

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 165/95

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SECTION OFFICER (Judl.)

*Kaly*  
*6.2.18*

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI..5

ORIGINAL APPLICATION NO: 165/95

MISC. PETITION/ REVIEW APPLICATION/CONT. PETITION NO.

..... Mr. Sarat Talukder APPLICANT(S)

versus

..... Mr. J.L. Sarkar and Mr. Ma Chanda RESPONDENT(S)

31-8-95

Mr. J.L. Sarkar and Mr. Ma Chanda  
for the applicant.

This application is in  
form and within time  
C. F. of Rs. 50/-

deposited vide

PO/BD No. 327/95

Dated 25.8.95

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

An interesting contention has been raised by the applicant in this O.A. The applicant was appointed as a Sepoy in Group 'D' on compassionate ground on 29-4-95. According to the applicant although he sought the appointment as LDC which he was qualified as there was no vacancy in that post he accepted the appointment as Sepoy. In the year 1992 he was declared successful at the promotion examination for the post of LDC from Group 'D' Sepoy. As he could not be immediately appointed in pursuance thereof for want of vacancies as he was at Sl.No. 35 in 1992, he was expecting promotion in due course. In the meanwhile by order dated 17-7-95 the respondents creating a supernumerary post of Library Assistant and appointed respondent No.4 in the post of compassionate ground. However that creating that post the respondents have diverted one post of LDC on compassionate appointment quota as matching saving. It is the grievance of the applicant that this diversion of one post of LDC has indefinitely reduced the total number of vacant posts of LDC and thereby his promotion prospect has been reduced to extent of one post and thus the diversion of one post of LDC is illegal. He therefore, wants the aforesaid order dated 17-7-95, and the order of the

contd/.

31-8-95 appointment of respondent No.4 as Library Assistant dated 24-8-95 to be quashed. As consequential reliefs he seeks that he should be directed to be considered for promotion to the post on his diversion being quashed.

It can hardly be disputed that it is for the administration to increase or decrease the posts of a particular cadre in the department. The grievance of the applicant that <sup>he</sup> is likely to suffer in the prospects of his promotion <sup>for</sup> some indefinite future is too remote to entitle him to claim the reliefs as prayed. Had the position being that if the post had not been diverted and the applicant had been immediately ~~him~~ eligible to be appointed having regard to his position in seniority the question would have been different. Secondly, although the applicant was <sup>appointed</sup> as Sepoy on compassionate ground his appointment as LDC is not claim <sup>ed</sup> against compassionate quota. The order dated 17-7-95 shows that the diverted post of LDC was ~~for~~ on compassionate appointment quota of LDC. That places the respondent No.4 on a totally different pedestal.

In view of the aforesaid two circumstances it appears difficult to <sup>find</sup> look at any locus in the applicant to challenge the two impugned orders. Mr. Sarkar however submits that he would try to substantiate on the basis of certain decisions of the Supreme Court that where the action of the respondents tends <sup>to</sup> ~~but~~ affect promotional prospect <sup>can</sup> ~~which~~ it cannot be assailed and the person would have locus to do so. That is the question of considerable significance and interesting one.

contd/-

O.A.165/95

31-8-95

We think that <sup>the</sup> question is ~~involved~~ involved in the case which deserves to be examined in detail. In that view of the matter the O.A. is admitted.

Issue notice to the respondents. Written statement within 8 weeks. Adjourned to 14-11-95 for further orders. However no interim <sup>order</sup> stay is granted.

Requisites are read  
a second time no. 3923-76  
22.8.95

5/9

lm

*hull*  
Vice-Chairman  
*hull*  
Member

14.11.95

Adjourned to 8.1.1996 for orders.

12-9-95

Rejoinder to the  
w/s submitted by  
the respondents.

pg

*hull*  
Member

*hull*  
Vice-Chairman

*hull*  
15/11

8.1.96 for orders on 23.2.96.

Notice send on  
R. no. 1 & 2.

*hull*  
14/12/95

1/12/95

23.2.96

Adjourned to 26.4.96 for orders. Liberty to file counter.

3.1.96

w/s submitted by  
the Respondent No.1, 2 and 3.

*hull*  
Member

*hull*  
Vice-Chairman

trd

*hull*

26.4.96 Mr M-Chanda for the applicant.

Written statement has been submitted by respondents 1, 2 and 3. Case ready for hearing.

List for hearing on 10.6.96.

Member

pg

10.6.96

Learned counsel Mr M. Chanda for the applicant. Learned Sr. C.G.S.C., Mr S. Ali, for the respondents.

Mr Chanda makes submission in part. Adjourned as part heard to tomorrow, 11.6.96.

Member(A)

Member (J)

nk m

11.6.96

Mr M.Chanda for the applicant. Mr S. Ali, Sr.C.G.S.C for the respondents.

Mr Chanda submits on instruction that the applicant has since been promoted to L.D.C during the pendency of this O.A. and the application has become infructuous and is not pressed.

The application is therefore dismissed as not pressed.

Member (A)

Member (J)

pg

1) Service ready on  
Respond no. 1 & 2.

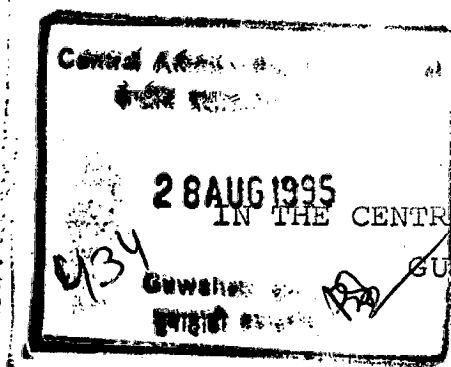
2) w/ statement - chs sum  
filed

SD  
7/6

16.7.96

Copy of order  
issued to the parties  
vide D.No. 2125 to 2129  
of 16.7.96

sh



6  
Filed by the applicant  
through M. Chandra  
Advocate  
28.8.95.

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

O.A. No. 165/95

Sri Sarat Talukdar ..... Applicant

-versus-

Union of India & Others ..... Respondents

I N D E X

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5	3	" dt.31.7.90	24-25
6	4	Estt. Order No. 249/92 dt. 31.8.92	26-28
7	5	Estt. Order No. 249/95 dt. 4.8.95	29
8	6	Estt. Order No. 222/95 dt. 17.7.95	30
9	7	Appointment Order dt. 4.8.95	31-34
10)	20/8/95		36-44

Filed By :

Advocate

Received

File - Sr. CSE  
28/8/95

Sarat Talukdar

1. Particulars of the Applicants

Shri Sarat Talukdar  
 Son of Late Raghav Talukdar  
 Working as Group D Sepoy in the  
 Office of the Assistant Commissioner,  
 Central Excise,  
 Guwahati. .... Applicant

2. Particulars of the Respondents

1. Union of India  
 through the Secretary to the Govt. of India  
 Department of Revenue  
 Ministry of Finance  
 New Delhi
2. Commissioner of Central Excise,  
 Shillong
3. Additional Commissioner (P&V)  
 Customs & Central Excise,  
 Shillong
4. Smt. Lidaris Syiemiong,  
 Office of the Commissioner of  
 Customs and Central Excise,  
 Shillong .... Respondents

3. Particulars for which this application is made.

This application is made against the Establishment Order No. 222/95 dated 17.7.95 and also against the appointment order of Smt. Lidaris Syiemiong issued under

Sarat Talukdar

Office Memorandum No. 11/31/7/E.T.II/90 dated 4.8.95 appointing her as Assistant Librarian, against the vacant post of Lower Division Clerk & also for a direction to consider the appointment of the applicant in the resultant vacancy of LDC with immediate effect.

