

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/NO. 156/09 2009-2008
R.A./CP/NO. 2015
E.P./M.P./NO. 2015

1. Order Sheets..... 2 pg..... 01 to 03 ✓
2. Judgment/ order dtd. 25.03.2010 pg..... 01 to 05 ✓
3. Judgment & Order dtd 17.5.2013 received from H.C. / Supreme Court.
N.P. CG NO. 1506/2011 pg- 01 to 06 ✓
4. O.A. 156/2008 page..... 01 to 81 ✓
5. E.P/M.P. page..... to.....
6. R.A./C.P. page..... to.....
7. W.S. Filed on behalf of R-M. Page..... 01 to 27 ✓
8. Rejoinder..... page..... to.....
9. Reply page..... to.....
10. Any other papers page..... to.....
11. Memo of Appearance pg 01 to 01 ✓

SECTION OFFICER (JUDL.)

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

1. ORIGINAL APPLICATION No : 156 / 2009
2. Transfer Application No : -----/2009 in O.A. No.-----
3. Misc. Petition No : -----/2009 in O.A. No.-----
4. Contempt Petition No : -----/2009 in O.A. No.-----
5. Review Application No : -----/2009 in O.A. No.-----
6. Execution Petition No : -----/2009 in O.A. No.-----

Applicant (S) : Sri Susanta Kumar Bhattacharjee

Respondent (S) : Union of India & Ors.

Advocate for the : Mr. J.P. Chouhan

{Applicant (S)} Mr. A. Sarma

Advocate for the : Mrs. M. Das,

{Respondent (S)} Addl. CGSC.

Notes of the Registry	Date	Order of the Tribunal
<p>this application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/BD No. <u>396-4/2529</u> Dated <u>12.7.09</u></p> <p><u>13.8.09</u> Dy. Registrar <u>13/8/09</u></p> <p><u>Two copies of Application with envelope received for issue notices to the Respondents No 1 & 2. Copy served.</u></p> <p><u>13/8/09</u></p> <p><u>K. Das</u> Send copies of this order with copies of O.A to the Respondents in the address given in the O.A.</p>	<p>18.08.2009</p>	<p>Heard Mr.J.P.Chouhan, learned counsel for the Applicant and Mrs.M.Das, learned Addl. Standing counsel for the Govt. of India; to whom a copy of this O.A. has already been supplied.</p> <p>Call this matter on 01.10.2009; by which time Mrs.M.Das, learned Addl. Standing counsel, shall obtain instructions in the matter pertaining to the representation and reminders filed by the Applicant.</p> <p>Send copies of this order (along with copies of this O.A.) to the Respondents in the address given in the O.A.</p> <p><u>(M.K.Chaturvedi)</u> Member (A)</p> <p><u>(M.R.Mohanty)</u> Vice-Chairman</p>

/bb/

Received copy 19/8/09
for Mrs. M. Das
+ K. Sarma
21/8/09

Copies of notices along with order dated 18/8/09, send to D/Sec. for issuing to resp. by regd. A/D post.

O.A.156/09
01.10.2009

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

Call this matter on 30.10.2009 awaiting written statement from the Respondents.

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

(M.R. Mohanty)
Vice-Chairman

24/8/09. D/- 25/8/09

① Service report awaited.

31.9.09

pg

K. Das

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

6/10/09

28.10.2009

Enabling the respondents to file written statement the case is adjourned to 2.12.2009.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

Copies of order dated 1/10/2009 send to D/Sec. for issuing to the respondents by post.

D/No-11694-11695

6/10/09

02.12.2009

Last opportunity is granted to the Respondents to file reply within two weeks ; failing which they will forfeit their right to file reply.

List on 17.12.2009

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

17.12.2009

Reply has been filed. Applicant may file rejoinder. Case is adjourned to 21.1.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

No N/S filed.

29.10.09

No N/S filed.

1.12.09

No N/S filed.

No rejoinder filed.

16.12.09

20.1.2010

3
O.A. 156/09

21.1.2010

Further time is sought for to file rejoinder which is not opposed.

List the matter for hearing on 17.2.2010.

In the meantime, rejoinder may be filed by the Applicant.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

lm

17.02.2010

Sri J.P. Chouhan, learned counsel for applicant prays for adjournment. Mrs. M. Das, learned Sr. CGSC for Respondents has no objection.

List the matter on 25th February 2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/PB/

25.02.2010

Heard learned counsel for parties. Hearing concluded. For the reasons recorded separately, O.A. is dismissed. No costs.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

23-3-2010

Judgment / Final order dated 25/2/2010 prepared and sent to the J/Section for issuing the all the respondents by post and issued counsel for the both sides vide NO 687 to 688

Dated 25-3-2010

Copy Received. Order dt. 25/2/10
J.P. Chouhan
Advocate
28/3/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A.No.156 of 2009

DATE OF DECISION: 25.02.2010

Shri Susanta Kumar Bhattacharjee

.....Applicant(s)

Mr J.P. Chauhan

Advocate(s) for the
Applicant (s)

- Versus -

Union of India and others

Respondent(s)

Mrs M. Das, Sr. C.G.S.C.,

Advocate(s) for the
Respondent(s)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

1. Whether reporters of local newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?

Yes/No

Yes/No

Yes/No


Member(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.156 of 2009

Date of Order: This the 25th day of February 2010

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Shri Susanta Kumar Bhattacharjee,
S/o Late S.B. Bhattacharjee,
Working as Assistant in the Office of the
Chief Conservator of Forests (Central),
Ministry of Environment & Forests, Regional Office,
(NER), Upland Road, Shillong-3,
Meghalaya.

..... Applicant

By Advocate Mr J.P. Chauhan

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Lodi Road, New Delhi-110003.
2. The Chief Conservator of Forests (Central)
Government of India,
Ministry of Environment & Forests,
Regional Officer (NER),
Upland Road, Shillong-3,
Meghalaya.

..... Respondents

By Advocate Mrs M. Das, Sr. C.G.S.C.




.....

ORDER (ORAL)**MUKESH KUMAR GUPTA, JUDICIAL MEMBER**


In this second round of litigation, Susanta Kumar Bhattacharjee, claims antedating promotion to the post of UDC with effect from January 1992, instead of June 1997, to further the post of Assistant Group 'B' with effect from January 2002, instead of February 2008, with all consequential benefits.

2. Admitted facts are that: he, initially appointed on 01.08.1980, came on deputation to present respondents' office on 15.06.1989 as LDC. He was permanently absorbed w.e.f. 30.10.1992. Next promotional post is UDC, recruitment to which is governed by the rules known as, "Regional Offices, Ministry of Environment and Forests (Group 'C' and Group 'D' posts) Recruitment Rules, 1992. According to said rules, UDC is a non-selection post, to be filled 100% by promotion, failing which by transfer on deputation. As per column 12, LDC with a minimum of eight years regular service in the grade is eligible for such promotion. It is not in dispute that he was promoted to said post of UDC on 15.06.1997, precisely on completion of eight years with the respondents as LDC. Since he had certain grievance i.e. antedating his promotion from LDC to UDC i.e. w.e.f. January 1992, instead of June 1997, he approached this Tribunal vide O.A.No.52/2007. Said O.A. was allowed to withdrawn vide order dated 15.05.2008 as in the meantime he had been promoted to next higher post of Assistant Group 'B' w.e.f. 18.02.2008 vide order dated 17.03.2008. Prior to it, he had also filed O.A.No.43 of 1994 seeking absorption, which was disposed of vide order dated 03.10.1994




requiring the respondents to consider his request sympathetically. Later he filed another O.A.s No.68 of 1995 as well as 227 of 2000 challenging order dated 09.04.1999 as by that time he had not been absorbed. Said O.A. was allowed vide order dated 22.08.2001 holding that order dated 09.04.1999 relating to the finding that applicant was absorbed not in public interest, was not sustainable in law. Order dated 09.04.1999 had been quashed and respondents were directed to refix the date of his seniority vis-à-vis respondent Nos.3 and 4 based on observations made therein. Being aggrieved, respondents preferred Writ Petition (C) No.6734/2004 and Writ Petition (C) No.41 (SH)/2002. Vide common order dated 23.09.2005 said Writ Petitions were dismissed and aforementioned order passed by the Tribunal was upheld.

3. His grievance is that promotion to post of UDC he antedated from June 1997 to January 1992 as well as to post of Assistant from February 2008 to January 2002. During the course of oral hearing, it was pointed out that since applicant had not challenged order of absorption, absorbing him w.e.f. 30.10.1992 as LDC, he is precluded from seeking promotion to next higher post prior to said date. This is the basic requirement of law and rule, emphasized learned counsel for the respondents. As far as promotion to UDC is concerned, counting his eligibility of eight years from the date he came on deputation to respondents' office as LDC from June 1989, he had already been allowed promotion to next higher post of UDC w.e.f. 15.06.1997, a non-selection post. Seniority and eligibility are two distinct and different concepts.



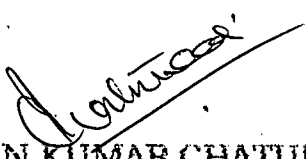
4. We have heard learned counsel for parties. Perused the pleadings and other material placed on record.

5. On examination of the matter, we are in agreement with the respondents' contention that seniority and eligibility are two distinct and different concepts. Precise grievance of the applicant is that he is entitled to counting his seniority of parent department i.e. 1980. From the relief clause, reproduced hereinabove, it would be seen that such is not a case either projected in present O.A. or relief prayed. Precise grievance had been to antedate his promotion as UDC as well as Assistant. As we have already observed hereinabove, on completion of eight years regular service with the respondents, he had already been promoted. It is an admitted fact that he has not been denied the benefits of earlier service in terms of pay fixation, pension etc. Furthermore, we may note that for the post of Assistant, as per rules notified, Assistant is a non-selection post, which has to be filled by promotion, failing which by deputation and vide column 12, UDC of respective Regional office with ten years regular service in the grade. Counting ten years from 15.06.1997, he became eligible for said post only on 15.06.2007. He has been granted promotion virtually after eight months i.e. February 2008 from the date when he completed his eligibility. There is no rule or law which requires that one is entitled to promotion precisely on the date one attains eligibility. In this view of the matter, we find no illegality or arbitrariness in conferring promotion as UDC as well as Assistant Group 'B' post. The basic fallacy of the applicant in present case is that without challenging the order of absorption as LDC, he is seeking promotion to next higher post prior to said date, which under no circumstances can be granted.



Unless a person is absorbed he has no right of promotion. Right accrues only after he is absorbed in the borrowing department.

6. In view of above discussion and finding no merit, O.A. is dismissed. No costs.



(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER



(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

nkmm

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND
ARUNACHAL PRADESH)

WP (C) NO. 1506/2011

Shri Susanta Kumar Bhattacharjee,
Son of Lat S. B. Bhattachajree,
Ministry of Environment and Forests,
Regional Office (NER) Upland Road,
Shillong-3, Meghalaya.

- Petitioner

- Versus -

The Union of India and Ors.

- Respondents

BEFORE
HON'BLE MR. JUSTICE I. A. ANSARI
HON'BLE MR. JUSTICE P. K. MUSAHARY

Advocate present:

For the petitioner : Mr. J. P. Chouhan,
Mr. A. Sarma

For the respondent : Mr. A. K. Bora,

Date of hearing & judgment : 17.05.2013

JUDGMENT & ORDER
(ORAL)

(Ansari, J)

Heard Mr. J. P. Chouhan, learned counsel, appearing for the petitioner, and Mr. A. K. Bora, learned Central Government counsel, appearing for the respondents.

2. This writ petition, made under Article 226 of the Constitution of India, has put to challenge the order, dated 25.02.2010, passed, in Original Application (in short, 'OA') No. 156/2009, whereby the learned Central Administrative

Tribunal (in short, 'the Tribunal'), Guwahati Bench, has dismissed the OA.

3. Before we come to the merit of the present writ petition, which has put to challenge, as mentioned above, the impugned order passed by the learned Tribunal, it is necessary to take note of the material facts, which have led to the passing of the impugned order by the learned Tribunal. The material facts are, therefore, set out, in brief, as under:

(i) The petitioner herein was initially appointed, on 01.08.1980, in the office of the Directorate of Census Operation and he came, on 15.06.1989, on deputation, in the post of Lower Division Clerk (in short, 'LDC'), to the office of the present respondents. By Order, dated 20.03.1996, the petitioner was permanently absorbed, in the post of LDC, in the borrowing Department w.e.f. 30.10.1992.

(ii) While, thus, the petitioner was appointed as LDC, on 01.08.1980, in the parent Department, he came to the borrowing Department, in the post of LDC, on 15.06.1989, and came to be permanently absorbed, in the post of LDC, in the borrowing Department, on 30.10.1992. The petitioner's date of permanent absorption, in the borrowing Department, was modified by order, dated 17.04.1996, passed by the respondents herein, and given effect from the date of his

joining the borrowing Department, i.e., 15.06.1989. The next promotional post for an LDC, in the establishment of the respondents, is Upper Divisional Clerk (in short, 'UDC') and recruitment for promotion to the post of UDC is governed by the Regional Office, Ministry of Environment and Forests (Group-C and Group-D) Recruitment Rules, 1992 (hereinafter referred to as the '1992 Rules'). In terms of the 1992 Rules, the post of UDC is a non-selection post and is required to be filled up 100% on promotion, failing which by transfer on deputation.

(iii) In terms of the 1992 Rules, which is undeniably prospective in nature, a person is required to put in a minimum period of 8 (eight) years of regular service, in the grade of LDC, for becoming eligible for promotion to the post of UDC. The petitioner was promoted to the post of UDC, on 15.06.1997, by computing completion of eight years of service, as LDC, in the establishment of the respondents. As the petitioner had grievance against his being treated as UDC w.e.f. January, 1992, he approached the Tribunal by OA No. 52/2007. The said OA was withdrawn by order, dated 15.05.2008, because the petitioner was, in the meanwhile, promoted to the next higher post of Assistant (Group-B), w.e.f., 18.02.2008, by an order issued, in this regard, on

17.03.2008. Prior to filing of the OA No. 52/2007, the petitioner had also filed OA No. 43/1994, seeking absorption, which was disposed of by order, dated 03.10.1994, requiring the respondents to consider the petitioner's request for absorption sympathetically. In course of time, the petitioner came to be absorbed, w.e.f. 30.10.1992, as already mentioned above. Aggrieved by the fact that he was being treated to have become eligible for promotion w.e.f. January, 1992, and not w.e.f. 01.08.1980, when he joined the post of LDC in his parent Department, the petitioner filed the OA, which has led to the filing of the present writ petition.

4. Having examined the grievance of the petitioner, the learned Tribunal has pointed out that since the petitioner has been absorbed w.e.f. 30.10.1992, he is precluded from asking for *antedating* his promotion to the post of UDC and, thereafter, to the post of Assistant. The remedy, therefore, lies, in the case of the petitioner, in putting to challenge his effective date of absorption. Based on this conclusion, the learned Tribunal has held that so long as the absorption of the petitioner, in the post of LDC, remains w.e.f. 30.10.1992, the petitioner cannot be given the benefit of promotion from the date he has sought for.

5. Having dispassionately examined the case of the petitioner, we find ourselves fully in agreement with the learned Tribunal that so long as the effective date of absorption of the petitioner, in the post of LDC, in the respondents' establishment, is not modified, changed or altered, neither the petitioner could have claimed, nor the learned Tribunal could have given, the relief of *antedating* the petitioner's promotion, as had been sought for by the petitioner.

6. Situated thus, when we do not find that the ultimate conclusion, reached by the learned Tribunal, suffers from any infirmity, factual or legal, we are constrained to hold that the writ petition has no merit and the same must, therefore, fail.

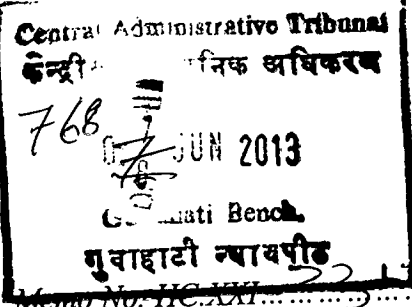
7. In the result and for the forgoing reasons, this writ petition is hereby dismissed.

8. Before parting with this writ petition, it is made clear that the petitioner shall remain at liberty to take, if so advised, appropriate steps, in accordance with law, for modification, amendment or alternation of his effective date of absorption.

9. No order as to costs.

Sd/- P. K. MUSAHARY
JUDGE

Sd/- I. A. ANSARI
JUDGE



BY SPECIAL MESSENGER

URGENT

Memo No. HC.XI/32130 — 32 R.M. Dtd. 1/6/13

Copy forwarded for information and necessary action to:-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Environment & Forests, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi- 110003.
2. The Chief Conservator of Forests (Central), Government of India, Ministry of Environment & Forests, Regional Officer (NER), Upland Road, Shillong- 3, Meghalaya.
3. The Section Officer, Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati- 5. He/She is requested to acknowledge the receipt of the following Case Records. This has a reference to his/her letter No. 16-3/02-JL/619 dtd. 09-08-2011.

Enclo:-

Case Record of O. A. Case No. 156/2009

- One File:
- i. Order Sheets- 3 Pages
 - ii. O. A. 156/09- 81 Pages
 - iii. W/S - 82-108 Pages
 - iv. Judgement- 5 Pages

By order

Deputy Registrar (I.M.)
Gauhati High Court, Guwahati.

bps

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

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

ORIGINAL APPLICATION NO. 156 OF 2009.

Sri Susanta Kumar Bhattacharjee

APPLICANT.

-Vs-

The Union of India & Ors.

RESPONDENTS.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

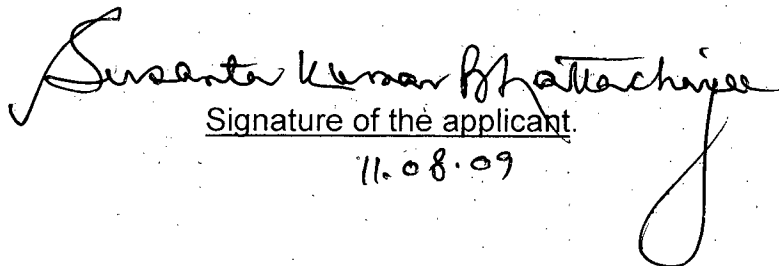
गुवाहाटी न्यायपीठ
Guwahati Bench

SYNOPSIS.

The applicant is aggrieved by the non-consideration of his case for antedating his promotion to the post of UDC as well as to the next higher post of Assistant (Group – B grade) with effect from January 1992 and January 2002 respectively, in the office of the Chief Conservator of Forests (C), Ministry of Environment & Forests, Regional Office (NER), Shillong.

But the respondents have granted promotion with effect from 15-06-1997 in place of January 1992 and 18-02-2008 in place of January 2002 respectively, to the two posts in question.

The applicant has submitted a number of representations before the respondent authority stating that he has been continuing in Central Government service with effect from 01-08-1980 in the regular line and so as per the rules he became eligible for promotion to the post of UDC in the year 1988 (but actually from 1992 since there was no vacancy in the year 1988) and to the next higher post of Assistant (in Group – B Grade) in the year 2002 upon completion of the stipulated period of service. However, the respondents have turned a deaf ear to the repeated requests of the applicant. Being aggrieved, the applicant has approached this Hon'ble Tribunal seeking justice and for amelioration of his grievance.


Signature of the applicant.
11.08.09

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

ORIGINAL APPLICATION NO. 156 OF 2009.

Sri Susanta Kumar Bhattacharjee ... APPLICANT.

-Vs-

The Union of India & Ors. ... RESPONDENTS.

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

12 AUG 2009

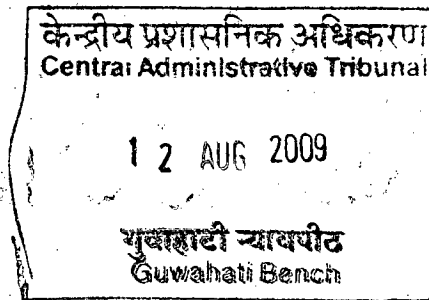
गुवाहाटी न्यायपीठ
Guwahati Bench

LIST OF DATES.

<u>Date</u>	<u>Particulars</u>
01-08-1980	Applicant joined as LDC in the Director of Census Operations.
16-01-1986	Applicant appointed in the same capacity in the NEPA at Barapani.
14-06-1989	Applicant released from NEPA with direction to report for duty in the O/o CCF(C), MoEF, NE(RO), Shillong. [Annexure A Page 21]
15-06-1989	Applicant joined in the MoEF, NE(RO), Shillong on deputation.
04-01-1992	Applicant promoted to the post of UDC in the MoEF, NE(RO).
4-1-92 to	Applicant granted promotion to the post of UDC by his parent
30-9-93	department i.e. NEPA. [Annexure B Page 22]
7-8-95 to	
2-4-96	
30-10-1991	Applicant asked to exercise option regarding his absorption in MoEF [Annexure C Page 24].
17-09-1993	Applicant expressed his willingness for absorption in the MoEF. [Annexure D Page 25]
02-08-1996	Communication regarding counting of past service rendered in the parent department. [Annexure E Page 27]
22-08-2001	Order passed by this Hon'ble Tribunal in O.A. No.227/2007. [Annexure F Page 28]
23-09-2005	Judgment and order passed by the Hon'ble Gauhati High Court in WP(C) No.6734/2004 upholding the Order in O.A. No.227/07. [Annexure G Page 38]
- 2006	Applicant absorbed in the MoEF, NE(RO), Shillong w.e.f 30-10-1992. [Annexure H Page 56]
25-09-2006	Applicant promoted as UDC w.e.f. 15-06-1997. [Annexure I Page 57]
17-03-2008	Office Order promoting the applicant to the post of Assistant w.e.f. 18-02-2008. [Annexure J Page 58]

- 15-05-2008 Order passed by this Hon'ble Tribunal in Q.A. No.52/2007.
[Annexure K Page 59]
- 16-07-2008 Representation filed by the applicant to the MoEF, Gol seeking benefit from January 2002 for promotion to the post of Assistant instead of 2008.
[Annexure L Page 60]
- 05-09-2008 Another representation filed by the applicant highlighting his grievances. [Annexure M Page 69]
- 24-11-2008 Supplementary filed by the applicant to justify his claim for promotion to the post of Assistant (in Group – B grade) with effect from January 2002. [Annexure N Page 73]
- 14-01-2009 Supplementary representation forwarded to the authority concerned. [Annexure O Page 79]
- 04-02-2009 Reminder filed by the applicant seeking disposal of his representations dated 16/7/08 and 24/11/08 [Annexure P Page 80]
- 09-04-2009 Reminder of the applicant forwarded to the Ministry concerned.
[Annexure Q Page 81]

Susanta Kumar Bhattacharya
Signature of the applicant.
11.08.09



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

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

ORIGINAL APPLICATION NO. 156 OF 2009.

Sri Susanta Kumar Bhattacharjee ...

APPLICANT.

-Vs-

The Union of India & Ors. ...

RESPONDENTS.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी ब्याचपीठ
Guwahati Bench

I N D E X.

Sl. No.	Particulars of Documents	Annexure No.	Page No.
1.	Original Application		1 - 20
2.	Verification		
3.	Communication dated 14-06-1989	A	21
4.	Certificate regarding promotion.	B	22 - 23
5.	Communication dated 30-10-1991	C	24
6.	Letter dated 17-09-1993	D	25 - 26
7.	Communication dated 02-08-1996	E	27
8.	Hon'ble Tribunal's Order dated 22-08-2001 passed in O.A. No. 227/2000	F	28 - 37
9.	Hon'ble High Court's Order dated 23-09-2005 passed in W.P.(C) No. 6734/2004	G	38 - 55
10.	Office order regarding absorption	H	56
11.	Order dt.25/9/06 regarding promotion as UDC	I	57
12.	Order dt.17/3/08 regarding promotion as Assistant J	J	58
13.	Hon'ble Tribunal's Order dated 15-05-2008 passed in O.A. No. 52/2007.	K	59
14.	Representation dated 16-07-2008	L	60 - 68
15.	Representation dated 05-09-2008	M	69 - 72
16.	Suppl. representation dated 24-11-2008	N	73 - 78
17.	Communication dated 14-01-2009	O	79
18.	Reminder dated 04-02-2009	P	80
19.	Communication dated 09-04-2009	Q	81

20. W/S - 82 -

Susanta Kumar Bhattacharjee
Signature of the applicant
11.08.09

For use in the Tribunal's office

Date of filing:-

Registration No.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

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

ORIGINAL APPLICATION NO. 156 OF 2009.

Sri Susanta Kumar Bhattacharjee
Son of Late S.B. Bhattacharjee
Working as Assistant in the Office of the
Chief Conservator of Forests (Central)
Ministry of Environment & Forests, Regional Office,
(NER), Upland Road, Shillong – 3, Meghalaya. ✓

..... APPLICANT.

-VERSUS-

1. The Union of India, represented by the Secretary
To the Government of India, Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex, Lodi Road,
New Delhi – 110 003. ✓

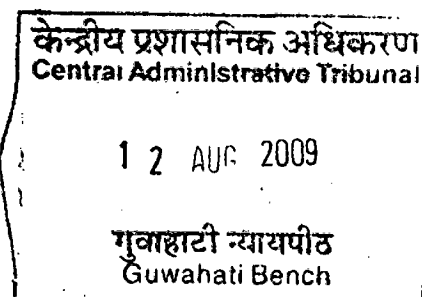
2. The Chief Conservator of Forests (Central), Government of India
Ministry of Environment & Forests, Regional Office (NER),
Upland Road, Shillong – 3, Meghalaya. ✓

..... RESPONDENTS.

DETAILS OF APPLICATION:-

1. Particulars of the order against which the application is made:-

The applicant is aggrieved by the wrong fixation of the date of his promotion to the post of Assistant (in Group – B grade) on 18-02-2008, granted



Filed by:-

Susanta Kumar Bhattacharjee
Through Joy Prakash Chaudhary, Advocate 11.08.09

vide office order No.11-27/96/E-RONE/Vol-I/3209-13 dated 17-03-2008 (Annexure-J Page), which according to the applicant should be January 2002.

2. Jurisdiction of the Tribunal:-

The applicant declares that the subject matter of the order against which he wants redress is within the jurisdiction of the Tribunal.

3. Limitation:-

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

4. Facts of the case:-

4.1 That the applicant is working in the post of Assistant (in Group – B grade) in the office of the Chief Conservator of Forests (C), Ministry of Environment & Forests, Regional Office, (NER), Upland Road, Shillong – 3 ['MoEF, NE (RO), for short].

