

✓

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

98/1/2009-2908

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

1. Order Sheets..... 4 ..... pg..... 01 ..... to..... 08/06 ✓
2. Judgment/ order dtd. 05.03.2010. pg..... 61 ..... to..... 05 ✓
3. Judgment & Order dtd..... received from H.C. / Supreme Court.
4. O.A. .... 78/09 ..... page..... 01 ..... to..... 55 ✓
5. E.P/M.P. ..... page..... to.....
6. R.A./C.P. ..... page..... to.....
7. W.S. ~~Filed by R.A. 1.2015~~ ..... Page..... 01 ..... to..... 07/16 ✓
8. Rejoinder ~~Filed~~ ..... page..... 01 ..... to..... 08 ✓
9. Reply ..... page..... to.....
10. Any other papers ..... page..... to.....
11. Memo Appearance ..... pg - 01 ✓

22/2/2018  
SECTION OFFICER (JUDL.)

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

ORDERSHEET

1. Original Application No: 78 / 2009

2. Misc Petition No \_\_\_\_\_

3. Contempt Petition No \_\_\_\_\_

4. Review Application No \_\_\_\_\_

Applicant(s) Sri. Amarjyoti Lakhbar

Respondent(s) Cl. O.I. M o/s.

Advocate for the Applicant(s): Mr. S. Nath  
MS U. Datta

Advocate for the Respondent(s): C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
1. Application is in form is. Reg. C. F. for Rs. 50/- deposited with P.G./P.T. No. 396, 405334 Dated 9.4.2009	30.04.2009	Issue notice to the Respondents requiring them to file their written statement returnable by 17.06.2009.
<i>W. S. Mohanty Dy. Registrar 28/4/09</i>		Call this matter on 17.06.2009.
<i>28/4/09</i>		
<i>28.4.09</i> 6 copies of Application with envelope received for Issue notice to the Respondents No. 1 to 6. A copy of the Application served upon the S.P. C.G.S.C. Extra charge of Rs. 5/- deposited.	17.06.2009 /bb/ 16/6/09	On the prayer made on behalf of the Respondents, call this matter on 20.07.2009 awaiting written statement from the Respondents.
<i>28/4/09</i>		
<i>28/4/09</i> Received an order dt. 30.4.09 alongwith the OA petition in behalf of the Respondents no. 1 to 6.	16/6/09 /bb/	<i>Y</i> (M.R.Mohanty) Vice-Chairman
<i>28/4/09</i>		
<i>28/4/09</i> Dulalbarma 4.5.09 (Copy to S.A.R.M.A.) Inspector (Law) Central Office, Guwahati		

Copies of notices O.A.78-2009  
 along with order  
 dated 30/4/09 send  
 to D/Sec. for issuing  
 to resp. Nos- 1, 2, 3, 4  
 and 6 by regd.  
 A/D post.

Another resp. no-5  
 received copy of  
 O.A along with order  
 dated 30/4/09 by hand  
 on 4/5/09. /bb/

~~Copy~~ D/No - 2318 to 2322  
 4/5/09. Dt = 4-5-2009

6.5.09  
 Memo of Appearance  
 filed by Mrs. H. Das,  
 Add CG SC for  
 Respondent No. 1 to 5.

~~6/5/09~~ (M.R. Mohanty)

Service report awaited

On 16/6/09 /lm

17-6-09

No W/S is filed

Order No. 102 sent and no W/S in the file.

No W/S filed.

11-8-09

K-Das  
 Send copy of this  
 order to the Respondents  
 in the address given in O.A.

13/8/09

No written statement has yet been filed by the Respondents. It is prayed on behalf of the Respondents that three weeks more time would be required to file the written statement.

Call this matter on 12.08.2009 awaiting written statement from the Respondents.

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

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

12.08.2009 No written statement has yet been filed by the Respondents.

Call this matter on  
 16.09.2009 awaiting written statement from the Respondents.

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

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

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

-3-  
OA 78/2009

Copies of order  
dated 12/8/2009  
Send to D/Sec.  
for issuing to  
respondents by  
post.

D/No - 9549-9554

Case  
12/8/09. Dt - 19/8/09

No W/S filed.

25/9/09

16.9.09  
W/S filed by the  
Respondents in the  
Court through Ms.  
M. Das, CGSC.  
Copy served.

26/9/09

No rejoinder  
filed.

28.9.09

29.10.09  
Rejoinder has been  
filed by the Applicant.  
Copy served.

29/10/09

The case is ready  
for hearing.

25.11.09

The case is ready  
for hearing.

2.12.09

16.09.2009 In this case written statement has  
already been filed by the Respondents. On  
the prayer of learned counsel for the  
Applicant, call this matter on 29.10.2009  
for rejoinder.

  
(M.K. Chaturvedi)  
Member (A)

/lm

29.10.2009 List on 17.11.2009 along with E.P. 7 of  
2008.

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

/bb/

17.11.2009 On the request of Mrs. M. Das, learned  
Sr. CGSC for respondents with consent of Mr. S.  
Nath, learned counsel for applicant, case is  
adjourned.

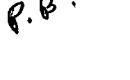
List this matter on 26<sup>th</sup> November, 2009.

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

/pb/

26.11.2009 List this matter on 03.12.2009.

  
P.B.

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

/pb/

26.11.2009

List this matter on 03.12.2009.

  
(Madan Kumar Chaturvedi)  
Member (A)

/pb/

O.A.No.78/2009

4

Proposed by:

03.12.2009 List this case on 14.12.2009 for  
and hearing.

Modan Kumar Chaturvedi  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

nkm

Proposed by:

to the Hon'ble Member of Parliament for the constituency of

Proposed by:

Proposed by:

Modan Kumar Chaturvedi  
Member (A)  
and Mukesh Kumar Gupta  
Member (J)

Proposed by:

Modan Kumar Chaturvedi  
Member (A)

Modan Kumar Chaturvedi  
Member (A)

Modan Kumar Chaturvedi  
(A) Member (A)

Modan Kumar Chaturvedi  
Member (A)

14.12.2009 On the request of proxy counsel Mrs. U.Dutta, case is adjourned to 20.01.2010.

The case is ready for hearing.

33  
19.1.2010

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

/lm.

The case is ready for hearing.

33  
5.2.2010

20.1.2010 Mentioned has been made by proxy counsel of Mrs. M.Das, learned counsel appearing for the Respondents to adjourn this matter.

List the matter on 8.2.2010.

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

/lm

The case is ready for hearing.

33  
23.2.2010

08.02.2010 Ms U. Dutta, learned counsel states that she will file vakalatnama in this case as Mr S.Nath, is no more dealing with this case. Mr M.Das, learned Sr.C.G.S.C is present for the respondents.

List on 24.2.2010.

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

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

/pg/

24.2.2010 Heard learned counsel for both sides. Hearing concluded. Judgment reserved.

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

/lm/

6  
O.A. No. 78 of 2009

29-3-2010.

05.03.2010

For the reasons recorded,  
separately the O.A is dismissed.

Judgement/Final order dated  
5/3/2010 Baffered and sent  
to the Despatch Section for  
issuing the all the respondents  
by post and issued Advocate  
Dr. Bala Seles  
vide NO 775 to 778  
dated 5-4-2010

(Madan Kr. Chaturvedi)  
Member (A)

(Mukesh Kr. Gupta)  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

.....  
O.A. No. 78 of 2009.

DATE OF DECISION: 05-03-2010.

Shri Amarjyoti Lahkar ..... Applicant/s

Mrs U.Dutta ..... Advocates for the  
Applicant/s

-Versus -

Union of India & Ors. ..... Respondent/s

Mrs M. Das, Sr. C.G.S.C ..... Advocate for the  
Respondent/s

CORAM

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

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

*Member (J) / Member (A)*  
Member (J) / Member (A)

a

**CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH**

Original Application No. 78/2009.

Date of Order : This the 5th Day of March, 2010.

**THE HON'BLE MR MUKESH KUMAR GUPTA, JUDICIAL MEMBER**

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

Shri Amarjyoti Lahkar,  
S/o Gokul Chandra Lahkar  
Vill & P.O. Sanekuchi,  
Dist. Nalbari, Assam.

.....Applicant

By Advocate Mrs U. Dutta.

**-Versus-**

1. Union of India,  
represented by the Secretary to the  
Government of India,  
Revenue Department,  
Ministry of Finance,  
New Delhi – 110001.
2. The Chief Commissioner,  
Central Excise,  
Morello Compound,  
Shillong 793001.
3. The Commissioner,  
Customs & Central Excise,  
Morello Compound,  
Shillong 793001.
4. The Joint Commissioner (P&V),  
Central Excise,  
Morello Compound,  
Shillong 793001.
5. The Assistant Commissioner,  
Central Excise, Guwahati  
Sethi Trust Building,  
Bhangagarh, Guwahati 781005.
6. Shri Raju Bordoloi,  
Son of Late Haricharan Bordoloi,  
Working as Sepoy,  
Office of the Deputy Commissioner,

Central Excise Division,  
Sethi Trust Building,  
Bhangagarh, Guwahati-781005.

.....Respondents

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

ORDER

MADAN KUMAR CHATURVEDI, MEMBER(A)

By this O.A applicant makes a prayer to direct the respondents to appoint him to the post of Sepoy on compassionate ground with immediate effect.

2. Applicant's father Gokul Ch. Lahkar is missing since 5.1.1993 when he was working as Sepoy in the office of the Superintendent of Central Excise and Customs, P.B.C-II Range, Guwahati. FIR was lodged on 21.1.93 at Basistha Police Station and request was made to the police to investigate into the matter. The family of Shri Gokul Ch. Lahkar comprised of his wife, one son, one daughter and younger brother who were dependent on him. The applicant is the only son of Shri Lahkar who was about 8 years of age at that point of time. As he was minor he could not make request for compassionate appointment. The Assistant Collector, Central Excise, Guwahati vide his order dated 12.1.1994 engaged Smt Renubala Lahkar wife of the deceased Government employee as Casual Worker. She is still continuing as casual worker in the office of the Deputy Commissioner, Central Excise, Guwahati.

3. Smt Renubala submitted a representation on 25.3.94 stating therein that she is facing hardship along with two minor

children and made a prayer for her employment on compassionate ground to the post of Sepoy. But she did not get any reply to her representation. Thereafter on 26.7.02 another representation was made wherein it was stated that her son has just appeared Higher Secondary Examination and he has become eligible for the post of Sepoy/LDC on compassionate ground. A call letter was issued in the name of his mother as well as in the name of applicant. Applicant had appeared in the physical test at Headquarter office, Shillong on 28.10.02. But he was not selected. Thereafter applicant approached before this Tribunal. Tribunal directed the respondents to consider the case of the applicant as and when vacancy arises and communicate the same to the applicant without fail. It was alleged that the case of the applicant was not considered as such again this application was moved before the Tribunal.

4. Mrs M. Das, learned Sr.C.G.S.C appearing for the respondents submitted before us that Smt Renubala Lahkar wife of the missing Government employee was called for interview. Assessment was made with respect to the financial condition and other relevant facts. She was not found fit for the compassionate appointment. Again she made application before the respondents to consider her son for the appointment but he could not be considered due to limited vacancies. Thereafter the applicant approached the Tribunal. Meanwhile the case of the applicant got barred by limitation as per the O.M. date 5.5.2003 which prescribed, inter alia, that person's name can be kept under consideration for offering compassionate appointment for three years

✓

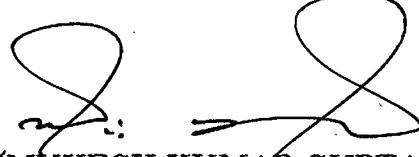
subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again. To buttress this proposition reliance was placed on the decision of the Apex Court rendered in the case of Sanjay Kumar vs. State of Bihar & Ors. (2000) 7 SCC 192 wherein petitioners mother died in harness while he was minor. He attained majority eight years later. It was held that his application was rightly rejected as time barred. Further reliance was placed on the decision of the Hon'ble Supreme Court in the case of <sup>wherein it was</sup> Eastern Coalfields Ltd. vs. Anil Badyakar & Ors. 2009(4) SLR 568 <sup>has</sup> ~~has~~ held that "compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over."

5. The compassionate appointment is intended to enable the penurious family of the deceased employee to tide over the sudden financial crisis resulted due to demise of the bread earner and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment. It cannot be granted after the long lapse of reasonable period. The purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in

service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case. Normally an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Hon'ble Supreme Court has clearly laid down that it <sup>is</sup> not a vested right which can be exercised at <sup>any</sup> time in future. Having regard to the entire conspectus of the case we find no merit in the present O.A and accordingly it is dismissed.

In the result O.A stands dismissed.

  
(MADAN KUMAR CHATURVEDI)  
ADMINISTRATIVE MEMBER

  
(MUKESH KUMAR GUPTA)  
JUDICIAL MEMBER

113  
28 APR 2009  
Guwahati Bench  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 78 /2009

Shri Amarjyoti Lahkar

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

05.01.1993- Father of the applicant is missing since 05.01.1993. At the time of missing he was working as Sepoy at the office of the Superintendent of Central Excise and Customs, P.B.C-II Range, Guwahati.

20.01.93/21.01.1993- F.I.R lodged by the father of the missing employee to the Basista Police station. Inspector of Central Excise also lodged another FIR to the Chandmari Police Station on 20.01.93. Superintendent of Central Excise informed to the Asstt. Collector, Central Excise, Guwahati, about missing of Shri Gokul Chandra Lahakar. (Annexure- 1 Series)

12.01.1994- Assistant Collector, Central Excise, Guwahati engaged mother of the applicant on purely temporary and on contract basis for a period of 3 months and she is continuing as such till date. (Annexure- 2)

25.03.1994/11.08.98- Smti. Renubala Lahkar, mother of the applicant submitted representations praying for her appointment to the post of Sepoy on compassionate ground but to no result. (Annexure- 3 Series)

26.07.2002- Applicant's mother submitted another representation for appointment of her son (applicant of this O.A) to the post of Sepoy/LDC on compassionate ground. (Annexure- 4 Series)

11.10.2002- Respondents issued call letter to the applicant and his mother to appear for physical test at Hqrs. Office, Shillong on 28<sup>th</sup> October, 2002 and a personal interview on 29<sup>th</sup> October 2002. (Annexure- 5)  
Applicant in response to the call letter dated 11.10.02 appeared interview and fared well.

05.05.2003- Govt. of India, D.O.P.T issued O.M with the instruction regarding time limit for Compassionate Appointment. (Annexure- 15)

28.04.09  
19.08.2005- Applicants' mother submitted representation addressed to the Chief Commissioner, Customs & Central Excise, praying for appointment of her son Shri Amarjyoti Lahkar to the post of Sepoy/LDC on compassionate ground. (Annexure- 6, 7)

28 APR 2009

Guwahati Bench

2006- Applicant approached this Hon'ble Tribunal by filing O.A No. 171/2006 for a direction to appoint him to the post of Sepoy/LDC on compassionate ground with immediate effect.  
Respondents in O.A No. 171/2006 filed written statement specifically stating that case of the applicant will be considered as and when vacancy will arise. (Annexure- 9)

26.06.2006- List of candidates pending for appointment on compassionate ground was published by the respondents. Applicant was placed at Sl. No. 6. (Annexure- 8)

04.05.2007- Hon'ble Tribunal disposed of the O.A. No. 171/2006 with the direction to the respondents to consider the case of the applicant as and when vacancy arises and communicate the same to the applicant without fail. (Annexure- 10)

14.05.2007- Applicant submitted representation enclosing judgment and order dated 04.05.07 in O.A. No. 171/2006 to the Chief Commissioner, Customs and Central Excise, Shillong Zone. (Annexure- 11)

14.09.2007- Applicant submitted representation for consideration of his appointment in terms of the judgment and order dated 04.05.07. (Annexure- 12)

21.05.2008- Respondent No. 4 vide impugned memorandum dated 21.05.08 appointed respondent No. 6 to the post of Sepoy on temporary basis against the existing vacancy ignoring the direction of this Hon'ble Tribunal in OA No. 171/2006. (Annexure- 13)

03.09.2008- Hon'ble Tribunal issued notice in E.P No. 7/2008, and the said E.P No. 7/2008 is still pending before this Hon'ble Tribunal.

23.10.2008- Respondent No. 4 vide his impugned letter dated 23.10.08 intimated the applicant that his request for appointment on compassionate grounds cannot be acceded to in the light of the DOPT's instruction dated 05.05.2003. (Annexure- 14)

16.12.2008- Respondents filed reply in E.P No. 7/2008. (Annexure- 16)

Hence this Original Application.

#### P R A Y E R S

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum bearing No. II (31)4/ET-III/2007/10662-67 dated 21.05.2008 (Annexure- 13) as well as the impugned letter bearing No. C. No. II (3)4/ET-II/2004/29276-77 dated 23.10.2008 (Annexure- 14).
2. That the Hon'ble Tribunal be pleased to direct the respondents to appoint the applicant to the post of Sepoy on compassionate ground with

28 APR 2009

গুৱাহাটী ন্যাবধীঠ  
Guwahati Bench

/6

immediate effect in terms of the direction passed by this Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A No. 171/2006.

3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

**Interim order prayed for:**

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

1. That the Hon'ble Tribunal be pleased to direct the respondents not to fill up the existing vacant post of Sepoy on compassionate ground till disposal of the Original Application.
2. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

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

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

Title of the case : O.A.No.

78 /2009

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

Shri Amarjyoti Lahkar. : Applicant.

-Versus-

Union of India & Ors. : Respondents.

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.	--	Application	1-17
2.	--	Verification	-18-
3.	1 (Series)	Copy of the F.I.R dated 21.09.93 (translated copy), 20.01.93 and letter dated 28.01.93.	19-21A
4.	2	Copy of the order dated 12.01.94.	-22-
5.	3 (Series)	Copy of the representation dated 25.03.94 and 11.08.98.	23-24
6.	4	Copy of the representation dated 26.07.02.	-25-
7.	5	Copy of the call letter dated 11.10.02.	-26-
8.	6	Copy of the representation dated 19.08.05.	-27-
9.	7	Copy of forwarding letter dated 03.05.06.	-28-
10.	8	Copy of the list of applicants pending for appointment on compassionate ground.	-29-
11.	9	Copy of written statement in O.A No. 171/2006.	30-35
12.	10	Copy of judgment and order dated 04.05.07.	36-42
13.	11	Copy of the representation dated 14.05.07	43-44
14.	12	Copy of the representation 14.09.07.	-45-
15.	13	Copy of the impugned memorandum dated 21.05.08	46-47
16.	14	Copy of the impugned letter dated 23.10.2008	-48-
17.	15	Copy of the D.O.P.T.O.M dated 05.05.2003	49-50
17.	16	Copy of the written statement in E.P No. 7/2008	51-53

18. — written Statement — → 56-72  
19. — Rejoinder — → 73-81

Filed By:

S. Nalik.  
Advocate

Date: - 28.04.2009

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## GUWAHATI BENCH: GUWAHATI

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

O.A. No. 78 /2009

## BETWEEN:

Shri Amarjyoti Lahkar,  
S/o Cokul Chandra Lahkar,  
Vill & P.O- Sanekuchi,  
Dist- Nalbari, Assam.

Applicant.

## -AND-

1. The Union of India  
Represented by the Secretary to the  
Government of India,  
Revenue Department,  
Ministry of Finance, North Block,  
New Delhi - 110001.
2. The Chief Commissioner  
Central Excise,  
Morello Compound  
Shillong - 793001.
3. The Commissioner  
Customs & Central Excise,  
Morello Compound  
Shillong - 793001.
4. The Joint Commissioner (P&V),  
Central Excise,  
Morello Compound,  
Shillong- 793001.
5. The Assistant Commissioner,  
Central Excise, Guwahati,  
Sethi Trust Building,  
Bhangaghar, Guwahati- 781005.
6. Shri Raju Bordoloi,  
Son of Late Haricharan Bordoloi,  
Working as Sepoy,  
Office of the Deputy Commissioner,  
Central Excise Division  
Sethi Trust Building,  
Bhangaghar, Guwahati- 781005.

Respondents.

Filed by the applicant  
through S. Mukt. 18  
Advocate  
28/04/2009

Amar Jyoti Lahkar.

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati BenchDETAILS OF THE APPLICATION**1. Particulars of the order (s) against which this application is made:**

This application is made against the impugned memorandum dated 21.05.08 (Annexure- 13) and impugned letter bearing No. C. No. II (3)4/ET-II/2004/29276-77 dated 23.10.2008 (Annexure- 14) whereby applicant has been denied appointment to the post of Sepoy on compassionate ground in violation of the direction passed by this Hon'ble Tribunal in judgment and order dated 04.05.2007 in O.A No. 171/2006, and further praying for a direction upon the respondents for appointment of the applicant on compassionate ground with immediate effect to the post of Sepoy in terms of the direction passed in judgment and order dated 04.05.2007 in O.A No. 171/2006 passed by this Hon'ble Tribunal.

