

30/100

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ON No. 219, 96

Sri M T B Nair

Applicant(s)

VS-

Union of India & or

Respondent(s)

Mr. B K Sarma, B. Mehla,
S. Sarma,

Advocates for the applicant(s)

Mr. A K Choudhury, Addl.

Advocates for the Respondent(s)

Cont. Adv. Nagaland, Mr. G. Sarma, Addl.

Office Notes

Date

Courts' Orders

This application is in
form and within time

C. F. of Rs. 50/-

deposited vide

IPO No. 346831

Dated 29.8.96

4.10.96

Mr. B.K.Sharma for the
applicant.

Mr. A.K.Choudhury, Addl.
C.G.S.C. for the respondents.

Heard Mr. Sharma for admission
and perused the contents of the
application and reliefs sought.
Application is admitted. Issue notice on
the respondents by registered post.
Written statement within six weeks.

List for written statement and
further order on 15.11.1996.

Pendency of this application
shall not be a bar for the respondent
No. 3, the Director General of Police,
Nagaland, Kohima to dispose of the
representation dated 27.9.95 Annexure-15
submitted by the applicant.

Member

Comply order dated

4-10-96

29/10

14.11.96

Notice issued to

the respondent vide

No. B7 58 Dt. 15.11.96

15.11.96

List for written statement and
further orders on 13.12.96 as requ-
ested by Mr A.K.Choudhury, Addl.C.C.
S.C.

Member

12-12-96

Memorandum of appearance filed by
Mr. G. Sarma, Addl.

pg

15/11

13.12.96

Mr B.K.Sharma for the applicant.
Mr A.K.Choudhury, Addl.C.G.S.C for
respondent No.1. Mr G.Sarma, Addl.C.G.S.
C for respondent No.2 and Mr C.T.Jamir
for respondents No.3 & 4. Mr Jamir
submits that respondent No.4 has not
been served. Counsel of the applicant
today served a copy of the application
on ~~Mr Jamir~~ Mr Jamir on behalf of
respondent No.4. All counsel of the
respondents seek time for filing
written statement.

List for written statement and
further orders on 16.1.97.

Member

pg

W
16/12

16.1.97

Mr S.Sarma for the applicant.

No written statement has been
submitted by any of the respondents.
Mr S.Ali, Sr.C.G.S.C for Mr A.K.Choudhury
submits for one month time to file
written statement by respondents No.1
& 2.

List for written statement and
further orders on 17.2.97.

Member

pg

W
16/1

17.2.97

Written statement has been filed on
behalf of respondent No.1. Other respondents have
not filed written statement. Mr G. Sarma, learned
counsel for respondent No.2 and the learned counsel
for respondent Nos.3 and 4 pray for further time
to file written statement. For the ends of justice
we grant two weeks time to file written statement
as a last chance. No further time will be granted.

List it on 28.2.97.

Member

Vice-Chairman

16.12.96

Notice duly served
on Respt No 1.

By

15-1-97

written statement has
not been filed.

W
15.1

21-1-97

W/S filed on behalf
of Respt. no. 1.

19-2-97

1) Service reports are
still wanted for R-2-4.

W
19/2

nk m

(3)

OA 219/96

3

27.2.97

28.2.97

Mr G. Sarma, learned Addl. C.G.S.C., appearing on behalf of respondent No.2, Union Public Service Commission prays for further extension of time to file written statement. AS several adjournments had already been granted earlier we are not inclined to grant any further extension of time. Respondent Nos.1, 3 and 4 have already filed written statement.

1) Reply filed on behalf of the R-1 by Mr A.K. Choudhary, Addl. C.G.S.C.

2) Memo of appearance filed by Mr A.K. Choudhary and Mr G. Sarma, Addl. C.G.S.C. on R-1 and 2.

20.3.97.

Let this case be listed for hearing on

Member

Vice-Chairman

3) A/c not yet received back from R-2 to 4.

nkm

W
27/2

20.3.97

On the prayer of Mr. B.K.Sharma, learned counsel appearing on behalf of the applicant hearing adjourned to 21.3.1997.