4.2 That the applicant joined as Lower Division Clerk (LDC, for short) on 01-08-1980 in the Directorate of Census Operation. Thereafter, he was appointed through proper channel in the same capacity in the North Eastern Police Academy, Ministry of Home Affairs, Umsaw, Barapani (NEPA, for short) with effect from 16-01-1986, with all benefits of past service, pay protection, etc. He was confirmed as LDC on 16-01-1989. While the applicant was working in the NEPA, he was sent on deputation to the MoEF, NE(RO). The applicant joined in the MoEF, NE(RO) on 15-06-1989 where he was permanently absorbed with effect from 30-10-1992.

Copy of the communication dated 14-06-1989 is annexed hereto and marked as ANNEXURE – A.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Susanta Kumar Bhattacharya

4.3 That while on deputation to the MoEF, NE(RO), the applicant was granted ad-hoc promotion to the post of Upper Division Clerk (UDC, in short) with effect from 04-01-1992 when a post of UDC fell vacant. The promotion of the applicant as UDC was extended periodically by various orders. The parent office of the applicant i.e. NEPA, also granted pro-forma promotion to the applicant to the post of UDC from 04-01-1992 to 30-09-1993 and again from 07-08-1995 to 02-04-1996.

A copy of the relevant certificate is annexed hereto and marked as ANNEXURE – B.

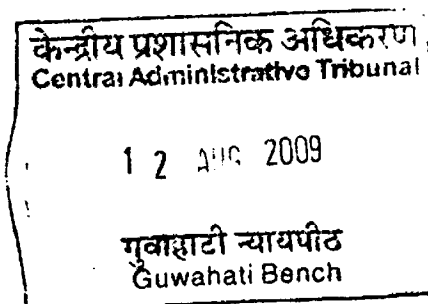
4.4 That while officiating as UDC in the MoEF, NE(RO), the applicant was asked in terms of the office order dated 30-10-1991, to seek reversion to the post of LDC to facilitate his absorption in the said office, since, as per recruitment rules of 1992, absorption was permissible only in the entry grade of LDCs. Accordingly, the applicant vide his letter dated 17-09-1993, sought reversion to the post of LDC. In the said letter, the applicant stated that if his absorption in the post of LDC in the Regional Office of the MoEF with effect from the date of coming into force of the Recruitment Rules is ordered, then his application may be treated as his willingness for reversion to the post of LDC in order to facilitate his permanent absorption in the Regional Office.

A copy of the letter dated 30-10-1991 is annexed hereto and marked as ANNEXURE – C.

A copy of the said letter dated 17-09-1993 is annexed hereto and marked as ANNEXURE – D.

4.5 That the Ministry of Environment, Government of India, New Delhi, in their letter No. 4-1/89-RO(HQ) dated the 2nd August 1996 to the Chief Conservator of Forests, Regional Office, Shillong, directed that "the earlier service period of Sri S.K. Bhattacharjee, LDC, in his parent department, should also be included while considering his case for promotion to the post of UDC".

A copy of the aforesaid letter dated 02-08-1996 is annexed hereto and marked as ANNEXURE – E.



Susanta Kumar Bhattacharjee

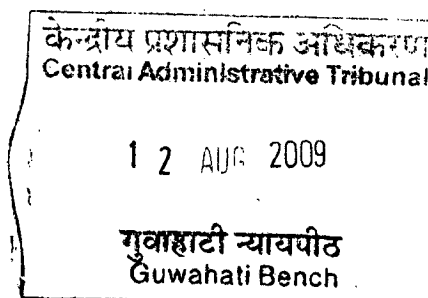
4.6 That accordingly the Regional Office reverted the applicant to the post of LDC on 01-10-1993 but delayed in ordering his absorption. The applicant made representations against the delay in ordering his absorption. Finally, the Regional Office ordered his absorption with effect from 03-04-1996, nearly 3 years after ordering his reversion to the post of LDC, instead of from 30-10-1992 the date on which the Recruitment Rules 1992 came into force ignoring the fact that his reversion application dated 17-09-1993 was expressly conditional.

4.7 That being aggrieved the applicant moved this Hon'ble Tribunal against ordering his absorption from 03-04-1996 instead of from 30-10-1992 in terms of his application dated 17-09-1993, on the basis of which his reversion to the post of LDC was ordered. After four rounds of litigation between the applicant and the respondent authorities, this Hon'ble Tribunal vide judgment dated 22-08-2001 in O.A. No. 227 of 2000 ordered that the date of absorption of the applicant in the Regional Office could not be lowered down beyond 30-10-1992, that is, the date on which the recruitment Rules 1992 came into effect.

A copy of the Judgment dated 22-08-2001 passed by this Hon'ble Tribunal in O.A. No.227/2000 is annexed hereto and marked as ANNEXURE – F.

4.8 That the respondent Regional Office filed a writ petition in the Hon'ble Gauhati High Court being WP(C) No. 6734/2004 challenging the judgment dated 22-08-2001 of this Hon'ble Tribunal in O.A. No. 227 of 2000.

4.9 That two other LDCs of the Regional Office, Shillong, both of whom were far junior to the applicant in service but were made senior to the applicant by ordering the absorption of the applicant with effect from 03-04-1996, were also made parties, as petitioners in WP(C) No.6734/2004, which the Regional Office filed challenging the judgment dated 22-08-2001 of this Hon'ble Tribunal in O.A. No.227 of 2000.



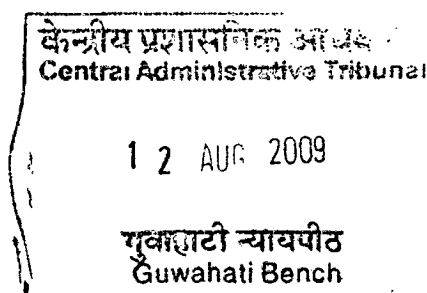
Susanta Kumar Mohanta

4.10 That the Hon'ble Gauhati High Court vide judgment and order dated 23-09-2005 dismissed the writ petition filed by the Regional Office and upheld the judgment dated 22-08-2001 passed by this Hon'ble Tribunal in O.A. No.227 of 2000. The Hon'ble High Court directed the Regional Office to re-fix the seniority of the applicant in the cadre of LDC by taking into account his past services rendered in his parent department.

A copy of the Judgment and Order dated 23-09-2005 passed by the Hon'ble Gauhati High Court in WP(C) No.6734/2004 is annexed hereto and marked as ANNEXURE - G.

4.11 That while dismissing the writ petition filed by the Regional Office, the Hon'ble Gauhati High Court in paragraph 20 of the Judgment dated 23-09-2005 in WP(C) No.6734/2004 observed as follows :

....."20. Before parting, we may also like to observe that the Union of India has filed the present writ petition on behalf of the writ petitioners No.3 (Smti J. Lyngkhai, LDC) and no.4(Sri M.P. Rimal, LDC) also, above whom the respondent No.1 (Sri S.K. Bhattacharjee) claims seniority, that too without filing power on their behalf. The Apex Court in S.I. Rooplal (supra) has observed that in the matter of dispute relating to the service condition of its employees, the state should only play a role of impartial employer in inter se disputes between its employees and if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to arrive at a correct decision and once a decision is rendered by a judicial forum, thereafter, the State should not further involve itself in litigation and the matter thereafter should be left to the parties concerned to agitate further if they so desire. It has further been observed that when a State, after the judicial forum delivers a judgment, files review petition, appeal etc, it gives an impression that it is espousing the cause of a particular group of employees



Susanta Kumar Bhattacharjee

against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, as observed above, no writ petition in fact been filed by the persons above whom the present respondent no.1 claims seniority and the present writ petition filed on their behalf cannot be treated as a writ petition on their behalf in the absence of any power executed by them in favour of the learned Central Government Counsel."

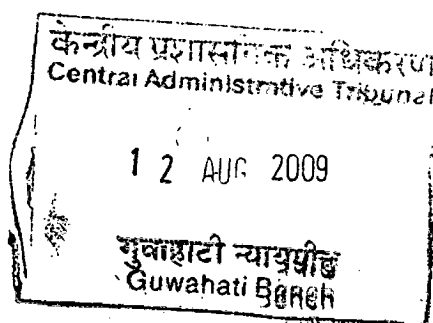
4.12 That in paragraph 19 of the judgment dated 23-09-2005, the Hon'ble High Court emphatically stated as follows –

".....we are of the view that the learned Tribunal has rightly set aside the orders dated 09-04-1999 as well as the decision of the Central Government communicated vide communication dated 11-06-2000 and directed the authorities to re-fix the inter-se seniority of Respondent No.1 (Sri S.K. Bhattacharjee) vis-à-vis the Writ petitioners No.3 and 4 by taking into account the past services rendered by the Respondent No.1 (Sri S.K. Bhattacharjee) in the parent department." (Underlinings added)

4.13 That the date of absorption of the applicant in the Regional Office, Shillong, was finally ordered as 30-10-1992 following the Hon'ble High Court's order dated 23-09-2005 in WP(C) No.6734/2004, as mentioned in the foregoing paragraphs.

A copy of the said order of absorption is annexed hereto and marked as ANNEXURE – H.

4.14 That as per the Recruitment Rules 1992 of the Regional Office, Shillong, an LDC who has put in 8 years of service is eligible for promotion to the post of UDC. Accordingly, the applicant became eligible for promotion to the post of UDC on 01-08-1988 reckoned from 01-08-1980 when the applicant entered service in his parent department. The applicant was granted ad-hoc promotion to



Susanta Kumar Bhattacharjee

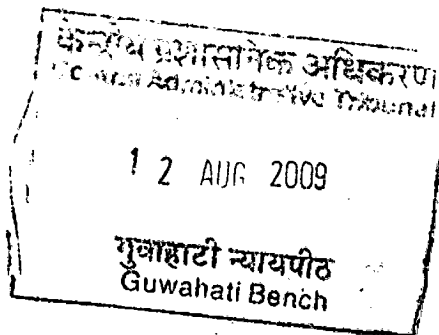
the post of UDC in the Regional Office, Shillong, in January 1992 when a post of UDC fell vacant as he was the senior most LDC then. The applicant was reverted to the post of LDC on 01-10-1993 only to facilitate his permanent absorption in the Regional Office, Shillong as asked for.

4.15 That after the absorption of the applicant in the Regional Office with effect from 30-10-1992 following the Hon'ble High Court's Judgment and Order dated 23-09-2005 in WP(C) No.6734/2004, the applicant was promoted to the post of UDC in the Regional Office, Shillong vide order dated 25-09-2006 with effect from 15-06-1997 without taking into account his past service in the parent department which was contrary to the Judgment and Order dated 23-09-2005 of the Hon'ble Court, according to which the seniority of the applicant in the cadre of LDC should be re-fixed by taking into account the past services rendered by the applicant in parent department.

A copy of the said order dated 25-09-2006 is annexed hereto and marked as ANNEXURE – I.

4.16 That as per the Judgment and Order dated 23-09-2005 passed by the Hon'ble High Court in WP(C) No.6734/2004, the past services of the applicant in his parent department ought to have been taken into account for computing his 8 years service as LDC, for the purposes of his promotion to the post of UDC.

4.17 That while ordering the applicant's promotion to the post of UDC with effect from 15-06-1997, his 8 years service as LDC has been computed from 15-06-1989 when he was appointed LDC on deputation, in the Regional Office, Shillong, thereby excluding and, wiping out his entire past service rendered by the applicant in his parent department which is outrightly contrary to the Hon'ble High Court's order dated 23-09-2005 and the Government of India, Ministry of Environment and Forests direction in their letter No. 4-1/89-RO(HQ) dated the 2nd August 1996.



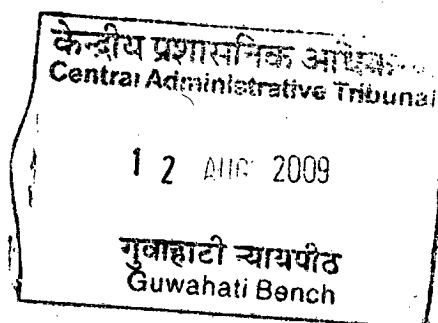
Susanto Kumar Bhattacharya

4.18 That the question whether the past services rendered by the applicant in his parent department should be taken into account in computing his 8 years service in the post of LDC has been finally settled by the Hon'ble High Court in paragraph 19 of their Judgment and order dated 23-09-2005 in WP (C) No.6734 of 2004 but has not been acted upon by the Regional Office, Shillong, in ordering his promotion to the post of UDC with effect from 15-06-1997 instead of from January 1992.

4.19 That the applicant served as LDC in his parent department from 01-08-1980 and after completion of 24 years of service with effect from 01-08-1980 the applicant was granted 2nd A.C.P. vide order No.13-22/2000/E-RONE/181-185, dated 15-04-2005.

4.20 That there is no dispute with regard to the fact that the applicant served as LDC in his parent department from 01-08-1980 (and therefore, he was granted 2nd A.C.P. with effect from August 2004 after completion of 24 years of service with effect from 01-08-1980). The applicant was appointed as LDC, on deputation, in the Regional Office, Shillong. Hence, his promotion to the post of UDC after taking into account his past services in his parent department fell due on 01-08-1988 but at that time there was no vacancy and the applicant was promoted to the post of UDC with effect from 04-01-1992 when the post of UDC fell vacant. The borrowing department also promoted the applicant to the post of UDC from January 1992 since he was the senior most LDC at that point of time.

4.21 That the applicant's promotion to the post of UDC in the Regional Office, Shillong, with effect from 15-06-1997 ordered by computing his 8 years service as LDC from 15-06-1989, has resulted in deferring his promotion by about five years and has materially amounted to confiscating the whole of his past service rendered in his parent department for granting promotion (except ACP) and is outrightly violative of the Judgment and order dated 23-09-2005 of the Hon'ble Court in WP (C) No. 6734 of 2004.



Swastika Kumar Bhattacharya

4.22 That meanwhile the applicant approached this Hon'ble Tribunal by way of filing O.A. No.52/2007 being aggrieved by the wrong fixation of the date of his promotion to the post of UDC on 15-06-1997 instead of January 1992 as well as non-consideration of his case for promotion to the next higher post of Assistant (Group – B).

4.23 That during pendency of the aforementioned O.A., the respondents promoted the applicant to the post of Assistant (Group – B) vide office order No.11-27/96/E-RONE/Vol-I/3209-13 dated 17-03-2008 but the effect thereof was given from 18-02-2008 instead of January 2002.

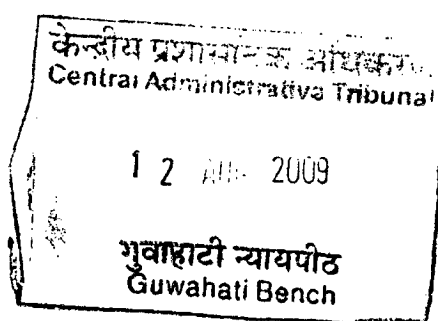
A copy of the aforesaid order dated 17-03-2008 is annexed hereto and marked as ANNEXURE – J.

4.24 That the applicant thereafter withdrew the said O.A. seeking to approach the respondent authorities for redressal of his grievance as his promotion to the post of Assistant (Group – B) ought to have been given effect from January 2002 instead of 2008. The said O.A. was allowed to be withdrawn by this Hon'ble Tribunal on 15-05-2008 and liberty was granted to approach the higher authorities and to workout his remedy by approaching the Hon'ble Tribunal in the event no redressal is granted to the applicant by the authorities.

A copy of the aforesaid order dated 15-05-2008 passed by this Hon'ble Tribunal in O.A. No.52/2007 is annexed hereto and marked as ANNEXURE – K.

4.25 That the applicant submitted a representation dated 16-07-2008 addressed to the respondent no.1 with a request to antedate his promotion to the post of UDC with effect from January 1992 by including his past services rendered in his parent department and thereafter to the post of Assistant (Group – B) with effect from January 2002 with benefit of pay fixation, increments etc. as admissible under the rules.

A copy of the aforesaid representation dated 16-7-08 is annexed hereto and marked as ANNEXURE – L.



Susanta Kumar Bhattacharya

4.26 That finding no response, the applicant submitted another representation dated 05-09-2008, followed by yet another one dated 24-11-2008. However, much to the dismay of the applicant, no reply was forthcoming from the respondents.

Copies of the aforesaid representation(s) dated 05-09-2008 and 24-11-2008 are annexed hereto and marked as ANNEXURE – M & N, respectively.

4.27 That the respondent no.2 vide communication dated 14-01-2009 forwarded the supplementary representation of the applicant dated 24-11-2008 to the respondent no.1.

A copy of the aforesaid communication dated 14-1-09 is annexed hereto and marked as ANNEXURE - O.

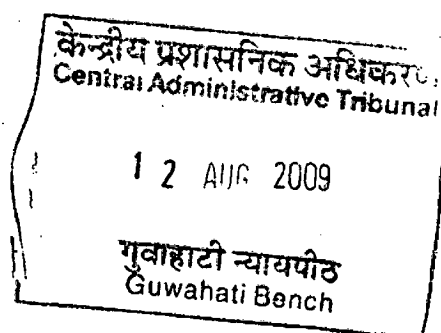
4.28 That as nothing was communicated to the applicant regarding the representation seeking correction of the date of promotion to the post of UDC and to the next higher post of Assistant (Group – B), the applicant submitted a reminder on 04-02-2009 requesting the respondent authority to take necessary action in the matter.

A copy of the said reminder dated 04-02-2009 is annexed hereto and marked as ANNEXURE – P.

4.29 That the respondent no.2 forwarded the aforesaid representation to the respondent no.1 vide communication dated 09-04-2009. Thereafter, nothing was communicated to the applicant.

A copy of the communication dated 09-04-2009 is annexed hereto and marked as ANNEXURE – Q.

4.30 That the exclusion of the past service of the applicant rendered by him in his parent department, has also led to deferring his promotion to the next higher



Susanta Kumar Bhattacharya

post of Assistant by about 6 (six) years from January 2002 to 18-02-2008, vide office order No.11-27/96/E-RONE/Vol-I/3209-13, dated 17-05-2008.

4.31 That the core issue in the case of the applicant is whether the past services rendered by him in his parent department shall count towards his service in his permanent absorption in the borrowing department for the purposes of his seniority. This core issue would be found to have been decisively settled in favour of the applicant from the following –

(1) The Ministry of Environment & Forests, Government of India, New Delhi, in their letter dated 2nd August 1996 to the Regional Office, Shillong, had directed that the “earlier service period of Shri S.K. Bhattacharjee, LDC, in his parent department should also be included while considering his case for promotion to the post of UDC”. The order is conclusive in itself.

(2) The Hon'ble Gauhati High Court in Paragraph 19 of their Judgment dated 23-09-2005 passed in WP (C) No.6734/2004 while dismissing the appeal of the Regional Office, Shillong, against the Judgment passed this Hon'ble Tribunal in favour of the applicant, has directed that his inter-se seniority in the cadre of LDCs vis-à-vis two other LDCs of the Regional Office, Shillong, should be fixed “by taking into account the past services rendered by the Respondent No.1 (the applicant herein) in the parent Department.” The Hon'ble High Court's direction is clear and unambiguous.

(3) The Hon'ble Supreme Court in the case of Sub-Inspector Rooplal v. Lt.Governor, reported in (2000) 1 SCC 644, held that a person should get the benefit of length of service rendered on regular basis in equivalent grade for the purpose of fixation of his seniority. Service rendered on equivalent post in parent department before absorption in deputation department, counts for seniority.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Susanta Kumar Bhattacharjee

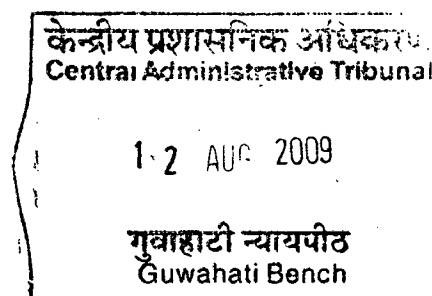
4.32 That viewed in the context of the letter dated 02-08-1996 of the Ministry of Environment & Forests of the Government of India, New Delhi, and the categorical direction of the Hon'ble Gauhati High Court in Paragraph 19 of their Judgment dated 23-09-2005 in WP (C) No. 6734 of 2004, the contentious issue of whether the past service of the applicant in his parent department should count towards his service on his permanent absorption in the borrowing department, has been finally settled by the Hon'ble High Court in favour of the applicant vide Judgment dated 23-09-2005.

4.33 That the Hon'ble High Court in Paragraph 19 of their Judgment dated 23-09-2005 has expressly set aside the orders dated 09-04-1999 as well as the "decision of the Central Government communicated vide communication dated 11-06-2000" and has directed the "authorities" to re-fix the inter-se seniority vis-à-vis the other two LDCs of the Regional Office, Shillong "by taking into account the past services" rendered by him in his "parent department". The decision is clear and unambiguous.

4.34 That the law in this regard is well settled which stipulates that an employee who is initially taken on deputation and absorbed later, his seniority will be fixed from the date he has been holding the post on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is earlier. This rule is available at P. 201-202 in Para 11 (IV) of Swamy's Complete Manual on Establishment and Administration.

4.35 That the applicant's absorption in the Regional Office, Shillong, was in public interest vide the Regional Office order dated 30-10-1991 which reads as follows:

"Shri S.K. Bhattacharjee, LDC on deputation to this office, is allowed to continue on deputation till finalisation of the recruitment rules and eventual absorption of said Shri S.K. Bhattacharjee in the services of this office as per Government of India, Ministry of Environment & Forests letter No.5/91



Suresh Kumar Bhattacharjee

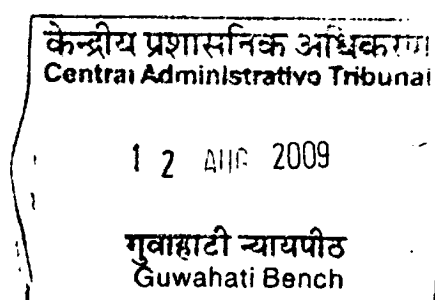
– RO(HQ) dated 2-5-1991. This order issues after taking into consideration the no-objection of his parent department as contained in that department's letter No.NEPA/PF(C)/1/86/Vol-I/1789 dated 14-6-1989."

4.36 That the Regional Office has counted the applicant's seniority in the cadre of LDC from 15-06-1989 i.e., the date on which the applicant was appointed, on deputation, to the post of LDC in the Regional Office which has amounted to confiscation of the whole of his 9 (nine) years past service rendered by him in his parent department from 01-08-1980 to 14-06-1989. This was in frontal violation of the various court orders in favour of the applicant and lastly the order dated 23-09-2005 passed by the Hon'ble Gauhati High Court in WP (C) No.6734/2004. In the said order the authorities were directed to re-fix the seniority of the applicant by taking into account the past services rendered by him in the parent department.

4.37 That the applicant's promotion to the post of UDC in the Regional Office, Shillong, was ordered with effect from 15-06-1997 without taking into account his past services in his parent department which was diametrically opposite and violative of the Hon'ble High Court's judgment and order dated 23-09-2005 passed in WP (C) No. 6734/2004.

4.38 That the Regional Office, Shillong has counted the applicant's seniority in the cadre of LDC from 15-06-1989, i.e., the date on which he was appointed, on deputation, to the post of LDC, by leaving out of account, the whole of his 9 year long service rendered by him in his parent department.

4.39 That in terms of the Hon'ble High Court's ruling in para 19 of the Judgment and order dated 23-09-2005 in WP (C) No.6734/2004, the fixation of the applicant's seniority in the cadre of LDC of the Regional Office with effect from 15-06-1989 by leaving out of account his 9 year long past service in his parent department from 01-08-1980 to 14-06-1989, is patently incorrect. The



Susanta Kumar Bhattacharya

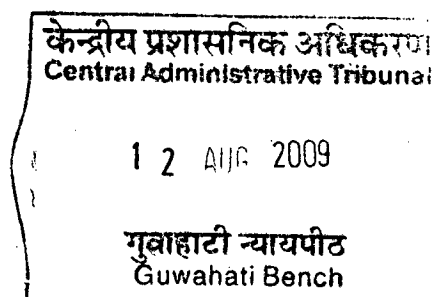
exclusion of the past service rendered by the applicant in his parent department is not only violative of the Hon'ble High Court's judgment but also wholly contrary, to the Ministry's letter dated 02-08-1996.

4.40 That as per paras 19 and 21 of the Judgment and order dated 23-09-2005 of the Hon'ble High Court in WP (C) No.6734/2004, the past service of the applicant in his parent department ought to have been taken into account in computing his 8 years service as LDC for the purposes of his promotion to the post of UDC but this was not done.

4.41 That the rule as originally laid down by the Ministry of Personnel in their OM dated 29-05-1986 regarding regulation of seniority of person who is initially on deputation and subsequently absorbed in the borrowing department, was amended and is no longer in force. The existing rule in this regard is contained in Para 11 (IV) in p – 201-202 of Swamy's Complete Manual on Establishment and Administration.

4.42 That the past service rendered by the applicant in his parent department from 01-08-1980 was taken into account in computing his 24 years' service while granting him the 2nd A.C.P. No differential yardstick could have been followed in computing his eligible years of service while granting him promotion to the post of UDC from January 1992, when the post of UDC fell vacant and he was actually promoted to the post of UDC (by duly constituted Selection Board/DPC), instead of June 1997 as well as to the post of Assistant (Group – B) which fell due from 2002, as per rule, instead of February 2008.

4.43 That the applicant has repeatedly requested the respondent authority to consider his grievance relating to antedating his promotion to the post of UDC and to the next higher post of Assistant (Group – B grade) but the said authority has failed to look into the matter with the sincerity it deserves especially in view of the hope expressed by this Hon'ble Tribunal in its order dated 15-05-2008. Hence, the applicant has approached this Hon'ble Tribunal praying for a suitable



Susanta Kumar Bhattacharya

direction towards the respondents to antedate his promotion to the posts in question.

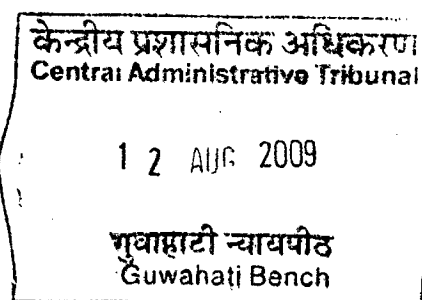
5. Grounds for relief with legal provisions:

5.1 For that the case of the applicant for promotion to the post of UDC ought to have been considered with effect from January 1992 instead of June 1997 by the respondents. Similarly, his case for promotion to the next higher post of Assistant ought to have been considered with effect from January 2002 instead of February 2008. The failure on the part of the respondents, in this regard, has violated the fundamental and other legal rights of the applicant.

