

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI - 5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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in OA NO 63/06 & 60/2009.

P.D.W. 6/7/2015
SECTION OFFICER (JUDL.)

✓ 6/7/2015

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

ORDERSHEET

1. Original Application No: 60 /2009

2. Mise Petition No

3. Contempt Petition No

4. Review Application No

Applicant(s) Sri Pradip Kumar Das

Respondent(s) C. O. I. KOPS.

Advocate for the Applicant(s): Mr. D.K. Das

Ms L. Gogoi Ahmed

Advocate for the Respondent(s): 6

C.G.S.C.
Govt. Adv. Assam

Mr. N. Barua, Dr. R. No. 2.

Notes of the Registry	Date	Order of the Tribunal
Application is in issue is filed on 09.03.2009 deposited v.d. (P.O.D.) No. 396 403662 Dated 16.3.09	31.03.2009	On being mentioned by Mr.D.K.Das, learned counsel appearing for the Applicant, this matter is taken up in presence of Mr.M.U.Ahmed, learned Addl. Standing counsel representing the Govt. of India and Mrs.M.Das, Advocate representing the State of Assam. Copies of this O.A. have already been served on Mr.M.U.Ahmed and Mrs.M.Das, Advocates.
30.3.09 3 Copies of Application with envelope received for issue notice to the Respsdt No. 1 to 3 30/3/09		Heard. Perused the materials placed on record. Issue notice to the Respondents requiring them to file their written statement/counter by 15.05.2009. ✓

Contd...

Issue notice to the Respondents
urgently.

Q.D.
14/10/11

Contd.
31.03.2009

Pendency of this application shall not

stand on the way of the Respondents to consider/re-consider the case of the Applicant for being taken to IAS cadre.

Received for Mrs. Mangala Das,
Govt Advocate, Assam
Nirshim Vashum
(Advocate)
06/04/09.

1/bb/

Send copies of this order to the Respondents along with notices.


(M.R. Mohanty)
Vice-Chairman

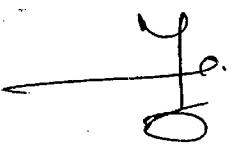
15.05.2009

Despite notice, no written statement has yet been filed by the Respondents.

None appears for the Applicant nor the Applicant is present. However, Mr. M. U. Ahmed, learned Addl. Standing Counsel for the Government of India and Mrs. M. Das, learned Counsel for the State of Assam are present.

Call this matter on 3rd July 2009, awaiting written statement from the Respondents.

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


(M.R. Mohanty)
Vice-Chairman

Memo of appearance
filed by Mrs. M. Das,
G.A. Assam.

3
20.4.09.

lm

W/S not filed.

3
14.5.09

18.5.09
Mr. K. Das,
Please comply the
order dtd 15.5.09.

18.5.09

—3—
OA 60/09

Copies of order
dated 15/5/09 send
to D/Sec. for issuing
to respondents by
post.
Class D/No-2487 to
2489
19/8/09. Dt- 19-5-09

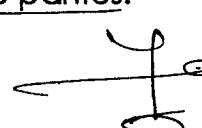
03.07.2009

Mr.D.K.Das, learned counsel for the Applicant is present. No written statement has yet been filed by the Respondents.

Call this matter on 13.08.2009 awaiting written statement from the Respondents.

Send copies of this order to the Respondents in the address given in the O.A. and free copies of this order be also supplied to counsel appearing for both the parties.

3
217-09



(M.R.Mohanty)
Vice-Chairman

Kudos /bb/
Send copies of this order to the Respondents and supply copies to counsel both the parties.

Mr.D.K.Das, learned counsel appearing for the Applicant is present. No written statement has yet been filed by the Respondents.

Call this matter on 16.09.2009.


(M.K.Chaturvedi)
Member (A)


(M.R.Mohanty)
Vice-Chairman

order dated 3/7/09 /bb/
Send to D/Sec.
for issuing to 17.09.2009
respondents by post
and free copies of
this order issuing to
counsel appearing
for both the parties

Class D/No-3772 to 3776
17/7/09. Dt- 8/7/09
/bb/

No written statement has yet been filed by the Respondents.

Call this matter on 22.10.2009 awaiting written statement from the Respondents.


(M.K.Chaturvedi)
Member (A)

29.7.09
Mr. N. Barnes, Advocate
has filed Writ Petition
for Respondent no 2.
(UPSC).
At 29/7/09

O.A. 60 of 09

FORM NO. 3

Order issued by the learned Counsel for the Plaintiff

No W/s filed

22.10.2009

Learned counsel for the Respondents seeks time to file reply.

Prayer allowed.

List on 09.11.2009.

12-8-09

W/s filed by the Respondents on 22.10.2009
by the Respondents on 22.10.2009

(Madan Kumar Chaturvedi)

Member (A)

(Mukesh Kumar Gupta)

Member (J)

/lm/

No 2 Rejoinder filed on 09.11.2009
Mr. N. Bansal,
Advocate

09.11.2009

None appears for parties. Adjourned to

07.12.2009.

12-8-09

No W/s filed.

Member (A)

nkm

(Mukesh Kumar Gupta)

Member (J)

12-9-09

No W/s filed.

07.12.2009

Learned counsel for the

Respondents undertakes to file written statement during the course of the day. Learned counsel for the Applicant is permitted to file rejoinder if any, before next date of hearing.

List the matter on 08.1.2010.

6-11-09

/lm/

No W/s filed by

8.1.2010

R NO-1 & 3.

None appears for the Applicant. Rejoinder has not been filed. Another opportunity is granted to the Applicant to file rejoinder.

Case is adjourned to 2.2.2010.

7-12-09

W/s filed by
the Respondent No 3.

/lm/

7-12-09

No rejoinder filed.

7-1-2010

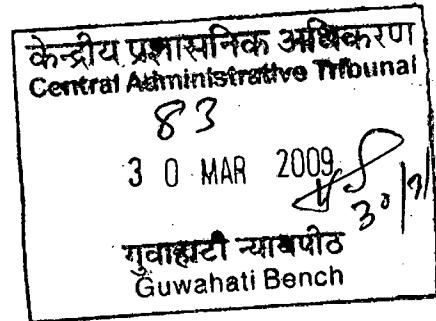
(Madan Kumar Chaturvedi)

Member (A)

(Mukesh Kumar Gupta)

Member (J)

Notes of the Registry	Date	Order of the Tribunal
<p>27.1.2010 An affidavit (Add.) has been filed by the Applicant. Copy served to the Govt. Adv. Assam. 27/1/10</p> <p>1-2-10 ① W.Ds filed by Respondents 2 & 3. ② An add. Stat. filed by Applicant. b/s</p> <p>Recd. copy for respondent No 1 R. Das 28/1/10</p>	02.2.2010	<p>Applicant has filed an additional affidavit bringing on record latest development which has taken place in present O.A. namely, order passed in Hon'ble Gauhati High Court in W.P.(C) No.1861/2009 dated 24.7.2009 requiring the Respondents to complete departmental proceedings in accordance with the rules within the stipulated time prescribed therein. Pursuant to the aforesigned order the respondents passed order dated 21.12.2009 and exonerated the applicant from the disciplinary proceeding initiated vide show cause notice dated 14.3.2008.</p> <p>In this view of the matter and as well as the order passed by this Tribunal in O.A.No.63 of 2006 dated 20.6.2008, Shri D.K.Das, learned counsel appearing for the Applicant suggest that the present O.A., may be disposed of requiring the Respondents to consider the Applicant inducting him to I.A.S. Assam-Meghalaya Joint Cadre, Assam segment, in the select list of 2004-05 and regulate his relief as prayed for. Ms. Manjula Das, learned counsel appearing for the Respondents, has no objection to regulate Applicant's claim accordingly.</p>
<p>30-4-2010 Final order dated 02-02-2010 before and sent to the D/ Section for issuing the all the respondent by P.O.32 vide No 1047 to 1049 dated 30-4-2010</p>	/Lm/	<p>In this circumstances, O.A. is disposed of in above noted terms.</p> <p>(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta) Member (A) Member (J)</p>



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
AT GUWAHATI

Filed by applicant
through Debyat ka Das
Molwala 30.3.09.

O.A. No 60 / 2009

Sri Pradip Kumar Das

.....Applicant

-Versus-

The Union of India & others

..... Respondents

S Y N O P S I S

The applicant has by way of this application assailed the inaction on the part of the respondent authorities in not issuing orders towards effecting his promotion to the cadre of IAS in terms of his selection for such promotion for the year 2004-2005. The name of the applicant was provisionally included in the select list of 2004-2005, in view of the pendency of a departmental proceeding initiated against him. The proceeding as initiated against the applicant was dropped on 16-07-2002 exonerating the applicant from the charges levelled against him therein. The select list in question is valid as per the Rules in

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Guwahati Bench

force and accordingly the applicant was required to be promoted immediately after his exoneration. The applicant was deprived of such promotion on the plea that there was a subsequent proceeding contemplated against him.

The applicant approached this Hon'ble Tribunal by way of filing O.A No. 63/2006 praying for his promotion to the IAS cadre in terms of his selection by the selection committee. The respondent authorities justified the non promotion of the applicant on the ground of contemplation of further departmental proceedings against him. This Hon'ble Tribunal vide order dated 20-06-2008 by negating the contentions raised by the respondent authorities therein, held the action of withholding the promotion of the application to the cadre of IAS on the plea of pendency of subsequent proceedings to be unlawful.

Thereafter in compliance of the Hon'ble Tribunal's order dated 20-06-2008 vide letter dated 19-11-2008, the Respondent State issued Integrity Certificate to the applicant for inclusion of his name in the select list of 2004-2005 as unconditional for appointment to IAS for the year 2004-2005. But on the basis of a new purported disciplinary proceeding subsequent to the period in question the respondent has again denied his due promotion to the IAS cadre and promoted persons junior to him vide notification dated 27-02-2009. The plea as advanced by the respondent authorities for denying to the applicant his due

MB

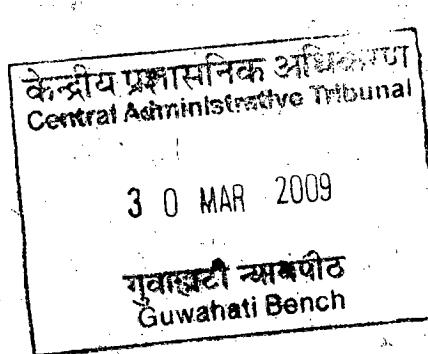
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Guwahati Bench

promotion to the cadre of IAS having already been negated by this Hon'ble Tribunal, the said plea is plea of pendency of proceedings is clearly unsustainable and it demonstrates the vindictive attitude adopted by the respondent authorities towards the applicant. It is under such circumstances that the applicant has come under the protective hands of Your Lordships praying for redressal of his grievances.

File by,


Advocate
Guwahati High Court



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
AT GUWAHATI

O.A. No 60 / 2009

Sri Pradip Kumar Das

Applicant

-Versus-

The Union of India & others

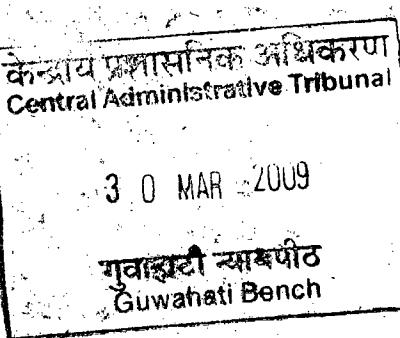
Respondents

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		Filed by

Advocate
Gauhati High Court

OK



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Filed by the applicant
through Substituted
Advocate, 30.3.09

Original Application No. 60 / 2009

BETWEEN

Sri Pradip Kumar Das,

Son of Late Dwijendra Kr. Das,

Resident of Ananda Nagar,

Guwahati - 6, Assam.

Applicant

AND

1. The Union of India,

represented by the Secretary to the

Government of India, Ministry of

Personnel and Public Grievance and

Pension, Department of Personnel and

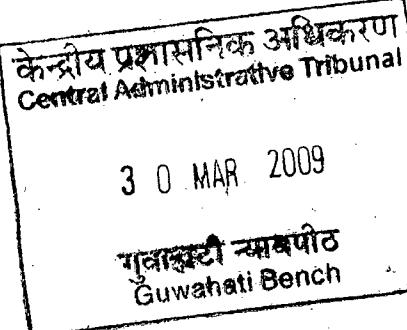
Training, North Block,

New Delhi - 110001.

2. The Union Public Service Commission,

represented by its Secretary, Dholpur

House, New Delhi. - 110069



2

3. The State of Assam,

Represented by the Commissioner and

Secretary to the Government of Assam,

Department of Personnel (A), Dispur,

Guwahati - 6.

Respondents

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

The instant application is not directed against any particular order or direction but is directed against the arbitrary and illegal action on the part of the respondent authorities in depriving the applicant of his due promotion to the cadre of IAS in terms of his selection for such promotion in violation of the Hon'ble Central Administrative Tribunal order dated 20-06-2008 passed in O.A No. 63/2006. The applicant was deprived of his said promotion only due to the arbitrary and illegal action on the part of the authorities in denying to him the integrity certificate inspite of the fact that there existed no any cogent and discernable reason for withholding of the said certificate.

PBW

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Guwahati Bench

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2. JURISDICTION :

The applicant further declares that the subject matter of the case is within the jurisdiction of the Central Administrative Tribunal.

3. LIMITATION :

The applicant declares that the instant application has been filed within the limitation period as has been prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

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

4.2. That the applicant was appointed to the Assam Civil Service as a direct recruit on his selection for the same by the APSC in the year 1977. The applicant in course of his service had held number of responsible posts and had discharged his duties all along to the best of his ability and without blemish to any

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Guwahati Bench

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quarter. The applicant is presently holding the post of Joint Commissioner, Government of Assam, State Housing Board.

4.3. That your applicant states that on being within the zone of consideration for promotion to the posts figuring in the Assam Segment of the Indian Administrative Service, Assam - Meghalaya Cadre, the case of the applicant came to be placed before the selection committee constituted by the UPSC for the purpose of filling up of the vacancies identified in the said cadre for the year 1998, 1999, 2000 and 2001. The selection committee in its meeting held on 09-04-2001 on consideration of the cases of all the officers in the zone of consideration proceeded to prepare separate select lists for each of the said years for which the selections were held.

4.4. That your applicant states that vide notification dated 27-06-2001 the Government of India proceeded to publish the selection list for the years 1998, 1999, 2000 and 2001. The name of the applicant figured in each of the select lists as prepared for the said years. However, it was indicated that the inclusion of the name of the applicant was subject to the clearance of the purported disciplinary proceeding pending against him.

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A copy of the said notification dated
27-06-2001 is annexed herewith as
ANNEXURE -1.

4.5. That your applicant states that as per the provisions of the Regulations holding the field the select list is to be prepared each year for the actual number of vacancies as existing and identified for that year. Accordingly, the selection of the applicant right from the year 1998 to 2001 was against available vacancies. The purported disciplinary proceeding stated to exist against the applicant was drawn up with issuance of a charge sheet on 16-02-2000 only. As such on the relevant dates for consideration of the eligibility of the applicant for inclusion of his name against the select lists as prepared for the year 1998 to 2001 i.e. the first of January of each of the said years, no any departmental proceeding was pending against the applicant. As such he could not have been denied his due appointment by way of promotion to the cadre of IAS against any of the vacancies as identified for the said years.

4.6. That the said departmental proceedings as drawn up against the applicant were based on false and fabricated charges having no substance. The said

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charge memo came to be issued against the applicant at the behest of a vested circle who had conspired to deny to the applicant his due and legitimate appointment to the IAS cadre by way of promotion. The applicant, basing on the said pretext of pendency of departmental proceedings against him was deprived of his promotion and he came to be superseded by his juniors. After being superseded by his juniors, an order dated 16-07-2002 came to be issued closing the departmental proceedings drawn against him holding that the charges levelled were not proved. As such it can be safely inferred that the only intent and purpose for initiation of the said departmental proceeding was with a view to deprive the applicant of his promotion, by contending that his integrity was under a cloud.

A copy of the order dated 16-07-2002

is annexed as ANNEXURE - 2.

4.7. That your applicant states that as the process for preparation of the select list of persons for promotion to the Assam Segment of the Assam Meghalaya IAS Cadre against the vacancies of 2002 was under way, the applicant being apprehensive that he would again be deprived of his due promotion basing on some untenable grounds, he proceeded wide his communication dated 18-05-2004 to pray before the Commissioner and

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Secretary, Government of Assam, Personnel (A) Department to obtain necessary reports from the CM's Vigilance Cell as regards the allegations levelled against him and others in a Public Interest Litigation case pending before the Hon'ble Gauhati High Court. The applicant prayed that he be not deprived of his due promotion on the basis of the pendency of the said case, inasmuch as the allegations as levelled against him therein had already been enquired into by the CM's Vigilance Cell and his name was cleared.

A copy of the said communication dated 18-05-2004 is annexed as ANNEXURE - 3.

4.8. That your applicant states that the Government of India, Ministry of Personnel & Training, vide notification dated May, 2004 proceeded to publish the select list for promotion against 8 vacancies as identified and existing for the year 2002 in the Assam segment of the Assam & Meghalaya IAS cadre. The name of the applicant figured at Serial No.1 of the said list. However, it was mentioned in the said notification that the name of the applicant was provisionally included, subject to grant of integrity certificate by the State Government.

A copy of the notification dated May 2004 is annexed as ANNEXURE - 4.

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Guwahati Bench

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4.9. That your applicant states that the PIL pending before the Hon'ble Gauhati High Court which was made the basis for the deprivation meted out to the applicant by denying to him his due promotion to the IAS cadre, came to be closed by the said Court vide its order dated 22-02-2003 without proceeding to direct initiation of any punitive action either against the applicant or any other person. As such the reason for denying to the applicant his due promotion to the IAS cadre also stood withdrawn and negated with the passing of the order dated 22-02-2003.

A copy of the said order dated 22-02-2003 is annexed as ANNEXURE - 5.

4.10. That inspite of the said position, the authorities failed to promote the applicant in terms of his position in the select list for the year 2002 as published vide the Annexure-4 notification dated May 2004, and such denial was not on the basis of any tenable ground. As such the applicant vide his representation dated 30-06-2005 proceeded to place his grievances in this connection before the authorities and prayed for doing justice in his case.

A copy of the said representation is annexed as ANNEXURE - 6.

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4.11. That your applicant states that as of 1998, 1999 and / or 2000 there existed nothing adverse against the applicant on the date relevant for the purpose of determining the eligibility of the applicant for promotion to the IAS cadre against the vacancies as identified for the said years. As such on his selection and inclusion of his name in the select lists for the said years i.e. 1998, 1999 and 2000, the applicant could not have been deprived of his due promotion to the IAS cadre against any of the vacancies for the said years. The applicant is required to be given promotion to the cadre of IAS in terms of his position in the select lists as prepared for the said years and w.e.f. the date his juniors came to be so promoted with all consequential benefits including seniority, salaries etc.

4.12. That your applicant states that it is a settled law that a person can be denied his promotion only in the event if on the date of selection for such promotion a departmental proceeding has been initiated against him and a charge memo has been issued. In the case on hand as on 29-12-2003 no departmental proceeding was pending against the applicant and no charge sheet was issued and pending against him. As such the applicant could not have been denied his due

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promotion to the IAS cadre at least from the select list of 2002.

4.13. That your applicant states that as far as the promotion to the IAS cadre is concerned, the power to issue integrity certificate as vested upon the State Government cannot be permitted to be used as per the whims and caprices of the person vested with the power to exercise the same. In the case on hand the integrity certificate came to be denied to the applicant without there being any rhyme or reason for such denial leading to deprivation being meted out to the applicant in the matter of promotion of the IAS cadre.

4.14. That the applicant left with no other alternative approached this Hon'ble Tribunal by way of filing O.A No. 63/2006, inter alia, praying for his promotion to the Assam segment of the IAS Assam Meghalaya Joint Cadre in terms of his position as obtained in the select list against the vacancies in the said years prepared for the years 1998, 1999, 2000 and 2002. the applicant had contended before this Hon'ble Tribunal in the said Original Application that with the dropping of the proceedings as pending against him at the time of his consideration for promotion to the IAS cadre, his case for promotion to the cadre of IAS was required to be considered immediately w.e.f. the date

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his junior was so promoted and the subsequent proceedings as contemplated cannot be reckoned for denying to him, his said promotion. The respondent authorities on the other hand raised a plea of pendency of a fresh proceeding towards non granting of the necessary integrity certificate and also towards declaring the name of the applicant as unconditional in the select list for the aforesaid period.

4.15. That the Hon'ble tribunal upon consideration of the above contentions raised before it in O.A. No. 63/2006 proceeded vide order dated 20-06-2008 to dispose of the said Original Application, inter alia holding that withholding of the integrity certificate in favour of the applicant and denial of promotion to the IAS against the approved select list of the year 2002, 2004 and 2005 is arbitrary and illegal and therefore, validity of the approved Final List for 2004 and 2005 that was notified on 13-06-2006 should be treated as a special case to have not lapsed as the applicant has approached the Hon'ble Tribunal during the period of approach of the Central Government on 13-06-2006 during the pendency of the aforesaid Original application.

A copy of the order dated 20-06-2008
is annexed as ANNEXURE - 7.

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4.16. That pursuant to the passing of the order dated 20-06-2008 in O.A No. 63/2006, by letter dated 19-11-2008 issued by the Commissioner and Secretary to the Government of Assam, Personnel (A) Department to the Secretary to the Government of India, Ministry of Personnel & Public Pension, Department of Personnel and Training, Government of India it was intimated that necessary integrity certificate in respect of the applicant for inclusion of his name in the select list of 2004 and 2005 as unconditional for appointment to IAS by promotion be issued immediately in compliance of the Hon'ble Tribunal's order dated 20-06-2008 in O.A No. 63/2006 and accordingly the Chief Secretary, Government of Assam issued the necessary integrity certificate to the applicant on 17-11-2008.

Copies of the letters dated 17-11-2008 and 19-11-2008 are annexed as ANNEKURE - 8 and 9 respectively.

4.17. That your applicant was under the bonafide belief that integrity certificate for the period 2004-2005 for appointment to IAS for promotion would be issued by the Respondent authorities in terms of letter dated 19-11-2008 but to his utter shock and disbelief the respondent authorities in gross violation of the Hon'ble Tribunal's order dated 20-06-2008 in O.A No.

P.D

63/2006 issued notification on 27-02-2009 wherein persons junior to the applicant were promoted to the Indian Administrative Service and the applicant was denied the said promotion on the ground of pendency of subsequent departmental proceeding initiated against him which dragged on for an inordinately long period of 9 years and thereby causing grave loss and prejudices to the applicant on account of withholding of his due / legitimate promotion to the IAS. The said action clearly speaks of gross illegality and malicious exercise of power by the respondents in as much as promotion found valid after due exoneration cannot be withheld on the ground of a subsequent departmental proceeding as held by the Hon'ble Supreme Court in various cases.

