

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

1. ORIGINAL APPLICATION No : ----- / 2009
2. Transfer Application No : ----- / 2009 in O.A. No. -----
3. Misc. Petition No : ----- / 2009 in O.A. No. -----
4. Contempt Petition No : 17 / 2010 63/2006 & 60/2009
in O.A. No. -----
5. Review Application No : ----- / 2009 in O.A. No. -----
6. Execution Petition No : ----- / 2009 in O.A. No. -----

Applicant (S) : Sri Pradip K. Das

Respondent (S) : Sri Rajiv Bora, IAS

Advocate for the : Mr. D.K. Das.

{Applicant (S)} Ms. L. S. Ahmed.

Advocate for the : -----

{Respondent (S)} -----

Notes of the Registry

Date

Order of the Tribunal

25.5.2010

This Contempt petition has been filed by the Applicant through his L/Advocate for wilful and deliberate violation of Judgment and order in OA No. 63/2006 and OA No. 60/2009 dated 20.6.2008 and 2.2.10 respectively passed by this Hon'ble Tribunal.

Laid before the Hon'ble Comt for favours of order.

AKS
25/5/2010
Section Officer (J).
AKS 25/5/2010

26.05.2010

Heard Mr.D.K.Das, learned counsel for applicant.

Notice. Personal appearance dispensed with. List on 30.06.2010.

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

/bb/

30.06.2010

Service report is awaited. Adjourned to 16.07.2010.

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

/bb/

Copy of Notice

13

2

R.No 1 has been
Prepared & send
to D/section for
issuing to M.R. Rosa
IAS for Regd Ad/
post.

Memo No. 1225

D/2. 01-6-2010

~~01/6/2010~~

Vakalatnama filed

by Mrs. M. Doss & Ors.

on behalf of
the respondents.

2
12.7.2010

⑩ Service report
awaited.

3
15.7.2010

-2-

C.P.17/10 (O.A.s 63/06 & 60/09)

16.07.2010

Mrs.M.Das, learned counsel for the respondents seeks and allowed two weeks time to file compliance report. List on 05.08.2010.

No compliance report

b/leel

23/7/2010


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

/bb/

05.08.2010

Mrs.M.Das, learned counsel appearing for sole respondent seeks further one week time to file compliance report. Giving last opportunity, case is adjourned to 24.08.2010.



No compliance report

b/leel

23.8.2010


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

24.08.2010

Both parties ad-idem that respondent no.1 in Contempt Petition has taken earnest steps to comply the directions of this Tribunal contained vide orders dated 20.06.2008 in OA No.63/2006 and 02.02.2010 in OA No.60/2009.

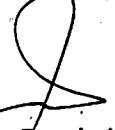
Abhidarif b/leel
on behalf of the
respondents, through
L/Adv. Mrs. M. Das,
S/o, CUSL

/bb/

23.8.2010

Mr. Letham D.
Pl- Compliance
W/ order date
24.08.2010
25.8.2010
26.8.2010
Every 1st & 3rd


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

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

C.P. No. 17 /2010

IN THE MATTER OF:

An application under Section 17 read with Section 27 of the Administrative Tribunals Act, 1985 read with Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987.

-AND-

IN THE MATTER OF:

Judgment and order dated 20.6.2008 in O.A No. 63/2006 and order dated 2.2.2010 in O.A No. 60/2009.

-AND-

IN THE MATTER OF:

Wilful and deliberate violation of Judgment and order in O.A No. 63/2006 and O.A No. 60/2009 dated 20.6.2008 and 2.2.2010 respectively passed by the Hon'ble Tribunal.

-AND-

136
Filed by the petitioner
the senior L. i. Government
Advocate, 2/6/10

25 MAY 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

IN THE MATTER OF:

Execution of the Judgment and order
dated 20.6.2008 in O.A No. 63/2006
and order dated 2.2.2010 in O.A No.
60/2009 and appropriate direction to
give effect to the aforesaid
judgment and order and to prevent
abuse of process of the Hon'ble
Tribunal and to secure the ends of
justice.

-AND-

IN THE MATTER OF:

Sri Pradip Kr. Das,
Son of Late Dwijendra Kr. Das,
Resident of Ananda Nagar,
Guwahati - 6, Assam.

..... Petitioner

-Versus-

Rajiv Bora, IAS
Principal Secretary,
Government of Assam, Department of
Personnel (A), Assam Secretariat,
Dispur, Guwahati - 6.

..... Opposite Party
/ Contemnor

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

IN THE MATTER OF:

Execution of the Judgment and order
dated 20.6.2008 in O.A No. 63/2006
and order dated 2.2.2010 in O.A No.
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give effect to the aforesaid
judgment and order and to prevent
abuse of process of the Hon'ble
Tribunal and to secure the ends of
justice.

-AND-

IN THE MATTER OF:

Sri Pradip Kr. Das,
Son of Late Dwijendra Kr. Das,
Resident of Ananda Nagar,
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..... Petitioner

-Versus-

Rajiv Bora, IAS
Principal Secretary,
Government of Assam, Department of
Personnel (A), Assam Secretariat,
Dispur, Guwahati - 6.

..... Opposite Party
/ Contemnor

25 MAY 2010

Guwahati Bench
গুৱাহাটী ন্যায়পৌঠ

The humble petition of the petitioner

above named -

MOST RESPECTFULLY SHEWETH :

1. That the petitioner above named as Applicant in Original Application No. 63/2006 and Original Application No. 60/2009 had approached this Hon'ble Tribunal assailing the inaction of the respondent authority in not issuing orders towards effecting his promotion to the cadre of IAS in terms of his selection for such promotion for the year 2004-2005. The name of the applicant was provisionally included in the select list of 2004-2005 in view of pendency of departmental proceeding against him. The said proceeding was dropped on 16.7.2002 and though he ought to have been given promotion in terms of his selection, the same was denied to him and as such he approached the Hon'ble Tribunal by way of O.A No.63/2006 praying for his promotion to the IAS cadre in terms of his selection. This Hon'ble Tribunal by order dated 20.6.2008 by negating the contention raised by the authorities held the action of withholding the promotion of the applicant to the cadre of IAS on the plea of pendency of subsequent proceeding to be unlawful.

Thereafter in compliance with the Hon'ble Tribunal's order though the Respondent authorities issued integrity certificate to the applicant for inclusion of

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपोठ

his name in the select list of 2004-2005 as unconditional for appointment to IAS. But on the basis of the new purported disciplinary proceeding subsequent to the period in question the respondent again denied his due promotion to the IAS cadre. And thereafter the applicant again approached this Hon'ble Tribunal in O.A No. 60/2009.

A copy of the order dated 20.6.2008 is annexed herewith as Annexure - A.

2. That this Hon'ble Tribunal after hearing the parties to the proceeding by order dated 2.2.2010 disposed of the said Original Application No. 60/2009 directing the respondent to consider the applicant's induction to IAS in terms of the earlier order passed by this Hon'ble Tribunal in O.A No. 63/2006 dated 20.6.2008.

A copy of the order dated 2.2.2010 is annexed herewith as Annexure - B.

3. That the applicant begs to state that the certified copies of the orders dated 20.6.2008 and 2.2.2010 in O.A No. 63/2006 and O.A No. 60/2009 respectively were duly communicated to the respondents for their compliance including the sole respondent on 8.2.2010 and 23.3.2010.

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

Copies of the letter dated 8.2.2010 and
23.3.2010 are annexed as Annexure - C.

4. That the contemnor/ opposite party despite having orders of this Tribunal have not implemented the same and no action have been taken to promote the applicant to IAS cadre in terms of the orders of this Hon'ble Tribunal. As such the contemnor is liable to be punished for his wilful and deliberate violation and disregard of this Tribunal's orders dated 20.6.2008 and 2.2.2010.
5. That the applicant states that the orders dated 20.6.2008 and 2.2.2010 passed by this Hon'ble Tribunal is very clear and categorical in so far as direction have been issued to promote the applicant to IAS cadre and thereby respondent authorities ought to have implemented the same. The non-implementation of this Hon'ble Tribunal's orders dated 20.6.2008 and 2.2.2010 amounts to wilful and deliberate violation of the same and an appropriate direction needs to be issued to the said respondent / contemnor to implement the same invoking Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987.
6. That this application has been filed bonafide and for the ends of justice.

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

In the premises aforesaid it is most respectfully prayed that the Hon'ble Tribunal would be pleased to issue notice to the respondent / contemnor to show cause as to why contempt of court proceeding shall not be drawn up against the contemnor and also as to why necessary orders be not passed invoking the power under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 for effective implementation of the orders dated 20.6.2008 and 2.2.2010 of this Hon'ble Tribunal in O.A No. 63/2006 and O.A No. 60/2009 and upon hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to pass appropriate orders of punishment of the respondent / opposite party/contemnor and further be pleased to pass appropriate orders towards implementation of the aforesaid orders of the Hon'ble Tribunal and/or be pleased to pass

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

such further order or orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case so as to give complete relief to the applicant.

And for this act of kindness, the applicant / petitioner as in duty bound shall ever pray.

25/5/2010

Guwahati Bench
गुवाहाटी न्यायपीठ

AFFIDAVIT

I, Sri Pradip Kr. Das, aged about 57 years, son of Late Dwijendra Kr. Das, a resident of Ananda Nagar, Guwahati - 6, presently working as Commissioner, State Housing Board, Government of Assam, do hereby solemnly affirm and declare as follows :

1. That I am the petitioner in the instant case and as such I am conversant with the facts and circumstances of the case.
2. That the statements made in this affidavit and in the accompanying petition in paragraphs 456 are true to my knowledge, those made in paragraphs 42 and 3 are true to my information derived from the record which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 25 day of May, 2010 at Guwahati.