5.2 For that the law in this regard is well settled which stipulates that an employee who is initially taken on deputation and absorbed later, his seniority will be fixed from the date he has been holding the post on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is earlier. This rule is available at P. 201-202 in Para 11 (IV) of Swamy's Complete Manual on Establishment and Administration.

5.3 For that the respondents cannot ignore the past service of the applicant with effect from 01-08-1980 to 15-06-1989 rendered as LDC for the purpose of fulfilling the requisite number of years for promotion to the post of UDC in view of the law laid down by the Apex Court in the case of Sub-Inspector Rooplal v. Lt. Governor reported in (2000) 1 SCC 644, wherein the Apex Court has held that a person should get the benefit of length of service rendered on regular basis in equivalent grade for the purpose of fixation of his seniority. Seniority rendered on equivalent post in parent department before absorption in deputation department, counts for seniority. Besides, the Ministry of Environment & Forests, Government of India, New Delhi, in their letter dated 2nd August 1996 to the Regional Office, Shillong, had directed that the "earlier service" period of Shri S.K. Bhattacharjee,

Sudanta Kumar Bhattacharjee



LDC, in his parent department should also be included while considering his case for promotion to the post of UDC". Moreover, the Hon'ble Gauhati High Court in Paragraph 19 of their Judgment dated 23-09-2005 passed in WP (C) No.6734/2004 while dismissing the appeal of the Regional Office, Shillong, against the Judgment passed by this Hon'ble Tribunal in favour of the applicant, has directed that his inter-se seniority in the cadre of LDCs vis-à-vis two other LDCs of the Regional Office, Shillong, should be fixed "by taking into account the past services rendered by the Respondent No.1 (the applicant herein) in the parent Department." The Hon'ble High Court's direction is clear and unambiguous.

This leads to the inevitable conclusion that the applicant is entitled to the benefit of service rendered by him on regular basis with effect from 01-08-1980. In other words, his seniority in the post of LDC is to be fixed after counting his service in his parent department from 01-08-1980 onwards. Therefore, the applicant is eligible for promotion to the post of UDC with effect from January 1992 and to the next higher post of Assistant with effect from January 2002

5.4 For that the respondents never disputed the correctness or otherwise of the orders dated 05-01-1993 (issued by the MoEF, RO) and 05-07-1996 (issued by the NEPA) whereby the applicant was promoted as UDC with effect from January 1992, therefore they cannot in legitimate exercise of power reject the claim of the applicant for promotion to the post of UDC with effect from January 1992 instead of 15-06-1997 and further promotion to the next higher post of Assistant with effect from January 2002.

5.5 For that the respondents ought to have considered the case of the applicant for promotion to the post of UDC with effect from January 1992 in terms of the recommendations of the Selection Committee as revealed from the office order(s) dated 05-01-1993 as well as 05-07-1996 wherein it has been clarified that the applicant has already been promoted as UDC with effect from January 1992. Therefore, the respondents cannot, now, refuse to promote him to the post

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Susanta Kumar Bhattacharya

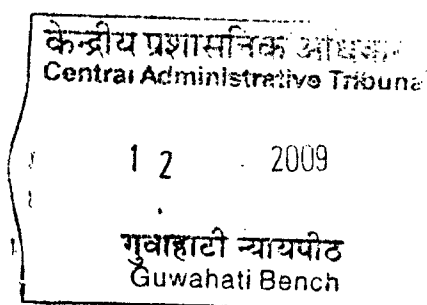
of UDC and further promotion to the next higher post of Assistant, with effect from the said date in the past.

5.6 For that the Regional Office has counted the applicant's seniority in the cadre of LDC from 15-06-1989 i.e., the date on which the applicant was appointed, on deputation, to the post of LDC in the Regional Office which has amounted to confiscation of the whole of his 9 (nine) years past service rendered by him in his parent department from 01-08-1980 to 14-06-1989. This was in frontal violation of the various court orders in favour of the applicant and lastly the order dated 23-09-2005 passed by the Hon'ble Gauhati High Court in WP (C) No.6734/2004. In the said order the authorities were directed to re-fix the seniority of the applicant by taking into account the past services rendered by him in the parent department.

5.7 For that the respondents have failed to dispose of the representation filed by the applicant for antedating his promotion to the post of UDC as well as to the next higher post of Assistant (Group – B grade) although in terms of Govt. of India, DoPT O.M. No.28034/6/2002-Estt (A), dated 11-01-2002, representation made by an employee should be disposed of within a maximum period of six weeks.

5.8 For that the impugned action of the respondents reveals non-application of mind to the attending facts and circumstances of the case and a lackadaisical approach to the grievance raised by the applicant.

5.9 For that the applicant has been made to suffer for no fault of his. Due to administrative failure, the applicant was deprived of his promotion to the post of UDC with effect from January 1992 and to the next higher post of Assistant with effect from January 2002. Had the respondents acted in accordance with law and considered the case of the applicant for promotion to the posts in question on and from the date when it fell due, then in that case the applicant would have got his promotional benefits with effect from a much earlier date, viz, January 1992



Susanta Kumar Mahanta

(for the post of UDC) and January 2002 (for the post of Assistant) respectively. In this connection, the Apex Court in the case of K.V. Jankiraman, reported in (1991) 4 SCC 109, has made it clear that arrear salary cannot be denied if the employee is kept out of work for no fault on his part. The Apex Court in the abovementioned case held as follows:

"The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him"

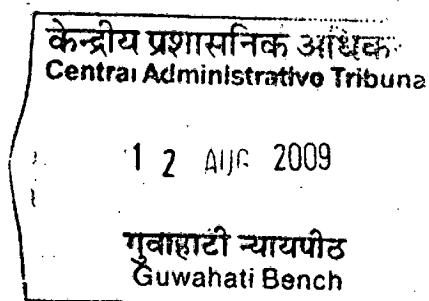
Therefore, the respondents, in all fairness, ought to have given the benefit of promotion to the post of UDC with effect from January 1992 instead of 15-06-1997 and for the post of Assistant January 2002 instead of 2008, and the failure in this regard has violated the fundamental and other legal rights of the applicant.

6. Details of the remedies exhausted:-

The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

7. Matters not previously filed or pending with any other court:-

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter, in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.



Susanta Kumar Bhattacharya

8. Relief(s) sought:-

In the premises aforesaid, it is most respectfully prayed that Your Lordships may be graciously pleased to admit this application, issue necessary notices, call for the records of the case and after hearing the cause/causes being shown and upon perusal of the records, Your Lordships may direct the respondents to antedate the promotion granted to the applicant in respect of the post of UDC with effect from January 1992 in place of June 1997 and the post of Assistant (Group - B grade) with effect from January 2002 in place of February 2008 with all consequential benefits and/or be pleased to pass any such further or other order/orders as Your Lordships may deem fit and proper.

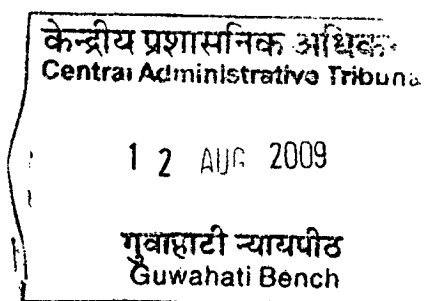
And for this act of kindness, the humble applicant as in dutybound, shall ever pray.

9. Interim order, if any prayed for:- Nil

10. Particulars of Bank Draft/ Postal Order:-

I.P.O. No. 412529 dated 16.2.2009 for Rs.50.00.

11. List of enclosures:- As stated in the index.



Susanta Kumar Bhattacharya

VERIFICATION.

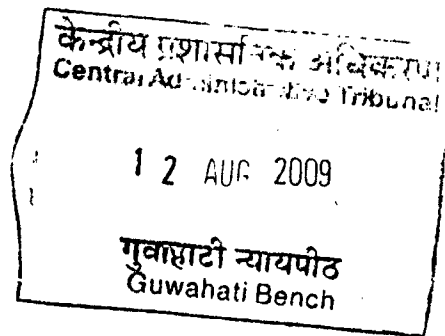
I, Shri Susanta Kumar Bhattacharjee, son of Late S.B. Bhattacharjee, aged about 53 years, working as Assistant in the office of the Chief Conservator of Forests (Central), Ministry of Environment & Forests, Regional Office (NER), Upland Road, Shillong – 3, Meghalaya, do hereby verify that the contents of paragraphs 2,3,4,6 and 7 are true to my personal knowledge and paragraph 5 believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this the 11th day of August 2009 at Guwahati.

Date :- 11.08.09

Place :- Guwahati

Susanta Kumar Bhattacharjee
Signature





- 21 -

Government of India
Ministry of Home Affairs
North Eastern Police Academy
Barapani : 793 103

No. NEPA/PF(C)/1/86/VOL.I/1789

Dated 14/8/1989

'NO OBJECTION CERTIFICATE'

Certified that Shri S K Bhattacharjee, LDC, NEPA, has been serving continuously for 9 (Nine) years as LDC (Since 1st August, 1980) in the Central Government Establishment in a regular line. He has been released from this establishment w.e.f. 14-6-89 (A.N.) with the direction to report for duty in the office of the Chief Conservator of Forests (Central), Regional Office, Shillong-4, as LDC on deputation as per their letter No. 4-1/89-RO(HQ), dated 30-5-89.

This office has no objection for placing his services in the department of CCF (Central), Regional Office, Shillong,

(1) Beyond three years and final absorption in the C.C.F. (Central), Shillong, office in any capacity.

(2) To promote him in the higher grade.

(R P HANDA)
Asstt Director (I) &
Head of Office.

North Eastern Police Academy
Barapani

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Certified to be true Copy

Anwarul Karim
Advocate



भारत सरकार ✓ 22 -
Government of India
 पर्यावरण एवं वन मंत्रालय
Ministry of Environment & Forests
 पूर्वोत्तर क्षेत्रीय कार्यालय
North Eastern Regional Office
 Upland Road, Laitumkhrah
 Shillong - 793 003

ANNEXURE- B

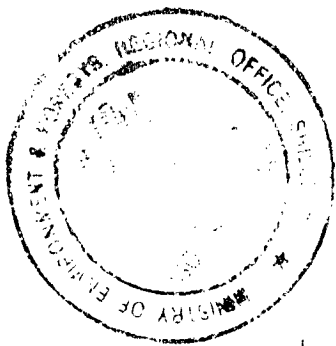
दूरभाष/Tele - (0364) 227673
 (0364) 227929
 (0364) 227565
 (0364) 225723
 फैक्स/Fax (0364) 227673
 email : rccfner@dte.vsnl.net.in

Date : 21-7-04

11-11-11 / 1077 (A)

To whom it may concern,

Shri S K Bhattacharjee, has been working continuously as a regular LDC in the Central Govt Establishment since 1st August, 1980. He is a sincere, punctual, disciplined, obedient, polite. He has been looking after Technical/NEC and other official works as & when necessary. His performance in the office work is very satisfactory. He was granted 'Proforma Promotion' to UDC during 1992, (Order No. NEPA/PF(C)/1/86/Vol-1/2133-36, dated 6-7-1995). He was also promoted to UDC (on deputation) by this MOEF, R.O. conducting DPC by the Selection Board during 1992. (Order No. 6-25-47/92/E-RONE, dated 5-1-93). Nothing is known against him. He is always respectful to his superiors.



[Signature]
 (IMTIENLA AO)
 DEPUTY CONSERVATOR OF FORESTS (C)

[Signature]
 युक्त निदेशक / Joint Director
 पर्यावरण एवं वन मंत्रालय
 Ministry of Environment and Forests
 क्षेत्रीय कार्यालय, शिलांग / Regional Office, Shillong

केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal
 12 AUG 2009
 गुवाहाटी न्यायपीठ
 Guwahati Bench

Certified to be true Copy

[Signature]
 Advocate

- 23 -

B

(True Copy)

No.11-27-96/RONE/1099(A)

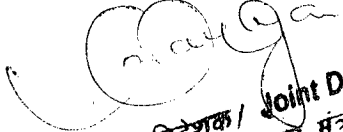
Date: 21-7-04.

To whom it may concern.

Shri S K Bhattacharjee, has been working continuously as a regular LDC in the Central Govt. Establishment since 1st August, 1980. He is a sincere, punctual, disciplined, obedient, polite. He has been looking after Technical/NEC and other official works as & when necessary. His performance in the office work is very satisfactory. He was granted 'Proforma Promotion' to UDC during 1992. (Order No.NEPA/PF(C)/1/86/VOL-1/2133-36, dated 6-7-1996). He was also promoted to UDC (on deputation) by this MOEF, R.O. conducting DPC by the Selection Board during 1992 (Order No.6-25-47/92/E-RONE, dated 5-1-93). Nothing is known against him. He is always respectful to his superiors.

Sd/-
Deputy Conservator of Forests(C)

Attested:


युक्त निदेशक / Joint Director
पर्यावरण एवं वन मंत्रालय
Ministry of Environment and Forests
क्षेत्रीय कार्यालय, शिलांग Regional Office, Shillong

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
12 AUG 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

- 24 -



--22--
No. RO-NE/A/PF/
GOVERNMENT OF INDIA

MINISTRY OF ENVIRONMENT & FORESTS
NORTH EASTERN REGIONAL OFFICE

Annexure - *[Signature]*
Telegram : PARYAVARAN
Telephone : (O) 27673, 27929, 27565

UPLAND ROAD, LAITUMKHAH
SHILLONG - 793 003

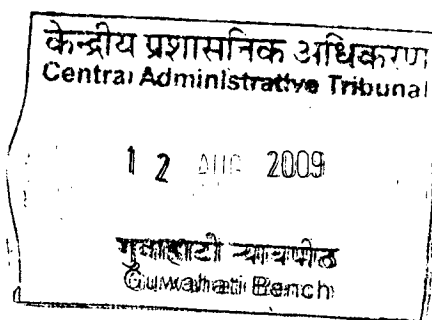
SHRI K RAJASEKHAR, IFS,
CHIEF CONSERVATOR OF FORESTS (CENTRAL).

Dated the 30-10-91.

OFFICE ORDER

Shri S K Bhattacharjee, IDC, on deputation to this office is allowed to continue on deputation till finalisation of the recruitment rules and eventual absorption of said Shri S K Bhattacharjee, in the services of this office as per Govt of India, Ministry of Environment & Forests, letter No. 3-5/91-RO(HQ), dated 2-5-91. This order issues after taking into consideration the No Objection of his parent department as contained in that department's letter No. NEPA/PF(C)/1/86/VOL.I/1789, dated 14-6-89.

[Signature]
(K RAJASEKHAR)
CHIEF CONSERVATOR OF FORESTS (C)



Certified to be true Copy

[Signature]
Advocate

- 25 -



(True Copy)

Dated Shillong,
The 17/9/93.

The Chief Conservator of Forests(Central),
Govt of India, Min of Env & Forests,
Regional Office(NER), Upland Road,
Laitumkhrah, Shillong-3.

(Through Proper Channel)

Sub: Application for reversion to the post of LDC for fecilitating
permanent absorption of Shri S K Bhattacharjee, presently UDC, to
the post of LDC, in the Regional Office, Min of Env & Forests, Govt
of India, Shillong.

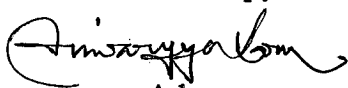
Respected Sir,

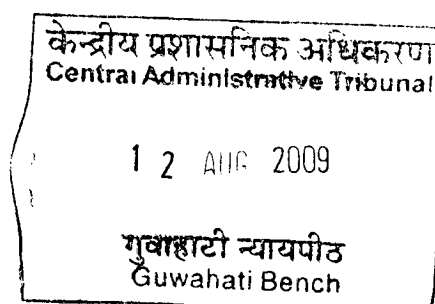
For quite some time past, I had been requesting for my
permanent absorption as LDC in your Regional Office. My representation
was supported by No Objection Certificate to my absorption to your
Regional Office, issued by my parent department, the North Eastern Police
Academy, Ministry of Home Affairs, Govt of India, Barapani (Meghalaya).

2. Keeping in view the outstanding track record of my service in your
Regional Office on deputation, now running 5(five) years, you
were pleased to recommend my case to the Ministry for my
permanent absorption in your Regional Office. In this connection a
reference is invited to your office order No.RO-NE/A/PF/749(a),
dated 30-10-1991, in which it was ordered that I may be retained
on deputation till my eventual absorption after finalisation of
Recruitment Rules.
3. Recruitment Rules-1992, issued by the Govt of India provides for
absorption of deputationist only in the LDC post provided the
parent department of the deputationist issues NOC to his
absorption as stated in para 2 above. My parent deptt has issued the
necessary NOC long back.
4. Since I am at present working as UDC and since absorption is
permissible only in the post of LDC, I am given to understand that

- 2 -

Certified to be true Copy


Advocate




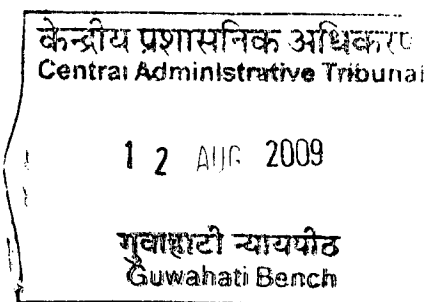
my absorption in the LDC post of this Regional Office would be done if I seek reversion to the LDC post since there is no provision in the R/R for absorption in the UDC post.

5. It is mentioned here that I was working as LDC on deputation in your Regional Office since June 1989 till my temporary promotion to the post of UDC in your office in 1992. I am thus the seniormost LDC in your R.O. when considered from my joining your Regional Office. I am also a Staff Selection Commission's qualified candidate for LD post.
6. One post of LDC in your R.O. is still lying vacant against which I may be absorbed w.e.f. the date when the Recruitment Rules-1992 came into effect in consideration of my seniority in the LDC Cadre and uninterrupted service in that post.
7. If my absorption in the LDC post of your Regional Office with effect from the date of coming into force of the Recruitment Rules-1992 is ordered, this application may kindly be treated as my willingness for reversion to the LDC post in order to facilitate my permanent absorption in your Regional Office for which I am representing for quite long.

With high regards,

Yours faithfully,


(S K Bhattacharjee)
UDC 17/9/93.



Ministry of Environment & Forests
Regional Office (Headquarters)

Paryavaran Bhawan,
CGO Complex, Lodi Road,
New Delhi-110 003

Dated the 2nd August, 1996

No. : 4-1/89-RO(HQ)

To

The Chief Conservator of Forests(C),
Regional Office(NEZ),
Upland Road, Latuumkhras,
Shillong.
Fax No. : 0364227673

Subject :- DPC for filling up the post of UDC on deputation.

Sir,

I am directed to refer to your fax message No. 13-7/94/E-RO-NE/1001 dated 30.7.96 on the subject cited above and to say that the earlier service period of shri S.K. Bhattacharjee, LDC, in his parent department, should also be included while considering his case for promotion to the post of UDC.

Yours faithfully,

(S.K. SEHRAWAT)

ASSTT. INSPECTOR GENERAL OF FORESTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Certified to be true Copy

[Signature]
Advocate

Original Application No. 227 of 2000.

ANNEXURE- F

Date of Order : This is the 22nd Day of August, 2001.

HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE CHAIRMAN

HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER

Shri Susanta Kr. Bhattacharjee
Lower Division Clerk
Ministry of Environment & Forests
Government of India
Regional Office (NER)
Shillong-3, Meghalaya.

. . . Applicant.

By Mr.R.Dutta, Mr.K.Paul & Mrs.G.Dutta.

- Vs -

1. Union of India

Represented by the Secretary
to the Government of India
Ministry of Environment & Forest
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi - 110 003.

2. The Chief Conservator of Forests

Ministry of Environment & Forests
Regional Office (NER)
Upland Road, Jaitumkhrah
Shillong - 793 003.

3. Smt. J. Lyngkhoh

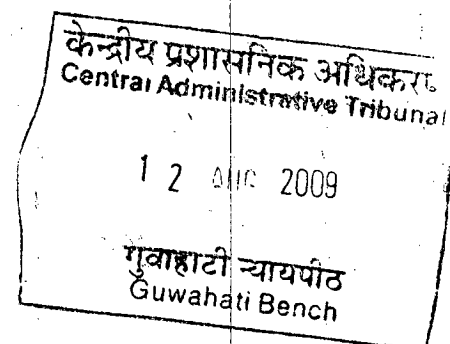
LDC, Ministry of Environment & Forest
Govt. of India, Regional Office (NER)
Shillong-3, Meghalaya.

4. Shri M.P. Rimal

LDC, Ministry of Environment & Forest
Government of India, Regional Office (NER)
Shillong-3, Meghalaya.

. . . Respondents.

By Mr.B.C. Patnak, Addl.C.G.S.C.,
Respondent Nos.3 & 4 in Person.



ORDER

CHOWDHURY J. (V.C.) :

This application under section 19 of the Administrative Tribunal Act, 1985 has arisen and is directed against the order dated 9.4.99 and the order conveyed vide communication dated 11.8.2000 both passed by the Chief Conservator of Forest (Central) i.e. Respondent No.2. This is the route of the litigative

Contd.. 2

Certified to be true Copy

Singapore
Advocate

Attended
to
Private Secretary
Government of India
Min. of Environment & Forests
Regional Office N.E. Regn.
Shillong-793003

battle for resolving the service condition of the applicant who initially came on deputation.

2. The applicant was first appointed as Lower Division Clerk with effect from 16.1.86 in the North Eastern Police Academy, Borapani (Umsoo) under the Ministry of Home Affairs. His services were lent to the Regional Office of the Ministry of Environment and Forest at Shillong under the Chief Conservator of Forest and he was posted as LDC on deputation with effect from 15.6.89 in the department. The period of deputation was extended from time to time totalling for five years or more. During that period he was ordered to officiate as UDC. The applicant sought for permanent absorption in the borrowing department. He was advised to intimate his willingness for absorption as LDC and the applicant consented for absorption as LDC. The parent department initially showed its willingness to spare the applicant for permanent absorption, but later on, it turned around and asked the respondent authority to take necessary action to repatriate the applicant immediately after the expiry of his deputation period on 14.6.94 vide communication dated 11.11.93.

3. The applicant moved this Tribunal by filing an Original Application which was numbered as O.A.43 of 1994. By order dated 3.10.94 the said O.A. was disposed of leaving it to the respondents to sympathetically consider the requests of the applicant for absorption. After disposal of the aforementioned O.A., the parent department i.e. North Eastern Police Academy issued a No Objection Certificate for permanent absorption of the applicant in the borrowing department vide memo dated 29.12.94 in response to the letter of the Deputy Conservator of Forest (C), Ministry of Environment & Forest dated 1.12.94. By order dated 13.5.95 the applicant was relieved by the

Contd.. 3

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

respondent directing him to report to duty to the Director, North Eastern Police Academy immediately. The applicant assailed the same by filing another O.A. in this Tribunal which was numbered as 68 of 1995. By an interim order dated 22.2.95 the Tribunal left it open to the applicant to join in his parent department without prejudice to his claim for absorption in the Regional Office of the Environment and Forests. The Tribunal by the judgment and order dated 18.10.95 disposed the ^{said} O.A. directing the respondents to consider the absorption of the applicant in the Environment and Forest Department in the light of the discussion made in the said O.A.. The judgment of the Tribunal in the said O.A. was detailed and explicit wherein it also expressed its unhappiness of the casual approach to the matter on the part of the respondents.

The respondents preferred a Misc. Application No. 22 of 1996 before this Tribunal wherein it sought for extension of time for compliance of the order of O.A. 68/95. By order dated 22.2.96 the Tribunal allowed the application and extended time to the respondents accordingly. The applicant was finally absorbed against the vacant post of Lower Division Clerk (Hindi Typist) in the Regional Office of Shillong in the scale of Rs. 950-20-1150-EB-25-1500/- plus DA & other allowances as admissible to Central Government Employees with effect from 20.3.96. Subsequently by order dated 17.4.96 the above order was modified to the extent that the order would be operative from the date of joining his duty. The applicant again moved this Tribunal assailing the prospective date of absorption and sought for giving effect to the earlier direction for giving him retrospective absorption.

Contd.. 4

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

The Tribunal by the order dated 21.1.99 disposed the D.A. 128 of 1996 with a direction on the respondents to consider the case of the applicant with retrospective effect.

5. Consequent upon the order of the Tribunal, the respondent no.2 The Chief Conservator of Forest (Central) passed the order dated 9.4.99, which is impugned in this proceeding. In the said order the respondents mentioned about the appointment of respondent Nos.3 & 4 in the Regional Office. In the said order it was stated that the date of absorption of the applicant as per the order dated 20.3.96 was with effect from 20.3.96. In the Grade of LDC, there were two persons working as on 20.3.96. one was Ms. J. Lyngkholi i.e. respondent no.3, who joined on regular basis on 4.5.93 on the basis of examination conducted by the Staff Selection Commission in 1991. The other post was filled up by respondent no.4 Shri M.P.Rimal on 3.4.95 by allotment from the Staff Selection Commission. With 20.3.96 as the date of absorption, the applicant is placed below both of them. The respondents also mentioned about the policy decision reflected in the memo dated 29.5.86. In response to the claim of the applicant that his absorption was to be treated from the date of deputation, the Chief Conservator of Forest held that the applicant was accommodated in the Office not in the public interest, but in his own interest, therefore, he could not be absorbed from the date of deputation. In the end, however, the Chief Conservator of Forest held that the order of absorption of the applicant was to be determined on and from 13.2.95, which was the order of repatriation to the parent department. The respondent no.3 who joined on 4.5.93 was in that grade on 13.2.95 and the seniority of the applicant was accordingly determined below the respondent no.3 and above the respondent no.4. As regards

Contd.. 5

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

the prayer of the applicant for promotion to UDC, it was ordered that the said post would be filled up in due course after processing by the DPC, but on the basis of seniority and even though on adhoc promotion. The case of the applicant could not be considered for giving adhoc promotion, when senior eligible person was already there. The applicant preferred an appeal against the aforesaid order, but the Chief Conservator of Forests (Central), Ministry of Environment & Forests turned down his appeal and held that the seniority of the applicant would be counted from the date of his absorption i.e. 3.4.96 and the seniority was accordingly modified placing the applicant junior to both respondent nos. 3 & 4. By the appellate order the applicant's date of absorption was fixed on 3.4.96. Hence, this application assailing the legitimacy and validity of the aforesaid order.