**2. Jurisdiction of the Tribunal:**

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

**3. Limitation:**

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

**4. Facts of the case:**

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

4.2 That the father of the applicant Shri Gokul Chandra Lahkar was appointed as Sepoy in the department of Central Excise and Customs in the year 1980. While working as Sepoy at the office of the Superintendent of Central Excise and Customs, P.B.C-II Range, Guwahati he is missing since 05.01.1993. Father of the missing employee Shri Gokul Chandra Lahkar lodged an F.I.R on 21.01.1993 at the Basistha Chariali Police Station, Guwahati and requested the Officer in-charge of the said police station to investigate the matter. In this connection it is relevant to mention here that Shri Biren Saikia, Inspector

Amar Jyoti Lahkar

28 APR 2009

Central Administrative Tribunal  
Guwahati Bench

of Central Excise & Customs also lodged an F.I.R in the Chandmari Police Station on 20.01.93 and it was entered in police station General Diary No. 739 dated 22.01.93. In his F.I.R Shri Biren Saikia, Inspector, Central Excise & Customs informed about non-attendance of office by Shri Gokul Chandra Lahkar since 05.01.93. Superintendent of Central Excise & Customs, Shri BR Das vide his letter dated 28.01.93 addressed to the Asstt. Collector, Customs & Central Excise, Guwahati, informed about the lodging of F.I.R to the Chandmari Police Station about missing of Shri Gokul Chandra Lahkar. Be it stated that at the time of missing Shri Gokul Chandra Lahkar has served in the department of Central Excise & Customs for more than 12 years.

Copy of the F.I.R dated 21.09.93 (translated copy), 20.01.93 and letter dated 28.01.93 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 1 (Series).

4.3 That it is stated that at the time of missing of Shri Gokul Chandra Lahkar, he left with his wife, 1 son, 1 daughter and younger brother who were dependent on him. The present applicant is the only son of the missing Govt. employee Shri Gokul Chandra Lahkar, who was about 8 years of age at that point of time and the younger daughter, was about 6 years of age. Therefore, being minor the applicant could not apply for appointment on compassionate ground at that point of time. Be it stated that Assistant Collector, Central Excise, Guwahati vide his order bearing No. C. No. II/39/3/Accts/90/433-35 dated 12.01.1994 engaged Smti. Renubala Lahkar, wife of the missing Govt. employee on purely temporary and on contract basis for a period of 3 months w.e.f. 05.01.94 for cleaning and misc. work @ Rs. 27.60 per day. Thereafter, her appointment as Casual Worker (Farash) in the department was extended from time to time and she is still continuing as Casual worker in the office of the Deputy Commissioner, Central Excise, Guwahati.

Copy of the order dated 12.01.94 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 2.

4.4 That the wife of missing Govt. employee Smti. Renubala Lahkar submitted a representation addressed to the Collector, Customs and Central Excise, Shillong on 25.03.1994, wherein she stated that her husband is missing since

Amar Jyoti Lahkar.

28 APR 2009

Guwahati Bench

05.01.93 and his whereabouts is not known and the matter has already brought to the kind notice of the department. In her representation dated 25.03.94 she also stated that since the date of missing of her husband she is facing hardship along with two minor children, therefore, she prayed for her employment on compassionate ground to the post of Sepoy but to no result. Be it stated that mother of the applicant submitted another representation on 11.08.98 praying for her appointment to the post of Sepoy on compassionate ground but to no result.

Copy of the representation dated 25.03.94 and 11.08.98 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 3 (Series).

4.5 That your applicant begs to state that his mother finding no response to her prayer for appointment to the post of Sepoy on compassionate ground submitted another representation on 26.07.02 addressed to the Commissioner, Central Excise, Shillong. In her representation dated 26.07.02 she stated that she has got one son who has just appeared his Higher Secondary Examination and one school going daughter as well as one unemployed brother of her missing husband as dependents family members and she is facing hardship to maintain her family of 4 members with the meager amount of pension and daily wages she receives as Farash in the department. In her representation dated 26.07.02 she also stated that the trauma following the episode of disappearance of her husband coupled with her failing health do not permit her to carry on with her assignment as Farash in the department. Therefore, she prayed for appointment of her son Shri Amarjyoti Lahkar (applicant of this O.A) to the post of Sepoy/LDC on compassionate ground, who appeared his Higher Secondary Examination.

Copy of the representation dated 26.07.02 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 4.

4.6 That your applicant begs to state that office of the Commissioner of Central Excise, Shillong, vide letter bearing No. C.No. 11 (39) 1/ET-II/98/37182-92 dated 11.10.2002 issued one call letter in the name of his mother as well as in his name. In the said call letter for appointment on compassionate ground it was requested to the applicant to appear for physical test at Hqrs. Office, Shillong on 28<sup>th</sup> October, 2002 and a personal interview on 29<sup>th</sup> October 2002

Amar Jyoti Lahkar.

28 APR 2009

গুৱাহাটী ন্যায়পীঠ  
Guwahati Bench

before the Interview Board along with original certificates and mark sheets, regarding age, educational qualification, caste etc. Be it stated that the applicant in response to the call letter dated 11.10.02 appeared interview and fared well.

Copy of the call letter dated 11.10.02 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 5.

4.7 That your applicant begs to state that finding no response to his appointment on compassionate ground his mother Smti. Renubala Lahkar submitted one more representation on 19.08.2005 addressed to the Chief Commissioner, Customs & Central Excise, Shillong. In her representation dated 19.08.02 mother of the applicant submitted that it is not possible to maintain a family of 4 members with the meager amount of pension and daily wages she receives as Casual Worker (Farash) in the department. In her representation she further stated that the trauma following the episode of disappearance of her husband coupled with her fragile health and it do not permit her to carry on with her assignment as Farash in the department anymore. She also stated in her representation that her son Shri Amarjyoti Lahkar appeared for interview on 29.10.02 in response to the letter dated 11.10.02 issued by the office of the Commissioner of Central Excise & Customs, Shillong but no communication was received about the outcome of the interview. Therefore, she prayed for appointment of her son Sri Amarjyoti Lahkar as Sepoy/LDC in the respondent department on compassionate ground and to save the family. The Deputy Commissioner, Central Excise Division, Guwahati, vide his letter dated 03.05.2006 forwarded the representation dated 19.08.2005 submitted by the mother of the applicant to the Respondent No. 5 for consideration.

Copy of the representation dated 19.08.05 along with forwarding letter dated 03.05.06 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 6 and 7 respectively.

4.8 That your applicant begs to state that he passed Higher Secondary Examination in the year 2003 and as such he has got requisite qualification for appointment to the post of Sepoy on compassionate ground in the respondent department. But in spite of repeated approach before the

Amar Jyoti Lahkar.

authority by his mother case of the applicant for compassionate appointment to the post of Sepoy on compassionate ground has not been considered till date.

4.9 That it is stated that at time of missing of Shri Gokul Chandra Lahkar, Sepoy, father of the applicant he was about 8 years of age and as such mother of the applicant was appointed by the respondents purely on temporary contractual basis to the post of Casual Worker (Farash) but her service was not regularised after serving for a long 13 years in the department of the Central Excise. Be it stated that as per the guidelines issued by the Dept. of Per & Trg. (DOPT), cases of the missing Government servants are also covered under the Scheme for compassionate appointment but the respondents neither regularise service of the mother of the applicant nor appointed the applicant on compassionate ground and it is very hard for her to maintain the family of 4 dependents members. As such mother of the applicant submitted representations from time to time to the department praying for appointment of the applicant on compassionate ground, but to no result.

4.10 That it is stated that finding no response from the respondents regarding appointment on compassionate ground, the applicant approached this Hon'ble Tribunal by filing O.A No. 171/2006 under Section 19 of the Administrative Tribunal's Act, 1985. In the said application, the applicant prayed for a direction upon the respondents to appoint the applicant to the post of Sepoy/LDC on compassionate ground with immediate effect. In the said O.A No. 171/2006 the respondents had filed written statement specifically stating that case of the applicant will be considered as and when vacancy will arise. The relevant portion of the written statement in O.A No. 171/2006 is quoted below for perusal of the Hon'ble Tribunal:

"9) ..... At the time of the interview, the applicant was at serial No. 10 in the List for Compassionate appointments. The selection Committee decided that the candidates who had already appeared before the Selection Committee may be exempted for future personal interviews. These candidates may be offered compassionate

28 APR 2009

গুৱাহাটী ন্যায়পাঠ  
Guwahati Bench

appointments as and when vacancies arise without future personal interviews. After those vacancy and appointment for the post of Sepoy (Group D) as mentioned above, there has been no vacancy and appointment for the post of Sepoy (Group D) till date. His case will be considered as and when vacancy will arise.

10) ..... Moreover, there is no vacancy for the compassionate appointment for the post of Sepoy now. Therefore, his case will be considered in due time."

From the above submission of the respondents before this Hon'ble Tribunal it is abundantly clear that the respondents had assured that case of the applicant for appointment to the post of Sepoy will be considered as and when vacancy will arise. However, the Hon'ble Tribunal, after hearing counsel of the parties and after perusal of the materials on record was pleased to dispose of the O.A. No. 171/2006 on 04.05.2007 with the direction to the respondents as follows:

"10. In the circumstances, I am of the view that since the respondents have given an assurance that the applicant's case will be considered as and when vacancy arises, the applicant will have to wait till such time. The respondents are accordingly directed to consider the case of the applicant as and when vacancy arises and communicate the same to the applicant without fail."

Copy of the list of applicants pending for appointment on compassionate ground, written statement in O.A No. 171/2006 and judgment and order dated 04.05.2007 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 8, 9 and 10 respectively.

4.11 That the applicant submitted a representation on 14.05.2007 addressed to the Chief Commissioner, Customs and Central Excise, Shillong Zone enclosing therewith a copy of the judgment and order dated 04.05.2007 in O.A. No. 171/2006. In his representation dated 14.05.07, the applicant prayed for consideration of his case sympathetically and to appointment him to the post of Sepoy/LDC on compassionate ground. He submitted

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

reminder/representation on 14.09.2007 for consideration of his appointment in any vacancy of LDC/Sepoy on compassionate ground.

Copy of the representation dated 14.05.07 and 14.09.07 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 11 and 12 respectively.

4.12 That it is stated that applicant while waiting for his appointment on compassionate ground in terms of the direction passed by this Hon'ble Tribunal in O.A. No. 171/2006, the respondent No. 4 vide his memorandum bearing No. II (31)4/ET-III/2007/10662-67 dated 21.05.2008 appointed one Shri Raju Bordoloi, (respondent No. 6) to the post of Sepoy on temporary basis against the existing vacancy. It is stated that this Hon'ble Tribunal in O.A. No. 171/2006 directed the respondents to consider the case of the applicant as and when vacancy arises and communicate the same to the applicant without fail. But the respondent No. 4 without considering the direction passed by this Hon'ble Tribunal in O.A. No. 171/2006 has appointed Shri Raju Bordoloi to the post of Sepoy and thereby filled up the vacant post of Sepoy for compassionate appointment. As such action of the respondents in appointing Shri Raju Bordoloi vide impugned memorandum dated 21.05.2008 is clear violation of the direction passed by the Hon'ble Tribunal on 04.05.2007 in O.A. No. 171/2006. Therefore the impugned memorandum dated 21.05.2008 is liable to be set aside and quashed.

Copy of the impugned memorandum dated 21.05.08 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 13.

4.13 That the applicant states that finding no response regarding his appointment on compassionate ground in terms of the direction passed by this Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A. No. 171/2006, he has approached this Hon'ble Tribunal by filing E.P. No. 7/2008 in O.A No. 171/2006 under Rule 24 of Central Administrative Tribunal (Procedure) Rule, 1987 for compliance of the order of the Hon'ble Tribunal. However, the Hon'ble Tribunal pleased to issue notice in E.P No. 7/2008 on 03.09.2008,

Amar Joti Lakhari

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

and the said E.P No. 7/2008 is still pending before this Hon'ble Tribunal for further consideration.

4.14 That the respondent No. 4 vide his impugned letter bearing No. C. No. II (3) 4/ET-II/2004/29276-77 dated 23.10.2008 intimated the applicant that his request for appointment on compassionate grounds cannot be acceded to in the light of the DOPT's instruction F. No. 14014/19/2002-Estt (D) dated 05.05.2003, which provides that the maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years. Be it stated that the respondents after receipt of the notice of the Hon'ble Tribunal in E.P No. 7/2008 most mechanically issued the impugned letter dated 23.10.2008, which is passed in violation of the direction passed by the Hon'ble Tribunal in judgment and order dated 04.05.2007 in O.A No. 171/2006, as such the said the impugned letter dated 23.10.08 is illegal and arbitrary and the same is liable to be set aside and quashed.

Copy of the impugned letter dated 23.10.2008 is enclosed herewith and marked as Annexure- 14.

4.15 That the Govt. of India, Depart of personnel and Training, vide it's O.M No. 14014/19/2002-Estt. (D) dated 5<sup>th</sup> May, 2003 issued instruction regarding time limit for Compassionate Appointment. In the said O.M it has been provided that if Compassionate Appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for Compassionate Appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If no scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

In para 3 of the said O.M it is further provided that the maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious

Amar Jyoti Lakhkar.

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

condition of the applicant at the end of the first and the second year. After three years, if Compassionate Appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.

It is categorically stated that the condition laid down by the DOPT in O.M dated 05.05.2003 is not applicable in the instant case of the applicant as because applicant was selected by the selection committee for compassionate appointment in the year 2002, as such his case is liable to be considered in terms of the instruction remained in force at that relevant point of time. The respondents in para 9 of the written statement in O.A No. 171/2006 have very categorically stated that:

“The selection Committee decided that the candidates who had already appeared before the Selection Committee may be exempted for future personal interviews.”

Again in para 10 of the written statement the respondents have stated that:

“there is no vacancy for the compassionate appointment for the post of Sepoy now. Therefore, his case will be considered in due time”.

Therefore, the respondents are barred by law of estoppel to deny appointment of the applicant on the basis of the O.M dated 05.05.2003. Moreover, the O.M dated 05.05.2003 was very much in force when the Hon'ble Tribunal decided the O.A. No. 171/2006 and directed the respondents vide judgment and order dated 04.05.2007 “to consider the case of the applicant as and when vacancy arises and communicate the same to the applicant without fail.”

It is quite clear from the above direction of the learned Tribunal that as and when vacancy to the post of Sepoy will arise respondents are to consider case of the applicant for compassionate appointment against that vacancy. But the respondent No. 4 instead of compliance with the aforesaid direction of the Hon'ble Tribunal has passed the impugned letter dated 23.10.2008, wherein respondent No. 4 acted contrary to the decision of the Hon'ble Tribunal and held that in terms of O.M dated 05.05.2003 request for appointment on compassionate grounds cannot be acceded to in the light of

Amar Jyoti Lakhani

128 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

the DOPT's instruction F. No. 14014/19/2002-Estt (D) dated 05.05.2003. It appears from the impugned order dated 23.10.2008 that the respondents have not at all examined the direction of this Hon'ble Tribunal regarding consideration of the case of the applicant for compassionate appointment as and when vacancy arises, as such the respondents have deliberately and willfully violated the direction of this Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A No. 171/2006. It is to be noted here at this stage that the O.M dated 09.10.1998 and O.M dated 05.05.2003 were very much in force when the Hon'ble Tribunal has passed the direction in judgment and order dated 04.05.2007 in O.A No. 171/2006 and said direction of the Hon'ble Tribunal is still in force. As such respondents are not entitled to reject the claim of the applicant for compassionate appointment on the basis of O.M dated 05.05.2003 since the direction of the Hon'ble Tribunal in judgment and order dated 04.05.2007 has already attained finality. It is further stated that when the Hon'ble Tribunal decided a matter and pleased to pass a direction in that event if the respondents are aggrieved with the direction of the Hon'ble Tribunal they are at liberty to approach the appropriate forum but the respondents cannot deliberately and willfully act contrary to the direction of the learned Tribunal. As such the impugned order dated 21.05.08 and 23.10.2008 are illegal, arbitrary and the same are liable to be set aside and quashed, therefore the Hon'ble Tribunal be pleased to set aside and quash the impugned order dated 23.10.2008 passed by respondent No. 4 and further be pleased to direct the respondents to appoint the applicant to the post of Sepoy in the light of the direction passed by this Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A No. 171/2006.

Copy of the O.M dated 05.05.2003 is enclosed herewith and marked as Annexure- 15.

4.16 That it is stated that the respondents have filed a written statement in E.P No. 7/2008. In para 4 of the written statement the respondents have stated as follows:

"4..... Compassionate Appointments are governed by DOPT's O.M No. 14014/19/2002-Estt (D) dated 5.5.2003. DOPT's circular dated 5.5.2003 provides that maximum period for compassionate

Amar Jyoti Lahkar.

appointment can be kept pending is 3 (three) years. The Screening Committee for compassionate Appointment met on 24<sup>th</sup> March, 2008 and decided that all cases barred by limitation (including that of the applicant) should not be considered in the light of the aforesaid DOPT's instruction. This decision was approved by the competent Authority Respondent No. 3. There was no vacancy in the grade of LDC while there were only 2 vacancies in the grade of Sepoys at the time of considering the case of the appointment. Accordingly, non consideration of the applicant's case is account of observance of the scheme for compassionate appointment laid down by Government of India."

In para 5 of the written statement it is further stated as follows:

"5. That with regard to the statement made in paragraph 5 of the execution petition the respondents beg to state that the order dated 4<sup>th</sup> May, 2007 passed by the Hon'ble C.A.T, Guwahati Bench in O.A. No. 171/2006 did not require that the respondents were to provide compassionate appointment to the applicant as a matter of right. However, due to oversight the respondents did not inform the applicant that his case could not be considered in the light of DOPT's instruction dated 5.5.2003. . ."

From the above submission of the respondents in the reply in E.P No. 7/2008, it reflects very casual approach of the respondents in compliance with the direction passed by the Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A. No. 171/2006, as such action of the respondents are contemptuous in nature. Be it stated that the applicant submitted a representation on 14.05.2007 addressed to the Chief Commissioner, Customs and Central Excise, Shillong Zone enclosing therewith a copy of the judgment and order dated 04.05.2007 in O.A. No. 171/2006, therefore it is not a case that the respondents were not at all aware of the judgment and order dated 04.05.2007 in O.A. No. 171/2006 when 2 post of Sepoy fell vacant for appointment on compassionate ground. Therefore duty of the respondents was to consider appointment of the applicant against any of those vacancies in terms of the direction passed by this Hon'ble Tribunal.

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

But the respondents have most casually disobeyed the direction of this Hon'ble Tribunal and not at all considered the appointment of the applicant on compassionate against those vacancies. It is further stated that right of the applicant for consideration for appointment on compassionate ground has accrued from the direction of this Hon'ble Tribunal in judgment and order dated 04.05.2007 in O.A. No. 171/2006, which is still in force.

Copy of the written statement in E.P No. 7/2008 is enclosed herewith and marked as Annexure- 16.

4.17 That it is stated that the direction of the Hon'ble Tribunal in it's judgment and order dated 04.05.2007 in O.A No. 171/2006 has attained it's finality and it appears from the contention of the respondents in para 4 of the written statement in E.P No. 7/2008 that the respondents have not at all examined the direction of this Hon'ble Tribunal regarding consideration of the case of the applicant for compassionate appointment as and when vacancy arose and deliberately ignored direction of this Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A No. 171/2006.

It is further stated that the Hon'ble Tribunal after considering the submission of the respondents in O.A. No. 171/2006 and also after scrutiny of the D.O.P.T office memorandum, directed the respondents to consider the case of the applicant for compassionate appointment as and when vacancy arises, as such question of rejection of the case of the applicant on the point of barred by limitation does not arise at all. Be it stated that from the submission of the respondents it is very much clear that there were 2 vacancies in the grade of Sepoys after the judgment and order dated 04.05.2007 in O.A. No. 171/2006, as such it is the duty of the respondents to consider the case of the applicant for appointment against any of those vacancies of Sepoy in order to comply with the direction of the Hon'ble Tribunal in O.A. No. 171/2006. But the respondents deliberately and willfully disobeyed the direction of the Hon'ble Tribunal and denied appointment of the applicant to the post of Sepoy. Therefore the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum dated 21.05.08 and the impugned letter dated 23.10.2008 and further be pleased to direct the respondents to appoint the applicant to the post of Sepoy in terms of the direction passed on 04.05.2007 in O.A. No. 171/2006.

Amar Jyoti Lahkar

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

4.18 That the applicant states that he has come to learn from reliable source that there are posts of Sepoy lying vacant in the respondent department under the quota for compassionate appointment, as such there is no difficulty on the part of the respondents to appoint the applicant against one such vacancy of Sepoy in terms of the direction passed by the Hon'ble Tribunal in judgment and order dated 04.05.2007 in O.A No. 171/2006.

4.19 That it is a fit case for the Hon'ble Tribunal to interfere with and protect the rights and interests of the applicant by passing an appropriate order directing the respondents to appoint the applicant on compassionate ground in the existing vacant post of Sepoy in the light of the direction passed by the Hon'ble Tribunal in judgment and order dated 04.05.2007 in O.A No. 171/2006.

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

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

5.1 For that the impugned memorandum dated 21.05.08 and impugned letter dated 23.10.2008 are contemptuous in nature and an act of deliberate violation of the Hon'ble Tribunal's judgment and order dated 04.05.2007 in O.A. No. 171/2006, as such same are liable to be set aside and quashed.

5.2 For that when the Hon'ble Tribunal being a competent Court of law, adjudicated the issue involved in the instant case and directed the respondents to consider appointment of the applicant as and when vacancy arises, as such the respondent No. 4 has no jurisdiction to violate the direction of the Hon'ble Tribunal.

5.3 For that applicant has acquired a valuable legal right for consideration for appointment to the post of Sepoy on compassionate ground in terms of the direction passed by the Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A No. 171/2006, which is still in force.

