

3

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/NO. 199/09 ~~2009~~ ~~2008~~  
R.A./CP/NO. 30/10 ~~2015~~  
E.P./M.P./NO. ~~2015~~

MP 165/10

1. Order Sheets..... 01 pg. 1 to 02 ✓  
CP 30/2010 (03 pages) 01 to 03 ✓ (in Part file A)  
MP 165/2010 01 ✓
2. Judgment/ order dtd. 18.09.2009 pg. 01 to 04 ✓
3. Judgment & Order dtd. ✓ received from H.C. /Supreme Court.
4. O.A. 199/2009 page. 01 to 83 ✓  
MP 165/2010 page 1 to 7
5. ~~EP/M.P. 30/2010~~ page. 01 to 10 ~~32~~ ✓
6. R.A./C.P. 30/2010 page. 1 to 25 (25) ✓
7. W.S. .... Page..... to.....
8. Rejoinder..... page..... to.....
9. Reply ..... page..... to.....
10. Any other papers ..... page..... to.....

20/7/2015  
SECTION OFFICER (JUDL.)

FORM  
(See Rule 42)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :  
ORDERSHEET

1. ORIGINAL APPLICATION No : 197 / 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 Tapan Kumar Dutta Roy

Respondent (S) : Union of India & Ors

Advocate for the : Mr. M. Chanda, Mr. S. Nath,  
{Applicant (S)} Mrs. U. Dutta & Mr. S. Choudhury

Advocate for the : -----  
{Respondent (S)} C.G.S.C.

Notes of the Registry

Date

Order of the Tribunal

Application is in form  
is filed. F. No. 30/-  
d. 16.9.09  
No. 395/2445  
Dated 16.9.09

17.9.09  
Dy. Registrar

17/9/09

18.09.2009

Heard Mr. M. Chanda, learned  
counsel appearing for the Applicant and  
Mr. M. K. Boro, learned Addl. Standing  
Counsel representing the Government of  
India.

Notice be issued to the  
Respondents requiring them to file their  
reply/written statement by 04.11.2009.

(M.K. Chaturvedi)  
Member (A)

/lm

7.9.09  
Three copies of Application  
with envelopes received  
in office notices to  
Respondents No 1 to 3.  
copy served.

17/9/09

18.09.2009

Heard Mr. M. Chanda, learned counsel appearing for the Applicant and Mr. M. K. Boro, learned Addl. Standing Counsel representing the Government of India.

For the reasons recorded separately, this O.A. stands disposed of.

(M.K. Chaturvedi)  
Member (A)

22/09/2009

Copy of judgment  
along with Notice  
order dated 18/09/09 /lm/  
send to the D/section  
for issuing to the  
Applicant & Respts.  
by Regd. post.  
Free copies of  
both side standing  
counsel by chanel.

<sup>Don</sup>  
22/9/09  
D/No. 11513-11516

Dtd. 29/9/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A.Nos. 199 of 2009

DATE OF DECISION: 18 -09-2009.

Shri Tapan Kumar Dutta Roy

.....Applicant/s  
Mr M.Chanda, S.Nath, Mrs U.Dutta & Mr S.Choudhury  
.....Advocate for the  
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s


Mr M.K. Boro, Addl.C.G.S.C.

.....Advocate for the  
Respondent/s

CORAM

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

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 (A)



4

CENTRAL ADMINISTRATIVE TRIBUNAL  
(GUWAHATI BENCH, GUWAHATI)

O.A. Nos. 199 of 2009.

Date of decision : 18.09.2009

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

Shri Tapan Kumar Dutta Roy,  
S/o Late Dr. Subodh Chandra Dutta Roy,  
Retd. Office Superintendent (HSG-I)  
Office of the Chief Post Master General (CPMG)  
North Eastern Circle, Shillong,  
C/o "Madhurima" Aarbuthnot Road,  
Shillong-11, District East Khasi Hills,  
Meghalaya

.....Applicant

By Advocate Mr M.Chanda, S.Nath Mrs U.Dutta & Mr S.Choudhury

-Versus-

1.The Union of India  
represented by the Secretary and Director General,  
Department of Posts, Dak Bhawan, Sansad Marg,  
New Delhi-110001.

2.The Chief Post Master General,  
North Eastern Circle, Shillong-793001.

3.The Assistant Director General (SPG)  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi-110001.

.....Respondents

By Advocate Mr M.K.Boro, Addl.C.G.S.C.

O R D E R (ORAL)

M.K.CHATURVEDI, MEMBER(A)

By this O.A. Applicant makes a prayer that his seniority be maintained qua Shri M. Sanaullah and Sri Harbans Singh Bhatia in the cadre of Office Superintendent HSG-I and Respondents be directed to modify the promotion order dated 28.02.2003 in order to grant

d.

promotion to the Applicant to the grade of Assistant Director (Rectt) Group B with arrear pay and consequential benefits.

2. Mr M.Chanda, learned counsel appeared for the applicant and Mr M.K.Boro, learned Addl. Standing counsel appeared for the Respondents. I have heard the rival submissions.

3. Applicant initially joined as Postal Clerk in Shillong Postal Division on 13.07.1965 and was promoted on 23.01.1973 as Upper Division Clerk in the office of the Post Master General, N.E.Circle, Shillong. Thereafter, he was promoted as LSG Clerk with effect from 01.01.1988 in the same office and was further promoted as HSG-II with effect from 26.06.1993. On 01.09.1995 he was promoted as Office Superintendent (HSG-II) on regular basis and was placed in the scale of pay of Rs.1600-2660/-, a scale of HSG-II which he has been drawing earlier also. Eventually the Applicant was promoted from Office Superintendent (HSG-II) to Office Superintendent (HSG-I) in the pay scale of Rs.6500-10500/- (classified as Non-gazetted class II post after pay revision) and continued in the same post till his retirement on 31.03.2005 on attaining the age of superannuation.

4. The Respondent issued letter proposing for holding DPC to the post of Assistant Director (Rectt), GCS Group-B reserved for Office Superintendent/Deputy Office Superintendent working in the circle offices in the country who were in the zone of eligibility in the seniority list. The date of regular appointment of the Applicant was shown 01.09.1995 as Deputy Office Superintendent. It was alleged that the applicant at no point of time served as Deputy Office Superintendent



and moreover there was no such post in the NE Circle, Shillong. He served as Office Superintendent with effect from 01.09.1995. This apart in the All India seniority list as on 01.01.2001, two incumbents namely, Shri M.S.Parmar (Sl.No.7) and Shri G.K.Parman (Sl.No.8) have been shown appointed as Office Superintendent, HSG-I on regular basis on the same date i.e. 06.03.1997, both holding the same post whereas the Applicant being the lone incumbent working as office Superintendent has been shown as Deputy Office Superintendent. Further vide Sl.No.15 of the said seniority list as on 01.01.2001 Shri L.C.Saini of the Haryana circle was shown as Office Superintendent HSG-I with effect from 01.09.2000, whereas the post of Office Superintendent came into existence in Haryana circle only after 30.03.2001 and applicant was working since 1981.

5. Learned counsel invited our attention to the judgment rendered in O.A.152/2002 by this Tribunal wherein the respondents were directed to grant promotion to the applicant as Office Superintendent HSG-I with retrospective effect. It was also stated before the Tribunal that Applicant made representation in this regard to the concerned officer. The representation is still pending before the authority concerned. It was prayed that Respondents be directed to expedite disposal of the representation. As to this prayer learned Standing counsel did not raise any objection.

5. In the above premises, without entering into the merits of the matter I dispose of this application, with a direction to the Applicant to put up a consolidated/comprehensive representation (by



way of raising all the relevant grounds) projecting all the grievances before the Respondents within one month from the date of receipt of this order and the Respondents shall consider and dispose of the said representation within a time frame of 3 months from the date of receipt of the same by a speaking order.

Send copy of this order to the Applicant and Respondents in the address given in the O.A. Free copies of the order be handed over to the counsel appearing for both the parties.

  
(M.K.CHATURVEDI)  
ADMINISTRATIVE MEMBER

i

A

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

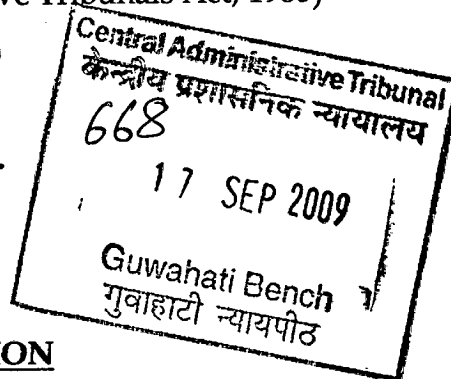
(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 199 /2009

Shri Tapan Kumar Dutta Roy.

-Vs-

Union of India and Others.



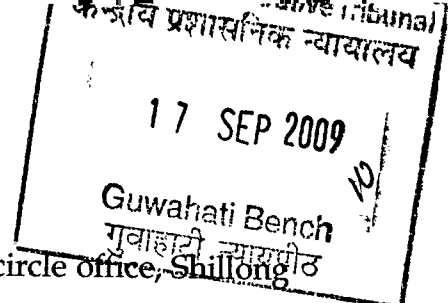
**SYNOPSIS OF THE APPLICATION**

In the instant application the applicant claiming promotion to the cadre of Assistant Director (Rectt), GCS, Group-B atleast with effect from 28.02.2003 i.e date on which juniors of the applicant have been promoted to the cadre of Assistant Director (Rectt) GCS, Group-B. Since the applicant has been superseded in the matter of promotion. As a consequence of judgment and order dated 02.12.2002 passed in O.A.No. 152 of 2002, which was further confirmed by the Gauhati High Court vide its judgment and order dated 07.04.2005, the applicant has been granted benefit of promotion to the cadre of Office Superintendent (HSG-I) w.e.f 01.12.1995 and as such applicant became senior to Sri M.Sanauallah and Sri H.S.Bhatia of J & K Circle and Punjab Circle respectively and thereby acquired further right for consideration to the cadre of Assistant Director in the scale of Rs. 6,500-10,500/-, but inspite of submission of several representations by the applicant for consideration of promotion to the cadre of Assistant Director, no action has been initiated by the respondents authorities to that effect.

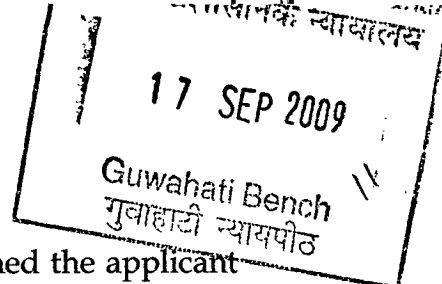
Hence the present application.

**LIST OF DATES**

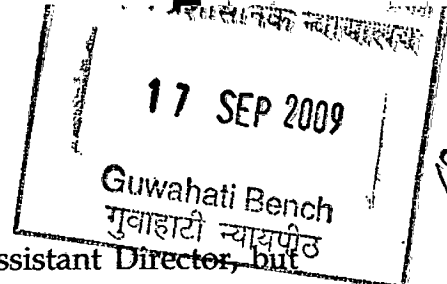
- |            |   |
|------------|---|
| 13.07.1965 | Applicant was initially joined in the then P&T Department as Postal Clerk in Shillong Postal Division.  |
| 23.01.1973 | Applicant was promoted to the post of Upper Division Clerk in the office of the Post Master General, N.E.Circle, Shillong and thereafter promoted as 20% Lower Selection grade (LSG Clerk) w.e.f 01.01.1988 in the same office. |
| 19.05.1981 | The post of office superintendent in the circle office at Shillong was upgraded from HSG-II to HSG-I in the pay scale of Rs. 700-900 (pre revised).<br>(Ann-II)   |



- 29.03.1985 The post of Office Superintendent in HSG-I in the circle office, Shillong was thereafter made permanent w.e.f 01.03.1985.  
(Ann-III)
- 26.06.1993 Applicant was promoted as Biennial Cadre Review official (BCR) HSG-II.
- 01.09.1995 Applicant was further promoted to the post of Office Superintendent on regular basis in the pay scale of Rs. 1600-2660/- in a scale of HSG-II.
- 22.05.2001 Applicant thereafter promoted from the office Superintendent (HSG-II) to office Superintendent (HSG-I) in the pay scale of Rs. 6500-10500/- and continued till the age of superannuation.  
(ANX-I)
- 25.09.2001 A seniority list of 01.01.2001 of Office Superintendent was published and applicants name has been shown at sl. No. 18, and the list showing his date of regular appointment on 01.09.1995 as Deputy Office Superintendent, but the applicant at the no point of time served as Deputy office superintendent as because there is no such post exist in N.E.circle, Shillong.  
(ANX - IV)
- 02.12.2002 Being aggrieved with the seniority and promotion the applicant approached the Hon'ble Central Administrative Tribunal through O.A.No. 152 of 2002 for protection of his legitimate right, after hearing the case the Hon'ble Court was pleased to allow the application with a direction to grant upgradation/promotion to the applicant as Office Superintendent, HSG-I with retrospective effect from 01.12.1995.  
(Ann-V)
- 29.01.2003 Applicant submitted a representation to the respondent no. 2 praying for correction of his inter se seniority position from sl. No. 18 to sl. No. 5.  
(Ann-VI)
- 29.01.2003, 07.03.2003 Applicant submitted representation to respondent 1 and 2 praying for his consideration for promotion upon vacancy of two post of Assistant Directors (Rectt) which fall vacant on 01.08.2002 and on 01.11.2002.  
(Ann-VII, VII A)
- 28.02.2003 Respondent no. 1 granted promotion to the juniors of the applicant namely Sri M. Sanaulah and Sri Harbans Singh ignored the case of the applicant with a malafide intention.  
(Ann-VIII)
- 16.04.2003 Applicant submitted a representation in the form of reminder for consideration of his promotion.  
(Ann-IX)
- 13.06.2003 Respondent no. 2 informed the applicant that his matter is under sub judice, and as such no decision has been taken as the respondents preferred an appeal before the Hon'ble High Court against the order passed by the Hon'ble CAT.  
(Ann-X)
- 21.04.2004 Applicant submitted another representation to the respondent no. 1 to consider his prayer for promotion to the post of Assistant Director (Rectt) in GCS Group-B.  
(Ann-XI)



- 11.05.2004 In reply to the representation respondent no. 1 informed the applicant that his matter was forwarded to the Postal Directorate, New Delhi but outcome of the same has not yet been intimated.  
(Ann-XII)
- 31.03.2005 Applicant retired from service on attaining the age of superannuation.
- 07.04.2005 The Hon'ble High Court, Shillong Bench dismissed the writ petition which was filed by the respondents against the order passed by the Hon'ble CAT in its order dated 02.12.2002.  
(Ann-XIII)
- 02.05.2005 Applicant submitted a representation addressed to the respondent no. 2. for granting the retrial benefits in terms of Hon'ble CAT's order.  
(Ann-XIV)
- 28.11.2005 Respondent no. 2 informed the applicant that the department have decided to implement the Hon'ble CAT's order read with Hon'ble High Court's order dated 07.04.2005.  
(Ann-XV)
- 07.12.2005/13.12.2005 Respondent no. 2 implemented the order passed by the Hon'ble CAT after retirement of the applicant giving him only the pensionary benefit by notionally fixing his pay in the cadre of Office Superintendent HSG-I w.e.f 01.12.1995 for which applicants seniority position as corrected by the said order of the Hon'ble CAT stood modified automatically.  
(Ann-XVI)
- 12.04.2006 Applicant submitted another representation to the respondent no. 1 to look into the matter of granting him promotion to the cadre of Assistant Director (Rectt) GCS Group-B by virtue of his seniority and exemplary service record with retrospective effect at least from 28.02.2003 from which date his juniors as appearing in the provisional seniority list with arrear pay and allowances from 28.02.2003 till 31.03.2005 as retrial benefits. But the respondent quite silent in this regard.  
(Ann-XVII)
- 22.04.2009 Applicant filed a review petition before the Division Bench of Hon'ble High Court and the review petition was disposed of on 22.04.2009 with a direction to pay the applicant back salary in terms of pay scale of Office Superintendent, HSG-I from 01.12.1995 to 21.05.2001 within a period of 2 months.  
(Ann-XVIII)
- 11.05.2009 Applicant submitted an application before the authority and the respondents in compliance with the order dated 22.04.2009 paid the arrear back salary to the applicant.
- 19.06.2009 Applicant submitted another representation praying for grant of promotion to the grade of Assistant Director (Rectt) GCS Group-B with retrospective effect from 28.02.2009 from the date when his juniors have been promoted with arrear pay and allowances w.e.f 28.02.2003 to 31.03.2005 with full retirement benefit in the cadre of Assistant director.  
(Ann-XIX)
- 10.08.2009 Finding no response applicant approached before the Hon'ble Gauhati High Court, Shillong bench through WP© No. 200(SH) of 2009 for



consideration of his promotion to the cadre of Assistant Director, but the same was withdrawn with liberty because the Hon'ble Central Administrative Tribunal is the court of first instance.

(Ann-XX)

Hence this original application.

### **PRAYER**

1. That the Hon'ble Tribunal be pleased to declare that the applicant is senior to Sri M. Sanaullah and Sri Harbans Singh Bhatia in the cadre of Office Superintendent HSG-I in the light of the judgment and order dated 02.12.2002 passed in O.A.No. 152 of 2002.
2. That the Hon'ble Tribunal be pleased to direct the respondents to consider promotion of the applicant to the cadre of Assistant Director (Rectt), GCS Group-B at least w.e.f 28.02.2003 with refixation of pay from the date of next increment (DNI) i.e w.e.f 01.01.2004 treating the applicant in the cadre of Office Superintendent (HSG-I) w.e.f 01.12.1995.
3. That the respondents be directed to modify the promotion order dated 28.02.2003 (Ann-VIII) and to grant promotion to the grade of Assistant Director (Rectt) Group-B with retrospective effect from 28.02.2003 in terms of prayer no. 2.
4. That the respondents be directed to pay the arrear pay and allowances of the post of Assistant Director (Rectt) from 28.02.2003 to 31.03.2005 (i.e till the date of retirement) with all consequential benefit.
5. Costs of the application.
6. 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 to the respondents for providing the relief as prayed for.

\*\*\*\*\*



**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. 199

**Shri Tapan Kumar Dutta Roy.**

**: Applicant.**

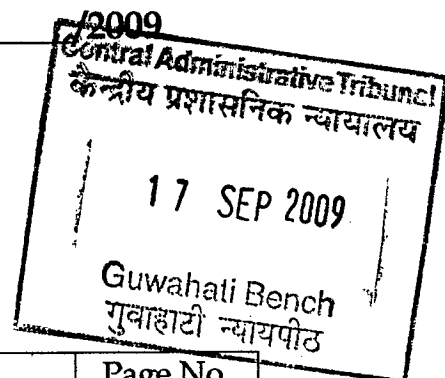
**-Versus-**

**Union of India & Ors.**

**: Respondents.**

**INDEX**

Sl. No.	Annexure	Particulars	Page No.
1.	---	Application	1 - 16
2.	---	Verification	- 17 -
3.	I	Copy of the order dated 22.05.2001	- 18 -
4.	II and III	Copy of the memo. dated 19.05.1981 and 29.03.1985	19 - 23
5.	IV	Copy of the all India seniority list as on 01.01.2001, dated 25.09.2001	24 - 25
6.	V and VI	Copy of the judgment and order dated 02.12.2002 in O.A. No. 152 of 2002, and the applicants letter dtd. 29.01.2003	26 - 36
7.	VII, VII A and VIII	Copy of the representations dated 07.03.2003 and order dated 28.02.2003	37 - 42
8.	IX and X	Copy of the letter dtd. 16.04.2003 and respondents letter dtd. 13.06.2003	43 - 45
9.	XI and XII	Copy of the letter dated 21.04.2004 and reply dated 11.05.2004 of the respondent no. 2.	46 - 48
10.	XIII	Copy of the judgment and order dated 07.04.2005	49 - 56
11.	XIV	Copy of the representation dated 02.05.2005	57 - 58
12.	XV	Copy of the letter dated 28.11.2005	- 59 -
13.	XVI	Copy of the order dated 07.12.2005/13.12.2005	- 60 -
14.	XVII	Copy of the applicants latter dated 12.04.2006	61 - 63
15.	XVIII	Copy of the judgment and order dated 22.04.2009 passed in review petition no. 5(SH) of 2008	64 - 76
16.	XIX	Copy of the letter dated 19.06.2009	77 - 80
17.	XX	Copy of the order dated 10.08.2009 passed in WP© No. 200 (SH) of 2009	81 - 83



Filed By:

*Dutta*  
Advocate

Date:- 17.09.09

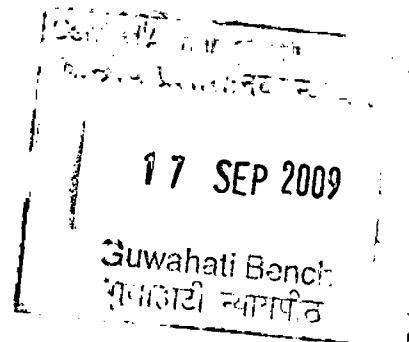
**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI**

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

O.A. No. 199 /2009

**BETWEEN:**

**Shri Tapan Kumar Dutta Roy,,**  
S/o- Late Dr. Subodh Chandra Dutta Roy,  
Retd. Office Superintendent (HSG-I),  
Office of the Chief Post Master General (CPMG),  
North Eastern Circle, Shillong,  
C/O "Madhurima" Aarbuthnot Road,  
Shillong-11, District- East Khasi Hills,  
Meghalaya. ✓



---Applicant.

**-AND-**

1. The Union of India  
Represented by the Secretary and Director General,  
Department of Posts, Dak-Bhawan, Sansad Marg,  
New Delhi-110001. ✓
2. The Chief Post Master General,  
North Eastern Circle, Shillong-793001. ✓
3. The Assistant Director General (SGP),  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi-110001. ✓

..... Respondents.

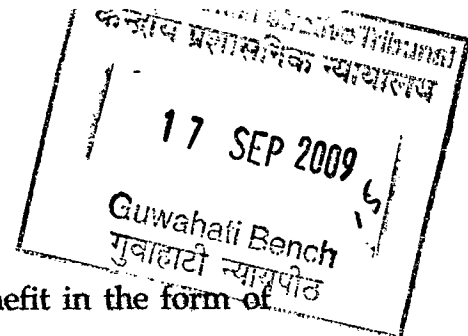
**DETAILS OF THE APPLICATION**

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

This application is made not against any particular order but against denial of promotional benefit w.e.f 28.02.2003 as Assistant Director (Rectt), GCS Group-B in the department of posts to which he was entitled as his juniors namely Mr. M. Sanaulah of J&K circle and Shri Harbans Singh Bhatia, Punjab Circle were promoted w.e.f 28.02.2003 to the said post and also for payment of arrear pay and allowances in the Grade of Assistant Director (Rectt) in GCS Group-B, Department of posts with retrospective effect from 28.02.2003 to 31.03.2005 (on 31.03.2005 the applicant retired) and to allow him to retire in that post, re-fixing pay etc., creating the same as a

Tapan Kumar Dutta Roy

14  
Filed by the applicant  
through U. Dutta, advocate  
on 17.09.09



superannuary post in that regard for giving retrial benefit in the form of arrear salary and pension benefit etc.

**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.

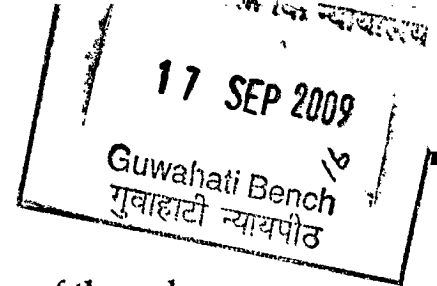
**4. Facts of the case:**

**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 the applicant initially joined the then Department of P&T on 13.07.1965 as Postal Clerk in Shillong Postal Division and promoted on 23.01.1973 as Upper Division Clerk in the office of the Post Master General, N.E. Circle, Shillong. Thereafter promoted as 20% Lower Selection Grade (LSG Clerk) w.e.f 01.01.1988 in the same office and thereafter he was further promoted as Biennial Cadre Review Official (BCR) HSG-II w.e.f 26.06.1993. Subsequently he was again promoted as Office Superintendent w.e.f 01.09.1995 on regular basis, vide memo. No. Staff/35/1275/76/II, dated at Shillong 07.09.1995 and placed in the pay scale of Rs. 1600-2660/-, a scale of HSG-II, which he had been drawing in his earlier post also. Eventually your humble applicant was promoted from the Office Superintendent (HSG-II) to Office Superintendent (HSG-I) in the pay scale of Rs. 6500-10,500/- (classified as non-gazetted class-II post after pay revision) vide Memo No. Staff/9-4/OS (CO)/2001 dated Shillong 22.05.2001 and continued in the same post till his retirement from service on 31.03.2005 on attaining the age of superannuation.

A copy of the order vide memo. no. Staff/9-4/OS(CO)/2001, dated 22.05.2001 is annexed hereto and marked as Annexure-I.

