

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 67/2005

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FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 67/2005

OF 199

Applicant(s)

B.N. Das

Respondent(s)

U.O.I. & OHS.

Advocate for Applicant(s)

A. Shakur, Gity Kalita, Mitaki Gogoi

Advocate for Respondent(s)

C. G. S. C.

| Notes of the Registry | Date | Order of the Tribunal |
|---|------------------|--|
| <p>209/116 SA.4 10.3.05 N. S. 15.3.05 1/e Steps taken with encl. 075 [Signature]</p> <p>Reference Court's order dated 17.3.05 passed on O.A.No. 67/05.</p> <p>In respect to the Court's Order dated 17.3.05 I have the honour to submit the following for favour of your Lordships kind consideration.</p> <p>The O.A. 67/05 was placed on my table for signature on 15.3.05, I not thoroughly checkup the case record as</p> | <p>17.3.2005</p> | <p>present ; The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman. The Hon'ble Mr. K.V.Prahladan, Administrative Member.</p> <p>The learned counsel for the respondents submits that copy of the application is not served on them though it is required under the Rule. Hence adjourned to 22.03.2005 for proper compliance.</p> <p>Deputy Registrar who is in-charge in this office shall explain as to why the application was not served with proper compliance under the Rules.</p> <p>[Signature] Member (A)</p> <p>[Signature] Vice-Chairman</p> |

Contd...2/-

| Notes of the Registry | Date | Order of the Tribunal |
|--|--|--|
| <p>it was already scrutinized by the D/Asstt. of filing Section. Through over site I simply signed the same on 15.3.05.</p> <p>For this act of your Lordship's kindness I may be excused for this time.</p> <p><i>21/3/05</i> I/C Deputy Registrar.</p> <p><i>Pl comply order dated 22.3.05.</i> <i>24/3/05</i></p> <p>Notice & order sent to D/section for issuing to resp. Nos. 1 to 5 by regd. A/D post.</p> <p><i>23/3/05.</i></p> <p>Notice duly served on resp. No-4.</p> <p><i>25-4-05</i> <i>5/2-awarded.</i></p> <p>Notice duly served on 1,4.</p> <p><i>20-5-05</i> Notice duly served on R. no. 1, 2 & 4. R. 3 & 5 awaited. No reply filed.</p> | <p>22.03.2005</p> <p>28.4.05.</p> <p>24.5.2005</p> | <p>Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman. The Hon'ble Mr. K.V.Prahladan Administrative Member.</p> <p>Heard Mr. A. Thakur, learned counsel for the applicant, Mrs. M. Das, learned Govt. Advocate for the State of Assam, for the Respondent No. 2 and also Ms. U. Das, learned Addl. C.G.S.C. for the Respondents No. 1 and 3.</p> <p>Issue notice to the respondents to show cause as to why the application shall not be admitted. Call for the records. List on 26.4.2005 for admission. No interim relief for the time being.</p> <p><i>K.V. Prahladan</i> Member (A)</p> <p><i>G. Sivarajan</i> Vice-Chairman</p> <p>Heard Mr. A. Thakur learned counsel for the applicant and Ms. U. Das learned Addl. C.G.S.C. for the Respondents. Notice to the Respondent Nos. 1, 2, 3 & 5 is awaited. Post the matter on 24.5.05. In the meantime the counsel for the applicant will ensure that the notice will serve on the Respondent Nos. 1, 2, 3 & 5.</p> <p><i>G. Sivarajan</i> Vice-Chairman</p> <p>Mr. A. Thakur, learned counsel for the applicant and also Mrs. M. Das, learned Govt. Advocate for the State of Assam are present.</p> <p>List on 24.6.2005 for admission.</p> <p><i>K.V. Prahladan</i> Member (A)</p> |

08.03.2006 Heard Mr. A. Thakur, learned counsel for the applicant, Ms. U. Das, learned Addl. C.G.S.C. for the the Union of India and Mrs. M. Das, learned Government Advocate for the State of Assam. Reserved for orders.

 
Vice-Chairman (J) Vice-Chairman (A)

mb



9.5.06.

Judgment delivered in open Court. Kept
in separate sheets. Application is dismissed.

Vice-Chairman

ln

Received
Alsha Das
Addl CUSC
30/3/06

Received copy for
G.P. Sharma
Shri Kumar
Dena
8.6.06

Copy of the Judgt
has been received
by the L.A.D.V. for
the applicant on
6.5.06
Hh

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

O.A. 67 of 2005

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

Shri Bhupendra Nath Das

-versus-

1. The Union of India, represented by
the Secretary Personnel Department,
Ministry of Home,
New Delhi-11.
2. The State of Assam, represented by the Chief
Secretary/Commissioner, Government of Assam,
Dispur, Guwahati-06.
Guwahati-6.
3. The Union Public Service Commission,
Represented by its Chairman,
Dholpur House, New Delhi.
4. State of Meghalaya
Represented by Commissioner & Secretary,
Personnel Department
Government of Meghalaya,
Shillong.
5. The Chairman,
Selection Committee IAS (Appointment by
Promotion)
For the year 2002 (Assam & Meghalaya)
To be served through U.P.S.C.
Dholpur House, New Delhi.

.....Respondents.

For the applicant : Mr. ~~A. Thakur~~ Advocate.

For the respondents : ~~Mrs.~~ M. Das, Jr. Govt. Advocate, ~~State of Assam.~~
Ms. U. Das, ACGSC, Advocate.

c

Date or order: 09.05.2006

O R D E R

Per Mr. B.N. Som, VC

Bhupendra Nath Das, presently Director of Food and Civil Supplies, Govt. of Assam has filed this O.A. assailing the impugned Govt. notification 2/2002/Pt/23 dated 26.5.2004 regarding appointment of the members of the State Civil Service for Assam (SC/ST) to Indian Administrative Service (IAS) against the vacancies of the year 2002. He has prayed for the following reliefs:-

“8.

- (a) To direct the Respondents to set aside or quash the impugned notification No. 2/2002/Pt/23 dated 26th May 2004 at Annexure-4(b) issued by the Respondents.
- (b) To direct the Respondents to promote your applicant to the IAS Cadre in the year 2002 on which five numbers of officers have been promoted from the ACS Cadre and reportedly another 2 nos. of officers promoted to the IAS Cadre with all consequential service benefits entitled by applicant.
- (c) Grant the cost of this application to the applicant.
- (d) To declare that reservation system inserted in the IAS appointment by competitive examination Regulation 1955, formulated in pursuance of Rule 7 of the IAS (Recruitment) Rules 1954 are discriminatory. Hence violative of Article 14 of the Constitution of India.”

2. The case of the applicant in short is that he being a member of the SC community is entitled to the benefit of reservation for promotion in service as notified by the Govt. from time to time. His case is that for preparing a panel of SC officers for promotion to the IAS for the year 2002 the respondents had considered the applicant along with others in the zone of consideration and in that zone his name appeared at Sl. No. 15. Relying on the Govt. of India, Department of Personnel and Training O.M. No.36012/17/88 Estt.(SCT) dated 25.4.89, he submitted that the respondents were obliged to follow the

policy of reservation in posts by promotion under the existing scheme as indicated in the said circular in respect of IAS in which the element of direct recruitment, does not exist 75%. His argument is that at least six posts under the present cadre strength of Assam, Meghalaya Cadre ought to have been offered to SC candidates following the reservation policy of the State Government in this regard.

3. The respondents by violating the reservation policy had deprived the applicant of his legitimate and just claim and thus had violated the Constitutional guarantee to the reserved category candidates. He has, therefore, submitted that the impugned order is bad in law and that he is entitled to be promoted from the date his juniors were so promoted.

4. The official respondents have stoutly contested the application. Their submission is that the promotion to IAS from the State Civil Service is carried out in terms of the IAS (Appointment by Promotion) Regulations, 1955 and the said officers who fall in the zone of consideration are considered strictly in terms of merit for preparing the select list of 2002. The Selection Committee met on 29.12.2003 to prepare a list for filling up of eight vacancies for which 24 State Civil Service officers were considered. The name of the applicant was considered at Sl. No. 16 in the eligibility list furnished by the State Govt. They have strongly disputed that the reservation policy of the Govt. was violated in preparing the select list of 2002. They have submitted that the guidelines issued by DOP&T vide O.M. dated 25.4.89 relied on by the applicant are applicable to promotion within Central Govt. by way of holding the Departmental Promotion Committee and that in the matter of promotion to the IAS the same is governed by the statutory IAS (Appointment by Promotion) Regulations and the selections are made by Selection Committee constituted for this purpose. They have further clarified that the ACS Officers are allowed benefit of reservation under the Constitutional provision at the time of their initial appointment to the State Civil Service and also on their promotion to

higher posts in the State Civil Service in accordance with the instructions in vogue in the State Govt. on the subject. In terms of the relevant provision in the IAS (Appointment by Promotion) Regulations, 1955 the promotions in the cadre are governed by the mode of selection-cum-merit and no reservation quota is applicable in the case of promotion of ACS officers to IAS.

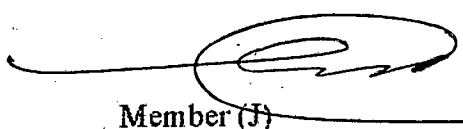
5. We have heard the ld. counsel rival parties and have perused the records placed before us.

6. The sole issue in this O.A. is whether reservation policy as enunciated by the Govt. in O.M. dated 25.4.89 (Annexure-A/7 to the application) is applicable for promotion to IAS. The respondents have categorically pointed out that the guidelines issued in the DOP&T O.M. dated 25.4.89 are applicable only in the matter of promotion, by selection or by Limited Departmental Examination in Gr.B, C and D and from Gr.B to the lowest rung of Gr.A of the Central Govt. We have perused the text of the O.M. dated 25.4.89 and for the sake of clarity we would like to quote the same here:-

"2. Under the existing orders contained in the Department of Personnel & A.R. O.M. No. 36021/7/75-Estt. Dated the 25th Feb., 1976, reservations have been provided at 15% and 7-1/2% of the vacancies for Scheduled Castes and Schedules Tribes respectively (i) in promotions through limited departmental competitive examinations in Group B, C & D (ii) in promotions by selection in Groups B, C & D and from Group B to the lowest rung of Group A and (iii) in promotion on the basis of seniority subject to fitness in all Groups i.e. Groups A, B, C & D (in all these cases), in grades or services in which the element of direct recruitment, if any, does not exceed 66-2/3%. It has now been decided in partial modification of above-mentioned O.M. that the reservations in posts by promotion under the existing scheme as indicated above should be made applicable to all grades or services, in which the element of direct recruitment, if any, does not exceed 75%."

From the perusal of the O.M. referred to earlier, it is clear that the same O.M. dated 25.4.89 was issued amending the order contained in Deptt. of Personnel and O.M. No. 36012/7/75- Estt. Dated 25.2.76 by which reservation in respect of SC and ST candidates was limited to the grade of services in which the element of direct recruitment, if any, did not exceed 66.66%. However, by amending the said order of O.M. dated 25.4.89 the

reservation in post for promotion was made applicable to all grades of services in which the element of direct recruitment, if any, did not exceed 75% and according to the said O.M. either O.M. dated 25.2.76 or the O.M. dated 25.4.89 reservation in promotion is limited to the lowest rung of Gr.A i.e. Junior Time Scale and not to any higher. The respondents in their reply have stated that the said O.M. is applicable only to the grade or service in the Central Govt. We do not find any such limitation in application of the order dated 25.4.89. We, however, find from the said O.M. that the reservation in promotion has been limited to the lowest rung of Gr. A i.e. Junior Time Scale of Gr.A and as the promotion from the State Civil Services to the IAS takes place at the Senior Time Scale of the All India Services, it is clear that the guidelines/reservation policy as enumerated in the DOP&T O.M. dated 25.4.89 is not applicable in the case of promotion from ACS to IAS. This being the position of law we see no merit in this O.A. which is accordingly dismissed being devoid of merit. No costs.


Member (J)
Vice-Chairman

15 MAR 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI

O. A. No. 67 of 2005

Sri Bhupendra Nath Das

.. Appellant

- Vs -

Union of India & Ors

.. Respondents

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

1. 26.05.2004 .. The impugned notification No.2/2002/Pt/23 publishing the names of five (5) numbers of A.C.S. Officers declaring their appointment on promotion as I.A.S. Officers for the year 2002, Annexure-4(b), Page 33-34.
2. 28.02.1980 .. The date of appointment of this applicant in Assam Civil Service Class-I (Jr. Grade) by Annexure-I.
3. 19.04.2000 .. The date of promotion of your applicant to Senior Grade-I of the Assam Civil Service by Annexure-3.