5.4 For that the direction of the Hon'ble Tribunal in it's judgment and order dated 04.05.2007 in O.A No. 171/2006 has attained it's finality, as such

Amar Joti Lakhani

28 APR 2009

गुवाहाटी बैच बैठी  
Guwahati Bench

32

respondents are duty bound to consider appointment of the applicant to the post of Sepoy against the existing vacancy.

- 5.5 For that the DOPT O.M dated 05.05.2003 is not applicable in the instant case of the applicant since the Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A No. 171/2006 has directed the respondents to consider case of the applicant for appointment on compassionate ground as and when vacancy arise, and said direction of the Hon'ble Tribunal is still in force.
- 5.6 For that the respondent No. 6 has been appointed against the vacant post of Sepoy on compassionate ground vide impugned memorandum dated 21.05.2008, after the direction passed by this Hon'ble Tribunal on 04.05.2007 in O.A No. 171/2006. As such the impugned memorandum dated 21.05.08 has been issued in violation of the direction of this Hon'ble Tribunal, therefore the same is liable to be set aside and quashed.
- 5.7 For that the respondents have very mechanically rejected the case of the applicant vide impugned letter dated 23.10.2008 without complying the direction passed by the Hon'ble Tribunal in judgment and order dated 04.05.2007 in O.A No. 171/2006. As such the impugned letter dated 23.10.2008 is liable to be set aside and quashed.
- 5.8 For that validity and legality of the judgment of the learned Tribunal dated 04.05.2007 in O.A. No. 171/2006 cannot be questioned by the respondents while implementing the same, however, if the respondents have aggrieved with the direction of the Hon'ble Tribunal they are at liberty to approach the appropriate forum but the respondents cannot deliberately and willfully act contrary to the direction of the learned Tribunal as evident from the impugned letter dated 23.10.2008 hence the same is liable to be set aside and quashed.
- 5.9 For that the DOPT in O.M dated 05.05.2003 is not applicable in the instant case of the applicant as because applicant was selected by the selection committee for compassionate appointment in the year 2002, as such his case is liable to be considered in terms of the instruction remained in force at that relevant point of time

Amar Jyoti Lahkar.

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

5.10 For that, father of the applicant is missing while in service since 05.01.1993 after serving the department for more than 12 years leaving behind 4 dependent family members.

5.11 For that, the applicant is entitled to be considered for compassionate appointment to support the dependent family members.

5.12 For that, applicant appeared interview in the year 2002 for appointment to the post of Sepoy on compassionate ground and the selection Committee decided that the candidates who had already appeared before the Selection Committee may be exempted for future personal interviews.

5.13 For that, as per rule case of compassionate appointment ought to have been considered on priority basis considering the urgency of the matter but unfortunately no such consideration has been made in the instant case of the applicant.

**6. Details of remedies exhausted.**

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

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

The applicant further declares that save and except filing of O.A No. 171/2006 he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

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

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

Amar Jyoti Lehkare.

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum bearing No. II (31)4/ET-III/2007/10662-67 dated 21.05.2008 (Annexure- 13) as well as the impugned letter bearing No. C. No. II (3)4/ET-II/2004/29276-77 dated 23.10.2008 (Annexure- 14).

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to appoint the applicant to the post of Sepoy on compassionate ground with immediate effect in terms of the direction passed by this Hon'ble Tribunal in the judgment and order dated 04.05.2007 in O.A No. 171/2006.

8.3 Costs of the application.

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

9. Interim order prayed for:

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

9.1 That the Hon'ble Tribunal be pleased to direct the respondents not to fill up the existing vacant post of Sepoy on compassionate ground till disposal of the Original Application.

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

10. ....

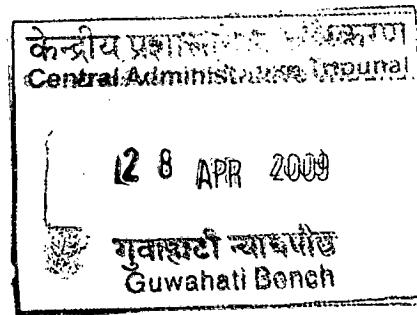
11. Particulars of the I.P.O

i) I.P.O No. : 396 405334  
ii) Date of issue : 09.04.2009  
iii) Issued from : G.P.O, Guwahati  
iv) Payable at : G.P.O, Guwahati

12. List of enclosures:

As given in the index.

Amar Joti Lakhari.



### VERIFICATION

I, Shri Amarjyoti Lahkar, S/o- Gokul Chandra Lahkar, aged about 25 years, resident of Vill & P.O- Sanakuchi, Dist- Nalbari, Assam, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 25<sup>th</sup> day of April, 2009.

Amar Jyoti Lahkar.

Customs & Central Excise ; PBC Range II, Guwahati, Assam

C.No. GL 1/(1)/ET/PBC-II/Ass/72/56/84

To : The Asstt. Collector,

Customs & Central Excise,

Sir

Guwahati (By name).

Sir : Lodging of FIR / corr regarding.

Please refer to this office dtdt. 20.1.93

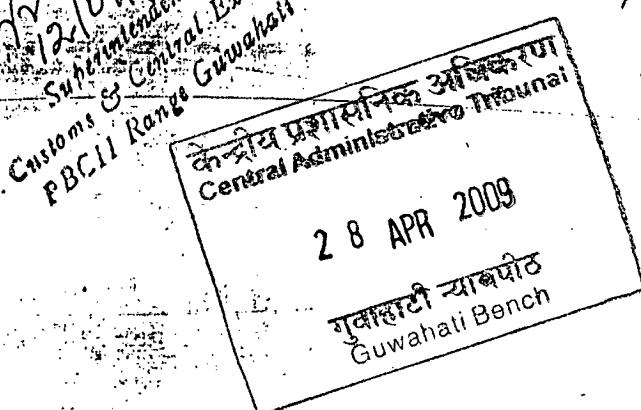
AG dt. 20.1.93 on the above subject.

In this connection, I have to inform that the F.I.R has been registered in the chandmari P.S., Guwahati, under Chandmari P.S. General diary No. 739 at 22.1.93 and accordingly messages have been sent by the o/c P.S. videlicet No. CMRI/61-62/93 dtd. 23.1.93 to the Officer in charge of all P.S. of greater Guwahati and P.S. of Ghatkopar, Nalbari, (jurisdictional P.S. of the place of Sri Gokul in Sakhari, Sepong, SLCSE, PBC range II, Guwahati) to take necessary action and to locate the whereabouts of Sri Gokul, ch. Sakhari.

No information has been received by the officer in charge, Chandmari, P.S. till today.

This is for your kind information and necessary action.

Attested  
B. R. Das  
Superintendent  
Customs & Central Excise  
PBC-II Range Guwahati



Yours faithfully,

Sd/- 28/1/93  
(B. R. Das)

Office Superintendent  
Superior & Central Bench  
PBC-II Range, Guwahati

Attested  
S. N. Das  
Advocate

O/C

Chandmari P.S. G.D.E. No. 739 dt 22.1.93

S/NO: CMRI/61-62/93 dt 23.1.93

To The officer in charge

Chandmari P/station.

Chandmari, Guwa-3.

Sir,

Sub: Lodging of F.I.R.

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

I have been directed by the Asstt. collector of C.S.C.E., Guwahati, Nityog Vi Kash Bhawan 6th floor, Guwahati-5 to lodge F.I.R regarding the non-attendance of office by Shri Gokul Ch. Lahkar C.S.C.E. Guwahati, PBC II Range, M.R. Dewan Rd, Chandmari, since 5.1.93. From the family source also it is confirmed that Shri Gokul Ch. Lahkar, say has not gone to his home and his whereabouts from 5.1.93 to till date is not known to this office.

This is for your information and necessary action please. The official address as well as home address of Shri Gokul Chandra Lahkar is given below with a photograph of Sri Gokul Ch. Lahkar.

Office address of Shri Gokul Ch. Lahkar

SHRI GOKUL CHANDRA LAHKAR (35 yrs ag)  
The Superintendent, customs & Cus. Excise  
Guwahati. PBC Range II  
M.R. Dewan Road, Chandmari,

② HOME ADDRESS

Gaon - SANE KUCHI.

P.O - Do -

Thana - Ghagrapar.

Dist - NALBARI.

Yours faithfully

Sd/-

20.1.93

(Biren Saikia)  
Thana H.

Attest  
J. N. Pathak  
Advocate

## केन्द्रीय प्रशासनिक अधिकारण Central Administrative Tribunal

28 APR 2009

গুৱাহাটী ন্যাবুদ্ধীঠ  
Guwahati Bench

ପାତ୍ରମାତ୍ରା

251761 270181 278282

ପ୍ରଦୀପ ପାତ୍ରଚନ୍ଦ୍ର

— 26 —

25/3/2016

Dom  
129194  
Superintendent (Welfare)  
Customs & Central Excise  
Guwahati.

Attested  
S. Rani  
Advocate

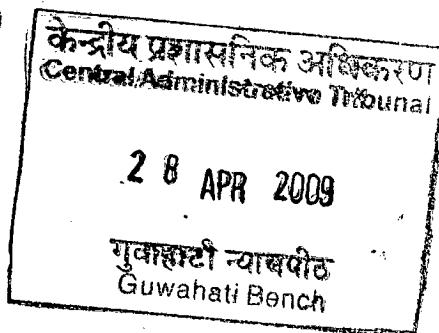
Annexure- 1 (Series)

(Extract)  
(Translated from Assamease)

To.

Officer in charge,  
Basista Chariali Police Station,  
Guwahati- 28.

Sub:- Regarding missing.



Sir,

With due respect I submit that my son Shri Gokul Chandra Lahkar is a fourth grade employee in the office of the Superintendent of Central Excise situated at Chandmari. From last 05.01.93 Shri Gokul Chandra Lahkar has not returned from his office. On asking about him at his office I came to learn that on 05.01.93 at about 6.30 in the morning he went to Shri Jit Singh, owner of a line hotel at 9<sup>th</sup> Mile (Guwahati) to collect money. On coming to know that I went to Shri Jit Singh and came to know that Shri Gokul Chandra Lahkar went to him and returned from him. But after searching many places I have not received any information regarding whereabouts of my son. As a result I am in very anxious mood in my house. Moreover, I also anticipating that somebody might have done any unwanted incident to my son. Therefore, I request you to investigate the matter and take necessary action.

Yours faithfully

Sd/-

Shri Chanaram Lahkar.

Maidam Bakra para  
Guwahati- 28.  
21/1/93.

Attest  
(S. Nabi  
Revenue)

22  
✓ Annexure 2  
CUSTOMS AND CENTRAL EXCISE  
GUWAHATI

R D E R

Dated Guwahati  
the 12th January, 1993 (04)

OM

Smti. Renubala Lahakar is hereby engaged purely temporary and on contract basis and no work no pay basis for a period of 3 (three) months w.e.f. 5.1.94 for cleaning and misc. work in PBC-I/PBC-II/RBC/Amingaon Range  
@ Rs. 27'60 per day.

Either of the party can terminate the contract without assigning any reason. It will not lead to employer and employee relationship.

S.R.B.

( S.R.BARUAH )  
ASSISTANT COLLECTOR

C.No.II/39/3/Accts/90

Dated: - 20/1/04

Copy forwarded for information and necessary action to:-

- 1) The A.P.R.O., Central Excise, Guwahati
- 2) Smti Renubala Lahakar
- 3) The Superintendent, PBC-I/RBC/Amingaon/PBC-II Range, Guwahati

S.R.B. 12/1/04  
( S.R.BARUAH )  
ASSISTANT COLLECTOR  
CENTRAL EXCISE: GUWAHATI

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

Affested  
S.Nath  
Advocate

To  
The Commissioner of  
Central Excise  
Shillong.

(Through proper channel)

Sir,

11.6.98  
R.O.  
Administrative Tribu-  
lal  
Customs & Central Excise  
Guwahati Bench

Subject:-Prayer for job of Sepoy- application Regarding

Most humbly and respectfully I beg to lay before you the following few lines for favour of your kind information sympathetic consideration and necessary action.

That Sir, my husband Shri Gokul Ch. Lahakar was working as Sepoy in your department and after serving for more than 12 years he was missing from 5.1.93 while on service. At the time of missing he was serving at the office of the Superintendent of Central Excise, P.B.C-II Range, Guwahati.

Accordingly F.I.R. was lodged by sri Chana Ram Lahakar, father of my husband with Basistha Chariali P.S., Guwahati-28 on 21.1.93 also the department lodged F.I.R. to the Chandmari P.S., Guwahati-3 on 22.1.93 and it was entered in police station General Diary No.739 dt.22.1.93. My husband is still missing and more than 6 years have since been elapsed without any trace of him.

That Sir, I have one school going son and one school going daughter as well as one unemployed brother of my missing husband as dependent and in the present days of hardship it is not possible to maintain a family of 4 members with meagre amount of pension and daily wages as Farash of your department. I am receiving

That Sir, I have passed Class-IX in the year 1978 (copy enclosed) and as such I applied to your honour vide application dated 3.6.98 for the post of Sepoy of your department on compassionate ground (copy enclosed) as per O.M.NO.14014/8/97-Estt(D), Govt. of India Ministry of Personnel, Public Grievances and Pension (DOPT), New Delhi dated 31.10.97 (copy enclosed) for favour of your sympathetic consideration.

As such I would again like to request your honour to be kind enough to appoint me as a Sepoy in your department and thereby save me and my family members from starvation for which act of kindness I shall remain ever grateful to your honour.

Yours faithfully,

RENU BALA LAHKAR  
11/8/98

(RENU BALA LAHKAR)  
W/O.GOKUL CH. LAHKAR,  
MISSING SEPOY OF CENTRAL  
EXCISE:GUWAHATI.

केन्द्रीय प्रशासनिक अधिकारा  
Central Administrative Tribunal

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

28 APR 2009  
Secretary  
Customs & Central Excise  
Guwahati Bench, Assam

Attested  
S. Nata  
Advocate

To

The Collector  
Customs and Central Excise  
Shillong

( Through the Asstt. Collector, Central Excise, Ghy.)

Sir,

Subject : Prayer for employment on compassionate ground.

With due respect I beg to submit herewith the following for favour of your perusal and sympathetic consideration.

That Sir, my husband & Gukul Ch. Lahakar was working in the Deptl of Customs and Central Excise as Sepoy and was posted in Guwahati PBC-II Range.

That Sir, from 5.1.93 he is missing and his whereabouts is not known. The matter has already been brought to your kind notice.

That Sir, I am facing great hardship since the date of missing of my husband along with two minor children. That Sir, I shall be highly obliged if you kindly employ me in your office on compassionate ground in the cadre of Sepoy and thus save from starvation and this act of your kindness I shall ever grateful for your kind consideration.

केन्द्रीय प्रशासनिक अदायकार (I)  
Central Administrative Tribunal

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

Yours faithfully,

23/  
( Mrs. Renu Bala Lahkar )

Copy to :-

1. The General Secretary, Gr."D" officers Association, Shillong.
2. The Secretary, Gr."D" Officers Association, Guwahati for information.

928 RR Rbala Lahkar  
( Mrs. Renu Bala Lahkar ) <sup>1/3/94</sup>

26/3/09  
Customs & Central Excise  
Guwahati

Attested  
S. N. Deka  
Advocate

To

The Commissioner  
Central Excise, Shillong

[Through Proper Channel]

Sir

Subject: Prayer for job of Sepoy/LDC on compassionate ground. Regarding: Guwahati Bench

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

28 APR 2009

Most humbly and respectfully, I beg to lay before you the following few lines for your kind and sympathetic consideration.

That Sir, my husband Shri Gokul Ch. Lahakar was working as Sepoy in your Department and after serving for more than 12 years, he has been missing since 05/01/1993 while on service. At that point of time, he was serving at the office of the Superintendent, PBC-II Range, Guwahati.

That Sir, an E.I.R. was lodged by Shri Chana Ram Lahakar, father of my husband with Basistha Chariali P.S., Guwahati - 28 on 21/01/1993. The Department also lodged an E.I.R. with the Chandmari P.S., Guwahati - 3 on 22/01/1993, which was registered in P/S General Diary No. 739 dated 22/01/1993. My husband is still missing and more than 9 (nine) years elapsed ever since.

That Sir, I have one son who has just appeared his Higher Secondary examination and one school going daughter as well as one unemployed brother of my missing husband a dependents and in the present days of hardship, it is not possible to maintain a family of 4 (four) members with the meagre amount of pension and daily wages I receive as farewell to the Department.

That Sir, I applied to your honour vide application dated 03/06/1998 for the post of Sepoy in the Department on compassionate ground as per O.M. No. 1401/13/97 Part (D) of the Govt. of India, Ministry of Personnel, Public Grievances and Pension (DOPPT), New Delhi dated 31/10/1997 followed by a reminder dated 11/08/1998.

That Sir, the trauma following the episode of disappearance of my husband coupled with my failing health do not permit me to carry on with my assignment as farewell to the Department any more.

That Sir, my son Shri Amartyoti Lahakar, who has just appeared his Higher Secondary examination is academically bright having passed his matriculation examination with a 1st Division against his name. Copies of his HSE/C Certificate, Identity Card, Admit Card and Marks Sheet of the said examination are enclosed herewith for your kind perusal.

That Sir, I shall be extremely grateful to your benign self if his name is considered for a post of Sepoy/LDC in the Department on compassionate ground in terms of the Govt. of India, Ministry of Personnel, Public Grievances and Pension (DOPPT), New Delhi dated 31/10/1997 referred to above.

That Sir, your kind action in the matter will save my entire family from economic and abysmal despair.

That Sir, for this act of kindness, I shall remain ever grateful.

Unkin Attested (1 sheet)

26/2/02  
Recorded 10/2/02  
Central Excise  
Guwahati

Attested  
S. R. RAHMAN  
Advocate

Annexure-4

Complaint  
No. 2002/02/02  
Date of filing  
10/2/02  
Date of filing  
Central Excise  
Guwahati

28 APR 2009

To,

गुवाहाटी न्यायालय  
Guwahati Bench  
The Commissioner

Central Excise, Shillong.

(Typed copy)

ANNEXURE-4

(Through proper channel)

Sir,

Subject: Prayer for job of Sepoy/LDC on compassionate ground. Regarding.

Most humbly and respectfully, I beg to lay before you the following few lines for your kind and sympathetic consideration.

That Sir, my husband Shri Gokul Ch. Lahkar was working as Sepoy in your Department and after serving for more than 12 years, he has been missing since 05/01/1993 while on service. At that point of time, he was serving at the office of the Superintendent PBC-II Range, Guwahati.

That Sir, and F.I.R was lodged by Shri Chana Ram Lahkar, father of my husband with Basistha Chariali, P.S. Guwahati-28 on 21/01/1993. The Department also lodged and F.I.R. with the Chandmari P.S. Guwahati- 3 on 22/01/1993, which was registered in P.S General Diary No. 739 dated 22/01/1993. My husband is still missing and more than 9 (nine) years elapsed ever since.

That Sir, I have one son who has just appeared his Higher Secondary examination and one School going daughter as well as one unemployed brother of my missing husband as dependents and in the present days of hardship, it is not possible to maintain a family of 4 (four) members with the meager amount of pension and daily wages I receive as Farash in the Department.

That Sir, I applied to your honour vide application dated 03/06/1998 for the post of Sepoy in the Department on compassionate ground as per O.M No. 14014/8/97 Estt (D) of the Govt. of India, Ministry of Personnel, Public Grievance and Pension (DOPT), New Delhi dated 31/10/1997 followed by a reminder dated 11/08/1998.

That Sir, the trauma following the episode of disappearance of my husband coupled with my failing health do not permit me to carry on with my assignment as Farash in the Department any more.

That Sir, my son Shri Amarjyoti Lahkar, who has just appeared his Higher Secondary Examination is academically bright having passed his matriculation examination with a 2<sup>nd</sup> Division against his name. Copies of his HSLC certificate, identity card, admit card and marks sheet of the said examination are enclosed herewith for your kind perusal.

That Sir, I shall be extremely grateful to your benign self if his name is considered for a post of Sepoy/LDC in the Department on compassionate ground in terms of the Govt. of India, Ministry of Personnel, Public Grievances and Pension (DOPT), New Delhi dated 31/10/1997 referred to above.

That Sir, your kind action in the matter will save my entire family from being ruined and abysmal despair.

That Sir, for this act of kindness, I shall remain ever grateful.

Enclo: As stated above (1 sheet)

Yours faithfully

(Renu bala Lahkar)

Farash

Central Excise, Guwahati

GOVERNMENT OF INDIA  
 OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE  
 MORELLO COMPOUND, SHILLONG - 793 001

C. No. II(39)1/ET-II/98/37182-92

Dated: 11 OCT 2002

To,

Sri/Ms. Renu Bala Lakhkar and Amritgati Lakhkar  
Central Excise Division  
Guwahati.

केन्द्रीय प्रशासनिक न्यायालय  
 Central Administrative Tribunal

128 APR 2009

गुवाहाटी न्यायालय  
 Guwahati Bench

Subject: Appointment on Compassionate Ground - regarding.

I am directed to refer to your application dated 24.04.98 on the above subject and to request you to appear for a physical test at Hqrs. Office, Shillong on 28<sup>th</sup> October, 2002 and a personal interview on 29<sup>th</sup> October, 2002 before the Interview Board at the Chamber of the Additional Commissioner (P&V), at Morello Compound, Shillong at 11.00 AM alongwith your Original Certificates and Marksheets regarding age, educational qualification, caste, etc.