4. Jurisdiction

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

5. Limitation

That the applicant further declare that this application is filed within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act.

6. Facts of the Case

6.1 That the applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed by the Constitution of India. The applicant is presently serving as Group 'D' Sepoy in the office of the Assistant Commissioner, Central Excise, Guwahati.

6.2 That the applicant was initially appointed on compassionate ground as Group 'D' Depoy and joined on 29.4.85 vide appointment Letter No. II(3)/ET.I/83 ~~Ext~~ 8252-53(A) dated 18.4.1985. Be it stated that late Raghav Talukdar father of the applicant was a Group 'D'

Sarat Talukdar



Sepoy under the Customs and Central Excise, Shillong while in service and posted at Dhubri the father of the applicant died on 3.1.83. At that time the applicant had passed his matriculation Examination and applied for appointment to the post of Lower Division Clerk (in short L.D.C.).

A copy of the appointment order dated 18.4.1985 is enclosed as Annexure-1.

6.3 That the applicant at the relevant time approached Sri G.R.Sarma, the then Collector, Customs and Central Excise, Shillong for his appointment to the post of LDC on compassionate ground but the Collector after hearing him in detail informed the present applicant that his case would be considered for Group 'D' Sepoy as there is no vacant post of LDC. However his case for appointment to the post of L.D.C. would be considered sympathetically as soon as the vacancy of L.D.C. is available. Under such compelling circumstances the applicant although eligible for appointment to the post of LDC he was offered appointment to the post of Group 'D' Sepoy and the applicant accordingly accepted the appointment in the post of Group 'D' Sepoy in the circumstances stated above.

6.4 That the applicant after joining to the post of Group 'D' post submitted several representations to the Collector, Customs and Central Excise, Shillong for appointment to the post of L.D.C. against compassionate <sup>several</sup> quota and/representations were submitted namely on 16.6.86, 20.10.87 and 31.7.90 respectively. But unfortunately the Collector did not consider all those representa-

Sarat Talukdar

tions for his appointment to the post of LDC and remain silent over the representation.

Copies of representations dated 20.10.87 and 31.7.90 is enclosed herewith and the same is marked as Annexure-  
~~2x and x3xx2x~~ 2 and 3.

14/15/4/92  
6.5 That the applicant appeared in the promotion examination for the post of LDC from Group 'D' Sepoy held on 14th and 15th April 1992 and he was declared successful vide Estt. Order 249/92 dtd. 31.8.92 and he was placed ~~at~~ serial No. 35 and since 1992 the applicant is eagerly waiting for the promotion to the post of LDC but he was not promoted due to non-availability of vacancy for the post of L.D.C. and after declaration of the result of the above said promotion examination, the applicant is waiging for his turn for promotion to the post of L.D.C. The panel prepared in accordance with 1992 promotional examination result is still valid.

A copy of the Esstt. Order No. 249/92 dated 31.8.92 is annexed as Annexure-4.

6.6. That Smt. Lidaris Syiemiong, wife of late Peter Lyngdoh, Ex-Inspector, Customs and Central Exices, Shillong who expired while on duty, she was appointed by the respondents as Lower Division Clerk (in shor L.D.C. in the year 1993, although she was a non-mature candidate with an undertaking from her, that she would acquire the requisite qualification within a period of two years,

Satrat Talukdar

i.e. respondent No. 4 is required to pass Matriculation Examination within a period of two years for regular appointment of her service in the cadre of L.D.C. but unfortunately she should not acquire the requisite qualification for regular appointment to the post of L.D.C. on compassionate ground.

6.6. That the appointment of respondent No. 4 to the post of L.D.C. was terminated with effect from 7.8.95 (F/N) vide Establishment Order No. 249/95 dated 4.8.1995 as she could not acquire requisite educational qualification. It is further stated in the termination order that the same is issued in concurrence with Ministry's communication F. No. A-12012/25/94-AD-III-B dated 29.4.95.

A copy of the termination order issued under Establishment Order No. 249/95 is enclosed as Annexure-5

6.8 Most surprisingly, respondent No. 2 vide Establishment Order No. 222/95 dated 17.7.95 wherein it is stated that in exercise of powers vested vide Ministry's letter No. A-12012/45/90-AD-III-B dated 10.4.90 a supernumary post of Library Assistant in the pay scale of Rs. 950-20-1150-EB-25-1500 is created in view of extra-ordinary circumstances, arising out of compassionate appointment case of Ms Lidaris Syiemiong, wife of late Peter Lyngdoh, Ex-Inspector of Customs and Central Excise, Shillong who expired while on duty. It is also stated that for being eligible, to be appointed in the said post, the incumbent will have to have of Book Keeping and proficiency in basic account keeping and English. It is further stated in the

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said order that consequent upon the above creation 1(one) post of L.D.C. from compassionate appointment quota is hereby diverted as matching saving. This decision of the Commissioner of Central Excise, is highly illegal, contradictory, arbitrary and violative of the Government policy, instruction and rules for compassionate appointment as well as this decision has adversely affected the promotion prospect of the present applicant as well as other similarly situated Employees of Group 'D' category who are waiting in the que for long time for promotion to the post of L.D.C. Therefore this decision of the Commissioner issued under Establishment Order No. 222/95 dated 17.7.95 be set aside and quashed.

A copy of the Establishment Order No. 222/95 dated 17.7.95 is enclosed as Annexure-6.

6.9. That Surprisingly respondent No. 4 is further appointed as Library Assistant in the scale of pay of Rs. 950-1500/- vide Office Memorandum No. 11/31/7/E.T.II/90 dated 4.8.95 although is not having requisite qualification for the post of Library Assistant in the scale of Rs. 950/- - 1500/-. Moreover one post of L.D.C. is diverted for creation of the said post of Library Assistant in the scale of pay of Rs. 950-1500/-, whereas, in the Establishment Order No. 222/95, it is also stated that a supernumary post of Library Assistant is created, if the supernumary post is created in that event there was no question of diversion of the post of L.D.C. for supernumary post of Library Assistant. The order itself is contradictory, and the same is violative of policy, instruction/rule of

*Sarwat Talukdar*

Central Government for appointment of compassionate ground. Therefore the appointment of respondent No. 4 to the post of Library Assistant is liable to be set aside and quashed and the applicant be promoted in the resultant vacancy.

A copy of the appointment letter dated 4.8.95 is enclosed as Annexure - 6.

6.10 That the present applicant hereby makes it clear that he is not against the compassionate appointment of respondent No. 4 if the same is made in accordance with rules but the present application is made against the diversion of 1 post of L.D.C. whereby the promotional prospect of the present applicant has adversely affected, as a result of diversion of 1 post of L.D.C. for creation of the post of Library Assistant to accommodate respondent No. 4 in violation of all rules, regulation and policy of decision for compassionate appointment, which already establishes malafice, favouritism on the part of the respondent.

Further, the applicant begs to state that the respondent No. 4 has already availed three years of relaxation on compassionate appointment to the post of L.D.C. therefore further ~~two~~ years of relaxation to the post of Library Assistant on compassionate appointment cannot be extended in accordance with rules. The action of the respondents is highly illegal, malafide, favouritism and unfair.