Identified by

Advocate's clerk

Pradip Kumar Das

D E P O N E T

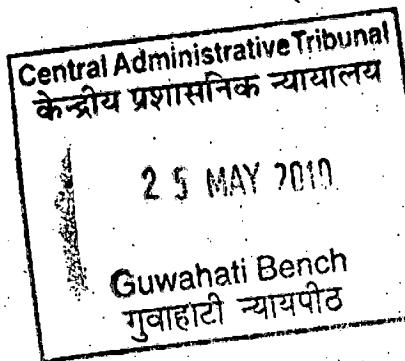
ANEXURE A

-9-

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Original Application No. 63 of 2006

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



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

The Hon'ble Shri Khushiram, Administrative Member

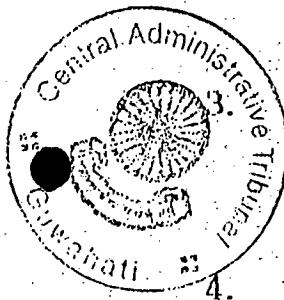
Shri Pradip Kumar Das, son of
Late Dwijendra Kr. Das, resident
of Ananda Nagar, Guwahati-6,
Assam.

.....Applicant

By Advocate Mr D.K. Das

- Versus -

1. The Union of India, represented by the Secretary to the Government of India, Department of Personnel and Training, New Delhi.
2. The Union Public Service Commission represented by its Secretary, Dholpur House, New Delhi.
3. The State of Assam, represented by the Secretary to the Government of Assam, Department of Personnel, Dispur, Guwahati-6.
4. Longki Phangcho, Commissioner of Excise, Assam, Guwahati.
5. Joy Chandra Goswami, Secretary, Health Department, Assam, Dispur.
6. Mohat Chandra Brahma, Secretary, W.P.T.B.C. Department, Assam, Dispur.
7. Md. Allauddin, Secretary, Personnel Department, Assam, Dispur.



Attested

8. Seikhollen Thadon,
Managing Director,
Assam Financial Corporation,
Guwahati.

9. Rebendra Kumar Das,
Secretary, S.A. Department,
Assam, Dispur.

10. Bhaba Gogoi,
Director,
Panchayat Development, 6th Mile,
Guwahati.

11. A.B. Mohammad Eunus,
Managing Director, STATFED,
Guwahati.

12. Balendra Basumatary,
Joint Secretary,
Forest Department,
Assam, Dispur.

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

14. Syed Iftikar Hussain,
Principal Secretary,
N.C. Hills District Council,
Hafslong.

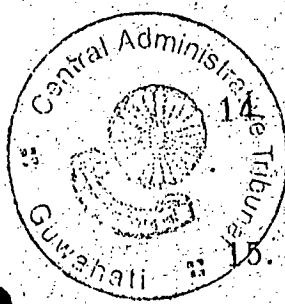
15. Rasique Zaman,
Joint Secretary,
Assam Secretariat,
Dispur.

Rasique Zaman,
Joint Secretary,
Assam Secretariat,
Dispur.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ



.....Respondents

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक व्यायालय

142
25 MAY 2010

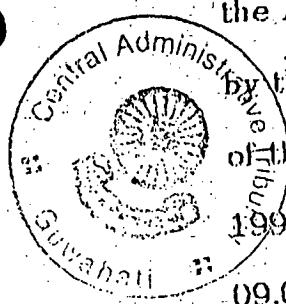
Guwahati Bench
गुवाहाटी व्यायालय

ORDER

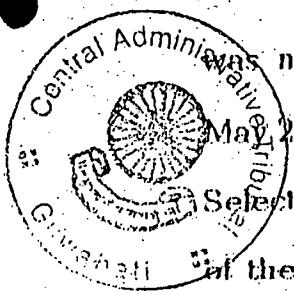
Manoranjan Mohanty, Vice-Chairman:-

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

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



initiated against him with the issuance of the charge sheet on 16.02.2000. It is the case of the Applicant that since there were no charge-sheet (in any Departmental Proceeding) against him during the years 1998 & 1999 [and even by 1st day of January of 2000]; he could not have been denied his due appointment [by way of promotion] to the cadre of I.A.S. against the vacancies for the years 1998, 1999 & 2000. After he was superseded by his juniors (in the matter of getting promotion to IAS Cadre), the Departmental Proceeding in question was closed by an order that was issued by State Govt. of Assam under Annexure 2 dated 16.07.2002 i.e. after 2 years and six months of initiation of Departmental Proceeding. It has been alleged by the Applicant that, with an ulterior motive, the charge sheet was drawn on 16.02.2000; just to deprive him to get the promotion and in order to benefit his juniors/ vested interest. Apprehending that he may, again, be deprived of the promotion (to IAS) of the year 2002, the Applicant made a representation under Annexure-3 dated 18.05.2004 to update his papers to be placed before the Selection Board. Select list, as against the 8 vacancies of the year 2002 (of Assam Segment and Assam Meghalaya Joint Cadre of IAS) was notified by the Government of India under Annexure-4 during May 2004; wherein the name of the Applicant figured at Sl.No.1 of the Select List and it was also disclosed therein that inclusion of the name of the Applicant was provisional for want of integrity certificate from the State Government of Assam. It is the case of the Applicant that PIL No.23 of 2002 that was filed (in the Hon'ble Gauhati High Court) during 2002 became the reason for the State Government of Assam not to grant 'Integrity Certificate' in his favour and that the said PIL



2.5.2011

- 13 -

5

Guwahati Bench
गुवाहाटी न्यायपीठ

No.23 of 2002 was virtually dropped by an order dated 22.02.2005;

the text of which reads as under:

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

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

This PIL stands disposed of accordingly."

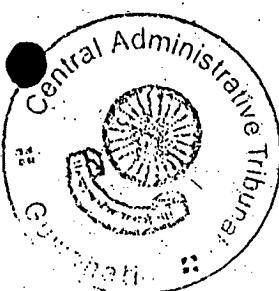
It is the case of the Applicant that despite the dropping of the proceeding (PIL No.23 of 2002) on 22.02.2005 in the Hon'ble High Court, no steps were taken to promote him (to IAS Cadre) as against the vacancies of the year 2002 (for he was recommended under Annexure-4 of May 2004) and, in the said premises,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

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

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

8.3. Cost of the application.

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



25 MAY 2019

Guwahati Bench
गुवाहाटी न्यायपीठ

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

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

“...that in terms of Rule 4(2) (b) of the IAS [Recruitment] Rules, 1954 read with Regulation 511 of the IAS [Appointment by Promotion] Regulations, 1955, the Central Govt., in consultation with the State concerned, determines the number of posts for recruitment by promotion of SCS officers of the State to the IAS during the particular year. Thereafter, the State Government forwards a proposal to the Commission along with the Seniority List, Eligibility List up to a maximum of three times the number of vacancies of the State Service Officers. Integrity Certificates, certificates regarding disciplinary/criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers.”

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

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



25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायालय

7

15

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

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

"...As per the provisions of Regulation 6 and 6A, the State Govt. and the Central Govt. are required to furnish their observations on the recommendations of the Selection Committee. After taking into consideration the observations of the State Govt. and the Central Govt. and the requisite records received from the State Govt., the Commission take a final decision on the recommendations of the Selection Committee with or without modifications in terms of the provisions of Regulation 7. Thereafter the Govt. of India, Department of Personnel and Training, appoints officers included unconditionally in the Select List to the IAS during the validity period of the Select List."

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

"....that Selection Committee Meeting for preparation of Select Lists of 1998, 1999, 2000 & 2001 was held on 09.04.2001 for 02, 04, 04 and 02 vacancies respectively. The State Government, vide letter dated 10.01.2001, had informed that disciplinary proceedings were pending against the applicant, Shri Pradip Kumar Das. On an overall relative assessment of the service records, the Selection Committee assessed as 'Very Good' for all the aforesaid years. On the basis of this assessment the applicant, Shri Pradip Kumar Das had been included at S. No.2 in all the aforementioned Select Lists provisionally subject to clearance of disciplinary proceedings pending against him as per Reg.5(5) of the Promotion Regulations. The Commission approved the Select List of 1998, 1999, 2000 and 2001 vide letter dated 26.06.2001.



25. MAY. 2010

Guwahati-Bench
गुवाहाटी न्यायपीठ

-16-

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

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

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

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

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



25 MAY 2010

Guwahati Bench
গুৱাহাটী বৰ্ষা

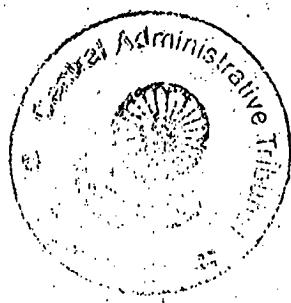
unconditional was made vide letter dated 08.10.2002 i.e. after the aforesaid Select Lists had already lapsed on 31.12.2001, the name of Shri Pradip Kumar Das could not be made unconditional as per the provisions of the Promotion Regulations.

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

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

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

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



25 MAY, 2010

Guwahati Bench
गुवाहाटी न्यायालय

10

-18-

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

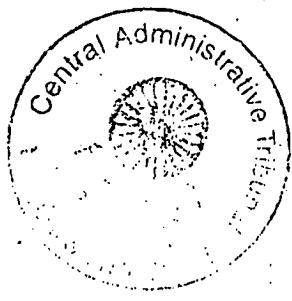
Provided further that while preparing year-wise select lists for more than one year pursuant to the 2nd proviso to sub-regulation (1), the officer included provisionally in any of the Select List so prepared, shall be considered for inclusion in the Select List of subsequent year in addition to the normal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

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

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

4. In filing a written statement the Govt. of India [Respondent No.1] stated as under:

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



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

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

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

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

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

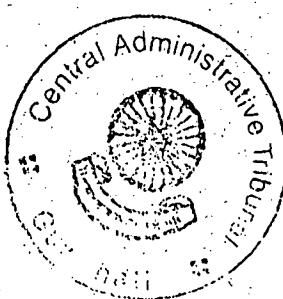
- a) through competitive examination (i.e. direct recruitment);
- b) by promotion of substantive members belonging to the State Civil Service; or
- c) by selection of officers who hold in a substantive capacity gazetted posts in connection with the affairs of the State and belong to the services other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

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायालय



25 MAY 2010

Guwahati Bench
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12

-20-

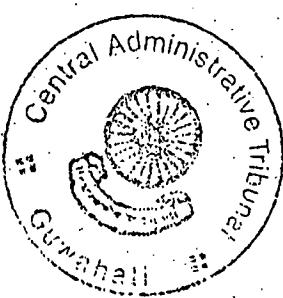
(Appointment by Promotion) Regulations, 1955
(hereinafter called the "Promotion Regulations") and is, therefore, concerned with the application in the matter of recruitment to the Civil Service from amongst State Civil Service officers and interpretation of any of the statutory provisions laid down in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

