

A

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI - 5

(DESTRUCTION OF RECORD RULES, 1990)

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83/09  
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SECTION OFFICER (JUDL.)

*23/7/2015*

*22.7.2015*

FROM NO. 4  
( See Rule 42 )

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:**

**ORDERSHEET**

1. Original Application No.: 83/2009

2. Mise Petition No 44109

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

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

Applicant(s) Pradip Kr. Chaudhury

Respondant(s) Mr. O. I. Gray

Advocate for the Applicant(s): M. Chandra

S. Nairn, Ms. L. Dutton

Advocate for the Respondant(s): cas

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 50/- deposited vade IPO/BD No. 896/40533/</p> <p>Dated.....7.5.09</p> <p><i>Dy. Registrar</i> 7.5.09</p>	08.05.2009	<p>Issue notice to the Respondents (both in O.A.No.83 of 2009 and M.P.No.44 of 2009) requiring them to file their written statement and objection by 23.06.2009.</p>
<p>Restitution is being for some notices were received without envelopes. Copy served.</p> <p><i>7.5.09</i> <u>80 (5)</u></p>		<p>A copy of this O. A. No.83 of 2009 and M.P.No.44 of 2009 have already supplied to Mr. M. K. Boro, learned Addl. Standing Counsel appearing for the Government of India. He also undertakes to inform the Respondents and to file their written statement by the date fixed.</p> <p><i>M.R. Mohanty</i> M.R. Mohanty Vice-Chairman</p>
I.M.		
<p>Given a copy of the order 8/6/09.</p> <p><i>M. K. Boro</i></p>		

Received a copy of the order  
at 878/09.

18/09 -  
Minal Kumar Bed  
Add. Case

13/5/09

OA.83/09

23.06.2009

copies of notices  
along with order  
dated 8/5/09 and  
MP No-44/09, OA 83/09  
sent to D/Sec.-box  
issuing to R-1 to 5  
by regd-A/ID post.

C/c  
19/5/09 D/t = 19-5-2009

/bb/

No written statement has yet been

filed by the Respondents. On the request of  
Mr.G.Baishya, learned Sr. Standing counsel for  
the Respondents, call this matter on  
06.08.2009 awaiting written statement from  
the Respondents.

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

  
(M.R.Mohanty)  
Vice-Chairman

22-6-09  
No w/s filed

b/

K-Das

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

  
22/6/09

06.08.2009 Mrs. U.Dutta, learned counsel  
appearing for the Applicant is  
present. No written statement has  
yet been filed by the Respondents in  
this case.

Call this matter on  
09.09.2009 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

Copies of order  
dated 23/6/09  
sent to D/Sec.-  
box issuing to  
respondents by  
regd-A post.

C/c  
24/6/09 D/t = 26-6-09

No w/s filed

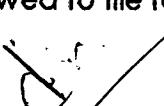
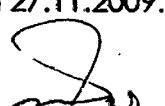
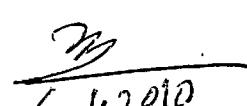
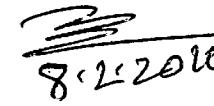
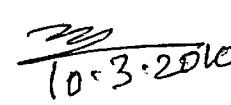
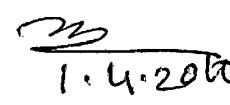
3  
5.8.09.

Copies of order dt. 6/8/09  
sent to D/Sec. for issuing  
to resp. by post.

C/c  
10/8/09 D/t = 10-8-09

Notes of the Registry	Date	Order of the Tribunal
W/S filed. <u>8.9.2009</u>	09.09.2009	Notices sent to Respondent No.5 has come back un-served. Applicant to take steps by Monday/the 14.09.2009.
<u>M. Das</u> Fresh Notice send to Respondent No.5 in the address to be supplied by the Applicant. <u>9/9/09</u>		Registry to issue fresh notice to the Respondent No.5 (in the address to be supplied by the Applicant) which is undertaken to be done by 14.09.2009. The said Respondent No.5 may be asked to file the written statement by 30.10.2009.
Copy of fresh notice along with order dt. 9/9/09 sent to D/Sec. for issuing to the resp. no.5 by regd-A/D post. D/No. 11386- <u>17/9/09, Dt. 18/9/09</u> <u>8/10/09</u>	/bb/ 30.10.2009	No written statement has yet been filed by the other Respondents in this case. On the prayer of Mr.M.K.Boro, learned Addl. Standing counsel, <u>call this matter on 30.10.2009 awaiting written statement from the Respondents.</u>
W/S filed by Respondents through Mr.M.K.Boro, Addl. CGSC. <u>8/10/09</u>		<u>J.</u> (M.K.Chaturvedi) Member (A)
W/S filed. <u>29.10.09</u>		<u>Y</u> (M.R.Mohanty) Vice-Chairman
		In terms of order dated 09.09.2009 fresh notice was issued to Respondent No.5 on 18.09.2009 by Speed Post. Neither the notice nor AD has been received though 30 days time has passed.
		In the given circumstances, under the provision of CPC service is presumed to have been complete on Respondent No.5. None appears for Respondents.
		Reply has been filed by Respondent on 17.10.2009 which has been made available to Applicant only on 23.10.2009.

