

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A./TA/ NO...162.....2015  
R.A./CP/NO.....2015  
E.P./M.P./NO.....2015

1. Order Sheets.....2.....page.....1.....to.....4/
2. Judgment/ order dtd. 31.3.2009 page.....1.....to.....4/
3. Judgment & Order dtd.....received from H.C. /Supreme Court.
4. O.A. 162/2009 page.....1.....to.....46/
5. E.P/M.P. .....1.....page.....to.....
6. R.A./C.P. .....1.....page.....to.....
7. W.S. Filed R.No. 5 .....Page.....1.....to.....5/
8. Rejoinder Filed by applicant page.....1.....to.....11/
9. Reply .....1.....page.....to.....
10. Any other papers .....1.....page.....to.....

*20/3/2015*  
SECTION OFFICER (JUDL.)

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

1. ORIGINAL APPLICATION No : 162 / 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) : Shri Abul Kalam

Respondent (S) : Union of India & Ors.

Advocate for the : Mrs. S. Nath

{Applicant (S)}

Advocate for the : Ste. CGSC. M. M. Das  
(Respondent (S))

Notes of the Registry	Date	Order of the Tribunal
1. Application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/BD No. 396410267 Dated 29.6.2009  20.8.09 Dy. Registrar 20.8.09	26.08.2009	Heard Mr.S.Nath, learned counsel appearing 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) and perused the materials placed on record.
2. 5 (Five) copies of application with envelope received for issue notice to the Respondents No. 1 to 5. Copy served.  20/8/09  K-Das	20.8.09	Admit. issue notice to the Respondents requiring them to file their written statement by 13.10.2009.
Issue notice to the Respondents.	20/8/09  M.K. Chaturvedi 20/8/09	Pendency of this case shall not stand on the way of the Respondents to consider the case of the Applicant as against year 2004 and to grant him TBOP benefits from that date i.e., before the date of his suspension.

(M.K. Chaturvedi)  
Member (A)

(M.R. Mohanty)  
Vice-Chairman

O.A.162-09

Copies of notices  
along with order  
dated 26/8/2009  
sent to D/Secy. for  
issuing to resp.  
by regd. A/D post.

D/NO - 9883 - 9882

Clue 31/8/09. D/L = 31.8.09

16/9/09

A/D Card received  
for Resps Nos 285

~~BBM~~  
16/9/09

/bb/

03.11.2009

No wts filed.

23  
12.10.09

No wts filed.

23  
30.10.09

/pg/

No wts filed.

23  
4.12.09

7.12.09  
W/S filed by  
Respondants through  
Ms. M. Das, Dr. CSC  
Copy served.

26/12/09

w/s filed

23  
14.12.09

13.10.2009 No written statement has yet been filed by the Respondents in this case. On the prayer of Mrs. M. Das, learned Addl. Standing counsel for the Govt. of India, time till end of October 2009 is, hereby, granted to the Respondents to put up their written statement.

Call this matter on 03.11.2009 awaiting written statement from the Respondents.

~~JK~~  
(M.K. Chaturvedi)  
Member (A)

~~JK~~  
(M.R. Mohanty)  
Vice-Chairman

On the request of Mrs. M. Das, learned Sr. standing counsel for the respondents another four weeks time is allowed to file written statement.

List on 07.12.2009.

~~JK~~  
(Madan Kr. Chaturvedi)  
Member (A)

~~JK~~  
(Mukesh Kr. Gupta)  
Member (J)

/pg/

O.A.162-09

07.12.2009 Despite several adjournments no written statement has yet been filed by the Respondents. On the request of Mrs. M. Das, learned Sr. Standing counsel last opportunity is granted to file reply.

List the matter on 15.12.2009.

~~JK~~  
(Mukesh Kumar Gupta)  
Member (J)

/lm/

15.12.2009

Reply has been filed. Learned counsel

for the Applicant seeks and allowed three weeks time to file rejoinder. Case was admitted on 26.8.2009.

List the matter for hearing on

28.1.2010.

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

/lm/

~~No rejoinder filed~~~~27.1.2010~~

28.01.2010

Learned counsel prays for adjournment stating that a fresh vakalatnama has to be filed.

In the circumstances, list on 24.02.2010.

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

/bb/

~~The case is ready for hearing.~~~~22.2.2010~~

24.02.2010

On the request of Mrs.U.Dutta, learned counsel for the Applicant adjourned to 12.03.2010.

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

/bb/

~~The case is ready for hearing.~~~~11.3.2010~~

12.03.2010

Issue being limited namely whether person who has misappropriated Government money could be promoted.

Being Division Bench Matter list on 30<sup>th</sup> March 2010.(Mukesh Kumar Gupta)  
Member (J)

/pb/

O.A. No. 162/2009

Received on behalf of the parties concerned.

Date of issue of order: 30.03.2010

Heard in Part. List for further

hearing on 31<sup>st</sup> March 2010.

Order

It is ordered that

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

/pb/

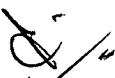
Member (A)

Vidya

31.03.2010

Heard counsel for the parties. Hearing  
concluded.

For the reasons recorded separately  
O.A is allowed.

  
(Madan Kumar Chaturvedi)  
Member (A)

  
(Mukesh Kumar Gupta)  
Member (J)

Received on behalf  
of applicant by  
Anupam Goswami  
Advocate  
8/4/2010

Order dt. 31.3.2010  
Received copy of  
order dt. 31/3/2010  
Abul Kalam  
(Applicant)  
08/4/2010

8-4-2010  
Judgement /Final order

Dated 31-3-2010

Prepared and sent to  
the D/ Section Officer  
issuing the Respondents

By post  
vide issue No 872  
876

Dated 8-4-2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

.....  
O.A. No. 162 of 2009.

DATE OF DECISION: 31 -03-2010.

Shri Abul Kalam

.....Applicant/s

Ms U. Dutta

.....Advocates for the  
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

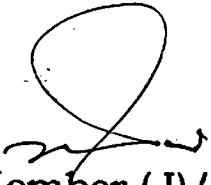
Ms M. Das, Sr.C.G.S.C

.....Advocate for the  
Respondent/s

CORAM

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

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

  
Member (J)/Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 162/2009.

Date of Order : This the 31st Day of March, 2010.

THE HON'BLE MR MUKESH KUMAR GUPTA, JUDICIAL MEMBER

THE HON'BLE MR M.K.CHATURVEDI, ADMINISTRATIVE MEMBER

Shri Abul Kalam  
Son of Late Mutahir Ali  
Postal Assistant, SB Section  
Office of the Chief Postmaster General  
Assam Circle, Meghdoot Bhawan,  
Guwahati- 1.

... Applicant

By Advocate: Mrs. U. Dutta

-Versus-

1. The Union of India  
Represented by Secretary to the  
Government of India  
Ministry of Communications  
Department of Post  
Dak Bhavan, Sansad Marg,  
New Delhi- 110001.
2. The Chief Postmaster General  
(Assam Circle), Meghdoot Bhawan,  
Guwahati- 1.
3. The Assistant Postmaster General (Staff)  
Meghdoot Bhawan, Guwahati- 1.
4. The Assistant Postmaster General (Vig)  
Meghdoot Bhawan, Guwahati- 1.
5. Asstt. Director of Accounts  
Office of the Chief Postmaster General  
(Assam Circle), Meghdoot Bhawan,  
Guwahati- 1. ... Respondents

By Advocate: Mrs. M. Das, Sr. CGSC.

ORDER (ORAL)

MUKESH KUMAR GUPTA, MEMBER(J)

By present application applicant seeks a declaration that he is entitled to time bound promotion in the pay scale of Rs.4500-7000/- with effect from 14.12.2004 under TBOP scheme dated 17.12.1983 i.e. the date from which he completed 16 years of service in the grade of LDC/Postal Assistant with all consequential benefits.

2. Admitted facts are that Abul Kalam, Postal Assistant joined initially as Group D staff and on 13.12.1988 temporarily appointed as LDC after clearing competitive examination conducted by Staff Selection Commission and posted at Meghdoot Bhawan, Guwahati. He was confirmed in said grade on 4.2.1994. He was placed under suspension on 25.7.2005 and was charge sheeted vide memorandum dated 14.10.2009 alleging that he misappropriated certain Government money. Aforesaid suspension had been revoked on 13.8.2007.

3. His grievance raised is that though he has completed 16 years of service on 13.12.2004, but no DPC, as contemplated vide above TBOP scheme, was convened in the year 2004 to consider him <sup>to</sup> assess his fitness. Ms U. Dutta, learned counsel appearing for the applicant contends that no DPC was held in the year 2004, as projected vide reply para 3.5. Subsequent DPC held in the years 2006, 2007 & 2008 are inconsequential in nature. On date when he became eligible no disciplinary proceedings were either contemplated or pending. Similarly, he was not placed under suspension. For not holding DPC,

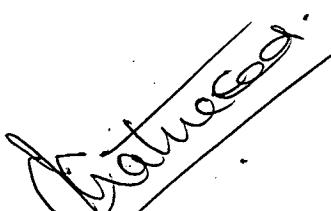
he cannot be penalized. Reliance was placed on (2004) 1 SCC 245 in P.N.Premchandran vs. State of Kerala and Ors. and (1998) 3 SCC 394, Union of India & Ors. vs. Dr Sudha Salhan to contend that when a DPC is held and the official is not placed under suspension, even the sealed cover procedure cannot be adopted on the ground that subsequently such proceedings had been initiated against the delinquent officer.

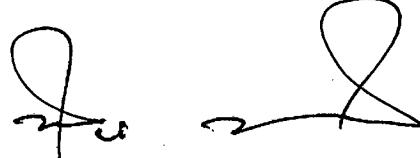
4. The only ground raised and plea urged by the respondents is as he is facing disciplinary proceeding initially in the form of suspension order dated 25.7.2005 and later on issuing charge sheet dated 14.10.2009, his case was not recommended by DPCs held in the years 2005-2008. Therefore, applicant has no legal claim for grant of financial up-gradation under aforesaid scheme.

5. We have heard both sides, perused the pleadings and other materials placed on record. The question which arises for consideration is whether applicant who was eligible for such financial upgradation on completion of 16 years of service as on 13.12.2004 could be denied right of consideration. Admittedly no DPC was held in the year 2004. It is further not in dispute that as per para 4 of TBOP Scheme dated 17.12.1983 the DPC is required to be convened before 30<sup>th</sup> June to consider fitness of the officials "completing 16 years of service in the grade during the year." Officials who complete 16 years of service on a date later than that of convening of the meeting of DPC will be placed on the approved list and will be promoted to the next higher scale of pay immediately on completion of 16 years of service. In other words, a

person who do not complete prescribed eligibility on the date when DPC is to be convened but complete such service in the year concerned, is also required to be considered though his ultimate financial upgradation would available only on completion of prescribed length of service. As he has a legal right for consideration of his prayer but when no DPC was held in 2004, the said legal right was violated, which is unsustainable in law. As observed by Hon'ble Supreme Court in P.N.Premchandran (supra) applicant cannot be penalized for administrative lapses by not holding DPC.

6. In the circumstances and following aforesaid law we have no hesitation to hold that applicant's right of consideration in the year 2004 has been violated. In the circumstances O.A is allowed. Respondents are required to convene DPC of 2004 to consider his case for financial upgradation under TBOP Scheme dated 17.12.1983 and if he is found suitable, respondents are required to regulate his financial upgradation. The aforesaid exercise shall be carried out within a period of 3 months from the date of receipt copy of this order. No costs.

  
(MADAN KUMAR CHATURVEDI)  
ADMINISTRATIVE MEMBER

  
(MUKESH KUMAR GUPTA)  
JUDICIAL MEMBER

कन्द्राय प्रशासनिक न्यायालय  
 50/20 AUG 2009  
 Guwahati Bench  
 गुवाहाटी न्यायपीठ

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**GUWAHATI BENCH: GUWAHATI**

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

**Title of the case : O.A. No. 162 /2009**

**Shri Abul Kalam : Applicant.**

**-Versus-**

**Union of India & Ors. : Respondents.**

**INDEX**

Sl. No.	Annexure	Particulars	Page No.
1		Synopsis & List of Dates	i-iii
2.	---	Application	1-15
3.	---	Verification	-16-
4.	1	Copy of the appointment letter dated 13.12.1988	-17 -
5.	2	Copy of the TBOP scheme dated 17.12.1983	18-25
6.	3	Copy of circular dated 22.07.1993	26-28
8.	4	Copy of the order dated 05.10.1993	29-31
9.	5	Copy of the order dated 04.02.1994	-32-
10.	6	Copy of the order dated 31.03.99	-33 -
11.	7	Copy of the order dated 25.07.2005	-34-
10.	8	Copy of the order dated 13.08.2007	-35 -
11.	9	Copy of the representation dated 16.09.08	36-37
12.	10	Copy of the representation dated 27.11.08	-38 -
13.	11	Copy of the Lawyers' notice dated 25.02.2009	39-43
14.	12	Copy of the letter dated 28.05.09	-44 -
15.	13	Copy of the letter dated 2/6.07.09	45-46

16.

W/S  
 Rejoinder

47-51  
 52-62

Filed By:-  
 The Petitioner  
 Through:-

Date:

(Shri S. Nata)  
 Advocate

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**GUWAHATI BENCH: GUWAHATI**

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

O. A. No. 162 /2008

**Shri Abul Kalam**

-Vs-

**Union of India and Others.**

**SYNOPSIS OF THE APPLICATION**

Applicant is a Postal Assistant working in the office of the Chief Postmaster General, Guwahati. He has completed his 16 years of service in the grade of LDC/Postal Assistant on 13.12.2004 and attained eligibility for time bound promotion w.e.f. 14.12.2004 in the scale of Rs. 4500-125-7000 in terms of time bound one promotion scheme dated 17.12.1983. Many of the juniors of the applicant has already been granted time bound promotion in the scale of pay of Rs. 4500-125-7000 after completion of 16 years of service in the grade of LDC/Postal Assistant but the same has been denied to the applicant. Be it stated that applicant was suspended vide order dated 25.07.2005 contemplating/pending disciplinary proceeding, however suspension was revoked vide order dated 13.08.2007. However, no charge memo or charge sheet was issued to him at any point of time. Applicant submitted representation on 16.09.2008 and 27.11.2008 for time bound promotion w.e.f. 14.12.2004, but to no result. Hence this Original Application.

**LIST OF DATES**

17.12.1983- Indian Posts and Telegraphs Department issued Time-Bound One Promotion Scheme (for short TBOP Scheme) providing placing of officers in the "next higher grade" who had completed sixteen years of service in Groups 'C' and 'D'.

In terms of para 4 of the scheme, the DPC meeting required to be convened before 30<sup>th</sup> June to consider fitness of the officials completing 16 years of service in the grade during the year. Officials who complete 16 years of service on a date later than that of convening of the meeting of the DPC will be placed on the approved list and will be promoted to the next higher scale of pay immediately on completion of 16 years of service, subject to their being found fit by the DPC and subject to normal rules relating to promotion

(Annexure- 2)

20 AUG 2009

ii

Guwahati Bench  
गुवाहाटी न्यायपीठ

13.12.1988- Applicant was temporarily appointed as Lower Division Clerk and posted at the office of Chief Postmaster General, Meghdoot Bhavan, Guwahati. (Annexure- 1)

22.07.1993- Govt. of India, Ministry of Communications, Department of Posts issued circular stating that the existing official who do not opt for the old scales would be considered for grant of first promotion in the higher scale of Rs. 1400-2300 if they complete/have completed 16 years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting Assistant and UDC taken together. (Annexure- 3)

05.10.1993- Post of L.D.C was converted to the post of Time Scale Postal Assistant w.e.f. 26.06.1993. Applicant was placed at Sl. No. 43 of the list of LDC converted as Postal Assistant. (Annexure- 4)

04.02.1994- Applicant was confirmed as L.D.C in the scale of pay of Rs. 975-1660 (revised Rs. 4,000-6,000 by the 5th CPC). (Annexure- 5)

31.03.1999- Applicant was posted as Development Officer (PLI), Circle Office, Guwahati for a period of three years w.e.f. 01.04.1999 in the scale of pay of Rs. 4500-7000. The said period was extended up to 31.03.2001. (Annexure- 6)

28.04.2004- Applicant was transferred to PLI section as Postal Assistant in the scale of pay of Rs. 4,000-6000.

14.12.2004- Applicant completed 16 years of service as LDC/Postal Assistant and attained eligibility for time bound promotion in the scale of Rs. 4500-125-7000 under the TBOP Scheme.

25.07.2005- Applicant was placed under suspension under Rule 10 of CCS (CCA) Rules, 1965 contemplating/pending disciplinary proceeding. (Annexure- 7)

20.08.2005- Shir Bijoy Mazumdar, immediate junior of the applicant has been granted time bound promotion in the scale of pay of Rs. 4500-7000 after completion of 16 years of service in the post of LDC/Postal Assistant.

13.08.2007- Respondents revoked the order of suspension dated 25.07.05 and allowed the applicant to join his duty. (Annexure- 8)

16.09.2008- Applicant submitted representation to the Respondent No. 2 for grant of time bound promotion w.e.f. 14.12.04. (Annexure- 9)

27.11.2008- Applicant submitted another representation for grant time bound promotion. (Annexure- 10)

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পৌঠ

25.02.2009- Counsel of the applicant submitted one notice for restoration of pay of the applicant since the immediate junior of the applicant is getting more pay than the applicant.

(Annexure- 11)

28.05.2009- Assistant Director (A/Cs) intimated the applicant that his immediate junior Shri Mazumdar got the time bound promotion as such he is drawing more pay than the applicant.

(Annexure- 12)

2/6.07.2009- Respondent No. 4 issued a letter addressed to the Council of the applicant stating that name of the applicant was forwarded to the DPC held in 2005, 2006, 2007, 2008 but the DPC did not recommend his name for financial up gradation under the TBOP scheme due to pending of disciplinary case.

(Annexure- 13)

It is stated that no charge memo or charge sheet initiating disciplinary proceeding has been issued against the applicant at any point of time.