4.3.97

W/s filed on R-2

R. no. 3 & 4

Member

Vice-Chairman

21.3.97

On the request of the learned counsel for the parties let this case be listed for hearing on 26.3.97.

Member

Vice-Chairman

1) Notice duly sent on op. no. 1.

2) Service Reports are still awaited on R-2-4.

3) W/s statement - has been filed on R-1

4) W/s statement - has been filed on R-2 & 4.

nkm

27.3.97

We have heard Mr B.K. Sharma, learned counsel for the applicant, Mr C.T. Jamir, learned Government Advocate, Nagaland, and Mr A.K. Choudhury, learned Addl. C.G.S.C. After hearing at some length we wanted certain information as to why the applicant was overlooked even though Hon'ble Gauhati High Court directed to restore his seniority and to treat him to be of 1976 batch. By an order dated 22.3.1993 the seniority of the applicant was restored treating him to be of 1976 batch. Two junior officers were promoted about two.

50
19/3

27.3.97

weeks thereafter. We wanted to know why this aspect was not taken into consideration by the Union of India, Union Public Service Commission and the Government of Nagaland. Mr G. Sarma, learned Addl. C.G.S.C., appearing on behalf of the Union Public Service Commission, has not been able to inform this Tribunal in this regard. Mr C.T. Jamir also has not been able to say anything in this regard. Mr A.K. Choudhury submits that he has also no instructions and in that regard he prays for two weeks time for that purpose. Considering this we grant two weeks time to the counsel for the respondents to receive proper instruction.

Let this case be listed on 21.4.97 for further hearing.


Member


Vice-Chairman

nkm
31/3

17.4.97

21.4.97

Mr B.K.Sharma, learned counsel for the applicant and Mr A.K.Choudhury, learned Addl.C.G.S.C for the respondents are present.

Let the case be listed for hearing on 23.4.97.


Member


Vice-Chairman

pg
24/4

23.4.97

Heard Mr.B.K.Sharma learned counsel appearing on behalf of the applicant. Learned Addl.C.G.S.C. Mr.A.K.Choudhury appearing on behalf of the respondents No.1. Learned counsel Mr.E C.T.Jamir appearing on behalf of the respondents Nos 3 & 4. Mr.G.Sarma learned Addl. C.G.S.C. was to make his submission. It is informed that Mr.G.Sarma Addl. C.G.S.C is in bereavement and therefore,

contd/-

Handwritten notes:
D/S filed on 17.4.97
P.m. 1, 3 & 4.
D/S from P.m. 2 admitted.
by

OA 219/96 4

23-4-97 he is unable to attend this Tribunal Accordingly, we adjourned the case for 10 days.

Let this case be listed for hearing on 5-5-97.

Member

Vice-Chairman

2.5.97

1) Written statement has been filed on behalf of the respondents NO 1, 3 and 4.

2) not yet received acknowledgment from the R-2 by this registry till 10-day.

lm

28/4

5.5.97

Heard Mr B.K.Sharma, learned counsel for the applicant, Mr A.K.Choudhury, learned Addl.C.G.S.C for respondent No.1, Mr G.Sarma, Addl.C.G.S.C for respondent No.2 and Mr C.T.Jamir for respondent No.3 & 4. Mr Jamir has produced records. Records may be kept in the safe custody of the Court Officer

Part heard. List on 7.5.97 for further hearing.

Member

Vice-Chairman

pg

7.5.97

Heard counsel for the parties. Judgment delivered in open Court. The application is allowed. No order as to costs. Judgment contain in separate sheets.

Member

Vice-Chairman

13.5.97

Copy of the judgment has been sent to the D/sec. for issuing the same to the parties, A Gents Adm, Nagaland.

1705 to 1709 vide No. 2, 13.5.97

trd

Received a copy of the judgment dated 7-5-97 today.

C. Yalpin 14/5/97.

Received original records in two files. C. Yalpin 16/5/97

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 219 of 1996.
T.A. NO.

