

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 80/2005

R.A/C.P No.

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SECTION OFFICER (Judl.)

Gahita
2/11/2005

FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 80/05

Misc. Petition NO. _____

Cobtempt petition No. _____

Review Application No. _____

Applicants: N. A. Kasar

Respondents: U.O.I. Gens.

Advocates for the Applicant: U.K. Nair, J. Parkash, B. Sama

Advocates of the Respondents: Addl. case U.K. Choudhuri

Notes of the Registry	Dated	Order of the Tribunal
<p>The application in form is filed/C.F. No. 80/05 deposited vide P. No. 206/1600/11 Dated 13.5.05</p> <p>13.5.05 Dy. Registrar mb</p> <p>Steps not taken 12/5/05</p>	<p>13.5.2005</p>	<p>At the request of behalf of Mr. U.K. Nair, learned counsel for the applicant, the case is adjourned to 16.5.2005.</p> <p>Member</p> <p>Vice-Chairman</p>
<p>Steps taken 12/5/05</p>	<p>16.5.05</p>	<p>Heard Mr U.K.Nair, learned counsel for the applicant and Mr A.K.Choudhuri, learned Addl.C.G.S.C for the respondents.</p> <p>The grievance of the applicant is that though the applicant being a Senior Administrative Officer Grade-I in the office of the Chief Engineer, MES, Shillong who is entitled to be promoted to the cadre of Principal Administrative Officer, has not been promoted and instead an Officer from the Engineering Service has been promoted</p>

16.5.05

to the said post which is contrary to the provisions regarding method of selection to the post of Principal Administrative Officer. The applicant has specifically alleged in para 4.10 that the promotion to the post of Principal Administrative Officer has to be made ^{from} among persons working in the administrative cadre alone (para 4.10 and 4.11 of the application). Mr A.K. Chaudhuri, learned Addl.C.G.S.C submits that he has to take instruction from the respondents in that regard and also to file a written statement. In the circumstances issue notice to the respondents to show cause as to why this application shall not be admitted.

List on 22.6.05 for filing reply and admission.

The respondents shall file written statement, if any within the time, particularly for the reason that the applicant has already retired from service.

Steps taken
on 24/5/05.
Ce
24/5/05.

Notice & order
sent to D/Section
for issuing to
resp. Nos. 1 to 4
by regd. A/D post.
Ce
24/5/05.

D/No- 801 to 804
Dt= 24/5/05.

Notice duly
served on resp.
Nos 4, 2
Ce
6/6/05

No. Reply has
been filed.

21.6.05

order dated 22.6.05
received.

NI
22/6/05

Notice duly served
on resp. No. 1, 2 & 4.

22.5-05

no W/S filed.

W/S has been filed.

24.8.05

Member

Vice-Chairman

pg

22.6.2005

Learned counsel for the applicant is present. Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. submits that a four weeks time more is required for filing written statement. Post this case on 25.7.2005.

Member

Vice-Chairman

bb

25.7.2005

Mr. U.K. Nair, learned counsel for the applicant is present. Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for respondents submits that some more time is required for filing written statement. Post on 25.8.2005.

Member

Vice-Chairman

25.08.2005

Learned counsel for the applicant is absent. Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents submits that written statement has already been filed. Post for hearing before the next Division Bench.

1.3.06

Rejoinder Submitted by the Applicant.

[Signature]

Vice-Chairman

mb

10.08.2006

Learned counsel for the applicant submitted that he is not ready in the matter and sought for adjournment.

Post before the next Division Bench.

The case is ready for hearing.

[Signature]
9.8.06

[Signature]
Member

[Signature]
Vice-Chairman

mb

13.3.2007

Learned counsel for the Applicant was represented and submitted that he is not available in the station and hence sought for adjournment. Post before the next Division Bench.

The case is ready for hearing.

[Signature]
12-3-07

[Signature]

Member (A)

[Signature]

Vice-Chairman

/bb/

23.4.2007

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

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

Mr. B. Sarma, learned counsel requests for adjournment on the ground his senior Mr. U.K. Nair, learned counsel for the Applicant is not in Station. Accordingly, case is adjourned.

Call on 13.05.2007.

The case is ready for hearing.

[Signature]
19.4.07

[Signature]
Member (A)

[Signature]
Member (J)

/bb/

The case is ready for hearing.

[Signature]
11.5.07

15.5.07.

Let the case be listed before next available Division Bench.

vice-Chairman

lm

The case is ready for hearing

06.05.2008

Mr.U.K.Nair, learned counsel appearing for the Applicant and Mr.G.Baishya, learned Sr.Standing counsel appearing for the Union of India are present.

Call this matter on 06.06.2008.

Send copies of this order to the Respondents, who should come ready for hearing on the next date by contacting with Mr.G.Baishya, Sr. Standing Counsel, appearing for the Respondents.

Call this matter on 06.6.2008.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

order dt. 6/5/08
send to D/Section
for issuing to
respondents by
post.

06.06.2008

Mr.B.Sarma, learned counsel appearing for the Applicant sought for an adjournment for a week. Mr.M.U.Ahmed, learned Addl. Standing counsel undertakes to file his appearance memo in this case for the official Respondents.

Call this matter on 12.06.2008.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

12.06.2008

Mr --U.K. Nair, learned Counsel appearing for the Applicant and Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India are present.

Call this matter on 16.06.2008 for hearing.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

akm

Pl. send copies of this order to the Respondents

05.05.06.

dt. 6.5.08

D/No-2195 to 2198
dt. 9/5/08

The case is ready for hearing.

5.6.08

Q.A NO. 80/2005


18.08.2008

Mr B. Sarma, learned Counsel appearing for the Applicant, is present. Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, is also present.

The Applicant is seeking a promotional avenue and as per him, it can only be done after a cadre review. In this case a reply and rejoinder were filed way back in 2005. In the said premises, Mr M.U. Ahmed seeks an adjournment to obtain up-to-date instructions in the matter pertaining to cadre review and promotional prospects of the Applicant.

Call this matter accordingly on 09.09.2008 for hearing.


(Khushiram)
Member(A)



(M.R. Mohanty)
Vice-Chairman

nkm

09.09.2008


Counsel for the Applicant is not present. Mr. M. U. Ahmed, learned Addl. Standing Counsel appearing for the Respondents is present.

Call this matter on 04.11.2008 for hearing.


(Khushiram)
Member(A)

lm

The case is ready for hearing.


8.09.2008

011.86107

5

16.06.2008

On the prayer of Mr. M. U. Ahmed, learned Addl. Standing Counsel appearing for the Respondents, call this matter for hearing on 22.07.2008; when he will produce all connected records of the Departments for effective adjudication of this case.

Copy of this order be supplied to Mr. M.U. Ahmed, learned Addl. Standing Counsel appearing for the Respondents.

dt. 16.6.08.

Pl. supply a copy of this order to Mr. M.U. Ahmed, Addl. GGC for Respondents

[Signature]

copy of order dt. 16/6/08 handed over to Mr. M.U. Ahmed, Addl. C.C.-S.C., CAT, City-5. 6/07-

Lm

[Signature]
(Khushiram)
Member(A)

[Signature]
(M.R. Mohanty)
Vice-Chairman

22.07.08

None appears for the Applicant nor the Applicant is present. However, Mr M.U.Ahmed, learned Addl. Standing counsel for the Respondents is present.

Call this matter on 18.08.2008.

The case is ready for hearing.

14.8.08

[Signature]
(Khushiram)
Member(A)

[Signature]
(M.R. Mohanty)
Vice-Chairman

pg

CA No. 80/2005

7

04.11.2008

None appears for either of the parties.

Call this matter on 28.11.2008 for hearing.

The case is ready for hearing.

(S.N. Shukla)
Member (A)

(M.R. Mohanty)
Vice-Chairman

nkm

27.11.08

28.11.2008

None appears for either of the parties.

Call this matter on 16.12.2008 for hearing.

2.12.08
Additional Ws submitted by Respondents.
Copy not served.

(M.R. Mohanty)
Vice-Chairman

nkm

Ph

16.12.2008

On the prayer made on behalf of the learned Counsel for the parties, call this matter on 20.01.2009.

The case is ready for hearing.

(S.N. Shukla)
Member (A)

(M.R. Mohanty)
Vice-Chairman

nkm

15.12.08

20.1.09

Bench is not available.
list on 12-2-09.

The case is ready for hearing.

CO.

11.2.09

12.02.2009

Call this matter on 24.03.2009 for hearing.

(M.R. Mohanty)
Vice-Chairman

/bb/

24.03.2009 Court work suspended due to sad demise of Hon'ble Justice Guman Mal Lodha (former Chief Justice of Gauhati High Court) and, accordingly, call this matter on 01.05.2009 for hearing.

The case is ready for hearing.

3
30.4.09

By Order


Court Officer

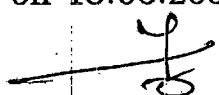
/pb/

The case is ready for hearing.

3
5.8.09

lm

01.05.2009 Call this matter on 15.06.2009 for hearing.


(M.R. Mohanty)
Vice-Chairman


15.06.2009 Call this matter on 06.08.2009 for hearing.



(M.R. Mohanty)
Vice-Chairman

nkm

06.08.2009 Mr. U. K. Nair, learned counsel appearing for the Applicant is present. On behalf of Mr. M. U. Ahmed, learned Addl. Standing Counsel for the Government of India, adjournment is sought.

Call this matter on 02.09.2009 for hearing.


(M.K. Chaturvedi)
Member(A)


(M.R. Mohanty)
Vice-Chairman

/lm/

C.A. 80/05 - 8r
- 9 -

9

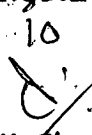
02.09.2009


On the prayer of learned counsel
for the Applicant, call this matter on
21.09.2009.

The case is ready
for hearing.

M
20.10.09

Lm.

10

(M.K. Chaturvedi)
Member(A)


(M.R. Mohanty)
Vice-Chairman


21.10.2009


Mr.S.N.Tamuli, proxy counsel states
that Mr.U.K.Nair, learned counsel for the
Applicant is out of station.

The case is ready
for hearing.

M
28.10.09.

List on 29.10.2009.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/bb/


29.10.2009


Vide order dated 16.06.2008, matter
was adjourned on the request of learned
counsel for Respondents who had undertaken
to produce all connected records for
adjudication of present case. Said order has
not yet been complied with. Mr.M.U.Ahmed,
learned Addl. C.G.S.C. seeks further time to
produce the records narrated therein.

The case is ready
for hearing.

M
3.11.09.

In the circumstances and very
reluctantly, we adjourn the matter to
04.11.2009. It is made clear that no further
adjournment will be granted since matter is of
2005.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/bb/

O.A. 80/05

04.11.2009

Heard Mr U.K. Nair, learned counsel for the applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C for the respondents. Hearing concluded.

Judgment delivered in open court.

For the reasons recorded separately the O.A is dismissed.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

Order dated
4/11/2009 sent to me
I seldom or issuing
the applicant and
all the Respondents
and both the advocates.

vide NO - 12656 to

dated - 26-11-2009

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

O.A. No. 80 of 2005

DATE OF DECISION: 04-11-2009.

Sri N. A. Kasar

.....Applicant/s

Mr U.K. Nair

.....Advocates for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

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


.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)

THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No
2. Whether to be referred to the Reporter or not ? Yes/No
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes/No


Member (J)/Member(A)

13

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI :**

O.A. Nos.80 of 2005

DATE OF DECISION : THIS IS THE 4th DAY OF NOVEMBER, 2009.

THE HON'BLE MR MUKESH KUMAR GUPTA, MEMBER (J)
THE HON'BLE MR MADAN KUMAR CHATURVEDI, MEMBER (A)

Shri N.A. Kasar,
Son of Late P.A.Kasar
C-947, Half Nagarjan,
Dimapur, Nagaland.

.....Applicant

By Advocate Shri U.K.Nair

-Versus-

1. The Union of India represented
by the Secretary to the Govt. of India,
Ministry of Defence, New Delhi.
2. Engineer in Chief,
Military Engineering Service Army
Headquarters, Kashmiri House DHQPO,
New Delhi - 110011.
3. Chief Engineer, Military Engineering Service,
Headquarters Eastern Command,
Fort William, Kolkata..
4. Chief Engineer Military Engineering
Service, Shillong Zone, SE Falls area,
Shillong, Meghalaya.