Contd...

Notes of the Registry	Date	Order of the Tribunal
<u>10.11.09</u> Fresh Notice received back again from Respondent No.5 as un-served.	Contd. 30.10.2009	In the circumstances Applicant is allowed to file rejoinder. List on 27.11.2009.   (Madan Kumar Chaturvedi) Member (A)  (Mukesh Kumar Gupta) Member (J)
<u>No rejoinder filed.</u>   <u>26.11.09</u>	26.11.2009	Learned counsel for Applicant prayed four weeks time to file rejoinder.  List this case for hearing on 07.01.2009.   (Madan Kumar Chaturvedi) Member (A)
<u>No rejoinder filed.</u>   <u>6.1.2010</u>  Rejoinder filed by the Applicant through his L/Advocate. Copy served. <u>8.1.2010</u>	/pb/	7.1.2010 Rejoinder has been filed. Pleadings are complete. List the matter for hearing on 9.2.2010.   (Madan Kumar Chaturvedi) Member (A)  (Mukesh Kumar Gupta) Member (J)
<u>The case is ready for hearing.</u>   <u>8.2.2010</u>	/lm/	09.02.2010 List the matter on 11 <sup>th</sup> March 2010.   (Madan Kumar Chaturvedi) Member (A)
<u>The case is ready for hearing.</u>   <u>10.3.2010</u>	/PB/	11.03.2010 List before Division Bench on 05.04.2010   (Mukesh Kumar Gupta) Member (J)
<u>The case is ready for hearing.</u>   <u>1.4.2010</u>	/pb/	

05.04.2010

It is stated that Mr.M.Chanda, learned counsel for the Applicant is unable to attend the Court for his personal difficulty.

List the matter on 29.4.2010

(Madan Kr. Chaturvedi)  
Member (A)

(Mukesh Kr. Gupta)  
Member (J)

Im

The case is ready  
for hearing.

28.4.2010

29.04.2010

At the outset it was brought to our notice that because of apparent conflict between the decisions of Apex Court in Dev Dutt vs. Union of India & Ors. 2008 (8) SCC 725 on the one hand and Satya Narayan Shukla vs. Union of India 2006 (9) SCC 69 and K.M.Mishra vs. Central Bank of India & Ors. 2008 (9) SCC 120, the matter regarding communication of adverse ACR/ downgradation of ACR has been referred to Larger Bench in SLP (C) No.15770/2009 Union of India vs. A.K.Goel & Ors.

Reviewed copy of  
order dt. 29/04/10.

Minakshi Kumar Bhu.  
Adv.  
16/05/10

In view of the above and as one of the issues raised in present case is whether applicant's alleged adverse ACR ought <sup>not</sup> to have been taken into consideration, hearing of present case is deferred till decision in the aforesaid case. Adjourned sine die. Parties are advised to revive the matter on the decision of aforesaid case.

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

/bb/

6-  
O.A. No. 83 of 2009

09.05.2012

Mrs.U.Dutta, learned counsel for the

applicant appeared before us and submitted that the decision rendered by the Apex Court in the case of **Abhijit Ghosh Dastidar vs. Union of India & Ors**, reported in (2010) 1 SCC 1&S 959 resolved the controversy. As such, the matter may be taken up for early hearing. Mr.Kankan Das, learned Addl. C.G.S.C. prayed for some time to produce the records.

List the matter for hearing on 18.05.2012.

11-5-2012

Memorandum of appearance  
filed by Mr. K. K. Das,  
Addl. C.G.S.C.

WY

/bb/

(Manjula Das)  
Member (J)

(M.K.Chaturvedi)  
Member (A)

18.05.2012

For the reasons recorded separately,  
the O.A. stands allowed. There will be no order  
as to cost.

24.5.12

Order copy issued  
to the parties vide  
No. 1289-1294  
Dtd. 24-5-12

PB

(Manjula Das)  
Member (J)

(Madan Kumar Chaturvedi)  
Member (A)

order received  
25/5/2012

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI:

Original Application No. 83 of 2009

Date of Decision 18.05.2012

Shri P.K. Choudhury  
.....

Applicant/s

Mr. M. Chanda  
.....

Advocate for the  
Applicant/s

- Versus -

U.O.I. & Ors.  
.....

Respondent/s

Mr. K.K. Das, Addl. CGSC  
.....

Advocate for  
the Respondents

**CORAM:**

**HON'BLE MR. MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER**

**HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER**

1. Whether reporters of local newspapers may be allowed  
to see the Judgment ?

Yes/No

2. Whether to be referred to the Reporter or not ?

Yes/No

3. Whether their Lordships wish to see the fair copy  
of the Judgment ?

Yes/No

Judgment delivered by

*Chalukya*  
Member (A)

A

**CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH**

Original Application No. 83 of 2009

Date of Order: This, the 18<sup>th</sup> Day of May, 2012

HON'BLE MR. MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

HON'BLE SMTI MANJULA DAS, JUDICIAL MEMBER

Shri P.K. Choudhury  
Ex-Jt. Area Organizer, SSB  
Village – Santipur, Ward No.5  
Near Hindi High School  
P.O. – Rangia, Bhutan Road  
Dist – Kamrup, Assam.