A copy of the notification dated 27-02-2009 is annexed as ANNEXURE- 10.

4.18. That your applicant states that in view of the settled position in the matter there cannot be any justification with regard to the delay occasioning in the issuance of necessary orders towards promotion of the applicant to the cadre of IAS and the objections as being raised by the various authorities having been already negated by this Hon'ble Tribunal, the action / inaction on the part of the respondent authorities in taking the matter to its logical conclusion is contemptuous and requires to be reviewed seriously by this Hon'ble Tribunal.

4.19. That there exists no justification in continuing to deprive the applicant of his due promotion to the

PD

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Guwahati Bench

-13A-

force and accordingly the applicant was required to be promoted immediately after his exoneration. The applicant was deprived of such promotion on the plea that there was a subsequent proceeding contemplated against him.

The applicant approached this Hon'ble Tribunal by way of filing O.A No. 63/2006 praying for his promotion to the IAS cadre in terms of his selection by the selection committee. The respondent authorities justified the non promotion of the applicant on the ground of further departmental proceedings against him which was drawn up and show cause notice was issued in March 2008. This Hon'ble Tribunal vide order dated 20-06-2008 by negating the contentions raised by the respondent authorities therein, held the action of withholding the promotion of the application to the cadre of IAS on the plea of pendency of subsequent proceedings to be unlawful.

Thereafter in compliance of the Hon'ble Tribunal's order dated 20-06-2008 vide letter dated 19-11-2008, the Respondent State issued Integrity Certificate to the applicant for inclusion of his name in the select list of 2004-2005 as unconditional for appointment to IAS for the year 2004-2005. But on the basis of a new purported disciplinary proceeding subsequent to the period in question, the respondent has again denied his due promotion to the IAS cadre and promoted persons junior to him vide notification dated 27-02-2009. The plea as advanced by the respondent authorities for denying to the applicant his due

30 MAR 2009

गुवाहाटी आयोगी
Guwahati Bench

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cadre of IAS and the applicant is required to be so promoted with reference to his selection against the vacancies of 2004-2005 with all consequential benefits including seniority, arrears of pay etc.

4.20. That your applicant states that inspite of the development as made in the case and also the repeated prayers made by him for effecting his promotion to the cadre of IAS in terms of his selection in the year 2004-2005, the respondent authorities are yet to respond to the same and no final orders redressing the grievance of the applicant has been issued till this very date, thereby violating the Hon'ble Central Administrative Tribunal's order dated 20-06-2008 passed in O.A No. 63/2006. As such left with no other alternative, the applicant has again come under the protective hands of this Hon'ble Tribunal praying for a positive direction towards his promotion to the cadre of IAS and thereby for redressing his long pending grievance.

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

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1. For that the applicant on 16-07-2002 having been fully exonerated of the charge pending against him, his case

30 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

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for promotion ought to have been considered on that day itself. The select list for 2004-2005 being valid in which the applicant's name appeared provisionally and which was also finally approved by the Central Government on 13-06-2006 during the pendency of O.A No. 63/2006 there exists no justification with regard to the action on the part of the respondent authorities in not declaring the including of the name of the applicant in the select list of 2004-2005 as unconditional. The said action / inaction is in clear violation of the guidelines set forth for such promotion.

5.2. For that with the dropping of the proceeding pending against the applicant on 16-07-2002 exonerating him of the charges, the applicant was free from the cloud. The second show cause having been issued on 14-03-2008 and the said proceeding currently pending against the applicant cannot under any circumstances have any bearing on the right accruing to the applicant for his promotion to the IAS cadre from 2004-2005. Accordingly, the inaction on the part of the respondent authorities in not promoting the applicant to the cadre of IAS in terms of his selection for the aforesaid period is clearly illegal, arbitrary and discriminatory.

AB

5.3. For that this Hon'ble Tribunal having already held the action on the part of the respondent authorities in denying to the applicant his due promotion to the cadre of IAS with reference to any subsequent proceeding initiated against the applicant after 16-07-2002 to be unlawful and the said decision having attained its finality with the passing of the Central Administrative Tribunal's order dated 20-06-2008 in O.A No. 63/2006 the respondent authorities cannot be permitted to continue to put forward the same very plea for denying to the applicant his due promotion to the cadre of IAS with reference to his selection for such promotion in the year 2004-2005.

5.4. For that the delay occasioning in issuance of necessary orders towards promoting the applicant to the cadre of IAS in terms of his selection in the year 2004-2005 is clearly attributable to the delay tactics and malafide action adopted by the respondent authorities solely with the view to prevent the promotion of the applicant to the cadre of IAS. Such action on the part of the respondent authorities is clear violation of the principles of fairness and equality as guaranteed under the provisions of Article 14 and 16 of the Constitution of India.

30 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

5.5. For that the applicant having been duly considered for promotion after his exoneration could not be denied promotion to IAS simply on the ground of pendency of another departmental enquiry initiated thereafter and the action of the respondents in withholding the promotion to IAS inspite of his selection for the period 2004-2005 as held by the Hon'ble Central Administrative Tribunal is illegal and arbitrary and as such liable to be interfered by this Hon'ble Tribunal. Moreover, the action of the respondents in denying the application his promotion inspite of clear directions of the Tribunal is contemptuous and in flagrant violation of the Hon'ble Tribunal's order and requires the Hon'ble Tribunal's intervention.

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

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

30 MAR 2009

गुवाहाटी आदायीठ
Guwahati Bench

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6. DETAILS OF REMEDIES EXHAUSTED :

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

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

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

8. RELIEF SOUGHT FOR :

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for, notices be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

30 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

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8.1. To direct the respondent authorities to appoint the applicant from the select list of 2004-2005 to the Assam Segment of IAS Assam Meghalaya Joint Cadre, by way of promotion in terms of his selection and grant him all consequential relief/s.

8.2. To direct the respondent authorities to fix the seniority of the applicant in the IAS cadre by reckoning his promotion to be effective from the period 2004-2005 and to allot to him his Year of Allotment accordingly.

8.3. To direct the respondent authorities to fix the pay and allowances of the applicant in the IAS cadre on the relevant date for the period 2004-2005 and to pay to the applicant the arrears thereof along with interest at current bank norms.

8.4. Cost of the application.

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

30 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

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9. INTERIM ORDER PRAYED FOR :

The applicant in view of the facts and circumstances of the case does not pray for any interim direction at this stage and only prays that this Hon'ble Tribunal be pleased to dispose of this application expeditiously.

The application is filed though advocate

10. PARTICULARS OF I.P.O:

i) I.P.O No.	: 30G7403662
ii) Date	: 16-3-09
iii) Payable at	: Guwahati C.W.P.O

11. LIST OF ENCLOSURES :

As stated in the index.

Verification page/21

PD

30 MAR 2009

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गुवाहाटी न्यायालय
Guwahati Bench

VERIFICATION

I, Sri Pradip Kumar Das, aged about 55 years, son of Late Dwijendra Kr. Das, a resident of Ananda Nagar, Guwahati - 6, in the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case, the statements made in paragraphs 4.1, 4.2, 4.3, 4.5, 4.9, 4.11 To 4.19, 4.18 To 4.21 are true to my knowledge; those made in paragraphs 4.9, 4.6, 4.7, 4.8, 4.10, 4.15, 4.16, 4.17, ----- are true to my information derived from the records which I believe to be true and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 30th day of March, 2009 at Guwahati.

Pradip Kumar Das.

D E P O N E N T

No.14015/2/2001-1S (I)

Government of India

Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)New Delhi, the 27th June, 2001संघीय प्रशासनिक अधिकारा
Central Administrative Tribunal

30 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati BenchNOTIFICATION

In terms of the provisions contained in sub-regulation (3) of Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the Union Public Service Commission has approved the Select Lists of 1998, 1999, 2000 and 2001 containing the names of the following Civil Service officers of the State of Assam prepared by the Selection Committee in its meeting held on the 9.4.2001, towards filling up two vacancies during 1998, four vacancies during 1999, four vacancies during 2000 and two vacancies during 2001, in the Assam Segment of the Indian Administrative Service Assam-Meghalaya Joint Cadre.

S.No. Name of the officer(S)/Staff Date of Birth

1998

1. Ashay Kumar Verma	27.07.1953 &
*2. Pradip Kumar Das	16.03.1953

1999

*1. Gokul Ch. Sharma	01.03.1948
*2. Pradip Kumar Das	16.03.1953
3. Longli Phangcho (STH) / MC	20.04.1952
4. Joy Chandra Goswami	25.11.1951 &
*5. Mahat Chandra Brahma (STP)	31.12.1946

2000

1. Gokul Chandra Sharma	01.03.1948
2. Pradip Kumar Das	16.03.1953
3. Mahat Chandra Brahma (STP)	31.12.1946
4. Md. Allauddin	31.12.1950
5. Md. Nurul Haque	28.02.1946
6. Seikhulien Thadou (STH)	25.09.1940 &
7. Rabendra Kumar Das	05.02.1954

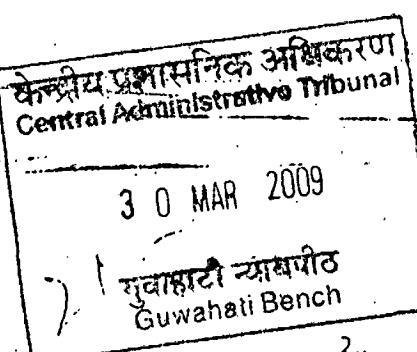
2001

*1. Gokul Chandra Sharma	01.03.1948
*2. Pradip Kumar Das	16.03.1953
*3. Mahat Chandra Brahma (STP)	31.12.1946
4. Md. Nurul Haque	28.02.1946
5. Ilaba Gogoi	01.03.1949 &
6. Ilaba Kumar Chetia	01.04.1949

The officers have been included in the Select List provisionally subject to their clearance in the disciplinary proceedings pending against them!

Contd. A/

Rabendra Kumar Das



- 23 -

35

-15-

The officer has been included in the Select List provisionally subject to grant of integrity certificate by the State Government.

Rishabh

(R.VAIDYANATHAN)

Under Secretary to the Government of India

To The Manager
Government of India Press
Faridabad (Haryana)

ME/EL/2001/2/2001-AIS/II

New Delhi, the 2 June 2001

1. The Chief Secretary, Government of Assam, Dispur, GUWAHATI with 12 spare copies for onward transmission to the officers concerned.
2. The Secretary, Union Public Service Commission, Dholpur House, New Delhi. (Ms. Molly Tiwari, Under Secretary)

Rishabh

(R.VAIDYANATHAN)

Under Secretary to the Government of India

Internal Distribution: Under Secretary (S.II) // 10 spare copies

Abd
AB

30 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

DEPUTY COMMISSIONER
CACHAR & SUCILLA

Now 30 JUL 2002

-24-

Confidential.

NO. AAP. 36/97/Pt/502.

GOVERNMENT OF ASSAM

DEPARTMENT OF PERSONNEL (PERSONNEL "A")
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI - 781006.

Annexure-2

Dated Dispur, the 16th July, 2002.

ORDERED BY THE GOVERNOR OF ASSAM.

Whereas, a departmental proceeding was drawn up vide show cause notice No. AAP. 36/97/Pt/191 dated 16-2-2000 against Shri Pradip Kumar Das, ACS, the then Joint Secretary to the Govt. of Assam, Tourism Department for allegedly committing certain irregularities during his tenure as Managing Director, Assam Plains Tribes Development Corporation Ltd. Guwahati ; and

Whereas, in his written statement of defence submitted vide letter dated 4-7-2000 Shri Pradip Kumar Das, ACS the then Joint Secretary to the Govt. of Assam, Tourism Department denied the charges framed against him ; and

Whereas, after careful examination of the written statement of defence submitted by Shri Das and the materials on records it was decided to hold an enquiry into the charges against him and accordingly Shri Sumeet Jeroth, IAS, the then Commissioner & Secretary to the Govt. of Assam, Power (Electricity) Department was appointed as Inquiring Authority to conduct the enquiry into the charges against Shri Das and submit enquiry report at the earliest vide order No. AAP. 36/97/Pt/319 dated 30-10-2000 ; and

Whereas, the Inquiring Authority vide his letter No. 8/ PCON/SHO/PKD/2K1 dated 16-7-2001 submitted his enquiry report ; and

Whereas, on perusal of the enquiry report submitted by the Inquiring Authority it is found that only the charge No. 4, 7, 9 and 12 out of all together 12 number of charges against Shri Das could be proved by the Inquiring Authority ; and

Whereas, after careful examination of the enquiry report submitted by the Inquiring Authority and the available records, the charge No. 4, 7, 9 and 12 which were found to be proved by the Inquiring Authority are also not found conclusively proved against Shri P.K.Das, ACS and accordingly it is decided to close the departmental proceeding with a warning to the charged officer to be more careful in future in the matter of following Govt. Rules/Regulations/Instructions.

Contd. P/2.

AHD
OD

30 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 2 -

Accordingly, the Governor of Assam is pleased to warn Shri Pradip Kumar Das, ACS, presently Deputy Commissioner, Cachar, Silchar to be more careful in future in the matter of following Govt. Rules/Regulations/Instructions and close the departmental proceeding drawn up against Shri Pradip Kumar Das, ACS vide show cause notice No. I&P. 36/97/Pt/101 dated 16-2-2000 and thus the departmental proceeding is finally disposed of.

By order and in the name
of the Governor of Assam.

Sd/- J.B.Saikia,
Commissioner & Secretary to the Govt. of Assam,
Personnel (I.) Department.

P.C.O. No. I&P. 36/97/Pt/502-A, Dated Dispur, the 16th July, 2002.

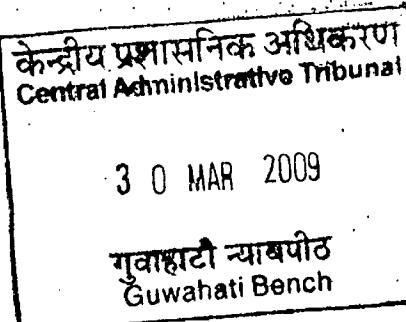
Copy to :-

1. Shri Pradip Kumar Das, ACS, Deputy Commissioner, Cachar, Silchar.
2. The Commissioner & Secretary to the Govt. of Assam, Finance Department, Dispur, Guwahati-6.
3. The Commissioner & Secretary to the Governor of Assam, Dispur, Guwahati-6.
4. P.P.B. to Chief Minister, Assam, Dispur, Guwahati-6.
5. P.P. to Chief Secretary, Govt. of Assam, Dispur, Guwahati-6.
6. Shri Sumeet Joshi, IAS, Director, Govt. of India, Deptt. of Economic Affairs, Ministry of Finance, New Delhi.
7. Personal file of Shri P.K.Das, ICS.

By order etc.,

J.B.Saikia
Commissioner & Secretary to the Govt. of Assam,
Personnel (I.) Department.
16/7/02
16/7/02

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M



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- 26 -

Annexure- 3

Dated, Dispur
The 15th May, 2004

To,

The Commissioner & Secretary to
The Govt. of Assam
Personnel (A) Deptt., Dispur.

Subject : Nomination to I.A.S.

Sir,

I have the honour to submit that my candidature for nomination to I.A.S. is overdue, as per my cadre-seniority in A.C.S. Of course, I am happy that I am in the current select list and I express my gratitude to the Govt. of Assam for this kind gesture.

However, I understand that my name is implicated in a PIL in the Hon'ble Gauhati High Court as one of nine respondents (as D.C., Cachar) filed by an N.G.O. , which is pending for hearing. I also do believe that the allegation brought out in the plaint against several officials of D.R.D.A., Cachar have already been thoroughly enquired into by C.M.'s Vigilance Cell, as per direction of the Hon'ble High Court.

May I therefore, pray that your good self would be kind enough to obtain necessary report/information from the Vigilance Cell and recommend my candidature for promotion to the I.A.S. at your earliest convenience, for ends of justice.

Yours faithfully,

P.K. Das
(P.K. Das) 18/5/04
Jt. Secy. to the Govt. of Assam
Soil Conservation Deptt., Dispur.

*Alfred
Das*

Annexure-4

(TO BE PUBLISHED IN THE GAZETTE OF INDIA PART I SECTION 3(2)(b) OF THE GOVERNMENT OF INDIA)

EX-मुद्रण प्रशासनिक अधिकारी
Central Administrative Tribunal

No. 14015/06/2003-AJS(I)-A

Government of India

Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi

30 MAR 2009

गुवाहाटी न्यायपीठ
May, 2009
Guwahati Bench

NOTIFICATION

In terms of the provisions contained in Sub-regulation (3) of Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the Union Public Service Commission has approved the Select List of 2002 for the Assam segment of the joint Assam-Meghalaya Cadre, containing the names of the following State Civil Service officers of the State of Assam prepared by the Selection Committee in its meeting held on 29th December, 2003, towards filling up 8 (eight) vacancies during 2002 in the Indian Administrative Service :-

SELECT LIST 2002

Sl. No.	Name of the Officer (S/Sh.)	Date of Birth
1.	Pradip Kumar Das	16.03.1953
2.	Md. Nurul Haque	28.02.1946
3.	A.B. Md. Eunus	01.02.1953
4.	Balendra Basumatary (STP)	01.04.1948
5.	Subhash Ch. Longmalei (STH)	23.02.1953
6.	Gokul Ch. Sarmia	01.03.1948
7.	Rafique Zaman	01.02.1951
8.	Syed Iftikhar Hussain	21.09.1954

\$ The names at S. No. 1 and 2 have been included in the Select List provisionally subject to grant of Integrity Certificate by the State Government. The officer at S. No. 2 cannot be appointed as he has retired on 29th February, 2004.

The name at S. No. 6 has been included in the Select List provisionally subject to grant of Integrity Certificate by the State Government and his clearance in the disciplinary proceedings pending against him.

K.K. Sharma
(K.K. Sharma)
Desk Officer

To

The Manager
Government of India Press
FARIDABAD (HARYANA).

A. K. Sharma
DD

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

No. 14015/06/2003-AIS(I)-A

New Delhi, the 21 May, 2004

1. The Chief Secretary, Government of Assam, Dispur, with eight spare copies for onward transmission to the officers concerned.
2. The Secretary, Union Public Service Commission, Dholpur House, New Delhi. (Ms. Molly Tiwari, Under Secretary).

Q.S.P.
(K.K. Sharma)
Desk Officer

Internal Distribution : US(S-II)/RO(CM)/D.S.(S-III)/10 Spare Copies.

*Attn
DR*

Application for
the copy.

प्राप्त और फोलियो की अपेक्षित गणना सुरक्षित होने की तिथि
तारीख
Date fixed for not
requiring number of
stamps and folios.

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के समय
Date of delivery of the
required stamps and
folios.

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Date on which the copy
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प्राप्तक को प्रतिलिपि देने की
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Date of making over the
copy to the applicant.

6/2/05

1/3/05

1/3/05

1/3/05

1/3/05

IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Annexure - 5

Appeal from

Civil Rule

PIL No. 23 of 2002

"AL-PADUT" a. Nor - Govt. Organisation

Appellant
Petitionerकेन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

30 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Versus

State of Assam

Others

Respondent

Opposite Party

Appellant
For
Petitioner

Mr. Mahendra Bhuyan

Mr. A. M. Mazumder

Mr. Syed Md. Tarkid Chisti

Mr. A. M. Mazumder

Mr. A. S. Choudhury,
Ms. S. Seal, Agent for PetitionerRespondent
For
Opposite PartyA. A., Assam Ms. A. S. Choudhury, Mr. N. D. Sarker, Mr. R. Islam,
Mr. A. M. Mazumder, Mr. A. B. Choudhury, Mr. R. Islam,Noting by Officer or
AdvocateSerial
No.

Date

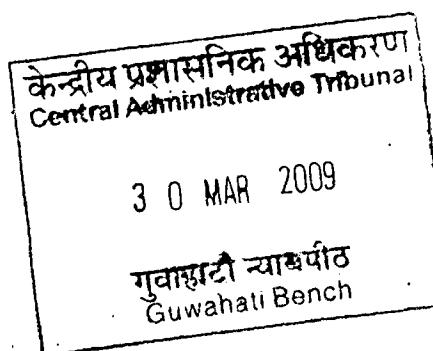
Mr. J. P. Office notes, reports, orders or proceedings
S. B. Bhattacharya, signature above for R. (8)

4

... F O R E ... G A R M A

Affid
X/2

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IN THE MATTER OF :-

"AGRADUT",

a Non-Government Organisation,

Head Quarter at Hospital Road,

Silchar - 1, Dist.: Cachar, Assam.

Represented by its Vice-President

Sri Matab Uddin Mazumdar.

PETITIONER

Matab
MD

1800
Guwahati
G.W.

3 - 23 -

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

30 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

-VERSUS -

1. The State of Assam, through the Secretary to the Govt. of Assam, Panchayat & Rural Development Department, Dispur, Guwahati-6.
2. The Chief Secretary to the Govt. of Assam, Dispur, Guwahati.
3. The Commissioner & Secretary Govt. of Assam, Chief Minister Secretariat, Dispur, Guwahati-6.
4. The Superintendent of Police, Chief Minister Vigilance Cell, Dispur, Guwahati-6.
5. The Director, Panchayat and Rural Development Department, Bhangagarh, Guwahati.
6. The Deputy Commissioner, Cachar, Silchar. P.O. Silchar, Dist.: Cachar.
7. The Project Director, District Rural Development Agency, Cachar, P.O. :- Silchar, Dist. :- Cachar, Assam.

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केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

30 MAR 2009

गुवाहाटी न्यायपाठी
Guwahati Bench

8. Sri Rashid Ahmed Mazumdar,
A.P. O. (T), D.R.D.A., Cachar.
P.O.;-Silchar Dist. Cachar.

9. Sri Afjal Hussain Laskar, Junior
Engineer, H.Q., DRDA, Cachar
P.O.: - Silchar, Dist.: - Cachar

.....RESPONDENTS.

.....positions

.....positions

Attd
✓

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
केन्द्रीय प्रशासनिक अधिकारी अधिकारी Central Administrative Tribunal 30 MAR 2009 गुवाहाटी न्यायपीठ Guwahati Bench	2	3	4 <u>PIL No. 23 of 2002</u>

HON'BLE MR. JUSTICE B.K. ROY, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE D. BISWAS

22/02/2005

Heard Mr. A.S. Choudhury, learned senior counsel for the petitioner and also Mr. A.M. Mazumdar, learned senior counsel for the respondent.

It appears that the grievance of the petitioner stands redressed by the further orders passed by the Government. Accordingly, no useful purpose will be served in keeping this PIL any more pending in this High Court.

This PIL stands disposed of accordingly.