.....Respondents

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

ORDER (ORAL)

MR MUKESH KUMAR GUPTA, MEMBER (J)

Mr M.U.Ahmed, learned counsel for the respondents states
that records as directed to be produced by this Tribunal have not been
made available and hence could not be produced.



2. We noticed that specific orders were passed on this aspect on 16.6.2008, as reiterated on 29.10.2009. In the circumstances, we have no other option but to proceed with the matter.

3. In this second round of litigation Shri N.A.Kasar, retired Senior Administrative Officer challenges validity of communication dated 10.11.2004 whereby his representation dated 9.8.2004, filed pursuant to the direction issued by this Tribunal on 23.7.2004 in O.A.37/2003, had been rejected.

4. The facts of the case in brief are that applicant was holding the post of Sr. Administrative Officer. Next higher post for promotion was Principal Administrative Officer. Recruitment to said post is governed by MES (PAO, SAO, SO Grade-I and AO Grade-II) Recruitment Rules, 2000, which were notified on 9.9.2000 and as per the schedule appended thereto, 2 posts were shown as sanctioned in cadre of PAO, in pay scale of Rs.12000-375-16500/-, which is to be filled by merit cum seniority basis. It is contended by the applicant that certain posts were created in the cadre of PAO, but who admittedly was at serial No.4 in the gradation list 2004, had been overlooked for promotion unjustly and arbitrarily. As such he approached this Tribunal vide O.A.37/2003, wherein he sought direction to Respondents to consider his case for promotion to said post, and he was eligible with effect from the date when his junior Shri K.S.Mukhopadya had taken over charge as Staff Officer-I (Personnel). Said O.A has been disposed of vide order dated 23.7.2004 as he made a statement that he would be satisfied if liberty is granted to file a detail representation before

+

respondent No.1, with a direction to respondents to consider the same and pass a speaking order within the time frame specified therein.

Accordingly he submitted a representation dated 9.8.2004 which came to be rejected by the impugned communication dated 10.11.2004. Para 4 of the said communication reads as under :

"Your representation has been perused by the competent authority and the following points are brought to your information :-

- a) Merely meeting the requisite qualifications such as educational qualification and length of service as given in the RR does not gives a right to an individual to be promoted to the next higher post. The promotion to the next higher post also depends upon the availability of vacancies in that post. In your case, you could not be promoted as PAO due to lack of vacancies and officers senior to you were promoted as PAO as and when the vacancy occurred.
- b) The post of SO-I (Legal) re-designated as Director (Legal) and SO-I(Pers & Legal) re-designated as Director (Pers & Legal) in the offices of CEs Commands & CEs Zones are being held by Superintending Engineers in terms of Govt. of India, Min of Def. letter No.16(2)/98/D (Works) dated 2nd November 2001. The number of posts of Principal Administrative Officer sanctioned vide Govt. of India letter No.85602/4/OR/PAO/1882/CSCC/D (Wks-II) dated 25th March 1988 are only two and you could be promoted only to this post as per the Statutory Recruitment Rules as per your seniority.
- c) Your contention that the post of SO-I(Pers & Legal), Director (Pers & Legal) are meant for your cadre are not in consonance with the Govt. order of creating of these appointments vide Min of Def letter No.16(2)/98/D (Works) dated 2nd November 2001, and therefore, cannot be accepted.


In view of above, your promotion to the post of PAO with effect from 12th February 2001 has not been possible and your plea is, therefore, not acceptable.



By issue of this order the judgment dated 23rd July 2004 in OA No.37/2003 stands complied with."

The basic ground taken by Mr U.K.Nair, learned counsel appearing for the applicant is that on numerous occasions he had been discharging the function of SO-I (Pers & Legal) and posts were created by the Government in the cadre of PAO though described as SO-I (Pers & Legal). Once posts are created, the same have to be taken in the cadre concerned and it cannot be outside the cadre notified by the Statutory RRs. He satisfied the condition prescribed under the rules and therefore there was no justification to ignore him from consideration for promotion to said post. It was emphasized that consideration to a higher post is a legal right, which cannot be violated and ignored for any reason unless the applicant was facing some departmental proceeding and ultimately rendered ineligible, which is not the case of the respondents. In this background it was emphasized that he thought though retired in 2003 is entitled to be considered for promotion to secure certain monetary benefits, which is a continuous cause of action.


5. By filing reply, the Respondents have contested the claim stating that the cadre review for the posts of PAO, SAO, AO Gde-I and AO Gde-II have already been forwarded to Govt. of India by Respondent No.2 vide letter dated 2.3.2005. His contention that Govt. of India has created a posts of Staff Officer-I (Personnel) is misleading. The Govt. of India has created a post of Staff Officer-I (Personnel & Legal) to look after the ever increasing legal cases in the department vide Ministry of Defence letter dated 2.11.2001. While creating such posts, no post of Principal Administrative Officer was



either suppressed or decreased, whereas the post of erstwhile Superintending Engineers were suppressed to create those posts and as such these were held by Superintending Engineers. Furthermore, the post of SO-I were re-designated as Director (Pers & Legal in pay scale of Rs.14300-18300/-. The scale relating to the post of PAO was Rs.12000-375-16500/- and therefore, there is no parity at all in said post of PAO vis-à-vis Director (Pers & Legal) which was earlier designated as Grade-I (Pers & Legal). It was emphasized that there remains only two sanctioned posts of PAO which were filled up by officer senior to him. Thus applicant has no legal right for promotion to the newly created posts, emphasized Shri M.U.Ahmed, learned Addl. C.G.S.C.

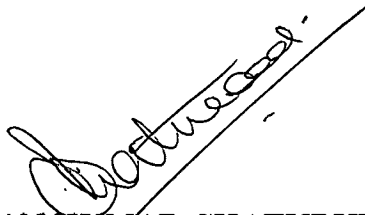
6. We have heard learned counsel for the parties, perused the pleadings and other materials placed on record. To seek consideration for promotion to the next higher post one has to satisfy two aspects i.e. availability of vacancy and fulfilling the requirements, as prescribed vide the statutory recruitment rules. On that count emphasized has been laid down by the respondents that two posts of PAO which were filled up by senior persons. This aspect and stand has not been either refuted or contested. What has been emphasized by the applicant is creation of post in the cadre of PAO.

7. We may note that posts which were created at the level of SO-I (Pers & Legal) were later re-designated in pay scale of Rs.14300-18300/-, which is a higher pay scale to the scale of PAO. Under the law

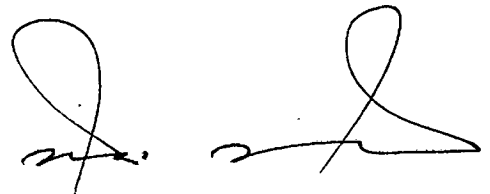


no one could have jumped almost Rs.4000/- as basic salary on promotion, and surpass two levels in the hierarchy.

8. On examination of all the aspects of the matter we are not satisfied with this contention for the simple reason that whenever there was a post it has to be duly filled up. Notification for creating a post while increasing or decreasing has not been brought to our notice. We are satisfied that no illegality had been committed by the Respondents by passing order dated 10.11.2004. Thus, we find no merits in O.A., which is accordingly dismissed. No costs.



(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER



(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

23 MAR 2005

- 16 -

गुवाहाटी न्यायालय
Guwahati Bench

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

O.A. No. 80 of 2005

Shri N.A.Kasar

...Applicant

-Versus-

The Union Of India & Ors.

....Respondents

SYNOPSIS

The applicant who while working as Senior Administrative Officer in the Office of the Chief Engineer MES, Shillong Zone had retired from his services on 31.3.2003 on reaching the age of superannuation, has by way of this application assailed a communication dated 10.11.2004 (Annexure-7) by which his claim for promotion to the posts as created in the cadre of Principal Administrative Officer was rejected. It is the case of the applicant that the reasons as assaigned in the impugned communication dated 10.11.2004 are all perverse and untenable. It is the case of the applicant that posts having been created in the cadre of Principal Administrative Officer the same was mandatorily required to be filled up by applying the provisions of the Rules of 2000 and the failure on the part of the authorities in following the provisions of the said Rules had resulted in miscarriage of justice.

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

O.A. No. of 2005

Shri N.A.Kasar

...Applicant

-Versus-

The Union Of India & Ors.

....Respondents

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Filed by: U.K. Nair

Advocate.

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

Filed by
N.A. Kasar
--- Applicant
Through, Unnikrishnan Nair
Advocate, 2

O.A. No. 80 of 2005

BETWEEN

1. Shri N.A. Kasar.

Son of late P.A. Kasar.

C-947, Half Nagarjan,

Dimapur, Nagaland.

... Applicant.

-VERSUS-

1. The Union of India Represented

by the secretary to the Government of India,

Ministry of Defence New Delhi.

2. Engineer - in - chief

Military Engineering service Army

Headquarters, Kashmiri House DHQPO,

New Delhi - 110011.

3. Chief Engineer, Military Engineering

Service, Headquarters Eastern command

Fort William, Kolkata.

4. Chief Engineer Military Engineering

service, Shillong Zone, SE falls area

Shillong, Meghalaya.

.... Respondents.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

This application is directed against the communication dated 10.11.2004 issued by the PAO,

Director E1, DPC-11, for Engineer-in-charge rejecting the prayers made by the applicant for his promotion to the cadre of Principal Administrative Officer, MES.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the cause of action of this applicant is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

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

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and a permanent resident in the State of Nagaland and as such he is entitled to the rights, protections and privileges granted under the Constitution of India and laws framed there under.

4.2 That the applicant while working as Senior Administrative Officer in the office of the Chief Engineer, Shillong Zone retired from his services with effect from 31.3.2003 on reaching the age of superannuation.

4.3 That the applicant on being selected through the UPSC was appointed as Administrative Officer Grade - II in the year 1979 and was posted to Dimapur under Hq, 137 Works Engineer. Thereafter, he was promoted as Administrative Officer, Grade - I and posted to the

AM

office of Chief Engineer MES, Kolkata Zone with effect from 18.11.1985. The applicant was thereafter promoted as Sr. Administrative Officer (SAO) in the year 1993 and held the said post till date of his superannuation on 31.3.2003.

4.4 That your applicant states that the next promotional avenue available to an incumbent in the post of SAO is the cadre of ~~Principal~~ Administrative Officer. The manner and method of effecting promotion to the post figuring in the cadre of Principle Administrative Officer, Sr. Administrative Officer Grade - I i.e. the Administrative posts in the MES service is governed by the provisions of the MES (PAO, SAO, SO Grade - I and AO Grade - II) Recruitment Rules, 2000. In terms of the provisions of the said Rules, the cadre of PAO consisted of two post which was however subject to variation, dependent on work load. The eligibility criteria prescribed for consideration for promotion to the cadre of PAO is five years continuous service as SAO. The stipulation a contained in the Rules of 2000, that the cadre strenght in the cadre of PAO is subject to variation, mandates carrying out of periodical reviews by the authorities to assess the work load various intervals of time.

A copy of the said Recruitment Rules 2000 is annexed as **Annexure - 1.**

4.5 That the applicant acquired the requisite eligibility for being considered for promotion to the cadre of PAO, in terms of the said Rules of 2000, in

M

the year 1998. The applicant who belongs to the scheduled Tribe category was the senior most amongst the SAO's working at that relevant point of time belonging to the scheduled Tribe category and was the fourth seniormost person amongst all categories of SAO's. The name of the applicant as such figured at serial No. 4 in the All India seniority list of SAO's for the year 2001-02.

A copy of the said All India seniority list is annexed as **Annexure - 2.**

4.6 That your applicant states that the Administrative service of the MES is an independent service and is governed by distinct and separate service Rules. Although, the Rules i.e. the said Rules of 2000 provides for only two post in the cadre of PAO, the same was subject to variation dependent on work load. The two posts of PAO originally created were already filled up by persons senior to the applicant and who belonged to the Administrative service. With the passage of time there was increase in the work load generating a legitimate need for creation of additional post in the cadre of PAO by invoking the conditions specified in this connection under the Rules of 2000. The authorities however failed to carry out cadre reviews to ascertain the exact increase in the work load in the cadre of PAO.