#### **P R A Y E R S**

1. That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to time bound promotion in the scale of pay of Rs. 4500-125-7000/- w.e.f. 14.12.2004 under the TBOP Scheme dated 17.12.1983 i.e. the date from which applicant completed 16 years of service in the grade of LDC/ Postal Assistant.
2. That the Hon'ble Tribunal be pleased to direct the respondents to convene DPC to grant time bound promotion of the applicant in the scale of pay of Rs. 4500-125-7000/- w.e.f. 14.12.2004 with all consequential benefits including arrear monetary benefits.
3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

#### **Interim order prayed for:**

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

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

Filed by: -  
Applicant-  
Through -  
S. N. Path.  
Advocate  
20/08/2009

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 162 /2009

Central Administrative Tribu  
केन्द्रीय प्रशासनिक न्यायाल

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

BETWEEN:

**Shri Abul Kalam**

Son of Late Mutahir Ali,  
Postal Assistant, SB Section,  
Office of the Chief Postmaster General,  
Assam Circle, Meghdoot Bhawan, Guwahati- 1.

.....Applicant.

-AND-

1. The Union of India,  
Represented by Secretary to the  
Government of India,  
Ministry of Communications,  
Department of Posts,  
Dak Bhavan, Sansad Marg, New Delhi- 110001.
2. The Chief Postmaster General,  
(Assam Circle), Meghdoot Bhawan,  
Guwahati- 781001.
3. The Assistant Postmaster General (Staff),  
Meghdoot Bhawan, Guwahati- 781001.
4. The Assistant Postmaster General (Vig.),  
Meghdoot Bhawan, Guwahati- 781001.
5. Asstt. Director of Accounts  
Office of the Chief Postmaster General,  
(Assam Circle), Meghdoot Bhawan,  
Guwahati- 781001.

.....Respondents.

DETAILS OF THE APPLICATION

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

This application is made not against any impugned order but praying for a direction upon the respondents for grant of benefit of time bound promotion to the applicant w.e.f. 14.12.2004 i.e. on completion of 16 years of service to the grade of LDC/Postal Assistant as provided by the Time Bound One Promotion (for short

*Abul Kalam*.

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

TBOP) Scheme dated 17.12.1983 and re-fix his pay in the grade of Postal Assistant with effect from 14.12.2004 after granting the benefit of TBOP with effect from 14.12.2004 with all consequential benefits including arrear monetary benefit.

**2. Jurisdiction of the Tribunal:**

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

**3. Limitation:**

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

**4. Facts of the case:**

**4.1** That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

**4.2** That your humble applicant was initially appointed as Group 'D' staff and posted in the office of the Post Master General, Shillong. Thereafter on 13.12.1988, he was temporarily appointed as Lower Division Clerk (for short L.D.C.) after clearing competitive examination conducted by the Staff Selection Commission and posted at Meghdoot Bhavan, Guwahati. Subsequently, the post of LDC was converted to the post of Time Scale Postal Assistant by the respondent. Applicant is working to the post of Time Scale Postal Assistant and he is posted in the S.B Section, office of the Chief Postmaster General, Meghdoot Bhavan, Guwahati.

Copy of the appointment letter dated 13.12.1988  
is enclosed herewith and marked as Annexure- 1.

**4.3** That the Indian Posts and Telegraphs Department, office of the Director General of Posts and Telegraphs, New Delhi vide Memorandum bearing No. 31-26/83-P.E.I dated 17.12.1983 issued the instructions regarding Time- Bound One Promotion Scheme (for

*Abul Kalam*

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পৌঢ়

short TBOP Scheme). The instructions were sent to all the Heads of Circles (Postal). The Scheme, inter alia, provided placing of officers in the "next higher grade" who had completed sixteen years of service in Groups 'C' and 'D'. The scheme came into effect from 30.11.1983. Para 1 of the TBOP Scheme relates to placing of an employee in "next higher grade" reads thus:

"(1) The scheme will come into effect from 30.11.1983. All officials belonging to basic grades in Group 'C' and Group 'D' to which there is direct recruitment other from outside and/or by means of limited competitive examination from lower cadres, and who have completed 16 years of service in that grade will be placed in the next higher grade. Officials belonging to operative cadres listed in the Annexure- I to the agreement will be covered under the scheme."

It is abundantly clear that so far as placing of an officer in the "next higher grade" is concerned, what is relevant and material is that such official belonging to basic grades in Groups 'C' and 'D' must have completed "sixteen years of service in that grade".

Copy of the TBOP scheme dated 17.12.1983 is enclosed herewith and marked as Annexure- 2.

**4.4** That the Govt. of India, Ministry of Communications, Department of Posts Vide circular bearing No. 4-12/88-P.E.I (Pt.) dated 22.07.1993 extended the TBOP scheme and Biennial Cadre Review Scheme to Group 'C' staff of administrative offices (Circle Offices) in the department of posts. In para 3.6 of the said circular it has been stated as follows:

"3.6 That the existing official who do not opt for the old scales would be considered for grant of first promotion in the higher scale of Rs. 1400-2300 if they complete/have completed 16 years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting Assistant and UDC taken together and then for second promotion in the next higher scale of Rs. 1600-2660 after completion of 26 years of service.

*Abul Kalam*

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পৌঠ

Their pay on grant of promotions under Time Bound Promotion Scheme and Second Promotion will be fixed under F.R 22 (I) (a) (1)."

It is abundantly clear from para 3.6 of the circular dated 22.07.93 that 16 years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting Assistant and UDC taken together is necessary criteria for grant of promotion under the TBOP scheme.

Copy of circular dated 22.07.1993 is enclosed herewith and marked as Annexure- 3.

**4.5** That your applicant while working as LDC, the respondent No. 3 issued an order under Memo No. Staff/2-30/93 dated 05.10.1993, whereby the post of L.D.C was converted to the post of Time Scale Postal Assistant w.e.f. 26.06.1993 along with other persons who were working as L.D.C. at that point of time. Be it stated that in the order dated 05.10.1993 name of the applicant appeared at Sl. No. 43 and his post was converted to Postal Assistant along with many of the juniors to him.

Copy of the order dated 05.10.1993 is enclosed herewith and marked as Annexure- 4.

**4.6** That the respondent No. 3 issued an order bearing Memo No. Staff/5-3/90 dated 04.02.1994, whereby service of the applicant was confirmed as L.D.C in the scale of pay of Rs. 975-1660 (revised Rs. ~~Rs. 4,000-6,900~~ by the 5<sup>th</sup> CPC).

Copy of the order dated 04.02.1994 is enclosed herewith and marked as Annexure- 5.

**4.7** That the applicant while working as Postal Assistant he was placed as Development Officer (PLI), Circle Office, Guwahati for a period of three years w.e.f. 01.04.1999 in the scale of pay of Rs. 4500-7000. The said period was extended up to 31.03.2004 by the Assistant Postmaster General (Staff) vide order dated 07.03.2003.

*Abul Kalam.*

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পৌঠ

Copy of the order dated 31.03.99 is enclosed herewith and marked as Annexure- 6.

4.8 That after completion of the aforesaid period the respondent No. 3 vide order under No. Staff/27/98/Pt-1 dated 28.04.2004 transferred the applicant to PLI section as Postal Assistant in the scale of pay of Rs. 4,000-6000. It is relevant to mention here that the applicant while serving as Postal Assistant, PLI Section he was placed under suspension vide letter No. DDM (PLI)/Staff/2995 dated 00.01.2005 under Rule 10 of CCS (CCA) Rules, 1965 contemplating/pending disciplinary proceeding. However, after lapse of more than 2 years the Deputy Divisional Manager (PLI) vide his letter bearing No. DDM (PLI)/Staff/2005 dated 13.08.2007 revoked the order of suspension dated 00.01.2005 and allowed the applicant to join his duty. It is relevant to mention here that in the revocation order of suspension dated 13.08.2007 it has no where stated by the Deputy Divisional Manager (PLI) that the disciplinary proceeding is pending against the applicant and no memorandum of charge sheet initiating disciplinary proceeding against the applicant has been issued at any point of time.

Copy of the order dated 00.01.2005 and 13.08.2007 are enclosed herewith and marked as Annexure- 7 and 8 respectively.

4.9 That it is stated that in terms of para (4) of the T.B.O.P Scheme dated 17.12.1983 it is mandatory on the part of the respondents to identify the officials belonging to the cadres covered under the scheme who will complete 16 years of service up to 31<sup>st</sup> March of the next year. The relevant Para 4 of the TBOP Scheme relates to convening of Departmental Promotion Committee for placing of an employee in "next higher grade" reads thus:

"(4) With effect from 1.4.84 onwards the Heads of Circles/Divisional Supdts./Heads of functional units will identify the official belonging to the cadres covered under the scheme, who will complete 16 years of service up to 31<sup>st</sup> March of the next year. The Departmental Promotion

*Abul Kalam*

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পৌর

Committee meeting will be convened before 30<sup>th</sup> June to consider fitness of the officials completing 16 years of service in the grade during the year. Officials who complete 16 years of service on a date later than that of convening of the meeting of the DPC will be placed on the approved list and will be promoted to the next higher scale of pay immediately on completion of 16 years of service, subject to their being found fit by the DPC and subject to normal rules relating to promotion. In respect of the officials who complete 16 years of service between the period from 1<sup>st</sup> April to the date the meeting of the DPC is convened, they will be placed in the next higher scale of pay from the date following the date they completed 16 years of service subject to their being found fit by the DPC."

It is abundantly clear from the above mentioned provision that for placing of an employee to the next higher grade in terms of T.B.O.P Scheme dated 17.12.1983, the DPC meeting will be convened before 30<sup>th</sup> June to consider fitness of the officials completing 16 years of service in the grade during the year. Officials who complete 16 years of service on a date later than that of convening of the meeting of the DPC will be placed on the approved list and will be promoted to the next higher scale of pay immediately on completion of 16 years of service, subject to their being found fit by the DPC and subject to normal rules relating to promotion.

In the instant case, the applicant completed his 16 years of service to the post of L.D.C/Postal Assistant on 13.12.2004 and thereby he has attained eligibility for grant of Time Bound Promotion w.e.f. 14.12.2004 i.e. day immediate after completion of 16 years of service under the T.B.O.P Scheme dated 17.12.1983. As such it was the duty of the respondents to consider promotion of the applicant by convening DPC within 30<sup>th</sup> June, 2004 itself since the applicant completed the 16 years of service in the year 2004 itself. It is relevant to mention here that the T.B.O.P Scheme dated 17.12.1983 is still in force but the respondents failed to follow the provision of the scheme for grant time bound promotion to the applicant w.e.f. 14.12.2004 for

Abul Kalam

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायालय

the reason best known to the authority. As such due to laches, lapses and negligence of the respondents applicant suffered the benefit of time bound promotion w.e.f. 14.12.2004 which he is legitimately entitled to. It is also relevant to mention here that applicant was very much in service on 14.12.2004 and no charge sheet, memo or warning was issued to him at that relevant point of time when the applicant completed 16 years of service to the post of L.D.C/ Postal Assistant. As such it is the duty of the respondents to grant time bound promotion to the applicant to the next higher grade w.e.f. 14.12.2004 by holding DPC.

**4.10** That your applicant situated thus, submitted one representation on 16.09.2008 addressed to the Chief Postmaster General (Assam Circle), Guwahati praying for grant of promotion to the next higher grade under the Time Bound Promotion Scheme. In his representation dated 16.09.2008 applicant stated that he has completed 16 years of service to the post of LDC/Postal Assistant on 13.12.2004 but he has been deprived of promotion to the next higher grade. It is categorically stated by the applicant that Shri Ananat Kumar Das, P.A. Smti Goma Thapa, P.A and many others juniors to him have been granted the benefit of time bound promotion after completion of 16 years of service but the same benefit of promotion has been denied to him. Therefore the applicant prayed for grant of time bound promotion w.e.f. 14.12.2004 with all consequential service benefit including arrear monetary benefit. Finding no reply to his representation dated 16.09.2008 applicant submitted another representation on 27.11.2008 addressed to the Director of Postal Service, Assam Circle, Guwahati stating therein that it is mandatory to convene DPC in June to consider the case of officials completing 16 years of service from 1<sup>st</sup> April of that year to 31<sup>st</sup> March next but it appears that his name was not placed before the DPC convened in June 2004 for consideration along with other officials who became eligible during the period from 1<sup>st</sup> April 2004 to 31<sup>st</sup> March, 2005. Applicant also stated that due to denial of promotion under TBOP scheme he has been suffering from pecuniary loss and it has adverse effect on revision of pay in 6<sup>th</sup> CPC. Therefore the applicant requested to

*Abul Kalam*

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

27

grant him promotion under the TBOP Scheme with all consequential financial benefit. But the respondents did not give reply to any of the representation submitted by the applicant, as a result applicant remained in dark regarding the ground of denial of time bound promotion to him on completion of 16 years of service. Be it stated that applicant has come to learn that his immediate junior Sri Bijoy Mazumdar has been granted time bound promotion w.e.f. 20.08.2005 i.e. the date after completion of 16 years of service in the post of LDC/Postal Assistant, however in spite of his best effort he could not collect the time bound promotion order of his immediate junior and other juniors. Therefore the applicant pray before the Hon'ble Tribunal for a direction upon the respondents to furnish the copy of the time bound promotion order of the juniors of the applicant for proper adjudication of the case of the applicant.

Copy of the representation dated 16.09.08 and 27.11.08 are enclosed herewith and marked as **Annexure- 9 and 10** respectively.

**4.11** That your applicant begs to state that finding no response from the respondents regarding restoration of his pay at par with his immediate juniors after revocation of order of suspension, the applicant served a Notice dated 25.02.2009 through his Lawyer addressed to the respondent No. 2 for restoration of his pay. In para 10 of the said notice, it has been categorically stated that after revision of scale of pay as per the recommendation of the Sixth Central Pay Commission the applicant is drawing basic with grade pay of Rs. 11,890 and total emolument of Rs. 18,940/- as on 01.01.2009 whereas his immediate junior Sri Bijoy Mazumdar is drawing basic and grade pay Rs. 12,570 and total emolument of Rs. 21,667/-. It is also stated that the applicant is drawing grade pay of Rs. 2400/- whereas immediate junior of the applicant is drawing grade pay of Rs. 2800/-, therefore in the notice dated 25.02.2009 it is urged to restore pay of the applicant with arrear monetary benefit.

Copy of the Lawyers' notice dated 25.02.2009 is enclosed herewith and marked as **Annexure- 11**.

Afzal Kalam.

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

4.12 That the Assistant Director (A/Cs) with reference to the Pleaders' notice dated 25.02.2009 addressed a letter bearing No. AP/31-6/2001 (L) dated 28.05.2009 to the applicant, wherein it has been stated that the immediate junior of the applicant Sri Bijoy Mazumdar has already got his promotion under the TBOP scheme with grade pay of Rs. 2800/- whereas grade pay of the applicant in the Postal Assistant cadre is Rs. 2400/-. It is evident from the letter dated 28.05.09 that the immediate junior of the applicant got promotion under the TBOP scheme whereas applicant has been denied the promotion under the TBOP scheme, as a result the immediate junior of the applicant drawing higher grade pay than the applicant. However, no reason has been assigned in the letter dated 28.05.2009 by the respondents for denial of time bound promotion to the applicant w.e.f. 14.12.2004 under the TBOP scheme.

Copy of the letter dated 28.05.09 is enclosed herewith and marked as Annexure- 12.

4.13 That from the letter dated 28.05.2009 it is evident that immediate junior of the applicant Sri Bijoy Mazumdar has already been placed in the scale of Rs. 4,500-125-7,000 [as per 6<sup>th</sup> CPC corresponding Pay Band Rs. 4,860-20,2000 with grade pay of Rs. 2,800] after granting him time bound promotion. Whereas applicant is placed in the scale of pay of Rs. 4,000-100-6,000 [corresponding Pay Bands Rs. 4,860-20,2000 with grade pay of Rs. 2,400] due non-extension of benefit of time bound promotion w.e.f. 14.12.2004. In this connection it is relevant to mention here that applicant completed 16 years of service to the post of LDC/Postal Assistant on 13.12.2004 and his immediate junior Sri Bijoy Mazundar completed 16 years of service to the post of LDC/Postal Assistant on 20.08.2005. As such denial of benefit of time bound promotion to the applicant in the scale of pay of Rs. 4500-125-7000 from the date of completion of his 16 years service as LDC/Postal Assistant is illegal, arbitrary and also attracts violation of Article 14 and 16 of the Constitution of India.

Abul Kalam

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

**4.14** That the Assistant Postmaster General (Vig.) (respondent No. 4) vide his letter No. VIG/Pleader Notice-10/08 dated 2<sup>nd</sup>/6 July, 2009 addressed to the Lawyer of the applicant it has been stated that name of the applicant was forwarded to the DPC held in 2005, 2006, 2007, 2008 but the DPC did not recommend his name for financial up gradation under the TBOP scheme due to pending of disciplinary case. It is also stated in the letter dated 2/6.07.09 that pay and allowance of the applicant has already been restored on 01.01.2009 and the suspension period of the applicant is yet to be regularized due to non-finalisation of the case by the competent authority. It has been further stated in the said letter that the junior of the applicant Sri Bijoy Mazumder got his promotion under the TBOP scheme with grade pay of Rs. 2800/- while the applicant is drawing grade pay of Rs. 2400/- in PA cadre and he is yet to got his promotion under the TBOP scheme due to pendency of departmental proceeding.

Copy of the letter dated 2/6.07.09 is enclosed herewith and marked as Annexure- 13.

