

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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14.7.2015
SECTION OFFICER (JUDL.)

~~14.7.2015~~

FROM NO. 4
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No: 106 /2009

2. Miscellaneous Petition No

3. Contempt Petition No

4. Review Application No

Applicant(s) Shri Ashim Kumar Dey in ops.

Respondant(s) Union of India in ops.

Advocate for the Applicant(s): Mr. M. Chandra,
Mr. S. Nath in
Mrs. L. Dutta

Advocate for the Respondant(s): 6
CGSC.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C.F. for Rs. 50/- disposed vide JPO/ED No. <u>396/405333</u> Dated <u>9.4.2009</u></p> <p><u>5/6/09</u> Dy. Registrar <u>4/5/09</u></p> <p><u>5.6.2009</u> 3 copies of Application with envelopes received for issue notice to the Respondents No. 1 to 3. Copy served. <u>4/5/09</u></p> <p><u>12.6.09</u> Issue notice to the Respondents both in O.A and M.P. <u>12/6/09</u></p>	<p><u>11.06.2009</u></p>	<p>Issue notice to the Respondents (in O.A.No.106 of 09 and in M.P.No.56 of 2009) requiring them to file written statement/objection by 31st July 2009.</p> <p><u>4/5/09</u> (M.R.Mohanty) Vice-Chairman</p> <p>→ PTO</p>

OA-106/2009

Copies of notices
in OA 106/09 and
MP no-56/09, send
to D/Sec. for
issuing to
respondents by
regd. A/D post.

31.07.2009

D/No-3520

19/6/09. Dt= 24.6.09

Copies of order
dated 31/07/09
send to D/Sec.
for issuing to
resp. by post.

31.08.2009

D/No-9239 to 9242

6/8/09. Dt= 6/8/09

No W/S filed.

28.8.09

K. Das

Send W/S of this
order to the Respondents
in the address given in OA.

/lm

11/9/09

Copies of order
dated 31/8/09
send to D/Sec. for
issuing to respondents
by post.

D/No-9980-9982

4/9/09. Dt= 4.9.09

NO W/S filed

12/9/09

Mr. Manik Chanda, learned counsel
for the Applicant is present. No written
statement has yet been filed by the
Respondents. On the prayer of Mr. G. Baishya,
learned Sr. Standing counsel for the
Government of India, call this matter on
31.08.2009 awaiting written statement from
the Respondents.

Send copies of this order to the
Respondents in the address given in the O.A.

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

No written statement has yet
been filed by the Respondents in this
case.

Call this matter on 09.10.2009
awaiting written statement from the
Respondents.

Send Copies of this order to the
Respondents in the address given in the
O.A.

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

P.T.O

09.10.2009

In this case written statement has already been filed. An objection to M.P. No.56/2009 has also been filed.

Heard. Subject to legal pleas to be examined at the final hearing, this case is admitted.

On the prayer of Mr.M.Chanda, learned counsel for the Applicant, time till 30.11.2009 is, hereby, granted to the Applicant to file rejoinder.

Send Copies to Applicant & Respondents.
Call this matter on 30.11.2009.


(M.R.Mohanty)
Vice-Chairman

/bb/

30.11.2009

O.A. has been admitted vide order dated 09.10.2009. Learned counsel for the Applicant seeks further time to file rejoinder. We are not inclined to grant any further time as sufficient time has been taken by the Applicant but no rejoinder has been filed.

In the circumstances, list the matter for hearing on 05.01.2010.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/lm

O.A. No. 106/ 2009

18.01.2010

Mrs. U. Dutta, learned counsel for applicant states that Mr. M. Chanda, learned counsel for applicant is unwell and prays for adjournment.

W/s filed on behalf of R.No-2 & 3.

List the matter on 09th February, 2010.

8.2.2010

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/PB/

9.2.2010

Respondent has been filed by the Applicant. Copy served to the Adv. for R.No 2 & 3.

09.02.2010

List the matter on 12th March 2010.

(Madan Kumar Chaturvedi)
Member (A)

/PB/

12.03.2010

List on 29th March 2010.

The case is ready for hearing.

(Mukesh Kumar Gupta)
Member (J)

/pb/

29.03.2010

Mr.M.Chanda, learned counsel for the applicant prays for adjournment, which is not opposed by proxy counsel for Mr.G.Balshya, learned counsel appearing for Respondent Nos. 2 & 3.

The case is ready for hearing.

26.3.2010

List on 22.04.2010.

The case is ready for hearing.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/bb/

21.4.2010

22.04.2010 On the request of proxy counsel for Respondents, case is adjourned to 26th April 2010. It is made clear that no further adjournment will be made.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/pb/

26.04.2010

For the reasons recorded separately, O.A. is dismissed of. No costs.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

Received copy
for G. Baishya
Utpal Kumar Bhattacharya
Advocate
10.5.2010
Received
Mitter
05/05/10

Received
for Respondent no. 2
Aul
10/5/10

24-5-2010

Judgment / Final order
dated 26/4/2010 prepared
and sent to the D/Secy
for issuing the respondents
by Post vide NO-1167 to
dated 28-5-2010 11:59
copy recorded & advocate
for both sides

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 106 of 2009 with M.A.56 of 2009

DATE OF DECISION: 26.04.2010

Shri Ashim Kr. Dey & 2 others

.....Applicant/s.

Mrs.U.Dutta

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

~~Mr. M. K. Dey, Addl. Secy~~ **Mr. G. Baishya.**

..... Advocate for the
Respondents


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

Judgment delivered by


Hon'ble Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 106 of 2009

With

Misc. Application No.56 of 2009

Date of Decision: This, the 26th day of April, 2010.

HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

1. Shri Ashim Kumar Dey
S/o Shri Ajit Kumar Dey
Working as Section Officer
O/o The Accountant General (A&E), Nagaland
Kohima, Nagaland-797 001.
2. Shri Arun Roy
S/o Late R.C.Roy
Working as Section Officer
O/ The Accountant General (A&E), Nagaland
Kohima, Nagaland-797 001.
3. Shri Akum Chuba
S/o A.W.Aluniba
Working as Section Officer
O/o The Accountant General (A&E), Nagaland
Kohima, Nagaland-797 001.

...Applicants

By Advocate: Mrs.U.Dutta

-Versus-

1. The Union of India, represented by
The Comptroller & Auditor General of India
10, Bahadur Shah Jafar Marg
New Delhi – 110 002.
2. The Accountant General (A&E), Assam
Maidamgaon, Beltola
Guwahati-781 029.
3. The Accountant General (A&E), Nagaland
Kohima-797 001.

.. Respondents

By Advocate: **Mr.G.Baishya, for Respondents 2 & 3.**



ORDER (ORAL)

MUKESH KUMAR GUPTA, MEMBER (J):

M.P. No.56/2009 under Rule 4(5)(a) of CAT (Procedure) Rules, 1987 for joining together is allowed.

2. In this second round of litigation, 3 applicants seek following reliefs:-

- "8.1 That the Hon'ble Tribunal be pleased to declare that the pendency of Original Application No.115/2006 and the interim order dated 17.05.2006 passed in the aforesaid Original Application cannot stand in the way of consideration of promotion of the applicants to the cadre of Section Officer.
- 8.2 That the Hon'ble be pleased to direct the respondents to modify order bearing No.Adm/A&E/Order No.101 dtd. 08.09.2006 (Annexure-11) antedating promotional benefit of the applicants to the cadre of Section Officer at least with effect from 04.02.2006 or from any other date in the month of March, 2006 as deem fit and proper with all service benefits including arrear monetary benefit and seniority.
- 8.3 That the Hon'ble Tribunal be pleased to declare that the applicants are entitled to exercise their option for permanent posting pursuant to the cadre separation policy dated 24.03.2006 and further be pleased to direct the respondents to allow the applicants to submit their options in terms of cadre separation policy dated 30.03.2006 and also to consider option of the applicants for permanent posting.
- 8.4 Costs of the application.
- 8.5 Any other relief(s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper."

(emphasis supplied)

3. On earlier occasion also, these applicants had preferred O.A. No.199/2006 seeking precisely the same very relief. Said O.A. was

instituted on 12.03.2007 and had been withdrawn vide order dated 17.11.2008 with liberty to file afresh.

4. Admitted facts are that present 3 applicants appeared in Section Officer Grade examination held in the month of May, 2005 result of which, had been declared in October, 2005 and as such on being declared successful they attained eligibility for consideration for their promotion in the cadre of Section Officer (Group B Non-Gazetted). There were 5 vacancies in said grade in the pay scale of Rs.6500-10500/-, occurred during the recruitment year 2005-06. Accordingly, DPC meeting was held at the instance of the Accountant General (A&E), Assam, Guwahati and based on its recommendation, vide order dated 18.01.2006 (Annexure-3) 5 persons were promoted to said post without prejudice to the claim of their seniors and also subject to the condition that the seniority in the cadre of Section Officer would be fixed later. They were placed on probation for a period of 2 years. The officers were required to intimate the office whether they accept the promotion or not within 03.02.2006 positively, failing which, their promotion will be treated as refused. Later on said date had been extended upto 15.03.2006. 4 out of 5 persons so promoted refused to convey their willingness or otherwise. Vide order dated 22.03.2006 (Annexure-4) it was observed that promotion to said post is deemed to have been refused by them w.e.f. 16.03.2006. Accordingly, they were debarred for promotion for one year w.e.f. 16.03.2006 in terms of Office Memorandums on said subject.

5. Their grievance had been that since vacancy had fallen vacant, they were eligible to be promoted at once w.e.f. 16.03.2006. It is not in dispute that applicants were promoted vide order dated 08.09.2006

(Annexure-11). Hence they claimed that they are entitled to antedating of their promotion w.e.f. 16.03.2006, instead of 08.09.2006. Mrs.U.Dutta, learned counsel for applicants placing reliance on **(2004) 1 SCC 245, P.N.Premachandran vs. State of Kerala and Others** contended that for delay in convening DPC, promotee cannot be made to suffer. Hence it was contended that applicants are entitled to reliefs, as prayed for.

6. Contesting the claim laid and by filing reply it was stated that in the DPC, held on 17.01.2006, recommended empanelment of 14 officials during the penal year 2006 against 5 vacancies. Promotion had been given according to seniority from the approved panel. Applicants appeared at Sl. Nos. 9, 10 & 11 respectively therein. 5 senior most officials were promoted vide order dated 18.01.2006, out of which, only 1 official, namely, Nepal Ch. Biswas accepted said promotion and rest of officials though sought extension of time, which was granted upto 15.03.2006, but ultimately they did not accept the promotion within the stipulated time and on expiry of the date, an order was passed on 22.03.2006 debarring them for promotion for 1 year w.e.f. 16.03.2006. Thus, before 22.03.2006 no other empanelled official could be offered promotion. When the process of offering promotion to next 4 empanelled officials was to be taken, a letter dated 24.03.2006 regarding separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices in North Eastern Region was received from the office of Comptroller & Auditor General of India, New Delhi, whereby policy of separation of common cadre of Group B officers in the A&E and Civil Audit offices of North Eastern Region along with a format of option form was forwarded with direction to obtain option from all the existing Group 'B' officers belonging to common cadre for

permanent transfer to the Civil A&E offices in North Eastern Region. As per direction, options were called for from the "existing Group 'B' officers". In the meantime another circular dated 30.03.2006 was issued on the same subject, which had been challenged by filing O.A. No.115/2006. Basically policy of separation of common cadre was challenged therein and vide order dated 17.05.2006, ad-interim order was passed requiring the respondents not to disturb the applicants therein from present place of posting. Ultimately said O.A. was disposed of vide order dated 22.03.2007 along with some other applications on the same subject. Applicants were subsequently promoted to the post of Section Officer in the office of Dy. Accountant General (A&E), Nagaland, Kohima vide order dated 08.09.2006. It was denied by the respondents that the applicants were the senior most as they were placed at Sl.Nos.9, 10 & 11 respectively and even if there had been 4 vacancies on account of refusal of said promotion by the senior most officers, applicants had not acquired any legal right for promotion to said post. This was the main thrust of the contentions raised by Mr.G.Baishya, learned counsel for the respondents.

7. We have heard Mrs.U.Dutta, learned counsel for applicants and Mr.G.Baishya, learned counsel for respondent nos. 2 & 3, perused the pleadings and other material placed on record very carefully.


8. The question which arises for consideration is whether applicants have any legal right to seek promotion to the post of Section Officer. Law is well trite on the subject, as held by the Constitution Bench in **(1991) 3 SCC 47 Shankarsan Dash vs. Union of India** wherein it was held that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates

do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, there is one exception to this principle i.e., State cannot act in an arbitrary manner and the decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. As noticed hereinabove, there were 5 vacancies and applicants appeared at SI Nos. 9, 10 & 11 respectively in the approved penal. Even if persons so promoted vide order dated 18.01.2006 refused to accept promotion, there are still other persons who are senior to the applicants, so recommended and empanelled by the DPC, namely, SI. Nos.6, 7 & 8. If any one has a legal right in preference to applicants, it is those officials who will have a preferential right and not the applicants. Only one of them, at best, could claim that he ought to have been considered and promoted. The officials who were placed at SI Nos.6, 7 & 8 have neither been impleaded as parties nor any averment made about their fate. In any case, it is not the case of applicants that any person junior to them has been promoted as Section Officer. We may note that circulars dated 24.03.2006 and 30.03.2006 are relating to Group 'B' officers. Applicants, by then, had not been promoted as Section Officer, which is Group 'B' Non-Gazetted post. They were Sr. Accountant then, which is Group 'C' post. Furthermore, option required vide aforesaid communication was in respect of Group 'B' officers and therefore, applicants have no legal rights to claim that they were denied to exercise option in terms of circulars dated 24.03.2006 and 30.03.2006. We may further note that 4

persons were debarred from promotion for one year vide order dated 22.03.2006. Prior to said date, applicants have no right what to talk of legal right for promotion. Immediately after a day i.e., on 24.03.2006 there had been change in policy i.e., bifurcation of Accounts and Audit cadre. This policy has not been challenged successfully by any of the officials. In other words, said policy remains intact. When the vacancy arose and the policy was notified, applicants cannot be allowed to contend that they acquired legal right to be promoted immediately on arising of such a vacancy. Law laid down in **S. Dash (supra)**, in our considered view, is squarely attracted in the facts and circumstances of present case. We find that applicants have no legal indefeasible right on either on 22.03.2006 or 24.03.2006, either on facts or in law. In any case, applicants were promoted to said post by the office of Sr. Deputy Accountant General (A&E), Nagaland on 08.09.2006. There had been hardly a difference of six months. It is not their case that any junior were promoted. In other words, they have not suffered in seniority.

9. Examining the case from either angle, it is found that applicants have miserably failed to make out a case warranting judicial interference. As far as judgment of **P.N.Premachandran (supra)** is concerned, we may note that the observations made therein had been that for the delay in convening DPC being on administrative lapse, promotees cannot be made to suffer, which is not the issue raised in present case. We may note at the cost of repetition that delay in convening DPC had not been the contention raised in present case. Rather delay had been caused due to policy decision taken place immediately. Thus, said judgment is clearly distinguishable and not

applicable in the facts and circumstances of present case. Resultantly
O.A., which is bereft of merits, is dismissed. No costs.


(MADAN KUMAR CHATURVEDI)
MEMBER (A)

/BB/


(MUKESH KUMAR GUPTA)
MEMBER (J)

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

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

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

5 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

O. A. No. 106 /2009

Shri Ashim Kumar Dey & Ors.

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

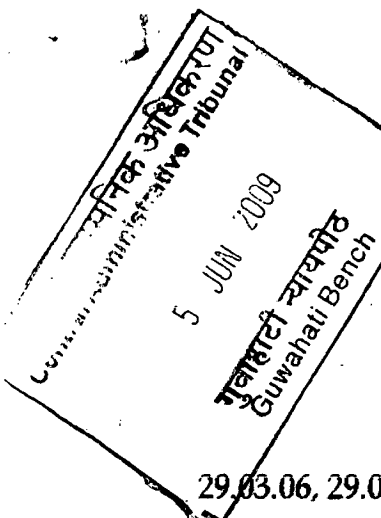
Applicants are now working as Section Officers and posted in the office of the Accountant General (A&E) Nagaland, Kohima.

- May 2005- Applicants while working as Sr. Accountants, they appeared in the Section Officer Grade Examination (for short SOC examination) held in the month of May 2005 and came out successful. As such they attained eligibility for consideration of their promotion in the cadre of Section Officer.
- 17.01.2006- Accountant General (A&E), Assam, Guwahati conducted DPC for filling up of 5 vacancies of Section Officers during the recruitment year 2005-06. Name of the applicants were placed at Sl. No. 9, 10 and 11 of the eligibility list of 14 officers. (Annexure- 2)
- 18.01.2006- Five Sr. Accountants were promoted to the cadre of Section Officer (Gr. B non-gazetted) in the scale of Rs. 6,500-10,500/- on the basis of recommendation of DPC with the condition that the promotee officers are required to intimate the office, whether they accept the promotion or not within 03.02.06 positively, failing which their promotion will be treated as refused. (Annexure- 3)
- 22.03.2006- Sr. Dy. AG (A), Guwahati intimated that out of the five Sr. Accountants four did not accept their promotion to the post of Section Officer. They were allowed to convey their willingness to accept promotion up to 15.03.06, failing which their promotion would be deemed to have been refused. (Annexure- 4)
- 24.03.2006- Office of the C&AG forwarded policy for separation of common cadre of Group 'B' officers in the A&E and Civil Audit office in NE Region to the Pr. A.G (Audit). (Annexure- 5)
- 30.03.2006- Office of the A.G (A&E), Assam issued a circular on cadre separation. It was directed to the Gr. 'B' officers to exercise their options for posting by 15th April, 2006. (Annexure- 6)

28.02.06, 29.05.06, 09.06.06-

Applicants submitted representations to the respondent No. 1 and 3, seeking grant of opportunity for exercising option as SOG examination passed Sr. Accountant in the event of separation of common Cr. 'B' cadre in NE region. They also stated in their representations that 4 employees did not accept promotion

*Received
Accountant/Ministry
S. 16-50
05.06.09*



when the same was offered to them within the validity period i.e. still 03.02.06 in terms of the promotion order dated 18.01.06, but in spite of existence of clear vacancies, they have been deprived in getting promotion in combined cadre and thereby acquiring the right to exercise option in the event of separation of cadres and prayed for grant of retrospective promotion to the combined Section Officer's cadre at the earliest as well as for providing opportunity to exercise option in the event of separation of cadre. (Annexure- 7 Series)

29.03.06, 29.05.06- AG (A&E) Nagaland forwarded representations of the applicants to the AG (A&E) Assam. (Annexure- 8 Series)

May, 2006- Some of the Gr. 'B' officers approached this Hon'ble Tribunal through OA No. 115/06 challenging the policy decision of cadre separation issued vide order dated 24.03.06 and 30.03.06. Applicants were not party in the said O.A.

17.05.2006- Hon'ble Tribunal in O.A. No. 115/2006 directed to maintain status quo.

02/5.06.06- AG (A&E) Assam, Guwahati in his D.O letter to the AG (A&E) Nagaland, referring the representations of the applicants stated that no promotion to the cadre of Section Officer have been effected after the cadre separation policy was issued and option for permanent posting from all the staffs were called for. It was further stated that in view of status quo order was issued in an O.A No. 115/2006 by Hon'ble CAT, Guwahati Bench the issue of cadre separation is subjudice and it was decided to maintain status quo till the decision from Hon'ble CAT, Guwahati Bench is communicated and it was further requested to inform the decision to the applicants.

(Annexure- 9)

09.06.2006- A.G (Audit) Nagaland, informed AG (A&E) Assam that out of the 5 official promoted to the cadre of Section Officer, 3 officials have not reported to the concerned offices within the specific time as per promotion order, therefore their promotion will be treated as cancelled. It is therefore requested to consider promotion of the wait listed candidates and to allow them to exercise option to avoid future litigation in the matter.

(Annexure- 10)

No action was taken by the respondents to promote the applicants against the vacant posts of Section Officers.

August, 2006- Applicants approached this Hon'ble Tribunal through O.A No. 199/2006 with the prayer to promote them to the cadre of Section Officers and also to allow them to exercise option in terms of the cadre separation policy.

08.09.2006- Applicants were promoted to the post of Section Officer with effect from date of their taking over charges. (Annexure- 11)

17.11.2008- Applicants withdrew the O.A. No. 199/2006 with liberty to approach afresh.

Hence this Original Application.

PRAYERS

1. That the Hon'ble Tribunal be pleased to declare that the pendency of Original Application No. 115/2006 and the interim order dated 17.05.2006 passed in the aforesaid Original Application cannot stand on the way of consideration of promotion of the applicants to the cadre of Section Officer.
2. That the Hon'ble Tribunal be pleased to direct the respondents to modify order bearing No. Adm/A&E/Order No. 101 dtd. 08.09.2006 (Annexure-11) antedating promotional benefit of the applicants at least with effect from 04.03.2006 or from any other date in the month of March, 2006 as deem fit and proper with all service benefits including arrear monetary arrear monetary benefit and seniority.
3. That the Hon'ble Tribunal be pleased to declare that the applicants are entitled to exercise their option for permanent posting pursuant to the cadre separation policy dated 24.03.2006 and further be pleased to direct the respondents to allow the applicants to submit their options in terms of cadre separation policy dated 30.03.2006 and also to consider option of the applicants for permanent posting.
4. Costs of the application.
5. Any other relief (s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

During pendency of the application, the applicants pray for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicants for providing relief as prayed for.

5 JUN 2009

গুৱাহাটী ন্যাযপীঠ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Title of the case : O.A. No. 106 /2009

Shri Ashim Kumar Dey & Ors. : Applicants.

-Versus-

Union of India & Ors. : Respondents.

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Filed By:

[Signature]

Advocate

Date:- 04.06.09

5 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O.A. No. 106 /2009

BETWEEN:

1. **Shri Ashim Kumar Dey,**
S/o- Shri Ajit Kumar Dey,
Working as Section Officer,
O/o- The Accountant General (A&E), Nagaland,
Kohima, Nagaland.-797001.
2. **Shri Arup Roy,**
S/o- Late R.C Roy,
Working as Section Officer,
O/o- The Accountant General (A&E), Nagaland,
Kohima, Nagaland.-797001.
3. **Shri Akum Chuba,**
S/o- A.W. Aluniba,
Working as Section Officer,
O/o- The Accountant General (A&E), Nagaland,
Kohima, Nagaland.-797001.

—Applicants.

-AND-

1. **The Union of India,**
Represented by
The Comptroller & Auditor General of India,
10, Bahadur Shah Jafar Marg,
New Delhi- 110002.
2. **The Accountant General (A&E), Assam,**
Maidamgaon, Beltola,
Guwahati- 781029.
3. **The Accountant General (A&E), Nagaland,**
Kohima- 797001.

..... Respondents.

DETAILS OF THE APPLICATION

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

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Filed by the applicant
through U. Datta, advocate
on 04.06.09

This application is made not against any particular order but praying for direction upon the respondents to antedate promotion of the applicants to the cadre of Section Officer with retrospective effect at least from the date of occurrence of the vacancies and also praying for a further direction to grant benefit of option of cadre separation.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

The applicants further declare that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act 1985.

4. Facts of the case:

- 4.1 That the applicants are citizen of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your applicant No. 1 was initially appointed as Clerk- cum-Typist in the year 1990 in the establishment of Accountant General (A&E) Kohima. He was thereafter promoted to the cadre of Accountant in the month of May 1993 and further promoted to the cadre of Sr. Accountant in the scale of pay of Rs. 5500-9000/- in the year 1996. However, he was promoted to the cadre of Section Officer vide order dated 08.09.2006 and he is serving in the office of the Accountant General (A&E), Nagaland, Kohima.

Applicant No. 2 was initially appointed as Clerk-cum-Typist in the year 1990, thereafter he was promoted as Accountant in the year 1995 and further promoted as Senior Accountant in the year 1998. However, he was promoted to the cadre of Section Officer vide order dated 08.09.2006 and he is serving in the office of the Accountant General (A&E), Nagaland, Kohima.

Applicant No. 3 was initially appointed as Clerk-cum-Typist, thereafter he was promoted as Accountant in the year 1998 and further

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promoted as Senior Accountant in the year 2001. Thereafter he was promoted to the cadre of Section Officer vide order dated 08.09.2006 and he is serving in the office of the Accountant General (A&E), Nagaland, Kohima.