4.7 That without exercising the power as provided under the rule in force, for creation of additional post in the cadre of PAO, the authorities without any

jurisdiction and in arbitrary manner proceeded to draft in officers belonging to the Engineering services more specifically officers posted as Superintending Engineers to discharge duties as Staff Officer - 1 (personal), duties of which purely belong to the Administrative Service. It may be mentioned here that the post of staff officer 1 (personal) belongs to the Personal and Administrative Service of MES and is equivalent to the post of PAO. The said action on the part of the authorities in drafting in additional hands for manning jobs specified for the Personal and Administrative Service of MES speak volumes of the fact that there was an increase in the work load in the cadre of PAO and this aspect of the matter was also accepted by the authorities.

4.8 That the respondent authorities vide communication dated 14.2.2001 appointed one K.S. Mukhopadya Superintending Engineer, Staff officer_1 (design) as staff officer 1 (personal) with effect from 12.2.2001. The posting of said K.S. Mukhopadya by the authorities was in view of the increase in the work load and the same was so effected without taking into consideration the claims of the existing senior officer including the applicant working in the cadre of SAO. It may be mentioned here that there is no public interest and/or any administrative convenience involved in the posting of personnel belonging to the Engineering Service as Staff Officer Grade - I post inasmuch such personnel are bereft of any experience in the duties attached to post belonging to the Administrative Service.

A copy of the communication dated 14.2.01 is annexed as **Annexure - 3.**

4.9 That your applicant states that the fact that the post of SAO - 1 (personnel) which was allowed to be filled up by an officer from Engineering Services was an post in the hierarchy of the Administrative Service is evident from the orders issued from time to time allowing the applicant to officiate as SAO - 1 (personnel). In this connection, mention may be made of order dated 5.5.2001, 22.9.2001, 22.10.2001, 29.4.2002, 23.8.2002 and 4.2.2003. It is therefore clear that the applicant was accordingly discriminated against and he was denied an opportunity for consideration of his case for promotion to the next higher cadre without any rhyme or reason.

A copies of the said orders are annexed as **Annexure - 4** series.

4.10 That your applicant states that poised thus he came to learn that the Government proceeded to undertake a cadre review in respect of Engineers, Surveyors and Architects cadre of MES Group - A civilian officers and vide order dated 2.11.01, by effecting a review of the Engineers cadre, 48 additional posts of Superintendent Engineers were created and the posts were directed to be utilized and 29 posts so introduced were directed to be created in each of the Chief Engineer Zones as Staff Officer - 1 (personnel). The posts so created by effecting a review

in the Engineers cadre was in reality creation of posts in the Administrative Cadre for accommodating officials belonging to Engineers cadre. Although posts were created in the Administrative cadre, i.e. in cadre of PAO, persons like the applicant working in administrative side were kept away from consideration for appointment against the said post. The order dated 2.11.01 is in direct conflict with the Rules of 2000 and as such the order dated 2.11.01 is bad in law as well as in facts to the extend of the said repugnancy.

4.11 That the 29 posts of SO- 1 (personnel & legal) (now redesignated as Director Personnel & Legal) are equivalent to the post figuring in the PAO and as such ought to have been declared as an promotional avenue for the SAO's like the applicant. Such a course of action ^{would have} also been in connosonce with the provisions of the said Rules of 2000.

4.12 That against the background of said factual matrix, the applicant approached this Hon'ble Tribunal by way O.A. No. 37/2003 interalia praying for his promotion to the post figuring in the cadre of PAO and/or against any equivalent post created after coming into force of the Rules of 2000. This Tribunal vide order dated 23.7.04 directed the applicant to file a fresh representation before the Secretary to the GOI Ministry of Defence within a period of 1(one) month from the date of this order with a further direction to the respondent authorities to take a decision on this matter within a period of 3 (three) months.

A copy of the order dated 23.7.2004 is annexed hereto and annexed as **Annexure = 5.**

4.13 That in terms of the order dated 23.7.04 in DA No. 37/2003, the applicant filed a detailed representation on 9.8.2004 highlighting therein his grievances with a prayer for his promotion with retrospective effect to cadre of PAO.

A copy of the representation dated 9.8.2004 is annexed as **Annexure = 6.**

4.14 That your applicant states that vide communication dated 10.11.2004, the representation of the applicant was considered and his prayer for promotion to the cadre of PAO with effect from 12.2.01 was rejected. The authority who had considered the case of the applicant was however not disclosed. The claim of the applicant was rejected without assigning any ~~logent~~ ^{logent} cause or reason or by appreciating the contentions as had been advanced by him in his representation dated 09.08.04. Further, it was contended that provision having not been made vide order dated 2.11.01 for promoting SAO's to the posts of SO-1 (personnel & legal) (now redesignated as Director Personnel & legal), his case for promotion against the said post of SO -1 (personnel & legal) cannot be considered. The reasons as had been assigned towards rejecting the claim of the applicant are all preverse and the communication dated 10.11.04 was issued without application of any issued.

A copy of the communication dated 10.11.2004 is annexed as **Annexure = 7.**

4.15 That your applicant states that the basic grievance of the applicant is that while proceeding to create posts in the administrative cadre by effecting a review of the Engineers cadre, the officials in the administrative cadre including the applicant was deprived in having his case considered for promotion against posts created in his cadre and in a most illegal and arbitrary manner, officials from the Engineering cadre were allowed to hold posts in the Administrative cadre. The action on the part of the authorities in proceeding to create additional posts in the Administrative cadre of MES, speaks volumes of the fact that there was admittedly an increase in the work load in the cadre and as such the posts so created ought to have been utilised for granting an opportunity, to the incumbents in the post of SAO for an advancement in their service career. Denial of such an opportunity to the applicant is not based on any cogent cause or reason. It may be stated here that for increase in the work load in the Administrative Cadre of MES, it was the bounded duty of the authorities to carry out a cadre review in the said cadre and not utilise the said cadre for the purpose of accommodating persons belonging to other cadres to the deprivation of the original incumbents of the Administrative cadre.

4.16. That your applicant states that the denial of an opportunity for advancement in his service career and the hostile discrimination meted out to him in this connection is in clear violation of the provisions of

Article 14 and 16 of the Constitution of India, in addition to being in clear violation of the provisions of the Rules of 2000.

4.17 That the applicant states that the reasons as assigned in the communication dated 10.11.2004 towards rejection of the claim of the applicant are all perverse and untenable. It is an admitted fact that posts were in fact created in the cadre of PAO but the same were in a most arbitrary and illegal manner utilised for the purpose of accommodating persons of other cadres to the deprivation of the incumbents in the Administrative cadre, including the applicant. The decision to accommodate persons of other cadres against the posts created in the Administrative cadre is not based on any sound policy and the same is also opposed to public interest inasmuch as persons having experience in the Administrative cadre were kept away from consideration for appointment against the posts created.

4.18 That the contention as advanced in the impugned communication dated 10.11.04, that posts of So-1 (Pers & Legal), Director (Legal & Pers) were not created for the Administrative Cadre is a perverse one and such contentions have been advanced only with a view to give coverage to the illegality committed in denying to the applicant his due and legitimate ^{promotion} to the next higher cadre.

4.19 That your applicant states that posts being available in the cadre of PAO and he being eligible for

promotion against the same, the respondent authorities could not have denied to the applicant his due and legitimate promotion against any of the posts of Director (Legal & Pers). Accordingly, the applicant is entitled for a direction for his promotion as Director (Legal & Pers) with retrospective effect i.e. with effect from the date of creation of the said posts with all consequential benefits including salary etc. Further, pursuant to such promotion, the pension & pensionary benefits as receivable by the applicant is required to be recalculated in the scale of pay prescribed for the posts of Director (Legal & Pers).

4.20 That in view of the facts and circumstances stated above the impugned Annexure - 7 communication dated 10.11.2004 is liable to be set aside and quashed and the applicant is entitled to a direction for his promotion against any posts created in the cadre of PAO with retrospaective effect.

4.21 That this application has been made bonafide for securing the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that in any view of the matter the impugned communication dated 10.11.2004 is not sustainable and the same is liable to be set aside and quashed.

5.2 For that the reasons as advanced in the communication dated 10.11.2004 towards rejection of the claim of the applicant are all perverse and untenable. Accordingly the said communication dated 10.11.2004

cannot stand the scrutiny of law and is liable to be set aside and quashed.

5.3 For that posts having admittedly been created in the cadre of PAO in the Administrative cadre of MES, it was the bounded duty of the authorities to fill up the same in accordance with the Rules of 2000, failure on the part of the authorities to fill up the posts in accordance with the provisions of the said Rules has the effect of rendering the action on the part of the authorities in filling up of the posts by drafting persons from other cadres null and void.

5.4 For that your humble applicant is entitled for promotion as principal Administrative Officer and/or against any other equivalent post as per Military Engineering Service Recruitment Rules as your humble applicant have completed 5 (five) years of regular service in the post of Senior Administrative Officer, 1993 and posts were available for considering the case of the applicant for such promotion.

5.5 For that it is the legitimate expectation, for everybody to go the higher post after working in lower categorical post and so your humble applicant who had worked as senior Administrative Officer from 1993 and was eligible to be promoted to the next higher post as Principal Administrative Officer after completion of 5 (five) years in 1998 being one of the Senior most Administrative Officer in the All India Seniority list was deprived by the Respondents illegally. The applicant was forced to staynote in the cadre of SAO

without any fault on his part.

5.6 For that in any view of the matter the action/inaction on the part of the respondents are not sustainable in the eye of law and same are liable to be set aside and quashed.

The applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant declares that he has no other alternative and efficacious remedy except by way of filing this application. He is seeking urgent and immediate relief.

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

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR:

Under the facts and circumstances stated above, the applicant pray that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought

for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs:

8.1 To set aside and quash the impugned Annexure-7 communication dated 10.11.2004.

8.2 To direct the Respondent authorities to promote the applicant to the cadre of Principal Administrative Officer against any of the posts of Senior Officer (Legal) and/or Senior Officer-I (Pers & Legal) now redesignated as Director (Legal) and Director (Pers & Legal) respectively with retrospective effect from the date of creation of the said posts with all consequential benefits, including pay and allowances.

8.3 To direct the respondents to pay to the applicant his pension and other pensionary benefits in the scale of pay prescribed for the posts of Senior Officer (Legal) and/or Senior Officer-I (Pers & Legal) now redesignated as Director (Legal) and Director (Pers & Legal) and to pay to the applicant the arrears thereof along with regular pension at the said scale.

8.4 Cost of the application.

8.5 Any other relief/ reliefs to which the applicant is entitled to under the facts and circumstances of the case and as may deem fit and proper by this Hon'ble Tribunal upon consideration of the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR:

In view of the facts and circumstances of the case the applicant at this stage does not pray for any interim direction, but prays for an early hearing of the matter.

10.

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

- i) I.P.O. No. : 209160011
- ii) Date : 21-3-05
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

V E R I F I C A T I O N

I, Sri Ngalangza Awungshi Kasar, aged about 62 years, Son of Later P.A. Kasar, presently resident of Dimapur, Nagaland, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 3, 4.1 to 4.3, 4.5 to 4.11
4.13 to 4.19 and 5 to 12 are true to my knowledge ;
those made in paragraphs 4.4 and 4.12
are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 14 th day
of March, 2005.