6. All the respondents contested the case and denied and disputed the claim of the applicant and submitted their respective written statements. Shri K. Paul, learned counsel appearing for the applicant in assailing the impugned order assailed by the respondents contended that the respondents fall into obvious error in ^{its} decision making process in determining his date of absorption and in deciding his seniority. Mr. Paul contended that it was the respondents who borrowed the services of the applicant in public interest. The applicant was brought in to the borrowed department on transfer by deputation where he was finally absorbed permanently. According to Mr. Paul, the deputation of the applicant ended in permanent absorption by way of transfer. Transfer ^{not} could, under any circumstance, erode his past services and wipe out the services ~~conferred~~ that he rendered prior to absorption. Mr. Paul, in support of his contention, referred to the factual matrix of the case as well as the decision of the Supreme Court rendered in

Contd.. 6

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Sub-Inspector Roop Lal & Another Vs. - Lt. Governor
Delhi & Others reported in (2000) 1 SCC 644.

7. Opposing the application, on behalf of respondent nos. 1 & 2 Mr. B.C. Pathak, Addl. C.G.S.C. submitted that the respondents, on considering all the material aspects of the matter and on balancing the respective claims of the parties, passed the impugned orders bona fide. Mr. Pathak, referring to the Office memo no. 20020/7/80-ESTT(D) dated 29.5.86, submitted that seniority in the Grade in which a person is absorbed normally be counted from the date of absorption. It could also date back in the case when the Officer was holding the same post of equivalent Grade in his borrowed department, but such benefit would only be given in the case where such transfers were made strictly in public interest. If, it was other than public interest, benefit of the past services would not be taken into account.

8. Ms. J. Lingkhoh and Shri M.P. Rimal, respondent nos. 3 & 4 respectively appeared in person and ably contested their case. Both the respondents pointed that they were regularly appointed in the department as per law and it was contended that both of them joined in the department in the Grade of LDC prior to date of absorption of the applicant. The terms of deputation was ^{put to an end} snapped when the applicant was repatriated to his parent department. In this circumstance, the respondent authority rightly determined the date of absorption of the applicant vis-a-vis the respondent nos. 3 & 4.

9. By the order of the appellate authority the date of absorption of the applicant was reckoned from 3.4.96. The rationality and legitimacy of the order is to be tested for ascertaining the claims in the Equality Clause defined in the Article 14 and 16 of the Constitution. There was no denying the fact that the applicant

Contd..7

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

was posted as Lower Division Clerk under the respondent on deputation basis with effect from 15.6.89. Prior to that he was working as LDC in a substantive post with effect from 16.1.86. There is no dispute that the parent department issued No Objection Certificate on 14.6.89 for placing the services of the applicant at the disposal of the department of the Chief Conservator of Forest, Shillong wherein it also expressed his concern for final absorption in the Office.

Transf.
in
Public
Interest

10. From the materials on records including the statement of facts mentioned in the judgment of the Tribunal in O.A.68/95, it appears that the office order was issued on 30.10.91 which contained the following observations.

"Shri S.K.Bhattacharjee, LDC on deputation to this Office is allowed to continue on deputation till finalisation of the recruitment rules and eventual absorption of said Shri S.K.Bhattacharjee in the services of this office as per Govt. of India, Ministry of Environment & Forests, letter No.5/91-RO(HQ) Dt.02.05.1991. This order issues after taking into consideration the No Objection of his parent department as contained in that department's letter No.NEPA/PF(C)/1/86/VOL-I/1789 Dated 14.06.1989 (emphasis laid)."

Transf.
in
P.I.



Entry in column No.11 of the Recruitment Rules, pertains to LDC in the schedule provides for 75% by direct recruitment failing which by transfer on deputation/transfer and 25% by promotion from amongst Group 'D' employees. The applicant also fulfilled the eligibility criteria prescribed in Column No.8. On coming into force of the Recruitment Rules in October, 92 there was no impediment on the part of the respondents to absorb the applicant and act as per the decision of the 14.12.92. All these aspects were duly dealt with in the decision of the Tribunal mentioned above.

11. Finally the applicant was also absorbed vide order dated 20.3.96 with effect from 20.3.96, which was also altered latter to the date of joining vide order

dated 17.4.96, which was later on fixed on 6.4.96. No reasons are discernible for ignoring the past services of the applicant. There is no justifiable reason for ignoring the past services of the applicant. Under the known service jurisprudence transfer of the employees cannot wipe out the past service he rendered in the Original post. It is also well established that where the impugned orders unfairly overlooked the past services of the applicant, the same requires to be rectified. The law is interpreted aptly, by the Supreme Court in K. Madhavan -vs- Union of India reported in (1987) 4 SCC 566 relying on R.S. Makashi - vs - I.M. Memon (1982) 1 SCC 379 and Wing Commander J. Kumar - vs - Union of India (1982) 2 SCC 116.

"It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre."

In K. Anjaiah v. K. Chandraiah (1998) 3 SCC 218 this Court held: (SCC Headnote)

"It is a just and wholesome principle commonly applied to persons coming from different sources and drafted to serve a new service to count their previous length of service for determining their ranking in the new service cadre."

The Government of India, by memo dated 29.5.86 issued the guidelines to determine the seniority of persons absorbed on being deputation. As per the guidelines the service in the parent department is also to be computed.

Contd.. 9

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

The applicant was holding a substantive post of Lower Division Clerk in the parent department prior to his transfer on deputation. The nature of duties and the responsibilities and powers exercised by the applicant in the two posts both in the parent department and in the deputation post are of similar nature. He possessed ^{the} necessary qualification to hold the post of LDC both in the parent department as well as in the deputation post. The services he rendered in the parent department, under no circumstances, could have been ignored.

12. In the context of the 1986 Office memo and the consistent view of the Supreme Court rendered in R.S. Makashi, Wing Commander J. Kumar and Madhavan and Sub-Inspector Roop Lal vs. Lt. Governor (2000) 1 SCC 644, ~~we are of the~~ view that the applicant is entitled to count the services rendered by him for the purpose of counting his seniority in the Office of the Chief Conservator of Forest, Ministry Environment & Forest, Regional Office.

The findings of the respondents in its orders dated 9.4.99 and 11.8.2000 to the effect that the applicant was absorbed by the respondents not in public interest, but in the interest of the applicant on the ground of sympathy ~~is not sustainable~~. The applicant was legitimately absorbed in the department by the respondents under the rules. No question of compassion and commiseration did arise in the matter of absorption. Therefore, there cannot be any justification for not computing the seniority of the applicant as LDC in the Office below the respondent Nos. 3 & 4. The date of absorption will have to ^{be} compute in terms of the Office Order dated 30.10.91 which indicated its nexus with the framing of the recruitment rules and in the case recruitment rules came into force

Contd.. 10

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

on 30.10.92, the applicant's absorption, in this circumstance, ^{lowered down} cannot be downgraded beyond 30.10.92. In the inter-seniority, therefore, the applicant would march over the respondent nos. 3 & 4 Ms. J. Lingkhoh & Shri M. P. Rimal. The impugned orders dated 9.4.99 and 11.8.2000 are set aside and the respondents are directed to refix the inter-seniority of the applicant vis-a-vis respondent nos. 3 & 4 on the basis of the observations made above.

The application is accordingly allowed.

There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Copy
प्रमाणित प्रतिलिपि

Section Officer (J)

प्रमुख अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati

गुवाहाटी न्यायपीठ, गुवाहाटी

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

তারিখ Date of application for this copy.	সংগ্রহ করণের তারিখ Date fixed for notifying the requisite number of stamps and folios.	দেখানোর তারিখ Date of delivery of the requisite stamps and folios.	প্রতিলিপি তৈয়ারি Date on which the copy was ready for delivery.	তারিখ Date of making over the copy to the applicant.
২৭/০৭/২০০৫	২৭/০৭/২০০৫	২৭/০৭/২০০৫	০৪/১০/২০০৫	০৪/১০/২০০৫

38- ANNEXURE ৬

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram and Arunachal Pradesh)

WRIT PETITION (C) NO. 6734 of 2004 (G)
(WRIT PETITION (C) NO.41 (SH)/2002)

1. Union of India
represented by the Secretary to
the Government of India, Ministry of
Environment & Forest Paryavaran Bhawan,
CGO Complex, Lodi Road,
New Delhi.

2. The Chief Conservator of Forests,
Ministry of Environment and Forests,
Regional Officer (NER)
Upland Road, Laitumkhrah
Shillong - 793 003.

3. Smt J. Lyngkhai
LDC, Ministry of Environment & Forest
Govt. of India, Regional Office (NER)
Shillong - 3, Meghalaya.

4. Shri M.P. Rimal
LDC, Ministry of Environment &
Forest, Govt. of India, Regional
Office (NER), Shillong -3,
Meghalaya.

..... PETITIONERS

-Versus-

1. Sri Sushanta Kr. Bhattacharjee,
Lower Division Clerk,
Ministry of Environment & Forests,
Government of India,
Regional Officer (NER),
Shillong - 3, Meghalaya.

2. The Central Administrative Tribunal,
Guwahati Bench,
Guwahati.

.....RESPONDENTS

Certified to be true Copy

Srinivasan
Advocate

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12-AUG-2009

गुवाहाटी न्यायपीठ
Guwahati Bench

P R E S E N T
HON'BLE MR. JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE B.P. KATAKEY

For the Petitioners	:	Mr. D.C. Chakravorty, Asstt. Solicitor General.
For the respondent	:	Mr. K. Paul, Mr. G.D. Paul, Advocates.
Date of hearing	:	6.9.2005
Date of Judgment and Order	:	23.9.05

JUDGMENT AND ORDER

By Katakey, J.

This writ petition is directed against the order dated 22.8.2001 passed by the learned Central Administrative Tribunal, Guwahati Bench, Guwahati in O.A. No.227/2000 allowing the said application and setting aside the orders dated 9.4.1999 and 11.8.2000, both passed by the Chief Conservator of Forests (Central), petitioner No.2 herein, and by directing the petitioners No.1 and 2 to refix the inter-se-seniority of the applicant (Respondent No.1 herein) vis-à-vis the petitioners No.3 and 4, the Respondents No.2 and 3 in Original Application, by holding that the past services rendered by the original applicant in the parent Department is to be counted for the purpose of fixing the seniority in the borrowing Department after he was permanently absorbed in the said Department.

2. The facts leading to the filing of the writ petition is that the Respondent No.1 herein, who was initially appointed as Lower Division Clerk (LDC) with effect from 16.1.1986 in the North Eastern Police Academy, Barapani, under the Ministry of Home Affairs, Government of India was sent on deputation as LDC with effect from 15.6.1989 in terms of the offer of appointment dated 11.5.1989, in the office of the Chief Conservator of Forests (Central), Regional Office, Shillong, Government of India, which was accepted by the Respondent No.1 herein. The

केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
 Guwahati Bench

Respondent No.1 herein accordingly joined the said post of LDC on deputation in the said office under the Ministry of Environment and Forests, Government of India on 15.6.1989. Though the initial period of deputation was for three years, the said period was extended from time to time totalling for a period of five years, during which period, he was even officiated as Upper Division Clerk (UDC). The Respondent No.1 (original applicant) in due course of time requested for permanent absorption in the borrowing Department and though the parent Department initially issued a 'No Objection' for his permanent absorption in the borrowing Department, subsequently, they vide communication dated 11.11.1993 requested the borrowing Department to repatriate him on expiry of the deputation period on 14.6.1994. The Respondent No.1, thereafter, moved the Central Administrative Tribunal in O.A. No. 43/94, which was disposed of vide order dated 3.10.1994 leaving it to the respondents therein to sympathetically consider his request for permanent absorption. The parent Department, namely, North Eastern Police Academy, thereafter, issued a no-objection certificate for permanent absorption of the respondent No.1 herein in the borrowing Department vide Memo dated 29.12.1994 in response to the letter of the Deputy Conservator of Forests, Ministry of Environment and Forests dated 1.12.1994. The parent Department, thereafter, vide order dated 13.5.1995 directed the Respondent No.1 to report to his parent Department immediately, which was assailed by him by filing another O.A. being O.A. No.68/95 before the Central Administrative Tribunal, Guwahati Bench, Guwahati wherein vide interim order dated 22.2.1995, the learned Tribunal left it open to the applicant (Respondent No.2 herein) to join his parent Department without prejudice to his claim for absorption in the borrowing Department. The said OA came to be disposed of vide Judgment and Order dated 18.10.1995 directing the respondents therein to consider the case of the applicant for absorption in the borrowing Department permanently in the light of the discussion made in the said judgment. The respondents in the said O.A. vide Misc. Case No.22/1996 filed before the learned Tribunal sought for extension of time for compliance of the said Judgment and Order dated 18.10.1995 which was allowed by the learned Tribunal vide order dated 22.2.1996 extending time for compliance of the said order. The Deputy Conservator

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 41 -

of Forests (C), Ministry of Environment and Forests, i.e. the borrowing Department vide office order dated 20.3.1996 permanently absorbed the original applicant (Respondent No.1 herein) against the vacant post of L.D.C. in the Regional Office at Shillong with effect from the date of issuance of the said order which was, however, been modified vide order dated 17.4.1996 to the effect that the order of permanent absorption would be operated from the date of joining his duty. The Respondent No.1 again moved the learned Tribunal assailing the prospective absorption in the parent Department in O.A. No.128/96 which was disposed of vide order dated 21.1.1999 directing the respondents therein, i.e. the borrowing Department to consider the case of the applicant for permanent absorption with retrospective effect. The Chief Conservator of Forests (Central), on the basis of the direction issued by the learned Tribunal in the said order dated 21.1.1999, vide order dated 9.4.1999 held that the order of absorption of the original applicant (Respondent No.1 herein) was to be determined with effect from 13.2.1995 i.e. the date on which the repatriation to the parent department was passed by the borrowing Department, on the ground that the original applicant was absorbed in the borrowing Department not in public interest but as per his own request and, therefore, his past service in the parent Department cannot be counted for the purpose of determining the seniority in the borrowing Department after absorption in view of the office memorandum dated 29.5.1986 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions. However, taking the date of absorption as 13.2.1995 i.e. the date when the order of repatriation was passed by the borrowing Department, the original applicant's seniority was fixed below the writ petitioner No.3 and above the writ petitioner No.4. The original applicant being aggrieved filed an appeal against the said decision. Another appeal was also preferred by the writ petitioner No.4 herein, which was disposed of by the Ministry of Environment and Forests, Government of India and communicated by the Chief Conservator of Forests (Central) vide memorandum dated 11.8.2000, holding that the applicant's seniority has to be fixed after both the present writ petitioner No.3 and 4 and on the basis of his date of absorption i.e. from 3.4.1996. Both the said orders were challenged in O.A. No.227/2000 before the learned Central Administrative Tribunal,

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 42 -

Guwahati Bench, Guwahati, which was disposed of, vide order-dated 22.8.2001. Hence, the present writ petition filed by the Union of India as well as the Chief Conservator of Forests, Ministry of Environment and Forests and Smt. J. Lyngkhoi and Shri M.P. Rimal who were respondents in the said O.A. It will not be out of place to mention herein that though the writ petition has been filed by arraying Smt. J. Lyngkhoi and Shri M.P. Rimal, over whom the original applicant claims seniority, no power has been filed by the learned Central Government counsel in preferring the present writ petition along with the Union of India as well as the Chief Conservator of Forests.

3. We have heard Mr. DC Chakraborty, learned Central Government Counsel appearing on behalf of the writ petitioners and also Mr. K. Paul, learned counsel appearing on behalf of the Respondent No.1, who was original applicant before the learned Tribunal.

4. Mr. Chakraborty, learned Central Government Counsel has assailed the order passed by the learned Tribunal on the ground that the seniority of the original applicant (Respondent No.1 herein) above the writ petitioner Nos. 3 and 4 cannot be fixed in view of the fact that the original applicant was permanently absorbed in the borrowing department i.e. in the office of the Chief Conservator of Forests (Central), Ministry of Environment and Forests, Government of India on his own request and not in public interest, in view of the Office Memorandum dated 29.5.1986 issued by the Government of India, Minister of Personnel, Public Grievances and Pensions, wherein it is stipulated that where the transfers are not strictly in public interest, the transferred officers will be placed after the officers appointed regularly to the grade on the date of absorption. According to the learned Central Government Counsel, though the initial order of transfer by way of deputation of the original applicant was in public interest, he was subsequently permanently absorbed in the borrowing Department as per his own request and, therefore, it cannot be said that he was permanently absorbed in public interest and, hence, by applying the said office Memorandum dated 29.5.1986, his seniority has to be fixed after the writ petitioner Nos.3 and 4 and, accordingly, the seniority was rightly fixed by

1
of
of
on,
The
No.1
the
ervice
or the
he is
he said
he same
of India

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

the Government of India, which was communicated by the Chief Conservator of Forests (Central) vide order dated 11.8.2000. The learned Counsel, therefore, submits that the learned Tribunal has committed illegality in setting aside the orders dated 9.4.1999 and 11.8.2000 and directed fixation of seniority of the original applicant by taking into account his past service in the parent Department.

5. Mr. Paul, learned counsel appearing on behalf of the Respondent No.1 has raised a preliminary objection as to the maintainability of the present writ petition filed on behalf of the writ petitioner Nos. 3 and 4, over which the present Respondent No.1 claims seniority, on the ground that though in the writ petition they have been arrayed as petitioners No.3 and 4 along with the Union of India and Chief Conservator of Forests, filed by the learned Central Government Counsel, no power has been filed by the learned Central Government Counsel on behalf of the said petitioners No.3 and 4 and, therefore, the writ petition can only be treated as the petition challenging the order passed by the learned Tribunal on behalf of the writ petitioners No.1 and 2 only i.e. the Union of India and the Chief Conservator of Forests (Central). On merit, the learned counsel has submitted that since the Respondent No.1, who was original applicant before the learned Tribunal, was deputed to the Department of Environment and Forests, Government of India in public interest and not on his own request, even by applying the office memorandum dated 29.5.1986, the past services of the Respondent No.1 herein in the parent Department cannot be wiped out and said period of service has to be taken into consideration for the purpose of fixation of seniority in the borrowing Department after his permanent absorption, even though he was permanently absorbed on his own request. The further submission of the learned counsel is that as the Respondent No.1 on his deputation to the borrowing department was serving in the equivalent cadre as in the parent department, the period of service rendered by him in the parent Department has to be counted for the purpose of fixation of seniority in the deputed post after he is permanently absorbed in the borrowing Department and if the said period is not counted for the purpose of fixation of seniority, the same would be violative of Articles 14 and 16 of the Constitution of India.

[Handwritten signature]

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

1-2 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 44 -

According to the learned counsel, the past services rendered by the Respondent No.1 in the parent Department cannot be taken away by issuing an office memorandum i.e. office memorandum dated 29.5.1986 as the law requires that the previous service of a transferred official has to be counted for seniority in the transferred post as both the posts are equivalent. The further submission of the learned counsel is that the borrowing Department never at any point of time before his permanent absorption had informed the applicant that his past services in the parent Department shall not be taken into consideration for the purpose of fixation of seniority and also about the existence of the office memorandum dated 29.5.1986 and had that been made known to the Respondent No.1, he would not have accepted the permanent absorption in the borrowing Department. Therefore, according to the learned counsel, the learned Tribunal has rightly passed the impugned order directing the respondent authorities to re-fix the seniority by taking into account past services rendered by him in the parent Department and in setting aside the orders dated 9.4.1999 as well as decision of the Government of India communicated vide communication dated 11.8.2000. The learned counsel in support of this contention has placed reliance on the decision of the Apex Court rendered in K. Madhavan and another -Vs.- Union of India and others, reported in 1987 (5) SLR 725 [1987 (4) SCC 566] as well as in S.I. Rooplal and another -Vs.- Lt. Governor to Chief Secretary, Delhi and others, reported in 2000(1) SCC 644.

6. We have considered the submissions of the learned counsel for the parties and also perused the pleadings as well as the records of O.A. No.227/2000 pertaining to the learned Central Administrative Tribunal, Guwahati Bench.

7. The main thrust of argument of the learned Central Government Counsel is that the Respondent No.1's permanent absorption in the office of the Chief Conservator of Forests (Central), Ministry of Environment and Forests is on the basis of the request made by him and, therefore, such absorption cannot be treated to have been made on public interest and, hence, the period of service rendered by

केन्द्रीय प्रशासनिक आधिकारण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

him in the parent Department prior to his absorption in the borrowing Department in view of the office memorandum dated 29.5.1986 cannot be taken into account.

8. There is no dispute that the Respondent No.1 was initially appointed as Lower Division Clerk under the North Eastern Police Academy, Barapani under the Ministry of Home Affairs, Government of India with effect from 16.1.1986 and vide order dated 11.5.1989 offer of appointment to the post of L.D.C. in the office of the Chief Conservator of Forests (Central), Ministry of Environment and Forests, Government of India, on deputation for three years was made to the Respondent No.1 who duly accepted the said offer and joined as Lower Division Clerk in the borrowing Department on being released by the parent Department. There is also no dispute that the post held by the Respondent No.1 in the parent Department and in the borrowing Department on deputation are equivalent. In fact, in the borrowing Department, the Respondent No.1 was given ad-hoc promotion to the post of Upper Division Clerk which promotional post he has relinquished on being informed by the borrowing Department that his case for permanent absorption in the said Department can only be considered if he remains as LDC in the borrowing Department.

9. The question which arose for determination before the learned Tribunal as well as before this Court is "whether the Respondent No.1 is entitled to get the benefit of his past services in the parent Department after he was permanently absorbed in the borrowing Department?"

10. The respondent No.1 was offered for appointment to the post of L.D.C. in the borrowing Department on deputation vide order dated 11.5.1989 and on being accepted the said offer, the Director (Coopn.), Ministry of Environment and Forests, Government of India, requested the Respondent No.1 to report for duties to the Chief Conservator of Forests (Central) on or before 15.6.1989. Accordingly, the petitioner, on being relieved by the parent Department, joined the services in the parent Department on 15.6.1989. There is no dispute to the effect that the said

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

offer of appointment on deputation was issued in public interest. The parent Department, in fact on 14.6.1989 issued a No Objection Certificate for permanent absorption of the Respondent No.1 in the borrowing Department, but subsequently, it has asked the borrowing Department to repatriate the respondent No.1 upon expiry of his deputation period on 14.6.1994. Though the Respondent No.1's deputation was initially for a period of three years commencing from the date of joining i.e. 15.6.1989 expiring on 14.6.1992, as his services in the borrowing Department was needed in public interest, the Chief Conservator of Forests vide communication dated 2.4.1992 addressed to the Secretary to the Government of India, Ministry of Environment and Forests, requested for extension of the deputation of the Respondent No.1 as in the interest of works in the Department his services were required. The Deputy Conservator of Forests (Central) also vide communication dated 23.4.1992 requested the Assistant Inspector General of Forests, Government of India, Ministry of Environment and Forests, requested for extension of the deputation period by two years as the Respondent No.1's services was required in public interest. Accordingly, the period of deputation of the Respondent No.1 was extended by two years in public interest.

11. The Conservator of Forests (C) by taking into account the no objection given by the parent Department on 14.6.1989 and on the basis of the order dated 2.5.1991 issued by the Government of India, Ministry of Environment and Forests, vide office order dated 30.10.1991 allowed the Respondent No.1 to continue on deputation till finalization of the recruitment rules and his eventual absorption in service in the borrowing Department. It is evident from the said office order dated 30.10.1991 that the permanent absorption of the Respondent No.1 in the borrowing Department was actively under consideration, which could not be done because of non-finalization of the recruitment rules. The Government of India vide notification published in the Gazette framed a recruitment rules, namely, Regional Offices, Ministry of Environment and Forests, Group-C and Group-D, Recruitment Rules, 1992, wherein it provides that the post of Lower Division Clerk is to be filled up by direct recruitment failing which by transfer on deputation. Therefore, service

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

rules also contemplate the transfer on deputation being a mode of appointment to the post of Lower Division Clerk in the present borrowing Department.

12. The Respondent No.1 earlier approached the learned Tribunal in O.A. No.43 of 1994 praying for his permanent absorption in the borrowing Department as no final order has been passed by the authority about his permanent absorption although the Department was sympathetically considering his case for absorption. The said O.A. was disposed of vide order dated 30.10.1994 directing the respondents therein i.e. the borrowing Department to sympathetically consider the case of the respondent No.1 for absorption in the borrowing Department in the light of the observation made in the said Judgment. Pursuant to the said order, the parent Department issued a no objection certificate vide Memo dated 29.12.1994, but the borrowing Department vide order dated 13.5.1995 relieved the Respondent No.1 directing him to report for duty in the parent Department immediately since no order for permanent absorption in the borrowing Department was passed. The Respondent No.1 challenged the same by filing O.A. No.68 of 1995 wherein an interim order dated 22.2.1995 was passed to the effect that it is open to the Respondent No.1 (applicant therein) to join the parent Department without prejudice to his claim for absorption in the borrowing Department. The learned Tribunal vide Judgment dated 18.10.1995 disposed of the said O.A. directing the respondent to consider the absorption of the Respondent No.1 in the borrowing Department and ultimately the borrowing Department vide order dated 20.3.1996 permanently absorbed the Respondent No.1 against vacant post of Lower Division Clerk with effect from the date of the order. However, the said order was modified vide order dated 17.4.1996 to the effect that the order of absorption shall come into effect from the date of joining of the duty. On being dissatisfied with the said prospective absorption of the Respondent No.1 in the borrowing Department, O.A. No.128/1996 was filed by him which was disposed of by the learned Tribunal on 21.1.1999 directing the Respondent No.1 to consider his case for absorption with retrospective effect. Pursuant to the said order, the Chief Conservator of Forests (Central) passed an order dated 9.4.1999 absorbing the

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Respondent No.1 with effect from 13.2.1995 i.e. the date when he was released from the borrowing Department and fixing seniority between the writ petitioners No.3 and 4. The said order was modified in the appeal preferred by the Respondent no.1 as well as the present writ petitioner No.4, by the Government of India by holding that his date of absorption should be 3.4.1996 and his seniority is to be fixed after the writ petitioners No.3 and 4.