...Applicant

By Advocate: Mr. M. Chanda

-Versus-

1. The Union of India  
Represented by the Secretary  
To the Government of India  
Ministry of Home Affairs  
North Block, New Delhi – 110001.
2. The Directorate General, SSB  
East Block – V, R.K. Puram  
New Delhi – 110066.
3. Assistant Director  
East Block – V  
R.K. Puram, New Delhi – 110066.
4. Deputy Inspector General  
SSB Kheri West at Palia  
Dist – Lakhimpur Kheri, Uttar Pradesh.
5. Smti. Sushila Sharma  
Area Organizer  
Birpur Area, SSB  
FTR Hqrs, SSB, P.O. – Patna, Bihar.

...Respondents

By Advocate: Mr. K. Das, Addl. CGSC.

D/

ORDER (ORAL)MADAN KUMAR CHATURVEDI, MEMBER (A):

By this O.A., applicant makes a prayer to issue direction to the respondents to hold the review DPC to consider his promotion to the cadre of Area Organizer, ignoring the downgrading un-communicated ACR and further be promoted to the cadre of Area Organizer with all consequential benefit at least from the date of promotion of his junior i.e. respondent no. 5.

2. Applicant was initially joined as Circle Organizer in the Special Security Bureau (SSB) on 17.04.1976. Thereafter, vide order dated 20.02.1987, he was promoted to the post of Sub-Area Organizer w.e.f. 20.02.1987. The next higher post in the hierarchy is the post of Joint Area Organizer which is to be filled up by promotion from amongst the Sub-Area Organizer who have completed six years service in the grade and have successfully passed the Executive Officers Training Course. After completing six years service, applicant became eligible for promotion to the next higher post i.e. Area Organizer in 1993. The DPC was held on 18.12.1997 for considering the names of the eligible Sub-Area Organizer for promotion to the post of Joint Area Organizer. Applicant was well within the zone of consideration. Accordingly, his name was considered by the DPC but his name was not recommended for promotion on the alleged ground that there had been some adverse remarks in the applicant's ACR w.e.f. 01.04.1995 to 20.07.1995 and hence the persons junior to the applicant were promoted.

3. Mr. M. Chanda, learned counsel for the applicant appeared before us. Respondents were represented by Mr. K. Das, learned Addl. CGSC.

4. Reliance was placed on the decision of the Hon'ble Apex Court rendered in the case of **Abhijit Ghosh Dastidar Vs. Union of India (2009) 16 SCC 146**. Learned counsel also invited our attention on para 15 and 22 of the written statement filed by the opposite party. It is mentioned at para 15 that the applicant was not recommended for promotion to the rank of Area Organizer by the DPC held on 20.10.2005 due to non attending the prescribed bench mark.

5. It was further stated in the written statement that as per the instructions in vogue at that particular point of time, no ACRs other than adverse entries were required to be communicated to the Government servant. In the case of **Abhijit Ghosh Dastidar Vs. Union of India (2009) 16 SCC 146** at para 8, Hon'ble Supreme Court has held that - "Non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution." The same view has been reiterated in the case of **Dev Dutt Vs. Union of India and Ors. (2008) 8 SCC 725**. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade.



6. In the facts of the present case, respondents admitted in the written statement that the appellant had <sup>never</sup> been informed of the nature of the grading given to him. We, therefore, respectfully following the precedents, direct the respondents to hold the review DPC to consider promotion of the applicant to the cadre of Area Organizer, ignoring the downgrading un-communicated ACR as per the ratio laid down in the light of **Abhijit Ghosh Dastidar (Supp)** with all consequential benefits.

7. In the result, O.A. stands allowed. There will be no order as to cost.



(MANJULA DAS)  
JUDICIAL MEMBER

PB



(MADAN KUMAR CHATURVEDI)  
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GHY 27

It is prayed that I may be  
permitted to do the following  
matter tomorrow, i.e on

08.05.09.

O.A. NO. — /09

P. K. Choudhury - VS - U.O.I

Alam  
08/05/09

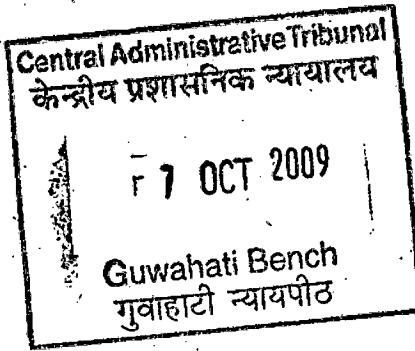
Dutta  
07.05.09

DISTRICT:

32

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:**

**GUWAHATI BENCH AT GUWAHATI**



**O.A NO. 83/2009**

**IN THE MATTER OF:**

Sri P.K. Choudhury

..... Applicant

-VS-

**Union of India & others**

..... Respondents

-AND-

**IN THE MATTER OF:**

A written statement on behalf of the Respondents

**WRITTEN - STATEMENT**

Written statement on behalf of the Respondents

**MOST RESPECTFULLY SHOWETH**

1. That I am Nilambar Buragohain, S/O late Mohan Chandra Buragohain, resident of A-10, Games village, Guwahati, working as Deputy Inspector General, Frontier HQ Sashastra Seema Bal (SSB) Guwahati, in the instant O.A. No. 83/2009. I have been impleaded as Respondent No.2. I have gone through a copy of the Original Application served on me and have understood the contents thereof. Being well conversant with the facts and circumstances of the case and I am competent to swear this Written Statement on my behalf as well as for all the respondents.