D E P O N E N T
(N A K A S A R)

(TO BE PUBLISHED IN PART II, SECTION 3 OF THE GAZETTE OF INDIA)

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

New Delhi, the 9

NOTIFICATION

Sepo 200

Sl. No. 26/ In exercise of the powers conferred by the proviso to article 163 of the Constitution and in supersession of the Military Engineer Services (Principal Administrative Officer) Recruitment Rules, 1938, Military Engineer Services (Senior Administrative Officer) Recruitment Rules, 1936, Military Engineer Services (Administrative Officer) Recruitment Rules, 1939 and Military Engineer Services (Administrative Officer) Recruitment Rules, 1935, except as respects things done or omitted to be done in supersession, the President hereby makes the following rules regulating the recruitment to the posts of Principal Administrative Officer, Senior Administrative Officer Grade I and Administrative Officer Grade II in the Military Engineer Services, namely:-

1. Short title and commencement - (1) These rules may be called the Military Engineer Services (Principal Administrative Officer, Senior Administrative Officer, Administrative Officer Grade I and Administrative Officer Grade II) Recruitment Rules, 2001.

(2) They shall come into force on the date of their publication in the Gazette.

Number of posts, classification and scales of pay. - The number of the posts, classification and the scales of pay attached thereto shall be as specified in Column (1) of the Schedule annexed to these rules.

Method of Recruitment, age limit and other qualifications, etc. - The method of recruitment, age limit and other matters relating to the said posts shall be as specified in Column (2) of the Schedule aforesaid.

Disqualification. - No person -

(a) who has entered into or contracted a marriage with a person having a spouse living, or

(b) who, having a spouse living, has entered into or contracted a marriage with a person who is not eligible for appointment to the said posts

shall be eligible for appointment to the said posts. Provided that the Government may, if satisfied that such marriage is entered into in good faith and applicable to such person and other party to the marriage, exempt any person from the operation of the provisions of the said rules.

Attested
Anni Losh
(H. K. Nair)
Advocate

-18- 2A

SCHEDULE

Name of post	No of post	Classification	Scale of pay	Whether selection by merit or direct recruits selection cum seniority or non selection post	Age limit for direct recruits	Whether benefit of added years of service admissible under rule 30, of Central Civil Service (Pension) Rules 1972	Educational and other qualifications required for direct recruits
1. Principal Administrative Officer	2* (20000)	General Central Service, Group 'A' Gazetted Ministerial	Rs. 12000-375-14500	Selection by merit	Not Applicable	Not Applicable	Not Applicable

Subject to variation dependent on work load

Promotion
 Senior Administrative Officer
 regular service in the Grade
Deposition
 Officers of the Central Government
 including Union Territories
 (a) (i) Holding analogous post as regular
 officer,
 (ii) with 5 years regular service in posts in the
 scale of Rs. 10,000-125-15,000 or equivalent
 and
 (c) Possessing experience in Establishment
 Administrative and Accounts matters.

Note 1: The Departmental Officers in the
 lower category who are in the direct line of
 promotion will not be eligible for
 consideration for appointment on deputation.
 Similarly deputationists shall not be
 considered for appointment by promotion.
 Period of deputation including periods of
 deputation in other posts retained post held
 immediately preceding this appointment in
 the same or some other
 organization/department of the Central
 Government shall not exceed four years.)

Note 2: Where officers who have completed
 their qualifying eligibility service are being
 considered for promotion their seniority would
 also be considered, provided they are not short
 of the requisite qualifying eligibility service
 by more than half of such qualifying
 eligibility service or two years, whichever is
 less, and have not been considered for their
 promotion in the preceding 10 years.

Group A - Departmental Consultation with the
 Promotion Committee Union Public Service
 (for promotion) Commission necessary
 with appointing an
 Officer on deputation.
 1) Chairman Member Union Public Service
 Commission - Chairman
 2) Joint Secretary Min of
 Defence - Member
 3) Joint Director General
 Engineers (General),
 Engineer in Chief's Branch,
 Army Headquarters - Member

20 - 40

SCHEDULE

Name of post	No of post	Classification	Scale of pay	Whether selection by merit or selection-cum-seniority or non selection post	Age limit for direct recruits	Whether added years admissible SO, of Civil Service Rules 1972	Level of Educational qualification required for direct recruits (Civil Service)	Other qualification required for direct recruits
1	2	3	4	5	6	7	8	
1. Principal Administrative Officer	2* (2000) *subject to variation dependent on work load	General Central Service, Group 'A' Gazetted Ministerial	Rs.12000-375-16500	Selection by merit	Not Applicable	Not Applicable	Not Applicable	Not Applicable

(TO BE PUBLISHED IN PART II, SECTION 4 OF THE GAZETTE OFFICE)

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

New Delhi,
the 9th Sept, 2000.

NOTIFICATION

.....24. In exercise of the powers conferred by the provision to article.... Constitution and in supersession of the Military Engineer Services (Principal A Officer) Recruitment Rules, 1988, Military Engineer Services (Senior Administrative Recruitment Rules, 1996, Military Engineer Services (Administrative Officer Recruitment Rules 1989 and Military Engineer Services (Administrative Officer Recruitment Rules 1985, except as respects things done or omitted to be done supersession, the President hereby makes the following rules, regulating the recruitment to the posts of Principal Administrative Officer, Senior Administrative Officer Grade I and Administrative Officer grade II in the MES services namely :-

Short title and commencement - (1) These rules may be called the MES services (Principal Administrative Officer, Senior Administrative Officer, (Officer Grade I and Administrative Officer Grade II). Recruitment Rules 2000.

(2) They shall come into force on the date of their publication in the Office.

Number of posts, classification and scales of pay- The number of the post, classifications and the scales of pay attached thereto shall be as specified in Cadre Schedule annexed to these rules.

Method of Recruitment, age limit and other qualification, etc,- The recruitment, age limit and other matters relating to the said posts shall be as specified in (1) to (14) of the Schedule aforesaid.

Disqualification - No person -

.....
.....

SCHEDULE

1) Name of post	Principal Administrative Officer
2) No. of post	2 (2000) Subject to variation dependent on work load
3) Classification Ministerial	General Central Service, Group 'A' Gazetted
4) Scale of Pay	Rs. 12030-375-16508
5) Whether selection by merit or selection- cum- seniority or non selection post	Selection by merit
6) Age limit for direct recruits	Not applicable
7) Whether benefit of added years of service admissible under rule 30 of Central Civil Service (pension) Rules 1972	Not applicable
8) Educational and service qualifications as required for direct recruits.	Not applicable

SAO
Copy
-21-
A-2
Annexure-2
19
Tele: 3019687

A/41060/SAO/2001-02/EIR(O)

Coord & Pers Directorate/EIR
Engineer-in-Chief's branch
Army Headquarters
DHQ PO, New Delhi - 110 011

20 May 2001

CIRCULATION OF ALL INDIA SENIORITY LIST OF SENIOR
ADMINISTRATIVE OFFICER - 2001-02

1. Two copies of All India Seniority List of Senior Administrative Officers are forwarded herewith.
2. The Seniority list may be circulated to all concerned officers affected in Review DPC and particulars in each column of the seniority list including the MEF Nos, Date of regular appi to the grade, post held substantively and Qualifications etc., may be checked and verified and amendments if any, be incorporated. Column No. 5 of AISL wherever left blank may please be filled and duly authenticated by an officer not below the rank of SO 1 (Pers), may be returned to this HQ by 15 Jul 2001 to complete our records and hold further DPCs in the cadre. Neither pieco-meal replies will be sent nor lower formations will be directed to forward seniority list directly to this Headquarters.
3. This may be accord PRIORITY.

(AK Ganopadhyay)
PAO
SO 1 Engrs (Pers)/EIR
For Engineer-in-Chief

Encls : AS above

Copy to :- List "B", "C" & "F"

Internal :- SPA/DG Pers, SPA/DDG (Pers) "A", E-Coord-1, E1A, E1B, E1C,
CSCC, MIS(Civ)

Attested
Anni Looch
(U.K. Nair)
Advocate

-22-

ALL INDIA SENIORITY LIST OF SENIOR ADMINISTRATIVE OFFICER - 2001-02

Sl No.	MES No. & Name of the Officers	Whether they belongs To SC/ST If no, say 'Neither'	Date of Birth	Date of regular appt to the grade	UPSC reference in which recommended/approved	Post held substantively	Educational Qualifications
1	2	3	4	5	6	7	8
01.	S/Shri 306180 Shriaji Ram Gupta	Neither	15 Jun 48	10 Jan 89	F.1/33(2)/ 88-AU-5 dt 14 Apr 88	AO-II 01 Apr 81	MA-70, MES Proce-79
02.	183235 VS Prasad	Neither	15 Oct 48	08 Oct 93	F.1/33(3)/ 91-AU-5 dt 27 May 93	AO-II 01 Apr 81	B. Sc-68, MES Proce- 80, Master in Personal Management - 86
03.	229208 KB Chettri	Neither	01 Mar 50	16 Aug 93	--do--	AO-II 27 Feb 79	BA Distinction-1970, MES Proce-80, Hindi Pragya-81
04.	243444 NA Kasar	S/Tribe	01 Apr 43	30 Jul 93	--do--	AO-II 01 Apr 88	BA, Dip in Medical Records Science, Hindi Pragya-83
05.	302828 Sanjeev Panwar	S/Caste	04-04-44	14 May 2001	F.1/33(55)/ 2000/AP-3 dt 16 Apr 2001		
06.	145025 BT Rao	S/Caste	20-12-43		--do--		

Contd.....21

- 23 -

ANNEXURE 3
4/86

Annexure-3

Tele : 6316

HQ Chief Engineer
Shillong Zone
Spread Eagle Falls
Shillong- 793011

77023/1/ 86 /E7A

14 Feb 2001

List 'A'

List 'B'

List 'C'

DELEGATION OF POWER INTERNAL OFFICERS

1. MES-113392 Shri KS Mukhopadhyay, SE(SG) has taken over as SO I(Pers) with effect from 12 Feb 2001. All Correspondance will be made with SO I(Pers) immediate effect. Tele Number of officer is as under:-

Tele Number

Mail - 6352 (Office)

2. No SO II (Pers) is presently posted.

(BP Mittal)
Major
SO II (Adm)
for Chief Engineer

Copy to

List (B)

OK
14/2/2001

Attested
Anni Sankar
(H.K. Nair)
Advocate

ANNEXURE 4 Series

09 MAY 2001

A-4 (Series)

26

EFA

OFFICE OF HO CHIEF ENGINEER SHILLONG ZONE, SHILLONG-11

OFFICE ORDER

DATED : 05 MAY 2001

SER NO : 01

DELEGATION OF POWER

1. During my absence on E/L w.e.f 08 May 2001, Shri NA Kasar, SAO will officiate as SO I (Pers).
2. This order is self cancelling on my rejoining duties.

(KS Mukhopadhyay)
SE (SG)
SO I (Pers)
For Chief Engineer

77023/1/E-78

Distribution :-

List "D"

PA to CE

PA to ACE (Wks)

PA to ACE (Plg)

37 Sec

CH	SEC 1
ACB (A)	
SO I (Pers)	
SO I (SG)	
SO I (Wks)	
SO I (Plg)	

Attested
Anni Bork
(A.K. Nain)
Advocate

- 25-20
OFFICE ORDER

ANNEXURE 4-Series

779

22 Sep 2001

70014/7/SAT/MIS

ALLOCATION OF DUTY

1. During my absence from duty on Temp duty to CSEC Kolkata wef 24 Sep 2001, MDO-247444 Shri N A Kasar, SDO will look after the duties of SOI(P). In case Shri Kasar does not report on 24 Sep 2001, Smt O Khongwir, AO-I shall perform this duty.
2. MDO-237051 Shri B Borkotoky, AO-II will assist in the duty of MDO, SI Legal and MIO.
3. This order is self cancelling on my return.

(K S Mukhopadhyay)
SOI(P)

Distribution:-

1. PA to CE
2. PA to ADE(MKA)
3. STA Section
4. Shri NA Kasar, SDO
5. Smt O Khongwir, AO-I
6. Shri B Borkotoky, AO-II
7. All concerned sections
8. Office copy.