**4.15** That it is stated that from the letter dated 2/6.07.09 it is evident that the name of the applicant was forwarded before the DPC held in the year 2005, 2006, 2007 and 2008 and the DPC did not recommend his name for financial upgradation under the TBOP Scheme due to pending disciplinary proceeding. The respondent No. 4 in the letter dated 2/6.07.09 nowhere stated the exact date of the DPC held in the year 2005 and subsequently, as such, the letter is cryptic, arbitrary and unreasonable, as such the reason as assigned by the respondent No. 4 for non granting benefit of time bound promotion to the applicant is liable to be rejected. It is relevant to mention here that the applicant completed his 16 years of service to the post of L.D.C/Postal Assistant on 13.12.2004 and thereby he has attained eligibility for grant of Time Bound Promotion w.e.f. 14.12.2004 i.e. day immediate after completion of 16 years of service under the T.B.O.P Scheme dated 17.12.1983. As such it is the duty of the respondents to consider promotion of the applicant by convening DPC within 30<sup>th</sup> June, 2004 in terms of the TBOP

Abul Kalam

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

25

scheme dated 17.12.1983 itself since the applicant completed his 16 years of service in the year 2004 itself. Therefore forwarding of the name of applicant to the DPC held in 2005 and subsequently is arbitrary, and the said act of the respondents are clear deviation from the direction issued in the TBOP scheme dated 17.12.1983. As such the Hon'ble Tribunal be pleased to direct the respondents to convene DPC to grant time bound promotion of the applicant in the scale of pay of Rs. 4,500-125-7,000 w.e.f. 14.12.2004.

**4.16** That it is a settled position of law that the promotion cannot be withheld merely because some disciplinary proceeding is pending against the employee. To deny the benefit of promotion there must be at the relevant point of time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. In the instant case of the applicant, he was suspended vide order dated 25.07.2005 stating therein that a disciplinary proceeding against the applicant is pending/contemplated whereas after issuance of the order dated 25.07.2005 no memorandum of charge sheet or show cause has been issued to the applicant initiating a disciplinary proceeding till date, as such question of withholding of time bound promotion of the applicant on the ground that the pending disciplinary proceeding against the applicant does not arise at all. Therefore the letter dated 2/6.07.2009 is arbitrary, cryptic, unreasonable and the same is liable to be rejected.

**4.17** That it is stated that the question in the instant case that the present applicant has been denied time bound promotion in the scale of pay of Rs. 4,500-125-7,000/- (pre-revised) w.e.f. 14.12.1983 under the TBOP Scheme even after successful completion of 16 years of service in the post of LDC/Postal Assistant. Whereas his immediate junior Shri Bijoy Mazundar has been granted time bound promotion in the scale of Rs. 4500-125-7000/- w.e.f. 20.08.2005, as a result applicant is drawing grade pay of Rs. 2400/- in Pay Band Rs. 4,860-20,2000 per month and his immediate junior Shri Mazumdar is drawing grade pay of Rs. 2800/- Pay Band Rs. 4,860-20,2000 per month. As such due to

Abul Kalam.

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

denial of time bound promotion to the applicant he has been suffering huge loss in each and every month leading to serious civil consequences upon the applicant. Such actions of the respondents are discriminatory and strikes at the root of Article 14 and 16 of the Constitution of India.

**4.18** That it is stated that denial of benefit of time bound promotion to the applicant in the scale of pay of Rs. 4,500-125-7000/- w.e.f. 14.12.2003 in terms of TBOP Scheme dated 17.12.1983 has caused irreparable loss and injury in the matter of pay and increment in each and every month, as such denial of appropriate pay scale by way of upgradation is a continuous wrong which is recurring in nature, and new cause of action arises each and every month, therefore the Original Application is well within the period of limitation.

**4.19** That due to denial of benefit of time bound promotion to the applicant in the scale of pay of Rs. 4,500-125-7000/- w.e.f. 14.12.2004, the applicant is suffering huge financial loss as stated above. Finding no other alternative, the applicant is now approaching this Hon'ble Tribunal for protection of his legitimate rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the right and interest of the applicant directing the respondents to respondents to convene DPC to grant time bound promotion of the applicant w.e.f. 14.12.2004 with all consequential benefits including arrear monetary benefits.

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

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

**5.1** For that, applicant has completed his 16 years of service to the post of L.D.C/Postal Assistant on 13.12.2004 and thereby he has attained eligibility for grant of time bound promotion w.e.f. 14.12.2004 i.e. day immediate after completion of 16 years of service under the T.B.O.P Scheme dated 17.12.1983.

**5.2** For that in terms of T.B.O.P Scheme dated 17.12.1983 so far as placing of an officer in the "next higher grade" is concerned, what is

Abul Kalan

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

relevant and material is that such official belonging to basic grades in Groups 'C' and 'D' must have completed "sixteen years of service in that grade". As such applicant has attained eligibility for grant of Time Bound Promotion w.e.f. 14.12.2004.

**5.3** For that, respondents were duty bound to consider promotion of the applicant by convening DPC within 30<sup>th</sup> June, 2004 in terms of the TBOP Scheme dated 17.12.1983 since the applicant completed the 16 years of service in the year 2004 itself.

**5.4** For that, juniors of the applicant has been granted time bound promotion in the scale of Rs. 4500-125-7000/- after completion of 16 years of service in the post of LDC/Assistant whereas the same has been denied to the applicant which is discriminatory and violative of Article 14 and 16 of the Constitution of India.

**5.5** For that, the day when applicant completed 16 years service i.e. on 14.12.2004 no charge sheet or charge memo was served upon the applicant and no disciplinary proceeding was contemplating/pending against the applicant. Therefore respondents are duty bound to convene DPC to grant time bound promotion to the applicant in the scale of pay of Rs. 4,500-125-7000 w.e.f. 14.12.2004.

**5.6** For that, promotion cannot be withheld merely because some disciplinary proceeding is pending against the employee. To deny the benefit of promotion there must be at the relevant point of time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. In the instant case of the applicant, no memorandum of charge sheet or show cause has been issued to the applicant at any point of time initiating a disciplinary proceeding, as such question of withholding of promotion of the applicant on the ground that the pending disciplinary proceeding against the applicant does not arise at all. Therefore the letter dated 2/6.07.2009 is arbitrary, cryptic, unreasonable and the same is liable to be rejected.

*Abul Kalam..*

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

5.7 For that, in the letter dated 2/6.07.09 nowhere it has been stated the exact date of the DPC held in the year 2005 and subsequently, as such, the said letter is cryptic, arbitrary and illegal and the same is liable to be ignored.

5.8 For that, due to denial of promotion to the applicant in the scale of Rs. 4,500-125-7000/- w.e.f. 14.12.2004, the applicant is suffering financial loss in each and every month, which is a continuous wrong.

5.9 For that, due to denial of benefit of time bound promotion to the applicant in the scale of pay of Rs. 4,500-125-7000/- w.e.f. 14.12.2004, the applicant has suffered huge financial loss as stated above. Therefore, the Hon'ble Tribunal be pleased to direct the respondents to convene DPC to grant time bound promotion of the applicant w.e.f. 14.12.2004 with all consequential benefits including arrear monetary benefits.

**6. Details of remedies exhausted.**

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

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

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

**8. Relief (s) sought for:**

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and

*Aewl Kalam*

20 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পৌর

after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to time bound promotion in the scale of pay of Rs. 4500-125-7000/- w.e.f. 14.12.2004 under the TBOP Scheme dated 17.12.1983 i.e. the date from which applicant completed 16 years of service in the grade of LDC/ Postal Assistant.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to convene DPC to grant time bound promotion of the applicant in the scale of pay of Rs. 4500-125-7000/- w.e.f. 14.12.2004 with all consequential benefits including arrear monetary benefits.
- 8.3 Costs of the application.
- 8.4 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

**9. Interim order prayed for:**

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

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

10. ....

**11. Particulars of the I.P.O**

i)	I.P.O No.	: 396410267
ii)	Date of issue	: 29.06.2009
iii)	Issued from	: G.P.O., Guwahati.
iv)	Payable at	: G.P.O., Guwahati.

**12. List of enclosures:**

As given in the index.

Abul Kalam

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

10 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

**VERIFICATION**

I, **Shri Abul Kalam**, Son of Late Mutahir Ali, aged about 50 years, working as Postal Assistant, SB Section, office of the Chief Postmaster General, Assam Circle, Meghdoot Bhawan, Guwahati- 1, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 11<sup>th</sup> day of August 2009.

*Abul Kalam*

-17-

OFFICE OF THE POSTMASTER GENERAL: ASSAM CIRCLE: GUWAHATI-781001.  
MEMO NO. STAFF/7-12/88 DATED AT GUWAHATI THE 13TH DEC. '88.

ANNEXURE-1

The following approved candidate's are hereby temporarily appointed as L.D.C., Circle Office, Guwahati in the scale of pay of Rs.950-20-1150-EB-25-1500/- Per month plus other allowances as admissible from time to time.

- 1) Sri Abul Kalam  
O/O the Postmaster General,  
Assam Circle, Guwahati.
- ii) Sri Sarat Buragohain,  
C/O Mukheswar Buragohain  
Purana Amulapatty,  
Bokulbari, P.O. Sibsagar  
Pin- 785640.
- 2) They are given to understand that their services are purely temporary terminable with one month's notice from either side.
- 3) They are further given to understand that the post to which they are being appointed are liable to be transferred in special circumstances to any part of India in the interest of public service and also liable to serve in Army within India in the time of war and National Emergency.
- 4) The appointment of candidates is provisional and subject to the satisfactory Police verification of character & antecedents.
- 5) Candidate should report to the undersigned within 10 days of receipt of this letter failing which it will be presumed that you are not willing to join in this office and your appointment letter will be liable to be cancelled.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

Copy to :-

- i) & ii) Candidate's concerned.
- iii) Asstt. Director (A/Cs), C.O., Guwahati.
- iv) J.O.(Bgt.), Co., Guwahati.
- v) S/S & P Section, C.O., Guwahati.
- vi) & vii) Personal File of the candidate's.
- viii) The Regional Director(N.E.R.), Staff Selection Commission, Nabagraha Road, Chenikuthi Hill Side, Guwahati-781003 with reference to his letter NO.SSCG/Nom.7/88/4373 dtd.14.10.88 which received vide P.M.G. Shillong letter NO.Staff/36-6/86 dtd.25.10.88.

\*\*\*\*\*

Attest  
S. N. S.  
Advocate

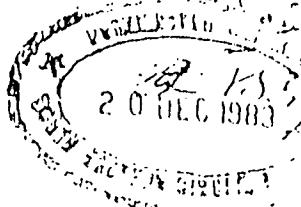
Post Master General  
Assam Circle  
Guwahati

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-18-

ANNEXURE-A

32



No. 31-26/83-P.E.T  
INDIAN POSTS & TELEGRAPH DEPARTMENT  
Office of the Director General of Posts & Telegraphs

17 DEC 1983

20, Sanchay Bhawan, New Delhi

All Heads of Circles (Postal)

Sir,

The issue of giving time bound promotion to regular employees in the operative cadres in the P&T Department has been under consideration of the Departmental Council (JCM). The Government have agreed to a time-bound one promotion scheme in the basic operative cadres in the P&T Department. An agreement on this scheme has been signed between the official side and staff side in the P&T Departmental Council of JCM on 30.11.1983. A copy of the agreement with the staff side along with its enclosures is forwarded for information.

The following instructions are hereby issued in connection with implementation of the above mentioned scheme in the P&T Department:

(1) The scheme will come into effect from 30.11.1983. All officials belonging to basic grades in Group 'C' and Group 'D' to which there is direct recruitment either from outside and/or by means of limited competitive examination from lower cadres, and who have completed 16 years of service in that grade will be placed in the next higher grade. Officials belonging to operative cadres listed in the Annexure-I to the agreement will be covered under the scheme.

(2) The Heads of Circles/Divisional Superintendents/ Heads of other functional units will take immediate action to identify the officials who have completed 16 years of regular service in the cadres covered under the scheme as on 30-11-83 as well as the officials who will complete 16 years of service from 1-12-83 to 31-3-84.

...../-

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

Attest  
S. K. Dhar  
Advocate

30 AUG 2009

- 19 -

- 2 -

Guwahati Bench  
गुवाहाटी न्यायपीठ

Thereafter, action will be initiated by the Heads of Circles to convene departmental promotion committee meetings to consider promotion of the officials in the operative cadres to the next higher scale of pay. The Departmental Promotion Committee which will be constituted in accordance with the existing instructions applicable to the different cadres will assess the fitness of the identified officials from for promotion to the higher scale of pay. The formalities in this regard should be completed within a period of 3 months. The promotions to the next higher scale of pay will be granted from the date following the date on which the identified officials complete 16 years of regular service. In case of officials who have completed 16 years of service before 30-11-83, the promotions to the next higher scale of pay will take effect from 30-11-1983.

(3) Special efforts should be made at all levels to take quick and prompt action which should be monitored by the Head of the Circle so that the DPC formalities are completed and promotion orders issued latest by 29.4.84.

(4) With effect from 1.4.84 onwards the Heads of Circles/Divisional Supdts./Heads of functional units will identify the officials belonging to the cadres covered under the scheme, who will complete 16 years of service upto 31st March of the next year. The Departmental Promotion Committee meeting will be convened before 30th June to consider fitness of the officials completing 16 years of service in the grade during the year. Officials who complete 16 years of service on a date later than that of convening of the meeting of the DPC will be placed on the approved list and will be promoted to the next higher scale of pay immediately on completion of 16 years of service, subject to their being found fit by the DPC and subject to normal rules relating to promotion. In respect of the officials who complete 16 years of service between the period from 1st April to the date the meeting of the DPC is convened, they will be placed in the next higher scale of pay from the date following the date they complete 16 years of service subject to their being found fit by the DPC.

(5) As soon as the departmental promotion committees finalise the lists of officials who are to be promoted to the next higher grade, the Head of the Circle will ensure that the basic grade posts are upgraded to the higher scale by issue of a formal sanction, distributing the higher posts to different units so that such officials can be placed on the higher grade.

(6) For promotions under the time-bound one promotion scheme the normal orders relating to reservation for SC/ST communities will not apply unless any specific order in this regard is subsequently issued.

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20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

- 3 -

(7) The pay of the officials on their being placed in the next higher scale of pay under the scheme will be fixed under FR 22-C.

(8) Officials on promotion to the higher scale of pay on completion of 16 years of service will maintain their seniority in the lower grade for purposes of promotion to supervisory posts justified on standards. This is to protect the interest of the senior officials who may not be eligible for promotion in a particular year for non-completion of 16 years of regular service, but are promoted on the basis of recommendation of a subsequent DPC. In case, however, an official who is considered unfit by a DPC (on completion of 16 years of service), he will lose seniority vis-a-vis the officials promoted to the higher scale of pay on the basis of the recommendations of that DPC.

(9) In the operative cadre covered by the scheme a 5% reduction will be effected in the sanctioned posts by the Head of the Circle/Divisional Officer/Head of independent functional units. The reduction will be done in respect of the basic grade posts covered under the scheme e.g. Time Scale Assistants, Postmen, Group 'D' etc. on a divisional basis. In other words, the 5% cut will not be effected office-wise. The total number of posts in a division will be taken into account and with immediate effect the total number of posts will be reduced by 5%. While calculating the reduction, fraction of .5 and above will be rounded off to the next higher integer. The Divisional Supdt. will ensure that the reduction is suitably distributed among various offices so that the service is not dislocated. It may be noted that as a result of this while there may not be any physical reduction of staff strength in smaller units, in bigger units the number of posts reduced may be more than 5%.

(10) Similarly, in respect of supervisory posts, which are sanctioned on the basis of prescribed norms as well as promotional posts which are sanctioned outside the basic grades as per prescribed norms (e.g. Supervisory LSG posts, Mail Overseer/Sorting Postmen etc.), the number of sanctioned posts will be reduced by 15% on divisional basis. While calculating the reduction, fraction of .5 and above will be rounded off to the next higher integer. Again the reduction should be suitably distributed among the different offices. The exercise referred to in this para and the previous para will have to be completed before 31-12-03 and a certificate should be given by the Head of the Circle personally, addressed to the Deputy Director General (P) (by name) that this has been done.

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21  
60 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

11. As per the agreement with the staff side in the JCM, existing officials regularly appointed to any basic grade, will not be retrenched from Service as a result of 5% cut in the basic posts as mentioned in the previous paragraphs. If there are not sufficient vacancies in a Division to cover 5% reduction in the basic grade posts by 31-12-83, the posts may be continued to the extent necessary in order to keep the officials in Service. As and when vacancies arise as a result of new creation, retirement, etc., the extra posts retained should be adjusted against them.

12. The posts in operative and supervisory cadres will continue to be sanctioned on the basis of present norms until further orders. However, while taking up proposal for sanction of establishment in different offices, care will be taken to see that the reduction of posts ordered in the year 1983-84 is duly taken into account and the staff reduced in a particular office even beyond 5% is not created again in the next review of the establishment.

13. After introduction of the scheme, the posts justified on prescribed standards, both in the basic and the supervisory grades, may continue to be sanctioned on the basis of the existing norms. On 1st April of every year, a 5% reduction in the basic grade posts and 15% in supervisory posts as described in paras 9 and 10, above will be effected in respect of the posts sanctioned during the previous financial year. It is clarified that the 5% and 15% cuts referred to in paras 9 and 10 in respect of posts existing on 30-11-83 will be effected immediately on receipt of this letter, in any case not later than 31-12-83. On 1-4-84 a similar reduction will be made in respect of posts sanctioned between 1-12-83 and 31-3-84. Thereafter the reduction will be effected on the 1st of April every year in respect of the additional posts sanctioned during the previous financial year.

In bigger offices where immediately on introduction of the scheme more than 5% of the sanctioned posts were reduced in order to maintain 5% cut on divisional basis, it has been ensured that at the subsequent review of establishment of that office only extra posts justified on time-test or prescribed norms will be sanctioned and the extra cut made in that office already is not restored.

For example, in an office if there were 100 posts in basic grade on 30-11-83 and 8 posts are reduced in order to maintain 5% cut on divisional basis, 92 posts would be available with effect from 31-12-83 (latest). If subsequent

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20 AUG 2009 96

Guwahati Bench  
गुवाहाटी न्यायपीठ

a view of establishment of this office is done and the total number of posts justified comes to 103, then only 3 more posts will be sanctioned for the office making the total effective number of posts as 95.