S/FR D. Biswas
Judge

S/FR Bimal Kr. Deka
Chief Justice

1/3/2005

CERTIFIED TO BE TRUE COPY	
Date: 1/3/2005	
Section 8 Guwahati Court Annotated U/S 76, Act 1, 1871	

1/3/2005

Attd
DS

To,

The Commissioner & Secretary

To the Govt. of Assam,

Personnel (A) Deptt.,

Dispur, Guwahati- 6

Dated, Dispur the 30th June, 2005केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

30 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench**Sub: Nomination to I.A.S. Prayer therefore.**

Sir,

With reference to the subject mentioned above, I have the honour to stat that I stand as one of the senior most officers in the A.C.S. cadre as per the prevailing Gradation- List, Published by the Govt. of Assam(Personnel Deptt.). But it is a matter of utter misfortune that I am deprived of nomination into I.A.S. despite my seniority of 28 (twenty-eight) years (1977 Batch) in the state cadre.

That sir, it is a fact that I was selected for nomination into I.A.S. by the U.P.S.C./Govt. of India (Ministry of Personnel, Deptt. of Personnel & Training, New Delhi) as back as in 2001, keeping my name in "Sealed Cover" due to pendency of Departmental Proceedings. However, the said Departmental Proceeding was closed and disposed of without any punishment, vide Govt. of Assam (Personnel "A" Deptt.) Order No. AAP 36/07/Pl./502 Dt. 16-07-2002.

It is matter of grave injustice and misfortune that the Govt. of Assam failed to open the "Sealed Cover" and notify me nominating into IAS as per select-list of 2001. It is also a matter of utter astonishment that till today I am in the dark as to the fate of the "Sealed-cover" as I have not received any communication what-so-ever to this effect from the Govt.

That Sir, may I be permitted to state that the net result of the Govt. inaction is that I have been superseded by several of my juniors in the state-cadre in being nominated to I.A.S.

However, as indicated in Govt. of India {Ministry of Personnel, Public Grievances & Pensions (Dept. of Personnel & Training)} Notification No. 14015/06/2003-AIS (I) – A dt. May, 2004, I was once again included in the U.P.S.C. approved Select List of 2002 and placed at serial number 1 (one), with the remark that the selection was made subject to grant of.... Integrity certificate by the state Govt. May I be permitted again, to state that I did submit a prayer to your

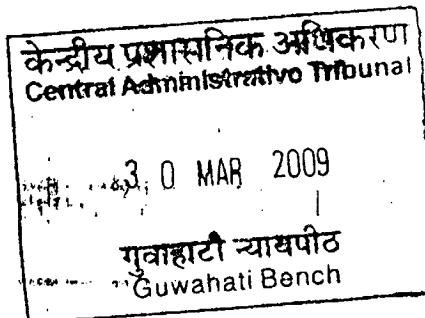
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good-self on 18th May, 2004 * seeking justice over the matter, but then, I am completely in the dark as to the Govt. action on my prayer vis-à-vis my nomination to I.A.S. since I have not received any communication in this regard from the Govt. till date.

In this regard, may I be permitted to draw your kind attention to Govt. of India {Ministry of Personnel, Public Grievances and Pensions (Dept. of Personnel & Training)} office Memorandum No. 22012/1/199-Estt. (D) Dt. 25.10.2004 on the subject of promotion and the cardinal policy/principle therefor. The said Office Memorandum unambiguously clarifies that "The D.P.C. is required to consider the cases of all persons who are other wise eligible in terms of the Recruitment Rules as on the relevant crucial date and are in the Zone of consideration. If, however, case of an employee in the Zone of consideration is covered by any of the three situations, only this fact is to be furnished to the D.P.C. so that the recommendations could be placed in sealed cover. Where none of the three situations has arisen, a simple vigilance clearance would need to be furnished. Vigilance clearance evaluation would have no other significance and would not be a factor in deciding the fitness of the officer for promotion on merit.

It is also clarified that there is no requirement of furnishing a separate integrity certificate to the D.P.C. In terms of the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Jayakumari etc. (AHC 1991 BC 2010); no promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption / dereliction of duty etc., there is a serious complaint and the matter is still under investigation of C.B.I. or other wise, the Govt. is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover."

Now, G.O.I. office memorandum No. 22011/4/91 – Estt. (A) dt. 14-09-1992 has unambiguously laid down the principle / yardsticks to be followed regarding cases of Government servants to whom "Sealed Cover" procedure will be applicable. Para 2, of the said O.M. reads as below :



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Quote:

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"At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration Zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Committee (DPC) :-

- (i) Govt Servants under suspension;
- (ii) Govt. Servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Govt. servants in respect of whom prosecution for a criminal charge is pending"

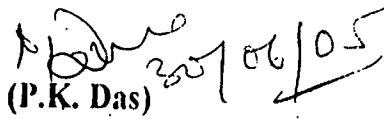
Unquote.

Now, under the circumstances narrated in the foregoing pares of my paras and the principle / policy enumerated in the relevant O.M.S. of Govt. of India, may I be permitted to state that none of the three categoriesed situations is applicable in my case of promotion, nor does there exist any impediment / reason as to why the required vigilance clearance could not have been / cannot be issued in my favour so as to materialise my nomination into I.A.S. as approved by the U.P.S.C. / Govt. of India In May, 2004.

That Sir, I am forced to state that I do consider the deprivation of my nomination to I.A.S as a case of grave injustice on part of the Govt. of Assam, in violation of the guiding principle / Policy / provisions laid down by G.O.I in this regard and I do pray that justice be not further delayed beyond a period of 30 (thirty) days from today in which case, I shall have no other option but to seek justice in the appropriate court of law.

I remain Sir,

Yours faithfully


(P.K. Das)

Joint Secretary to the Govt. of Assam
Soil Conservation Deptt.
Assam Sectt., Dispur


Addressee

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Original Application No. 63 of 2008

Date of Order: This the 20th day of June 2008

The Hon'ble Shri M.R. Mohanty, Vice-Chairman

The Hon'ble Shri Khushiram, Administrative Member

Shri Pradip Kumar Das, son of
Late Dwijendra Kr. Das, resident
of Ananda Nagar, Guwahati-6,
Assam.

.....Applicant

By Advocate Mr D.K. Das

- Versus -

1. The Union of India, represented by the Secretary to the Government of India, Department of Personnel and Training, New Delhi.
2. The Union Public Service Commission represented by its Secretary, Dholpur House, New Delhi.

The State of Assam, represented by the Secretary to the Government of Assam, Department of Personnel, Dispur, Guwahati-6.

4. Longki Phangchô,
Commissioner of Excise,
Assam, Guwahati.
5. Joy Chandra Goswami,
Secretary, Health Department,
Assam, Dispur.

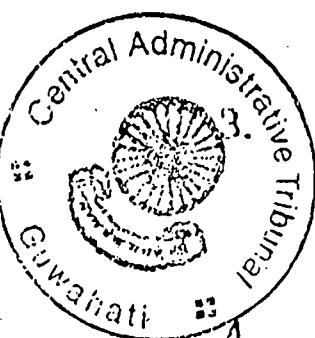
6. Mahak Chandra Brahma,
Secretary, W.P.T.B.C. Department,
Assam, Dispur.

7. Md. Allauddin,
Secretary, Personnel Department,
Assam, Dispur.

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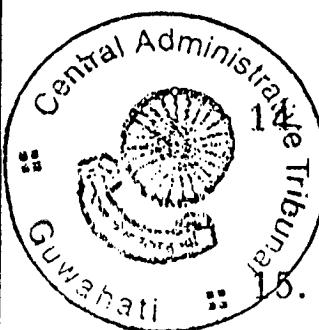


8. Seikhollen Thadon,
Managing Director,
Assam Financial Corporation,
Guwahati.
9. Rebendra Kumar Das,
Secretary, S.A. Department,
Assam, Dispur.
10. Bhaba Gogoi,
Director,
Panchayat Development, 6th Mile,
Guwahati.
11. A.B. Mohammad Eunus,
Managing Director, STATFED,
Guwahati.
12. Balendra Basumatary,
Joint Secretary,
Forest Department,
Assam, Dispur.
13. Subhash Chandra Longmailai,
D.C. Chirang, District Dhaligaon.
14. Syed Iftikar Hussain,
Principal Secretary,
N.C. Hills District Council,
Haflong.
15. Rafique Zaman,
Joint Secretary,
Assam Secretariat,
Dispur.
Rafique Zaman,
Joint Secretary,
Assam Secretariat,
Dispur.

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.....Respondents

By Advocates Mr M.U. Ahmed, Addl. Standing Counsel for the
Union of India; Mrs M. Das, Government Advocate, Assam
and Ms U. Das for UPSC.


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ORDER

Manoranjan Mohanty, Vice-Chairman:-

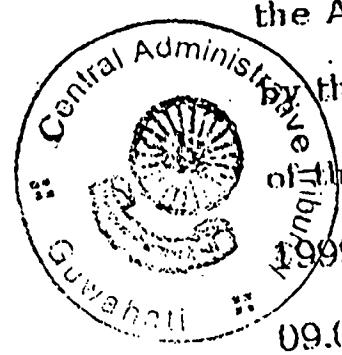
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The case of the Applicant, as disclosed in the Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, is as follows:-

In the year 1977, the Applicant was selected by Assam Public Service Commission to be a member of Assam Civil services and was appointed to the said Services and, in course of his said employment; he held a number of responsible posts and discharged his duties all along to the best of his ability and without blemish. At the time of filing of the present Original Application, he was holding the post of Joint Secretary to State Govt. of Assam in Soil Conservation Department. On being within the zone of consideration for promotion (to the posts figuring in the Assam Segment of Assam-Meghalaya Cadre of the Indian Administrative Service), the case of the Applicant was placed before the Selection Committee constituted by the Union Public Service Commission for the purpose of filling up of the vacancies (identified in the said IAS cadre) for the year 1998, 1999, 2000 & 2001. The Selection Committee in its meeting held on 09.04.2001, prepared separate select lists for each of the said years and, by Notification under Annexure-1 dated 27.08.2001, the Govt. of India published year-wise select lists; wherein the name of the Applicant was figured in each of these lists prepared for the years 1998, 1999, 2000 & 2001. It was, however, indicated that inclusion of the name of the Applicant was subject to clearance of the Disciplinary Proceeding pending against him. A Disciplinary Proceeding was



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initiated against him with the issuance of the charge sheet on 16.02.2000. It is the case of the Applicant that since there were no charge-sheet [in any Departmental Proceeding] against him during the years 1998 & 1999 [and even by 1st day of January of 2000]; he could not have been denied his due appointment [by way of promotion] to the cadre of I.A.S. against the vacancies for the years 1998, 1999 & 2000. After he was superseded by his juniors (in the matter of getting promotion to IAS Cadre), the Departmental Proceeding in question was closed by an order that was issued by State Govt. of Assam under Annexure 2 dated 16.07.2002 i.e. after 2 years and six months of initiation of Departmental Proceeding. It has been alleged by the Applicant that, with an ulterior motive, the charge sheet was drawn on 16.02.2000; just to deprive him to get the promotion and in order to benefit his juniors/vested interest. Apprehending that he may, again, be deprived of the promotion (to IAS) of the year 2002, the Applicant made a representation under Annexure-3 dated 18.05.2004 to update his papers to be placed before the Selection Board. Select list, as against the 8 vacancies of the year 2002 (of Assam Segment and Assam Meghalaya Joint Cadre of IAS).

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May 2004; wherein the name of the Applicant figured at Sl.No.1 of the Select List and it was also disclosed therein that inclusion of the name of the Applicant was provisional for want of integrity certificate from the State Government of Assam. It is the case of the Applicant that PIL No.23 of 2002 that was filed (in the Hon'ble Gauhati High Court) during 2002 became the reason for the State Government of Assam not to grant 'Integrity Certificate' in his favour and that the said PI



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No.23 of 2002 was virtually dropped by an order dated 22.02.2005; the text of which reads as under:

"Heard Mr. A.S. Choudhury, learned senior counsel for the and also Mr. A.M. Mazumdar, learned senior counsel for the respondent.

It appears that the grievance of the petitioner stands redressed by the further orders passed by the Government. Accordingly, no useful purpose will be served in keeping this PIL any more pending in this High Court.

"This PIL stands disposed of accordingly."

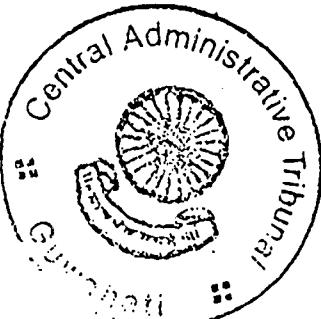
It is the case of the Applicant that despite the dropping of the proceeding (PIL No.23 of 2002) on 22.02.2005 in the Hon'ble High Court, no steps were taken to promote him (to IAS Cadre) as against the vacancies of the year 2002 (for he was recommended under Annexure-4 of May 2004) and, in the said premises, the Applicant submitted a representation under Annexure-6 dated 30.06.2005, and, finally, approached this Tribunal with the present Original Application [filed on 08.03.2006] with the following prayers:-

"8.1 To direct the Respondent authorities to promote the applicant as per his position as obtained in the select list prepared for the years 1998, 1999 and 2000 for promotion to the Assam segment of the IAS of the Assam-Meghalaya cadre with retrospective effect with all consequential benefits including salary, seniority etc.

8.2 Alternatively direct the respondent authorities to promote the applicant as per his position as obtained in the select list prepared for the year 2002 for promotion to the Assam segment of the IAS of the Assam-Meghalaya cadre with retrospective effect with all consequential benefits including salary, seniority etc.

8.3 Cost of the application.

8.4 Any other relief/reliefs that the applicant may be entitled to."



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By filing a written statement, the Union Public Service Commission [Respondent No.2] has disclosed as under:-

"...that the Union Public Service Commission discharge their functions and duties assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for the IAS/IPS/IFS. In pursuance of these Rules, the IAS (Appointment by Promotion) Regulations, 1955 [Promotion Regulations, in short] have been made. In accordance with the provisions of the Promotion Regulations, the Selection Committee presided over by the Chairman/Member of the Union Public Service Commission, makes selection of State Civil Service [SCS, in short] officers for promotion to the Indian Administrative Service."

"...that in terms of Rule 4(2) (b) of the IAS [Recruitment] Rules, 1954 read with Regulation 5(1) of the IAS [Appointment by Promotion] Regulations, 1955, the Central Govt., in consultation with the State concerned, determines the number of posts for recruitment by promotion of SCS officers of the State to the IAS during the particular year. Thereafter, the State Government forwards a proposal to the Commission along with the Seniority List, Eligibility List (up to a maximum of three times the number of vacancies) of the State Service Officers. Integrity Certificates, certificates regarding disciplinary/criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers."

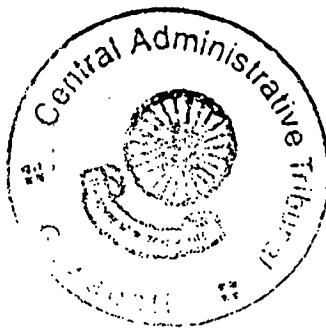
"The above documents received from the State Govt. are examined by the Commission for completeness and after the deficiencies have been resolved and reconciled, a meeting of the Selection Committee is convened for preparing the Select List for promotion to the I.A.S. As per Regulation 3 of the said Regulations, the meeting of the Selection Committee is presided over by either the Chairman or a Member, UPSC."

"...In accordance with the provisions of Regulation 5(4) of the Promotion Regulations, the aforesaid Committee duly classifies the eligible State Civil Service officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(5) of the said

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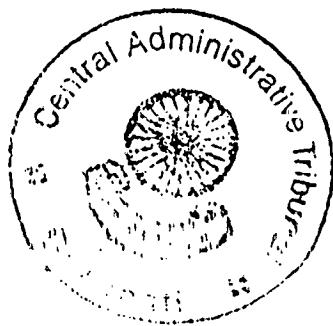
Regulations, the Selection Committee prepares a list by including the required number of names first from officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Civil Service."

"...Further, the names of the officers whose integrity certificate is withheld by the State Govt., or against whom there are disciplinary/criminal proceedings pending are included in the Select Lists provisionally in accordance with the provisions of proviso to Regulation 5[5].

"...As per the provisions of Regulation 8 and 8.A, the State Govt. and the Central Govt. are required to furnish their observations on the recommendations of the Selection Committee. After taking into consideration the observations of the State Govt. and the Central Govt. and the requisite records received from the State Govt., the Commission take a final decision on the recommendations of the Selection Committee with or without modifications in terms of the provisions of Regulation 7. Thereafter the Govt. of India, Department of Personnel and Training, appoints officers included unconditionally in the Select List to the IAS during the validity period of the Select List."

3. In the said written statement of the UPSC/Respondent No.2, it has also been disclosed as under:-

"...that Selection Committee Meeting for preparation of Select Lists of 1998, 1999, 2000 & 2001 was held on 09.04.2001 for 02, 04, 04 and 02 vacancies respectively. The State Government, vide letter dated 05.01.2001, had informed that disciplinary proceedings were pending against the applicant, Shri Pradip Kumar Das. On an overall relative assessment of the service records, the Selection Committee assessed as 'Very Good' for all the aforesaid years. On the basis of this assessment the applicant, Shri Pradip Kumar Das had been included at S. No.2 in all the aforementioned Select Lists provisionally subject to clearance of disciplinary proceedings pending against him as per Reg.5(5) of the Promotion Regulations. The Commission approved the Select List of 1998, 1999, 2000 and 2001 vide letter dated 26.06.2001." *[Signature]*



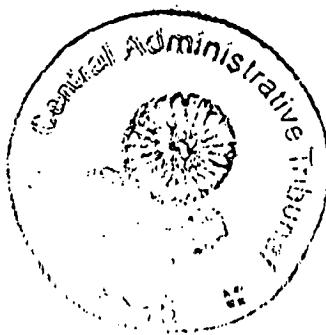
..... that the Govt. of Assam vide their letter dated 08.10.2002 forwarded a proposal to the Commission for making inclusion of the name of Shri Pradip Kumar Das as unconditional in the Select Lists of 1998, 1999, 2000 and 2001. The Commission examined the proposal and observed that Regulation 7(4) of the Promotional Regulations lays down the following:-

"7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or up to 60 days from the date of approval of the Select List by the Commission under sub-regulation (1) or as the case may be finally approved under sub-regulation (2) whichever is later.

Provided also that where the select list is prepared for more than one year pursuant to the second proviso to sub-regulation (1) of regulation 5, the Select Lists shall remain force till the 31st day of December of the year in which the meeting was held to prepare such lists or up to 60 days from the date of approval of the Select Lists by the Commission under this regulation, whichever is later.

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the Select List as 'Unconditional' to the Commission during the period when the Select List was in force, the Commission shall decide the matter within period of ninety days (amended as 45 days w.e.f. 13.10.2005) or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the Select List ceased to be in force."

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"In view of the above, the State Government were intimated vide letter dated 09.12.2002 that as the Select Lists of 1998, 1999, 2000 & 2001 for promotion to the IAS of Assam-Meghalaya Joint Cadre were prepared by the Selection Committee at its meeting held on 09.04.2001 and approved by the Commission on 26.06.2001 the validity period of these Select Lists had lapsed on 31.12.2001. Since the proposal of the State Government to make the inclusion of Shri Pradip Kumar Das



unconditional was made vide letter dated 08.10.2002, i.e. after the aforesaid Select Lists had already lapsed on 31.12.2001, the name of Shri Pradip Kumar Das could not be made unconditional as per the provisions of the Promotion Regulations.

"..... that the Govt. of India determined vacancies for 2002 and '2003 as 08 and 'Nil' respectively. The State Government, vide letter dated 03.09.2003, furnished a proposal to convene a Selection Committee Meeting. Vide their letter dated 17.12.2003, the State Government informed that they were unable to certify the integrity of Sh P.K. Das. The Selection Committee meeting which was held on 29.12.2003 considered the applicant, Shri Pradip Kumar Das at S.No.1 of the eligibility list and on an overall relative assessment of his service records, he was assessed as Very Good'. On the basis of this assessment, the applicant was included in the Select List of 2002, at S.N.1. However his inclusion therein was provisional subject to grant of Integrity Certificate by the State Govt. No Select List was prepared for 2003 as there was 'Nil' vacancy. The Select List of 2002 was approved by the Commission on 28.04.2004. No proposal was received from the State Govt. to make the name of Shri Pradip Kumar Das unconditional in the Select List of 2002 during the validity period of the Select List. As such, his name could not be made unconditional in the Select List of 2002.

"..... that as per the information submitted by the State Government in their proposal, a charge sheet had already been issued to the applicant on the date of the Meeting of the Selection Committee i.e. 09.04.2001. The Selection Committee had provisionally included the name of the applicant in the Select Lists of 1998, 1999, 2000 & 2001 strictly in accordance with the provisions of Regulation 5(5) of the Promotion Regulations. The said Regulation is quoted below:-

"5(5) The List shall be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter se within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him

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unfit for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year-wise select lists for more than one year pursuant to the 2nd proviso to sub-regulation (1), the officer included provisionally in any of the Select List so prepared, shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the Select List determined by the Central Government for such year."

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"The Selection Committee takes into account the disciplinary proceedings pending as on the date of preparation of the Select Lists and not the disciplinary proceedings pending as on the first day of the year for which the Select List is prepared."

"..... that the State Government had withheld the integrity certificate in respect of the applicant at the time of the Selection Committee Meeting held on 29.12.2003 and as such the Committee made the applicant's inclusion in the Select List of 2002 provisional. The said action of the Selection Committee was strictly in accordance with the provisions of Regulation 5(5) quoted above."

4. In filing a written statement the Govt. of India

[Respondent No.1] stated as under:

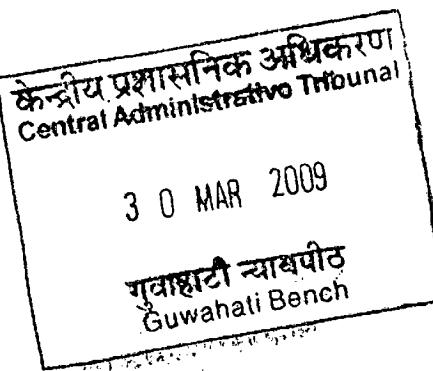
"..... the process for appointment of State Civil Service officers to the IAS under IAS (Appointment by Promotion) Regulations, 1955 is initiated by the State Government with determination of year-wise vacancies. Once the vacancies are determined, the State Govt. is required to make available the relevant service records of eligible State Civil Service Officers who fall within the zone of consideration to the Union Public Service Commission. The Commission convenes a meeting of the Selection Committee. The role of Union of India in finalizing the selection is restricted to the functional requirement of nominating two Joint Secretary level officers as its representatives. After the Select List is approved by the Union Public Service Commission, only thereafter the appointments of those State Civil Service officers who are included unconditionally in the Select List are notified by Government of India. Parliament in accordance with Article 309 of the Constitution of India read with Article 312 of the Constitution of India has enacted the All India Services Act, 1951 for the purposes of regulating the



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recruitment and conditions of the service of persons belonging to the Indian Administrative Service and the Indian Police Service. Under the All India Services Act 1951, particularly section 3 of the said Act, the Central Government is empowered to make rules to regulate the recruitment and conditions of the service of persons appointed to the Indian Administrative Service. The relevant provisions of section 3 read as under:-



"3(1) The Central Government may, after consultation with the Governments of the State concerned, (including the State of Jammu & Kashmir) (and by notification in the Official Gazette) make Rules for the Regulation of recruitment and conditions of service of persons appointed to an All-India Service....."