4. 12.03.2002 .. Date of publication of Gradation List (Sr. Grade) of Assam Civil Service Officers, Annexure-4(a) Page-32.
5. 08.09.1999 .. The Cadre strength of I.A.S. level officers in Assam authorised at No.226, out of which 158 nos. by direct recruitment and 68 by promotion (Annexure-5) Page-35.
6. Para 4(11) .. Assam, Meghalaya Cadre I.A.S. present strength is 50 (fifty) nos. of post; under 33% reservation policy 6 posts to be filled up from Schedule Caste candidate i.e. 7% rate of Quota under constitution of mandate.
7. 24.12.2004 .. The representation filed by your applicant before the respondents No.2 for consideration of the promotion.
8. 25.04.1989 .. The date of notification of the Government of India directing for reservation of post by promotion where the element of direct recruitment-

ment , if any, does not exceed 75%,
the element of direct recruitment in
the instant case did not exceed 75%
(Annexure-7).

Hence this original Application before this
Hon'ble Tribunal.

PRAYER

RELIEFS SOUGHT FOR

1. To direct the Respondents to set aside or quash the impugned notification No.2/2002/Pt/23 dtd. 26th May, 2004 at Annexure-6 issued by the Respondents.
2. To direct the Respondents to promote your applicant to the IAS Cadre in the year 2002 on which five numbers of officers have been promoted from the ACS Cadre and reportedly another 2 nos. of Officers promoted to the IAS Cadre with all consequential service benefits entitled by applicant.
3. To grant such further or other relief or relieves as deemed fit to which the applicant may be entitled having regard to the facts and circumstances of the case.

4. Grant the cost of this application to the applicant.
5. To declare that reservation system inserted in the IAS appointment by competitive examination Regulation 1955, formulated in pursuance of Rule 7 of the IAS (Recruitment) Rules 1954 ~~by~~ are discriminatory. Hence violative of Article 14 of the Constitution of India.

INTERIM ORDER PRAYER FOR

In the interim, it is respectfully prayed that this Hon'ble Tribunal may be pleased to issue a direction/order to the Respondents more particularly to the Respondent No.2 to keep one post of I.A.S. Officers, to be appointed on promotion from the Senior A.C.S. Cadre in accordance with the provision of I.A.S. (Recruitment) Rules 1954 and I.A.S. (Appointment by promotion) Regulation 1955, reserved till the disposal of this application.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

67/05

ORIGINAL APPLICATION NO.....

1. (a) Name of the applicant: B.N. Das
- b) Respondents: Union of India & Ors.
- c) No. of Applicant:
2. Is the Applicant in the proper form: YES/NO
3. Whether name & designation and Address of all the papers been furnished in cause title: YES/NO
4. Has the application been duly signed and verified : YES/NO
5. Have the copies duly signed : YES /NO
6. Have sufficient number of copies of the application been filed: YES/NO.
7. Whether all the annexures parties are impleaded: YES/NO.
8. Whether English translation of documents in the language: YES/NO
9. Is the application is in time : YES/NO.
10. Has the Vakalatnama/Memo of Appearance/Authorisation, filed: YES/NO.
11. Is the application by IPO/BD/For Rs. 50/- 206/18594
12. Has the application is maintainable : YES/NO
13. Has the impugned order original duly attested been filed: YES/NO
14. Has the legible copies of the annexures duly attested filed: YES /NO.
15. Has the Index of documents been filed all available : YES/NO.
16. Has the required number of enveloped bearing full address of the Respondents been filed: YES/NO
17. Has the declaration as required by item 17 of the form: YES/NO
18. Whether the relief sought for arises out of the Single: YES/NO.
19. Whether the interim relief is prayed for: YES/NO.
20. In case of condonation of delay is filed is it support: YES/NO.
21. Whether this case can be heard by ~~SINGLE BENCH~~/DIVISION BENCH.
22. Any other points:
23. Result of the scrutiny with initial of the scrutiny clerk :

15.3.05 The application is in order
SECTION OFFICER

DEPUTY REGISTRAR

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Filed by the
appellant through
G. Kalela
Advocate
15/3/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI.

(An application under Section 19 of the Central Administrative Tribunal Act, 1985).

O.A. No. 67 of 2005

Shri Bhupendra Nath DasAppellant

- Vs -

Union of India & Ors. Respondents.

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Filed by -
G. Kalela
Advocate.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI.

(An application under Section 19 of the Central Administrative Tribunal Act, 1985).

O.A. No. 67 of 2005

Sri Bhupendra Nath Das
Director of Food and Civil Supplies,
Bhangagarh,
Guwahati-05.

.... Appellant

- Versus-

1. Union of India

Represented by the Secretary
Personnel Department,
Ministry of Home,
New Delhi-11.

2. State of Assam

Represented by the Chief Secretary/
Commissioner,
Government of Assam,
Dispur, Guwahati-06.

3. Union Public Service Commission

Represented by its
Chairman,
Dholpur House,
New Delhi.

4. State of Meghalaya

Represented by Commissioner & Secretary
Personnel Department

Contd.....2

Government of *Meghalaya*
Shillong

5. The Chairman,

Selection Committee I.A.S.(Appointment by Promotion)

for the year 2002 (Assam & Meghalaya)

to be served through U.P.S.C.

Dholpur House

New Delhi.

.....Respondents.

1.

Particulars of the order against which the application is made :

The application is made against the impugned Government notification, 2/2002/Pt/23 on 26th May, 2004, demanding consideration of this petitioners right to be considered for appointment by promotion to IAS Cadre, as the only Scheduled Caste candidate. Prejudice caused to the petitioner for non consideration of his candidature in selection in the year 2002. The Government by the impugned Government notification promoted 5 nos. of officers to the ACS in the year 2002 and reportedly 2 nos. of officers to the IAS under the sealed cover due to certain reasons. So all total 7 nos. of officers promoted against the vacancies in the year 2002. The Government Reservation Policy has not been followed while promoting the officers from ACS to IAS. Against a Government total cadre strength in a State at present is 33% posts are to be promoted from the State Civil Service as per rules.

2.

JURISDICTION OF THE TRIBUNAL :

Contd...3

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

3. **LIMITATION ;**

The applicant further declared that this application is filed within the limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. **FACTS OF THE CASE :**

- 4(1) That your humble applicant is a citizen of India and as such he is entitled to all the rights and privileges and protection granted by the Constitution of India.
- 4(2) That your applicant was initially appointed in Assam Civil Service Class-I (Jr. Grade) with effect from the date of their joining and posted as Extra Assistant Commissioner in the station at Dhemaji given him initially as Sub Divisional Officer (Civil) Charaideo, Sub Division.

A copy of the Appointment letter

dtd. 28.2.1980 is annexed herewith

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and marked as Annexure-1.

- 4(3) That thereafter ^{your GK} applicant has been promoted to Senior Grade of ACS-I and was appointed as Project Director, I.T.D.T., Dangarai, Tinsukia.

A copy of the said notification dtd.

26.5.1988 is annexed herewith and

marked as Annexure-2.

- 4(4) That thereafter your petitioner have been finally promoted to Senior Grade-I of ACS on 19.4.2000 by an official notification No.AAA.6.85/217-J.

A copy of the said notification dtd.

19.4.2000 Memo No.AAA.6/85/217-

J is annexed herewith and marked as

Annexure-3.

- 4(5) That thereafter the Personnel Department, Government of Assam had published an office order under notification No.AAP.53/2002/Pt/35 dtd. 2.7.2002 disclosing the gradation list of A.C.S. Officers (Sr.Grade-I) as on

Contd...5

1.5.2002 and in the said list, the name of this petitioner appeared in serial

✓ No.20.

A copy of the said order disclosing the gradation on

2.7.2002 is annexed herewith and marked as

Annexure-4.

4.5(a)

That this appellant begs to state that out of 21 numbers of A.C.S.

Officers shown in the afore noted gradation list as on 1.5.2002 the serial numbers 2, 4, 6, 8 and 10 had not gone before the selection committee as they were over aged and accordingly retired/superannuated. The fate of the serial number 1 and serial number 3 are not known as reportedly they are result is under sealed cover. If serial number 2, 4, 6, 8 and 10 are eliminated then this applicant automatically comes to number 15 (fifteen).

Hence this applicant begs to submit that he is entitled to be considered for IAS and also entitled for appointment on promotion in terms of the scheme/notification No.DOP&T, OM No.36012/17/88 Estt(SCT) dtd.


25.4.89-

“the reservations in posts by promotion under the existing scheme as

indicated above should be made applicable to all grades or services, in which the element of direct recruitment, if any, does not exceed 75%".

(Annexure-7).

4(6)

That thereafter this petitioner had been given the charge of Deputy Commissioner, District Tinsukia, Assam and continuously thereafter, your petitioner has been holding various important assignments as Senior A.C.S. Officer of the Govt. of Assam and presently this petitioner is holding a dual charge as the Director of Supply, Government of Assam and the Chief Executive Officer of Assam Khadi and Village Industries Board, Guwahati.

4(7)

That your applicant begs to submit that as per provision of the Act and the Regulation State Government is required to make and publish a list of ACS officers to be appointed by promotion to the IAS Cadre from among the Senior Officers selected by the Selection Committee on yearly basis and is doing so, the Selection Committee and the (State) Government is required to keep in mind the reservation policy and concerned notification /direction orders issued from time to time by

Contd...7

the Central Government in that regard pursuant to the settled legal position under Article 16(4) and 4(A) of the Constitution of India.

A copy of the said notification is annexed herewith and marked as Annexure-4(a)

4(8) That your applicant begs to submit that in the year 2002 reportedly he was within the zone of consideration of total selected candidates but his name has not been considered for promotion to the IAS Cadre under the impugned notification No.2/2002/Pt/23 on 26th May, 2004. Thus the Government of Assam had promoted 5 (five) numbers of Officers from the A.C.S. Cadre for the year 2002 and reportedly another 2 nos. of Officers promoted to the I.A.S. under the sealed cover due to certain reason. So all total 7 nos. of Officers promoted against the vacancies in the year 2002.

A copy of the said notification dated 26.5.2004 is annexed herewith and marked as Annexure-4(b).

4(9) That your applicant begs to state that although he was within the

zone of consideration among 28 officers his name has not been considered

✓ for promotion to I.A.S. while giving appointment by promotion from

A.C.S. officers to I.A.S. Cadre the settled principles of law and the reservation policy had not been followed and hence your applicant has been deprived of his due appointment by promotion in the I.A.S. Cadre.

So prejudice has been caused to your applicant by non-consideration of the mandatory provisions of the Reservation Policies of the Central Govt. and the provision of Assam Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Act 1978.

4(10) That your applicant begs to state that the total Cadre strength in the I.A.S. level in Assam authorized at no.226 out of which 158 nos. to be filled by direct recruitment and 68 nos. by promotion.

A copy of the said notification dtd. 8.9.1999

of the Government of Assam is annexed herewith

and marked as Annexure-5.

4(11) That the petitioner begs to state that in State Cadre, as per prevailing norms 33% posts were to be promoted from the State Civil Service against the

total Cadre strength. The respondents did ^{not} adhere to the formulated policies for which the 33% had not been represented adequately by the Scheduled Caste/Scheduled Tribes officers in I.A.S. Cadre under the present cadre strength of Assam, Meghalaya Cadre about 50 nos. of posts have been filed up from State Civil Service and in this situation at least six (6) posts ought to have been offered to Scheduled Caste candidates following the reservation policy of the State Government, Central Government and the constitutional mandate as well quota which has been fixed at the rate of 7% in this regard. Hence in the circumstances your applicant has a just and legal right to be considered for appointment on promotion to the IAS Cadre as he belongs to Scheduled Caste community and was within the zone of consideration in the year 2002.

4(12) That the petitioner begs to submit that reservation policies and constitutional mandate are followed strictly in case of 66% appointment by direct recruitment to IAS, there is no reason as to why the formulated reservation policies should not be followed in appointment by promotion to IAS from the State Civil Service on the 33% appointment by

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promotion. The provision and omissions of both the legislations IAS (Appointment by Competitive Examination) Regulation, 1955 and the IAS (Appointment by promotion) Regulation, 1955 are discriminatory and the IAS (Recruitment) Rules 1954 are discriminatory and violative of Article 14 of India.

4(13)

That the petitioner begs to submit that he was stunned as soon as he came to know that his name did not appear in the promotion list; to the best of the knowledge of this petitioner there was no cogent reasons for not getting the appointment on promotion to the IAS Cadre even when he is one of the Sr. A.C.S. Officers was within the zone of consideration for selection to the I.A.S. Cadre and also a scheduled caste candidate, neither any case is pending nor any adverse performance report has ever been communicated to your petitioner during his long service tenure. Your petitioner has rendered on unblemished record of service with outstanding performance so far and never reported any short coming in his performance by the superior offices of the department to the best of his knowledge.