DATE OF DECISION 7-5-1997.

Shri M.T.B.Nair

(PETITIONER(S))

Shri B.K.Sharma

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr A.K.Choudhury, Addl.C.G.S.C.
Mr G.Sarma, Addl.C.G.S.C.
Mr. C.T.Jamir, Govt. Advocate, Nagaland.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE-CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.

sd
16/7/97

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 219 of 1996

Date of decision : This the 7th day of May, 1997.

Hon'ble Justice Shri D.N.Baruah, Vice-Chairman.

Hon'ble Shri G.L.Sanglyine, Administrative Member.

Mr. M.T.B. Nair,
Commandant,
1, Nagaland Armed Police Battalion,
Chumukedima,
Nagaland

Applicant

By Advocate Mr. B.K.Sharma.

-versus-

1. The Union of India,
represented by the Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Union Public Service Commission,
represented by its Chairman,
1, Shahjahan Road,
Dholpur House, New Delhi.
3. The Director General of Police,
Nagaland,
Kohima.
4. The State of Nagaland
represented by the Secretary (Home),
Nagaland.

Respondents

By Advocates Mr. A.K.Choudhury, Addl. C.G.S.C., for
respondent No.1, Mr. G.Sarma, Addl. C.G.S.C. for
respondent No.2 and Mr. C.T.Jamir, Advocate, Govt. of
Nagaland for the respondent Nos. 3 and 4.

O R D E R

BARUAH J. (V.C.).

The applicant in this application has
prayed for a direction to the respondents to appoint
him on promotion in the Indian Police Service with
effect from 1990 showing the year of allotment as 1986

.....and

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and also prayed for further direction to the respondents to give him all consequential benefits including arrear salary. Facts are :

2. The applicant is an officer in Nagaland Police Service. In 1963 he was in the Emergency Commission in the Indian Army. He remained there for about five years and thereafter he was released on 5.2.1968. At the time when he left Army he was holding the rank of Captain. The Govt. of Nagaland extended all the benefits of the Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of vacancies) Rules 1967 to officers in respect of employment in Nagaland State Civil Service.

3. On 24.2.1968 the applicant was appointed Deputy Superintendent of Police with effect from 26.2.1968 in Nagaland. Nagaland Police Service Rules Service (Class I & II) Rules 1977 were framed and the same was published by issuing a notification. Thereafter, in January 1981 the applicant was permanently absorbed in Nagaland Police Service as per the provisions of the said rule.

4. The Government of Nagaland by Memorandum dated 20.11.1982 gave the applicant seniority with effect from 2.7.1976 and thus he became a member of 1976 Batch of Nagaland Police Service. In May 1984 seniority list of the Deputy Superintendent of Police was published showing the applicant's position at serial No. 2 of 1976 Batch. However, about a year thereafter on 3.4.1985 Annexure-5 Order dated 29.5.1984 was issued cancelling the benefit of the past service of the applicant which was given to him earlier towards the fixation of seniority as stated above. In the same

.....month

month on 12.4.1985 Government published yet another seniority list pushing the applicant down in the seniority list by ignoring his past Military Service.

5. The applicant, being aggrieved, approached the Hon'ble Gauhati High Court by filing a writ application (Civil Rule No. 21 (K) of 1989). The said Civil Rule was disposed of by Judgement dated 7.3.1991, directing the respondents to restore the seniority of the applicant by giving benefit of his past service in Army. It may be mentioned here that during the pendency of the aforesaid Civil Rule, selection for promotion to the Indian Police Service was held among the eligible officers upto 1979 Batch, totally overlooking the case of the applicant as his seniority position was pushed down from 1976 Batch to 1981 Batch. Meanwhile in March 1990 some junior Police Officers had been promoted to the Indian Police Service. At that time also the authorities ignored the claim of the applicant. Notwithstanding the aforesaid Judgement, the seniority position of the applicant was not restored and as a result the applicant continued to suffer. In 1992 another selection was held for appointment of officers in the Indian Police Service on promotion. However, the seniority of the applicant was not restored even then. This time the applicant was considered and he was placed at Sl. No. 3 in the aforesaid select list that too without giving the benefit of his past service in the Army. As a consequence his juniors who were placed at higher positions in the list were appointed in the I.P.S. Cadre but the applicant could not be appointed due to non-availability of vacancies. On 22nd of March 1993 at last, the Government of Nagaland had complied with thedirection