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

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

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

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



25 MAY 2013

Guwahati Bench
गुवाहाटी न्यायालय

13

-21-

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

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

6. By filing a written statement the State Govt. of Assam

[Respondent no.3] stated as under:-

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

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

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



25 MAY 2010

14

-22-

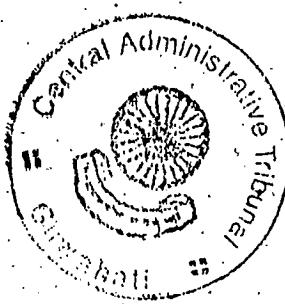
Guwahati Bench
गुवाहाटी न्यायमंड़

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

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

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

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



25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

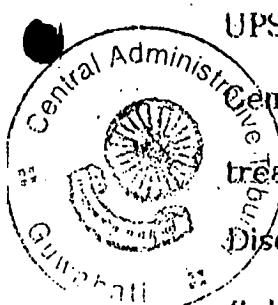
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15

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

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

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



24

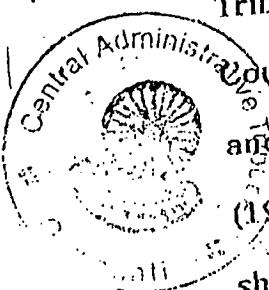
25 MAY 2012

Guwahati Bench
গুৱাহাটী ন্যাশনীয়

16

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

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



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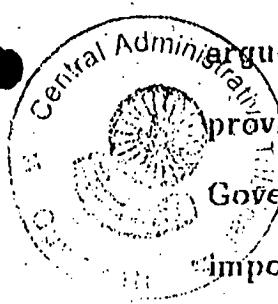
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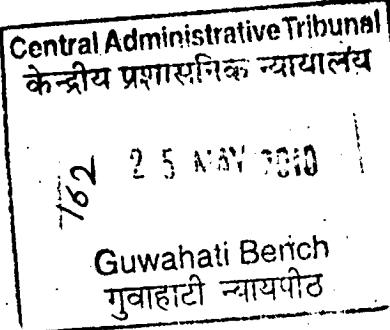
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Departmental Disciplinary Proceeding (after submission of memo/sheet) is consistent with the views of the Hon'ble Apex Court of India rendered in the case of Janakiraman (Supra).

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

12. Ms¹ Usha Das, learned Counsel appearing for the UPSC argued with reference to the 1st proviso to Regulation 7(4) and 2nd proviso to Regulation 9, of the Regulations of 1955 that the State Government having not moved the UPSC (to remove the condition imposed in respect of the name of the Applicant in the final select lists) during the validity of the Select Lists (for the years 1998, 1999, 2000 & 2001) the UPSC rightly did not agree to the proposal to lift the condition or to give clearance to promote the Applicant to Indian Administrative Services. Relevant portion of the Regulations of 1955, on which Ms Usha Das has relied upon, are extracted below;





7. Select List-(1)

(2)

(3)

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

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

Provided further that

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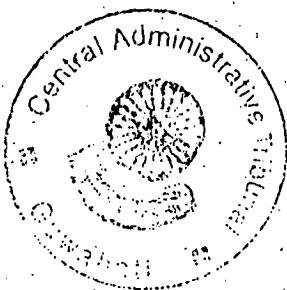
9. Appointments to the service from the Select List-(1)

Provided that

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

Provided also that

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



-27-

19

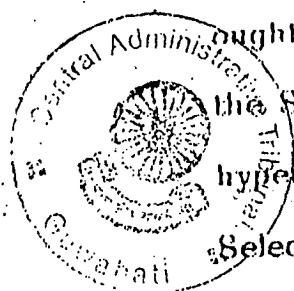
25 May 2009

Guwahati Bench

गुवाहाटी न्यायालय

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

13. Mr D.K. Das, learned Counsel appearing for the Applicant, who has not challenged the provisions of the Recruitment Regulations of 1955 in question, pointed out at the hearing that while extension of validity of the Select List in respect of the proposal (to remove the condition in respect of an officer named provisionally in the Select List) submitted by the State Government within the validity period has been provided; the Regulation is silent about the proposals submitted after the validity period of the Select List. He submitted that there is a gray area in the Regulation pertaining to a situation in hand. He argued that in absence of any prohibition before the UPSC to entertain the proposal submitted after the validity period, the UPSC ought to have examined the case on merit to make the Applicant in the Select List as un-conditional and ought not to have resorted to hyper technical ground of limitation; especially when the next Selection Committee meeting was held long after on 29.12.2003. He argued to state that when the Regulation granted extension of time to UPSC to give consideration to a proposal, submitted at fag end of the validity period, beyond the validity period and up to the next meeting of the Selection Committee, the proposal dated 08.10.2002 of the



-28-

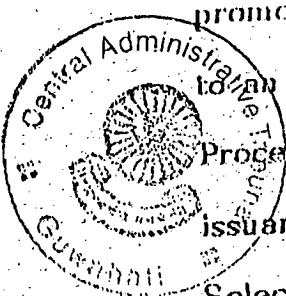
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85

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

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

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



29

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

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

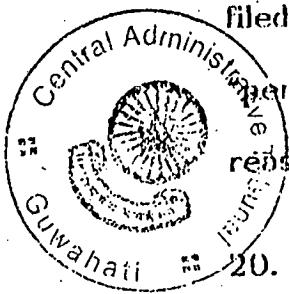
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16 25 MAY 2010

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

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

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

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



- 31 -

23

25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायालय

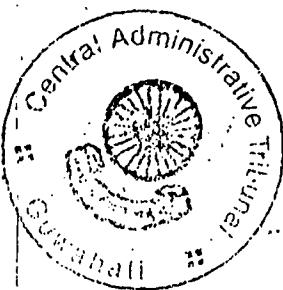
"Certificate" resulting withholding of promotion of the Applicant to IAS. He argued, further that without confronting the allegations (involved in so called vigilance case) to the Applicant and without giving him an opportunity to have his say on those allegations, the "Integrity Certificate" could not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

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

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

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

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



25 MAY 2010

188
Guwahati Bench
गुवाहाटी न्यायपीठ

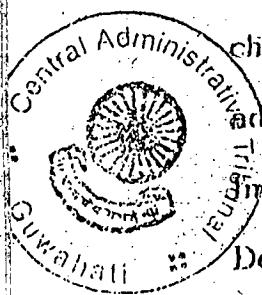
24

- 32 -

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

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

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



25 MAY 2010

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- 93 -

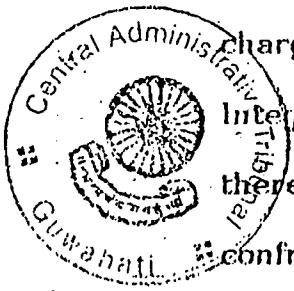
Guwahati Bench
गुवाहाटी न्यायपीठ

injustice to the employees. Relevant portion of Para 16 of the

Judgment of the Apex Court rendered in the case of *Janakiraman*
(Supra) reads as under:

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

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



25 MAY 2019

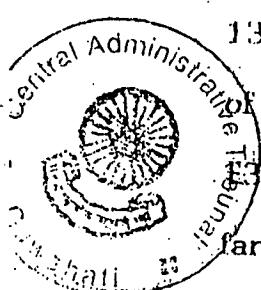
Guwahati Bench
गुवाहाटी न्यायालय

-34-

26

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

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



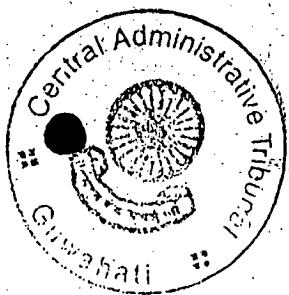
25 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

27

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

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



Date of Application : 30.7.08

Date on which copy is ready : 30.7.08

Date on which copy is certified : ...

Certified to be true on 30.7.08

Section 10(2)(a) of the RTI Act
(Guwahati) 30.7.08

C. A. T. Guwahati Bench
Guwahati-5.

ORDERSHEET

ANNEXURE B

1. Original Application No: 60 /2009
 2. Mise Motion No _____
 3. Contempt Petition No _____
 4. Review Application No _____

- 36 -

Applicant(s) Sri Pradyip Kumar DasRespondent(s) 22. C. I. KomsAdvocate for the Applicant(s): Mr. D.K. Das
Ms L. Gogoi AhmedAdvocate for the Respondent(s): C.P.G.S.C.
Govt. Adv. Assam

Notice of the Registry

Date

Order of the Tribunal

02.2.2010 Applicant has filed an additional affidavit bringing on record latest development which has taken place in present O.A. namely, order passed in Hon'ble Gauhati High Court in W.P.(C) No.1861/2009 dated 24.7.2009 requiring the Respondents to complete departmental proceedings in accordance with the rules within the stipulated time prescribed therein. Pursuant to the aforesaid order the respondents passed order dated 21.12.2009 and exonerated the applicant from the disciplinary proceeding initiated vide show cause notice dated 14.3.2008.

In this view of the matter and as well as the order passed by this Tribunal in O.A.No.63 of 2006 dated 20.6.2008, Shri D.K.Das, learned counsel appearing for the Applicant suggest that the present O.A. may be disposed of requiring the Respondents to consider the Applicant inducting him to I.A.S. Assam-Meghalaya Joint Cadre, Assam segment, in the select list of 2004-05 and regulate his relief as prayed for. Ms. Manjula Das, learned counsel appearing for the Respondents, has no objection to regulate Applicant's claim accordingly.

In this circumstances, O.A. is disposed of in above noted terms.

Sd/- M.K.Gupta
 Member (J)
 Sd/-M.K.Chaturvedi
 Member (A)

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय

25 MAY 2010

Guwahati Bench
 गुवाहाटी न्यायपीठ

Attested

1
-37-
OFFICE OF THE COMMISSIONER
ASSAM STATE HOUSING BOARD:::R.G.BARUAH ROAD
GUWAHATI-5.