14. With effect from the date of introduction of the scheme, the officials posted against regular supervisory posts sanctioned on standards will be entitled to draw special allowance as indicated in Annexo 'B' to the agreement.

Only officials who hold supervisory posts will be eligible to draw the special allowance and as such necessary adjustments based on seniority in posting will have to be made. Such of the senior officials as are entitled to hold supervisory posts and have to move out for want of posts in the stations of their posting where they are working at present may be allowed at their option to move out at the end of the current academic year. But they will be eligible to draw special allowance only when they actually work against the supervisory posts. Supervisory posts carrying special allowance which form circle cadre will have to be filled on circle basis based on seniority.

15. The incumbents of posts in promotional grades like Head Postman/Sorting Postmen/Mail Overseer upto the extent of 10% of the total number of posts in the basic grade after 5% cut from which promotion is made, will be entitled to Rs. 25/- per month as special allowance. Posts in Mail Overseer/Sorting Postmen, etc., cadre upto a limit of 10% of total number of posts in Postmen cadre after 5% reduction should be identified and the officials holding those posts may be given the special allowance. The filling up of these posts may be done on seniority. This will apply to 10% of posts in the case of Mail Guards also.

The incumbents of the posts of Jamadars upto the extent of 10% of the total number of posts in the basic grade of Group 'D' Test category (including those of Jamadars created by upgradation of Group 'D' posts), after effecting the 5% cut, will be entitled to Rs. 15/- per month as Special Allowance. Such posts of Jamadar should be identified and the officials holding these posts may be given special allowance. The filling up of these posts may be done on seniority.

16. With effect from 30-11-83, special pay sanctioned for basic grade posts as charge allowance will be withdrawn. However, special pay on grounds such as for acquiring additional qualifications, for special training and for handling cash etc., will continue so long as these posts are held by the officials in the basic grade unless a special pay is prescribed in the higher scale also.

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20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

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17. Annexo 'C' to the Agreement gives particulars of the posts to which a special pay/charge allowance sanctioned at present will be withdrawn with effect from 30.11.83.

18. The posts of single-handed and double handed sub-post-masters which carry charge allowance at present will henceforth be manned by officials who have completed 16 years of service and have been placed in the next higher scale of pay. In order to avoid inconvenience to the officials consequent on the introduction of the scheme in mid academic session, it is not necessary to deploy such officials against the posts of single handed and double handed Sub-Postmaster immediately. Such deployment may be effected at the end of the academic year. Charge Allowance to these posts will, however, stand withdrawn with effect from 30-11-83.

19. For sanction of supervisory posts on standards in higher grades in future the posts justified as per existing standards in the lower grades before reduction will be taken into account.

20. The special allowance for supervisory posts mentioned in paras 14 and 15 above will not have the characteristics of special pay. The special allowance shall not count for any purpose other than pensionary benefits.

#### 21. P.O. & R.M.S. Accountants

P.O. & R.M.S. Accounts, who are in the time scale of pay plus special pay, are also entitled to promotion to the scale of Rs. 425-640 on completion of their total 16 years of service in the clerical grade including the period they worked as Accountants.

However, the officials belonging to P.O & RMS Accountants cadre who have chosen the scale of pay of Rs. 380-620 are not eligible for one promotion on completion of 16 years of service in that scale. They may be given an option to revert to the time scale of pay plus special pay retrospectively with effect from the date they chose the scale of pay of Rs. 380-620. Their pay on reversion to the time scale of pay will be notionally fixed with reference to the pay in the time scale which they would have drawn plus special pay of Rs. 45/-.. They would be eligible for being promoted to the scale of Rs. 425-640 on the basis of completion of 16 years of service in the time scale of pay. The special pay granted to them on notional basis may be taken into account for fixation of their pay subject to the conditions laid down in Govt. of India's order No. 6 regarding Annexure below FR 22 (Swamy's compilation of F.R. & O.R.)

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24-

20 AUG 2009 38

excess pay and allowances which they might have drawn in scale of pay of Rs. 300-620 after fixation of their pay in the time scale on notional basis will not be recovered. The option should be exercised by all concerned within a period of two months from the date of issue of these orders and the option exercised once shall be final.

22. Since it has been decided to give one promotion to all officials who complete 16 years of service in a particular grade, officials who have been transferred under Rule 38 of the P&T Manual, Vol. IV in the same cadre, are eligible to count their entire period of service for promotion under the scheme. This will cover even officials who have been transferred from one Circle to another in the same cadre. The question of extending the scheme to officials who have been transferred under Rule 38 from one cadre to another (e.g. from RWS Assistants to PO Assistants) is separately under consideration.

The following further clarifications and instructions are also issued.

(i) In respect of the cadres which are covered under the scheme of time-bound one promotion, the orders issued vide P&T Dts. No. 31-19/74-P.E.I dated 15.6.74 and Ministry of Finance O.M. No. P.7(21)-E.III(A)/74 dated 10.1.1977 will stand withdrawn after 30.11.83.

(ii) Promotion to the LSG 1/3rd on the basis of departmental examination will be abolished on introduction of the scheme. However, vacancies falling under LSG 1/3rd quota upto 30.12.82 will be filled in accordance with the instructions on the subject.

(iii) The introduction of the scheme will not affect officials who have already been promoted on regular basis from the basic grades to the next higher grades before 30.11.83 under existing rules. The officials who have already been promoted to the next higher scale of pay before 30.11.83 will rank on block senior to the officials who are placed in the next higher scale in pursuance of the new scheme.

(iv) The officials who complete 16 years of service and who are promoted to next higher scale of pay will continue to perform operative duties unless they are posted to regular supervisory posts in their turn.

The Heads of Circles and Administrative Offices will be personally responsible to ensure implementation of the orders issued above. They will examine the enclosures to this letter including the Agreement and the instructions contained in the above para very carefully and take all steps for its most expeditious implementation. They will also be responsible to monitor the progress made in the Circle/Administrative Units under their jurisdiction regarding the implementation of the scheme.

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Their attention is specifically drawn to the instructions contained in para 10 regarding the certificate to be sent by them to the DDG (P) by name.

The Heads of Circles/Administrative Offices may take immediate steps to set up a cell within the existing staff to deal with the different matters relating to the scheme of time-bound one promotion in their offices for this purpose.

The Heads of Circles and Administrative Offices will please send a fortnightly progress report to the Directorate in the enclosed proforma regarding implementation of the scheme of time-bound one promotion.

In case of any doubt regarding implementation of the scheme, a reference may be made by Heads of Circles to the ADG (One Promotion Cell) in the P&T. Dept., which has been specifically constituted to deal with the matters arising out of the implementation of time-bound one promotion scheme in the P&T Department.

Receipt of this letter may please be acknowledged to Sri P. H. Venkateswaran, ADG (PE).

Yours faithfully,

(S.K. PARTHASARATHY)  
DEPUTY DIRECTOR GENERAL (P)

Copy to :-

1. The Director of Audit, P&T. Audit Office, Delhi-110054.
2. All P&T. Branch Audit Office.
3. All Directors/Dy. Directors of Accounts (Postal).
4. Officer-in-charge, APS Record Office, Kumpoo.
5. DPS, Nagpur-440001.
6. Chief Accounts Officer, P&T. Cost Check Unit, Bangalore-560001.
7. Admin/CA/TE/SPG/SEA/SPB-I/SPB-II/Budget/F&I/F&I/F&III/F&IV/Postal Accounts/Inspection (8 Copies)/GA Section (8 Copies)/CMR (8 Copies)/S.R. Section
8. All Recognised Unions/Associations & Federations etc.
9. Sanction file/Quard file.

(S. K. PARTHASARATHY)  
DEPUTY DIRECTOR GENERAL (P)

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

10 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

20 AUG 2009

Government of India  
Ministry of Communications: Department of Posts  
No. 4-12/88-PE.I(Pt.)

Dated July, 22, 1993

To

All Chief Postmasters General/Regional Postmaster  
General/ Controller Foreign Mail, Bombay/Additional  
Director General, Army Postal Service.

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

Subject: Extension of Time Bound One Promotion Scheme  
(TBOP) and Biennial Cadre Review (Second Promotion)  
to Group 'C' staff of administrative offices  
(Circle Offices) in the Department of Posts.

The question of extending the Time Bound One  
Promotion (TBOP) Scheme and Biennial Cadre Reviews (BCR)  
to the Group 'C' staff of administrative offices (Circle-  
Offices) has been under consideration for some time past.

2. It has not been decided to extend the benefit  
of the Time Bound One Promotion Scheme and Second Promotion  
after 25 years of satisfactory service to the clerical staff  
of administrative offices excluding isolated posts like  
Hindi Translator, Librarian etc.

3. The following instructions are issued to ensure  
proper implementation of the schemes mentioned in para two  
above.

3.1 The Schemes will come into effect from 26.06.93.

3.2 The posts of LDCs (Rs. 950-1500) and UDCs (Rs. 1200-  
2040) in the Circle Offices, except to the extent of the LDCs/  
UDCs who opt to remain in the existing scale, will be abolished  
and an equal number of posts of time scale Postal Assistants  
(C.O.) (Rs. 1975-1660) will be created. The remaining posts will  
however, be converted as Postal Assistants (C.O.) as and when  
the concerned LDC/UDC ceases to hold that post. All the  
existing LDCs/UDCs will be required to furnish within one  
month, their option under FR-23 according to which they may,  
if they so like, retain their existing scale of pay which  
would be personal to such officials. The option once exercised  
will be final.

3.3 On replacement of the LDCs and UDCs by time scale  
Postal Assistants (C.O.), the existing duties of the LDC/UDC  
in the Circle Offices will be performed by the time scale  
Postal Assistants (C.O.). Senior officials would be required  
to perform the duties at present entrusted to UDCs.

3.4 The officials who do not opt for their old scales  
will be brought into the grade of Postal Assistants (C.O.)  
and their pay will be fixed under FR 22(I)(a)(2) by treating  
the posts in the time scale as not involving assumption of  
higher duties and responsibilities.

3.5 10% of total non-gazetted sanctioned strength  
(excluding isolated posts) will be surrendered as matching  
savings with immediate effect on a permanent basis.

Akash  
Sarker  
Advocate

1 AUG 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পৌঠ

- 2 -

3.6 The existing officials who do not opt for the old scales would be considered for grant of first promotion in the higher scale of Rs. 1400-2300 if they complete/have completed 16 years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting Assistant and UDC taken together and then for Second promotion in the next higher scale of Rs. 1600-2660 after completion of 26 years of service. Their pay on grant of promotions under Time Bound One Promotion Scheme and Second Promotion will be fixed under FR.22(I)(a)(1).

3.7 The UDCs who are drawing pay more than the maximum of the time scale pay (Rs. 975-1660) and who opt for Postal Assistants' Cadre (C.O.) to get the benefit of Time Bound One Promotion Scheme, will have their pay fixed at the maximum of the time scale of pay without any protection of the loss of pay already drawn.

3.8 With effect from the date of implementation of these orders, knowledge of typewriting will be essential for future recruits in the clerical cadre in Circle Offices in the pay scale of Rs. 975-1660.

3.9 The minimum educational qualifications for recruitment to the Postal Assistants' grade in Circle Offices shall be 10+2. Further recruitment, if required, will be done by Circle Offices on an interim basis instead of through Staff Selection Commission till new recruitment rules are finalised.

3.10 The Circle Office staff, as on 26.06.93 will retain the existing liability for transfer between the Circle Office and the Regional Offices. In addition, their promotion under this scheme will be conditional, subject to their liability for transfer to any unit located at the headquarters station of the Regional Office/Circle Office.

3.11 The Special pay of Rs. 70/- P.M. being paid to UDCs will stand withdrawn from the date of introduction of this scheme.

3.12 Under this scheme, only such officials as have completed 16 and 26 years' service in the Postal Assistants/ UDC/LDC Grade will be eligible for promotion to the next higher grades of Rs. 1400-2300 and Rs. 1600-2660 respectively, if they are otherwise eligible. In cases where a senior has not completed the prescribed period of service, whereas his/her junior shall be considered eligible for promotion. However, when the senior completes the prescribed service and is adjudged suitable for promotion, then his/her original seniority will be restored vis-a-vis his/her juniors in the lower grade. In such cases, promotion under this scheme will be subject to the condition that the senior employee shall not be able to claim benefit of higher pay fixation merely on the ground that officials who were junior to him in the lower grade are now drawing higher pay by virtue of early promotion.

3.13 In respect of cadres which are covered under the scheme of Time Bound One Promotion, the orders issued vide Directorate no. 31-19/74-P.E.I dated 15.6.74 and Ministry of Finance O.M. no. 7(21)-E.III(A)/74 dated 10.1.78 stand withdrawn w.e.f. 26.06.93

\*\* has become eligible, then only the junior \*\*

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

- 3 -

28 -

3.14 The existing LDCs/UDCs/LSG 1/3 quota officials who do not opt for this scheme will not be eligible for future consideration against the existing promotional channels. All recruitment to LDC, UDC and 1/3 LSG promotion quota will also be abolished on introduction of this scheme.

3.15 The officials who complete 16 or 26 years of service and who are promoted to the next higher scale of pay will continue to perform operative duties until and unless they are posted to regular supervisory posts.

3.16 For promotions under the Time Bound One Promotion Scheme, and 2nd Promotion Scheme, the orders relating to the reservation for SC/ST communities already issued by this office on this subject, may be followed.

4. The existing instructions applicable to the different cadres to assess their fitness for promotion to the next higher scale of pay will be observed and the formalities in this regard should be completed within a period of three months. The promotions to the next higher scale of pay will be granted from the date on which the eligible officials complete 16 and 26 years of regular service respectively.

5. This issues with the concurrence of Ministry of Finance (Department of Expenditure) vide u.o.no.2(24)/E.III/92 dated 11.5.1993 and Dy. No. F.2265/JS(Per)/93 dated 25.6.93 and in consultation with Finance Advice (Postal) Dy. No. 1979-FA/93 dated 16.7.93.

6. Hindi version will follow separately.

Sd/-

( Gautam Gupta )  
Dy. Director General (Trg. & Estt)  
Tele: 3717749

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DEPARTMENT OF POSTS:INDIA  
OFFICE OF THE CHIEF POSTMASTER GENERAL:ASSAM CIRCLE:GUWAHATI.

Memo No. Staff/2-30/93

Dated at Guwahati the 05-10-93.

The following UDCs/LDCs of CO/RO Guwahati who have opted for TBOP & BCR Scheme are converted to the post of Time Scale Postal Assistants, CO/RO Guwahati carrying the scale of Rs. 975-25-1150-EB-30-1660/- with effect from 26-6-93.

Name of officials

		<u>Converted to</u>
1.	Sri T.C.Das, UDC/CO	PA/CO
2.	" O.P.Tewari, UDC/CO	PA/CO
3.	" B.N.Sarma, UDC/CO	PA/CO
4.	" J.N.Deka, UDC/CO	PA/CO
5.	" C.P.Das, UDC/CO	PA/CO
6.	" K.K.Mazumdar, UDC(Cashier)/CO	PA/CO
7.	" A.K.Roy, UDC(Cashier)/RO	PA/RO
8.	" B.B.Das, UDC/CO(Postadas DO PLI)	PA/CO
9.	" G.M.Sarma, UDC/CO	PA/CO
10.	" J.Bhuyan, UDC/CO	PA/CO
11.	" O.W.Ranjah, UDC/RO(On depth to NVS)	PA/RO
12.	" H.C.Saloi, UDC/CO	PA/CO
13.	" H.G.Choudhury, UDC/CO(PostedadDOPLI)	PA/CO
14.	" T.Deka, UDC/CO	PA/CO
15.	" M.Rahman, UDC/CO	PA/CO
16.	" D.M.Ali, UDC/CO	PA/CO
17.	" J.Biswas, UDC/RO	PA/RO
18.	" B.N.Ojha, UDC/CO	PA/CO
19.	" U.K.Dey, UDC/CO	PA/CO
20.	" S.K.Sarkar, UDC/RO	PA/RO
21.	" J.Baruah, UDC/CO	PA/CO
22.	" P.K.Athparia, UDC/RO	PA/RO
23.	" N.K.Choudhury, UDC/CO	PA/CO
24.	" B.C.Deka, UDC/CO	PA/CO
25.	" B.C.Das, UDC/CO	PA/CO
26.	" K.Kalita, UDC/CO	PA/CO
27.	" D.Baruah, UDC/RO	PA/RO
28.	" A.Ahmed, UDC/RO	PA/RO
29.	" P.K.Das, UDC/CO	PA/CO
30.	Smt. Shovita Guha, UDC/RO	PA/RO
31.	Sri Chakradhar Das, UDC/ RO	PA/RO
32.	" N.Ahmed, UDC/CO	PA/CO

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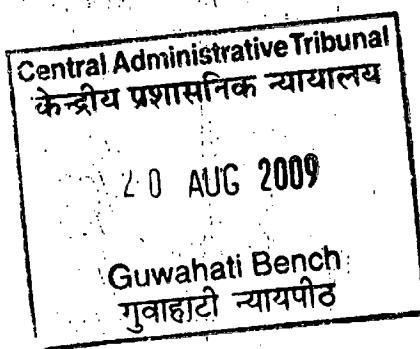
Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

*Abeswar  
Sarkar  
Advocate*

31. Sri M.M.Sarma, UDC/RO	PA/RO
32. " A.Kuddus, UDC/CO	PA/CO
33. " L.R.Khatoniar, LDC/CO	PA/CO
34. " K.K.Baidya, UDC/RO	PA/RO
35. " N.C.Deka, Offg.UDC/RO	PA/RO
36. " B.Ghose, Offg.UDC/CO	PA/CO
37. " M.R.Mar,Offg.UDC/RO	PA/RO
38. " G.K.Malakar,Offg.UDC/RO	PA/RO
39. " B.B.Dey, LDC/RO	PA/RO
40. " Bimalendu Bhattacharjee, LDC/CO	PA/CO
41. " Abul Kalam, LDC/CO	PA/CO
42. " D.Mazumdar, LDC/RO	PA/RO
43. " D.K.Sarkar, LDC/RO	PA/RO
44. " D.Swargiary, LDC/RO	PA/RO
45. " A.Bhattacharjee, LDC/RO	PA/RO
46. " K.Roy, LDC/CO	PA/CO
47. " G.Prasad, LDC(Hindi Typist)/CO	PA/CO
48. " M.Baro, LDC/CO	PA/CO
49. Smt. Siwadi Dewri, LDC/PO	PA/PO
50. Sri A.K.Das, LDC/CO	PA/CO
51. " J.Haloi, LDC/CO	PA/CO
52. " Ratanadhar Das, LDC/CO	PA/CO
53. " P.K.Barman, LDC/CO	PA/CO
54. " B.P.Swargiary, LDC/CO	PA/CO
55. " T.C.Basumatary, LDC/CO	PA/CO
56. " Ram Ch.Das, LDC/RO	PA/RO
57. " J.K.Deka, LDC/CO	PA/CO
58. " Rohini Dovi, LDC/CO	PA/CO
59. " Goma Thapa, LDC/RO	PA/RO
60. " Miss B.Kurkalong, LDC/CO	PA/CO
61. " Guwahati Bench	PA/CO
62. " Guwahati Bench	PA/CO



SAI  
(P. MATH)  
A.P.M.G.(Staff)  
For Chief Postmaster General,  
Assam Circle, Guwahati-781091.