"In pursuance of section 3(1) of the All India Services Act, 1951 the Central Government has framed the following rules relevant for the purposes of the present O.A.:-

- a) The Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to in short as the Recruitment Rules)
- b) The Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to in short as Promotion Regulations).
- c) The Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as Selection Regulations).

"A person is recruited to the Indian Administrative Service under Rule 4 of the Recruitment Rules by one of the three sources given hereinbelow:-

- a) through competitive examination (i.e. direct recruitment);
- b) by promotion of substantive member belonging to the State Civil Service; or
- c) by selection of officers who hold in a substantive capacity gazetted posts in connection with the affairs of the State and belong to the services other than State Civil Service.

"..... the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in the Government of India administers the provisions contained in the Indian Administrative Service

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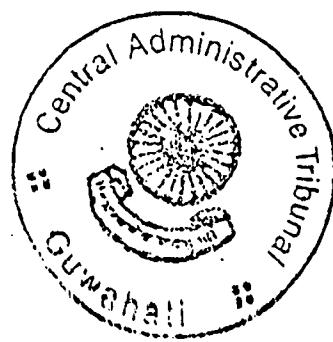
(Appointment by Promotion) Regulations, 1955 (hereinafter called the "Promotion Regulations") and is, therefore, concerned with the application in the matter of recruitment to the Civil Service from amongst State Civil Service officers and interpretation of any of the statutory provisions laid down in the said Regulations as the cadre controlling authority in respect of the Indian Administrative Service.

"..... the State Government and the Union Public Service Commission are primarily concerned with reference to case for consideration of the applicant for promotion to the IAS. The suitable State Civil Service officers who are included in the

"In the process of preparation of the Select List by the UPSC, the Government of India, as Cadre Controlling Authority in respect of the Indian Administrative Service, is concerned with determination of vacancies and nomination of two officers not below the rank of Joint Secretary as members of the Selection Committee and thereafter in making appointments of the officers included in the Select List to the IAS subject to and in accordance with the provisions contained in Regulation 9 of the Promotion Regulations.

"..... the process of preparation of the Select List for vacancies already determined begins with the list of names of State Civil Service Officers being forwarded by the State Government to the Commission for consideration by the Selection Committee. The Select List prepared by the Committee is forwarded by the State Government to the Commission alongwith its observations on the recommendations of the Committee. The observations of the Central Government are also forwarded to the Commission thereon and the final approval to the Select List is conveyed by the Commission to the Central Government. Thereafter, on receipt of Select List, appointments are considered by the Central Government from the Select List on receipt of unconditional willingness for appointment to the IAS from the officers included in the Select List, accompanied with a declaration of marital status and also consent for termination of lien in the State Civil Service in the event of substantive appointment to the IAS.

5. In para 13 & 14 of the written statement, the Govt. of India/Respondent No.1 has disclosed the reason for which the Applicant could not be promoted to the cadre of I.A.S. Text of said para 13 14 of the written statement of the GOI/respondent No.1 reads as under:-



"As regards the contention of the applicant that he should have been appointed to IAS and the charge sheet was issued with malafide intention, it is submitted that the applicant was considered and included provisionally in the Select List for promotion to IAS. The State Govt. did not make positive recommendations to the Union Public Service Commission to make the name of the applicant as unconditional during the validity period of the Select List, there was, therefore, no occasion for the replying respondent to appoint the applicant to the IAS cadre of Assam. It is

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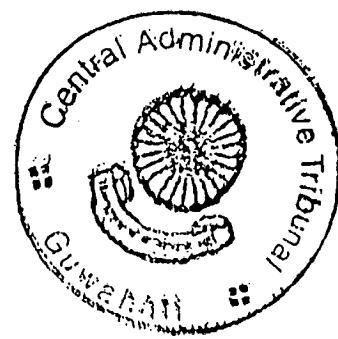
"..... in the light of the above position and particularly the fact that the name of the applicant was not made unconditional during the validity period of the Select List there was no occasion for the replying respondent to issue notification appointing the applicant to IAS cadre of Assam in accordance with the statutory provisions of the IAS (Appointment by Promotion) Regulations, 1955. The Hon'ble Tribunal may be pleased to dismiss the application which is devoid of merit and it is prayed accordingly."

6. By filling a written statement the State Govt. of Assam [Respondent no.3] stated as under:-

"..... the State Govt. recommended the name of Shri P.K. Das, ACS (i.e. the applicant) to the UPSC several times for considering his promotion to the IAS, Govt. of India, Ministry of Personnel, P.G. & Pensions (DOPPT), the applicant was also included in the Selection List provisionally subject to clearance of departmental proceedings (granting of Integrity Certificate).

"..... a departmental proceeding was drawn up by the State Govt. against the applicant while he was working as M.D. Assam Tourism Development Corporation Ltd. Guwahati. Accordingly, the Govt. of Assam after proper enquiry close the said Departmental Proceeding with warning to the applicant to be more careful in future in the matter of following Govt. Rules/Regulation/ Instructions and closed the said departmental proceedings and finally disposed of vide State Govt.'s Order No.AAP.36/97/PI/502, Dated 16.7.2002.

"..... a revised proposals for preparation of Select List of State Civil Service Officers against 2 post for the year, 1998, against 4 post of 1999, again 4 post of 2000 were forwarded to UPSC by State Govt. vide 3 letters Dated 12.12.2000. Proposal for preparation of Select List of Officers against 2 vacancies for the year, 2001 was also forwarded to UPSC vide State Govt. letter Dated 5.1.2001. In all the proposals, Certificate showing Departmental



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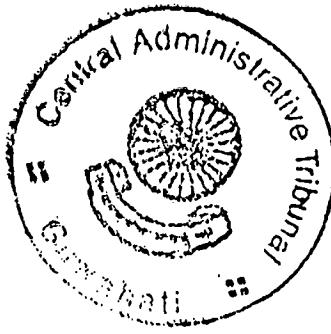
Proceeding (Charge Sheeted) pending against the applicant were issued along with the aforesaid proposals.

"..... the Govt. of India, Ministry of Personnel, P.G. & Pensions included the applicant in the Select List of 1998, 1999, 2000 and 2001 provisionally subject to clearance in the Disciplinary proceeding pending against the applicant vide letter Dated 27.4.2001.

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"..... the UPSC communicated a letter Dated 9.12.2002 of Govt. of Assam stating that in accordance with regulation 7(4) of the IAS (appointment by promotion) regulation 1995, the Select List remains in force till the 31st December of the year in which the meeting of the Selection Committee held or upto 60 days from the date of approval of the Select List by the Commission whichever is later. The Select List of 1998, 1999, 2000 and 2001 for promotion of Assam Segment to the IAS were prepared by the Selection Committee in each meeting held on 9.4.01 and approved by the Commission on 26.6.01. The validity period of those Select List therefore lapsed on 31.12.01 and accordingly the request of the State Govt. to declare applicants inclusion in the same Select List as unconditionally cannot be accepted. A proposal for filling up 6 vacancies of ACS Officers for the year 2002 was forwarded to UPSC vide State Govt. letter Dated 1.9.03. In the said proposal it was mentioned that the Departmental Proceeding against the applicant has been concluded and he is exonerated from the charges framed against him.

"However, Integrity Certificate was withheld due to the pending of the vigilance case against the applicant. Accordingly the Govt. of India, included the name of Shri P.K. Das in the Select List of 2002 provisionally subject to grant of Integrity Certificate. The State Govt. submitted 2 proposals to the UPSC for preparation of the Select List of ACS for promotion to IAS for the year 2004 and 2005 vide letter Dated 25.8.04 & 26.9.2005. In both the proposals the name of the applicant was found against Serial No.1. Shri Pradip Kumar Das has been included in the Select List of 2004 & 2005 provisionally subject to grant of Integrity Certificate by the State Govt. vide Govt. of India, Ministry of Personnel, P.G. and Pensions (Deptt. of Personnel & Training) letter No.14015/2003/2005-AIS(I)-A, Dtd. 13.6.2006."



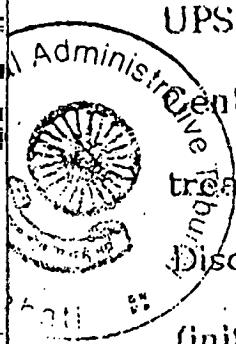
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7. From the pleadings of the parties, it reveals that the final recommendation made by UPSC/Central Government in favour of the Applicant (for the years 1998, 1999, 2000 & 2001) stood throttled for the reason of pendency of a Departmental Proceeding and subsequent recommendation for the year 2002, 2004 & 2005 also have been throttled for the reason of "want of integrity certificate from the State Government of Assam".

8. We heard Mr D.K. Das, learned Counsel appearing for the Applicant, Ms Usha Das, learned Counsel appearing for the UPSC and Mrs Manjula Das, learned Counsel appearing for the State Government of Assam and Mr M.U. Ahmed, learned Additional Standing Counsel for Union of India and also perused the materials placed on record.

9. In the present case, it is the stand of the Respondents that for the reason of the provisions in the relevant Recruitment Regulations, the name of the Applicant (who was not only recommended by the Committee headed by Chairman/Member of UPSC; but also was placed in the final list approved by the UPSC and Central Government (for the years 1998, 1999, 2000 and 2001) was treated "provisional" for the reason of pendency of a Departmental Disciplinary Proceeding against him. It is seen that a charge sheet (initiating a Departmental Disciplinary Proceeding) was drawn against the Applicant on 16.02.2000. Proposals of the State Government of Assam pertaining to the Applicant and other ACS Officers was submitted to UPSC (on 12.12.2000 & 05.01.2001) in respect of vacancies of the years 1998, 1999, 2000 & 2001. In all those proposals it was disclosed about pendency of a Departmental



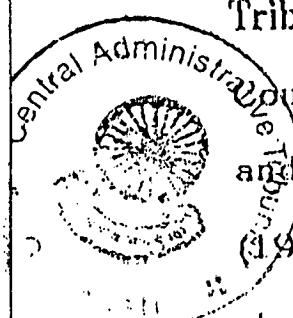
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Proceedings against the Applicant. Selection Committee meeting (for preparation of Select Lists for the years 1998, 1999, 2000 & 2001) was held on 09.04.2001. On overall relative assessment of the Service records, the Selection Committee assessed the Applicant to be "Very Good" for all the 4 years and placed him in all the Select List (at Sl.No.2) for the years 1998, 1999, 2000 & 2001, which received the final approval of UPSC on 26.06.2001. However, inclusion of his name, in those Select Lists were treated "provisional" for the reason of pendency of the Departmental Disciplinary Proceeding that was initiated with issuance of Charge Sheet on 16.02.2000 and, accordingly, he was not granted promotion; despite approval of his recommendation by the UPSC. It is stated that for the reason of the provisions in the Regulations governing the field, his promotion stood throttled for a Departmental Proceeding was pending against the Applicant since issuance of charge sheet dated 16.02.2000.

10. Similar provision (as that of withholding the promotion, during pendency of a Departmental Disciplinary Proceeding) came for consideration of this Tribunal and was examined by a Full Bench. Later, the said matter (which was examined by the Full Bench of this Tribunal) received consideration of the Hon'ble Apex Court of this Country in the case of 'Union of India and others Vs. K.V. Janakiraman and others' (reported in 1993 SCC (I&S) 387 = (1993) 23 ATC 322 = (1991) 4 SCC 109); wherein it was clearly held that 'promotions should be withhold in respect of a Government Servant, if charge sheet has been issued against him before the meeting of the Selection Committee'. Thus, the provisions of the Regulation (governing the promotion of State Civil Services Officers to IAS) to treat the name of a selected candidate as "provisional" during the pendency of



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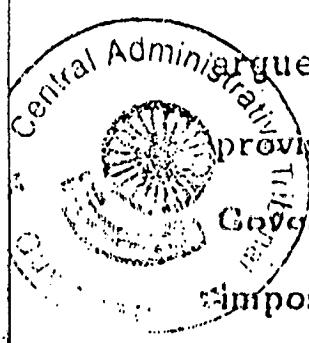
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Departmental Disciplinary Proceeding (alter ^{गवाहाटी न्यायपीठ} _{Guwahati Niyapiti}) of charge memo/sheet) is consistent with the views of the Hon'ble Apex Court of India rendered in the case of Janakiraman (Supra).

11. Applicant was, virtually, exonerated in the Departmental Disciplinary Proceeding vide an order dated 16.07.2002 and the State Government of Assam, on 08.10.2002, moved the UPSC to remove the condition so that promotion can be granted to the Applicant. But UPSC did not agree on the plea that the validity of the Select lists dated 09.04.2001 (for the years 1998, 1999, 2000 & 2001 in which the name of the Applicant found place, provisionally, subject to condition of disposal of Departmental Proceeding); which received the final approval of UPSC on 26.06.2001; lapsed on 31.12.2001 and the proposal dated 08.10.2002 of the State Government (of Assam) (to remove the condition as against the name of the Applicant) was not submitted within the validity period of the final Select List and as such the UPSC did not agree to remove the condition to grant promotion to the Applicant.

12. Ms Usha Das, learned Counsel appearing for the UPSC argued with reference to the 1st proviso to Regulation 7(4) and 2nd proviso to Regulation 9, of the Regulations of 1955 that the State Government having not moved the UPSC (to remove the condition imposed in respect of the name of the Applicant in the final select lists) during the validity of the Select Lists (for the years 1998, 1999, 2000 & 2001) the UPSC rightly did not agree to the proposal to lift the condition or to give clearance to promote the Applicant to Indian Administrative Services. Relevant portion of the Regulations of 1955, on which Ms Usha Das has relied upon, are extracted below:-



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7. Select List-(1)

(2)

(3)

(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of Regulation 5 or up to sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later.

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as 'unconditional', to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under Regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.

Provided further that

8.

9. Appointments to the service from the Select List.

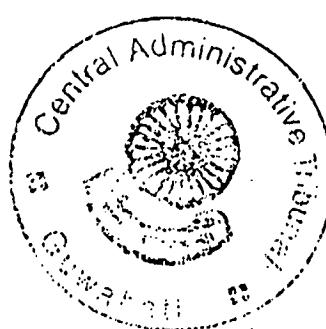
(1)

Provided that

Provided further that the appointment of an officer, whose name has been included or deemed to be included in the Select List provisionally under the proviso to sub-regulation (5) of Regulation 5 or under the proviso to sub-regulation (3) of Regulation 7, as the case may be, shall be made within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) of Regulation 7.

Provided also that.....

Relevant portion of Paragraphs 7 and 9 of the Regulations of 1955 (Supra) make it clear, by implication, that any appointment from the Select List, after its validity is spent of, shall become invalid.



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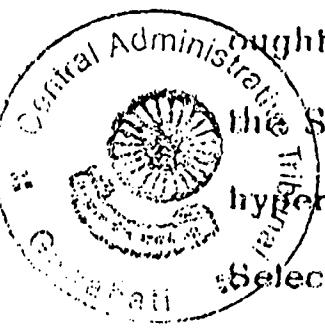
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Guwahati Bench

But, however, there are relaxations ~~available in the provisions~~ to certain extent where the State Government makes a proposal (to remove the condition in respect of an officer placed provisionally in the approved select list) within the valid period of the Select List and in that event, the UPSC can remove the condition within ninety days or before the meeting of the next selection committee (whichever is earlier) and then only appointment on promotion can be considered to be granted in respect of such an officer even after the expiry of the validity period but within sixty days of removal of condition by the UPSC.

13. Mr D.K. Das, learned Counsel appearing for the Applicant, who has not challenged the provisions of the Recruitment Regulations of 1955 in question, pointed out at the hearing that while extension of validity of the Select List in respect of the proposal (to remove the condition in respect of an officer named provisionally in the Select List) submitted by the State Government within the validity period has been provided; the Regulation is silent about the proposals submitted after the validity period of the Select List. He submitted that there is a gray area in the Regulation pertaining to a situation in hand. He argued that in absence of any prohibition before the UPSC to entertain the proposal submitted after the validity period, the UPSC

ought to have examined the case on merit to make the Applicant in the Select List as un-conditional and ought not to have resorted to hyper technical ground of limitation; especially when the next Selection Committee meeting was held long after on 29.12.2003. He argued to state that when the Regulation granted extension of time to UPSC to give consideration to a proposal, submitted at the end of the validity period, beyond the validity period and up to the next meeting of the Selection Committee, the proposal dated 08.10.2002 of the



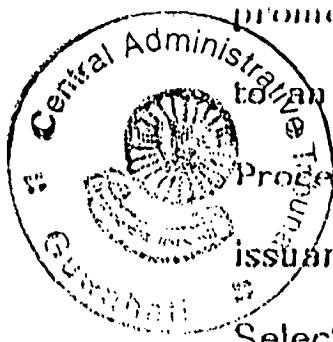
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State Government (made in favour of the ~~Govt. of India and thought to have~~) to have been available to be entertained up to next meeting that was held 29.12.2003 and that the same ought not have been turned down on 09.12.2002.

14. We have not found any force in the above arguments of Mr Das. Validity period has been prescribed in the Regulations of 1955; which is applicable to all universally; to the aspirants of the promotion, to the State Governments, to the Central Government and to the UPSC also. It is 31st December of the year in which the Select List was drawn or 60 days from the date it received the approval of UPSC, whichever is later. In the present case, the proposal (to remove the condition) having been given by the State Government long after the lapse of the validity period; the same was not entertainable by UPSC/Central Government. In this case the Departmental Proceeding also came to an end long after lapse of the validity period of the select lists.

15. Mr Das, learned Counsel appearing for the Applicant, proceeded to argue that the gray area left in the Recruitment by Promotion Regulations of 1955 has left enough room to malafidely victimize the State Civil Services Officers at the stage of their promotion to IAS. He argued further that in order to deny promotion to an officer or to unduly favour his junior officer, a Departmental Proceeding can be malafidely initiated against a meritorious officer by issuance of a Charge sheet on the day before the meeting of the Selection Committee in order to put his name as Provisional in the Select List and to drop the said Departmental Proceeding after the validity period of the Select List.



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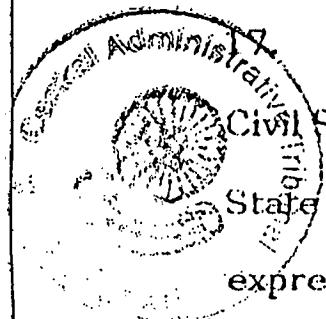
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16. Above submission of Mr Das, learned Counsel appearing for the Applicant, may be an extreme case; which need be considered by the authorities in control of the matter of recruitment by promotion to IAS. But the case in hand is giving a different picture. After dropping of the Departmental Proceedings (on 16.07.2002) the State Government moved the UPSC on 08.10.2002 to remove the conditions in the Select List (in which the name of the Applicant was placed provisionally) in order to pave the way before the Applicant to get the promotional Appointment in IAS. But long before dropping of the Departmental Proceeding, the validity period of the Select Lists (for 1998, 1999, 2000 and 2001) had lapsed. There are no materials placed on record to show that any attempt unjustly made by anybody to put the Applicant in difficulty in the matter of his promotion to IAS; especially when it is seen that he was charge sheeted (in the Departmental Proceedings) way back on 16.02.2000 and long after 10 months, on 12.12.2000, proposal was submitted by the State Government (naming the Applicant) to UPSC to consider the case of the Applicant and others for promotion to IAS. From that it cannot be stated that Departmental Proceeding was initiated with an intention to throttle promotion of the Applicant to IAS.

It is seen that in the proposal to promote Assam State Civil Service Officers to IAS (for the years 2002) that was submitted in State Government letter dated 03.09.2003, the State Government expressed that they are unable to certify the "integrity" of the Applicant. Yet, the Selection Committee, that had a meeting on 29.12.2003, considered the Applicant as 'Very Good' and placed him at Sl.No.1 in the Select List for the year 2002. But such placement in



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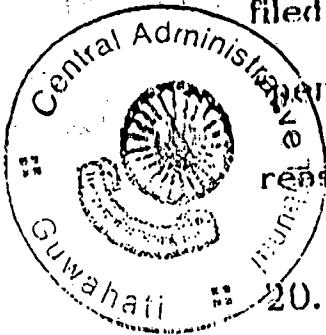
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the Select List for the year 2002 had "provisional" for the reason of absence of 'Integrity Certificate' in favour of the Applicant. The said Select List received approval of the UPSC on 28.04.2004. It is also seen that proposal to promote Assam State Civil Service Officers to IAS (for the years 2004 & 2005) was submitted in State Government letters dated 25.08.2004 and 26.09.2005 and the name of the Applicant has again found place in both the Select Lists (of the years 2004 and 2005) provisionally for the reason of want of "Integrity Certificate" from the State Government vide Government of India/DOPT letter dated 13.06.2006.

18. Thus, finally, it is seen that for the reason of non-furnishing of "Integrity Certificate" from the end of the State Government of Assam, the name of the Applicant has remained "provisional" in all the Select Lists for the years 2002, 2004 and 2005.

19. Applicant has disclosed in the Original Application that for the reason of a PIL (No.23 at 2002) pending in the Hon'ble High Court at Guwahati, Integrity Certificate was not granted in his favour and that the said case in the Hon'ble High Court having been disposed of on 22.02.2005; there were no reason to withhold the Integrity Certificate by the State Government. But, in the Written Statement filed by the State Government of Assam, it has been disclosed that the dependency of the Vigilance Case against the Applicant" was the reason for which "Integrity Certificate" was withheld.

20. Mr D.K. Das, learned Counsel appearing for the Applicant argued that mere opening of an administrative file in the Vigilance wing of the Department, pertaining to unspecified allegations against the Applicant cannot be a ground to withhold the "Integrity



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23 Certificate" resulting withholding of ~~promotion of the Applicant to~~

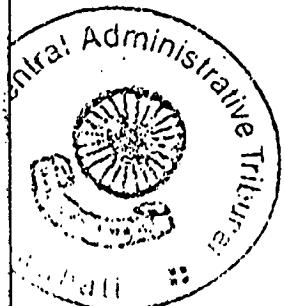
IAS. He argued further that without confronting the allegations (involved in so called vigilance case) to the Applicant and without giving him an opportunity to have his say on those allegations, the "Integrity Certificate" could not (should not) have been withheld; as a result of which the Applicant (though approved by UPSC for promotion) is continuing to be deprived of his promotion to IAS.