- 4.3 That the applicants pray permission to move this application jointly in a single application under Sec 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules 1987 as the relief's sought for in this application by the applicants are common, therefore, they pray for granting leave to approach the Hon'ble Tribunal by a common application.
- 4.4 That your applicants further beg to say that the Accountant General (A&E) Assam is the cadre controlling authority of the post of Section Officer.
- 4.5 That it is stated that the applicants after attaining eligibility and qualified employees appeared in the Section Officer Grade Examination (for short SOG Examination) held in the month of May 2005, which was conducted by the respondents Union of India. However, the applicants were declared successful in the said examination in the month of October 2005 and as such the applicants have attained eligibility for consideration of their promotion in the cadre of Section Officer at that relevant point of time.
- 4.6 That it is stated that 5 vacancies of Section Officers in the scale of Rs. 6500-10,500/- has occurred during the recruitment year 2005-2006 accordingly DPC was conducted at the instance of the Accountant General (A&E), Assam, Guwahati and subsequently on the basis of the recommendation of the DPC, 5 Senior Accountants were promoted to the cadre of Section Officer (Group 'B' non-gazetted) in the scale of Rs. 6,500-10,500/- vide order bearing No. Admn. 1 Order No. 242 dated 18.01.2006 whereby the Office of the Accountant General (A&E) Assam have issued the offer of promotion order without prejudice to the claim of their seniors and also subject to the condition that the seniority in the cadre of Section Officer would be fixed later. In the promotion order dated 18.01.06 it is stipulated that the promotee officer are liable to be transferred and posted to any of the offices of the Accountant General (A&E) Assam, Nagaland, Tripura, Manipur, Meghalaya etc. or any other offices likely to be opened in future in the NE Region and on promotion they would be placed on probation for a period of 2 years. It is

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also specifically stated in promotion order dated 18.01.06 that the promotee officers are required to intimate the office whether they accept the promotion or not within 03.02.06 positively failing which their promotion will be treated as refused.

In terms of the aforesaid promotion order dated 18.01.06 the 4 of the promotee officers, namely; Sri Basudev Mandal, Sri Dilip Gupta, Sri Susanta Choudhuri, Sri Pulak Chandra Sen neither reported for promotion nor intimated the acceptance of the promotion order as required, in terms of the condition laid down in the promotion order dated 18.01.06 and as such promotion of the Sl. No. 2 to 5 deemed to have been refused. Therefore, out of the five (5) posts of the Section Officer, 4 posts were remained vacant till August, 2006 due to non-acceptance of the promotion order by the promotees whose names were indicated in Sl. No. 2 to 5. In the circumstances stated above, 4 posts of Section Officer of the recruitment year 2005-2006 have fallen vacant since 04.02.06, therefore, a duty cast upon the cadre controlling authority i.e. respondent No. 2 to consider the promotion of the other eligible and qualified wait listed candidates who have qualified in the SOG Examination held in the month of May 2005 and eagerly waiting for their turn for promotion to the cadre of Section Officer. But the cadre controlling authority i.e. respondent No. 2 did not take any action till September, 2006 for consideration of the promotion of the applicants although 4 vacancies were vacant w.e.f. 04.02.06.

It is stated that promotion is very much important in the service career of a government employee, in the instant case of the applicants, they were well within the zone of consideration and 4 vacancies of the Section Officers were available since April, 2006 but the respondents, more particularly respondent No. 2 did not consider their promotions till filing of O.A. No. 199/2006. The respondent no. 2 did not take any action immediately thereafter for consideration of promotion of the present applicants in the cadre of Section Officer in spite of availability of 4 vacancies of Section officer w.e.f 04.02.2006.

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4.7 That it is stated that as per Govt. of India's instructions, on the day when a vacancy is available, the same should be filled up as per DOPT instructions, issued by the Govt. of India from time to time. In this connection the applicants like to draw the attention of the Hon'ble Court on the following instructions issued by the Government of India. The relevant portion is quoted below from Swamy's Manual on Establishment and Administration:

"Frequency at which D.P.C should meet

3.1 The D.P.Cs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. The Ministries/Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meeting need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

1[Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is

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available in advance for making promotions against vacancies arising over a year.]

3.2 The requirement of convening annual meetings of the DPC should be dispensed only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question."

Surprisingly in the instant case, the respondents did not follow the aforesaid instructions of the Government, as a result, abnormal delay has been caused in considering the case of the applicants for promotion to the post of Section Officer Group 'B' and as such they incurred huge financial loss, loss of seniority, and further promotion prospects to the next higher cadre. Moreover, the applicants were deprived from the scope of submitting option invited by the Union of India in terms of cadre separation policy which cause irreparable loss and injury to the applicants.

Copy of extract of Govt. of India's instruction regarding holding of DPC (Page-834) from Swamy's Complete Manual of Establishment and Administration for Central Govt. Officials, 2003 Edition is enclosed as Annexure-1.

4.8 That it is stated that the DPC for consideration of promotion of the applicants held on 17.01.2006 at Guwahati for combined N.E. cadre. The committee after careful evaluation of individual ACRS recommended empanelment of 14 officials for promotion to the grade of section officer during the panel year 2006, where the present applicant's names were recommended for promotion at sl. No. 9, 10 and 11. It appears from the DPC proceeding that the vacancies against which the applicants were considered for promotion by the DPC were the vacancies of combined N.E. cadre. As such it is obligatory on the part of the respondents to give effect of the promotion before cadre separation in terms of recommendation of DPC held on 17.01.2006.

A copy of the DPC proceeding held on 17.01.2006 is enclosed as Annexure-2.

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4.9 That it is stated that the AG (AE) Assam-Guwahati initially promoted 5 persons out of the panel of 14 persons vide order bearing letter no. Admn. 1. order no. 242 dtd. 18.01.2006. In the said order of promotion, it was specifically stated that if the officers are required to intimate the office of the AG(AE) Guwahati regarding their acceptance of promotion, they were to inform within 3rd February, 2006 positively failing promotion would be treated as refused. But surprisingly, out of the 5 persons who were given promotion, none of them have joined in the promotional post on 03.02.2006. Sri Nepal Chandra Biswas initially accepted the promotion but subsequently he surrendered his promotion. As a result those 5 persons who were promoted to the cadre of SO did not join promotional post within 03.02.2006.

Copy of the promotion order dtd. 18.01.2006 is enclosed as Annexure- 3.

4.10 That it is stated that by the letter bearing No. 144-NGE(App)/17-2004 dtd. 24.03.2006, wherein it is stated that the Junior Officers in each cadre who are not likely to be accommodated in the concerned offices as per option exercised by them may be posted on deputation basis to the deficit offices as per instructions contained in para 4 of the policy, and further stated that the action taken report should be sent to the department by 15.05.2006.

It is pertinent to mention here that the vacancies against which the applicants were considered by the DPC, were the vacancies of combined N.E cadre and moreover the DPC recommended the cases of the present applicants and others way back on 17.01.2006, as such it was obligatory to fill up the vacancies immediately after recommendation of the DPC. It is also to be noted here at this stage that 4 persons namely; Basudev Mandal, Dilip Gupta, Sushanta Choudhury, Pulak Chandra Sen vide order bearing No. Sr. DAG(A)/Panel/S.O/2004/137 dtd. 22.03.2006, were given opportunity to intimate the office whether they accepted the promotion or not by 03.02.2006 positively, failing which their promotion would be treated as refused, and they would be debarred for promotion for a period of 1 year w.e.f 16.03.2006. But none of the aforesaid persons accepted the offer of promotion and as a result they were debarred for promotion w.e.f 16.03.2006. But surprisingly in spite of availability of 4 vacancies the case of the applicants were not

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considered for promotion to the cadre of section Officers on the pretext of certain non existent flimsy grounds and deliberately the respondents particularly the cadre controlling authority without any valid and legal reasons, did not pass any order of promotion in favour of the applicants from 04.03.2006 to 07.09.2006 whereas as per Govt. of India's instruction, a vacancy is liable to be filled up, the day when it has occurred without any delay. But in the instant case, the said instruction of the Government of India has been deliberately violated by the respondents Union of India with the ulterior motive not to allow the applicants to exercise their option in the event of cadre separation from promotional post of Section Officer pursuant to the circular bearing no. AG/Sep/Gr 'B'/2006/141 dtd. 30.03.2006.

It is categorically submitted that since the applicants were qualified for promotion to the cadre of Section officer following recommendation of the DPC and when following recommendation of the DPC with clear vacancies there was no justifiable reason to deny the promotion to the applicants immediately after refusal of promotion by the aforesaid persons. But respondents acted in a manner prejudicial to the interest of the applicants and thereby kept them waiting till 08.09.2006 in issuing the offer of appointment pursuant to recommendation of DPC held on 17.01.2006 so that applicant could not be able to submit their option from the promotional cadre of section Officer pursuant to the circular dtd. 30.03.2006: As such action of the respondents is highly arbitrary, illegal and unfair and contrary to the instruction/rules of Govt. of India.

Copy of the letter dtd. 22.03.2006, 24.03.06 and circular dtd. 30.03.2006 are enclosed as Annexure- 4, 5 and 6.

4.11 That your applicant No. 1 initially on 28.02.06 submitted a representation addressed to the Accountant General (A&E), Nagaland, Kohima, seeking grant of opportunity for exercising option as SOG examination passed Sr. Accountant in the event of separation of common Group 'B' cadre in NE Region. The applicant in his representation also stated that he has acquired eligibility for getting into the Group 'B' cadre since October 2005 when the common cadre system existed in the region. It is further stated that his promotion was held up for last 6 months for no fault of him but due to

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inaction of the respondents. It was further stated that the applicant should not be subjected to the denial of benefit of exercising option for final placement on promotion and prayed for grant of an opportunity of exercising option for placement on promotion in the separate cadres arising out of the proposed cadre separation scheme. On similar prayer applicant again submitted another representation on 29.05.06 and in the said representation which was addressed to the Comptroller and Auditor General of India, New Delhi, through proper channel, wherein particularly in para 2, the applicant specifically pointed out that 4 employees did not accept promotion when the same were offered to them within the validity period i.e. still 03.02.06 in terms of the promotion order dated 18.01.06, but in spite of existence of clear vacancies, the applicant has been deprived in getting promotion in combined cadre and thereby acquiring the right to exercise option in the event of separation of cadres and prayed for grant of retrospective promotion to the combined Section Officer's cadre at the earliest as well as for providing opportunity to exercise option in the event of separation of cadre. Applicant No. 1 finding no response again submitted another representation on 29.05.06 and on 09.06.06 more or less on the same grounds for non-consideration of his promotion as well as for non-providing opportunity for exercising option in combined cadre of Section Officer and prayed for retrospective promotion to the cadre of Section Officer.

Applicant No. 2 submitted similar representation addressed to the respondent No. 1 and 3 on 29.03.06, 29.05.2006 and on 09.06.2006 more or less on the same grounds for non-consideration of his promotion as well as for non-providing opportunity for exercising option in combined cadre of Section Officer and prayed for retrospective promotion to the cadre of Section Officer. Applicant No. 3 also submitted a similar representation addressed to the respondent No. 1 on 29.05.2006 more or less on the same grounds for non-consideration of his promotion as well as for non-providing opportunity for exercising option in combined cadre of Section Officer and prayed for retrospective promotion to the cadre of Section Officer.

Copies of the representations dated 29.03.06, 29.05.06, 09.06.06 are enclosed herewith as Annexure- 7 (Series).

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4.12 That it is stated that the AG, Nagaland after receipt of the representation dated 29.03.06 and 29.05.06 forwarded the same to the AG (A&E) Assam, Guwahati on 29.03.06 and also on 29.05.06. In the forwarding letter the AG (A&E) Nagaland has clearly expressed his opinion with the request that option may be allowed to exercise from those SOG examination passed candidates also who have not been promoted. Again the AG (A&E) Nagaland requested the AG (A&E) Assam to consider promotion of wait listed candidates against the 3 posts where 3 employees did not report for promotion within 03.02.06 and also requested that promotion order of those candidates may be treated as cancelled since they have not accepted the promotion and also requested to consider the prayer of exercising option of the applicant pending promotion in the cadre of Section Officer to avoid any litigation in the matter but to no result. In this connection it is categorically submitted that the applicants have come to learn from a reliable source that one more person refused to accept promotion within the stipulated period i.e. within 03.02.06 to the cadre of Section Officer, as such altogether 4 vacancies existed to the cadre of Section Officer against which the present applicants ought to have been considered for promotion to the cadre of Section Officer at that relevant point of time.

Copy of the forwarding letter dated 29.03.06 and 29.05.06 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 8 (Series).

4.13 That it is state that the AG (A&E) Assam, Guwahati wrote a D.O letter on 2/5.06.06 to the AG (A&E) Nagaland, Kohima with reference to a D.O letter dated 29.05.06 wherein with reference to the representations of the applicants and other similarly situated employees it was stated that further promotion to the cadre of Section Officer have not been effected after the cadre separation policy was issued and option for permanent posting from all the staffs were called for. It is further stated in the said D.O letter dated 2/5.06.06 that in view of filing an O.A. No. 115/2006 by certain Group 'B' staff of the common cadre in Hon'ble CAT, Guwahati Bench the issue of cadre separation is presently sub-judice before the Hon'ble CAT, Guwahati Bench where status quo order was issued. Therefore, it has been decided to

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maintain status quo till the decision from Hon'ble CAT, Guwahati Bench is communicated and it was further requested to inform the aforesaid decision to the applicants. It is to be noted here that there was no stay or bar in consideration of promotion of the applicants at that relevant point of time.

Copy of the D.O letter order dated 02/05.06.06 and 09.06.06 are enclosed herewith as Annexure- 9 and 10.

4.14 That due to non consideration of promotion of the applicants in spite of existence of vacancies has caused irreparable loss and injury to the applicants in as much as they started suffering due to loss in emoluments, seniority as well as loss in further promotion prospect and also they have been deprived of exercising their option in the matter of cadre separation.

It is categorically submitted that the implementation of cadre separation policy dated 24.03.2006 and circular dated 30.03.2006 had no relevancy or link with the consideration of the promotion of the present applicants. The staus quo order has been passed by this Ld. Tribunal in O.A. No. 115/2006 whereby posting of those applicants of O.A No. 115/2006 were temporarily restrained in the Section Officer cadre. The cadre separation policy means permanent posting of the Gr. 'B' officers in different establishment of the offices of AG (A & E) whereas the applicants were working as Sr. Accountant at that relevant point of time and they were entitled to be considered for promotion since vacancies were available and their posting, on promotion normally are required to be made where vacancies are available in the cadre of Section officer 'Gr B'. As such the interim order passed by this Ld. Tribunal on 17.05.2006 in O.A. No. 115/2006 had no relevancy or link with the issue or promotion of the applicants. But on the plea of pendency of O.A No. 115/2006, the respondents deliberately did not consider promotion of the applicants to the cadre of Section Officer at that relevant point of time in spite of existence of vacancies with malafide intention.

4.15 That your applicants being highly aggrieved due to non-consideration of promotion, approached the Hon'ble Tribunal through O.A. No. 199/2006 with the following prayer.

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"8.1 That the Hon'ble Tribunal be pleased to direct the respondents to hold the DPC to consider the promotion of the applicants in the cadre of Section Officer with immediate effect in the existing vacancies of Section Officers and further be pleased to direct the respondents to grant retrospective promotional benefit at least with effect from 04.03.2006 with all service benefit including arrear monetary arrear monetary benefit and seniority.

8.2 That the Hon'ble Tribunal be pleased to declare that the pendency of Original Application No. 115/2006 and the interim order dated 17.05.2006 passed in the aforesaid Original Application cannot stand on the way of consideration of promotion of the applicants to the cadre of Section Officer.

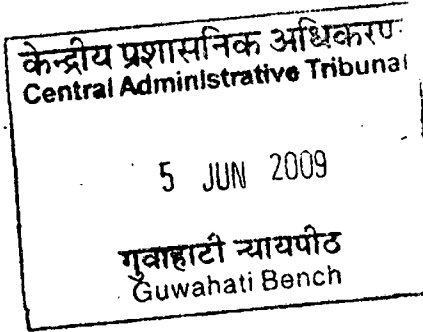
8.2 A That the Hon'ble Tribunal be pleased to declare that the applicants are entitled to exercise their option for permanent posting pursuant to the cadre separation policy date 24.03.2006 and further be pleased to direct the respondents to consider their option in the light of the cadre policy.

8.3 Costs of the application.

8.4 Any other relief (s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper."

During pendency of the aforesaid O.A. the respondents have promoted the applicants vide order bearing no. Adm/A&E/Order No. 101 dtd. 08.09.2006, whereby applicants have been promoted in the scale of Rs. 6500-10,500/- and the said promotion has been effected from a prospective date i.e. from the date of taking over the charges. It would be evident from the order dated 08.09.2006 that at least five vacancies were filled up by the said order which occurred during the recruitment year 2005-2006.

Copy of the promotion order dtd. 08.09.2006 is enclosed as Annexure- 11.



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4.16 That it is stated that as per circular dtd. 30.03.2006 opportunity has been provided to the Section Officer working in the combined N.E. cadre to exercise their one time option for allocation of permanent posting in the offices at Assam, Meghalaya, Manipur, Tripura, Nagaland and in the newly created offices at Mizoram and Arunachal Pradesh in the event of cadre separation decided by the H.Q. office but the applicant have been deliberately denied such opportunity to exercise their option for permanent posting consequent upon the cadre separation policy, from the cadre of Section Officer.

It is categorically submitted that there was no order of stay or injunction prohibiting the respondents not to promote the applicants in the existing vacancies where there were working at the relevant point of time as such delay in issuing of promotion order in the cadre of section officer in respect of the applicant inspite of DPC recommendation and empanelment of their names in the panel, more so when the vacancies were available has caused irreparable loss and injury to the promotion prospect of the applicants and opportunity of exercising one time option for permanent posting in their choice offices in terms of circular dtd. 30.03.2006. Therefore, Hon'ble Tribunal be pleased to direct the respondents to antedate the promotion of the applicants at least w.e.f 04.03.2006 and further be pleased to direct the respondents to allow the applicants to exercise their option for permanent posting in the different offices located in N.E. Region following cadre separation policy dated 30.03.2006.

✓ 4.17 That your applicants further beg to say that it would be evident from the written statement submitted by the present respondents in earlier proceeding i.e. O.A. No. 199/2006 wherein it would be evident that the respondents have fairly admitted that after refusal of promotion by the first set of employees the next turn of promotion came in respect of the applicants and the process was started but in the meanwhile circular for cadre separation dtd. 30.03.2006 was issued by the H.Q. office and it was alleged that some of the officers approached the Hon'ble Central Administrative Tribunal and obtained order of status quo in respect of cadre separation policy and it is further alleged that since the case of cadre separation was

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sub-judice before the Id. Tribunal as such applicants remained as Sr. Accountant. Therefore, statement of the present respondents made in the written statement of O.A. No. 199/2006 is quite irrelevant in the facts and circumstances of the present case.

It is to be noted here at this stage in para IV of the written statement, it is fairly admitted by the respondents that AG(AE)Assam ceased to be cadre controlling authority w.e.f 01.08.2006 for the combined cadre of Group-B officers of the N.E. Region, therefore there was no difficulty to promote the applicants to the cadre of Section Officer w.e.f 04.03.2006 or immediately thereafter in the month of March, 2006 since they were already empanelled for promotion following recommendation of DPC and the vacancies were also available under the combined N.E. cadre for promotion and more so in view of the fact that the other set of employees refused to accept the offer of promotion even after the extended period of 15.03.2006. Moreover, DPC for empanelment was held by the combined cadre controlling authority, as such applicants are legally entitled to antedate of their promotion.

In the circumstances stated above it appears that the applicants deliberately did not issue the offer of promotion order in spite of existing vacancies with the sole intention to deny the benefit of exercising option following cadre separation policy dtd. 30.03.2006.

It is categorically submitted that there is no relevancy with the promotion of the applicants in the existing vacancies of section Officers and AG(AE), Kohima with the cadre separation policy of the H.Q dtd. 30.03.2006, as such applicants has acquired a valuable legal right for antedating their promotion atleast w.e.f 16.03.2006 or in any other day within the month of March 2006 in view of the non acceptance of promotion by order sheet of employee in the cadre of section Officer and also due to existence of clear vacancies in the cadre of Section Officer. As such applicants are entitled to antedating promotion w.e.f 16.03.2006 in the cadre of Section Officer with further opportunity to exercise option for permanent posting at their choice office located in N.E. Region as per H.Q circular dtd. 30.03.2006.

Copy of the written statement submitted in O.A. No. 199/2006 is enclosed as Annexure- 12.

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- 4.18 That your applicants submitted number of representation before the competent authorities on 29.03.2006, 29.05.2006 and also on 09.06.2006 more or less on the same grounds.
- 4.19 That your applicants earlier filed an original application no. 199/2006 but during pendency of the said original application they have been promoted to the cadre of Section Officer without any retrospective benefit vide order dtd. 08.09.2006, as such they withdraw the original application on 17.11.2008 with liberty to file fresh original application. Hence the present application.
- 4.20 That it is stated that the applicants were adversely affected due to non consideration of promotion of the applicants at lest w.e.f 16.03.2006 when vacancies were available and the names of the applicants were very much in the panel. Moreover, there was no administrative order imposing restriction in issuing promotion order. But the competent authority deliberately did not issue the promotion order in favour of the applicants in order to deprive them the opportunity to exercise their option from the promotional post of Section Officer pursuant to the cadre separation policy dtd. 30.03.2006. It is categorically submitted that there is no cogent reason to deny the benefit of promotion to the applicants at least w.e.f March 2006 to enable them to exercise their options for posting in other offices in N.E. Region in the cadre of Section Officer, more so in view of the fact that all the applicants have been empanelled for promotion against the vacancies of combined N.E. cadre and as such the applicants have acquired a valuable legal right for antedating their promotion at least from the date of occurrence/availability of vacancies i.e. w.e.f 04.03.2006 and also entitled to exercise their option pursuant to the cadre separation policy, in the cadre of Section Officer. The applicants earlier submitted representation but to no result except the order of promotion issued vide order dated 08.09.2006 i.e. after a lapse of 8 months from the due date of promotion. Since the applicants have been deprived of from the promotional benefit with retrospective effect that is w.e.f. 04.03.2006 or any other date during the month of March, 2006 as deem fit and proper otherwise they will suffer irreparable loss and injury in the matter of exercising their option for permanent posting following cadre separation policy.

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

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

5.1 For that, the applicants were qualified SOG examination passed candidates and were due for promotion to the cadre of Section Officer when at least 4 vacancies were available to the cadre of Section Officer with effect from 04.03.2006 since 4 of the officials has not accepted the offer of promotion in the cadre of Section Officer which was issued in terms of promotion order dated 18.01.2006 as such the present applicants have acquired a valuable, legal and fundamental right for consideration of their promotion to the cadre of Section Officer at least with effect from 04.03.2006 or from any other date in the month of March 2006 as deem fit and proper.

5.2 For that, the cadre separation policy dated 24.03.2006 and circular dated 30.03.2006 of the existing Group 'B' officers working in the combined cadre in the various establishments of the Accountant General in the North eastern region has no relevancy or link with the matter of consideration of promotion of the present applicants to the cadre of Section Officer as such grounds for non-consideration of promotion of the applicants to the cadre of SO assigned by the AG (A&E) Assam in his D.O letter dated 02.05.2006 is not sustainable in the eye of law.

5.3 For that, the order of status quo passed by the learned Tribunal on 17.05.2006 in O.A. No. 115/2006 has no relevancy or link with the claim for consideration of antedating of promotion of the applicants to the cadre of Section Officer, by the order of status quo passed by the learned Tribunal restraining the respondents from posting and transferring the Group B officers who have filed the Original Application No. 115/2006 challenging the cadre separation policy dated 24.03.2006 and other consequential order. Hence the order of status quo cannot stand on the way of consideration of antedating promotion of the applicants to the cadre of SO who were willing to avail promotion in any establishment of the North Eastern Region.

5.4 For that, non-consideration of promotion of the applicants with retrospective effect to the cadre of SO even after being declared successful

Ashim K. Dey

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in the rigorous SOG examination held in the month of May 2005, more so when at least 4 vacancies were available in the cadre of Section Officer have caused irreparable loss and injury to the present applicants.

- 5.5 For that, the decision of the Accountant General (A&E) Assam, not to consider promotion of the applicants on the pretext of issuance of the cadre separation policy dated 24.02.2006, circular dated 03.03.2006 in respect of existing Group B officers and also on the alleged ground that this Hon'ble Tribunal has passed an order of status quo in O.A. No. 115/2006 is highly arbitrary, unfair and illegal and contrary to the factual position inasmuch as the cadre separation policy and order of status quo in no way standing in consideration of antedating promotion of the applicants to the cadre of Section Officer.
- 5.6 For that, in spite of existence of at least 4 vacancies of Section Officer and also in view of the repeated request made by the Accountant General (Audit) Nagaland the case of the applicants for promotion has not yet been considered for promotion since February 2006 till date.
- 5.7 For that, the applicants also made numbers of representations for consideration of their promotion to the cadre of Section Officer in the existing available vacancies which was favourably recommended by the AG (A&E) Nagaland but the AG (A&E) Assam deliberately ignored the legitimate claim of the applicants for promotion to the cadre of Section Officer on the pretext of pendency of O.A. No. 115/2006.
- 5.8 For that denial of promotion to the applicants to the cadre of Section Officer in time has adversely affected the seniority, emolument, increment and promotion prospect for the next higher grade which will cause irreparable loss and injury to the applicants, besides applicants have been arbitrarily denied of exercising their option in terms of cadre separation scheme dated 30.03.2006.
- 5.9 For that there is a specific instruction issued by the Govt. of India from time to time for holding DPC frequently to enable the Government employee to avail the benefit of promotion on the day when a vacancy is occurred in the

Shri M. K. Dey

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promotional cadre but the respondents in the instant case deliberately violated the aforesaid instructions of the Govt. of India in order to deny the legitimate claim of promotion of the applicants.