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direction given in the Judgement of Gauhati High Court restoring the seniority of the applicant from 1976 and made recommendation to the Government of India to appoint the applicant in Indian Police Service against the vacancy which was to occur on the retirement of Shri Insumeren Ao. Sri Ao was to retire on 30.4.1993. However no action was taken. On 8 April 1993 the two juniors of 1978 Batch had been promoted to the Indian Police Service. In the month of March 1995 a select list for promotion to the Indian Police Service was prepared and the applicant's position was shown at Serial number 1. However, no appointment has yet been made. Hence the present application.

6. We have heard Mr. B.K.Sharma, learned counsel appearing on behalf of the applicant and Mr. A.K.Choudhry, learned Addl. C.G.S.C. for the respondent No.1, Mr. G.Sarma, learned Addl. C.G.S.C. for the respondent No.2 and Mr. C.T.Jamir, learned Advocate, Governement of Nagaland for the respondent Nos. 3 and 4.

7. Mr. B.K.Sharma has placed before us the entire facts and circumstances. He has made endeavour to show how injustice had been caused to the applicant by ignoring the direction given by the Gauhati High Court and also by overlooking the provision of law. According to Mr. Sharma the action of the respondents

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was utterly in violation of the Articles 14 and 16 of the Constitution and also the relevant rules. Mr. Sharma has also emphasized, while arguing before us, that the action of the respondents more particularly the Respondent Nos. 3 and 4 was arbitrary, unreasonable and unfair. Mr. Sharma further submits that the facts and circumstances of the case clearly indicate that the authorities had taken action deliberately just to deprive the applicant to get promotion which was legally due to him. While making such submissions he has drawn our attention to the Judgement of the Hon'ble Gauhati High Court passed in Civil Rule No. 21 (K) of 1989. In that Civil Rule applicant challenged the action of the Respondents in pushing down his seniority position ignoring the period of his service in Army. The Gauhati High Court by its Judgement dated 7.3.1991 clearly directed that the applicant was entitled to get the benefit of his past service in Army in determining his seniority. The Judgement was delivered and it was known to the Government immediately after the pronouncement of the Judgement in view of the fact that the Advocate General as well as the Govt. Advocate, Nagaland appeared in the said case. But the respondents left the matter unnoticed without taking any step to comply with the direction given by the High Court. Only in the month of March, 1993 the Government of Nagaland had written to the Union of India recommending for appointment of the applicant in the vacancy to be occurred on the superannuation of Shri Imsumeren Ao with effect from 30.4.1993. In the month of March, 1991 the Judgement was pronounced by the Gauhati High Court. The Judgement was pronounced about two years before.

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The name of the applicant was recommended by 4th Respondent. However, the respondents No. 3 and 4 did not consider necessary to recommend the name of applicant to the Union Public Service Commission immediately after the pronouncement of the Judgement of the High Court. The reason for such delay has not been explained before us. Records placed before us also do not indicate any reason. Mr. Jamir has, however, made an attempt to impress upon us by saying that probably the judgement was not received by them. The records do not support this submission. Be, that as it may, when the Judgement was delivered and the respondent No. 3 namely, State of Nagaland was a party to the proceedings before the High Court and the State of Nagaland was defended by the Advocate General and Govt. Advocate, it is difficult for us to accept the submission of Mr. Jamir. If no information was given to the Respondent No. 3, it will only suggest how negligently the officers of the State of Nagaland were. For such negligence the applicant cannot be allowed to suffer. If proper steps had been taken in appropriate time, the applicant would have been promoted as per the Judgement, the applicant would have become number 1 in the said list. Admittedly wrong had been done to the applicant by the respondent No. 4. When the respondent/State had realised this, they made an attempt to rectify it by recommending the name of the applicant for appointment to the IPS cadre in the vacancy which was to occur in April, 1993. This was objected by Union of India as well as by the Union Public Service Commission. But the respondent Nos. 1