13. The contention of the learned Central Government Counsel appearing on behalf of the writ petitioners is that the services rendered by the respondent No.1 in the parent Department cannot be treated for the purpose of computation of seniority after his absorption in the borrowing Department in view of the Office Memorandum dated 25.9.1986 as his absorption in the borrowing Department was not in public interest but on his own request. For better appreciation, the said Office Memorandum dated 29.5.1986 is quoted below :-

No.20020/7/80-ESTT(D)

Government of India/Bharat Sarkar
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training.

New Delhi, the 29th May, 1986

OFFICE MEMORANDUM

Subject : Seniority of persons absorbed after being
on deputation.

The undersigned is directed to say that the existing instructions on seniority of transferees contained in para 7 of the Annexure to this Department's O.M. No. 9/11/55-RPS dated 22nd December, 1959 (copy enclosed) mainly deal with cases where persons are straight way appointed on transfer. It is, however, observed that most of the cases of permanent absorption are those where the officers were taken on deputation initially under the method of 'transfer on deputation/transfer' contained in the relevant recruitment rules. This O.M. is intended to fill this gap in the existing instructions.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ

2) Even in the type of cases mentioned above that is where an officer initially comes on deputation and is subsequently absorbed, the normal principle that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not affect any regular promotions made prior to the date of absorption. Accordingly, it has been decided to add the following sub-para(iv) to para 7 of general principles communicated vide O.M. dated 22nd December, 1959 :-

Gauhati High Court at Guwahati

“(iv) In case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for Transfer on deputation/Transfer) his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (in the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation.

Or

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department (whichever is later).
The fixation of seniority of a transferee in accordance with the above principle will not however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words,

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 50 -

it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In case in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption".

- 3) All the Ministers/Department are requested kindly to bring these instructions to the notice of all concerned in the Ministries/ Departments and Attached and subordinate officers under them for their guidance and to ensure their compliance.
- 4) These orders will not be applicable to transfers within the India Audit and Accounts Department which are governed by orders issued by the C & AG from time to time.
- 5) Hindi version is attached.

Sd/-

(K.S.R. KRISHNA RAO)

Deputy Secretary to the Govt. of India."

Gauhati High Court at Guwahati

14. It appears from the said office Memorandum, as quoted above, that in case of a person who is initially taken on deputation and absorbed later, for the purpose of fixation of his seniority in the grade, in which he is absorbed, the period of services rendered by him in the parent Department shall be taken into consideration if he is holding the same or equivalent grade on regular basis in the borrowing Department. However, the said provision was qualified by putting a rider to the effect that in case the transfers are not strictly in public interest, the transferred employee will be placed below all the officers appointed regularly to the grade on absorption. It is the case of the writ petitioners that the writ petitioners No.3 and 4 were appointed regularly as Lower Division Clerk prior to the date of absorption of the Respondent No.1 in the borrowing Department and as he was absorbed strictly not in public interest but for his own interest, his seniority has to be fixed after the writ petitioners No.3 and 4, though there is no dispute to the fact that the Respondent No.1 before his deputation and absorption in the

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- S-1 -

borrowing Department was holding an equivalent regular post in the parent Department.

15. It is a fact that the Respondent No.1 has applied for his permanent absorption in the borrowing Department and the borrowing Department though initially appointed him on deputation for three years, his deputation was initially extended by two years in public interest as his services were required in the Department. As already observed above, there is no dispute regarding the initial appointment of the respondent No.1 on deputation in public interest and subsequent extension of the deputation in public interest. The Respondent No.1's claim is that his past services in the parent Department cannot be wiped out as he was holding equivalent post in the parent Department on regular basis.

16. It is evident from the office order dated 30.10.1991 that the borrowing Department even during continuance of the petitioner's service on deputation for first three years was actively considering the permanent absorption of the Respondent No.1 in the borrowing Department in terms of the no objection given by the parent Department on 14.6.1989. It is also evident from the communication dated 2.4.1992 issued by the Chief Conservator of Forests (Central) and dated 23.4.1992 issued by the Deputy Conservator of Forests (Central) that the services of the Respondent No.1 is required in the borrowing Department in public interest as there was no such efficient person in the said Department. Accordingly, the period of deputation of the Respondent No.1 was extended by two years. The Respondent No.1 was permanently absorbed vide office order dated 20.3.1996 issued by the Deputy Conservator of Forests (Central) which is quoted below :-

GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENTAL FORESTS
NORTH EASTERN REGIONAL OFFICE

UPLAND ROAD
LAITUMKHEH
SHILLONG-793 003.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

e
.1
as
itly
est,
nent
pra),
esent
ce if a
ame or
d of his
ration in

NO.11-5-89/E-RO-NE/6081-87

Dated 20-03-1996

OFFICE ORDER

With reference to letter No.4-189(RD)Part-II dated 20-03-1996 from the Ministry, New Delhi, Shri S.K. Bhattacharjee of North Eastern Police Academy, Umsaw, is hereby absorbed against the vacant post of L.D. Clerk (Hindi Typist) in this Regional Office, Shillong in the scale of Rs.950-20-1150-EB-25-1500/- plus DA and other allowances as admissible to the Central Government employees with effect from 20-03-1996.

Sd/- K.R. LYNADOH
Deputy Secretary of Forests (C).

17. The said order dated 20.3.1996 does not reflect that the Respondent No.1 was absorbed on his request and not in public interest. Moreover, it is not the case of the petitioners that the Respondent No.1 was made known about the office Memorandum dated 29.5.1986 to the effect that if he is permanently absorbed in the borrowing Department, in view of the application filed by him to that effect, his past services in the parent Department will not be taken into consideration for the purpose of fixation of seniority in the borrowing Department, on being permanently absorbed. Had that been made known to the Respondent No.1, he would not have opted for permanent absorption in the borrowing Department to his detriment. The writ petitioners, therefore, after Respondent No.1's absorption permanently in the borrowing Department cannot take recourse to the said office memorandum to deny the Respondent No.1 the benefit of his past service in the parent Department. Moreover, as discussed above, it is not that the Respondent No.1 was permanently absorbed in the borrowing Department only on the basis of his request, but also because his services are required in the borrowing Department in public interest. The Apex Court in the case of K. Madhavan (supra), while dealing with the matter which is similar in nature as in the present case, has held that it will be against all rules of service jurisprudence if a government servant holding a particular post is transferred to same or an equivalent post in another Government Department, the period of his services in the post before his transfer is not taken into consideration in

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

17 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 53 -

computing his seniority in the transferred post as the transfer cannot wipe out his length of service in the post from which he has been transferred. The Apex Court relying on the decision in R.S. Mokashi and others -Vs.- I.M. Meenon and others, reported in 1982(1) SCC 379 as well as in Wing Comm. J. Kumar -Vs.- Union of India and others, reported in (1982) 3 SCR 453 has further held that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service, their pre-existing total length of service in the parent Department should be taken into account for determining their rank in the new service cadre. The Apex Court in S.I. Rooplal (supra) while considering a similar question has also held that in law it is necessary that the previous service of transferred official is to be counted for seniority in the present post if the post held by him in the parent Department as well as in the borrowing Department are equivalent. The Apex Court while dealing with the Office Memorandum dated 29.5.1986 has also held that equity demands that before applying the said memorandum, the officer must be made known about the conditions contained in the said memorandum before he is permanently absorbed in the borrowing Department and if the same is not done, then it will go to show that the memorandum has in fact never been acted upon. It has further been held that the period of service rendered by a deputationist in the parent Department cannot be arbitrarily taken away and any rule, regulation or executive instruction which has the affect of taking away the service rendered by the deputationist in an equivalent cadre in the parent Department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution of India. The Apex Court in view of the facts involved in the said case has in-fact struck down the words "which ever is later" as appeared in the said memorandum in amended Clause (iv).

18. In the instant case, as observed above, the services of the respondent No.1 was lend to the borrowing Department in public interest, his deputation was extended from time to time in public interest and though he made a request for permanent absorption, in-fact he was absorbed in public interest in the borrowing Department. Had the borrowing Department's had no requirement for absorbing the

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Respondent No.1 permanently, he could have very well been told to that effect and repatriated to his parent Department after completion of his period of deputation, which has not been done. Therefore, at this stage the borrowing Department cannot say that the order of absorption dated 20.3.1996 was passed in view of the direction issued by the learned Tribunal on 18.10.1995 in O.A. No.68 of 1995 as the learned Tribunal by the said order only directed the borrowing Department to consider absorption of the Respondent No.1 in Environment and Forests Department as LDC and there is no direction to absorb. The borrowing Department upon consideration of the entire matter has passed the order of absorption dated 20.3.1996 and, therefore, it cannot subsequently say that there was no public interest involved in absorbing the Respondent No.1.

19. In view of the above, we are of the view that the learned Tribunal has rightly set aside the orders dated 9.4.1999 as well as the decision of the Central Government communicated vide communication dated 11.6.2000 and directed the authorities to re-fix the inter-se seniority of the Respondent No.1 vis-à-vis the writ petitioners No.3 and 4 by taking into account the past services rendered by the Respondent No.1 in the parent Department.

20. Before parting, we may also like to observe that the Union of India has filed the present writ petition on behalf of the writ petitioners No.3 and 4 also, above whom the respondent No.1 claims seniority, that too without filing any power on their behalf. The Apex Court in S.I. Rooplal (supra) has observed that in the matter of dispute relating to the service condition of its employees, the State should only play a role of impartial employer in inter se disputes between his employees and if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to arrive at a correct decision and once a decision is rendered by a judicial forum, thereafter, the State should not further involve itself in litigation and the matter thereafter should be left to the parties concerned to agitate further if they so desire. It has further been observed that when a State, after the judicial forum delivers a judgment, files review petition, appeal

Wey

Wey

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

S-S-

etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, as observed above, no writ petition in fact been filed by the persons above whom the present Respondent No.1 claims seniority and the present writ petition filed on their behalf cannot be treated as a writ petition on their behalf in the absence of any power executed by them in favour of the learned Central Government Counsel.

21. In view of the above, the writ petition has no merit and, hence, the same is dismissed. The order passed by the learned Central Administrative Tribunal, Guwahati Bench in O.A. No.227 of 2000 on 22.8.2001 is upheld.

No costs.

Sd/ B. P. Kalakay

Judge

Gauhati High Court at Guwahati

Sd/ D. Biswas

Chief Justice (Acting)

CERTIFIED TO BE TRUE COPY
 At on Borpatra Mohan
 Date 04/10/05
 Superintendent (Copying Section)
 Gauhati High Court
 Authorised U/S 76, Act I, 1872

Pet no 41182
 dtd 27/9/05

Cloned
 04/10/05

केन्द्रीय प्रशासनिक अधिकारी
 Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
 Guwahati Bench

WJ

Speed Post.

Government of India
Ministry of Environment & Forests
North Eastern Regional Office, Shillong

No.11-27/96/E-RONE/Vol-I/ 2071-74

Date: 7-11-2007

OFFICE ORDER

In pursuance to direction of Hon'ble High Court, Guwahati in W.P.(C) No.6734/2004 on 23-9-2005 and Ministry's letter F.No. 14-3/99-RO(HQ), dated 23-1-2006 and 3-9-2007, the seniority list of UDCs in the Ministry of Environment & Forests, North eastern Regional Office, Shillong, is mentioned below:

Sl. No.	Name & Educational Qualifications	Date of Birth	Whether SC/ST, if not, say Neither	Date of appointment to the grade in MOEF, NE(RO),Shillong.	Date of Confirmation	Remarks.
1.	Shri S. K. Bhattacharjee, P.U.Science	25-10-1955	Neither	15-6-1997	16-1-1989	Confirmed by NEPA.
2.	Smt. J. Lyngkhoi, BA(Hons) Khasi	16-9-1970	ST	28-10-2002	4-5-1995	
3.	Shri M. P. Rimal, B.A.(Hons). (Political Science)	10-8-1972	Neither	04.04.2005	03.04.1997	

Date of absorption of Shri S. K. Bhattacharjee as per the direction of Hon'ble CAT in O.A. No.227 of 2000 on 22-8-2001 upheld by Hon'ble Gauhati High Court, Guwahati in WP(C) No.6734/2004 on 23-9-2005 is 30-10-1992.

(R K Dey)

Chief Conservator of Forests(C)

Copy to:

1. The Director(RO,HQ), Govt. of India, Ministry of Environment & Forests, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi-110 003 for information.
 2. Mrs. Sunita, Technical Officer (Forestry), RO(HQ), Govt. of India, Ministry of Environment & Forests, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi-110 003 with reference to her letter F.No. 14-3/99-RO(HQ), dated 3-9-2007.
- All concerned.
Guard File

Attended
Chandana
08/11/07
Shillong

Chief Conservator of Forests(C)

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Certified to be true Copy

Advocate
Advocate

- 57 -

'B'

(b)



सत्यमेव जयते

भारत सरकार
पर्यावरण एवं वन मंत्रालय
पूर्वोत्तर क्षेत्रीय कार्यालय
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT AND FORESTS
NORTH EASTERN REGIONAL OFFICE

No.11-27/96/E-RONE/Vol.I / 2272-36

Dated 25-9-2006

OFFICE ORDER

With reference to Ministry's letter F.No.14-3/1993-RO(HQ) dated 6-9-2006 and in terms of the minutes of DPC held in the Ministry on 31-7-2006, Shri S.K. Bhattacharjee, LDC is hereby promoted to the post of UDC w.e.f. 15-6-1997 in the pay scale of Rs.4000-100-6000/-.

(B.N. Jha)

Chief Conservator of Forests (C)

Copy to:

1. Shri A.K. Johari, Director (Admn.), Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110003 for information.
2. The Pay & Accounts Officer, Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110 003.
3. Director (FC & ROHQ), Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110003 for information.
4. Shri S.K. Bhattacharjee, UDC, MoEF, RO, Shillong.
5. DPC file.

[Signature] 22/9/06
Chief Conservator of Forests (C)

[Signature] 26/9/06
Joint Director

पुनः निदेशित
पर्यावरण एवं वन मंत्रालय
Ministry of Environment and Forests
क्षेत्रीय कार्यालय, शिलांग / Regional Office, Shillong

अपलैण्ड्स रोड, लाइमुखरा, शिलांग - 793 003

UPLANDS ROAD, LAITUMKHEAH, SHILLONG - 793 003

टेली/Tel: (0364) 2227673, 2227929, 2227565, 2306088, 2502278; फेक्स/Fax - (0364) 2227673; ईमेल/email - mofner@shillong.meg.nic.in

Certified to be true Copy

[Signature]
Advocate

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 58 -

(C)

Government of India
Ministry of Environment & Forests
Regional Office(NER), Upland Road,
Laitumkhrah, Shillong-793 003.
(Meghalaya)

No. 11-27/96/E-RONE/Vol-I/3209-13

Date: 17/3/08

OFFICE ORDER

With reference to Ministry's letter No.F.14-3/99-ROHQ, dated 22-2-2008 and minutes of the Departmental Promotion Committee meeting held on 13-2-2008, Shri S K Bhattacharjee, UDC is hereby promoted to the post of Assistant (Group-B) in the pay scale of Rs.5500-175-9000/- (Group-B) Non-Gazetted on a regular basis w.e.f. 18th February 2008.

(R K Dey)

Chief Conservator of Forests(C)

Copy for information to:

1. The Secretary (E&F), Government of India, Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110 003.
2. The Director(Admn), Govt of India, Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110 003.
3. The Pay and Accounts Officer, Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110 003.
4. ✓ Shri S K Bhattacharjee, Assistant, (Group-B), Ministry of Environment & Forests, Regional Office, (NER), Shillong.
5. DPC File.

(R K Dey)

Chief Conservator of Forests(C)

Attested
18/3/08
Regional Conservator of Forests (Control)
Min. of Environment & Forests
Regional Office, Shillong

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Certified to be true Copy

Sivayyadan
Advocate

52/07

- 59 -

Applicant(S) S.K.B. Bhattacharyei VS Union of India & OrsAdvocate for the Applicant(S) J. P. ChanhaniA. Sarma
Mr. G. BaishyaAdvocate for the Respondent(S) Mr. G. Baishya

15.05.2008

Heard Mr. A. Sarma, learned counsel appearing for the Applicant and Mr. G. Baishya, learned Sr. Standing counsel appearing for the Respondents.

In course of hearing Mr. A. Sarma, learned counsel appearing for the Applicant has filed a memorandum wherein he has disclosed that a part of the relief claimed in this Application has already been granted by the Respondent Department and that for the remaining grievances the Applicant wishes to approach the authorities for necessary redressal.

In the said premises, the Applicant wishes to withdraw the O.A. to approach the higher authorities for redressal of his grievances.

Having heard the learned counsel appearing for both parties the O.A. is permitted to be withdrawn with liberty to approach the higher authorities and to workout his remedy by approaching this Tribunal in the event no redressal is granted to him by the authorities.

In the above premises, this case stands dismissed as being withdrawn.

Send copies of this order to the Applicant and to the Respondents in the addresses given in the O.A.

Free copies of this order be supplied to the learned counsel appearing for the parties.



TRUE COPY

प्रतिनिधि

अनुभा अधिकारी 21/5/08

Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी न्यायापीठ
Guwahati Bench
गुवाहाटी/Guwahati-5

15/5/08

Certified to be true Copy

Advocate

Sd/-
Manoranjan Mohanty
Vice Chairman
Sd/-
Khushiram
Member (A)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायापीठ
Guwahati Bench

- 60 -

To

Date: 16-7-2008.

The Head of Office,
Ministry of Env & Forests,
Govt of India, RO(NER),
Shillong-793 003.

Sub: Representation.

Ref: Hon'ble Central Administrative Tribunal's order dated 15-5-2008
in O.A. No.52/07.

Sir,

Referring to the above, I am to submit herewith Representation dated 16-7-2008
addressed to The Secretary, Govt of India, Ministry of Environment & Forests, New
Delhi, with a request to forward the same to the addressee & needful and oblige.

With regards,

Enclo: As stated.

Yours faithfully,

(S K Bhattacharjee)
16/7/08

DIRTY No 1028
Dtd. 17/7/08
GOVT OF INDIA
Ministry of Environment and Forests
Regional Office, Shillong

Self copy

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Certified to be true Copy

(Signature)
Advocate

- 61 -

-1-

Date: 16-7-2008.

To

The Secretary to the Government of India,
Ministry of Environment & Forests,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi-110 003.

(Through Proper Channel)

Sub: Representation of Shri S K Bhattacharjee against deferring his promotion to the post of Upper Division Clerk by 5(five) years from January 1992 to June 1997 and thereafter to the post of Assistant from 2002 to February 2008 in violation of the Hon'ble Gauhati High Court Judgement and Order dated 23-9-2005 in W.P.(C) No.6734 of 2004.

Ref: Hon'ble Central Administrative Tribunal's order dated 15-5-2008 in O.A. No.52/07.

Respected Sir,

In the subject matter aforesaid, I beg to enclose a copy of the Hon'ble Central Administrative Tribunal(Guwahati Bench) order dated 15-5-2008 in O.A. No.52/07 and represent as follows:

1. That, on 1-8-1980 I was appointed as Lower Division Clerk in the Central Govt Organization on regular line basis.
2. That on 15-6-1989, I was appointed LDC, on deputation, in the Ministry of Environment & Forests, Regional Office at Shillong initially for 3 years.
3. That, my deputation term as LDC in the Regional Office, Shillong, of the Ministry of Environment & Forests, Government of India (hereinafter referred to as the Regional Office, Shillong) was extended from time to time, in public interest, for periods totaling a little over five years. While extending the period of my deputation appointment beyond the first 3 years, the Regional Office, Shillong, in its office order dated 30-10-1991 stated as follows:

Slary No. 1028
Date 17/7/08
GOVT OF INDIA
Ministry of Environment And Forests
Regional Office, Shillong

-2-

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
12 AUG 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

"Shri S K Bhattacharjee, LDC on deputation to this office, is allowed to continue on deputation till finalization of the recruitment rules and eventual absorption of said Shri S K Bhattacharjee in the services of this office as per Govt of India, Ministry of Environment & Forests letter No.5/91-RO(HQ) dated 2-5-1991. This order issues after taking into consideration the no-objection of his parent department as contained in that department's letter No.NEPA/PF(C)/1/86/Vol-I/1789, dated 14-6-1989."

4. That, while on deputation appointment to the Regional Office, Shillong, I was granted ad-hoc promotion to the post of Upper Division Clerk(UDC) with effect from 4-1-1992 when a post of UDC fell vacant. My promotion as UDC was extended periodically by orders. My parent office had also granted me pro-forma promotion to the post of UDC from 4-1-1992 to 30-9-1993 and again from 7-8-1995 to 2-4-1996.
5. (i) That, while officiating as UDC in the Regional Office, Shillong, as stated in para 5 herein-above, I was asked in terms of the office order dated 30-10-1991, to seek reversion to the post of LDC to facilitate my absorption in the Regional Office, Shillong, since, as per recruitment Rules of 1992, absorption was permissible only in the entry grade of LDCs. Accordingly, with my letter dated 17-9-1993, I sought reversion to the post of LDC. In para 7 of my letter dated 17-9-1993, I stipulated as follows:
 "If my absorption in the LDC post of your Regional Office with effect from the date of coming into force of the Recruitment Rules is ordered, (then) this application may kindly be treated as my willingness for reversion to the LDC post in order to facilitate my permanent absorption in your Regional Office for which I am representing for long (on the footing of your office order dated 30-10-1991)."
- (ii) That, accordingly the Regional Office, Shillong, reverted me to the post of LDC on 1-10-1993 but procrastinated in ordering my absorption. This made me to make representations against the delay in ordering my absorption. Finally, the Regional Office ordered my absorption with effect from 3-4-1996, nearly 3 years after ordering my reversion to the post of LDC, instead of from 30-10-1992 the date on which the Recruitment Rules 1992 came into force ignoring the fact that my

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

-3-

12 AUG 2009

गुवाहाटी न्यायालय
Guwahati Bench

reversion application dated 17-9-1993 was expressly conditional.

6. That, deeply aggrieved, I moved the Hon'ble Central Administrative Tribunal(Guwahati Bench) against ordering my absorption from 3-4-1996 instead of from 30-10-1992 in terms of my application dated 17-9-1993 (on the basis of which my reversion to the post of LDC as ordered) when my representations to the departmental authorities were not heeded to.
7. That, after four bouts of litigative shuttlecocking between me the respondent authorities, the Hon'ble Central Administrative Tribunal, Guwahati Bench, in their Judgement dated 22-8-2001 in O.A. No.227 of 2000 ordered that the date of my absorption in the Regional Office, Shillong, could not be lowered down beyond 30-10-1992, that is, the date on which the recruitment Rules 1992 came into effect.
8. That, the Respondent Regional Office, Shillong, filed a Writ Petition in the Hon'ble Gauhati High Court being WP(C) NO.41(SH)/2002 subsequently renumbered as WP(C) No.6734/2004, challenging the Judgement dated 22-8-2001 of the Hon'ble Central Administrative Tribunal, Guwahati Bench, in O.A. No. 227 of 2000.
9. That, the two other LDCs of the Regional Office, Shillong, both of whom were far junior to me in service but were made senior to me by ordering my absorption with effect from 3-4-1996, were also made parties, as applicants, in the writ petition(C) No.6734/2004 to the Hon'ble Gauhati High Court, which the Regional Office, Shillong, filed challenging the judgement dated 22-8-2001 of the Hon'ble Central Administrative Tribunal(Gauhati Bench) in O.A. No.227 of 2000.
10. That the Hon'ble Gauhati High Court dismissed the writ petition filed by the Regional Office, Shillong, by order dated 23-9-2005 and directed the Regional Office, Shillong, to re-fix my seniority in the LDC cadre by taking into account my past services rendered in my parent department.
11. That, in addition to dismissing the writ petition filed by the Regional Office, the Hon'ble Gauhati High Court in para 20 of their judgement dated 23-9-2005 in W.P.(C) No.6734/2004 observed as follows:
 " 20. Before parting, we may also like to observe that the Union of India has filed the present writ petition on behalf of the writ

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 Aug 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

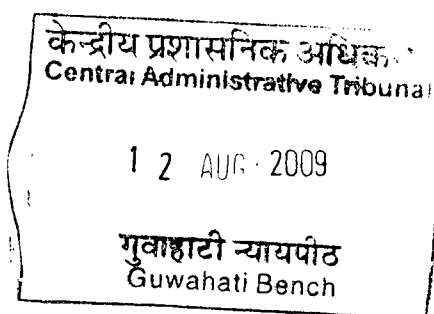
petitioners No.3 (Smti J Lyngkhai,LDC) and 4 (Shri M P Rimal,LDC) also, above whom the respondent No.1(Shri S K Bhattacharjee) claims seniority, that too without filing power on their behalf. The Apex Court in S.I. Rooplal(supra) has observed that in the matter of dispute relating to the service condition of its employees, the state should only play a role of impartial employer in inter se disputes between his employees and if the matter is dragged to a judicial forum, the state should confine its role to that of an amicus curiae by assisting the judicial forum to arrive at a correct decision and once a decision is rendered by a judicial forum, thereafter, the state should not further involve itself in litigation and the matter thereafter should be left to the parties concerned to agitate further if they so desire. It has further been observed that when a State, after the judicial forum delivers a judgement, files review petition, appeal etc, it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, as observed above, no writ petition in fact been filed by the persons above whom the present respondent No.1.claims seniority and the present writ petition filed on their behalf cannot be treated as a writ petition on their behalf in the absence of any power executed by them in favour of the learned Central Government Counsel."

12. That, in para 21 of their judgement in the case, the Hon'ble Gauhati High Court said:

"In view of the above, the writ petition has no merit and, hence, the same is dismissed. The order passed by the learned Central Administrative Tribunal, Gauhati Bench in O.A No.227 of 2000 on 22-8-2001 is upheld".