You may also like to note that if you fail to appear before the Interview Board at the time and place mentioned above, your request for compassionate appointment will not be considered.

*M. L. Jyrwa*  
 (M. L. JYRWA)  
 ADMINISTRATIVE OFFICER (ESTT.)  
 CUSTOMS & CENTRAL EXCISE  
 SHILLONG.

*Atul S. Nath*  
 Advocate

Dated Guwahati, the 19th of August, 2005

Central Administrative Tribunal  
नियन्त्रित प्रशासनिक अधिकारपाल

28 APR 2009

गुवाहाटी न्यायपाल  
Guwahati Bench

To,

The Chief Commissioner,  
Customs & Central Excise,  
Shillong. Through proper channel.

Subject: - Prayer for job of Sepoy/LDC on compassionate ground.

Respected Sir,

Most humbly and respectfully I beg to lay before you the following few lines for your kind and sympathetic consideration.

That Sir, my husband Shri Gokul Ch. Lahakar was working as sepoy in your Department and after serving for more than 12 years he has been missing since 5.1.1993 while on service. At that point of time he was serving at the office of the Superintendent PBC-II Range, Guwahati and more than 12 years elapsed ever since his disappearance.

That Sir, I have one son who is studying BA 2nd year and one daughter who is studying Higher Secondary 2nd year as well as an unemployed brother of my missing husband as dependent and in the present days of hardship it is not possible to maintain a family of 4 (four) members with the meagre amount of pension and daily wages I receive as Casual Worker (Farash) in the Department.

That Sir, the trauma following the episode of disappearance of my husband coupled with my failing health do not permit me to carry on with my assignment as Farash in the department anymore.

That Sir, vide my representation dt. 26.7.02 (copy enclosed) to the Commissioner Central Excise, Shillong I prayed for appointment of my son Sri Amarjyoti Lahkar as Sepoy/LDC in this department on compassionate ground.

That Sir, as per call letter under C. No. II(39)1/ET-II/98/37182-92 dt. 11.10.02 (Copy enclosed) of your office my son Sri Amarjyoti Lahkar appeared for interview on 29.10.02 at Shillong but Sir no communication has yet been received about the outcome of the interview.

That Sir, in the above circumstances I fervently request you to appoint my son Sri Amarjyoti Lahkar as Sepoy/LDC in this department on compassionate ground and save the family.

That Sir, for this act of kindness I shall remain ever grateful to your honour.

Enclo:

- (i) Representation dt. 26.2.02
- (ii) Call letter dt. 11.10.02
- (iii) H.S.L.C., H.S. Marksheets. (A Part -1 attached)

Yours faithfully,

Renu bala Lahkar  
(RENUBALA LAHKAR)Casual Worker in office of the Deputy  
Commissioner, Central Excise, Guwahati

AB  
23.8.05  
Received in  
Appellate Court  
Central Excise  
Guwahati

Attest  
S. Kalita  
Advocate

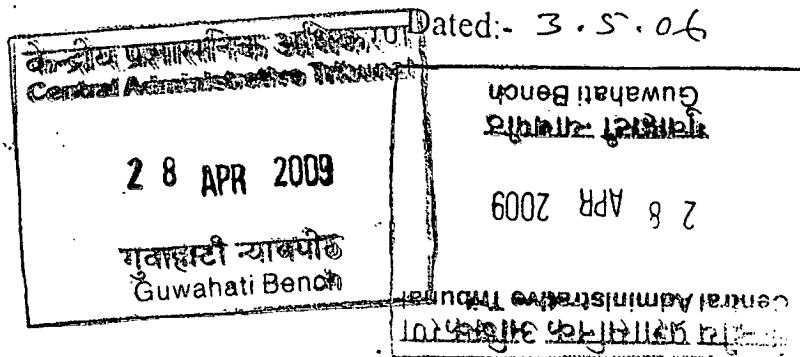
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
OFFICE OF THE ASSISTANT COMMISSIONER  
CENTRAL EXCISE: GUWAHATI  
6<sup>TH</sup> FLOOR, SETHI TRUST BUILDING, BHANGAGARH, GUWAHATI - 781 005  
Tele- (0361) 2529435/2529967 Fax-2452816 E-mail: cex0603guwahati@rediffmail.com

C.No.II(3)1/ET/ACG/92/

To,

The Joint Commissioner(P&V),  
Central Excise,  
Shillong.

Sir,



Subject:- Prayer for Job of Sepoy/L.D.C. on compassionate ground –  
Regarding.

I have to forward herewith one representation received from Smti. Renubala Lahakar w/o Shri G.C. Lahakar, Sepoy missing since 05-01-1993 addressed to the Commissioner, Central Excise, Shillong regarding appointment of her son Shri Amarjyoti Lahakar for a post of Sepoy/L.D.C. in the Department on compassionate ground for consideration at your end.

Enclo: As above.

Yours faithfully,

*B Dasgupta*  
(B. Dasgupta)  
Deputy Commissioner,  
Central Excise Division,  
Guwahati.

*Abesha  
S. Khat  
Advocate*

No.	Name of the Applicant	Name of the deceased / Medically retired Govt. Servant	Date of application	Date of Birth of the applicant	Educational qualification.	Whether SC/ST/OBC/ General	Name of the post to which recommended for appointment, if selected.	Remarks
1.	Shri/Smt. Socha Joshi	Shri/Smt. W/o Am Narayan Jcshi, Sepoy	05.01.97	03.01.73	Cl. VIII	GN	Sepcy	Still Pending
2.	Pranay Kar	S/o P. C. Kar, Superintendent	03.10.97	19.06.73	Cl. VIII	GEN	Sepcy	- do -
3.	Marju Nazar/ Sikash Ch. Das	W/o Manu Ch. Narzay, Driver	18.11.97	01.02.72	Cl. IX	ST	Sepcy	- do -
4.	Banani Das	S/o Eiren Ch. Das, Sepoy	20.02.98	06.03.79	Cl. IX	SC	Sepcy/LDC	- do -
5.	Amarjyoti Lahkar	W/o Babul Das Inspector	18.05.98	03.03.64	H. S. L. C	GEN	LDC	- do -
6.	Reena Sunar	S/o Gokul Ch. Lekhar, Sepcy	24.04.93	31.12.63	Cl. IX	GEN	Sepcy	- do -
7.	Sarath Pytuli	W/o Budhi Raj Sunar, Sepoy	04.05.99	21.01.67	Cl. VIII	GEN	Sepcy	- do -
8.	Koi Yaring	Str/o Smt. F. Fytuh, ACAO	02.07.99	17.03.61	H. S. L. C	ST	LDC	- do -
9.	Rivincing Lamare	W/o Koj Ta, Superintendent	13.12.99	03.04.73	H. S. L. C	ST	Sepcy	- do -
10.	Jintu Snochowai	S/o F. Pyngrope, Driver	12.01.2000	12.06.77	H. S. L. C	ST	L D.C. / Drver.	- do -
11.	El. Anima Wahlang	S/o K. Snochowai, Sepoy	05.01.2000	16.11.80	Cl. X	ST	Sepcy	- do -
12.	M. Wahlang	W/o K. Limpi, T. A	15.09.2000	19.08.71	Cl. VIII	ST	Gr. 'C'	- do -
13.	Mamonji Goraon	W/o Chasingi Lyndoh, Sepoy	18.10.2000	09.06.67	H. S. L. C	ST	Sepcy	- do -
14.	Rupchunir Sutradhar	W/o Mileswar Gohain, Sepcy	08.11.2000	23.08.64	Cl. IX	GEN	Gr. 'C' or 'D'	- do -
15.	Jyotirmoy Saha	S/o J. M. Saha, A. O.	17.11.2000	30.11.71	H. S. L. C	SC	Gr. 'D'	- do -
16.	Manash Jyoti Borah	S/o Ananda Ch. Bora, A. C.	14.02.2001	20.02.73	Cl. X	GEN	Gr. 'C'	- do -
17.	Mohan Basumatary	S/o Deben Basumatary, LDC	26.02.2001	11.06.75	H. S. L. C	ST	LDC	- do -
18.	Atupanjali Eorah	S/o Asanta Borah A.C	29.03.2001	01.04.79	H. S. L. C	ST	Gr. 'C'	- do -
19.	Kabita Larma	W/o Dil Bahadur Lama LDC	03.04.2001	18.03.62	3. A (1 <sup>st</sup> year)	GEN	Sepcy	- do -
20.	Thokchom Elm Singh	S/o T. Bibisol Singh, Driver	30.04.2001	17.11.71	Cl. VIII	ST	Gr. 'C'	- do -
21.	Uthin Paul	S/o G. C. Paul (Rtd)	13.06.2001	01.02.82	ST	GEN	Gr. C or D	- do -
22.	Fupja Sora	W/o Chanda Ram Bora, Hav.	31.07.2001	21.10.83	H. S. L. C	GEN	Sepcy	- do -
23.	M. Bisikmai	W/o Dalsuanthang, Inspector	07.09.2001	21.02.67	Cl. VIII	ST	Gr. C or D	- do -
24.	Arinali Dehing	W/o Biju Dey	08.10.01	01.03.68	ST	GEN	Sepcy	- do -
25.	Zenurimawi	W/o Jairunthang, Sepcy	21.10.01	31.08.65	VII passed	OBC	Sepcy	- do -
26.	Lalrunthari	W/o L. Z. Ralie, Driver	27.03.02	02.08.69	Cl. VIII	ST	Sepcy	- do -
27.	Maya Chettri	W/o Chettri, Sepoy	19.04.02	07.03.70	Cl. VIII	GEN	Sepcy	- do -
28.	Suchitra	Str/o N. C. Deb, Sepoy	08.07.02	30.09.78	Cl. IX	GEN	Sepcy	- do -
29.	Bharati Sharma	W/o Dipa Sharma, Sepcy	29.07.02	04.11.70	Cl. IX	GEN	UEC	- do -
30.	Smt. Ratna Das	W/o Sanjay Das, Inspector	12.08.02	04.09.68	3.A	GEN	LDC/Sepoy	- do -
31.	Marju Das	W/o Kiranjit Pathak, Sepoy	04.09.02	01.09.65	H. S. L. C	GEN	LDC/Sepoy	- do -
32.	Smt. Anima Dey	W/o Safal Ch. Dey, DCS	16.08.02	26.06.55	H. S. L. C	GEN	LDC/Sepoy	- do -

क. द्रविय प्रशासनिक अधिकारी  
Central Administrative Tribunal

28 APR 2009

गवर्नरी न्यायपीठ

20 JUNE  
-06

After  
J. R. K.  
Reviewed

Minister 26/6/06  
Joint Commissioner, P & V.  
Customs & Central Excise  
Shillong  
Smt. 25/06/06  
ASSTANT

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH GUWAHATI

OA NO. 171/2006  
SHRI AMARJYOTI LAHKAR

.....APPLICANT  
-VERSUS-

UNION OF INDIA & ORS

.... RESPONDENTS

केन्द्रीय प्रशासनिक अधिकारी  
Central Administrative Tribunal

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

WRITTEN STATEMENT FILED BY THE RESPONDENTS

- 1) That the respondents have received copy of the OA and have gone through it and have understood the contentions made thereof. Save and except, the statements, which are not specifically admitted herein below, rests may be treated as total denial. The statements, which are not borne on record, are also denied and the applicant is put to the strictest proof thereof.
- 2) That before going through the various paragraphs of the OA, the respondents beg to place the Brief History of the case.

Shri Amarjyoti Lahkar is a son of Shri Gokul Chandra Lahkar, Sepoy who was missing since 05.01.1993 while he was on duty at the office of the Superintendent of Central Excise, PBC-II Range, Guwahati.

Shri Gokul Chandra Lahkar was appointed as Sepoy in the Department of Customs and Central Excise in the year 1981.

It is stated that at the time when Shri Gokul Chandra Lahkar, went missing he left his wife, one son, one daughter and younger brother who were dependent on him. The applicant Shri Amarjyoti Lahkar, son of Shri Gokul Chandra Lahkar was about 8 (eight) years of age at that time.

That Ass'tt. Collector, Central Excise, Guwahati vides order no. C. No. II/39/3/Actts/90/433-35 dated 12.01.1994 engaged Smti Renubala Lahkar wife of the missing Sepoy Shri Gokul Chandra Lahkar, on purely temporary and on contract basis for a period of 3 (three) months w. e. f. 05.01.1994 for cleaning and other misc. work.

Compassionate appointments are considered as per a DoPT's O. M. dated 9.10.1998 (copy enclosed). As per para-11 of the said O. M., a request to grant the benefit of compassionate appointment can be considered only after a lapse of at

Attested  
J. N. Lahkar  
Parascale

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

least 2 years from the date from which the Government servant has been missing subject to some provisions.

Representation from Smti Renuhala Lahkar, wife of the missing Sepoy Gokul Chandra Lahkar addressed to the Commissioner of Central Excise, Shillong for his appointment to the post of Sepoy on Compassionate ground was received on 24.4.1998 in this Hqrs. Office, Shillong. Later on, she requested to consider her son, Shri Amarjyoti Lahkar for Compassionate appointment in the grade of Sepoy/LDC in place of her. The applicant, Shri Amarjyoti Lahkar was called for interview for compassionate appointments held on 28.10.2002 & 29.10.2002. Accordingly, he appeared. In the interview held on 28<sup>th</sup> & 29<sup>th</sup> October, 2002, 17 candidates for Group D category, 16 for LDC category and 5 candidates under UDC category appeared for compassionate appointments and vacancy position for compassionate appointment at the time of interview was two for the post of Sepoy (Group- D), one for the post of LDC and four for the post of UDC. Under Group-D grade, the selection committee recommended two names for appointment. At the time of interview, the applicant was at Serial No. 10 in the List for Compassionate appointments. The selection committee decided that the candidates who had already appeared before the Selection Committee may be exempted for future personal interview. These candidates may be offered appointments on compassionate grounds, as and when vacancies arise without further Personal Interview.

After the appointments in 2002 on compassionate ground, there was no vacancy to the post of Group D/LDC which could be filled up on compassionate ground.

Now, the applicant Shri Amarjyoti Lahkar, son of Shri Gokul Chandra Lahkar (missing) Sepoy filed the present application before the Hon'ble CAT, Guwahati for his appointment on compassionate ground.

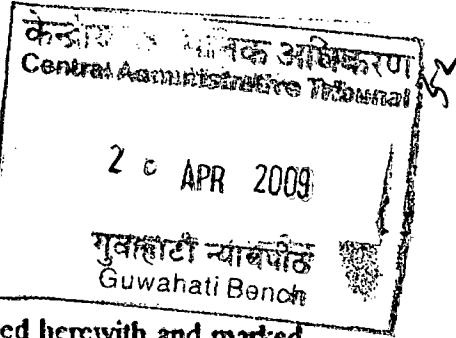
- 3) That with regard to statement made in paragraph 4.1 of the OA, the respondents beg to offer no comment.
- 4) That with regard to the statement made in paragraph 4.2 of the OA, the respondents beg to state that Shri Gokul Chandra Lahkar, father of the applicant Shri Amarjyoti Lahkar joined this department as Sepoy 18.3.1981. He was reported as missing since 05.01.1993. He was posted at the office of the Superintendent of Central Excise, PBC II Range, Guwahati at the time of missing. Representation from Smti Renuhala Lahkar wife of the missing Sepoy

28 APR 2009

Gokul Ch. Lahkar addressed to the Commissioner of Central Excise, Shillong for her appointment to the post of Sepoy on compassionate ground was received on 24.4.1998 in this office, Sillong. Later on vide representation-dated 26.7.2002, she requested to consider her son, Shri Amarjyoti Lahak for compassionate appointment in the grade of Sepoy/LDC. In place of her.

5) That with regard to the statement made in paragraph 4.3 of the OA, the respondents beg to submit that Smti Renubala Lahkar was engaged as daily wages labour purely on temporary basis and on contract (on work on pay) basis for a period of three months w.e.f. 5.1.1994. However, she is working as contract labour till date on no work no pay basis.

6) That with regard to the statement made in paragraph 4.4 of the OA, the respondents beg to state that compassionate appointments are considered as per a DoPT's O. M. dated 9.10.1998. As per para-11 of the said O. M., a request to grant the benefit of compassionate appointment can be considered only after a lapse of at least 2 years from the date from which the Government servant has been missing subject to some provisions. Representation from Smt. Renubala Lahkar, wife of missing sepoy Shri Gokul Ch. Lahak addressed to the Commissioner of Central Excise, Shillong for his appointment to the post of Sepoy on Compassionate ground was received on 24.4.1998 in this Hqrs Office, Shillong. Later on, she requested to consider her son, Shri Amarjyoti Lahkar for compassionate appointment in the grade of Sepoy/LDC in place of her. The applicant, Shri Amarjyoti Lahkar was called for interviews held on 28.10.2002 and 29.10.2002. Accordingly, he appeared in the interview held on 28<sup>th</sup> and 29<sup>th</sup> October 2002 along with 17 candidates under Group-D category, 16 for LDC category and 5 candidates under UDLC category appeared for compassionate appointments and the vacancy position for compassionate appointment at that time of interview was two for the post of Sepoy (Group D), one for the post of LDC and four post of UDLC. Under Group D grade, the selection committee recommended two names for appointment. At the time of interview, (the applicant was at Sl. No. 10 in the List for compassionate appointments) The Selection Committee decided that the candidates who had already appeared before the Selection Committee may be exempted for future personal interviews. These candidates may be offered appointments, on compassionate grounds, as and when vacancies arise without further personal interview.



A copy of the O. M. dated 9.10.1998 is annexed herewith and marked as Annexure- R 1.

- 7) That with regard to the statement, made in paragraph 4.5 of the OA, the respondents beg to offer no comment.
- 8) That with regard to the statement made in paragraph 4.6 of the OA, the respondents beg to submit that the vacancy/ies for the compassionate appointments are very limited. At the time of interview of the applicant on 28 & 29.10.2002, his serial number in the list for the compassionate appointment was 10 and he was eligible for the post of Sepoy at that time. But only two candidates who were senior to him were given appointment for the post of Sepoy (Group D) as per vacancy. Now his serial number is six in the waiting list for compassionate appointment. His name will also be considered in due time as per policy /rules.
- 9) That with regard to the statement made in paragraph 4.7 of the OA, the respondents beg to state that Compassionate appointment are considered as per a DoPT's OM dated 9.10.1998. As per para-11 of the said MO, a request to grant the benefit of compassionate appointment can be considered only after a lapse of at least 2 years from the date from which the Government servant has been missing subject to some provisions. Representation from Smt Renubala Lahkar, wife of the missing Sepoy Gokul Ch. Lahkar addressed to the Commissioner of Central Excise, Shillong for his appointment to the post of Sepoy on Compassionate ground was received on 24.4.1998 in this Figrs. Office, Shillong. Later on she requested to consider her son Shri Amarjyoti Lahkar for compassionate appointment in the grade of Sepoy/LDC in place of her. The applicant, Shri Amarjyoti Lahkar was called for interview for compassionate appointments held on 28.10.2002 and 29.10.2002. Accordingly he appeared. In the interview, held on 28<sup>th</sup> and 29<sup>th</sup> October 2002, 17 candidates under Group- D category, 16 for LDC category and 5 candidates under UDC category appeared for compassionate appointments and the vacancy position for compassionate appointment at the time of interview was two for the post of Sepoy (Group-D), one for the post of L. D. C. and four for the post of UDC. Under group- D grade, the selection committee recommended two names for appointment. At the time of interview, the applicant was at serial

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

No. 10 in the List for Compassionate appointments. The Selection Committee decided that the candidates who had already appeared before the Selection Committee may be exempted for future personal interviews. These candidates may be offered compassionate appointments as and when vacancies arise without future personal interviews. After those vacancy and appointment for the post of Sepoy (Group D) as mentioned above, there has been no vacancy and appointment for the post of Sepoy (Group D) till date. His case will be considered as and when vacancy will arise.

- 10) That with regard to the statement made in paragraph 4.8 of the OA, the respondents beg to state that after the cadre restructuring, compassionate appointments were given only for the post of Sepoy and TA. For the post of TA, required minimum qualification is graduate. Hence he is not entitled to the post of TA as he has not completed his graduation. Moreover, there is no vacancy for the compassionate appointment for the post of Sepoy now. Therefore, his case will be considered in due time.
- 11) That with regard to the statement made in paragraph 4.9 of the OA, the respondents beg to state that Smt. Renuhala Lahkar was engaged as daily wages labour purely on temporary basis and on contract basis (no work no pay basis) for a period of three months w.e.f. 5.1.1994. However, she is working as contract labour till date on no work no pay basis.
- 12) That with regard to the statement made in paragraphs 4.10 of the OA, the respondents beg to reiterate and reaffirm the statements made in paragraph 8 and 9 above.
- 13) That with regard to the statement made in paragraphs 4.11 and 4.12 of the OA, the respondents beg to offer no comment.
- 14) That in view of the above facts and circumstances narrated above there is no valid ground as mentioned in the paragraphs 5.1 to 5.7 and no relief can be granted on the grounds as prayed for in the paragraph 8.1 and 8.2, hence the present application is devoid of merit and deserves to be dismissed.

केन्द्रीय प्रशासनिक अधिकारी  
Central Administrative Tribunal

20 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

VERIFICATION

I ..... aged

about ..... years at present working as

..... who is one of the respondents and taking steps in this case, being duly authorized and competent to sign this verification for all respondents, do hereby solemnly affirm and state that the statement made in paragraph

..... are true to my knowledge and belief those made in paragraph ..... being matter of records, are true to my information derived there from and the rest are my humble submission before this Humble Tribunal. I have not suppressed any material fact.