21. On the other hand, Mr Manjula Das, learned Counsel appearing for the State of Assam argued that when a Vigilance Case is under investigation against him, the Integrity Certificate could not have been furnished in favour of the Applicant; because on completion of the investigation, the Applicant is likely to be charge sheeted, may be, for the seriousness of the matter.

22. The point in issue is no more res iuterga. Hon'ble Supreme Court of India in the case of Janakiraman (Supra) considered similar situation (of withholding of promotion, of an individual, at pre-charge sheet stage, by resorting to sealed cover procedure) and held as under:-

"promotion etc can not be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny said benefit, they must be at the relevant time pending at the stage when charge memo/charge sheet has already been issued to the employee."

23. In the case of Janakiraman (Supra) the provision to keep the views of DPCs in Sealed Cover (to withhold promotions etc.) was being examined by the Hon'ble Apex Court, when it was held aforesaid. Similar is the position in the present case and we are examining the issue of withholding of promotion by placing the main



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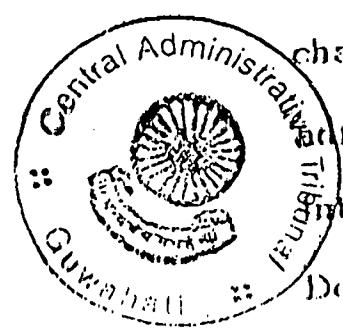
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of the selected persons in the Select List provisionally conditionally for want of Integrity Certificate. We are faced with the question as to at what stage the Integrity Certificate can be withheld resulting in withholding of the promotion of an aspirant for promotion to IAS. In the case of Janakiraman (Supra) the answer is available very much as discussed in the following paragraphs.

24. As it appears, there are certain allegations (against) involving/touching the Applicant being investigated/verified from vigilance angle of the State Government and no charge memo initiating Departmental Proceeding/charge sheet in Criminal Proceeding has yet been framed against him nor he has been confronted (to have his say) in the matter as yet. At least no such material has been placed on record of this case by the Respondents. In the said premises, we are constrained to hold that non-furnishing of Integrity Certificate in favour of the Applicant amounts to gross violation of the principles of natural justice.

25. Faced with this, Mrs Manjula Das, learned Counsel appearing for the State of Assam proceeded to argue that when there are very serious allegation against a Government Servant and it takes time to collect necessary evidence to prepare and issue charge memo/ charge sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion by granting Integrity Certificate. This point was also raised by the Respondent Departments of Government of India before the Hon'ble Supreme Court of India in the case of Janakiraman (Supra) and the said stand did not receive the approval of the Apex Court. Rather, the Apex Court took the view that accepting such a proposition shall result in



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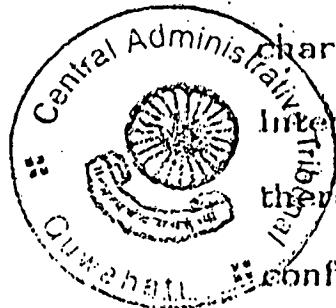
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injustice to the employees. Relevant portion of the Judgment of the Apex Court rendered in the case of *Jansakiraman* (Supra) reads as under:

“..... the Full Bench of the Tribunal has held that it only when a charge memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are the serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.”

26. Thus, mere opening of a Vigilance File (Vigilance Case) against the Applicant (which has not reached the stage for issuance of charge sheet/memo) could not have been a reason to withhold Integrity Certificate needed for promotion to IAS, especially when there are no materials to show that he (Applicant) was ever confronted with the allegations involved in the Vigilance Case in question.

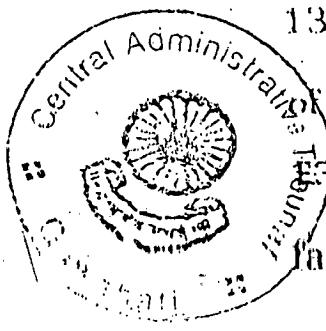


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27. Thus, we hold that there has been a miscarriage of justice in the decision making process (which led to withholding of the Integrity Certificate in favour of the Applicant) as a result of which the UPSC had to keep his (Applicant's) name as provisional/conditional in the approved Select Lists for the years of 2002, 2004 and 2005 and as a consequence, the Applicant is continuing to be denied promotion to IAS.

28. Since Integrity Certificate has been withheld in gross violation of the principles of natural justice, there has been violation of Article 14 of the Constitution of India also. Therefore, we direct the State Government of Assam to re-consider the matter and take appropriate steps to grant "Integrity Certificate" in favour of the Applicant and all the Respondents should treat the Applicant to be in the approved Select List without any condition/not provisional and, in the peculiar circumstances of this case and in the interest of justice, grant him all consequential relief notwithstanding lopse of the validity period of the approved Select Lists for the years 2002, 2004 and 2005. It may be noted here that this Original Application was filed by the Applicant on 08.03.2006 and the Select List for 2004 and 2005 (in which the name of the Applicant appeared provisionally) was finally approved and published by the DOPF of Government of India on 13.06.2006 (i.e. during pendency of this case) and, therefore, validity of the approved final list for 2004 and 2005 that was notified on 13.06.2006 should be treated (as a special case) to have not lapsed so far the Applicant is concerned; for he is facing a continuing wrong committed by the State Government of Assam. While passing this order we are conscious of the provisions under Rule 8 of the IAS (Recruitment) Rules, 1954; where the Central Government may, in



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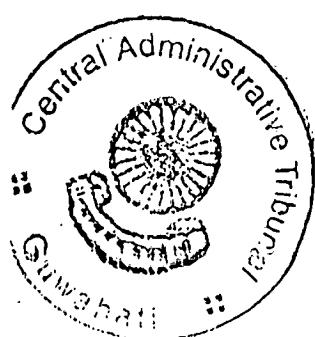
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special circumstances, deal with the recommendations of the State Government in consultation with the UPSC.

29. This Original Application stands allowed to the extent noted above. No costs.



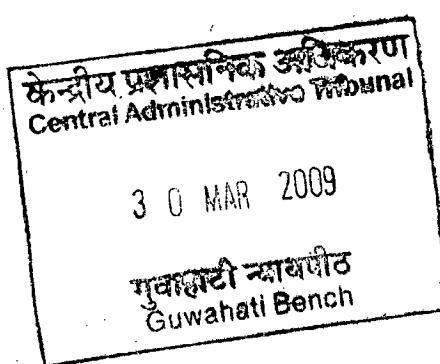
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Section 307(1)(d) 30.7.08
C. A. T. Guwahati Bench
Guwahati.

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INTEGRITY CERTIFICATE ANNEXURE

The State Government certifies the integrity in respect of Shri Pradip Kumar Das, SCS officer, for the year 2004 and 2005 with reference to the entries in his Annual Confidential Reports in pursuance of order dated 20.06.2008 of the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. No.63/06 of Shri Pradip Kumar Das.



(P. C. Sharma.)
Chief Secretary to Government, Assam

NO.AAP.55/2006/154
 GOVERNMENT OF ASSAM
 DEPARTMENT OF PERSONNEL (PERSONNEL ::A)
 ASSAM SECRETARIAT (CIVIL) DISPUR
 GUWAHATI-6

Dated : Dispur, the 19th November, 2008

केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal

To,

The Secretary to the Govt. of India,
 Ministry of Personnel, Public Grievances & Pensions,
 Department of Personnel & Training,
 North Block, New Delhi-110001.

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गुवाहाटी न्यायघाँठ
 Guwahati Bench

Sub. : CAT, Guwahati Bench Order Dated.20th June, 2008 in O.A. No.63
 of 2006 filed by Shri P. K. Das. – Regarding.

Ref. : Your letter No.14015/03/2008-AIS(i). Dated.7-8-2008.

Sir,

With reference to your letter mentioned above, I am directed to inform you that the issue of Integrity Certificate in pursuance with the Hon'ble CAT, Guwahati Bench's order and judgement Dated.20-6-2008 in O.A. No.63/2006 in respect of Shri P. K. Das, ACS has examined by this State Govt. as per the prescribed rules and procedures. After careful examination and consideration of the matter the State Govt. have decided to comply with the Hon'ble CAT's order and judgement Dated.20-6-2008 in O.A. No.63/2006 and issue necessary Integrity Certificate in respect of Shri P. K. Das, ACS for inclusion of his name in the Select list of 2004 & 2005 as unconditional for appointment to IAS by promotion for the year 2004 & 2005. It may be mentioned that Shri P. K. Das, ACS, was selected provisionally for the year 2004 & 2005 as conditional. However, it may be mentioned that as on date Shri P. K. Das, ACS is not clear from the Vigilance angle since disciplinary proceedings were initiated against vide letter NO.AAP.82/2002/139, Dated. 14th March, 2008.

Govt. of India is requested to consider the case of appointment of Shri P. K. Das, ACS, to IAS by promotion for the year, 2004 & 2005 in compliance of Hon'ble CAT's order Dated. 20-6-2008 in O.A.No.63/2006.

Action taken in this regard may kindly be intimated to this Department at an early date.

Yours faithfully,

[Signature]
 Commissioner & Secretary to the Govt. of Assam,
 Personnel (A) Department.

Memo No.AAP. 55/2006/154-A, Dated : Dispur, the 19th November, 2008.
 Copy to :-

1. The Secretary, Union Public Service Commission, Dhalpur House,
 Shahjahan Road, New Delhi-110069 for information & necessary
 action. This is with reference to their letter No.11/81/2006-AIS,
 Dated.22-8-2008.

By Order Etc.

[Signature]
 Commissioner & Secretary to the Govt. of Assam
 Personnel (A) Department

[Signature]
 GJ

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

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

No. 14015/03/2008-AIS(1)-A

Government of India

Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

30 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

...
New Delhi, the 27th February 2009.

NOTIFICATION

In exercise of powers conferred by Rule 8(1) of the Indian Administrative Service (Recruitment) Rules, 1954, read with Regulation 9(1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the President is pleased to notify the Select List of State Civil Service officers of Assam containing the following names prepared on 19th December, 2008 under Regulation 5(5) and approved on 26th February, 2009, under Regulation 7(2) towards filling up promotion quota vacancies in Assam segment of the joint IAS Cadre of Assam-Meghalaya under State Civil Service category determined by the Government of India under Regulation 5(1) of the said Regulations in consultation with the State Government for the Select List years 2007 and 2008 :-

SELECT LIST 2007

S.No.	Name of the Officer (S/Shri)	
1*	Pradip Kumar Das	16.03.1953
2.	Rajeeb Losan Duara	01.10.1953
3@)	Md. Jiauddin Ahmed	21.01.1953
4.	Smt. Marmie Hagher Barman (ST)	13.10.1954
5.	Pranab Ch. Golmin (OBC)	09.01.1953
6.	Smt. Binata Rynjah	01.01.1954
7	Jyotirmoy Chakraborty	01.02.1953
8	Dilip Kr. Baruah (OBC)	01.03.1953
9	Smt. Nilufer Alum Hazarika	06.04.1955

*Cab
W*

Abd

W

30 MAR 2009

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* The officer at S. No. 01 has been included provisionally subject to grant of Integrity Certificate by the State Govt. and clearance of disciplinary proceedings pending against him.

@ The officer at S.No. 03 has been included provisionally subject to grant of integrity certificate by the State Govt. and clearance of criminal proceedings pending against him.

SELECT LIST 2008

OA@	Md. Jiauddin Ahmed	21.01.1953	-
1.	Sankar Prasad Nandi	03.12.1956	
2.	Smt Rwitterka Das Kalita	01.01.1960	
3.	Md. Sohrab Ali	02.01.1954	
4.	Preetom Kumar Saikia	22.04.1961	
5*	Dilip Borthakur	26.06.1956	
6.	Dr. Anupam Kumar Roy (OBC)	01.05.1956	

@ The officer at S.No. 0A has been included in addition to the normal size of the Select List in accordance with the 2nd proviso to Reg. 5(5) of the IAS (Appointment by Promotion) Regulations, 1995. He has also been included provisionally subject to grant of Integrity Certificate by the State Govt. and clearance of criminal proceedings pending against him.

* The officer at S.No. 05 has been included provisionally subject to grant of Integrity Certificate by the State Govt. and clearance of disciplinary proceedings pending against him.

S.S. Shukla
(S.S. Shukla)
Under Secretary to the Government of India

To

The Manager
Government of India Press
FARIDABAD
(HARYANA).

Alka
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

ORIGINAL APPLICATION No. 60 of 2009

P. K. Das ----- Applicant

versus

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

Reply Statement on behalf of Respondent No. 02

I, N. T. Paite, working as Under Secretary in the Union Public Service Commission, New Delhi do hereby file this reply on behalf of Respondent No. 2 on solemn affirmation and state as under:

2. I state and submit that the copy of the original application has been served along with annexures annexed thereto and I have gone through the same and made myself conversant with the facts of the case after going through the relevant records available with my office. I state and submit that I am filing this reply for limited purpose to bring certain important and relevant facts on record of this Hon'ble Tribunal. As I am filing this for limited purpose, I am not dealing with the facts of the original application parawise and in detail. My non-dealing with the facts of the original application parawise may not be construed as admission on my part and, in fact, I specifically deny the facts stated in the application save and except which are specifically admitted by me hereinafter. However, I crave leave of this Hon'ble Tribunal to file further and detailed affidavit in case of necessity.

(एन.टी. पैटे)

(N. T. PAITE)

कार सचिव/Under Secretary

संघ लोक सेवा आयोग

Union Public Service Commission

नई दिल्ली/New Delhi

Filed by
the respondent no. 2
through
Nileshwar Basu
Advocate
12-8-09

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Nileshwar Basu
Advocate
12-8-09

3. At the outset, it is submitted that the Union Public Service Commission, being a Constitutional body, under Articles 315 to 323 Part XIV (Services under the Union and the States) Chapter-II of the Constitution, discharge their functions, duties and Constitutional obligations assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for the IAS/IPS/IFS. In pursuance of these Rules, the IAS (Appointment by Promotion) Regulations, 1955 ["Promotion Regulations" for short] have been made. In accordance with the provisions of the said Regulations, the Selection Committee, presided over by the Chairman/Member of the Union Public Service Commission, makes selection of State Civil Service ["SCS" for short] officers for promotion to the Indian Administrative Service.

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Guwahati Bench

4. Thus, in discharge of their Constitutional functions, the Union Public Service Commission, after taking into consideration the records received from the State Government under Regulation 6 and observations of the Central Government received under Regulation 6A of the Promotion Regulations, take a final decision on the recommendations of the Selection Committee in accordance with the provisions of Regulation 7 of the aforesaid Regulations. The selections are done, in a fair and objective manner on the basis of relevant records and following the relevant Rules and Regulations.

5. At the outset, I may bring the following position of Rules to the notice of this Hon'ble Tribunal:

The provisions regarding preparation of a list of suitable officers as laid down in the Indian Administrative Service (Appointment by Promotion) Regulation, 1955 is as follows:

(एन. टी. पाटे)
(N. T. PADE)
अमर शास्त्री/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

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“5 (1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission.

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when;

- (a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the state Civil Service under rule 9 of the recruitment rules; or
- (b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of the Recruitment Rules;

Provided further that where no meeting of the Committee could be held during a year for any reason other than that provided for in the first proviso, as and when the Committee meets again, the Select List shall be prepared separately for each year during which the Committee could not meet, as on the 31st December of each year.

5(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Civil Services in the order of seniority in that service of a number, which is equal to three times the number referred in sub-regulation (1).

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers.

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded;

Provided also that the Committee shall not consider the case of a member of the State Civil Service unless on the first day of January of the year for which the Select List is prepared, he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

5 (3): The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared.

Provided that a member of the State Civil Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed to the service only because he was included provisionally in that Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile, attained the age of fifty four years.

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Provided further that a member of the State Civil Service who has attained the age of fifty four years on the first day of January of the year for which the Select List is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of "January of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to sub-regulation(1)".

5(4) The Selection Committee shall classify eligible officers as 'Outstanding', 'Very Good', 'Good' or 'unfit' as the case may be on an overall relative assessment of their service records.

5 (5) The List shall be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Explanation-I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be.

* * *

(एन.टी. पाटे)
(N. T. PAITE)
अधर सचिव/Under Secretary
संघ सेवा नियन्त्रण
Union Public Service Commission
नियन्त्रण विभाग, दिल्ली

7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto 60 days from the date of approval of the Select List by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2) which ever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the Select List as 'Unconditional', to the Commission during the period when the Select List was in force, the Commission shall decide the matter within a period of **forty-five** days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the Select List ceased to be in force."

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6. It is respectfully submitted that the Applicant Shri P. K. Das has filed the instant Original Application against the respondent authorities in depriving him of his due promotion to the cadre of IAS in violation of this Hon'ble Central Administrative Tribunal order dated 20.06.2008 passed in OA No. 63/2006. The Applicant has mainly raised the following contentions:

6.1 That the applicant on 16.07.2002 having been fully exonerated of the charge pending against him, his case for promotion ought to have been considered on that day itself. The select list for 2004-2005 being valid in which the applicant's name appeared provisionally and which was also finally approved by the Central Government on 13.06.2006 during the pendency of OA No. 63/2006 there exists no justification with regard to the action on the part of the respondent authorities in not declaring the including of the name of the applicant in the select list of 2004-2005 as unconditional.

6.2 With the dropping of the proceeding pending against the applicant on 16.07.2002 exonerating him of the charges the applicant was

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(S. T. PAITE)

उपराजपत्री/Under Secretary

संघ सेवा चौक असम

Union Public Service Commission

गुवाहाटी न्यायपीठ

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free from the cloud. The second show cause having been issued on 14.03.2008 and the said proceeding currently pending against the applicant cannot under any circumstances have any bearing on the right accruing to the applicant for the promotion to the IAS cadre from 2004-2005.

6.3 That this Hon'ble Tribunal having already held the action on the part of the respondent authorities in denying to the applicant his due promotion to the cadre of IAS with reference to any subsequent proceeding initiated against the applicant after 16.07.2002 to be unlawful and the said decision having attained its finality with the passing of the Central Administrative Tribunal's order dated 20.06.2008 in O.A. No. 63/2006 the respondent authorities cannot be permitted to continue to put forward the same very plea for denying to the applicant his due promotion to the cadre of IAS with reference to his selection for such promotion in the year 2004-2005.

6.4 That the delay occasioning in issuance of necessary orders promoting the applicant to the cadre of IAS in terms of his selection in the year 2004-2005 is clearly attributable to the delay tactics and malafide action adopted by the respondent authorities solely with the view to prevent the promotion of the applicant to the cadre of IAS.

6.5 That the applicant having been duly considered for promotion after his exoneration could not be denied promotion to IAS simply on the ground of pendency of another departmental enquiry initiated thereafter and the action of respondents in withholding the promotion to IAS inspite of his selection for the period 2004-2005 as held by the Hon'ble Central Administrative Tribunal is illegal and arbitrary and as such liable to be interfered by this Hon'ble Tribunal.

REPLY TO CONTENTIONS

7. Regarding the contention of the Applicant at para 6.1 to 6.5 above, the Respondent begs to state that as per the Regulation 7(4) of the Promotion Regulations, the Select List remains in force till the 31st December of the year in which the meeting of the Selection Committee is held or upto 60 days from the date of approval of the Select list by the

(नंदा टाटा विद्या)
(N. T. PAITE)

जवाहर लाल नेहरू/Under Secretary
केंद्र लोक सेवा आयोग
Union Public Service Commission
गोपनीय राष्ट्रपति की सेवा

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Commission, whichever is later. Regulation 7(4) of the said Regulations has been reproduced in para 5 above.

8. It is respectfully submitted that as per Regulation 7(3) of the Promotion Regulations, if an officer whose name is included in the Select List is, after such inclusion, issued with a charge sheet or a charge sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional. Regulation 7(3) of the said Regulations reads as under:-

"7 (3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge sheet or a charge sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional."

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9. It is respectfully submitted that Selection Committee Meeting for preparation of the Select Lists of 1998, 1999, 2000 & 2001 was held on 09.04.2001 for 02, 04, 04 and 02 vacancies respectively. As per the information furnished by the State Government, the Committee were informed that disciplinary proceedings were pending against applicant, Shri P. K. Das. On an overall relative assessment of his service records, applicant was assessed by the Selection Committee as 'Very Good' for all the Select Lists. On the basis of the above assessment and pendency of disciplinary proceedings the name of the applicant was included at Sl. No.2 in all the aforementioned Select Lists provisionally, subject to clearance of disciplinary proceedings pending against him as per Regulation 5(5) of the Promotion Regulations. The Commission approved the Select Lists of 1998, 1999, 2000 and 2001 after receiving the comments of the Govt. of Assam, JCA, Meghalaya and the Govt. of India vide letter dated 26.06.2001.

10. It is further submitted that the Govt. of Assam vide their letter dated 08.10.2002 forwarded a proposal to the Commission for inclusion of the name of the applicant as unconditional in the Select Lists of 1998, 1999, 2000 and 2001. The Commission examined their proposal and intimated the State Govt. vide letter dated 09.12.2002 that in accordance with

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(K. T. DAS)

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Union Public Service Commission

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Regulation 7(4) of the Promotion Regulations, the Select List remains in force till the 31st December of the year in which the meeting of the Selection Committee is held or upto 60 days from the date of approval of the Select list by the Commission, whichever is later. As the Select Lists of 1998, 1999, 2000 & 2001 for promotion to the IAS of Assam Segment of Assam-Meghalaya Joint Cadre were prepared by the Selection Committee at its meeting held on 09.04.2001 and approved by the Commission on 26.06.2001, the validity period of these Select Lists lapsed on 31.12.2001. As such, the name of the applicant could not be made unconditional.

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11. It is further submitted that the Govt. of India determined vacancies for 2002 and 2003 as 08 and 'Nil' respectively. As such, a Selection Committee meeting was held on 29.12.2003 for preparation of the Select List of 2002 for promotion of SCS officers to the IAS of Assam-Meghalaya Joint Cadre (Assam segment). The applicant had been considered by the Selection Committee at S.No.1 of the eligibility list and assessed as 'Very Good'. On the basis of this assessment his name been included in the Select List of 2002 at S.No.1 provisionally subject to grant of Integrity Certificate by the State Govt. No Select List was prepared for 2003 as there was 'Nil' vacancy. The Select List of 2002 was approved by the Commission on 28.04.2004. No proposal was received from the State Govt. to make the name of applicant unconditional in the Select List of 2002 during the validity period of the Select List.