*Tapan Kumar Datta Roy*

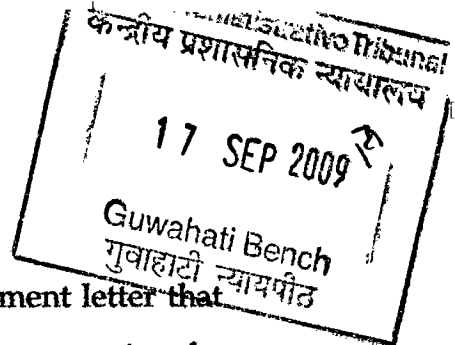


4.3 That it would be appropriate to mention here that after issuance of the order dated 22.05.2001 (Ann-I) by which the applicant was promoted to the post of office Superintendent of higher selection grade-I (hereinafter referred to as HSG-I) w.e.f the date of order, applicant objected to that and he made repeated representations to the respondent no. 1 and 2 consecutively registering his objection stating that the post of office Superintendent in the circle office at Shillong was upgraded from HSG-II to HSG-I in the pay scale of Rs. 700-900/- (pre-revised) in 1981, vide memo. no. Estt./34-19/77, dated Shillong 19.05.1981 and under the said memo. the post of Office Superintendent in HSG-II in the scale of Rs. 550-750/- (pre-revised) in the Circle office, Shillong was abolished meaning thereby that the post of Office Superintendent in the circle office, Shillong is in the Grade of HSG-I only w.e.f 19.05.1981. The said post of office superintendent in HSG-I in the Circle office, Shillong was thereafter made permanent vide memo. no. Estt/34-06/76, dated Shillong 29.03.1985 w.e.f 01.03.1985 and the same was reflected in the gradation list corrected upto 01.07.1986, showing therein 1 (one) permanent post of office Superintendent in the scale of Rs. 700-900 in the grade of HSG-I. And as such the said order, dated 22.05.2001 should be ante dated w.e.f 01.09.1995.

A copy of the office memo. dated 19.05.1981 and 29.03.1985 are annexed herewith and marked as Annexure-II and III respectively.

4.4 That your applicant begs to submit that in the meantime the respondents issued letter bearing no. 12-3/2001-SPG dated 25.09.2001 proposing for holding DPC for promotion to the Grade of Assistant Director (Rectt), GCS Group-B reserved for office superintendent/Deputy Office Superintendent working in the circle offices in the Country and appended alongwith the said letter a seniority list of the office of Superintendent as on 01.01.2001 who were in the zone of eligibility for consideration by the aforesaid DPC. And in the said seniority list the name of the applicant has been shown under sl. No. 18 at the bottom of the said list showing his date of regular appointment on 01.09.1995 as Deputy Office Superintendent. Surprisingly applicant at no point of time served as deputy office superintendent and moreover there was no such post in the NE circle, Shillong but served as office

*Tapan Kumar Datta Roy*



superintendent w.e.f 01.09.1995 as evident from the appointment letter that the respondent mentioned the name of the post only but did not mention the grade and scale of pay and most arbitrarily extended the pay scale of O.S.HSG-II and also such statements furnished in the foregoing paragraphs and therefore for this wrong treatment of him as Deputy Office Superintendent it has adversely affected his seniority.

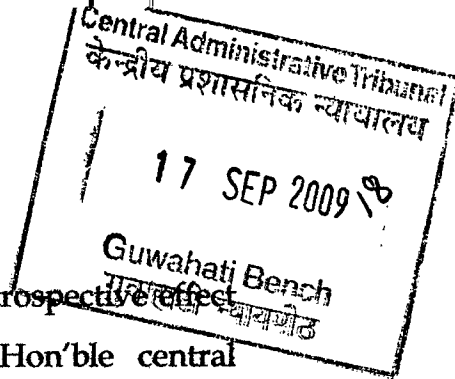
This apart in the said All India seniority list as on 01.01.2001, two incumbents namely Shri M.S.Parmar (sl. No. 7) and Shri G.K.Parmar (sl. No.8) have been shown appointed as office Superintendent, HSG-I on regular basis on the same date i.e 06.03.1997 in Gujrat circle, both holding the same post whereas the applicant being the lone incumbent working as office Superintendent in the N.E.circle office, Shillong has been shown as Deputy office Superintendent (actually office Superintendent, HSG-I).

Further under sl. No. 15 of the said All India seniority list as on 01.01.2001 Shri L.C.Saini of the Haryana circle was shown to have been working as office Superintendent HSG-I w.e.f 01.09.2000, whereas the post of office Superintendent, HSG-I came into existence in Haryana circle only after the issuance of the letter no. 22-1/89 PE-1 (Vol.II), dated 30.03.2001 but your applicant was denied to the post of Office Superintendent, HSG-I in the N.E.Circle, Shillong retrospectively although such post came into existence in 1981.

A copy of the all India seniority list of OS-I/OS-II for consideration for post of A.D. (rectt) GCS Group-B as on 01.01.2001, dated 25.09.2001, is annexed herewith and marked as Annexure-IV.

- 4.5 That your applicant begs to submit that when the respondents did not consider his prayer for granting him promotion as office Superintendent, HSG-I w.e.f 01.09.1995 and he was incurring heavy loss in terms of pay and also in terms of All India seniority vis-à-vis service prospects and finding thereby no other alternative, your humble applicant approached the Central Administrative Tribunal at the Guwahati Bench, Guwahati by filing an application bearing O.A No. 152 of 2002 for protection of his legitimate right and to interfere with for such protection praying for the issue of a direction to the respondents to grant him the HSG-I scale and other consequential

Tapan Kumar Datta Roy



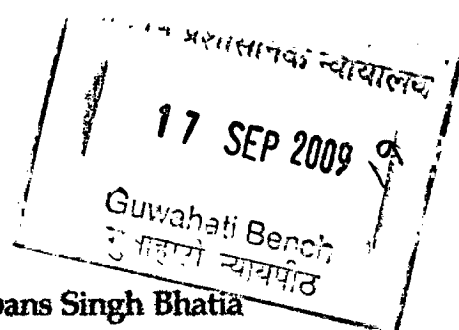
benefits including protection of All India seniority with retrospective effect from 01.09.1995 in favour of the applicant and the Hon'ble central Administrative Tribunal, Guwahati bench, after hearing of the case was pleased to allow the application and passed order on 02.12.2002 in the original application no. 152 of 2002, directing the official respondents here to grant promotion to your humble applicant as Office Superintendent, HSG-I with retrospective effect from 01.12.1995 in terms of the communication, dated 06.11.1995 and thereby his position in the interse seniority list of Office Superintendent HSG-I/HSG-II as on 01.01.2001 (Annexure-IV) has been finalized from sl. No. 18 to sl no. 5 and your humble applicant by his letter dtd. 29.01.2003 intimated the respondents no. 2 for early action to that effect.

The copy of the judgment and order dated 02.12.2002 in O.A. No. 152 of 2002 passed by the learned CAT and the applicants letter dtd. 29.01.2003 are annexed herewith and marked as Annexure-V and VI respectively.

4.6 That the consequential result of the judgment and order dtd. 02.12.2002 of the Hon'ble CAT as above stated involves the following 5 (issues) or benefits to your humble applicant.

- (i) Grant of promotion to the petitioner to the post of office Superintendent, HSG-I with retrospective effect from 01.12.1995.
- (ii) Protection of his seniority in the All India seniority to the grade of Office Superintendent, HSG-I with retrospective effect from 01.12.1995.
- (iii) payment of arrear duty pay and allowances of the post of office Superintendent, HSG-I with retrospective effect from 01.12.1995 to 21.05.2001.
- (iv) Grant of promotion to the Grade of Assistant direction (Rectt) in GCS Group-B in the scale of Rs. 6500-200-10500/- (classified as gazetted class-II post) with retrospective effect from 28.02.2003 i.e the date from which the applicants Junior (consequent upon the CAT's judgment and order dtd. 02.12.2002 as passed in O.A No. 152 of 2002) namely Shri

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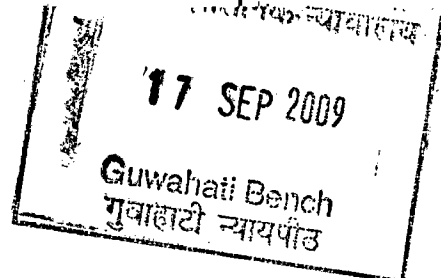


M.Sanaulah of the J & K circle and Shri Harbans Singh Bhatia of the Punjab circle were granted promotion to the Grade of Assistant Director (Rectt) w.e.f 28.02.2003 vide memo. no. 9-84/2002/SPG dated 28.02.2003.

- (v) Payment of arrear pay and allowances in the grade of Assistant Director (Rectt) in GCS Group-B with retrospective effect from 28.02.2003 to 31.03.2005 (till the date of retirement of the applicant)

4.7 That the applicant begs to submit here to bring on record that consequent upon the retirement of Shri Bodu Ram Meena (sl. No. 1 of All India seniority list of the office Superintendent HSG-I as on 01.01.2001) as the Assistant Director (Rectt), Rajasthan circle, Jaipur on 31.07.2002 and Smti. A.Vasugi (sl. No. 4 of the said seniority list) of the Karnataka Circle, Bangalore on 31.10.2002, 2 (two) posts of Assistant Director (Rectt) had fallen vacant on 01.08.2002 and 01.11.2002 respectively and as per verdict, dated 02.12.2002 of the Hon'ble CAT, Guwahati Bench, Guwahati passed in O.A No. 152 of 2002, the applicant was eligible to get promotion to the post of Assistant Director (Rectt) against any one of the said 2 (two) vacant post which were fallen vacant on 01.08.2002 and on 01.11.2002 following the retirement of the 2 (two) said retirees above named in the year 2002. But it is regretted to mention here that despite submission of representations dated , addressed to both, the respondent no. 2 on 29.01.2003 through proper channel and under registered post accompanying the esteemed order dated 02.12.2002 as referred to above and to give him the benefit of Office Superintendent, HSG-I w.e.f 01.12.1995 and also to promote to the post of Assistant Director (Rectt) GCS Group-B but the same were utterly ignored. Instead the respondent no. 1 granted promotion to the juniors of your humble applicant namely Shri M.Sanaulah the then office Superintendent of J & K circle and Shri Harbans Singh Bhatia, the then office Superintendent of the Punjab Circle in the grade of Assistant Director (Rectt) in GCS Group-B w.e.f 28.02.2003 vide notification no. 9-84/2002-SPG dtd. 28.02.2003 that otherwise means either lack of coordination or malafide intention to deprive one and to endow with benefit to others.

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A copy of the representations dated 07.03.2003 and order dated 28.02.2003 are annexed hereto and marked as Annexure-VII, VII A and VIII respectively.

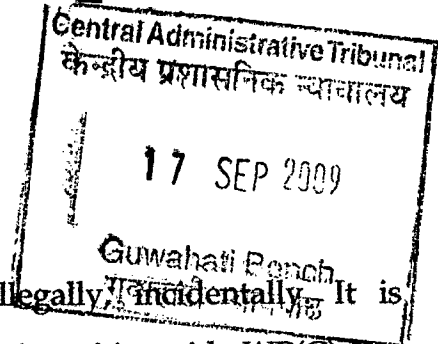
- 4.8 That your applicant made a further representation to the respondent no. 1 (Secretary and Director General, Department of Posts, New Delhi) in the form of reminder vide his representation dtd. 16.04.2003 under registered post with copy to the respondent no. 2 and the respondent no. 2 after a long gap of 2 months vide his letter no. Staff/158-8/2001 dated 13.06.2003 informed that the matter of your humble applicant is under subjudice and as such no decision could be taken as the official respondents have preferred an appeal against the Hon'ble CAT's order dated 02.12.2002 passed in O.A.No. 152 of 2002 under Article 227 of the constitution of India vide writ petition (C) No. 51(SH) of 2003.

Copy of the letter dtd. 16.04.2003 and respondents letter datd. 13.06.2003 is annexed hereto and marked as Annexure-IX and X respectively.

- 4.9 That the applicant once again by his representation under registered cover dated 21.04.2004 (through proper channel) requested the respondent no. 1 to consider his prayer for promotion upto the post of Assistant Director (Rectt) in GCS Group-B because the authority vested in him have promoted or otherwise granted promotion to two of his juniors on 28.02.2003 (vide annexure- VIII of this writ petition) as Assistant Director (Rectt) pending disposal of the writ petition © No. 51 (SH)/2003 with copy to the respondent no. 2/CPMG, NE circle, Shillong and the respondent no. 2 by his letter no. staff/158-8/2001 dated 11.05.2004 informed that the matter of your humble applicant has been forwarded to the postal Directorate, New Delhi vide letter dated 26.03.2003 but outcome of the same has not been intimated till date. And action will be taken only on receipt of the verdict from the Court of law and the same will be intimated to your applicant in due course and thereby kept the fact of the CAT's order dated 02.12.2002 from knowledge of the respondent no. 1 for long 3 (three) months. And had it been informed in time, the respondent no. 1 would have directed the respondent no. 2 not to prefer any appeal in the form of writ and would not have issued the

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promotion order of the applicants juniors ~~illegally~~ ~~incidentally~~ It is appropriate to mention here that by filing the writ petition vide WP(C) No. 51 of 2003, against the order dated 02.12.2002 of the Ld. CAT, the respondents have intentionally kept humble applicant away from the avenues of his promotion to the post Assistant Director (Rectt) GCS Group-B which was always however at the risks and responsibility of the respondents.

A copy of the letter dated 21.04.2004 of the applicant and reply dated 11.05.2004 of the respondent no. 2 are annexed hereto and marked as **Annexure-XI and XII** respectively.

- 4.10 That the writ petition no. 51(SH) of 2003 as filed malafide by the official respondents against the order dtd. 02.12.2002 as passed by the Hon'ble CAT in O.A.No. 152 of 2002 has been dismissed vide order dtd. 07.04.2005 by the Hon'ble High Court as the said order of the Hon'ble CAT challenged does not suffer from any infirmity or error on law. However, the order dated 07.04.2009 as passed in review petition no. 5 (SH) of 2008 mentioned in paragraph no. 17 and 18 hereinafter.

The copy of the judgment and order dated 07.04.2005 in WP© No. 51(SH) of 2003 passed by the Hon'ble High Court, Shillong Bench is enclosed as **Annexure-XIII**.

- 4.11 That it is most humbly and respectfully submitted here to state that the writ petition © No. 51 (SH) of 2003 was filed by the official respondents is smacks malafide after long end of three months in order to deprive the applicant from the service benefit whereas the respondents themselves being service holders should not have over looked the matter and should not have unnecessarily assailed the order dated 02.12.2002 of the Hon'ble CAT knowing it fully well that the Ld. CAT have passed the order dated 02.12.2002 after hearing both sides and the documents on record and also on the basis of the principle of natural justice and negligence on the part of the respondents who failed to comply with the departmental communication vide OM dtd. 06.11.1995 within 01.12.1995.

It would be appropriate to bring on record a legal provision for the judicial notice of the Hon'ble Court and to state that in case of dispute,

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Guwahati Bench  
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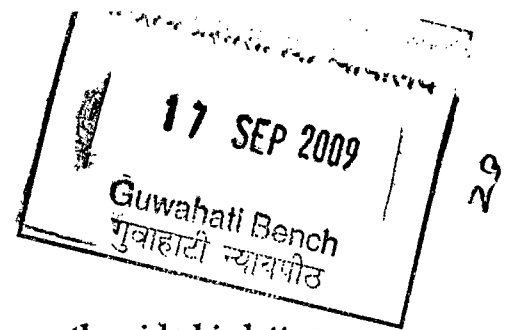
unless there is injunction/stay from Court/Tribunal, promotion is always to be made provisionally upon convening DPC on the basis of existing seniority list. When directions of the Court/Tribunal becomes available a review DPC may be held and necessary adjustment made in the promotions based on the revised seniority list, if necessary by reverting any officer promoted provisionally but not figuring in the approved list (N.B. Swamy's Complete Manual on Establishment and Administration).

But in the case of the applicant, the respondents after receipt of the Hon'ble CAT's order dtd. 02.12.2002 and when 2 (two) posts of Assistant Director (Rectt) in the meantime were vacant on 01.08.2002 and 01.11.2002, they should not have filled up the same by the common order dated 28.02.2003 (03.03.2003), more so, when according to the Ld. CAT's order dated 02.12.2002 the seniority position of the applicant to the best of the official respondents knowledge had changed in the cadre of office Superintendent HSG-I for such promotion to Assistant Director (Rectt) as on 01.01.2001 (Annexure-IV). The official so promoted under the order dated 28.02.2003 vide (annexure-VIII) of the original application were junior to the applicant being on the previous post of OS HSG-I w.e.f 01.09.1996 and 11.10.1996 respectively and your humble applicant in the similar post w.e.f 01.12.1995.

- 4.12 That after the disposal of the writ petition © No. 51 (SH) of 2003 vide order dated 07.04.2005 by the Hon'ble Gauhati High Court, Shillong Bench, applicant submitted a representation on 02.05.2005 addressed to the respondent no. 2 for granting the retrial benefits in terms of the Hon'ble CAT's order dated 02.12.2002 as passed in O.A No. 152 of 2000 to pay him arrear of pay and allowances of the post of office Superintendent HSG-I with retrospective effect from 01.12.1995 to 21.05.2001 and other consequential benefits as he is in the meantime retired from service on 31.03.2005 upon attainment of the age of superannuation even after waiting for a considerable period but no reply was made to your humble applicant till 27.11.2005.

A copy of the representation dated 02.05.2005 is annexed hereto and marked as Annexure-XIV.

Tapaa Kumar Datta Roy.



**4.13** That the respondent no. 2 after the lapse of long 6 (six) months vide his letter no. Vig 5/4/2002 (CAT/WP) Pt.II dated 28.11.2005 when a contempt petition was filed by the applicant under COP No. 35(SH) of 2005 intimated that the department have decided to implement the Ld. CAT's order dated 02.12.2002 read with the Hon'ble High Court's order dated 07.04.2005 as referred to above and in this way the respondents have been harassing the applicant in every step and he has been forced to approach the court of law for the redressal of his grievances incurring expenses, bearing the cost of litigations.

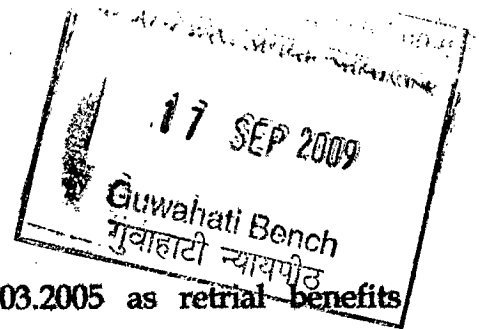
A copy of the letter dated 28.11.2005 is enclosed herewith and marked as Annexure-XV.

**4.14** That the respondent no. 2 vide his memo no. Staff/158-8/2001 (L) re-dated 07.12.2005 implemented the Hon'ble CAT's order dtd. 02.12.2002 passed in O.A.No. 152 of 2002 after retirement of the applicant giving him only the pensioery benefit by notionally fixing his pay in the cadre of office superintendent HSG-I w.e.f 01.12.1995 for which however the applicants seniority position as corrected by the said order of the Ld. CAT stood modified automatically but his other benefits as stated in paragraph no. 6 hereinabove except clause no. 1 all remained unfulfilled.

A copy of the order dated 07.12.2005/13.12.2005 is annexed hereto and marked as Annexure-XVI.

**4.15** That the applicant thereafter by his letter dated 12.04.2006 when the respondents were not complying with the Hon'ble Court's order made a fervent prayer to the respondent no. 1 to be graciously pleased and be kind enough to look into the matter of granting him promotion to the cadre of Assistant Director (Rectt) GCS Group-B as per procedure to be followed by the departmental promotion committee in regard to retired employees to which post he is entitled by virtue of his seniority and exemplary service record with retrospective effect at least from 28.02.2003 from which date his juniors namely Shri M.Sanaulah of the J&K Circle and Shri Harbans Singh Bhatia of the Punjab circle as appearing in the provisional seniority list Annexure-IV of the writ petition were promoted to the said post with arrear

Tapan Kumar Datta Roy



pay and allowances from 28.02.2003 till 31.03.2005 as retrial benefits consequent upon the Ld. CAT's order dated 02.12.2002 and order dated 07.04.2005 by this Hon'ble High Court. So that your applicant shall feel his job satisfaction as any other government servant does feel as he left a good records of long 40 years of service with the Government of India by creating a superannuary post for the same as per the rule in this regard in vogue and to give pensionery benefit as Assistant Director (Rectt) GCS, Group-B with arrear pay and allowances but till this date no reply is received from his generous end.

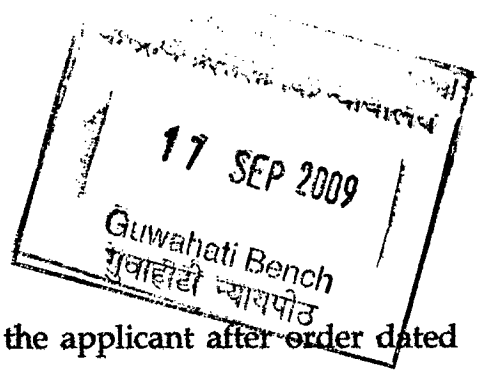
Copy of the applicants latter dated 12.04.2006 is annexed hereto and marked as Annexure-XVII.

4.16 That your applicant most humbly and respectfully submits that in-action on the part of the official respondents to denying the consequential promotion to the cadre of Assistant Director, in fact hits the Article 14, 16 and 39 (d) of the Constitution of India and relevant rules in vogue in this regard and as such he filed a writ petition vide WP(C) No. 230 (SH) of 2006 before the Hon'ble High Court, which ultimately had to be withdraw to file a fresh petition or appropriate application vide Hon'ble Court's order 06.03.2008, when the respondents in the said affidavit-in-opposition in the said writ petition misinterpreted the Hon'ble Division Bench order dated 07.04.2005 as passed in WP© No. 51(SH) of 2003, he filed a review petition before the appropriate bench vide review petition no. 5 (SH) of 2008, praying modification/clarification for removal of any scope of misinterpretation in the area as raised by the respondents.

4.17 That the Division bench of this Hon'ble Court vide its order dated 22.04.2009 disposed of the review petition no. 5 (SH) of 2008, removed the scope of misinterpretation and was further pleased to direct the respondent to pay the writ petitioner and back salary in terms of the pay scale of Office Superintendent, HSG-I from 01.12.1995 to 21.05.2001 and to pay the same within 2 months.

A copy of the judgment and order dated 22.04.2009 passed in review petition no. 5(SH) of 2008 is annexed hereto and marked as Annexure-XVIII.

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4.18 That it is appropriate to mention here that the applicant after order dated 22.04.2009 passed by the Hon'ble High Court in Review Petition no. 5 (SH) of 2008 submitted an application dtd. 11.05.2009 enclosing the copy of the order dated 22.04.2009 as referred to above to pay his arrear back salary in terms of the pay scale of office Superintendent (HSG-I) from 01.12.1995 to 21.05.2001 and the respondent no. 2 accordingly paid the same on 11.06.2009, in compliance with the order dated 22.04.2009.

4.19 That your applicant thereafter submitted another representation on 19.06.2009 addressed to the respondent no. 1 along with the order dated 22.04.2009 and other relevant documents with a humble prayer to grant him promotion of the Grade of Assistant Director (Rectt) GCS Group-B with retrospective effect from 28.02.2009 from the date on which his juniors namely Shri M.Sanaulah of the J&K Circle and Shri Harbans Singh Bhatia, of the Punjab circle were given promotion to the said post vide notification dated 28.02.2003 (Annexure-V) of the writ petition with arrears pay and allowances as per rule in this regard from 28.02.2003 to 31.03.2005 with full retirement benefit in the cadre of Assistant Director (Rectt) GCS Group-B with copy of CPMG/Respondent no. 2 and so far applicant has not yet been obliged in at least acknowledge the receipt of the same.

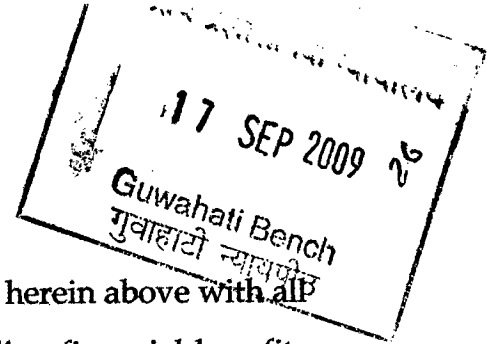
A copy of the letter dated 19.06.2009 is enclosed herewith and marked as Annexure-XIX.

4.20 That the applicant begs to mention here that he had filed a writ petition bearing no. 200(SH) of 2009 before the Hon'ble Gauhati High Court, Shillong Bench on the same subject matter, however the same was withdrawn with a liberty to file a fresh application before the appropriate authority, because Hon'ble Central Administrative Tribunal is the first instance in the view of jurisdiction.

A copy of the order dated 10.08.2009 passed in WP© No. 200 (SH) of 2009 is enclosed herewith and marked as Annexure-XX.

4.21 That it is further appropriate to bring on records that the applicants claim regarding granting him the promotion to the grade of Assistant Director

Tapaa Kumar Datta Roy



(Rectt) GCS, group-B with retrospective effect as stated herein above with all arrears and other consequential service benefits including financial benefits and retirement benefits as such as the promotion in the cadre of Assistant Director (Rectt) are the claims pertaining to the service period benefits of your applicant.

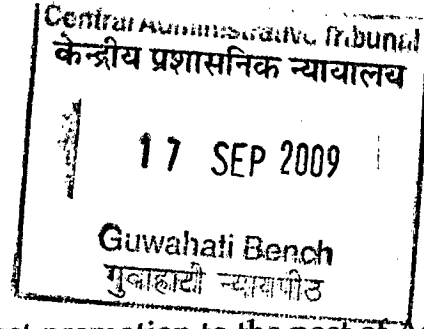
**4.22** That it is stated that promotion in the service carrier of an employee is very much valuable and as a result of implementation of judgment and order dated 02.12.2002 passed in O.A.No. 152/2002, the applicant has acquired a further valuable legal right for consideration of promotion in the cadre of Assistant Director in the scale of Rs. 6,500-10,500/- . the applicant accordingly submitted several representations for consideration of his promotion to the cadre of Assistant Director, but none of the said representations were considered by the respondents U.O.I and the same are still pending with the respondents. Since promotion to the post of Assistant Director in the scale of Rs. 6500-10,500/-, which involves re-fixation of pay in the appropriate higher scale of the promotional post but due to denial of such promotion to the applicant, he is incurring huge financial loss each and every day while monthly pension is being paid to the applicant. As such denial of promotion and non fixation of pay in the appropriate scale gives rise cause of action each and every day, as such the instant original application is well within the law of limitation more so, when the representation are pending with the respondents. Be it stated that respondents have implemented the judgment and order 02.12.2002 only on 22.04.2009 following the order of the Hon'ble High Court in the review petition.