4(13)(a)

That the petitioner begs to submit that as the procedure framed for selection of Officers for appointment on promotion from amongst the Senior A.C.S. officers to I.A.S. Cadre must be made regularly on year to year basis subject to vacancies existing in the particular year, but in so far as the instant case is concerned the statutory provisions and mandate of relevant rules, regulations and notification, issued by the State and the Central Government from time to time in this regard has not been

followed since the year 2001-2002 and hence enough prejudice has caused to the petitioner for the omission done by the respondents. And the selection and the appointment done under the notification No.2/2002/Pt/23 dtd. 26.5.2004 is irregular and arbitrary. This petitioner came to know about the impugned notification only in the month of December, 2004 after making inquiry from the concerned office.

4(14) That your applicant begs to submit that it is reliably learnt that ^A ^{GR} CRs of the applicant are not inferior to some of the Officers promoted by the Respondent in the impugned order which can be verified by calling the records from the Respondents.

4(15) That your applicant begs to submit that your applicant submitted a representation before the Chief Secretary, Government of Assam Dispur demanding justice in regard to the impugned notification and claimed that as your applicant was the only Scheduled Caste candidate in the consideration zone of 2002. He deserved appointment on promotion to the IAS Cadre in terms of various settled laws and declared policies of the Government. But till date he has not received any response and the applicant is convinced that no useful purpose will be served by waiting any longer and as such he is approaching this Hon'ble Tribunal for relief due to him.

Copies of the said representation dated 24.12.2004 is annexed

Contd..12

herewith and marked as Annexure-6.

4(16) That your applicant begs to submit that at present his age is about 56 years or slightly more and the age bar has been touched for which he will be deprived of his legitimate and just claims for blatant omission on part of the Respondent and such omission tantamount to the violation of Fundamental Rights and state policies inshrined in the constitution of India.

4(17) That your applicant begs to submit that being aggrieved at the irregular and arbitrary act and glaring omission on part of the Respondent. While issuing the impugned notification depriving this applicant from being appointed by promotion to IAS Cadre he is compelled to prefer this petition before this Hon'ble Tribunal for kind and appropriate order.

4(18) That your applicant begs to submit that the Government of India amended Rule 16 of the All India Services Death-cum-Retirement Benefit Rules 1958 (Sub rule (1) enhancing the age of retirement from 58 to 60 years including IAS). It is therefore just and proper to proportionately increase the maximum age limit to 56 years under the Indian Administrative

Service (Appointment by Promotion) Regulations 1977. Failure to do so by the Government of India is affecting the fundamental right of the applicant who is eligible and entitled to be considered for appointment to the post of IAS.

4(19) That your applicant begs to submit that the attitude of the Respondent in regard to the implementation of reservation policies while promoting officers from amongst senior ACS Cadre to the IAS Cadre seems to be step motherly as a matter of fact that there are no adequate representation of Scheduled Caste Officers in the IAS Cadre in the State of Assam.

4(20) That your applicant begs to submit that in Assam as per provision of the Assam Schedule Caste/Schedule Tribe (Reservation of vacancies in service and posts) Act 1978 there shall be 7% reservation in all cadres from the Schedule Caste community. On the basis of above reservation policy, which is the reflection of the population pattern^{6x} of the State at least 6 nos. post out of total 68 nos. post to be filled up from State Civil Service should be filled up from S.C. Officers. But it is seen only 2 nos. of officers being promoted to the IAS so another 4 nos. of posts are still

lying as backlog. The State Government and the Central Government are constitutionally and morally bound to promote officers of the reserved category in all services which includes promotion from State Services to Central Services as per existing State or Central Government norms. The Central Government appoints S.C. and other reserved category officers by implementing reservation policy in case of fresh recruitments every time to the Central Services (IAS etc). But this fresh recruitments covers only 66% of the total cadre strength and the remaining 33% of the posts left either unrepresented or less represented as it happened as at present in Assam. This is not fair, unjustified and a matter of hostile attitude towards the officers of reserved category (as shown by the state and Central Government Officer). Adequate representation of the officers of the reserved categories must be made in all services by the Governments.

4(21)

That your applicant begs to submit that the Central Government and the State Government had issued O.Ms in order to effect seniority of S.C./S.T. Government services on promotion by virtue of rule of

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reservation/roster vide No.2001-1/2001 Estt(D) Dtd. 21, Jan. 2002
Ministry of Personnel, Public Grievances and Pension, Government of
India, New Delhi and OM No.ABP.59/96/163 dtd. Dispur the 12th March
2002 consequent upon the amendment of Article 16(4)(A) of the
Constitution of India (85th amendment). The reservation policy and
constitutional mandate carried out strictly in the Indian Administrative
Service (Appointment by competitive Examination) Regulation 1955.

4(22) That your applicant begs to submit that under the present cadre strength in
the IAS level is 226 and against this strength the total promotion post is 68
nos. So there shall be atleast 6 nos. of post to be filled up from the
Scheduled Caste Officers under the provisions of the Assam Scheduled
Caste, Scheduled Tribes reservation Act. But at present there are only 2
(two) nos. of officers in the Cadre. Hence the Scheduled Caste officers are
not adequately represented.

4(23) That your applicant begs to submit that the intention of the Government
Notification No.DOP&T O.M.No.36012/17/88-Estt(SCT) dtd. 25.4.1989
for making reservation for promotion has not been followed in its later and

Contd...16

spirit wherein it has been specifically mentioned as hereunder :

The question of enlarging the scope of the existing scheme of reservation for Scheduled Castes and Scheduled Tribes in posts filled by promotion by extending it to grades or services in which the element of direct recruitment is more than 66-2/3% has been under the consideration of Government.

It has now been decided in partial modification of above mentioned O.M. that the reservations in posts by promotion under the existing scheme as indicated above should be made applicable to all grades or services, in which the element of direct recruitment, if any, does not exceed 75%.

A copy of the said notification dtd.

25.4.1989 is annexed herewith and

marked as Annexure-7.

4(24)

That the petitioner begs to state that the Government of Assam has from time to time issued various notification and memorandum high

Contd...17.

lighting and directing the appointing authorities to make / take appropriate steps for promoting the Scheduled Caste and Scheduled Tribes candidates both by direct recruitment and promotion in their respective department.

A copy of the said notification dated.

14.7.2004 is annexed herewith and

marked as Annexure-8.

4(25) That there is no efficacious alternative remedy and the remedy sought for is just and proper.

4(26) That this petition has been filed bonafide and for ends of justice.

GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5(1) For that the actions of the Respondents in not giving appointment by promotion to IAS Cadre is illegal, arbitrary and violative of Part III and Part IV of the Constitution of India and also violative of other procedures and policies and his name ought to have been included in the Government notification dtd. 26.5.04. Hence, the impugned notification is bad in law

Contd...18.

and liable to be set aside.

5(2) For that the applicant has suffered and enough prejudice has been caused to him and other similarly situated officers for discriminatory treatment by the respondents is in clear violation of Article 14 of the Constitution.

5(3) For that the applicant further submits that being a model employer the Respondents cannot deprive the promotion of the applicant without any reason.

5(4) For that the applicant submits that no adverse remark in the ACR of the applicant was ever communicated to him through out his service career and as such there can be no justification whatsoever in denying promotion to the applicant and superceding him by at least two of his juniors and as such the impugned orders are bad in law and the applicant is entitled to be promoted from the date his juniors were so promoted.

5(5) That the petitioner begs to state that the Respondents have not applied their mind to the constitutional mandate and various settled laws declared by the Apex Court in so far as the promotion of reserved category

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candidate to IAS scale from the State Cadre. Hence this Hon'ble Court has long arms under the writ jurisdiction for issuance of an order/direction for compliance of mandatory provisions of constitution/declared laws by Apex Courts and other scores of notification/orders issued by the Government of India in this regard from time to time.

It is further respectfully submitted that the Respondents have willfully blocking the avenues of upliftment and progress of the backward communities which tantamount to deliberate deprivation of the fruits grown by the legislatures from time to time for the social upliftment.

6. **DETAILS OF REMEDIES EXHAUSTED :**

That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

The applicant further declare that he has not filed any application, writ petition or suit in respect or the subject matter of the instant application before any other Court authority nor any such applications, writ petition or suit is pending before any of them.

8. **RELIEF SOUGHT FOR :**

Under the facts and circumstances stated above the applicants most respectfully prayed that your Lordships may be pleased to admit this application call for the entire records of the case including the ACRs of the applicant and others and also the minutes of the Selection Committee and after hearing the parties on the cause or causes that may shown and on perusal of the records grant the following relief to the applicant.

- 8(i) To direct the Respondents to set aside or quash the impugned notification No.2/2002/Pt/23 dtd. 26th May, 2004 at Annexure-4(b) issued by the Respondents.
- 8(ii) To direct the Respondents to promote your applicant to the IAS Cadre in the fyear 2002 on which five numbers of officers have been promoted

from the ACS Cadre and reportedly another 2 nos. of officers promoted to the IAS Cadre with all consequential service benefits entitled by applicant.

8(iii) To grant such further or other relief or relieves as deemed fit to which the applicant may be entitled having regard to the facts and circumstances of the case.

8(iv) Grant the cost of this application to the applicant.

8(v) To declare that reservation system inserted in the IAS appointment by competitive examination Regulation 1955, formulated in pursuance of Rule 7 of the IAS (Recruitment) Rules 1954 are discriminatory. Hence violative of Article 14 of the Constitution of India.

9. DOES NOT ARISE :

10. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN RESPECT

OF THE APPLICATION FEE: 206116594, Rs 50/-, 10/3/2005

11. LIST OF ENCLOSURES :

As stated in the INDEX.

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VERIFICATION

I, Sri Bhupendra Nath Das, son of Late Rabindra Nath Das, resident of Guwahati, Assam, aged about 56 years, by occupation Director, Food and Civil Supplies, Government of Assam and Chief Executive Officer, Assam Khadi and Village Industries Board, Guwahati do hereby solemnly verify that the statements made in Paragraphs 4(1, 6, 9, 11, 12, 13, 14, 15, 19, 21, 25) are true to my personal knowledge and statements made in paragraphs 4(2, 3, 4, 5, 7, 8, 10, 16, 24, 26, 22, 23) are being matter of records which are true to my information derived there from and are believe to be true to my legal advice and rest are my humble submission before this Hon'ble Tribunal I have not suppressed any material facts.

And I sign this verification on this the 15th day of March, 2005 at Guwahati.

Bhupendra Nath Das
DEPONENT

ORDERS BY THE GOVERNOR
Notification

February 28, 1980.

No. AAA.13/79/pt.1/134 : The following persons are appointed, on probation, to Assam Civil Service Class-I (Jr. Grade) with effect from the date of their joining and posted as Extra Assistant Commissioner in the station noted against each.

- | | | |
|--------------------------------------|---|-----------------|
| 1. Shri Rafiquz Zaman | - | Dibrugarh |
| 2. Shri Hara Mohan Barman | - | Tinsukia |
| 3. Syed Iftikhar Hussain | - | North Lakhimpur |
| 4. Shri Khagen Sarma | - | Silchar |
| 5. Shri Karuna Kanta Kalita | - | Sibsagar |
| 6. Shri Sabir Hussain | - | Golaghat |
| 7. Shri Apurba Kr. Phukan | - | Nowjong |
| 8. Shri Swapnanil Barua | - | Gauhati |
| 9. Shrimati Sonmai Bora | - | Mongoldoi |
| 10. Shri Shantonoo Thakur | - | Dhubri |
| 11. Shri Sanesh Kr. Kalita | - | Tezpur |
| 12. Shri Sailendra Kr. Nath | - | Diphu |
| 13. Md. Nawab Mahmood Hussain | - | Nalbari |
| 14. Shri Harendra Nath Bora | - | Lohai |
| 15. Shrimati Sumitra Das (nee Dutta) | - | Goalpara |
| 16. Shri Rajib Lochan Baruah | - | Karimganj |
| 17. Shri Chittaranjan Kalita | - | Barpeta |
| 18. Shri Jiauddin Ahmed | - | Hatlong |
| 19. Shri Jatin Gogoi | - | Hailakandi |
| 20. Shri Mridendra Kalita | - | Barpeta |
| 21. Shri Karmad Ranjan Das | - | Sadiya |
| 22. Shri Dicken Ch. Sonowal | - | Karimganj |
| 23. Shrimati Maimie Hajer | - | Dhubri |
| 24. Shri Bhupendra Nath Das | - | Dhemaji |

- Their relative seniority will be determined later on.