82

....and

and 2 also did not consider that wrong had been caused to the applicant, which is apparent on the face of the records, for no fault of the applicant. In earlier occasion when the Union of India and the Union Public Service Commission, respondent Nos. 1 and 2 allowed over utilisation of quota without any justifiable reason, at least no counsel before us has made submission that it was done under any compelling circumstances. In our opinion, for the ends of justice the applicant should have also been promoted to the Indian Police Service Cadre.

8. Now the position is that the applicant was made to suffer for no fault of his. Law cannot countenance such injustice. The injustice done on the applicant has to be rectified. Another aspect of the matter should also be considered that even in 1995 the applicant was selected and he was placed in the serial No. 1. Till now no appointment has been made for the year 1995 and also for the year 1996.

9. It is well established principle of Law that a public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element that becomes open to challenge. If it is shown that the exercise of power is arbitrary, unjust and unfair, such actions are liable to be struck down. The action of the State, from its instrumentality are amenable to judicial review and the validity are amenable to judicial review and the validity of such

.....action

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action would be tested on the anvil of Article 14. It is also a well recognised principle that every action of the State or its instrumentality should be fair and reasonable, free from arbitrariness. If the State fails to discharge its obligation as per the public law, such act shall be unfair, unreasonable and arbitrary.

10. In the present case as stated above, the State of Nagaland, respondent No. 4, failed to discharge its legal obligation by not recommending the name of the applicant for his appointment in the IPS cadre by way of promotion in appropriate time, of which the applicant was made to suffer. Such action cannot sustain in law. The State of Nagaland and other Respondents are under obligation to set at right of such wrong action.

10. In view of these circumstances, we are of the opinion that the applicant must be appointed in the cadre of Indian Police Service by way of promotion. If there is no vacancy at present it is the duty of the respondents to appoint the applicant in the Indian Police Service by creating a supernumerary post. Therefore, we dispose of this application by directing to appoint the applicant in the I.P.S. cadre in any vacant post, if there is no vacancy by creating a supernumerary post. This must be done within a period of 15 days from today. This appointment shall be effective from 1990 when his juniors were appointed for the purpose of his pay fixation.

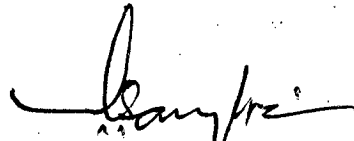
11. Mr. Jamir, Government Advocate, Nagaland, Mr. A.K.Choudhury, Addl. C.G.S.C. and Mr. G.Sarma, Addl.

.....C.G.S.C.

C.G.S.C. shall communicate the order.

The Original Application is allowed in the manner indicated above.

Considering the entire facts and circumstances, we make no order as to costs.



(G.L.SANGLYINE)
Administrative Member



(D.N.BARUAH)
Vice-Chairman

trd

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

O.A. No. 219/96

Shri M.T.B. Nair

- Vs -

Union of India & Ors.

WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT

1. The applicant, an officer of the Nagaland Police Service has been illegally deprived of his promotion to IPS and now he is due for retirement on attaining the age of superannuation i.e. 57 years on 30.5.97. If his grievance is redressed and promoted to IPS, he will get another one year of service since the age of retirement of IPS Officer is 58 years.

2. It has been admitted by all the contesting respondents that injustice has been done to the applicant over the years. Only plea ~~that~~ put forwarded is - non-availability of vacancy. Such a plea on the face of admitted illegality meted out to the applicant is not at all tenable. After persistently depriving the applicant of his legitimate promotion to IPS over the years, such an argument ought not to have been put forwarded by the contesting respondents. However, it is recorded that the State of Nagaland has been pursuing the matter in favour of the applicant with the Union Government. The State Government has rightly pointed out to the Union Government as to how many officers have superseded the applicant and accordingly has urged upon for his immediate promotion to IPS. This position has been made known by the Govt. Advocate, Nagaland by producing the records.