I hereby undertake  
to serve this copy  
upon the counsel  
for the applicant  
during the course  
of the day.

Nilambar Buragohain  
Addl. C.A.S.C.

6/10/09

Dy. Inspector General  
Ftr. HQ. SSB, (MHA)  
Guwahati.

Filed by the Respondents

Through me

Guwahati Bench

6/10/09

7 OCT 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

2. That save and except those statements made in the Original Application, which are specifically admitted herein below, the rests not being admitted should be treated to have been denied by the deponent hereto. The deponent also does not admit anything which is contrary to and inconsistent with the records of the case.
3. That the statements made in Paragraph- 1 of the Original Application are incorrect and hence denied. The deponent begs to state that outcome of the review DPC conducted in compliance of order 18.06.01 of the Hon'ble CAT Bench Guwahati in O.A. 262 of 1999 was intimated to the applicant vide Memo. dated 18.09.2001, receipt of which was duly acknowledged by the applicant vide his receipt dated 26.09.01. In fact the applicant in a bid to mislead the Hon'ble court has knowingly quoted the memo dated 01.02.2007 which in fact was issued while disposing his representation dated 20.11.06 in which too contents of memo dated 18.09.2001 were reiterated, just to evade the inordinate delay in adjudicating the matter which being time barred is covered under the provisions of delay and latches. Accordingly the delay in adjudicating the matter works out to be for a period of 7 years and 8 months and not for 454 days as worked out by the applicant in his application for condonation of delay.
4. That with regard to the statements made in paragraph- 2 of the Original Application the deponent have no comments.
5. That the statements made in paragraph - 3 of the Original Application are not admitted and are contrary to the facts of the case. The applicant has not come with clean hands before the Hon'ble Court and has tried to mislead the Hon'ble court by quoting wrong facts as mentioned in para- 3.
6. That with regards to the statement made in paragraph- 4.1 of the Original Application the deponent begs to state that the applicant

  
Dy. Inspector General  
Attr. HQ. SSB, (MHA)  
Guwahati.

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7 OCT 2009

-3-

Guwahati Bench

গুৱাহাটী ন্যায়পীঠ

Shri P.K. Choudhury, Joint Area Organiser, SSB-Falakata-retired from Government service on superannuation on 30.06.2008 (AN) and not in the month of August 2008 as mentioned in the OA.

7. That, with regard to the statements made in paragraph- 4.2 of the Original Application, the deponent have no comments and do not admit anything which is contrary to and / or is inconsistent with the records.
8. That with regard to the statements made in paragraph – 4.3 of the Original Application, the deponent begs to state that the DPC for promotion to the rank of Joint Area Organiser was held on 21.01.1998 and 07.08.1998 instead of 18.12.1997. The case of the applicant for promotion to the rank of Joint Area Organizer (herein after called as JAO) was also considered by the DPCs but he was not recommended for promotion.
9. That with regard to the statements made in paragraph- 4.4 of the Original Application, the deponent begs to state that the applicant while holding the post of Sub Area Organiser (hereinafter called as SAO) filed an OA No. 262 of 1999 in Hon'ble CAT Guwahati for promotion to the rank of JAO. The said O. A. was disposed off by the Hon'ble CAT Guwahati vide its order dated 18.06.2001 directing the respondents to held a review DPC for considering the claim of the applicant for promotion from SAO to the post of JAO within a period of 03 months from the date a copy of order is filed.

The deponent further begs to state that in compliance of the said orders of Hon'ble CAT, Guwahati, dated 18.06.2001 a review DPC was held on 22.08.2001 to consider the promotion of the applicant. The review DPC held on 22.08.2001 reviewed the minutes of the DPC held on 21.01.1998 and 07.08.1998 for promotion of SAO and considered the case of applicant on the basis of records. The review DPC graded him a 'Good' only whereas SAO junior to him who superseded him in the DPC held



Dy. Inspector General  
Ftr. HQ. SSB, (MHA)  
Guwahati.

on 21.01.1998 and 07.08.1998 were graded as 'Very Good'. The review DPC did not find the applicant fit for promotion to the rank of JAO, even after expunging the adverse remarks in his ACR for the year 1995-1996. The out come of review DPC was duly intimated to the applicant vide office Memorandum No. 35/SSB/A2/99(3)-2588-89 dated 18.09.2001. Therefore, the contention that the respondents were silent regarding the out come of review DPC is not correct. The applicant is thus misleading the Hon'ble court and his contentions are baseless.

