged after the date of holding DPC. It is for the appointing authority to scrutinize the case with a view to decide whether or not a review of his case by a review DPC is justified taking into consideration the nature of the adverse remark toned down or expunged. In other words, it is not automatic that in every such case where adverse remarks are expunged subsequent to the holding of DPC, a review DPC is a must. It all depends in the nature of remarks and judgment of the appointing authority whether keeping in view the nature of the remarks expunged, it can make a material difference in the assessment and the grading of the officer by the review DPC. In this case, holding of review

DPC may not make any material difference in the assessment of the officer as he was graded 'Just Adequate' in most columns of the ACR 2000 -2001 which is below the required bench mark grading 'Good'.

✓ 5. That with regard to the statements made in paragraphs 4.9, 4.10, 4.11 and 4.12 of the application, the answering respondents beg to submit that in the ACR of 2000-01 in respect of Shri N.C.Malakar, in most of the columns of the said report of ACR, the gradings were "JUST ADEQUATE". The gradings, "JUST ADEUQATE" were below the benchmark "GOOD" for promotion to the grade of Superintendent Group-B. In the ACR of 2000-01, adverse entry was recorded only in one column i.e. column No. 3 (Industry and conscientiousness) as "POOR" and in other columns, the gradings were recorded as "JUST ADEUQATE" except in column 7(a). Though the said adverse entry in column No.3 was expunged, but due to gradings recorded in other columns of the ACR, his case is not fit for promotion to the grade of Superintendent by way of review DPC or otherwise.

6. That with regard to the statements made in paragraphs 4.13 to 4.15 and 5 to 7 of the application, the answering respondents do not admit anything which is beyond the record and the applicant is put to strictest proof thereof.

✓ 7. That with regard to the statements made in para 8 of the application, the answering respondents beg to submit that for promotion from Inspector to the grade of Superintendent (Group B), the bench mark of ACR gradings are "Good". The representation of Shri N.C.Malakar for

review DPC was examined in the past on more than one occasion. However, in terms of para 18.4.1 of the DPC guidelines, the ACR for the year 2000-2001 of Shri Malakar was thoroughly scrutinized further with a view to decide whether or not a review of his case by a review DPC is justified. The scrutiny of his ACR reveals that in most of the columns of the report of ACR of 2000-2001, the gradings were "JUST ADEQUATE", the gradings, therefore, were below the bench mark "Good" for promotion to the grade of Superintendent Group B. It may be mentioned here that adverse entry was recorded only in one column i.e. column No.3 (Industry and conscientiousness) as "POOR" and in other columns, the gradings were recorded as "JUST ADEQUATE" except in column 7(a). Though the said adverse entry in column No.3 as mentioned above was expunged, but due to gradings recorded in other columns of the ACR, his case is not fit for promotion to the grade of Superintendent by way of review DPC or otherwise.

8. That the respondents beg to submit that the application is devoid of merit and as such same is liable to be dismissed.

9. That this written statement is made bonafide and for the ends of justice & equity.

Under the above circumstances, Your  
Lordship would be pleased to dismiss the  
application filed by the applicant for the  
ends of justice.



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**VERIFICATION**

I, Shri Bhabani Prasanna Sinha, Deputy  
Commissioner of Central Excise, Guwahati do hereby  
solemnly affirm and verify that the statements made hereinabove are true to my  
knowledge, belief and information and nothing is being suppressed.

I sign this verification on this 17<sup>th</sup> day of March 2006 at  
Guwahati.

Bhabani Prasanna Sinha  
Signature

(B.P. Sinha)  
Deputy Commissioner,  
Central Excise : Division : Guwahati

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केन्द्रीय प्रशासनिक आयोग  
Central Administrative Tribunal

27 JUL 2006

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
Guwahati Bench

GUWAHATI BENCH: GUWAHATI

Filed by me applicant -  
through: S. X. Kh. Advocate  
27.7.2006

In the matter of: -

O.A. No. 310 of 2005

Shri Niranjana Chandra Malakar

-Vs-

Union of India and Others.

-And-

In the matter of: -

Rejoinder submitted by the applicant in reply to the written statements submitted by the respondents.