13. That, while dismissing the writ petition filed by the Regional Office,Shillong, the Hon'ble High Court in para 19 of their Judgement dated 23-9-2005 emphatically said-

"..... we are of the view that the learned Tribunal has rightly set aside the orders dated 9-4-1999 as well as the decision of the Central Government communicated vide communication dated 11-6-2000 and directed the authorities to re-fix the inter-se-seniority of Respondent No.1(Shri S K Bhattacharjee) vis-à-vis the Writ petitioners No.3(Smti J Lyngkhai,LDC) by taking into account the



- past services rendered by the Respondent No.1(Shri S K Bhattacharjee) in the parent department." (Underlinings added).
14. That, the date of my absorption in the Regional Office, Shillong, was finally ordered as 30-10-1992 following the Hon'ble High Court's order dated 23-9-2005 in the W.P.(C) No.6734 of 2004 as mentioned in para 13 hereinabove.
 15. That, as per the Recruitment Rules 1992 of the Regional Office, Shillong, an LDC who has put in 8 years of service is eligible for promotion to the post of UDC. Accordingly, I became eligible for promotion to the post of UDC on 1-8-1988 reconed from 1-8-1980 when I entered service in my parent department. I was, granted ad-hoc promotion to the post of UDC in the Regional Office, Shillong, in January 1992 when a UDC post fell vacant as I was the senior-most LDC then. I was reverted to LDC post on 1-10-1993 only to facilitate my permanent absorption in the Regional Office, Shillong as asked for.
 16. That, after my absorption as LDC in the Regional Office with effect from 30-10-1992 following the Hon'ble High Court Judgement and order dated 23-9-2005 in W.P.(C) No.6734 of 2004, my promotion to the post of UDC in Regional Office, Shillong, was ordered only on 15-6-1997 vide office order No.11-27/96/E-RONE/Vol-I/2232-38, dated 25-9-2006 without taking into account my past service in my parent department which was contrary to the Judgement and order dated 23-9-2005 of the Hon'ble High Court who had ruled that my seniority in the cadre of LDC should be re-fixed "by taking into account" the past services rendered by me in parent department, vide para 13 hereinabove.
 17. That, as per paras 19 and 21 of the Judgement and Order dated 23-9-2005 in W.P.(C) No.6734 of 2004 of the Hon'ble Gauhati High Court, my past services in my parent department ought to have been taken into account for computing my 8 years service as LDC, for the purposes of my promotion to the post of UDC.
 18. That, the Ministry of Environment, Government of India, New Delhi, in their letter No.4-1/89-RO(HQ) dated the 2nd August 1996 to the Chief Conservator of Forests, Regional Office, Shillong, directed that "the earlier service period of Shri S K Bhattacharjee, LDC, in his parent department, should also be

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 APR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

included while considering his case for promotion to the post of UDC."

19. That, while ordering my promotion to the post of UDC with effect from 15-6-1997, my 8 years service as LDC has been computed from 15-6-1989 when I was appointed LDC, on deputation, in the Regional Office, Shillong, **thereby excluding and, wiping out my entire past service rendered by me in my parent department which is outrightly contrary to the Hon'ble High Court order dated 23-9-2005 and the Government of India, Ministry of Environment and Forests direction in their letter No.4-1/89-RO(HQ) dated the 2nd August 1996.**
20. That, the question whether the past services rendered by me in my parent department should be taken into account in computing my 8 years service in the post of LDC has been finally settled by the Hon'ble High Court in para 19 of their Judgement dated 23-9-2005 in W.P.(C) No.6734 of 2004 but has not been acted upon by the Regional Office, Shillong, in ordering my promotion to the post of UDC with effect from 15-6-1997 instead of from January 1992.
21. That, there is no dispute that I served as LDC in my parent department from 1-8-1980 (and therefore, I was granted 2nd A.C.P. with effect from August 2004 after completion of 24 years of service w.e.f. 1-8-1980,). And on 15-6-1989 was appointed LDC, on deputation, in the Regional Office, Shillong. Hence, my promotion to the post of UDC after taking into account my past services in my parent department, fell due on January 1992 when I was actually promoted to the post of UDC being the senior-most LDC then. Since, however, a UDC post fell vacant in January 1992, my promotion to the post of UDC ought to have been ordered with effect from January 1992.
22. That, I served as LDC in my parent department from 1-8-1980 and after completion of 24 years of service w.e.f. 1-8-1980 I was granted 2nd A.C.P. w.e.f. 1-8-2004 vide order No.13-22/2000/E-RONE/181-185, dated 15-4-2005.
23. That, my promotion to the post of UDC in the Regional Office, Shillong, with effect from 15-6-1997 ordered by computing my 8 years service as LDC from 15-6-1989, **has resulted in deferring my promotion by about five years and has materially amounted to confiscating the whole of my past service rendered in my parent department for granting promotion (except ACP) and is outrightly violative and ultra ~~vires~~ of the**
vires

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Judgement and order dated 23-9-2005 of the Hon'ble High Court in W.P.(C) No.6734 of 2004.

24. That, the exclusion of my past service rendered by me in my parent department, has also led to deferring my promotion to the next higher post of Assistant by about 6 (six) years from January 2002 to 18-2-2008, vide office order No.11-27/96/E-RONE/Vol-I/3209-13, dated 17-5-2008.
25. That, I represented my case to the Regional Office, Shillong, with my applications dated 4-5-2006 and application dated 2-6-2008 but, so far, no order has been communicated to me.
26. Prayer and relief sought:

That I pray most humbly and respectfully as follows:-

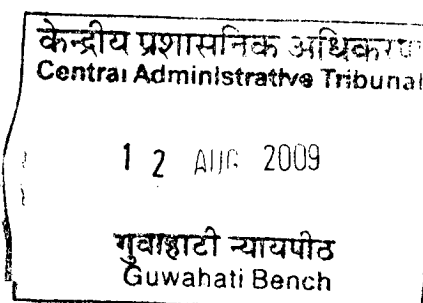
- (1) That, my promotion date to the post of UDC in the Regional Office, Shillong, be advanced and ordered with effect from January 1992 (when I was promoted & holding the post of UDC) with benefit of pay fixation, back wages, increments etc, by including my past services rendered by me in my parent department, and
- (2) That, my promotion to the next higher post of Assistant be also correspondingly advanced and ordered with effect from January 2002 with benefit of pay fixation, increments etc. as my be admissible under rule.

And for these acts of your high kindness, I as duty bound, shall ever pray.

With respectful regards,


Yours faithfully,

(S K Bhattacharjee)
Assistant(Group-B)



- 68 -

1. Advance copy to the Secretary, Government of India, Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110 003, for kind information & necessary action.
2. The Chief Conservator of Forests, Ministry of Environment & Forests, Government of India, Regional Office(NER), Shillong, for kind information and necessary action.


(S.K. Bhattacharjee)



RYNIAH S.O. (793006)
READ @ 7627
Counter No:11/OP-10001111
RECEIVED BY ENVIA & FOREST, CGO COMPLEX
NEW DELHI PIN 110003

W5155grams,
Amt:35.28 , 18/07/2009 , 10:37
<>>

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
12 AUG 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

- 69 -

To

Date: 5th September, 2008.

The Head of Office,
MOEF, RO(NER),
Shillong.

Sir,

I beg most respectfully to enclose herewith a representation dated 5th September, 2008 (written by me) addressed to the Hon'ble Secretary, Govt of India, Min of Env & forests, New Delhi, with a request to forward the same to the addressee and oblige.

Encl: My representation dated 5-9-2008.

Yours faithfully,

(S K Bhattacharjee)
Asstt(Gr-B).

05/9/08

Seyfer

for SKB

Slary No. 1153
Date 5/9/08
GOVT OF INDIA
Ministry of Environment And Forests
Regional Office, Shillong

Answer No: 1769
dt 29-9-08

Certified to be true Copy

[Signature]
Advocate

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

12 AUG 2009

पंजाबी

20 -

Date: 5th September, 2008.

To

The Secretary to the Government of India,
Ministry of Environment & Forests,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi-110 003.

(Through Proper Channel)

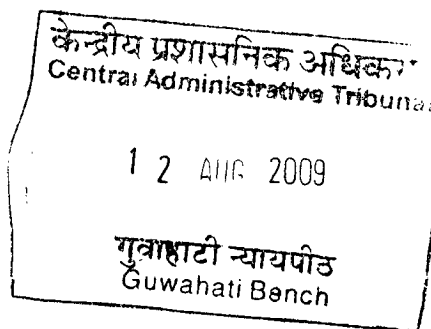
Sub: Representation of Shri S K Bhattacharjee, Assistant (Gr-B) in the Ministry's Regional Office at Shillong, against deferment of his promotion to the post of Upper Division Clerk (UDC) by 5 (five) years from January 1992 to June 1997 and consequently to the post of Assistant from January 2002 to February 2008 by violation of the Hon'ble Gauhati High Court's judgement and Order dated 23-9-2005 in W.P.(C) No.6734 of 2004.

Ref: (1) Hon'ble Central Administrative Tribunal's order dated 15-5-2008.
(2) Shri S K Bhattacharjee's representation dated 16-7-2008.

Respected Sir,

I beg most humbly and respectfully to invite your kind attention to my representation dated 16-7-2008 on the matter mentioned in the captioned subject, and submit to state as under:-

1. That, my representation dated 16-7-2008 was submitted to your goodself as per direction contained in the order dated 15-5-2008 of the Hon'ble Central Administrative Tribunal.
2. That, my representation was submitted to you through proper channel, and to my belief was received in your office,
3. That, by now about 50 days have elapsed but no order on my representation, if since passed, has been communicated to me,



-2-

- 71 -

4. That, full details of my case were given in my representation dated 16-7-2008 along with a copy of the Hon'ble Central Administrative Tribunal's order dated 15-5-2008.

5. That, as stated in my representation dated 16-7-2008, I was the senior most LDC in Regional Office at Shillong having been appointed, initially on deputation, on 15-6-1989 and subsequently absorbed in the LDC post. The second senior most in Shillong Regional Office was appointed in 1993 and is junior to me by about 13 years.

6. **That, by incorrect interpretation of the extant rules for promotion of the deputation absorbees, I was allowed promotion to the post of UDC in Regional Office at Shillong in June 1997 instead of in January 1992 as explained in paras 15 and 16 of my representation under reference.**

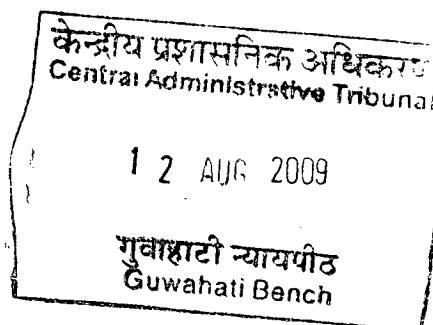
7. That, the administrative interpretation of the extant rules for promotion of the deputation absorbees was not correct as held by the Hon'ble Gauhati High Court in their judgement and order dated 23-9-2005 in W.P.(C) No.6734 of 2004 as brought out in paras 16,17 and 18 of my representation under reference.

8. **That, exclusion of my past service rendered in my parent department was contrary to the Hon'ble High Court order dated 23-9-2005 and was, therefore, not maintainable in law and also as per the direction contained in your Ministry's letter No.4-1/89-RO(HQ) dated the 2nd August,1996 to the Regional Office at Shillong,**

9. **That, after taking into account my past services in my parent department, my promotion to the post of UDC in Shillong Regional Office fell due in January 1992 but was allowed in June 1997 and consequently my promotion to the post of Assistant which fell due in January 2002 was ordered in February 2008.**

10. That, in para 26 of my representation under reference, I prayed for advancing, by order, of my promotion to the post of UDC from June

- 3 -



1997 to January 1992 with all consequential benefits and also advancing the date of my promotion to the next higher post of Assistant from February 2008 to January 2002.

11. That, in an earlier occasion on a related issue, my representation dated 12-12-2006 was not disposed of by any order. This is brought to your kind notice for information.

12. That, I am confident that my present representation dated 16-7-2008 is receiving your kind consideration and I pray that your kind and sympathetic order thereon be communicated to me without further prolonging my woes and mental agony, keeping in view my prayer in para 26 of my representation dated 16-7-2008.

With deep and respectful regards,

Yours faithfully,

(S K Bhattacharjee) 05/9/08
Assistant (Group-B)

1. Advance copy to the Secretary, Government of India, ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110 003, for kind information & necessary action.
2. The Chief Conservator of Forests, Ministry of Environment & Forests, Government of India, Regional Office(NER), Shillong, for information and necessary action.

(S K Bhattacharjee

RYNJAY S.O. (793006)
88 EEEB57Z75755RIN
Counter Mail-PR-CoverAK
To:EDDY,BILLY L E & F,30 COMPLE
New Delhi, PINKHAWAD
From: B-E-ATTN-AARVER , JALAM-BAA,3MILLION6-
with 2chama;
Amt:25.00 , 06/09/2008 , 11:24
Taxes:Rs.3.00<>>EDD(If not a holiday)W9/09/2



केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 AUG 2009

Gumdhari Bench

Slary No. 2228
Date 24/11/08

ANNEXURE-N

- 73 -

GOVT OF INDIA
Ministry of Environment And Forests
National Office, Shillong

-1-

Shillong.
Date: 24-11-2008.

To

The Deputy Secretary(RO-HQ),
Government of India,
Ministry of Environment & Forests,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi-110 003.

(Through Proper Channel)

Sub: Supplementaries to the representations dated 16-7-2008 of Shri S KBhattacharjee, Assistant(Group-B)RegionalOffice(NER),Shillong, against deferring his promotion to the post of UDC by 5 years from January 1992 to June 1997 and consequently to the post of Assistant(Gr-B) from January 2002 to February 2008 in contravention of the Hon'ble Gauhati High Court Judgement & direction dated 23-9-2005 in W.P.(C) No.6734 of 2004(G).

Respected Sir,

In continuation of my representation dated 16-7-2008 in the subject matter aforesaid, I beg to submit the following supplementaries and request your honour to take them into consideration while considering my representation dated 16-7-2008.

1. That, referring to the Hon'ble Gauhati High Court's Judgement in W.P.(C) No.6734 of 2004, the Ministry of Environment & Forests of the Government of India, New Delhi, in their letter F.No.14-3/99-RO(HQ) dated 23-1-2006 directed the Regional Office(NER), Shillong, to comply with orders of the Hon'ble High Court in my case. It is, therefore, of primary importance to see what was the order of the Hon'ble High Court in my case and whether it has been complied with when about 2 years have gone by. I submit to state that, it seems, the Hon'ble High Court's order was not complied with fully, hence was my representation. In retrospect, I feel that some points in addition to those mentioned in my representation dated 16-7-2008, need be highlighted for your kind ready appraisal; hence are the supplementaries herewith.
(a) As stated in para 1 of my representation dated 16-7-2008, I was appointed as LDC on 1-8-1980 in the O/O the DCO(AP), MHA, Govt of India, Shillong initially on temporary capacity. In due course, my temporary service was regularized, without any break at any point of time, from 1-8-1980(kindly refer letter No.NEPA/PF(C)/1/86/VOL-1789, dated 14-6-1989 as the recording in my S/B).
(b) On 15-6-1989, I was appointed LDC, on deputation, in the Regional Office(NER), Shillong, of the Ministry of Environment & Forests, Government of India, Regional Office, Shillong initially for 3 years. My deputation period was extended "till finalization of the recruitment rules and (my) eventual absorption" in the services of the Regional Office, as per Government of India, Ministry of Environment & Forests letter

- 2 -

Certified to be true Copy

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायाधीश
Guwahati Bench

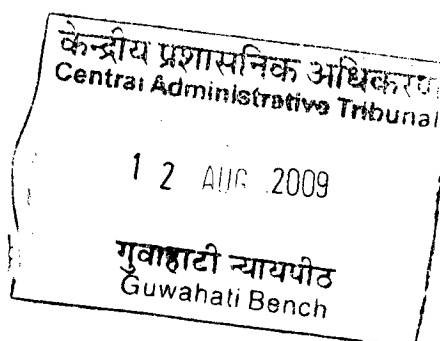
No.5/91 RO(HQ) dated 2-5-1991 vide Regional Office's Order dated 30-10-1991. The extension of my deputation period was thus done in public interest.

© The Hon'ble High Court in para 17 & 18 of their Judgement & Order dated 23-9-2005 in W.P.(C No.6734 of 2004(G) have, by elaborate discussions, held that my absorption in the Regional Office, was in public interest.

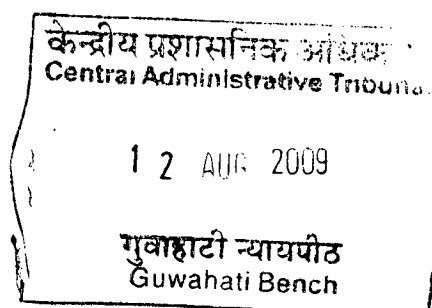
- (d) At no point of time, there was any break in my service ever since I entered the Government service on 1st August 1980. My appointment, on deputation, to the Regional Office, Shillong, was through proper channel.
- (e) While on deputation, I was given adhoc promotion to the post of UDC in Regional Office, Shillong, on 4-1-1992. My promotion as adhoc UDC in the Regional Office, Shillong, was extended by orders from time to time.
- (f) Earlier, the Regional Office, Shillong, in its office order dated 30-10-1991 had stated that I would continue on deputation till finalization of the Recruitment Rules of the Regional Offices and my 'eventual absorption' in the services of the Regional Office.
- (g) While officiating as UDC in the Regional Office, Shillong, I was asked to seek reversion to the post of LDC to facilitate my absorption in the Regional Office, Shillong, in terms of the office order dated 30-10-1991 with which my deputation term was extended for my "eventual absorption" in the Regional Office, since absorption was permissible only in the entry grade of LDC. Further facts have been detailed in paras 5(ii), 6,7,8,9,10 and 11 of my representation dated 16-7-2008 which may kindly be gone through.
- (h) I was eventually absorbed in the borrowing Department with effect from 30-10-1992 following Hon'ble Court's Judgement in O.A. No.227 of 2000. The Hon'ble High Court in paras 17 and 18 of their "Judgement & Order" dated 23-9-2005 has categorically held that my absorption was in public interest, vide in particular, the last line of para 18 of the Hon'ble High Court order.

2. That, the core issue in my case is whether the past services rendered by me in my parent department shall count towards my service on my permanent absorption in the borrowing department for the purposes of my seniority.
3. That, this core issue would be found to have been decisively settled in my favour from the following-

- (1) The Ministry of Environment & Forests, Government of India, New Delhi, in their letter dated 2nd August, 1996 to the Regional Office, Shillong, had directed that the "earlier service period of Shri S K Bhattacharjee, LDC, in his parent department should also be included while considering his case for promotion to the post of UDC". The order is conclusive in itself.

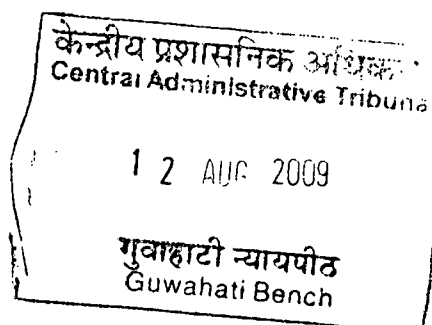


- 75--
- (2) The Hon'ble Gauhati High Court in Para 19 of their Judgement dated 23-9-2005 in W.P.(C) No.6734/2004 while dismissing the appeal of the Regional Office, Shillong, against the Hon'ble CAT(Gauhati Bench) Judgement in my favour, has directed that my inter-se-seniority in the cadre of LDCs vis-à-vis two other LDCs of the Regional Office, Shillong, should be fixed "by taking into account the past services rendered by Bhattacharjee in his parent department". The Hon'ble High Court direction is loud and categorical.
4. That, viewed in the context of the letter dated 2-8-1996 of the Ministry of Environment & Forests of the Government of India, New Delhi, and the categorical direction of the Hon'ble Gauhati High Court in Para 19 of their Judgement dated 23-9-2005 in W.P.(C) No.6734 of 2004(G), the contentious issue of whether my past service in my parent department should count towards my service on my permanent absorption in the borrowing department, has been finally settled by the Hon'ble High court Judgement dated 23-9-2005 in my favour.
5. That, the Hon'ble High Court in Para 19 of their Judgement dated 23-9-2005 has expressly set aside the orders dated 9-4-1999 as well as the "decision of the Central Government communicated vide communication dated 11-6-2000" and **has directed the "authorities" to re-fix my inter-se-seniority vis-à-vis the other two LDCs of the Regional Office, Shillong "by taking into account the past services" rendered by me in my "parent department"**. The decision is clear, loud and unambiguous.
6. That, regarding fixation of seniority of deputation absorbees, I enclose a photocopy of Para 11(IV) in P-201-202 from Swamy's Complete Manual on Establishment and Administration from which it will be seen that an employee who is initially taken on deputation and absorbed later, his seniority will be fixed from the date he has been holding the post on deputation or the date from which has been appointed on a regular basis to the same or equivalent grade in his parent department, **whichever is "earlier".(Copy enclosed-'A')**
7. That, my absorption in the Regional office, Shillong, was in public interest vide the Regional office order dated 30-10-1991 which read as follows:-
"Shri S.K. Bhattacharjee,LDC on deputation to this office, is allowed to continue on deputation till finalization of the recruitment rules and eventual absorption of said Shri S K Bhattacharjee in the services of this office as per Government of India, Ministry of Environment & Forests letter No.5/91-RO(HQ) dated 2-5-1991. This order issues after taking into consideration the no-objection of his parent department as contained in that department's letter No.NEPA/PF(C)/1/86/Vol-I/1789 dated 14-6-1989."
8. That, the Regional Office has counted my seniority in the cadre of LDC
- 4---



from 15-6-1989 i.e, the date on which I was appointed, on deputation, to the post of LDC in the Regional Office which has amounted to confiscation of the whole of my 9(nine) years' past service rendered by me in my parent department from 1-8-1980 to 14-6-1989. This was in frontal violation of the Hon'ble Gauhati High Court's order in para 19 of their 'Judgement and Order' dated 23-9-2005 in W.P.(C) No.6734 of 2004(G). In the said para 19 of their judgement and order order, the Hon'ble High Court had unequivocally 'directed' the authorities to 're-fix' my seniority "by taking into account the past services" rendered by me "in the parent department".

9. That, all other facts stated and submissions made in Para 6 to 15 of my representation dated 16-7-2008 stand as they are.
10. That, as stated in Para 16 of my representation dated 16-7-2008, my promotion to the post of UDC in the Regional Office, Shillong, was ordered with effect from 15-6-1997 **without taking into account my past services in my parent department which was diametrically contrary and violative of the Hon'ble High Court's Judgement and direction dated 23-9-2005 in W.P.(C) No.6734 of 2004.**
11. That, the Regional Office, Shillong has counted my seniority in the cadre of LDC from 15-6-1989, i.e, the date on which I was appointed, on deputation, to the post of LDC, by leaving out of account, the whole of my 9-year-long service rendered by me in my parent department.
12. That, in terms of the Hon'ble High Court's ruling in para 19 of the judgement and order dated 23-9-2005 in W.P.(C) No.6734 of 2004(G), the fixation of my seniority in the LDC cadre of the Regional Office with effect from 15-6-1989 by leaving out of account my 9-year-long past service in my parent department from 1-8-1980 to 14-6-1989, was patently incorrect.
13. It is respectfully pinpointed here that in ordering my promotion to the post of UDC in the Regional Office, Shillong, my seniority in the cadre of LDC has been counted from 15-6-1989, that is, the date on which I was appointed LDC on deputation in the Regional Office, Shillong, thereby wiping out the whole of my past services rendered by me in my parent department.
The exclusion of my past service rendered by me in my parent department is not only violative of the Hon'ble High Courts Judgement but also wholly contrary to the Ministry's O.M. direction dated 2-8-1996.
14. That, as per paras 19 and 21 of the Judgement and Order dated 23-9-2005 of the Hon'ble High court in WP(C) No.6734 of 2004(G), my past service in my parent department ought to have been taken into account in computing my 8 years service as LDC for the purposes of my promotion to the post of UDC but this was not done.
15. That, the rule as originally laid down by the Ministry of Personnel in their OM dated 29-5-1986 regarding regulation of seniority of person who is initially on deputation and subsequently absorbed in the borrowing department, was amended and is no longer in force. The existing rule in this regard is contained in Para 11(IV) in P-201-202 of Swamy's Complete Manual on Establishment



and Administration (Photocopy enclosed for ready reference) vide also para 6 hereinabove.

16. That, a pointed reference is invited to para 22 of my representation dated 16-7-2008 wherefrom it shall be seen that my past service rendered by me in my parent department from 1-8-1980 was taken into account in computing my 24 years' service while granting me the 2nd A.C.P. No differential yardstick could have been followed in computing my eligible years' service while granting my promotion to the post of UDC, and/or from January 1992 when post of UDC fell vacant and I was actually promoted to the post of UDC, being the senior most UDC then, w.e.f. January 1992(duly constituting Selection Board/DPC). And Assistant due from 2002 as per rule instead of 2008.
17. That, the Judgement of a High Court is a law on the issue on which it is passed. Presuming but not accepting that the OM dated 29-5-1986 of the Ministry of Personnel is still in force (which is not), its provision cannot override the Hon'ble High court's order.
18. That, the supplementaries are in addition to all the Para of my representation dated 16-7-2008. They all stand and may be taken into consideration.
19. That, with the supplementaries as hereinabove, I repeat, in toto, my prayer and relief I sought in Para 26 of my representation dated 16-7-2008 and most humbly seek your beneign consideration and orders thereon in as early a date as possible.

With deep and respectful regards,

Yours faithfully,

Advance copy

(S K Bhattacharjee)
Asstt(Gr-B), MOEF
RO(NER), Shillong.

24/11/08

CHITURKHAH S.G. 1170000
SP EE410495424 IN
Counter No:1.DP-Code:KIPS
To:THE DEPUTY SECRETAR.MINISTRY
New Delhi, PIN:110003
From:S K BHATTACHARJEE . SHG
Wt:32grams.
Amt:25.00 . 25/11/2008 , 11:51
Taxes:Rs.3.00<EDD(If not a holiday):26/11/2008



Advance copy for kind information & action

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal
12 AUG 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

10.2 Cases of absorption fall into two categories, viz. —

- (a) Where Recruitment Rules provide for appointment by Deputation/absorption and the proposal is only to absorb an officer already selected on deputation.
- (b) Where Recruitment Rules provide for Deputation only at the time of initial selection of the officer concerned, but have been amended subsequently to include absorption.

As far as the first category is concerned, the Commission will consider the proposals for absorption where the following conditions are fulfilled: —

- (i) The initial selection on deputation basis should have been made in consultation with the Commission.
- (ii) The Administrative Ministry should certify that there is no other deputationist in position appointed earlier to the officer now proposed for absorption, and in case there is any such person, he is not willing to be considered for appointment on absorption basis.
- (iii) The person concerned and the lending authority have given their willingness for such permanent absorption.
- (iv) The original circular letter calling for nomination for deputation should have clearly mentioned the possibility of permanent absorption.