10. That, with regards to the statements made in paragraph- 4.5 of the Original Application, the deponent begs to states that as stated above, in compliance with the judgment of this Hon'ble Court dated 18.06.2001, a review DPC was convened on 22.08.2001. The review DPC did not recommend the name of applicant for promotion to the rank of JAO and the outcome of said review DPC was conveyed to the applicant vide Memorandum dated 18.09.2001 which was acknowledged by him on 26.09.2001. It is admitted that the applicant was promoted to the rank of JAO along with his junior Smt. Sushila Sharma vide order dated 15.07.2002.

11. That, with regards to the statements made in paragraph – 4.6 of the Original Application, the deponent begs to states that the applicant with others was considered for promotion to the rank of JAO by the DPC held on 21.01.1998 and 07.08.1998 but he was not recommended by the DPC. The review DPC convened on 22.08.2001 also did not recommend his name for promotion as he failed to attain the required bench mark. After being found fit in all respect he was promoted to the rank of Joint Area Organiser in 2002 as per recommendation of the subsequent DPC. Thus the applicant has never been deprived from his legitimate promotion but for his unsuitability he could not be promoted earlier.

7 OCT 2009

Guwahati Bench  
गुवाहाटी न्यायपोर्ट

12. That, with regards to the statements made in paragraph – 4.7 of the Original Application, the deponent begs to states that the DPCs for promotion are convened every year if the existing / anticipated vacancies exist in a particular grade / cadre. No DPC for promotion of SAO's to the rank of JAO was convened on 18.12.1997. However his name was considered for promotion to the rank of JAO by the DPCs held on 21.01.1998, 7.8.1998 and review DPC held on 22.08.2001 but he was not recommended for promotion. Thereafter, the DPC for promotion of SAO to JAO was held on 16.04.2002 in which the applicant was considered and recommended for promotion.

13. That, with regards to the statements made in paragraph – 4.8 of the Original Application, the deponent begs to state that the name of the applicant is above the name of Smt. Sushila Sharma, JAO as per the seniority list of JAOs as on 01.01.2005 circulated vide Force Hqrs. SSB Memorandum dated 25.01.2005 and his junior Smt. Sushila Sharma was promoted to the rank of Area Organiser by superseding the applicant as he was not recommended for promotion by the DPCs.

That, the deponent further begs to state that on 20.10.2005 a DPC was held to consider promotion of Joint Area Organisers to the rank of Area Organiser in which the applicant along with others was considered. The DPC did not recommend the name of the applicant for promotion to the rank of Area Organiser as he could not make required benchmark. Whereas the name of his junior Smt. Sushila Sharma, JAO who secured required benchmark was recommended for promotion to the rank of Area Organiser by the same DPC and accordingly she was promoted to the rank of Area Organiser vide SSB HQrs. order dated 02.03.2006 by superseding the applicant.

14. That, with regards to the statements made in paragraph – 4.9 of the Original Application, the deponent have no comments unless

  
Dy. Inspector General  
Ftr. HQ. SSB, (MHA)  
Guwahati.

7 OCT 2009

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Guwahati Bench

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contrary to records and the deponent begs to states that Smt. Sushila Sharma, JAO was promoted to the rank of Area Organiser by superseding the applicant as per recommendations of the DPC due to unsuitability of the applicant for promotion.

15. That, with regards to the statements made in paragraph - 4.10 of the Original Application, the deponent begs to states that the applicant submitted a representation dated 19.03.2006 for his promotion to the rank of Area Organiser, and against the promotion of his Junior Smt. Sushila Sharma, JAO to the rank of Area Organiser by superseding him. As already stated the applicant was not recommended for promotion to the rank of Area Organiser by the DPC held on 20.10.2005 whereas the name of his junior Smt. Sushila Sharma, JAO was recommended for promotion to the rank of Area Organizer by the same DPC. A suitable reply was given to the applicant through DIG, Frontier HQrs. Lucknow vide this office Memo. No. 7/SSB/A2/2004. (2) - 6820 dated 10.08.2006. As per the instructions in vogue at that particular point of time, no ACRs other than adverse entries was required to be communicated to the Government servant.

16. That, with regards to the statements made in paragraph - 4.11 of the Original Application, the deponent begs to states that contents of the same has been replied upon in the preceding paras which is reiterated here for the sake of brevity.

17. That, with regards to the statements made in paragraph - 4.12 of the Original Application, the deponent begs to states that the applicant submitted his representation dated 20.11.2006 for implementation of judgment order dated 18.06.2001 passed by the Hon'ble Court, and to consider his promotion to the rank of Area Organiser with effect from the date of promotion of Smt. Sushila Sharma, Area Organiser who was junior to him in the rank of Joint Area Organiser. It is reiterated that in compliance of the order of this Hon'ble Court order dated 18.06.2001, a review DPC was held on 22.08.2001 to consider the promotion of the

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Dy. Inspector General  
Ftr. HQ. SSB, (MHA)  
Guwahati.