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6.11 That the applicant begs to state that very recently Smt. Promila Narzary, wife of late Jyothi Ranjan Narzary, Ex-Inspector of Customs and Central Excise, who dies while on duty, was appointed in the cadre of Group D with effect from 19.7.95, as Smti Promila Narzary, not having requisite qualification for appointment on compassionate ground in the cadre of L.D.C. but she was not given any opportunity in the cadre of Group C post like respondent No.4. Therefore it appears that further creation of post of Library Assistant where Educational qualification is Matriculation passed required under the rule in the scale of Rs. 950-1500/- diverting 1 post of L.D.C. is arbitrary, discriminatory and violative of rules of compassionate appointment as such the appointment order dated 4.8.95 is liable to be set aside and quashed.

6.11 That the rule for compassionate appointment clearly states that on compassionate appointment relevant recruitment rule must be followed, and the educational qualification may be temporarily relaxed for a period of two years, but if the candidate cannot acquire the prescribed qualification then the service must be terminated. The relevant rule of compassionate appointment clearly states that the appointment on relaxation of educational qualification on compassionate ground can be made for a period of two years only. The relevant portion of the ~~Establishment and Administration~~ Swamy's Complete Manual on Establishment and Administration for Central Government Offices 1989 Edition 1989 P. 253 regarding compassionate appointment is quoted below :

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"2. Authority competent to make compassionate appointments.

- a) Joint Secretary incharge of Administration or Secretary in the Ministry/Department concerned.
- b) In the case of Attached and Subordinate Offices, such power may be exercised by the Head of the Department under Supplementary Rule 2(10).

3. Posts to which such appointments can be made.

Group 'C' post or Group 'D' posts.

4. Eligibility

- a) Compassionate appointments can be made only against direct recruitment quota.
- b) Applicants for compassionate appointment should be appointed only if they are eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules
- c) Departments are, however, competent to relax temporarily educational qualifications in the case of appointment at the lowest level, i.e., Group 'D' or LDC post, in exceptional circumstances where the condition of the family is very hard. Such relaxation will be permitted up to a period of two years beyond which no relaxation of educational qualifications will be admissible and the services of the persons concerned if still unqualified, are liable to be terminated.
- d) Where a widow is appointed on compassionate ground to a Group 'D' post, she will be exempted

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from the requirements of educational qualifications, provided the duties of the post can be satisfactorily performed without having the educational qualification of Middle standard prescribed in the Recruitment Rules.

- e) In deserving cases even when there is an earning member in the family a son/daughter/near relative of the deceased Government servant, leaving his family in distress may be considered for appointment with the prior approval of the Secretary of the Department concerned who, before approving the appointment, will satisfy himself that the grant of concession is justified having regard to the number of dependants, the assets and liabilities left by the deceased Government servant, the income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased Government servant and whether he should not be a source of support to the other members of the family".

Therefore, it is quite clear that after a period of two years educational qualification cannot be relaxed for compassionate appointment, but in the instant case, to avoid the compassionate appointment rule laid down by the Government in the case, of respondent No. 4 the respondent

Satish Tarkuskar



Mo. 2 very clearly created a post of Library Assistant diverting one post of L.D.C. without considering the far reaching adverse effect, in the matter of promotion prospect of the applicant who are waiting for a very long time for promotion in the cadre of L.D.C.

The applicant beg to state that educational qualification cannot be relaxaed for a period of 3rd year as per rule for compassionate appointment but the same is violated in the instant case of compassionate appointment. The authorities should have appointed the respondent No. 4 in the cadre of Group 'D' post on compassionate ground, like Smt. Promila Narzary.

6.13 That the applicant further begs to state that the probable question as regard locus standi and maintainability of the application may arise and the applicant in this connection begs to refer the Hon'ble Supreme Court's judgement passed in Lakhi Ram Vs. State of Haryana and Others reported in (1981) Vol.II, S.C.C. 674 where the Hon'ble Court held as follows :

"The only ground on which the writ petition filed by the appellant has been dismissed by the High Court is that the appellant has not locus standi to maintain the writ petition. The appellant filed the writ petition challenging the action of the Government expunging the adverse remarks made in the annual confidential report of respondent 6. The High Court took the view that the appellant was not entitled to complain against the expungement of

Sarjit Tatarwal

adverse~~se~~ remarks made in the confidential report of another officer. But this view is, in our opinion, erroneous because the effect of expungement - nt of adverse remarks in the confidential report of respondent 6 is to prejudice the chances of promotion of the appellant and if the appellant is able to show that the expungement of the remarks is illegal and invalid, the adverse remarks could continue to remain in the confidential report of respondent 6 and that would improve the chances of promotion of the appellant vis-a-vis respondent 6. The appellant was, therefore, clearly entitled to show that the government acted beyond the scope of its power in expunging the adverse remarks in the confidential report of respondent 6 and that the expungement of the adverse remarks should be cancelled. The appellant had, in the circumstances, locus stand to maintain the writ petition and the High Court was in error in rejecting it on the ground that the appellant was not entitled to maintain the writ petition.

2. This was the reason why we allowed the appeal and, setting aside the order of dismissal passed by the High Court, remanded the writ petition to the High Court for disposal on merits.

Therefore in the instant case also due to diversion of one post of L.D.C. the chances of promotion of the applicant

Sarat Talwar

have been reduced. This is abundantly clear from the Establishment Order No. 222/95 dated 17.7.95 whereby one post of L.D.C. have been diverted for creation the post of Library Assistant and the diversion of one post of LDC for creation of Library Assistant makes it clear that the educational qualification of Library Assistant is equivalent to the educational qualification of L.D.C. i.e. Matriculation Pass and thereby the chances of promotion to the post of LDC is affected and reduced. Hence the application is maintainable as the respondents have acted beyond the scope of its power inasmuch as appointing the Respondent No. 4 to the post of Library Assistant in further relaxation of Educational qualification.

6.14 That the post of Library Assistant is created diverting one post of L.D.C. where educational qualification is required matriculation just to accommodate Respondent No. 4 avoiding the harshness of the compassionate appointment rule. Therefore the Hon'ble Tribunal is required to lift the veil and also for ends of justice.

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

#### 7. Reliefs prayed for

Under the facts and circumstances stated above the applicants pray for the following reliefs :-

1. That the Establishment order No. 222/95 dated 17.7.95 (Annexure-6) be set aside and quashed.

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2. That the appointment order issued under letter No. 249/95 dated 4.8.95 (Annexure-7) be set aside and quashed.
3. ✓ That the respondents be directed to consider the promotion of the applicant in the resultant vacancy against which respondent No. 4 is appointed.
4. That the Hon'ble Tribunal be pleased to declare that the diversion of 1 post of LDC for creation of the post of Library Assistant for appointment of Respondent No. 4 for 3rd consecutive year with having requisite qualification is illegal and violative of compassionate appointment scheme issued by the Govt. of India.
5. That the respondents be directed to consider the promotion of the applicant in the resultant vacancy against which respondent No. 4 is appointed.
6. Cost of the case

The above relief is prayed on the following amongst other

-G R O U N D S-

1. For that the applicants are available and waiting for promotion to the post of L.D.C. after passing the Promotion Examination.