5.10 For that the applicants have been deprived promotion in the month of March, 2006 in spite of existence of vacancies to the cadre of Section Officer and as a result they have been deprived of the benefit of exercising their option pursuant to the cadre separation policy introduced by the Comptroller and Auditor General vide their letter dated 24.03.2006.

5.11 For that the applicants are legally entitled to antedate the promotion at least w.e.f. 04.03.2006 and also legally entitled to benefit of exercising options for permanent posting pursuant to the cadre separation policy.

5.12 For that there is no valid reason for deferring the promotion from March 2006 to September, 2006, when the applicants were empanelled against the available vacancies of combined N.E. cadre.

5.13 For that, the respondents have deliberately delayed the promotion from the February/March, 2006 to September, 2006.

5.14 For that the vacancies occurred in the combined N.E. cadre are liable to be filled up before cadre separation policy is effected. More so, when vacancies were available and eligible officers have been waiting for promotion.

5.15 For that the grounds assigned by the respondents in the written statement in O.A. No. 199/2006 for non effecting the promotion of the applicants in February/March, 2006 are not sustainable in the eye of law.

6. Details of remedies exhausted.

That the applicants declare that they have exhausted all the remedies available to and there is no other alternative remedy than to file this application.

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

The applicants further declare that save and except filing of O.A. No. 199/2006 they had not previously filed any application, Writ Petition or

Aslim K. Dey

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Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

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

- A**
- 8.1 That the Hon'ble Tribunal be pleased to declare that the pendency of Original Application No. 115/2006 and the interim order dated 17.05.2006 passed in the aforesaid Original Application cannot stand on the way of consideration of promotion of the applicants to the cadre of Section Officer.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to modify order bearing No. Adm/A&E/Order No. 101 dtd. 08.09.2006 (Annexure-11) antedating promotional benefit of the applicants to the cadre of Section Officer at least with effect from 04.03.2006 or from any other date in the month of March, 2006 as deem fit and proper with all service benefits including arrear monetary arrear monetary benefit and seniority.
- 8.3 That the Hon'ble Tribunal be pleased to declare that the applicants are entitled to exercise their option for permanent posting pursuant to the cadre separation policy dated 24.03.2006 and further be pleased to direct the respondents to allow the applicants to submit their options in terms of cadre separation policy dated 30.03.2006 and also to consider option of the applicants for permanent posting.
- 8.4 Costs of the application.
- 8.5 Any other relief (s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper.
9. Interim order prayed for:
- B**

Action Kn Day

During pendency of the application, the applicants pray for the following interim relief: -

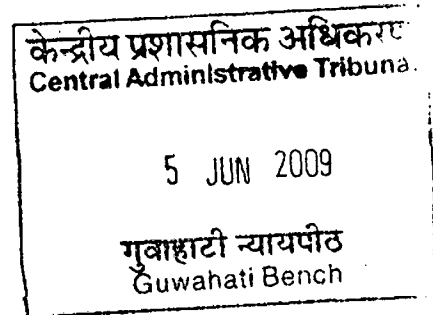
- 9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicants for providing relief as prayed for.

10.

11. Particulars of the I.P.O

- | | | | |
|------|---------------|---|---------------|
| i) | I.P.O No. | : | 396 405333 |
| ii) | Date of issue | : | 9.4.2009 |
| iii) | Issued from | : | GPO. Guwahati |
| iv) | Payable at | : | GPO. Guwahati |

12. List of enclosures:
As given in the index.



Ashim K. Roy

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

5 JUN 2009

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Guwahati Bench

VERIFICATION

I, Shri Ashim Kumar Dey, S/o- Shri Ajit Kumar Dey, aged about 42 years, working as Section Officer in the office of the Accountant General (A&E), Nagaland, Kohima, Nagaland, applicant No. 1 in the instant application, duly authorized by the others to verify the statements made in the instant original application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 24th day of May 2009.

Ashim K. Dey

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ANNEXURE-1

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SWAMY'S — ESTABLISHMENT AND ADMINISTRATION

2.7 In Group 'A' and Group 'B' services/posts, if none of the officers included in the DPC as per the composition given in the Recruitment Rules is an SC or ST officer, it would be in order to co-opt a member belonging to the SC or ST if available within the Ministry/Department. If no such officer is available within the Ministry/Department, he may be taken from another Ministry/Department.

2.8 In the case of EB crossing. — ***

PART - II

FREQUENCY OF MEETINGS

Frequency at which DPC should meet

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List, etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. The Ministries/Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

[Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.]

3.2 The requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question.

[See O.M. dated 8-9-1998 at the end of this section for Model Calendar.]

1. G.I., Dept. of Per. & Trg., O.M. No. 22011-3/91-Per. (D), dated the 13th May, 1991.

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Attested
Mulla
Adv

PROCEEDING OF THE DEPARTMENTAL PROMOTION COMMITTEE IN CONNECTION WITH THE PROMOTION OF S.O.G.E. PASSED CANDIDATES TO THE GRADE OF SECTION OFFICER DURING THE PANEL YEAR 2006.

The Departmental Promotion Committee consisting of Ms. Naina A. Kumar, Sr. DAG (Admn) O/o the A.G.(A&E) Assam, Guwahati, Ms. D. Thakur, DAG(Admn) O/o the Pr. A.G. (Audit) Assam, Guwahati and Shri R.C. Barman, Sr. A.O., O/o the A.G.(A&E) Assam, Guwahati met on 17/01/2006 to consider promotion of S.O.G.E. passed candidates to the grade of Section Officer for the combined N.E. Cadre.

2. The Committee was informed that the following S.O.G.E. passed officials are eligible for promotion to the grade of Section Officer during the panel year 2006.

Refused the promotion on the date of separation i.e before 31⁷/06

vacancies are available on the date of separation of cadre i.e before 31⁷/06

Sl. No.	Name (S/Shri/Smti.)
1.	Nepal Ch. Biswas
2.	Basudev Mandal (SC)
3.	Dilip Gupta (SC)
4.	Susanta Choudhury
5.	Pulok Ch. Sen
6.	S. Balendro Singh
7.	Paritosh Deb
8.	P. Saurat Singh (SC)
9.	Ashim Kr. Dey
10.	Arup Roy
11.	Akum Chuba (ST)
12.	Barun Paul (SC)
13.	Sajal Chakraborty
14.	Rajat Kt. Deb

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal

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3. The Committee was further informed that for promotion of 14 officials on seniority-cum-fitness basis, the position vis-à-vis requirement of SC/ST officers in the post based working roster is as follows :-

a)	Sanctioned Strength	=	40
b)	Men-on-roll	=	30
c)	Size of the post based working roster	=	40
d)	Post reserved in a 40 point working roster	=	SC=6 ST=3
e)	No. of SC/ST Officers on roll out of (b) above	=	SC=7 ST=1
f)	No. of SC/ST Officers eligible for promotion	=	SC=4 ST=1

Attested
17.1.06

17.1.06

17/1/06

OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM, NAIDAMGAON,
BELTOLA, GUWAHATI - 781 029.

Admn.1. Order No. 242

January 18, 2006

Without prejudice to the claim of their seniors and also subject to the condition that their seniority in the cadre of Section Officer will be fixed later, the following officials are hereby promoted to officiate as Section Officer(Group-B Non-Gazetted) in the scale of pay of Rs. 6500-200-10500/-p.m. w.e.f. the dates they take over charge in the offices as shown against their names.

Sl. No	Name Shri/Smti	Office to which Attached	Office to which posted
01.	Nepal Ch. Biswas	Sr. D.A.G. (A&E) Tripura, Agartala	Sr. D.A.G. (A&E) Tripura, Agartala
02.	Basudev Mandal	A.G. (A&E) Assam, Guwahati	A.G. (A&E) Meghalaya, Shillong
03	Dilip Gupta	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal
04	Susanta Chaudhuri	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal
05.	Pulok Ch. Sen	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal

The officers are liable to be transferred and posted to any of the offices of the Accountant General (A&E) in Assam, Nagaland, Tripura, Manipur, Meghalaya etc., or any other offices likely to be opened in future in the North Eastern Region.

On promotion they will be placed on probation for two years.

On their promotion, the officers are required to exercise option, if any, in the matter of fixation of their pay within one month in terms of G.I.D. No. 19 below FR-22(I)(a)(1).

The officers are required to intimate this office whether they accept the promotion or not within 03-02-06 positively, failing which their promotion will be treated as refused.

The transfer is in public interest

[Authority: AG's order dated 18-01-06 at P/32^N of file no. Sr. DAG(A)/Panel/SO/2004]

sd/-

Sr. Deputy Accountant General (A& VLC)

Memo No. Admn.1/3-5/2004-05/3625

January 18, 2006

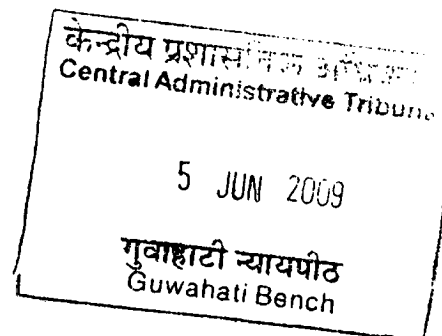
Copy forwarded to:

The Comptroller & Auditor General of India,
10- Bahadur Shah Zafar Marg,
Indraprastha Head Post Office,
New Delhi-110 002

sd/-

Sr. Deputy Accountant General (A& VLC)

Attested
M. Dutta
A. S. W.





-25-

महालेखाकार (ले एवं ह) असम का कार्यालय

ANNEXURE-4

Office of the Accountant General (A & E)

Assam

मैदांगगांव, बेलतोला, गुवाहाटी - 781029

Maidamgaon, Beltola, Guwahati-781029

No. Sr.DAG(A)/Panel/S.O./2004/137

Dated: 22/3/06

The following SOGE passed candidates were Promoted to officiate as Section Officer vide this office Admn-I order No.242 dt.18th January 2006 with effect from the date they take over charge in the offices as shown against their names.

Sl.No.	Name S/Shri	Office to which posted
1)	Basudev Mandal	A.G.(A&E) Meghalaya, Shillong
2)	Dilip Gupta	Sr.DAG(A&E) Manipur
3)	Susanta Chaudhuri	Sr.DAG(A&E) Manipur
4)	Pulok Ch.Sen	Sr.DAG(A&E) Manipur

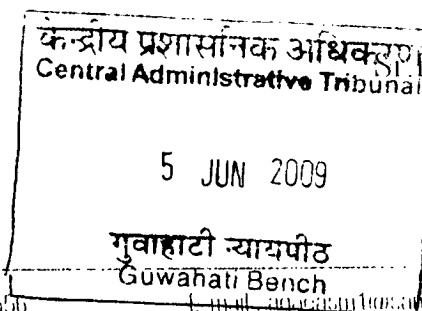
On Promotion, they were given opportunity to intimate this office whether they accept the Promotion or not by 03-02-2006 positively, failing which their promotion will be treated as refused. They represented about their place of posting. Their representations were duly considered by the Accountant General. After careful consideration it was ordered that their requests could not be acceded to as there was no vacancy as per their choice of offices. However, they were allowed time upto 15/3/06 to convey their willingness to accept the Promotion before this date otherwise Promotion will be deemed to have been refused w.e.f. 16-03-2006.

Since they have not accepted the Promotion within the stipulated period, the Promotion is deemed to have been refused by them w.e.f. 16-3-2006 and are, accordingly, liable for consequences arising out of refusal of promotion as per rules/instructions.

Hence, they are debarred for Promotion for a period of 1 (one) year w.e.f. 16-3-2006.

Authority :- A.G's order dt.22/3/06 at p/37n of F.No.Sr.DAG(A)/Panel/SO/2004]

Wtstetd
Wnta
Adw



Dy. Accountant General(A)

(2nd Postal Copy)

OFFICE OF THE COMPTROLLER & AUDITOR GENERAL OF INDIA,
10, BHADURSHAH ZAFAR MARG, NEW DELHI-110 002.

No: 144-NGE(App)/17-2004

Dated: 24.03.2006

To

The Pr. Accountant General (Audit),
Meghalaya, etc.,
Shillong.

Sub:-

Separation of common cadre of Group 'B' Officers in the A&E and
Civil Audit Offices in North East Region.

Sir,

I am to forward herewith the policy for separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices in North East Region alongwith a format of option form. It is requested that fresh options may be obtained from all the existing Group 'B' officers belonging to common cadre under your cadre control for permanent transfer to the Civil Audit offices in North East Region intimating them the cadre strength of each office and they may be allocated to the concerned offices on the basis of their seniority-cum-options exercised by them as per instruction contained in para 3 of the policy.

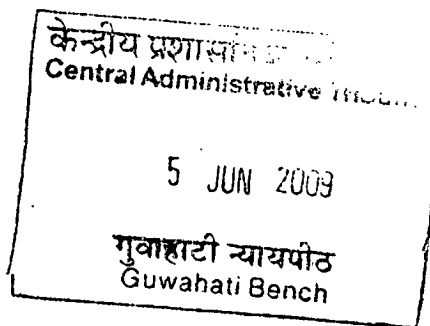
2. The junior officers in each cadre who are not likely to be accommodated in the concerned offices as per options exercised by them may be posted on deputation basis to the deficit offices as per instructions contained in para 4 of the policy.

3. The action taken report should be sent to us by 15-05-2006. We intend to have the separated cadres in place as on 01-06-2006.

4. Caveat in the appropriate courts of judicature may be filed in consultation with your standing counsels.

Yours faithfully,

Encls: As above.



Sd/-
(Manish Kumar)
Assistant Comptroller and
Auditor General (N)

Attended
to the
Adm

Policy for separation of common cadre of Group 'B' officers in the A&E and Civil Audit Offices in N.E. Region.

- I One time option for allocation to a particular office may be called for from the existing Group 'B' officers belonging to common cadre by the present cadre controlling authorities i.e. PAG (Audit) Meghalaya etc., Shillong and AG (A&E) Assam, Guwahati. The optees shall be required to indicate their preference.
- II Vacancies in combined cadre may be proportionately distributed among all the concerned offices and the existing staff may be allocated to various offices against the required strength i.e. sanctioned strength minus vacancies proportionately distributed in each cadre.
- III Permanent posting of Group 'B' officers of common cadre against the required strength of various Civil Audit/A&E offices shall be made by the respective cadre controlling authorities strictly on the basis of the seniority of the officers, who have exercised their option for allocation to such offices, irrespective of their base office.
- IV If the number of optees for a particular office is more than the required strength of that office, the excess persons in each cadre (SAO/AO/AAO/SO), who can not be accommodated in the office of their preference against the required strength of that office as per their seniority, shall be posted on deputation basis to the office viz. deficit offices. If sufficient volunteers are not available for such posting on deputation basis, the junior most persons in excess of required strength in each cadre shall be sent to deficit office on deputation basis. No willingness shall be necessary for this purpose but deputation allowance shall be payable. However, they may be asked to give their preference for such posting mentioning the names of deficit offices and as far as possible they may be posted to such deficit offices on the basis of their seniority and preference given by them for this purpose. These persons shall be posted to the office of their choice on the basis of their seniority on availability of subsequent vacancies against the required strength in such offices. The surplus optees shall also form part of the cadre of their office for which option was exercised by them.
- If the number of optees for a particular office is less than the sanctioned strength of that office all the optees shall be allocated to that office. The remaining vacancies shall be filled up by deputation of surplus optees as per guidelines laid down at IV above. The vacancies arising due to repatriation of the deputationists to the office of their choice will be filled up by the concerned offices as per provisions contained in the Recruitment Rules for the concerned posts.
- VI The promotions to Group 'B' posts after the separation of cadre shall be made by the concerned offices from amongst the eligible officers of their office. However, in surplus offices no further promotion will be made till all the surplus optees posted to deficit offices on deputation basis are accommodated in these offices.
- VII Direct recruitment will be done in the deficit offices only against the requisition already placed/to be placed to Staff Selection Commission.

Central Administrative Tribunal
5 JUN 2009
Guwahati Bench

Noted
Date
AW

OFFICE OF THE ACCOUNTANT GENERAL(A&E) ASSAM, GUWAHATI

Circular on Cadre Separation

Circular No.AG/Sep/Gr.'B'/2006/141

Dated 30/3/2006

5 JUN 2009

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunalगुवाहाटी न्यायपीठ
Guwahati Bench

- I. Headquarters office has decided to separate the common Group 'B' cadre from Section Officers to Sr. Accounts Officers in the A&E offices of the N.E. region hither to controlled by the Accountant General(A&E) Assam, Guwahati.
- II. The offices to which the staff may exercise their one time option are the A&E offices at Assam, Meghalaya, Manipur, Tripura, Nagaland and the newly created offices of Mizoram and Arunachal Pradesh.
- III. The separation of Group 'B' cadres would be in accordance with the following criteria :-
- ✓ IV. The existing staff may be allocated on permanent posting against the required strength on the basis of the seniority of the officers who have exercised their option for allocation to such offices, irrespective of their base office.
- V. If the number of optees for a particular office is more than the required strength of that office, the excess persons in each cadre (SAO/AO/AAO/SO), who can not be accommodated in the office of their preference against the required strength of that office as per their seniority, shall be posted on deputation basis to the office for which number of optees is less than the required strength of that office viz deficit offices. If sufficient volunteers are not available for such posting on deputation basis, the junior most persons in excess of required strength in each cadre shall be sent to deficit office on deputation basis. No willingness shall be necessary for this purpose but deputation allowance shall be payable. However, they may be asked to give their preference for such posting mentioning the names of deficit offices and as far as possible they may be posted to such deficit offices on the basis of their seniority and preference given by them for this purpose. These persons shall be posted to the office of their choice on the basis of their seniority and availability of subsequent vacancies against the required strength in such offices. The surplus optees shall also form part of the cadre of their office for which option was exercised by them.
- VI. If the number of optees for a particular office is less than the sanctioned strength of that office all the optees shall be allocated to that office. The remaining vacancies shall be filled by deputation of surplus optees as per guidelines laid down at V above. The vacancies arising due to repatriation of the deputationists to the office of their choice will be filled up by the concerned offices as per provisions contained in the Recruitment Rules for the concerned posts.
- VII. The promotions to Group 'B' posts after the separation of cadre shall be made by the concerned offices from amongst the eligible officers of their office. However, in surplus offices no further promotion will be made till all the surplus optees posted to deficit offices on deputation basis are accommodated in these offices.
- VIII. Direct recruitment will be done in the deficit offices only against the requisition already placed/to be placed to Staff Selection Commission.
- ✓ IX. With a view to implement the above scheme of separation of cadres of Group 'B' posts, all the present Group 'B' Officers (Section Officers to Senior Accounts Officers including those on deputation and on foreign service) of this office are hereby directed to exercise their options in the enclosed "FORM OF OPTION" and submit the same to the Senior Accounts Officer/Admn. of this office by 15th April 2006 positively. He should also prepare a list of officers on leave and ensure sending of this circular with 'Option Form' to them by Registered post.

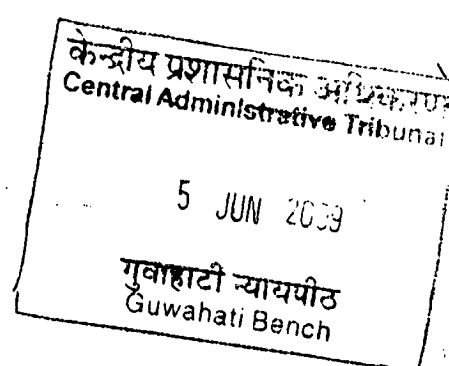
Sr. Dy. Accountant General (Admn.)

Submitted
Authr
Adn

-29-

5

Annexure-7 (series)



To
The Accountant General,
Nagaland, Kohima

Sub: Prayer for allowing options to be exercised in the event of separation of cadres of Group 'B' staff in NE Region.

Sir

Kindly refer to my representation dtd. 28th February 2006 seeking grant of opportunity for exercising option as SOGE passed Sr. Accountant in the event of separation of common Group 'B' cadre in NE region (copy enclosed). Although a considerable time has already been elapsed the fate of my representation is not known.

That Sir, separation of group 'B' cadre in the region is now a certainty and fresh options are invited from all persons holding Group 'B' post in the common cadre. Sir, on my passing of SOGE 2005, I have also acquired the eligibility for getting into the Group 'B' cadre since October 2005 when the common cadre system existed in the region. My promotion was held up for none of my fault for last 6 (six) months probably for want of vacancy in the common cadre.

That Sir, on my passing SOGE during the existence of common cadre system I have been placed on the same footing as my other colleagues who had already made it to the cadre prior to actual separation and on that analogy, I believe I shall not be subjected to the denial of benefits of exercising option for final placement on promotion.

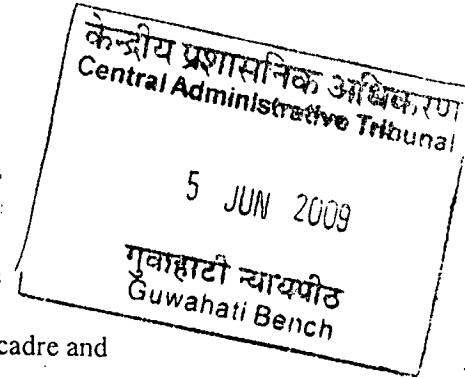
Under the circumstances, I would request you to take up the matter personally and move to the Cadre Controlling Authority as well as the Comptroller & Auditor General of India for favour of granting me an opportunity of exercising option for placement on promotion in the separate cadres arising out of the proposed cadre separation.

Yours faithfully,
Arup Roy
(Arup Roy) 24/5/06

Encl: As stated above.

*Collected
Mulla
Akh*

The Comptroller & Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi - 2.



Through the Accountant General, Nagaland

Sub : Application for seeking redressal against deprivation of promotion to SO's cadre and consequent denial of opportunity to exercise options for final placement.

Respected Sir,

I Sri Arup Roy, SOGE passed (2005 batch) Sr. Accountant of O/O the Accountant General, Nagaland beg to lay before you the following facts for your kind and sympathetic consideration.

That Sir, when the proposal for separation of cadre in respect of Group 'B' officers in NE region was developing, I have applied to the Cadre Controlling Authority to consider my case and allowing me to exercise option for final placement on the analogy that on my passing SOGE in 2005. I have also acquired the eligibility of getting promotion to the Group 'B' cadre since October 2005 when the common cadre system existed in the region. But my contention was rejected by the cadre controlling Authority {AG(A&E) Assam} on the ground that I have not yet promoted to the group 'B' post.

2. That sir, I have passed SOGE in the year 2005 (October 2005) but as of now despite having vacancies I have not been considered for promotion to the post of SO(A&E). However, in January 2006, 5(five) qualified candidates who had earlier refused promotion in December 2004 had been promoted to available vacancies with validated period till 3rd February 2006 for accepting the offer. Out of 5(five), 4(four) had not accepted the offer within the validated period and the posts till remain vacant. The Cadre Controlling Authority did not consider my case even when the seniors refused the offer and clear vacancies in the grade exists depriving me the benefit of getting promotion in combined cadre and thereby acquiring the right to exercise option in the event of separation of cadres.

3. That Sir, my humble submission that by not considering my case for promotion in February 2006 to the vacancies arising due to refusal by my seniors without assigning any reason was not just, fair and transparent.

In view of above facts, I would fervently request your benign self to interfere into the matter personally and to scrupulously take such action which can bring an appropriate justice in this regard, so that I can get a retrospective promotion to the combined SO's cadre at the earliest as well as opportunity to exercise option in the event of separation of cadre.

Yours faithfully

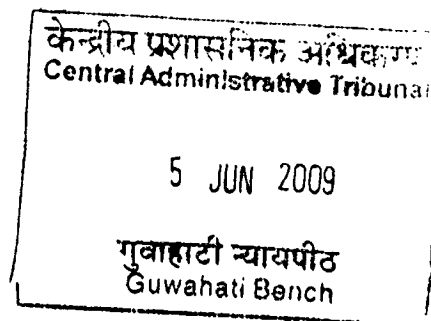
(Arup Roy)

Encl: Promotion Order of 5(five) SOGE passed Candidates.

Copy to: The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati - 29 for information and necessary action Please.

Attested
B. B. B.
A. B.