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Guwahati Bench

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applicant from the rank of SAO to JAO but his name was not recommended for promotion by the review DPC. As regards his supersession by Smt. Sushila Sharma, Area Organiser, the name of applicant for promotion to the rank of Area Organiser was not recommended by the DPC held on 20.10.2005 whereas the name of his junior Smt. Sushila Sharma, JAO for promotion to the rank of Area Organiser was recommended by the same DPC. A reply has been sent to the applicant through DIG, Frontier HQrs. Guwahati vide Force Hqrs SSB Memo. No. 14/SSB/A2/2002(4)-1309 dated 01.02.2007. As regards Shri Dilip Paul, AO, a perusal of seniority list of Joint Area Organisers as on 01.01.2005 circulated vide this office memorandum dated 25.01.2005 Shri Dilip Paul, JAO was senior to the applicant. The name of Shri Dilip Paul, JAO for promotion to rank of Area Organizer was also recommended by the DPC held on 20.10.2005. Shri Dilip Paul was senior than that of applicant in the rank of JAO and was promoted to the rank of Area Organiser as per recommendations of DPC, the claim of applicant for notional benefit of promotion and re-fixation of seniority is not justified.

18. That, with regards to the statements made in paragraph – 4.13 of the Original Application, the deponent begs to states that the outcome of review DPC held on 22.08.2001 for promotion of SAO's to the rank of Joint Area Organiser has already been conveyed to the applicant in detail vide this office Memo. No.35/SSB/A2/99 (3)-2588-89 dated 18.09.2001 receipt of which has been acknowledged by the applicant on 26.09.2001.
19. That, with regards to the statements made in paragraph – 4.14 of the Original Application, the deponent begs to states that the DPC held on 20.10.2005 did not recommended the name of applicant for promotion to the rank of Area Organiser. Therefore, he could not be promoted.
20. That, with regards to the statements made in paragraph – 4.15 of the Original Application, the deponent begs to states that the applicant along with respondent No.5 i.e. Smt. Sushila Sharma

  
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Central Admin. Services  
was considered for promotion to the rank of Area Organiser by the DPC held on 20.10.2005 but he was not recommended by the DPC for promotion and as such could not be promoted whereas the respondent No.5 on being found fit for promotion was accordingly promoted to the rank of Area Organiser.

21. That, with regards to the statements made in paragraph - 4.16 & 17 of the Original Application, the deponent have no comments unless contrary to the records.

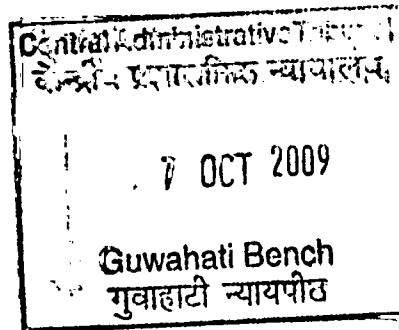
22. That, with regards to the statements made in paragraph - 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 of the Original Application, the deponent begs to states that the applicant was eligible for promotion to the rank of Area Organiser and accordingly he was considered for promotion by the DPC held on 20.10.2005 but his name was not recommended by the DPC for promotion to the rank of Area Organiser due to non-attending the prescribed bench mark. It is further stated that there were no instructions in force by that time to communicate the ACRs other than adverse entries made in the ACRs and there were no any adverse remark found recorded in the ACRs during the period which was considered by the DPC on 20.10.2005, therefore, the same was not communicated to the applicant.

It is further stated that the review DPC reviewed the case of the applicant for promotion from SAO to JAO on 22.08.2001 after taking into consideration his ACRs including expunged adverse remarks for the year 1995-96 but he was not recommended for promotion. Subsequently the applicant was again not recommended for promotion to the rank of Area Organizer by the DPC held on 20.10.2005 whereas his junior Smt. Sushila Sharma, JAO was recommended for promotion to the rank of Area Organizer by the same DPC due to non-attending the required bench mark by the applicant.

23. That the deponent beg to submit that for the administrative exigencies only a suitable and fit person can be promoted for the better functioning of the administrative machinery of the Organization/ Institution and if any unqualified/ unsuitable

persons is allowed to be promoted it will lower the esteem of the Organization/ Institution as well as the efficiency of the officials and will cause greater threat in the field of administration and its functioning. In the present case the applicant has been considered for promotion at all levels but could be promoted only when found fit in all respects at relevant point of time.

24. In view of the submissions made herein above and those to be urged at the time of arguments it is evident that the present O.A. is unjust and unsustainable both in facts and law and as such it is humbly prayed that the same may be dismissed with cost.



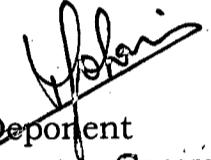
  
DEPONENT.  
Dy. Inspector General  
Ftr. HQ. SSB, (MHA)  
Guwahati.

## VERIFICATION

I, Nilambar Buragohain son of late Mohan Chandra Buragohain , aged about 55 years, working as Deputy Inspector General in the office of the Inspector General, Frontier HQ Sashastra Seema Bal (SSB), 345 Nikita complex, Khanapara , Guwahati-781022 resident of A-10, Games village, Guwahati do hereby verify that the contents of paragraph 1 to 22 are true to the best of my personal knowledge and paras 23 to 24 believed to be true on legal advice and that I have not suppressed any material facts.