-31-

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Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

Copy for information and necessary action to :-

- (1) The AD(Estt.), CO/RO; Guwahati.
- (2) The AD(A/Cs), CO/RO; Guwahati.
- (3) The AAO(Bgt), CO/RO; Guwahati.
- (4) The DA(P) Calcutta (through A&P SEC.).
- (5) The Office Supdt., CO/RO; Guwahati.
- (6) All Group Officer, CO/RO; Guwahati.
- (7) All Section Supervisors, CO/RO; Guwahati.
- (8) The Sr.PA/PA, CPMG/PMG/DPS; Guwahati.
- (9) The Staff Section, RO/Guwahati.
- (10) The G/L File No. Staff/19-1/88.
- (11) The officials concerned.
- (12) The P/E of officials.
- (13) Office copy.
- (14) Spare.

4  
(P. MATH)  
A.P.M.G.(Staff)  
For Chief Postmaster General,  
Assam Circle, Guwahati.

-:-

Baro/61093.

DEPARTMENT OF POSTS, INDIA  
OFFICE OF THE CHIEF POSTMASTER GENERAL,  
ASSAM CIRCLE : NEGRHDCT PHASUA,  
GUWAHATI-781 001.

Memo No. Staff/5-3/90

Date at Guwahati, the 4th Feb. '94.

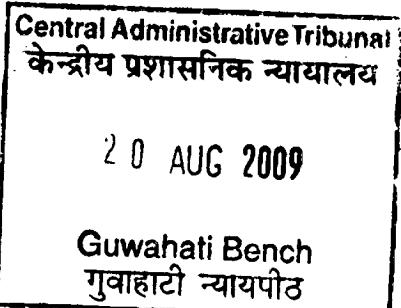
The Director of Postal Services, Office of the Chief Postmaster General, Assam Circle, Guwahati is pleased to confirm the following approved officials in the cadre of PA, CO/RO in the scale of pay Rs. 975-25-1150-EB-30-1660/- with effect from the dates shown against each.

<u>Name of officials</u>	<u>Date of confirmation</u>	<u>Post against which confirmed</u>
1. Sri Abul Kalam	- 1-2-1994	PA, Circle office, Guwahati.
2. Sri Dharmeswar Swargiary	- 1-2-1994	- Dm -
3. Sri Abhijit Bhattacharjee	- 1-2-1994	PA, Regional Office, Guwahati.

(P.G. 1/4)  
( I.C. SARMA )  
A.P.M.G. ( Staff )  
For Chief Postmaster General,  
Assam Circle, Guwahati-781 001.

Copy to:-

1. The P.M.G., Assam Region, Guwahati.
2. The A.D.P.S. (A/Cs), CO/RO, Guwahati.
3. The A.A.O. (BGT), CO/RO, Guwahati.
4. The Office Supdt., CO/RO, Guwahati.
5. The Officials concerned.
6. The P/F of officials.
7. The Circle Office G/L file.
8. Office copy.
9. Spare.



(P.G. 2/4)  
( I.C. SARMA )  
A.P.M.G. ( Staff )  
For Chief Postmaster General,  
Assam Circle, Guwahati-781 001.

DEPARTMENT OF POSTS : INDIA  
OFFICE OF THE CHIEF POSTMASTER GENERAL : ASSAM CIRCLE,  
MEGHDOOT BAZAAR : GUWAHATI-781 001.

NO. Staff/7-6/90

Dated at Guwahati, the 31st March, 1999.

The D.P.S., Office of the Chief Postmaster General, Assam Circle, Guwahati is pleased to appoint Shri Abul Kalam, PA(RO) and Shri Tarun Ch. Basumatary, PA(RO) in the posts of D.O.(PLI), Circle Office, Guwahati in the scale of pay rs.4500-125-7000/- to be effected from 01-04-99 for 3 years vice Shri J.C. Sarma Bordoloi and Bibhuti Bn. Dey reverted to their substantive post of PA(CC) and PA(RO) respectively.

(2) Posting orders of Shri J.C. Sarma Bordoloi, PA(CC) is being issued separately and Shri Bibhuti Bn. Dey will seek posting order at RO/Dibrugarh at Guwahati.

(3) Shri Abul Kalam and Shri Tarun Ch. Basumatary will be attached to PLI Section, CO/Guwahati. This is however subject to their being able to obtain adequate PLI business for which target will be prescribed from time to time by the CPNG(PLI). On termination of their appointment to the posts either on completion of 3 years tenure or otherwise Shri Abul Kalam and Shri Tarun Ch. Basumatary shall be reverted to their substantive posts of PA in RO, Dibrugarh at Guwahati.

(4) This appointment is purely temporary and on adhoc basis and will confer upon the official no claim for regular absorption in the posts. This arrangement can be terminated at any time in the interest of service without assigning any reason.

Shri Abul Kalam, PA(RO)  
Officer in Charge  
Assam Circle, Guwahati

( I. FINGERPRINTS )

Assst. Postmaster General (Staff)  
O/O the Chief Postmaster General,  
Assam Circle, Guwahati-781 001.

Copy for information and necessary action

To,

1. The PMG, Dibrugarh at Guwahati w.r.t. his No. Staff/1/28-3/98 (RP) dtd. 18-01-99.
2. The DDM(PLI), CO/GH w.r.t. his No. LI-DO/Bordoloi/98 dtd. 22-12-98.
3. The AD(A/Cs), CO/RO, Guwahati.
4. The AAO(BGT), CO/Guwahati.
5. The O.S., CO/Guwahati.
6. The Officials concerned.
7. PF of the officials.

Central Administrative Tribu  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

( I. FINGERPRINTS )  
Assst. Postmaster General (Staff)

Abul Kalam  
for S. Ch. Basumatary  
Advocate

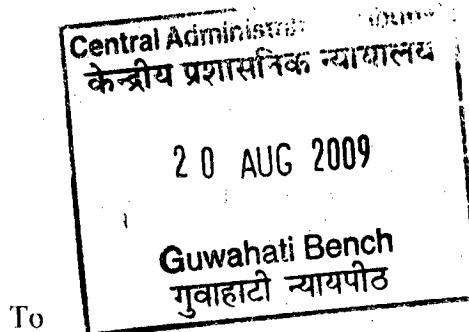
Department of Posts, India  
Office of the Chief Postmaster General, Assam Circle, Meghdoot Bhawan, 5<sup>th</sup> Floor,  
Guwahati - 781001

NO. DDM(PLI)/Staff/2005.  
Dated Guwahati, 25-07-2005.

Whereas a disciplinary proceeding is against Shri Abul Kalam, Postal Assistant, PLI Section, office of the Chief Postmaster General, Assam Circle, Guwahati is contemplated/pending.

Now, therefore, the undersigned in exercise of the power conferred by Rule-10 (1) of CCS (CCA) Rules 1965, hereby places the said Shri Abul Kalam under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the Headquarters of Shri Abul Kalam, PA, PLI Section should be Guwahati and the said Shri Abul Kalam shall not leave the headquarter without obtaining the previous permission of the undersigned.



  
( D. N. SHARMA ),  
Deputy Divisional Manager (PLI)  
Office of the Chief Postmaster General,  
Assam Circle, Guwahati-781001.

Shri Abul Kalam, Postal Assistant (PLI Section),  
Office of the Chief Postmaster General,  
Assam Circle, Guwahati-781001.

Residing at :-

Shri Abul Kalam,  
No.2 Mathgharia,  
Nongmati,  
GUWAHATI - 781 020.

Attested  
S. Kanti  
Advocate

Government of India  
Ministry of Communications & I. T.,  
Department of Posts,  
Office of the Chief Postmaster General, Assam Circle,  
GUWAHATI - 781001

No.DDM(PLI)/Staff/2005.  
Dated Guwahati, 13.08.2007.

WHEREAS an order placing Shri Abul Kalam, PA, PLI Section, Office of the Chief Postmaster General, Assam Circle, Guwahati under suspension was made vide this office Memo. of even No. dated 25.07.2005.

NOW, therefore, the undersigned in exercise of the powers conferred by Clause (c) of Sub-Rule (5) of Rule 10 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect.

*(Signature)*  
( K. Ahmed ),  
Deputy Divisional Manager(PLI),  
Office of the Chief Postmaster General,  
Assam Circle, Guwahati-781001.

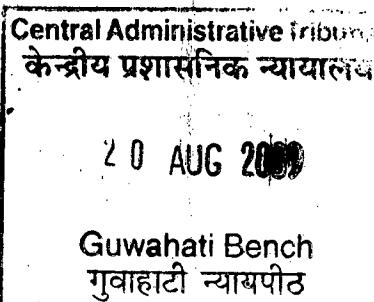
Copy to :---

1. Shri Abul Kalam, PA PLI Section, office of the Chief Postmaster General, Assam Circle, Guwahati-781001 residing at No.2 Mathgharia, Noonmati, Guwahati-781020.

2. The ADPS(Accounts), Office of the Chief Postmaster General, Assam Circle, Guwahati.

3. The APMG(Staff), Office of the Chief Postmaster General, Assam Circle, Guwahati-781001.

4. The APMG(Vig), Office of the Chief Postmaster General, Assam Circle, Guwahati.



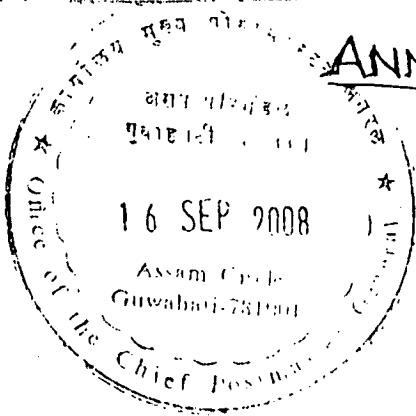
*(Signature)*  
( K. Ahmed ),  
Deputy Divisional Manager(PLI),  
Office of the Chief Postmaster General,  
Assam Circle, Guwahati-781001.

*Attestd  
J. N. Pathi  
Advocate*

-36-

To,

The Chief Postmaster General,  
 (Assam Circle)  
 Meghdoot Bhawan,  
 Guwahati- 1.



(Through proper channel)

Sub:- Prayer for grant of promotion to the next higher grade under the Time Bound Promotion Scheme.

Respected Sir,

Most humbly I beg to draw your kind attention on the subject cited above and further beg to lay following few lines for your kind consideration:

- 1) That Sir, I was appointed as Lower Division Clerk (for short L.D.C) on 13.12.1988 and posted in the Meghdoot Bhawan, Guwahati.
- 2) That Sir, Govt. of India, Ministry of Communication, department of Posts introduced Time Bound One Promotion Scheme w.e.f. 26.06.1993. In terms of the said scheme it has been provided that officials who have completed 16 and 26 years of service in Postal Assistant/UDC/LDC will be eligible for promotion to the next higher grade.
- 3) That Sir, while working as L.D.C my post has been converted to Time Scale Postal Assistant w.e.f. 26.06.1993.
- 4) That Sir, I have completed 16 years of regular service to the post of L.D.C/Postal Assistant on 13.12.2004 without any promotion whereas in terms of the Time bound promotion scheme it has been instructed to assess the fitness for promotion to the next higher scale of pay will be observed and the formalities in this regard should be completed within a period of three months. The promotion to the next higher grade will be granted from the date on which the eligible official complete 16 years of regular service but in my case although I have completed 16 years of regular service in the post of P.A on 13.12.2004 but I have been deprived of promotion to the next higher grade.

Central Administrative Tribunal  
 केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Attested  
 J. N. Kar  
 Advocate

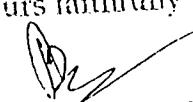
5) *Smt. Goms*  
That Sir, Shri Ananat Kumar Das, P.A, ~~Shri Ganga~~ Thapa, P.A and many others juniors to me have granted the benefit of promotion to the grade of Lower Selection Grade after completion of 10 years of service in the cadre of P.A but the same benefit of promotion has been denied to me. As such, I urge upon Your Honour to provide the benefit of promotion to the post of L.S.G w.e.f. 13.12.2004 i.e. the date on which I have completed 16 years of service to the post of P.A.

6) That Sir, during my entire service career, I have rendered service to the department with the outmost honesty and sincerity and as recognition of my meritorious services I was awarded Silver Certificate by Your Honour for consecutive four years w.e.f. 1999 to 2004.

7) That Sir, since I have completed 16 years of regular service on 13.12.2004 without any promotion, as such I am entitled for promotion to the next higher grade of L.S.G, but my promotion to the next higher grade has not been considered till date. Therefore, I request Your Honour kindly to consider my promotion to the next higher grade of L.S.G w.e.f. 14.12.2004 with all consequential service benefit including monetary benefit.

Under the facts and circumstances as stated above, I pray to Your Honour to promote me to the grade of L.S.G w.e.f. 14.12.2004 with all consequential service benefit including arrear monetary benefit and for this act of kindness the undersigned as in duty bound shall ever grateful to you. An early action in this regard is highly solicited.

Yours faithfully



(ABUL KALAM)

P.A, SB Section,  
Office of the Chief  
Postmaster General,  
Assam Circle,  
Guwahati-1.

Date: 16/09/2008

7 AUG 2009

Guwahati Bench  
प्रभाग न्यायालय

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

Copy to:

The Director of Postal Services (HQ), Assam Circle, Guwahati-1, for information and necessary action.

Shri Pawan Kumar Singh,  
Director Postal Services (HQ & Mktg.),  
O/O the Chief Postmaster General,  
Assam Circle, Guwahati-1.

Dated at Guwahati, the 27-11-2008.

Sub:- Promotion under TBOP Scheme due from 14-12-2004 denied.

Ref:- I) Dte. New Delhi letter No.31-26/83-PE.I dated 17-12-1983  
II) Dte. New Delhi letter No.4-12-88-PE.I(Pt) dated 22-07-1993  
III) Dte. New Delhi letter No.37-28/91-SPB-I dated 04-07-1991.

Respected sir,

Kindly excuse me for writing this letter to your honour by name.

Kindly refer to my representation dated 16-09-2008 addressed to the Chief Postmaster General(Staff) and copy endorsed to you regarding my promotion under TBOP scheme.

That, I completed 16 years of service in the combined grades of LDC and Postal Assistant on 13-12-2004 and I became eligible for TBOP w.e.f. 14-12-2004.

That, vide para ii of Directorate, New Delhi letter No.37-28/91-SPB-I dated 04-07-1991, it is mandatory to convened DPC in June to consider the case of officials completing 16 years of service from 1st April of that year to 31<sup>st</sup> March next. All those officials empanelled by DPC constitutes one 'batch'. But my name appeared to be not placed before the DPC convened in June'2004 for consideration alongwith other officials became eligible during the period from 1st April'2004 to 31<sup>st</sup> March'2005.

Because of denial of my promotion under TBOP scheme, I have been suffering from pecuniary loss and it has adverse effect on revision of pay in 6<sup>th</sup> CPC.

Under the above circumstances, I fervently request your good self to kindly look into my case sympathetically and cause to effect the promotion with all consequential financial benefit at your early convenient date and for this act of kindness I shall remain ever grateful to you.

With regards,

Yours faithfully,

( Abul Kalam )  
Postal Assistant,  
C.O.Guwahati-1.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

Attest  
J. K. Khatua  
Postmaster

Ref. No.

Date : 25/02/2009

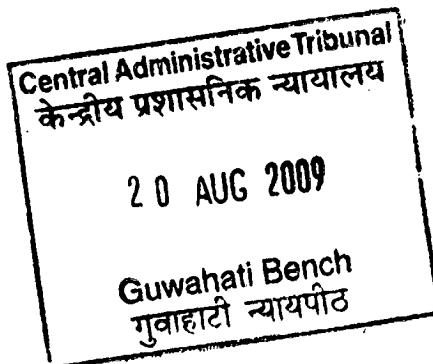
NOTICE

From:

Shri Subrata Nath  
Advocate.

To,

The Chief Postmaster General,  
(Assam Circle)  
Meghdoot Bhawan, Guwahati- 1.



Sub: - Restoration of pay.

Ref: - (1) Memo No. DDM (PLI)/Staff/2005 dated 25.07.2005 and  
(2) Order No. DDM (PLI)/Staff/2005 dated 13.08.2007.

My client:- Shri Abul Kalam, PA, SB Section, Office of the Chief Postmaster General, Assam Circle, Guwahati- 1.