- 26 -
780 7 -21-

22 OCT 2001

ANNEXURE 4 (B)

48 780

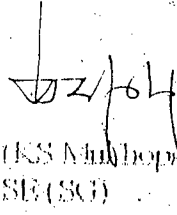
OFFICE OF HQ CHIEF ENGINEER SHILLONG
ZONE SHILLONG-II

OFFICE ORDER

SER NO : 02 DATED : 19 OCT 2001

DELEGATION OF POWER

1. During my absence on earned leave wef 22 Oct 2001, Shri NA Kasar, SAO will officiate as SO I (Pers) in addition to his own duties.
2. EI (Con) section will be directly dealt by ACE (Wks), as per direction issued by him.
3. Shri Padon Borkotoky, AO II, will be the officer in charge of EI Legal section. He will be reporting to Shri NA Kasar, SAO.
4. Allocation of duties of other officers will remain the same.
5. This order is self cancelling on my return from leave.


(KS Nishu Dopolhyni)
SE (SG)
SO I (Pers)
For Chief Engineer

Distribution :-

1. PA to CE
2. PA to ACE (Wks)
3. PA to ACE (p/h)
4. Shri NA Kasar, SAO
5. Smt O Khongwir, AO I
6. Shri AK Doke
7. Shri B Borkotoky, AO II
8. EIB
9. EIC (1)
10. EIC (2)
11. EIC (3)
12. EID
13. EI (Con)
14. EI (Legal)
15. EI

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ANNEXURE-4 LL
40

**PART I ORDER
RX**


BRIG SS GREWAL CHIEF ENGINEER, SHILLONG ZONE
SHILLONG-11

Ser No : 111

Dated : 27 Apr 2002

DELEGATION OF POWER

1. Consequent upon SOS of MES-113392 Shri KS Mukhopadhyay, SE(SG) SOI(Pers & Legal) on his permanent posting to DGNP Mumbai wef 27 Apr 2002 (AN) MES-243444 Shri NA Kasar, SAO/SOI(Pers) will perform as Offg SOI(Pers & Legal) without any financial benefit with immediate effect.
2. Accordingly the following duties are allotted to the officers of EI Section as shown against each in addition to their normal duties with immediate effect.
3. (a) MES264041 Smt O Khongwir, AOI - EIB
4. (b) MES-237051 Shri B Borkotoky, AOII - EI(legal)
5. (c) MES-237327 Shri KP Barua, AOII - EI(Con)


(M Mohan Prakash)
Major
SOI(Adn)
For Chief Engineer

Distribution:-

- | | | |
|--------------------------------------|---|------------------------------------|
| 1. PA to CE | - | for information of CE above please |
| 2. PA to ACE(Wks) | - | -do- |
| 3. MES-243444 Shri NA Kasar, SAO | - | } for info and compliance. |
| 4. MES-264042 Smt O Khongwir, AOI | - | } |
| 5. MES-237051 Shri B Borkotoky, AOII | - | } |
| 6. MES-237327 Shri KP Barua, AOI | - | } |

PART I ORDER
BY

-28-

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COL SN BOLAKHE, OFFG CHIEF ENGINEER, SHILLONG ZONE
SHILLONG-11

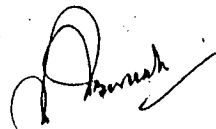
Ser.No : 22

Dated : 27 Aug 2002

OFFICE ORDER

1. During the absence of IC-39422F LtCol TM Chandrakant SOI(Pers) who is proceeding on 61-days A/Furlough wef 26 Aug 2002 to 25 Oct 2002. MES-243444 Shri NA Kasar, SAO will perform the duties of SOI(pers) (Legal) without any financial effect.

2. This has the approval of Offg CE.



(KP Baruah)
AOH
SOIII(Adm)
for Chief Engineer

Distribution :

1. PA to CE
- 2.. PA to ACE(Wks)
- 3.. Shri NA Kasar, SAO
- 4.. All section

RESTRICTED

RESTRICTED

PART I ORDER

BY

BRIG SS GREWAL CHIEF ENGINEER, SHILLONG ZONE
SHILLONG-11

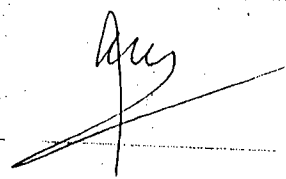
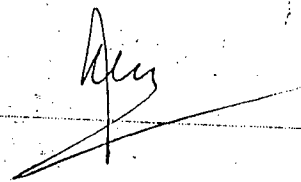
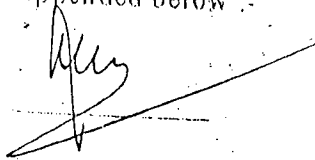
Ser No : 03

Dated : 04 Feb 2003

DELEGATION OF POWER

1. During the absence of IC-39422 F Lt Col TM Chandrakant SO-I(Pers) who is proceeding on AL wef 27 Jan 2003 to 28 Feb 2003, MES-243444 Shri NA Kasar, SAO will also perform the duties of SO-I(Pers) in addition to his own duties.

2. Specimen Signatures of MES-243444 Shri NA Kasar, SAO are appended below :-



3. This order will cease to be operative on rejoining of IC-39422 F Lt Col TM Chandrakant till further order.

(RP Sanawar)

Major

SO-II(Adm)

for Offg Chief Engineer

Distribution :

1. PA to Offg CE
2. PA to ACE(Wks)
3. HQ CEEC KOLKOTA
5. CDA(O) Pune.
6. AAO Shillong.
7. List 'A' 'B' 'C' and 'D'
8. Shri NA Kasar, SAO

RESTRICTED

CENTRAL ADMINISTRATIVE TRIBUNAL : : GUWAHATI BENCH.

Original Application No. 37 of 2003.

Date of Order : This, the 23rd Day of July, 2004.

THE HON'BLE SHRI K. V. SACHIDANANDAN, JUDICIAL MEMBER.

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

Shri N.A.Kasar

S/o Late P.A.Kasar

Designation: Senior Administrative Officer

C/o C.E. Shillong Zone

Shillong-793 011.

. . . . Applicant.

By Advocate Mr.H.Rahman & Mr.A.M.Ahmed.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Defence
New Delhi.

2. Engineer-in-Chief
Military Engineering Service
Army Headquarters, Kashmir House
DHQPO, New Delhi-110 011.

3. Chief Engineer
Military Engineering Service
Headquarter Eastern Command
Fort William, Kolkata.

4. Chief Engineer
Military Engineering Service
Shillong Zone, SE, Falls Area
Shillong, Meghalaya.

. . . . Respondents.

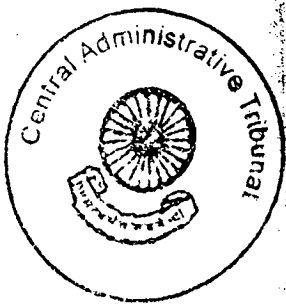
By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

ORDER (ORAL)

SACHIDANANDAN, K.V., MEMBER (J):

The applicant, working as Sr.Administrative Officer in the respondents' establishment, filed this O.A. for non-consideration of his promotion to the post of Principal Administrative Officer. According to him, he was

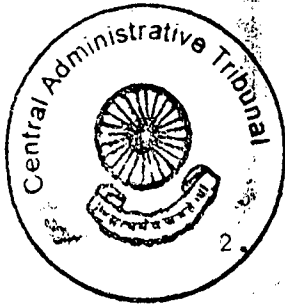
Contd./?



Attested
Anni Lomz
(H.K. Nair)
Advocate

eligible to hold the aforesaid post in the year 1998
itself and has sought for following reliefs:-

"It is, therefore, prayed that Your Lordships may be pleased to admit the application, issue a show cause notice to the respondents and after hearing the respondents may issue a direction to the respondents to consider the case of the applicant for promotion to the post of Principal Administrative Officer with all monetary benefits from the day he was eligible as per Rules and or from 12.2.2001 the date when Sri K.S.Mukhopadhyay a Superintending Engineer have taken over charge as Staff Officer-I (Personal) which is the promotional cadre of your humble applicant for which he is eligible and or pass necessary orders/direction as Your Lordship deem fit and proper."



2. The respondents have filed a detailed reply statement opposing the claim of the applicant and submitted that the case of the applicant can only be considered for the promotion provided vacancies exist. Although out, there case was there is no vacancy.

3. Admittedly, in the seniority list the applicant was placed at Sl.No.4 which is annexed at Annexure-1. The applicant's claim is that he is entitled for promotion to the post of Principal Administrative Officer, whereas respondents denied the averment. When the matter came up for hearing, it was brought to the notice of the Tribunal that the applicant had retired on 31.3.2003. Learned counsel for the applicant, Mr.H.Rahman submitted that he would be satisfied if the applicant is directed to file a fresh representation before respondent No.1 and in turn respondents shall consider the same within a time frame. Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. submitted that he

Contd./3

has no objection in adopting such procedure. In the interest of justice, we direct the applicant to file a fresh representation to the respondent No.1 i.e. Secretary to the Government of India, Ministry of Defence, New Delhi within a period of one month from the date of receipt of this order and if such application is made within the time specified, the said respondent or any other competent authority who is eligible to take a decision on the subject as directed by him, shall dispose of the same within three months thereafter.

The O.A. is disposed of with the observations made above. In the circumstances, no order as to costs.

Sd/MEMBER(J)
Sd/MEMBER(A)

Certified to be true Copy

নথীকৃত প্রতিলিপি

4/5/04

Section Officer (J)

C.A.T. GUWAHATI BRANCH

Guwahati-781005

To

The Secretary to the Government of India,
Ministry of Defence, New Delhi.

(Personal attention: Shri. Ajai Vikram Singh, Secretary)

OA No. 37/2003 filed by Shri. N.A. Kasar. Vs UOI and Ors at CAT, Guwahati Bench.

Sir,

1. Please refer to the Hon'ble Tribunal of Guwahati Bench judgment dated 23/07/04 in the above OA (Copy attached as Annexure - I)
2. That Sir, in the above judgement the Hon'ble Tribunal in para 3 have given direction as under :-

"Admittedly, in the seniority list the applicant was placed at Sl. No. 4 which is annexed at Annexure -1. The applicant's claim is that he is entitled for promotion to the post of Principal Administrative Officer, whereas respondents denied the averment. When the matter came up for hearing, it was brought to the notice of the tribunal that the applicant had retired on 31/03/2003. Learned counsel for the applicant, Mr. H. Rahman submitted that he would be satisfied if the applicant is directed to file a fresh representation before respondent No. 1 and in turn respondents shall consider the same within a time frame. Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. submitted that he has no objection in adopting such procedure. In the interest of justice, we direct the applicant to file a fresh representation to the respondent No. 1 i.e. Secretary to the Government of India, Ministry of Defence, New Delhi within a period of one month from the date of receipt of this order and if such application is made within the time specified, the said respondent or any other competent authority who is eligible to take a decision on the subject as directed by him, shall dispose of the same within three months thereafter".

Attested
Anil Kumar
(U.K. Nair)
Advocate

- 34-
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3. That Sir, I was promoted to the post of Senior Administrative Officer (SAO) w.e.f. 30/07/1993 and was posted to Engineer-in-Chief's Branch, Army Headquarter New Delhi. As per Recruitment Rules (RR), an SAO is eligible for promotion to the post of Principal Administrative Officer (PAO) after rendering continuous 5(Five) years service. Thus I was eligible for promotion to the post of PAO by 1998. But inspite of repeated requests the applicant was denied for the promotion to PAO by the respondents for the reasons best known to them. Being aggrieved the applicant alongwith three other colleagues had served a legal notice to your predecessor Shri. Yogendra Narain with a copy to Lt. Gen. Hari Unyal, then the Engineer-in-Chief, Army Headquarter. Copy of legal notice Dated 22/02/2002 is attached as Annexure 2.
 4. That Sir, it is regretted to state that the respondents have neither taken any action on the legal notice nor even reply thereof received. On the other hand the respondents by using discriminatory power have inducted the Superintending Engineers ~~of~~ in the cadre of Personal and Administration without having a knowledge of that cadre in five Command Chief Engineers and in all Zonal Chief Engineers in M.E.S. to perform the duties of SO 1 (Legal) and SO 1 (Pers & Legal) respectively in the year 2001. This action of the respondents is not only injustice but also illegal, violation to fundamental rights, violation to the laid down ~~to the~~ statutory rules (Recruitment Rules) and deprivation of the legitimate right of a bonafide government servant.
 5. That Sir, aggrieved by the aforesaid illegal action of the respondents the applicant filed the above OA at the Hon'ble CAT, Guwahati Bench during February 2003 as the time of superannuation of the applicant was approaching fast (to be retired on 31/03/2003 AN). Accordingly the Hon'ble Tribunal have admitted the applicant's genuine demand, directed the applicant to file a fresh representation to the respondent No. 1 i.e. to your good self and to consider the legitimate demand of the applicant i.e. to promote him to the post of PAO with all monetary benefits from the date he was eligible for promotion to the post of PAO i.e. 1998 within 3 (Three) months. However considering the hardship that may arise to the respondents if the promotion date is affected right from 1998 i.e. eligibility date for promotion, the applicant has taken a liberal attitude and to affect his promotion from 12/02/2001 i.e. the date when Shri. K.S. Mukhopadhyay, Superintending Engineer has taken over the charge of SO 1 (Pers & Legal) at Chief Engineer, Shillong Zone. Office Order to this effect is attached as Annexure-3. To substantiate the right to the claim of the applicant's eligibility for the post of PAO, copies of the officiating orders as So 1 (Pers & Legal) in favour of the applicant issued by the above office are enclosed as Annexure 4(A), 4(B), 4(C), 4(D), and 4(E) respectively.