Contd...P/2.

Filed by Subin Sarin

3. Above position of deprivation of promotion to IPS has got its germ in Annexure-6 order dated 3.4.85 by which Annexure-5 Office Memorandum dated 29.5.84 circulating seniority list of NPS Officers showing the applicant at Sl. No. 2 giving him alongwith two other officers the benefit of commission service in the Indian Army was arbitrarily cancelled without any notice. Earlier by virtue of counting of Army Service, the applicant became an NPS Officer of 1976 batch with seniority position at Sl. No. 2. However, because of such arbitrary order dated 3.4.85, he was pushed down in his seniority and became an NPS Officer of 1981. Against this arbitrary order, the applicant filed Civil Rule No. 21(K) of 1989 which was allowed vide Judgment dated 7.3.91 restoring his seniority.

4. During the aforesaid development selection for promotion to IPS was held in 1989 in which members of NPS upto 1979 batch were considered. Applicant although belonged to 1976 batch, his case could not be considered because by that time, he was made of 1981 batch by the Annexure-6 order dated 3.4.85 as stated above. Pursuant to such selection, his juniors were promoted in 1990 to IPS.

5. Unfortunately inspite of restoration of seniority by the Hon'ble High Court, same was not implemented by the Govt. of Nagaland for long two years, because of which, his case was considered for promotion to IPS, alongwith others by the Selection Committee in 1992

treating him to be of 1991 batch instead of 1976. In the said selection, even without restoration of seniority, the name of the applicant figured in the select list at Sl. No. 3 and his juniors belonging to 1978 batch were placed at Sl. Nos. 1 and 2. Both of them were promoted to IPS in 1993.

6. It was only in March 1993 (22.3.93), the Hon'ble High Court's order was implemented and seniority of the applicant was restored. Immediately on such restoration the case of the applicant for promotion to IPS on the basis of 1989 and 1992 select list ought to have been considered, but unfortunately same was not done although the Home Commissioner, Nagaland by his Annexure-11 letter dated March 1993 urged upon for his appointment to IPS against the vacancy to be caused on 30.4.93 on retirement of one Sri Imsumenon Ao, IPS.

7. After restoration of seniority, the applicant's position in the select list of 1995 is at Sl. No. 1. This list is still holding the field. However, the applicant is yet to be appointed to IPS and now his retirement is fast approaching.

8. With the restoration of seniority, applying the well known principle of service jurisprudence 'NEXT BELOW RULE', the applicant ought to have been promoted to IPS from the date of promotion of his immediate junior ((1985) 1 SCC 43). In this connection, it will be

Contd....P/5.

pertinent to mention here that applying the principle, the applicant has been given his benefits of promotion etc. in NPS to the extent of his junior Sri N.N. Ngullie vide Annexure-19 Notification dated 6.9.96 Sri N.N. Ngullie has been promoted to IPS in 1990 vide Annexure-8 Notification dated 14.3.90. Thus there is no earthly reason as to why the same benefit could not be extended to the applicant for his promotion to IPS when it could be done in NPS.

9. That there has been timely implementation of High Court's order, the case of the applicant could have been considered as an incumbent of 1976 batch and not of 1981 batch by the Selection Committee in 1992 and naturally his name would have figured at Sl. No. 1 of the Select List of 1992 instead of at Sl. No. 3. The persons-at Sl. Nos. 1 and 2 belong to 1978 batch.