**4.23** That the applicant feels it necessary to mention here that Shri H.S.Bhatia of the Punjab Circle has in the meantime already retired from service on 30.04.2003 while Shri M. Sanaullah of the J & K Circle has also retired from service on 31.05.2007 and as such they have not been impleaded as party in the present original application.

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

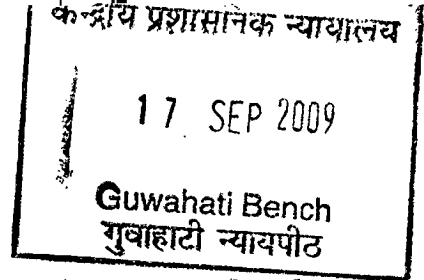
**5. Grounds for relief (s) with legal provisions:**

*Tapan Kumar Datta Roy*



- 5.1 For that, the applicant was entitled to get promotion to the post of Assistant Director (Rectt) office Superintendent, HSG-I with retrospective effect from 28.02.2003, since the juniors of the applicant namely Shri M.Sanaullah and Shri S,Bhatia have already been promoted to the cadre of Assistant Director.
- 5.2 For that when the benefit of Office Superintendent granted to the applicant and consequent upon the payment of back wages of Office Superintendent HSG-I for the period from 01.12.1995 to 21.05.2001 made only on 11.06.2009 and also eligible for promotion to the cadre of Assistant Director at least from the date of promotion of his junior in the cadre of Assistant Director.
- 5.3 For that applicant is entitled for grant of promotion to the Grade of Assistant Director (Rectt) in GCS Group-B in the scale of Rs. 6500-200-10500/- (classified as gazetted class-II post) with retrospective effect from 28.02.2003 i.e the date from which the applicants Junior (consequent upon the CAT's judgment and order dtd. 02.12.2002 as passed in O.A No. 152 of 2002) namely Shri M.Sanaullah of the J & K circle and Shri Harbans Singh Bhatia of the Punjab circle were granted promotion to the Grade of Assistant Director (Rectt) w.e.f 28.02.2003 vide memo. no. 9-84/2002/SPG dated 28.02.2003.
- 5.4 For that when the juniors have been promoted in the grade of Assistant Director (Rectt) in GCS Group-B with effect from 28.02.2003, as such applicant has acquired a valuable and legal right for grant of promotion to the cadre of Assistant Director at least w.e.f the date of promotion of his juniors with all consequential benefit including arrear monetary benefit.
- 5.5 For that denial of promotion to the applicant to the cadre of Assistant Director (Rectt) in GCS, Group B, when juniors have been promoted in the said cadre as such action of the respondents hits article 14 and 16 of the Constitution of India.
- 5.6 For that non consideration of promotion to the cadre of Assistant Director (Rectt) in GCS Group-B infringes the fundamental right of the applicant,

Tapas Kumar Datta Roy



moreso, when the juniors of the applicant have been considered and promoted to the said cadre in the scale of Rs. 6500-10,500/-.

5.7 For that the respondents did not consider the representations submitted by the applicant and the same are still pending before the authorities without any action.

5.8 For that similarly situated employees cannot be denied similar benefit of promotion, moreso, when the juniors of the applicant namely Shri M.Sanaullah and Sri Harbans Singh Bhatia have been promoted w.e.f 28.02.2003, as such, applicant is also entitled to get promotion to the cadre of Assistant Director (Rectt) Group-B w.e.f 28.02.2003 till the date of retirement with all consequential service benefit.

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 states that except he had filed an O.A. which was registered as O.A. No. 152/2002, he had not 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.

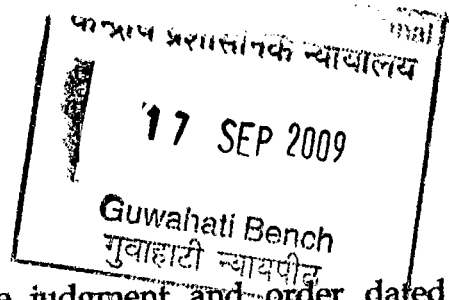
8. **Relief (s) sought for:**

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 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 senior to Sri M. Sanaullah and Sri Harbans Singh Bhatia in the cadre of Office

*Tapas Kumar Sultana Roy*

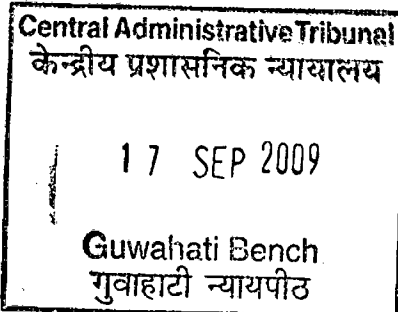




Superintendent HSG-I in the light of the judgment and order dated 02.12.2002 passed in O.A.No. 152 of 2002.

- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to consider promotion of the applicant to the cadre of Assistant Director (Rectt), GCS Group-B at least w.e.f 28.02.2003 with refixation of pay from the date of next increment (DNI) i.e w.e.f 01.01.2004 treating the applicant in the cadre of Office Superintendent (HSG-I) w.e.f 01.12.1995.
- 8.3 That the respondents be directed to modify the promotion order dated 28.02.2003 (Ann-VIII) and to grant promotion to the grade of Assistant Director (Rectt) Group-B with retrospective effect from 28.02.2003 in terms of prayer no. 2.
- 8.4 That the respondents be directed to pay the arrear pay and allowances of the post of Assistant Director (Rectt) from 28.02.2003 to 31.03.2005 (i.e till the date of retirement) with all consequential benefit.
- 8.5 Costs of the application.
- 8.6 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 to the respondents for providing the relief as prayed for.
10. ....
11. **Particulars of the I.P.O**
- |      |               |              |
|------|---------------|--------------|
| i)   | I.P.O No.     | : 396 424445 |
| ii)  | Date of issue | : 16.09.09   |
| iii) | Issued from   | : G.P.O, Ghy |
| iv)  | Payable at    | : G.P.O, Ghy |
12. **List of enclosures:**  
As given in the index.

Tapas Kumar Datta Roy



**VERIFICATION**

I, Shri Tapan Kumar Dutta Roy, S/o- Late Subodh Chandra Dutta Roy, aged about 64 years, by occupation a retired Central Government employee from Department of Posts, presently resident of C/O "Madhurima", Arbuthnot Road, Shillong-793011, District- East Khasi Hills, Meghalaya 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 16th day of September, 2009.

*Tapan Kumar Dutta Roy.*



DEPARTMENT OF POSTS: INDIA  
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE::  
SHILLONG-793 001.

Memo No.Staff/9-4/OS(CO)/2001 Dated Shillong, the 22<sup>nd</sup> May' 2001

Approval of the competent authority is hereby conveyed to the promotion of Sri Tapan Kumar Dutta Roy, OS, (HSG-II) C.O., Shillong to O.S.(HSG-I) cadre in the Scale of 6500-10,500/= with immediate effect.

2. The post of O.S.(HSG-II) C.O., Shillong will be treated as upgraded to (HSG-I) from the date of joining of Sri T.K. Dutta Roy, in pursuance of Dte's letter No.22-1/89-PE-I (Vol-II) dtd.30-3-2001 and C.O. Shillong memo No.Est/20-20/Rlg.91-92 dtd.19-4-2001.

3. Sri T.K. Dutta Roy, will be on probation for a period of two years from the date of assuming charge of O.S.(HSG-I), C.O., Shillong.

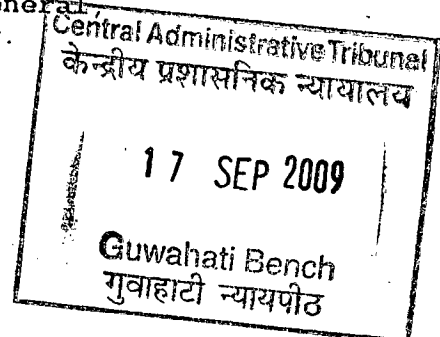
4. He is requested to exchange necessary charge reports with copy to all concerned.

5. He may exercise option for fixation of pay under FR-22 within one month from the date of taking over charge.

( Niranjan Das )  
Asstt. Director(Staff)  
For Chief Postmaster General  
N.E.Circle, Shillong.

Copy to:-

1. The APMG(A/Cs), C.O., Shillong.
2. All Group Officer, C.O., Shillong.
3. The JAO(BGT), C.O., Shillong.
4. Sri T.K. Dutta Roy, C.O., Shillong.
5. P.F. of Sri T.K. Dutta Roy.
6. Service Book of Sri T.K. Dutta Roy.
7. The D.D.A. (P) Shillong.



For Chief Postmaster General,  
N. E. Circle, Shillong.

Attested  
Dutta  
Adv.

INDIAN POSTS AND TELEGRAPH DEPARTMENT  
Office of the Postmaster-General, N.E. Circle, Shillong - 793001

Memo. No. Est/34-19/77 Dated Shillong, the 19th May, 81.

Approval of the Postmaster-General, North Eastern Circle, Shillong is hereby accorded to the creation of a temporary post of Head Assistant (General) in the Circle office, Shillong in the scale of Rs. 550/- to Rs. 750/- with immediate effect.

Consequent on the creation of the post of Head Assistant (General) in the scale of Rs. 550/- to Rs. 750/- the Postmaster-General, N.E. Circle, Shillong is further pleased to upgrade the post of the Office Supdt., Circle Office, Shillong to HAO-I in the scale of Rs. 700/- to Rs. 900/- with immediate effect.

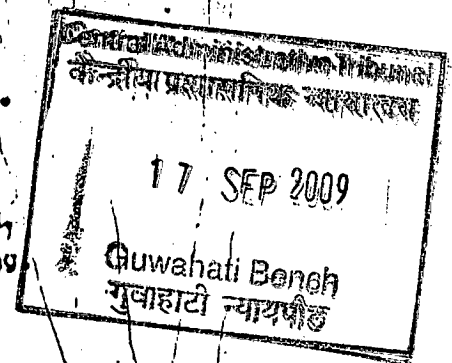
The Postmaster-General, N.E. Circle, Shillong is also pleased to decide that from the date of filling up of the post of Office Supdt. in the scale of Rs. 700/- to Rs. 900/- the post of Office Supdt. in the scale of Rs. 550/- to Rs. 750/- may be treated as abolished.

The expenditure involved in this sanction is debitable to the Head of No. 2(1) Circle Office salaries and should be met from the sanctioned grant.

Sd/- I. Dewri  
Director Postal Services (HQ)  
for Postmaster-General,  
N. E. Circle, Shillong.

Copy to :-

- 1) The Asstt. Director (Staff) C.O., Shillong for information. He will kindly intimate the date of filling up of the above posts to this section early. He will also kindly refer to this section Memo. no. Est/34-4/76 dated 29.4.81 and intimate the date of entertainment of the two posts of WDCs to this section early for issuing formal retention orders.
- 2) The Director of Accounts (Postal), Calcutta
- 3) The Asstt. Director (Accounts), C.O., Shillong.
- 4) The Office Supdt., C.O., Shillong.
- 5) The Guard file (S.S. Estt. section).
- 6) The Cell Share, Estt. section, C.O., Shillong.
- 7) The S.S. Staff and A&P section, C.O., Shillong.
- 8) The C.O. file No. Est/34-4/76.
- 9) By a/c.



Deputy Divisional Manager (P&T)  
Off the Chief Postmaster General  
N.E. Circle, Shillong-793001

for Postmaster-General,  
N. E. Circle, Shillong.

Attended  
Mulla  
Adv

Post Master General  
N.E. Circle  
Shillong 793001

No. EST/34-6/76 Dated at Shillong the 29/08/85

I am directed to convey the Approval of the Postmaster General, N.E. Circle, Shillong for forwarding of the following posts in annexure 'A' viz 3/85

② Necessary proposition statement should be submitted to this office immediately.

Attested  
20/9/01

Deputy Divisional Manager (PLI)  
O/O the Chief Postmaster General  
N.E. Circle, Shillong-793001

(S. K. Sinha)  
Asst. Postmaster General  
for P.M.G./Shillong

National Administrative Tribunal  
राष्ट्रीय प्रशासनिक न्यायालय

17 SEP 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

Copy forwarded for information and necessary action to:-

- 1) The Asst. Director (Staff) Circle Office Shillong
- 2) The Asst. Director (Admin) Office Shillong
- 3) The concerned establishment file in CO
- 4) The staff register and Guard file
- 5) The O/S Circle Office Shillong
- 6) The O/S

For Postmaster General  
N.E. Circle, Shillong 793001

Attested  
Dulla

See Annexure 'A' below at 96/2

96

on 10/10/81

Annexure 'A'

Sl. No.	Designation Post	Name of the Head Quarters	Scale Pay	Date of sanction memo	Co's Sanction memo No.
1	Office Supt. Circle Office	Shillong	Rs 700 - 90/-	20.5.81	Est / 34-19/77 20.5.81
2	Head Asst (General)	Shillong	Rs 650 - 75/-	20.5.81	Est / 34-19/77 20.5.81

17 SEP 2001  
Guwahati Bench  
গুৱাহাটী ন্যায়দেয়

Deputy Divisional Manager (PL)  
O/O the Chief Postmaster General  
N.E. Circle, Shillong-793001

ANNEXURE - II

Typist Copy  
Annexure - III

OFFICE OF THE POST MASTER GENERAL N.E. CIRCLE,  
SHILLONG-793001.

Memo No. Est/34-6/76 Dated at Shillong the 29th March 1985.

I am directed to convey the Approval of the  
is  
Postmaster General, N.E. Circle Shillong/hereby accorded for  
permanency of the following Posts in annexure 'A' w.e.f. 1.3.85.

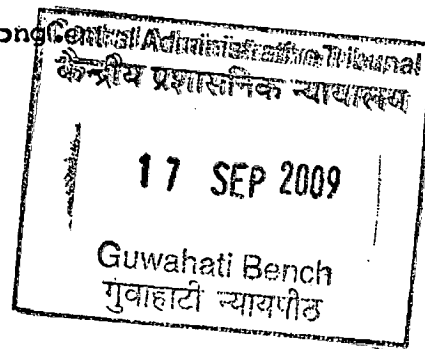
(2) Necessary preposition statemnt should be submitted  
to this Office immediately.

sd/-

(S.K. Sinha)  
Asst. Postmaster General (Estt)  
For PMG/Shillong.

Copy forwarded for information and necessary action to:-

- 1) The Asstt. Director (Staff) Circle Office, Shillong.
- 2) The Asstt. Director (a/c) Circle Office, Shillong.
- 3) The concerned establishment filed in CO.
- 4) The Estt. Registrar and Guard File.
- 5) The O/S Circle Office, Shillong.
- 6) Spare.



sd/-

Asstt. Postmaster General (Estt).  
N.E Circle, Shillong -793001.

Attached  
Data  
sdw

Secy. Admin. A-2 36/6

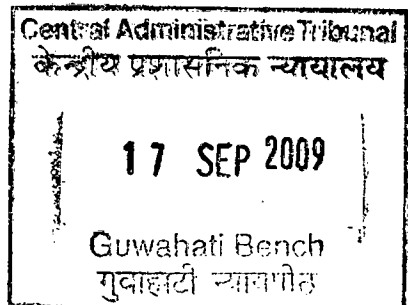
Contd...- 2/-



= 2 =

## ANNEXURE 'A'

SL.	Designation	Name of Head Quarters	Scale of Pay	Date of entertainment	CO 'S Sanction Memo No.
(1)	(2)	(3)	(4)	(5)	(6)
1.	Office Suptd. Circle Office	Shillong	Rs. 700-900/-	20.5.81	Est/34-19/77 Dtd. 19.5.81.
2.	Head Asstt. (General)	Shillong	Rs. 580/- 750/-	20.5.81	Est/34-19/77 Dtd. 19.5.81.





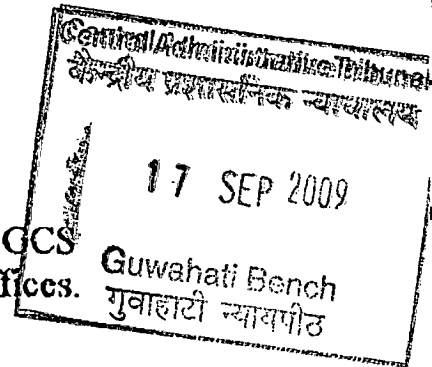
IMMEDIATE

No. 12- 3/2001-SPG  
Government of India  
Ministry of Communications  
Department of Posts  
Dak Bhawan, New Delhi - 110 001

Dated: 25.09.2001

To  
The Chief Postmaster General,  
N.E. Circle,  
Shillong - 793001

Subject: DPC for promotion to the grade of Asstt. Director (Recdt.), GCS Group 'B' reserved for OS./ Dy. Office Supdt. working in Circle Offices.



Sir,

I am directed to say that it is proposed to hold a DPC meeting for selection of official for promotion for three posts of Asstt. Director (Recdt.), GCS Group 'B' in the Department of Posts on retirement of a regular incumbents of the said grade. A list of the officials who are likely to find place in eligibility zone is enclosed herewith. Seniority list is provisional and subject to change on receipt of omissions/ corrections, if any, yet to be received from various circles.

You are, therefore, requested to forward the up-to-date CR dossier along with the vigilance clearance of the official(s) belonging to your circle to this office latest by 10<sup>th</sup> October 2001. A statement indicating particulars of current punishment /penalty, if any, against these official(s) may also be furnished.

This office may also be kept informed of any change in the aspect relating to vig./disc. case, if any, about those official(s) until the DPC meeting is held. The particulars of the official(s) mentioned in the enclosed list may also be got confirmed.

Attested  
Datta  
dhw

Yours faithfully,

(R.C.Sharma)  
Assistant Director General (SGP)

-2-

Provisional seniority List of OS I/ OS II for consideration for the post of AD(Recrt.), GCS Group 'B' as on 01.01.2001

<u>S. N.</u>	<u>Name of the officer</u>	<u>DOB</u>	<u>Date of regular apptt. in the following grades</u>		<u>Circle where working at present</u>	<u>Remarks</u>
			<u>OS</u>	<u>Dy.OS</u>		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Bodu Ram Meena (ST)	06.07.42	9.3.92	3.8.91	Raj.	
2.	Santi Ram Saikia	01.06.42	3.12.92	--	Assam	
3.	M.Nachimuthu (ST)	06.01.56	24.12.93	5.11.92	T.N.	
4.	Smt. A. Vasugi ( SC)	05.10.42	29.09.94	--	KTK	
5.	M.Sanaullah	13.05.47	1.9.96		J& K	
6.	Harbans Singh Bhatia	01.05.43	11.10.96	--	Punjab	
7.	M.S.Parmar ( SC)	01.03.44	6.3.97	--	Guj	
8.	G.K.Parmar ( SC)	07.03.43	6.3.97	--	Guj	
9.	Gayadhar Kisan (ST)	20.01.46	11.4.97	3.3.93	Orissa	
10.	S.D.Lonkar	13.12.43	29.4.97	26.6.93	Mah.	
11.	M.J.Ninama ( ST)	08.06.43	1.5.97	--	Guj	
12.	Arjun Prasad ( ST)	23.09.47	23.9.97	9.5.94	Bihar	
13.	R.N.M.Tripathi	01.07.43	1.11.97	--	U.P.	
14.	Radhanath Soren (ST)	02.06.46	1.8.2000	1.11.93	W.B.	
15.	Laxmi Chand Saini	14.12.50	1.9.2000	--	Har	
16.	Narendra Singh	25.09.41	--	10.8.94	U.P.	
17.	Sambhu Ch. Debnath	21.09.42	--	13.3.95	W.B.	
18.	T.K.Dutta Roy	6.3.45	--	1.9.95	N.E.	

Central Administrative Tribunal  
 17 SEP 2009  
 Guwahati Bench  
 গুৱাহাটী বেঞ্চ

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.152 of 2002

Date of decision: This the 2nd day of December 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Tapan Kumar Dutta Roy,  
Office Superintendent,  
Office of the Chief Post Master General,  
North Eastern Circle,  
Shillong.

.....Applicant

By Advocates Mr M. Chanda

- versus -

1. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Communication,  
New Delhi.

2. The Secretary and Director General,  
Department of Posts,  
New Delhi.

The Chief Postmaster General,  
North Eastern Circle,  
Shillong.

The Chief Postmaster General,  
Assam Circle,  
Guwahati.

The Asstt. Director General (SGP),  
Department of Posts,  
New Delhi.

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

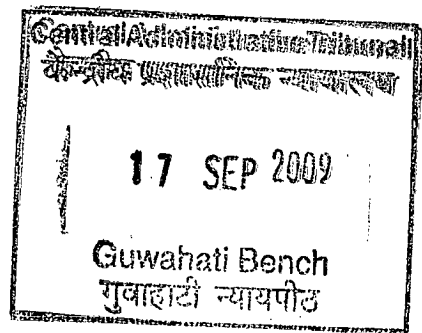
.....Respondents

ORDER

CHOWDHURY. J. (V.C.)

This is an application under Section 19 of the  
Administrative Tribunals Act, 1985 seeking for a direction  
for antedating the date of promotion of the applicant as  
Office Superintendent Higher Selection Grade I (O.S. (HSG-  
I) for short) and the consequent improvement of his

Attested  
Dutta  
Adv



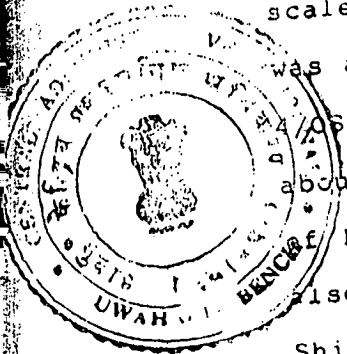
seniority.

2. Facts : The applicant is working for gain in the Postal Department. He joined as Postal Clerk on 13.7.1965 in Shillong Postal Division under the respondents and thereafter promoted to the post of Upper Division Clerk in the Office of the Postmaster General, N.E. Circle, Shillong on 23.1.1973. He was thereafter promoted as Lower Selection Grade Clerk with effect from 1.1.1988. The applicant was thereafter given the benefit of Biennial Cadre Review promotion to HSG-II with effect from 26.6.1993. On the retirement of the incumbent who was holding the post of Office Superintendent, Circle Office, Shillong on 31.8.1995, the applicant was promoted as Office Superintendent, Circle Office, Shillong with effect from 1.9.1995 vide order dated 7.9.1995 in the scale of pay of Rs.1600-2660/-, a scale of HSG-II which he was also drawing in his earlier post. By Memo No.Staff/9-OS(CO)/2001 dated 22.5.2001 the applicant was conveyed about his promotion to the post of OS HSG-I in the scale Rs.6500-10,500 from the post of OS HSG-II. The order also conveyed that the post of OS HSG-II, Circle Office, Shillong was to be treated as upgraded to HSG-I from the date of joining of the applicant in pursuance to the communications dated 30.3.2001 and 19.4.2001. The applicant also pleaded that prior to his aforesaid regular promotion he also officiated in the higher post on three different occasions. During 1994-95. The applicant pleaded that as per the policy of the Government of India the President of India accorded sanction for creation of two hundred and eight posts of HSG-I by way of upgradation from the post of HSG-II. As per the Staff Inspection Unit norms there was justification for one post of Office Superintendent.....

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

17 SEP 2009

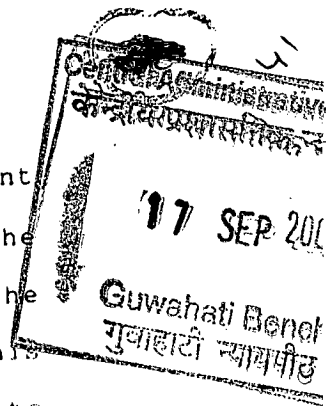
Guwahati Bench  
गुवाहाटी न्यायापीठ



Superintendent in N.E. Circle in HSG-I and the respondent authority in a most illegal fashion did not act as per the policy decision and delayed the upgradation of the applicant without any justifiable ground. By this application the applicant has sought for a direction to antedate his promotion to the post of HSG-I with effect from 1.9.1995 and give the consequential benefits. In the O.A. the applicant has also assailed the provisional seniority list communicated vide Mrmo No.12-3/2001-SPG dated 25.9.2001 wherein the applicant's name was shown at the bottom of the list at serial No.18 showing him as Deputy Office Superintendent as on 1.9.1995. By the said communication addressed to the Chief Postmaster General, N.E. Circle, Shillong, the Assistant Director General (SGP) indicated about the DPC meeting to be held for promotion to the grade of Assistant Director (Rectt.), GCS Group 'B' in the Department of Posts reserved for Office Superintendent/Deputy Office Superintendent working in the Circle Offices. In the said communication a list of officials who were likely to find place in the eligibility zone was enclosed as per their seniority. The concerned officer was advised to forward the up-to-date CR dossiers alongwith vigilance clearance of the officials belonging to the Circle by a specified date.

3. The respondents disputed and resisted the claim of the applicant by filing written statement. The respondents in the written statement stated that the post of Office Superintendent in Circle Office, Shillong was upgraded to HSG-I during 1981 abolishing the post of Deputy Office Superintendent consequent on creation of the posts of Head Assistant Grade-II in the same scale of pay as that of the grade of Office Superintendent having similar responsibility. The HSG-I post alongwith HSG-I grade post

continued.....