EXHIBIT C
1/23

No.ASHB/Comm/G/2006/65

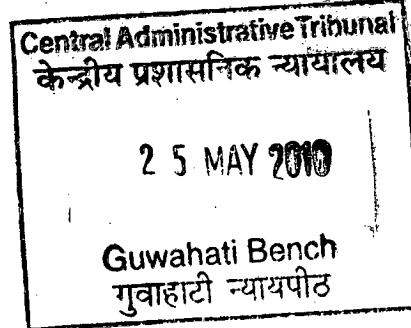
Dated, Guwahati the 8th Feb/2010.

To

The Commissioner & Secretary to the Govt. of Assam,
Personnel (A) Department,
Assam Secretariat,
Dispur, Guwahati-6.

Sub : Promotion to I.A.S.— Prayer therefor.

Ref : OA. 60/2009
Shri Pradip Kr. Das
Vs
Union of India and others.



Sir,

With reference to the above, I have the honour to inform you that the Hon'ble Central Administrative Tribunal, Guwahati Bench, by judgment and order dated, 02/02/2010 has been kind enough to dispose of the aforesaid original petition, by directing the Respondents to promote/induct me to the I.A.S., Assam-Meghalaya Joint Cadre, Assam segment and regulate the relief as sought for in O.A.63/2006, in terms of the order passed by the Hon'ble Central Administrative Tribunal dated, 20/6/2008 which has now attained finality.

Submitted for your kind information and expeditious necessary action in accordance with the directive of the Hon'ble Central Administrative Tribunal, Guwahati Bench.

Enclosures: (1) Certified copy of order dated, 02/02/2010 of Central Administrative Tribunal, Guwahati Bench on OA.60/2009.
(2) Copy of order dated, 20/06/2008 on OA.63/2006 by the Hon'ble Central Administrative Tribunal, Guwahati Bench.
(3) Copy of order No.AAP.82/2002/364 dated, 21/12/2009 of the Commissioner & Secretary, Personnel (A) Deptt., Govt. of Assam, Dispur, Guwahati-6.
(4) Copy of the order dated, 24/07/2009 of Hon'ble Gauhati High Court on W.P. (C) 1861/2009.
(5) Copy of letter No. AAP.55/2006/154 dated, 19/11/08 of the Commissioner - Secretary, to the Govt. of Assam Personnel (A) Department.

Yours faithfully


(Shri Pradip Kr. Das.)
Commissioner,
Assam State Housing Board,
Guwahati-5.

(Contd....P/2)


Attested

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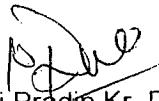
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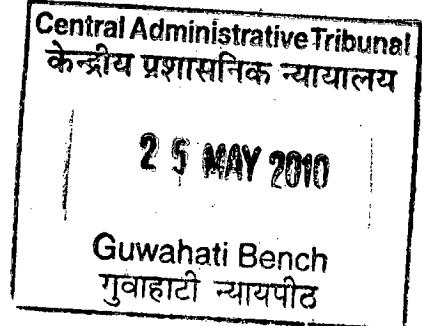
Memo No.ASHB/Comm/G/2006/65 -A

Dated, Guwahati the 8th Feb/2010.

Copy forwarded (along with copies enclosures) for favour of information and necessary action to :-

1. The Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, North Block, New Delhi-110001.
2. The Secretary, to the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110069.


 (Shri Pradip Kr. Das.)
 Commissioner,
 Assam State Housing Board,
 Guwahati-5.



39-

23/3	The Principal Secy.	NO-ASHB/Comm/Gr/2006/66.
2010	Personal (A) Deptt.	dt = 23-03-2010
	Assam Secy.	
	Dispur, Guwahati-6	

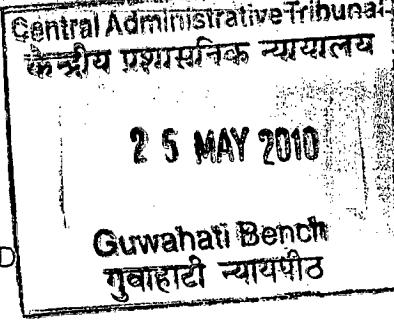
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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

25 MAY 2010

गुवाहाटी न्यायपाठ



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

No.ASHB/Comm/G/2006/66

Dated, Guwahati the 23rd March/2010.

To

The Principal Secretary, to the Govt. of Assam,
Personnel (A) Department,
Dispur, Guwahati-6.

Sub : Promotion to I.A.S.

Ref : Order dated, 02/02/2010 by the Central Administrative Tribunal and my
Prayer No. ASHB/Comm/G/2006/66 dated, 08/02/2010.

Sir

With reference to the above, I have the honour to state that I have not yet
received any communication whatsoever from your end regarding my promotion to I.A.S. in
accordance with the Order dated, 02/02/2010 by the Central Administrative Tribunal,
Guwahati Bench on OA.60/2009 and Order dated, 20/06/2008 of the Central Administrative
Tribunal, Guwahati Bench on OA.63/2006, even after a period of more than 45 (forty five)
days from the date of issue of the Orders of the Central Administrative Tribunal, Guwahati
Bench.

May I therefore, request you to be kind enough to communicate the
Government decision in this regard at your earliest convenience.

Yours faithfully


(Shri P.K. Das),
Commissioner,
Assam State Housing Board
Guwahati-5.

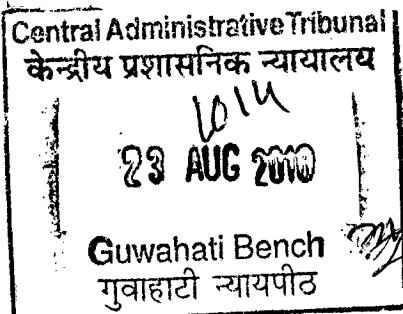
Memo No.ASHB/Comm/G/2006/66 -A

Dated, Guwahati the 23rd March/2010.

Copy forwarded for favour of information and necessary action to:-

1. The Secretary, to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), North Block, New Delhi-110001.
2. The Secretary, to the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110009.


(Shri P.K. Das),
Commissioner,
Assam State Housing Board
Guwahati-5.



File No: 1
The Contemnor / 26
The Plaintiff /
Name: Rajiv Bora
Address:
Rajiv Bora
Date: 20/8/2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH

C.P. No. 17/10

In O.A. No. 63/06 & 60/09

Sri Pradip Kr. Das

Son of Late Dwijendra Kr. Das,

R/O Ananda Nagar, Guwahati-6, Assam

.....Petitioner

-Vs-

Rajiv Bora, IAS

Principal Secretary to the Govt. of Assam,

Department of Personnel (A),

Dispur, Guwahati-6

.....Opposite Party/Contemnor

-AND-

IN THE MATTER OF:

Affidavit-in-reply in terms of Compliance Report of the judgement and order dated 20.06.08 and 02.02.10 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. nos. 63/06 and 60/09 with due compliance with the Hon'ble Tribunal's direction to the respondents to consider the applicant's case for induction to IAS cadre.

(AN AFFIDAVIT-IN- REPLY IN TERMS OF COMPLIANCE REPORT)

I, Sri Rajiv Bora, S/o.....Shri Tarun Chandra Bora, aged about 50 years, presently working as the Principle Secretary to the Govt. of Assam, Personnel (A) Department, Dispur, Guwahati-6, do hereby solemnly affirm and state as follows:

1. That the humble deponent begs to state that he is presently working as the Principle Secretary to the Govt. of Assam, Personnel (A) Department. He has been impleaded as Contemnor in the instant Contempt Petition. The said contempt petition was moved in this Hon'ble Tribunal, inter

File No:
23.8.10

FILED BY THE
THROUGH
ADVOCATE DATE.....

23 AUG 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

2 42

RAJIB HAZARI

alia, praying for issuing show cause notice to the respondent/contemnor and taking appropriate action for willful and intentional violation of the Hon'ble Tribunal's orders dated 20.06.08 and 02.02.10 passed in O.A. nos. 63/06 and 60/09 respectively.

2. That the humble deponent begs to state that this Hon'ble Tribunal vide order dated 26.05.10 was pleased to issue notice to the contemnor. The copy of the notice was served upon him and he has gone through the copy of the contempt petition and has understood the contents thereof.

3. That the humble deponent begs to state that the Applicant/Opposite Party approached before this Hon'ble Tribunal by filing O.A. no. 63/06 with prayers, *inter alia*, to direct the respondents to promote the applicant as per his position as obtained in the select list prepared for the years 1998, 1999 and 2000 for promotion to the Assam segment of the IAS of the Assam-Meghalaya cadre with retrospective effect with all consequential benefits. Alternatively prayed to promote the applicant as per his position as obtained in the select list prepared for the year 2002 for promotion to the Assam segment of the IAS of the Assam-Meghalaya cadre with retrospective effect with all consequential benefits.

4. That the humble deponent begs to state that this Hon'ble Tribunal after hearing was pleased to allow the said O.A. vide order dated 20.06.08 with a direction to the State Govt. to reconsider the matter and take appropriate steps to grant Integrity Certificate in favour of the applicant and that all the respondents should treat the applicant to be in the approved Select List without any condition/not provisional and grant him all consequential relief notwithstanding lapse of the validity period of the approved Select List for the years 2002, 2004 and 2005.

Copy of the said order dated 20.06.08 is annexed herewith and marked as **Annexure 1.**

5. That the humble deponent begs to state that on receipt of the Hon'ble Tribunal's order dated 20.06.08, the Govt. of India, Dept. of Personnel & Training, New Delhi opined that at the first instance the Govt. of Assam should send a proposal to the UPSC for inclusion of name of the applicant in the impugned Select List and on the basis of that proposal the UPSC is required to take action for declaration of inclusion of the applicant in the Select List as unconditional and final.

17/2
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The Govt. of India further opined that the issue of notifying the appointment of the applicant to IAS would come only after the declaration of UPSC about the inclusion of the name of the applicant in the Select List as unconditional and final. Thereafter, the Dept. of Personnel & Training, Govt. of India urged the Govt. of Assam to intimate about their proposed action in pursuance of the Hon'ble Tribunal's order dated 20.06.08 urgently to the Dept.

6. That the humble deponent begs to state that the on receipt of the order dated 20.06.08 the UPSC has also requested to intimate the decision of the State Govt. in respect of implementation of the said order.