To
The Principal Director(Staff),
Office of the Comptroller & Auditor General of India,
10- Bahadu Shah Zafar Marg,
New Delhi - 2.



Through the Accountant General, Nagaland.

Sub : Application for seeking redressal against deprivation of Promotion to SO's cadre as well as options.

Respected Madam,

In inviting a reference to the subject cited above I beg to lay before you the following facts for your sympathetic consideration.

That Madam, I have passed the SOGE (A&E) in October 2005 and awaiting promotion to SO (A&E), a Group 'B' posts in the common cadre in NE region. Unfortunately, the reason for not being considered for promotion even after elapse of more than 8 months is beyond my comprehension.

That Madam, the Cadre Controlling Authority of the Group 'B' cadre of the region of Guwahati seeks option for all those officers who have already got promotion to the cadre for final placement in the event of separation of cadres. But in this process I was not given an opportunity for exercising my option even though I have been in line for getting promotion to the cadre.

That Madam, my simple presumption is that since I have acquired the eligibility of being promoted to the grade before actual separation of the common cadre, if finally held, I deserved to be given a chance of exercising my option for final placement in the event of actual separation of cadre to be done at any later stage and this would be the only fair and just course of action in my case.

My presumption is based on the fact that on my passing SOGE during the existence of common cadre system I have been placed on the same footing as my other colleagues who had already made it to the cadre prior to actual separation and on that analogy, I believe I shall not be subjected to the denial of benefits of exercising option for final placement on promotion.

Further I would like to refer to the promotion order no.242, dtd.18.01.06 issued by CCA, Guwahati where 5 eligible candidates seniors to me in line who had earlier refused promotions in December 2004, had been promoted on 18.01.06 to available vacancies with validity period of accepting the offer till 03.02.06. As per the order, if the promotion is not accepted within 03.02.06 their offer of promotion would be treated as

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cancelled. Out of the aforesaid five candidates, four candidates did not accept the offer in time and as such, other qualified wait listed candidates should have been considered for promotion against those vacant posts but in the instant case that was not done as of now. In these connection, I would like to refer to the response of my representation dated 29.5.2006 received from CCA, Guwahati wherein it is stated that options were called for from all Group B officers in common cadre as per circular for cadre separation issued on 30.3.2006 and no promotion have effected after cadre separation policy was issued on 30.3.2006. Now, my assumption is that my senior's promotion order has been expired on 3.2.2006 before the cadre separation policy was issued on 30.3.2006, but the CCA, Guwahati did not consider my case in between the periods of 54 days in between the expiry date (3.2.06) of offer and issuance of cadre separation policy (30.3.06).

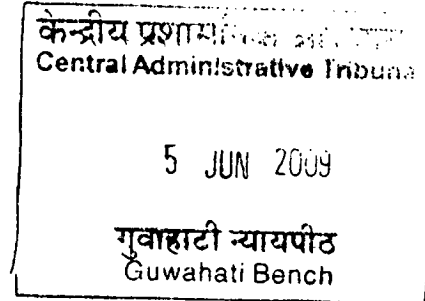
In view of above facts, I would request your benign self to look into the matter which can bring an appropriate justice in this regard so that I can get a retrospective promotion to SO's cadre at the earliest as well as opportunity to exercise options in the event of separation of cadre.

Yours faithfully,

Arup Roy
(Arup Roy) 21/6/06

Encl: Promotion order's of 242, dtd. 18.01.06

Copy to: The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati-29 for information and necessary action Please.



To

The Principal Director(Staff),
Office of the Comptroller & Auditor General of India,
10- Bahadu Shah Zafar Marg,
New Delhi - 2.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

5 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Through the Accountant General, Nagaland.

Sub : Application for seeking redressal against deprivation of Promotion to SO's cadre as well as options.

Respected Madam,

In inviting a reference to the subject cited above I beg to lay you the following facts for your sympathetic consideration.

On my passing of SOGE in 2005, when the common cadre system existed in NE region I have acquired the eligibility for getting promotion into Group "B" cadre. So I have been placed on the same footing as my senior's before cadre separation implemented for final placement.

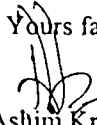
Secondly, I would like to refer the promotion order no.242, dtd.18.01.06 issued by CCA, Guwahati where 5 eligible candidates who has earlier refused promotions in December 2004 had been promoted to available vacancies with validated period till 03.02.06. As per the order if the promotion is not accepted within 03.02.06 their promotion will be treated as cancelled. Among 5 eligible candidates 4 eligible candidates have failed to report in time and as such other qualified wait listed candidates should have been promoted against those post(s). In these connection I like to refer the response of my representation dtd.29.05.06 received from CCA,Guwahati wherein it is stated that options were called for from all Group B officers in common cadre as per circular for cadre separation issued on 30.03.06 and no promotion have effected after cadre separation policy was issued. Now my analogy is that my senior's promotion order has cancelled on 03.02.06 before the cadre separation policy issued on 30.03.06. The CCA,Guwahati did not consider my case in between the interim periods of 54 days for none of my fault and depriving me the benefit of getting promotion in common cadre and thereby acquiring the right to exercise option.

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Thirdly, if the CCA, Guwahati has treated me as the separate cadre then I have to be considered eligible for promotion from November 2005 but due to the existence of common cadre in NE region I have been deprived from my due benefits in time. So, in that juncture I wish your utmost preference in this regard.

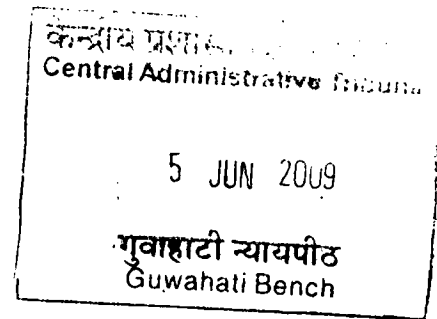
In view of above facts, I would request your benign-self to look into the matter which can bring an appropriate justice in this regard so that I can get a retrospective promotion to SO's cadre at the earliest as well as opportunity to exercise options in the event of separation of cadre.

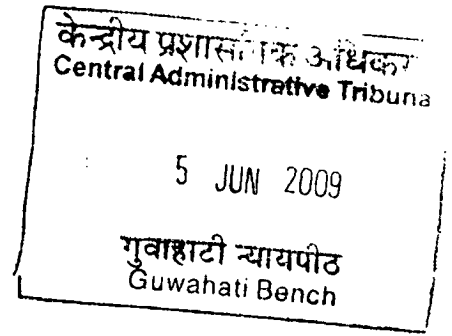
Yours faithfully,

(Ashim Kr. Dey)

Encl: Promotion Order's of 242, dtd 18.01.06.

Copy to: The Accountant General, (A&E) Assam,

Maidamgaon, Beltola, Guwahati 29 for information and necessary action Please.





To
The Principal Director(Staff),
Office of the Comptroller & Auditor General of India,
10- Bahadu Shah Zafar Marg,
New Delhi - 2.

Through the Accountant General, Nagaland.

Sub : Application for seeking redressal against deprivation of Promotion to SO's cadre as well as options.

Respected Madam,

In inviting a reference to the subject cited above I beg to lay before you the following facts for your sympathetic consideration.

That Madam, I have passed the SOGE (A&E) in October 2005 and awaiting promotion to SO (A&E), a Group 'B' posts in the common cadre in NE region. Unfortunately, the reason for not being considered for promotion even after elapse of more than 8 months is beyond my comprehension.

That Madam, the Cadre Controlling Authority of the Group 'B' cadre of the region of Guwahati seeks option for all those officers who have already got promotion to the cadre for final placement in the event of separation of cadres. But in this process I was not given an opportunity for exercising my option even though I have been in line for getting promotion to the cadre.

That Madam, my simple presumption is that since I have acquired the eligibility of being promoted to the grade before actual separation of the common cadre, if finally held, I deserved to be given a chance of exercising my option for final placement in the event of actual separation of cadre to be done at any later stage and this would be the only fair and just course of action in my case.

My presumption is based on the fact that on my passing SOGE during the existence of common cadre system I have been placed on the same footing as my other colleagues who had already made it to the cadre prior to actual separation and on that analogy, I believe I shall not be subjected to the denial of benefits of exercising option for final placement on promotion.

Further I would like to refer to the promotion order no.242, dtd.18.01.06 issued by CCA, Guwahati where 5 eligible candidates seniors to me in line who had earlier refused promotions in December 2004, had been promoted on 18.01.06 to available vacancies with validity period of accepting the offer till 03.02.06. As per the order, if the promotion is not accepted within 03.02.06 their offer of promotion would be treated as

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my fault and depriving me the benefit of getting promotion in common cadre and thereby acquiring the right to exercise option.

In view of above facts I would request your benign self to look into the matter which can bring an appropriate justice in this regard so that I can get a retrospective promotion to SO's cadre at the earliest as well as opportunity to exercise options in the event of separation of cadre.

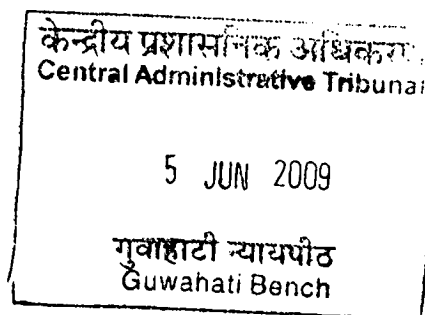
Dated, 9th/6/06

Yours faithfully,

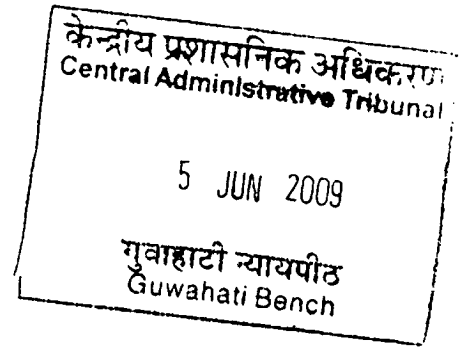
(Ashim Kr. Dey)

Copy to: The Accountant General, (A&E) Assam,

Maidamgaon, Beltola, Guwahati 29 for information and necessary action Please.



-37-



To

The Comptroller & Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi - 2.

Through the Accountant General, Nagaland

Sub : Application for seeking redressal against deprivation of promotion to SO's cadre and consequent denial of opportunity to exercise options for final placement.

Respected Sir,

I Sri Akum Chuba, SOGE passed (2005 batch) Sr. Accountant of O/O the Accountant General, Nagaland beg to lay before you the following facts for your kind and sympathetic consideration.

That Sir, when the proposal for separation of cadre in respect of Group 'B' officers in NE region was developing,, I have applied to the Cadre Controlling Authority to consider my case and allowing me to exercise option for final placement on the analogy that on my passing SOGE in 2005. I have also acquired the eligibility of getting promotion to the Group 'B' cadre since October 2005 when the common cadre system existed in the region. But my contention was rejected by the cadre controlling Authority {AG(A&E) Assam} on the ground that I have not yet promoted to the group 'B' post.

2. That sir, I have passed SOGE in the year 2005 (October 2005) but as of now despite having vacancies I have not been considered for promotion to the post of SO(A&E). However, in January 2006, 5(five) qualified candidates who had earlier refused promotion in December 2004 had been promoted to available vacancies with validated period till 3rd February 2006 for accepting the offer. Out of 5(five), 4(four) had not accepted the offer within the validated period and the posts till remain vacant. The Cadre Controlling Authority did not consider my case even when the seniors refused the offer and clear vacancies in the grade exists depriving me the benefit of getting promotion in combined cadre and thereby acquiring the right to exercise option in the event of separation of cadres.

3. That Sir, my humble submission that by not considering my case for promotion in February 2006 to the vacancies arising due to refusal by my seniors without assigning any reason was not just, fair and transparent.

In view of above facts, I would fervently request your benign self to interfere into the matter personally and to scrupulously take such action which can bring an appropriate justice in this regard, so that I can get a retrospective promotion to the combined SO's cadre at the earliest as well as opportunity to exercise option in the event of separation of cadre.

Yours faithfully

(Akum Chuba)

Encl: Promotion Order of 5(five) SOGE passed Candidates.

Copy to: The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati - 29 for information and necessary action Please.

Requested
Beltola
Adm

R.M. JOHRI

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

5 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

D.O.No.AGN/Sep. Cadre/2005-06/342
Dated the 29th March 2006.

Subject: Separation of cadre in Group 'B' Cadre in North Eastern Region.

Dear

I am forwarding a representation received from a S.O.G. Examination passed candidate for your consideration. He has passed SOG examination and is awaiting promotion as S.O pending vacancies in Group 'B' cadre.

Since the separation of cadre is to be carried out, those candidates who have passed along with other SOG examination 2005 candidates but could not be promoted due to no vacancy in the cadre, cannot take the benefit of applying of option.

I feel that the option may be obtained from those SOG examination passed candidates also who have not been promoted. I am enclosing his representation with my letter for suitable action.

Thanking you,

Yours sincerely,

To

Shri Bhajan Singh
Accountant General (A&E), Assam,
Beltala, Maidamgaon,
Guwahati.

Attended
Mulla
24/3

24/3

R.M. Johri
Accountant General, Nagaland

-39-

Annexure-8 (Serial 2)

D.O.NO.AGN/SECTT/MISC/2005-06/ 63

Dated the 29th May 2006.

Dear Shri

I am enclosing representations of S/Shri Arup Roy, Ashim Kumar Dey, and Akum Chuba, Sr. Accountants who have passed SOG examination 2005 and are awaiting for promotion to the post of Section Officers. As they are not getting promotion in Combined cadre, they are not getting the opportunity to exercise option in the event of Separation of Group 'B' cadres.

I would like to refer the promotion orders dated 18th January 2006 issued by the CCA where 5 officials have been promoted as S.O but 3 officials have not yet reported to the concerned offices within the specific time. As per orders if the promotion is not accepted within 03.02.2006 their promotion will be treated as cancelled. Since these three officials have failed to report in time other qualified wait listed officials should have been promoted against those three posts, whereas no further promotion orders in respect of other wait listed candidates has yet been issued from your office.

I would, therefore, request you to consider them to exercise option pending promotion to the S.Os cadre in the event of Separation of Group 'B' cadre to avoid any litigation in the matter.

Yours sincerely,
Sd/-

Shri Bhajan Singh
Accountant General (A&E), Assam,
Maidamgaon, Beltala,
GUWAHATI - 781 029.

NO.AGN/SECTT/MISC/2005-06/ 64

Dated the 29th May 2006.

Copy to Ms Mamta Kundra, Pr. Director (Staff), Office of the Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi - 100 002 for information.

Attended
Mamta
29/5

कन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

5 JUN 2009

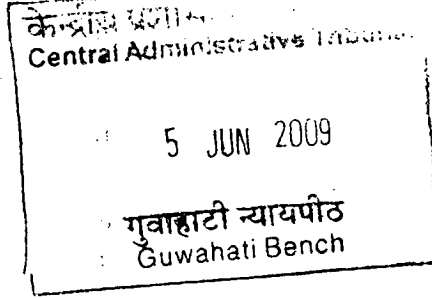
गुवाहाटी न्यायपीठ
Guwahati Bench

Accountant General

Am
29/5



भजन सिंह
BHAJAN SINGH



महालेखाकार (ले एवं ह) असम

Accountant General (A & E) Assam

मैदामगांव, बेलतोला, गुवाहाटी-781029

Maidamgaon, Beltola, Guwahati-781029

D.O. No: Sr. DAG(A)/Panel/S.O./2004/52
Dated Guwahati the 2nd June, 2006.

05 JUN 2006

Dear Shri Johri,

Please refer to your letter D.O. No.AGN/Sectt/Misc/2005-06/63 dated 29.5.06 regarding forwarding of representations of S/Shri Arup Roy, Ashim Kumar Dey and Akum Chuba, Sr. Accountants who have passed SOGE 2005 and are awaiting for promotion to the post of Section Officer. As per Cadre Separation policy for Group 'B' Officers, options were called for from all the Group 'B' officers in the common cadre as per Circular for Cadre Separation issued on 30/3/2006. Any further promotions to the cadre of Section Officers have not been effected after the Cadre Separation Policy was issued and options for permanent posting from all the staff were called for. As per OA No.115/2006 filed by certain Group 'B' staff of the common cadre in Hon'ble CAT, Guwahati Bench, the issue of cadre separation is presently sub-judice and the Hon'ble CAT, Guwahati Bench, has issued status-quo order on the case presently.

Keeping these issues in mind, it has been decided to maintain status-quo till the decision from Hon'ble CAT, Guwahati is communicated. This may kindly be communicated to S/Shri Arup Roy, Ashim Kr. Dey and Akum Chuba.

With regards

Yours sincerely,

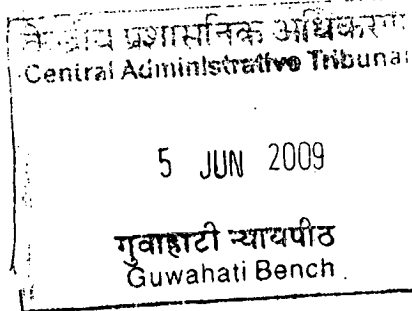
[Signature]

Shri R.M. Johri, IA&AS,
O/o the Accountant General (A&E) Nagaland,
Kohima : 797 001.

7/6
Received
[Signature]



Ram Mohan Johri



- 41 -

Annexure-10

महालेखाकार (लेखापरीक्षा), नागालैण्ड

ACCOUNTANT GENERAL (AUDIT)

कोहिमा - ७९७ ००१

NAGALAND : KOHIMA - 797 001

Tel: (0370) 2243117(O) 2244787(R). Fax: 2244788

D.O.NO.AGN/SECTT/MISC/2005-06/77

Dated the 9th June 2006.

Dear Shri

Blajan Singh,

I am enclosing representations of S/Shri Arup Roy, and Ashim Kumar Dey, Sr. Accountants who have passed SOG examination 2005 and are awaiting promotion to the post of Section Officers

I would like to refer the promotion orders dated 18th January 2006 issued by the CCA wherein 5 officials have been promoted as S.O but 3 officials have not yet reported to the concerned offices within the specific time. As per orders if the promotion is not accepted within 03.02.2006 their promotion will be treated as cancelled. Since these three officials have failed to report in time and as such other qualified wait listed officials could have been promoted against those three posts, whereas no further promotion orders in respect of other wait listed candidates has yet been issued from your office.

I would, therefore, request you to consider their case of promotion as well as allow them to exercise option to avoid any future litigation in the matter.

Regards

Yours sincerely,

Ram Mohan Johri

Shri Bhajan Singh
Accountant General (A&E). Assam.
Maidamgaon, Beltala,
GUWAHATI - 781029.

*Attested
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dhw*



- 42 - ANNEXURE → 11 - 64

**OFFICE OF THE SR. DY. ACCOUNTANT GENERAL (A&E),
NAGALAND :: KOHIMA.**

No. Admn/A&E/Order No.101

Date : 15 September 2006

In pursuance of the recommendations by the Departmental Promotion Committee the following S. O. G. E. passed officials are promoted to officiate as Section Officers in the scale of pay of Rs.6,500-200-10,500/- pm until further orders with effect from the date of their taking over charges (i.e on 8th September, 2006) and subject to usual terms and conditions of promotion.

In terms of FR 22.1 (a) (I), read with GOI orders there under, they are required to exercise an option, if any, within one month from the date of their joining as Section Officer.

✓ Shri Ashim Kr. Dey, Sr. Accountant

✓ Shri Arup Roy, Sr. Accountant

✓ Shri Akum Chuba, Sr. Accountant

Shri Shaji K, Sr. Accountant

Shri Kholi Sani, Accountant

(Authority :- AG's order at p^N of File No. Sr. DAG(AE&VLC)/CONF/DPC/SOG/2006-07 dated 8th September, 2006.

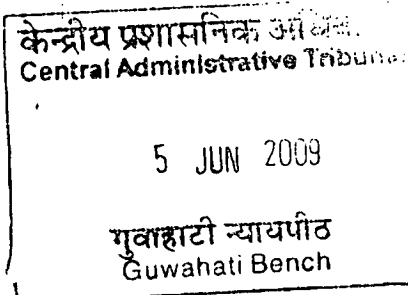
sd/-
ACCOUNTS OFFICER (ADMIN.)

Memo No. Admn./A&E/4-54/Promotion/2006-07/1164-1176

Dated 8/9/2006

Copy for information and necessary action to;

1. P.S. to Accountant General
2. P.A. to Sr. DAG (Admin)
3. The Director (P), O/o The Comptroller & Auditor General of India, New Delhi -2
4. Shri Ashim Kr. Dey, Sr. Accountant
5. Shri Arup Roy, Sr. Accountant
6. Shri Akum Chuba, Sr. Accountant
7. Shri Shaji K, Sr. Accountant
8. Shri Kholi Sani, Accountant
10. PAO (Local)
11. Bill Table
12. Personal File
13. Admn Order Book



ACCOUNTS OFFICER (ADMIN.)

*Collected
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- 43 -

ANNEXURE-12 5

In the Central Administrative Tribunal Guwahati Branch : Guwahati

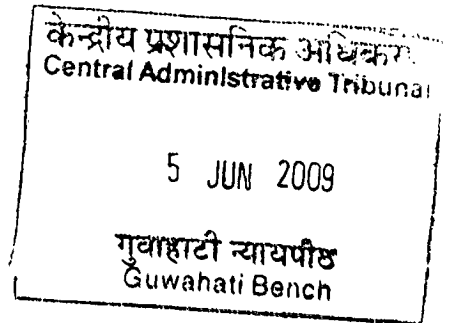
R/19.08.08

O.A No. 199/2006

Shri Ashim Kumar Dey & Others

-Vrs-

Union of India & Others



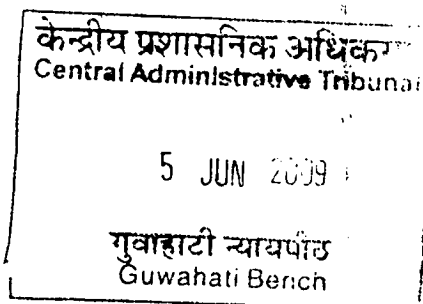
Written Statement Submitted on behalf of all the Respondents-

Most Respectfully Sheweth

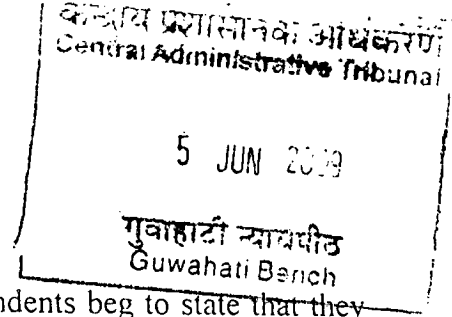
1. That with regard to Para 1, the Respondents beg to state that a Departmental Promotion Committee met on 17-01-2006 in the Office of the A.G (A&E), Assam to consider promotion of SOGE passed candidates to the grade of Section Officer for the combined A&E offices. The committee recommended empanelment of 14 (fourteen) officials for promotion to the grade of Section Officer during the panel year 2006. The promotions had to be given according to seniority of the approved Panel. As per seniority the names of the applicants (Shri Ashim Kumar Dey, Sr. Accountant, Shri Arup Roy, Sr. Accountant and Shri Akum Chuba, Sr. Accountant) appeared in the panel at serial number 9, 10 & 11 respectively (Annexure-I). There were 5 (five) vacancies in the cadre of Section Officer and accordingly an order promoting five officials in order of seniority of the panel to the post of Section Officer was issued vide Admn.1 Order No. 242 dt. 18-01-2006 (Annexure-VI) with a direction to the promoted officials to intimate this office whether they accept the promotion or not within 03-02-2006, failing which their promotion would be treated as refused. Out of the 5 (five) officials, one official v.i.z Shri Nepal Ch. Biswas accepted promotion and the rest four officials v.i.z Shri Basudev Mandal, Shri Dilip Gupta, Shri Susanta Chaudhuri and Shri Pulok Sen sought extension of time. The officials were given

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extension upto 15-03-2006. But they did not accept the promotion within the stipulated date and on expiry of the date, an order was issued debarring the concerned officials for promotion for a period of 1 (one) year w.e.f 16-03-2006 vide order No. Sr. DAG (A)/Panel/S.O./2004/137 dated 22-03-2006 (Annexure-II). Thus before 23-03-2006 no other empanelled officials could be offered promotion due to administrative reason. When the process of offering promotion to the next 4 (four) empanelled officials was about to be taken up then a letter No. 144-NGE (App)/17-2004 dated 24-03-2006 regarding separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices in North East Region was received from the Office of the Comptroller and Auditor General of India, New Delhi by fax on 24-03-2006, whereby the policy for separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices in North East Region along with a format of option form was forwarded with a direction to obtain option from all the **existing Group 'B' officers** belonging to the common cadre for permanent transfer to the Civil A&E offices in North East Region (Annexure-VII). As per direction of the Headquarters office, options from all the then **existing Group 'B' officers** (Section Officer/Asstt. Accounts Officer/Accounts Officer/Sr. Accounts Officer) belonging to the common cadre were called for vide Circular No. AG/Sep/Gr.'B'/2006/141 dt.30-03-2006 (Annexure-III). As in terms of the Headquarters office letter dated 24-03-2006 options for permanent allocation to the offices of their choice were to be called for only from the **existing Group 'B' officers**. As per transfer policy further promotion to Group 'B' post after the separation of cadre should be made by the concerned offices from amongst the eligible officials of their office. Further, after issuance of the circular for separation of Group 'B' cadre, some officers filed applications before the Hon'ble CAT, Guwahati against the policy of separation of Group 'B' cadre. The case was sub-judice and the Hon'ble CAT had issued order to maintain status-quo. As a result the separation of common Group 'B' cadre took place w.e.f 31-07-2006 (A.N.), and the applicants remained as Sr. Accountants in the office of the Sr. Deputy Accountant General (A&E), Nagaland.