And I sign this verification this -----th day of September 2006 at -----

REPOENT

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No.171 of 2006

Date of Order: This the 04th day of May 2007

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman

Shri Amarjyoti Lahkar,  
S/o Gokul Chandra Lahkar,  
Vill. & P.O.- Sangkuchi,  
Distt.- Nalbari, Assam.

.....Applicant

By Advocate Shri S. Nath

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Revenue Department, Ministry of Finance, New Delhi - 110001.

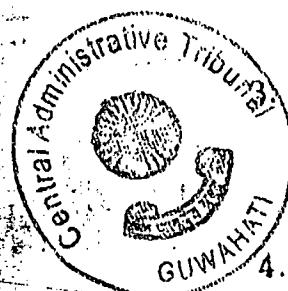
2. The Chief Commissioner Central Excise, Morello Compound, Shillong - 793001.

3. The Commissioner Customs & Central Excise, Morello Compound, Shillong - 793001.

4. The Joint Commissioner (P&V) Central Excise, Morello Compound, Shillong - 793001.

5. The Assistant Commissioner Central Excise, Guwahati, Sethi Trust Building, Bhangagarh, Guwahati - 781005.

By Advocate Ms U. Das, Addl. C.G.S.C.



## केन्द्रीय प्रशासनिक अधिकारपा Central Administrative Tribunal

28 APR 2009

## गुवाहाटी न्यायालय Guwahati Bench

affectionately  
Sarah  
Sewonke

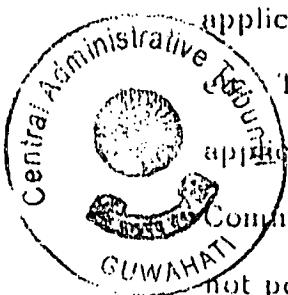
ORDERकेन्द्रीय प्रशासनिक न्यायालय  
Central Administrative Tribunal

28 APR 2009

K.V. SACHIDANANDAN (VICE-CHAIRMAN)गुवाहाटी न्यायालय  
Guwahati Bench

The father of the applicant Shri Gokul Chandra Lahkar who was working in the Central Excise and Customs with effect from 1980 has been missing since 05.01.1993. An FIR was lodged on 21.01.1993 at the Basistha Chariali Police Station, Guwahati (Annexure-1). The missing person has served the Department for more than twenty years. The missing has his wife, one son, one daughter and his younger brother and they are all dependent on him. The son is the applicant in this O.A. The wife was given a temporary appointment on 12.01.1994 as the applicant was only eight years of age at the time when the employee went missing. The mother of the applicant made representation on 26.07.2002 requesting for appointment of her son (applicant) on compassionate ground when the applicant appeared at the Higher Secondary Examination. The applicant was called for interview in October 2002 for physical test. Thereafter there was no communication. The mother of the applicant made a representation on 19.08.2005 before the Chief Commissioner, Customs and Central Excise, Shillong stating that it is not possible for her to maintain her family with a meager income as a casual labourer (Farash). The applicant passed the Higher Secondary Examination in the year 2003 and now reading in B.A. Part III under the Gauhati University and has the required qualification for appointment as Sepoy/LDC on compassionate ground.

2. As per Department of Personnel and Training (DOP&T) guidelines dated 29.07.1998 cases of the missing Government



28 APR 2009

servants are also covered under the Scheme for compassionate appointment. The respondents did not regularize the service of the mother of the applicant nor had given any appointment to the applicant. The applicant could not make an application in the year 1994 since the applicant was only a minor at that time. Aggrieved by the said action of the respondents the applicant has filed the present O. A. seeking the following reliefs:

"8.1 That the Hon'ble Tribunal be pleased to direct the respondents to appoint the applicant to the post of Sepoy/LDC on compassionate ground with immediate effect."

3. The respondents have filed a detailed written statement contending that when the employee went missing in 1993 the applicant was only eight years of age. In 1994 the mother of the applicant was given appointment on purely temporary basis for three months which is being extended from time to time. Compassionate appointment can be considered only after a lapse of at least two years from the date on which the Government servant went missing. The applicant was called for the interview for compassionate appointment held on 28.10.2002 and 29.10.2002. In the interview, seventeen candidates for Group 'D' category, sixteen for LDC category and five UDC category appeared and the vacancy position for compassionate appointment at the time of interview was two for the post of Sepoy (Group 'D'), one for the post of LDC and four for the post of UDC. The Selection Committee recommended two names for appointment under the Group 'D' category. The applicant was at serial No.10 in the Select List and it was decided that the candidates who had already appeared before the Selection Committee may be

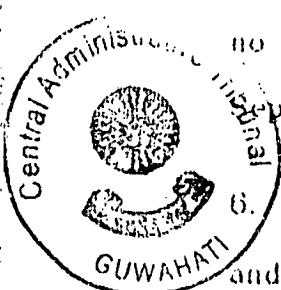


2.  
P

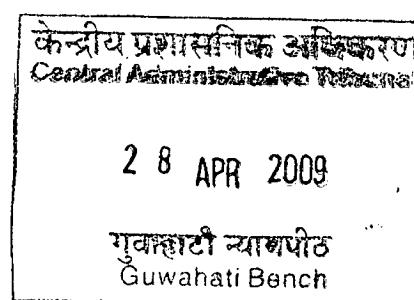
exempted from future personal interview. Only two persons senior to the applicant were given appointment as Sepoy and now the applicant is at serial No.6 in the waiting list for compassionate appointment. The applicant will be considered for compassionate appointment in due time as per policy/rules. Therefore, the present application is devoid of any merit and the same is liable to be dismissed.

4. The applicant has filed a rejoinder reiterating the contentions in the O.A. and further contended that one Smt Bithi Dutta has been appointed on compassionate ground on 03.11.2006 to the post of LDC although Smt Bithi Dutta applied for appointment on compassionate ground much later than the applicant. As such the respondents could have appointed the applicant on compassionate ground prior to Smt Bithi Dutta.

5. The respondents have filed a reply to the rejoinder of the applicant further reiterating that the case of the applicant will be considered in due course. The applicant is not entitled to the post of Tax Assistant as the applicant has completed his graduation. There is no vacancy for appointment on compassionate ground to the post of



6. I have heard Mr S. Nath, learned counsel for the applicant and Ms U. Das, learned Addl. C.G.S.C. appearing on behalf of the respondents. The learned counsel for the parties have taken me to the various pleadings, evidence and materials placed on record. The learned counsel for the applicant argued that the applicant could have been given compassionate appointment, but the applicant's junior who has applied for the said appointment has already been considered and given appointment. There are also existing vacancies in which the



28 APR 2009

Gujarat न्यायपीठ  
Guwahati Bench

applicant's case could very well be considered. The learned counsel for the respondents, on the other hand, argued that a Screening Committee has considered seventeen persons in all and the applicant's merit comes as 10<sup>th</sup>. The committee has evaluated various aspects of different candidates such penury/financial position of the candidates, the dependency factor, income factor etc. and has come to a reasonable consideration that the applicant who is at serial No.10 cannot be considered for the time being.

7. I have given due consideration to the arguments and materials placed on record. The learned counsel for the parties have submitted that dependents of missing employees will come under the purview of the Scheme in granting compassionate appointment considering the various recommendations of the Fifth Central Pay Commission Report as well as the Study Reports of 1990 and 1994 prepared by the Department of Administrative Reforms and Public Grievances on the subject. The Ministry of Personnel, Public Grievances and Pension has formulated a Scheme on 09.10.1998, the relevant portion of which is reproduced below:

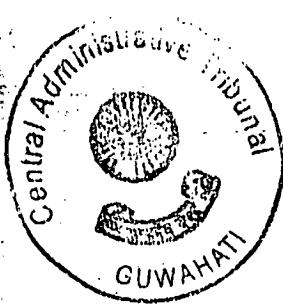
"The object of the Scheme is to grant appointment on Compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

.....  
.....

#### MISSING GOVERNMENT SERVANT

Cases of missing Government servants are also covered under the Scheme for compassionate appointment subject to the following conditions:

- A request to grant the benefit of compassionate appointment can be considered only after a lapse of at



28 APR 2008

गुवाहाटी नगर  
Guwahati (Bengal)

least 2-years from the date from which the servant has been missing provided that:

- i) as FIR to this effect has been lodged with the police;
- ii) — the missing person is not traceable and
- iii) the competent authority feels that the case is genuine.

b) This benefit will not be applicable to the case of a Government servant:

- i) Who had less than two years to retire on the date from which he has been missing; or
- ii) Who is suspected to have committed fraud, or suspected to have joined any terrorist organisation or suspected to have gone abroad.
- iii) Compassionate appointment in the case of a missing Government servant also would not be a matter of right as in the case of others and it will be subject to fulfillment of all the conditions, including the availability of vacancy, laid down for such appointment under the Scheme.
- iv) While considering such a request, the results of the Police investigation should also be taken into account, and
- v) A decision on any such request for compassionate appointment should be taken only at the level of the Secretary of the Ministry/Department concerned."

8. It is made clear under the Scheme that dependents of a missing Government servant is also entitled to apply for the said post after a lapse of two years from the date on which the employee went missing. The applicant has no case that the procedure that has been laid down in such case has not been complied in this case. The only contention of the respondents is that the committee, which has been formulated for assessment of the merit in such selection, has recommended the applicant at serial No.10 out of the seventeen candidates who have been evaluated and since there is no vacancy the applicant's chance will come in its turn.



28 APR 2009

42

9. Since appointment on compassionate ground could only be made by the concerned branch be against 5% of the vacancies arising and that percentage having already been exhausted, the position is that the applicant can only be considered as and when vacancy arises. It is profitable to note the following decision of the Hon'ble Supreme Court: Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (Mrs) & Anr., (1994) 2 SCC 716, where it was held that Courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/guidelines/instructions. If in a given case, the Department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the Courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved otherwise.

In the circumstances, I am of the view that since the respondents have given an assurance that the applicant's case will be considered as and when vacancy arises, the applicant will have to wait till such time. The respondents are accordingly directed to consider the case of the applicant as and when vacancy arises and communicate the same to the applicant without fail.

11. With the above observations the O.A. is disposed of. In the circumstances there will be no order as to costs.

Date of Application : 7.5.07

Sd/ VICE CHAIRMAN

Date on which copy is ready : 7.5.07

Date on which copy is referred : 7.5.07

Certified to be true COPY

N. Sarm  
7.5.07  
Section C. A. T. Guwahati

C. A. T. Guwahati  
Guwahati 7.5.07

28 APR 2009

ANNEXURE-11

गुवाहाटी न्यायालय  
Guwahati Bench

To  
The Chief Commissioner  
Customs and Central Excise,  
Shillong Zone  
3<sup>rd</sup> Floor, Crescens Building,  
M.G. Road, Shillong-793001

(Through the Deputy Commissioner  
Central Excise, Guwahati.)

Sub-4 Judgment and order dated 04.05.07 passed in O.A. No. 171/2006 (Sri Amarjyoti Lahkar -Vs- U.O.I & Ors.) by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati, compliance of

Respected Sir,

With due respect and humble submission I beg to submit that I approached the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati, praying therein for a direction upon the Authority for appointment of the undersigned on compassionate ground in the post of Sepoy/LDC with immediate effect by filing Original Application No. 171/2006 (Sri Amarjyoti Lahkar -Vs- U.O.I & Ors.). In this connection I beg to submit that my father Sri Gokul Chandra Lahkar, while working as Sepoy in the Central Excise, Guwahati he is missing since 05.01.1993, and after missing of my father, my mother was appointed to the department of Central Excise on casual basis w.e.f 12.01.1994 but after her long service of about 13 years her service was not regularised and now a days she is unable to maintain the family with her meager income, moreover her fragile health is not permitting her to continue in temporary service. Therefore, I prayed to the Authority for my appointment in the post of Sepoy/LDC and I was also called for interview in the year 2002 but I was not appointed thereafter. Situated thus and being helpless, I approached the Hon'ble Central Administrative Tribunal by filing the above mentioned Original Application. The Hon'ble Tribunal vide it's judgment and order dated 04.05.2007

प्रमाण / Receipt for  
प्राधायक अस्सी / Assistant Commissioner  
केन्द्रीय उत्पाद शुल्क / Central Excise  
गुवाहाटी / Guwahati

Attest  
S. N. RAHMAN  
Advocate

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

directed the Authority to consider the case of the undersigned as and when  
vacancy arises and communicate the same to the undersigned.

Therefore, I earnestly request Your Honour to consider my case  
sympathetically and to appointment me to the post of Sepoy LDC and to  
save my family from being ruined. I am enclosing a copy of the order dated  
04.05.07 passed in OA No. 171/2006 for your perusal and necessary action  
for compliance thereof.

Enclo:- Copy of the order dated 04.05.07.

Yours faithfully

Shri Amar Jyoti Lahkar.

(AMARJYOTI LAHKAR)

S/o- Gokul Chandra Lahkar.

Vill & P.O- Sanekuchi.

Dist- Nalbari, Assam.

Date: 14-05-2007

To,

The Chief Commissioner,  
Central Excise,  
Morello Compound,  
Shillong - 793001.

केंद्रीय प्रशासनिक अदायकरण  
Central Administrative Tribunal

28 APR 2009

(through the Deputy Commissioner,  
Central Excise, Guwahati)

Guwahati Bench

Date: 14-09-03

Sub.: Implementation of Judgement and order  
Dtd. 04/05/07 of CAT Guwahati in O.A.  
No.171 of 2006 (Shri Amarjyoti Lahkar,  
-vs- U.O.I. & others).

Ref.: My representation Dtd. 14/05/2007.

Sir,

Most respectfully, I beg to state that I submitted a representation on 14/05/2007 enclosing there with a copy of judgement and orders dtd. 04/05/07 in O.A. No. 171/2006, passed by the Hon'ble CAT, Guwahati Bench for implementation of the same. In this connection I pray before your honour to appoint me in any vacancy of LDC/Sopgy in terms of directly passed by the Hon'ble CAT Guwahati as in duty bound shall ever pray.

I am enclosing a copy of judgement and order dtd. 04/05/07 in O.A. No. 171/2006 for your ready reference and early action.

Yours faithfully,

Shri Amarjyoti Lahkar

(SRI AMARJYOTI LAHKAR)  
S/o Gokul Ch. Lahkar,  
Vill. & P.C. Sanakuchi,  
Dist. Nalbari, Assam.

Enclo.: Copy of judgement  
dtd. 04/05/07

Attested  
by  
S. N. Lahkar  
Advocate

14/9/07  
SRI AMARJYOTI LAHKAR  
S/o GOKUL CH. LAHKAR  
VILL. & P.C. SANAKUCHI  
DIST. NALBARI, ASSAM

\*\*\*

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE  
MORELLO COMPOUND, M.G. ROAD, SHILLONG -1.  
Tel. 91-0364-2224751 / 2223030. Fax. 91 0364-2224428 / 2226215.

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

E-Mail: [ceash@vivecise.nic.in](mailto:ceash@vivecise.nic.in)

28 APR 2009

OFFICE MEMORANDUM

गुवाहाटी न्यायपीठ  
Guwahati Bench

With reference to his/her application / interview / recommendation of the Staff-Selection Commission, Shri / Smti / Km. Raju Bordoloi is hereby offered a temporary post of Agency in the scale pay of Rs 260-60-2910-65-3300 -70-4000/- plus the usual allowances as sanctioned by the Government of India. His/her appointment will be subject to the following terms and conditions

- (i) The appointment is purely temporary and will be governed by the C.C.S (T.S) Rules 1965 and is liable to termination without assigning any reason under Rules 5
- (ii) He/She will be on probation for a period of two years which may however be extended at the discretion of the appointment authority
- (iii) He/She will have to comply with requirements of the C.C.S (Conduct) Rules, 1964 and the plural Marriage Act. All Rules or orders already in existence or issued from time to time regarding attendance duties, discipline, conditions of service etc will automatically be applicable to him/her.
- (iv) He/She must be willing to serve any where within the jurisdiction of Shillong Zone
- (v) That on their appointment to service on or after 01.01.2004, they should be covered under the Defined Contribution Pension Scheme as per Department of Expenditure's O.M. No 1(7)(2)/2003/TA/616 dated 29.12.2003
- (vi) He/She should give a declaration of his/her town for the purpose of LTC within 6 (Six) months from the date of entry into service
- (vii) He/She should pass the prescribed Departmental Examination within two years of his/her appointment, failure to which may lead to his/her service being terminated.
- (viii) That the seniority of the candidate of direct recruit vis-à-vis promotions will be assigned according to the Instruction issued by the Ministry from time to time
- (ix) His/Her retention in service in future subject to his/her being found suitable for Government service in all respect.
- (x) His/Her appointment is subject to the production of Medical Certificate of Fitness from the Civil Surgeon/Assistant Surgeon in case of Group 'D' staff only and subject to his/her taking an oath of allegiance to the constitution of India
- (xi) He/She is liable to transfer/posting within this Zone to which he/she is nominated and under no circumstance his/her request for transfer to any other Commissionerate outside this zone will be entertained.

Contd P/2

Attested  
Aman Jyoti Lohkwar

Attested  
K.K. Advocate

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

47

(v) A declaration in the form enclosed regarding marriage  
 (vi) No Objection Certificate from his/her previous employer and release order from his/her employer accepting his/her resignation from the service  
 (vii) Attestation form in triplicate duly filled in.  
 (viii) Employment Exchange Registration Card in Original (if any)

4. No traveling or other allowances / fees will be paid to him/her for obtaining the Medical or other Certificates.

Enclo :

Sd/-

(H.M. ANAL)  
JOINT COMMISSIONER (P&V)  
CUSTOMS & CENTRAL EXCISE  
SHILLONG.

BY REGISTERED POST:

To :

✓ Mrs. Rayu Bordoloi,  
S/o (2) Harcharan Bordoloi, Ex--driver.  
C/o The Deputy Commissioner,  
Central Excise Division, Shillong/Guwahati

C. No. II(31)4/ET-III/2007/

Dated :-

121 MAY 2008

Copy forwarded for information and necessary action to

1. The Chief Commissioner, Customs and Central Excise, Shillong Zone, Crescent Building, M.G. Road, Shillong
2. The Deputy / Assistant Commissioner / Superintendent, Customs (P) / Central Excise Division.

A copy of the joining report along with an attested copy of each certificate showing his/her age, educational qualification and caste, employment exchange Registration Card (in original) etc. may please be sent to this Office immediately after his/her joining. Oath of Allegiance from the official may also be obtained and the same may be made an entry to this effect in the Service Book.

3. Copy to Personal File

*W.M. ANAL*  
(H.M. ANAL)  
JOINT COMMISSIONER (P&V)  
CUSTOMS & CENTRAL EXCISE  
SHILLONG.

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

-48-

Annexure - 6  
ANNEXURE - 14



GOVERNMENT OF INDIA  
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE  
MORELLO COMPOUND, M.G. ROAD, SHILLONG - 1.  
Tel. 91-0364-2224751 / 2223030. Fax. 91-0364-2223428 / 2226215. E-Mail: cexshill@excise.nic.in

C. No. II(3)4/ET-II/2004/

To,

Dated :

23 OCT 2008

Shri Amar Jyoti Lahkar,  
S/o (L) Gokul Chandra Lahkar,  
Vill & P.O. Sanekuchi,  
Nalbari District,  
Assam.

Sub : Request for compassionate appointment – regarding.

Please refer to your application dated 14.09.2007 and the Hon'ble CAT, Guwahati Bench order dated 04.05.2007 in respect of O.A. NO. 171/2006.

In this regard, you are informed that your request for appointment on compassionate grounds cannot be acceded to in the light of DOPT's instruction F. No. 14014/19/2002-Estt(D) dated 05.05.2003, which provides that the maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years.

This issues with the approval of Commissioner, Central Excise, Shillong.

Sd/-

(ARVIND MADHAVAN)  
JOINT COMMISSIONER (P&V)

C. No. II(3)4/ET-II/2004/

Dated :

Copy forwarded for information to the Superintendent (PLC), Central Excise, Hqrs. Office, Shillong.

27/10/08  
(ARVIND MADHAVAN)  
JOINT COMMISSIONER (P&V)

three times

Akash  
S. Ray  
Advocate

9/1.