Sattat Talukdar

2. For that the illegal appointment of respondent No. 4 for the 3rd consecutive year without having requisite qualification on compassionate ground in the cadre of Group 'C' post is highly illegal and arbitrary.
3. For that diversion of 1 post of L.D.C. for creation of the post of Library Assistant to accommodate respondent No. 4, have indefinitely reduced the total number of vacant post of L.D.C. thereby promotion prospect of the applicants also reduced to the extent of 1 post.
4. For the when supernumary post of Library Assistant is created therefore diversion of 1 post of L.D.C. is illegal.
5. For that the post of Library Assistant is analogous to the post of L.D.C. and belonged to Group 'C' category where Matriculation is essential educational qualification but the respondent No. 4 could not acquire the same within a stipulated period of 2 years as per rules. Therefore, further appointment to the post of Library Assistant and further relaxation of two years for compassionate appointment is illegal.
6. For that respondent No. 3 acted mala fide by appointing respondent No. 4 for the period of 3rd year without having requisite educational qualification.

Surat Talwar

7. For that respondent No. 4 do not passes requisite educational qualification i.e. Matriculation.

7. Interim Reliefs prayed for

That the appointment order dated 4.8.95 (Annexure-7) issued in favour of respondent No. 4 be stayed till disposal of this instant application.

The above prayer is made on the grounds explained in para 7 of this application.

8. The the present applicant declares that ~~they~~ he has not filed any other application before any other Court or Tribunal on this subject.

9. That there is no any other rule/law save and except filing the application before this Hon'ble Tribunal.

10. Particulars of the Postal Orders

- |                     |                    |
|---------------------|--------------------|
| 1. Postal Order No. | : 327195.          |
| 2. Date of Issue    | : 28-8-95.         |
| 3. Issued from      | : G.P.O., Guwahati |
| 4. Payable at       | : GPO, Guwahati    |

11. Index of documents are enclosed

12. Enclosures

As per Index.

Sarat Talukder

V E R I F I C A T I O N

I, Shri Sarat Talukdar, Son of Late Raghav Talukdar, Working as Group D Sepoy in the office of the Assistant Commissioner, Central Excise, Guwahati do hereby declare and verify the statements made in paragraphs 1 to 12 of this application are true to my knowledge, and belief. I have not suppressed any material facts.

I sign this verification on this the 28<sup>th</sup> day of August 1995.

Place : Guwahati

Date : 28-8-95

Sarat Talukdar  
SIGNATURE

## ANNEXURE-1

REGISTERED A/DOFFICE OF THE COLLECTOR OF CUSTOMS  
AND CENTRAL EXCISE : SHILLONG

C.No. II(3)15/ET.I/83 8252-53 (A) Dated Shillong  
The 18 APR 1985

## OFFICE MEMORANDUM

With reference to his interview Shri Sarat Talukdar is hereby offered a temporary post of Sepoy (O.G) in the scale of pay of Rs. 196-3-220-EB-3-232/- plus the usual allowances as sanctioned by the Government of India. His appointment will be subjected to the following terms and conditions :-

- i. The appointment is purely temporary and will be governed by the C.C.S. (T.S.) Rules, 1965 and is liable to termination without assigning any reason under Rule 5 ibid.
- ii. He will be on probation for a period of two years which may, however, be extended at the discretion of the appointing authority.
- iii. He will have to comply with the requirement of the C.C.S. (Conduct) Rules, 1964 and the Plural Marriage Act. All Rules or orders already in existence or issued from time to time regarding attendance, duties, discipline, conditions of service etc. will automatically be applicable to him/her.
- iv. He should give a declaration of his hometown for the purpose of L.T.C. within 6 (six) months from the date of entry into service.
- v. He must be willing to serve anywhere within the jurisdiction of this Collectorate.
- vi. He should pass the prescribed Departmental Examination within two years of his appointment failure to which may lead to his service being terminated.

Attested  
@ Shillong  
Adv.

Sarat Talukdar



- vii. That the seniority of the candidate of direct recruits vis-a-vis promotees will be assigned according to the position of each candidate in roster.
- viii. His retention in service is further subjected to his being found suitable for Government service in all respects.
- ix. His appointment is subject to the production of Medical Certificate of fitness from the Assistant Surgeon I (in case of Group 'D' staff only) and subject to his taking an oath of allegiance to the Constitution of India.
- x. He is liable to transfer/posting within the Collectorate to which he is nominated and under no circumstances his request for transfer to any other Collectorate will be entertained.
2. If the offer is accepted by him he should report for duty to the Assistant Collector of Customs and Central Excise, Guwahati immediately, but in any case not later than 15 (fifteen) days from the date of issued of this offer. If he fail to do so, this offer of appointment will be treated as cancelled.
3. He should submit the following documents alongwith his joining report.
- i. The medical fitness certificate in the form enclosed obtainable from the Assistant Surgeon on production of the enclosed letter to him.
- ii. The original Matriculation Certificate and or other certificates in support of age, educational qualifications etc.
- iii. Two certificates of Character (in the enclosed form) not more than three months old from two Gazetted Officers.

Attested  
@  
Adv.

Sd/- T. Talukdar.

- iv.. If he claims to be a member of Scheduled Caste/  
Scheduled Tribe, he should submit the original  
certificate in support of his statement in the  
enclosed form duly signed by the Sub-Divisional  
Officer/District Magistrate/Deputy Commissioner  
or by a Gazetted Officer of the Central or a State  
Govt. and countersigned by the District Magistrate/  
Deputy Commissioner of the District to which the  
candidate belongs.
- v. A declaration in form enclosed regarding marriage.
- vi. No objection certificate from his previous  
employer and release order from his employer  
accepting his resignation from that service.
4. No travelling or other allowance will be paid to  
him for obtaining the Medical or other certificates or  
for joining the post.

Sd/- Z. TOCHHAWING  
DEPUTY COLLECTOR ( PER. & ESTT.)  
CUSTOMS AND CENTRAL EXCISE : SHILLONG

To  
Shri Sarat Talukdar  
C/o late Raghav Talukdar Ex-Sepoy  
Vill Kotalkuchi  
P.O. Kotalkuchi  
Dist. Kamrup

Attested  
@huly  
A.W.

Sarat Talukdar

To  
The Collector,  
Customs & Central Excise  
Shillong

(Through Proper Channel)

Sir,

Sub : Prayer for appointing in the post of  
Lower Division Clerk - on compassionate  
ground - regarding.

With due defference and humble submission I beg  
to lay before your kindness the following few lines for  
favour of your kind consideration and favourable orders.

That Sir, I was appointed in this Department as  
Sepoy on compassionate grounds and joined in the Guwahati  
Divisional Office on 29th April 1985 and since then rendering  
my service to the best satisfaction of all my superior  
officers. Since the death of my father the whole burden  
of looking after the large family comprising of seven  
members fell upon me, being the only bread earner.

That Sir, if I am given the opportunity to serve  
under your kindness in the post of Lower Division Clerk as  
I do have the requisite qualification, I am sure I shall  
incure displeasure. The emoluments thus received will help  
in a big way to meet the demands which from my poor earning  
has not been able to meet.