12. It is further submitted that the Selection Committee meeting for preparation of the Select Lists of 2004 and 2005 was held on 23.12.2005 for promotion of SCS officers to the IAS of Assam-Meghalaya Joint Cadre(Assam segment) for 04 and 02 vacancies respectively. The applicant was considered by the Selection Committee at S. No. 1 and 0A of the eligibility lists and assessed as 'Very Good' in both the years. On the basis of this assessment his name had been included in the Select List of 2004 at S. No. 1 and at S. No. 0A of the Select List of 2005 provisionally subject to grant of Integrity Certificate by the State Govt. These Select Lists were approved by the Commission on 15.05.2006. During the validity period of the Select Lists the State Govt. did not send any proposal to the Commission for making the provisional inclusion of the

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(N. T. PAITE)

অধীকারী/Under Secretary

নির্মল পাইটে

Union Public Service Commission

৭ ট্রেফি, New Delhi

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applicant as 'Unconditional'. The applicant, Shri P. K. Das was therefore, not appointed to the IAS for these years also.

13. It is further submitted that a copy of the order dated 20.06.2008 of this Hon'ble Tribunal in OA No. 63 of 2006 filed by Sh. PK Das was received in the Commission's office on 04.08.2008. The UPSC wrote to the State Govt. on 22.08.2008 to take a decision on the implementation or otherwise of this Hon'ble CAT directions as the matter of issue of Integrity Certificate comes under their purview. Reminders were issued to the State Govt. on 09.09.2008 & 31.10.2008. The State Govt. vide letter dated 19.11.2008 addressed to the Govt. of India, DoP&T and copy endorsed to UPSC intimated that they have decided to comply with this Hon'ble CAT order dated 20.06.2008 and that they are issuing necessary Integrity Certificate for the years 2004 & 2005. In the forwarding letter, the State Govt. stated that Shri P. K. Das was not free from Vigilance angle as fresh disciplinary proceedings were initiated against him vide State Govt. letter dated 14.03.2008.

14. It is further submitted that the Govt. of India, DoP&T vide letter dated 24.11.2008 intimated that UPSC has to take a decision regarding inclusion of Shri P. K. Das in the Select List of 2004 & 2005 as unconditional and final after taking into consideration the fact that fresh disciplinary proceedings are pending against Shri P. K. Das.

15. It is respectfully submitted that for making an officer unconditional under Regulation 7(4), the following documents and information are required to be furnished by the State Government to the UPSC as per the uniform procedure followed for all States/Cadres:

- (i) The recent Integrity Certificate in respect of the officer proposed to be made as unconditional, duly signed by the Chief Secretary of the concerned State Govt.
- (ii) A proposal from the State Government with a positive recommendation to make the officer's inclusion in the Select List as unconditional.



(एन. टी. पैटे)

(N. T. PAITE)

अधर सचिव/Under Secretary

संघ लोक सेवा आकादमी

Union Public Service Commission
गृह संसद/Parliament House, Delhi

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16. It is respectfully submitted that the State Government had neither issued speaking orders nor sent a positive proposal to make the officer's inclusion in the Select Lists of 2004 & 2005 as unconditional. The Commission could not therefore proceed to consider the case of the applicant, Shri P. K. Das for his unconditional inclusion in the Select List of 2004 & 2005 in accordance with the provisions of the IAS (Appointment by Promotion) Regulations, 1955.

17. It is further submitted that in the meanwhile, the SCM for preparing the Select Lists of 2007 and 2008 for promotion of SCS officers to the IAS of Assam-Meghalaya Joint Cadre (Assam Segment) was held on 19.12.2008. Shri P. K. Das, Applicant was considered in the eligibility list at S. No. 1 for 2007 and at S. No. 0A for 2008. On an over-all assessment of his service records, he was graded as Very Good for the year 2007 and was included in the Select List of 2007 provisionally at S. No. 1 subject to grant of Integrity Certificate and clearance of disciplinary proceedings pending against him. For the year 2008, Shri P. K. Das was not included in the Select List on the basis of his assessment for that year.

18. It is further submitted that the minutes of the SCM held on 19.12.2008 were approved by the Commission on 26.02.2009 after receipt of the observations of the State Govt./Jt. Cadre Authority and the Govt. of India, DoP&T. The officers who were included in the Select List unconditionally were appointed to the IAS vide Govt. of India notification dated 27.02.2009. Inclusion of Shri Dilip Borthakur (Sl. No. 05 in Select List of 2008) has been made unconditional subsequently on receipt of proposal from Government of Assam during the validity period of the Select List.

19. It is further submitted that this Respondent has filed a Writ Petition No. 2000/2009 before Hon'ble Guwahati High Court against the order dated 20.06.2008 of this Hon'ble Tribunal in OA No. 63/2006.

20.1 It is humbly submitted that as per Regulation 7(3) of the IAS (Appointment by Promotion) Regulations, 1955, if an officer whose name is included in the Select List is, after such inclusion, issued with a charge sheet or a charge sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional.

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(नवानंद पाटे)

(N. T. PAITE)

लक्ष्मी सार्वजनिक सेवा विभाग

संघ लोक सेवा आयोग

Union Public Service Commission

नई दिल्ली/New Delhi

20.2 The Hon'ble Supreme Court in the case of 'Janakiraman' have held that "the least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalized in presenti." (AIR 1991 SC 2010)

21. It is further submitted that the Hon'ble Guwahati High Court after taking into consideration the grounds submitted before them have been pleased to stay the operation of this Hon'ble Bench order dated 20.06.2008 in OA No. 63/2006 filed by Shri P. K. Das, the applicant in the instant matter. A copy of stay order is annexed as Annexure-A

22. It is most respectfully prayed that taking into consideration the submission regarding factual position and rule position made in the preceding paragraphs, stay granted by Hon'ble Guwahati High Court and also taking into consideration the reply filed by the State Government and the Central Government, this Hon'ble Tribunal may be pleased to dismiss the instant OA as devoid of merits.

DEPONENT

(एमो टाटू पाटे)

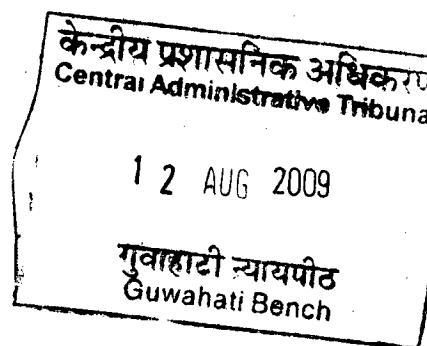
(N. T. PAITE)

मान्य सचिव/Under Secretary

संघ लोक सेवा आयोग

Union Public Service Commission

नई दिल्ली/New Delhi



AFFIDAVIT

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I, N. T. Paite, aged about 44 years, resident of New Delhi, do hereby solemnly affirm and state as follows :-

1. That I am working as Under Secretary, AIS Branch, Union Public Service Commission, New Delhi and as such, I am acquainted with the facts and circumstances of the present case. I am competent to swear this affidavit on behalf of the Respondent after being duly authorized.
2. That the statements made in this affidavit and those made in paragraphs 7 to 20 of the are true to the best of my knowledge and belief and those made in paragraphs 1 to 6 being matters of records are true to my information derived therefrom which I believe to be true, and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this the 15th day of June, 2009 at New Delhi.

DEPONENT

(एन० टी० पैटे)

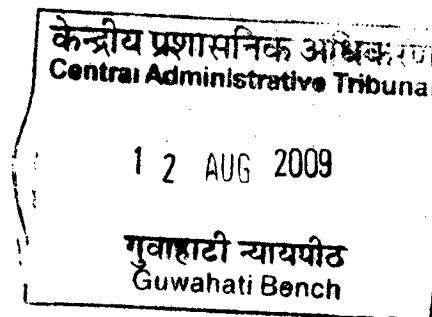
(N. T. PAITE)

अधर सचिव/Under Secretary

संघ लोक सेवा आयोग

Union Public Service Commission

नई दिल्ली/New Delhi



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy	छाप और प्रोसेसिंग की अपेक्षित तिथि दर्शाया दृश्यत है। Date of delivery of the copy is indicated.	प्रोसेसिंग स्थापन और प्रोसेसिंग की दोनों तिथियों की तारीख। Date of delivery of the requisition stamp and the two dates of processing.	सारिख, जबकि देने के लिए प्रतिलिपि तैयार ही। Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
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IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Appeal from
Civil Case.

25P(c)

No. 2000 of 2019

Union Public Service Commission Appellant
Petitioner
(U.P.S.C.)

Pradip Kumar Das 81025

**Respondent
Opposite Party**

Appellant

For Mr. A. K. Goswami (S. A. Adv.)
Petitioner

Mr. N. Basra Advocate, (L.P.S.C.)

Advocacias

Respondents

For Opposite Party (1) Ass't. S. G. I
(2) G. A. Assam

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports orders or proceedings with signature
1	2	3	4
			<div style="border: 1px solid black; padding: 5px; display: inline-block;"> केन्द्रीय प्रशासनिक अ Central Administrative 12 AUG 2009 गुवाहाटी न्यायालय Gauhati Bench </div>

केन्द्रीय प्रशासनिक अधिकार राज Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायालय
Guwahati Bench

-14-

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केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

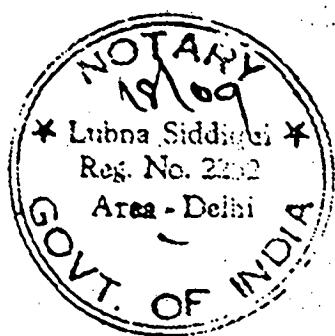
12 AUG 2009

गुवाहाटी न्यायालय
Guwahati Bench

IN THE MATTER OF :-

Union Public Service Commission (UPSC), represented by its
Secretary, Dholpur House, Shahjahan Road, New Delhi.

.....Petitioner



(मेरी जानकारी
(H. T. HATTE)
मेरे नाम/Under Secretary:
मेरी जानकारी यहाँ
Union Public Service Commission
पर्सनल विभाग, दिल्ली

-Vs-

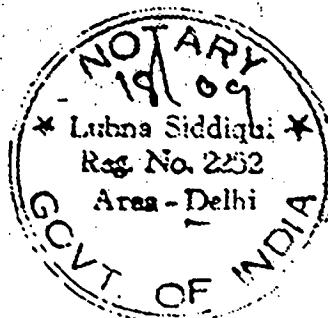
82

1. Pradip Kumar Das
son of Late Dwijendra Kumar Das
resident of Ananda Nagar, Guwahati, Assam.
2. The Union of India represented by the
Secretary, Department of Personnel & Training,
New Delhi.
3. State of Assam, represented by the
Secretary, Department of Personnel,
Dispur, Assam
4. Longki Phangcho
Commissioner of Excise,
Guwahati, Assam.
5. Jay Chandra Goswami
Secretary, Health Department
Dispur, Assam.
6. Mahat Chandra Brahma
Secretary, W.P.T.B.C. Department,
Dispur, Assam.
7. Md. Allauddin
Secretary, Personnel Department,
Dispur, Assam.
8. Seikholian Thadou,
Managing Director,
Assam Financial Corporation
Guwahati.
9. Rebendra Kumar Das
Secretary, S.A. Department,
Assam, Dispur.
10. Bhaba Gogoi
Director, Panchayat Development
6th Mile, Guwahati.
11. A.B. Mohammad Eunus,
Managing Director
STATFED, Guwahati.
12. Balendra Basumatary
Joint Secretary, Forest Department
Dispur, Assam.

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench



(नवा तारा खाना)
(N. T. PATE)
मंत्री सचिव/Under Secretary
संघ सेवा एवं शासकीय
Union Public Service Commission
गृह मंत्रालय/Ministry of Home Affairs, New Delhi

13. Subhash Chandra Longmailai
D C. Chirand, District Dhaligaon.

14. Syed Iftikat Hussain
Principal Secretary, N.C. Hills
District Council, Haflong.

15. Rafique Zaman Joint Secretary
Assam Secretariat, Dispur.

.....Respondents

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

-17-

11

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α^b

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			WP(C) 2000/0
PRESENT			
HON'BLE THE CHIEF JÜSTICE J. CHELAMESWAR			
HON'BLE MR. JUSTICE I.A.ANSARI			
22.5.2009			
(J.Che l ameswar, CJ)			
Heard Mr.AK Goswami, learned senior counsel for the petitioner.			
Admit.			
Notice.			
Mr.H Rahman, learned Assistant Solicitor General of India accepts notice on behalf of Respondent No.2. Mrs. B. Goyal, learned State Counsel accepts notice on behalf of Respondent No.3. Therefore, no formal notice need be sent to the Respondent Nos.2 and 3. However, notice to the remaining respondents be sent by registered post with A/D.			
There shall be an interim suspension of the judgment under challenge.			

Sdl I. A. Ansari

Judge

5d1 8

for swm
Chief Justice

CERTIFIED TO BE TRUE COPY

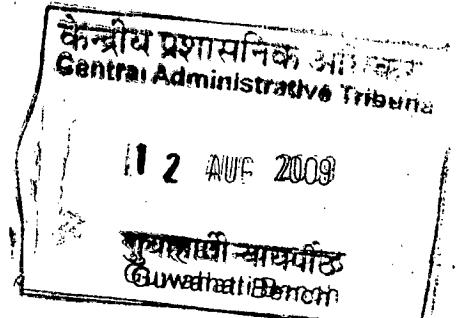
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Date: _____

Superintendent (Copying Section)

Gauhati High Court

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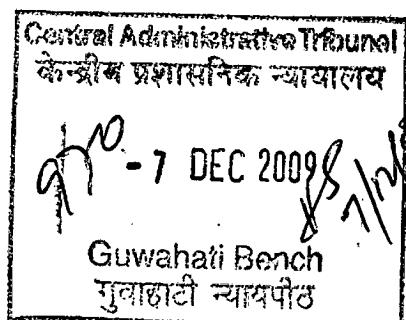


Sl no - 117717
Sl d 26/5/09

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

ORIGINAL APPLICATION NO.60 OF 2009

IN THE MATTER OF:



O.A No.60 of 2009

Shri Pradip Kumar Das

.....Applicant

-VS-

The State of Assam & Ors.

.....Respondents

-A N D-

IN THE MATTER OF:

Written Statement on behalf of the
Respondent no. 3.

(WRITTEN STATEMENT ON BEHALF OF RESPONDENT NO. 3)

I, Sri N.C. Mishra, son of late Basudev Mishra, aged about 58 years, presently serving as Joint Secretary to the Govt. of Assam, Personnel Department, Dispur, Guwahati-6 do hereby solemnly affirm and state as follows:

1. That I am presently serving as Joint Secretary to the Govt. of Assam, Personnel Department, Dispur, Guwahati-6. A copy of the above Original Application has been served upon the respondent. I have gone through the same and, being the Joint Secretary to the Government of Assam, am acquainted with the facts and circumstance of the case. I have been authorised to file the additional statement on behalf of respondent no. 3.
2. That I do not admit any of the averments except which are specifically admitted hereinafter and the same are deemed as denied.
3. That before traversing various paragraphs of the present Original Application, the answering respondent would like to place the brief facts of the case.

BRIEF FACTS:

Filed by: -
The State of Assam
Respondent no. 3
Through -
Pradip Kumar Das
Govt. Advocate
7/12/09
29

Naren Chandra Mishra

1-7 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

3.1 That the applicant was appointed to the Assam Civil Services in the year 1977 as a direct recruit on his selection by the Assam Public Service Commission.

3.2 That on being within the zone of consideration for promotion to post figuring in the Assam segment of Assam-Meghalaya cadre of the Indian Administrative Service, the case of the applicant was placed before the Selection Committee constituted by the UPSC for the purpose of filing up of the vacancies for the years 1998, 1999, 2000 and 2001.

3.3 That the Selection Committee in its meeting held on 09.04.01 prepared separate Select List for each of the said years and by Notification dated 27.06.01 (Annexure 1 to OA) the Govt. of India published yearwise Select List, wherein the name of the applicant was figured in each of these lists prepared for the years 1998, 1999, 2000 and 2001. It was, however, indicated that inclusion of the name of the applicant was subject to clearance of the Disciplinary Proceeding against him.

Hence, it is stated that the name of the applicant, Sri P.K.Das, was forwarded to the UPSC for several times for considering his promotion to State cadre of IAS.

3.4 That the proposal for preparation of the Select List of the State Civil Officers for promotion to IAS for the years 1998, 1999, 2000 and 2001 was submitted to the UPSC by the State Govt. on 12.12.2000.

3.5 That a Disciplinary Proceeding was initiated against the applicant with the issuance of a charge-sheet on 16.02.2000 which was finally closed on 16.07.02.

Further stated that on final disposal of the Disciplinary Proceeding drawn up against the applicant, Sri P.K.Das, the Govt. of Assam requested the Secretary, UPSC to take necessary action to formally include the name of Sri P.K.Das in the Select List of State Civil Service (hereinafter 'SCS') officers for the year 1998 as unconditional vide letter dated 08.10.02 issued by the Principal Secretary, Govt. of Assam.

3.6 That the UPSC vide their letter dated 09.12.02 regretted the proposal of the State Govt. for inclusion of the name of the applicant, Sri P.K.Das as unconditional in the Select List of the State Civil Service Officers for the year 1998 on the ground that the validity period of these Select Lists has already been lapsed on 31.12.01.

In its letter dated 09.12.02 the UPSC has clearly stated that according to the Regulation 7(4) of the IAS (Appointment by Promotion) Regulations, 1955, the Select List remains in force till the 31st OF December of

Minister
Chairman
Narash

- 7 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

the year in which the meeting of the Selection Committee is held or upto 60 days from the date of approval of the Select List by the Commission, whichever is later.

In the instant case the Select List of 1998, 1999, 2000 and 2001 for promotion of Assam Segment to IAS of Assam-Meghalaya Joint Cadre were prepared by the Selection Committee in its meeting held on 09.04.01 and approved by the Commission on 26.06.01. Hence the validity period of these Select Lists, therefore, lapsed on 31.12.01.

3.7 That, thereafter, the Govt. of Assam vide its letter dated 01.09.03 once again forwarded a proposal to the UPSC for filling up of six vacancies for SCS officers including the name of Sri P.K.Das, the applicant for the year 2002.

In the said proposal it was mentioned that the departmental proceedings against the applicant has been closed and he was exonerated from the charges framed against him. However, Integrity Certificate in respect of the applicant was withheld by the State Government on the basis of report received from the Political (Vigilance Cell) Department vide their letter dated 15.11.03.

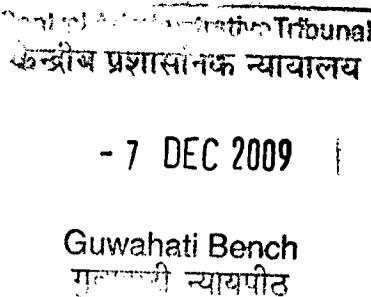
3.8 That the Government of India, Department of Personnel and Training, New Delhi vide notification dated 25.05.04 included the name of the applicant in the Select List of 2002 provisionally subject to the grant of Integrity Certificate by the State Government.

3.9 That in the meantime the applicant filed an O.A. being No. 63/06 before the Hon'ble Central Administrative Tribunal, Guwahati Bench with a prayer to direct the respondent authorities to promote the applicant as per his position as obtained in the Select List prepared for the year 2002 for promotion to the Assam segment of the IAS of the Assam-Meghalaya Joint Cadre with retrospective effect with all consequential benefits.

3.10 That the Hon'ble Tribunal after hearing was pleased to pass a judgement and order dated 20.06.08 directing the respondents to treat the applicant to be in the approved Select List without any condition. Further directed the government of Assam to take appropriate steps to grant Integrity Certificate in favour of the applicant (Annexure 7 to O.A.)

3.11 That in pursuance of the Hon'ble Tribunal's order dated 20.06.08 passed in O.A. 63/06 the Government of Assam have issued Integrity Certificate in respect of the applicant on 17.11.08 and the same was forwarded to the Secretary, UPSC vide Government letter dated 19.11.08 informing that there is a disciplinary proceeding drawn up against the officer subsequently vide show cause letter dated 14.03.08.

Manohar Chandra Minra



Hence in view of the above, it is stated that the disciplinary proceeding is still pending against the applicant in respect of the show cause letter dated 14.03.08.

4. REPLY TO THE FACTS OF THE CASE:

4.1 That with regard to the statements made in paragraph 4.1 and 4.2 of the application, the humble answering respondent has nothing to make comment on it. However, he does not agree to any statement contrary to record.

4.2 That with regard to the statements made in paragraph 4.3 of the application, the humble answering respondent admit the statements therein.

4.3 That with regard to the statements made in paragraph 4.4 of the application, the humble answering respondent begs to offer no comment as they are matters of records of the case. However, he does not agree to any statement contrary to record.

4.4 That with regard to the statements made in paragraph 4.5 of the application, the humble answering respondent begs to state that the proposal for preparation of Select List of State Civil Service Officers for promotion to IAS for the year 1998 to 2001 was submitted to the UPSC by the state government on 12.12.2000 as per record. The disciplinary proceeding against the applicant Sri P.K. Das was drawn up on 16.02.2000.

4.5 That with regard to the statements made in paragraph 4.6 of the application, the humble answering respondent begs to state that a Disciplinary Proceeding was initiated against the applicant with the issuance of a charge-sheet on 16.02.2000 which was finally closed on 16.07.02. On final disposal of the Disciplinary Proceeding drawn up against the applicant, Sri P.K.Das, the Govt. of Assam requested the Secretary, UPSC to take necessary action to formally include the name of Sri P.K.Das in the Select List of State Civil Service (hereinafter 'SCS') officers for the year 1998 as unconditional vide letter dated 08.10.02 under No.AAI.34/2000/167-A issued by the Principal Secretary, Personnel (A) Department, Govt. of Assam.

Further it is stated that the UPSC vide their letter dated 09.12.02 regretted the proposal of the State Govt. for inclusion of the name of the applicant, Sri P.K.Das as unconditional in the Select List of the State Civil Service Officers for the year 1998 on the ground that the validity period of these Select Lists has already been lapsed on 31.12.01.

In its letter dated 09.12.02 the UPSC has clearly stated that according to the Regulation 7(4) of the IAS (Appointment by Promotion) Regulations, 1955, the Select List remains in force till the 31st of December of

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Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

the year in which the meeting of the Selection Committee is held or upto 60 days from the date of approval of the Select List by the Commission, whichever is later.

In the instant case the Select Lists of 1998, 1999, 2000 and 2001 for promotion of Assam Segment to IAS of Assam-Meghalaya Joint Cadre were prepared by the Selection Committee in its meeting held on 09.04.01 and approved by the Commission on 26.06.01. Hence the validity period of these Select Lists, therefore, lapsed on 31.12.01.

Copies of the Govt. letter dated 08.10.02 and UPSC letter dated 09.12.02 are annexed herewith and marked as **Annexure-A and B** respectively.

4.6 That with regard to the statements made in paragraph 4.7 to 4.10 of the application, the humble answering respondent begs has nothing to make comment on it as they are matters of record of the case.