Further it is stated that the Department of Personnel & Training, New Delhi vide letter dated 07.08.08 directed the State Govt. to reconsider the matter and take appropriate steps to grant Integrity Certificate to the applicant against the approved Select List for the year 2004-2005. The State Govt. in pursuance of the said letter dated 07.08.08 furnished the Integrity Certificate for the year 2004-2005 in respect of the applicant vide letter dated 19.11.08 under no. AAP.55/2006/154. However, it was also intimated to the Govt. of India that on that date the applicant was not clear from the Vigilance angle since a Departmental Proceeding was initiated against him vide Letter no. AAP.82/2002/139 dated 14.03.08 with a copy to UPSC.

Copies of the said letters dated 07.08.08, 19.11.08 and 14.03.08 are annexed herewith and marked as **Annexure 2, 3 and 4** respectively.

7. That the humble deponent begs to state that being aggrieved on drawal of departmental proceedings the applicant, Sri P. K. Das, subsequently, filed another O.A. no. 60/09 with a prayer to direct the respondents to promote him to the Assam segment of the IAS of the Assam-Meghalaya cadre in terms of his selection from the Select List of 2004-2005.

The Hon'ble Tribunal after hearing was pleased to dispose of the said O.A. vide order dated 02.02.10 directing the respondents to consider the applicant's induction to IAS in terms of the earlier order dated 20.06.08 passed by the Hon'ble Tribunal in O.A. no. 63/06.

Copies of the said order dated 02.02.10 are annexed herewith and marked as **Annexure 5** respectively.

8. That the humble deponent begs to state that on receipt of the copy of the Hon'ble Tribunal's order dated 02.02.10 passed in O.A. no. 60/09,

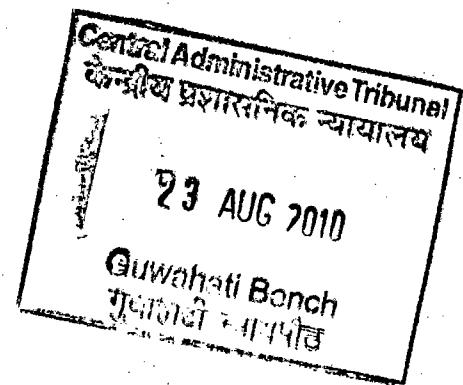
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Rajib
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the Department of Personnel (A), Govt. of Assam, immediately referred the matter to the Judicial Department, Govt. of Assam for their comments in this regard. Expressing their views over the matter the Judicial Department advised the Personnel (A) Department to take up the matter with the Govt. of India, Department of Personnel & Training, New Delhi and Union Public Service Commission (UPSC) for taking necessary action from their end.

9. That the humble deponent begs to state that, consequently, as the matter of induction to IAS from the State Civil Service falls within the purview of Govt. of India, Department of Personnel & Training, New Delhi and UPSC the humble petitioner with due compliance of the Hon'ble Tribunal's orders dated 20.06.08 and 02.02.10 passed in O.A. nos. 63/06 and 60/09 forwarded the necessary documents to the Secretary, Govt. of India, Department of Personnel & Training, New Delhi as well as the Secretary, Union Public Service Commission (UPSC) with a request to consider the promotion of the applicant, Sri P. K. Das to the Assam segment of the IAS of the Assam-Meghalaya Joint Cadre vide letter no. AAP.54/2009/141 dated 14.06.2010 for taking necessary action from their end.

Copy of the said letter dated 14.06.10 is annexed herewith and marked as **Annexure 6.**

10. That this affidavit has been filed in compliance of this Hon'ble Tribunal's orders dated 20.06.08 and 02.20.10.04.03.10 passed in O.A. nos. 63/06 and 60/09 by this Hon'ble Tribunal.



AFFIDAVIT

I, Sri Rajiv Bora, S/o. Sri Tarun Chandra Bora, aged about 50 years, presently working as the Principle Secretary to the Govt. of Assam, Personnel (A) Department, Dispur, Guwahati-6, do hereby solemnly affirm and state as follows:

1. That I am the petitioner in this instant case and well conversant with the facts and circumstances of the case. I have impleaded as the Contemnor in the instant Contempt Petition.
2. That the statements made in this affidavit and in paragraphs 5, 6, 7, 8, 9, 10 are true to my knowledge and those made in paragraphs 1 to 4, 6 to 10 are being matters of records of the case derived therefrom which I believed to be true and the rest are my humble submissions before this Hon'ble Tribunal.

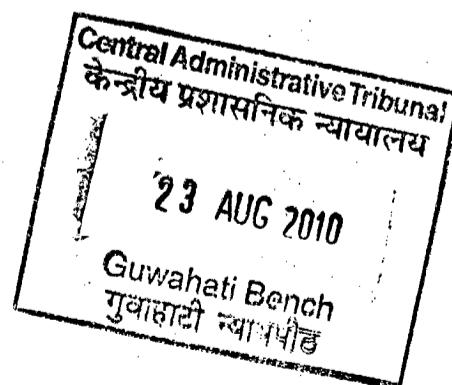
And I sign this affidavit on this 20th day of August, 2010 at Guwahati.

Identified by:-

Manjul D N
Advocate

Rajiv Bora

DEPONENT



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Original Application No. 63 of 2008

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

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

The Hon'ble Shri Khushlalram, Administrative Member

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

Applicant

By Advocate Mr D.K. Das

- Versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Department of Personnel and Training,
New Delhi.

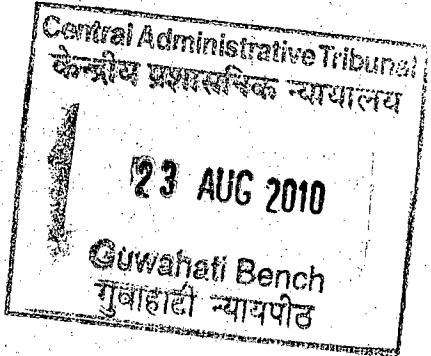
2. The Union Public Service
Commission represented by its
Secretary, Dholpur House,
New Delhi.

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

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

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

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



CERTIFIED TO BE TRUE COPY
f. k. reval
ADVOCATE

8. Seikhollen Thadon,
Managing Director,
Assam Financial Corporation,
Guwahati.

9. Rebendra Kumar Das,
Secretary, S.A. Department,
Assam, Dispur.

10. Bhaba Gogoi,
Director,
Panchayat Development, 6th Mile,
Guwahati.

11. A.B. Mohammad Eunus,
Managing Director, STATFED,
Guwahati.

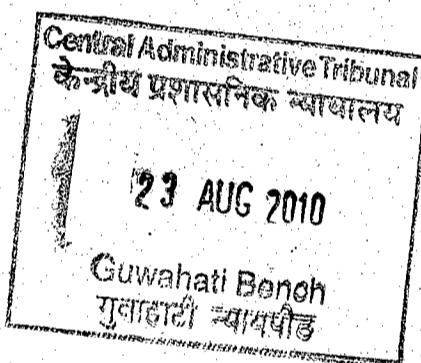
12. Balendra Basumatary,
Joint Secretary,
Forest Department,
Assam, Dispur.

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

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

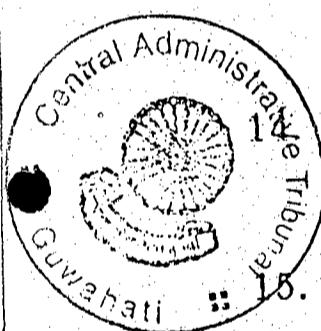
15. Rafique Zaman,
Joint Secretary,
Assam Secretariat,
Dispur.

15. Rafique Zaman,
Joint Secretary,
Assam Secretariat,
Dispur.



.....Respondents

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



- 8 -

8

ORDER

Manoranjan Mohanty, Vice-Chairman:-

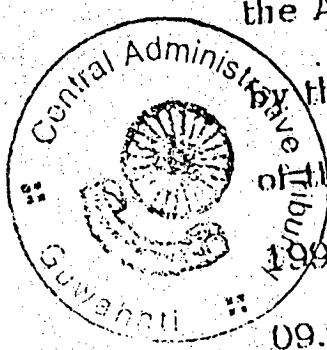
Central Administrative Tribunals
केन्द्रीय प्रशासनिक न्यायालय

23 AUG 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

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

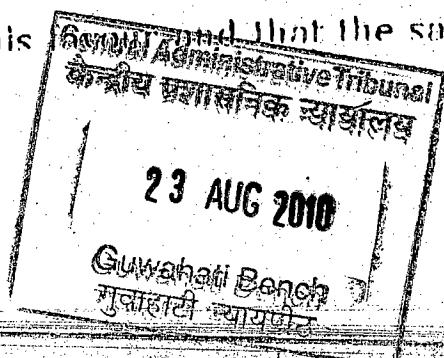
In the year 1977, the Applicant was selected by Assam Public Service Commission to be a member of Assam Civil services and was appointed to the said Services and, in course of his said employment; he held a number of responsible posts and discharged his duties all along to the best of his ability and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



1 - 9 - 40 -

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

Central Administrative Tribunals
Guwahati Bench
was notified by the Government of India under Annexure-4 during May 2004; wherein the name of the Applicant figured at Sl.No.1 of the Select List and it was also disclosed therein that inclusion of the name of the Applicant was provisional for want of integrity certificate from the State Government of Assam. It is the case of the Applicant that PIL No.23 of 2002 that was filed (in the Hon'ble Gauhati High Court) during 2002 became the reason for the State Government of Assam not to grant 'Integrity Certificate' in his favour and that the said PIL



60 - 10 -

No.23 of 2002 was virtually dropped by an order dated 22.02.2005;

the text of which reads as under:

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

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

"This PIL stands disposed of accordingly."