Sd/- J. Hazarika,
Secretary to the Government of Assam.
Memo No. AAA.13/79/pt.1/134-A, Dated Dispur, the 28th February, 1980.

- Copy to :-
1. The Accountant General, Assam etc., Shillong-793 001.
 2. The Commissioner of Upper Assam Division, Jorhat.
 3. The Commissioner of Lower Assam Division, Gauhati.
 4. The Commissioner of Hills Division, Gauhati.
 5. All persons concerned. They should report for duty within 15 days of receipt of this appointment order.
 6. All Deputy Commissioners/Sub-Divisional Officers concerned. They are requested to see that all probationers get chance to learn work of all the branches of their offices.
 7. The Supdt. Assam Govt. Press, Banunimaidan, Gauhati-781 021 for publication of the notification in the next issue of the Assam Gazette.
 8. The Secretary to the Governor of Assam, Dispur.

P.T.O.

Shri Bhupendra Nath Das,

Jamuna Road West-2,

certified to be true copy
G. Kalita, Advocate;

-24-

-: 2 :-

9. Adviser (A) to the Governor of Assam, Dispur.
10. Adviser (D) to the Governor of Assam, Dispur.
11. The P.S. to the Chief Secretary to the Govt. of Assam, Dispur.
12. The Secretary, Assam Public Service Commission, Baisietha Road
Gauhati-781 006 with reference to the Commission's letter No.
4PSC/CCE-Exam/78-79, dt. 15.10.79 for information and necessary action.

By order etc.

(J Hazarika)

Secretary to the Government of Assam.

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ANN-2

-25-
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL :: A)
ASSAM SECRETARIAT (CIVIL) DISUR
GUWAHATI-781006.
(200)

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ORDERS BY THE GOVERNOR.
NOTIFICATION.

The 26th May, 1988.

NO. AAP. 134/87/56 : On his services being replaced at the disposal of Personnel (A) Department by Hill Areas Department, the services of Shri Bijoy Kumar Datta, ACS, Project Co-ordinator, I.J.D.P., Office of the Development Commissioner for Hill Areas, Assam are placed at the disposal of Revenue (Settlement) Department for appointment as Settlement Officer, Cachar District with effect from the date he takes over charge until further orders.

NO. AAP. 134/87/56-A : Shri Syed Iftikhar Hussain, ACS, Sub-Divisional Officer (Sadar), Karimganj is temporarily promoted to officiate in the Senior Grade of ACS-I and his services are placed at the disposal of Hill Areas Department for appointment as Project Co-ordinator, I.J.D.P., Office of the Development Commissioner for Hill Areas, Assam, Guwahati with effect from the date he takes over charge until further orders vice Shri Bijoy Kumar Datta, ACS transferred.

NO. AAP. 134/87/56-B : Shri Karuna Kanta Kalita, ACS, Sub-Divisional Officer (Civil), Sadiya Sub-Division is temporarily promoted to officiate in the Senior Grade of ACS-I and his services are placed at the disposal of Panchayat & Rural Development Department for appointment as Project Director, District Rural Development Agency, Barpeta District with effect from the date he hands over charge until further orders vice Shri Bhaba Gogoi, ACS transferred.

NO. AAP. 134/87/56-C : Shri Sabbir Hussain, ACS, Under Secretary to the Government of Assam, Political (Border) Department is temporarily promoted to officiate in the Senior Grade of ACS-I and is transferred and posted as Deputy Secretary to the Government of Assam, Panchayat and Rural Development Department with effect from the date he takes over charge until further orders vice Shri B. G. Bhattacharjee, ACS transferred.

NO. AAP. 134/87/56-D : Shri Apurba Kumar Bhukan, ACS, Sub-Divisional Officer (Civil), Maibong Sub-Division is temporarily promoted to officiate in the Senior Grade of ACS-I and is transferred and posted as Deputy Secretary to the Government of Assam, W.P.T. & B.C. etc. Departments with effect from the date he takes over charge until further orders vice Smt. Gayatri Baruah, ACS transferred.

*certified to be true copy
G. Kalita, Advocate*

NO. AAP. 134/87/56-E : Shri Swapnani Barua, ACS, Sub-Divisional Officer (Civil), Udalguri Sub-Division is temporarily promoted to officiate in the Senior Grade of ACS-I and his services are placed at the disposal of W.F.T. & B.C. Department for appointment as Project Director, I.T.D.P., Kokrajhar with effect from the date he takes over charge until further orders vice Shri Sibamanda Sanna, ACS retired.

NO. AAP. 134/87/56-F : Smti. Gomai Bora, ACS, Under Secretary to the Government of Assam, Labour & Employment Department is temporarily promoted to officiate in the Senior Grade of ACS-I and is transferred and posted as Deputy Secretary to the Government of Assam, Health & F.W. Department with effect from the date she takes over charge until further orders vice Shri Bharat Ch. Tudu, ACS retired.

NO. AAP. 134/87/56-G : Shri Shantaboo Bhakur, ACS, Under Secretary to the Government of Assam, Excise and Cooperation Departments is temporarily promoted to officiate in the Senior Grade of ACS-I and is posted as Deputy Secretary to the Government of Assam, Excise and Cooperation Departments with effect from the date he takes over charge until further orders.

NO. AAP. 134/87/56-H : Shri Ganesh Kumar Kalita, ACS, Sub-Divisional Officer (Civil), North Salmara Sub-Division, Aihayapuri is temporarily promoted to officiate in the Senior Grade of ACS-I and is transferred and posted as Deputy Secretary to the Government of Assam, Revenue Department with effect from the date he takes over charge until further orders.

NO. AAP. 134/87/56-I : Shri Sailendra Kumar Nath, ACS, Sub-Divisional Officer (Civil), Cossigaon is temporarily promoted to officiate in the Senior Grade of ACS-I and is transferred and posted as Additional Deputy Commissioner, Kokrajhar with effect from the date he takes over charge until further orders.

NO. AAP. 134/87/56-J : Shri Nawab Mahmood Hussain, ACS, Sub-Divisional Officer (Civil), Jonai Sub-Division is temporarily promoted to officiate in the Senior Grade of ACS-I and his services are placed at the disposal of W.F.T. & B.C. Department for appointment as Project Director, I.T.D.P., Jorhat with effect from the date he takes over charge until further orders vice Shri Sishu Ram Pegu, ACS retired.

NO. AAP. 134/87/56-K : Shri Harendra Nath Bora, ACS, Sub-Divisional Officer (Civil), Gaidipani, is temporarily promoted to officiate in the Senior Grade of ACS-I and is transferred and posted as Deputy Secretary to the Govt. of Assam, Education Department with effect from the date he takes over charge until further orders.

NO. A.P. 134/87/56-L : Shri Nagendra Nath Deka, ACS, Sub-Divisional Officer (Civil), Charideo Sub-Division is temporarily promoted to officiate in the Senior Grade of ACS-I and his services are placed at the disposal of W.P.T. & B.C. etc. Departments for appointment as Project Director, I.T. D.P., Pangori, Tingkhla.

NO. A.P. 134/87/56-M : Shri Nripendra Kalita, ACS, Sub-Divisional Officer (Sadar), Dhubri is transferred and posted as Sub-Divisional Officer (Civil), North Salmara, Sub-Division, Ahayapuri with effect from the date he takes over charge until further orders vice Shri Ganesh Kumar Kalita, ACS promoted and transferred.

NO. A.P. 134/87/56-N : Shri Dipak Kumar Goswami, ACS, Sub-Divisional Officer (Sadar), Kokrajhar is transferred and posted as Sub-Divisional Officer (Civil), Sadiya Sub-Division with effect from the date he takes over charge until further orders vice Shri Karuna Kanta Kalita, ACS promoted and transferred.

NO. A.P. 134/87/56-O : Shri Kamlasan Goswami, ACS, Sub-Divisional Officer (Sadar), Darrong, Mangaldoi is transferred and posted as Sub-Divisional Officer (Civil), Jorai Sub-Division with effect from the date he takes over charge until further orders vice Shri Mahmood Hussain, ACS promoted and transferred.

NO. A.P. 134/87/56-P : Shri Nagendra Nath Deka, ACS, Deputy Secretary to the Government of Assam, Industries and Excise Department is relieved of the charge of the Excise Department with effect from the date Shri Shantanoo Thakur, ACS takes over charge.

NO. A.P. 134/87/56-Q : Shri Ananta Kumar Malakar, ACS, Deputy Secretary to the Government of Assam, Handloom, Textile and Sericulture, W.P.T. & B.C. Departments is relieved of the charge of W.P.T. & B.C. Department with effect from the date Shri Apurba Kumar Phukan, ACS takes over charge.

Sd/- K. BORAH,
Secretary to the Government of Assam.

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Mem. NO. A.P. 134/87/56-R, Dated Dispur, the 26th May, 1988.
Copy to :-

1. The Accountant General (Accounts), Assam, Dillong.
2. The Chairman, Assam Administrative Tribunal, Guwahati.
3. The Chairman, Assam Board of Revenue, Guwahati.
4. All Commissioner & Secretaries/Spl. Secretaries/Secretaries to the Government of Assam.
5. All Commissioner of Divisions, Assam.
6. All Deputy Commissioners/Sub-Divisional Officers.
7. The Joint Secretary, Governor's Secretariat, Dispur.
8. All Departments of Assam Secretariat/ Heads of Deptt.
9. The Supt., Assam Govt. Press, Bamunimaidan, Guwahati-21 for publication in the Assam Gazette.
10. The P.S. to Chief Minister, Assam.
11. The Joint Secretary to Chief Minister, Assam.
12. All P.S. to Minister/Ministers of State.
13. The P.S. to Chief Secretary, Assam.
14. The P.S. to Director Genl. of Eng (ASG), Assam, Dispur.
15. Officers concerned.
16. Department concerned.
17. Personal file of officers.

By orders etc.,

A.K. Dasgupta 26.5.88

(A.K. DASGUPTA)

Deputy Secretary to the Government of Assam.

Mt/.

111
26/5/88

- 29 - ANN-03

45

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

ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Disbur, the 19th April, 2000.

- NO.AAA.6/85/217 : Shri Abhay Kr. Verma, ACS, Joint Secretary to the Govt. of Assam, W.P.T. & B.C. Department is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-A : Shri Mrinal Kanti Nag, ACS, Addl. Deputy Commissioner, Dhubri is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-B : Dr. Rafiquz Zaman, ACS, Director, Welfare of Scheduled Caste, Assam Guwahati is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-C : Shri Karuna Kanta Kalita, ACS, Secretary, Assam Public Service Commission, Guwahati is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-D : Shri Sabbir Hussain, ACS, Managing Director, Assam State Warehousing Corporation, Guwahati is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-E : Shri Apurba Kr. Phukan, ACS, Director, Fisheries, Assam, Guwahati is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-F : Shri Swapnanil Barua, ACS, Deputy Commissioner, Barpeta is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-G : Smti. Sonmai Barua, ACS, Director of Cultural Affairs, Assam Guwahati is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-H : Shri Shantanu Thakur, ACS, Deputy Commissioner, Cachar is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.
- NO.AAA.6/85/217-I : Shri Ganesh Kr. Kalita, ACS, Joint Secretary to the Govt. of Assam, Home & Political Department is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.

Contd.....2

Certified to be true copy.
G. Kalita, Advocate

Indira
19/4/2000

NO.AAA.6/85/217-J : Shri Bhupendra Nath Das, ACS, Chief Executive Officer, Assam Khadi & Village Industries Board, Guwahati is promoted to officiate in the Senior Grade-I of ACS with effect from the date of taking over charge.

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

MEMO NO.AAA.6/85/217-K ; Dated Dispur, the 19th April, 2000.

Copy to :-

1. The Accountant General (AGE), Assam, Maidamgaon, Beltola, Guwahati-28.
2. The Chairman, Assam Administrative Tribunal, Guwahati.
3. The Chairman, Assam Board of Revenue, Guwahati.
4. The Chairman, Assam State Electricity Board, Guwahati.
5. All Principal Secretaries/Commissioners & Secretaries/Secretaries to the Govt. of Assam.
6. The Chief Electoral Officer, Assam, Dispur.
7. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
8. The Agricultural Production Commissioner, Assam, Dispur.
9. All Commissioners of Divisions, Assam.
10. The Chief Secretary to the Govt. of Meghalaya, Shillong.
11. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
12. The Under Secy. to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Department of Personnel & Training, New Delhi.
13. The Under Secy. to the Govt. of India, Ministry of Personnel, P.G. & Pensions, Career Management Division, New Delhi.
14. The Secretary to the Governor of Assam, Dispur.
15. The Secretary, Assam Legislative Assembly, Dispur.
16. The PPS to Chief Minister, Assam, Dispur.
17. All Principal Secretaries of the Autonomous Councils, Assam.
18. The Secretary, State Election Commission, Assam, Dispur.
19. All Deputy Commissioners/Sub-Divisional Officers.
20. The Secretary-cum-Registrar, C/O the Lokayukta, Nabin Nagar, Guwahati.
21. All Heads of Depts/All Depts of Assam Secretariat.
22. The PS to Chief Secretary, Assam, Dispur.
23. The PS to Adml. Chief Secretary, Assam, Dispur.
24. All PS to Ministers/Ministers of State.
25. Officers concerned.
26. Departments concerned.
27. The Nazir, Assam Sectt. (Civil), Dispur.