4.7 That with regard to the statements made in paragraph 4.11 of the application, the humble answering respondent begs to reiterate and reaffirm the statements made in para 4.4 of this written statement.

4.8 That with regard to the statements made in paragraph 4.12 and 4.13 of the application, the humble answering respondent begs to state that the Govt. of Assam vide its letter dated 01.09.03 under no.AAI.2/2002/148 once again forwarded a proposal to the UPSC for filling up of six vacancies for SCS officers to IAS including the name of Sri P.K.Das, the applicant for the year 2002.

In the said proposal it was mentioned that the departmental proceedings against the applicant has been closed and he was exonerated from the charges framed against him. However, Integrity Certificate in respect of the applicant was withheld by the State Government on the basis of report received from the Political (Vigilance Cell) Department vide their letter dated 15.11.03. The Government of India, Department of Personnel and Training, New Delhi vide notification dated 25.05.04 included the name of the applicant in the Select List of 2002 provisionally subject to the grant of Integrity Certificate by the State Government.

Copy of the government letter dated 01.09.03 and 15.11.03 and the said notification dated 25.05.04 are annexed herewith and marked as **Annexure C, D and E** respectively.

4.9 That with regard to the statements made in paragraph 4.14 of the application, the humble answering respondent begs to reiterate and reaffirm the statements made in paragraph 4.5 of this written statement.

101
Naren Chandra Naha

- 7 Dec 2008

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

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4.10 That with regard to the statements made in paragraph 4.15 and 4.16 of the application, the humble answering respondent begs to state that the applicant had earlier approached this Hon'ble Tribunal by filing O.A. No. 63/06 with a prayer to direct the respondent authorities to promote the applicant as per his position as obtained in the Select List prepared for the year 2002 for promotion to the Assam segment of the IAS of the Assam-Meghalaya Joint Cadre with retrospective effect with all consequential benefits.

The Hon'ble Tribunal after hearing was pleased to pass a judgement and order dated 20.06.08 directing the respondents to treat the applicant to be in the approved Select List without any condition. Further directed the government of Assam to take appropriate steps to grant Integrity Certificate in favour of the applicant (Annexure 7 to O.A.)

Further in pursuance of the Hon'ble Tribunal's order dated 20.06.08 passed in O.A. 63/06 the Government of Assam have issued Integrity Certificate in respect of the applicant on 17.11.08 and the same was forwarded to the Secretary, UPSC vide Government letter dated 19.11.08. It was also informed in the said letter that there is a disciplinary proceeding drawn up against the officer subsequently vide show cause letter dated 14.03.08.

Hence in view of the above, it is stated that the disciplinary proceeding is still pending against the applicant in respect of the show cause letter dated 14.03.08.

Copy of the said Government letter dated 19.11.08 and show cause letter dated 14.03.08 are annexed herewith and marked as **Annexure F and G** respectively.

4.11 That with regard to the statements made in paragraph 4.17 to 4.20 of the application, the humble answering respondent has nothing to make comment on it as they are matters of record.

4.12 That the instant application has no merit at all and is liable to be dismissed.

Monohor Chandra Mitra

Central Administrative Tribunal देशीय प्रशासनिक न्यायालय
- 7 DEC 2009
Guwahati Bench गुवाहाटी न्यायपीठ

VERIFICATION

I, Sri N.C. Mishra, son of Late Basudev Mishra, aged about 58 years, presently serving as Joint Secretary to the Govt. of Assam, Personnel Department, Dispur, Guwahati-6 do hereby solemnly affirm and verify as follows:

That the statements made in paragraphs 1.3, 4.1, 4.3..... are true to my knowledge and those made in paragraphs 3.1 to 3.11, 4.3 to 4.11..... being matters of record are true to my information derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 7th day of December, 2009 at Guwahati.

Naren Chandra Mishra
SIGNATURE

By Speed post.

167(c)

ANNEXURE-A

NO.AAP.34/2000/167,
 GOVERNMENT OF ASSAM
 DEPARTMENT OF PERSONNEL (PERSONNEL & A)
 ASSAM SECRETARIAT (CIVIL) DISPUR
 GUWAHATI - 781006.

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय

- 7 DEC 2002

Dated Dispur, the 8th Oct./2002.

Guwahati Bench
 गुवाहाटी न्यायालय

To : The Secretary,
 Union Public Service Commission,
 Dholpur House, Sahjanan Road,
 New Delhi-110011.

Sub : Select list of SCS Officers under Government of Assam for promotion to IAS against the vacancies of 1998.

Sir,

I am directed to say that Shri Pradip Kumar Das, ACS, found his place provisionally in the select list of SCS Officers prepared by the Selection Committee of the Union Public Service Commission for filling the vacancies of 1998 in the promotion quota of IAS under this State Government. The provisional inclusion of Shri Pradip Kumar Das in the above select list was in view of a Departmental Proceeding instituted against the Officer. The Proceedings have since been concluded.

After careful examination of the Enquiry Report submitted by the Inquiring Authority and the available records, the charges No.4,7,9 and 12 which were found to have been proved by the Inquiring Authority were not found to be conclusively proved. Accordingly a decision was taken to close the Departmental Proceeding with a warning to the Charged Officer to be more careful in future in the matters of following Government Rules/Regulations/Instructions vide Show Cause Notice No.AAP.36/97/Pt/191 dated 16-2-2000 (copy enclosed). Thus the Departmental Proceeding was finally disposed off vide order No.AAP.36/97/Pt/502 dated 16-7-2002 (copy enclosed).

Contd.....P/2.

Certified to be true
 (Signature)

8293-9

7 DEC 2002

Guwahati Bench
গুৱাহাটী ন্যায়পৌঠ

- 2 -

In view of the position stated above, you are requested to take necessary action to formally include the name of Shri Pradip Kumar Das in the final select list of SCS officers of 1998.

Yours faithfully,

8/10/02

(P.D.DAS)

D
Ranu Principal Secretary to the Govt. of Assam
8/10/2002 Personnel (A) Department 6th Oct./2002.

Memo. No. AAP.34/2000/167-A, Dated Dispur, the

Copy to :-

1) The Additional Secretary to the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi-110001. Copies of letter No. AAP.36/97/Pt/191 dtd. 16-2-2000 and order No. AAP.36/97/Pt/502 dtd. 16-7-2002 are enclosed for favour of necessary action. The list of the substantive appointment as Deputy Collector or its equivalent post is enclosed at annexure-I.

By order etc.,

D
Ranu Principal Secretary to the Govt. of Assam, Personnel (A) Department.

8/10/2002.

164(E)

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Annexure-I.

Shri Pradip Kumar Das held substantive appointment in the State Civil Service as Deputy Collector or its equivalent post continuously since 23-5-77 as Extra-Assistant Commissioner, Dibrugarh.

The subsequent postings of Shri P.K.Das was as :-

1. Joint Secretary - From 1-11-95
Agriculture Department.
2. Joint Secretary, - From 11-3-96
Agriculture & Revenue
Dept.
3. Joint Secretary, - From 24-6-96
Revenue & R.R. Deptt.
4. Joint Secretary, - From 4-10-99
Tourism Department.
5. Deputy Commissioner, - From 24-4-98
Darrang.
6. Deputy Commissioner, - From 18-7-2001
Cachar.

Central Administration
केन्द्रीय प्रशासनिक न्यायपाठ

- 7 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपाठ

8-10-02

(P.D.DAS)

Principal Secretary to the Govt. of Assam
Personnel (A) Department.

P.D.DAS
8/10/2002

Gram : UNISERCOM
FAX : 011-3782049
Email : upsc@vsnl.net

File No.6/2(1)/2000-AIS
UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD
New Delhi - 110011

To

The Chief Secretary,
Govt. of Assam,
Personnel Department,
Disput.

[Attn : Ms. Parul Debi Das, Principal Secretary]

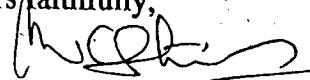
Subject : IAS - SCM for promotion of Assam Segment to the IAS of Assam-Meghalaya Joint Cadre during 1998 - making inclusion of Shri Pradip Kumar Das as unconditional - Regarding

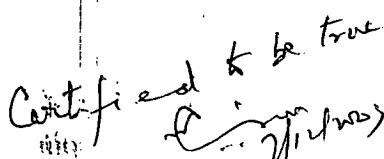
Sir,

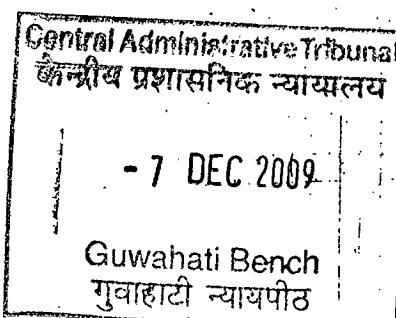
I am directed to refer to your letter No.AAI.34/2000/167 dated 08.10.2002 on the subject and to say as follows :-

2. In accordance with Regulation 7(4) of the IAS (Appointment by Promotion) Regulations, 1955, the Select List remains in force till the 31st December of the year in which the meeting of the Selection Committee is held or upto 60 days from the date of approval of the Select List by the Commission, whichever is later. In the instant case, the Select Lists of 1998, 1999, 2000 & 2001 for promotion of Assam Segment to the IAS of Assam-Meghalaya Joint Cadre were prepared by the Selection Committee in its meeting held on 09.04.2001 and approved by the Commission on 26.06.2001. The validity period of these Select Lists therefore lapsed on 31.12.2001.
3. In view of the above, the request of the State Govt. to declare Shri Das's inclusion in the said Select Lists as unconditional cannot be acceded to.

Yours faithfully,


(Molly Tiwari)
Under Secretary (AIS)
Union Public Service Commission
Tel. 3382724


Certified to be true
Signature



1-96-12

(148)

ANNEXURE - C

148

NO. AAI.2/2002/439.

GOVERNMENT OF ASSAM

DEPARTMENT OF PERSONNEL (PERSONNEL & A)

ASSAM SECRETARIAT (CIVIL) DISPUR

GUWAHATI - 781006.

Dated Dispur, the 1st Sept./2003.

To :

The Secretary, U.P.S.C.,
Dholpur House, Sahjahan Read,
New Delhi-110069.

(Attention : Ms. Nelly Tiwari, Under Secretary).

Proposal for preparation of Select List of SCS
officers for promotion to IAS by Selection
for 2002.

Sub :

Your letter No.11/39/2003-AIS dt'd. 20-5-2003.

Ref :

Sir,

With reference to the above, I am directed to say that the last meeting of the selection committee of the U.P.S.C. was held on 9-4-2001 when 4 select lists of SCS officers under this State Govt. for the following years were prepared for vacancies shown against each.

1998	-	2 vacancies
1999	-	4 "
2000	-	4 "
2001	-	2 "

Out of the above 12 vacancies 9 (nine) have been filled up by promotion of select list officers. The inclusion of the following 2 officers in the respective select lists still continues to be provisional as the cases pending against them have not been finalised.

Name of officers

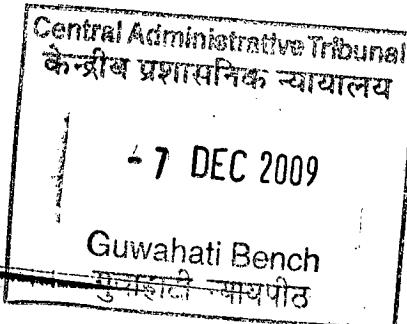
- 1) Shri Pradip Kumar Das
- 2) Ms. Nurul Haque.

However, it may be mentioned here that Departmental proceeding against Shri P.K.Das and Ms. Nurul Haque have been concluded recently and they are exonerated from the charges framed against them.

These 3 vacancies kept unfilled and in view of provisional inclusion, these 2 officers will again come in the zone of consideration of the selection committee for preparation of the select list for 2002.

Certified
to be true
S. C. S.
7/12/2007

Contd....2



(149)

63

In addition to the three vacancies as mentioned above, seven vacancies in the promotion quota of IAS have occurred during the period after 1-1-2001 due to retirement etc. of the following officers.

1. Shri N.C. Barooah, IAS (SCS:83)	- Retired on 31-5-2001
2. Shri D.C. Barman, IAS (SCS:84)	- Retired on 28-2-2001
3. Shri Purneswar Basumatary, IAS (SCS:85)	- Retired on 31-3-2001
4. Late N.K. Chetia, IAS (SCS:89)	- Expired on 21-7-2001
5. Shri N.G. Baruah, IAS (SCS:87)	- Retired on assuming the charge of State Election Commission on 27-8-2001.
6. Late Jibon Ch. Pegu, IAS	- Expired on 11-2-2002
7. Shri A.K. Verma, IAS	- Expired on 26-9-2002.

As J.C. Pegu, IAS died in February, 2002 and A.K. Verma, IAS expired in Sept., 2002 these two resultant vacancies will have to be considered by the selection committee at the time of preparation of select list of 2003.

It may be mentioned that the seniority list of ACS officers published by Govt. on 2-7-2003 was challenged by a group of ACS officers of 1983 batch in the Hon'ble Gauhati High Court and the Court issued direction to the State Govt. not to act upon the said seniority list. However, the Gauhati High Court clarified that the pendency of the writ petition shall be no bar for promotion of the respondents in the misc. case No. 1400/2002 of WP(C) No. 4739/2002. The copy of the aforesaid Misc. case is enclosed.

There was another case No. CA No. 20/2003 in the Hon'ble Central Administrative Tribunal, Guwahati Bench which has since been disposed of (copy of the order dtd. 2-4-2003 in O.A. No. 20/2003 is enclosed).

As It has been decided by this State Govt. to fill up 2(two) vacancies by appointment of non-SCS officer through separate proposal.

In view of the above position, a proposal for 2(two) vacancies for SCS officers appointment by

Central Administrative Tribunal
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- 3 -

1. A list of eligible officers in order of seniority.
2. A statement showing the position of ACRs of 24 eligible officers.
3. Certificate regarding non-communication of adverse remarks.
4. Certificate regarding communicated adverse remarks in ACRs against which no representation has been received and the time for submission of representation is over.
5. Certificate regarding submission of representation against adverse remarks in ACRs but Govt. decision thereon is yet to be taken.
6. Certificate regarding departmental proceedings.
7. List of IAS(SCS) officers new in position.
8. Integrity certificate will be submitted later on.

Yours faithfully,

(J.P.SAIKIA).

Commissioner & Secretary to the Govt. of
Assam, Personnel (A) Department.

Memo. No. AAI.2/2002/139-A, Dated Dispur, the 1st Sept./2003.

Copy to :-

1. The Secretary to the Govt. of India, Ministry of Personnel, P.G. & Pension, Deptt. of Personnel & Training, New Delhi.
2. The Chief Secretary to the Govt. of Meghalaya, Shillong.

By order etc.,

Commissioner & Secretary to the Govt. of
Assam, Personnel (A) Department.

Central Administrative Tribunal
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ANNEXURE - D

GOVERNMENT OF ASSAM
POLITICAL :::(A)::: DEPARTMENT
(VIGILANCE CELL)
E&E

NO.PLA(V)6/99/pt.II/78 : Dated Dispur, the 15th Nov/03.

From : Shri K.R. Deb,
Deputy Secretary to the Govt. of Assam,
Political (Vigilance Cell) Department.

To : The Deputy Secretary to the Govt. of Assam,
Personnel (A) Department,
Dispur.

Sub : Vigilance Report.

Ref : Your letter NO.AAI.2/2002/151, dated 9.9.03.

Sir,

In inviting a reference to your letter quoted above, I am directed to say that there is no vigilance case/enquiry pending against the following ACS officers in this Department at present :

- |1| Shri A.B. Md. Eunus, ACS.
- |2| Shri Balendra Basumatary, ACS.
- |3| Dr. Rafique Zaman, ACS.
- |4| Syed Iftikhar Hussain, ACS.
- |5| Shri Karuna Kt. Kalita, ACS.
- |6| Shri Apurba Kr. Phukan, ACS.
- |7| Shri Swapnil Baruah, ACS.
- |8| Smti. Sonmai Barua, ACS.
- |9| Shri Santanu Thakur, ACS.
- |10| Shri Ganesh Kalita, ACS.
- |11| Shri Bhupendra Nath Das, ACS.
- |12| Shri Nawab Mahmood Hussain, ACS.
- |13| Shri Harendra Nath Bora, ACS.
- |14| Shri Bhupendra Nath Mahanta, ACS.
- |15| Smti. Marmie Hagger Barman, ACS.
- |16| Smti. Sumitra Das, ACS.
- |17| Shri Rajib Losan Duara, ACS.
- |18| Shri Chitta Ranjan Kalita, ACS.

DR
R. S. D.
DPI/2003

Contd....2

Certified & between 2/12/09
S. J. (2/12/09)

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

(-2-)

In respect of the following officers
vigilance/other enquiries/cases are pending against
them at present :

- 11 Shri Pradip Kr. Das, ACS
(SVC Case).
- 12 Md. Nurul Haque, ACS,
(Vigilance & Anti-Corruption enquiry).
- 13 Shri Subhash Ch. Longmailai, ACS,
(Vigilance & Anti-Corruption).
- 14 Shri Sabbir Hussain, ACS,
(Vigilance & Anti-Corruption).
- 15 Shri Sailendra Kr. Nath, ACS,
(Who has been placed under suspension by
Personnel (A) Department recently, However,
no ACB or SVC enquiry is pending or
contemplated against him).
- 16 Md. Jiauddin Ahmed, ACS,
(CBI case, involved in LOC Scam of
Veterinary Department).

Yours faithfully,

[Signature]
Deputy Secretary to the Govt. of Assam,
Political (Vigilance Cell) Department.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

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17 - 108 → Annexure XV
ANNEXURE E - E
(TO BE PUBLISHED IN THE GAZETTE OF INDIA PART I SECTION 2)

No. 14015/06/2003-AIS(I)-A
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi, May, 2004.

25 MAY 2004

NOTIFICATION

In terms of the provisions contained in Sub-regulation (3) of Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the Union Public Service Commission has approved the Select List of 2002 for the Assam segment of the joint Assam-Meghalaya Cadre, containing the names of the following State Civil Service officers of the State of Assam, prepared by the Selection Committee in its meeting held on 29th December, 2003, towards filling up 8 (eight) vacancies during 2002 in the Indian Administrative Service :-

SELECT LIST 2002

<u>Sl. No.</u>	<u>Name of the Officer (S/Sh.)</u>	<u>Date of Birth</u>
1.	Pradip Kumar Das	16.03.1953
2.	Md. Nuful Haque	28.02.1946
3.	A.B. Md. Eunus	01.02.1953
4.	Balendra Basumatary (STP)	01.04.1948
5.	Subhash Ch. Longmailei (STH)	23.02.1953
6.	Gokul Ch. Sarma	01.03.1948
7.	Rafique Zaman	01.02.1951
8.	Syed Istikhar Hussain	21.09.1954

The names at S. No. 1 and 2 have been included in the Select List provisionally subject to grant of Integrity Certificate by the State Government. The officer at S. No. 2 cannot be appointed as he has retired on 29th February, 2004.

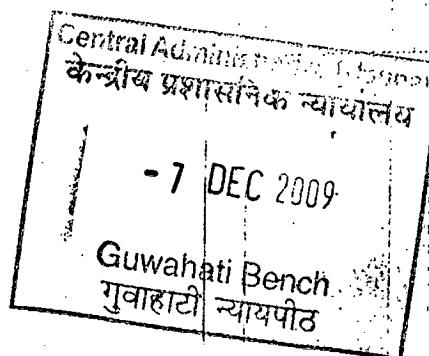
The name at S. No. 6 has been included in the Select List provisionally subject to grant of Integrity Certificate by the State Government and his clearance in the disciplinary proceedings pending against him.


(K.K. Sharma)
Desk Officer

To

The Manager
Government of India Press
FARIDABAD
(HARYANA)

*Confirmed to be true
S. Singh (S)*



ANNEXURE F

18

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NO.AAP.55/2006/154
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL ::A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-6

Dated : Dispur, the 19th November, 2008.

To.

The Secretary to the Govt. of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi-110001.

Sub:

CAT, Guwahati Bench Order Dated.20th June, 2008 in O.A.NO.63
of 2006 filed by Shri P. K. Das. – Regarding.

Ref. :

Your letter No.14015/03/2008-AIS(i). Dated.7-8-2008.

Sir,

With reference to your letter mentioned above, I am directed to inform you that the issue of Integrity Certificate in pursuance with the Hon'ble CAT, Guwahati Bench's order and judgement Dated.20-6-2008 in O.A. No.63/2006 in respect of Shri P. K. Das, ACS has examined by this State Govt. as per the prescribed rules and procedures. After careful examination and consideration of the matter the State Govt. have decided to comply with the Hon'ble CAT's order and judgement Dated.20-6-2008 in O.A. No.63/2006 and issue necessary Integrity Certificate in respect of Shri P. K. Das, ACS for inclusion of his name in the Select list of 2004 & 2005 as unconditional for appointment to IAS by promotion for the year 2004 & 2005. It may be mentioned that Shri P. K. Das, ACS, was selected provisionally for the year 2004 & 2005 as conditional. However, it may be mentioned that as on date Shri P. K. Das, ACS is not clear from the Vigilance angle since disciplinary proceedings were initiated against vide letter NO.AAP.82/2002/139, Dated. 14th March, 2008.

Govt. of India is requested to consider the case of appointment of Shri P. K. Das, ACS, to IAS by promotion for the year, 2004 & 2005 in compliance of Hon'ble CAT's order Dated. 20-6-2008 in O.A.No.63/2006.

Action taken in this regard may kindly be intimated to this Department at an early date.

Yours faithfully,

[Signature]
Commissioner & Secretary to the Govt. of Assam,
Personnel (A) Department.

Memo No.AAP. 55/2006/154-A. Dated : Dispur, the 19th November, 2008..

Copy to :-

1. The Secretary,Union Public Service Commission,Dhalpur House, Shahjahan Road,New Delhi-110069 for information & necessary action. This is with reference to their letter No.11/81/2006-AIS, Dated.22-8-2008.

Certified to be true
S. J. Das

By Order Etc.
[Signature]
Commissioner & Secretary to the Govt. of Assam
Personnel (A) Department

ANNEXURE - 6

CONFIDENTIAL

NO. AAP.82/2002/159
 GOVERNMENT OF ASSAM
 DEPARTMENT OF PERSONNEL (PERSONNEL : A)
 ASSAM SECRETARIAT (CIVIL) DISPUR
 GUWAHATI-781006

Dated, Dispur, the 14th March, 2008.

To : Shri Pradip Kumar Das, ACS,
 Commissioner, Assam State Housing Board,
 R.G.Baruah Road, (Nursery Bus Stop)
 Guwahati-781005.