In this connection, I pray to refer to my petitions  
submitted vide C No. II/3/1/ET/ACG/85/6642 dated 26.6.86  
and subsequent reminder on 21.10.87 vide C. No. 990-992  
from the N.O.R. Range Noonmati in this regards and as ill  
luck would have it, I am yet to receive a reply. It would  
be proper to bring to your Honour's notice here that most  
of the persons joined so far compassionate grounds have  
since been upgraded as L.D. Clerks save and except me.  
While being appointed I represented the same verbally to  
the then Collector in presence of the Union Secretary of  
the Group D Union whereupon it was assured that my case will

Attested  
By  
Adv.

Sarat Talukdar

be considered after a period of 2 (two) years as there was then no vacancy of L.D.C. here. Since there has been vacancy now at the Divisional Office, I would like to pray your honour to kindly consider my humble prayer and allow me the opportunity to serve this Department with full satisfaction as well as to improve the economic hardship of the poor family.

While visiting the NOR on 23.9.89 that your honour instructed to submit a representation and accordingly I have now submitted this petition.

In anticipation of your kind and sympathetic orders. I remain Sir,

Yours faithfully

Sd/- Sarat Talukdar, Sepoy

21.10.87 C-2 C Ex.  
N.O.R. Rang Noonmati

Copy to

1. Advance copy to Collectorate & EX. Shillong
- C.C. The General Secretary, Group D Officer's Association, C & CE,
- C.C. The ~~General~~ Secretary, Group D Officer's Association, C & CE, Jowhati Division.

Sd/- Sarat Talukdar

Attested  
By  
Sd/-

Sarat Talukdar

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23 24  
ANNEXURE - 43

C.No. 11(39/EST/93/NOR/88/544

Dt. 31.7.90

To

The Hon'ble Collector,  
Customs and Central Excise,  
Shillong

(Through Proper Channel)

Sir,

Sub : Prayer for promoting me to the post of  
Lower Division Clerk Corres-regarding

With due respect and humble submission I beg to invite your kind attention to the following few lines on the above prayer for favour of your sympathetic consideration.

That Sir, I have been serving this esteemed Department since 29th April, 1985, to the best satisfaction of all my superior officers.

Being all only earning head of a big family of seven wholly dependent members, I have been struggling a lot to meet the livelihood of such a big family.

That Sir, I have passed my H.S.L.C. Examination in 1982 and completed 5 yrs. service in this Department since my joining on 29.04.1985. In this regard, I would like to refer to my prayers vide C.No. II/3/1/ET/ACG/85/6642, dt. 26.6.86, and C.No. 990-92 dt. 21.10.87 and C.No. II (39)EST/43/NOR/88/878-81 dt. 16.10.89. But the irony of fate of such a poor servant like me is that I have not received any response from Collectorate Hqs., Shillong, so far.

Attested  
By  
Adv.

Sarant Tataran.

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ANNEXURE -3 (Contd.)

It may kindly be noted that - I was appointed under "Deceased quota" after the death of my father who was an employee of this Department.

Last year on 23.9.89, the day of your visit in Noonmati Oil Refinery Range, Gauhati, I was directed by your honour to submit a prayer in details. Accordingly, a prayer was submitted by me vide C No. II (39) EST/43/NOR/88/878-81 dt. 16.10.89. But no response has come till to date.

I, therefore, wholeheartedly pray and hope that your honour would be sympathetic enough for favourable consideration of my prayer for promoting me to the post of Lower Division Clerk of this department at your kind and earliest perusal.

Yours faithfully,

Sd/- Sarat Talukdar, Sepoy

Dated - Noonmati  
Guwahati-20 Customs and Central Excise, NOR-Range  
Noonmati

Dt. 31.7.90

Attested  
@hule  
Ahr-

Sarat Talukdar.

## ANNEXURE - 4

## CUSTOMS AND CENTRAL EXCISE : SHILLONG

ESTABLISHMENT ORDER NO. 249/92

Dated, Shillong the 31st August, 1992

Subject : Promotion Examination for Gr. D Officers for promotion to the grade of L.D.C. held on 14th & 15th April, 1992.

The result of the above mentioned examination held on 14th and 15th April '92 is declared as under :

Note : (P) indicate paper in which the candidate has passed  
(F) indicate paper in which the candidate has failed.  
(A) indicate paper in which the candidate has absent.  
(-) indicate paper passed in the earlier Examination.

Roll No.	Name	Paper			Remarks
		I	II	III (type test)	
1	2	3	4	5	6
	S/Shri				
1	B.F. Sohkheth	-	-	F	
2	A.M. Kharbamon	-	-	F	
3	Motuir Rahman	-	-	F	
4	Lok Nath Deka	-	-	F'81	
5	Jogen Moshahary	-	-	F	
6	Mrioil Barua	P	P	F	
7	D.B. Lama	P	P	F	
8	Sudam Ch. Dhar	-	-	F	
9	Ratan Sengupta	P	P	P	Pass in all subjects
10.	Kripamoy Das	-	-	P	-do-
11.	Debashish Chakra- borty	-	-	P	-do-
12	Sankar Chakraborty	-	-	P	-do-
13	Riazul Hussain	P	P	F	

Attested  
@  
Adv.

Sarat Tewari.

ANNEXURE - 4 (contd.)

6	1	2	3.	4.	5.	6
14	Padma Kanta Deka Barman	-	-	P		Pass in all subject
15.	D.P.Haokip	P	P	P		-do-
16	M.Snbol Singh	P	P	P		-do-
17	M.Mani Singh	P	P	P		-do-
18	S.I.Singh	P	P	A		
19	S.A.Singh	-	-	A		Passed in all subjects
20	Monu Gogoi	-	-	F		
21	Kailash Tewari	-	-	P		Passed in all subjects
22	Shymal Kr. Das	-	-	P		Passed in all subjects
23	Subash Chakraborty	-	-	P		-do-
24	V.Thanziala	A	A	A		
25	Liladhar Saikia	P	P	P		Passed in all subjects
26	Sahabuddin Ahmed	P	P	P		-do-
27	Hemakanta Barua	-	-	P		-do-
28	Binod Changmari	-	-	F		
29	Naraiyan Kagyung	-	-	F		Passed in all subjects
30	Deben Pathori	-	-	F		
31	Pradip Das	A	A	A		
32	Mukibur Rahaman	P	P	P		Passed in all subjects
33	Subash Ch.Roy	P	P	P		-do-
34	Lohit Gogoi	P	P	P		
35	Sarat Talukdar	P	P	P		Passed in all subjects
36	Ramen Kr. Das	P	P	P		-do-
37	Banamali Das	-	-	P		Passed in all subjects
38	Khagen Baishya	-	-	P		-do-
39	Kushal Ch. Saikia	-	-	F		
40	Ajit Ch. Bora	-	-	F		
41	P.K.Daiman	-	-	F		
42	Ranjan Kr. Das	P	P	F		
43	Hireswar Bora	F	F	F		
44	D.Basumatory	-	-	F		
45	Umesh Ch. Pora	-	-	P		Passed in all subjects
46	Kamal Gogoi	-	-	F		
47	Baharul Islam	P	P	F		
48	Pabitra Kr. Nath	P	P	P		Passed in all subjects
49	Hazarat Ali	P	P	P		-do-
50	Sitendra Ch.Roy	P	P	F		

Attested  
by  
Adm.



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ANNEXURE - ~~2~~ (Contd.)