Sir,

Under instruction of my above named client, I like to draw your kind attention on the subject cited above and beg to lay following few lines for your kind consideration:

- 1) That my above named client completed 16 years of regular service as LDC/ Postal Assistant on 13.12.2004 and he became eligible for TBOP w.e.f. 14.12.2004.
- 2) That vide para (ii) of the Directorate, New Delhi letter No. 37-28/91-SPB-I dated 04.07/1991, it is mandatory on the part of authority to convene DPC in June of each calendar year to consider the case of officials completing 16 years of service from 1<sup>st</sup> April of the year to 31<sup>st</sup> March next. But although my client became eligible for placing him in the next higher scale in terms of the TBOP scheme w.e.f. 14.12.2004 but his name was not forwarded before the DPC for getting benefit of next higher scale w.e.f. 14.12.2004, as a result

*Subrata Nath  
Advocate*

**Subrata Nath, M.Sc., LL.B**  
Advocate  
Guwahati High Court

Phone : 2522998, 9135117615  
Bye Lane, 7, H/No. 8,  
Lachitongar, Guwahati- 781007

**Ref No.**

**Date : 21/08/2009**

my client has been deprived of the benefit of TBOP w.e.f. 14.12.2004. Due to denial of the benefit of upgradation to the next higher scale of pay in terms of the TBOP scheme my client is getting lesser pay than his immediate juniors.

- 3) That the juniors of my client, namely; Shri Bijoy Mazumdar, Shri Ananta Kumar Das, P.A, Smti Gomg Thapa, P.A, and many others have been granted promotion to the grade of LSG after completion of 16 years of service in the cadre of P.A. but due to denial of the benefit of LSG to my client w.e.f. 14.12.2004 juniors of my client are drawing more salary than my above named client which is not permissible under the rule.
- 4) That my above named client while working as Postal Assistant, he was placed under suspension vide Memo No. DDM (PLI)/Staff/2005 dated 25.07.2005 stating therein that a disciplinary proceeding is contemplated/pending against my above named client. However, after lapse of more than 2 (two) years the authority was pleased to revoke the order of suspension vide Order No. DDM (PLI)/Staff/2005 dated 13.08.2007, and he was allowed to join duty. It is stated that in the order of revocation of suspension dated 13.08.2007 there is no intimation regarding pending finalization of disciplinary proceeding against my above named client, as such the suspension of my client w.e.f. 25.07.2005 to 13.08.2007 can be said to be wholly 'unjustified in terms of F.R. 54-B. Therefore, my above named client is entitled to the benefit of full pay and allowance w.e.f. 25.07.2005 to 13.08.2007 in terms of F.R. 54-B (3), which reads as follows:

**Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय**

**20 AUG 2009**

**Guwahati Bench  
गुवाहाटी न्यायालय**

**Subrata Nath, M.Sc., LL.B.**  
**Advocate**  
**Guwahati High Court**

Phone: +91 929908 9133/ 917615  
By: Room 7, B/No. 40,  
Kachitongar, Guwahati- 781097

**Ref No.**

*Date: 21/08/2007*

"(3) Where the authority competent to order of reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had not been suspended."

But after the revocation of suspension of my above named client no order has been passed till date restoring his pay and allowance and also regarding treatment of the period of absence.

- 5) That suspension period of my above named client was prolonged due to reason best known to the authority and during the period no show cause or notice has been served upon him following the order of suspension.
- 6) That delay in issuing revocation of order of suspension cannot be attributable to my above named client. However, after revocation of order of suspension no opportunity/notice was given to my above named client to determine proportionate pay and allowance payable to him. As such it is evident that the authority has acted in violation of the provision laid down in F.R. 54 B regarding the treatment of pay and allowance after revocation of the suspension.
- 7) That in the order dated 13.08.2007 reinstating authority did not give (i) any specific decision on treatment of period of suspension and (ii) a specific decision on the quantum of pay and allowances for the said period.
- 8) That no order has been passed regarding treatment of pay and allowance and the treatment of the period spent under suspension following the provision laid down in F.R 54 B.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायालय

**Subrata Nath, M.Sc., LL.B**  
Advocate  
Gauhati High Court

Phone : 2522998, 9135117615  
Bye Lane 7, B/No. 8,  
Lachitbongar, Guwahati- 781097

**Ref No.**

**Date :** 17.08.2009

9) That after one year since the revocation of the suspension my client is continuing his duty, but he has not granted any increment since 25.07.2005 without any reason. As such he is drawing lesser salary than his juniors since his pay has not been restored after revocation of order of suspension. It is also stated that after revocation of suspension my above named client is entitled to all the service benefit including increment of pay etc. since 25.07.2005 as because no show cause or notice have been issued upon him at any point of time after suspension till date.

10) That after revision of scale of pay as per the recommendation of the Sixth Central Pay Commission my above named client is drawing basic with grade pay Rs. 11,890 and total emolument of Rs. 18,904/- as on 01.01.2009 whereas <sup>his</sup> my immediate junior Sri Bijoy Mazumdar is drawing basic and grade pay Rs. 12,570 and total emolument of Rs. 21,667/-. Be it stated that Grade pay of my above named client is shown as Rs. 2400/- whereas the above mentioned junior of my client is drawing grade pay of Rs. 2800/-. It is further stated that a junior is receiving more salary than his senior is not permissible under any rule that too when no punishment has been imposed upon him. Therefore, after revocation of suspension, pay of my client has not been restored, as a result he is suffering huge financial loss. Moreover, my client has not received revised arrear pay due to him w.e.f. 01.01.2006 till date.

11) That my above named client submitted representation before Your Honour on 16.09.2008, 16.10.2008 and 27.11.2008 ventilating his grievances and also praying for restoration of his pay, but to no result.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गুৱাহাটী বাণিজ্য

Subrata Nath, M.Sc., LL.B  
Advocate  
Guwahati High Court

Phone: 03622998, 9135447945  
Byc Lane-7, B/No. 8,  
Lachitongar, Guwahati-781007

Ref No.:

Date: 20/08/2009

As such, I request You to issue necessary order restoring pay of my client and also to pay him arrears of revised pay w.e.f. 01.01.2006.

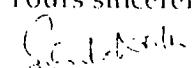
Under the facts and circumstances as stated above, I hereby serve you this NOTICE and call upon you to restore pay of my above named client and to pay him arrear of revised pay w.e.f. 01.01.2006 within a period of 30 days from the date of receipt of this notice, failing which, I have definite instructions from my client to approach before the competent court of Law. Your decision in this regard kindly be intimated directly to my above named client or to the undersigned.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

Yours sincerely



(SUBRATA NATH)

-44-

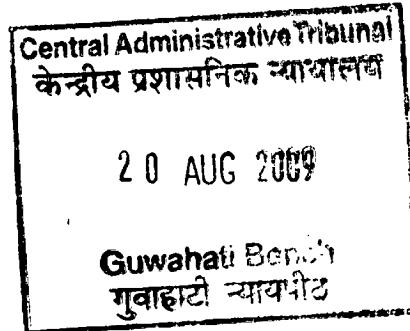
ANNEXURE-12

DEPARTMENT OF POST, INDIA  
OFFICE OF THE CHIEF POSTMASTER GENERAL, ASSAM CIRCLE  
MEGHDOOT BHAWAN, GUWAHATI.

No. AP/31-6/2001(L)

Dated at Ghy the 26-5-2009

To: Shri Abul Kalam,  
Circle Office,  
Guwahati-781001



Sub: Regarding restoration of pay

Ref: Pleader's Notice dated 25-02-2009

With reference to your above cited pleader's notice dated 25-02-2009 served by your pleader Mr Subrata Nath, Advocate, Guwahati High Court in your favour it is to mention here that your increment could not be allowed because you were under suspension for the period from 25-7-2005 to 06-09-2007 which is yet to be regularized.

However, on revocation of your suspension vide CO/Ghy letter no. DDM(PLI) Staff/2005 dated 13-8-2007 & on resumption of duty by you on 7.9.2007 your pay has been fixed to Rs. 9490 (DP) + 2400 (GP) based on the substantive pay during 25-7-2005 and accordingly the arrears arrived at in term of 6<sup>th</sup> CPC were paid to you.

As regards para 10 of the notice regarding drawl of more pay by your junior Sri Bijoy Mazumdar it is to mention here that Sri Mazumdar has already got his promotion under TBOP Scheme with grade pay of Rs 2800/- while your grade pay in the PA cadre is Rs 2400/- only. That is the reason for drawl of more pay by your junior, Sri Bijoy Mazumdar than you.

However, an increment @ 3% i.e. Rs. 360/- will be allowed w.e.f. 01-07-2008 & after allowing increment your pay will be Rs 9850 (PB) + 2400 (GP) = Rs 12250/- with effect from 01-07-2008.

*B*  
(N.C. BHOWMIK)  
Asstt. Director (A.Cs)  
For the Chief Postmaster General,  
Assam Circle, Guwahati -781001

Copy to

Bill clerk CO, Guwahati for information and allowing an increment @ 3% i.e. Rs 360/- w.e.f 01-7-2008

*SL*  
For the Chief Postmaster General,  
Assam Circle, Guwahati -781001

*Alleso  
S.K. Khati  
Advocate*

45

ANNEXURE-13

भारतीय डाक विभाग  
Department of Posts  
कार्यालय मुख्य पोस्टमास्टर जनरल, असम परिमंडल, गुवाहाटी-781001  
Office of the Chief Postmaster General, Assam Circle, Guwahati-781001

No: VIG/Pleader Notice-10/08

Dated at Guwahati the 2<sup>nd</sup> July, 2009  
✓6

To

Shri Subrata Nath,  
Advocate,  
Guwahati High Court,  
Guwahati-781001.

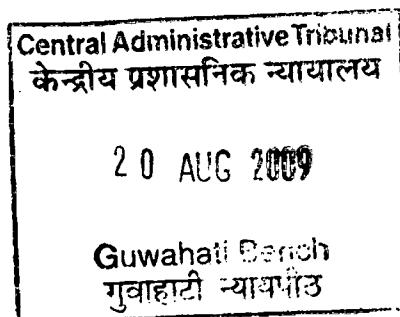
Sub: Pleader Notice served by Shri Subrata Nath, Advocate, Guwahati High Court, in favour of Shri Abul Kalam, PA, SB Section, o/o the Chief PMG, Assam Circle, Guwahati

Ref: Your Notice No. dated 25.02.09.

Sir,

With reference to your letter under reference on the above cited subject, the requisite informations are furnished below:-

1. No comment.
2. The name of the official was forwarded to the DPC held in 2005, 2006, 2007, 2008. But the DPC did not recommend his name for financial up gradation under TBOP scheme due to pending of disciplinary case.
3. No comment.
4. Orders for restoration of pay and allowances have already been issued on 01-01-09. Suspension period is yet to be regularized due to non finalization of the case by the competent authority.
5. No comment.
6. No comment.



Contd.P-2

Attested  
J.N.K.  
Advocate

- 46 -  
66

7. No comment.
8. Same as Sl. 4 above.
9. The increment was not drawn since the official was under suspension for the period from 25-07-2005 to 06-09-2007 which has not yet been regularized as proceedings not yet completed.

However his suspension was revoked vide CO/Ghy letter No. DDM (PLI)/Staff/2005 dated 13-08-2007 and the official resumes his duty on 07-09-2007. The pay of the official was Rs. 5100/- prior to suspension i.e. on 24-07-2005. Hence, due to implementation of the 6<sup>th</sup> CPC w.e.f. 01-06-2006 the pay of the official is fixed at Rs. 9490+2400 w.e.f. 07-09-2007 on the pre-revised pay of Rs. 5100/-. In the pre-revised pay his increment date was 1<sup>st</sup> June. Thus he worked 1 month 24 days on Rs. 5100/- (from 01-06-05 to 24-07-05) and balance 6<sup>th</sup> months 6 days on the revised pay of Rs. 9490+2400= 11980/-.

10. As regards para 10 of the notice regarding drawing more pay by his junior Sri Bijoy Mazumder than him it is because that Shri Bijoy Mazumder has already got his promotion under TBOP Scheme with grade pay of Rs. 2800/- while Shri Kalam is drawing grade pay of Rs. 2400/- in PA cadre & yet to got his promotion under TBOP Scheme due to pendency departmental proceedings.
11. Same as Sl. 4 above.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

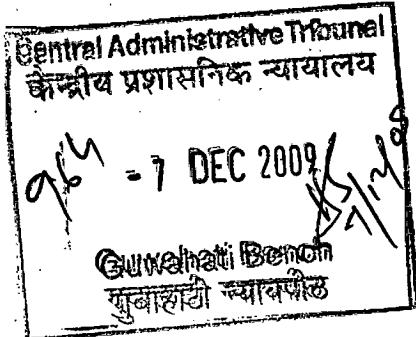
Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

Yours faithfully,

(L.K.Barman),  
Asstt. Postmaster General (Vig.),  
O/O the Chief Postmaster General,  
Assam Circle, Guwahati-781 001.

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

ORIGINAL APPLICATION NO. 162/09



**IN THE MATTER OF:**

In O.A. No. 162/09

Sri Abul Kalam .....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 L.K. Barman, , S/o ~~Lat Rati Ram Barman~~, aged about 59 years, presently working as the Assistant Postmaster General (Vig.), O/o The Chief Postmaster General, Assam Circle, Guwahtai-781001, do hereby solemnly affirm and state as follows:-

1. That I am presently working as the Assistant Postmaster General (Vig.), O/o The Chief Postmaster General, Assam Circle, Guwahtai-781001. I have been impleaded as party respondent no. 4. The copies of the aforesaid applications have been served upon the Respondents. I have gone through the same and 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 Respondent nos. 1, 2, 3 and 5.
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:**

Filed by:  
The Respondents  
Thruny Das  
M. A. J. S. C. S. A. T.  
7/12/09

Lakshmi Kanta Barman

- 7 DEC 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

**3.1** That the applicant Sri A. Kalam has been working as Time Scale Postal Assistant since 01.02.94 in the O/o The Chief Postmaster General, Assam Circle, Guwahati.

**3.2** That while the applicant was working as Postal Assistant in the O/o The Chief Postmaster General, Assam Circle, Guwahati, he was placed temporarily as Development Officer (PLI), Circle Office, Guwahati for a period of three years w.e.f. 01.04.99 in the scale of Rs. 4,500-7000. Subsequently the period was extended upto 31.03.04.

**3.3** That after completion of the aforesaid period, the applicant was posted as Postal Assistant, PLI Section (Service Centre) and worked upto 18.07.05. During this period the applicant was involved in a case where there was misappropriation of government money.

**3.4** That the department thereafter contemplated a disciplinary proceeding against the applicant and he was placed under suspension with immediate effect vide order dated 25.07.05. The applicant was also charge-sheeted.

**3.5** That no Departmental Promotion Committee (DPC) was held in the year 2004 for financial upgradation under Time Bound One-time Promotion (TBOP) Scheme. However subsequently the name of the applicant was forwarded to the DPC for financial upgradation under TBOP Scheme held in 2005, 2006, 2007 and 2008. But the DPC did not recommend the name of the applicant for financial upgradation under TBOP Scheme due to pendency of the departmental proceedings.

#### **4. REPLY TO THE FACTS OF THE CASE**

**4.1** That with regard to the statements made in paragraph 4.1 of the application, the humble answering respondent has nothing to make comment on it.

**4.2** That with regard to the statements made in paragraphs 4.2 to 4.5 of the application, the humble answering respondent has nothing to make comment on them as they are part of records of the case.

**4.3** That with regard to the statements made in paragraph 4.6 of the application, the humble answering respondent begs to state that the service of the applicant as Postal Assistant in the scale of pay of Rs. 975-1660 w.e.f. 01.02.94 was confirmed but not as an LDC.

Lakshmi Kanta Baruah

**4.4** That with regard to the statements made in paragraph 4.7 of the application, the humble answering respondent has nothing to make comment on it as they are part of records of the case.

**4.5** That with regard to the statements made in paragraph 4.8 of the application, the humble answering respondent begs to state that during the tenure of the applicant from June 2004 to 18.07.05 he was involved in misappropriation of government money. Consequently he had to face departmental proceeding, charge-sheet was also issued against him vide order dated 14.10.09 and the same was delivered to him and he was placed under suspension vide order dated 25.07.05 as appears from the Annexure-7 to the Original Application.

Subsequently the above suspension order dated 25.07.05 was revoked vide order dated 13.08.07 as appeared in Annexure 8 of the Original Application.

**4.6** That with regard to the statements made in paragraphs 4.9 and 4.10 of the application, the humble answering respondent begs to state that no DPC was held in 2004 for financial upgradation under TBOP Scheme. The name of the applicant was forwarded to the DPC for financial upgradation under TBOP Scheme held in 2005, 2006, 2007 and 2008. But the DPC did not recommend his name for financial upgradation under TBOP Scheme due to pending of disciplinary case.

**4.7** That with regard to the statements made in paragraph 4.11 of the application, the humble answering respondent begs to state that the order for restoration pf pay and allowance have already been issued vide order dated 01.01.09. The suspension period however could not be regularized due to non-finalization of the case by the competent authority.

**4.8** That with regard to the statements made in paragraph 4.12 of the application, the humble answering respondent begs to reiterate and affirm the statements made in paragraph 4.6 of this written statement.

**4.9** That with regard to the statements made in paragraph 4.13 of the application, the humble answering respondent begs to reiterate and affirm the statements made in paragraph 4.6 of this written statement.

Further stated that there is no violation of Articles 14 and 16 of the Constitution of India on the part of the respondent authority.

**4.10** That with regard to the statements made in paragraph 4.14 of the application, the humble answering respondent begs to reiterate and affirm the statements made in paragraph 4.7 of this written statement.

Further stated that in reply dated 02.07.09 in response to the advocate's notice by the humble answering respondents clearly stated that the

Lakshmi Kauli Bawmam

- 7 DEC 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

junior Sri Bijoy Majumdar in fact drawing more pay than the applicant as he has already got his promotion under the TBOP scheme with grade pay of Rs. 2,800/- whereas the applicant Sri Kalam is drawing the pay of Rs. 2,400/- as he has yet to get his promotion under TBOP Scheme.

**4.11** That with regard to the statements made in paragraph 4.15 of the application, the humble answering respondent begs to reiterate and affirm the statements made in paragraph 4.6 of this written statement.