You are hereby required to show cause under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 read with Article 311 of the Constitution of India, why any of the penalties prescribed in Rule 7 of the aforesaid rules, should not be inflicted on you on the following charges based on the statement of allegations attached herewith:-

That while you were holding the post of Deputy Commissioner, Darrang, the DRDA, Darrang took up the Scheme of 'implementation of low cost green house-cum-rain shelter for raising of season vegetables and flowers" following the government instruction communicated vide letter No. RDD.170/98/31, dated 24.3.1999 with your approval and for that purpose 150 Rolls of UV stabilized polyethylene plastic film of silpaulin brand having thickness of 120 GSM at an exorbitant Rate of Rs.70.25 per Sq.mtr. were procured in gross violation of the guidelines and instructions contained in above mentioned letter and allowed payment of Rs. 30,68,520/- to the supplier firm causing financial loss to the government.

By your above acts you had not only violated the government instructions and caused huge financial loss to the government but also acted in a manner most unbecoming of a government servant of your status and rank.

You are, therefore, not only charged with violation of government guidelines and instructions and causing huge financial loss to the government but also violation of rule 3 of the Assam Civil Services (Conduct) Rules, 1965 and gross indiscipline and misconduct.

List of documents and witnesses proposed to be relied upon for proving these charges and allegations, are also enclosed.

[Handwritten signatures and marks]
 Certified by
 [Signature]
 [Signature]

Central Administrative Tribunal কেন্দ্ৰীয় প্ৰশাসনিক ন্যায়ালয়	
- 7 DEC 2008	
Guwahati Bench গুৱাহাটী ন্যায়পীঠ	

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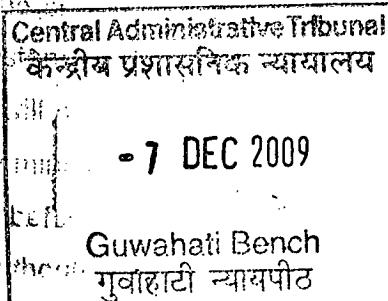
You should submit your written statement in defence within ten days from the date of receipt of this communication provided you do not intend to inspect the documents which have relevance with the issues under enquiry. In case you intend to inspect those documents you should write to the undersigned for the same within seven days from the date of receipt of this communication and submit your explanation thereafter within ten days from the date of completion of the inspection.

Your written statement stating whether you desire to be heard in person should be submitted to the undersigned within the period specified above.

If the disciplinary authority decides to appoint an Inquiring Officer to inquire into the charges, you will be allowed to present your case, if you so desire, with the assistance of any other government servant approved by the disciplinary authority but will not be allowed to engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority to present the case in support of the charges before the inquiring authority is a legal practitioner or unless the disciplinary authority, so permits.

By order and in the name
Of the Governor of Assam

Commissioner & Secretary to the Govt. of Assam
Personnel (A) Department



STATEMENT OF ALLEGATION

That Shri Pradip Kumar Das, ACS while holding the post of Deputy Commissioner-Cum-Chairman, DRDA, Darrang, the DRDA, Darrang took up the Scheme of "Low Cost Green House-Cum-Rain Shelter for raising off season vegetables and flowers" for implementation following the Government instruction communicated vide letter N RMD.170/98/31, Dated.24-3-1999, The Project Director, DRDA, Darrang invited short quotation vide No.DRDA/MLD/1138/98-99/29, dated. 12-4-1999 for supply of 150 Rolls of 200 micron thickness U.Vs film required for erecting "Green House-Cum-Rain Shelter" and accordingly 3 firms submitted quotations. The rate quoted by M/S Nilachal Enterprises was found to be the lowest @ Rs.70.25 per Sq.mtr. of U.Vs film of 200 micron thickness. Shri Pradip Kumar Das, ACS, as Chairman of the DRDA approved the above rate in the comparative Statement. The Project Director, DRDA, Darrang vide his note at page 3/N-6/N of the file bearing No.DRDA/MLD/1138/98-99 apprised him for procuring U.Vs film of 120 GSM Silpaulin at the same rate from M/S Nilachal Enterprises and he approved the same. Accordingly, the Project Director, DRDA, Darrang issued supply order for 150 Rolls of U.Vs film of 120 GSM thickness Silpaulin @ Rs.70.25 per Sq. mtr. vide Order No.DRDA/MLD/1198-99/1264, Dated.4-5-1999. The APO (Agri) of the DRDA, Darrang, received the materials and certified the quality and quantity to be correct. M/S Nilachal Enterprise was paid Rs.30,60,520/- against the supply bills as per his approval. Though the bills were supposed to be checked by the FAO but it was found that the file was not routed through the FAO and no comment was take from FAO in this regard.

By order and in the name
of the Governor of Assam,

Commissioner & Secretary to the Govt. of Assam,
Personnel (A) Department.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 7 DEC 2009

Guwahati Bench
गुवाहाटी न्यायालय

LISTS OF DOCUMENTS AND WITNESSES(A) DOCUMENTS :-

1. Letter NO. RDD.170/98/31, Dated.24-3-1999.
2. File No.DRDA/MLD/1138/98-99.
3. Supply Order NO.DRDA/MLD/1138/98-99/1264, Dated.4-5-1999.
4. Inquiry Report of the Chief Minister's Special Vigilance Cell, Assam submitted vide letter No.BVC/C/Case/2/2004/C/75, Dated.21-3-2005.

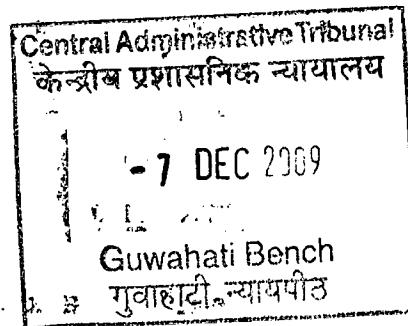
(B) WITNESSES :-

1. Shri B.N.Sarma,APS,
Deputy Superintendent of Police,Chief Minister's Special Vigilance Cell,Assam,Guwahati-5.

1. Letter No. RDD.170/98/31

By order and in the name
of the Governor of Assam

2. File No. DRDA/MLD/1138/98-99/1264

Commissioner & Secretary to the Govt. of Assam,
Personnel (A) Department.

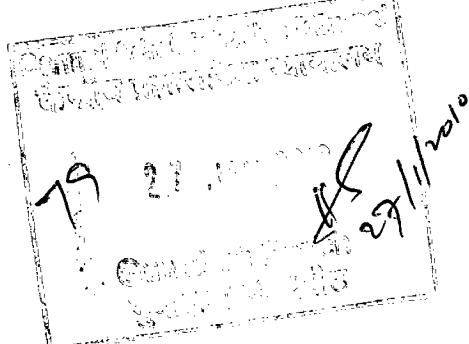
1. Letter No. RDD.170/98/31

2. File No. DRDA/MLD/1138/98-99/1264

Q.

HO

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI



IN THE MATTER OF

Original Application No. 60/09

Pradip Kr. Das

..... Applicant

-Versus-

Union of India & others

..... Respondents

AND

IN THE MATTER OF

An additional affidavit on behalf of the applicant to bring on record certain subsequent facts which has arisen consequent to the filing of the aforesaid original application.

Received copy
for Mr. N. Das,
Advocate,
Govt. Advocate,
Assam
D. K. Baruah
27. 01. 10

ADDITIONAL AFFIDAVIT

I, Sri Pradip Das, aged about 56 . . . years, son of Late Dwijendra Kr. Das, resident of Anand Nagar, Guwahati - 6, do hereby solemnly affirm and state as follows :

19
filed by the applicant
through Ll copy filed
through Advocate 27/1/2010

27 JAN 2010

Guwahati Bench
গুৱাহাটী বেঞ্চ

2

1. That the deponent has preferred an original application being O.A No. 60/2009 before the Central Administrative Tribunal, Guwahati Bench challenging the inaction of the respondent authority in not promoting him to the IAS inspite of his selection on account of pendency of disciplinary proceeding.

2. That your deponent states that during the pendency of the original application before the Central Administrative Tribunal, the deponent has moved a writ petition being W.P.(C) No. 1861/2009 before the Hon'ble Guwahati High Court against the inaction of the respondent authority to finalise the departmental proceeding and the Hon'ble Court vide order dated 24.07.2009 was pleased to direct the respondent authorities to complete the departmental proceeding within a stipulated time.

A copy of the order dated 24.07.2009 passed in W.P.(C) No. 1861/2009 is annexed herewith and marked as ANNEXURE - A.

3. That your deponent states that pursuant to the order of the Hon'ble Court the respondent authority vide

27.11.2009

Gurukul Branch
T.S.I.C. 2003

3

order dated 21.12.2009 exonerated the deponent from the disciplinary proceeding.

A copy of the order dated 21.12.2009 is annexed herewith and marked as ANNEXURE - B.

4. That your deponent states that thereafter by representation dated to the respondent authorities the applicant called upon the same to consider his case for promotion to IAS in view of the fact that he has already been exonerated of all charges by order dated 21.12.2009.

A copy of the representation referred to above is annexed herewith and marked as ANNEXURE - D.

5. That this affidavit has been filed for the purpose of bringing on record the facts subsequent to filing of the present original application.

6. That this affidavit has been filed bonafide and in the interest of justice.

97/01/2010

4

Guwahati Bench
Court of Appeal

7. That the statements made in this affidavit in paragraphs - 1, 5 and 6 - - - - are true to my knowledge, those made in paragraphs 2, 3, 4 - - - being matters of record are true to my information which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this the 27th day of January 2010 at Guwahati.

Identified by,

Advocate

. Pradip Kumar Das

प्राप्तान्वय के लिए आदेश का तारीख Date of issue of the order	स्टाम्प और फोटोसेक्यू की अपेक्षित तारीख स्टाम्प दस्तावेज की अपेक्षित Date of issue of the stamp and photo-copy	अपेक्षित स्टाम्प और फोटोसेक्यू देने की तारीख Date of issue of the stamp and photo-copy	तारीख, जबकि देने के सिर प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	अपेक्षित को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
27/7/09	27/7/09	27/7/09	31/7/09	31/7/09

IN THE GAURATI HIGH COURT

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

CIVIL APPELLATE SIDE

Appeal from
Civil Rule

W.P.C.

No. 1861 of 2009

861

27 JAN 1968

Guwahati Bench গুৱাহাটী ন্যায়পৰিচ

Appellant
Petitioners

Padmapriya Das
Teresa

State of Accts. 8

Respondent
Opposite Party

Appellant
For Mr. D.K. Doss

M.R. D.K. Das

Petitioner Ms L. G. Khan cel

Respondent
For: G. A. Asen

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders of proceedings with signature
✓	2	3	

Central Arbitration Collective Tribunal
केन्द्रीय प्रशासनिक न्यायालय

27 JAN 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

IN THE MATTER OF:

Sri Pradip Kumar Das,

Son of Late Dwijendra Kr. Das,

Resident of Ananda Nagar,

Guwahati - 6, Assam.

PETITIONER

VERSUS

27 JAN 2010

Guwahati Bench
गুৱাহাটী ন্যায়পীঠ

1. The State of Assam,

Represented by the Chief Secretary

to the Government of Assam,

Dispur, Guwahati - 6.

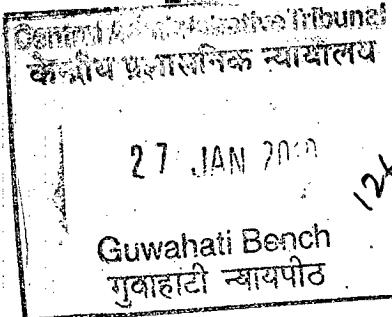
2. The Commissioner and Secretary to

the Government of Assam, Personnel

(a) Department, Assam Secretariat,

Dispur, Guwahati - 6.

... RESPONDENTS



Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	<p>4</p> <p>WP(C) NO.1861/2009</p> <p>-PRESENT -</p> <p>THE HON'BLE MR JUSTICE AMITAVA ROY</p> <p>24-07-2009</p> <p>Heard Mr Das, learned counsel for the petitioner and Mr Ghosh, learned State Counsel for the respondents.</p> <p>The instant proceeding principally, is for an appropriate writ and/or direction to the respondents to complete the departmental proceeding initiated by the Memorandum of charges dated 14.3.2008, but pending as on date.</p> <p>For the order, which I propose to pass, it is not considered necessary to go into the factual details. Suffice it to mention that, according to the petitioner, he is at the threshold of his promotion to the Indian Administrative Service. At this juncture, by the aforementioned Memorandum of charges, a departmental proceeding has been initiated under Rule 9 of the Assam Services(Discipline and Appeal) Rules, 1964(hereafter referred to as the 'Rules'). The Memorandum of charges, as the documents annexed to the petition disclose, was accompanied by statement of allegations, list of documents and witnesses. The petitioner, in the meantime has also submitted his written statement of defence. The documents appended to the writ petition</p>

27 JAN 2010 / 27

Guwahati Bench

পুরাতন নথিপত্র

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			demonstrate that an Enquiry Officer as well as the Presenting Officer have, in the meantime, been appointed.
			Mr Das has submitted that having regard to the impending promotion of the petitioner to the Indian Administrative Service(IAS), the departmental proceeding ought to be expedited as the same appears to be the only impediment in the way of his such elevation. The learned counsel has also drawn the attention of this Court to the Integrity Certificate dated 17.11.2008 issued by the Chief Secretary, Govt. of Assam vis a vis the petitioner.
			Mr Ghosh submits that, as the preparatory steps for furthering the departmental proceeding have in the meantime, been taken, there is no reason to apprehend that the finalization thereof would be unnecessarily delayed.
			Upon hearing the learned counsel for the parties and on a consideration of the background of facts as narrated hereinabove, this Court is of the opinion that, it would be in the interest of justice to direct the respondents to complete the departmental proceeding within a fixed time frame. Having regard to the nature of the charge and the evidence proposed by the departmental authority to prove the same, a period of four months is considered to be appropriate.

27 JAN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পৌঠ

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>In the above premise, this petition stands closed with a direction to the State respondents to complete the departmental proceeding in accordance with the Rules within a period of four months herefrom. Needless to say that, the petitioner would be kept apprised of the developments in the departmental proceeding as is required under the Rules. No costs.</p>

sd/- Ami Dava Roy
Judge

12/15/09
31/7/09
Neipen Barthak
Copy right section
Guwahati High Court
Authentic 14/3/76, Act 1, 1972

31/7/09

27 JAN 2010
CONFIDENTIAL

NO.AAP.82/2002/364
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL: A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI: 781006

Dated Dispur, the 21st December/2009

ORDERS BY THE GOVERNOR OF ASSAM.

Whereas a departmental proceeding against Shri Pradip Kumar Das, ACS, Commissioner, Assam State Housing Board, was drawn up vide show cause notice No.AAP.82/2002/139, dated 14-03-2008 for allegedly approving the proposal for implementation of "Low Cost Green House-Cum-Rain Shelter for raising off season vegetables and Flowers" scheme and allowing payment of Rs.30,68,520/- against procurement of 150 Rolls of unspecified UV stabilised Polyethylene plastic film of Silpaulin brand having thickness of 120 GSM at an exorbitant rate of Rs.70.25 per sq.mtr and thereby causing financial loss to the Government during his tenure as Deputy Commissioner-Cum-Chairman, District Rural Development Agency, Darrang; and

Whereas Shri Pradip Kumar Das, ACS submitted written statement in defence vide his letter dated 14-07-2008 and denied therein the charges framed against him; and

Whereas after careful examination of the written statement in defence submitted by Shri Pradip Kumar Das, ACS it was decided to hold an enquiry into the charges by appointing Md. Alauddin, IAS, Commissioner & Secretary to the Govt. of Assam, Food & Civil Supplies and Consumer Affairs Department(since Retd.) and accordingly he was appointed as the Inquiry Authority vide order No.AAP.82/2002/155, dated 26-03-2009 to hold the enquiry into the charges against Shri Pradip Kumar Das ACS and to submit enquiry report thereof; and

Whereas the Inquiring Authority has submitted enquiry report vide letter No.COM & SECY/FCS & CA/ENQ/12/2009/20, dated 16-10-2009; and

Whereas perusal of the enquiry report has revealed that the Inquiring Authority on the basis of evidence placed before him has found that the delinquent officer had approved the implementation of the scheme of "Low Cost Green House-Cum-Rain Shelter for raising off season Vegetables and Flowers" as per the Government instructions and guidelines and had allowed payment of 50% of the amount of Rs.30,68,520/- as proposed by the then Project Director, District Rural Development Agency, Darrang and also has found that the then Project Director, District Rural Development Agency, Darrang had procured UV Stabilized film of specification inferior to that stipulated by the Government in the instructions without the knowledge of the charged Officer and on such findings he has not found the charge established against the charged officer; and

Whereas after careful examination of the enquiry report of the Inquiring Authority and the materials on record, it has been decided to accept the findings as well as the enquiry report of the inquiring Authority and to drop the departmental proceedings by exonerating Shri Pradip Kumar Das, ACS from the charges levelled against him;

27 JAN 2010

Guwahati Bench
गुवाहाटी न्यायपौठ

Now, therefore, the Governor of Assam is pleased to accept the enquiry report of the inquiring Authority submitted vide letter No. COM & SECY/FCS & CA/ENQ/12/2009/20, dated 16-10-2009, drop the departmental proceedings against Shri Pradip Kumar Das, ACS, Commissioner, Assam State Housing Board and to exonerate him from the charges levelled against him.

Thus, the departmental proceedings are disposed of.

By order and in the name
Of the Governor of Assam,

Sd/- (Rajiv Bora)
Commissioner & Secretary
Personnel (A) Department.

Memo No. AAP.82/2002/364-A

Dated Dispur, the 21st December/2009

Copy to:-

- 1) Shri Pradip Kumar Das, ACS, Commissioner, Assam State Housing Board, R.G. Barua, Road, Guwahati-5.
- 2) The Principal Secretary to the Governor of Assam, Raj Bhawan, Guwahati-1.
- 3) The Principal Secretary to the Govt. of Assam, Political Department, Dispur, Guwahati-6
- 4) The Commissioner & Secretary to the Govt. of Assam, P & RD Department, Dispur, Guwahati-6
- 5) The P.P.S. to Chief Minister, Assam, Dispur, Guwahati-1
- 6) The P.S. to Chief Secretary to the Govt. of Assam, Dispur, Guwahati-6
- 7) Md. Alauddin, IAS (Retd.), Ex-Commissioner & Secretary to the Govt. of Assam, F & CS & CA Department, Dispur, Guwahati-6
- 8) Personal file of Shri P.K. Das, ACS.

By order etc.,

235 21/12/09
Officer-On-Special Duty,
Personnel (A) Department.

Annexure C.

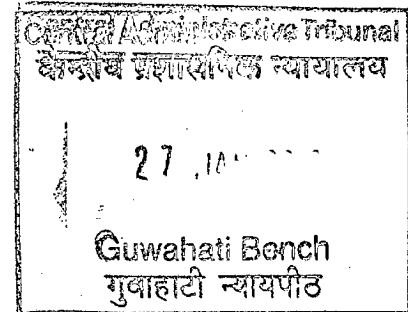
31

OFFICE OF THE COMMISSIONER
ASSAM STATE HOUSING BOARD:::R.G.BARUAH ROAD
GUWAHATI-5.

No.ASHB/Comm/G/2006/60

Dated, Guwahati the 9th December/2009.

To : 1. The Secretary, to the Govt. of India,
Department of Personnel and Training,
New Delhi.
2. The Secretary to the Union Public Service Commission,
Dholpur House, New Delhi.
Sub : Nomination to I.A.S. – Prayer therefor.



Sir,

With reference to the subject cited above, I have the honour to state that I am at present the senior-most officer in the A.C.S. Cadre as per the prevailing Gradation list published by the Govt. of Assam (Personnel Department). But it is a matter of misfortune that even till date I have been deprived of nomination into I.A.S. despite my seniority of more than 30 (thirty) years in the state cadre.

That sir, it is a fact that I was selected for nomination into I.A.S. by U.P.S.C./ Govt. of India (Department of Personnel and Training, New Delhi) way back in 2001, keeping my name in 'Sealed Cover' due to pendency of Departmental Proceeding. However, the said Departmental Proceeding was closed vide Govt. Order dated, 16/7/2002 but the Govt. did not consider my case for promotion to I.A.S. even after that which forced me to move the Hon'ble Central Administrative Tribunal. The Hon'ble Tribunal, in OA63/2006 was kind enough to pass a judgment and order dated 20/6/2008 and allowed my petition and directed the Govt. of Assam to consider my case for promotion to I.A.S. by taking appropriate steps to grant 'Integrity certificate' in my favour.

In the meantime though, 'Integrity Certificate' was issued as per the Hon'ble Tribunal's direction on 7/11/2008, my case for promotion was again held up by drawing up another Departmental Proceeding on 14/3/2008. thereby, the process caused inordinate delay in the matter of my promotion and as such grave loss and prejudice to my entitlement.

That Sir, in the meantime, I approached Hon'ble Gauhati High Court on the arbitrary and illegal action on part of the Government in causing inordinate delay towards completion of the Departmental Proceeding thereby, continuing the act of depriving me of consideration for promotion to the I.A.S. even in the calendar year of 2009.

That sir, the Hon'ble Gauhati High Court, by judgment and Order dated, 24/07/2009 in [WP© No.1861/2009] directed the Govt. of Assam to complete the Departmental Proceeding in accordance with the rules within a period of 4 (four) months from the date of the Order; the Hon'ble Court also ordered that the petitioner (myself) would be kept apprised of the developments in the Departmental Proceeding. But, till date nothing has been

communicated to me about completion of the Departmental Proceeding or/ and my case of promotion to the I.A.S. by the Govt. of Assam.

That Sir, I have already submitted a prayer vide my letter No. ASHB/Comm/G/2006/59 dated, 09/12/2009 (copy enclosed) to the Govt. of Assam to complete the Departmental Proceeding initiated on 14/03/2008 in terms of the judgment and order dated, 24/07/2009 in WP(C)1861/2009 (copy enclosed) and consider my case for promotion to the I.A.S. without any further delay, within the calendar year of 2009.

Under the circumstances narrated in the foregoing paras, I would consider the deprivation of my nomination to I.A.S. as a case of great injustice and I pray that my case of promotion to the I.A.S. be considered without any further delay, within the calendar year of 2009 in terms of the Hon'ble Gauhati High Court's direction dated, 24/07/2009 in WP(C)1861/2009 and the Judgment and order dated, 20/6/2008 by the Hon'ble Central Administrative Tribunal in OA/63/2006 and for this act of kindness I shall remain ever grateful.

Yours faithfully



(Shri Pradip Kumar Das.)
Commissioner,
Assam State Housing Board,

Memo No.ASHB/Comm/G/2006/60 -A

Dated, Guwahati the 9th December/2009.

- o Copy forwarded for favour of information and necessary action to the Commissioner and Secretary to the Govt. of Assam, Personnel (A) Department, Dispur, Guwahati-6.


(Shri Pradip Kumar Das.)
Commissioner,
Assam State Housing Board,