Place: Guwahati

Date: 24/09/09

  
Deponent  
Dy. Inspector General  
Fr. HQ. SSB, (MHA)  
Guwahati.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

Filed but the applicant  
through L. Dulla, advocate  
on 06/01/10

In the matter of:-

O.A.No. 83/2009.

Shri P.K.Choudhury.

-Versus-

Union of India and others.

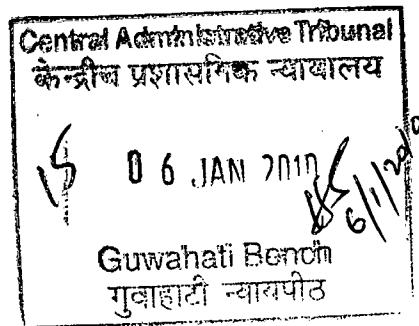
-And-

In the matter of:-

Rejoinder submitted by the applicant  
against the written statements submitted  
by the respondent.

The applicant above named most respectfully begs to state as follows:-

1. That the applicant has duly received a copy of the written statement and understood the contents thereof. The applicant denies the correctness of the averments made therein, save and except which are borne on records.
2. That your applicant denies the correctness of the statements made in the para 3, 5, 8 and 9 of the written statement and further beg to say that in the instant original application, the applicant confined his prayer for reconsideration of promotion to the cadre of Area Organiser and not against the promotion to the cadre of Joint Area Organiser, as such, the contention of misleading the Hon'ble Tribunal is totally incorrect and as such there is no attempt to cover up any delay as alleged in para 3 of the written statement. So far prayer of the applicant regarding promotion to the cadre of Area Organiser is well within the period of limitation. Moreover the applicant has also preferred an application for condonation of delay separately through M.P.No. 44/2009.



Received:  
Minil Kumar Das  
6/1/10  
Addl Cst.

Pradip Bar. Ch. Dm

06 JAN 2010

Guwahati Bench  
गुवाहाटी न्यायपीठ

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The statements made by the respondents in para 3 in fact without looking into the prayer of the applicant made in the original application. The applicant merely pointed out the injustices caused to him denying the promotion to the applicant to the rank of Joint Area Organiser, when it was due to the applicant. As a result the seniority and service prospect of the applicant has been adversely effected. Moreover the ACR of the applicant has been downgraded without providing him any reasonable opportunity.

3. That with regard to the statements made in para 10, 11, 12, 13, 14 and 15 of the written statement, the applicant while denying the correctness of those statements, further beg to say that delayed promotion in the year 2002 in the cadre of Joint Area Organiser caused irreparable loss and injury to the applicant. It is also relevant to mention here that when adverse remarks were expunged of the year 1995-1996 then the grading of the relevant year ought to have been upgraded as 'very good', in conformity with the previous years. But in the instant case downgrading ACR has been acted upon by the review DPC held in the month of August' 2001.

Moreover it is abundantly clear from the averments made in para 13 and 15 of the written statement, that the applicant was superseded by his junior i.e respondent no. 5 on the alleged ground of non attaining required benchmark. In this connection it may be stated that as per admission of the respondent, the applicant was promoted to the cadre of Joint Area Organiser in the year 2002 after attaining benchmark of 'very good' and also after recommendation of the DPC in the year 2002. Therefore it can be rightly presumed that the applicant has attained benchmark 'very good' for all these years before his promotion to the cadre of Joint Area Organiser in the year 2002, therefore applicants ACR again appears to be downgraded in between the year 2002 to 2004 and as a result applicant was further superseded by his juniors Smti. Sushila Sarma, respondent no. 5 to the cadre of Area Organiser, as because DPC held on 20.10.2005 did not recommended the name of the applicant to the cadre of Area Organiser.

Therefore it is quite clear that the applicant has been denied promotion to the cadre of Area Organiser due to downgrading of ACR which was acted upon by the DPC held on 20.10.2005 without providing

Pradeep Ver. Choudhury

any reasonable opportunity to the applicant to improve his downgrading ACR. No memo, warning or show cause notice was issued in respect of the applicant pointing out any deficiencies in his performance. Since the applicant has retired on superannuation, hence it is a fit case for the Hon'ble Tribunal to interfere with the case of the applicant directing the respondents to reconsider the applicant for promotion to the cadre of Area Organiser by holding a review DPC ignoring the downgrading ACR of the relevant year or alternatively upgrading the downgrading ACR in conformity with the previous years with all consequential service benefits atleast from the date of promotion of respondent no. 5.

Be it stated that against the reply dated 10.08.2006, the applicant approached the Hon'ble Tribunal through O.A.No. 173 of 2007. However, the same was withdrawn on 22.05.2008 on the question of territorial jurisdiction with the liberty to the applicant to put up the grievances before any appropriate forum. However, the applicant meanwhile retired on superannuation on 30.06.2008. As such, the applicant infact being a permanent resident of Rangia, Assam approached this Hon'ble Tribunal with a condonation application through M.P.No. 44 of 2009 in O.A.No. 83 of 2009.