**4.12** That with regard to the statements made in paragraph 4.16 of the application, the humble answering respondent begs to state that the departmental proceeding was initiated against the applicant and memorandum of charges against the applicant was issued vide memorandum dated 14.10.09.

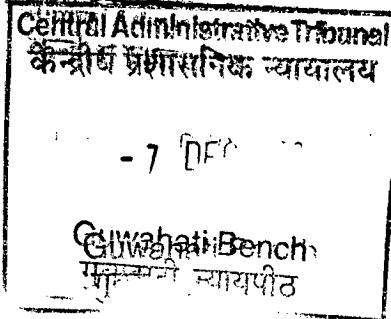
**4.13** That with regard to the statements made in paragraph 4.17 of the application, the humble answering respondent begs to state that Sri Bijoy Majumdar has been drawing more pay than the applicant because he has also already got the benefit under TBOP Scheme of Rs. 2,800/- while the applicant is drawing pay of Rs. 2,400/- of Postal Assistant cadre as he has not yet got the promotion due to the pendency of departmental proceeding.

**4.14** That with regard to the statements made in paragraph 4.18 of the application, the humble answering respondent begs to state that the departmental proceeding that was initiated against the applicant is for a serious offence of misappropriation of government money.

**4.15** That with regard to the statements made in paragraph 4.19 of the application, the humble answering respondent begs to state that there is a departmental proceeding initiated against the applicant where the memorandum of charges was also issued vide order dated 14.10.09 for serious misappropriation of government money, hence the denial of pay scale by way of upgradation under TBOP Scheme is not wrong.

**4.16** That it is submitted that the instant applicant has no merit at all and is liable to be dismissed.

Lakshmi Kanta Barman



**VERIFICATION**

I, Sri L.K. Barman, , S/o Lali Rahi Ram Barman aged about 59 years, presently working as the Assistant Postmaster General (Vig.), O/o The Chief Postmaster General, Assam Circle, Guwahati-781001, do hereby solemnly affirm and verify as follows:-

That the statements made in paragraphs 1, 2, 4.1..... are true to my knowledge and belief, those made in paragraphs 3.1 to 3.5, 4.2 to 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 7<sup>th</sup> day of December, 2009 at Guwahati.

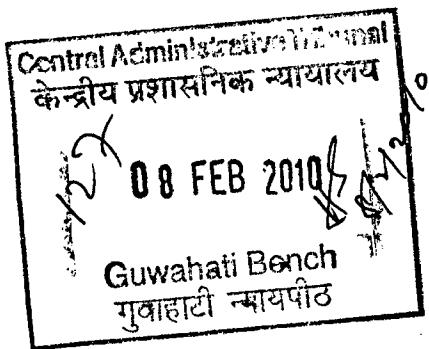
Lakshmi Kanta Barman

**SIGNATURE**

Asstt. Postmaster General (Vig)  
O/o the Chief Postmaster General  
Assam Circle, Guwahati-781 001

56  
Filed day the applicant  
through G. Datta, advocate  
on 08.02.10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI



In the matter of: -

O.A. No. 162 of 2009

Sri Abul Kalam.

..... Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of: -

Rejoinder submitted by the applicant  
in reply to the written statement  
submitted by the Respondents.

The humble applicant above named most humbly and respectfully  
states as under; -

1. That with regard to the statements made in paragraph 3.1 the applicant begs to state that he was temporarily appointed as Lower Division Clerk after clearing competitive examination conducted by the Staff Selection Commission and posted at Meghdoot Bhavan, Guwahati on 13.12.1988. However, the respondent No. 3 vide order under Memo No. Staff/2-30/93 dated 05.10.1993 (Annexure- 4), converted the post of L.D.C to the post of Time Scale Postal Assistant w.e.f. 26.06.1993. The applicant along with other persons who were working as L.D.C. at that point of time was converted as Postal Assistant. Subsequently, the respondent No. 3 issued an order bearing Memo No. Staff/5-3/90 dated 04.02.1994, whereby service of the applicant was confirmed as L.D.C in the scale of pay of Rs. 975-1660 (revised Rs. 4,000-6,000 by the 5th CPC). Be it stated that in terms of para 3.6 of the circular dated 22.07.93 (Annexure-3) 16 years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting Assistant and UDC taken together is necessary criteria for grant of promotion under the TBOP scheme.

Received  
on behalf of  
Mrs. M. Das,  
Dr. Chisc,  
CS Hazarika  
8.2.10

Abul Kalam

08 FEB 2010

Guwahati Bench  
গুৱাহাটী ন্যায়পাঠ

2. That with regard to the statement made in paragraph 3.4 of the written statement the applicant begs to state that he has completed 16 years of service on 13.12.2004 and became eligible for grant of time bound promotion in terms of TBOP scheme dated 17.12.1983. It is stated that at that relevant point of time no show cause, memo or charge sheet was issued upon the applicant. Applicant was placed under suspension on 25.07.2005 and the memorandum of charge sheet was issued against the applicant vide order dated 14.10.2009 that too after issuance of notice by this Hon'ble Tribunal in the instant original application.

3. That with regard to the statement made in paragraph 3.5 of the written statement applicant begs to state that in terms of para (4) of the T.B.O.P Scheme dated 17.12.1983 (Annexure- 2) it is mandatory on the part of the respondents to identify the officials belonging to the cadres covered under the scheme who will complete 16 years of service up to 31<sup>st</sup> March of the next year. The Departmental Promotion Committee meeting will be convened before 30<sup>th</sup> June to consider fitness of the officials completing 16 years of service in the grade during the year. Officials who complete 16 years of service on a date later than that of convening of the meeting of the DPC will be placed on the approved list and will be promoted to the next higher scale of pay immediately on completion of 16 years of service, subject to their being found fit by the DPC and subject to normal rules relating to promotion. In respect of the officials who complete 16 years of service between the period from 1<sup>st</sup> April to the date the meeting of the DPC is convened, they will be placed in the next higher scale of pay from the date following the date they completed 16 years of service subject to their being found fit by the DPC.

In the instant case, the applicant completed his 16 years of service to the post of L.D.C/Postal Assistant on 13.12.2004 and thereby he has attained eligibility for grant of Time Bound Promotion w.e.f. 14.12.2004 i.e. day immediate after completion of 16 years of service under the T.B.O.P Scheme dated 17.12.1983. As such it was the duty of the respondents to consider promotion of the applicant by convening DPC within 30<sup>th</sup> June, 2004 itself since the applicant

Abul Kalam

completed the 16 years of service in the year 2004 itself. It is relevant to mention here that the T.B.O.P Scheme dated 17.12.1983 is still in force but the respondents failed to follow the provision of the scheme for grant time bound promotion to the applicant w.e.f. 14.12.2004 for the reason best known to the authority. As such due to laches, lapses and negligence of the respondents applicant suffered the benefit of time bound promotion w.e.f. 14.12.2004 which he is legitimately entitled to. It is further stated that non-holding of DPC in the year 2004 is a lapse on the part of the respondents and a clear deviation from the scheme dated 17.12.1983, as such applicant should not suffer due to administrative lapses.

Applicant in support of his contention raised in the original application relies upon the decision of the Hon'ble Apex Court in the case of Union of India and Ors. -Vs- M. Mathivan [reported in (2006) 6 SCC 57].

Copy of the judgment dated 09.06.2006 in Civil Appeal No. 5739 of 2005 is enclosed herewith and marked as Annexure- 14.

4. That with regard to the statements made in paragraph 4.3 the applicant begs to state that the Govt. of India, Ministry of Communications, Department of Posts Vide circular bearing No. 4-12/88-P.E.I (Pt.) dated 22.07.1993 clarified that the existing official who do not opt for the old scales would be considered for grant of first promotion in the higher scale of Rs. 1400-2300 if they complete/have completed 16 years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting Assistant and UDC taken together and then for second promotion in the next higher scale of Rs. 1600-2660 after completion of 26 years of service. Their pay on grant of promotions under Time Bound Promotion Scheme and Second Promotion will be fixed under F.R 22 (l) (a) (1). As such applicant who completed 16 years of service as LDC and Postal Assistant on 13.12.2004 is entitled to the benefit of time bound promotion like his juniors who were granted benefit of time bound promotion on completion of 16 years of service as LDC and Postal Assistant.

Abul Kalam

5. That the applicant categorically denies the statement made in paragraph 4.5 of the written statement and further begs to state that at the relevant point of time when the applicant completed 16 years of service (i.e. on 14.12.2004) no memo, show cause or charge sheet was issued against the applicant, as such he is entitled to the benefit of time bound promotion in the scale of pay of Rs. 4,500-125-7,000/- (pre-revised) w.e.f. 14.12.2004 under the TBOP Scheme.

Be it stated that it is a settled position of law that the promotion cannot be withheld merely because some disciplinary proceeding is pending against the employee. To deny the benefit of promotion there must be at the relevant point of time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. In the instant case of the applicant charge sheet was issued against the applicant only on 14.10.2009 that too after receipt of notice from this Hon'ble Tribunal in the instant original application.

6. That with regard to the statement made in paragraph 4.6 of the written statement in terms of para (4) of the T.B.O.P Scheme dated 17.12.1983 (Annexure- 2) it is mandatory on the part of the respondents to identify the officials belonging to the cadres covered under the scheme who will complete 16 years of service up to 31<sup>st</sup> March of the next year. The Departmental Promotion Committee meeting will be convened before 30<sup>th</sup> June to consider fitness of the officials completing 16 years of service in the grade during the year. As such non holding of DPC in the year 2004 is an administrative lapse and the applicant should not suffer due to administrative lapse. In the instant case of the applicant denied promotion w.e.f. 14.12.2004 whereas memorandum of charge sheet was issued to the applicant only on 14.10.2009.

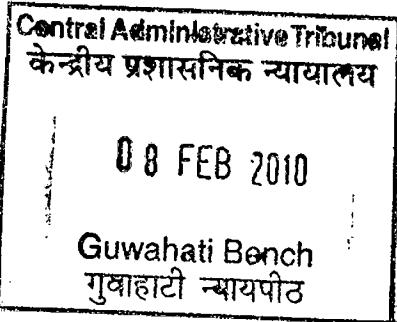
7. That with regard to the statement made in paragraph 4.9 the applicant begs to state that the respondents have not denied the fact that the juniors of the applicant were granted benefit of time bound promotion on completion of their 16 years of service as LDC/Postal Assistant. As such applicant is also entitled the benefit of time bound promotion in the scale of Rs. 4,500-7,000 w.e.f.

Abul Kalam

14.12.2004. As such the Hon'ble Tribunal be pleased to direct the respondents to grant the benefit of time bound promotion to the applicant w.e.f. 14.12.2004 with arrear monetary benefits.

8. That the applicant denies the statement made in paragraph 4.14 and 4.15 and further begs to state that it is settled position of law that that the promotion cannot be withheld merely because some disciplinary proceeding is pending against the employee. To deny the benefit of promotion there must be at the relevant point of time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. In the instant case of the applicant, he was suspended vide order dated 25.07.2005 stating therein that a disciplinary proceeding against the applicant is pending/contemplated whereas memorandum of charge sheet was issued against the applicant only on 14.10.2009 and the respondents on the plea of pending disciplinary proceeding withheld time bound promotion of the applicant for last 5 years. Therefore it appears that the respondents most arbitrarily delayed the initiation of disciplinary proceeding against the applicant just to harass the applicant and to withheld his time bound promotion.
9. That under the facts and circumstances stated above the applicant reiterates the submission made in the original application and the original application deserves to be allowed with costs.

Abul Kalam



VERIFICATION

I, **Shri Abul Kalam**, Son of Late Mutahir Ali, aged about 51 years, working as Postal Assistant, SB Section, office of the Chief Postmaster General, Assam Circle, Meghdoot Bhawan, Guwahati- 1, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 9 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 31<sup>st</sup> day of January 2010.

*Abul Kalam*

in State (Delhi) Admin. v. Secretary, Government of India, it was stated (SCC p. 420, para 14):

"Indeed, proof of facts by preponderance of probabilities as in a civil case is not foreign to criminal jurisprudence because, in cases where the State raises a presumption of guilt as, for example, the Prevention of Corruption Act, the accused is entitled to rebut that presumption by proving his defence by a balance of probabilities. He does not have to establish his case beyond a reasonable doubt. The same standard of proof as in a civil case applies to proof of incidental issues involved in a criminal trial like the cancellation of bail of an accused."

50. The evidence adduced by the parties before the trial court lead to one conclusion that the appellant had been able to discharge his initial burden. The burden thereafter shifted to the second respondent to prove his case. He failed to do so.

51. The submission of the second respondent that the appellant had not denied his entire responsibility and the dispute relating only to the quantum of debt cannot be accepted.

52. We, in the facts and circumstances of this case, need not go into the question as to whether even if the prosecution fails to prove that a large portion of the amount claimed to be a part of the debt was not owing and due to the complainant by the accused and only because he has issued a cheque for a higher amount, he would be convicted if it is held that existence of debt in respect of large part of the said amount has not been proved. The appellant clearly said that nothing is due and the cheque was issued by way of security. The Id defence has been accepted as probable. If the defence is acceptable as probable the cheque therefor cannot be held to have been issued in discharge of the debt as, for example, if a cheque is issued for security or for any other purpose the same would not come within the purview of Section 138 of the Act.

53. We have gone through the oral evidence. The second respondent has even failed to prove that the appellant had paid to him a sum of Rs 5000 by cash.

54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

55. We, therefore, are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. The appellant is on bail. He is discharged from the bail bonds. The second respondent shall pay and bear the costs of the appellant. Counsel's fee assessed at Rs 10,000.

1978 2 SCC 411 : 1978 SCC (C) 223 : AIR 1978 SC 961

(2006) 6 Supreme Court Cases 57.

(BEFORE ARJUN PASADEV AND C.K. THAKKER, JJ.)

[VACANCY BENCH]

UNION OF INDIA AND OTHERS

Appellants,

VERSUS

M. MATHIVANAN

Respondent

Civil Appeal No. 5739 of 2005, decided on June 9, 2006

Service Law — Promotion — Time-bound promotion scheme — Para 1 of the Scheme providing that all officials belonging to basic grades in Group 'C' and Group 'D' who completed "sixteen years of service, will be placed in the next higher grade" — Para 2 providing for convening of DPC meetings to consider "promotion" of officials who completed "sixteen years of regular service" in the operative cadres — Employees claiming to be placed in the next higher grade, held, required to establish that he had completed 16 years of "service" in the basic grades in Group 'C' and Group 'D' as required under Para 1 — Para 2 which required completion of 16 years of "regular service" for the purpose of promotion, not applicable to such employees — Supreme Court in an earlier case had observed that time-bound promotion and regular promotion are two different concepts and the former does not affect seniority of those higher up — Respondent employee having completed the eligibility condition of 16 years of service, which included non-regular as well as regular service, held, he would be entitled to benefit of the time-bound promotion scheme under para 1 and same cannot be denied on ground that he had not completed 16 years of regular service.

(Paras 13 and 19)

Dwijen Chandra Sarkar v. Union of India, (1999) 2 SCC 119 : 1999 SCC (L&S) 455  
Union of India v. V.N. Bhat, (2005) 8 SCC 714 : 2004 SCC (L&S) 167, relied on

R-M/ATZ/34381/CL

Advocates who appeared in this case:

Mohan Parasaran, Additional Solicitor General (S. Wasim A. Qadri, V.K. Verma and Shreekanth N. Tendulkar, Advocates, with him) for the Appellants;  
S. Nanda Kumar, K. Mayukh Samy, G. Ananda, A. Santha Kumar and V.N. Raghupathy, Advocates, for the Respondent.

Chronological list of cases cited

(on pages)

1. (2003) 8 SCC 714 : 2004 SCC (L&S) 167, *Union of India v. V.N. Bhat* 63d, 63e  
2. (1999) 2 SCC 119 : 1999 SCC (L&S) 455, *Dwijen Chandra Sarkar v. Union of India* 61h, 63b-c, 63c-d, 63d-e, 63e

The Judgment of the Court was delivered by

C.K. THAKKER, J. This appeal is directed against an order dated 3-4-2002 passed by the Central Administrative Tribunal (CAT), Madras Bench in OA No. 1094 of 2001 and confirmed by the High Court of Judicature at Madras on 16-4-2003 in Writ Petition No. 25452 of 2002.

From the Judgment and Order dated 16-4-2003 of the High Court of Judicature at Madras in Writ Petition No. 25452 of 2002

Central Administrative Tribunal  
केंद्रीय प्रशासनिक न्यायालय

08 FEB 2006

Guwahati Bench  
गुवाहाटी न्यायपीठ

Alveria  
12/2/06

2. The relevant facts leading to the present appeal are that the respondent herein, Mr M. Mathivanan was selected for recruitment to the cadre of Postal Assistant on 28-12-1981 and was appointed as Postal Assistant on daily-wage basis. He underwent necessary training and was placed in Reserve Training Pool (RTP), Postal Assistant to be absorbed as regular Postal Assistant and was posted to work in the post offices in Cuddalore Postal Division. In August 1983 the respondent volunteered for enrolment in the Army Postal Services (APS). By an order dated 19-8-1983 his request was accepted and he was appointed as Postal Assistant, Cuddalore with effect from 27-8-1983. The appointment was made subject to the following conditions:

(i) The appointment is purely on ad hoc and temporary basis and candidate will have no claim for regular absorption in preference to his seniors in the RTP list of this division.

(ii) The inter se seniority between the candidates who volunteered for APS and candidates who were appointed in the civil wing will not be disturbed merely by virtue of the above appointment of volunteers in the civil wing for deputation to APS.

(iii) If the candidate is declared medically unfit for enrolment to the APS, he will revert back to the RTP list and take his chance for absorption as regular PA in the normal course as and when it is due.