- 45 -



2. That with regard to Paras 2 and 3, the Respondents beg to state that they have no comments to offer in this regard.
3. That with regard to Paras 4.1 to 4.3, the Respondents beg to state that they have no comments to offer.
4. That with regard to Para 4.4, the Respondents beg to state that the Promotions had to be given according to seniority of the approved Panel, the applicants could not be Promoted before Cadre Separation as there were no vacancies in the Cadre of Section Officer commensurate with the number of officials in the Panel approved by the competent authority. It is further submitted that Accountant General (A&E), Assam ceased to be Cadre Controlling Authority of the combined cadre of Group 'B' officers of the North East region w.e.f. 01-08-2006.
5. That with regard to Para 4.5, the Respondents beg to state that the applicants could not be promoted before Cadre Separation as they were junior vis-à-vis the other officials empanelled in the approved Panel and in respect of whom promotion orders had been issued.
6. That with regard to Para 4.6, the Respondents beg to state that before expiry of the stipulated date i. e. 3-02-2006 the promoted officials v.i.z Shri Basudev Mandal, Shri Dilip Gupta, Shri Susanta Chudhuri and Shri Pulok Sen sought extension of time to decide whether to accept promotion or not. Accordingly they were permitted extension of time up-to 15-03-2006 with a direction that if they don't accept the promotion by 15.03.2006, their promotion will be treated as refused. But none of the promoted officials accepted promotion within 15-03-2006 and therefore their promotion was treated as refused and they were debarred from promotion for a period of one year w.e.f 16.03.2006 vide letter No. Sr.DAG(A)/Panel/SO/2004/137 dt.22/3/2006 (Annexure- II). In the meantime, process of separation of common Group 'B' cadre began and as per policy options were called for from all the then **existing Group 'B' officers** in the common cadre vide Circular No. AG/Sep/Gr.'B'/2006/141 dt.30-03-2006 (Annexure-III). No further promotions to the cadre of Section Officer had been

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5 JUN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

given after the issuance of the policy for cadre separation. After issuance of the circular for separation of Group 'B' cadre, some officers filed applications before the Hon'ble CAT, Guwahati against the policy of separation of Group 'B' cadre. The case was sub-judice and the Hon'ble CAT had issued order to maintain status-quo. Thereafter, as soon as the judgement order of the Hon'ble CAT was received, the policy of cadre separation was implemented w.e.f 31.07.2006 (A.N). The applicants were junior to the other officials empanelled in the proceedings of Departmental Promotion Committee (DPC). Consequently, they could not be promoted before implementation of separation of Gr. 'B' cadre and remained as Sr. Accountants in the Office of the Sr. Deputy Accountant General (A&E), Nagaland and were outside the scheme of separation of Group 'B' cadre.

7. That with regard to para 4.7, the Respondents beg to state that the Departmental Promotion Committee for the Panel year 2006 had drawn up a panel of 14 (fourteen) SOGE passed officials but all of them could not be promoted due to implementation of Cadre Separation Policy. The DPC was held as soon as vacancy had arisen during the Panel years as per rule and there was no delay in making promotion against the vacancies occurring during the course of a year. In pursuance of Headquarters office instructions, options were called for from all the **then existing Group 'B' officers** who were under Cadre Controlling Authority i. e. AG (A&E) Assam, Guwahati. As such the applicants were not allowed to exercise option as they were outside the common Group 'B' Cadre.
8. That with regard to Para 4.8, the Respondents beg to state that it was intimated vide letter No. Sr.DAG (A) /Panel /SO/2004/1 dt.6-04-2006 (Annexure - IV) that the SOGE passed candidates were not allowed to exercise option under common cadre as they were outside the common cadre strength of Group 'B' officers.
9. That with regard to Para 4.9, the Respondents beg to state that reply is same as given in paras 6 & 8 above.

5 JUN 2009

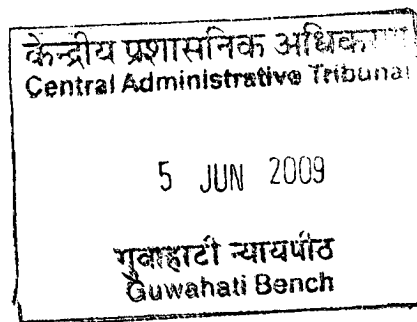
गुवाहाटी न्यायपीठ
Guwahati Bench

- 47 -

10. That with regard to Para 4.10, the Respondents beg to state that applicants who were awaiting promotion to the post of Section Officer were intimated vide letter DO No. Sr. DAG (A) / Panel/SO/52 dt 2.06.2006 (Annexure-V) that as per Cadre Separation policy for Gr. 'B' Officers, options were called for from all Group 'B' Officers in the common cadre as per Circular for Cadre Separation issued on 30-03-2006. Any further promotions to the cadre of Section Officer had not been effected after issuance of policy for cadre separation and options for permanent posting from all the Gr. 'B' officers were called for. Some Group 'B' officers filed applications (O.A. No. 115/2006) before the Hon'ble CAT, Guwahati against the policy of separation of Group 'B' cadre. The case was sub-judice and the Hon'ble CAT had issued order to maintain status-quo.
11. That with regard to Para 4.11, the facts have been stated in the foregoing paras.
12. That with regard to Para 4.12 to 4.15, the Respondents beg to state that the applicants being Senior Accountants were not under common cadre. The common Group 'B' cadre was under the Cadre Controlling Authority of Accountant General (A&E) Assam up-to 31/07/2006 i.e prior to separation of Group 'B' cadre. The question of exercising option by the applicants in connection with separation of Gr. 'B' cadre would have arisen if they had been promoted as Section Officer before Cadre Separation. This being so, the grievance of the applicants does not merit consideration. The applicants were junior to the other officials empanelled in the DPC Panel. In fact, some officials senior to them in the Panel also could not be offered promotion after the commencement of the process of cadre separation in the month of March 2006, and its subsequent implementation on 31-07-2006.
13. That with regard to Para 5.1 to 5.11, the Respondents beg to state that the grounds of the applicants are not tenable and no relief need to be granted.
14. As regards Para 6 and 7, the Respondents have no comments to offer.

- James H Hudson Dec

बॉरेण्ड उप महालेखाकार (प्र०)
 Sr. Dy. Accountant General (Admin) Deponent
 महालेखाकार, बॉरेण्ड, जिला बॉरेण्ड, जिला बॉरेण्ड, जिला बॉरेण्ड
 O/O the Accountant General & L. & A. Secy
 मैदानगाँव, बॉरेण्ड, गुवाहाटी-७८
 Maidanigaon, Bhaluka, Guwahati-78



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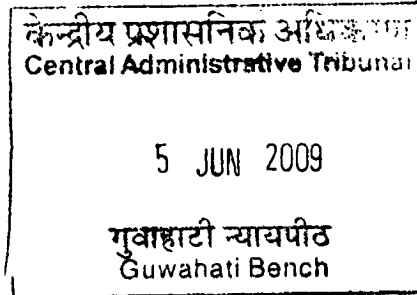
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VERIFICATION

I, Shri Ramesh Chandra Das, son of Late Mandar Chandra Das
aged 60 years, Resident of Soalkuchi Gump, Assam being duly
authorized and competent to sign this verification, do hereby solemnly affirm and
verify that the statement made in para _____ are true to my
knowledge, belief and information and those made in para _____
are derived from the record/facts etc., and rests are humble submissions before the
Hon'ble Court and I have not suppressed any material facts.
And I sign this verification on this 14th day of July 2008 at
Guwahati.

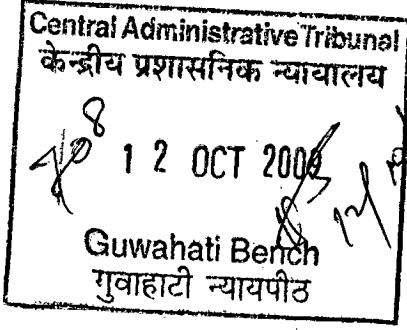
Ramesh Chandra Das

वरिष्ठ उप महासेवाकार (प्र०)
Sr. Dy. Accountant General (Admn) Deponent
महासेवाकार (प्र०) / Sr. Dy. Accountant General (Admn)
गैरमजदूर / Non-Judicial
मालदास, कलकत्ता, तमिः नाडु / Maldanigan, Calcutta, Tamil Nadu



9

**In the Central Administrative Tribunal Guwahati Bench
Guwahati**



In O.A. No. 106/2009

Shri Ashim Kumar Dey & Ors.

... Applicant.

-VERSUS-

Union of India & Ors.

..... Respondents.

File in Court on... 9/10/09
kn
Court Officer.

INDEX

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4.	Annexure-II (order dt 18.1.06)	15 and 16
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Filed by Respondents 2 & 3
through Brajendra Kumar Singh
09.10.09

Copy Received.
9/10/09.

In the Central Administrative Tribunal Guwahati Bench:
Guwahati

O.A No. 106/2009

Shri Ashim Kr. Dey & Others..... Applicant

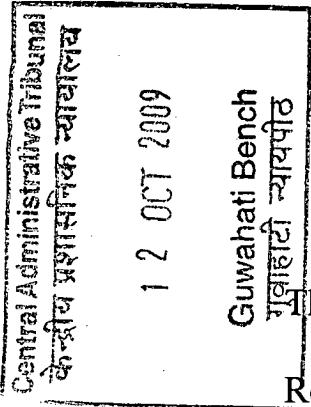
-Vrs-

Union of India & Others..... Respondents

The written statement on behalf of the above named
Respondents.

MOST RESPECTFULLY SHEWETH

1. That a copy of the Original Application No. 106/2009 has been served upon the respondents. The Respondents after going through the same has understood the contents thereof.
2. That the Respondents beg to state that the statement which are not specifically admitted by the Respondents are deemed to be denied by the respondents.
3. That with regard to the statement made in Paragraph 1, the respondents beg to state that a Departmental Promotion committee met on 17.01.2006 in the Office of the A.G. (A&E), Assam to consider promotion of SOGE passed candidates to the grade of Section Officer for the combined A&E offices. The committee recommended empanelment of 14 (fourteen) officials for promotion to the grade of Section Officer during the panel year



9.10.09
Advocate
Prinshu
Graham
Mough

F. V. Vellay
Ananta Bijoy Dasgupta
Dy. Accounts Officer (Admn)
Office of the A.G. (A&E)
Assam

2006. The promotions had to be given according to seniority from the approved Panel. As per seniority the names of the applicants (Shri Ashim Kumar Dey, then Sr. Accountant; Shri Arup Roy, then Sr. Accountant and Shri Akum Chuba, then Sr. Accountant) appeared in the panel at serial number 9, 10 & 11 respectively. There were 5 (five) vacancies in the cadre of Section Officer and accordingly an order promoting five officials in order of seniority of the panel to the post of Section Officer was issued vide Admn.1 Order No. 242 dated 18.01.2006 with a direction to the promoted officials to intimate this office whether they accept the promotion or not within 03.02.2006, failing which their promotion would be treated as refused. Out of the 5 (five) officials, one official namely Shri Nepal Ch. Biswas accepted promotion and the rest four officials namely Shri Basudev Mandal, Shri Dilip Gupta, Shri Susanta Chaudhuri and Shri Pulok Ch. Sen sought extension of time. The officials were given extension upto 15.03.2006. But they did not accept the promotion within the stipulated date and on expiry of the date, an order was issued debarring the concerned officials for promotion for a period of 1 (one) year w.e.f. 16.03.2006 vide order No. Sr. DAG (A)/Panel/S.O./2004/137 dated 22.03.2006. Thus before 23.03.2006 no other empanelled officials could be offered promotion due to administrative reason. When the process of offering promotion to the next 4 (four) empanelled officials was about to be taken up then a letter No. 144-NGE (App)/17-2004 dated 24.03.2006 regarding separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices in North East Region was received from the Office of the

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
12 OCT 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Ananta Bijoy Barakastha

उप-न्यायाधीश (सं.)

Dy. Accountant General/Admn

न्यायाधीश कार्यालय (सं.)

Office of the Dy. Accountant General/Admn

মেদামণি: বেলতলা, গুৱাহাটী-৭৮১০০১

Maidamoni, Belitola, Guwahati-781001

Comptroller and Auditor General of India, New Delhi by fax on 24.03.2006, whereby the policy for separation of common cadre of Group 'B' officers in the A& E and Civil Audit offices in North East Region along with a format of option form was forwarded with a direction to obtain option from all the existing Group 'B' officers belonging to the common cadre for permanent transfer to the Civil A&E offices in North East Region. As per direction of the Headquarters office, options from all the then existing Group 'B' officers. (Section Officer/Asstt. Accounts Officer/Accounts Officer/Sr. Accounts Officer) belonging to the common cadre were called for vide Circular No. AG/Sep/Gr. 'B'/2006/141 dated 30.03.2006. In terms of the Headquarters office letter dated 24.03.2006 options for permanent allocation to the offices of their choice were to be called for only from the existing Group 'B' officers. As per transfer policy further promotion to Group 'B' post after the separation of cadre should be made by the concerned offices from amongst the eligible officials of their office. Further, after issuance of the circular for separation of Group 'B' cadre, some officers filed applications (O.A. No. 115/2006) before the Hon'ble CAT, Guwahati against the policy of separation of Group 'B' cadre. The case was sub-judice and the Hon'ble CAT had issued order to maintain status-quo. As a result till the separation of common Group 'B' cadre, which took place w.e.f. 31.07.2006 (A.N.), the applicants remained as Sr. Accountants in the office of the Sr. Deputy Accountant General (A&E), Nagaland, Kohima. The applicants were subsequently promoted to the post of Section Officer in the Office of the Sr. Deputy Accountant General

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
12 OCT 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Ananta Bijoy Inrayas Ma

उप-न्यायाधीश (सं.)

Dy. Accountant General (Admn.)

न्यायाधीश (सं.)

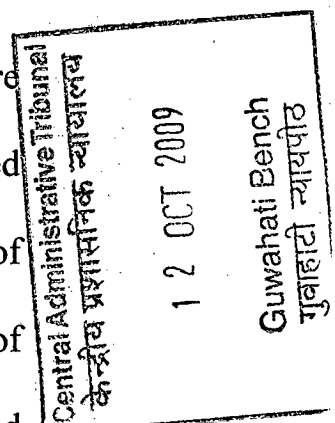
Office of the Dy. Accountant General (Admn.)

मैदमगोन, बेल्टोला, गुवाहाटी-781008

Maidamgaon, Beltola, Guwahati-781008

(A&E), Nagaland, Kohima vide No. Admn/A&E/Order No. 101 dated 08.09.2009 and joined the post of Section Officer on 08.09.2006 (A.N.).

As the applicants could not be offered promotion before the separation of common Gr. 'B' cadre due to the reasons stated above, all the applicants remained Sr. Accountant till separation of common Gr. 'B' cadre and hence no option in terms of policy of separation of common Gr. 'B' cadre was required to be submitted by them and therefore no option was called for from them. After cadre separation they remain under the Cadre Controlling Authority of Sr. Deputy Accountant General (A&E), Nagaland. So, after cadre separation it became incumbent on the Office of the Sr. Deputy Accountant General (A&E), Nagaland to consider their promotion to the cadre of Section Officer and the applicants have been given promotion by that office. In view of the position stated above the applicants' claim to antedate promotion with retrospective effect and to allow them to exercise option for permanent posting in terms of policy of cadre separation is not justified.



Aranta Bejoy Barmajaka

उप-प्रशासक (अ.न.)
Dy. Accountant General/Admn.
प्रशासक (अ.न.)
Office of the Dy. Accountant General/Admn.
मैदान, बेलोला, गुवाहाटी-29
Maidamoon, Belola, Guwahati-29

Copies of DPC proceedings held on 17.01.2006, Admn.1 Order No. 242 dated 18.01.2006, Order No. Sr. DAG (A)/Panel/S.O./2004/137 dated 22.03.2006, letter No. 144-NGE (App)/17-2004 dated 24.03.2006 and Circular No. AG/Sep/Gr. 'B'/2006/141 dated 30.03.2006 are enclosed as Annexure-I, II, III, IV & V respectively.

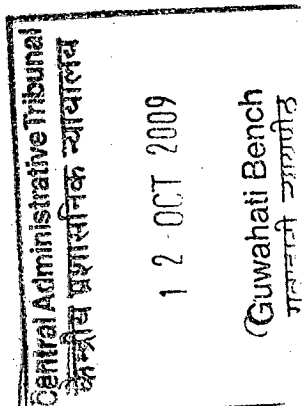
4. That with regard to the statements made in paras 2, 3, 4.1, 4.2 & 4.3 the respondents beg to state that they have no comments to offer.

5. That with regard to the statements made in para 4.4 the respondents beg to state that the Accountant General (A&E), Assam was the Cadre Controlling Authority of the common Gr. 'B' cadre (Section Officer/Asstt. Accounts Officer/Accounts Officer/Sr. Accounts Officer) of the A&E offices of the North East Region till 31.07.2006. Consequent upon separation of common Gr. 'B' cadre w.e.f. 31.07.2006 (A.N.), the Accountant General (A&E), Assam ceased to be the Cadre Controlling Authority of Gr. 'B' cadre of other A&E offices w.e.f 01.08.2006.

6. That with regard to the statements made in para 4.5 the respondents beg to state that they have no comments to offer.

7. That with regard to the statement made in Paragraph 4.6, the respondents beg to state that the reply is same as given in para 3 above. In view of the position stated therein the applicants' claim that Respondent No. 2 did not take any action for consideration of promotion of the applicants is not justified.

8. That with regard to the statement made in Paragraph 4.7, the respondents beg to state that DPC was held as soon as vacancy had arisen during the panel years as per rule and there was no delay in making promotion against the vacancies occurring during the course of a year. So far as the reasons as to why the applicants



Aravante Bijoy Prasad
অৱান্তেৰি জয়প্ৰসাদ (স.স.)

By. Accountant General/Admn

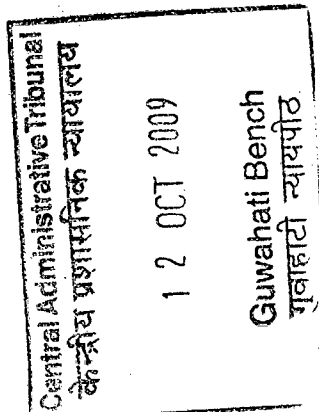
বিশেষাধিকাৰ (স.স.) অসম

Office of the Accountant General

মেদাসাগোণ, বেলিওলা, গুৱাহাটী-৭৮১০০১

Maidamsaon, Belliola, Guwahati-781001

could not be offered promotion to the post of Section Officer before separation of common Group 'B' cadre has been explained in para 3 above. Further, the applicants' claim that they were deprived of the scope of submitting of option in terms of policy of separation of Group 'B' cadre is not correct because, in pursuance of Headquarters office instructions, options were called for from all the **then existing Group 'B' officers** and the applicants were not allowed to exercise option as they were outside the common Group 'B' cadre.



9. That with regard to the statement made in Paragraph 4.8, the respondents beg to state that the reasons as to why the applicants could not be offered promotion before separation of common Group 'B' cadre has been explained in para 3 above.

10. That with regard to the statement made in Paragraph 4.9, the respondents beg to state that there were 5 (five) vacancies in the cadre of Section Officer and accordingly an order promoting five officials in order of seniority of the panel to the post of Section Officer was issued vide Admn.1 Order No. 242 dated 18.01.2006 with a direction to the promoted officials to intimate this office whether they accept the promotion or not within 03.02.2006, failing which their promotion would be treated as refused. Out of the 5 (five) officials, one official namely Shri Nepal Ch. Biswas accepted promotion and the rest four officials namely Shri Basudev Mandal, Shri Dilip Gupta, Shri Susanta Chaudhuri and Shri Pulok Ch. Sen sought extension of time. The

Ananta Bejoy Dasgupta

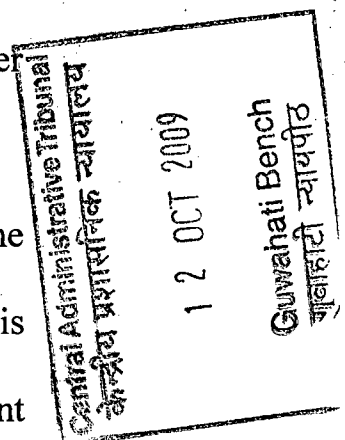
অনন্ত বিজয় দাসগুপ্তা (সং.)
Dy. Accountant General (Sd.)
আই.এস.আর. (সং.)
Office of the Dy. Accountant General
মেইনফ্রেম, গুৱাহাটী
Maidamson, Belitola, Guwahati-28

officials were given extension upto 15.03.2006. But they did not accept the promotion within the stipulated date and on expiry of the date, an order was issued debarring the concerned officials for promotion for a period of 1 (one) year w.e.f. 16.03.2006 vide order No. Sr. DAG (A)/Panel/S.O./2004/137 dated 22.03.2006.

However, Shri Nepal Ch. Biswas had accepted the promotion and joined as Section Officer on 20.01.2006. As per his request he was subsequently reverted to the post of Sr. Accountant after separation of common Group 'B' cadre by the Office of the Sr. DAG (A&E), Tripura, Agartala. The applicants' claim that none of the 5 (five) persons who were promoted to the cadre of Section Officer joined promotional post within 03.02.2006 is not correct.

Copies Admn.1 Order No. 242 dated 18.01.2006, Order No. Sr. DAG (A)/Panel/S.O./2004/137 dated 22.03.2006 are enclosed as Annexure- II & III respectively.

11. That with regard to the statement made in para 4.10, the respondents beg to state that the reasons as to why the applicants could not be offered promotion before separation of common Group 'B' cadre have been explained in para 3. In pursuance of Headquarters office instructions conveyed vide letter No. 144-NGE (App)/17-2004 dated 24.03.2006, options were called for from all the **then existing Group 'B' officers only**. Since the applicants were outside the common Group 'B' cadre they were not allowed to exercise option. The actions of the respondents



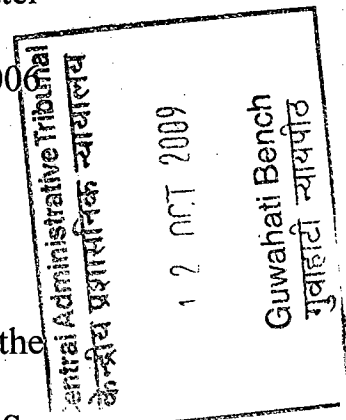
Dr. Ananta Bijoy Dasgupta
Dr. Ananta Bijoy Dasgupta (S.O.)
Dr. Ananta Bijoy Dasgupta (S.O.)
Office of the Secretary, Government of Assam
Maidamgaon, Belgaon, Assam

were in conformity with relevant rules and instructions and in no way can be termed as arbitrary, illegal or unfair.

Copy of Headquarters office letter

No. 144-NGE (App)/17-2004 dated 24.03.2006

is enclosed as Annexure- IV.



12. That with regard to the statement made in para 4.11, the respondents beg to state that it was intimated vide letter No. Sr. DAG (A)/Panel/S.O./2004/1 dated 06.04.2006 that the SOGE passed candidates were not allowed to exercise option under common cadre as they were outside the common cadre strength of Group 'B' officers.

Copy of letter No. Sr. DAG

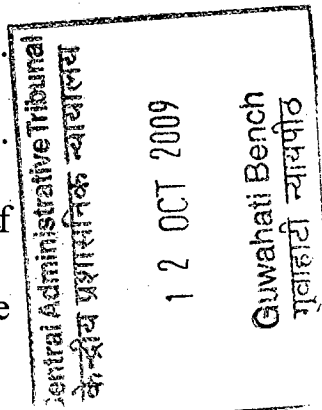
(A)/Panel/S.O./2004/1 dated 06.04.2006 is enclosed as Annexure- VI.