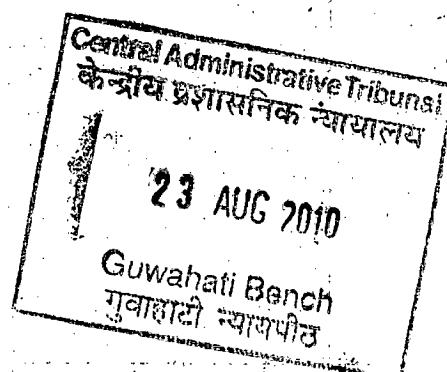
It is the case of the Applicant that despite the dropping of the proceeding (PIL No.23 of 2002) on 22.02.2005 in the Hon'ble High Court, no steps were taken to promote him (to IAS Cadre) as against the vacancies of the year 2002 (for he was recommended under Annexure-4 of May 2004) and, in the said premises,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

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

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

8.3 Cost of the application.

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



2. By filing a written statement, the Union Public Service

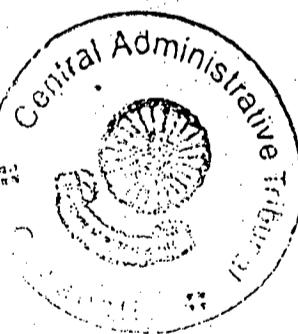
Commission [Respondent No.2] has disclosed as under:-

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

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

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

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



Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

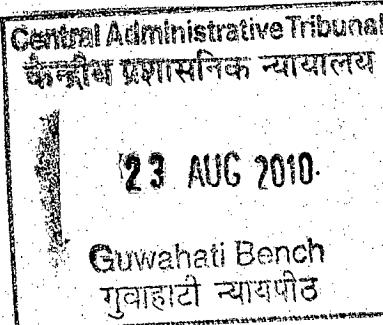
23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायालय

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

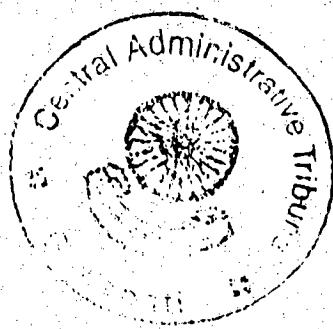
...Further, the names of the officers whose integrity certificate is withheld by the State Govt., or against whom there are disciplinary/criminal proceedings pending are included in the Select Lists provisionally in accordance with the provisions of proviso to Regulation 5[5].

...As per the provisions of Regulation 6 and 6A, the State Govt. and the Central Govt. are required to furnish their observations on the recommendations of the Selection Committee. After taking into consideration the observations of the State Govt. and the Central Govt. and the requisite records received from the State Govt., the Commission take a final decision on the recommendations of the Selection Committee with or without modifications in terms of the provisions of Regulation 7. Thereafter the Govt. of India, Department of Personnel and Training, appoints officers included unconditionally in the Select List to the IAS during the validity period of the Select List."



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

....that Selection Committee Meeting for preparation of Select Lists of 1998, 1999, 2000 & 2001 was held on 09.04.2001 for 02, 04, 04 and 02 vacancies respectively. The State Government, vide letter dated 05.01.2001, had informed that disciplinary proceedings were pending against the applicant, Shri Pradip Kumar Das. On an overall relative assessment of the service records, the Selection Committee assessed as 'Very Good' for all the aforesaid years. On the basis of this assessment the applicant, Shri Pradip Kumar Das had been included in all the aforementioned Select Lists subject to clearance of disciplinary proceedings against him as per Reg.5(5) c. the Promotion Regulations. The Commission approved the Select List of 1998, 1999, 2000 and 2001 vide letter dated 26.06.2001.



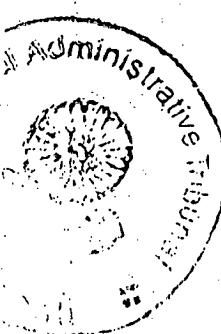
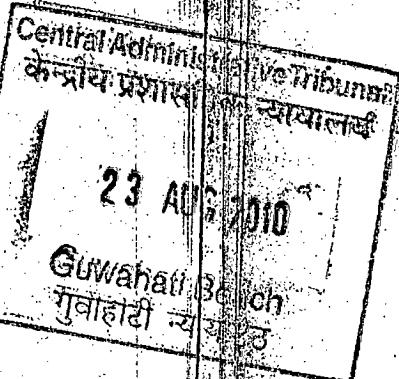
"..... that the Govt. of Assam vide their letter dated 08.10.2002 forwarded a proposal to the Commission for making inclusion of the name of Shri Pradip Kumar Das as unconditional in the Select Lists of 1998, 1999, 2000 and 2001. The Commission examined the proposal and observed that Regulation 7(4)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

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

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

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

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



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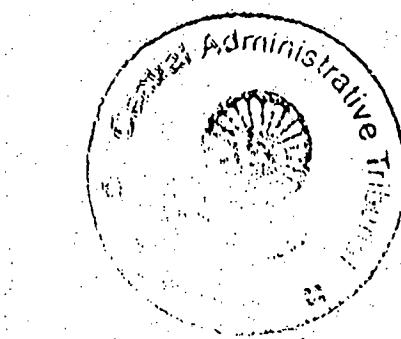
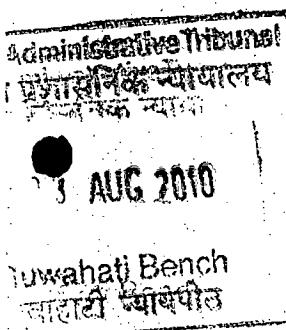
unconditional was made vide letter dated 08.10.2002 i.e. after the aforesaid Select Lists had already lapsed on 31.12.2001, the name of Shri Pradip Kumar Das could not be made unconditional as per the provisions of the Promotion Regulations.

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

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

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

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



Guwahati Bench
गुवाहाटी न्यायालय

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

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 AUG 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

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

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

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

[Respondent No.1] stated as under:

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



165

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

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

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

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

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

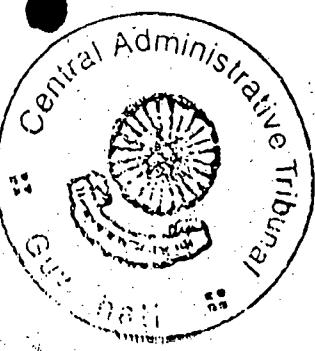
- a) through competitive examination (i.e. direct recruitment);
- b) by promotion of substantive member belonging to the State Civil Service; or
- c) by selection of officers who hold in a substantive capacity gazetted posts in connection with the affairs of the State and belong to the services other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

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायपीठ



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

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

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

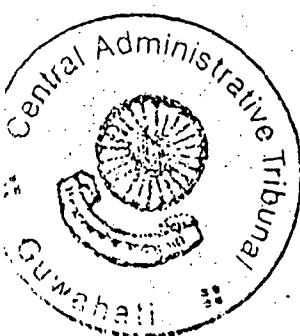
"..... the process of preparation of the Select List for vacancies already determined begins with the list of names of State Civil Service Officers being forwarded by the State Government to the Commission for consideration by the Selection Committee. The Select List prepared by the Committee is forwarded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

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

Central Administrative Tribunal
नियमित प्रशासनिक न्यायालय

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायालय



58

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

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

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायालय

6.

By filing a written statement the State Govt. of Assam

[Respondent no.3] stated as under:-

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

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

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



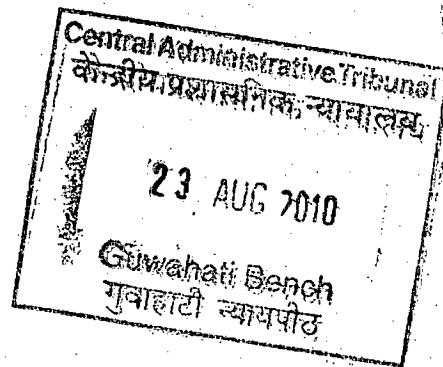
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Proceeding (charge sheeted) pending against the applicant were issued along with the aforesaid proposals.

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

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

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



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

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

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

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

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

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

Departmental Disciplinary Proceeding (after submission of charge memo/sheet) is consistent with the views of the Hon'ble Apex Court of India rendered in the case of *Janakiraman (Supra)*.

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

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

7. Select List-(1)

(2)

(3)

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

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायपीठ

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

Provided further that

8.

9. Appointments to the service from the Select List-(1)

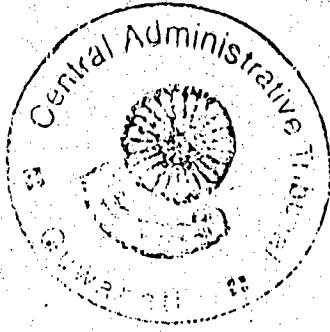
Provided that

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

Provided also that

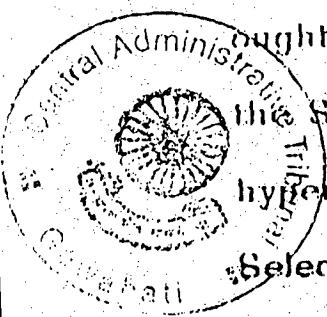
Relevant portion of Paragraphs 7 and 9 of the Regulations

of 1955 (Supra) make it clear, by implication, that any appointment from the Select List, after its validity is spent of, shall become invalid.



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

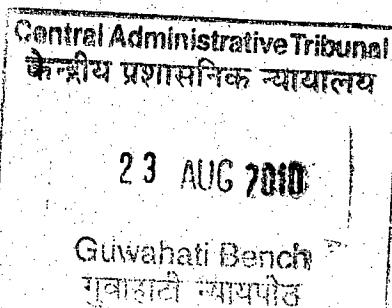
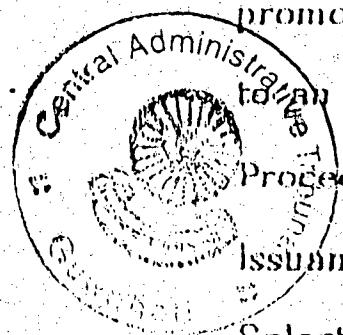
13. Mr D.K. Das, learned Counsel appearing for the Applicant, who has not challenged the provisions of the Recruitment Regulations of 1955 in question, pointed out at the hearing that while extension of validity of the Select List in respect of the proposal (to remove the condition in respect of an officer named provisionally in the Select List) submitted by the State Government within the validity period has been provided; the Regulation is silent about the proposals submitted after the validity period of the Select List. He submitted that there is a gray area in the Regulation pertaining to a situation in hand. He argued that in absence of any prohibition before the UPSC to entertain the proposal submitted after the validity period, the UPSC ought to have examined the case on merit to make the Applicant in the Select List as un-conditional and ought not to have resorted to hyper technical ground of limitation; especially when the next Selection Committee meeting was held long after on 29.12.2003. He argued to state that when the Regulation granted extension of time to UPSC to give consideration to a proposal, submitted after end of the validity period, beyond the validity period and up to the next meeting of the Selection Committee, the proposal dated 08.10.2002 of the