6	1	2	3	4	5	6
---	---	---	---	---	---	---

52	Numal Ch. Sonowal	P	-	P	Passed in all subjects
53	Sarat Ch. Hazarika	-	-	F	
54	Bijoy Krishna Deb	-	-	F	
55	Torun Ch. Gogoi	-	-	F	
56	Pulin Dehingia	P	P	F	
57	Budheswar Dehingia	-	-	F	
58	Swapan Kr. Seal	P	P	P	Passed in all subjects

Sd/- D.D.INGTY

ADDITIONAL COLLECTOR (P&amp;V)

CUSTOMS &amp; CENTRAL EXCISE : SHILLONG

Attested  
 @hulu  
 A.W.

## ANNEXURE - 5

CUSTOMS AND CENTRAL EXCISE : SHILLONG

ESTABLISHMENT ORDER NO. 249/95

Dated, Shillong the 4th August, 1995.

Subject : Termination of service of Smti. Lidaris Syiemiong,  
L.D.C.

As Smti. Lidaris Syiemiong, L.D.S. could not acquire the requisite educational qualification within the stipulated period her service as L.D.C. is hereby terminated with effect from 07.08.95 (F/N).

This issues in concurrence with Ministry's communication F.No. A-12012/25/94-Ad-III-B dated 29.04.95.

Sd/- J.L.NGILNEIA  
Additional Commissioner ( P & V )  
Customs and Central Excise : Shillong

C.No. 11(31)7/ET-11/90/15406-11(A) dated 4.8.95

Copy for information and necessary action to :-

1. The Superintendent (Training Cell), Customs and Central Excise, Shillong. He is requested to relieve Smti Lidaris Syiemiong, L.D.C. w.e.f. 07-08-95 (F/N) positively. Copy meant for Smti Syiemiong is enclosed.
2. Smti. Lidaris Syiemiong, L.D.C.
3. C.A.O/P.A.O/A.C.A.O., Customs and Central Excise, Shillong.
4. Confidential Branch of Hqrs. Office, Shillong.
5. Guard File.

Sd/- J.L.NGINEIA  
Additional Commissioner (P&V)  
Customs and Central Excise : Shillong

AA estd  
Chiller  
AdV

Satrat Talukdar

## ANNEXURE - 6

## CUSTOMS AND CENTRAL EXCISE : SHILLONG

ESTABLISHMENT ORDER NO. 222/95

Dated Shillong the 17th July, '95

In exercise of powers vested vide Ministry's letter N.No. A-12012/45/90-AD-III-B dated 10.04-90, a superannumerary post of Library Assistant in the pay scale of Rs. 950-20-1150-EB-25-1500 is hereby created in view of the extraordinary circumstances arising out of compassionate appointment case of Ms. Lidaris Syiemiong W/o Late Peter Lyngdoh, Ex-Inspector of Customs and Central Excise, Shillong who expired while on duty. For being eligible to be appointed in the said post, the incumbent will have to have knowledge of book keeping and proficiency in basic account - keeping and English.

Consequent upon the above creation, 1(one) post of L.D.C. from compassionate-appointment-quota is hereby diverted as matching saving.

Sd/- L.R. Mithran  
Commissioner of Central Excise : Shillong

C.No. II931)7/ET.II/90/1434-61/A | Dated 17 Jul 1995

Copy for information and necessary action to :

1. Sri R.K.Mitra, Under Secretary, Section Ad.III B, Central Board of Excise & Customs, New Delhi.
2. The P.A.O/C.A.O. of Hqrs., Office, Shillong.
3. The A.C.A.O (Accts) of Hqrs. Office Shillong.
4. The Superintendent (Training Cell) of Hqrs. Office, Shillong.
5. Ms Lidaris Syiemiong.
6. General Secretary, Gr. 'C' Executive Officers' Association/Gr. C Ministerial Officers' Association/Group D Officers' Association, Shillong.
7. Guard File.

Sd/- EVA M.R.HYNNIENTA  
DEPUTY COMMISSIONER (P&V)  
CUSTOMS AND CENTRAL EXCISE : SHILLONG

*Attested  
Chhinder  
A.S.V.*

*Sarat Talukder.*

## ANNEXURE - 7

OFFICE OF THE COLLECTOR OF CUSTOMS AND  
CENTRAL EXCISE : SHILLONG

C.No. 11/31/7/ET.II/90/5394

Dated 4.8.1995

## OFFICE MEMORANDUM

With reference to his/her application/Interview/recommendation of the Staff Selection Commission Shri/Smti Lidaris Syiemiong is offered a temporary post of Library Assistant in the scale of Pay Rs. 950-20-1150-EB-25-1500 plus the usual allowances as sanctioned by the Government of India. His/her appointment will be subject to the following terms and conditions.

- i. The appointment is purely temporary and will be governed by the C.C.S. (T.S.) Rules 1965 and is liable to termination without assigning any reason under Rules 5.
- ii. He/She will be on probation for period of two years which may however be extended at the discretion of the appointing authority.
- iii. He/she will have to comply with requirements of the C.C.S. (Conduct) Rules, 1964 and the plural Marriage Act. All Rules or orders already in existence or issued from time to time regarding attendance duties discipline, conditions of service etc. will automatically be applicable to him/her.
- iv. He/She must be willing to serve anywhere within the jurisdiction of this Collectorate.
- v. He/she should pass the prescribed Departmental Examination within two years of his/her appointment failure to which may lead to his/her service being terminated.
- ~~xxxx He/she should pass the prescribed Departmental Examination~~
- vi. He/she should give a declaration of his/her twon for the purpose of L.T.C. within 6 (six) months from the date of entry into service.

Attested  
@  
Adv.

Sarant Talukdar

## ANNEXURE-7 (Contd.)

- vii. That the seniority of the candidate of direct recruit vis-a-vis promotees will be assigned according to the Instruction issued by the Ministry from time to time.
- viii. His/Her retention in service in future subject to his/her being found suitable for Govt. service in all respect.
- ix. His/Her appointment is subject to the production of Medical Certificate of Fitness from the Civil Surgeon Assistant Surgeon in case of Group 'D' staff only and subject to his/her taking an oath of allegiance to the Constitution of India.
- x. He/She is liable to Transfer/Posting within the Collectorate to which he/she is nominated and under no circumstance has/her request for transfer to any ~~other~~ other Collectorate will be entertained.
- xi. Applicable to candidates appointed on compassionate ground.
- a) The appointment is purely provisional subject to satisfactory Police Verification Report.
- b) The educational qualification has been relaxed as a special case. He/she has to acquire requisite educational qualification viz. \_\_\_\_\_ class within two years from the date of appointment.
- c) He/She should acquire the requisite speed in type writing as failure to pass the type writing test will debar him/her from drawing increments in the pay scale and he/she will not be entitled the confirmation.
- xii. Applicable to candidates claiming to be belonging to Scheduled Castes/Scheduled Tribes :
- "The appointment is provisional and is subject to the Caste/Tribe Certificate being verified through the proper channels and in the verification reveals that

Attested  
@hln  
Adv

Poojat Talwar

## ANNEXURE - (Contd.)

the claim to belong to SC/ST, as the case may be, is false, the services will be out prejudicial such further action as may be taken under the provisions of the Indian Penal Code for Production of false Certificate".