- 35 -

52

6. That Sir, in view of the direction of the Hon'ble Tribunal and the above explained facts the applicants humbly request your honour being "Respondent No -1" in the above ^{OA} way to consider my promotion to the post of PAO w.e.f. 12/02/2001 with all consequential benefits within three months time as specified by the Hon'ble Tribunal failing which the applicant will be left with no other recourse but to file a contempt of court.

Encl : As above.

Yours Faithfully,



(N.A. KASAR)

S.A.O. (Retd)

Dated : Dimapur the 09/08/04.

Half Nagarjan, P.O. Box No. 164
Dimapur- 797112 (Nagaland)

Copy to:

1. Engineer-in-Chief (Personal Attention: Lt. Gen. Matthew Mammen)
Army Headquarter, Kashmir House
DHQ PO, New Delhi - 110011
2. Chief Engineer
H.Q. Eastern Command
Fort William, Kolkata - 21
3. Chief Engineer
Shillong Zone
SE Falls, Shillong - 11

Tele: 23018565

- 36 -

Directorate General (Personnel)/EIL(O)
Military Engineer Services
Engineer-in-Chief's Branch
Army Headquarters
DHQ PO New Delhi - 110011

Annexure - 7

A - 7

B/46400/108/E1 Legal (O)

10 Nov 2004

✓ Shri NA Kasar
Retd SAO
Half Nagarjan, P.O. Box No. 164
Dimapur - 797 112 (Nagaland)

O.A. NO.37/2003 FILED BY SHRI NA KASAR, SAO (RETD)
IN CAT GUWAHATI

1. Reference Hon'ble CAT Guwahati Order dated 23rd Jul 2004 in OA No. 37/2003 and your representation dated 09th August 2004.

2. The Hon'ble CAT has directed as under: -

"Admittedly, in the seniority list the applicant was placed at Sl. No. 4 which is annexed at Annexure-1. The applicant's claim is that he is entitled for promotion to the post of Principal Administrative Officer, whereas respondents denied the averment. When the matter came up for hearing, it was brought to the notice of the Tribunal that the applicant had retired on 31.3.2003. Learned counsel for the applicant, Mr. H. Rahman submitted that the would be satisfied if the applicant is directed to file a fresh representation before respondent No. 1 and in turn respondents shall consider the same within a time frame Mr. A.K. Chaudhuri, learned Addl C.G.S.C. submitted that he has no objection in adopting such procedure. In the interest of justice, we direct the applicant to file a fresh representation to the respondent No. 1 i.e. Secretary to the Government of India, Ministry of Defence, New Delhi within a period of one month from the date of receipt of this order and if such application is made within the time specified, the said respondent or any other competent authority who is eligible to take a decision on the subject as directed by him, shall dispose of the same within three months thereafter."

3. In your representation you have brought out the following grounds for promotion to the post of PAO: -

a) As per Recruitment Rules, you claimed to be eligible for promotion to the post of PAO since you had rendered 05 years of service as SAO by 1998.

b) The respondent by using discriminatory powers have inducted the Superintending Engineers in the cadre of personnel administration without having a knowledge of that cadre to perform the duties of SO-I (Legal) and SO-I (Pers & Legal) respectively in the year 2001.

4. Your representation has been perused by the competent authority and the following points are brought to your information: -

a) Merely meeting the requisite qualifications such as educational qualification and length of service as given in the RR does not gives a right to an individual to be promoted to the next higher post. The promotion to the next higher post also depends upon the availability of vacancies in that post. In your case, you could not be promoted as PAO due to lack of vacancies and officers senior to you were promoted as PAO as and when the vacancy occurred.

b) The posts of SO-I (Legal) re-designated as Director (Legal) and SO-I (Pers & Legal) re-designated as Director (Pers & Legal) in the offices of CEs Commands & CEs Zones are being held by Superintending Engineers in terms of Govt of India Min of Def letter No. 16(2)/98/D (Works) dated 2nd November 2001. The number of posts of Principal Administrative Officer sanctioned vide Govt of India letter No. 85602/4/OR/PAO/1882/CSCC/D (Wks-II) dated 25th Mar 88 are only two and you could be promoted only to this post as per the Statutory Recruitment Rules as per your seniority.

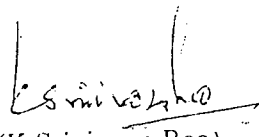
Contd..2.

A Hested
Anni bodz
for k. n. n. n.
advocate

- c) Your contention that the posts of SO-I (Pers & Legal), Director (Pers & Legal) are meant for your cadre are not in consonance with the Govt Order of creation of these appointments vide Min of Def letter No. 16(2)/98/D (Works) dated 2nd November 2001, and therefore, can not be accepted.

5. In view of above, your promotion to the post of PAO with effect from 12th February 2001 has not been possible and your plea is, therefore, not acceptable.

6. By issue of this order the judgement dated 23rd July 2004 in OA No. 37/2003 stands complied with.


(K Srinivasa Rao)
PAO
Director E1 DPC-II
For E-in-C

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

গুৱাহাটী কেন্দ্রীয় প্রশাসনিক আদালত Central Administrative Tribunal 9 JUL 2005 গুৱাহাটী ন্যায়পীঠ Guwahati Bench
--

IN THE MATTER OF :-

O.A. No 80 of 2005

Shri NA Kasar, Applicant

-Versus-

Union of India & Ors. Respondent

**WRITTEN STATEMENT FOR AND ON BEHALF OF
RESPONDENT NO. 1, 2, 3 & 4.**

I, Lt Col. B. P. Singh, SO-I(Pers & Legal), office of the Chief Engineer, Shillong Zone, Spread Eagle Falls, Shillong-11 do hereby solemnly affirm and say as follows :-

1. That I am the SO-I(Pers & Legal), officer of the Chief Engineer, Shillong Zone, Spread Eagle Falls, Shillong Zone and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statement may be deemed to have been denied. I am authorised to file the written statement on behalf of all the respondents.
2. That the respondents have no comments to the statements made in Paragraph 4.1, 4.2, and 4.3 of the application.
3. That with regard to the statements made in paragraph 4.4 of the application, the respondents beg to state that the contents of this paragraph except those which are matter of record are denied. That the post of PAO is subject to variation depending upon the workload and the work establishment sanctioned up to 30 Sep 2005 vide Govt of India letter No A/93114/E2W(PPC)/2827/D(W-II) dated 06 Sep 2002 which has been issued depending upon the current workload sanctioned only two posts of the Principal Administrative Officer. A copy of letter dated 06-09-2002 is annexed hereto and made marked as **Annexure R-I**.

Contd...2/-

4. That with regard to the statements made in paragraph 4.5 of the application, the respondent beg to state that matter of record. However, it is submitted that automatically the eligibility of a person for a post does not give him the right for promotion to the post, and the promotion is done based on the available vacancies for the said post.

5. That with regard to the statements made in paragraph 4.6 of the application, the respondent beg to state that the contents of this para except those which are matter of record are denied. That the applicant has himself agreed that only two posts of PAO sanctioned by Govt of India have been filled by the officers senior to the applicant.

That the applicant can not compel the executives to formulate a policy or mandatory carryout a cadre reviews. However, it is brought out that the cadre review for the post of PAO, SAO, AO Gde-I and AO Gde-II have already been forwarded to Govt of India respondent No 2 office letter No B/76016/CR/1/GP B, C, D/CSCC dated 02 Mar 2005.

6. That with regard to the statements made in paragraph 4.7, 4.8, 4.9 & 4.10 of the application, the respondent beg to state that the contents of this para as brought out are not correct. That the post of Staff Officer-I (Personal) as contended by the applicant is misleading but instead the Govt of India has created a post of Staff Officer Gde-I (personal & Legal) primarily to look after the ever increasing legal cases in the department vide Govt of India Min of Def letter No 16(2)/98/D(Works) dated 02 Nov 2001. Also while creating such posts, no post of Admn Officer was either suppressed or decreased, whereas the post of Supdt Engineers were suppressed to create those posts and as such these were held by Supdt Engineers.

That the letter dated 14 Feb 2001 (please refer Annexure A-3 of the application) has been issued by the officer without any application of mind. It may be seen from Govt of India letter dated 01 Nov 2001 that the said post is SO I (Pers & Legal) and there is no post of SO I(Pers).

7. That with regard to the statements made in paragraph 4.11 of the application, the respondent beg to state that the contents of this para are wrong and hence denied. At the post of PAO not equal to the post of Director(pers & legal). The post of PAO is in the scale of Rs. 12000-375-16500 whereas the post of Director (Pers & Legal) carries a scale of-Rs. 14300-400-18300 and as such SAO can not be promoted as Director (Pers & Legal).

8. That with regard to the statements made in paragraph 4.12 & 4.13 of the application, the respondent beg to state that matter of record.

9. That with regard to the statements made in paragraph 4.14 of the application, the respondent beg to state that the contents of this para are mere apprehension of the applicant and are wrong. The applicant's representation after OA No 37 of 2003 was considered by the competent authority and the claim of the applicant was correctly rejected in terms of Govt of India, Min of Def letter No 16(2)/98/D(Works) dated 02 Nov 2001.

10. That with regard to the statements made in paragraph 4.15 of the application, the respondent beg to state that as brought out earlier, keeping in view the requirement and increase in the work load, the review in the number of vacancies for the post of PAO, SAO, AO-I & AO-II has already been taken up with Govt of India vide respondent No 2. letter A/93114/E2W(PCC)/2827/D(W-II) dated 06 Sep 2002.

11. That with regard to the statements made in paragraph 4.16 of the application, the respondent beg to state that the contents of this para are wrong and no discrimination has been done with the applicant. The promotion to the post of PAO has been done strictly in accordance with the sanctioned strength for PAO vide Govt of India, Min of Def letter No A/9311/E2W(PCC)/2827/D(W-II) dated 06 Sep 2002.

Contd...4/-

12. That with regard to the statements made in paragraph 4.17, 4.18, 4.19, 4.20 & 4.21 of the application, the respondent beg to state that the contents of this para as stated are wrong. It is to mention that in the MES there is no organized cadre of the PAO and no organized Administrative service. It may also be seen from the recruitment rules for these post (please refer Annexure-I of the application) that the rules read as under :-

" These rules may be called the Military Engineer Services (PAO, SAO, AO Gde-I and AO Gde-II) Recruitment rules 2000".

It is thus the post created as SO-I(Pers & legal) now re-designated as Director (Pers & Legal) cannot be called to be created in PAO cadre. The posts of SO-I(Pers & Legal) has been created by suppressing the post of Supdt Engineer of Indian Defence Services of Engineers and thus these posts were held by Supdt Engineer.

13. That the respondents have no comments to the statements made in paragraph 5.1 and 5.2 of the application.

14. That with regard to the statements made in paragraph 5.3 of the application, the respondents beg to state that there was no vacancy of PAO therefore applicant was not promoted.