3. In September 1983, while he was working in Reserve Training Pool as Postal Assistant, he was asked by the Superintendent of Post Offices, Cuddalore Division to appear before the authorities for selection in Army Postal Services. Accordingly, he appeared and was selected as Warrant Officer with effect from 30-9-1983. By an order dated 20-10-1983 the respondent was appointed as Postal Assistant in Cuddalore division with effect from 30-9-1983 on the conditions mentioned in the said order. After his enrolment in the Army Postal Services, an order was passed by the Hon'ble the President of India appointing him on the establishment of regular army with effect from 30-9-1983.

4. It was the case of the respondent that Time-Bound Promotion Scheme was formulated by the authorities vide a memorandum dated 17-12-1983. The instructions were sent to all the Heads of Circles (Postal). The Scheme, *inter alia*, provided placing of officers in the "next higher grade" who had completed sixteen years of service in Groups 'C' and 'D'. The Scheme came into effect from 30-11-1983. According to the respondent, he had shown his willingness vide letter dated 29-1-1988 for being governed by the said Scheme. It is not in dispute that the respondent was appointed as Postal Assistant on "regular" basis from 18-7-1989. He was transferred to Cuddalore division and joined there on 6-8-1991. In 1999, the respondent made an application to the Superintendent of Post Office, Cuddalore division for granting benefit of Time-Bound Promotion Scheme as he had completed sixteen years considering the starting point of 30-9-1983. He also stated that he was in continuous service from 1983 and as such he was entitled to get the benefit from 30-9-1999. Unfortunately, however, his name was not included

in the Time-Bound Promotion Scheme. Finally, he was informed by a communication dated 24-3-2000 that his case for time-bound promotion would be considered only from 2007. His appeal against the said order also came to be dismissed by the Superintendent of Post Offices on 18-10-2000.

5. Being aggrieved by the said orders, the respondent approached the Central Administrative Tribunal, Madras by filing original application. The Central Administrative Tribunal allowed his application holding that his services ought to have been considered from 30-9-1983 and since he had completed sixteen years in 1999, he was entitled to the benefit of Time-Bound Promotion Scheme. Accordingly, the application was allowed. The writ petition filed by the appellant herein was dismissed by the High Court of Madras which order has been challenged by the appellants in the present appeal.

6. On 23-1-2004, notice was issued on special leave petition by this Court since there was delay of 155 days in approaching this Court. Meanwhile, however, interim stay was granted against the operation of the orders passed by CAT and confirmed by the High Court. On 12-9-2005, after hearing the parties, delay was condoned, leave was granted, special leave was admitted while interim relief was ordered to be continued and the appeal was set aside and ordered to be expedited for final hearing.

7. We have heard the learned counsel for the parties.

8. Mr Parasaran, learned Additional Solicitor General, appearing for the appellants, contended that the Tribunal as well as the High Court committed an error of law in not considering in its proper perspective, the Time-Bound Promotion Scheme and by granting benefit of the said Scheme to the respondent. According to him, the provision in the Scheme is clear and an employee would be entitled to the benefit of time-bound promotion only if he has completed sixteen years of "regular" service. Admittedly, the respondent was regularly appointed in September 1989 and joined Cuddalore division in 1991. The Department was, therefore, perfectly justified in rejecting the prayer for granting time-bound promotion as according to the Department, he was not entitled to such promotion. He also submitted that the respondent was initially appointed in 1981, but the Scheme required completion of sixteen years of service on "regular" basis. The counsel, therefore, submitted that the order passed by the Tribunal and confirmed by the High Court deserves to be set aside by upholding the action of the Department and by rejecting the prayer of the respondent.

9. The learned counsel for the respondent employee, on the other hand, supported the order passed by the Tribunal and confirmed by the High Court. He urged that the Scheme had been properly interpreted by the Tribunal and benefit was extended to him which was confirmed by the High Court. He also relied upon decisions of this Court in which similar action had been set aside by this Court by granting benefits to the employees. He, therefore, submitted that the appeal deserves to be dismissed.

*Afterwards  
A. Parasaran*

08 FEB 2010

Guwahati Bench  
गुवाहाटी न्यायपीठ

With having heard the learned counsel for the parties in consultation the order passed by CAT and confirmed by the High Court deserves no interference. It is not in dispute by and between the parties that the respondent was enrolled as Reserve Training Pool Postal Assistant and was appointed initially as Postal Assistant in the year 1981. It is also not in dispute that in 1983, he volunteered for enrolment in Army Postal Services and was absorbed in August 1983 by an order dated 19-8-1983. In the conditions referred to earlier, it was stated that the appointment was purely on ad-hoc and temporary basis and the respondent would have no right to claim regular absorption in preference to his seniors in RTP Est of the division. It was also stated that the inter se seniority between the candidates who volunteered for such services and candidates who were appointed in the civil wing would not be disturbed. It is also undisputed that pursuant to the willingness shown by the respondent, he was regularised in 1989. But it cannot be disputed and is not disputed before us that he was appointed as Warrant Officer in September 1983. The order passed by the Hon'ble the President of India appointing the respondent as Warrant Officer on the establishment of regular army reads thus:

To  
M. Mathivanan  
Greetings

You are hereby appointed to be a Warrant Officer on the establishment of the regular army, from the 30th day of September, One thousand nine hundred and eighty-three.

You are therefore carefully and diligently to discharge your duty as such; and you are to obey such orders and observe such directions as from time to time you shall receive from me or any of your superior officers according to the rules, regulations and order for the governance of the regular army.

Given at New Delhi the sixth day of March of the same year, one thousand nine hundred and eight corresponding to Tuesday, sixth day of the month of January of the year One thousand nine hundred and eighty-seven AD.

Zai Simon

President of India

11. The learned counsel for the respondent in our opinion, is right in relying on para 1 of the Time Bound Promotion Scheme, Para 1, which relates to placing of an employee in 'next higher grade' reads thus:

"(1) The Scheme will come into effect from 30-11-1983. All officials belonging to basic grades in Group 'C' and Group 'D' to which there is direct recruitment either from outside (and/or by) means of limited competitive examination from lower cadres, and who have completed 16 years of service in that grade, will be placed in the next higher grade.

Officers belonging to operative cadres listed in Annexure A 19 to the agreement will be covered under the Scheme." 60

12. Para 2 speaks of 'promotion' and reads as under:

The Heads of Circles/Divisional Superintendents/Heads of other functional units will take immediate action to identify the officials who have completed sixteen years of regular service in the cadres covered under the Scheme as on 30-11-1983 as well as the officials who will complete 16 years of service from 1-12-1983 to 30-3-1984. Thereafter, action will be initiated by the Heads of Circles to convene Departmental Promotion Committee meetings to consider promotion of the officials in the operative cadres to the next higher scale of pay. The Departmental Promotion Committee which will be constituted in accordance with the existing instructions applicable to the different cadres will assess the fitness of the identified officials for promotion to the higher scale of pay. The formalities in this regard should be complete within a period of three months. The promotion to the next higher scale of pay will be granted from the date following the date on which the identified officials complete sixteen years of regular service. In case of officials who have completed sixteen years of service before 30-11-1983, the promotions to the next higher scale of pay will take effect from 30-11-1983."

13. Reading of the above two paragraphs makes it abundantly clear that so far as placing of an officer in the 'next higher grade' is concerned, what is relevant and material is that such official belonging to basic grades in Groups 'C' and 'D' must have completed 'sixteen years of service in that grade'. The said paragraph nowhere uses the connection 'regular' service. Para 2 which provides for the Departmental Promotion Committee and consideration of cases of officials for 'promotion', provides for sixteen years of 'regular' service. The Tribunal, therefore, rightly considered para 1 as relevant and held that basic eligibility condition for being placed in the next higher grade is that the officer must have completed sixteen years of service in the basic grade in Group 'C' and Group 'D'. Though in other paragraphs, the service was qualified by the adjective 'regular', the said qualification was not necessary for the purpose of para 1. Since the employees wanted the benefit of placement in 'next higher grade', what was required to be established by him was that he had completed sixteen years of service in the grade and the said requirement had been complied with in view of the fact that with effect from 30-9-1983 he was appointed as Warrant Officer. He was, therefore, entitled to the benefit of 'next higher grade' under para 1 from 1999. The authorities were, therefore, not justified in rejecting the claim and accordingly the petition was allowed. The High Court rightly upheld the direction of CAT.

14. The learned counsel for the respondent is also right in placing reliance on the decision of this Court in *Dwijen Chandra Sarkar v. Union of India*. Almost in similar circumstances, the Court considered the extent and applicability of Time-Bound Promotion Scheme and held that the benefit of

1 (1999) 2 SCC 119 : 1999 SCC (L&S) 485

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

08 FFR 2010

Guwahati Bench  
गुवाहाटी बैचनिक

the said Scheme would be available to a person who had completed "sixteen years of service" in the grade. In that case, two appellants were working in the Posts and Telegraphs Department and they had claimed the benefit of the Scheme. Initially, they were serving to the Rehabilitation Department of the Government of India, but were transferred to the Department of Posts and Telegraphs afterwards. The question before the Court was whether the appellants were entitled to count the services rendered by them earlier in the Rehabilitation Department of the Government of India and whether they would be entitled to the benefit of the Scheme by taking into account past services. The Court considered the scheme of December 1983 and held that what was required under the Scheme was completion of sixteen years of service in that grade. If the said requirement is complied with, an employee would be entitled to be placed in the next higher grade. It was observed that two concepts, namely, (i) "time-bound promotion", and (ii) "regular promotion" were different. So far as the "time-bound promotion" was concerned, the Court observed that since there were large number of employees who were not likely to get promotion in the near future because of their comparatively low position in the seniority, the Government thought it necessary that in order to remove frustration, the employees should be placed in the "next higher grade" in terms of emoluments while retaining them in the same cadre. This is what is generally known as the "time-bound promotion". Such "time-bound promotion" does not affect seniority of those higher up.

15. The Court then stated: (SCC pp. 123-24, para 12)

"12. If that be the true purpose of a time-bound promotion which is meant to relieve frustration on account of stagnation, it cannot be said that the Government wanted to deprive the appellants who were brought into the P&T Department in public interest — of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those already in the P&T Department but also of those who are administratively transferred by the Government from the Rehabilitation Department to the P&T Department. The Government while imposing an eligibility condition of 16 years' service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. (emphasis supplied) The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of *eligibility* (emphasis in original) for obtaining a financial benefit of a higher grade."

The Court added that for the purpose of "regular promotions" to the higher cadre in the Department, their seniority should be counted only from the date of their transfer in the Posts and Telegraphs Department.

16. The Court, therefore, concluded: (SCC p. 124, para 14)

"14. The words "except seniority" in the 1983 circular, in our view, mean that such a benefit of a higher grade given to the transferees will in

no way affect the seniority of employees in the P&T Department when the turn of the P&T employees comes up for promotion to a higher category or post. The said words 'except seniority' are intended to see that the said persons who have come from another department on transfer do not upset the seniority in the transferee department. Granting them higher grade under the Scheme for time-bound promotion does not, therefore, offend the condition imposed in the transfer order. We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P&T Department."

17. It is no doubt true as observed by the High Court that *Dwijen Chandra Sarkar*<sup>1</sup> was not an identical case, inasmuch as in that case, the appellants were transferred "in public interest", whereas in the instant case, the transfer was volunteered by the respondent employee for enrolment in army. That, however, in our opinion, does not make difference since to us, the language of para 1 of the Scheme is clear, unambiguous and leaves no room for doubt. That aspect was also considered in *Dwijen Chandra Sarkar*<sup>1</sup>. But in any case, even that point is also finally concluded by another decision of this Court in *Union of India v. V.N. Bhai*<sup>2</sup> in which the employee was initially appointed in the Ministry of Defence and voluntarily transferred himself to the office of the Post Master General. The question which came up for consideration was as to whether he would be entitled to get benefit of the Scheme. Relying on *Dwijen Chandra Sarkar*<sup>1</sup> this Court held that the employee would be entitled to the benefit of the Scheme on completion of sixteen years of service.

18. Relying on *Dwijen Chandra Sarkar*<sup>1</sup> this Court observed: (V.N. Bhai case<sup>2</sup>, SCC p. 716, para 4)

"The well-settled principle of law that even in the case where the transfer has been allowed on request, the employee concerned merely loses his seniority, but the same by itself would not lead to a conclusion that he should be deprived of the other benefits including his experience and eligibility for promotion. In terms of the Schemes aforementioned, promotion is to be granted for avoiding stagnation only within the said parties. The said Schemes have been framed because they are beneficial ones and are thus required to be implemented. The Scheme merely perused that any person having rendered 16/26 years of service without obtaining any promotion could be entitled to the benefit therefor. It is, therefore, not a case where promotion to the higher post is to be made only on the basis of seniority."

19. Since the respondent had completed sixteen years of service in 1999, he would be entitled to the benefit of para 1 of the Time-Bound Promotion Scheme and the action of the authorities in not granting the said benefit was illegal and contrary to law. The Central Administrative Tribunal as well as the

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

08 FEB 2010

Guwahati Bench  
गुवाहाटी न्यायपीठ

After 1st  
Afterwards

High Court were therefore right in setting aside the said action and by directing the authorities to extend the benefit of the Scheme to the respondent. We see no infirmity in the reasoning adopted and conclusion recorded by CAT or by the High Court and find no substance in the appeal of the appellants.

20. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed with costs.

(2006) 6 Supreme Court Cases 64

(BEFORE ARJIT PASAYAT AND C.K. THAKER, JJ.)

IBRAHIM NAZER

Appellant

Versus

Respondents

STATE OF T.N. AND ANOTHER

Criminal Appeal No. 732 of 2006<sup>†</sup>, decided on July 10, 2006

Preventive Detention — Detention order — Detenu already in jail — Imminence possibility or likelihood of detenu being released on bail — Only requirement is detaining authority's awareness about detenu being already in custody and likelihood of his being released on bail — It is the subjective satisfaction of detaining authority based on materials which is normally not to be interfered with by court — Detaining authority's view in the instant case that in similar cases, orders granting bail are passed by various courts, not disputed by detenu — In the circumstances held, subjective satisfaction of detaining authority about likelihood of detenu being released on bail cannot be questioned — Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, S. 3(1)(i). (Para 7)

It was submitted on behalf of the appellant detenu that the High Court was not justified in holding that the detaining authority's view about imminent possibility of the detenu coming out on bail was correct. It was also submitted that since the detenu had not filed any bail application after withdrawal of the first petition, the detaining authority could not have inferred that there was possibility of his being released on bail.

Dismissing the appeal, the Supreme Court, held as above.

Rajesh Gulati v. Govt. of NCT of Delhi, (2002) 7 SCC 129, 2002 SCC (CJ) 1627, distinguished.

R.W/Z/54586/CR

Advocates who appeared in this case:

K.K. Mani, Advocate for the Appellant

Mohan Parasaran, Additional Solicitor General (V. Krishnamurthy, Meenakshi Sharma and B. Krishna Prasad, Advocates) for the Respondents

Chronological list of cases cited

1. (2002) 7 SCC 129, 2002 SCC (CJ) 1627, Rajesh Gulati v. Govt. of NCT of Delhi.

<sup>†</sup> Arising out of SLP (Cr) No. 11524 of 2005. From the Judgment and Order dated 15-2-2005 of the Madras High Court in HCP No. 1126 of 2005.

The Judgment of the Court was delivered by

ARJIT PASAYAT, J. — Leave granted.

2. The appellant calls in question legality of the judgment rendered by a Division Bench of the Madras High Court dismissing the habeas corpus petition filed by one Rizwana Ziyah seeking release of her husband, the present appellant, Ibrahim Nazeer (hereinafter referred to as "the detenu") who was detained and kept in custody in the Central Prison of Chennai under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short "the COFEPOSA Act"). The order of detention was passed under Section 3(1)(i) of the COFEPOSA Act with a view to prevent the detenu from indulging in smuggling goods in future. The order of detention is dated 20-9-2005.

3. The background facts which led to the detention of the detenu as set out in the grounds of detention are as follows:

On 31-8-2005, the detenu Ibrahim Nazeer, arrived at Chennai from Singapore by Indian Airlines Flight IC 558 with Ticket No. 51671263852. After immigration clearance, he collected three bags from the conveyor belt and proceeded to Customs Table No. 8 where he declared that he was in possession of electronic goods worth Rs 30,000. At this point, he was intercepted by the Customs Officer who questioned him about the contents of his baggage. He reiterated the declaration given at the table that he was in possession of electronic goods of the value of Rs 30,000. Since his reply was not convincing, his three bags were taken up for examination in the presence of two independent mahazir witnesses. He produced two claim tags bearing Nos. SQ 441432 and SQ 441433, and further stated in the presence of independent witnesses that the cardboard carton bearing Tag No. SQ 442077 tagged in the name of Smt Selvi Narayanan actually belonged to him and that as he was already having excess weight, he made use of her baggage entitlement. Enquiries by the officer showed that the said Selvi Narayanan had already left the arrival hall and that she had not filed any claim for missing baggage. In the presence of witnesses, his three bags were opened and examined one by one. Examination of navy blue colour bag bearing baggage Tag No. SQ 441432 resulted in the recovery of 12 Nos. of Pioneer (model DEH-P 7750 MP) car stereos and 500 Nos. of Hynix 256 MB RAMS. Examination of indigo colour bag bearing baggage Tag No. SQ 441433 resulted in the recovery of 10 Nos. of Panasonic (model NV-GS 25 GC) digital video cameras, 5 Nos. of Sony (model DCR-TRV 285 E) digital video cameras, 3 Nos. of Pioneer car stereos and 10 Nos. of Motorola V3 mobile phones (without accessories). Examination of Pioneer cardboard carton bearing baggage Tag No. SQ 442077 resulted in the recovery of 4 Nos. of Panasonic (model NV-MD 9000 EN) digital video cameras. It is also stated in the grounds that after fulfilling all the formalities, the value of the seized goods was ascertained. On the date of seizure, the value of the seized goods was Rs 8,22,500 (CIF) and Rs 11,51,500 (market value) approximately. After finding that the adjudication and prosecution

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक व्याधालय

08 FEB 2010

Gauhati Bench  
গুৱাহাটী আয়োজন