2. If the offer is accepted by him/her, he/she should report for duty to the Additional Commissioner of Customs & Central Excise, Shillong immediately, but in any case not later than 15 (fifteen) days from the date of receipt of this offer. If he/she fails to do so, this offer of appointment will be treated as cancelled.
3. He/She should submit the following documents alongwith him/her joining report.
  - i. The Medical fitness certificate in the form enclosed obtainable from the Civil Surgeon/Assistant Surgeon on production of the enclosed letter to him/her.
  - ii. The original Matriculation Certificate and other Certificates in support of age, educational qualification etc
  - iii. If he/she claims to be Member of SC/ST, he/she should submit the Original Certificates in support of his/her statement mentioned in the enclosed form duly signed by any of the following officers.
    - a. District Magistrate/Additional District Magistrate/Collector/Deputy Commissioner/Additional Deputy Commissioner/Deputy Collector/Ist Class Stipendary Magistrate Sub Divisional Magistrate/Taluka Magistrate/Executive Magistrate Extra Assistant Commissioner.
    - b. Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate.
    - c. Revenue Officer not below the rank of Tehsildar.
    - d. Sub-Divisional Officer of the area where the candidates and or his family normally resides.

Attested  
@ Shillong  
Adm.

Sarat Talukder.

## ANNEXURE-7 (Contd.)

- iv. Two certificate of Character in the enclosed form not more than three month old from two gazetted officer. One of the Certificates should be attested by the District Magistrate or Sub-Divisional District Magistrate or their superior Officer.
- v. A declaration in form enclosed regarding marriage.
- vi. No Objection Certificates from his/her previous employer and release order from his/her employer accepting his/her resignation from that service.
- vii. Attestation form in triplicate duly filled in.
- viii. Employment Exchange Registration Card in original.
4. No travelling or other allowances will be paid to him/her for obtaining the Medical or other Certificates.

Sd/- J.L.Ngilneia

Addl. Commissioner (P&V)

Customs & Central Excise : Shillong

To

C.No. II (31) 7/ET II/90

Dated :

Copy forwarded to the Assistant Collector Customs and Central Excise, for information and necessary action.

A copy of the joining report alongwith an attested copy of each Certificate showing his/her age, educational qualification and caste Employment Exchange Registration Card (in original) etc. may please be sent to this Office immediately after his/her joining.

He should obtain the oath of allegiance from the official and entry to this effect should also be made in the service book.

2. Copy to the personal file.

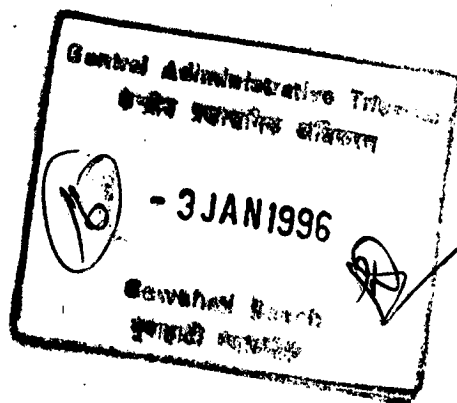
Sd/- J.L. Ngilheia

Addl. Commissioner (P&V)

Customs & Central Excise : Shillong

*Attested  
Chul  
Adv.*

*Sarat Talukder*



Filed by:

Shankar

(MD. SHAUKAT ALI) 3/1/95

Br. Central Govt Standing Counsel

Central Administrative Tribunal

Guwahati Bench, Guwahati

1/1/96

Superintendent (Law)

Central Excise

Guwahati Division

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI :

In the matter of :-

O.A.No. 165/95

Shri Sarat Talukdar

- Vs. -

Union of India and others.

In the matter of :-

Written Statements submitted by the  
Respondents No. 1, 2, 3

WRITTEN STATEMENTS ::

The humble Respondents submit their  
written statements as follows :-

1. That with regard to statements made in paragraphs 1 to 5 of the application, the Respondents have no comments on them.
2. That with regard to statements made in paragraph 6.1 and 6.2 of the application, the Respondents have no comments on them.
3. That with regard to statements made in paragraphs 6.3 and 6.4 of the application, the Respondents beg to state that as there was no vacancy then in the

.....2/-



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28/1/96  
Superintendent (Law)  
Central Excise  
Guwahati Division

grade of L.D.C. against Compassionate Appointment Quota, Shri Talukdar could not be considered for appointment as L.D.C. then. He then expressed his willingness to join as a Sepoy in Group 'D' Cadre. Now, once a person is appointed to a post on Compassionate Ground, he cannot be considered again, a second time for appointment in any other post on compassionate ground and no such promise was also made to the applicant stating that his case for compassionate appointment as L.D.C. will be considered even after he has joined as Sepoy on compassionate ground. As the applicant has mentioned that this department has made such a promise, he should substantiate it by producing documentary evidence.

4. That with regard to statements made in paragraphs 6.5, 6.6 and 6.7 of the application, the Respondents beg to state that they have no comments on them, the same being matters of record.

5. That with regard to statements ~~inx~~ made in paragraphs 6.8 of the application, the Respondents beg to state that the creation of the post was well within the ~~now~~ powers of the Head of the Department vide Board's letter F.No. A-12012/45/90-Ad.III-B dated 10-04-90 (Copy enclosed as Annexure-I) which was issued in pursuance of deliberation of the Hon'ble Apex Court in Civil Appeal No. 3642 of 1989. Again, as this post of L.D.C. was diverted from Compassionate appointment quota and not from ~~xx~~ promotion quota, the diversion has in no way effected the

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R. S. 1/1/96  
Superintendent (Law)  
Central Excise  
Guwahati Division

promotional scope of the applicant. As such the contention of the applicant that the creation of the Superanumerary post and the diversion of the post of L.D.C. as highly illegal, contradictory, arbitrary and violative of Govt's policy, Instruction and rules for Compassionate appointment is not correct. Moreover, as the issue does not affect the applicant in any way, he has no locus-standi to question the creation and diversion.

6. That with regard to statement made in paragraph 6.9 of the application, the Respondents beg to state that the Board interviewing Ms. ~~Kibaryx~~ Lidaris Syiemiong found her eligible for appointment as Library Assistant with reference to this Office Establishment Order dated 17-07-95 (Copy enclosed as Annexure-II). As has been mentioned in this Office Order dated 17-07-95, post of L.D.C. from Compassionate Appointment quota was diverted as matching saving so that the Non-Plan Expenditure does not exceed the sanctioned grant of this department. Hence, the diversion was in no way violative of policy, Instruction/rules of Central Govt. As already stated vide paragraph 6.8 above, the diversion has in no way affected the promotional prospect of the applicant. Further, the appointment of the respondent No. 4 to the post was a regular appointment and not any extension of relaxation of educational qualification as contended by the applicant.

8. That with regard to statements made in paragraphs 6.11 of the application, the Respondents beg

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12/11/76  
R. R. R. R. R.  
Superintendent (Genl)  
Excise  
Guwahati Division

to state that as it has already been discussed, Ms. Syiemiong could not be appointed as L.D.C. on compassionate ground as she did not have the minimum requisite qualification. She could not be appointed as a Sepoy too (i.e. the only grade in ~~Gr.~~ Gr. 'D' cadre where vacancy existed) as she did not have the physical standards as per Recruitment Rules. It is under these extraordinary circumstances that this department had to resort to creating a superanumerary post of Library Assistant as per Board's Order dated 10-4-90 mentioned above. Moreover, this did not affect the promotional prospect of any one as contended by the applicant. Ms. Narzary had the requisite qualification and physical standards for appointment as Sepoy and hence, there was no extraordinary circumstance to resort to creation of a superanumerary post as was done in case of Ms. Syiemiong.