Ananta Bijoy Burakayasta
অনন্ত বিজয় বুরাকয়াস্তা
By. Accountant (B-1)
নথীস্বাক্ষর (বি-১)
Office of the
অফিসের
উপস্থাপক, অর্থ

13. That with regard to the statement made in para 4.12, the respondents beg to state that their reply is same as given in paras 3 & 11 above.

14. That with regard to the statement made in para 4.13, the respondents beg to state that the applicants who were awaiting promotion to the post of Section Officer were intimated vide letter DO No. Sr. DAG (A)/Panel/S.O./2004/52 dated 02.06.2006 that as per cadre separation policy for Gr. 'B' officers, options were called for from all Group 'B' officers in the common cadre as per

Circular for Cadre Separation issued on 30.03.2006. Any further promotions to the cadre of Section Officer had not been effected after issuance of policy for cadre separation and options for permanent posting from all the Group 'B' officers were called for. Further, some Group 'B' officers filed applications (O.A. No. 115/2006) before Hon'ble CAT, Guwahati against the policy of separation of Group 'B' cadre. The case was sub-judice and the Hon'ble CAT had issued order to maintain status-quo.



Copy of letter letter DO No. Sr.

DAG (A)/Panel/S.O./2004/52 dated 02.06.2006

is enclosed as Annexure- VII.

15. That with regard to the statement made in para 4.14, the respondents beg to state that in view of the position stated in para 3 above, the applicants could not be offered promotion to the cadre of Section Officer. The applicants' claim that the respondents deliberately did not consider their promotion to the cadre of Section Officer with a *malafide* intention is unfounded.

Ananta Bijoy Burayaska
 Dy. Accountant General (A&E)
 Office of the Accountant General (A&E)
 Maidamgaon, Bongaigaon

16. That with regard to the statement made in para 4.15, the respondents beg to state that the applicants got promotion to the cadre of Section Officer after separation of common Group 'B' cadre. They have been given promotion to the cadre of Section Officer by their parent office i.e. Office of the Sr. DAG (A&E), Nagaland, Kohima against the vacancies occurred in that office in the cadre of Section Officer. The vacancies that occurred in the cadre of Section Officer during 2006 prior to the separation of

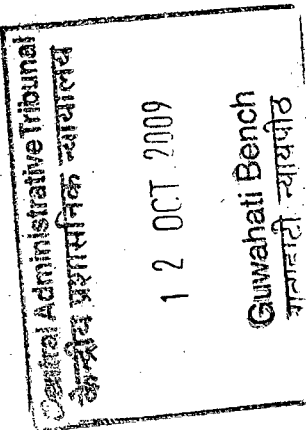
common Group 'B' cadre has nothing to do with the vacancies that occurred in the Office of the Sr. DAG (A&E), Nagaland, Kohima after separation of common Group 'B' cadre.

17. That with regard to the statement made in paras 4.16 & 4.17, the respondents beg to state that in view of the position stated in para 3 above the applicants' claim to antedate the promotion w.e.f. 04.03.2006 and to allow them to exercise their option in terms of policy of separation of common Group 'B' cadre is not justified.

18. That with regard to the statement made in para 4.18, the respondents beg to state that in response to the representations received from the applicants required information had been furnished to the Accountant General (Audit) Nagaland, with a request to convey the same to the applicants vide letters No. Sr. DAG (A)/Panel/S.O./2004/1 dated 06.04.2006 and DO No. Sr. DAG (A)/Panel/S.O./2004/52 dated 02.06.2006.

Copies of letter No. Sr. DAG (A)/Panel/S.O./2004/1 dated 06.04.2006 and DO No. Sr. DAG (A)/Panel/S.O./2004/52 dated 02.06.2006 are enclosed as Annexure- VI & VII respectively.

19. That with regard to the statement made in para 4.19, the respondents beg to state that they have no comments to offer.



Ananta Bijoy Monayaska
অনন্ত বিজয় মনয়সকা
By. Accountant General (Audit) Nagaland
ন্যায়ায়িক
Office of the Accountant General (Audit) Nagaland
মে. দ. অ. জ. (অডিট) নাগাল্যান্ড
Maidamgaon, Bellingh. Co. 781007

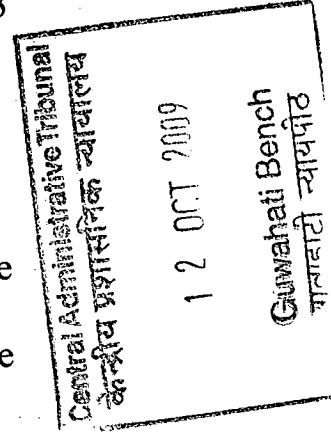
20. That with regard to the statement made in para 4.20, the respondents beg to state that the reply is same as given in para 3 above.

21. That with regard to the statement made in para 4.21, the respondents beg to state that in view of the statements made in the foregoing paras it is clear that there was no injustice meted out to the applicants.

22. That with regard to the statement made in paras 5.1 to 5.15, the respondents beg to state that the grounds of the applicants are not tenable in view of the position explained in the foregoing paras and hence no relief need to be granted.

23. That with regard to the statements made in paras 6 & 7, the respondents beg to state that they have no comments to offer.

24. That with regard to the statements made in paras 8, 8.1 to 8.5, 9 & 9.1 the respondents beg to state that their being no ground for the application, neither relief sought for nor the interim order prayed for be granted.



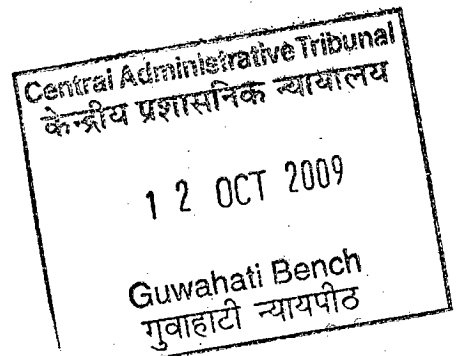
Ananta Bijoy Barman

Dr. Accountant General (P-1)

सहायक निदेशक (प्र-1)
Office of the
मेसर्स
Baidyanath, Belgaon, Guwahati-78

69

VERIFICATION



I, Shri Ananta Bijoy Purkayastha, son of Late Akhil Chandra Purkayastha aged 58 years, Resident of Beltola, Guwahati, in the district of Kamrup (Metro) and working as Deputy Accountant General and has been authorized by the respondents to verify the statement on their behalf. I, do hereby verify that the statement made in paras 1, 2, 4-19, 13, 15-17, 19-24 are true to my knowledge and those made in paras 3, 10, 11, 12, 14, 18 being matters of record are true to my information derived there from which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal and I have not suppressed any material facts. And I sign this verification on this 27 day of JULY 2009 at Guwahati.

Ananta Bijoy Purkayastha
Signature

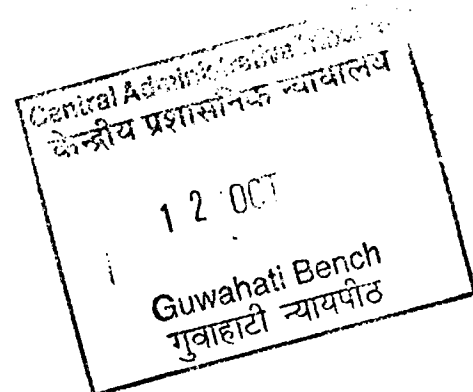
উপ-মহালেক্ষাকার (প.০.)
Dy. Accountant General
মহালেক্ষাকার
Office of the
মহালেক্ষাকার, বেলতলা
Waidamgaon, Beltola. Part-28

PROCEEDINGS OF THE DEPARTMENTAL PROMOTION COMMITTEE IN CONNECTION WITH THE PROMOTION OF NO. 141 PASSED CANDIDATES TO THE GRADE OF SECTION OFFICER DURING THE PANEL YEAR 2006.

The Departmental Promotion Committee consisting of P.A. Nama A. Kumar, Sr. D.A.O. (Admin) O/o the A.G. & S.D. Assam, Guwahati; Mr. D. Thakur, D.A.O. (Admin) O/o the P.O. & G. (Admin) Assam, Guwahati and Shri R.C. Barman, Sr. A.O. O/o the A.G. & S.D. Assam, Guwahati met on 17/01/2006 to consider promotion of S.O.G.E. passed candidates to the grade of Section Officer for the combined N.E. Cadre.

2. The Committee was informed that the following S.O.G.E. passed officials are eligible for promotion to the grade of Section Officer during the panel year 2006.

Sl. No.	Name (S/Serial/Grade)
1.	Nepal Ch. Biswas
2.	Basudev Mandal (SC)
3.	Dilip Gupta (SC)
4.	Susanta Choudhury
5.	Pulok Ch. Sen
6.	S. Balendro Singh
7.	Paritosh Deb
8.	P. Sharat Singh (SC)
9.	Ashim Kr. Dey
10.	Arup Roy
11.	Akum Chuba (ST)
12.	Barun Paul (SC)
13.	Sajal Chakraborty
14.	Rajat K. Deb



3. The Committee was further informed that for promotion of 14 officials on seniority-cum-fitness basis, the position vis-à-vis requirement of SC/ST officers in the post based working roster is as follows :-

a)	Sanctioned Strength	=	40
b)	Men-on-roll	=	30
c)	Size of the post based working roster	=	40
d)	Post reserved in a 40 point working roster	=	SC=6 ST=3
e)	No. of SC/ST Officers on roll out of (b) above	=	SC=7 ST=1
f)	No. of SC/ST Officer eligible for promotion	=	SC=4 ST=1

certified to be true copy

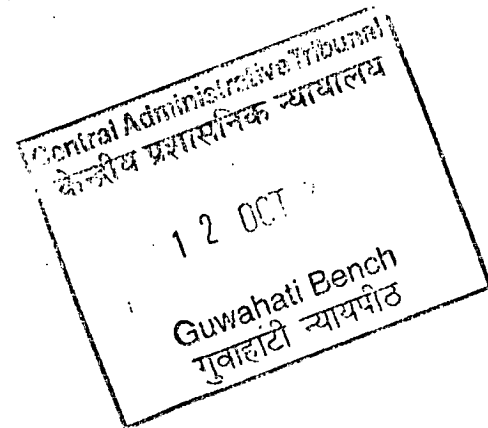
17.1.06

for file

17/1/06

4. After careful evaluation of individual ACs, the Committee recommends empanelment of the following officials for promotion to the grade of Section Officer during the panel year 2006.

Sl. No.	Name (S/Shri/Ms/Mr.)
1.	Nepal Ch. Biswas
2.	Basudev Mandal (SC)
3.	Dilip Gupta (SC)
4.	Susanta Choudhury
5.	Pulok Ch. Sen
6.	S. Balendra Singh
7.	Paritosh Deb
8.	P. Sharal Singh (SC)
✓ 9.	Ashim Kt. Dey
✓ 10.	Arup Roy
✓ 11.	Akum Chuba (ST)
12.	Barun Paul (SC)
13.	Sajal Chakraborty
14.	Rajat Kt. Deb



5. The Committee was informed that there is no disciplinary/Court or Vigilance cases pending /contemplated against any of the above officials.

It is certified that none of the candidates being considered by the DPC are related to any members of the DPC in any way.

[Signature]
17-1-06

(R.C. Barman)
Sr. Accounts Officer
O/o the A.G.(A&E) Assam
Guwahati

[Signature]
17/1/06

(D. Thakur)
DAC(Admin)
O/o the Pr. AG (Audit)
Assam, Guwahati.

[Signature]
17/1/06

(Naina A. Kumar)
Sr. DAC (Admin)
O/o the A.G.(A&E) Assam,
Guwahati

OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM, MAIDAMGAON.
BELTOLA, GUWAHATI - 781 029.

Admn.1. Order No. 242

January 18, 2006

Without prejudice to the claim of their seniors and also subject to the condition that their seniority in the cadre of Section Officer will be fixed later, the following officials are hereby promoted to officiate as **Section Officer(Group-B Non-Gazetted)** in the scale of pay of Rs. 6500-200-10500/-p.m. w.e.f. the dates they take over charge in the offices as shown against their names.

Sl. No.	Name Shri/Smti	Office to which Attached	Office to which posted
01.	Nepal Ch. Biswas	Sr. D.A.G. (A&E) Tripura, Agartala	Sr. D.A.G. (A&E) Tripura, Agartala
02.	Basudev Mandal	A.G. (A&E) Assam, Guwahati	A.G. (A&E) Meghalaya, Shillong
03.	Dilip Gupta	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal
04.	Susanta Chaudhuri	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal
05.	Pulok Ch. Sen	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal

The officers are liable to be transferred and posted to any of the offices of the Accountant General (A&E) in Assam, Nagaland, Tripura, Manipur, Meghalaya etc., or any other offices likely to be opened in future in the North Eastern Region.

On promotion they will be placed on probation for two years.

On their promotion, the officers are required to exercise option, if any, in the matter of fixation of their pay within one month in terms of G.I.D. No. 19 below FR-22(I)(a)(1).

The officers are required to intimate this office whether they accept the promotion or not within 03-02-06 positively, failing which their promotion will be treated as refused.

The transfer is in public interest.

[Authority: AG's order dated 18-01-06 at P/32^N of file no. Sr. DAG(A)/Panel/SO/2004]

sd/-
Sr. Deputy Accountant General (A& VLC)

Memo No. Admn.1/3-5/2004-05/3625

January 18, 2006

Copy forwarded to:

The Comptroller & Auditor General of India,
10- Bahadur Shah Zafar Marg,
Indraprastha Head Post Office,
New Delhi-110 002

sd/-
Sr. Deputy Accountant General (A& VLC)

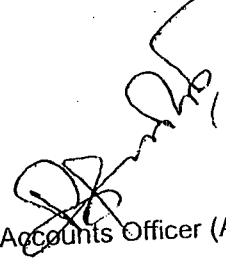
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true copy
BAC sign.

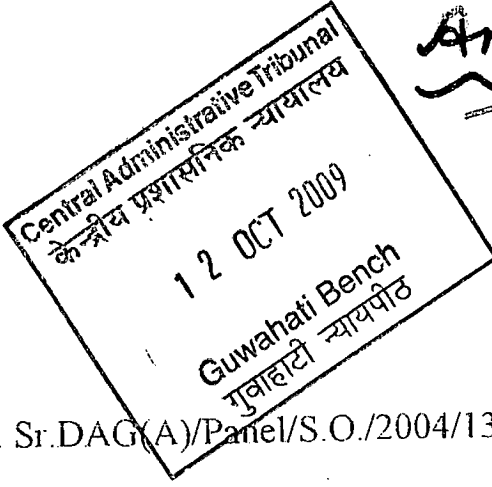
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
12 OCT 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

January 18, 2006

Memo No. Admn.1/3-5/2004-05/ 3626-44
Copy forwarded to:

1. The Pr. Director of Audit, N.F. Railway, Maligaon, Guwahati -11.
2. The Deputy Accountant General(A), O/O. the A.G.(A&E) Meghalaya etc., Shillong-1.
He is requested to intimate the date of joining in respect of SI.No. 2 in his office.
3. The Sr. Deputy Accountant General (A&E) Tripura, Agartala with one spare copy.
He is requested to hand over a copy of this order to Shri Nepai Ch. Biswas and intimate the date of his joining as Section Officer.
4. The Sr. Deputy Accountant General(A&E) Manipur, Imphal. He is requested to intimate the date of joining in respect of SI No. 3, 4 & 5 in his office.
5. The Sr. Deputy Accountant General (A&E) Nagaland, Kohima.
6. The Secretary to the Accountant General (A&E) Assam, Guwahati.
7. The Pay & Accounts Officer, O/ O the A.G (A&E) Assam, Guwahati.
8. The P. S. to the Accountant General(A&E) Assam, Guwahati
9. A.A.O./Confidential Cell.
10. A.A.O. /Record (C).
11. A.A.O. /Admn-II.
12. Steno Gr II attached to Sr. DAG (Admn. & VLC)
13. Steno Gr. I attached to Sr. DAG (P&F).
14. Steno Gr. II attached to DAG (A/cs)
15. Hindi Officer/Hindi Cell. Hindi version of this order may be issued from his end.
16. Concerned Officials
17. Posting Group, G.L. Group, Fixation Group, Budget Group.
18. Service Book Group.
19. Admn.1/ Order Book.


Sr. Accounts Officer (Admn)



Annexure III

महालेखाकार (ले एवं ह) असम का कार्यालय
Office of the Accountant General (A & E)
Assam

मैदामगांव, बेलतोला, गुवाहाटी-७८१०२९
Maidamgaon, Beltola, Guwahati-781029

No. Sr.DAG(A)/Panel/S.O./2004/137

Dated: 22/3/06

The following SOGE passed candidates were Promoted to officiate as Section Officer vide this office Admn-I order No.242 dt.18th January 2006 with effect from the date they take over charge in the offices as shown against their names.

Sl.No.	Name S/Shri	Office to which posted
1)	Basudev Mandal	A.G.(A&E) Meghalaya, Shillong
2)	Dilip Gupta	Sr.DAG(A&E) Manipur
3)	Susanta Chaudhuri	Sr.DAG(A&E) Manipur
4)	Pulok Ch.Sen	Sr.DAG(A&E) Manipur

On Promotion, they were given opportunity to intimate this office whether they accept the Promotion or not by 03-02-2006 positively, failing which their promotion will be treated as refused. They represented about their place of posting. Their representations were duly considered by the Accountant General. After careful consideration it was ordered that their requests could not be acceded to as there was no vacancy as per their choice of offices. However, they were allowed time upto 15/3/06 to convey their willingness to accept the Promotion before this date otherwise Promotion will be deemed to have been refused w.e.f. 16-03-2006.

Since they have not accepted the Promotion within the stipulated period, the Promotion is deemed to have been refused by them w.e.f. 16-3-2006 and are, accordingly, liable for consequences arising out of refusal of promotion as per rules/instructions.

Hence, they are debarred for Promotion for a period of 1 (one) year w.e.f. 16-3-2006.

[Authority :- A.G's order dt.22/3/06 at p/37n of F.No.Sr.DAG(A)/Panel/SO/2004]

22/3/06
Sr.Dy.Accountant General(A)

certified to be true copy

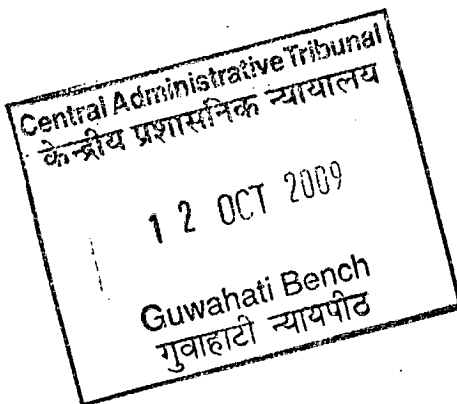
- 17 -

BY SPEED POST

No. 144-NGE(App)/17-2004



सत्यमेव जयते



भारत के नियंत्रक-महालेखापरीक्षक का कार्यालय

10, बहादुरशाह जफर मार्ग,

नई दिल्ली - 110 002

OFFICE OF THE

COMPTROLLER & AUDITOR GENERAL
OF INDIA10, BAHADUR SHAH ZAFAR MARG,
New Delhi - 110 002

दिनांक / DATE 24.3.06

To

The Accountant General (A&E),
Assam,
GuwahatiSubject: Separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices
in North East Region.

Sir,

I am to forward herewith the policy for separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices in North East Region alongwith a format of option form. It is requested that fresh options may be obtained from all the existing Group 'B' officers belonging to common cadre under your cadre control for permanent transfer to the Civil A&E offices in North East Region intimating them the cadre strength of each office and they may be allocated to the concerned offices on the basis of their seniority-cum-options exercised by them as per instruction contained in para 3 of the policy.

2. The junior officers in each cadre who are not likely to be accommodated in the concerned offices as per options exercised by them may be posted on deputation basis to the deficit offices as per instructions contained in para 4 of the policy.

3. The action taken report should be sent to us by 15-05-2006. We intend to have the separated cadres in place as on 01-06-2006.

4. Caveat in the appropriate courts of judicature may be filed in consultation with your standing counsels. A format of the Caveat is enclosed herewith.

Yours faithfully,

(Manish Kumar)

Assistant Comptroller and
Auditor General (N)

Encl.: As above.

*certified to be
true copy
per [signature]*

-18-

हो भी / Phone : 23231440, 23231761

टैलेक्स / Telex : 031-65981, 031-65847

तार / Telegram : ARGEL NEW DELHI

फैक्स / Fax : 91-11-23235446, 91-11-23234014

96

AA

Policy for separation of common cadre of Group 'B'
officers in the A&E and Civil Audit offices in N.E.
Region

(3)

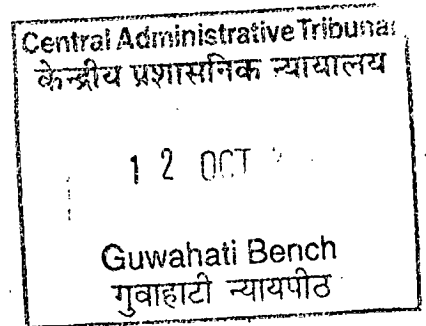
- I One time option for allocation to a particular office may be called for from the existing Group 'B' officers belonging to common cadre by the present cadre controlling authorities i.e. PAG (Audit), Meghalaya etc., Shillong and AG (A&E), Assam, Guwahati. The optees shall be required to indicate their preference.
- II Vacancies in combined cadre may be proportionately distributed among all the concerned offices and the existing staff may be allocated to various offices against the required strength i.e. sanctioned strength minus vacancies proportionately distributed in each cadre.
- III Permanent posting of Group 'B' officers of common cadre against the required strength of various Civil Audit/A&E offices shall be made by the respective cadre controlling authorities strictly on the basis of the seniority of the officers, who have exercised their option for allocation to such offices, irrespective of their base office.
- IV If the number of optees for a particular office is more than the required strength of that office, the excess persons in each cadre (SAO/AO/AAO/SO), who can not be accommodated in the office of their preference against the required strength of that office as per their seniority, shall be posted on deputation basis to the offices for which number of optees is less than the required strength of that office viz deficit offices. If sufficient volunteers are not available for such posting on deputation basis, the junior most persons in excess of required strength in each cadre shall be sent to deficit office on deputation basis. No willingness shall be necessary for this purpose but deputation allowance shall be payable. However, they may be asked to give their preference for such posting mentioning the names of deficit offices and as far as possible they may be posted to such deficit offices on the basis of their seniority and preference given by them for this purpose. These persons shall be posted to the office of their choice on the basis of their seniority on availability of subsequent vacancies against the required strength in such offices. The surplus optees shall also form part of the cadre of their office for which option was exercised by them.

V

If the number of optees for a particular office is less than the sanctioned strength of that office all the optees shall be allocated to that office. The remaining vacancies shall be filled up by deputation of surplus optees as per guidelines laid down at IV above. The vacancies arising due to repatriation of the deputationists to the office of their choice will be filled up by the concerned offices as per provisions contained in the Recruitment Rules for the concerned posts.

VI The promotions to Group 'B' posts after the separation of cadre shall be made by the concerned offices from amongst the eligible officers of their office. However, in surplus offices no further promotion will be made till all the surplus optees posted to deficit offices on deputation basis are accommodated in these offices.

VII Direct recruitment will be done in the deficit offices only against the requisition already placed/ to be placed to Staff Selection Commission.

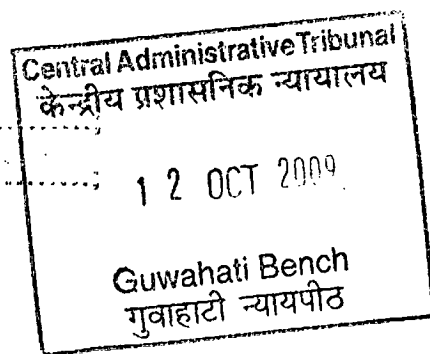


Annexure - IV P/3 98
(57)
(10)

FORM OF OPTION

In the event of separation of existing common cadre for Group 'B' posts of (Sr.AO/AO/AAO/SO) of the A&E offices of the Indian Audit & Accounts Department located in the North East, I Shri/ Smt./ Ma working in the office of the as (designation), knowing fully that the option so exercised shall be final and no further change in the above option shall be allowed in any case, do hereby opt to be finally allocated to the following office(s) in order of preference:-

1. Office of the
2. Office of the
-and so on.



(Signature)

Date:
Station:

Name
Designation
O/O the
Employee No.