28 APR 2009

440

SWAMY'S - ESTABLISHMENT AND ADMINISTRATION

440  
 36. All India Carrom Federation, १०२८, Sector-१०, Bhagirathi Place, Chandni Chowk, Delhi — ११० ००२  
 37. All India Lawn Tennis Association, B-३७, Asaf Ali Road, New Delhi — ११० ००२.  
 38. Amateur Athletic Federation of India, Room No. 1148-A, Gate No. 28, Jawaharlal Nehru Stadium, New Delhi  
 39. Arya Patya Federation of India, Nagpur Sharirk Shikshan Mahavidyalaya, Dr. Moonga Marg, Dhantoli, Nagpur — १२.  
 40. Billiards & Snooker Federation of India, C/o. The Bengal Bonded Warehouse Association, 25, Netaji Subhas Road, Calcutta — ७०० ००१.  
 41. Cycle Polo Federation of India, Dundlod House, Hava Sarak, Civil Lines, Jaipur — ३०२ ००६.  
 42. Indian Amateur Boxing Federation, 158-A, Gate No. 28, Jawaharlal Nehru Stadium, New Delhi — ११० ००३.  
 43. Indian Powerlifting Federation, 98, New Ranikher, Jamshedpur — ८३१ ००५.  
 44. Amateur Handball Federation of India, 27, Parade Ground, Jammu Tawi — १८० ००१.  
 45. Badminton Association of India, C/o. Jackson Hotel, Civil Line, Jabalpur (MP) — ४२० ००१.  
 46. Board of Control for Cricket in India, Cricket Association of Bengal, Dr. B.C. Roy Club House, Eden Gardens, Calcutta — ७०० ०२१.  
 47. Equestrian Federation of India, 764-B, Gate 29, Jawaharlal Nehru Stadium, New Delhi — ११० ००३.  
 48. Indian Body Building Federation, 1/49, Santokh Mansion, Br. Nath Pai Road, Mazgaon, Mumbai — ४०० ०१०.  
 49. Indian Style Wrestling Federation of India, NIS Wrestling Coach, House No. 1335, Sector-17, Defence Colony, Gurgaon (Haryana).  
 50. Indian Kayaking & Canoeing Association, 606, Akash Deep, 6th Floor, Barakhamba Road, Connaught Place, New Delhi — ११० ००१.  
 51. Roller Skating Federation of India, 14/2, Clive Road, Calcutta — ७०० ००१.  
 52. Shooting Ball Federation of India, S-28, Green Park Extension, New Delhi.  
 53. Amateur Baseball Federation of India, 112/14, Onkar Nagar-8, Trilokpuri, Delhi — ११० ०३५.

After 1st New Advisor

49

ANNEXURE-15

## CHAPTER 32

### COMPASSIONATE APPOINTMENTS

(1) Implementation of the recommendations of the "Study Report on Employment on Compassionate Grounds".— The undersigned is directed to forward herewith a copy of extracts of recommendations made in the "Study Report on Welfare Measures for the Central Government Employees" on Employment on Compassionate Grounds.

Welfare Officers are requested to take action on recommendation No. 4 of the Study Report as and when such cases arise in their respective Ministry/Departments.

(G.I. Dept. of Per. & Trg., O.M. No. 32/498-Welfare, dated the 29th July, 1992.)

#### ENCLOSURE

Recommendations made in the Study Report on "Employment on Compassionate Grounds":— Delay and Harassment — Need for Streamlining Procedures" — (Compiled and Issued in August, 1990)

#### Recommendations

1. The Department of Personnel and Training should revise its instructions so as to define the term 'near relative' and to include a wife or husband or brother or sister of the deceased Government servant as a beneficiary of the scheme of compassionate appointments.
2. The power to relax limit of 5% of direct recruitment vacancies for making compassionate appointments should be vested with the Secretary in the Ministries/Departments of Government of India.
3. The Ministries/Departments should ensure that the compassionate appointments are made on means-cum-merits basis.
4. The Welfare Officer in each Ministry/Department should meet the members of the family of the deceased Government servant immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him.
5. A time norm of 6 to 8 weeks should be fixed for making compassionate appointments.

6. The Department of Personnel and Training should make arrangements for a periodic review of cases of compassionate appointments dealt with the Ministries/Departments with a view to reduce delay and to get feedback on

APR 2009

of prescribing a time-limit for making appointment on compassionate grounds has received due consideration taking into account the ceiling of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post prescribed in this regard in Paragraph 7 (b) *ibid* and the ruling of the Supreme Court that appointment on compassionate grounds can be made only if vacancies are available for the purpose mentioned in Para 17 (d) *ibid*.

Accordingly, it has been decided that the Committee prescribed in Para. 12 *ibid* for considering a request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year, that too within the ceiling of 5% mentioned above. This would ensure grant of compassionate appointment within a year.

The instructions contained in the OM, dated 9-10-1998 [ *Order (2) above* ] stand modified to the extent mentioned above.

[ G.I., Dept. of Per. & Trg., O.M. No. 14014/23/99-Estt. (D), dated the 3rd December, 1999 and O.M. No. 14014/18/2000-Estt. (D), dated the 22nd June, 2001. ]

(4) Time-limit for Compassionate Appointment.— The undersigned is directed to refer to Department of Personnel and Training O.M. No. 14014/6/94-Estt. (D), dated 9-10-1998 and O.M. No. 14014/23/99-Estt. (D), dated 3-12-1999 ( *Orders (2) and (3) above respectively* ) on the above subject and to say that the question of prescribing a time-limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one-year limit prescribed for grant of Compassionate Appointment is often resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% of Direct Recruitment quota.

2. It has, therefore, been decided that if Compassionate Appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for Compassionate Appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if Compassionate Appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.

4. The instructions contained in the above-mentioned OMs stand modified to the extent mentioned above.

5. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.

[ G.I., Dept. of Per. & Trg., O.M. No. 14014/19/2002-Estt. (D), dated the 5th May, 2003. ]

(5) Maintenance of other dependent family members of the deceased Government servant by the appointee.— According to Paragraph 13 of the Department of Personnel and Training Office Memorandum No. 14014/6/94-Estt. (D), dated 9-10-1998 [ *Order (2) above* ] on the above subject, a person appointed on compassionate grounds under the scheme should give an undertaking in writing that he / she will maintain properly the other family members who were dependent on the Government servant / member of the Armed Forces in question and in case it is proved subsequently (at any time) that the family members are being neglected or are not being maintained properly by him / her, his / her appointment may be terminated forthwith. The question of its legal enforceability has been examined in consultation with the Ministry of Law (Department of Legal Affairs) and it has been decided that it should be incorporated as one of the additional conditions in the offer of appointment applicable only in the case of appointment on compassionate grounds.

2. The relevant instructions contained in the aforesaid Office Memorandum, dated 9-10-1998 [ *Order (2) above* ] stand modified to the extent maintained above.

[ G.I., Dept. of Per. & Trg., O.M. No. 14014/6/94-Estt. (D), dated the 20th December, 1999. ]

(6) Secretary of the Administrative Ministry / Department only can terminate the services of a compassionate appointee for non-compliance of any condition in the offer of appointment.— The Department of Personnel and Training, O.M. No. 14014/16/99-Estt. (D), dated 20-12-1999 [ *Order (5) above* ] provides that in the case of compassionate appointment, the offer of appointment should contain a specific condition to the effect that a person appointed on compassionate grounds under the scheme should give an undertaking in writing that he / she will maintain properly the other family members who were dependent on the Government servant / member of the Armed Forces in question and in case it is proved subsequently (at any time) that the family members are being neglected or are not being maintained properly by him/her, his/her appointment may be terminated forthwith. The procedure to be followed in general for such termination particularly, the question whether the procedure prescribed in the Disciplinary Rules/Temporary Service Rules should be followed or not has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It has been decided that such compassionate appointments can be terminated on the ground of non-compliance of any condition stated in the offer of appointment after providing an opportunity to the compassionate appointee by way of issue of show-cause notice asking him/her to explain why his/her services should not be terminated.

28 APR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

ANEXURE-16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI

EP 7/2008 IN Misc Case No. 107/08

in O.A. No. 171 OF 2008

Amar Jyoti Lakhar

...Petitioner/Applicant

Versus-

Union of India & Ors.

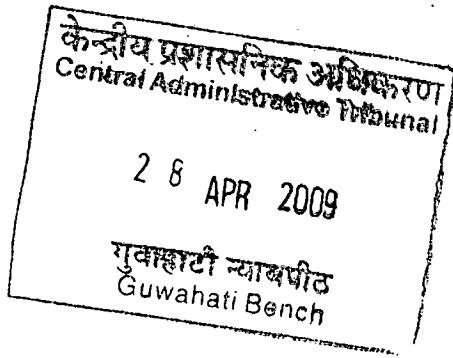
....Respondents

INDEX OF THE WRITTEN STATEMENT

SL. NO.	PARTICULARS	PAGE NO.
1.	Written Statement	3
2.	Verification	4
3.	Annexure- 1 (Copy of the OM dtd. 9.10.98)	5 - 6
4.	Annexure- 2 (Copy of Circular dt. 5.5.03)	7 - 9
5.	Annexure- 3 (Copy of Letter dt. 23.10.08)	10

Attest  
J. K. Baru  
Advocate

c/c



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

EP. NO. 7/2008 IN M/S. Case 10/2008

ID. O.A. NO. 170/2008

SRI Amar Jyoti Bhattacharjee

..... Petitioner/Applicant

-VERSUS-

Union of India & Ors.

.... Respondents

The written statement on behalf of  
the Respondents above named-

WRITTEN OBJECTION OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That a copy of the Execution petition has  
been served upon the respondents and the respondents  
after going through the same has understood thereof.

2. That the respondents beg to state that the  
statement which are not specifically admitted by the  
respondent are deemed to be denied by them.

3. That with regard to the statement made in  
paragraphs 1, 2 and 3 of the execution petition the  
respondents beg to offer no comment as those are matter  
of records and the respondents do not admit anything  
which are not borne out of records.

Contd... P/-

Affidavit  
S. N. Bhattacharjee

1/1.

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

( 2 )

4. That with regard to the statement made in paragraph 4 of the execution petition the Respondents beg to state that Shri Raju Bordoloi has been temporarily appointed to the post of Sepoy. He was in the list of applicants for compassionate appointment. The Respondent No.3 being the Head of Department and the Cadre Controlling Authority is the Competent Authority for approving any case of Compassionate Appointment. The appointment order of Shri Raju Bordoloi was issued by Respondent No.4 after due approval by Respondent No.3. The interviews for Compassionate appointment were held at Shillong only on 13th May, 2008. Placing the applicant at St. No.6 of the list does not confer any legal right for Compassionate Appointment. Compassionate Appointments are governed by DOPTE's O.M. No. 14014/6/94-ESTC (B) dated 09-10-1998 and No. 14014/19/2002-ESTC(B) dated 5.5.2003. DOPTE's circular dated 5.5.2003 provides that the maximum period that any applicant for Compassionate Appointment can be kept pending is 3 (three) years. The Screening Committee for Compassionate Appointment met on 24th March, 2008 and decided that all cases barred by limitation (including that of the applicant) should not be considered in the light of the aforesaid DOPTE's instruction.

This decision was approved by the competent Authority Respondent No.3. There was no vacancy in the grade of LDC while there were only 2 vacancies in the grade of Sepoys at the time of considering the case of appoint-

Contd... P/

9/1.

28 APR 2009

गुवाहाटी न्यायालय  
Guwahati Bench

13  
ment. Accordingly, non-consideration of the applicant's case is on account of observance of the Schemes for Compassionate Appointment laid down by Government of India.

Copy of the OM dated 9.10.1998 is annexed herewith and marked as Annexure-1.

Copy of the DOPT's Circular dated 1.5.2003 is annexed herewith and marked as Annexure-2.

5. That with regard to the statement made in paragraph 5 of the execution petition the Respondents beg to state that the order dated 4th May, 2007 passed by the Hon'ble CAT, Guwahati Bench in O.A. No. 171/2006 did not require that the respondents were to provide Compassionate Appointment to the Applicant as a matter of right. However, due to oversight the respondents did not inform the applicant that his case could not be considered in the light of DOPT's instruction dated 5.5.2003. The position has been corrected and the applicant has now been informed about the reasons for non-consideration of his case. It is submitted that there is no wilful violation of the order dated 4th May, 2007 of the Hon'ble CAT, Guwahati Bench.

Copy of the letter to the applicant dtd. 23.10.08 is annexed herewith as Annexure-3.

6. That with regard to the statement made in paragraph 6 of the execution petition the Respondents beg to offer no comment.

Contd... P/-

9/1.

28 APR 2009

141

गुवाहाटी न्यायपीठ  
Guwahati Bench

VERIFICATION

I, Sri... Rajy... Mr... Thir... S/o... San... Thir...  
aged about 57 years, R/o Brahmapuria, Saptari, Datta Qury, by  
District Tawang... working as ~~State~~ Commissioner Central  
and competent officer of the ~~Ency~~, <sup>Ency</sup> ~~g~~  
answering Respondents, do hereby verify that the state-  
ment made in paras 1, 2, 3 & 6  
are true  
to my knowledge and those made in paras 4, 5  
being matters of record are true to my information  
derived therefrom which I believe to be true and the  
rests are my humble submission before this Hon'ble  
Tribunal.

And I sign this verification on this 8<sup>th</sup> day  
of Dec 2008 at Guwahati.

Signature

C/L.

File in Court on 16/9/09

Court Officer.

-56-

15

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

**O.A no. 78/09**

Sri Amarjyoti Lahkar

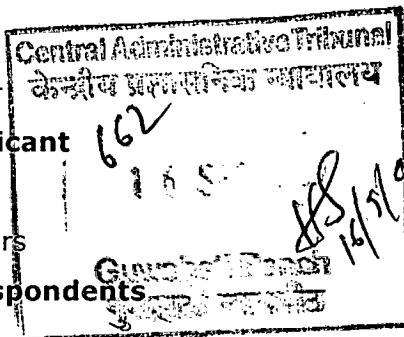
Central Administrative Tribunal  
केन्द्रीय नियन्त्रित न्यायालय

...Applicant 62

-Vs-

Union of India and others

...Respondents



**INDEX**

Sl. No.	Annexure	Particulars	Page no
1.	.....	Written Statement	1-6
2.	.....	Verification	7
3.	1	Copy of the minutes of the meeting of the Standing Committee dated 24.03.08	8
4.	2	Copies of the list of candidates for the post of Sepoy under compassionate ground	9-14
5.	3	Copy of the Office Memorandum dated 05.05.03	15-16

Received  
S.N.D.M. 16/9/09  
Advocate

Filed by:

Mrs. Manjula Das,  
Senior Panel Counsel, UOI,  
CAT, Guwahati Bench.

(57)

Filed by:-  
The Respondent Nos.  
1 to 5

*Heinayogha Rayan Lahkar*  
Sri Lahkar  
Throngor  
Marginal Dms  
H.R. Saha  
Assistant Commissioner  
Central Excise and Service Tax,  
Central Excise and Service Tax,  
Guwahati.

M.O.T  
16/9/09  
28

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

**IN THE MATTER OF:**

O.A no. 78/09

Sri Amarjyoti Lahkar

...Applicant

-Vs-

Union of India and ors.

...Respondents

-AND-

**IN THE MATTER OF:**

Written statement on behalf of Respondent  
nos. 1 to 5

**(WRITTEN STATEMENT ON BEHALF OF RESPONDENT NOS. 1 TO 5)**

I, Sri Heinayogha Rayan Lahkar, S/o Rati Heen Rayan Lahkar,  
aged about 58 years, presently working as Assistant Commissioner, Central  
Excise, Guwahati, Sethi Trust Building, Bhangagarh, Guwahati-781005, do  
hereby solemnly affirm and state as follows:-

1. That I am the Assistant Commissioner, Central Excise, Guwahati and have been impleaded as party Respondent no. 5 in the instant case. A copy of the aforesaid application has been served upon me. I have gone through the same and have understood the contents thereof. I am conversant with the facts and circumstances of the case. I have been authorized to file this Written Statement on behalf of the Respondent nos. 1 to 4.
2. That I do not admit any of the statements save and 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:**

- 3.1 That the father of the applicant, Sri Gokul Chandra Lahkar, was appointed as Sepoy in the Department of Central Excise and Customs in the year 1980.

58  
H. R. Saha  
Assistant Commissioner  
Central Excise and Service Tax,  
Guwahati.

H. R. Saha  
Assistant Commissioner  
Central Excise and Service Tax,  
Guwahati.

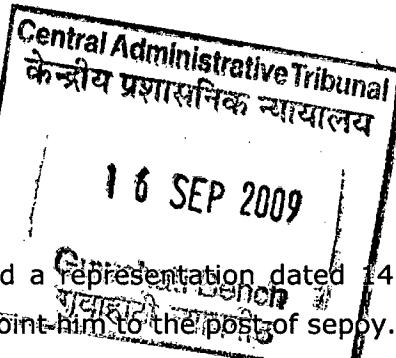
**3.2** That Smt. Renu Bala Lahkar, wife of Sri Gokul Chandra Lahkar, intimated the department about the missing of her husband since 05.01.93 and requested the concerned department to employ her on compassionate ground in the cadre of sepoy.

**3.3** That the department of the humble answering respondent infact in order to relieve the hardship of the family of Sri Gokul Chandra Lahkar, ex-sepoy, engaged Smt. Renu Bala Lahkar, wife of Sri Gokul Chandra Lahkar, as a casual worker since 05.01.94 vide order dated 20.01.94 under no. II/39/3-Accts/90 and is still working in the Central Excise, Guwahati till date.

**3.4** That, in pursuance of her application, Smt. Renu Bala Lahkar alongwith the other applicants was called for interview fixed on 29.9.99 and 30.09.99 to assess the applicants with respect to the financial condition and for verification of the certificates and testimonials, etc. Thereafter she was also called for physical test on 05.11.99 but she was found unsuccessful and not qualified for being appointed as sepoy.

**3.5** That Smt. Renu Bala Lahkar made representation dated 26.07.02 to the Commissioner, Central Excise, Shillong with a request to appoint her son, Sri Amarjyoti Lahkar, the present applicant, on compassionate ground. The respondent authority, thereafter, vide letter dated 11.10.02 issued call letter to the present applicant to appear for physical test at Headquarter Office, Shillong on 28.10.02 and a personal interview on 29.10.02 before the Interview Board at Shillong. The applicant appeared before the Interview Board alongwith the other candidates. However, the case of appointment of the applicant could not be considered due to the limited vacancies. It is to be stated here that there are other deserving candidates in the fray for the compassionate appointment and in the list of candidates for appointment on compassionate ground the name of the other deserving candidates appear above the applicant. As there are only two posts in the grade of sepoy, only two candidates, above the applicant, namely Smt. Ning Singson and Sri Dilip Hatimura, were given appointment for the post of Sepoy, Group D on compassionate ground.

**3.6** That the applicant, thereafter, approached before this Hon'ble Tribunal by filing O.A. No. 171/06 with a prayer for direction to the respondents to appoint the present applicant to the post of sepoy/LDC on compassionate ground. In the said case, this Hon'ble Tribunal was pleased to dispose of the case vide order dated 04.05.07 with a direction to the respondents to consider the case of the applicant as and when vacancy arises and communicate the same to the applicant.



*R. B. Deka*

J. R. Saha  
Assistant Commissioner  
Central Excise and Service Tax,  
Guwahati.

**3.7** That the applicant submitted a representation dated 14.05.07 to the Respondent no. 2 with a prayer to appoint him to the post of sepoys.

**3.8** That in compliance with the Hon'ble Tribunal's order dated 04.05.07, the case of the applicant was placed alongwith others before the meeting of Standing Committee for compassionate appointment in Group D post held on 24.03.08. After careful scrutiny and proper examination of the documents of the candidates, the Standing Committee found that out of 60 candidates in the list, the Sl. Nos. 1 to 51 were found to be barred by limitation as prescribed in the Office Memorandum dated 05.05.03. In the said list, the applicant's name appeared against Sl. No. 6. The Office Memorandum dated 05.05.03 issued by the Government of India, Ministry of Public Grievances and Pensions, Department of Personnel and Training says as follows:

"3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again."

**3.9** That the respondents always respect the Hon'ble Courts/Tribunals' order and obey the orders passed by the Courts/Tribunals.

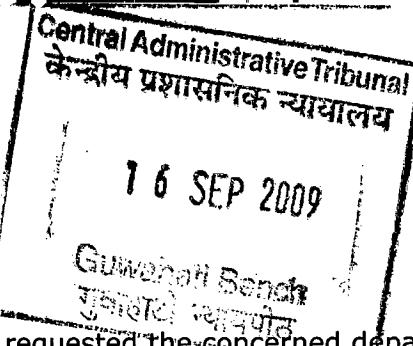
**3.10** That the object of the granting of compassionate appointment is to enable to tide over sudden crisis and to relieve the family of the deceased from financial crisis and to help to get over emergencies. That in the instant case the Central Excise Department i.e. the humble answering respondent has already granted employment as casual worker to Smt. Renu Bala Lahkar, who is still working as such.

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

**4.1** That with regard to the statements made in paragraph 4.1 of the application, the humble answering respondent begs to offer no comment on it.

**4.2** That with regard to the statements made in paragraphs 4.2 and 4.3 of the application, the humble answering respondent has nothing to make comment on it as they are being records of the case.

**4.3** That with regard to the statements made in paragraphs 4.4 of the application, the humble answering respondent begs to state that Smt. Renu Bala Lahkar, wife of Sri Gokul Chandra Lahkar, intimated the department about the



H. R. Safa  
Assistant Commissioner  
Central Excise and Service Tax,  
Guwahati.

79

H. R. Safa  
Assistant Commissioner  
Central Excise and Service Tax,  
Guwahati.

missing of her husband since 05.01.93 and requested the concerned department to employ her on compassionate ground in the cadre of sepoy. In order to relieve the hardship of the family of Sri Gokul Chandra Lahkar, ex-sepoy, the department of the humble answering respondent engaged Smt. Renu Bala Lahkar, wife of Sri Gokul Chandra Lahkar, as a casual worker w.e.f. 05.01.94 vide order dated 20.01.94 under no. II/39/3-Accts/90 and is still working in the Central Excise, Guwahati till date.

Further it is stated that Smt. Renu Bala Lahkar, made representation dated 11.08.98 before the respondent authority for her appointment to the post of sepoy on compassionate ground.