Shri Bhupendra Nath Das, ACS By Order etc.,

CEO, Assam Khadi & Village Industries

Board,

Ghy.

(H.N. SARMA) 19/4/2000
Under Secretary to the Govt. of Assam

ANN-4
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- 24 -

GOVERNMENT OF ASSAM
PERSONNEL : : : : : (A) : : : : : DEPARTMENT
ASSAM SECRETARIAT (CIVIL) DISBUR.
GUWAHATI - 781006.

NO.AAP.53/2002/pt/35

Dated Dispur, the 2nd July'2002.

OFFICE ORDER

The enclosed gradation list of ACS officers revised in pursuance of the OM No.AAP.59/96/63, dated 12.3.2002, in the context of the 85th amendment of the Constitution of India is hereby published for general information.

Sd/-J.P.SAIKIA,
Commissioner & Secy.to the Govt.of Assam
Personnel (A) Department.

Memo.No.AAP.53/2002/pt/35-1. Dated Dispur, the 2nd July'2002.

Copy forwarded to :-

1. The Accountant General (M&A), Assam, Majidamgaon, Beltola, Guwahati - 78.
2. All ACS officers.

S. Thakur, ACS,

Dy. Secy, G.A. Dept.

By order etc.,

[Signature]

(H.O. SARMU)

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

*Certified to be true copy
G. Kalita, Advocate*

-32- ANN- 4(a) 58

Gradation list of V.A.C.S. Officers as on 1-5-2002
in pursuance of O.M.No. ABP. 55/96/163 dtd. 12.3.2002.

| Sl. No. | Name | Qualification | Date of birth | Home Dist. | Date of entry in ACS | Caste | Remarks |
|---------|-------------------------------|----------------|---------------|------------------|----------------------|--------|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1. | Shri Gokul Ch. Sarma | M.A. | 1-3-48 | Jorhat | 13.11.75 | G. | Subject to outcome of Civil Rule No. 3316/96 filed by him in the High Court. |
| 2. | Shri Harendra Nath Bhuyan. | M.A. | 25.2.46 | Lakhi- pur. | 1977 | G. | |
| 3. | Shri Pradip Kr. Das | M.A. | 16.3.53 | Cachar | 1977 | G. | |
| 4. | Md. Narul Haque | M.A. | 28.2.46 | Jorhat | 1977 | G. | |
| 5. | A.B. Mahammad Eunus | M.A. LLB. | 1.2.53 | Kamrup | 1977 | G. | |
| 6. | Shri Banikanta Pegu | M.A. | 1.10.47 | Jorhat | 1977 | ST(P) | |
| 7. | Shri Balendra Basumatary | M.A. LLB. | 1.8.48 | Bongai- gaon. | 7.5.77 | (ST(P) | |
| 8. | Shri Bimal Kr. Hazarika | M.A. | 1.3.45 | Kamrup | 1977 | S.C. | |
| 9. | Shri Subhash Longmai- lai. | B.A. | 23.2.53 | N.C. Hills | 2.5.77 | ST(H). | |
| 10. | Shri Jyoti Prasad Das | B.A. | 1.3.45 | Kamrup | 1977 | S.C. | |
| 11. | Dr. Rafiquz Zaman | M.Sc. | 1.2.51 | Jorhat | 21.3.80 | G. | |
| 12. | Syed Iftikhar Hussain | M.Sc. Ph.D. | 21.9.54 | Golaghat | 1980 | G. | |
| 13. | Shri Karuna Kanta Kalita. | B.A. | 1.1.50 | Kamrup | 10.3.80 | G. | |
| 14. | Md. Subbir Hussain | M.Sc. Ph.D. | 1.1.55 | Dibrugarh | 1980 | G. | |
| 15. | Shri Apurba Kr. Phukan | M.Sc. Ph.D. | 1.4.52 | Dibrugarh | 1980 | G.B.C. | |
| 16. | Shri Swapnanil Barua | B.A. | 21.7.56 | Kamrup | 8.3.80 | G. | |
| 17. | Smt. Sonmaj Barua | LLB. | 1.1.52 | Tinsukia | 6.2.76 | G. | |
| 18. | Shri Santanu Thakur | M.A. | 4.11.55 | Jorhat | 24.3.80 | G. | |
| 19. | Shri Ganesh Ch. Kalita | M.A. | 3.11.55 | Sibsagar | 20.3.80 | G. | |
| 20. | Shri Eupendra Nath Das | M.A. LLB. | 1.11.48 | Sibsagar | 1980 | SC. | |
| 21. | Shri Sailendra Kumar Nath. | M.Sc. | 1.1.54 | Barpeta | 1980 | G.B.C. | |

Contd... 2/-

certified to be true copy.
G. Kalita, Advocate

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

ORDERS BY THE GOVERNOR
NOTIFICATION.

Dated Dispur, the 26th May, 2004.

NO. AAI.2/2002/Pt/23 : The following notification issued by the Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training is reproduced below for general information -

"Notification No.14015/06/2003-AIS(I)-B dated 25th May, 2004 - In exercise of the powers conferred by Sub-Rule (I) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (I) of Regulation 9 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Rule 3 of the Indian Administrative Service (Probation) Rules, 1954, the President is pleased to appoint the following members of the State Civil Service of Assam to the Indian Administrative Service against the vacancies of the year 2002 on probation with immediate effect until further orders and to allocate them to the Assam segment of the joint Assam-Meghalaya Cadre, under sub-rule (I) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954 :-

| <u>Sl.No.</u> | <u>Name of the Officer (S/Sh)</u> |
|---------------|-----------------------------------|
| 1. | A.B.M.D. Eu |
| 2. | Balendra Satyary (STP) |
| 3. | Subhash Ch. Longmailei (STH) |
| 4. | Rafique Zaman |
| 5. | Syed Iftikhar Hussain |

Sd/-

(K.K.Sharma)
Desk Officer

Sd/-D.K.Goswami,
Joint Secretary to the Govt. of Assam,
Personnel (A) Department.

Memo.No.AAI.2/2002/Pt/23-A, Dated Dispur, the 26th May, 2004.

Copy to :-

1. The Accountant General, Assam, Guwahati-29.
2. The Chairman, Assam Administrative Tribunal, Guwahati.
3. The Chairman, Assam Board of Revenue, Guwahati.
4. The Chairman, Assam State Electricity Board, Guwahati.

certified to be true Contd. 2/-
Copy, G. Kanta Advocate

5. The Chairman, Assam Administrative Reforms Commission, Dispur.
6. All Principal Secretaries/Commissioner & Secretary/Secretaries to the Govt. of Assam.
7. The Chief Electoral Officer, Assam, Dispur.
8. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
9. The Agricultural Production Commissioner, Assam.
10. All Commissioners of Divisions, Assam.
11. The Chief Secretary to the Govt. of Meghalaya, Shillong.
12. The Commissioner & Secretary to the Chief Minister, Assam.
13. The Secretary to the Governor of Assam.
14. The Under Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pension Department of Personnel & Training, New Delhi.
15. The Under Secretary to the Govt. of India, Ministry of Personnel, Public Grievances, Career Management Division, New Delhi.
16. The Secretary, Assam Legislative Assembly, Dispur.
17. The Research Officer, Career Management Division, Department of Personnel & Training, Room No. 215, North Block, New Delhi.
18. The PPS to Chief Minister, Assam.
19. All Principal Secretaries of the Autonomous Councils, Assam.
20. All Deputy Commissioners/Sub-Divisional Officers, Assam.
21. The Secretary, State Election Commission, Assam.
22. All Heads of Department/All Department of Assam Secretariat.
23. The Deputy Director, Assam Govt. Press, Guwahati-21 for publication in the Assam Gazette.
24. The PS to Chief Secretary, Assam.
25. The PS to Addl. Chief Secretaries, Assam.
26. All PS to Ministers/Ministers of State, Assam.
27. The Secy (Press & PR) to the Chief Minister, Assam.
28. Officers concerned.
29. Department concerned.
30. Personal file of the officers.

By order etc.,

(N.C. MISRA)

Deputy Secretary to the Govt. of Assam,
Personnel & Training Department.

7. The Resident Commissioner, Govt. of Assam, Assam House, New Delhi.
8. All Commissioners of Divisions, Assam.
9. The Agriculture Production Commissioner, Assam, Dispur.
10. The Chief Secretary to the Govt. of Meghalaya, Shillong.
11. The Under Secretary to the Govt. of India, Ministry of Personnel, PG & Pensions, Deptt. of Personnel & Training, New Delhi.
12. The Under Secretary to the Govt. of India, Ministry of Personnel, PG & Pensions, Career Management Division, New Delhi.
13. The Commissioner & Secretary to the Chief Minister, Assam, Dispur.
14. The Secretary to the Governor of Assam, Dispur.
15. The PPS to Chief Minister, Assam, Dispur.
16. All Principal Secretaries of the Autonomous Councils.
17. The Secretary, State Election Commission, Housefed Complex, Dispur.
18. All Deputy Commissioners/ Sub-Divisional Officers.
19. The PS to Chief Secretary, Assam, Dispur.
20. The PS to Addl. Chief Secretary, Assam, Dispur.
21. All PS to Ministers/ Ministers of State.
22. Officers concerned.

By order etc.,

H.N. Sarma 10/7/98

(H.N. SARMA

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

H.N. Sarma
8/9/99

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ANN-6 (10)

GOVERNMENT OF ASSAM
DIRECTORATE OF FOOD AND CIVIL SUPPLIES
GUWAHATI - 5.

No.DS.22/2004/36

Dated Guwahati the 24th Dec/2004.

To

The Chief Secretary to the Govt. of Assam,
Dispur, Guwahati-6

Sub : Promotion to the I.A.S.

*Ref : Govt. Notification No. MI.2/2002//Pt./23
dated Dispu, the 26th May, 2004.(copy enclosed)*

Sir,

In inviting reference to the subject above, I have the honour to submit before your honour that -

The Government by above referred Notification promoted 5 nos. of Officers from the A.C.S. against the year 2002 and reportedly another 2 nos. of Officers promoted to the I.A.S. under the sealed cover due to certain reason. So all total 7 nos. of Officers promoted against the vacancies against the year 2002.

As learnt against the above referred 7 nos. of vacancies, 28 nos. of Officers were included within the zone of consideration and I was also one of the Officer within the zone of consideration.

That Sir, while promoting the Officers from A.C.S. to I.A.S., the Govt. Reservation Policy has not been followed. The Govt. of India has been always following while selecting the Officers directly to the I.A.S.

In a State cadre at present norms is that 33% posts are to be promoted from the State Civil Service against the total cadre strength. That unless the reservation is followed, then 33% will not be represented adequately by the S.C./S.T. Officers in I.A.S. cadre.

That Sir, under the present cadre strength of Assam cadre, there are about 50 nos. of posts have been filled up from State Civil Service and therefore at least 4 nos. of Officers ought to have been promoted from the S.C. Officers at the rate of 7% under the State S.C./S.T. Reservation Act. It would also be covered under the Central Govt. Act. But there are only 2 nos. of Officers in I.A.S. from the State civil service at present.

Contd...p/2

*certified to be true copy
B. Kalita, Advocate.*

(2)

That Sir, as I belong to S.C. Community, I may be permitted to stake my claim for promotion to the I.A.S. from the State Cadre Service as I was the only S.C. candidate within the zone of consideration as it appears to be backlog against the S.C.

I feel it that I have been deprived of the promotion to the I.A.S.

Under the facts and circumstances as stated above, I would like to request you kindly to consider my case and Sir, it is hoped that you would be pleased to give justice to me as provided by the Constitution of India and I may be promoted to the I.A.S. against the reservation for the year 2002. And for that I shall be remain ever grateful to you.

Encl : as stated
above

Yours faithfully,



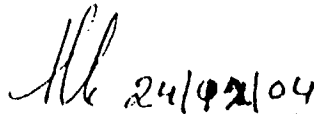
(Bhupendra Nath Das, ACS)
Director, Food & Civil Supply,
Bhangagarh, Guwahati

Memo No. DS.22/2004/36
Copy to :-

Dated Guwahati the 24th December, 2004.