Annexure V

OFFICE OF THE ACCOUNTANT GENERAL(A&E) ASSAM, GUWAHATI

Circular on Cadre Separation

Circular No.AG/Sep/Gr.'B'/2006/141

Dated 30/3/2006

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
12 OCT 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

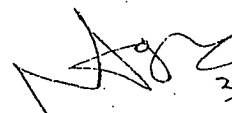
- I. Headquarters office has decided to separate the common Group 'B' cadre from Section Officers to Sr. Accounts Officers in the A&E offices of the N.E. region hitherto controlled by the Accountant General(A&E) Assam, Guwahati.
- II. The offices to which the staff may exercise their one time option are the A&E offices at Assam, Meghalaya, Manipur, Tripura, Nagaland and the newly created offices of Mizoram and Arunachal Pradesh.
- III. The separation of Group 'B' cadres would be in accordance with the following criteria :-
- IV. The existing staff may be allocated on permanent posting against the required strength on the basis of the seniority of the officers who have exercised their option for allocation to such offices, irrespective of their base office.
- V. If the number of optees for a particular office is more than the required strength of that office, the excess persons in each cadre (SAO/AO/AASO/SO), who can not be accommodated in the office of their preference against the required strength of that office as per their seniority, shall be posted on deputation basis to the office for which number of optees is less than the required strength of that office viz deficit offices. If sufficient volunteers are not available for such posting on deputation basis, the junior most persons in excess of required strength in each cadre shall be sent to deficit office on deputation basis. No willingness shall be necessary for this purpose but deputation allowance shall be payable. However, they may be asked to give their preference for such posting mentioning the names of deficit offices and as far as possible they may be posted to such deficit offices on the basis of their seniority and preference given by them for this purpose. These persons shall be posted to the office of their choice on the basis of their seniority on availability of subsequent vacancies against the required strength in such offices. The surplus optees shall also form part of the cadre of their office for which option was exercised by them.
- VI. If the number of optees for a particular office is less than the sanctioned strength of that office all the optees shall be allocated to that office. The remaining vacancies shall be filled by deputation of surplus optees as per guidelines laid down at V above. The vacancies arising due to repatriation of the deputationists to the office of their choice will be filled up by the concerned offices as per provisions contained in the Recruitment Rules for the concerned posts.
- VII. The promotions to Group 'B' posts after the separation of cadre shall be made by the concerned offices from amongst the eligible officers of their office. However, in surplus offices no further promotion will be made till all the

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New Jan

surplus optees posted to deficit offices on deputation basis are accommodated in these offices.

VIII. Direct recruitment will be done in the deficit offices only against the requisition already placed/to be placed to Staff Selection Commission.

IX. With a view to implement the above scheme of separation of cadres of Group 'B' posts, all the present Group 'B' Officers (Section Officers to Senior Accounts Officers including those on deputation and on foreign service) of this office are hereby directed to exercise their options in the enclosed **"FORM OF OPTION"** and submit the same to the Senior Accounts Officer/Admn. of this office by 15th April, 2006 positively. He should also prepare a list of officers on leave and ensure sending of this circular with 'Option Form' to them by Registered post.

 30/3/06

Sr. Dy. Accountant General (Admn.)

NO: Sr. DAG(A)/Panel/S.O./2004/1

Dated 06/4/06.

To

The Accountant General (Audit) Nagaland
Kohima - 797 001.

Sub:- Separation of cadre in Group 'B' cadre in N.E. Region.

Sir,

I am directed to invite a reference to your letter D.O. No. AGN/Sep.Cadre/2005-06/342 dated 29/3/06 on the subject cited above and to state that the option was called for from the existing Common Cadre Group 'B' officers. The SOGE passed candidates are not allowed to exercise their options under Common Cadre as they are outside the Common Cadre strength of Group 'B' officers.

As and when they come under the cadre of Section Officer they will be asked to exercise option, in case cadre separation takes place after their promotion otherwise they will be on the strength of respective Accountant General's office.

This issues with the approval of Accountant General.

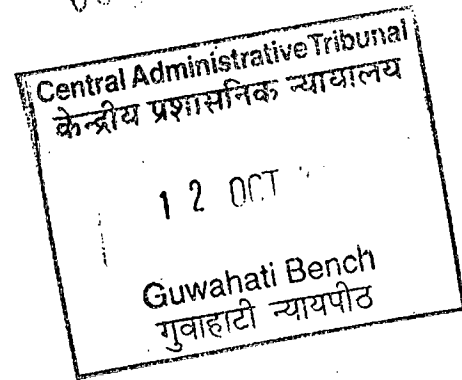
Yours faithfully,

*certified to be true copy
for issue*

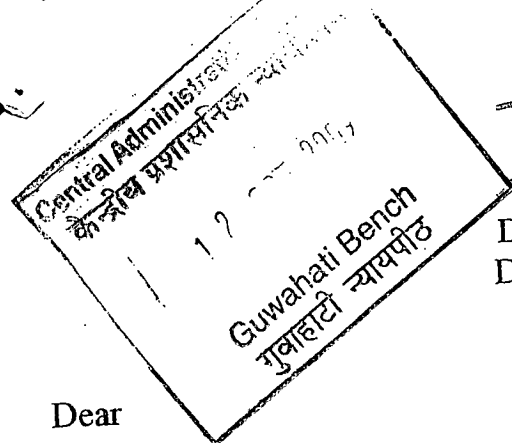
6/4/06

Sr. Deputy Accountant General (Admn)

Annexure - V
Per. Special Post
(199)
(62)
101



Annexure - VII



D.O. No: Sr. DAG(A)/Panel/S.O./2004/52
Dated Guwahati the 2nd June, 2006.

05 25 2006

Dear

Please refer to your letter D.O. No.AGN/Sectt/Misc/2005-06/63 dated 29.5.06 regarding forwarding of representations of S/Shri Anup Roy, Ashim Kumar Dey and Akum Chuba, Sr. Accountants who have passed SOGE 2005 and are awaiting for promotion to the post of Section Officer. As per Cadre Separation policy for Group 'B' Officers, options were called for from all the Group 'B' officers in the common cadre as per Circular for Cadre Separation issued on 30/3/2006. Any further promotions to the cadre of Section Officers have not been effected after the Cadre Separation Policy was issued and options for permanent posting from all the staff were called for. As per OA No.115/2006 filed by certain Group 'B' staff of the common cadre in CAT, Guwahati Bench, the issue of cadre separation is presently sub-judice and the CAT, Guwahati Bench, has issued status-quo order on the case presently.

Keeping these issues in mind, it has been decided to maintain status-quo till the decision from CAT, Guwahati is communicated. This may kindly be communicated to S/Shri Anup Roy, Ashim Kr. Dey and Akum Chuba.

Yours sincerely,

Shri R.M. Johri, IA&AS,
O/o the Accountant General (A&E) Nagaland,
Kohima : 797 001.

certified to be
true copy
for doc



FORM OF THE VAKALATHNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH, GUWAHATI.

O.A./R.A./G.P./M.A./P.T./ 106 /No. _____ of 2009

A. K. Dey /APPLICANT(S)

VERSUS

U.O. 1 & others /RESPONDENT(S)

I, _____ Applicant No. _____

Respondent No. 243 in the above application/Petition do hereby appoint and Shri GAUTAM BAISHYA

Advocate(S) to appear,

plead and act for me/us in the above application/petition and to conduct and prosecute all proceedings that may be taken in respect thereof including Contempt of court petitions and Review applications arising therefrom and applications for return of documents, enter into compromise and to draw any moneys payable to me/us in the said proceeding.

Ananta Bejoy Purkayastha
उप महालेखाकार (प्र.)

Place :-

Date :-

Dy. Accountant General (Admn)

महालेखाकार वा वकील (प्र.) असम

O the Accountant General (Admn) Assam

Signature of the Party

Maldamgaon, Belling, Guwahati-78

Accepted

Executed in my presence.

* Signature with date
(Name and Designation)

Gautam Baishya

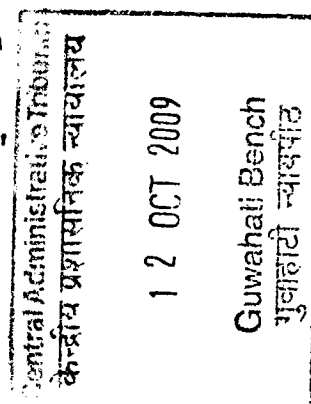
Signature with date
(Name of the Advocate)

Name and address of the
Advocate for Service.

* The following Certification to be given when the party is unacquainted with the language of the Vakalath or is blind or illiterate :

The contents of the Vakalath were truly and audibly read over/ translated into _____ language to the party executing the Vakalath and he seems to have understood the same.

Signature with date
(Name and Designation)



- 50 -

164

In the Central Administrative Tribunal Guwahati Bench
Guwahati

File in Court on 09/10/09

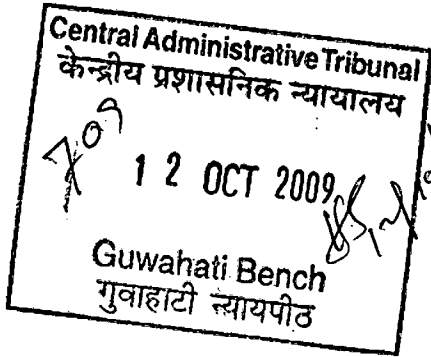
Court Officer.

Misc. Petition No. 56/2009

In O.A. No. 106/2009
Shri Ashim Kumar Dey & Ors.
... Applicant.

-VERSUS-

Union of India & Ors.
..... Respondents.



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Filed by Respondent 2109
Gautam Biswas
Advocate
09.10.09

Copy submitted
9/10/09

51

195

Deho cute

9.10.09.

Brewtan Khindye

Mough

Ananta Bijay Punyastha

Dy. Accountant General (Admn),
बहालवाकफ का कर्मचारी (अ. ए. ए. ए.) असम
Office of the Accountant General (ASG) Assam
असम-राज्य, गुवाहाटी, भारत-781 001

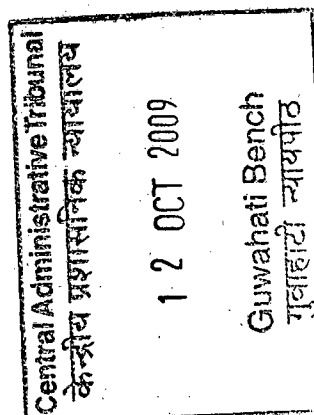
In the Central Administrative Tribunal Guwahati Bench:
Guwahati

Misc. Petition No. 56/2009
In O.A No. 106/2009

Shri Ashim Kr. Dey & Others..... Applicant

-Vrs-

Union of India & Others..... Respondents



The written statement on behalf of the above named Respondents.

MOST RESPECTFULLY SHEWETH

1. That a copy of the Misc. Petition No. 56/2009 has been served upon the respondents. The Respondents after going through the same has understood the contents thereof.
2. That the Respondents beg to state that the statement which are not specifically admitted by the Respondents are deemed to be denied by the respondents.
3. That with regard to the statement made in Paragraph 1, the respondents beg to state that a Departmental Promotion committee met on 17.01.2006 in the Office of the A.G. (A&E), Assam to consider promotion of SOGE passed candidates to the grade of Section Officer for the combined A&E offices. The committee recommended empanelment of 14 (fourteen) officials for promotion to the grade of Section Officer during the panel year 2006. The promotions had to be given according to seniority of the approved Panel. As per seniority the names of the applicants (Shri

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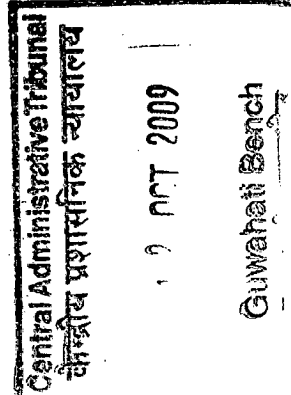
Ashim Kumar Dey, then Sr. Accountant; Shri Arup Roy, then Sr. Accountant and Shri Akum Chuba, then Sr. Accountant) appeared in the panel at serial number 9, 10 & 11 respectively. There were 5 (five) vacancies in the cadre of Section Officer and accordingly an order promoting five officials, in order of seniority, from the panel, to the post of Section Officer was issued vide Admn.1 Order No. 242 dated 18.01.2006 with a direction to the promoted officials to intimate this office whether they accept the promotion or not within 03.02.2006, failing which their promotion would be treated as refused. Out of the 5 (five) officials, one official namely Shri Nepal Ch. Biswas accepted promotion and the rest four officials namely Shri Basudev Mandal, Shri Dilip Gupta, Shri Susanta Chaudhuri and Shri Pulok Ch. Sen sought extension of time. The officials were given extension upto 15.03.2006. But they did not accept the promotion within the stipulated date and on expiry of the date, an order was issued debarring the concerned officials for promotion for a period of 1 (one) year w.e.f. 16.03.2006 vide order No. Sr. DAG (A)/Panel/S.O./2004/137 dated 22.03.2006. Thus before 23.03.2006 no other empanelled officials could be offered promotion due to administrative reason. When the process of offering promotion to the next 4 (four) empanelled officials was about to be taken up then a letter No. 144-NGE (App)/17-2004 dated 24.03.2006 regarding separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices in North East Region was received from the Office of the Comptroller and Auditor General of India, New Delhi by fax on 24.03.2006, whereby the policy for separation of common cadre of

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
12 OCT 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Ananta Bijoy Barua
उप-नियन्त्रक (अ.न.)
Dr. Accountant General Adm.
नियन्त्रक का कार्यालय (अ.न.) असम
Office of the Accountant General (A) & Adm.
मैदागाँव, बेलतला, गुवाहाटी-781008
144-NGE (App)/17-2004 dated 24.03.2006

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Group 'B' officers in the A& E and Civil Audit offices in North East Region along with a format of option form was forwarded with a direction to obtain option from all the **existing Group 'B' officers** belonging to the common cadre for permanent transfer to the Civil A&E offices in North East Region. As per direction of the Headquarters office, options from all the then existing Group 'B' officers (Section Officer/Asstt. Accounts Officer/Accounts Officer/Sr. Accounts Officer) belonging to the common cadre were called for vide Circular No. AG/Sep/Gr. 'B'/2006/141 dated 30.03.2006. In terms of the Headquarters office letter dated 24.03.2006, options for permanent allocation to the offices of their choice were to be called for only from the **existing Group 'B' officers**. As per policy further promotion to Group 'B' post after the separation of cadre should be made by the concerned offices from amongst the eligible officials of their office. Further, after issuance of the circular for separation of Group 'B' cadre, some officers filed applications before the Hon'ble CAT, Guwahati against the policy of separation of Group 'B' cadre. The case was sub-judice and the Hon'ble CAT had issued order to maintain status-quo. As a result till the separation of common Group 'B' cadre, which took place w.e.f. 31.07.2006 (A.N.), the applicants remained as Sr. Accountants in the office of the Sr. Deputy Accountant General (A&E), Nagaland, Kohima. The applicants were subsequently promoted to the post of Section Officer in the Office of the Sr. Deputy Accountant General (A&E), Nagaland, Kohima vide No. Admn/A&E/Order No. 101 dated 08.09.2009 and joined the post of Section Officer on 08.09.2006 (A.N.).



Ananta Bijoy Doreyama
सहायक लेखाकार (अ.प्र.),

Dr. Accountant General (Admn.)

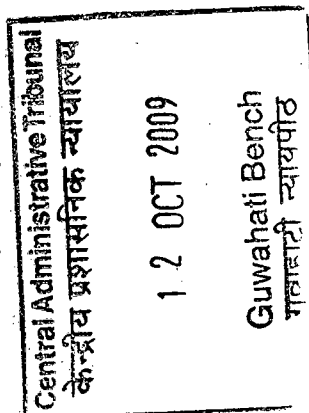
नृदेवकार का कार्यालय (अ.प्र. ए.प्र.) अक्षा

Office of the Accountant General (A&E) Admn.
मेदामार्ग, देरहात, गुवाहाटी-28

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As the applicants could not be offered promotion before the separation of common Gr. 'B' cadre due to the reasons stated above, all the applicants remained Sr. Accountant till separation of common Gr. 'B' cadre and hence no option in terms of policy of separation of common Gr. 'B' cadre was required to be submitted by them and therefore no option was called for from them. After cadre separation they remain under the Cadre Controlling Authority of Sr. Deputy Accountant General (A&E), Nagaland. So, after cadre separation it became incumbent on the Office of the Sr. Deputy Accountant General (A&E), Nagaland to consider their promotion to the cadre of Section Officer and the applicants have been given promotion by that office. In view of the position stated above the applicants' claim to modify promotion order, antedate promotional benefit and to allow them to exercise option for permanent posting in terms of policy of cadre separation is not justified.



Ananta Bijoy Barmayak

Dr. Accountant General (A&E)
न्यायपालिका (अ. ए. ए.)
Office of the Accountant General (A&E) Assam
मेदामार्ग, केसला, गुवाहाटी-28

Copies of DPC proceedings held on
17.01.2006, Admn.1 Order No. 242 dated
18.01.2006, Order No. Sr. DAG
(A)/Panel/S.O./2004/137 dated 22.03.2006,
letter No. 144-NGE (App)/17-2004 dated
24.03.2006 and Circular No. AG/Sep/Gr.
'B'/2006/141 dated 30.03.2006 are enclosed as
Annexure-I, II, III, IV & V respectively.

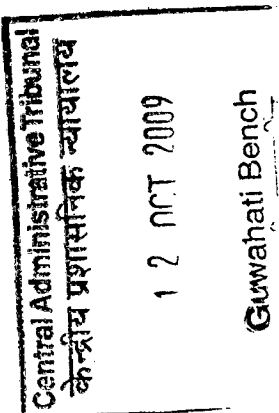
55

Ananta Bejoy Vinayak

डॉ. अश्वमेधवार (B.A.)
Dy. Accountant General (A.S.).
गुलेवाकर का कार्यालय (वि. ए.) धर्मपुरा
Office of the Accountant General (A.S.) Ahmednagar.
मुद्रित, इकबाल, भातार-२३
१९

-56-

were called for vide Circular No. AG/Sep/Gr. 'B'/2006/141 dated 30.03.2006. In terms of the Headquarters office letter dated 24.03.2006 options for permanent allocation to the offices of their choice were to be called for only from the **existing Group 'B' officers**. As per policy further promotion to Group 'B' post after the separation of cadre should be made by the concerned offices from amongst the eligible officials of their office. Further, after issuance of the circular for separation of Group 'B' cadre, some officers filed applications before the Hon'ble CAT, Guwahati against the policy of separation of Group 'B' cadre. The case was sub-judice and the Hon'ble CAT had issued order to maintain status-quo. As a result till the separation of common Group 'B' cadre, which took place w.e.f. 31.07.2006 (A.N.), the applicants remained as Sr. Accountants in the office of the Sr. Deputy Accountant General (A&E), Nagaland, Kohima. After cadre separation the applicants remain under the Cadre Controlling Authority of Sr. Deputy Accountant General (A&E), Nagaland. So, after cadre separation it became incumbent on the Office of the Sr. Deputy Accountant General (A&E), Nagaland to consider their promotion to the cadre of Section Officer and they have been given promotion by that office. In view of the position stated above the applicants' claim that Respondent No. 2 did not take any action is not correct.



Ananta Bejoy Bora
ज.सहायकाकार (प्र.)
Dr. Accountant General Adm.
नहायकाकार का क.सहायकाकार (प्र.) असा
Office of the Accountant General (A&E) Assam

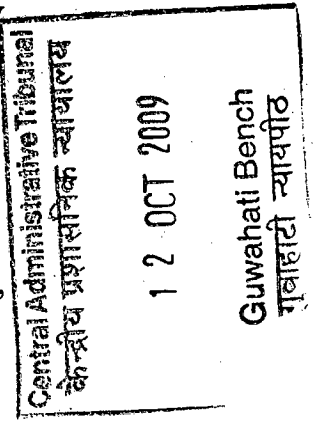
Copies of Order No. Sr. DAG

(A)/Panel/S.O./2004/137 dated 22.03.2006,

letter No. 144-NGE (App)/17-2004 dated

24.03.2006 and Circular No. AG/Sep/Gr.

57
'B'/2006/141 dated 30.03.2006 are
enclosed as Annexure- III, IV & V
respectively.



5. That with regard to the statement made in Paragraph 3,
the respondents beg to state that they have no comments to offer.

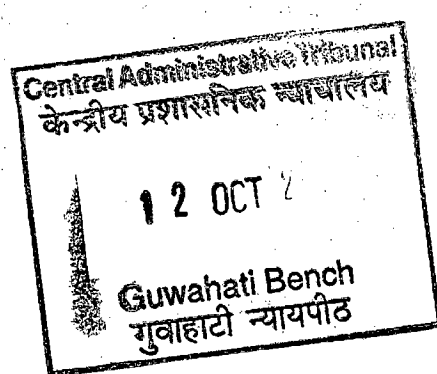
6. That with regard to the statement made in Paragraph 4,
the respondents beg to state their reply is same as given in para 3
above and in view of the position explained in para 3, the
applicants' claim that the competent authority deliberately did not
issue the promotion order and deprived them of the opportunity to
exercise their option from the promotional post of Section Officer
in terms of cadre separation policy is not correct.

Accountant General
अकाउन्टान्त जनरल
By. Accountant General
अकाउन्टान्त जनरल का कार्यालय
Office of the Accountant General
मेदासर्गोन, देहरादून, 24

7. That with regard to the statement made in Paragraph 5,
the respondents beg to state that they have no comments to offer.

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VERIFICATION



I, Shri Ananta Bijoy Purkayastha, son of Late Akhil Chandra Purkayastha aged 58 years, Resident of Beltola, Guwahati, in the district of Kamrup (Metro) and working as Deputy Accountant General and has been authorized by the respondents to verify the statement on their behalf. I, do hereby verify that the statement made in paras 1, 2, 5, 6 & 7 are true to my knowledge and those made in paras 3 & 4 being matters of record are true to my information derived there from which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal and I have not suppressed any material facts. And I sign this verification on this 27 day of JULY 2009 at Guwahati.

Ananta Bijoy Purkayastha
Signature

उप-प्रमुख लेखाकार (अ.प्र.)
Dy. Accountant General
उप-प्रमुख लेखाकार का कार्यालय (ले. प्र.)
Office of the Accountant General
मैदामगाँव, बेल्टोला, गुवाहाटी
Maidamgaon, Beltola, Guwahati-781028

PROMOTION OF THE DEPARTMENTAL PROMOTION COMMITTEE IN CONNECTION WITH THE PROMOTION OF N.E. PASSED CANDIDATES TO THE GRADE OF SECTION OFFICER DURING THE PANEL YEAR 2006.

The Departmental Promotion Committee consisting of Mr. Nana A. Kumar, Sr. DAC (Admin) O/o the A.G.(S&D) Assam, Guwahati; Mr. D. Thakur, DAC (Admin) O/o the P. A.G. (Admin) Assam, Guwahati and Shri R.C. Barman, Sr. A.O. O/o the A.G.(S&D) Assam, Guwahati met on 17/01/2006 to consider promotion of S.O.G.E. passed candidates to the grade of Section Officer for the combined N.E. Cadre.

2. The Committee was informed that the following S.O.G.E. passed officials are eligible for promotion to the grade of Section Officer during the panel year 2006

Sl. No.	Name (S/Shri/Smt.)
1.	Nepal Ch. Biswas
2.	Basudev Mandal (SC)
3.	Dilip Gupta (SC)
4.	Susanta Choudhury
5.	Pulok Ch. Sen
6.	S. Balendra Singh
7.	Paritosh Deb
8.	P. Sharat Singh (SC)
9.	Ashim Kr. Dey
10.	Arup Roy
11.	Akum Chuba (ST)
12.	Barun Paul (SC)
13.	Sajal Chakraborty
14.	Rajat K.L. Deb

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

12 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

3. The Committee was further informed that for promotion of 14 officials on seniority-cum-fitness basis, the position vis-à-vis requirement of SC/ST officers in the post based working roster is as follows :-

a)	Sanctioned Strength	=	40
b)	Men-on-roll	=	30
c)	Size of the post based working roster	=	40
d)	Post reserved in a 40 point working roster	=	SC=6 ST=3
e)	No. of SC/ST Officers on roll out of (b) above	=	SC=7 ST=1
f)	No. of SC/ST Officer eligible for promotion	=	SC=4 ST=1

certified to be true copy
17.1.06

17/1/06

4. After careful evaluation of individual cases, the Committee recommends empanelment of the following officials for promotion to the grade of Section Officer during the panel year 2006.

Sl. No.	Name (S/Sir/Ms/Mr.)
1.	Nepal Ch. Biswas
2.	Basudev Mandal (SC)
3.	Dilip Gupta (SC)
4.	Susanta Choudhury
5.	Pulok Ch. Sen
6.	S. Balendra Singh
7.	Paritosh Deb
8.	P. Sharal Singh (ST)
9.	Ashim K. Dey
10.	Arup Roy
11.	Akum Chuba (ST)
12.	Barun Paul (SC)
13.	Sajal Chakraborty
14.	Rajat K. Deb

5. The Committee was informed that there is no disciplinary/Court or Vigilance cases pending /contemplated against any of the above officials.

It is certified that none of the candidates being considered by the DPC are related to any members of the DPC in any way.