Smt. Renu Bala Lahkar, alongwith the other applicants, was called for interview fixed on 29.9.99 and 30.09.99 to assess the applicants with respect to the financial condition and for verification of the certificates and testimonials, etc. Thereafter she was also called for physical test on 05.11.99 but she was found unsuccessful and not qualified for being appointed as sepoy.

**4.4** That with regard to the statements made in paragraphs 4.5 and 4.6 of the application the humble answering respondent begs to state that Smt. Renu Bala Lahkar made representation dated 26.07.02 to the Commissioner, Central Excise, Shillong with a request to appoint her son, Sri Amarjyoti Lahkar, the present applicant, on compassionate ground. The respondent authority, thereafter, vide letter dated 11.10.02 issued call letter to the present applicant to appear for physical test at Headquarter Office, Shillong on 28.10.02 and a personal interview on 29.10.02 before the Interview Board at Shillong. The applicant appeared before the Interview Board. However, the case of appointment of the applicant could not be considered due to the limited vacancies. It is to be stated here that there are other deserving candidates in the fray for the compassionate appointment and in the list of candidates for appointment on compassionate ground the name of the other deserving candidates appear above the applicant. As there are only two posts in the grade of sepoy, only two candidates, above the applicant, namely Smt. Ning Singson and Sri Dilip Hatimura, were given appointment for the post of Sepoy, Group D on compassionate ground.

**4.5** That with regard to the statements made in paragraphs 4.7 to 4.9 of the application the humble answering respondent reiterates and reaffirms the statements made in paragraph 4.4 of this written statement.

Further it is stated that during 1999 the applicant's mother was given opportunity to appear in the Physical Test-cum-Interview. Similarly the applicant was also called for Physical Test-cum-Interview during 2002.

18 SEP 2009

Guwahati Bench  
गुवाहाटी न्यायालय

R. Saha  
Handwritten

H.R. Saha  
Assistant Commissioner  
Central Excise and Service Tax,  
Guwahati.

**4.6** That with regard to the statements made in paragraphs 4.10 and 4.11 of the application, the humble answering respondent has nothing to make comment on it as they are being records of the case.

**4.7** That with regard to the statements made in paragraphs 4.12 of the application, the humble answering respondent begs to state that in compliance to the Hon'ble Tribunal's order dated 04.05.07, the respondent authority considered the case of the applicant by placing his case before the Standing Committee when the two vacancies arose.

It is to be stated here that this Hon'ble Tribunal vide its judgment date 04.05.07 was pleased to dispose of the O.A. No. 171/06 with a direction to consider the case of the applicant as and when vacancy arises and communicate the same to the applicant without fail.

It is pertinent to mention here that in 2008, against the two vacancies the case of the applicant alongwith others were placed before the Standing Committee and it was found that the applicant alongwith other fifty numbers of candidates were not covered under the prescribed limitation for compassionate appointment. As per the Office Memorandum dated 05.05.08, not only the applicant's case but also of the other candidates could not be considered for appointment against the two vacancies as the maximum time limit for consideration in case of appointment on compassionate ground had expired. The applicant was accordingly intimated vide letter dated 23.10.08 about the inability of the respondent authority to accede to his case as appears as Annexure 14 to the Original Application.

Copy of the minutes of the meeting of the Standing Committee dated 24.03.08 is annexed herewith and marked as  
**Annexure- 1.**

**4.8** That with regard to the statements made in paragraphs 4.13 of the application, the humble answering respondent has nothing to make comment on it as they are being records of the case.

**4.9** That with regard to the statements made in paragraphs 4.14 of the application, the humble answering respondent reiterates and reaffirms the statements made in paragraph 4.7 of this Written Statement.

**4.10** That with regard to the statements made in paragraphs 4.15 of the application, the humble answering respondent begs to state that there was no vacancy for the post of Sepoy in the office of the Central Excise Department under the five percent quota for appointment under compassionate ground between 4.10.02 to 24.03.08. The Office Memorandum on the subject of time limit for making compassionate appointment was issued subsequently on

05.05.03. The said Office Memorandum prescribed the maximum time limit for making compassionate appointment which is three years. It was specifically contained in the Office Memorandum that after three years, if compassionate appointment is not possible to be offered to the candidate, his case will be finally closed.

However, in compliance to the Hon'ble Tribunal's order, the case of the applicant was considered by placing his case before the meeting of the Selection Committee. After proper examination and scrutiny, it was found that the applicant's father went missing since 1993. He made application in 26.07.02. His case was considered and his name appeared in the list of candidates where his name appears against Sl. No. 6. However, as at that relevant time, only two vacancies were present, the case of the applicant could not be acceded. It is to be stated here in compliance of the Tribunal's order dated 4.5.07, his case was considered again on the meeting of the Standing Committee on 24.03.08. However in view of the O.M. dated 05.05.03, the case of the applicant alongwith the others, Sl. Nos. 1 to 51 from the list could not be acceded to.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

16 SEP 2009

Guwahati Bench  
गुवाहाटी न्यायपाल

4.11

That with regard to the statements made in paragraphs 4.16 of the application, the humble answering respondent begs to state that this Hon'ble Tribunal vide order date 04.05.07 was pleased to dispose of the said case O.A. 171/06 with a direction to consider the case of the applicant as and when vacancy arises. In compliance with the Hon'ble Tribunal's order, the case of the applicant was considered alongwith others. However, in the light of the Office Memorandum date 05.05.03 the case of the applicant alongwith fifty other candidates could not be acceded to.

4.12 That with regard to the statements made in paragraphs 4.17 of the application, the humble answering respondent reiterates and reaffirms the statements made in paragraph 4.10 of this Written Statement.

4.13 That with regard to the statements made in paragraphs 4.18 and 4.19 of the application, the humble answering respondent begs to state that it is not correct that the post of sepoy in the Department under quota for compassionate appointment is lying vacant.

4.14 That the instant Original Application has no merit and is liable to be dismissed.

Copies of the list of candidates for the post of Sepoy under Compassionate ground and the Office Memorandum dated 05.05.03 are annexed herewith and marked as **Annexures 2 and 3** respectively.

7 b3'

82

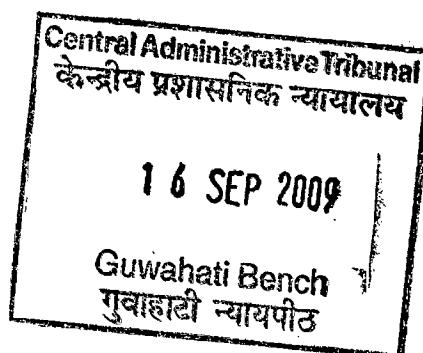
## VERIFICATION

I, Sri. Hemangshree Ray Baruah, S/o Lalit Hara Ray Baruah,  
aged about 58 years, presently working as Assistant Commissioner, Central  
Excise, Guwahati, Sethi Trust Building, Bhangagarh, Guwahati-781005, do  
hereby verify that the statements made in paragraphs  
1, 2, 3'9, 3'10, 4'1, 4'13..... are true to my knowledge and belief, those  
made in paragraphs 3'1 to 3'8, 4'2 to 4'12..... being matters of  
records of the case are true to my information derived therefrom which I believe  
to be true and the rests are my humble submission before this Hon'ble Tribunal.  
I have not suppressed any material facts before the Hon'ble Tribunal,

And I sign this verification on this the 16<sup>th</sup> day of September  
2009 at Guwahati.

Hemangshree Ray Baruah,

**SIGNATURE**  
Assistant Commissioner  
Central Excise and Service Tax,  
Guwahati.





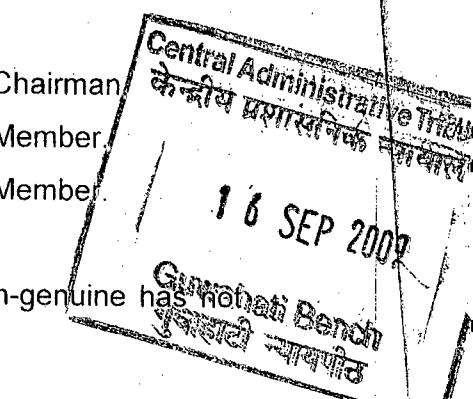
GOVERNMENT OF INDIA  
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE  
MORELLO COMPOUND, M.G. ROAD, SHILLONG - 1.

Tel. 91-0364-2224751 / 2223030. Fax. 91-0364-2223428 / 2226215. E-Mail: cexshill@excise.nic.in

MINUTES OF THE MEETING FOR COMPASSIONATE APPOINTMENT TO GROUP 'D'  
POSTS HELD ON 24.3.2008

1. Today, on 24.3.2008, the following members of the Standing Committee met in the Chamber of the Additional Commissioner, Chief Commissioner's Unit, Shillong for appointment on Compassionate Ground for the post of Sepoy, Group 'D'.
 

1. Shri R.N. Rustagi, Additional Commissioner	Chairman
2. Shri Arvind Madhavan, Joint Commissioner	Member
3. Smt. H.M. Anal, Joint Commissioner (P&V)	Member
2. It is found that monthly scrutiny of cases to filter of genuine / non-genuine has been done in the past.
3. Out of the list of Compassionate requests i.e., till Sl. No. 51 were found to be barred of limitation of 3 (three) years from the month of Oct'07, the first of day on which the meeting of Compassionate Appointment was to be held in view of clauses (f) of the general Guidelines of the procedures of appointment, were not required to be considered.
4. The cases for Sl. No. 52 onwards were taken up but it was found that their financial enquiries and other details verifications were still pending. Therefore, it was decided that such enquiry case from Sl. No. 52-60 may be completed immediately and report to present at the time of next meeting.
5. Those in the list from Sl. Nos. 52 – 60 and have applied for the post of Tax Assistant, their option may also be taken as to whether they would be allowed to be considered for the post of Sepoy at the time of financial verification.



*R.N. Rustagi*  
(R.N. RUSTAGI)  
ADDL. COMMISSIONER

*Arvind Madhavan*  
(ARVIND MADHAVAN)  
JOINT COMMISSIONER

*Copy*  
11/9/08  
अधीक्षक (पी.एस.सी.)  
Superintendent (PLC)  
केन्द्रीय उत्तर शुल्क, नियमित  
Central Excise, Shillong

*M. Anal*  
(H.M. ANAL)  
JOINT COMMISSIONER (P&V)

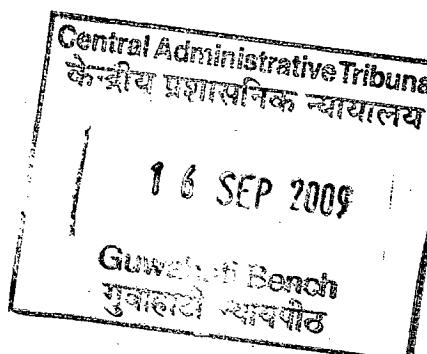
SL. NO.	NAME OF THE DECEASED	DESIGNATION	DATE OF APPLICATION	DATE OF DEATH	NAME OF APPLICANT	THE RELATIONSHIP	EDUCATIONAL RECOMMENDED	DATE OF	REMARKS
							QUALIFICATIONS FOR THE POST	APT., IF ANY	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
✓	Shri Am Narayan Debroy Joshi		05.10.97	19.08.96	Shobha wife	Todd (GN) / Cl-VIII	Debroy passed		
✓	Paramal Ch. Debroy Kar	Asstt.	03.10.97	06.09.97	Pranay son	Kar (GN) / - do -	Debroy		
✓	Manu Ch. Narayan	Driver	18.11.97	23.09.95	Manu wife	Naray (ST) / Cl-IX	Debroy passed		
✓	Birendra Ch. Das	Debroy	20.02.98	24.01.97	Bikash (SC)	Ch. Das / Matriculate	Debroy (1)		
✓	Babul Das	Inspector	18.05.98	25.04.98	Banari / wife	Das (GN) / - do -	Debroy (1)		
✓	Goutam Ch. Debroy	Debroy	24.05.98	05.01.93	Ananya / son	Dakkar (GN) / B.A. H.I.	Debroy (1) passed		
✓	Buddhi Ray Sunar	Debroy	09.05.99	05.10.98	Reena / wife	Sunar (GN) / Cl-VIII	Debroy passed		
✓	R. Pyrthuk	ACAO	02.07.99	09.06.99	Saralya (ST) /	Pyrthuk / Matriculate	Debroy (1)		

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

13 SEP 2009

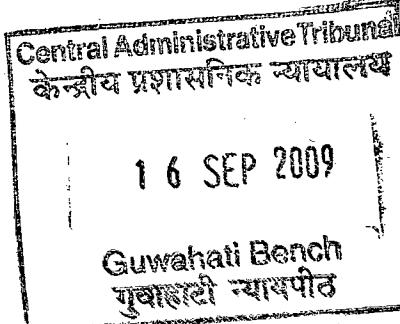
Guwahati Bench  
गुवाहाटी न्यायालय

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
9/ Koj Tatia	Depot.	13.12.99	04.02.99.	Koj Tariung wife		(ST) /	Matriculate	Depoy	
10/ K. Sonowal	Depoy	05.01.2000	17.12.99.	Tirthu (ST) / Son		Sonowal	Cl-X	Depoy	
11/ P. Pungrope	Driver	12.01.2000	22.11.99.	Wakawonki daughter		Samare (ST) / Graduate	T.A. 12		
12/ K. Dimbu	T.A.	18.09.2000	15.02.00	Philomina wife		Walling (ST) /	Cl-VII	Depoy passed	
13/ Blangji Lyngdoh	Depoy	18.10.00	16.10.00	M. Wallang wife		(ST) /	Matriculate	Depoy	
14/ Mileswar Gohain	Depoy	08.11.00	27.07.00	Manoni (GN) /		Gohain	Cl-IX	Depoy passed	
15/ Jyoti Prabha Shitadhar	Depoy	17.11.00	30.10.00	Ronodhar (SC) /		Xitradhar	Matriculate	Depoy	
16/ J.M. Saha	A.O.	14.02.01	27.01.01	Jyotirmoy (GN) /		Saha	Cl-X	Depoy	
17/ Ananda Ch. Bora	A.C.	26.02.01	08.02.01	Manash Bora (ST) /		Jyoti Son	Cl-XII	Depoy passed	
18/ Deben Boruahary	LDC	29.03.01	10.11.00	Mohan (ST) /		Basumatary	B.A. 1 <sup>st</sup> Son	Depoy yr passed	



(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
18/	Asanti Barah	AC	03.04.01	07.07.01	Anypanjali Barah (ST) / daughter	B.I. 1 <sup>st</sup> year Depoy®			
20/	Sil Baladur Lama	LDC	30.04.01	13.12.00	Rati (GN) / son	C. VIII passed	Depoy		
21/	T. Bibisol Singh	Driver	13.06.01	21.05.01	Thokchom Singh (GN) / son	C. XII passed	Depoy®		
22/	G. C. Paul (Hd.)	Subdt.	31.07.01	01.07.01	Lukun Paul (GN) / Matriculate son		Depoy®		
23/	Chandra Ram Barua	Baraldar	04.09.01	04.07.00	Rupa Barua (GN) / wife	C. VIII passed	Depoy		
25/	Dalswanthang	Inspector	18.01.01	29.09.01	Biakmar wife	C. XII passed	Depoy®		
26/	Bulu Delingia	Depoy	24.12.01	04.08.01	Anjali (GN) / wife	C. VIII passed	Depoy		
27/	Smithang Lura Chengkhal (ST)	Depoy	27.01.02	09.07.02	Zonunma-wi (ST) / wife	C. VIII passed	Depoy		
28/	L. Z. Ralte	Driver (ST)	27.03.02	13.03.02	dalmen thani (ST) / wife	Matriculate	Depoy®		
29/	R. B. Chettri (GEN)	Depoy	19.04.02	07.03.02	Maya (GN) / wife	C. VIII passed	Depoy		
30/	N. C. Deb	Depoy	08.07.02	19.05.99	Luchitra (GN) / wife	C. X passed	Depoy		

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
30	Silp Sharma	sepoy	29.07.02	04.06.02	Charotra (GN)	Sharma wife	Cl-IX passed	sepoy	
31	Safal Ch. Dey (GEN)	DAC	16.08.02	24.12.01	Arinika wife	Dey (GN) Matriculate	sepoy		years
32	Kiranjit Pathak (SC)	sepoy	04.09.02	24.06.02	Mayuri wife	Sis (GN)	- do -	- do -	years
33	V. Dalzidanga	Navaldar	03.02.03	05.01.01	Dabrem ma- tive	wia (ST)	Cl-IX son	sepoy passed	years
34	Syongwati Langkumar	IRS	10.02.03	21.08.02	Mativtem wife		la (ST)	Graduate T.A.	closed case
35	S. N. Pati (ST)	DAS-I	05.03.03	07.02.03	Rajesh son	Pati	Matriculate ST	sepoy	copy
36	N. Barnak	AC	10.04.03	04.03.00	Ridep son	Hati Baruah (OBC)	Graduate T.A.		copy
37	Golp Ch. Das (SC)	sepoy	17.08.03	13.01.03	Untaryan daughter	Sis (SC)	Cl-XII passed	sepoy	copy
38	G. Bag Kebui	sepoy	28.10.03	15.01.99	G. Pabin brother	Kabui (ST)	N.A.	sepoy	copy
39	Lekhong Jonthang	sepoy	28.10.03	24.12.98	Holkholing sister		N.A.	sepoy	
40	Priyatosh Ch. Das (GN)	DAS-I	14.11.03	04.03.06	Priyajyoti (GN)	Sher / son	Graduate T.A.		



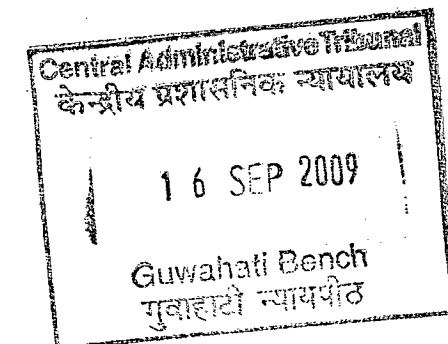
Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

16 SEP 2009

Guwahati Bench  
गुवाहाटी न्यायालय

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
✓ 1. Dambor Shillai	Hawaldar	16.12.03	01.12.03	W. Babu	Syndek	Matriculate	Depoy		
					(ST) wife				
✓ 2. Ebhinda Shabong	SOS-I	01.01.04	10.01.04	R. Kiyati	Shabong (ST)	11-XII	Depoy		
					/ daughter				
✓ 3. S. K. Vidyanta	Driver	05.01.04	09.01.99	Ramanta	Vidyanta (GN)	11-VIII	Depoy		
					/ son				
✓ 4. Ranab Kr. Deb	Hawaldar	15.01.04	19.11.03	Pranab Kr. Deb	Deb (GN)	Matriculate	Depoy		
(GEN)									
✓ 5. B. B. Shapa	Depoy	04.03.04	11.02.97	Gauri	Shapa (GN)	11-VIII	Depoy		
(GEN)					/ sister				
✓ 6. T. Jangkholtsheng	Hawaldar	10.03.04	08.01.04	T. Seimor	They (ST)	Matriculate	Depoy		
					/ son				
✓ 7. Lakshwas Das	G. Operator	26.04.04	16.01.04	Chitra Shanta	Das (SC)	Matriculate	Depoy		
(SC)									
✓ 8. John Banam	Driver	17.05.03	08.02.04	John Banam	(ST) wife	11-XII	Depoy		
✓ 9. Didam Shiemoy	Lab. Att.	28.08.03	02.02.98	Ewakhuw	Shiemoy	11-XII	Depoy		
					(ST) / daughter				
✓ 10. Asok Banowal	Driver	09.07.04	17.09.04	Padmavati	Asok Banowal (ST)	Depoy			
✓ 11. Puspa Mukherjee	Depoy	27.08.04	28.12.98	Kriti	Mukherjee (GN)	11-VIII	Depoy		
(GN)					/ daughter				

16 SEP 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পীঠ

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
52.	Nibash Kanti Barman (Mrs)	Insp.	30.08.04	10.07.89	Jewel Kanti son	Barman	CL-VII	Depoy	
53.	Ganesh Tiwar	4/Haveldar	02.09.04	04.02.04	Deepak Tiwar / son		CL-IX (SC)	Depoy	
54.	Banicharan Bordoloi	Driver	13.10.04	06.03.04	Rajni Bar (ST)	doloi/son	Metric	Depoy <sup>②</sup>	
55.	Amiteva Bhattacharyee	Insp.	01.02.04	03.10.04	Shyamanta / wife	Bhattacharyee	Graduate (GN)	T.A.	
56.	Juba Kanta Chengir	Depoy	09.01.05	01.10.04	Koneng wife	Chengir (ST)	CL-VII	Depoy	
57.	Jarnail Singh	Subinspector	08.02.05	12.01.05	Darshan / wife	Kaur	CL-VIII (GN)	Depoy.	
58.	Jolly Hazarika (JS Adam.)	Insp.	22.03.05	15.12.04	Junita daughter	Hazarika (GN)	Graduate	T.A.	
59.	Bijen Lyngdoh	Insp.	01.04.05	29.05.02	Ibashish ST/ daughter	Lyngdoh	CL-XII	Depoy <sup>②</sup>	
60.	Henkanta Baruah	Loc.	04.04.05	29.12.04	Dipan Baruah / wife		CL-IX GEN	Depoy	
61.	Binoj Debbarma	Depoy	30.05.05	28.05.05	Debanshu son	Debbarma	CL Metric (ST)	Depoy <sup>②</sup>	
62.	H. Haekyi	Insp.	31.05.05	08.02.05	Stephen Ty son	Haekyi ST	Class-XII	Depoy <sup>②</sup>	

Superintendent  
Guwahati Bench  
Central Administrative Tribunal

\*\*\*\*\*  
New Delhi, dated the 5th May, 2003.