- 1) The Commissioner & Secretary to the Govt. of Assam,
Personnel Department, Dispur, Guwahati-6
for information & necessary action

- 0/C
- ✓ 2) The Commissioner & Secretary
to the Hon'ble Chief Minister of Assam,
Dispur, Guwahati-6 for information & necessary action



(Bhupendra Nath Das, ACS)
Director, Food & Civil Supply,
Bhangagarh, Guwahati

ANNEXURE 6.5

Text of DOP&T, O.M. No. 36012/17/88-Estt. (SCT), dt. 25.4.1989

Reservation for Scheduled Castes and Scheduled Tribes in Posts filled by Promotion—Applicability to Grades or Services in which the element of Direct Recruitment does not exceed 75%

[Para 6.3]

The question of enlarging the scope of the existing scheme of reservation for Scheduled Castes and Scheduled Tribes in posts filled by promotion by extending it to grades or services in which the element of direct recruitment is more than 66-2/3% has been under the consideration of Government.

2. Under the existing orders contained in the Department of Personnel & A.R. O.M. No. 36021/7/75-Estt. dated the 25th Feb., 1976, reservations have been provided at 15% and 7-1/2% of the vacancies for Scheduled Castes and Scheduled Tribes respectively (i) in promotions through limited departmental competitive examinations in Group B, C & D (ii) in promotions by selection in Groups B, C & D and from Group B to the lowest rung of Group A and (iii) in promotion on the basis of seniority subject to fitness in all Groups i.e. Groups A, B, C & D (in all these cases), in grades or services in which the element of direct recruitment, if any, does not exceed 66-2/3%. It has now been decided in partial modification of above mentioned O.M. that the reservations in posts by promotion under the existing scheme as indicated above should be made applicable to all grades or services, in which the element of direct recruitment, if any, does not exceed 75%.

3. The above instructions take effect from the date of issue of these orders except where a Select List for promotions under the relevant orders has already been prepared by the Departmental Promotion Committee and in the case of selections made through limited departmental competitive examination, the relevant exam has already been held.

4. Ministry of Finance etc. are requested to bring the above decision to the notice of all concerned.

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future guidance
notice of all the

*certified to be true copy. G. Kalita
Advocate*

GOVERNMENT OF ASSAM
DEPARTMENT FOR WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
DISPUR:: GUWAHATI-6.

No. TAD/BC/142/96/56,

Dated Dispur, the 14th July, 2004.

OFFICE MEMORANDUM

Sub:- Implementation of Assam SC & ST (RVSP) Act. 1978 and Rules 1983 - filling up of backlog vacancies for S.C. and S.T. there under.

1. The undersigned is directed to draw attention of all administrative departments and appointing authorities that a large number of backlog of vacancies of SC & ST communities in different cadres/services is being reported by different Departments. In this regard various Scheduled Castes and Scheduled Tribes Organisations have also submitted memorandum to the Government to fill up the backlog vacancies by reserved candidates belonging to S.C. & S.T. Government have also reiterated the need to reduce/eliminate the backlog of reserved vacancies.
2. It has been observed that a large number of backlogs shown by the different departments are due to mis-interpretation of Assam S.C. & S.T. (RVSP) Act. 1978 and Rules, 1983 and due to wrong calculation of backlog vacancies.
3. Under provision of Section 5 of the Assam S.C. & S.T. (RVSP) Act. 1978, the admissible reservation quota for S.C., ST(P) and ST(H) is 7%, 10% and 5% respectively.
4. In terms of Rules 4(6) & 5(6) of Assam SC & ST(RVSP) Rules, 1983 the reserved vacancies can be dereserved following the procedure mentioned therein subject to carry forward of the vacancy dereserved (called backlog).
5. In terms of Sub-para (VI) in the Schedule under Assam SC & ST(RVSP) Act. 1978, in the absence of a qualified reserved candidate the reserved vacancies shall be carried forward till the requisite percentage of reserved categories in the cadre is filled up. The same has been reiterated in Sub-rule (7) of Rule 4 of the Assam SC & ST(RVSP) Rules, 1983 wherein it has been mentioned that a vacancy dereserved shall be filled up by general candidates but reservation will be carried forward till reservation quota is filled up.

certified to be true copy,
G. Karim, Advocate.

Contd..... 2/-

6. Several instances have come to the notice of the Government in the WPT & BC department that the departments have carried forward backlog as well as current vacancies even to the extent beyond permissible entitled quota for ST(P), ST(H) and SC which have shown exaggerated figures of backlog/ current vacancies for reserved categories. All appointing authorities are requested to carry out a review for correct assessment of backlog/ current vacancies in respect of SC, ST(P) & ST(H) both by direct recruitment and promotion and to make concerted efforts to fill up the back-log/current vacancies under reserved categories.

Sd/- K.D.Tripathi,
Commissioner & Secy. to the Govt. of Assam,
WPT & BC Department.

Dated Dispur, the 14th July, 2004.

Memo No. TAD/BC/142/96/56-A,
Copy to :-

1. The P.P.S. to Chief Minister, Assam, Dispur.
2. The P.S. to Minister, -----
3. The P.S. to Minister of State, -----
4. The P.S. to Chief Secretary to the Govt. of Assam, Dispur.
5. The P.S. to Addl. Chief Secy. to the Govt. of Assam, Dispur.
6. The Principal Secy. to the Govt. of Assam,
----- Department, Dispur.
7. The Commissioner of -----
----- Division,
8. The Commissioner & Secy. to the Govt. of Assam,
----- Department.
9. The Secretary to the Govt. of Assam, ----- Deptt.
10. The Deputy Commissioner, ----- Dist.
11. All Heads of the Department -----
12. S.D.O (C) -----

By or for etc.,

Deputy Secy. to the Govt. of Assam,
WPT & BC Department.

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Central Administrative Tribunal
10 JUN 2005
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION No. 67/2005

BETWEEN:

BHUPENDRA NATH DAS

--- APPLICANT

AND:

UNION OF INDIA & OTHERS

--- RESPONDENTS

**WRITTEN STATEMENT FILED ON BEHALF OF THE THIRD
AND FIFTH RESPONDENTS**

Written Statement of Shri Manjit Kumar son of Late Shri Bujha Ram, posted as Under Secretary in the Union Public Service Commission, New Delhi.

2. I solemnly affirm and state that I am an officer in the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi and am authorised to file the present Reply Statement on behalf of Respondent Nos 03 & 05. I am fully acquainted with the facts of the case as gathered from the records and stated below:

3 That I have read and understood the contents of the above Application and in reply I submit as under:

4.1 At the outset, it is submitted that the Union Public Service Commission, being a Constitutional body, under Articles 315 to 323 Part XIV (Services under the Union and the States) Chapter-II of the Constitution, discharge the functions, duties and Constitutional obligations assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for the IAS/IAS/IFS. The IAS (Appointment by Promotion) Regulations, 1955 [Promotion Regulations, in short] have been made in pursuance of these Rules. In accordance with the provisions of the said Regulations, the Selection Committee presided over by the Chairman/Member of the Union Public Service Commission, makes selection of State Civil Service [SCS, in short] officers for promotion to the Indian Administrative Service.

4.2 Thus, the Union Public Service Commission, after taking into consideration the records received from the State Government under Regulation 6 and observations of the Central Government received under Regulation 6A of the Promotion Regulations, take a final decision on the recommendations of the Selection Committee in accordance with the provisions of Regulation 7 of the

(मनजीत कुमार) (Manjit Kumar)
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
अटल बिहारी वाजपेयी

Filed by
the Respondents No. 3 & 5
through
Bujha Das
Addl. C.G.S.O.
CAT/Ghy. 6/6/05

aforesaid Regulations. The selections are done in a fair and objective manner on the basis of relevant records and following the relevant Rules and Regulations.

PRELIMINARY SUBMISSIONS:

5.1 It is respectfully submitted that the selection of State Civil Service Officers for promotion to the IAS are governed by the IAS (Appointment by Promotion) Regulations, 1955. Regulation 3 of the said Regulations prevalent prior to the amendment dated 31.01.2005 provided for a Selection Committee consisting of the Chairman of the Union Public Service Commission or where the Chairman is unable to attend, any other Member of the Union Public Service Commission representing it and in respect of the Joint Cadre of Assam-Meghalaya, the following officers as members: -

- i) Chief Secretary to the Government of Assam;
- ii) Chief Secretary to the Government of Meghalaya;
- iii) Chairman, Board of Revenue, Govt. of Assam;
- iv) Commissioner of Division, Govt. of Meghalaya;
- v) Two nominees of the Central Government not below the rank of Joint Secretary.

The meeting of the Selection Committee is presided over by the Chairman/Member, UPSC.

5.2 That as per the provisions of the said Regulations, the State Government sends a proposal to the Union Public Service Commission for convening a meeting of the Selection Committee to prepare the Select List for promotion to the All India Services after the vacancies have been determined by the Central Government. The proposal of the State Government, *inter-alia*, includes documents and information like the Seniority List, ACRs, Eligibility List, Integrity Certificates, and Statement of pending Disciplinary Cases etc. Thus a meeting of the Selection Committee is convened after the Commission has examined these documents for completeness.

5.3 That in accordance with the provisions of Regulation 5(4) of the said Regulations, the aforesaid Committee duly classifies the eligible State Civil Service officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(5) of the said Regulations, the Selection Committee prepares a list of suitable officers by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of

(मनजीत कुमार / Manjit Kumar)
 सचिव (सचिव) / Under Secretary
 सचिव सचिव सचिव
 Union Public Service Commission
 New Delhi

NAK

names within each category is maintained in the order of their respective inter-se seniority in the State Civil Service.

FACTS OF THE CASE

6.1 It is respectfully submitted that during the year 2002, the State Government had not forwarded any proposal for convening a meeting of the Selection Committee. Thus as per the provisions of the Promotion Regulations, the Selection Committee Meeting for 2003 was required to prepare year-wise Select Lists for 2002 and 2003. After repeated requests to the Central Government and State Government by Union Public Service Commission, the Central Government determined 08 vacancies for 2002 and NIL vacancies for 2003 vide its letter dated 02.12.2003. Thereafter, the Selection Committee met on 29.12.2003 to prepare the Select List of 2002 for selection of SCS officers for promotion to the IAS of Assam-Meghalaya Joint Cadre, Assam Segment against 8 vacancies determined by the Govt of India. The name of the applicant was considered at S.No. 16 in the eligibility list furnished by the State Govt. On an overall relative assessment of his service records, the Selection Committee assessed him as 'Very Good'. On the basis of this assessment, his name could not be included in the Select List due to statutory limit on the size of the Select List and that there were sufficient number of officers with similar grading and senior to the applicant were available for inclusion as per the provisions to Regulation 5(4) and 5(5) of the Regulation. No officer junior to the Applicant has been included in the Select List of 2002. Further, the Select List of 2003 was not prepared as the Government of India had determined 'Nil' vacancy for that year.

6.2 That the Selection Committee Meeting for 2004 could not be held during the year due to non-receipt of certain clarification sought by Union Public Service Commission from the Central/State Government.

CONTENTIONS OF THE APPLICANT

7. Being aggrieved by non-appointment to the IAS, the Applicant, Shri BN Das, has challenged the Government of India's Notification dated 26.05.2004 appointing officers to the IAS from the Select List of 2002, by filing the instant OA. In this regard the Commission have also received a letter from the State Govt forwarding a copy of the representation of the Applicant. The main contentions of the Applicant in the OA are as follows:-

- (i) That no adverse remarks in the ACR of the Applicant was ever communicated to him through out his service career and as such there can be no justification whatsoever in denying promotion to

(मनजीत कुमार / Manjit Kumar)
अवर सचिव / Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
अटल भवन / New Delhi



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the applicant and superseding him by at least two of his juniors and as such the impugned orders are bad in law and the applicant is entitled to be promoted from the date his juniors were so promoted.

- (ii) That the Respondents have not applied their minds to the constitutional mandate and various settled laws declared by the Apex Court in so far as the promotion of reserved category candidates to IAS scale from the State Cadre. The intention of the Govt Notification No. DOP&T No.36012/17/88-Estt(SCT) dated 25.04.1989 for making reservation for promotion has not been followed in its letter and spirit. The Respondents have wilful blocking the avenues of upliftment and progress of backward communities which tantamount to deliberate deprivation of the fruits grown by the legislatures from time to time for the social upliftment.
- (iii) That the Government of India amended Rule 16 of the All India Services Death-cum-Retirement Benefit Rules 1958 [Sub rule (1) enhancing the age of retirement from 58 to 60 years including IAS]. It is therefore just and proper to proportionately increase the maximum age limit to 56 years under the Indian Administrative Service (Appointment by Promotion) Regulations 1977. Failure to do so by the Government of India is affecting the fundamental right of the applicant who is eligible and entitled to be considered for appointment to the post of IAS.