[Signature]
17-1-06

(R.C. Barman)

Sr. Accounts Officer

O/o the A.C.(A&E) Assam

Guwahati

[Signature]
17-1-06

(D. Thakur)

DAG(Admin)

O/o the Pr. AG (Audit)

Assam, Guwahati.

[Signature]
17/1/06

(Naima A. Kumar)

Sr. DAG (Admin)

O/o the A.C.(A&E) Assam,

Guwahati

Annexure - II

OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM, MAIDAMGAON.
BELTOLA, GUWAHATI - 781 029.

Admn.1. Order No. 242

January 18, 2006

Without prejudice to the claim of their seniors and also subject to the condition that their seniority in the cadre of Section Officer will be fixed later, the following officials are hereby promoted to officiate as **Section Officer(Group-B Non-Gazetted)** in the scale of pay of Rs. 6500-200-10500/-p.m. w.e.f. the dates they take over charge in the offices as shown against their names.

Sl. No.	Name Shri/Smti	Office to which Attached	Office to which posted
01.	Nepal Ch. Biswas	Sr. D.A.G. (A&E) Tripura, Agartala	Sr. D.A.G. (A&E) Tripura, Agartala
02.	Basudev Mandal	A.G. (A&E) Assam, Guwahati	A.G. (A&E) Meghalaya, Shillong
03	Dilip Gupta	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal
04	Susanta Chaudhuri	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal
05.	Pulok Ch. Sen	A.G. (A&E) Assam, Guwahati	Sr. DA.G. (A&E) Manipur, Imphal

The officers are liable to be transferred and posted to any of the offices of the Accountant General (A&E) in Assam, Nagaland, Tripura, Manipur, Meghalaya etc., or any other offices likely to be opened in future in the North Eastern Region.

On promotion they will be placed on probation for two years.

On their promotion, the officers are required to exercise option, if any, in the matter of fixation of their pay within one month in terms of G.I.D. No. 19 below FR-22(I)(a)(1).

The officers are required to intimate this office whether they accept the promotion or not within 03-02-06 positively, failing which their promotion will be treated as refused.

The transfer is in public interest.

[Authority: AG's order dated 18-01-06 at P/32^N of file no. Sr. DAG(A)/Panel/SO/2004]

sd/-
Sr. Deputy Accountant General (A& VLC)

Memo No. Admn.1/3-5/2004-05/3625

January 18, 2006

Copy forwarded to:

The Comptroller & Auditor General of India,
10- Bahadur Shah Zafar Marg,
Indraprastha Head Post Office,
New Delhi-110 002

sd/-
Sr. Deputy Accountant General (A& VLC)

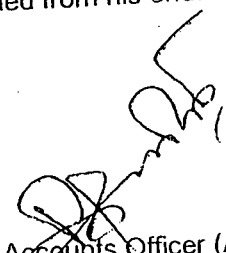
*certified to
be true copy
for
B&A
Joh*

-11-

January 18, 2006

Memo No. Admn.1/3-5/2004-05/ 3626-44
Copy forwarded to:

1. The Pr. Director of Audit, N.F. Railway, Maligaon, Guwahati-11.
2. The Deputy Accountant General(A), O/O. the A.G.(A&E) Meghalaya etc., Shillong-1.
He is requested to intimate the date of joining in respect of SI.No. 2 in his office.
3. The Sr. Deputy Accountant General (A&E) Tripura, Agartala with one spare copy.
He is requested to hand over a copy of this order to Shri Nepai Ch. Biswas and intimate the date of his joining as Section Officer.
4. The Sr. Deputy Accountant General(A&E) Manipur, Imphal. He is requested to intimate the date of joining in respect of SI No. 3, 4 & 5 in his office.
5. The Sr. Deputy Accountant General (A&E) Nagaland, Kohima.
6. The Secretary to the Accountant General (A&E) Assam, Guwahati.
7. The Pay & Accounts Officer, O/ O the A.G (A&E) Assam, Guwahati.
8. The P. S. to the Accountant General(A&E) Assam, Guwahati
9. A.A.O./Confidential Cell.
10. A.A.O. /Record (C).
11. A.A.O. /Admn-II.
12. Steno Gr II attached to Sr. DAG (Admn. & VLC)
13. Steno Gr. I attached to Sr. DAG (P&F).
14. Steno Gr. II attached to DAG (A/cs)
15. Hindi Officer/Hindi Cell. Hindi version of this order may be issued from his end.
16. Concerned Officials
17. Posting Group, G.L. Group, Fixation Group, Budget Group.
18. Service Book Group.
19. Admn.1/ Order Book.


Sr. Accounts Officer (Admn)



Annexure-II

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महालेखाकार (ले एवं ए) असम का कार्यालय
Office of the Accountant General (A & E)
Assam
मैदामगांव, बेलतोला, गुवाहाटी-७८१०२९
Maidamgaon, Beltola, Guwahati-781029

No. Sr.DAG(A)/Panel/S.O./2004/137

Dated: 22/3/06

The following SOGE passed candidates were Promoted to officiate as Section Officer vide this office Admn-I order No.242 dt.18th January 2006 with effect from the date they take over charge in the offices as shown against their names.

Sl.No.	Name S/Shri	Office to which posted
1)	Basudev Mandal	A.G.(A&E) Meghalaya, Shillong
2)	Dilip Gupta	Sr.DAG(A&E) Manipur
3)	Susanta Chaudhuri	Sr.DAG(A&E) Manipur
4)	Pulok Ch.Sen	Sr.DAG(A&E) Manipur

On Promotion, they were given opportunity to intimate this office whether they accept the Promotion or not by 03-02-2006 positively, failing which their promotion will be treated as refused. They represented about their place of posting. Their representations were duly considered by the Accountant General. After careful consideration it was ordered that their requests could not be acceded to as there was no vacancy as per their choice of offices. However, they were allowed time upto 15/3/06 to convey their willingness to accept the Promotion before this date otherwise Promotion will be deemed to have been refused w.e.f. 16-03-2006.

Since they have not accepted the Promotion within the stipulated period, the Promotion is deemed to have been refused by them w.e.f. 16-3-2006 and are, accordingly, liable for consequences arising out of refusal of promotion as per rules/instructions.

Hence, they are debarred for Promotion for a period of 1 (one) year w.e.f. 16-3-2006.

[Authority :- A.G's order dt.22/3/06 at p/37n of F.No.Sr.DAG(A)/Panel/SO/2004]

certified to be true copy
Per. [Signature]

[Signature] 22/3/06
Sr.Dy.Accountant General(A)

- 13 -

BY SPEED POST

No. T44-NGE(App)/17-2004



सत्यमेव जयते

भारत के निबंधक-महालेखापरीक्षक का कार्यालय

10, बहादुरशाह जफर मार्ग,

नई दिल्ली - 110 002

OFFICE OF THE

COMPTROLLER & AUDITOR GENERAL
OF INDIA

10, BAHADUR SHAH ZAFAR MARG,

New Delhi - 110 002

दिनांक / DATE 24.3.06

To

The Accountant General (A&E),
Assam,
Guwahati

Subject: Separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices
in North East Region.

Sir,

I am to forward herewith the policy for separation of common cadre of Group 'B' officers in the A&E and Civil Audit offices in North East Region alongwith a format of option form. It is requested that fresh options may be obtained from all the existing Group 'B' officers belonging to common cadre under your cadre control for permanent transfer to the Civil A&E offices in North East Region intimating them the cadre strength of each office and they may be allocated to the concerned offices on the basis of their seniority-cum-options exercised by them as per instruction contained in para 3 of the policy.

2. The junior officers in each cadre who are not likely to be accommodated in the concerned offices as per options exercised by them may be posted on deputation basis to the deficit offices as per instructions contained in para 4 of the policy.

3. The action taken report should be sent to us by 15-05-2006. We intend to have the separated cadres in place as on 01-06-2006.

4. Caveat in the appropriate courts of judicature may be filed in consultation with your standing counsels. A format of the Caveat is enclosed herewith.

Yours faithfully,

(Manish Kumar)

Assistant Comptroller and
Auditor General (N)

Encl.: As above.

*certified to be
true copy
of the
original*

- 1/2 -

हो भाग / Phone : 23231440, 23231761

टैलेक्स / Telex : 031-65981, 031-65847

तार / Telegram : ARGEL NEW DELHI

फैक्स / Fax : 91-11-23235446, 91-11-23234014

611

Policy for separation of common cadre of Group 'B'
officers in the A&E and Civil Audit offices in N.E.
Region

(3)

- I One time option for allocation to a particular office may be called for from the existing Group 'B' officers belonging to common cadre by the present cadre controlling authorities i.e. PAG (Audit), Meghalaya etc., Shillong and AG (A&E), Assam, Guwahati. The optees shall be required to indicate their preference.
- II Vacancies in combined cadre may be proportionately distributed among all the concerned offices and the existing staff may be allocated to various offices against the required strength i.e. sanctioned strength minus vacancies proportionately distributed in each cadre.
- III Permanent posting of Group 'B' officers of common cadre against the required strength of various Civil Audit/A&E offices shall be made by the respective cadre controlling authorities strictly on the basis of the seniority of the officers, who have exercised their option for allocation to such offices, irrespective of their base office.
- IV If the number of optees for a particular office is more than the required strength of that office, the excess persons in each cadre (SAO/AO/AAO/SO), who can not be accommodated in the office of their preference against the required strength of that office as per their seniority, shall be posted on deputation basis to the offices for which number of optees is less than the required strength of that office viz deficit offices. If sufficient volunteers are not available for such posting on deputation basis, the junior most persons in excess of required strength in each cadre shall be sent to deficit office on deputation basis. No willingness shall be necessary for this purpose but deputation allowance shall be payable. However, they may be asked to give their preference for such posting mentioning the names of deficit offices and as far as possible they may be posted to such deficit offices on the basis of their seniority and preference given by them for this purpose. These persons shall be posted to the office of their choice on the basis of their seniority on availability of subsequent vacancies against the required strength in such offices. The surplus optees shall also form part of the cadre of their office for which option was exercised by them.

Annexure - IV A/2
64 -

14007



If the number of optees for a particular office is less than the sanctioned strength of that office all the optees shall be allocated to that office. The remaining vacancies shall be filled up by deputation of surplus optees as per guidelines laid down at IV above. The vacancies arising due to repatriation of the deputationists to the office of their choice will be filled up by the concerned offices as per provisions contained in the Recruitment Rules for the concerned posts.

VI The promotions to Group 'B' posts after the separation of cadre shall be made by the concerned offices from amongst the eligible officers of their office. However, in surplus offices no further promotion will be made till all the surplus optees posted to deficit offices on deputation basis are accommodated in these offices.

VII Direct recruitment will be done in the deficit offices only against the requisition already placed/ to be placed to Staff Selection Commission.

Annexure - IV A/3
65
121

FORM OF OPTION

In the event of separation of existing common cadre for Group 'B' posts of (Sr.AO/AO/AAO/SO) of the A&E offices of the Indian Audit & Accounts Department located in the North East, I Shri/ Smt./ Ms. working in the office of the as (designation), knowing fully that the option so exercised shall be final and no further change in the above option shall be allowed in any case, do hereby opt to be finally allocated to the following office(s) in order of preference:-

1. Office of the
2. Office of the
-and so on.

(Signature)

Date:

Station:

Name

Designation

O/O the

Employee No.

Annexure V
bb

122

OFFICE OF THE ACCOUNTANT GENERAL(A&E) ASSAM, GUWAHATI

Circular on Cadre Separation

Dated 30/3/2006

Circular No.AG/Sep/Gr.'B'/2006/141

- I. Headquarters office has decided to separate the common Group 'B' cadre from Section Officers to Sr. Accounts Officers in the A&E offices of the N.E. region hitherto controlled by the Accountant General(A&E) Assam, Guwahati.
- II. The offices to which the staff may exercise their one time option are the A&E offices at Assam, Meghalaya, Manipur, Tripura, Nagaland and the newly created offices of Mizoram and Arunachal Pradesh.
- III. The separation of Group 'B' cadres would be in accordance with the following criteria :-
- IV. The existing staff may be allocated on permanent posting against the required strength on the basis of the seniority of the officers who have exercised their option for allocation to such offices, irrespective of their base office.
- V. If the number of optees for a particular office is more than the required strength of that office, the excess persons in each cadre (SAO/AO/AAO/SO), who can not be accommodated in the office of their preference against the required strength of that office as per their seniority, shall be posted on deputation basis to the office for which number of optees is less than the required strength of that office viz deficit offices. If sufficient volunteers are not available for such posting on deputation basis, the junior most persons in excess of required strength in each cadre shall be sent to deficit office on deputation basis. No willingness shall be necessary for this purpose but deputation allowance shall be payable. However, they may be asked to give their preference for such posting mentioning the names of deficit offices and as far as possible they may be posted to such deficit offices on the basis of their seniority and preference given by them for this purpose. These persons shall be posted to the office of their choice on the basis of their seniority on availability of subsequent vacancies against the required strength in such offices. The surplus optees shall also form part of the cadre of their office for which option was exercised by them.
- VI. If the number of optees for a particular office is less than the sanctioned strength of that office all the optees shall be allocated to that office. The remaining vacancies shall be filled by deputation of surplus optees as per guidelines laid down at V above. The vacancies arising due to repatriation of the deputationists to the office of their choice will be filled up by the concerned offices as per provisions contained in the Recruitment Rules for the concerned posts.
- VII. The promotions to Group 'B' posts after the separation of cadre shall be made by the concerned offices from amongst the eligible officers of their office. However, in surplus offices no further promotion will be made till all the

*certified to
be true
copy
Bm sow*

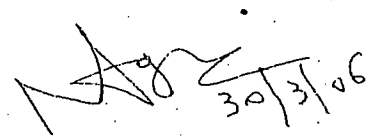
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surplus optees posted to deficit offices on deputation basis are accommodated in these offices.

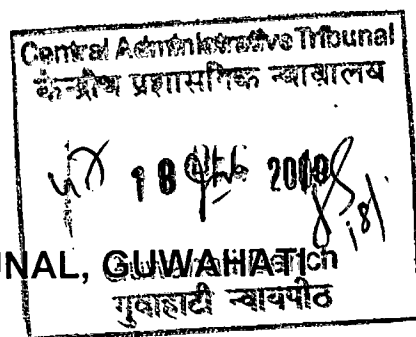
VIII. Direct recruitment will be done in the deficit offices only against the requisition already placed/to be placed to Staff Selection Commission.

IX. With a view to implement the above scheme of separation of cadres of Group 'B' posts, all the present Group 'B' Officers (Section Officers to Senior Accounts Officers including those on deputation and on foreign service) of this office are hereby directed to exercise their options in the enclosed **"FORM OF OPTION"** and submit the same to the Senior Accounts Officer/Admn. of this office **by 15th April, 2006 positively.** He should also prepare a list of officers on leave and ensure sending of this circular with 'Option Form' to them by Registered post.


30/3/06
Sr. Dy. Accountant General (Admn.)



FORM NO. II
(SEE Rule 62)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH, GUWAHATI

O.A./R.A./C.P./M.A./P.T./T.A. OA /No. 106 of 2009
M.P. No 56 of 2009

A.K. Dey & Ons Applicant (s)

-Vs-

G.O.I. & Ons Respondent(s)

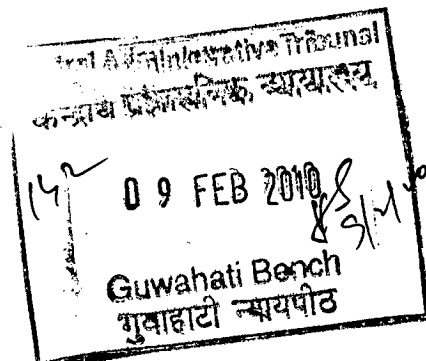
MEMO OF APPEARANCE

I, Smt. Manjula Das, Senior Central Government Standing Counsel, having been authorized by the Joint Secretary to the Government of India, Ministry of Law to appear and conduct the Central Government's cases before the Hon'ble Central Administrative Tribunal, Guwahati Bench, hereby appear for the Respondent No.....Respondents... and undertake to plead and act for them in all matters in the aforesaid case.

Mrs. Manjula Das,
Senior CGSC, U.O.I.,
CAT, Guwahati Bench.

Place: Guwahati

Date: 18.1.10



1207
Filed by the applicant
through U. Dutta, advocate
on 08.02.10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

O.A. No. 106/2009

Shri Ashim Kumar Dey & Ors.

---Applicant.

-Vs-

Union of India & Ors.

..... Respondents.

In the Matter of :

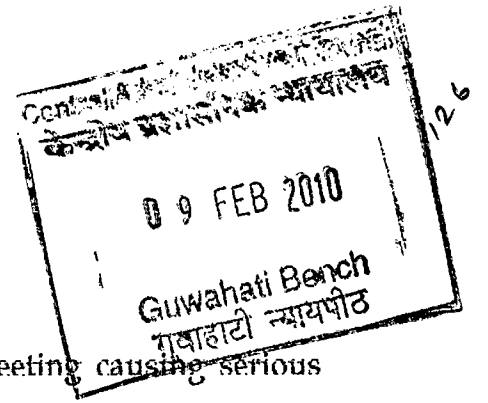
Rejoinder submitted by the Applicant against the written statement filed by the Respondents.

The applicants above named most respectfully beg to state as under:-

1. That in reply to the statements made in Para 2 and 3 of the written statement, the applicants beg to state that the vacancies for which the DPC met on 17.01.06 pertain to the recruitment year 2005-06. As per the normal schedule for DPC meetings as laid down by the DOP & T, Govt. of India, the meeting in the instant case ought to have been held much earlier in 2005 itself for the recruitment year 2005-06, but the same was inordinately delayed and held as late as on 17.01.06 for the reasons best known to the respondents. Subsequently when promotion orders were issued on the basis of the panel approved by the DPC which contained the names of the applicants also, five promotees did not accept their promotions and did not join their promoted posts till 15.03.2006 ever after the extension granted to them till 15.03.06 expired. As such, there had been five clear vacancies in the cadre of Section Officer which were available for recruitment w.e.f. 04.02.06 and were lying vacant even till 15.03.06. The applicants being the next senior most candidates in the select panel, their promotion order ought to have been issued at least on 16.03.06 if not earlier, more so in view of the fact that there had been

Received
For G. Daimy
U. Bhattacharya
Adv.
7.2.2010

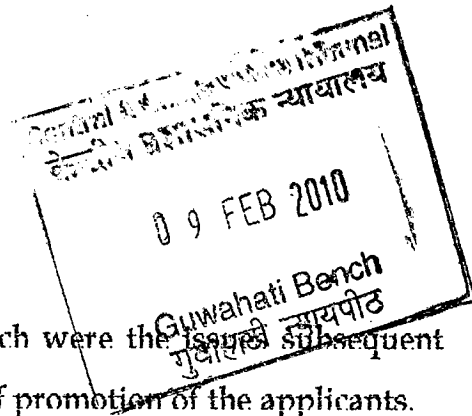
Arup Roy



inordinate delay already in holding the DPC meeting causing serious loss to the expectant candidates. But surprisingly, the respondents kept sitting over the select panel for no valid reasons even after the five promotees refused their promotions and as soon as the alleged letter dated 24.03.06 regarding separation of common cadre of Group 'B' officers of N.E. Region was issued by the C&AG, the respondents took plea of the said letter and stopped the promotion of the applicants until 08.09.2006. It is relevant to mention here that in the instant case the entire recruitment procedure was completed before 24.03.06 and but the promotion orders of the applicants were not issued due to inaction of the respondents who later on have taken an unacceptable plea of letter dated 24.03.06 issued by the C&AG. Further, the alleged letter dated 24.03.06 has nowhere mentioned that the said promotions be stopped nor the proposed separation of cadre envisaged under the said letter has got any relevancy to the promotions of the applicants. As such, the contentions of the respondents and withholding the promotions of the applicants in the pretext of cadre separation are not sustainable and their action is arbitrary, malafide, unfair and opposed to the settled position of law.

2. That the applicants categorically deny the statements made in Para 5,7,8,9 and 10 of the written statement and beg to submit that the contention that the Accountant General (A&F), Assam ceased of other offices w.e.f. 31.07.06 is not relevant here since there had been no impediments whatsoever in issuing the promotion order of the applicants prior to 31.07.06 when there had been clear vacancies available and the approved select panel was in existence. Inordinate delay in holding DPC and non-issuance of the promotion orders of the applicants in time and depriving them of exercising their options are all due to the inaction of the respondents and are solely attributable to the respondents. Further, the question of option is also irrelevant here since the applicants were willing to join their promoted posts in any office of the N.E. Region without any reservation whatsoever, and as such

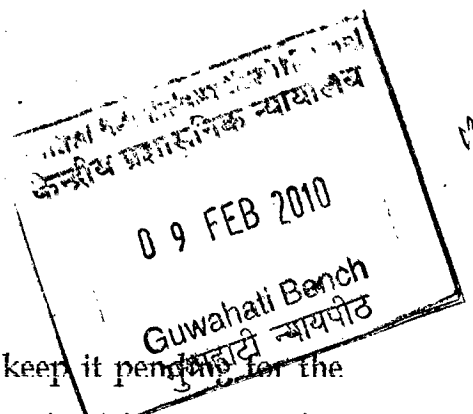
Arun Roy



separation of cadre vis-à-vis option which were the ^{subsequent} should not have been stood on the way of promotion of the applicants.

3. That the applicants categorically deny the statements made in Para 11,12,13 and 15 of the written statement and beg to submit that non-issuance of the promotion orders of the applicant at least till 16.03.06 and their option thereof by the respondents and the subsequent reliance on an unrelated letter dated 24.03.06 of C&AG by the respondents are not sustainable for the reasons explained in Para 1 herein above and the contentions of the respondents averred in Para 11,12,13 and 15 are their after thoughts which are malafide, unfair and arbitrary.
4. That the applicants categorically deny the statements made in para 14 of the written statement and beg to submit that the D.O. letter dated 2/5.06.06 of AG(A&F), Assam, referred to by the respondents is not sustainable in as much as that the same was an after thought made just for suppressing the representations of the applicants. It is relevant to mention here that neither the proposed cadre separation policy had got any nexus to the promotion of the applicants nor the order of the Hon'ble CAT in O.A. No. 115/2006 imposed any stay or bar in consideration of the promotion of the applicants. As such, the D.O. letter dated 2/5.06.06 of AG (A&F), Assam as pleaded by the respondents lacks jurisdiction and authority and hence liable to be ignored.
5. That the applicants emphatically deny the statements made in Para 16,17 and 18 of the written statement and beg to submit that there had been absolutely no reason for holding up the promotion of the applicants on the vague plea of cadre separation which ought to have been given w.e.f. 04.02.2006 and at any rate not later than 16.03.2006 i.e. after the expiry of the extended last date when the five promotees refused to join in their promoted posts of Section Officer. There had been clear vacancies against the recruitment year 2005-06 and the select panel approved by the DPC was also available with the respondents

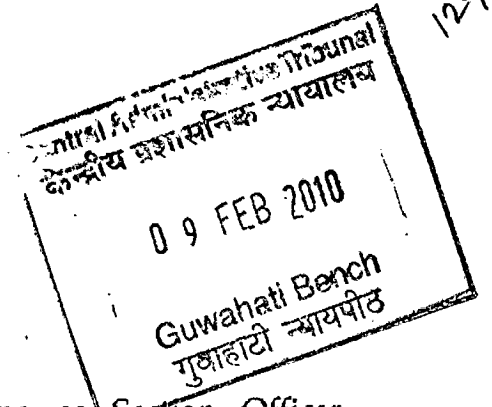
Ramp Roy



and as such there has been no valid reason to keep it pending for the parents office i.e. office of the Sr. DAG(A&F), Nagaland for issuing after the cadre separation which has got no relevancy to the promotion of the applicants. As such the claim of the applicants to antedate their promotions w.e.f. 04.02.2006 is bonafide and justified in all fitness of the things.

6. That the applicants categorically deny the statements made in Para 20,21,22, 23 and 24 of the written statements and most humbly beg to submit that the applicants are legitimately entitled to get their promotions to the cadre of Section Officer w.e.f. 04.02.2006 instead of from 08.09.06 for the reasons stated in the foregoing paras herein above and denial of antedating their promotions w.e.f. 04.02.06 amounts to gross injustice. The grounds pleaded in the O.A. and the reliefs prayed for therein are in accordance with law and the O.A. deserves to be allowed with costs.
7. That in the facts and circumstances stated above, it is most respectfully prayed that the Hon'ble Tribunal be pleased to allow the application with costs.

Amulya



VERIFICATION

I, Shri Ashim Kumar Dey, presently working as Section Officer, Accountant General (A&F), Nagaland is the applicant of the original applications dully authorized by the others so swear this verification and do hereby verify the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraphs 5 being matter of records are true to my information derived there from which believe to be true and rests are my humble submissions before this Hon'ble Tribunal.

And, I sign this verification on this the 7th day of Febr 2010, at Guwahati.

Ashim Kumar Dey