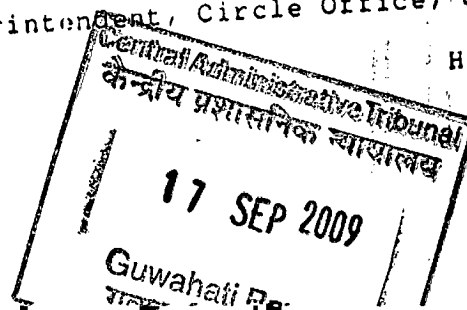
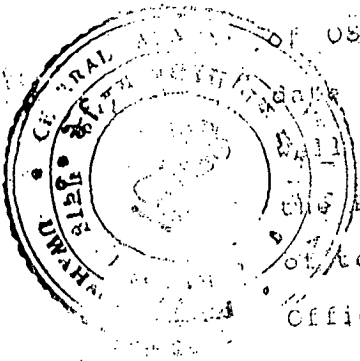
Central Administrative  
केन्द्रीय प्रशासनिक  
17 SEP 20  
Guwahati Bench  
গুৱাহাটী ন্যায়পাট

continued till bifurcation of the Composite North Eastern Circle in 1988 and on bifurcation the post of HSG-I was transferred to Assam Circle retaining the post of HSG-II in the Shillong Circle. The respondents admitted that the applicant was working as HSG-II from 1.9.1995 continuously as Office Superintendent (HSG-II) until upgradation of the post to HSG-I with effect from 22.5.2001. According to the respondents the applicant was holding the post of Office Superintendent which was in HSG-II grade and he was allowed the pay scale of HSG-II grade from 1.9.1995. In the written statement the respondents averred that the N.E. Postal Circle was not the only case of Office Superintendent being in grade II. The same was the status in case of Haryana and Himachal Pradesh also. The DTE by Memo No.22-1/89-PE-1(Vol.II) dated 30.3.2001 had upgraded 1622 posts in HSG-I grade with direction to upgrade the post of Office Superintendent to grade I where there was no HSG-I post of Office Superintendent and accordingly the post of Office Superintendent of Circle Office Shillong was also upgraded to grade I vide letter dated 19.4.2001. The respondents also pleaded in the written statement that the applicant was holding the post of Office Superintendent (HSG-II) with effect from 1.9.1995 and he was drawing grade pay from the said date. The seniority list that was circulated was purely for the officials holding the posts of Office Superintendent/Deputy Office Superintendent in the HSG-I cadre. The applicant was not eligible to be included in the seniority list of Office Superintendent/Deputy Office Superintendent (HSG-I) and accordingly he was not considered by the competent authority for promotion to AD (Recit) GCS Group 'B' post. Promotion to the post of AD (Recit.) was finalized based

on.....

on the correct seniority list of HSG-I officials and orders were issued by the competent authority, D.G., Posts vide Memo dated 31.12.2001.. Since the applicant was holding the post of HSG-II with effect from 1.9.1995 he could not be placed in the higher scale in which was not physically working. It may also be mentioned that the applicant submitted a number of representations assailing the action of the respondents and finally after institution of the application the authority vide order dated 3.7.2002 rejected the representation of the applicant declining to give him the promotion with retrospective effect, the legality of which was assailed in this proceeding.

4. We have heard Mr M. Chanda, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. From the materials on record it appears that the applicant was ordered for promotion to OS (HSG-I) cadre vide order dated 22.5.2001. The promotion order itself shows that the post of OS HSG-II was treated as upgraded to HSG-I from the date of joining of the applicant. As per the pleadings as well as the materials on record it is also apparent that the Postmaster General, N.E. Circle accorded the creation of temporary post of Head Assistant (General) in the Circle Office, Shillong in the scale of Rs.550-750. Consequent on the creation of the post of Head Assistant (General), the Postmaster General also ordered to upgrade the post of Office Superintendent, Circle Office, Shillong to HSG-I in the scale of Rs.700-900 with immediate effect and the post of Office Superintendent in the scale of Rs.500-750 was treated as abolished. By communication 29.3.1985 the Office of the Postmaster General communicated the order of approval of the Postmaster General for permanency of the post of Office Superintendent, Circle Office, Shillong and Head.....



Head Assistant, Shillong. In the gradation list of the officials of the Office of the Postmaster General, N.E. Circle corrected upto 1.7.1986, the post of Office Superintendent in the scale of pay of Rs.700-900 was shown as vacant.

5. At this stage it would be appropriate to refer to the communication dated 6.11.1995 issued by the Government of India, Ministry of Communications, Department of Posts, indicating the sanction for creation of 208 posts i.e. 3% of total BCR HSG-II posts in the HSG-I grade in the scale of Rs.2000-3200 by suitably upgrading the existing HSG-II posts in the scale of Rs.1500-2660 with immediate effect as per the details annexed to the said communication. The relevant part of the communication is reproduced below:

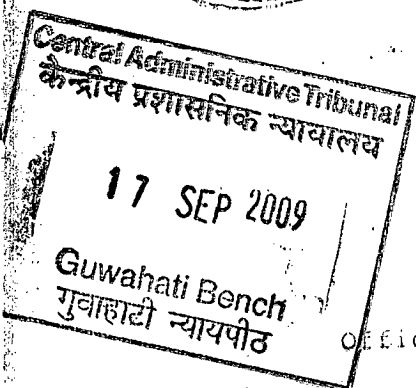
"Heads of Circles are requested to identify the number of HSG-II posts indicated against their Circle in Annex 'A' and upgrade them to HSG-I under intimation to this office. The identification of HSG-II posts may be done on the basis of following guidelines:

- i) Those HSG-II posts where an HSG-I post is justified on the basis of norms, but the same could not be created due to ban on creation of posts.
- ii) Posts of HSG-II Head Postmaster at District Headquarters where no HSG-I post exists at present. The Chief Postmaster General should identify the District based on its importance/workload in the Region.
- iii) Other HSG-II posts which are considered operationally important by Heads of Circles.

The work of identification of posts, holding of D.P.C. and placement of the officials against the posts should be completed by 01.12.1995 positively. Thereafter a report to this effect be furnished to the Directorate.

The mode of recruitment for the upgraded post will be by method of selection as prescribed in Recruitment Rules for the HSG-I posts."

Office-wise distribution of 208 posts of HSG-I by way of upgradation as indicated in the Annexure to the aforementioned communication was shown. Serial No.13 showed two posts of HSG-I in the N.E. Postal Circle. The communication.....





: 7 :

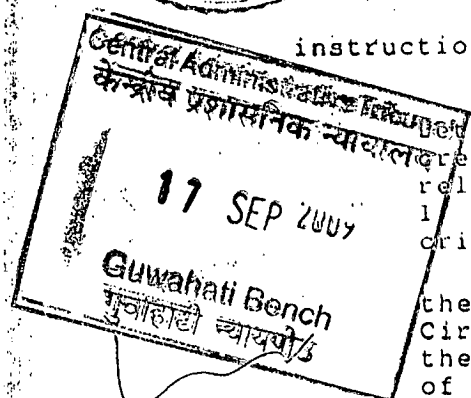
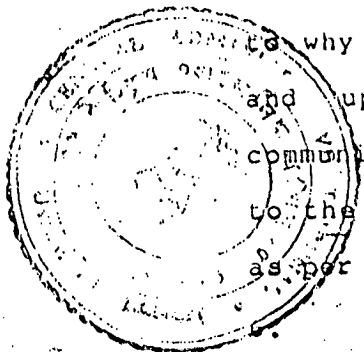
Communication referred to above itself indicated a time frame for filling up of the vacant posts. As per the communication issued by the Government of India, Ministry of Communications, Department of Posts dated 30.3.2001 addressed to all the Heads of Postal Circles according sanction for creation of 1622 posts of HSG-I by upgradation of the post of HSG-II, it is revealed that as per SIU norms there was justification of one post of Office Superintendent in each Circle (Administrative Office) in HSG-I grade. The said communication further revealed that every Circle had the post of OS HSG-I except Haryana, Himachal Pradesh and the North East. The Circle Heads of these Circles were requested to upgrade the post to HSG-I from amongst their quota allotted. Pursuant to the said communication the applicant was promoted to the cadre of OS HSG-I. As a matter of fact the said promotion was made by upgrading the post of OS HSG-II, Circle Office, Shillong to HSG-I. No justification was assigned as such as to why the respondents failed to adhere to the promotion and upgradation of the applicant in terms of the communication dated 6.11.1995. The materials indicated as to the justification for the post of Office Superintendent as per the SIU norms.

Mr A. Deb Roy placed before us the following written instructions received by him from the department:

"Instruction contained in the Directorate Letter No.22-1/89-PE-I (Vol.II) dated 6.11.95 for creation of 208 HSG-I posts through out the country relates to upgradation of 3% of HSG-II posts to HSG-I for General line officials based on specific criteria.

Heads of Circle were empowered under para-2 of the Dte letter to identify the HSG-II posts in the Circle according to the allotment/distribution of the number of posts to the Circle (as per Annexure-A of the Dte Letter) keeping in view the guide lines

in.....



in para-2 of the letter

To upgrade

1. Those HSG-II posts where HSG-I post was justified according to Norms but the same could not be created due to ban on creation.
2. To upgrade the post of HSG-II Head postmaster at the District HQ according to the importance/work load of the area/District HQ

And

3. To upgrade other HSG-II Posts which are considered operationally important.

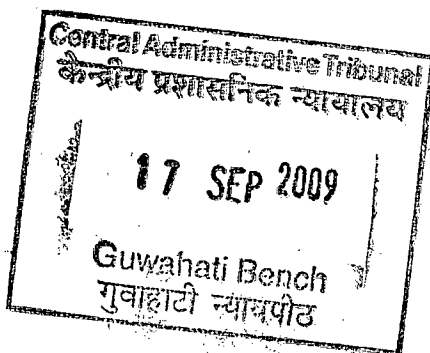
As per annexure-1 of the Dte letter Two posts were allotted to this circle. Keeping in view the guide lines of the Dte letter, two posts in important operative offices viz Dy postmaster Shillong G.P.O. a gazetted post office at Circle Head Quarters and the post of postmaster Dharmanagar Postal Divisional Head Quarters in Tripura were considered for upgradation from the postal operational point of view due to the work load and operational importance; the two posts were upgraded to HSG-I from 1.12.95.

The post of Office Supdt Circle office Shillong falls within the category of Administrative office positions mainly clerical supervision in nature and less important compared to the operational post offices and work load of the post also did not justify upgradation to HSG-I post according to norms. In the absence of specific instructions in Dte letter for upgradation of the post of Office Supdt in Circle office, an administrative office, the competent authority did not consider to identify the post for upgradation to HSG-I post.

The post of Office Supdt was up graded to HSG-I post from 22.5.2001. The post was upgraded under the specific instruction from Dte in their letter No.22-1/89-PE-1 (Vol-II) dtd 30.3.02 (Annexure-B)."

7. We have given our anxious consideration in the matter. The aforesaid instructions also did not specify any reason as to why the competent authority did not consider to identify the posts for upgradation to HSG-I post above. The reasons are not far to seek. The Memo.No.Est/34-19/77 dated 19.5.1981, Annexure VII to the application itself indicated the decision of the authority to upgrade the post of Circle Office, Shillong to HSG-I in the scale of Rs.700-900 with immediate effect. By Memo.No.Est/34-6/96 dated

29.3.1985.....

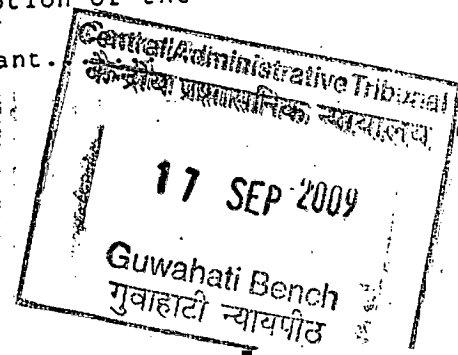
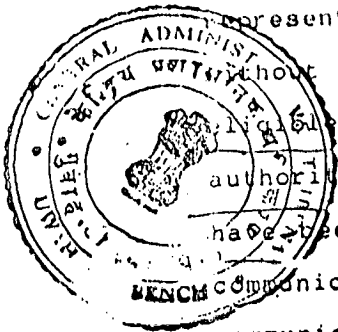


29.3.1985 the Postmaster General, N.E. Circle, Shillong accorded sanction for permanency of the post of Office Superintendent, Circle Officer, Shillong at the scale of Rs.700-900. The instructions set forth above, therefore, goes counter to the policy enunciated by the respondents.

8. The materials placed before us clearly indicated the eligibility of the applicant for being considered for upgradation to HSG-I in terms of the O.M. dated 6.11.1995. The said communication also indicated about the existence of vacancies. Save and except the three places mentioned above, in the other Circles the concerned persons were upgraded to the higher scale. The respondents failed to assign any disability of the applicant for being considered for upgradation in terms of the aforementioned Office Memorandum. Obviously, the materials on record revealed manifest infraction on the constitutional right of the applicant guaranteed under Articles 14 and 16 of the Constitution. The respondents arbitrarily rejected the representation of the applicant with a most cryptic order without assigning any reason. The applicant found for promotion on upgradation by the competent authority in May 2001, which benefit the applicant ought to have been given on and from 1995 on the strength of the communication dated 6.11.1995 which as per the departmental communication was required to be completed by 1.12.1995.

9. For all the reasons stated above we are of the considered opinion that the applicant is entitled for antedating his promotion/upgradation to the post of Office Superintendent HSG-I on and from at least 1.12.1995, the date on which the respondents were ordered to complete the exercise of upgradation. The respondents are accordingly ordered to give effect to the upgradation/promotion of the

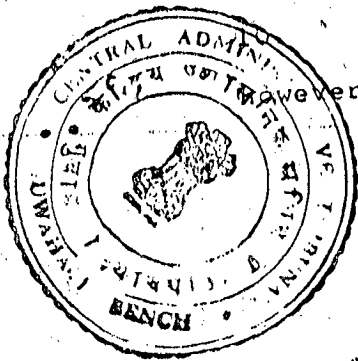
applicant.



: 10 :

applicant in terms of the communication dated 6.11.1995 and antedate the promotion of the applicant accordingly as expeditiously as possible, preferably within three months from the date of receipt of the order. The impugned order dated 3.7.2002 rejecting the representation of the applicant is also set aside.

The application is accordingly allowed. There shall, however, be no order as to costs.



nkm

*Attested  
With  
Adv*

Sd/ VICE CHAIRMAN  
Sd/ MEMBER (ADM)

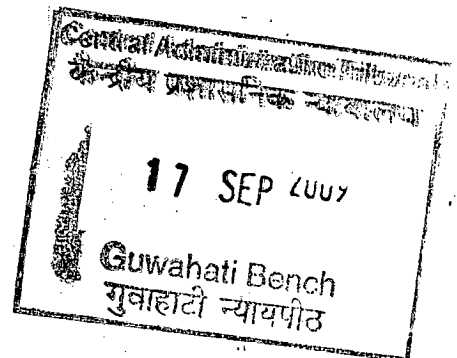
*Certified to be true Copy*  
*प्रमाणित प्रतिलिपि*

*Section Officer (J)*

*C.A.T. GUWAHATI BENCH*  
*Guwahati-781005*

*20/12/02*  
*HS 20/12/02*

*Attested*





To

Shri P.K. Chatterjee,  
Chief Postmaster General,  
North Eastern Circle,  
Shillong - 793 001.

Sub : Prayer for the grant of promotion to the cadre of Office Superintendent  
HSG-I, Circle Office, Shillong with retrospective effect from 1-12-95.

Respected Sir,

A kind reference is invited to the judgement of the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati dated 2<sup>nd</sup> December 2002 passed in the case No. OA No. 152 of 2002 (xerox copy enclosed) wherein, the Hon'ble CAT Guwahati is being pleased, has passed orders for the grant of promotion to me to the cadre of Office Superintendent HSG-I, Circle Office, Shillong with retrospective effect from 1-12-1995.

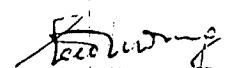
That Sir, I beg to mention here that as per judgement dated 2<sup>nd</sup> December 2002 of the Hon'ble CAT, Guwahati Bench, Guwahati passed in the case No. OA No. 152/2002, I am eligible to get the promotion to the cadre of Office Superintendent - HSG-I, Circle Office, Shillong with retrospective effect from 1-12-1995.

Now, in terms of the judgement dated 2<sup>nd</sup> December 2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the case No. OA No. 152 of 2002, I therefore, pray to your honour, kindly to grant me the promotion to the cadre of Office Superintendent HSG-I, Circle Office, Shillong with retrospective effect from 1-12-1995 and pass necessary orders to pay me the arrear pay and allowances with retrospective effect from 1-12-1995 to 21-5-2001 with due protection of all India seniority of the Office Superintendent HSG-I with retrospective effect from 1-12-1995 and for this act of your kindness, I shall remain ever grateful to you.

An early action into the matter is solicited.

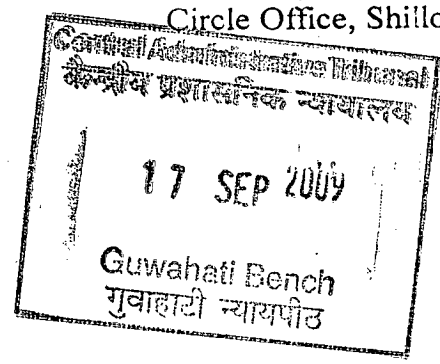
With kind regards,

Yours faithfully,

  
(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.

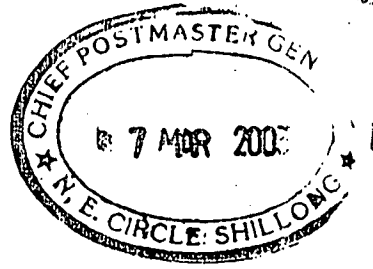
DA - As said above  
Dated at Shillong,  
The 29<sup>th</sup> Jan/2003

*Attested  
Dutta  
Adv*



To

Smti P.B. Subramanian,  
Secretary and  
Director General,  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi - 110 001.  
(Through proper channel)



Sub : Prayer for the grant of promotion to the cadre of Office Superintendent HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995.

Respected Madam,

Kindly permit me to submit a few lines before your honour for favour of your kind perusal, sympathetic consideration and favourable orders.

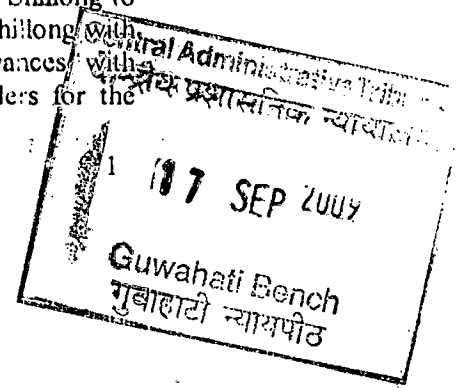
2. That Madam, in this connection, a kind reference is invited to the judgement of the Hon'ble Central Administrative Tribunal Guwahati Bench, Guwahati dated 2-12-2002 passed in the case No. OA No. 152 of 2002 (attested copy enclosed) wherein the Hon'ble CAT Guwahati is being pleased, has passed orders for the grant of promotion to me to the cadre of Office Superintendent HSG-I Circle Office, Shillong, with retrospective effect from 1-12-1995.

3. That Madam, I beg to mention here that as per judgement dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the case No. OA No. 152 of 2002, I am eligible to get the promotion to the cadre of Office Superintendent HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995.

4. That Madam, I would like to mention here that in the light of the judgement dated the 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the case No. OA No. 152 of 2002, I had submitted a representation to the Chief Postmaster General, North Eastern Circle, Shillong by name on 29-1-2003 enclosing a xerox copy of the judgement of the Hon'ble CAT Guwahati Bench, Guwahati dated 2-12-2002 passed in the case No. OA No. 152 of 2002 (xerox copy of the representation dated 29-1-2003 is enclosed for ready reference) praying for the grant of promotion to me to the cadre of Office Superintendent HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and to pay me the arrear pay and allowances with retrospective effect from 1-12-1995 to 21-5-2001 with due protection of all India seniority of the Office Superintendent in HSG-I cadre with retrospective effect from 1-12-1995. But even after the lapse of three months time from the date of judgement and one month period from the date of submission neither the orders of the Hon'ble CAT Guwahati bench Guwahati dated 2-12-2002 passed in the case No. OA No. 152 of 2002 was implemented nor any reply was received from the Circle Administrative, Shillong.

5. Now in view of the facts narrated above and in terms of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the case No. OA No. 152 of 2002, I therefore fervently beg to appeal to your generous generosity to be gracious enough kindly to look into the matter and pass necessary orders to the Circle Administration, Shillong to grant me the promotion to the cadre of Office Superintendent HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and to pay me the arrear pay and allowances with retrospective effect from 1-12-1995 to 21-5-2001. Kindly also pass necessary orders for the

Attested  
By  
[Signature]





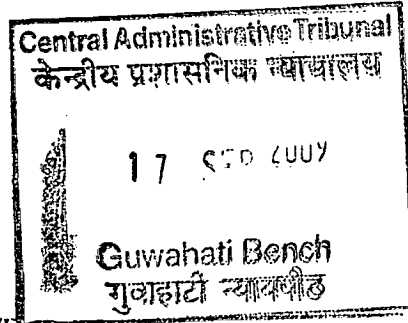
protection of my all India seniority of the Office Superintendent HSG-I with retrospective effect from 1-12-1995 and for this act of your kindness. I shall remain ever grateful to you.

An early action into the matter is solicited.

With kind regards,

Yours faithfully,

DA - As said above  
Dated at Shillong,  
The 7<sup>th</sup> March/2003



*Tapan Kr. Dutta Roy*  
(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.

Copy in advance to :-

By registered post with A/D

Smti P.B. Subramanian, Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001 for favour of kind information. A xerox copy of my representation dated 29-1-2003 addressed to the Chief Postmaster General, North Eastern Circle, Shillong by name together with an attested copy of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the case No. OA No. 152 of 2002 are sent herewith for favour of kind perusal. Her magnanimity is requested to gracious enough kindly to look into the matter and in the light of the judgement dated 2-12-2002 of the Hon'ble CAT, Guwahati Bench, Guwahati passed in the above case, kindly to pass necessary orders to the Circle Administration, Shillong to grant me the promotion to the cadre of Office Superintendent HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and to pay me the arrear pay and allowances with retrospective effect from 1-12-1995 to 21-5-2001. Her honour is also requested kindly to pass necessary orders for the protection of my all India seniority of the Office Superintendent HSG-I with retrospective effect from 1-12-1995 and for this act of your kindness, I shall remain ever grateful to you.

An early action into the matter is solicited.

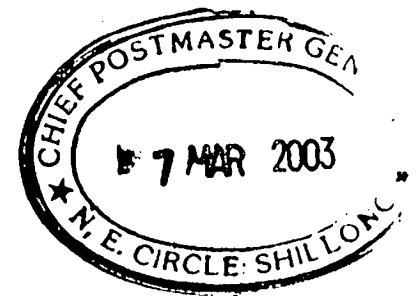
With kind regards,

Yours faithfully,

DA - As said above  
Dated at Shillong,  
The 7<sup>th</sup> March/2003

*Attested  
Tapan  
Adv*

*Tapan Kr. Dutta Roy*  
(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.



To

Smti P.B. Subramanian,  
Secretary and Director General,  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi - 110 001.  
(Through proper channel)

Sub : Grant of promotion to the cadre of Asstt. Director (Rectt) CGS Group - B.

Respected Madam,

Kindly permit me to submit a few lines before your honour for favour of your kind perusal, sympathetic consideration and favourable orders.

That Madam, in this connection, a kind reference is invited to my representation dated 7-3-2003 wherein an attested copy of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the OA No. 152 of 2002 was sent to the Directorate vide Shillong GPO RL A/D No. B 957 dated 7-3-2003.

That Madam, I beg to mention here that as per judgement dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the case No. OA No. 152 of 2002, I am eligible to get promotion to the cadre of Office Superintendent - HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and thereby my position to the cadre of Office Supdt., HSG-I on all India basis stands at serial No. 1

Now in view of the facts narrated above and in terms of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati bench Guwahati, passed in the case No. OA No. 152 of 2002, I therefore, fervently beg to appeal to your generous generosity to be gracious enough kindly to look into the matter and pass necessary orders to decide the promotion case of Asstt. Director (Rectt) GCS Group-B by taking into account my seniority position at serial No.-1, else it will be a clear contempt case and in the said circumstances, I shall rather been compelled to take the shelter of the Court of Law for the redress of my grievances and for this act of your kindness, I shall remain ever grateful to you.

An early action into the matter is solicited.

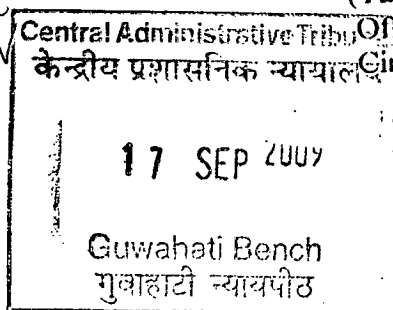
With kind regards,

Yours faithfully,

Dated at Shillong,  
The 7<sup>th</sup> March/2003

Attested  
Dutta  
Adv

(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.







Copy in advance to :-

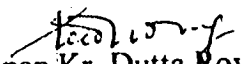
By registered post with A/D

Smti P.B. Subramanian, Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001 for favour of kind information. Her noble-self is requested to be gracious enough, kindly to refer my representation dated 7-3-2003 and pass necessary orders to decide the promotion case of Asstt. Director (Rectt) GCS Group-B by taking into account my all India seniority position of Office Superintendent HSG-I at serial No.-1, else it will be a clear contempt case and in the said circumstances, I shall be compelled to take the shelter of the Court of Law for the redress of my grievances and for this act of your kindness, I shall remain ever grateful to you.

An early action into the matter is solicited.