REPLY TO THE CONTENTIONS

8.1 In reply to the contentions of the Applicant made in para 7 (i) above, it is most respectfully submitted that it is denied that the officer has been superseded by his juniors. As per Regulation 5(4) and 5(5), the officers are to be assessed on the basis of their service records in the order of their seniority in the State Service and thereafter the officers are included in the Select List based on their overall assessment and seniority of the officers. Further, as alleged, the absence of adverse remarks is not the sole criterion for assessing the quality of an officer while considering him for promotion. Hon'ble Supreme Court in the case of Sh. Ghulam Hussain vs. UOI and ors, [1971-SC 1138] have held as under:-

"Promotion is made on the basis of the positive merit. Absence of adverse remarks in the confidential Report is no criterion of the quality of an officer".

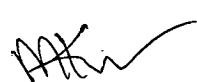
(मनजीत कुमार / Manjit Kumar)
 उपर सचिव / Under Secretary
 संय ल क सेवा आयोग
 Union Public Service Commission
 10, Chanderprabha, Delhi



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8.2 It is further respectfully submitted that in accordance with Regulation 5(4) of the said Regulations, the aforesaid Committee duly classifies the eligible SCS officers included in the zone of consideration as 'Outstanding' 'Very Good' 'Good' or 'Unfit' as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(5) of the Promotion Regulations, the Selection Committee prepares a list by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Civil Service.

8.3 The ACRs of eligible officers are the basic inputs on the basis of which they are categorised as 'Outstanding', 'Very Good', 'Good' and 'Unfit' in accordance with the provisions of Regulation 5(4) of the Promotion Regulations. As per the uniform and consistent procedures and practices followed by the Union Public Service Commission, the Selection Committee examines the service records of each of the eligible officers, with special reference to the performance of officers for the years preceding the year for which the Select List is being prepared, deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then, after detailed deliberations and discussions, finally arrives at a classification to be assigned to each eligible officer in accordance with the provisions of the Promotion Regulations. While doing so, the Selection Committee also reviews and determines the overall grading recorded in the ACRs to ensure that this is not inconsistent with the grading/remarks under various parameters or attributes recorded in the respective ACRs. The grading given by the reporting/reviewing officers in the ACRs reflects the merit of the officer reported upon in isolation whereas the classification made by the Selection Committee is on the basis of a logical and in-depth examination of the service records of all the eligible officers in the zone. The Selection Committee also takes into account orders of appreciation for meritorious work done by the concerned officers, if any. Similarly it also keeps in view orders awarding penalties or any adverse remarks communicated to the officer, which even after due consideration of his representation, have not been completely expunged. The Selection Committee makes its assessment in a fair and objective manner. The procedure adopted by the Selection Committee in preparing the Select Lists is uniformly and consistently applied for all States and Cadres for induction into the All India Services.



(मनजीत कुमार / Marjit Kumar)
 उपर सचिव / Under Secretary
 सचि सं क सेवा आयोग
 Union Public Service Commission
 नई दिल्ली / New Delhi

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8.4. It is further submitted that the Selection Committee undertakes the detailed exercise enumerated above solely with a view to ensure objectivity and fairness in the selections. The IAS (Appointment by Promotion) Regulations 1955 do not specify as to how the classification is to be made. The Selection Committee manned and presided over by competent and able members follow uniform procedures, norms and yardsticks for evaluation of ACRs of officers in the zone of consideration. This procedure is uniformly and consistently applied to all States/Cadres for induction to the All India Services. The Selection Committee that met on 29.12.2003 assessed all the officers by applying uniform standard/yardstick in a fair and objective manner as is done for all States/Cadres for induction to the All India Services.

8.5 It is further respectfully submitted that the selections to the All India Services is primarily made on the basis of merit and seniority plays only a secondary role. The procedure followed by the Selection Committee as detailed above has been upheld by this Hon'ble Supreme Court in the case of R.S. Dass (AIR 1987 SC 593) which reads as under:

"The amended provisions of Regulation 5 have curtailed and restricted the role of seniority in the process of selection as it has given priority to merit. Now the committee is required to categorise the eligible officers in four different categories viz. 'Outstanding', 'Very Good', 'Good' or 'Unfit' on overall relative assessment of their service records. After categorisation is made, the Committee has to arrange the names of the officers in the Select List in accordance with the procedure laid down in Regulation 5(5). In arranging the names in the Select List, the Committee has to follow the inter-se seniority of officers within each category. If there are five officers who fall within 'Outstanding' category, their names shall be arranged in the order of their inter-se seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the officers falling in the category of 'Very Good' and 'Good'. Similarly, if a junior officer's name finds place in the category of 'Outstanding' he would be placed higher in the Select List in preference to a senior officer finding place in the 'Very Good' or 'Good' category. In this process a junior officer having higher grading would supersede his seniors. This cannot be helped. Where selection is made on merit alone for promotion to a higher service, selection of an officer though junior in service in preference to senior does not strictly amount to supersession."

8.7 The matter relating to assessment made by the Selection Committee has been contended before the Hon'ble Supreme Court in a number of cases. In the case of Nutan Arvind Vs. Union of India & Others, the Hon'ble Supreme Court have held as under:-

"When a high level Committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority."

[(1996) 2 SUPREME COURT CASES 488]

(महोदय) / (Mr./Mrs.)
 उपायुक्त / Under Secretary
 पब्लिक सर्विस कमिशन
 Public Service Commission
 नई दिल्ली / New Delhi

8.8 In the case of Durga Devi & Another Vs. State of Himachal Pradesh & Others, the Apex Court have held as under:-

"In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the Selection Committee. The observations of this Court in Dalpat Abasaheb Solunke case are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10-12-1992 is quashed and the matter is remitted to the Tribunal for fresh disposal on other points in accordance with the law after hearing the parties."

[1997(4)-SCC -575]

8.9 In the case of State of Madhya Pradesh Vs. Shrikant Chapekar, the Hon'ble Supreme Court has held as under:-

"We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the ACR are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal out stepped its jurisdiction in reaching the conclusion that the adverse remarks were sufficient to deny the respondent his promotion to the post of Dy. Director. It is not the function of the Tribunal to assess the service record of a Government servant, and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. This Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was considered for promotion or the consideration was illegal then the only direction which can be given is to reconsider his case in accordance with law. It is not within the competence of the Tribunal, in the fact of the present case, to have ordered deemed promotion of the respondent".

[JT 1992 (5) SC 633]

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

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

[AIR 1990 SC 434]

8.11 In the case of Smt. Anil Katiyar Vs. Union of India & Others, the Hon'ble Supreme Court have held as under:-

(पुनर्जीन कृपा) (Anil Kumar)
 सचिव सचिव/Under Secretary
 सचिव सचिव सेवा आयोग
 Union Public Service Commission
 नई दिल्ली New Delhi

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

[1997(1) SLR 153]

8.12 It is respectfully submitted that in view of the aforementioned judicial pronouncements, the assessments are made by the Selection Committee in accordance with the rules and regulations.

8.13 In the instant case, the Committee considered the name of the applicant for the year 2002 and assessed him as 'Very Good' on an overall assessment of his service records. On the basis of this assessment, his name could not be included in the Select List due to statutory limit on the size of the Select List and that there were officers with similar grading but higher seniority who were available for inclusion in the Select List. As such, no officer junior to the Applicant has been included in the Select List of 2002.

8.14 Thus the Selections have been made strictly in accordance with provisions of the Promotion Regulations prevailing at that time as also the uniform and consistent practice followed by Union Public Service Commission. The Applicant is substituting his own judgement to that of a statutorily constituted Selection Committee. The contentions of the Applicant are therefore without any merit and hence denied.

9.1. In reply to the contentions of the Applicant made in pars 7(ii) above, it is most respectfully submitted that the guidelines issued by the DOP&T vide OM dated 25.04.1989 are applicable to promotion within the Central Government by way of a Departmental Promotion Committee (DPC) and are not applicable in the matter of promotion to the All India Service, which is governed by the statutory IAS Promotion Regulations and the selections are made by a Selection Committee Meeting as elaborated in the preceding paragraphs.

9.2 It is further submitted that as per the present policy of the Government of India there is no reservation quota in the matter of induction into All India Services by Promotion. The Selection Committee, which met on 29.12.2003, had prepared the Select List of 2002 for promotion to the IAS of Assam-Meghalaya Joint Cadre, Assam Segment strictly in accordance with the provisions of the said Promotion Regulations. As such, the contentions of the applicant are based on his ignorance of the provisions of the IAS Promotion Regulations. The submissions of Government of India (DoP&T) in this regard

(मनजीत कुमार / Manjit Kumar)
 सचिव (अधीनस्थ) / Under Secretary
 सचिव लोक सेवा आयोग / Secretary
 Union Public Service Commission
 नई दिल्ली / New Delhi

may also be referred to, as they are the nodal authority for framing, amending and interpreting the AIS Rules and Regulations as also the DPC guidelines.

10. In reply to the contentions of the Applicant made in pars 7(iii) above, it is most respectfully submitted that the Govt of India are concerned with the determination of vacancies, enhancement of the age for consideration from 54 years to 56 years and amendment in the Promotion Regulations and as such the submissions being made by them may kindly be referred to.

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

12. In view of the facts and circumstances stated above, the Hon'ble Tribunal may be pleased to dismiss the OA as devoid of merit.

VERIFICATION

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

Verified at New Delhi on the 22nd day of May, 2005

DEPONENT

(मनजीत कुमार / Manjit Kumar)
अवर सचिव / Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली / New Delhi

Filed by
the Respondent
through
Usha Das
Addl Cus
7/7/05

ORIGINAL APPLICATION NO. 67/2005

SRI B.N. DAS

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1

MOST RESPECTFULLY SHOWETH:

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

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

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

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

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

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

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

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

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

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

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- A1
- c) The Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as Selection Regulations).

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

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

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

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

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

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

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

✓ 13. As regards the contention of the applicant for making reservation in promotion it is submitted that the SCS officers are allowed the benefit of reservation under the Constitutional Provisions at the time of their initial appointment to the State Civil Service and obtain promotion still higher posts in the State Civil Services in accordance with the extant instructions in vogue in the State Government on the subject. At the time of their consideration for appointment to the Indian Administrative Service the State Civil Service officers invariably hold Group "A" posts in the State Government and are appointed by promotion to Senior time-scale posts (Group 'A) in the I.A.S in the Central Government. In terms of the relevant provisions in the IAS (Appointment by Promotion) Regulations, 1955, these promotions are considered by the mode of **selection by merit**.

✓ 14. It is further submitted that the instructions relating to reservation are not applicable in cases of appointment by promotion on the basis of selection by merit as is the case of appointment of State Civil Service

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officers to the Indian Administrative Service. It is also submitted that selection to Indian Administrative Service is made from among the State Civil Service officers including reserved category without discrimination. The reserved category officers are beneficiaries of State's reservation policy and do get adequately represented in appointment to IAS by promotion if they are in the consideration zone and are found suitable for appointment.

PARA-WISE REPLY

- Paras 1 - 3 : No comments.
- Para 4(1) : No comments.
- Paras 4(2) : Concerns Respondent No. 2, hence no comments.
& 4(3)
- Paras 4(4) : Concerns Respondent No. 3 and hence no comments.
& 4(5)
- Para 4.5(a) : As regards the contention of the applicant for providing reservation in terms of OM No. 36012/17/88-Estt.(SCT) dated 25.04.1989, the submissions made in preliminary paras 13 and 14 may kindly be referred to.
- Para 4(6) & : Concerns Respondents No. 2 and hence no comments.
4(7)
- Paras 4(8) : Concerns Respondents No. 2 and 3, hence no comments.
& 4(9)
- Para 4(10) : Admitted to the extent that the number of promotion posts is 68.
- Paras 4(11) : Not admitted. As pointed out in the preliminary
& 4(12) submissions the reservation in promotion under the IAS (Appointment by Promotion) Regulations, 1955 from State Civil Service to IAS is not applicable.
- Para 4(13) : No comments.
- Para : As per the IAS (Appointment by Promotion) Regulations,
4(13)(a) 1955, the year wise Select Lists are prepared for promotion of eligible and suitable SCS officers to IAS. However, if for some reasons the meeting of the Selection Committee is not held during a particular year, the vacancies for that

particular year only are taken into consideration for preparation of year wise Select Lists.

Para 4(14) : No comments.