The applicant above named most humbly and respectfully begs to state as under; -

1. That the applicant categorically denies the contention raised by the respondents in paragraph 1 (b), (c), (d), (e) and further begs to say that the grounds set out by the respondents in the above paragraphs are totally irrelevant with the facts and circumstances of the instant case of the applicant.
2. That with regard to the statements made in paragraph 2, 3, 4, 5, 6, 7, 8 and 9 the applicant while denying the contention of the respondents made in those paragraphs of the written statement, at the same time it is stated that

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the respondents themselves have admitted in paragraph 2 that many of his juniors in the SC category have been promoted vide Establishment order No. 139/2002 dated 23.09.02 but case of the applicant was not considered due to some adverse remarks in his ACR of 2000-2001 as alleged in the written statement. Therefore, it is an admitted fact on the part of respondents that there was adverse remarks only for the year 2000-2001, and for such adverse ACR of the year 2000-2001 the applicant did not attend the bench mark as because in most of the columns of the report of ACR of 2000-2001 the grading were recorded "JUST ADEQUATE". Therefore, it is clear case of down grading of ACR of the applicant with an ulterior motive to deprive him from the promotional benefit, in the cadre of Superintendent Group B. Moreover, it appears from the written statement itself that his representation against the adverse remarks was rejected initially vide letter dated 20.11.01 but the Board after detailed scrutiny and examination has expunged the said adverse remarks. Therefore, it appears that a vested circle with an ulterior motive recorded adverse remarks for the year 2000-2001 with the sole intention to block his legitimate promotion. It is also relevant to mention here that while such adverse remark was recorded in his ACR during the year 2000-2001, no prior notice, warning or memo were issued to the applicant pointing out his deficiency in work. As such entry of adverse remarks in ACR particularly in the year 2000-2001 was made by the reporting officer, Shri H.R Saha, the then Assistant Commissioner, Central Excise and Customs, Silchar, in total violation of the Government instruction from time to time and which holding the field till date and on finding such inconsistencies the higher authority was pleased to expunge the adverse entries of the applicant recorded in the ACR. Moreover, even the contention of the respondents made in the written statement to the effect that in spite of setting aside of the adverse remarks by the higher authority respondents are still maintaining that the applicant is not entitled to be considered for promotion by holding review DPC since in other columns of the ACR for

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the particular year 2000-2001, it is remarked by the reporting officer as "JUST ADEQUATE" whereas even assuming the contention of the respondent are factually correct, even in that case such remarks "JUST ADEQUATE" only for the year 2000-2001 was recorded by the reporting officer or reviewing authority is liable to be ignored by the DPC since such grading is below bench mark which was recorded in ACR of the applicant without providing any opportunity to him. It is categorically submitted that so far the applicant came to learn from reliable source that his ACR are always very good right from the beginning of his service career but such grading of "Very Good" has been downgraded by the reporting officer and reviewing officer during the year 2000-2001 with the deliberate intention to place him below bench mark in order to deny his legitimate claim of promotion to the cadre of Superintendent Group B whereas it is a settled position of law that such downgrading of ACR is not permissible without providing any reasonable opportunity to the employee concerned and the DPC also cannot take into consideration such downgrading of ACR at the time of promotion of the applicant and on that score alone review DPC is liable to be arranged to reconsider the case of the applicant for promotion to the cadre of Superintendent Group B, ignoring such downgrading of ACR recorded for the year 2000-2001. Therefore, the Hon'ble Court would be pleased to direct the respondents to produce all relevant ACRs at least for 10 years prior to 2002-2003 of applicant in order to ascertain the factual position and also for proper adjudication of the case of the applicant.

It is further submitted that whether an applicant is fit or unfit for recommendation of promotion, more so, when the applicant is well within the zone of consideration and when his numbers of juniors have superseded him in the matter of promotion, as such it is the case of the applicant for promotion and should declare whether the applicant is liable to be recommended for promotion or not but no individual authority has any jurisdiction to declare the applicant ineligible on scrutiny of his ACR.

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Such exercise of power by an individual authority and declaring the case of the applicant is not liable to be reviewed on the alleged ground that for the year 2000-2001, "JUST ADEQUATE" remark was recorded in the ACR, such action of the respondents authority is highly arbitrary, illegal and unfair and contrary to the law of downgrading laid down by the various Courts.

In the facts and circumstances the application deserves to be allowed with cost.

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VERIFICATION

I, Shri Niranjana Chandra Malakar, S/o- Shri Naresh Chandra Malakar, aged about 50 years, presently working as Inspector in the office of Dy. Commissioner, Customs and Central Excise, Karimganj, do hereby verify that the statements made in Paragraph 1 to 3 of this rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 23<sup>rd</sup> day of July 2006.

Niranjana Ch. Malakar

NOTICE

From:-  
Mr. S. Nath.  
Advocate.

To.  
Mr. M. V. Ahmed.  
Adl. C.G.S.C.

Sub:- Rejoinder in O.A. No. 310/2005 (Sri M.C. Malakar  
-vs- U.O.I & ors).

Sir, find please enclosed herewith a copy of the rejoinder,  
which is being filed today. This is for your information  
and necessary action.

Please acknowledge receipt of the same.

Received

Yours sincerely,

S. Nath.  
Advocate.  
27/7.

(M. V. Ahmed),  
Adl. C.G.S.C.

I undertake to serve  
a copy to Mr. M. V. Ahmed.

Sant.  
27/7