In the second category of cases, i.e., where "Absorption" has been provided in the Rules subsequent to the selection of a person on Deputation, the Ministries/Departments should re-circulate the post, clearly indicating "Absorption" as a mode of recruitment and then only make a reference to the Commission. Such circulation will also be necessary in the other category of cases if the original circular letter calling for nomination for deputation did not clearly mention the possibility of permanent absorption *vide* (iv) above.

11. Seniority of persons absorbed after being on deputation

11.1 The instructions on seniority of transferees contained in Para. 7 of the Annexure to DoP's O.M. No. 9/11/55-R.P.S., dated 22-12-1959, [see Chapter 40 — Seniority] mainly deal with cases where persons are straight-away appointed on absorption. It is, however, observed that most of the cases of permanent absorption are those where the officers were taken on Deputation initially under the method of 'Deputation/Absorption' contained in the relevant Recruitment Rules.

11.2. Even in the type of cases mentioned above, i.e., where an officer initially comes on Deputation, and is subsequently absorbed, the normal principle that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption the same or equivalent grade on regular basis in his parent Department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only

from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not affect any regular promotion made to the next higher grade prior to the date of absorption. Accordingly, it has been decided to add the following sub-para (iv) to Para. 7 of principles communicated *vide* OM, dated 22-12-1959: —

(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e., where the relevant Recruitment Rules provide for Deputation/Transfer), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent Department such regular service in the grade shall also be taken into account in fixation of his seniority, subject to the condition that he will be given seniority from

— the date he has been holding the post on Deputation
or

— the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent Department

whichever is earlier.

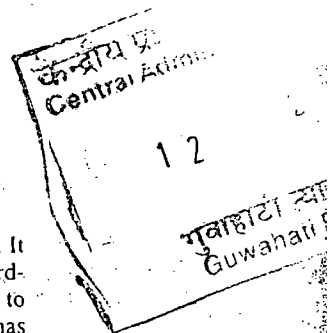
The fixation of seniority of a transferee in accordance with the above principles will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up vacancies in higher grade taking place after such absorption. In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption.

12. Whether an officer on deputation can be considered for appointment for another deputation without completing cooling off period

12.1 No general order has been issued regarding cooling off period between one spell of deputation and another spell of deputation. It is for the cadre Controlling Authority to decide whether there should be any cooling off period or not. However, in view of the rigid application of Tenure Rules, officers should not stay away from their respective cadres beyond the normal permissible deputation period. This aspect should be kept in view while deciding whether there should be any cooling off period or not.

13. Redeployment of surplus staff against vacancies to be filled by Absorption

13.1 No vacancy shall be filled by absorption (otherwise than on deputation basis) without obtaining a certificate of non-availability of surplus staff for redeployment against the vacancy in the first instance from the Central (Surplus Staff) Cell in the Department of Personnel and Training in respect of



- 79 -

ANNEXURE-0

Government of India
Ministry of Environment & Forests
North Eastern Regional Office
Upland Road, Laitumkhrach
Shillong - 793 003

No.11-27/96/E-RONE/Vol.I/ 2919-20

Dated 14-1-2009

To

Pratibha Raj,
Deputy Secretary, RO(HQ)
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi- 110 003.

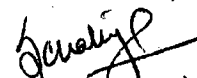
Sub: Forwarding of supplementary to the representation dated 16-7-2008 of Shri
S.K.Bhattacharjee, Assistant - regarding

Madam,

With reference to the subject cited above, I am directed to forward herewith
supplementary to the representation dated 16-7-2008 submitted by Shri
S.K.Bhattacharjee, Assistant for your kind information and necessary action.

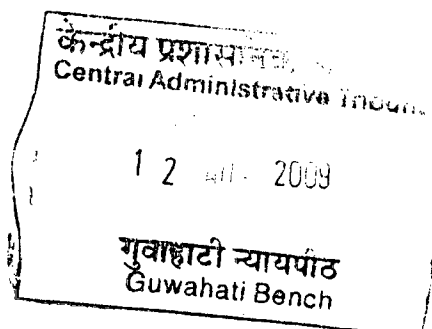
Encl: as above.

Yours faithfully,



(Dr. S.C. Katyar)
Joint Director &
Head of Office.

Copy to

Shri. S.K. Bhattacharjee, Asstt. for information



Certified to be true Copy


Advocate

- 80 -

To

Date: 4th February, 2009.

The Deputy Secretary(Admn),
Govt of India, Min of Env & Forests,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi-110 003.

(Through Proper Channel)

Sub: My Representation dated 16th July, 2008 and supplementary dated
24th November, 2008 thereto.

Respected Sir/Madam,

I respectfully invite to your kind attention to my Representation and the
Supplementary thereto and beg to state that your kind order on my Representation are
eagerly awaited.

With high regards.

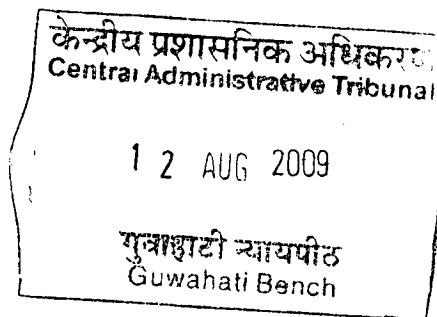
Yours faithfully,

(S K Bhattacharjee)
Assistant(Gr-B), MOEF,
RO(NER), Shillong.

Advance copy submitted to the Dy. Secretary, Govt of India, Min of Env & Forests,
Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110 003.

(S K Bhattacharjee)

Sl. No. 2917
Date 4/2/09
GOVT OF INDIA
Ministry of Environment And Forests
Regional Office, Shillong



Certified to be true Copy

[Signature]
Advocate

- 81 -

Registered

Government of India
Ministry of Environment & Forests
Regional Office(NER), Upland Road
Laitumkhrah, Shillong-793 003
(Meghalaya)

No.11-27/96/E-RONE/Vol-I/50-51

Date: 9-4-09

To

The Deputy Secretary(Admn),
Government of India
Ministry of Environment & Forests,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi-110 003.

Sub: Forwarding of Representation dated 4-2-2009 received from
Shri S K Bhattacharjee, Assistant(Group-B) – regarding.

Madam,

Referring to the subject cited above, I am directed to forward herewith a
Representation dated 4-2-2009 received from Shri S K Bhattacharjee, Assistant(Group-B)
for kind further necessary action.

Encl: As above.

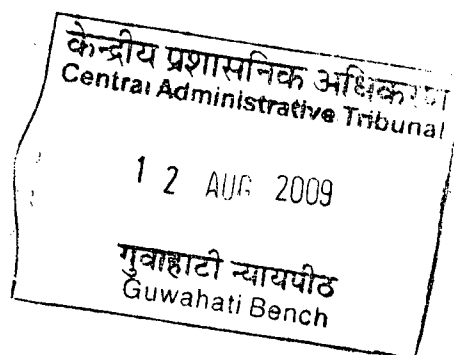
Yours faithfully,

(Dr. S C Katiyar)
Joint Director &
Head of Office.

Copy to:

✓ Shri S K Bhattacharjee, Assistant(Group-B), Ministry of Environment & Forrests,
Govt of India, RO(NER), Shillong for information.

[Signature]
Head of Office.



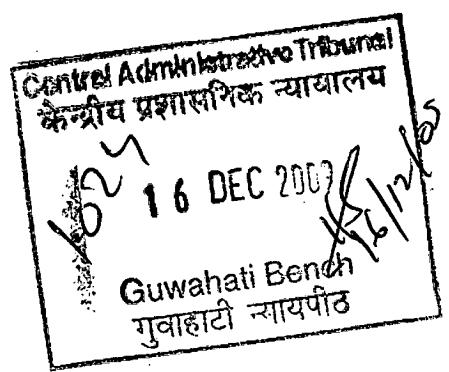
Certified to be true Copy

[Signature]
Advocate

- 82 -

Filed by:-
The Respondents
Through:-
Mangulor Das
Sr. C.B.S.C.
EAT
16/12/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



IN THE MATTER OF:

In O.A. No. 156/09

Sri S. K. Bhattacharjee

.....Applicant

-vs.-

Union of India and others

.....Respondents

-AND-

IN THE MATTER OF:

Written statement on behalf of the respondents.

(WRITTEN STATEMENT ON BEHALF OF RESPONDENTS)

I, Sri R. Lalnun Sanga, S/o R. KHAWBULA (L), aged about 43 years, presently working as the Deputy Conservator of Forests (C), Ministry of Environment & Forest, North Eastern Regional Office, Laitumkhrah, Shillong-793003, do hereby solemnly affirm and state as follows:-

1. That I am the Deputy Conservator of Forests (C), Ministry of Environment & Forest, North Eastern Regional Office, Shillong. I have been impleaded as party respondent no. 2. I have gone through the Original Application and have understood the contents thereof. I am conversant with the facts and circumstances of the case. I have been authorized to file this written statement on behalf of other respondents.
2. That I do not admit any of the averments except which are specifically admitted hereinafter and the same are deemed as denied.
3. That before traversing various paragraphs of the present Original Application, the answering respondent would like to place the brief facts of the case.

BRIEF FACTS OF THE CASE:

3.1 That the applicant, Sri S. K. Bhattacharjee, while working as LDC in the North East Police Academy (NEPA in short), Barapani was released from the establishment vide its order dated 14.06.89 with the direction to report for duty in the Office of the Respondent no. 2 i.e. Chief Conservator of Forests

(Central), Regional Office, Shillong-4 as LDC on deputation as per their letter dated 30.05.89. The applicant, accordingly, joined in the Office of the Respondent no.2 on 15.06.89.

3.2 That the applicant, thereafter, served in the Office of the Respondent no. 2 initially for a period of 3 years on deputation. The said period was later extended by another two years. Further the Ministry of Environment and Forests vide its letter dated 24.10.93 approved the extension of deputation period of the applicant for the fifth year w.e.f. 15.06.93 to 31.03.94.

3.3 That soon after joining on deputation the applicant started requested for permanent absorption in the Office of the Respondent no.2 vide his letter dated 22.01.91, 02.01.92 and 01.12.92 on the ground of personal/family problems.

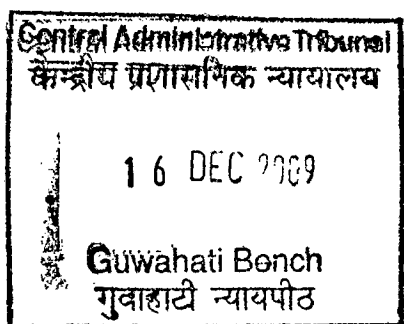
3.4 That during the deputation period he was given adhoc promotions to UDC vide order dated 10.03.92 issued by the Respondent no.2 by giving effect from 14.01.92 for a period of 3 months and again from 14.04.92 for a period of 6 months and thereafter from 14.10.92 for a period of 6 months vide order dated 14.04.92 and 14.10.92 respectively issued by the Respondent no.2, i.e borrowing department.

Thereafter, while the applicant was still on deputation in the Office of the Respondent no.2, he was again given adhoc promotion from 15.12.92 till 13.06.93.

Further the applicant was also granted proforma promotion vide order dated 05.07.96 on adhoc basis to the post of UDC by his parent department i.e. NEPA under the provision of 'Next Below Rule' of FR-30 w.e.f. 04.01.92 (i.e. the date on which his junior was promoted to the post of UDC) to 30.09.93 (i.e. the date on which the applicant was reverted from the post of UDC to LDC at his own request) and again from 07.08.95 (i.e. the date of reporting to NEPA) to 02.04.96 (i.e. the date of release from NEPA to accept his absorption in the O/O R.2 as LDC).

3.5 That while still holding the post of UDC on adhoc basis, the applicant requested Respondent no.2 for reversion to the post of LDC on 17.09.93 to enable his absorption in the Office of the Respondent no.2, i.e the Chief Conservator of Forests. Accordingly the applicant was reverted to the post of LDC w.e.f. 01.10.93.

3.6 That before the expiry of the deputation period the applicant filed O.A. no. 43/94 in the Hon'ble CAT, Guwahati Bench which was disposed of vide order 03.10.94 leaving it to the respondents therein to sympathetically consider his request for permanent absorption.



3.7 That thereafter, the parent department i.e. NEPA issued a No Objection Certificate for permanent absorption of the applicant in the Office of the Respondent no.2 vide memo dated 29.12.94 in response of Ministry of Environment & Forest, Regional Office, Shillong's letter dated 01.12.94.

3.8 That thereafter, Ministry of Environment & Forest vide its order dated 13.05.95 directed the applicant to report for duty in the parent department. This order of the NEPA was assailed by the applicant by filing another O.A. being no. 68/95 before CAT Bench. The said O.A. was disposed of vide judgement and order dated 18.10.95 directing the respondents therein to consider the case of the applicant for absorption in the borrowing department permanently.

3.9 That, thereafter, Respondent no.2 vide its order dated 20.03.96 permanently absorbed the applicant against the vacant post of LDC w.e.f. the date of issuance of the said order which, was, however, been modified vide order dated 17.04.96 to the effect that the order of the permanent absorption would be operated from the date of joining his duty.

3.10 That, thereafter, the applicant again moved the Hon'ble Tribunal assailing the prospective absorption in the parent department in O.A.128/96 which was disposed of vide order dated 21.01.99 directing the respondents therein i.e. the borrowing department (Respondent no.2) to consider the case of the applicant for permanent absorption with retrospective effect. The Chief Conservator of Forests (Central) i.e. Respondent no.2, on the basis of the direction issued by the Hon'ble Tribunal in the said order dated 21.01.99, vide its order dated 09.04.99 held that the order of absorption of the applicant was to be determined w.e.f. 13.02.95 i.e. the date on which the repatriation to the parent department was passed by the borrowing department, on the ground that the applicant was absorbed in the borrowing department not in public interest but as per his own request as well as direction of the Hon'ble CAT to consider his case sympathetically and therefore his past services in the parent department cannot be counted for the purpose of determining the seniority in the borrowing department after absorption in view of the OM dated 29.05.1986 issued by the Govt. of India, Ministry of Personnel, Public Grievance and Pensions. However, taking the date of absorption as 13.02.95, i.e. the date when the order of repatriation was passed by the borrowing department, the applicant's seniority was fixed below the other LDCs.

3.11 That the applicant, thereafter, filed an appeal against the said direction in O.A. no. 227/2000 before the Hon'ble CAT, Guwahati Bench which

was disposed of vide order dated 22.08.01 observing that the applicant's date of absorption cannot be lowered down beyond 30.10.1992.

3.12. That, thereafter, the Respondent no.2 filed a writ petition being no. 6734/04 before the Hon'ble Gauhati High Court challenging the judgment and order dated 22.08.01 passed by the Hon'ble CAT in O.A. no. 227/2000 wherein the Hon'ble High Court upheld the judgement of the Hon'ble CAT in O.A. no. 227/2000 directing the respondents to refix the inter-se-seniority of the applicant vis-à-vis other LDCs by taking into account the passed services rendered by the applicant in the parent department.

3.13. That, thereafter, the Respondent no.2 issued the Seniority List of the LDCs vide office order dated 08.02.06 under no. 11-27/96/E-RONE/4595-98 wherein the applicant was made seniormost LDC with 30.10.92 as the date of absorption and the date of appointment to the grade of LDC in Ministry of Environment & Forest, RO, Shillong was reckoned as 15.06.1989 i.e. the date on which he joined Ministry of Environment & Forest in the post of LDC on deputation as per Ministry of Personnel O.M. dated 29.05.86.

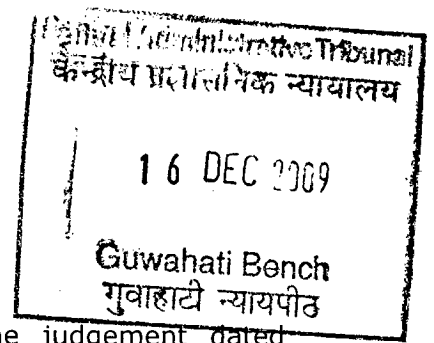
3.14. That, accordingly, the applicant was promoted to the post of UDC w.e.f. 15.06.97 i.e. after completion of 8 years of regular service in the post of LDC as per Ministry of Environment & Forest, Govt. of India's letter no. 14-3/1993-RO(HQ) dated 06.09.2006 (and) to the post of Assistant Group 'B' w.e.f. 18.02.2008 after completion of 10 days in the post of UDC as per Ministry of Environment & Forest, Govt. of India's letter no. 14-3/99-RO(HQ) dated 22.02.2008.

3.15. That, thereafter, the applicant's representation dated 16.07.08 and his subsequent representations dated 05.09.08 and 24.11.08 requesting to antedate his promotion were duly forwarded to the Respondent no.1 vide letter dated 14.01.09.

4. REPLY TO THE FACTS OF THE CASE:

4.1 That with regard to the statements made in paragraph 4.1 to 4.3 of the application, the humble answering respondent begs to state that the applicant is presently working as Assistant Group B in the Office of the Respondent no.2.

4.2 That with regard to the statements made in paragraph 4.2 of the application, the humble answering respondent beg to offer no comment as being matters of records.



However, it is stated that in view of the judgement dated 22.08.2001 passed by the Hon'ble CAT, Guwahati Bench in O.A. no. 227/2000 and upheld by the Hon'ble Guwahati High Court in W.P.(c) NO. 6734/2004 vide order dated 23.09.2005 the applicant was permanently absorbed in the Office of the Respondent no.2 and his period of absorption was given effect on 30.10.92.

4.3 That with regard to the statements made in paragraph 4.3 the humble answering respondent begs to state that during the deputation period the applicant was given adhoc promotions to the post of UDC vide order dated 10.03.92 issued by the Respondent no.2 by giving effect from 14.01.92 for a period of 3 months and again from 14.04.92 for a period of 6 months and thereafter from 14.10.92 for a period of 6 months vide order dated 14.04.92 and 14.10.92 respectively issued by the Respondent no.2, i.e borrowing department.

Thereafter, while the applicant was still on deputation in the Office of the Respondent no.2, he was again given adhoc promotion from 15.12.92 till 13.06.93.

Further the applicant was also granted proforma promotion vide order dated 05.07.96 on adhoc basis to the post of UDC by his parent department i.e. NEPA under the provision of 'Next Below Rule' of FR-30 w.e.f. 04.01.92 (i.e. the date on which his junior was promoted to the post of UDC) to 30.09.93 (i.e. the date on which the applicant was reverted from the post of UDC to LDC at his own request) and again from 07.08.95 (i.e. the date of reporting to NEPA) to 02.04.96 (i.e. the date of release from NEPA to accept his absorption in the O/O R.2 as LDC).

4.4 That with regard to the statements made in paragraph 4.4 of the application, the humble answering respondent beg to state that while still holding the post of UDC on adhoc basis, the applicant requested respondent no.2 for reversion to the post of LDC on 17.09.93 to enable his absorption in the Office of the Respondent no.2. Accordingly, the applicant was reverted to the post of LDC w.e.f. 01.10.93. Before the expiry of the deputation period the applicant filed O.A. no. 43/94 in the Hon'ble CAT, Guwahati Bench which was disposed of vide order 03.10.94 leaving it to the respondents therein to sympathetically consider his request for permanent absorption.

Thereafter, the parent department i.e. NEPA issued a No Objection Certificate for permanent absorption of the applicant in the Office of the Respondent no.2 vide memo dated 29.12.94 in response of Ministry of Environment & Forest, RO, Shillong's letter dated 01.12.94. Thereafter, Ministry of Environment & Forest vide its order dated 13.05.95 directed the applicant to report for duty in the parent department This order of the NEPA was assailed by the applicant by filing another O.A. being no. 68/95 before CAT Bench. The said O.A. was disposed of vide judgement and order dated 18.10.95 directing the

respondents therein to consider the case of the applicant for absorption in the borrowing department permanently.

Thereafter Office of the Respondent no.2 vide its order dated 20.03.96 permanently absorbed the applicant against the vacant post of LDC w.e.f. the date of issuance of the said order which, was, however, been modified vide order dated 17.04.96 to the effect that the order of the permanent absorption would be operated from the date of joining his duty.

4.5 That with regard to the statements made in paragraph 4.5 of the application, the humble answering respondent beg to ~~state that~~ offer no comment.

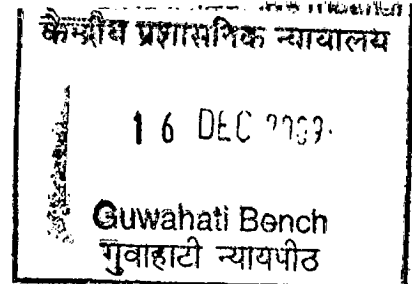
4.6 That with regard to the statements made in paragraphs 4.6 of the application, the humble answering respondent begs to state that the Regional Offices, Ministry of Environment and Forests (Group 'C' and Group 'D' posts) Recruitment Rules, 1992 provides that the promotion to the post of UDC requires 8 years of regular service in the post of LDC.

However, keeping in view the direction of the Hon'ble Gauhati High Court in WP (c) no. 6734/2004 upholding the judgement passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. 227/2000 wherein the Hon'ble Tribunal made an observation that the applicant's date of absorption cannot be lowered down beyond 30.10.92, the Respondent no.2 issued the seniority list of LDC's vide Office Order no. 11-27/96/E-RONE/4595-98 dated 08.02.2006 wherein the applicant was made the senior most LDC with 30.10.92 as the date of absorption and the date of appointment to the grade of LDC in Ministry of Environment & Forests, Regional Office, Shillong was reckoned as 15.06.1989 i.e. the date on which he joined the said office in the post of LDC on deputation.

The seniority of the applicant was regulated in accordance with the Ministry of Personnel O.M. No. 200220/7/80-Estt (D) dated 29.05.86 which provides that:-

"In case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant Recruitment Rules provide for transfer on deputation/transfer), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (in the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

88- 7



- the date he has been holding the post on deputation
- or
- the date from which he has been appointed on regular basis to the same or equivalent grade in his parent department, whichever is later."

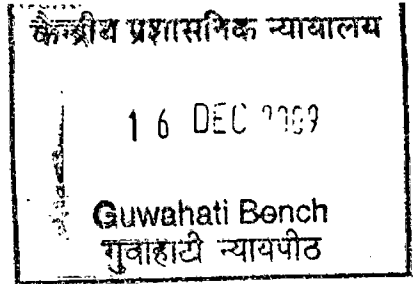
Accordingly in pursuance to the aforesaid O.M. dated 29.05.86, the respondent absorbed the applicant in the post of LDC from 30.10.92. However, since the applicant has been holding the equivalent post of LDC on the date of absorption, his seniority has been reckoned from 15.06.89 i.e. the date on which he has been appointed on deputation to the post of LDC. Accordingly, the applicant was promoted to the post of UDC w.e.f. 15.06.97 i.e. after completion of eight years of regular service in the post of LDC as per the Recruitment Rules, 1992 vide Ministry of Environment and Forest, Government of India letter no. 14-3/1993-RO(HQ) dated 06.09.06. Further the applicant was again promoted to the post of Assistant w.e.f. 18.02.08 after completion of ten years of regular service in the post of UDC as per Recruitment Rules, 2000 vide Ministry of Environment and Forest, Government of India letter no. 14-3/1999-ROHQ dated 22.02.08.

Copies of the Recruitment Rules, 1992, Office orders dated 08.02.06, O.M. dated 29.05.86 and letters dated 06.09.06, 22.02.08 are annexed herewith and marked as **Annexure 1, 2, 3, 4, and 5** respectively.

4.5 That with regard to the statements made in paragraphs 4.7 to 4.14 of the application, the humble answering respondent has nothing to make comment on it.

4.6 That with regard to the statements made in paragraphs 4.15 and 4.17 of the application, the humble answering respondent begs to reiterate and reaffirm the statements made in paragraph 4.4 of this written statement.

4.7 That with regard to the statements made in paragraphs 4.18 of the application, the humble answering respondent begs to state that the applicant has been holding equivalent post of LDC on the date of absorption, i.e. 30.10.92 and his seniority has been reckoned from 15.06.89 i.e. the date on which he has been appointed on deputation to the post of LDC from the parent department, i.e. NEPA to Office of the Respondent no.2. As per O.M. dated 29.05.86 as stated above, a person who is initially taken on deputation and absorbed later, his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already



(in the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation or the date from which he has been appointed on regular basis to the same or equivalent grade in his parent department, whichever is later.

Further, the applicant was promoted to the post of UDC w.e.f. 15.06.97 i.e. after completion of eight years of regular service in the post of LDC as per the Recruitment Rules, 1992 vide Ministry of Environment & Forest's letter dated 06.09.06 and to the post of Assistant w.e.f. 18.02.08 after completion of ten years of regular service in the post of UDC as per Recruitment Rules, 2000 vide Ministry of Environment & Forest's letter dated 22.02.08.

4.8 That with regard to the statements made in paragraphs 4.19 to 4.22 of the application, the humble answering respondent has nothing to make comment on it.

4.9 That with regard to the statements made in paragraph 4.23 of the application, the humble answering respondent begs to state that the Regional Offices, Ministry of Environment and Forests (Group 'B' posts) Recruitment Rules, 2000 provides that the promotion to the post of Assistant requires 10 years of regular service in the post of UDC.

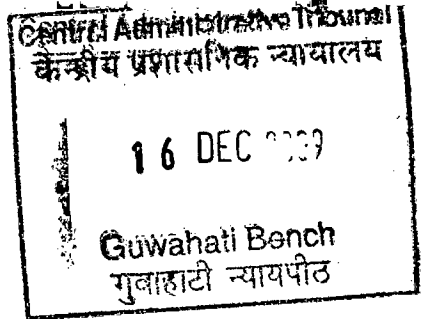
Accordingly, the applicant was promoted to the post of Assistant Group B w.e.f. 18.02.08 i.e. after completion of 10 years of regular service in the post of UDC as per Recruitment Rules, 2000 vide Ministry of Environment and Forest, Government of India letter no. 14-3/1999-ROHQ dated 22.02.08.

Copy of the Recruitment Rules, 2000 is annexed herewith and marked as **Annexure 6**.

4.10 That with regard to the statements made in paragraph 4.24 of the application, the humble answering respondent has nothing to make comment on it.

4.11 That with regard to the statements made in paragraphs 4.25 to 4.30 of the application, the humble answering respondent begs to state that the applicant's representation dated 16.07.08 and his subsequent representations dated 05.09.08 and 24.11.08 requesting to antedate his promotion were duly forwarded to the R.1 vide letter dated 14.01.09.