With kind regards,

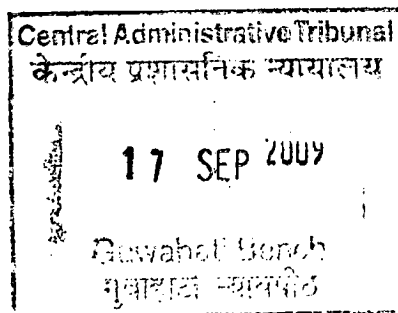
Yours faithfully,

  
(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.

Dated at Shillong,  
The 7<sup>th</sup> March 2003

cc: as the copy

*Attested  
Dutta  
Adh*



(TO BE PUBLISHED IN PART I SECTION 2 OF GAZETTE OF INDIA)

Government of India  
Ministry of Communications & Information Technology  
Department of Posts  
Dak Bhavan, Sansad Marg, New Delhi - 110 001

Dated : 28.02.2003

03-03-2003

**NOTIFICATION**

Subject : Promotion and posting to the post of Assistant Director  
(Recit.), GCS Group 'B'

No. 9-84/2002-SPG. The Director General(Posts) is pleased to promote the following officials working in Circle Offices in the grade of Office Supdt. to officiate in the grade of Assistant Director(Recit.) in GCS Group 'B' in the scale of Rs. 3500-200-10500/- with effect from the Date of assumption of charge and until further orders. The place of posting is indicated against each :

S. No.	Name of the officer (S/Shri)	Circle where working at present	Circle to which posted on Promotion
1.	M.Sanaulah	J & K	J & K
2.	Harbans Singh Bhatia	Punjab	Punjab

2. The four sanctioned posts of Assistant Director(Recit.), GCS Group 'B' in the Department are hitherto to be filled up on rotation basis and will get transferred to the circle to which the promoted officer belongs as clarified in this Directorate letter No. 31-23/91-P.E.II dated 21.09.2001. The post ceases to operate on retirement of the incumbent of the post in the concerned circle.

3. **VIGILANCE/DISCIPLINARY CASE, IF ANY**

In case any vig./disc. case, of the type referred to in O.M.No.22011/4/91-Estt.(A) dated 14.09.92 from DOP&T circulated vide this office Memo. No. 25-10/88-SPG dated 13.10.92 is pending against the official, he should not be relieved for posting without obtaining specific orders from this office. In case any punishment is current against the official, he should not be promoted before expiry of currency of punishment. A report in this regard be submitted immediately.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

17 SEP 2003

Guwahati Bench  
गुवाहाटी न्यायपीठ

Attested

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Deputy Divisional Manager (P&T)  
O/O the Chief Postmaster General  
N.B. Circle, Shillong-793001

Attested  
W. Datta  
Adv

-2-

## 4. OPTION FOR FIXATION OF PAY

If the officer wishes to give option for choosing date for fixation of pay under FR-22(1)(a)(i), he should do so within one month from the date of promotion.

6. The charge reports may please be sent to this office in due course.



(R.S. Yadav)

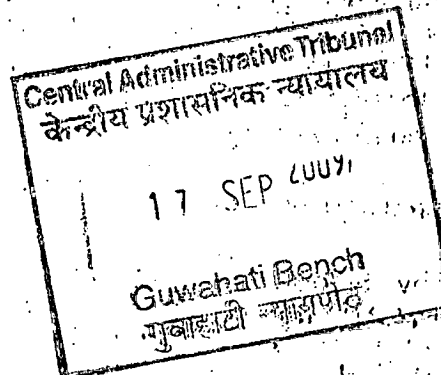
Asstt. Director General(SGP)

To

The Manager,  
Govt. of India Press,  
Faridabad - 121 001.

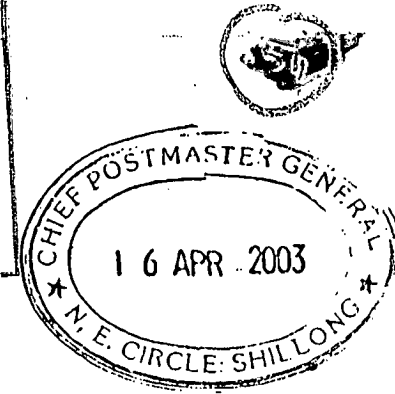
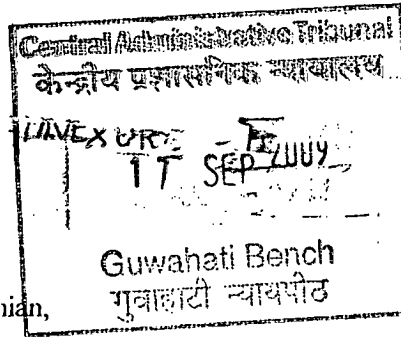
Copy to :-

1. All Chief Postmasters General;
2. Director of Accounts(Postal), Jammu/Chandigarh
3. CS to Member(P)
4. S.O. Guard file



H.N. Gupta  
(H.N. Gupta)  
Section Officer(SPG)

Lefttested  
Dutta  
Ash



To

Smti P.B. Subramanian,  
Secretary and  
Director General  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi - 110 001.  
(Through proper channel)

Sub : (1) Prayer for the grant of promotion to the cadre of Office Supdt., HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and payment of arrear pay and allowances with retrospective effect from 1-12-1995 to 21-5-2001.  
(2) Prayer for the protection of all India seniority of the Office Supdt., HSG-I with retrospective effect from 1-12-1995 and grant of promotion to the cadre of Asstt. Director (Rectt) GCS Group-B post.

Respected Madam,

Kindly permit me to submit a few lines before your honour for favour of your kind perusal, sympathetic consideration and favaourable orders.

2. That Madam, in this connection a kind reference is invited to my representations dated 7-3-2003 sent by registered A/D post under Shillong GPO RL No. B 957 dated 7-3-2003 and RL No. C 4688 dated 7-3-2003 which were received in the Postal Directorate, New Delhi on 10-3-2003.

3. That Madam, I beg to mention here that along with my representation dated 7-3-2003 sent under Shillong GPO RL No. B-957 dated 7-3-2003 an attested copy of the judgement of the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati dated 2-12-2002 passed in the OA case No. 152 of 2002 was sent to the Directorate and as per judgement dated 2-12-2002 of the Hon'ble CAT Guwahti Bench, Guwahati passed in the OA Case No. 152 of 2002, I am eligible to get the promotion to the cadre of Office Supdt., HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995.

4. That Madam, it is quite surprise to mention here that even after the lapse of one month time of bringing the above fact to the notice of the Directorate vide my representation dated 7-3-2003 neither the orders of the Hon'ble CAT Guwahati Bengh, Guwahati dated 2-12-2002 passed in the case No. OA No. 152 of 2002 was implemented nor any reply was received.

5. Now in view of the facts narrated above, I therefore once again beg to appeal to your generous generosity to be gracious enough kindly to look into the matter and in terms of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahti Bench, Guwahati passed in the OA case No. 152 of 2002, kindly pass necessary orders to the Circle Administration, Shillong to grant me the promotion to the cadre of Office Supdt., HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and to pay me the arrears pay and allowances with retrospective effect from 1-12-1995 to 21-5-2001. I also beg to appeal to your honour that in the light of the judgement as referred to above kindly pass necessary orders to grant me the promotion to the cadre of Asstt. Director (Rectt) GCS Group-B by taking into account my position to the cadre of Office Supdt., HSG-I on all India basis as serial No.1, and for this act of your kindness, I shall remain ever grateful to you.

Attested  
Mulla  
Adv

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An early action into the matter is solicited.

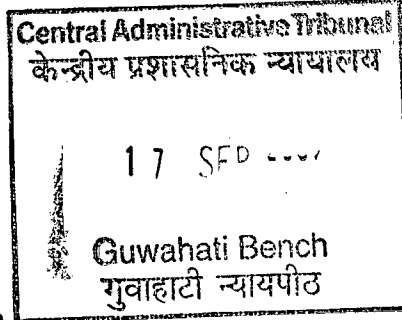
With kind regards,

Yours faithfully,

Dated at Shillong,  
The 16<sup>th</sup> April/2003

Copy in advance to :-

By registered post with A/D



*Tapan Kr. Dutta Roy*  
(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.

Smti P.B. Subramanian, Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001 for favour of kind information. Her noble-self is requested to be gracious enough, kindly to refer to my representation dated 7-3-2003 and in terms of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the OA case No. 152 of 2002, kindly to pass necessary orders to the Circle Administration, Shillong to grant me the promotion to the cadre of Office Supdt., HSG-I with retrospective effect from 1-12-1995 and to pay me the arrear pay and allowances with retrospective effect from 1-12-1995 to 21-5-2001 and also pass necessary orders to grant me the promotion to the cadre of Asstt. Director (Rectt) GCS Group-B by taking into account my position to the cadre of Office Supdt., HSG-I on all India basis at serial No.1 and for this act of your kindness, I shall remain ever grateful to you.

An early action into the matter is solicited.

With kind regards,

Yours faithfully,

Dated at Shillong,  
The 16<sup>th</sup> April/2003

*Collected  
T. Dutta  
Adw*

*Tapan Kr. Dutta Roy*  
(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.



DEPARTMENT OF POSTS: INDIA  
OFFICE OF THE CHIEF POSTMASTER GENERAL N. E. CIRCLE::  
SHILLONG-793 001.

No.Staff/158-8/2001

Dated at Shillong, the 13<sup>th</sup> June' 2003.

To,

U/R

Sri T. K. Dutta Roy,  
Office Superintendant,  
Circle Office, Shillong.

Sub:- Request for the grant of promotion to the cadre of Office Supdt. HSG-I,  
Circle Office, Shillong with retrospective effect from 1-12-95 etc. etc.

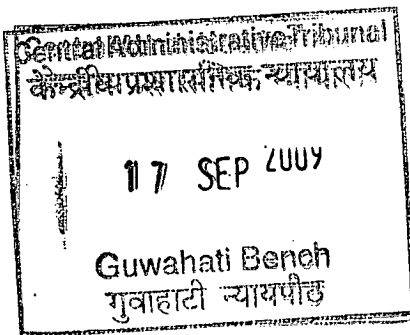
Ref:- Your application dtd.16-4-03.

Directorate's under letter No.4-14/2003-SPB-II dtd.6-6-03 intimates that  
since the matter is subjudice no decision can be taken by the Dte. at this stage.

( B. R. Halder )

Asstt. Director (Staff)  
For Chief Postmaster General,  
N. E. Circle, Shillong.

Attested  
Dutta  
Adn



~~ANNEXURE~~

To

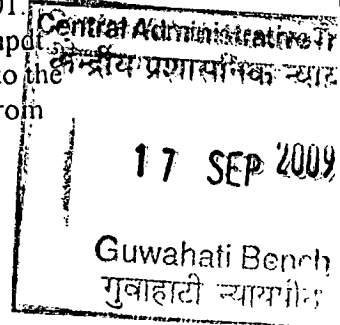
Shri Vijay Bhusan,  
Secretary and Director General  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi - 110 001.  
(Through proper channel)

Sub :

- 1) Prayer for grant of promotion to the cadre of Office Supdt., HSG-I, Circle Office, Shillong with retrospective effect from 1-12-1995 and payment of arrear pay and allowances with retrospective effect from 1-12-1995 to 21-5-2001
- 2) Prayer for the protection of all India seniority to the cadre of Office Supdt. HSG-I with retrospective effect from 1-12-1995 and grant of promotion to the grade of Asstt. Director (Rectt) GCS Group-B with retrospective effect from 03-03-2003.

Ref :

Respected Sir,



Kindly permit me to submit the following few lines before your honour for favour of your kind perusal, sympathetic consideration and favourable orders.

2) That Sir, in this connection a kind reference is invited to my representations dated 7-3-2003 and 16-4-2003 sent by registered A/D post under Shillong GPO RL No. B-957 and RL No. C-4688 dated 7-3-2003 and RL No. C-9814 dated 16-4-2003 which were received in the Postal Directorate, New Delhi on 10-3-2003 and 21-4-2003 respectively.

3) That Sir, I beg to mention here that along with my representation dated 7-3-2003, sent under Shillong GPO RL No. B-957 dated 7-3-2003, an attested copy of the judgement of the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati dated 2-12-2002 passed in the OA case No.152 of 2002 was sent to the Directorate and as per judgement dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in the OA case No.152 of 2002, I am eligible to get the promotion to the cadre of Office Supdt., HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and as per the said verdict dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in the above OA case, I am even senior to Shri M. Sanaulah, the then Office Supdt., J&K Circle and now Asstt. Director (Rectt) J&K Circle.

4) That Sir, I beg to point out here that a Writ Petition bearing No. (C) No.51 (SH)/ 2003 of the department is pending before the Hon'ble Guwahati High Court, Shillong Bench, Shillong and the matter is now very much sub judice before the Hon'ble Guwahati High Court, Shillong Bench, Shillong and hence the granting of promotion to my juniors in the grade of Asst. Director (Rectt) in GCS Group-B will be un-lawful and violation of the Court's orders as well as contempt of Court.

5) Now in view of the facts narrated above, I therefore, once again beg to appeal to your generous generosity to be gracious enough kindly to look into the matter and in terms of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati, passed in the OA Case No.152 of 2002, kindly pass necessary orders to the Circle Administration, Shillong to grant me the promotion to the cadre of Office Supdt., HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and to pay me the arrear pay and allowances with

Attested  
Writ  
Ash



retrospective effect from 1-12-1995 to 21-5-2001. I also beg to appeal to your honour that in the light of the judgement as referred to above kindly pass necessary orders to grant me the benefit of promotion to the grade of Asstt. Director (Rectt) in GCS Group-B with retrospective effect from 3-3-2003 i.e., from the date from which my junior Shri M. Sanaulah was granted promotion to the grade of Asstt. Director (Rectt) in GCS Group-B vide Notification of the Directorate dated 28-2-2003/03-03-2003 and for this act of your kindness, I shall remain ever grateful to you.

An early action into the matter is solicited.

With kind regards,

Yours faithfully,

*(Signature)*  
(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.

Dated at Shillong,  
The 21/04/2004

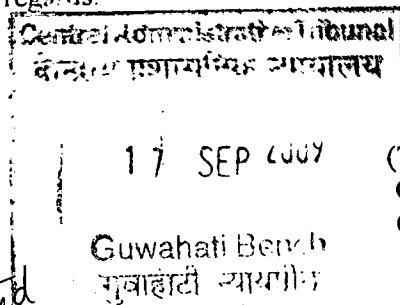
Copy in advance to :-

By register post with A/D

1) Shri Vijoy Bhusan, Secretary and Director General, Department of Posts, Dask Bhawan, Sansad Marg, New Delhi-110001 for favour of kind information. His noble-self is requested to be gracious enough, kindly to refer my representation dated 7-3-03 and 16-4-03 and in terms of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in the OA case No.152 of 2002, kindly pass necessary orders to the Circle Administration, Shillong to grant me the promotion to the cadre of Office Supdt., HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and to pay me the arrear pay and allowances with retrospective effect from 1-12-95 to 21-5-2001. His honour is also requested kindly to pass necessary orders to grant me the benefit of promotion to the grade of Asst. Director (Rectt) in GCS Group-B with retrospective effect from 3-3-2003 i.e., from the date from which my junior Shri M. Sanaulah of J&K Circle was granted promotion to the grade of Asstt. Director (Rectt) in GCS Group-B vide Directorate's notification dated 28-2-03/03-03-2003 and for this act of your kindness, I shall remain ever grateful to him. An early action into the matter is solicited. With kind regards.

2) Shri A Ghosh Dastidar, Chief Postmaster General, North Eastern Circle, Shillong for favour of kind information. His honour is requested kindly to pass necessary orders to forward this application to the Directorate at the earliest convenient time. An early action into the matter is solicited. With kind regards.

Dated at Shillong,  
The 21/04/2004



Yours faithfully,

*(Signature)*  
(Tapan Kr. Dutta Roy)  
Office Superintendent  
Circle Office, Shillong.

*Attested  
Dutta  
Adv*



ANNEXURE



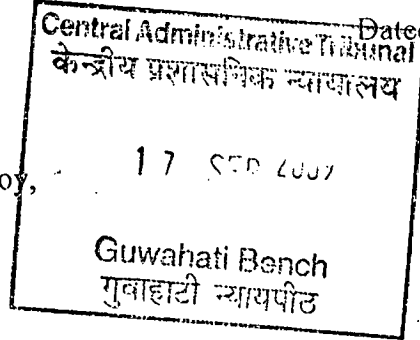
## DEPARTMENT OF POSTS: INDIA

OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE:: SHILLONG-793 001.

No.Staff/158-8/2001

To

✓ Sri T. K. Dutta Roy,  
O.S. (HSG-I),  
C.O., Shillong.

Dated at Shillong, the 11<sup>th</sup> May' 2004.

Sub:-

Reg. promotion to the cadre of OS HSG-I C.O., Shillong with retrospective effect from 1-12-95 etc etc.

Ref:-

Your representation dtd.21-4-04.

Your request for grant of promotion to the cadre of OS HSG-I in C.O., Shillong with retrospective effect from 1-12-1995 & payment of arrear pay & allowances thereof and protection of All India seniority & promotion to the grade of A. D. (Rectt) in GCS 'B' has been forwarded to Postal Directorate under this office letter of even No. dtd.26-3-2003. But the outcome of the same is not intimated by the Dte. till date. Action will be taken only after receipt of the verdict from the court of law and the same will be intimated to you in due course.

Appeal against the decision conveyed treating the period from 21-7-03 to 22-7-03 as Dies-non was rejected under this office letter of even No. dtd.7-4-04 as already intimated to you.

Appeal against the decision of stoppage of next increment for a period of six months without cumulative effect issued under this office memo of even no. dtd.6-11-2003, was disposed of by modifying to stoppage of next increment for a period of two months without cumulative effect under this office letter of even No. dtd.29-3-04 which has also been intimated to you.

Hence you may submit a fresh representation on any unsettled grievance.

Attested  
Dutta  
Adv

( B. R. Halder )  
Asstt. Director (Staff)  
For Chief Postmaster General,  
N. E. Circle, Shillong.

Applicant for the copy.	Date used for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamp and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
18-4-08	18-4-08	20-4-08	20-4-08	20-4-08

**THE GAUHATI HIGH COURT  
(HIGH COURT OF  
ASSAM: NAGALAND: MEGHALAYA: MANIPUR:  
TRIPURA: MIZORAM & ARUNACHAL PRADESH)  
SHILLONG BENCH**

WP(C) No 51 (SH) 2003

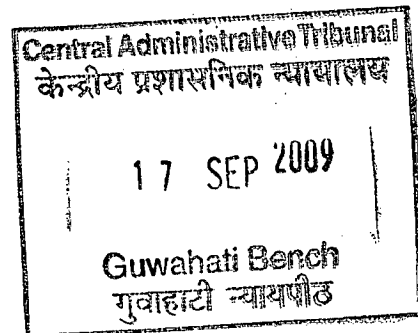
1. Union of India represented by  
the Secretary to the Govt of India  
Ministry of Communication,  
Department of Post, New Delhi.

2. The Director General  
Department of Posts, Dak Bhawan  
Sansad Marg, New Delhi.

3. The Chief Post Master General  
North Eastern Circle, Shillong.

4. The Chief Post Master General  
Assam Circle, Guwahati.

5. The Assistant Director General (SGP)  
Department of Posts, New Delhi.



: Petitioners

-Versus -

1. Shri Tapan Kumar Dutta Roy  
Office Superintendent  
O/O the Chief Post Master General  
North Eastern Circle, Shillong.

2. The Central Administrative Tribunal  
Guwahati Bench, Guwahati.

: Respondents

BEFORE

THE HON'BLE MR JUSTICE AH SAIKIA

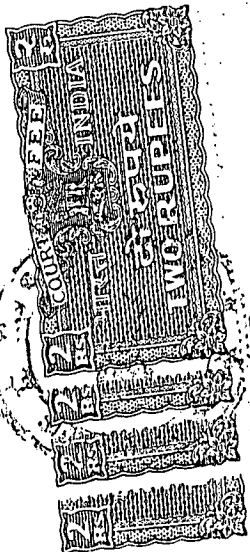
THE HON'BLE MRS JUSTICE A HAZARIKA

For the Petitioner : Mr SC Shyam, CGSC

For the Respondent : Mr JL Sarkar, Advocate  
Mr A Chanda, Advocate

Date of Hearing : 7.4.2005

Date of Judgment & Order : 7.4.2005 ( Oral)



*Attested  
Mitra  
Adv*



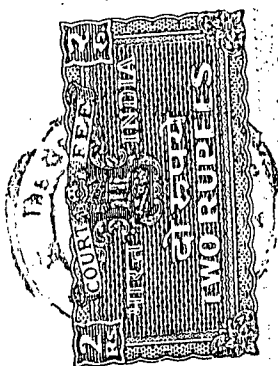
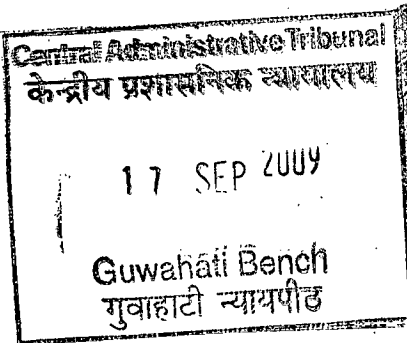
JUDGMENT & ORDER(ORAL)

AM Sainda, J :

Heard Mr SC Shyam, learned Central Government Standing Counsel (for short, CGSC). Also heard Mr JL Sarkar and Mr M Chanda, learned counsel appearing for the respondent..

2. The question as to whether the respondent is entitled to antedated promotion with effect from 1.9.95 to the post of Office Superintendent in Higher Selection Grade I (for short, HSG-I) as accepted by the learned Central Administrative Tribunal, Guwahati Bench on 2.12.2002 in Original Application (OA) No.152/2002, has been posed before us in this application under Article 226 of the Constitution of India.

3. Relevant facts in short as gathered from the pleadings exchanged by and on behalf of the parties may be recited for resolution of this point. The Respondent joined as Postal Clerk on 13.7.1965 in the Shillong Postal Division and thereafter, promoted to the post of Upper Division Clerk in the Office of the Postmaster General, NE Circle, Shillong, on 23.1.1973. He was again promoted to the post of Lower Selection Grade Clerk with effect from 1.1.1988. Again, on 26.6.93, he was promoted to HSG-II and thereafter, he got his promotion as Office Superintendent with effect from 1.9.95 and eventually he was promoted to the post of Office Superintendent HSG-I with effect from 22.5.2001.



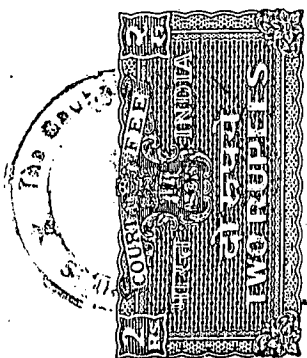
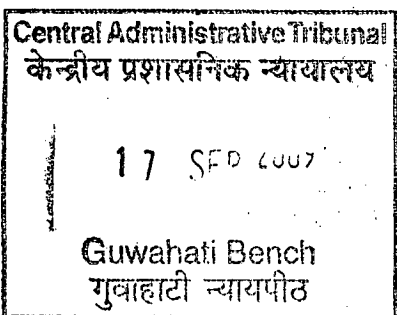


4. Though he was promoted to the post of Office Superintendent HSG-I only on 22.5.2001, he had made a grievance before the learned Central Administrative Tribunal through Original Application No.152/2002 claiming antedated promotion to the post of Office Superintendent HSG-I with effect from 1.9.1995 with further pleading to give him the consequent approval of seniority.

5. The learned Tribunal, on consideration of the submission of the learned counsel for the parties, and also taking into account the materials available on record including the circulars issued from time to time, particularly the Circular dated 6.11.95, by order dated 2.12.2002 accepted the contention of the respondent and held that the respondent was entitled <sup>to</sup> for antedating <sup>ed</sup> his promotion/upgradation to the post of Office Superintendent HSG-I on and from atleast 1.12.95, the date on which the writ petitioners were ordered to complete the exercise of upgradation. This finding was passed on the <sup>basis of Govt's</sup> communication dated 6.11.95. Hence, this writ petition preferred by the Union of

India challenging the above finding of the Tribunal.

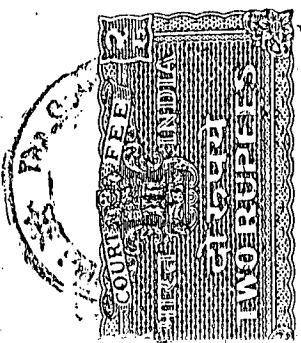
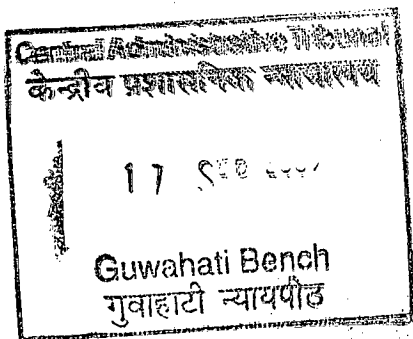
6. Mr SC Shyam, learned CGSC has assailed the impugned order only on the ground that the promotion as per direction of the learned Tribunal cannot be given to the respondent because at the relevant time there were no such post of Office Superintendent HSG-I. According to him, Annexure-A appended to Annexure-IV to the writ petition, clearly shows that



for upgradation of 208 posts from HSG-II to HSG-I grade as per Circle-wise distribution in the entire country, for North East <sup>only</sup> two posts have been allotted and those two posts have already been filled up by upgradation on 1.12.95 <sup>one</sup> at Dharmanagar Postal Division Headquarters in Tripura <sup>one</sup> and Deputy Postmaster, Shillong GPO.