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

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

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



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

It is seen that in the proposal to promote Assam State

Civil Service Officers to IAS (for the years 2002) that was submitted in State Government letter dated 03.09.2003, the State Government expressed that they are unable to certify the "integrity" of the

Applicant. Yet, the Selection Committee, that had a meeting on 29.12.2003, considered the Applicant as 'Very Good' and placed him at Sl.No.1 in the Select List for the year 2002. But such placement in

Central Administrative Tribunal
केन्द्रीय व्यापारिक न्यायालय

23 AUG 2010

Guwahati Bench

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

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

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

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 AUG 2010

Gujarati Page

68
23 23 AUG 2010
Central Administrative Tribunal
Guwahati Bench
प्रतापगंगा नगर
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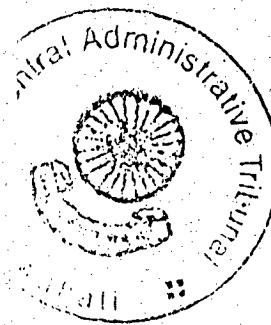
"Certificate" resulting in withholding of promotion of the Applicant to IAS. He argued further that without confronting the allegations (involved in so called vigilance case) to the Applicant and without giving him an opportunity to have his say on those allegations, the "Integrity Certificate" could not (should not) have been withheld; as a result of which the Applicant (though approved by UPSC for promotion) is continuing to be deprived of his promotion to IAS.

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

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

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

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

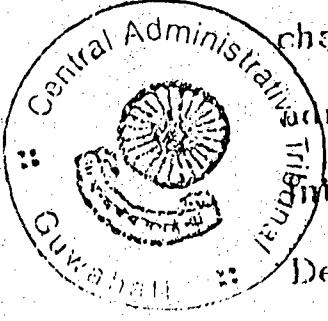


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of the selected persons in the Select List provisionally/conditionally for want of Integrity Certificate. We are faced with the question as to at what stage the Integrity Certificate can be withheld resulting in withholding of the promotion of an aspirant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

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

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

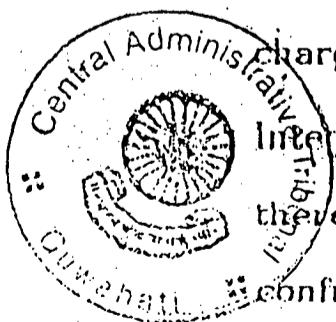


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injustice to the employees. Relevant portion of Para 16 of the Judgment of the Apex Court rendered in the case of *Janakiraman* (Supra) reads as under:

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

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



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

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

Central Administrative Tribunal
Guwahati Bench
Assam Legislative Assembly

23 AUG 2010

Guwahati Bench
Assam Legislative Assembly

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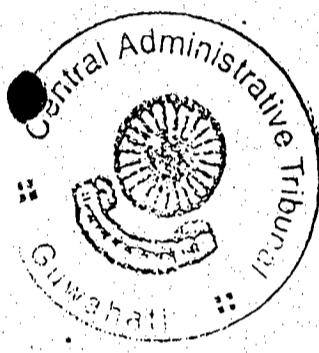
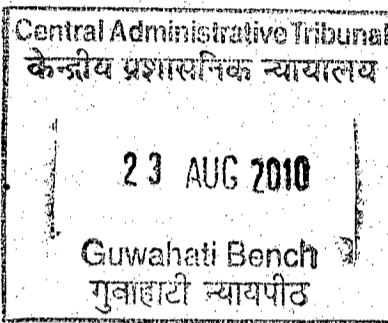
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special circumstances, deal with the recommendations of the State Government in consultation with the UPSC.

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



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2 (Guwahati) 30.7.08
Section
C. A. Guwahati Bench
Guwahati.

No. 14015/03/2008-AIS(I)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

New Delhi, 7th August, 2008.

To

The Chief Secretary
 Government of Assam
Dispur.

(Kind Attn. : Sh. Jishnu Barua, Commr. & Secy.-Personnel A)

Subject : CAT, Guwahati Bench order dated 20th June, 2008 in O.A. No. 63 of 2006 filed by Shri P.K. Das – reg.

Sir,

I am directed to refer to the subject cited above and to say that the Hon'ble Tribunal vide their order dated 20th June, 2008 has disposed of the O.A. They have observed that withholding of integrity certificate in respect of Sh. P.K. Das was unjustified. With this observation the Hon'ble Tribunal has directed as under :-

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

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16/8/08

syndk (B.Rof)

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13/8/2008

SCM 13/8/2008 5963
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l. h. m. general
ADVOCATE
Central Administrative Tribunal
संकेत प्रशासनिक न्यायालय
23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायालय

29-34-78

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209

- 2 -

2. In this connection it is submitted that in the first instance on a proposal from the Govt. of Assam, the Union Public Service Commission is required to take action for declaration of inclusion of Sh. Das in the impugned Select Lists, as unconditional and final. The issue of notifying the appointment of Sh. Das to IAS will come only after Union Public Service Commission declares inclusion of the name of Sh. Das in the Select List as unconditional and final. It is therefore requested that the action proposed to be taken by the State Government in this regard may kindly be intimated to this Department urgently.

Yours faithfully,

(S.S. Shukla)

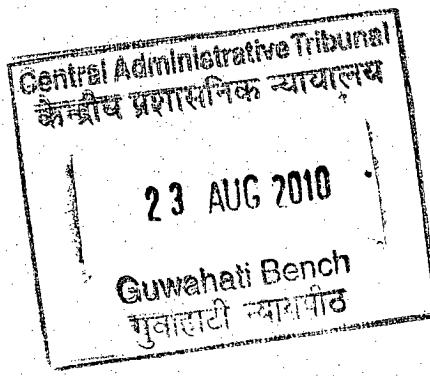
Under Secretary to the Government of India

Ph. No. 23092695

Copy for information and similar request to the Secretary, Union Public Service Commission, Dholpur House, New Delhi (Sh. N.T. Paite, Under Secretary).

(S.S. Shukla)

Under Secretary to the Government of India



CERTIFIED TO BE TRUE COPY
S. K. Baruah
ADVOCATE

ANNEXURE 3 78

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

23 AUG 2010

Guwahati Bench
 गुवाहाटी न्यायालय

Dated : Dispur, the 19th November, 2008.

To,

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

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

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

Sir,

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

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

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

Yours faithfully,

Jah 29/11/08
 Commissioner & Secretary to the Govt. of Assam,
 Personnel (A) Department.

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

Copy to :-

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

By Order Etc.

Jah 29/11/08
 Commissioner & Secretary to the Govt. of Assam
 Personnel (A) Department

CERTIFIED TO BE TRUE COPY
 L. K. Barua
 ADVOCATE

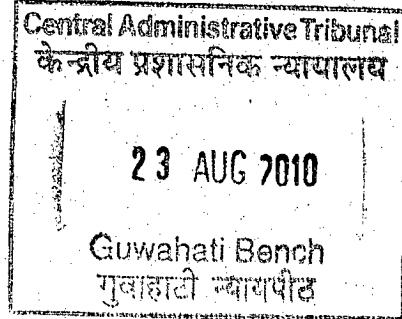
31 76 Dated 17/11/2008

INTEGRITY CERTIFICATE

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

P.C. Sharma

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



*CERTIFIED TO BE TRUE
L. K. Sharma
ADVOCATE*

32
ANNEXURE 4
77
37

CONFIDENTIAL

Central Administrative Tribunal
केन्द्रीय प्रशासन न्यायालय

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायालय
To

NO. AAP.82/2002/139
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL (PERSONNEL : A)
ASSAM SECRETARIAT (CIVIL) DISPUR
GUWAHATI-781006

Dated, Dispur, the 14th March, 2008

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

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

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

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

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

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

CERTIFIED TO BE TRUE COPY
ADVOCATE

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38

78

-2-

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायसंलय

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायपाठी

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

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

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

By order and in the name
Of the Governor of Assam

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

Om 14/3/07
CERTIFIED TO BE TRUE COPY
A. K. Raheja
ADVOCATE

STATEMENT OF ALLEGATION

(39)

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That Shri Pradip Kumar Das, ACS while holding the post of Deputy Commissioner-Cum-Chairman, DRDA, Darrang, the DRDA, Darrang took up the Scheme of "Low Cost Green House-Cum-Rain Shelter for raising off season vegetables and flowers" for implementation following the Government instruction communicated vide letter I RMD.170/98/31, Dated.24-3-1999, The Project Director, DRDA, Darrang invited short Quotation vide No.DRDA/MLD/1138/98-99/29, Dated. 12-4-1999 for supply of 150 Rolls of 200 micron thickness U Vs film required for erecting "Green House-Cum-Rain Shelter" and accordingly 3 firms submitted quotations. The rate quoted by M/S Nilachal Enterprises was found to be the lowest @ Rs.70.25 per Sq.mtr. of UVs film of 200 micron thickness. Shri Pradip Kumar Das, ACS, as Chairman of the DRDA approved the above rate in the comparative Statement. The Project Director, DRDA, Darrang vide his note at page 3/N-6/N of the file bearing No.DRDA/MLD/1138/98-99 apprised him for procuring U.Vs film of 120 GSM Silpaulin at the same rate from M/S Nilachal Enterprises and he approved the same. Accordingly, the Project Director, DRDA, Darrang issued supply order for 150 Rolls of U.Vs film of 120 GSM thickness Silpaulin @ Rs.70.25 per Sq. mtr. vide order No.DRDA/MLD/11 98-99/1264, Dated.4-5-1999. The APO (Agri) of the DRDA, Darrang, received the materials and certified the quality and quantity to be correct. M/S Nilachal Enterprise was paid Rs.39,68,520/- against the supply bills as per his approval. Though the bills were supposed to be checked by the FAO but it was found that the file was not routed through the FAO and no comment was take from FAO in this regard.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

23 AUG 2010

Guwahati Bench
गुवाहाटी न्यायपीठ.