9. That with regard to statements made in paragraph 6.12 of the application, the Respondents beg to state that the same has already replied in earlier paragraphs Nos. 6.10 and 6.11.

10. That with regard to statements made in paragraphs 6.13 of the application, the Respondents beg to state that as already explained vide Para. No. 6.8 above, the diversion has not affected the promotional prospect of the applicant and hence he has no locus-standi to maintain this application. Further, the diversion was made as matching saving of Non-Plan expenditure (Pt. 6.9 above) and this diversion did not mean that the educational qualification for library Assistant is equivalent to the educational qualification for the post of L.D.C. i.e. Matriculation.

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R. S. J. 1/1/96  
Superintendent (Law)  
Central Excise  
Guwahati Division

11. That with regard to statements made in paragraph No. 6.14 of the application, the Respondents beg to state that the same is already explained in foregoing paragraphs.
12. That with regard to statements made in paragraph 6.15 of the application, the Respondents have no comments on them.
13. That with regard to statements made in paragraph 7 of the application regarding Reliefs prayed for the Respondents beg to state that the applicant is not entitled to any of the Reliefs prayed for and as such the application is liable to be dismissed.
14. That with regard to grounds of the application the Respondents beg to state that none of the grounds is maintainable in law as well as in facts and as such the application is liable to be dismissed.
15. That with regard to statements made in paragraph 7, regarding Interim Reliefs prayed for, the Respondents beg to state that in view of the facts and circumstances narrated above the Interim order is liable to be dismissed.
16. That with regard to statements made in paragraphs 8 to 12 of the application, the Respondents have no comments on them.
17. That the Respondents submit that the application is devoid of merit and as such the application is liable to be dismissed.

VERIFICATION

I, Shri/ Smt. *P.R. Ghosh*  
Superintendent (Law), Central Excise, Guwahati,  
Office of the Assistant Commissioner, Central  
Excise, G.B. Road, Guwahati - 5 being authorised  
do hereby solemnly declare that the statements  
made above are true to my knowledge, belief and  
information.

And I sign this verification on this  
1st th day of *January*, 1996 at Guwahati.

*P.R. Ghosh 1/1/96*  
DECLARENT :  
Superintendent (Law)  
Central Excise  
Guwahati Division

ANNEXURE - I

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F.NO. A-12012/45/90-Ad.III.B  
Government of India  
Ministry of Finance  
Department of Revenue,  
Central Board of Excise & Customs.

46

New Delhi, the 10th April, 1990.

To  
All Heads of Departments,  
Under Central Board of Excise and Customs.

Subject :- Supreme Court's Judgement regarding appointment on  
compassionate grounds - Clarification regarding -

Sir,

I am directed to say that the Hon'ble Supreme Court of India in their judgement dated 25.8.1989 in the case of Smt. Sushma Gosain and Others - Vs. - Union of India and Others in Civil Appeal No. 3642 of 1989 while holding that the denial of appointment on compassionate grounds in that case was patently arbitrary and had to be set aside, has also made observations that if there is no suitable post for appointment, Supernumerary post should be created to accommodate the applicant.

2. Pursuant to the aforesaid judgement, some of the Collectors have written to the Ministry whether any decision has been taken by the Government in the matter. The Department of Personnel and Training have clarified that the Supreme Court has directed the creation of Supernumerary post, if necessary, to offer compassionate appointment in the peculiar circumstances of that case and, as such, it does not imply that this extra-ordinary step should be taken in all cases of compassionate appointments. Such appointments are essentially discretionary in character subject to the considerations laid down in that Department's O.M. No. 14014/6/86-Estt.(D) dated 30.6.87 and should be offered to the dependants of the deceased Government servants only in really deserving cases where the family is in immediate need of assistance. If a selective approach for offering such appointments is adopted, keeping in view the enhanced financial ~~and~~ benefits admissible to the family, it should be possible for the departments to offer compassionate appointments in deserving cases within the number of vacancies which could be earmarked for this purpose under the existing instructions.

3. Receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/-

( PARKASH CHANDRA )  
UNDER SECRETARY

CENTRAL BOARD OF EXCISE & CUSTOMS

Tel.No. 343049.

CUSTOMS AND CENTRAL EXCISE :::: SHILLONG.

C.NO. V.3(3)71/LAW/89/

Dated :-

Copy forwarded for information and necessary action to :-

1. The Additional Collector, TECHNICAL/PREVENTIVE/AUDIT/  
xx VALUATION, Customs and Central Excise, Shillong.
2. The Deputy Collector (P & V), Customs and Central Excise,  
Shillong.
3. The Assistant Collector, Customs and Central Excise,
4. The Assistant ~~Collector~~ Chief Accounts Officer,  
Accounts Branch, Revenue Branch, Customs and Central  
Excise, Shillong.
5. The Administrative Officer(Hqrs.), Customs and Central  
Excise, Shillong.
6. The Superintendent, ESTABLISHMENT/TECHNICAL/CUSTOMS/  
STATISTICS/APPEAL/SHILLONG RANGE/K & J HILL CELL,  
Customs and Central Excise, Shillong.
7. ~~XXXXXXXXXXXX~~ The Pay & Accounts Officer, Customs  
and Central Excise, Shillong.

( A.F. LYNCH )  
SR. SUPERINTENDENT (LAW)  
CUSTOMS AND CENTRAL EXCISE  
SHILLONG.

22/5/90

ANNEXURE - II

CUSTOMS AND CENTRAL EXCISE::SHILLONG

ESTABLISHMENT ORDER NO.222/95  
DATED SHILLONG THE 17TH JULY, '95

In exercise of powers vested vide Ministry's letter N.No. A-12012/45/90-AD-III-B dated 10-04-90, a superannumerary post of Library Assistant in the pay scale of Rs.950-20-1150-EB-25-1500 is hereby created in view of the extra ordinary circumstances arising out of compassionate appointment case of Ms. Lidaris Syiemiong, W/O Late Peter Lyngdoh, Ex-Inspector of Customs and Central Excise, Shillong who expired while on duty. For being eligible to be appointed in the said post, the incumbent will have to have knowledge of book keeping and proficiency in basic account- keeping and English.

Consequent upon the above creation, 1(one) post of L.D.C. from compassionate-appointment-quota is hereby diverted as matching saving.

sd/-

( L.R. MITHRAN )

COMMISSIONER OF CENTRAL EXCISE:SHILLONG

No.II(31)7/ET.II/90/

14354-11109

Dated 13 JUL 1995

Copy forwarded for information and necessary action to :-

1. Sri R.K. Mitra, Under Secretary, Section Ad.III.B, Central Board of Excise & Customs, New Delhi.
2. The F.A.O./C.A.O. of Hqrs. Office, Shillong.
3. The A.C.A.O.(Accts) of Hqrs. Office, Shillong.
4. The Superintendent(Training Cell) of Hqrs. Office, Shillong.
5. Ms. Lidaris Syiemiong.
6. General Secretary, Gr. 'C' Executive Officers' Association/  
Gr. 'C' Ministerial Officers' Association/Group 'D'  
Officers' Association, Shillong.
7. Guard File.

*Eva M. Hynniewta*

( EVA M. HYNNIEWTA )  
DEPUTY COMMISSIONER(P&V)

CUSTOMS & CENTRAL EXCISE::SHILLONG

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