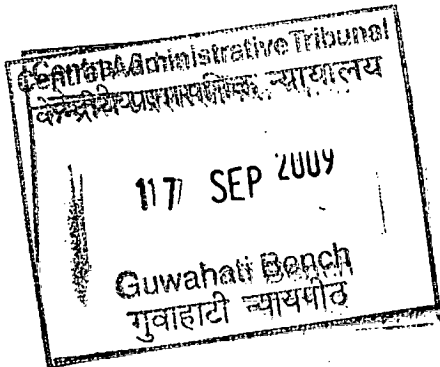
7. Countering such submission advanced on behalf of the petitioners, Mr Sarkar, learned counsel for the respondent has strenuously argued, that it is not correct that there was no vacancy at the relevant time for upgradation of the respondent from Office Superintendent HSG-II to Office Superintendent HSG-I. According to him, on the relevant date i.e. 6.11.95 when the circular was issued, the respondent was holding the post of Office Superintendent HSG-II at Shillong Circle Office, Shillong, with effect from 1.9.95 vide order dated 7.9.95. A copy of the order dated 7.9.95 has been produced before this Court and the same be kept to form part of the record.

8. So far the submission <sup>as regards</sup> of filling up those two posts, <sup>each</sup> one at Dharmanagar and <sup>one</sup> Shillong, as advanced by the learned CGSC, Mr Sarkar has categorically refuted the same claiming that this was an after-thought <sup>of the authority</sup> only to deprive the respondent from such upgradation. He has emphasized that the same submission has also been recorded by the Tribunal in the judgment itself and that contention has already been taken care by the learned Tribunal while deciding





the case in favour of the respondent. According to him, in any view, there is no illegality or irregularity committed by the learned Tribunal in directing the authority to give the respondent antedated promotion/upgradation to the post of Office Superintendent HSG-I with effect from 1.12.95 within which period the authorities were directed to complete the entire exercise of upgradation.



9. We have heard the learned counsel of the contesting parties at length and also meticulously examined the materials available on record including the impugned judgment and order. It appears, that by Circular/Communication dated 6.11.95 the Government proposes to upgrade 208 posts of Office Superintendent HSG-II to Office Superintendent HSG-I grade throughout the country. For the sake of convenience, the said Circular may be quoted as under :-

"No.22-1/89-PE.I(Vol.II)  
Government of India  
Ministry of Communications  
Department of Post.

Oak Bhawan  
Sansad Marg  
New Delhi-110 001

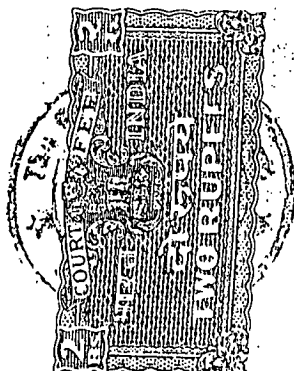
Dated 06/11/95

To

All Heads of Postal Circles.

Subject: Upgradation of 208 posts of HSG-II to HSG-I Grade.

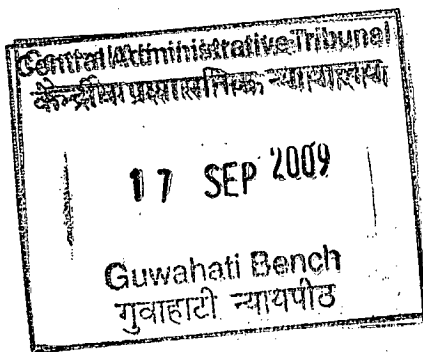
The President is pleased to accord sanction for creation of 208 posts i.e. 3% of total BCR HSG-II pos in the HSG-I grade in the scale of Rs.2000-3200/- by suitably upgrading the existing HSG-II posts in the scale of Rs 1600-2660/-with immediate effect as per the details at Annex 'A'.





2. Heads of Circles are requested to identify the number of HSG-II posts indicated against their Circle in Annex 'A' and upgrade them to HSG-I under intimation to this office. The identification of HSG-II posts may be done on the basis of following guidelines :

- i) Those HSG-II posts where an HSG-I post is justified on the basis of norms, but the same could not be created due to ban on creation of posts.
- ii) Posts of HSG-II Head Postmasters at District Headquarters where no HSG-I post exists at present. The Chief Postmaster General should identify the District based on its importance workload in the Region.
- iii) Other HSG-II posts which are considered operationally important by Heads of Circles.



3. The work of identification of posts, holding of DPC and placement of the officials against the posts should be completed by 01.12.1995 positively. Thereafter a report to this effect be furnished to the Directorate.

4. The mode of recruitment for the upgraded post will be by method of selection as prescribed in Recruitment Rules for the HSG-I posts.

5. The expenditure involved in debitable to the Head "3201-Postal Services A-2(1) Circle Offices-1-Salaries" and should be met from the sanctioned grant of the respective year.

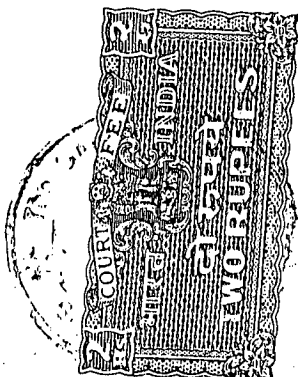
6. This issues with the concurrence of Ministry of Finance vide their ID No.2(5)/EIII/94 dated 02.9.1994 and in consultation with the Internal Finance Advice Branch vide their ID No.3063/FAD/95 dated 2/11/95.

7. Hindi version will follow.

Sd/-  
(Alok Saxena)  
Asstt. Dir. General (Estt.)"

The guidelines have been <sup>provided</sup> ~~underlined~~ for such upgradation in <sup>clause</sup> paragraph 2 as already noticed above. As per this guideline, this <sup>clause of the</sup>

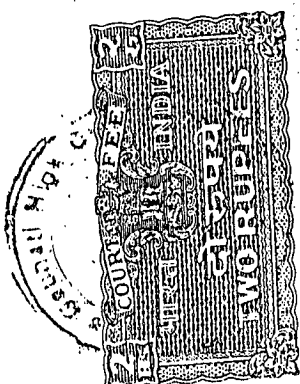
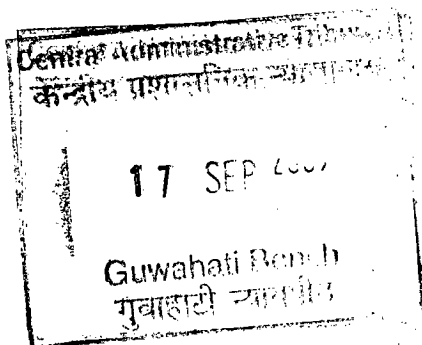
Court is of the view that the respondent is entitled to get his upgradation, <sup>More so as</sup> ~~particularly~~ <sup>in clause (2)</sup> Clause (1) of the guidelines speaks that one post of Office Superintendent HSG-I is justified on the basis





of norms which could not be created due to the ban on such posts. <sup>of argument of</sup> ~~Spot~~ Thrust has been given by Mr Sarkar <sup>basins</sup> on this clause stating that, at the relevant time i.e. on 6.11.95 when the respondent was eligible for such upgradation and such upgradation to the post was justified on the basis of such norms, ~~those~~ cannot be done due to the ban prevailing at that particular period. Had there been no ban during this relevant period, the respondent ought to have been promoted or upgraded <sup>very</sup> to the said post in terms of Circular dated 6.11.95. In the instant case, it appears that the authority did not consider the case of the respondent for such upgradation during the entire period till 2001. Records do not reveal any such justification to show why the case of the respondent was not considered when there were two posts which were ear-marked for North East Region. On pointed query from this Court, Mr SC Shyam, learned CGSC could not produce any relevant documents to substantiate the contention that those two posts were since filled up on 1.12.95 at Dharmanagar as well as at Shillong.

10. The provisional seniority list of Office Superintendent HSG-I/Office Superintendent HSG-II for consideration of the post of Assistant Director (Recruitment) GCS Group 'B' as on 1.1.2001 annexed as Annexure-II to the writ petition would abundantly show that the respondent was placed at serial No.18 being an incumbent from North East showing him as Deputy Office Superintendent where in fact he





was appointed as Office Superintendent HSG-II with effect from 1.9.95 on regular basis. Bearing in mind this provisional seniority list, we can unhesitatingly say that on the of issuance of Circular dated 6.11.95, the respondent's case ought to have been considered for upgradation to the post of Office Superintendent HSG-I but the same was not done in the instant case for the reason best known to the authorities. At this stage, it is stated at the Bar by learned counsel for the parties, that by this time the respondent had already retired by 31.3.2005 as evident from the provisional seniority list mentioned above wherein his date of birth was shown as 6.3.1945 and, as such, the respondent may be given only upgradation for getting the retiral benefit.

11. In view of what has been observed and indicated, *on consideration of the standing facts and circumstances* this Court is of the view that the impugned order does not suffer from any error *either of fact or law* and accordingly, we are disinclined to upset the same.

12. In the result, this writ petition fails and stands dismissed.

*Sd/- A. H. Bakshi*  
*Judge*

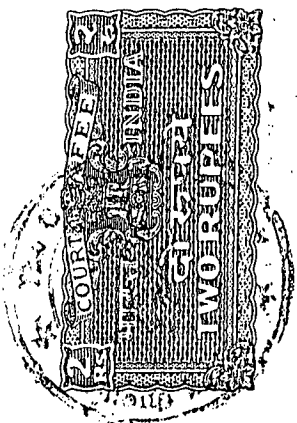
*Sd/- A. H. Bakshi*  
*Judge*

*Collected  
Dutta  
Adv*

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Read By.....  
Authenticated By.....

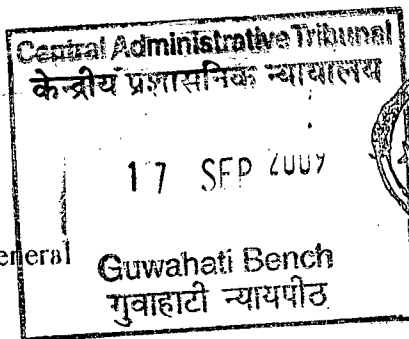
Carried To Be True Copy  
*[Signature]*  
Superintendent (Judicial)  
Gauhati High Court  
Silchar Bench.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय  
17 SEP 2009  
Guwahati Bench  
गुवाहाटी न्यायापीठ



To

The Chief Postmaster General  
North Eastern Circle,  
Shillong - 793 001.  
(Staff Section)



Sub:

- 1) Prayer for the grant of promotion to the cadre of Office Supdt. HSG-I Circle Office, Shillong with retrospective effect from 1-12-1995 and payment of arrear pay and allowances of Office Supdt. HSG-I with retrospective effect from 1-12-1995 to 21-5-2001 and
- 2) Revision of Pension, Gratuity, Commuted value of pension and leave encashment etc.

Ref:

C.O., letter No. Staff/158-8/2001 dated 11-5-2004.

Respected Sir,

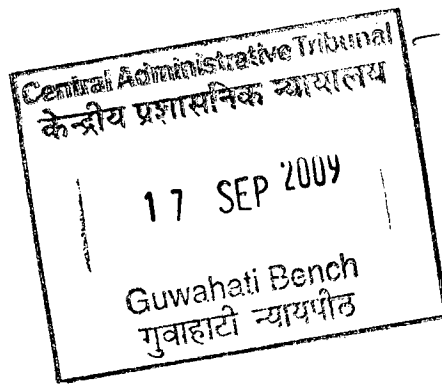
A kind reference is invited to my representation dated 21-4-04 on the above subjects.

2) That Sir, in this connection, I am sending here a xerox copy of the certified copy of the judgement of the Hon'ble Gauhati High Court, Shillong Bench (Division Bench) Shillong dated 7-4-2005 passed in the Writ Petition No. WP (C) No.51 (SH) 2003 wherein the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the OA Case No.152 of 2002 was upheld and the Writ Petition bearing No. WP (C) No.51 (SH) 2003 was dismissed. Further the Hon'ble Gauhati High Court Shillong Bench (Division Bench) Shillong vide orders dated 7-4-2005 passed in the above writ petition also passed orders to grant the retiral benefit.

3) That Sir, in this respect, I beg to draw your kind attention to my representation dated 29-1-2003 addressed to Sri P.K. Chatterjee, the then Chief Postmaster General, North Eastern Circle, Shillong and along with the said letter dated 29-1-2003, a xerox copy of the certified copy of the judgement of the Hon'ble CAT Guwahati Bench Guwahati dated 2-12-2002 passed in the case No.OA No. 152 of 2002 was submitted to the Circle Office, Shillong.

4) Now in view of the facts narrated above, I therefore fervently beg to appeal to your generous generosity to be gracious enough kindly to look into the matter personally and in terms of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in the OA case No.152 of 2002, kindly pass necessary orders to grant me the promotion to the cadre of Office Supdt. HSG-I, Circle Office, Shillong with retrospective effect from 1-12-1995 and to pay me the arrear pay and allowances of Office Supdt. HSG-I with the retrospective effect from 1-12-1995 to 21-5-2001.

*Attached  
1/2/05  
ADW*



5) That Sir, further I beg to appeal to your honour that in terms of the judgement dated 7-4-2005 of the Hon'ble Gauhati High Court, Shillong Bench (Division Bench) Shillong passed in the Writ Petition No. WP (C) No. 51(SH) 2003, kindly pass necessary orders to grant me the retiral benefits as mentioned at subject (2) above and to pay me the differences of pension, DGR Gratuity, commuted value of pension and leave encashment etc., at the earliest convenient time and for this act of your kindness, I shall remain ever grateful to you.

An early action into the matter is solicited.

With kind regards,

Yours faithfully,

  
(Tapan Kr. Dutta Roy)

Retd. Office Superintendent  
"MADHURIMA"  
Arbuthnot Road  
P.O. Assam Rifles,  
Shillong - 793 011.

DA - As said above  
Dated at Shillong  
The 2<sup>nd</sup> May/2005

*[Faint handwritten text and stamps]*



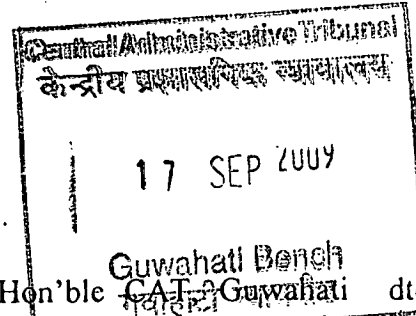
DEPARTMENT OF POSTS:  
OFFICE OF THE CHIEF POSTMASTER GENERAL:  
NORTH EAST CIRCLE: SHILLONG- 793 001.

**Under Entry**

No. Vig-5/4/2002(CAT/WP) Pt-II, Dtd at Shillong-1, the 28<sup>th</sup> November, 2005.

To

- 1) The Asstt. Director (Staff), O/O the CPMG,  
N.E. Circle, Shillong - 793 001.
- 2) The Accounts Officer (A&P Section)  
O/O the CPMG, N.E. Circle, Shillong-793 001.



Subject: Implementation of the judgment of Hon'ble CAT, Guwahati dtd. 02.12.02 on O.A. No 152/2002 filed by Sri Tapan Kumar Dutta Roy and upheld by Hon'ble Guwahati High Court, Shillong Bench vide Order dtd.07.4.05 in W.P.(C) No.51(SH)2003 filed by U.O.I.

Reference: Postal Directorate New Delhi, D.O. letter No.4-14/2003-SPB.II dtd. 25.11.05.

1. On the captioned subject, I am directed to say that the Department has decided to implement the order of the Hon'ble CAT, Guwahati, dtd.02.12.02, <sup>read with</sup> followed by the order of the Hon'ble Guwahati High Court, Shillong Bench, dtd. 07.4.2005, immediately.
2. A copy the order of the Hon'ble CAT, Guwahati dtd. 02.12.02 and that of the order of the Hon'ble Guwahati High Court dtd. 07.4.05, are enclosed.
3. Date of implementation of the orders may kindly be intimated.

Enclo.: as stated.

*[Signature]*  
Asstt. Postmaster General (Vig.)

Copy to:

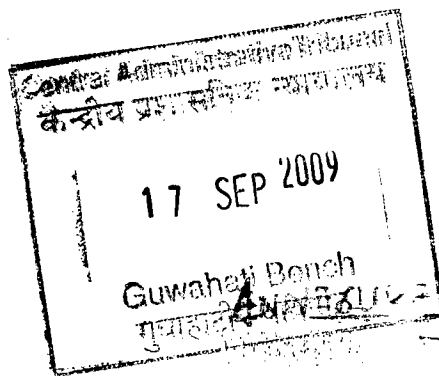
Registered. 1. Sri Tapan Kumar Dutta Roy, Retired Office Supdt. Now at "Madhurima" Arbuthnot Road, Shillong-11, for information.

Under Entry. 2. Sri R.S Yadav, Director (SPN) Dak Bhawan, New Delhi-01, with reference to D.O. letter No. 4-14/2003-SPB.II dtd. 25.11.2005.

Under receipt. 3. Sri Subhash Ch. Shyam, CGSC. Guwahati High Court, Shillong Bench, for information and necessary action, with reference to this office letter of even No. dtd. 16.11.2005 regarding CP No. 35(SH)05 filed by Sri T.K. Dutta Roy.

*[Handwritten signature: Attested Dutta Adv]*

*[Signature]*  
for Chief Postmaster General



ANNEXURE - XVI

23

## Department of Posts: India

Office of the Chief Postmaster General, North East Circle, Shillong-793001

Under Entry

Memo no: Staff/158-8/2001 (L)

Dated at Shillong the 7<sup>th</sup> December, 2005

13

In pursuance of Postal Directorate D.O. No. 4-14/2003-SPB II dated 25/11/2005 in compliance of Learned Guwahati High Court, Shillong Bench judgment order dated 07/04/2005 in case No. WP (C) No. 51 (SH) 2003 upholding the Hon'able CAT/ Guwahati Bench Judgment order dated 02/12/2002 in OA. No. 152 of 2002 filed by Shri Tapan Kumar Dutta Roy, Office Superintendent, Circle Office, Shillong (retired on superannuation on 31/03/2005 A/N), the Chief Postmaster General, North East Circle, Shillong has been pleased to issue the orders as follows:-

### Order

The order of Promotion of Shri Tapan Kumar Dutta Roy, Office Superintendent, Circle Office, Shillong (Retired on superannuation on 31/03/2005 A/N) to the grade of HSG-I issued vide this office memo no. Staff/9-4/OS (CO)/2001 dated 22/05/2001 will be effective from 01/12/1995 as directed by the above mentioned Learned Court.

(Lalhluna)

Chief Postmaster General,  
North East Circle, Shillong-793001

Copy to:-

1. Shri Tapan Kumar Dutta Roy, Retired Office Supdt., "MADHURIMA" Arbuthnot Road, Shillong-793011.
2. The Accounts Officer (Accounts), Circle Office, Shillong for immediate necessary action.
3. Pension Share, Circle Office, Shillong for necessary action.
4. The JAO (BGT), Circle Office, Shillong for necessary action.
5. The DA (P), Shillong-793001 for necessary action.
6. Shri R.S. Yadav, Director (SPN), Postal Directorate, Dak Bhawan, Sansad Marg, New Delhi-110001 w.r. to his D.O. No. 4-14/2003-SPB.II dated 25/11/2005.
7. The APMG (Vig & Est), Circle Office, Shillong.
8. Spare.

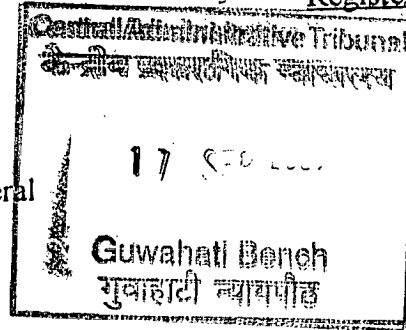
For Chief PMG, N.E.Circle,  
Shillong 793001



Registered A/D

To

Sri U.S. Raghavan,  
Secretary and Director General  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi - 110 001.



Subject: Grant of promotion to the cadre of Asstt. Director (Rectt) GCS Group-B with retrospective effect from 3-3-2003 for retiral benefits and payment of arrear pay and allowances of Asstt. Director (Rectt) with retrospective effect from 3-3-2003 to 31-3-2005.

Respected Sir,

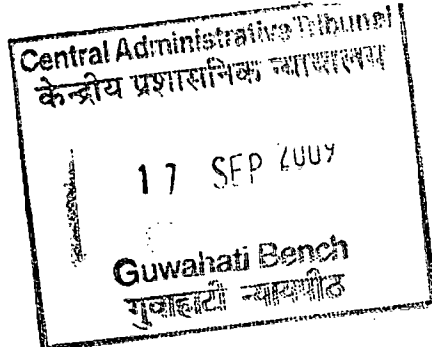
1) Kindly permit me to submit a few lines before your honour for favour of your kind perusal, sympathetic consideration and favourable orders.

2) That Sir, in this connection, I beg to draw your kind attention to my representations dated 7-3-2003 addressed to Smt. P.B. Subramanian, the then Secretary and Director-General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi, sent under Shillong GPO RL No.957 dated 7-3-2003 and RL No.4688 dated 7-3-2003, under which a xerox copy of my representation dated 29-1-2003, addressed to Sri P.K. Chatterjee, the then Chief Postmaster General, North Eastern Circle, Shillong together with a xerox copy of the certified copy of the judgement of the Hon'ble CAT Guwahati Bench, Guwahati dated 2-12-2002 passed in the case No. OA No.152 of 2002 were sent to the Directorate, but no reply was received.

3) That Sir, further in this respect, a kind reference is invited to my representation dated 16-4-03 addressed to Smt. P.B. Subramanian, the then Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi, sent under Shillong GPO RL No. C 9814 dated 16-4-2003 followed by subsequent representation dated 21-4-2004 addressed to Sri Vijoy Bhusan, the then Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi, sent under Shillong GPO RL No. B 2796 dated 21-4-04 on the above subject, but no reply was received.

4) That Sir, I beg to mention here that as per judgement of the Hon'ble Guwahati High Court, Shillong Bench (Division Bench) Shillong dated 7-4-05 passed in the Writ Petition bearing No. WP (C) No.51 (SH) 2003 wherein the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the OA case No.152 of 2002 was upheld and the Writ Petition bearing No. WP (C) No.51 (SH) 2003 filed by the department was dismissed.

Attached  
Dutta  
A/W



-62-

85

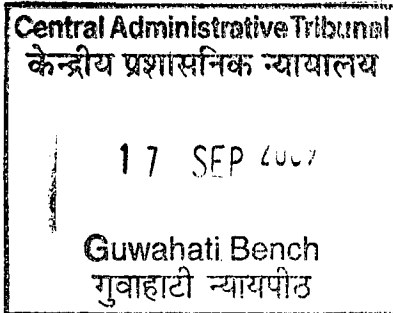


5) That Sir, I would like to mention here that in compliance of the judgement order dated 7-4-05 of the Hon'ble Guwahati High Court, Shillong Bench passed in case No. WP (C) No. 51(SH) 2003, upholding the judgement order dated 2-12-2002 of the Hon'ble CAT, Guwahati Bench, Guwahati passed in OA No.152 of 2002, as per Circle Office, Shillong memo No. Staff/158-8/2001 (L) dated 7<sup>th</sup>/13<sup>th</sup> December 2005, I have been granted promotion to the cadre of Office Supdt. Circle Offices, Shillong to the grade of HSG-I with retrospective effect from 01-12-1995, by protecting my All India seniority to the cadre of Office Supdt. HSG-I with retrospective effect from 01-12-1995 and thereby as per seniority list, I was even senior to Sri M. Sanaulah, the then Office Supdt. J&K Circle and now Asstt. Director (Rectt) J&K Circle.

6) That Sir, I beg to point-out here that consequent on the retirement of Sri B.R. Meena, the then Asstt. Director (Rectt) Rajasthan Circle, Jaipur on 31-7-02 and Smt A. Vasugi, the then Asstt. Director (Rectt) Karnataka Circle, Bangalore on 31-10-02, two posts of Asstt. Director (Rectt) had fallen vacant on 01-8-2002 and 1-11-2002 respectively, and as per verdict dated 02-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the OA No.152 of 2002, I was eligible to get the promotion of Asstt. Director (Rectt) in the above two retirement vacancies of the Asstt. Director (Rectt) that had fallen vacant during the year 2002 and despite of submission of the xerox copy of the certified copy of the judgement dated 02-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the OA No.152 of 2002, both to the Circle Office, Shillong, as well as to the Postal Directorate vide my representations dated 29-1-2003 and 07-3-2003, the verdict of the Hon'ble CAT, Guwahati Bench, Guwahati dated 02-12-2002 passed in the above OA case was again and again completely ignored and I have been deprived of my legitimate promotion of Asstt. Director (Rectt).

7) That Sir, I beg to mention here that as per Circle Office, Shillong memo No. Staff/158-8/2001 (L) dated 7<sup>th</sup>/13<sup>th</sup> December 2005, since I have been granted promotion to the cadre of the Office Supdt. Circle Office, Shillong, to the grade of HSG-I with retrospective effect from 01-12-1995, by protecting my All India seniority to the cadre of Office Supdt. HSG-I with retrospective effect from 01-12-1995 as mentioned at para-5 above, as such, I was eligible to get the promotion to the grade of Asstt. Director (Rectt) with retrospective effect from 03-03-2003.

8) Now, in view of the facts narrated above, I therefore fervently beg to appeal to your generous-generosity to be gracious enough kindly to look into the matter personally and in terms of the judgement dated 02-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati, passed in the case No. OA No.152 of 2002 as well as in terms of the judgement dated 07-4-2005 of the Hon'ble Guwahati High Court, Shillong Bench Shillong passed in the case No. WP (C) No.51 (SH) 2003 and in terms of the orders issued under Circle Office, Shillong memo No. Staff/158-8/2001 (L) dated 7<sup>th</sup>/13<sup>th</sup> December 2005, kindly pass necessary orders to grant me the promotion in the grade of Asstt. Director (Rectt) with retrospective effect from 03-03-2003 i.e. from the date from which my junior Sri M. Sanaulah of J&K Circle was granted the promotion to the grade of Asstt. Director (Rectt) vide Directorate's Notification dated 28-02-2003 / 03-03-2003 for retiral benefits and also to pay me the arrear pay and allowances of the Asstt. Director



(Rectt) with retrospective effect from 03-03-2003 to 31-3-2005 and for this act of your kindness, I shall remain ever grateful to you.