4.12 That with regard to the statements made in paragraphs 4.31 to 4.40 of the application, the humble answering respondent begs to state that the Hon'ble Tribunal, Guwahati Bench vide order dated 21.01.99 passed in O.A. no. 128/96 directed the respondents i.e. the borrowing department to consider the



case of the applicant for permanent absorption with retrospective effect. The Respondent no.2 in compliance with the order dated 21.01.99 issued an order dated 09.04.99 stating that the order of absorption of the applicant has to be determined with effect from 13.02.1995, i.e the date on which the repatriation of the applicant to the parent department was passed by the borrowing department on the ground that on the ground that the applicant was absorbed in the borrowing department not in public interest but as per his own request as well as direction of the Hon'ble CAT to consider his case sympathetically and therefore his past services in the parent department cannot be counted for the purpose of determining the seniority in the borrowing department after absorption in view of the OM dated 29.05.1986 issued by the Govt. of India, Ministry of Personnel, Public Grievance and Pensions. However, taking the date of absorption as 13.02.95, i.e. the date when the order of repatriation was passed by the borrowing department, the applicant's seniority was fixed below the other LDCs.

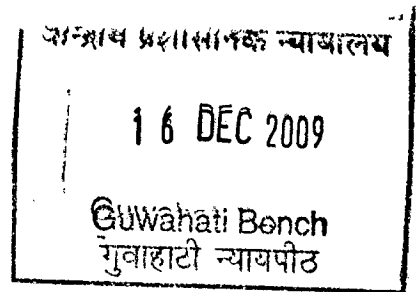
The applicant, thereafter, filed an appeal against the said direction in O.A. no. 227/2000 before the Hon'ble CAT, Guwahati Bench which was disposed of vide order dated 22.08.01 observing that the applicant's date of absorption cannot be lowered down beyond 30.10.1992.

4.13 That with regard to the statements made in paragraphs 4.41 of the application, the humble answering respondent has nothing to make comment on it.

4.14 That with regard to the statements made in paragraphs 4.42 of the application, the humble answering respondent begs to state that ACP is a separate issue for which total no. of years of service is counted when there was no promotion avenue. In the instant case the issue is the date of giving promotion and seniority to the applicant. It is stated promotion cannot be granted with retrospective effect as per Recruitment Rules.

4.15 That with regard to the statements made in paragraphs 4.43 of the application, the humble answering respondent begs to state that the applicant was promoted to the post of UDC w.e.f. 15.06.97 i.e after completion of 8 years of regular service in the post of LDC vide Ministry of Environment & Forest's letter dated 06.09.2006 and to the post of Assistant w.e.f. 18.02.08 after completion of ten years of regular service in the post of UDC vide Ministry of Environment & Forest's letter dated 22.02.08.

Further it is stated here that the applicant has been considered for promotion to the post of UDC after completion of 8 years of regular service in the post of LDC as per Recruitment Rules, 1992. Further, the applicant was also promoted to the post of Assistant Group B w.e.f. 18.02.08 i.e. after he fulfilled 10 years of regular service in the post of UDC i.e. the requisite period for



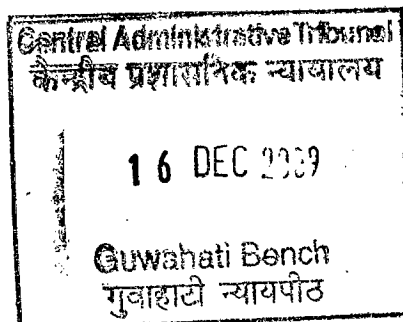
eligibility for the post of Assistant, as per Recruitment Rules, 2000 for Group 'B' posts.

Further it is stated that the applicant was also granted proforma promotion vide order dated 05.07.96 on adhoc basis to the post of UDC by his parent department i.e. NEPA under the provision of 'Next Below Rule' of FR-30 w.e.f. 04.01.92 (i.e. the date on which his junior was promoted to the post of UDC) to 30.09.93 (i.e. the date on which the applicant was reverted from the post of UDC to LDC at his own request) and again from 07.08.95 (i.e. the date of reporting to NEPA) to 02.04.96 (i.e. the date of release from NEPA to accept his absorption in the O/O R.2 as LDC).

However, the applicant was relieved by his parent department to join Ministry of Environment & Forest, Regional Office, Shillong in the post of LDC on absorption as per the direction of Hon'ble CAT, Guwahati Bench in O.A. no. 68/95.

Copy of the communication dated 05.07.96 is annexed herewith and marked as Annexure 7.

4.16. That the humble answering respondent begs to submit that the instant original application has no merit at all and is liable to be dismissed.



VERIFICATION

I, Sri R. Lalnun Sanga, S/o R. KHAW BULA (L), aged about 43 years, presently working as the Deputy Conservator of Forests (C), Ministry of Environment & Forest, North Eastern Regional Office, Laitumkhrach, Shillong-793003 do hereby verify as follows:-

That the statements made in paragraphs 1.2, 2.4.1 and 4.14 are true to my knowledge and belief, those made in paragraphs 3.1 to 3.15, 4.2 to 4.13 and 4.15 being matters of record are true to my information derived therefrom and rests are my humble submission before the Hon'ble Tribunal. I have not suppressed any material fact before the Hon'ble Tribunal.

And I sign this verification on this 16th day of December, 2009 at Guwahati.

SIGNATURE

Deputy Conservator of Forest (Central)
Ministry of Environment & Forests
Regional Office, (NLZ)
Shillong.

-93- -12- ANNEXURE - 1
No 4-1/89-RO(HQ) dt 30.10.92

(TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION(1) OF THE
GAZETTE OF INDIA)

Government of India
Ministry of Environment & Forests

Dated: New Delhi the , 1992.

N O T I F I C A T I O N

G.S.R.....In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to Group 'C' and Group 'D' posts in the Regional Offices of the Ministry of Environment and Forests, namely:-

1. Short title and commencement: (1) These rules may be called the Regional Offices, Ministry of Environment And Forests (Group 'C' and Group 'D' posts) Recruitment Rules, 1992.

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

Application: These rules shall apply to the posts specified in Column.1 of the Schedule annexed to these rules.

Number of posts, Classification and scale of pay: The number of the said posts, their classification and the scale of pay attached thereto shall be as specified in column 2 to 4 of the said Schedule.

4. Method of recruitment, age limit and other qualifications etc: The method of recruitment, age limit, qualifications and other matters relating to the said posts shall be as specified in columns 5 to 14 of the aforesaid Schedule.

- 4 A. Liability of persons appointed as peons to undergo training as Home Guards: Notwithstanding any thing contained in these rules, every person appointed as a peon under these rules shall undergo training as a Home Guard for a period of three years, save those who are physically handicapped to undergo such training.

Provided that the Commandant-General, Home Guards, may having regard to the performance of and standard of training achieved by any person during the period of training reduce such period to two years for reasons to be recorded in writing.

San Nighar

certified
to be true

MD

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

16 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

Put up with
file.

24/11

-94-

-: 2 :-

5. Disqualification - No person -

(a) Who has entered into or contracted a marriage with a person having a spouse living; or

(b) Who having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to any of the said posts:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

6. Power to relax - Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

7. Saving - Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, the Ex-Servicemen and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

(THE SCHEDULE)

(M.G. GROVER)

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA
No.4-1/89-RO(HQ)

The Manager,
Government of India Press,
Mayapuri, Ring Road,
NEW DELHI.

COPY TO: (1) Chief Conservator of Forests(C), Regional Offices.

(2) Spare Copies.

Hindi Version will follow:

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

16 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

-95-

(9)

✓

(191)

(1) (2) (3) (4) (5) (6)

3 Upper Division 11 *
(1992)
* Subject to variation dependent on work load.
General Central Service Group 'C' Non-Gazetted Ministerial.
Rs. 1200-30-1560
13-40-2040
Non-selection Not applicable

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
16 DEC 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

96-

(10)

(7)

(8)

(9)

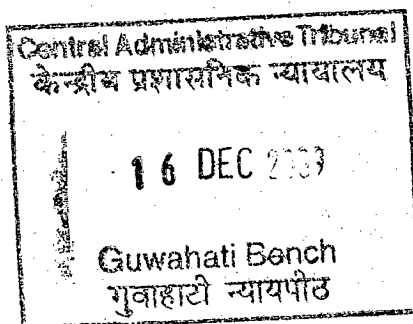
(10)

Not applicable

Not applicable

Not applicable

Not applicable.



97-

11

193

(11) (12) (13) (14)

By promotion failing which by transfer on deputation,

Promotion

Lower Division Clerk with a minimum of eight years regular service in the grade.

Transfer on deputation

Officers of the Central/State Governments/Public Sector Undertakings/Autonomous bodies:

- (a) Holding analogous posts on regular basis; or
- (b) With eight years regular service in a post in the pay scale of Rs.930-1500 or equivalent.

Group 'C' Departmental Promotion Committee consisting of:

Not Applicable

- 1. Deputy Secretary (Administration) - CHAIRMAN.
- 2. Assistant Inspector General of Forests (Regional Office Headquarter) - MEMBER
- 3. Deputy Conservator of Forests (Central) - MEMBER
- 4. Scientist 'SD' - MEMBER
- 5. One group 'A' Officer belonging to Scheduled Caste/Scheduled Tribes. - MEMBER
- 6. One Group 'A' Officer belonging to minority Community - MEMBER

(The Departmental Officers who are in the direct line of promotion will not be eligible for consideration for appointment on deputation.

Similarly deputationists shall not be eligible for consideration for appointment by promotion. Period of deputation including period of deputation in another ex-cadre posts held immediately preceding this appointment in the same or some other organisation/department of the Central Government shall ordinarily not exceed three years).

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
16 DEC 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

- 98 -
- 17 -
SI. No. 46(I)
ANNEXURE - 2
166
110

Government of India
Ministry of Environment & Forests
North Eastern Regional Office, Shillong

No.11-27/96/E-RONE/Vol.I / 4585-98

Dated 8-2-2006

OFFICE ORDER

In pursuance to direction of Hon'ble Gauhati High Court, Guwahati in WP (C) No.6734/2004 on 23-9-2005 and Ministry's letter F.No.14-3/99-RO (HQ) dated 23-1-2006, the seniority list of LDCs in the Ministry of Environment & Forests, North Eastern Regional Office, Shillong is refixed as below:

Sl. No.	Name and Educational Qualifications	Date of Birth	Whether SC/ST, if not say Neither	Date of appointment to the grade in MoEF, NE (RO)	Date of confirmation	Remarks
1.	Shri S.K. Bhattacharjee P.U. Science	25-10-1955	Neither	15-6-1989	16-1-1989	Confirmed by NEPA
2.	Smt. J. Lyngkhoi BA (Hons) Khasi	16-9-1970	ST	4-5-1993	4-5-1995	
3.	Shri M.P. Rimal BA (Hons) Political Science	10-8-1972	Neither	3-4-1996	3-4-1997	

Date of absorption of Shri S.K. Bhattacharjee as per the direction of Hon'ble CAT in O.A. No. 227 of 2000 on 22-8-2001 upheld by Hon'ble Gauhati High Court, Guwahati in WP (C) No.6734/2004 on 23-9-2005 is 30-10-1992.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

16 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

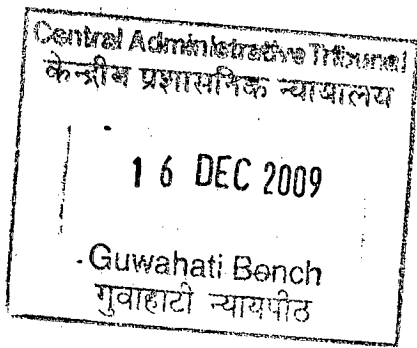
Certified to be true
[Signature]

[Signature]
Chief Conservator of Forests (C)
(Khazan Singh)

(165)

Copy to:

1. Shri A.K. Johari, Director (RO HQ), Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110 003 for information.
2. Shri R.K. Dutta, Technical Officer (Forestry), RO (HQ), Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi with reference to your letter F.No.14-3/99-RO(HQ) dated 23-1-2006.
3. All concerned.
4. Guard File.



[Signature]
Chief Conservator of Forests (C)

[Signature]

No. 20020/7/80-ESTT(D)
 Government of India/Bharat Sarkar
 Ministry of Personnel, Public Grievances & Pensions
 Department of Personnel & Training

New Delhi, the 29th May, 1986.

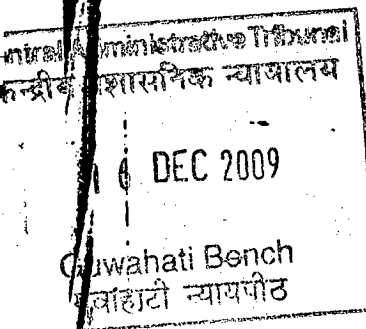
OFFICE MEMORANDUM

Subject: Seniority of persons absorbed after being on deputation.

The undersigned is directed to say that the existing instructions on seniority of transferees contained in para 7 of the Annexure to this Department's O.M.No.9/11/55-RPS dated 22nd December, 1959 (copy enclosed) mainly deal with cases where persons are straightway appointed on transfer. It is, however, observed that most of the cases of permanent absorption are those where the officers were taken on deputation initially under the method of 'transfer on deputation/transfer' contained in the relevant recruitment rules. This O.M. is intended to fill this gap in the existing instructions.

2. Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principle that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not affect any regular promotions made prior to the date of absorption. Accordingly, it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide O.M. dated 22nd December, 1959 :

"(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be from the date of absorption. However, if he has ever been holding a post in the grade in which he is absorbed prior to the date of absorption, his seniority will be counted from the date of such previous absorption."



taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation,
- Or
- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.

The fixation of seniority of a transferee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption".

3. All the Ministries/Departments are requested kindly to bring these instructions to the notice of all concerned in the Ministries/Departments and Attached and Subordinate offices under them for their guidance and to ensure their compliance.

4. These orders will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C&AG from time to time.

5. Hindi version is attached.

Sd/-
(K.S.R. KRISHNA RAO)
Deputy Secretary to the Govt. of India

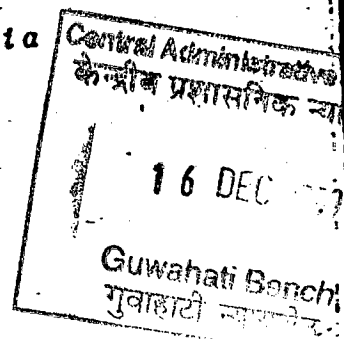
To

1. All Ministries/Departments of Govt. of India
2. President's/Vice President's Secretariat.
3. Prime Minister Office.
4. Lok Sabha/Rajya Sabha Secretariat.
5. Central Bureau of Investigation.
6. Staff Selection Commission.
7. Institute of Secretariat Training & Management.

Copy also forwarded to :-

1. The Union Public Service Commission with 10 spare copies w.r.t. their letter No.2/22/81-S.II dated 9.9.1981 and in continuation of this Department's letter of even number dated 3.1.1983.
2. The Controller & Auditor General of India w.r.t. their U.O.No. 383-GE.1/71-81(Seniority-transferee) dated 18.7.1982.
3. All Sections of the Deptt. of Personal & Training.

Sd/-
(K.S.R. KRISHNA RAO)
Deputy Secretary to the Govt. of India



*Testified
to be
true*

- 102 - -21-
भारत सरकार
पर्यावरण एवं वन मंत्रालय
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT & FORESTS

ANNEXURE-4

164
635

F.No.14-3/1993-RO(HQ)

Speed Post

Most Immediate

Dated - 6/09/2006

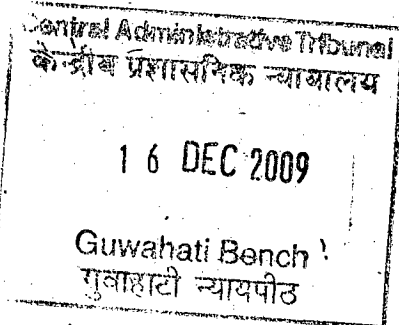
To

Shri R.L. Sanga, IFS
Deputy Conservator of Forests ©
Regional Office (NEZ),
Ministry of Env. & Forests,
Uplands Road, Laitumkhrah,
Shillong-793003
Phone No, (0364) 2227673.

Subject - Promotion of Shri S.K. Bhattacharjee, from the post of LDC to UDC
in RO, MoEF, Shillong-regarding

Sir,

Reference to your letter No 13-25/2004/E-RONE/1578 dated 3-8-2006 on the subject noted above and in this context I am directed to inform you that the competent authority in the Ministry has decided to allow promotion to Shri S.K. Bhattacharjee, LDC in the Regional Office, MoEF, Shillong to the post of Upper Division Clerk (UDC) w.e.f 15-06-1997 in terms of the Minutes of DPC held in the MoEF, New Delhi on 31/07/2006. The order's of promotion of Shri S.K. Bhattacharjee may kindly be issued immediately under intimation to this Ministry



Yours faithfully,

[Signature]
06/09/06
(RK.DUTTA)

Technical Officer (Forestry), RO(HQ)

Slary No. 1363
Date 20/9/06

GOVT OF INDIA
Ministry of Environment And Forest
Regional Office, Shillong

Artified
to be
over

[Signature]

Amc(R)
Rh
19/9





F.No. 14-3/99-ROHQ

-103-
-22-
SI. No. 100 (R)
भारत सरकार
पर्यावरण एवं वन मंत्रालय
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT & FORESTS

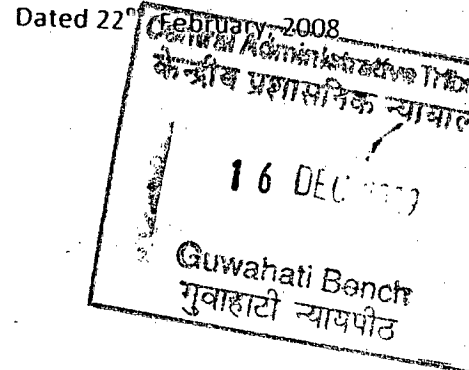
ANNEXURE-5

By Regd. Post

(325)

To

The Chief Conservator of Forests©
Regional Office (NEZ)
Ministry of Environment and Forests
Upland Road, Laitumkhrah
Shillong – 793001



Subject: Filling up of post of Assistant by promotion in Regional Office, MoEF, Shillong

Sir,

I am directed to inform that on the recommendation of DPC held on 13-02-2008 under the chairmanship of ADG(FC) for considering the promotion of UDC to Assistant. DPC recommended the case of Shri S.K. Bhattacharjee, UDC in MoEF, Shilling for the post of Assistant in the pay scale of Rs 5500-175-9000/- Group "B" Non-Gazetted on regular basis as approved by Secretary (E&F), New Delhi w.e.f from 18-02-2008. It is therefore requested to issue formal orders of promotion in favour of Shri S.K. Bhattacharjee w.e.f. 18-02-2008 under intimation to this Ministry.

Yours faithfully

(S.K. AGARWAL)
Director (Administration)

Certified to be true

Set
Rh
4/3/08

Sl. No. 3015
Date 4/3/08
GOVT OF INDIA
Ministry of Environment And Forests
Regional Office, Shillong



जहाँ है हरियाली।
वहाँ है खुशहाली।

पर्यावरण भवन, सी.जी.ओ. कॉम्प्लेक्स, लोदी रोड, नई दिल्ली - 110 003
PARYAVARAN BHAWAN, C.G.O. COMPLEX, LODI ROAD, NEW DELHI - 110 003

-109-

-23-

ANNEXURE - 6

53

(21/162)

NOTIFIED IN PART II SECTION, SUBSECTION (I) OF GAZETTE OF INDIA)

GOVERNMENT OF INDIA
Ministry of Environment and Forests

New Delhi the 5th July' 2000

NOTIFICATION

G.S.R. In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the methods of recruitment of Group "B" posts in the Regional Offices of the Ministry of Environment and Forests.

1. Shrot title and commencement:-

- (1) These rules may be called the Regional Offices of the Ministry of Environment and Forests (Group "B" posts) Recruitment Rules 2000.
- (2) They shall come into force on the date of their publication in the Official Gazette.

Number of posts, classification and scale of pay:-

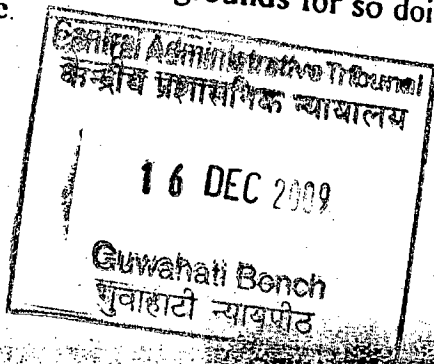
The number of said posts, their classification and scale of pay attached thereto shall be as specified in column (3) to (4) of the said schedule.

Method of recruitment, age limit and other qualification etc:-

The method of recruitment, age limit, qualifications and other matters relating to the said posts shall be as specified in columns (5) to (14) of the aforesaid schedule.

Disqualification:- No person:-

- (a) Who has entered into or contracted a marriage with a person having a spouse living; or
- (b) Who having a spouse living has entered into or contracted marriage with any person shall be eligible for appointment to any of the said posts provide that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.



to relax and in Consultation with the Union Public Service Commission

where the Central Government is of the opinion that it is necessary or expedient so to
may by order, for reasons to be recorded in writing and in consultation with the Union
Public Service Commission relax any of the provisions of these rules with respect to any
calss or category of persons.

Saving:-

Nothing in these rules shall affect reservations, relaxation of age limit and other
concessions required to be provided for the Scheduled Castes, the Scheduled Tribes and
Other BackWard Classes, the Ex-servicemen and other special categories of persons in
accordance with the orders issued by the Central Government from time to time in this
regards.

(THE SCHEDULE)

G.C. Basumatary
(G.C.BASUMATARY)
DIRECTOR

The Manager
Governemnt of India Press
Mayapuri, Ring Road,
New Delhi.

Unfiled
to be
over

[Signature]

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
16 DEC 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

159

-7-

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
<p>ASSISTANT</p> <p>(2000) SUBJECT TO VARIATION DEPENDANT ON WORK LOAD</p> <p>REGION-WISE BREAK UP OF THE POSTS</p> <p>Bangalore(SZ)-02 Bhopal(WZ)-02 Bhubaneswar(FZ)-02 Lucknow (CZ)-02 Shillong (NEZ)-02 Chandigarh-01</p>	11	GENERAL CENTRAL SEERVICE GROUP B NON- GAZETTED MINISTER-IAL	5500-175- 9000	Non-Selection	NOT APPLICABLE	NO	NOT APPLICABLE	NOT APPLICABLE

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

16 DEC 2003

Gauhati Bench
गुवाहाटी न्यायपीठ

107

51

158

117

PROMOTION Failing which BY DEPUTATION	(11)	PROMOTION UDC in the scale of Rs. 4000-6000/- in the respective Regional office with ten years <u>regular service</u> in the grade. NOTE :- Where juniors who have completed their qualifying eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years whichever is less and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service. DEPUTATION Officers under the Central/State Governments:- (a) (i) holding analogous posts on a regular basis; or (ii) with three years regular service in posts in the scale of Rs. 5000-8000/- or equivalent; or (iii) with six years regular service in posts in the scale of Rs. 4500-7000/- or equivalent; or (iv) with ten years regular service in posts in the scale of Rs.4000-6000/- or equivalent; and NOTE. 1 The departmental officers in the feeder grade who are in direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion. NOTE.2 The period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the central Government shall not ordinarily exceed three years. The maximum age limit for appointment on deputation shall be not exceeding fifty six years as on the closing date prescribed for receipt of application	PROMOTION COMMITTEE FOR CONSIDERING PROMOTION 1. Additional Inspector General of Forests/Joint Secretary (Administration), Ministry of Environment and Forests- Chairman 2. Deputy Secretary (Administration) Ministry of Environment and Forests- Member 3. Assistant Inspector General of Forests, Regional Office (Head Quarter)- Member 4. Deputy Conservator of Forests (Central) of respective regional office- Member	COMMISSION WITH UNION PUBLIC SECRVICE COMMISSION NECESSARY WHILE AN ON DEPUTATION
Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय 16 DEC 2009 Guwahati Bench. गुवाहाटी न्यायपीठ				

-108- -27- ANNEXURE-7- 47 (1A2)

Government of India
Ministry of Home Affairs
North Eastern Police Academy
Umsaw, 793 123, Barapani, Meghalaya

No. NEPA/PF(C)/1/86/Vol-I/2133-36 Dtd. Umsaw, the 5th July '96.

O R D E R

Shri S K Bhattacharjee, L.D.C. of this Institution, who was on deputation with Deputy Conservator of Forests(C), Govt of India, Ministry of Environment and Forests, NER, Shillong-03, is hereby granted "Proforma Promotion" on ad hoc basis to the post of U.D.C in the scale of pay of B.1200-30-1560-ER-40-2040/-p.m. plus other allowances as admissible from time to time, under the provision of "next below rule" of FR-30, with effect from 4/1/92(FW) (i.e. the date on which his junior was promoted to the post of U.D.C.) to 30/9/93(AH) (i.e. the date on which Shri S.K. Bhattacharjee, was reverted from the post of U.D.C to L.D.C. at his own request) while on deputation.

Further, Shri S K Bhattacharjee, L.D.C. is hereby promoted to the post of U.D.C. in the scale of pay indicated above from 07/03/1995(FW) (i.e. the date of reporting to this office) to 02/04/1996(AH) i.e. the date of release from this office to accept his absorption in Govt of India, Ministry of Environment and Forests, NER, Shillong-03, as L.D.C.

(T. Chandrasekharan)
Director (Current Affairs)

Memo No. NEPA/PF(C)/1/86/Vol-I/2133-36 Dtd. Umsaw, the 5th July '96
Copy to :-

1. The Deputy Conservator of Forests(C), Govt of India, Ministry of Environment & Forests, NER, Upland Road, Laitumkhrah, Shillong-03.
2. Shri S K Bhattacharjee, L.D.C., O/O the Dy. Conservator of Forests(C), Govt of India, Ministry of Environment & Forests, NER, Upland Road, Laitumkhrah, Shillong-03.
3. The RPAC (EB), Shillong-03.
4. The A/cs Section (Local), NEPA, Umsaw.
5. Office Order File.

Copy No. 723
Date 22/7/96

GOVT OF INDIA
Ministry of Environment and Forests
Office: Shillong

Central Administration
केन्द्रीय प्रशासनिक

16 DEC 2

Guwahati Box
गुवाहाटी न्यायपत्रिका