15. That with regard to the statements made in paragraph 5.4 of the application, the respondents beg to state that Efforts are on to increase the vacancy of PAO through Cadre Review which is time consuming process.

16. That with regard to the statements made in paragraph 5.5 of the application, the respondents beg to state that the applicant is eligible for promotion. But there was no vacancy of PAO.

17. That with regard to the statements made in paragraph 5.6 of the application, the respondents beg to state that since there is no vacancy as such no action can be taken.

18. That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

VERIFICATION

I, Lt Col. B. P. Singh, SOI(Pers & Legal), S/O Shri Kedar Nath Singh office of HQs Chief Engineer, Shillong Zone, S.E. Falls, Shillong-11 being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs of the application are true to my knowledge and belief, those made in paragraphs 1 to 18 being matter of record are true to my information submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 29th day of July 2005.



DEPONENT

6
Annexure RI ✓
No.A/93114/E2W(PPC)/2828/ D(W-II)
Government of India
Ministry of Defence,
New Delhi-110011

The Chief of Army Staff,
New Delhi.

6, Sep 2002

Subject : ESTABLISHMENT E-IN-C's BRANCH.

Sir,

I am directed to convey the sanction of the President to the Establishment as shown in the attached Appendix 'A' for E-in-C's Branch. The posts tenable by Civ & Mil Officers will be as per Appendix 'B'. The sanction is valid w.e.f. 01 Oct 2002 to 30 Sep 2005.

2. The expenditure involved will be debitable to Major Head 2076 Defence Service (Army) Minor Head 101 (Army Personnel including Reservists) Sub Head 'A' Pay and Allowances in respect of Military Officers and Minor Head 104, Civilians, Sub Head 'K1 (MES)' in respect of Civilian Officers.

3. The deployment of various formation Officers commensurate to the work load will be at the discretion of E-in-C.

4. This issues with the concurrence of Ministry of Defence (Finance/Works) vide their U.O.No.1723/W-I/2002 dated 26 Aug 2002.

Yours faithfully,

(B.P. SHARMA)
Deputy Secretary to the Govt. of India

Copy to :-

The CGDA, New Delhi

The Controller of Defence Accounts, All Commands (Signed in ink)

The CDA, Patna, The CDA (O) Pune (Signed in ink) .

The CDA (ORs) South, Madras, The DADS, New Delhi.

The Dy. Director of Audit, Defence Services, Patna

The Asstt. Director of Audit, Defence Services, Calcutta, Bombay and Dehradun.

DFA(W) 3 copies, DFA(Navy), DFA(Airforce) Naval HQ
Air HQ (Works Dte) GS Branch/SD-I, DS-4, SD-7, MISO/ORBAT
AG's Branch/AG Coord, OMG's Branch Q1E, MS Branch/MS(Coord)

Contd.p/2-

7

-2-

E-in-C's Branch/E2W (PPC) ...70 copies
The Senior Dy. Directors of Audit, Defence Services
Southern Command, Eastern Command, Western Command,
Central Command and Northern Command.

Copy for information to :-

SO to Defence Secretary
PS to Additional Secretary (Defence)
SPA to JS(P&W).

Govt. of India, Min of Defence letter No. A '93114 'E2W(PPC) 2827 '
D(W-II) dated 6 Sep 2002

ENGINEER IN CHIEF'S BRANCH-'M' STAFF
PEACE ESTABLISHMENT.

Detail	Number
Director General of Works (Pers)	1
Director General of Works (Maj Gen)	1
Additional Director General of Works (Maj Gen/ADGW)	3
Deputy Director General of Works (Brig/CE)	10
Director of Works (Col/ACE)	23
Staff Officer Grade-I (Lt Col/SE)	36
Staff Officer Grade-II (EE)	24
Staff Officer Grade-III (Capt/AEE)	15
Principal Adm Officer (PAO)	2
Senior Administrative Officer (SAO)	8
Chief Surveyor of Works (Brig/CSW)	1
Superintending Surveyor of Works (Lt Col/SSW)	5
Surveyor of works (Maj/SW)	5
Assistant Surveyor of Works (Capt/ASW)	3
Chief Architect (Brig/CA)	2
Senior Architect (Lt Col/SA)	6
Architect (Maj/Arch)	10
Deputy Architect (Capt/Dy. Arch)	3
Assistant Architect	6
Chief D'Man	15
Principal Barrack Store Officer (PBSO)	1
Total :	180

AFRMO OFFICERS

Director Budget	1
Senior Civilian Staff Officer	2
Civilian Staff Officer	7
Asstt. Civilian Staff Officer	29
Principal Private Secretary (PPS)	2
Private Secretary (PS)	7
Total :	48

JUNIOR COMMISSIONED OFFICER

JCO (Engineers)

1

NON GAZETTED STAFF

Superintendents B/R, E/M Grade-I (Junior Engineer)	51
Supervisors B/R Grade-I	7
Surveyor Assistant Grade-I/II (Wk Junior Engineer Q, S&C)	10
D' Man Grade-I (a)	59
D' Man Grade-II (b)	16
Tracers	3
Store Keeper Grade-I	6
Store Keeper Grade-II	1
Ferro Printer	6

Total : 159

AFIIO & NON-GAZETTED STAFF

Clerks	176
Personal Assistant (Steno Gde 'C')	10
Stenographer Grade-III (Steno 'D')	26
Photostat Operator	1
Daftaries	15
Peons	70
Gestetner Operator (Senior)	1
Record Sorter	2

Total Civilians Non-Gazetted - 329

NOTES

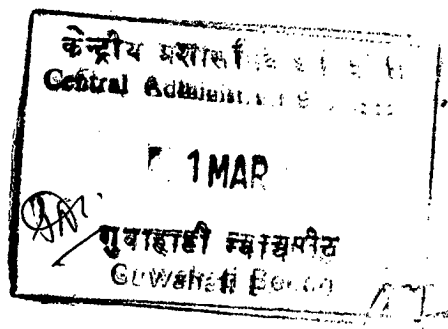
1. The posts tenable by Civ and Mily Officers will be as per Appendix 'B'

Contd..p/3-

(10)

2. The post of Director (Budget), SCSO, CSO, ACSO, PPS, PS, Clerks, Steno Gde 'C' and 'D' Photostat Operator, Daftries, Peons, Gestetner Operator and Record Serter are tenable by AFHQ Staff.
3. Staff Officers Grade-I - Two appointments may be held by SL Officers where ever necessary.
4. Asstt. Civilian Staff Officer - Four to be Admin Officer Grade II (MES)
5. Clerks - 25% Clerks will be from MES Cadre.

Attested
[Signature]
Addl. C. G. S. O.



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

Original Application No of 2005

Sri N.A. Kasar
..Applicant

versus

The Union Of India & Ors
...respondents.

IN THE MATTER OF :

Rejoinder filed by and on behalf of
the applicant to the written
statement filed by the respondents
in the above noted original
application.

I, Shri Ngalangza Awungshi, Kasar, aged about 62
years, son of Late P.A. Kasar, resident of Dimapur,
Nagaland, do hereby solemnly affirm and state as
follows:

1. That I am the applicant in the above noted
original application and as such fully conversant with
the facts and circumstances of the case.

2. That a copy of the written statement filed by
the respondent Nos. 1, 2, 3 & 4 as served on my
counsel, has been perused by me. On perusal of the
written statement, under reply, I have fully understood
the contents thereof. Save and except the statements

Filed by:- the applicant
through → Pongjish Barua, Esq.
Advocate.

that are specifically admitted to herein below, all the averments made in the written statement, under reply shall be deemed to have been categorically denied. I do not further admit the statements that are not borne out of the records of the case.

PRELIMINARY SUBMISSION:

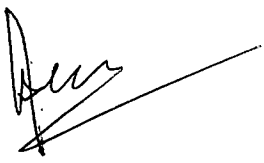
3. That your deponent states that the posts of Staff Officer I (personnel) as created, was actually created for the works of the Personnel and Administrative Service of MES and is equivalent to the post of Principal Administrative Officer (PAO). The post of PAO being the promotional post of incumbents in the cadre of Sr. Administrative Officer (Senior Administrative Officer), all posts of SO-I created for the works relating to the Personnel & Administrative Service of MES ought to have been declared to be the promotional posts for incumbents working as Sr. Administrative Officer. The authorities with a view to deprive the eligible officers of the Personnel and Administrative Service of MES, proceeded to draft in personnel from the Engineering service to man the posts of SO- I (Pers & Legal) as created. This lead to the deponent being denied of the benefits of promotion that he was legally entitled to and the same resulted in the applicant drawing lesser amount of pension, than that he would have drawn, had he not been denied of his due and legitimate promotion.



4. That the posts of SO-I (Pers & Legal) was in fact created in the just next higher cadre and its equivalence to the posts of PAO is clearly evident from the action on the part of the authorities in allowing the deponent to hold the charge of the said posts on a number of occasion, on vacancies arising therein. In the event the posts of SOI (Pers & Legal) had been in a higher pedestal than the posts of PAO, under no circumstances would have the deponent got an opportunity to hold the charge of the same, in view of the fact that the 2 posts of PAO were manned at that relevant point of time. As such the contentions of the authorities ~~was~~ contrary to the said position hold no water.

PARAMISE REPLY:-

5. That with regard to the statements made in paragraph 3 of the written statement, under reply, your deponent denies the same and reiterates and reaffirms the statements made in paragraph 4.4 of the Original Application. The respondents have tried to mislead this Hon'ble Tribunal by projecting the communication dated 06.09.02 (Annexure - I to the written statement) to have been issued after making an assessment of the current work load, whereas the said communication is nothing but a renewal of sanction for retention of already existing posts and the same has been issued for the purpose of authorisation of drawl of salaries against the posts. The respondents with a view to deny



justice being granted to the deponent by this Hon'ble Tribunal have tried to veil the illegality committed against the applicant, by making statements which are to ~~be~~ the core of it misleading.

6. That your deponent denies the statements made in paragraph 4 of the written statement, under reply and states that posts of SO-I having been specifically created for the works the Personnel and Administrative Service of MES, the same were required to be filled up in terms of Recruitment Rules 2000 and no departure from the said position could have been made. The seniority of the deponent in the cadre of senior administrative officer and also the reservation available for Schedule Tribes candidates would have ensured the promotion of the deponent to the next higher cadre against the posts of SO-I as created. The eligibility of the deponent having not been questioned, the posts of SO-I as created, in the event of being made available to the incumbents in the Personnel and Administrative Service of MES, the same would have resulted in the deponent being promoted against the same and there would not have existed any cause for any grievances existing on his part.

7. That with regard to the statements made in paragraphs 5 & 10 of the written statement, under reply, your deponent states that, it is his case that the posts of SO-I (Personnel & legal) as created was specifically created for the works of Personnel and

File

Administrative Service of MES and inspite of the fact that there were eligible persons like the deponent available for appointment against the same, the same could not have been allowed to be manned by personnel of other service. The question of cadre review is a matter to be decided by the authorities, but once posts are created in the hierarchy of a particular service, the incumbents in the next below cadre cannot be denied an opportunity for promotion against the same. This cardinal principle of service jurisprudence has been violated by the authorities in the case on hand, inasmuch as, inspite of creation of posts equivalent to the posts of PAO, in the Personnel and Administrative Service, the officers in the Personnel and Administrative Service were not considered for promotion against the said posts and persons belonging to another service came to be drafted in to man the said posts.

The contention of the respondents that the cadre review for the various posts in the Personnel and Administrative Service of MES was in fact carried out and now forwarded to the concerned authority is inconsequential for the issue involved in the present case. The applicant has claimed for his promotion against the posts of SO-I that were actually created and utilised for the works of Personnel and Administrative Service.