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

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

CERTIFIED TO BE TRUE
ADVOCATE

LISTS OF DOCUMENTS AND WITNESSES

(A) DOCUMENTS :-

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

(B) WITNESSES :-

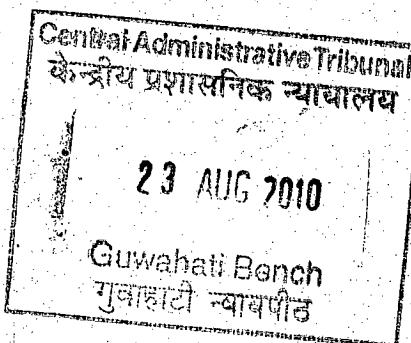
1. Shri B.N.Sarma,APS.

Deputy Superintendent of Police, Chief Minister's Special Vigilance Cell, Assam, Guwahati-5.

By order and in the name
of the Governor of Assam

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

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CERTIFIED TO BE TRUE COPY
L. K. Bhattacharya
ADVOCATE



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ANNEXURE - 5

FROM NO. 4
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No: 60/2009

2. Misc Petition No. _____

3. Contempt Petition No. _____

4. Review Application No. _____

Applicant(s): Sri Pradip Kumar Das

Respondent(s): C.O.I. Kops

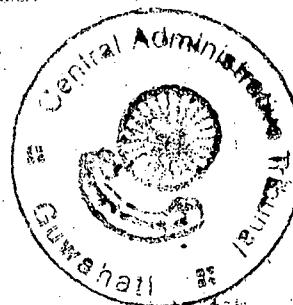
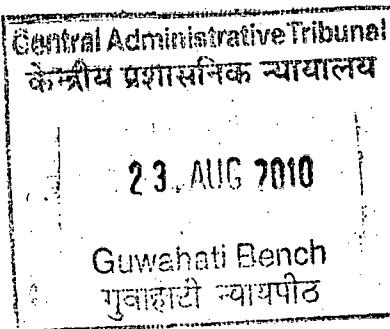
Advocate for the Applicant(s): Mr. D.K. Das

Ms L. Gogoi Ahmed

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

Mr. N. Baruah, A.R. No. 2.

Notes of the Registrar: _____ Date: _____ Order of the Tribunal: _____



TRUE COPY

प्रतिलिपि

AKM 23.8.2010

अनुपमा अधिकारी

Section Officer (Judi)
Central Administrative Tribunal
गुवाहाटी न्यायपीठ
Guwahati Bench
गुवाहाटी/Guwa

CERTIFIED TO BE TRUE COPY
L. K. Das
ADVOCATE

02.2.2010. Applicant has filed an additional affidavit bringing on record latest development which has taken place in present O.A. namely, order passed in Hon'ble Gauhati High Court in W.P.(C) No.1861/2009 dated 24.7.2009 requiring the Respondents to complete departmental proceedings in accordance with the rules within the stipulated time prescribed therein. Pursuant to the aforesaid order the respondents passed order dated 21.12.2009 and exonerated the applicant from the disciplinary proceeding initiated vide show cause notice dated 14.3.2008.

In this view of the matter and as well as the order passed by this tribunal in O.A.No.63 of 2006 dated 20.6.2008, Shri D.K.Das, learned counsel appearing for the Applicant suggest that the present O.A. may be disposed of requiring the Respondents to consider the Applicant inducting him to I.A.S. Assam-Meghalaya Joint Cadre, Assam segment. In the select list of 2004-05 and regulate his relief as prayed for. Ms. Manjula Das, learned counsel appearing for the Respondents, has no objection to regulate Applicant's claim accordingly.

In this circumstances, O.A. is disposed of
in above noted terms.

Sd/-
Neelam (J)

Sd/- Neelam (J)

GR

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ANNEXURE - 6

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No. AAP54/2009/141

GOVERNMENT OF ASSAM

DEPARTMENT OF PERSONNEL (PERSONNEL :: A)

ASSAM SECRETARIAT (CIVIL) DISPUR

GUWAHATI-781 006

Dated Dispur, the 14th June, 2010

To

- (1) The Secretary to the Govt. of India
Department of Personnel and Training
New Delhi.
- (2) The Secretary
Union Public Service Commission
New Delhi.

Sub :

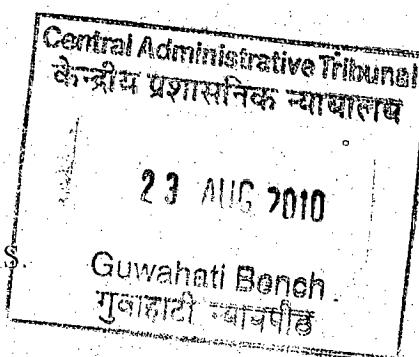
Induction of Shri P.K. Das, ACS to the IAS.

Sit,

I am directed to forward a copy of Order of Hon'ble Central Administrative Tribunal, Guwahati Bench passed in O.A. No. 60/2009 in the matter of Shri P.K. Das Vs. Union of India & Ors and would like to submit the following for your kind perusal.

Shri P.K. Das, ACS was selected provisionally for promotion to IAS by the Union Public Service Commission in the Select List of 2002, 2004 and 2005 as the Integrity Certificate was withheld by the State Govt. on the basis of Vigilance Status Report received from the Political (Vigilance Cell) Department. Being aggrieved on withholding of the Integrity Certificate by the State Govt., Shri P.K. Das filed a petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench (O.A. No. 63/06). The Hon'ble Central Administrative Tribunal in its Judgment & Order dated 20-06-2008 passed on the above quoted O.A. has directed the State Govt. to reconsider the matter and take appropriate steps to grant Integrity Certificate in favour of the Applicant Shri P.K. Das and all Respondents should treat the Applicant to be in the approved Select List without any condition / not provisional and in the peculiar circumstances of this case and in the interest of justice grant him all consequential relief notwithstanding lapse of the validity period of the approved Select List for the years 2002, 2004 and 2005. The Hon'ble Central Administrative Tribunal further observed that this original Application was filed by the Applicant on 08-03-2006 and the Select List for 2004 & 2005 (in which the name of the Applicant appeared provisionally) was finally approved and published by the Department of Personnel and Training of the Govt. of India on 13-06-2006 (i.e. during pendency of this case) and, therefore, validity of the approved final list for 2004 & 2005 that was notified on 13-06-2006 should be treated (as a special case) to have not lapsed so far the Applicant is concerned, "for he is facing a continuing wrong committed by the State Govt. of Assam".

On receipt of the Order dated 20-06-2008 of the Hon'ble Central Administrative Tribunal, Guwahati Bench, the Govt. of India, Department of Personnel and Training, New Delhi opined that in the first instance on a proposal from the Govt. of Assam, the Union Public Service Commission is required to take action for declaration of inclusion of Shri Das in the impugned Select List as unconditional and final. The issue of notifying the appointment of Shri Das to IAS will come only after the Union Public Service Commission declares inclusion of the name of Shri Das in the Select List as unconditional and final. The Department of Personnel and Training, Govt. of India urged this State Govt. that the proposed action to be taken in the context of the Order of Hon'ble Central Administrative Tribunal be intimated to them also urgently.



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Further, the Union Public Service Commission being the Respondents in O.A. No. 63/2006, on receipt of the Order of the Hon'ble Central Administrative Tribunal, Guwahati Bench has requested that State Govt. to intimate the decision of the Govt. in regards to the implementation of the direction given in the Order dated 20-06-2008 by the Hon'ble Central Administrative Tribunal in respect of Shri P.K. Das, ACS.

On receipt of direction from the Department of Personnel and Training vide their Letter dated 07-08-2008 to reconsider the matter and take appropriate steps to grant Integrity Certificate to Shri P.K. Das against the approved Select List for the Year 2004 & 2005, this State Govt. furnished the Integrity Certificate for the Year 2004 & 2005 in respect of Shri P.K. Das, ACS on 19-11-2008 vide Letter No. AAP.55/2006/154. However, Govt. of India was intimated that on that date Shri Das was not clear from the Vigilance angle since a Departmental Proceedings were initiated against him vide Letter No. AAP.82/2002/139, dated 14-03-2008 with a copy of Union Public Service Commission.

Being aggrieved on drawal of the above Departmental Proceedings, Shri P.K. Das, ACS filed a Writ Petition before the Hon'ble Gauhati High Court and the Hon'ble Court admitted the same as W.P.(C) No. 1861/09. The Hon'ble Gauhati High Court vide its Order dated 24-07-2009 in the above W.P.(C) directed the State Respondents to complete the Departmental Proceedings in accordance with Rules within a period of 4 months therefrom.

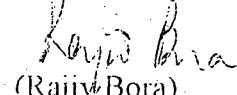
Simultaneously, Shri P.K. Das, ACS filed an application before the Hon'ble Central Administrative Tribunal, Guwahati Bench on 31-03-2009 which was admitted as O.A. No. 60/2009. The Written Statement in defence in O.A. No. 60/2009 was submitted in the Hon'ble Central Administrative Tribunal, Guwahati Bench on August, 2009. In the meantime, the Departmental Proceedings drawn against the officer on 14-03-2008 has been dropped and Shri P.K. Das, ACS was exonerated from the charge leveled against him on 21-12-2009, in pursuance of the Order of the Hon'ble Gauhati High Court in W.P.(C) No. 1861/09.

In view of above the Hon'ble Central Administrative Tribunal, Guwahati Bench in its Order dated 02-02-2010 referring their earlier Order dated 20-06-2008 in O.A. No. 63/06 has disposed of the O.A. No. 60/2009 directing the Respondents to consider the Applicant for induction to IAS of the Assam Segment of Assam-Meghalaya Joint Cadre in the Select List of 2004 & 2005 and regulate his relief.

On receipt of the above Order of the Hon'ble Central Administrative Tribunal, the matter was referred to the Judicial Department for their views. The Judicial Department in their views intimated that the Order of the Hon'ble Central Administrative Tribunal passed in the O.A. No. 60/2009 has directed the Union of India and Others and advised this Department to take up the matter with the Union of India and Union Public Service Commission for taking necessary action form their end.

In view of above and as the subject matter falls within the purview of Govt. of India, Department of Personnel and Training, New Delhi, and Union Public Service Commission, you are requested to consider the appointment of Shri P.K. Das, ACS to the IAS as directed by the Central Administrative Tribunal, Guwahati Bench.

Yours faithfully


(Rajiv Bora)

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