An early action into the matter is solicited.

With kind regards,

Yours faithfully,

(Tapan Kumar Dutta Roy)  
Retired Office Superintendent  
Circle Office, Shillong.  
C/O "MADHURIMA"  
Arbuthnot Road, P.O. Assam Rifles  
Shillong - 793 011.

Dated at Shillong  
The 12 th April/2006

Under receipt

Copy to :-

Shri S.K. Das, Chief Postmaster General, North Eastern Circle, Shillong  
for favour of kind information and necessary action. With kind regards.

Yours faithfully,

(Tapan Kumar Dutta Roy)  
Retired Office Superintendent  
Circle Office, Shillong.  
C/O "MADHURIMA"  
Arbuthnot Road, P.O. Assam Rifles  
Shillong - 793 011.

Dated at Shillong  
The 12 th April/2006

Attested  
Dutta  
Adv



- 64 -

ANNEXURE-XVIII

22

ANNEXURE



Copy	Date fixed for notifying the requisite number of stamps and folios	Date of delivery of the requisite stamp and folios	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.
3	5-5-09	6-5-09	6-5-09	6-8-09

THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:  
TRIPURA:MIZORAM & ARUNACHAL PRADESH)

SHILLONG BENCH

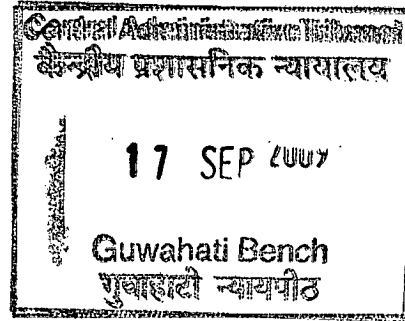
REVIEW PETITION NO.5(SH)2008

Shri Tapan Kr Dutta Roy  
Office Superintendent  
Office of Chief Post Master General  
North Eastern Circle, Shillong.

Review  
Petitioner

- Versus -

1. Union of India, represented by  
The Secretary, Govt. of India  
Ministry of Communication  
Deptt. Of Posts, New Delhi.
2. Director General  
Department of Posts, Dak Bhavan  
Samsad Marg, New Delhi.
3. The Chief Post Master General  
Eastern Circle, Shillong.
4. The Chief Post Master General  
Assam Circle, Guwahati.
5. Assistant Director General (SGP)  
Deptt. Of Posts, New Delhi.
6. The Central Administrative Tribunal  
Guwahati Bench, Guwahati.

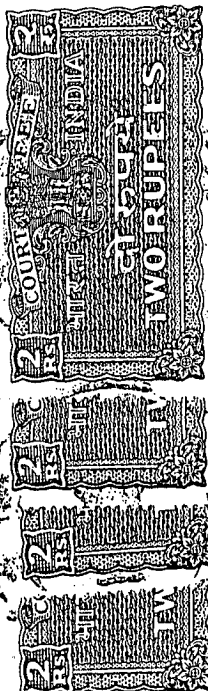


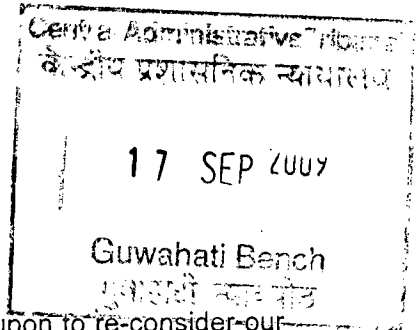
Respondents

BEFORE  
THE HON'BLE MR JUSTICE T VAIPHEI  
THE HON'BLE MRS JUSTICE ANIMA HAZARIKA

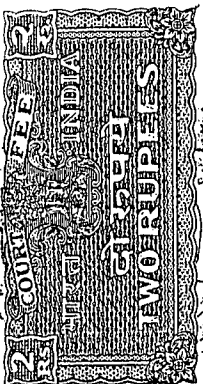
For the Review Petitioner : Mr R Choudhury, Advocate  
For the Respondents : Mr SC Shyam, CGC  
Date of Hearing : 12.3.2009  
Date of Judgment : 22-4-2009

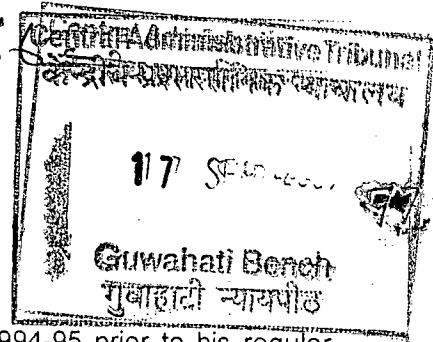
*Attested  
Dutta  
Adh*



JUDGMENT AND ORDERT.VAIPHEI, J :

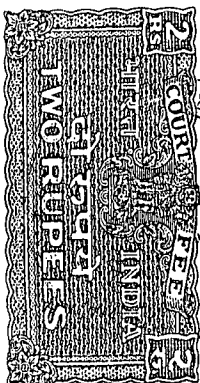
In this review application, we are called upon to re-consider our judgment and order dated 7-4-2005 rendered in connection with W.P.(C) No. 51(SH) of 2003. The material facts giving rise to this application may be noticed at the very outset. The petitioner had filed an application under Section 19 of the Administrative Tribunals Act before the Central Administrative Tribunal, Guwahati Bench being Original Application No. 152 of 2002 seeking for a direction for antedating the date of his promotion as Office Superintending Higher Selection Grade-I ("OS HSG-I" for short) and consequential improvement in his seniority. His case is that he joined as Postal Clerk on 13-7-1965 in the Shillong Postal Division, was promoted to the post of Upper Division Clerk in the Office of the Post Master General, N.E. Circle, Shillong on 23-1-1973 and was further promoted to Lower Selection Grade Clerk with effect from 1-1-1988. Subsequently, he was given the benefit of Biennial Cadre Review promotion to Higher Selection Grade-II ("HSG-II") with effect from 26-6-1993. Following the retirement of the incumbent holding the post of Office Superintendent, Circle Office, Shillong on 31-8-1995, he was promoted as Office Superintendent, Shillong Circle in the scale of pay of Rs.1,600-2,660/-, which was the pay scale of HSG-II and which was drawn by him in the earlier post, with effect from 1-9-1995. Thereafter, he was promoted to the post of OS HSG-I in the pay scale of Rs.6,500-10,500/- from the post of OS HSG-II vide Memo dated 22-5-2001: it was also conveyed therein that the post of OS HSG-II, Circle Office, Shillong was to be treated as upgraded to HSG-I from the date of his joining the post, which was in pursuance of the communications dated 30-3-2001 and dated 19-4-2001. It is also the case of the petitioner that he had already officiated in





the higher post on three different occasions in 1994-95 prior to his regular promotion.

2. According to the petitioner, as per the policy of the Government of India, the President of India accorded sanction for creation of 208 posts of HSG-I by upgrading the posts of HSG-II, and as per the Staff Inspection Unit norms, there was justification for one post of Office Superintendent in N.E. Circle in the rank of HSG-I, but the respondent authorities in a most illegal fashion did not act as per the policy decision and delayed his up-gradation without any justifiable ground. The petitioner also assailed the provisional seniority list communicated vide Memo dated 25-9-2001 wherein his name was shown at the bottom of the list at serial No. 18 by showing him as Deputy Office Superintendent. By this communication addressed to the Chief Post Master General, NE Circle, Shillong, the Assistant Director General (SGP) intimated about the DPC meeting to be held for promotion to the grade of Assistant Director (Recct.), GCS Group 'B' in the Department of Posts reserved for Office Superintendent working in the Circle Office. A list of officials who were likely to find place in the eligibility zone as enclosed in that communication is as per their seniority. The concerned officer was advised to forward the up-to-date CR dossiers along with vigilance clearance of the officials belonging to the Circle by a specified date. The application was filed by the petitioner seeking a direction to antedate his promotion to the post of HSG-I with effect from 1-9-1995 and to give consequential benefits including his seniority. The application was contested by the respondent authorities.

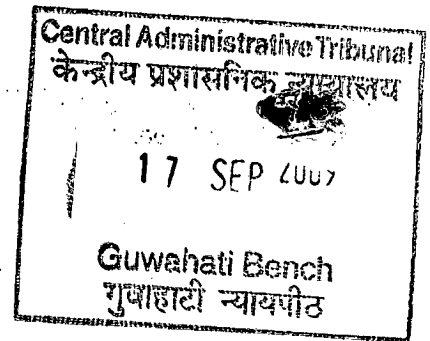


3. On the basis of the material on record, the Tribunal found that the petitioner was ordered to be promoted to OS HSG-I cadre in terms of the order dated 22-5-2001, which itself showed that the post of OS HSG-II was to be treated as upgraded to HSG-I from the date of joining the post by the

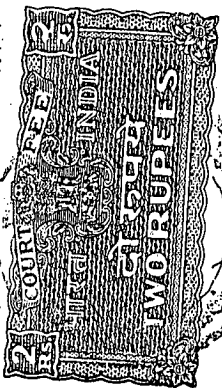
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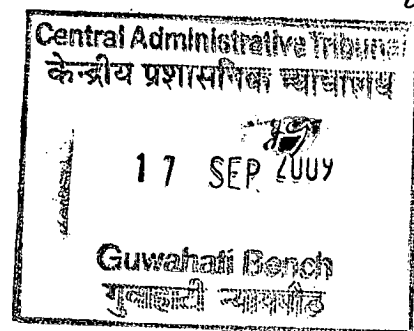
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petitioner; that the Post Master General, NE Circle had accorded the creation of temporary post of Head Assistant (General) in the Circle Office, Shillong in the pay scale of Rs.550-750/-, and following the creation of the post of Head Assistant (General), the Post Master General had also ordered the up-gradation of the post of Office Superintendent, Circle Office, Shillong to HSG-I in the pay scale of Rs.700-900 with immediate effect whereupon the post of Office Superintendent with the pay scale of Rs.500-750/- stood abolished; that by the communication dated 29-3-1985, the Office of the Post Master General communicated the order of approval of the Post Master General for making the posts of Office Superintendent, Circle Office, Shillong and Head Assistant, Shillong permanent and that in the gradation list of the officials of the Office of the Post Master General, NE Circle, which was corrected up to 1-7-1986, the post of Office Superintendent with the pay scale of Rs.700-900 was shown vacant. On making comparative reading of the communication dated 6-11-1995 issued by the Government of India, Ministry of Communication, Department of Posts, the communication dated 30-3-2001 issued by the same Ministry addressed to all Heads of the Postal Circles and the written instructions received by the learned counsel for the respondent authorities, the Tribunal recorded the findings that the written instructions went counter to the policy enunciated in Memo dated 19-5-1981 and Memo dated 29-3-1985 and that the petitioner was eligible for up-gradation to the post of HSG-I in terms of the communication dated 6-11-1995, which also indicated the existence of vacancies and that except for three places mentioned therein, the concerned officials were given up-gradation to the higher scales in all other Circles. According to the Tribunal, the respondent authorities did not assign any reason for not considering the petitioner for his up-gradation to the higher scale, which is violative of his constitutional right guaranteed under Articles 14 and 16 of the Constitution of India, and when he was found fit for promotion on up-gradation by the competent authority in





May, 2001, he ought to have been promoted with effect from 1995 in terms of the communication dated 6-11-1995, which exercise, as per the departmental communication, was to be completed by 1-12-1995. On the basis of the aforesaid findings, the Tribunal allowed the application and directed the respondent authorities to antedate the promotion/up-gradation of the petitioner to the post of Office Superintendent HSG-I, at least, with effect from 1.12.1995, which is the date on which the respondents were ordered to complete the exercise of such up-gradation. Aggrieved by this judgment and order, the respondent authorities filed a writ petition being W.P.(C) No. 51(SH) of 2003 before this Court. This Court did not find merit in the writ petition and dismissed the same. However, while dismissing the writ petition, this Court made the following observations at paragraphs 10, 11 and 12, which prompted the petitioner to file this review petition:

**"10. The provisional seniority list of Office Superintendent HSG-I/Office Superintendent HSG-II for consideration of the post of Assistant Director (Recruitment) GCS Group 'B' as on 1-1-2001 annexed as Annexure-II to the writ petition would abundantly show that the respondent was placed at serial No. 18 being an incumbent from North East showing him as Deputy Office Superintendent where in fact he was appointed as Office Superintendent HSG-II with effect from 1-9-95 on regular basis. Bearing in mind this provisional seniority list, we can unhesitatingly say that on the issuance of Circular dated 6-11-95, the respondent's case ought to have been considered for up-gradation to the post of Office Superintendent HSG-I but the same was not done in the instant case for the reason best known to the authorities. At this stage, it is stated at the Bar by learned counsel for the parties, that by this time the respondent had already retired by 31-3-2005 as evident from the provisional seniority list mentioned above wherein his date of birth was shown as 6-3-1945 and, as such, the respondent may be given only up-gradation for getting the retrial benefit.**

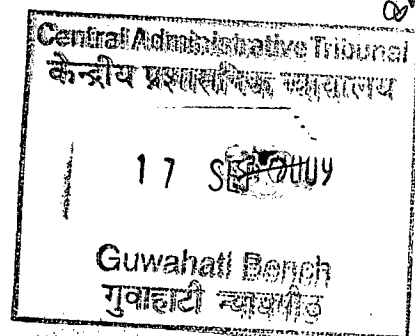
**11. In view of what has been observed and indicated, this Court is of the view that on consideration of the attending facts and circumstances of the case, the impugned order does not suffer from any error on law, and accordingly, we are disinclined to upset the same.**

**12. In the result, this writ petition fails and stands dismissed."**



- 69 -

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4. The respondent authorities, purportedly in compliance with the aforesaid order of this Court, issued the following order :

"  
**Department of Posts: India**  
**Office of the Chief Postmaster General, North East Circle,**  
**Shillong.**  
**Memo No: Staff/158-8/2001(L)**  
**7<sup>th</sup> December, 2005.**

**Dated at Shillong, the**

**In pursuance of Postal Directorate D.O. No. 4-14/2003-SPB II dated 25-11-2005 in compliance of Learned Guwahati High Court, Shillong Bench judgment order dated 07-04-2005 in case No. WP© No. 51(SH) 2003 upholding the Hon'ble CAT/Guwahati Bench Judgment order dated 02-12-2003 in OA No. 152 of 2002 filed by Shri Tapan Kumar Dutta Roy, Office Superintendent, Circle Officer, Shillong (retired on superannuation on 31-03-2005 A/N), the Chief Postmaster General, North East Circle, Shillong has been pleased to issue the order as follows:-**

**Order**

**The order of promotion of Shri Tapan Kumar Dutta Roy, Office Superintendent, Circle Office, Shillong (retired on superannuation on 31-03-2005 A/N) to the grade of HSG-I issued vide this office memo no. Staff/9-4/OS(CO)/2001 dated 22-05-2001 will be effective from 01-12-1995 as directed by the above mentioned Learned Court.**

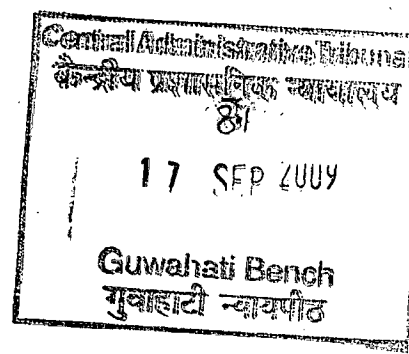
**Sd/- (Lalhluna)**  
**Chief Postmaster General,**  
**North East Circle, Shillong-793001."**

5. We have minutely gone through the judgment and order passed by the Tribunal and the pleadings of the petitioner before the Tribunal in juxtaposition, and are of the view that the Tribunal undoubtedly allowed the application of the petitioner and held that he was entitled for antedating his promotion/up-gradation to the post of Office Superintendent HSG-I on and from at least 1-12-1995, the date on which the respondents were ordered to complete the exercise of up-gradation in terms of the communication dated 6.11.1995. In the application filed before the Tribunal, the petitioner specifically prayed for payment of the pre-revised pay scale of Rs.2,000-3,200/- with effect from 1-12-1995 to 31-12-1995 and in the revised pay scale of Rs.6,500-10,500/- with effect from 1-1-1996 to 21-5-2001. However, the order dated 7-4-2005 dismissing the writ petition of the respondent authorities passed by us with the observation that following his retirement on 31-3-2005,

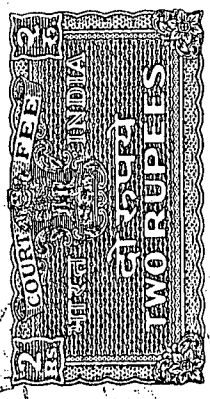


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the petitioner (the respondent therein) might be given only up-gradation for getting the retiral benefit, apparently created confusion and afforded an opportunity to the respondent authorities to deny the salary arrears to the petitioner with effect from 1-12-1995. In our reconsideration of the entire facts and circumstances of the case, it appears that our observation that the petitioner might be given only up-gradation for the purpose of retiral benefits on the ground he had retired from service on 31-3-2005, is unwarranted and wholly erroneous. Having dismissed the writ petition, the retirement of the petitioner from service cannot deprive him of his salary arrears, which are legitimately due to him, and which logically flows from the dismissal of the writ petition filed by the respondent authorities. Once the writ petition was dismissed and the relief granted by the Tribunal was, therefore, not interfered with by us, there is no earthly reason to deny the petitioner the benefit of his salary arrears, which he was held entitled to, on his promotion/up-gradation to the post of Office Superintendent HSG-I with effect from 1-12-1995. It is, however, the contention of Mr. S C. Shyam, the learned CGC, appearing for the respondent authorities, that once this Court has held that the petitioner might be given only up-gradation for getting the retiral benefit, which has now attained finality, the issue cannot be re-opened by the petitioner by filing this review application: if he is so aggrieved, he ought to have preferred an appeal before the Apex Court. In terms of the direction of this Court contained in the judgment and order dated 7-4-2005, the respondent authorities issued the compliance order which is at Annexure-II, for which the petitioner cannot have any legitimate grievance. Furthermore, contends the learned CGC, this is not a case of discovery of new evidence, which could not be produced by the petitioner at the time of passing the order sought to be reviewed despite exercise of due diligence nor is it a case of error apparent on the face of the record and, therefore, the review application is not maintainable.



17 SEP 2009

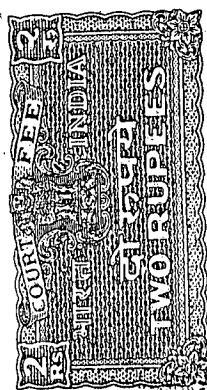
Guwahati Bench  
गुवाहाटी न्यायपीठ

6. We have given our anxious consideration to the submissions of the learned CGC, but we are unable to agree with him. On reconsideration of our judgment sought to be reviewed, we think that we have made an erroneous assumption of fact that following the retirement of the petitioner from service, he became entitled to up-gradation to the post of HSG-I only for the purpose of getting retiral benefit, and have in the process denied him of the salary arrears legitimately due to him. This is the unfortunate result of the erroneous view taken by us. *Actus curiae neminem gravabit* ("an act of the court shall prejudice no man"). That the petitioner had already retired from service on 31-5-2005 cannot be a ground for denying the salary arrears due to him in terms of the judgment and order of the Tribunal. It is the duty of this Court to rectify, revise and re-call its orders as and when it is brought to its notice that certain of its orders were passed on a wrong and mistaken assumption of facts and that implementation of those orders would cause grave prejudice to the petitioner, for which he cannot be faulted. It is thus a case of an error or mistake apparent on the face of record. The Apex Court in *S. Nagaraj v. State of Karnataka*, 1993 Supp(4) SCC 595, para 36 observed:

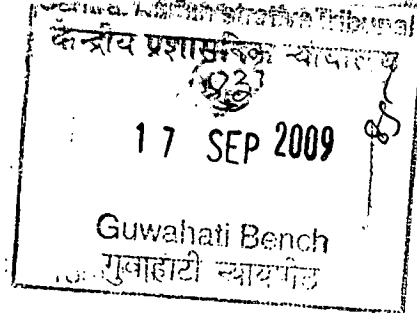
*"It is the duty of the court to rectify, revise and recall its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences. An act of court should prejudice none. 'Of all these things respecting which learned men dispute', said Cicero, 'there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature'. This very idea was echoed by James Madison (The Federalist, No. 51, p. 352). He said:*

*'Justice is the end of government. It is the end of the civil society. It ever has been and ever will be pursued, until it obtained or until liberty be lost in the pursuit.' "*

7. A case of an error apparent on the face of record is best illustrated by the decision of the learned Single Judge of the Madras High

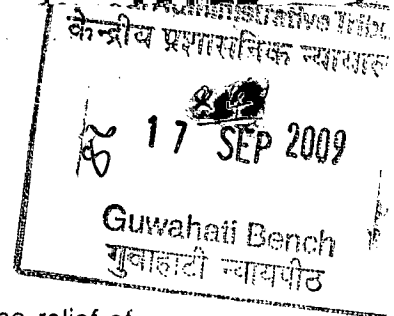






Court in *Lakshmi v. Meenakshi Ammal* reported in AIR 1984 Mad 10. That was a case where the plaintiff instituted a suit for partition and possession and mesne profits. Court fee was paid under Section 37(2) Court-Fees Act on the basis of the plaintiff being in constructive joint possession and not actual possession. The trial court found that the vendor of the plaintiff had title to one-third share in the property and that the respondent was entitled to the remaining two-third. It was also found that a dispute was going on between the plaintiff and the respondent regarding possession of the property and that the respondent cannot claim to have totally excluded the plaintiff from the joint possession of the property. In this view, the payment of court-fee under Section 37(2) of the Court-Fees Act was held to be correct. While granting a preliminary decree for partition in favor of the plaintiff directing the division of the suit property into three equal shares and the allotment of one such share to her, the learned Subordinate Judge left open the question of mesne profits to be decided in a separate enquiry under O. 20, R. 12 CPC. The matter was taken to appeal before the learned District Judge, which, while upholding the decree granted in favor of the plaintiff, held that the order of the trial court that the determination of future mesne profits was left open to be decided in a separate enquiry under O. 20, R. 12, CPC, was not correct. The second appeal filed by the respondent was also dismissed. The plaintiff thereafter filed I.A. 148 of 1980 in A.S. 154 of 1977, purporting to be one under O. 47, Rule.1 and 3, CPC, praying for a review of the judgment of the learned District Judge on the ground that the respondent had admitted having rented out portions of the suit house to strangers and the collection of rents therefrom and as such, the claims for those profits from the date of suit will fall under Order 20, R. 18, CPC and that owing to erroneous assumption and error apparent on the face of record, the relief of mesne profits had been deleted and, therefore, that should again be provided for by reviewing the judgment impugned therein. The learned Single Judge held that the lower

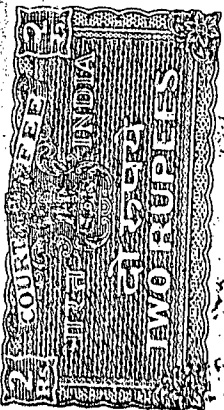




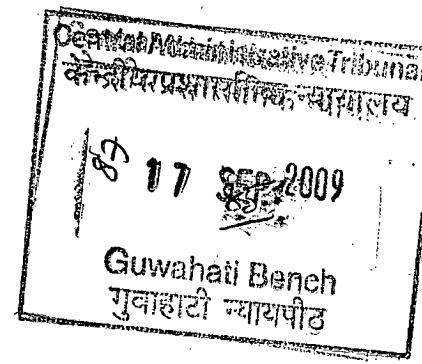
appellate court when it proceeded to delete the decree granting the relief of mesne profits in favor of the plaintiff had proceeded on the assumption that the plaintiff was in joint possession of the property by which it understood that such possession was also physical possession of the property and, therefore, no question of payment of mesne profits would arise under O. 20, R. 12 CPC; that the case would be governed by O.20, R.18, CPC and that in the absence of any finding by the court below to the effect that the plaintiff was in physical possession of the property or least her share thereof, the plaintiff could not have been deprived of the relief of mesne profits. The learned Single Judge observed towards the end paragraph 4 of the judgment :

*"..... It is thus obvious that what the petitioner in effect claims is only the correction by way of review of an erroneous decree resulting from the wrong assumption on the part of the lower appellate court which had absolutely no basis whatever either on evidence or even on the basis of the findings recorded in the course of the proceedings. In other words, plainly the present case is one where the lower appellate Court proceeded to delete the decree for mesne profits on a totally erroneous assumption of a fact which as stated earlier had absolutely no existence. Consequently, the decree deleting the mesne profits earlier granted as a result of an erroneous assumption on the part of the lower appellate Court is one vitiated by an error apparent on the face of the record so as to justify the exercise of the review jurisdiction under O. 47, Rr. 1 and 3, CPC. In this view, the order of the Court below declining to review the judgment is set aside and the petitioner will be entitled to a decree for mesne profits from the date of suit till the date of delivery of possession under O. 20, R. 18 CPC which is directed to be relegated to a separate enquiry. The civil revision is therefore allowed with costs."*

8. That apart, there is no prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words. No doubt, a party is not entitled to a review of a judgment merely for the purpose of re-hearing and a fresh decision of the case. When the proceedings stand terminated by final disposal of the writ petition, it is not open to the Court to re-open the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and finality of

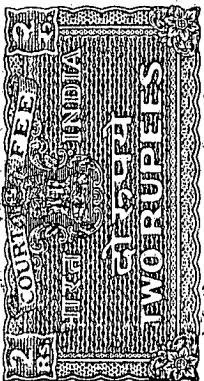


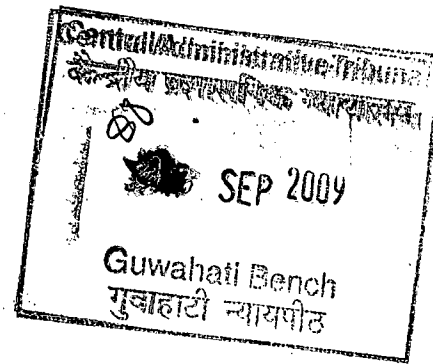
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proceedings would cease to have any meaning. However, in a miscellaneous application, if no fresh relief, on the basis of a new cause of action, had been sought, it is open to the court to re-open the proceedings. This position was explained by the Apex Court in the latest decision reported in (2009) 2 SCC 164, *K.A. Ansari and another v. Indian Airlines Ltd.*. That was a case where the appellant was one of the petitioners before the learned Single Judge of the High Court of Delhi. The learned Single Judge disposed of appellant's writ petition, inter alia, holding that "he would be entitled to be posted to a post in equivalent scale held by (him) when the letter dated 23.4.2003 was issued". The learned Single Judge further held that if as a result of this direction, the appellant was to be put in a post of higher grade, arrears of pay and allowance would also be paid to him within a specified time. Pursuant to that direction, the appellant who was in the pay scale of Rs.6,200-8025 was placed in the pay scale of Rs.5675-8025 and his pay in his previous pay scale was protected in the new pay scale according to the directions of the learned Single Judge. The appellant objected to his placement in the pay scale of Rs.5675-8025 on the ground that it was not a pay scale equivalent to his previous pay scale of Rs.6200-8025 but was a lower pay scale. The appellant therefore moved a miscellaneous application seeking a direction that he should be placed in the equivalent pay scale of Deputy Manager. The respondent Airlines' stand was that maximum of both the pay scales were the same, i.e. Rs.8025/-, and appellant's pay in the previous pay scale was also protected while placing him in the new pay scale.