OFFICE MEMORANDUM

Subject: Time-limit for making compassionate appointment.  
\*\*\*\*\*

The undersigned is directed to refer to Department of Personnel & Training OM No.14014/6/94-Estt(D) dated October 9, 1998 and OM No.14014/23/99-Estt(D) dated December 3, 1999 on the above subject and to say that the question of prescribing a time limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one year limit prescribed for grant of compassionate appointment is often resulting in depriving genuine cases seeking compassionate

Central Administrative TADDOOMents, on account of regular vacancies not being केन्द्रीय प्रशासनिक न्यायालय available, within the prescribed period of one year and within

16 SEP 2009 the prescribed ceiling of 5% of direct recruitment quota.

2. It has, therefore, been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

certified copy

11/9/09

अधीक्षक (पी.एस.सी.)  
Superintendent (P.S.C.)  
केन्द्रीय उत्तर द्रविड़, निर्माण  
Central Excise, Shillong

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.

4. The instructions contained in the above mentioned OMs stand modified to the extent mentioned above.

5. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय

16 SEP 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

6.

Hindi version will follow.

To

All Ministries/Departments of the Government of India.

Copy to:-

1. The Comptroller and Auditor General of India
2. The Secretary, Union Public Service Commission.
3. Rajya Sabha Secretariat.
4. Lok Sabha Secretariat.
5. All State Governments/Union Territory Administrations.
6. All Attached/subordinate offices under the Department of Personnel & Training/Ministry of Home Affairs.
7. National Commission for SCs/STs, New Delhi.
8. National Commission for OBCs, New Delhi.
9. The Secretary, Staff Side, National Council.
10. The Registrar General, The Supreme Court of India.
11. The Department of Administrative Reforms and Public Grievances, Sardar Patel Bhavan, New Delhi.
12. All Officers/Sections of Department of Personnel & Training.
13. Facilitation Centre, DOP&T - 20 spare copies.
14. Establishment(D) Section (500 copies).

certified copy  
20/9/09

andhra (ए.ए.ए.)  
Superintendent (PLC)  
Andhra State PLT, Panchayat  
and District Parishad, Shillong

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक न्यायालय  
Guwahati Bench  
गुवाहाटी न्यायपीठ  
29/10/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

Title of the case : O.A. No. 78/2009

Shri Amarjyoti Lahkar. : Applicant.

-Versus-

Union of India & Ors. : Respondents.

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.	--	Application	1-5
2.	--	Verification	-6-
3.	A	Copy of judgment and order dated 04.12.06	7-8

Filed By:

S. A. S.

Advocate

Date: - 29.10.09

Recd  
M 29/10/09

24

Filed by the applicant

Lokonghi: S. Nahar  
Advocate  
29.10.2009

23

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

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

In the matter of: -

O.A. No. 78 of 2009

Shri Amarjyoti Lahkar

-Versus-

Union of India & Ors.

-And-

In the matter of: -

Rejoinder submitted by the applicant in reply to the written statements submitted by the respondents.

The applicant above named most humbly and respectfully begs to state as under: -

1. That with regard to the statements made in paragraph 3.3 of the written statement the applicant begs to state that his mother was appointed as casual worker after missing of his father Shri Gokul Chandra Lahkar and her service is not regularised till date. In this connection it is relevant to mention here that respondents did not appoint mother of the applicant on regular basis after submission of her representation on 25.03.1994. However, the respondents appointed many candidates on compassionate ground after appointing the mother of the applicant on casual basis, but the respondents did not regularize service of mother of the applicant for the reasons best known to the respondents. It is stated that although the scheme of compassionate appointment provides for regular appointment on compassionate ground the respondents did not appoint mother of the applicant on regular basis in Gr. 'D' post till date. Therefore it can rightly be

Amar Jyoti Lahkar

20 OCT 2009 a

### Guwahati Bench

गवाहाटी न्यायपीठ

गवाहारी न्या  
said that the respondents deprived the family of missing govt. employee  
Shri Gokul Chandra Lahkar from compassionate appointment since last 15  
years as because appointment on casual basis is no appointment in the eye  
of law. As such respondents have caused serious injustice to the family  
members of the missing ex-Sepoy Shri Gokul Chandra Lahkar during last  
15 years.

It is stated that during last 15 years many persons have been appointed on compassionate ground but the respondents on the one hand denied appointment to the mother of the applicant on regular basis and now denying appointment to the applicant on compassionate ground. Therefore, the Hon'ble Tribunal be pleased to direct the respondents to produce records of the compassionate appointment from the date mother of the applicant first applied for appointment on compassionate ground i.e. from 25.03.1994 for perusal of the Hon'ble Tribunal.

2. That with regard to the statement made in para 3.5, the applicant begs to state that due to denial of appointment on regular basis to the mother of the applicant and also due to her fragile health condition she prayed for appointment of his son i.e. the present applicant on compassionate ground. Be it stated that application for appointment on compassionate ground to a family member of the missing ex-sepoy Shri Gokul Chandra Lahkar is pending before the authority since 1993 but the respondents denied appointment to the mother of the applicant on regular basis and now denying appointment to the applicant. Since appointment on compassionate ground should be on regular basis in terms of scheme of compassionate appointment, therefore there cannot be a genuine case for compassionate appointment than the applicant as because no one from the family of missing govt. employee has been appointed till date taking into consideration the ground that casual appointment is no appointment. As such the respondents have violated very basic spirit of the scheme of compassionate appointment.

3. That in reply to para 3.8 of the written statement applicant begs to state that the Hon'ble Tribunal vide judgment and order dated 04.05.2007 in OA No. 171/2006 directed the respondents to consider appointment of the applicant

Amar Jyoti Lahkar.

29 OCT 2009

Guwahati Bench  
গুৱাহাটী ন্যায়পৌর3  
76'

as and when vacancy arise. It is stated that O.M dated 05.05.2003 was very much in force during pendency of the O.A. No. 171/2006 before this Hon'ble Court but the respondents did not take the ground of O.M dated 05.05.2003 at any point of time in OA No. 171/2006 rather respondents assured before this Hon'ble Tribunal that the applicant shall be appointed as and when vacancy arise. Moreover, the respondents did not approach this Hon'ble Tribunal for review of judgment and order dated 04.05.2007 in OA No. 171/2006 on the basis of condition laid down in O.M dated 05.05.2003, as such the respondents cannot deny appointment of the applicant on compassionate ground taking the condition laid down in O.M dated 05.05.2003.

It is also stated that case of the applicant deserves consideration for compassionate appointment in the light of the judgment and order dated 04.05.2007 passed in OA No. 171/2006 and the O.M dated 05.05.2003 is not applicable in the instant case of the applicant. It is further stated that the applicant prayed for compassionate appointment when O.M dated 05.05.2003 was not in existence. His case, therefore, required to be considered in terms of the rules which was in existence in the year 1993 or in the year 2002.

4. That in reply to para 3.10 of the written statement applicant begs to state that in terms of scheme of compassionate appointment every appointment on compassionate ground should be regular appointment but the respondents appointed mother of the applicant on casual basis for last 15 years and her service has not been regularized till date. Therefore the respondents of their own conduct flouted the spirit of the scheme of compassionate appointment. As such it can rightly be said that great injustice has been caused to the family of missing ex-sepoy Shri Gokul Chandra Lahakar. Therefore the Hon'ble Tribunal be pleased to direct the respondents to appoint the applicant to the post of Sepoy on compassionate basis in place of private respondent No. 6 or against next vacancy.
5. That in reply to para 4.3 written statement the applicant begs to state that her mother was appointed as casual worker which was not regularized by

Amar Jyoti Lahakar.

29 OCT 2009

Guwahati Bench  
गुवाहाटी न्यायालय

4

XX

the respondents since last 15 years and thereby the respondents deprived the family of missing ex-Sepoy Shri Gokul Chandra Lahkar.

6. That in reply to para 4.4 of the written statement the applicant begs to state that after missing of his father, mother of the applicant was appointed on casual basis and since last 15 years she is working on casual basis. It is stated that in the eye of law appointment on casual basis is no appointment and therefore it can be said that no one has been appointed from the family of missing ex-sepoy Shri Gokul Chandra Lahkar. Therefore there cannot be any deserving candidate for compassionate appointment than the present applicant.
7. That in reply to para 4.7 of the written statement the applicant begs to state that the O.M dated 05.05.2003 was very much in force when the O.A No. 171/2006 was decided by the Hon'ble Tribunal but the respondents did not take the ground of O.M dated 05.05.2003 in OA No. 171/2006 and also not filed any review application for review of the judgment and order dated 04.05.2007 passed in OA No. 171/2006. Therefore after passing direction in O.A. No. 171/2006 the respondents cannot take the ground of O.M dated 05.05.2003 to deny appointment to the applicant.

It is further stated that the applicant prayed for compassionate appointment when O.M dated 05.05.2003 was not in existence. His case, therefore, required to be considered in terms of the rules which were in existence in the year 1993 or in the year 2002. In support of his claim the applicant relies upon the decision rendered by the Hon'ble Supreme Court in Civil Appeal No. 5657 of 2006 decided on December 4, 2006 in the case of Abhishek Kumar -Vs- State of Haryana and Ors. [Reported in (2006) 12 SCC 44].

Copy of the judgment and order dated 04.12.06 is enclosed  
herewith and marked as Annexure- A.

8. That in reply to the paragraph 4.10 of the written statement applicant begs to state that the O.M dated 05.05.2003 is not applicable in the instant case of the applicant as because his mother was not appointed on regular basis as

Amar Jyoti Lahkar.

10 OCT 2009 ९८

Guwahati Bench  
गुवाहाटी न्यायपीठ

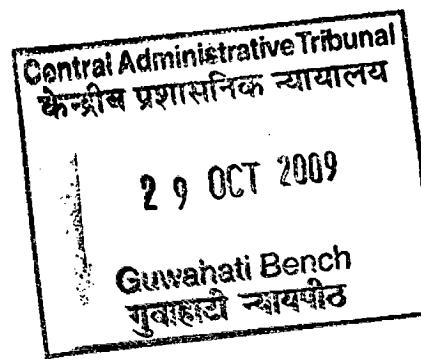
per the scheme of compassionate appointment. It is stated that case of the applicant deserves to be considered in terms of the scheme of 1998.

5  
78

9. That the applicant denies the contention raised in para 4.11 of the written statement and further begs to state that the Hon'ble Tribunal directed the respondents in judgment and order dated 04.05.2007 passed in OA No. 171/2006 to consider the case of the applicant for compassionate appointment as and when vacancy arise. The O.M dated 05.05.2003 was very much in force when the direction was passed by the Hon'ble Tribunal and the respondents did not take the ground of O.M dated 05.05.2003 in OA No. 171/2006, therefore, the respondents are barred by law of estoppel to take the ground of O.M dated 05.05.2003 to deny appointment to the applicant on compassionate ground.
10. That with regard to the statement made in para 4.12, 4.13, 4.14 the applicant begs reiterate the submission made in original application and further prays that the Hon'ble Tribunal be pleased to allow the O.A with the direction to the respondents to appoint the applicant on compassionate ground in place of respondent No. 6 or against the next vacancy.

That in the facts and circumstances stated above the Original Application deserves to be allowed with costs.

Amar Jyoti Lahkar.



VERIFICATION

I, Shri Amarijyoti Lahkar, S/o- Gokul Chandra Lahkar, aged about 25 years, Vill & P.O- Sanakuchi, Dist- Nalbari, Assam, applicant in the instant original application do hereby verify that the statements made in Paragraph 1 to 10 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 28<sup>th</sup> day of October 2009.

Amar Jyoti Lahkar

20 OCT 2009

framed therein as to whether the requirements of Sections 7 and 8 of the Hindu Adoptions and Maintenance Act, 1956 had been complied with or not. It is in that view of the matter, the learned trial Judge opined that the status of the respondent as an adopted son of Smt Jarawali could not be looked into in the said case.

10. Submission of Mr Kapoor that adoption of the respondent is *per se* illegal; in our opinion, has rightly been held by the learned trial Judge to be irrelevant for the purpose of determination of the issues in suit.

11\*. If the respondent could represent the estate of original plaintiff and despite the fact that the appellant had an opportunity to raise the said issue at the stage of determination of the question as envisaged under Order 22 Rule 5 of the Code of Civil Procedure, the same having not been done, such a question cannot be permitted to be raised in the second appeal or before us for the first time.

12. It is now well known that the principle of *res judicata* also applies in different stages of the same proceedings. (See *Bhanu Kumar Jain v. Archana Kumar*<sup>1</sup> and *Ishwar Dutt v. Land Acquisition Collector*<sup>2</sup>.)

13. Once, thus, the respondent was substituted in place of Jarawali, in our opinion, the question of reopening the said question by us does not arise.

14. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. No costs.

(2006) 12 Supreme Court Cases 44

(BEFORE S.B. SINHA AND MARKANDEY KATJU, JJ.)  
ABHISHEK KUMAR  
Guaranti Bench  
Versus  
STATE OF HARYANA AND OTHERS  
Appellant: Respondents.

Civil Appeal No. 5657 of 2006<sup>1</sup>, decided on December 4, 2006  
Service Law — Compassionate appointment — Denial of, on ground of non-existence of vacancy — On death of appellant's father while posted as Kanungo in District Yamuna Nagar, appellant applied for appointment on compassionate ground in Yamuna Nagar or Karnal district — In terms of Statewise list maintained by State of Haryana, appellant was entitled to obtain an appointment on compassionate ground — Although appellant was offered an appointment by the State, District Magistrate concerned refused to provide for the post — Appellant in his written statement categorically to provide for the post — Appellant in his written statement categorically stated that he was ready and willing to join anywhere in the State — Held, when a Statewise list was prepared District Magistrate or any other officer

\* Ed.: Para 11 corrected vide Official Corrigendum No. F.3/Ed.B.J/9/2007 dated 15-2-2007.

<sup>1</sup> (2005) 1 SCC 787

<sup>2</sup> (2005) 7 SCC 190

<sup>†</sup> Arising out of SLP (C) No. 26850 of 2005. From the Final Judgment/Order dated 26-9-2005 of the High Court of Punjab and Haryana at Chandigarh in CWP No. 7957 of 2004

ANNEXURE-A

ABHISHEK KUMAR v. STATE OF HARYANA (Sinha, J.)

could not disobey the order passed by a higher authority — Further, even if no post was available at Karnal, such a post would be available in some other district within the State of Haryana or else such an appointment could not have been made

Appeal allowed

Advocates who appeared in this case :

P.N. Puri and Dhiraj, Advocates, for the Appellant:

Ajay Siwach, Manjit Singh and T.V. George, Advocates, for the Respondents.

b The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted.

2 The appellant's father expired on 10-2-2001 while in office. In terms of the rule, as it was existing then, the appellant was entitled to be appointed on compassionate grounds. An application for such an appointment was filed within two weeks by the appellant from the date of his father's death. Not

c only the appellant was denied appointment in District Yamuna Nagar although his deceased father had been employed as a Kanungo in District Yamuna Nagar, when he sought to be appointed in the district of Karnal, the same was denied to him by the District Magistrate, Karnal inter alia on the plea that there does not exist any vacancy.

d 3. The appellant filed a writ petition before the Punjab and Haryana High Court. Before the said Court, the respondents raised a contention that in the meanwhile the State of Haryana had issued a notification on 28-2-2003 known as "the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003". Rule 9 of the same reads as under:

e "9. (a) Appointments under these Rules shall be made only on regular basis and that too only, if regular posts meant for that purpose are available.

f (b) Appointments under these Rules can be made up to a maximum of 5% of sanctioned posts (falling under direct recruitment quota) in Group C and D categories to be determined by the Head of the Department on the 31st March of each year. The appointing authority may hold back up to 5% of posts in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise, so as to fill such posts by appointment on compassionate grounds.

g (c) A person selected for appointment on ex gratia basis shall be adjusted in the recruitment roster against the appropriate category viz. Scheduled Caste/Scheduled Tribe/Backward Classes/General depending upon the category to which he/she belongs."

h 4. The High Court relying on and on the basis of the said rule dismissed the writ petition filed by the appellant directing the respondents to make the payment of ex gratia amount under the Rules.

i 5. The appellant herein had sought for appointment on compassionate grounds at a point of time when the 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the Rules which were in existence in the year 2001. Evidently, in the State of Haryana a Statewise list is maintained. In terms of the said list so maintained by the

29 OCT 2009

Gauhati Bench  
WHEELS INDIA LTD.

(2006) 12 Supreme Court Cases 46  
BEFORE DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.  
Appellant:  
INDIA LTD.

Versus

Respondents.

Civil Appeals No. 5095 of 2006<sup>†</sup> with No. 5096 of 2006<sup>‡</sup>  
decided on November 17, 2006

Labour Law — Industrial Disputes Act, 1947 — S. 10 — Termination —  
SLP filed against order of reinstatement — Meanwhile, amicable settlement  
arrived at between the parties during pendency of instant appeals — Hence,  
appeals disposed of in terms of and as per settlement (Paras 3 and 4)  
P.M/A/35347/SL 9

Advocates who appeared in this case :  
Rajesh K. Khanna, Senior Advocate (Raj Birbal, Dr. Rashmi Khanna, Ms Shailja  
Sinha, Ms Jahanvi Wohra and Surya Kant, Advocates, with him) for the Appellant;  
T. Mahipal, Pradeep Misra and Anurag Singh, Advocates, for the Respondents.

<sup>†</sup> Arising out of SLP (C) No. 15838 of 2005. From the Judgment and Order dated 15-4-2005 of the High Court of Judicature at Allahabad in CMWP No. 2732 of 2003 : 2005 ALJ 2192

<sup>‡</sup> Arising out of SLP (C) No. 15848 of 2005

66  
State of Haryana, the appellant was entitled to obtain an appointment on compassionate grounds. He was offered such an appointment by the State. It was the District Magistrate who came in the way and refused to provide for a post.

6. The High Court unfortunately failed to consider this aspect of the matter.

7. When a Statewise list is prepared, it does not lie in the mouth of a authority-in-charge, be it a District Magistrate or any other officer, to disobey the order passed by a higher authority. Furthermore, there might not be any post available at Karnal but there cannot be any doubt or dispute that such a post would be available in some other district within the State of Haryana as otherwise such an appointment could not have been made. The appellant in his written statement has categorically stated that he is ready and willing to join anywhere in the State of Haryana.

8. Before us the State has not filed any counter-affidavit. The District Magistrate of Karnal has done so and before us also only the pleas which were raised before the High Court have been raised.

9. For the reasons aforementioned, we are not inclined to accept the said pleas of Respondent 4. We, therefore, allow this appeal and set aside the judgment of the High Court. The Department of Personnel, State of Haryana is directed to issue an appointment letter posting the appellant to any post within the State of Haryana as per his original seniority within four weeks from the date of receipt of copy of this order.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J.—Leave granted. Heard both sides.

a 2. The appellant in these appeals is M/s Wheels India Ltd. and the respondents, namely, Shanker Lal and Om Prakash are employees of the appellant. Notice was ordered in these matters on 16-8-2005. During the pendency of the proceedings in this Court, both the respondent workmen in these appeals have amicably settled the disputes with the management. The settlement and the receipts issued by the respective workmen were placed before the Assistant Labour Commissioner, District Panchayat Premises, Court Road, Moradabad. The various issues and the terms arrived at the settlement are as under:

*"Statement of the dispute"*

Due to the failure of conciliation between M/s Wheels India Ltd., Tada Badali, Rampur and workman Shri Om Prakash, s/o Shri Ghansiram, before the Conciliation Officer regarding the dispute of termination of the services vide letter dated 22-2-2001, the dispute was referred to the Labour Court, Rampur for its adjudication. The Court decided the case vide Case No. 101 of 2001 dated 13-5-2002 and passed an award which was published on 20-9-2002. It was held in the award that the termination of services dated 22-2-2001 is against the law and held that the employee should be reinstated on his post and wages from the date of joining should be given. The employer has filed a writ petition challenging the award in the Hon'ble Court, which was dismissed by the Hon'ble Court. Thereafter in order to maintain industrial peace, both the parties held talks on various issues and arrived at a settlement on the following terms:

e 1. The workman informed the Labour Court that at the time of termination he was getting Rs 4100/- as wages when he was in the service of the management from 1-10-1986.

f 2. The workman due to some personal reasons did not want to continue his job in the office and the same was informed to the management and the management has no objection to this.

g 3. Keeping in view the regular service of the workman, the management is agreeable to pay him gratuity and as per the terms of the award, the total amount of earned wages, and earned leave due from the date of publication of award.

h 4. That the management is paying to the workman vide Cheque No. 0209181 dated 6-9-2005, Cheque No. 0209182 dated 6-9-2005 and Cheque No. 0209183 dated 6-9-2005 a total amount of Rs 4,95,000 (Rupees four lakhs ninety-five thousand only) which is inclusive of gratuity, earned leave and wages from the date of publication of the award till this day dated 6-9-2005.

5. That on the said paid amount approximately 1,44,000 (Rupees one lakh forty-four thousand only) of income tax is payable as per rules and employer is ready to deposit the said income tax amount on