4. That with regard to the statements made in para 16, 17, 18, 19, 20, 22, 23 and 24 of the written statement, the applicant begs to say that it is fairly admitted by the respondents that the applicant was superseded in the matter of promotion to the cadre of Area Organiser as because the DPC did not recommend his name which was held on 20.10.2005 as because applicant failed to attain the required bench mark of 'very good' as already stated in the preceding paragraph. That the applicant was never communicated downgrading of his ACR during the relevant period which were considered by the DPC held on 20.10.2005. Since, downgrading ACR has been acted upon by the DPC on 20.10.2005 without providing any reasonable opportunity to the applicant by the authority before recording entries of downgrading ACR. As such, it is a fit case for the Ld. Tribunal to interfere with and to protect the rights and interest of the applicant by passing an appropriate direction to the respondent to hold the review DPC

Pradip Kumar Choudhury

ignoring the down grading ACR of the applicant recorded during the relevant period for consideration of promotion of the applicant to the cadre of Area Organiser.

It is categorically submitted that since 1999 upto 2002 the applicants grading were 'very good' as evident from the earlier proceedings, and as a result the applicant was granted promotion to the cadre of Joint Area Organiser in the year 2002, which require minimum bench mark of 'very good' for promotion to the cadre of Joint Area Organiser. Therefore it can be presumed that after 2002, the entries of downgrading were recorded in ACRs in between 2002-2004. Hence entries of those downgrading ACRs are not sustainable in the eye of law and as such those downgrading ACRs are liable to be upgraded as 'very good' in conformity with the previous years. And thereafter the case of the applicant for promotion to the cadre of Area Organiser is liable to be reviewed ignoring the downgrading entries of ACRs of the relevant period or upgrading the ACRs of the aforesaid period in question.

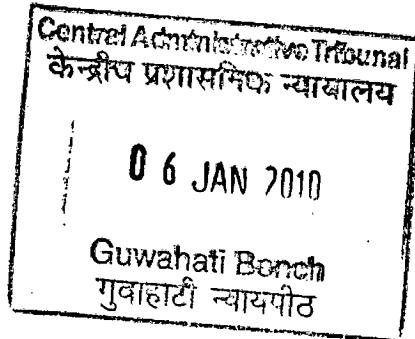
So far contentions raised in para 22 that there was no adverse entries recorded in the ACRs while case of the applicant was considered for promotion by the DPC relied on 20.10.2005 is not sustainable in the eye of law as because downgrading entries of ACR from 'very good' to 'good' is also adverse for the purpose of promotion.

It is abundantly clear from the averments made in the written statement that the applicant was not recommended for promotion to the cadre of Area Organiser due to non attaining of the required bench mark.

In the circumstances stated above the Hon'ble Tribunal be pleased to direct the respondents to produce all the ACRs from the year 1995 to 2005 for proper adjudication of the case of the applicant on question of entries of downgrading ACR.

5. In the circumstances stated above the original application is deserves to be allowed with costs.

Pradeep K. Choudhury



VERIFICATION

I, Shri Pradip Kumar Choudhury, aged about 60 years, Ex-Jt. Area Organiser, SSB, Village- Santipur, Ward No. 5, near Hindi High School, P.O- Rangia, Bhutan Road, Dist- Kamrup (Assam), do hereby verify that the statements made in Paragraph 1, 2, 3 and 4 of the rejoinder are true to my knowledge and legal advice and I have not suppressed any material fact.

And I sign this verification on this the 3rd day of January, 2010.

Pradip Kumar Choudhury

Kankan Das B.A., LL.B.  
Advocate, Guwahati High Court

केन्द्रीय प्रशासन नियंत्रण नियायालय  
Central Administrative Tribunal, Niyaya Layya

Residence: Near B2  
Rukminigaon, Guwahati  
Cell No.: 98640-38451  
H/N 15

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9 MAY 2012

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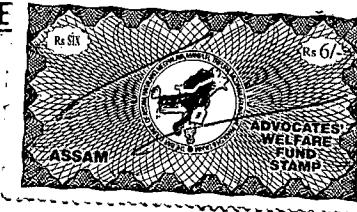
Date: .....

गुवाहाटी न्यायालय  
Guwahati Bench

### MEMORANDUM OF APPEARANCE

To

The Registrar,  
Central Administrative Tribunal  
Bhangagarh, Rajgarh Road,  
Guwahati - 5.



In the Matter of:

O.A. No. O.A. 83 of 2008 2009

Sri P.K. Choudhury

..... Applicant

- Versus -

Union of India & Others

..... Respondents

I Sri Kankan Das, Additional Standing Govt. Counsel, in CAT, Guwahati bench hereby enter Appearance of behalf of the Union of India & Respondents No..... all..... in the above case, my name may kindly be noted as Counsel and shown as Counsel for the Respondents.

Sri Kankan Das  
9/5/2012

Kankan Das  
Additional Standing Govt. Counsel,  
in CAT, Guwahati Bench. Ghy-5