The learned Single Judge disposed of the miscellaneous application by directing the respondent Airlines to place appellant in the pay scale of Rs.6200-8025 as he could not be placed in a lower pay scale. The learned Single Judge further clarified that if the pay scale of Rs.6200-8025 was not available, the petitioner would have to be placed in the next higher grade. However, on appeal, the Division Bench held that after disposal of the writ





petition, miscellaneous application was not maintainable and therefore the order on the miscellaneous application was without jurisdiction. Allowing the special leave petition, the top Court observed:

**"19. Having bestowed our anxious consideration on the rival submissions, we are of the opinion that keeping in view the terms of the final order dated 11-10-2004, the miscellaneous application could not be said to be founded on a separate or fresh cause of action so as to fall foul of the aforesaid legal position viz. on termination of proceeding by final disposal of writ petition, it is not open to the court to re-open the proceedings by means of a miscellaneous application in respect of a matter which provided fresh cause of action.**

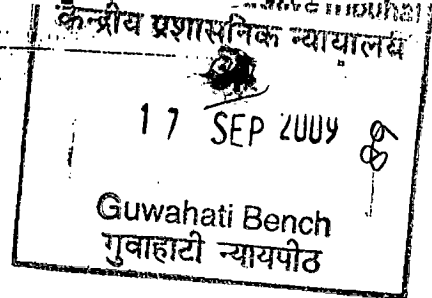
**20. It is manifest that in Direction (ii), the learned Single Judge had clearly indicated that the writ petitioners would be entitled "to be posted to a post in equivalent scale held by them when the letter dated 23-4-2003 was issued". The respondent Airlines was obliged to obey and implement the said direction. If they had any doubt or if the order was not clear, it was always open to them to approach the court for clarification of the said order. Without challenging the said direction or seeking clarification, Indian Airlines could not circumvent the same on any ground whatsoever. Difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-implementation.**

**21. In our opinion, in the miscellaneous application, no relief, on the basis of a new cause of action, had been sought. It was an application filed for pursuing and getting implemented the relief granted in the writ petition, namely, placement in appropriate grade in which he was placed at the time when the letter dated 23-4-2003, was issued. This was precisely done by the learned Single Judge vide his order dated 4-3-2005.**

**22. Without examining those factual aspects of the matter, in our judgment, the Division Bench was in error in holding that after the disposal of the writ petitions, miscellaneous application was not maintainable and the only remedy available to the applicant was to approach the authorities and if his interpretation was not acceptable to them, then he could file a fresh writ petition."**

9. In our opinion, the relief of back wages denied by us on the sole ground that the petitioner had retired from service when the order sought to be reviewed was passed by us appears to be unjustified and unwarranted on the facts and circumstances of this case. Once the petitioner was found to be entitled to up-gradation to the post of Office Superintendent HSG-1 with effect from 1-12-1995, which post minus the pay scale of HSG-I he was holding, hitherto, it would be irrational to deny him the relief of back wages: it was not





a case of retrospective up-gradation per se, but he was admittedly discharging the post of Office Superintendent HSG-II with the same responsibility as Office Superintendent HSG-I. When this Court, being under a misapprehension as to the actual relief claimed by the petitioner, proceeded to deny the relief legitimately due to him, it will be either a case of error/mistake apparent on the face of record thereby warranting a review of the order sought to be reviewed or a case for issuing clarification without requiring him to file a fresh writ petition when no fresh relief, on the basis of a new cause of action, is sought for. Therefore, in any view of the matter, there is absolutely no reason to deny the petitioner the relief of back wages in respect of the post of HSG-I with effect from 1-12-1995 to 21-5-2001.

10. The upshot of the foregoing discussion is that this review petition is allowed. We accordingly recall the portion of our judgment and order dated 7-4-2005 holding that the petitioner might be given up-gradation only for getting the retiral benefit. The remaining judgment and order sought to be reviewed shall remain intact. The respondent authorities are directed to pay to the petitioner the back salary arrears in terms of the pay scale of HSG-I with effect from 1-12-1995 till 21-5-2001 without any loss of time and positively within two months from the date of receipt of this judgment and order. However, the parties are directed to bear their respective costs.



*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

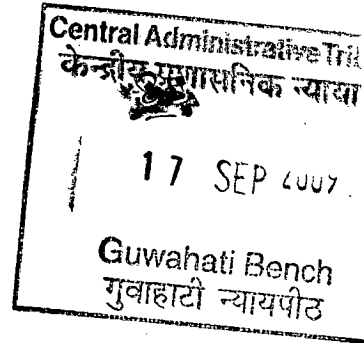
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typed By.....  
Read By.....  
Compared By.....

Certified To Be True Copy

*[Signature]*  
Deputy Registrar  
Guwahati Bench

*Affected  
Writ  
Adm*



To

Registered A/D

Mrs. R. Doraiswamy,  
Secretary and Director General  
Department of Posts,  
Dak Bhawan, Sansad Marg,  
New Delhi - 110 001.

**Subject:** Prayer for the grant of promotion to the grade of Assistant Director (Rectt) GCS Group-B with retrospective effect from 3-3-2003, from the date from which my junior Sri M. Sanaulah of J&K Circle was promoted to the grade of Asstt. Director (Rectt) GCS Group-B and payment of arrear duty pay and allowances of Assistant. Director (Recruitment) with retrospective effect from 3-3-2003 to 31-3-2005 with full retirement benefits.

**Reference:** 1) Directorate's letter No. 12-3/2001-SPG dated 25-9-2001 and  
2) Notification No.9-84/2002-SPG dated 28-2-2003 / 3-3-2003.

Respected Madam,

Kindly permit me to submit a few lines before your honour for favour of your kind perusal, sympathetic consideration and favourable orders.

2) That Madam, in this connection I beg to draw your kind attention to my representation dated 7-3-2003 addressed to Mrs. P.B. Subramanian, the then Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi sent under Shillong GPO RL No.957 dated 7-3-2003 under which a Xerox copy of my representation dated 29-1-2003 addressed to Shri P.K. Chatterjee, the then Chief Postmaster General, North Eastern Circle, Shillong together with a Xerox copy of the certified copy of the judgement of the Hon'ble CAT Guwahati Bench, Guwahati dated 2-12-2002 passed in the case No. OA No.152 of 2002 were sent to the Directorate followed by second representation dated 7-3-2003 sent under Shillong GPO RL No.4688 dated 7-3-2003, but no reply was received. A Xerox copy of my letter dated 29-1-03 addressed to the then Chief Postmaster General, N.E. Circle, Shillong is enclosed herewith for favour of kind perusal and ready reference.

3) That Madam, further in this respect, a kind reference is invited to my third representation dated 16-4-03 addressed to Mrs. P.B. Subramanian, the then Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi sent under Shillong GPO RL No. C 9814 dated 16-4-2003 followed by fourth representation dated 21-4-2004 addressed to Sri Vijoy Bhusan, the then Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi sent under Shillong GPO RL No. B 2796 dated 21-4-2004 followed by fifth and last representation dated 12-4-2006 addressed to Sri U.S. Raghavan, the then Secretary and Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi sent under Shillong GPO RL No. B 6368 dated 12-4-2006 on the above subject, but uptil today no reply was received.

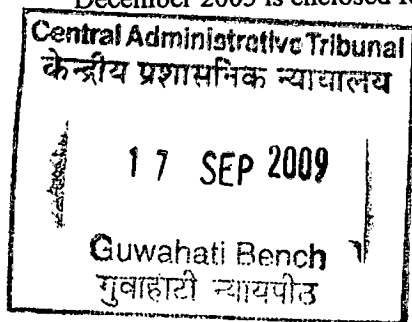
4) That Madam, I beg to mention here that the Circle Administration, Shillong instead of implementing the judgement order dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in the case No. OA No.152 of 2002, so

*Attested  
Dutta  
A/W*

submitted on 29-1-2003 had suppressed the fact and preferred a writ appeal bearing No. WP (C) No.51 (SH) 2003 before the Hon'ble Guwahati High Court, Shillong Bench (Division bench) Shillong by resisting the orders of the Hon'ble CAT Guwahati bench, Guwahati dated 2-12-2002 passed in the above case just to deprive me of my legitimate promotion of Office Superintendent HSG-I with retrospective effect from 1-12-1995. Whereas the Hon'ble Guwahati High Court, Shillong Bench (Division bench) Shillong vide their judgement order dated 7-4-2005 passed in the WP (C) No.51 (SH) 2003 has upheld the judgement order dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in the OA No.152 of 2002 and the writ appeal above so filed by the department was dismissed.

5) That Madam, I beg to enclose herewith a Xerox copy of the Directorate's letter No.12-3/2001-SPG dated 25-9-2001 circulating the seniority list of Office Superintendent / Deputy Office Superintendent for holding DPC for promotion to the grade of Assistant Director (Rectt) GCS Group-B wherein at para-1 of the said letter it was mentioned that the seniority list is provisional and subject to change on receipt of omissions / corrections, if any, yet to be received from various circles.

6) That Madam, I beg to mention here that the Circle Administration, Shillong on receipt of the judgement order dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in OA No.152 of 2002 on 29-1-2003 as mentioned at para-2 above ought to have been issued the promotion order to the upgraded post of Office Superintendent HSG-I with retrospective effect from 1-12-1995 in the month of February 2003 as directed by the Hon'ble CAT Guwahati bench, Guwahati in the above OA case. But it is regret to mention here that instead of complying with the orders dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in the above OA case, the Circle Administration, Shillong by suppressing the fact had rather preferred a writ appeal bearing No. WP (C) No.51 (SH) 2003 before the Hon'ble Guwahati High Court, Shillong Bench, Shillong, while the Hon'ble Guwahati High Court, Shillong Bench, Shillong by their judgement order dated 7-4-2005 have dismissed the writ appeal of the department by upholding the judgement of the Hon'ble CAT Guwahati Bench, Guwahati dated 2-12-2002 passed in the OA No.152 of 2002, then in compliance of the judgement order dated 7-4-05 of the Hon'ble Guwahati High Court, Shillong Bench, Shillong passed in the WP (C) No.51 (SH) 2003, upholding the judgement order dated 2-12-2002 of the Hon'ble CAT Guwahati Bench, Guwahati passed in OA No.152 of 2002, the Circle Administration, Shillong after a long gap of 3 years 10 days from the date of judgement of the Hon'ble CAT, Guwahati Bench, Guwahati passed in the above OA case vide Circle office, Shillong Memo No. Staff/158-8/2001 (L) dated 7<sup>th</sup> / 13<sup>th</sup> December 2005 have granted me the promotion to the cadre of Office Superintendent, Circle Office, Shillong to the grade of HSG-I with retrospective effect from 1-12-1995 by correcting and protecting my all India seniority to the cadre of Office Superintendent HSG-I with retrospective effect from 1-12-1995 and thereby the provisional seniority list so circulated under the Directorate's letter No. 12-3/2001-SPG dated 25-9-2001 as mentioned at para-5 above automatically stood corrected, and I was even senior to Shri M. Sanaulah, the then Office Superintendent, J&K Circle and later Assistant Director (Rectt) J&K Circle since retired from service. The Circle Office, Shillong Memo No. Staff/158-8/2001 (L) dated 7<sup>th</sup> / 13<sup>th</sup> December 2005 was also endorsed to the Directorate having a reference to the Directorate's DC No. 4-14/2003-SPB-II dated 25-11-2005. A Xerox copy of the Circle Office, Shillong Memo No. Staff/158-8/2001 (L) dated 7<sup>th</sup> / 13<sup>th</sup> December 2005 is enclosed for ready reference.



7 SEP 2009

7) That Madam, in this connection, I am sending herewith a Xerox copy of the certified copy of the revised judgement and order dated 22-4-2009 of the Hon'ble Guwahati High Court, Shillong Bench (Division Bench) Shillong passed in the review petition bearing No. 5 (SH) 2008 wherein the Hon'ble Guwahati High Court, Shillong Bench (Division Bench) Shillong has passed a revised judgement and order to make payment of the arrear duty pay and allowances of the Office Superintendent HSG-I, with retrospective effect from 1-12-1995 to 21-5-2001 to me by modifying the judgement and order dated 7-4-2005 passed in the Writ Petition bearing No. WP (C) No. 51(SH) of 2003. A Xerox copy of the aforesaid revised judgement and order dated 22-4-2009 was submitted to the Circle Administration, Shillong on 11-5-2009 vide my letter dated 11-5-2009 followed by reminder dated 5-6-09. The Circle Office Shillong vide letter No. Staff/158-8/2001 (L) dated 1-6-09 has sanctioned the arrear back-salary in terms of the pay scale of HSG-I from 1-12-1995 to 21-5-2001 and as per letter No. AP/46-226/04 dated 10-06-2009 passed orders to make payment of the arrear back-salary for the above period and finally the payment was made on 11-6-2009.

8) That Madam, I beg to point out here that consequent on the retirement of Shri B.R. Meena, the then Assistant Director (Rectt) Rajasthan Circle, Jaipur on 31-7-02 and Smti A. Vasugi, the then Assistant Director (Rectt) Karnataka Circle, Bangalore on 31-10-02, two posts of Assistant Director (Rectt) had fallen vacant on 1-8-2002 and 1-11-2002 respectively, and as per verdict dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in the OA No.152 of 2002, I was eligible to get the promotion of Assistant Director (Rectt) in the above two retirement vacancies of the Assistant Director (Rectt) those had fallen vacant during the year 2002 and despite of submission of the Xerox copy of the certified copy of the judgement dated 2-12-2002 of the Hon'ble CAT Guwahati bench, Guwahati passed in the OA No.152 of 2002 both to the Circle Office, Shillong as well as to the Postal Directorate vide my representations dated 29-1-2003 and 7-3-2003, the verdict of the Hon'ble CAT guwahati Bench, Guwahati dated 2-12-2002 passed in the above OA case was again and again completely ignored and my juniors namely Shri M. Sanaullah, the then Office Superintendent, J&K Circle, and Shri Harbans Singh Bhatia, the then Office Superintendent of Punjab Circle were promoted in the grade of Assistant Director (Rectt) GCS Group-B vide Directorate's notification No. 9-84/2002-SPG dated 28-2-2003 / 3-3-2003 by depriving me of my legitimate promotion of Assistant Director (Rectt). Xerox copy of the Directorate's notification mentioned above is enclosed for ready reference.

9) That Madam, I do hope and believe that your honour will surely agree with me that non-implementation of the judgement order dated 2-12-2002 of the Hon'ble CAT Guwahati Bench passed in OA No.152 of 2002 in time, and suppression of facts and resisting the case before the Hon'ble Guwahati High Court, Shillong Bench (Division Bench) Shillong and at last the issue of promotion order to the cadre of Office Superintendent HSG-I with retrospective effect from 1-12-1995 after a long gap of 3 years 10 days as mentioned at para-6 above, are completely and exclusively the administrative lapses on the part of the Circle Administration, Shillong and for such lapses a Government servant cannot suffer lose his future promotion, lose of pay and allowances and retirement benefits.

10) That Madam, I beg to mention here that from the date of judgement of the Hon'ble CAT Guwahati Bench dated 2-12-2002, the case is suffering delay by 6 years 5 months while from the issue of the Circle Office, Shillong Memo No. Staff/158-8/2001 (L) dated 7<sup>th</sup> / 13<sup>th</sup> December 2005, the promotion issue to the grade of Assistant Director



- 80 -

- 4 -

Central Administrative  
केन्द्रीय प्रशासनिक न्याय  
17 SEP 2009  
Guwahati Bench  
गुवाहाटी न्यायपीठ

(Rectt) is suffering delay by 3 years 5 months. Had the action been taken on CAT's order above dated 2-12-2002 in time, then this type of complication would not have arisen.

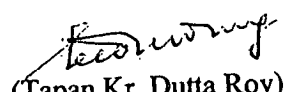
11) That Madam, I would like to mention here that every time, I am being forced to approach the Court of law for the realization of my arrears due from the Government and as a senior citizen, I am losing 9% compound interest for the last 3 years on the arrear payment which is yet to be received from the office due to the delay in settlement of the promotion of Assistant Director (Rectt).

12) Now in view of the facts narrated above I therefore fervently beg to appeal to your generous generosity to be gracious enough, kindly to look into the matter personally and in terms of judgement dated 2-12-2002 of the Hon'ble CAT, Guwahati Bench, Guwahati passed in the OA No.152 of 2002 as well as in terms of the revised judgement and order dated 22-4-2009 of the Hon'ble Guwahati High Court, Shillong Bench (Division Bench) Shillong passed in the review petition bearing No.5 (SH) 2008 and in terms of the orders issued under Circle Office, Shillong Memo No. Staff/158-8/2001 (L) dated 7<sup>th</sup> / 13<sup>th</sup> December 2005, kindly pass necessary orders to grant me the promotion to the grade of Assistant Director (Rectt) with retrospective effect from 3-3-2003, i.e. from the date from which my juniors Shri M. Sanaulah of J&K Circle and Shri Harbans Singh Bhatia of Punjab Circle were granted promotion to the grade of Assistant Director (Rectt) vide Directorate's Notification letter No. 9-84/2002-SPG dated 28-2-03 / 3-3-2003 and to pay me the arrear pay and allowances of the Assistant Director (Rectt) with retrospective effect from 3-3-2003 to 31-3-2005 with full retirement benefits and for this act of your kindness I shall remain ever grateful to you.

An early action into the matter is solicited.

With kind regards,

Yours faithfully,

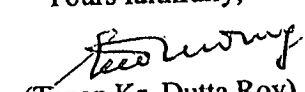
  
(Tapan Kr. Dutta Roy)  
Retired. Office Superintendent  
C/O "MADHURIMA" Arbuthnot Road  
P.O. Assam Rifles,  
Shillong - 793 011.

DA - As said above  
Dated at Shillong  
The 19<sup>th</sup> June 2009.

Under receipt

Copy to:- Shri A.N.D. Kachari, Chief Postmaster General, North Eastern Circle, Shillong for favour of kind information and necessary action.  
With kind regards.

Yours faithfully,

  
(Tapan Kr. Dutta Roy)  
Retired. Office Superintendent  
C/O "MADHURIMA" Arbuthnot Road  
P.O. Assam Rifles,  
Shillong - 793 011.

Dated at Shillong  
The 19<sup>th</sup> June 2009.

Attested  
M. Dutta  
A.S.

Date of application of the copy	Date fixed for notifying the requisite number of stamps and folios	Date of delivery of the requisite stamp and folios	Date on which the copy was ready for delivery	Date of making over the copy to the applicant
11/9/09	11/9/09	11/9/09	11/9/09	11/9/09

**ANNEXURE - XX**

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,  
MANIPUR AND TRIPURA)  
SHILLONG BENCH  
CIVIL APPELLATE SIDE

Appeal from W P C No 200 (SH) of 2009  
Civil Rule

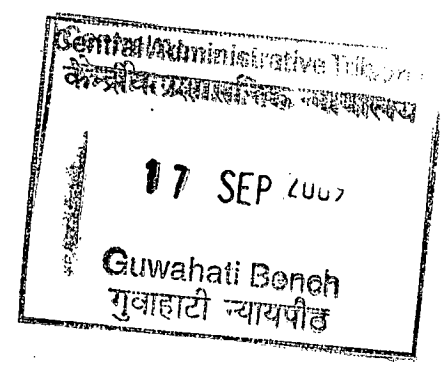
Shri Jagan Kumar Datta Roy Appellant  
Petitioner

Versus

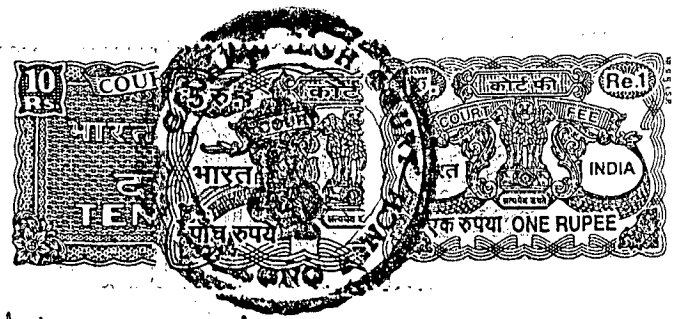
Union of Andhra Pradesh Respondent  
Opposite-Party

Appellant MR R. Choudhary  
For Petitioner MR B. Haldin Singh

Respondent  
For Opposite-Party



Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4



*Attested  
Mita  
Adh*

**IN THE MATTER OF:-**

Shri Tapan Kr. Dutta Roy,  
S/o (L) Dr. Subodh Chandra Dutta  
Roy,  
Retd. Office Superintendent (HSG-I)  
Office of the Chief Post Master  
General (CPMG) North Eastern  
Circle, Shillong,  
C/o "Madhurima" Aarbuthnot Road,  
Shillong-11, District East Khasi  
Hills, Meghalaya.

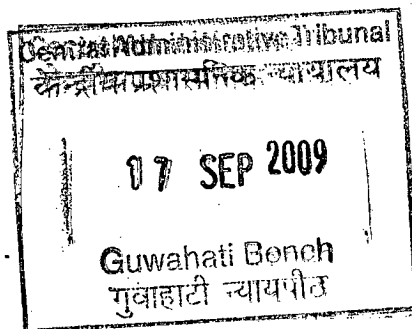
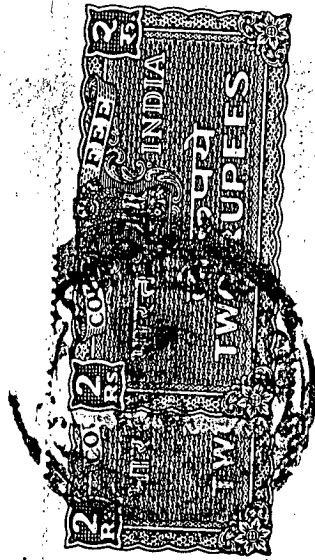
..... **PETITIONER**

**-VERSUS-**

1. The Union of India, represented by  
the Secretary and Director General,  
Department of Posts, Dak-Bhawan,  
Sanad Marg, New Delhi-110 001.
2. The Chief Post Master General,  
North Eastern Circle, Shillong-  
793001.
3. The Assistant Director General  
(SGP) Department of Posts, Dak  
Bhawan, Sanad Marg, New Delh-  
110 001.

..... **RESPONDENTS**

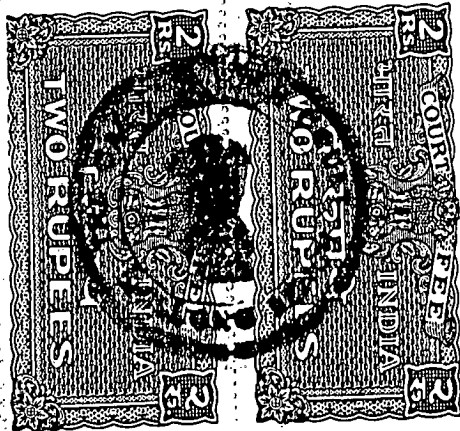
The Petitioner above named



**COMMISSIONER OF AFFIDAVIT**

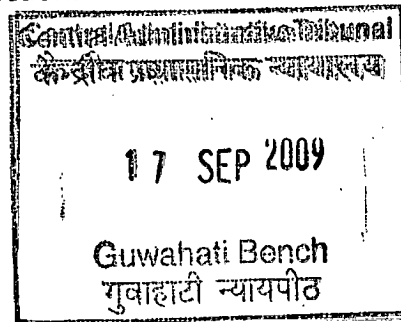
BEFORE  
THE HON'BLE MR JUSTICE T VAIPHEI  
WP(C) No.200(SH)2009

10.08.2009



Heard Mr R Choudhury, the learned counsel for the petitioner and Mr R Deb Nath, the learned counsel for the respondents.

On the prayer of the learned counsel for the petitioner, the petitioner is allowed to withdraw this writ petition with a liberty to approach a competent court of jurisdiction.



Sd/ T. Vaiphei

JUDGE

dr

Typed By.....  
Read By.....  
Compared By.....

Unaffected  
Mita  
Adv