Para 4(15) : Concerns Respondent No. 2 and hence no comments.

Para 4(16) : The eligibility criteria for SCS officers for consideration for promotion to IAS include upper age limit fixed at 54 years of age as on 1st day of the January for which the Select List is prepared. This is applicable in respect of all State Civil Service officers and is equally applied uniformly and hence there is no violation of any fundamental rights.

Para 4(17) : No comments.

Para 4(18) : Not admitted. The promotion of eligible SCS officers to IAS under the statutory promotion regulations is not solely governed by age criteria but also by some other factors. The question of increasing the age from 54 years to 56 years has been considered in the past and a conscious policy decision has been taken not to increase the age from 54 years to 56 years since the Government of India expects the SCS officers promoted to IAS to render some service under the Central Government.

Paras 4(19) : Not admitted. As pointed out in reply to the earlier paras
- 4(23) ✓ the reservation is not applicable in case of promotion of SCS officers to IAS.

Para 4(24) : Concerns Respondent No. 3, hence no comments.

Paras 4(25) : No comments.

& 4(26)

GROUND FOR RELIEF WITH LEGAL PROVISIONS :

Paras 5(1) - : Not admitted. The applicant was not included in the
5(3) Select List by the Union Public Service Commission. Therefore, the question of his appointment to IAS does not arise.

Paras 5(4) & : Concerns Respondent No. 2 & 3, hence no comments.
5(5)

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Paras 6 - : Require no comments.

8(iv)

Para 8(v) : It is submitted that there is reservation in appointment to IAS through direct recruitment. The applicant is a member of the State Civil Service and cannot claim parity with the direct recruits joining IAS through competitive examination conducted by the Union Public Service Commission.

Paras 9 - 11 : Require no comments.

In the light of the reply to the above paras, it is submitted that the applicant was not approved by the Union Public Service Commission for inclusion in the year wise Select Lists prepared by the Commission for the year 2002. The question of his appointment to the IAS, therefore, does not arise. The application is devoid of merit and hence is liable to be rejected. It is prayed accordingly.

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

DEPONENT

VERIFICATION

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

FOR AND ON BEHALF OF RESPONDENT NO. 1

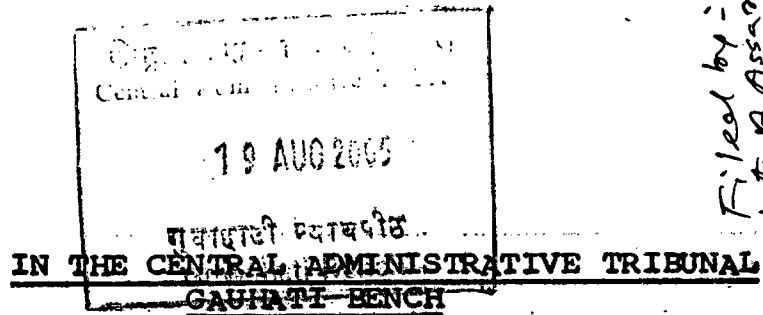
Place :

Dated :

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

DEPONENT

(Advocate)



Filed by :-
State of Assam
Respondent No. 2
Through :-
Manjinder Das
Sr. Asst. Advocate
Assam
C.A.T. 16/8/05
Nareish Chandra Misra

O.A. NO. 67/05

IN THE MATTER OF :

O.A. 67/05

SHRI B.N. Das

----- Vs ----- APPLICANT.

Union of India & Others.

----- RESPONDENTS.

- AND -

IN THE MATTER OF :

Written statement on behalf of the
Respondent No. 2 (The Chief Secretary
to the Govt. of Assam) in the above
case.

(Written statement on behalf of Respondent No. 2 to the
application filed by the applicant)

I, Shri N.C. Misra, Deputy Secretary to the Govt.
of Assam, Personnel (A) Department, Dispur, Guwahati-6, do
hereby solemnly affirm and state as follows :-

1. That I am the Deputy Secretary to the Govt. of
Assam, Personnel Department, Dispur, Guwahati-6. A copy
of the aforesaid application had been served upon the
Respondent No.2. I have gone through the same and have
understood the contents thereof. I have been authorised
to file this written statement on behalf of the Respondent
No.2. I do not admit any of the averments which do not
specifically admitted herein after and the same are to be
deemed as denied.

Contd.....2/-

2. That the statements made in paragraphs 4.1 to 4.4 of the application the answering respondent has nothing to make comment on it. He, however does not admit any statements which are contrary to records.

3. That with regard to the statement made on paragraphs 4.5 of the application, it is stated that the gradation list of ACS Officers was published by the State Govt. on 2-7-02 vide Notification No.AAP.53/02/Pt/35 and the name of the applicant appears against Sl.No 20 in the list.

4. That with regard to the statements made in paragraphs 4.5(a), the answering respondent begs to state that it is not true that the Sl. No.4 of the gradation list Shri Nurul Haque, had not gone before the Selection Committee in fact his name was duly proposed in the eligibility list for the promotion to IAS. The names of Shri Gokul Chandra Sarma (Sl.No.1) and Shri Pradip Kumar Das (Sl.No.3) of the said gradation list also included in the eligibility list proposed for promotion to IAS for the year 2002, Shri Nurul Haque although selected by was not appointed to the IAS due to his retirement on 29-2-04.

5. That the statements made in paragraphs 4.6 of the application, the answering respondent has nothing to make comment on it. He, however, does not admit any statement which are contrary to records.

6. That with regard to the statements made in paragraph 4.7 of the application, it is stated that as per regulation 5(1) and 5(3) of the IAS (Appointment by promotion) Regulation, 1955 the State Govt. prepare the list of eligible ACS Officers in order of seniority in that service of a number which is equal to three times the number of vacancy in that year. Accordingly, the State

Govt. as per above rule submitted proposal to the UPSC for preparation of the select list for the year 2002 vide Govt. letter dated 28-11-03. In the said proposal, the name of the applicant was found against the Sl.No. 16.

The humble answering respondents craves leave to produced the said proposal dated 28-11-03 at the time of hearing.

7. That with regard to the statement made in paragraphs 4.8 of the application, the humble answering respondent begs to state that for the year, 2002 altogether eight vacancies arises in the promotion quota of IAS and the Selection Committee accordingly selected eight Officers for the promotion to IAS. However, only 5 Officers could be promoted and the remaining 3 could not be promoted due to non clearance of vigilance case, and pending disciplinary proceedings, and one officer has since been retired.

The answering respondent craves leave to produce the select list dated 25-5-2004 at the time hearing.

8. That with regard to statements made in paragraph 4.9 of the application, it is respectfully state that the promotion to IAS Cadre is made on the basis of merit with due procedure of law. The select list for promotion to IAS has been made by Selection Committee of the UPSC.

9. That with regard to the statements made in paragraph 4.10 of the application, the answering respondent begs to state that the total Cadre Strength of IAS in Assam Wing is 162 numbers and not 226 numbers as stated by the applicant. However, in the joint Cadre of Assam-Meghalaya, total strength is 226 posts. Break up of 162 posts in Assam Wing indicated below :-

72/ Narek Chandra Pliya

| | | |
|----|---|-------|
| 1) | Senior Posts under the Govt. of Assam - | 88 |
| 2) | Central Deputation Reserve @ 40% of item 1(1) above. | - 35 |
| 3) | State Deputation Reserve @ 25% of item (1) above. | - 22 |
| 4) | Training Reserve @ 3.5% of item (1) above. | - 03 |
| 5) | Post to be filled up by promotion and Selection @ 33 1/3% of item (1)+2+3+4 | - 49 |
| 6) | Leave Reserve, Junior Post Reserve @ 16.5% of item 1(1) above. | - 14 |
| 7) | Post to be filled up by direct recruitment 1(1)+2+3+4+6)-5 | - 113 |

Direct recruitment post-113

Promotion posts - 49

Total Authorised strength 162

10. That with regard to the statements made in paragraph 4.11, 4.12, 4.13 of the application, the answering respondent begs to state that the promotion to IAS Cadre from the ACS Officers is made as per rule on strictly on merit basis and the select list is prepared by the UPSC.

11. That with regard to statement made in paragraphs 4.13(A), the answering respondent reiterate and re-affirm the statements made in paragraph 6 of this written statement.

12. That with regard to statements made in paragraph 4.14 of the application, it is stated that as per rule the State Govt. prepared a list of eligible ACS Officers in order of seniority in that service, and forwarded the proposal for promotion to IAS along with the details information and relevant documents to the UPSC. Thereafter the Selection Committees of the UPSC in its meeting held on 29-12-03 prepared the select list selecting eight officers for promotion to IAS.

Naren Chandra Mishra

13. That with regard to the statements made in paragraph 4.15 of the application, the answering respondent begs to state that the representation dated 24-12-04 made by the applicant before the Govt. of Assam was immediately forwarded to the UPSC, New Delhi vide letter No.AAI.2/02/Pt/52 dated 10-3-2005 for information and necessary action. *A copy of the letter dt 10-3-2005 is annexed herewith and marked as Annexure-I.*

14. That with regard to the statements made in paragraph 4.16, 4.17 and 4.18 of the application, the answering respondent has nothing to make any comment on it. He, however, does not admit any statements which are contrary to records.

15. That with regard to the statements made in paragraph 4.19 and 4.20 of the application, the answering respondents reiterates and re-affirm the statements made in paragraph-6 of the present written statement.

16. That with regard to the statements made in paragraph 4.21 of the application, the answering respondent begs to state the gradation list of ACS Officer was revised in pursuance of the Office Memorandum No.AAP.59/96/163, dated 12-3-2002 after giving consequential seniority to the officer in consequents upon the amendment of article 16(4)(A) of the constitution of India which was published on 2-7-02 and on the basis of the said gradation list, the name of the applicant has been proposed for promotion/ appointment to IAS vide Govt. letter No.AAI.2/2002/319, dated 28-11-03.

17. That with regard to the statements made in paragraph 4.22 of the application, the answering respondent reiterate and re-affirm the statements made in paragraphs 6 and 9 of the present written statement.

18. That with regard to the statements made in paragraph 4.23 of the application, the answering respondent has nothing to make comment on it. He, however, does not admit any statements which are contrary to record. Further, with regard to the statements made in the instant paragraph of the application are to be replied by the Govt. of India and UPSC, New Delhi.

19. That, with regard to the statements made in paragraph 4.24 of the application the answering respondent begs to state that the State Govt. while forwarding the proposal vide letter dated 28-11-03 to the UPSC for preparation of the select list for appointment of SCS officer to the IAS by promotion for the year 2002, there was clear indication of community i.e. SC/ST against the name of the officer fall under the category. Further, it is stated that the Selection Committee made at New Delhi on 29-11-03 prepared the select list by selecting 8 persons.

20. That, the answering respondents begs to state that the instant original application is not maintainable and may be dismissed for non-joinder of necessary parties. It is submitted that the impugned notification dtd. 26-5-04 sought to be quashed by the applicant, contain some selected person for promotion to IAS have not been made as party respondents. Hence it is bad in law and liable to be dismissed.

21. That the ground setforth under the good ground and cannot be taken into consideration.

22. That it is submitted that the application has no merit for interference to quash the impugned notification dtd. 26-5-04 and the application is liable to be dismissed.

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VERIFICATION

I, Shri N.C. Misra, Deputy Secretary to the Government of Assam, Personnel (A) Department, Dispur, Guwahati-6 do hereby verify that the statements made in paragraphs 1, 2, 5, 6, 8, 10, 11 and 14 to 19 are true to my knowledge, those made in paragraphs 3, 4, 7, 9, 12 and 13 are being matter of records of the case derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

I have not suppressed any material facts and I have signed this verification on this 16th day of July, August 2005.

Narek Chandra Misra
SIGNATURE OF DEPONENT.

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Annexure VII

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NO.AAI.2/2002/Pt./52
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-6
: : : :

Dated : Dispur, 10th March, 2005.

To.

The Under Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110062.

Sub. : Representation of Shri Bhupendra Nath Das, ACS
for promotion to the IAS.

Sir,

With reference to the above, I am directed to
forward herewith a copy of letter No.DS.22/2004/14,
Dated.24-12-2004 received from Shri Bhupendra Nath Das,
ACS, Director of Food & Civil Supplies, Assam, which is
speak for itself, for favour of your kind information &
necessary action.

Yours faithfully,

(N. C. Misra.)

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

Memo No.AAI.2/2002/Pt/52-A. Dated : Dispur, the 10th March, 2005.
Copy to :-

1. Shri Bhupendra Nath Das, ACS, Director, Food & Civil Supplies,
Assam, Guwahati-5 for information.

By Order Etc.,

(N. C. Misra.)

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

RB/-