8. That your deponent denies the statements as made in paragraph 6 of the written statement and reiterates and reaffirms the statements as made in paragraph 4.7, 4.8, 4.9 and 4.10 of the original application. Mere perusal of the orders annexed as Annexure - 4 Series to the original application would lay to rest all doubts that the posts of SOI (Pers & Legal) as created were utilised in the Personnel and Administrative Service of MES and as such the same being equivalent to the posts of PAO, the deponent could not have been denied his due and legitimate promotion against the same. There having been an increase in the work load at the level of PAO in the Personnel and Administrative Service of MES, necessity was felt for creation of additional posts at that level. As such there could not have been any question of decrease in the strength of posts in the PAO cadre. The applicant states that even if it was the mistake of the signing officer who has erroneously mentioned as SO-I (Pers) and not as SO-I (Pers & Legal) while issuing order appointing Sri K.S. Mukhpadayay, SE (SG) as SO-I (Pers & Legal) of Chief Engineer Shillong Zone Office, the applicant has nothing to do with the mistake, however what is relevant is the fact that the said officer actually performed the duties of SO-I (Pers & Legal). The same duty was also performed by the applicant on six different occasions being the senior most Senior Administrative Officer in that same office during vacancies arising on various counts in the said post. This establishes beyond any iota of doubt the

[Handwritten signature]

legitimate claim of the applicant for promotion to PAO/
SO-I (Pers & legal).

9. That the deponent denies the statements made in paragraph 7 of the written statement, under reply and reiterates and reaffirms the statements made in paragraph 4.11 of the original application. The posts of SOI (Pers & Legal) as created was treated as equivalent to that of PAO and this aspect of the matter will be clear from the fact that as and when vacancy occurred against the same, the deponent being the senior most Senior Administrative Officer was allowed to hold the charge of the post. The deponent accordingly has claimed his promotion on regular basis against the said posts. It seems that there still exists posts of SO-I (Pers & Legal) and accordingly the claims as made by the deponent is justified. Even if the scale of pay as prescribed for the post of Director (Pers & Legal) is higher than that of PAO, still in the event the same is treated to be in the next higher cadre than that of Senior Administrative Officer, then the deponent cannot be denied his legitimate claim for promotion to the next higher cadre.

10. That with regard to the statements made in paragraph 8 of the written statement, under reply, your deponent reiterates and reaffirms the statements made in paragraph 4.12 & 4.13 of the Original Application.

[Signature]

11. That with regard to the statements made in paragraph 9 of the written statement, under reply, your deponent denies the same and states that the communication dated 10.11.04 (Annexure - A/7 to the original application) is silent as regards the authority considering the representation of the deponent in pursuance to the directives as passed by this Hon'ble Tribunal. The contentions as raised by the deponent in his said representation were not considered by the authorities. The representations came to be disposed of on vague and untenable grounds. The grievance of the deponent was not considered by the authorities in its proper perspective.

12. That the deponent denies the statements made in paragraph 11 of the written statement, under reply and states that the deponent has been discriminated in the matter of his due and legitimate promotion against the posts of SO-I (Pers & Legal) as created in the Personnel and Administrative Service of MES. The issue involved in the instant Original Application is not of promotion to the post of PAO but the denial to the deponent consideration of his case for promotion against the post of SOI (Pers & Legal) as created for the works of the Personnel and Administrative Service.

13. That the deponent denies the statements made in paragraph 12 of the written statement, under reply and reiterates and reaffirms the statements made in paragraph 4.17, 4.18, 4.19, 4.20 and 4.21 of the



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-9-

Original Application. By contending that there is no organised cadre of PAO and no organised cadre of Administrative Service, the respondents have contradicted themselves. There being clear and separate Rules governing the service conditions of incumbents in the administrative service as well as Engineering service, the contention that there was no organised administrative service is clearly unwarranted and baseless. The posts as mentioned in the Recruitment Rules 2000 all from the Administrative Service of MES.

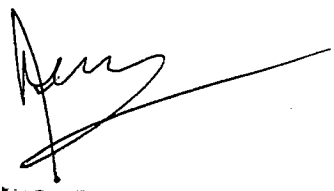
The posts of SOI (Pers & Legal) as created are equivalent to the posts of PAO and accordingly the same also require to be manned by the officers of the administrative service and is to be filled up by promoting the eligible Sr. Administrative officers. Under no circumstances could have the respondent authorities allowed officers of the Engineering service to man the posts whose works are purely related to the administrative side and for which an administrative service in place. Further, the expertise required to man the said posts of SO-I cannot be expected to be available in persons coming from the Engineering service.

14. That with regard to the statements made in paragraph 13 of the written statement, under reply, your deponent reiterates and reaffirms the statements made in paragraph 5.1 and 5.2 of the original application.

[Signature]

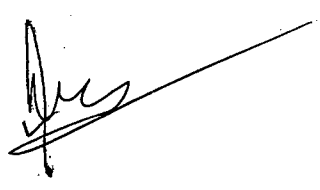
15. That with regard to the statements made in paragraph 15 of the written statement, under reply, your deponent reiterates and reaffirms the statements made in paragraph 5.3 of the original application and those made in the foregoing paragraph of this rejoinder. It is stated that the deponent has claimed for his promotion against the posts of SOI (Pers & Legal) created by the authorities to offset the additional work load in the cadre of PAO and as such the actual increase in the post of PAO is immaterial for the purpose of deciding the issue raised in the instant Original Application.

16. That with regard to the statements made in paragraph 16 & 17 of the written statement, under reply, your deponent reiterates and reaffirms the statements made in paragraph 5.5 of the original application and in the foregoing paragraphs of this rejoinder. The non-availability of vacancies promoting the deponent to the next higher cadre is a misnomer inasmuch as, the posts of SOI as created could have been utilised for promoting the deponent, however the illegality committed by the authorities in filling up the said posts by drafting in persons from the engineering service deprived the deponent of his valuable right for being considered for promotion against the said posts, although it is admitted by the authorities, that he was eligible for such promotion.



17. That the deponent denies the statements made in paragraph 18 of the written statement, under reply and states that he has succeeded in making out a prima-facie case requiring the interference in the matter by your lordships. The deponent is entitled to the reliefs as prayed for by him in the original application. The original application is accordingly required to be allowed.

18. That the deponent states that in view of the facts and circumstances as narrated in the Original Application and in the foregoing paragraphs of this rejoinder the deponent is entitled to be promoted to the next higher cadre and accordingly directions are required to be issued to the authorities to create a supernumerary post of SO-I for promoting the deponent w.e.f. 12.02.01 till 31.03.03 with all consequential benefits including salary. The pension of the deponent is also required to be recalculated by now basing the same on the pay receivable by the deponent in the promotional post and he is entitled to the arrears so arising.



VERIFICATION

I, Shri Ngalangza Awungshi, Kasar, aged about 62 years, son of Late P.A. Kasar, resident of Dimapur, Nagaland, do hereby solemnly affirm and states that the statements made in the forgoing paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the rejoinder are true to the best of my knowledge and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 15 day of December, 2005 at Dimapur.


DEPONENT

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

DEC 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
Guwahati Bench

W/ 28/11
Motin Ud-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)

IN THE MATTER OF :

O.A. No.80/2005

Shri N.A.Kasar

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

- AND -

IN THE MATTER OF :

Addl. Written statement submitted by the Respondents

No.

WRITTEN STATEMENT

The humble answering respondents
submit their addl.written statement
as follows :

1. That I, Ravi sinha, Dir (Pers & Legal), office of the Chief Engineer, Shillong zone, Spread Eagle Falls, Shillong_11 do hereby solemnly affirm and say as follows : 6
and Respondents No. four in the above case and I have gone through a copy of the rejoinder served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the addl. written statement, the contentions and statements made in the rejoinder may be deemed to have been denied. I am competent and authorized to file the addl. statement on behalf of all the respondents.

2. That with regard to the statements made in paragraphs 1, 2, 7, 13, 15 and 16 of the rejoinder, the answering Respondents beg to state

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that they do not admit anything which is beyond the record and based on legal foundation and as such the applicants are put to strict proof thereof.

3. That with regard to the statements made in paragraph 3 of the Application, the answering Respondents beg to state that the applicant has not brought out any rules, regulation or legal basis on which he contends that the post of SOI (Pers and Legal) should be filled by promotion from SAOs. The posts of SOI (Pers and Legal) have been sanctioned by suppressing posts of Superintending Engineer and are tenable by SEs.

4. That with regard to the statements made in paragraphs 4 of the rejoinder, the answering Respondents beg to state that the contention that the post of SOI (Pers and Legal) was created as next higher cadre to PAO is denied. Since the post of SOI (Pers and Legal) was created by suppressing post of SEs. Making temporary arrangement locally by his formation to look after the duties of SOI (Pers and Legal) in the absence of leave etc. of the permanent incumbent to the post of SOI (Pers and Legal) does not bestow upon him any legal right to claim for promotion to the higher post. Only two posts of PAOs from time to time as per the Recruitment Rules.

5. That with regard to the statements made in paragraphs 5 of the rejoinder, the answering Respondents beg to state that the same is denied. The contention that the renewal of establishment sanction is for demand of pay and allowances only is not correct, since manning of the posts and grant of pay and allowances is made based on the basis of establishment sanction. The contention of denying justice and committing illegality and misleading etc. is denied as baseless unsubstantiated and unwarranted.

Motin Ud-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)

6. That with regard to the statements made in paragraphs 6 of the rejoinder, the answering Respondents beg to state that the Recruitment Rules pertains to the post of PAO and not SOI (Pers and Legal).

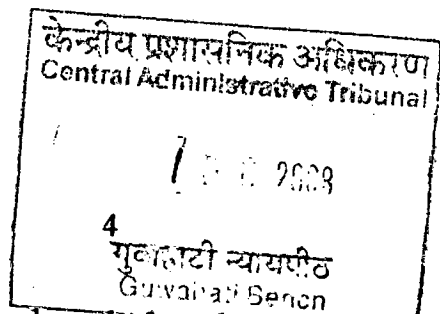
7. That with regard to the statements made in paragraphs 8 of the rejoinder, the answering Respondents beg to state that temporary local arrangement made by Unit/Formation for perform duties of SOI (Pers and Legal) do not bestow any legal right to the applicant to claim promotion to the post of SOI (Pers and Legal).

8. That with regard to the statements made in paragraphs 9 & 10 of the rejoinder, the answering Respondents beg to state that the applicant has no legal right to claim the promotion from SAO to PAO on the basis of creation of posts of SOI (Pers and Legal).

9. That with regard to the statements made in paragraphs 11 of the rejoinder, the answering Respondents beg to state that the contention is denied. The representation has been correctly disposed of and no legal infirmity lies therein which warrants interference from this Hon'ble Tribunal.

10. That with regard to the statements made in paragraphs 12 of the rejoinder, the answering Respondents beg to state that the next post available for promotion for SAO is PAO and not SOI (Pers and Legal). The applicant has not brought out any rule, regulation or legal basis on which he can claim promotion from SAO to SOI (Pers and Legal).

11. That with regard to the statements made in paragraphs 17 & 18 of the rejoinder, the answering Respondents beg to state that no rules, regulation or legal basis has been brought out by the applicant in the OA to substantiate his claim for promotion as SOI (Pers and Legal) and hence the O.A deserves to be dismissed with costs.

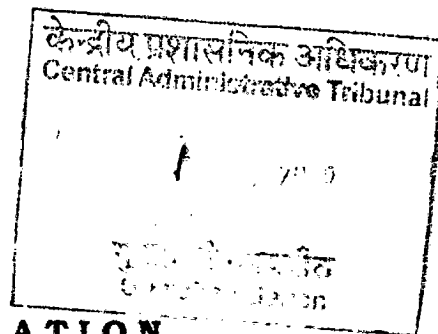


10. That this additional reply has been made bona fide and for the ends of justice and equity. .

In the aforesaid premises, it is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed.

Motin Ud-Din Ahmed

M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)



VERIFICATION

I, Ravi Sinha

Son of Late Shri A Prasad aged about 48
years, resident of L-94, Road No-2, SK Nagar, Patna-I
working as Director (Pers & Legal)

duly authorized and competent officer of the answering respondents
to sign this verification, do hereby solemnly affirm and verify that the
statements made in Paras 3 to 8 are true to my knowledge,
belief and information and those made in Para being
matters of record are true to my knowledge as per the legal advice
and I have not suppressed any material facts.

And I sign this verification on this 30th day of August 2008
at Cochin

DEPONENT

u
Motin Ud-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)