10. ~~That~~ Now the applicant's name being at Sl. No. 12 of the existing Select List prepared in 1995 and it being an admitted position, that he was eligible for such promotion in 1990 when his juniors were so promoted, the Union Government is required to be directed for his such promotion and fixation of year of allotment as has been done in such cases by the Apex Court. Reference may be made of the case reported in AIR 1996 SC 2165 in which case also the petitioners who were eligible to be appointed in earlier year having been wrongly denied of the same, the Apex Court directed the Union Govt. for passing order of promotion with retrospective effect and fixation of year of allotment accordingly.

11. In the instant case, but for the cancellation of earlier seniority taking into account the Army service, the applicant would have been promoted to IPS in 1990 when his juniors were so promoted. He was again deprived of the same in 1993 in spite of Hon'ble High Court's order for restoration of seniority. Now his position is at Sl. No.1 of the current select list. Accordingly, applying the principle of "NEXT BELOW RULE", he is required to be promoted to IPS from the date when his juniors were so promoted. To deny him such benefit will be miscarriage of justice and the applicant will suffer for no fault of ~~his~~ his own. It is a case in which the respondents particularly the Union Government ought to have promoted the applicant of their own having regard to the illegal deprivation of the same to him over the years and ought not have raised the technical pleas.

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WIRELESS MESSAGE/CRASH


FROM : HOME NEW DELHI

TO : SHRI A.K. CHAUDHURI
ADDL CENTRAL GOVT. STANDING COUNSEL
K.R. CHAUDHURI ROAD
BHARALUMUKH, GUWAHATI-781009

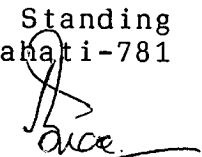
NO.I.14011/82/96-IPS.I

DATED 15.4.97

KINDLY REFER TO YOUR LETTER DATED 1.4.97 (RECEIVED IN THIS MINISTRY ON 11.4.97 AFTERNOON) REGARDING O.A. NO.219/96 FILED BY SHIR M.T.B. NAIR IN CAT CUWAHATI BENCH(.) THE PROMOTION QUOTA OF IPS CADRE OF NAGALAND IS FULLY UTILISED(.) THERE IS NO PROVISION IN AIS RULES/REGULATIONS WHICH EMPOWERS THE CENTRAL GOVT. TO ENHANCE PROMTOION QUOTA SUO-MOTO(.) MOREOVER, NO SELECT LIST OF 1996-97 FOR PROMOTION OF STATE POLICE OFFICERS OF NAGALAND TO IPS HAS BEEN PREPARED(.) AS SUCH NO SELECT LIST IS IN OPERATION AS ON DATE(.) IT IS FURTHER MENTIONED THAT SHRI NAIR CANNOT BE APPOINTED TO IPS AS NO SELECT LIST IS IN OPERATION AS ON DATE(.) YOU ARE REQUESTED TO MAKE THE SUBMISSIONS ON THE AFORESAID LINE BEFORE THE CAT ON 21.4.97 AND TO INTIMATE THE OUTCOME OF HEARING(.) MATTER MOST URGENT(.)


(P.S. PILLAI)
UNDER SECRETARY TO GOVT. OF INIDA
TELE NO. 301 1359

✓ Copy forwarded by speed post in confirmation to
Shri Anup Kumar Caudhuri, Addl. Central Govt. Standing
Counsel, K.R. Chaudhuri Road, Bharalumukh, Guwahati-781
009.


(P.S. PILLAI)
UNDER SECRETARY TO GOVT. OF INDIA

28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GAUHATI BENCH.

O.A.No. 219 of 1996

Sri M.T.B.Nair

-vs-

Union of India & ers.

List of dates and submission on behalf of the applicant.

Applicant - Commandant 1st Nagaland Armed Police Bn. in the Nagaland Police Service is aggrieved by his non-promotion to IFS.

27.9.63 - Applicant was granted Emergency Commission in the Indian Army and was released on 5.2.68. At the time of release - the applicant was holding the rank of Captain.

1967 - Govt. of India, Ministry of Home Affairs framed a set of rules called "Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of vacancies) Rules 1967" for the purpose of rehabilitation of Emergency Commissioned Officers

21.9.68 - Govt. of Nagaland vide Memo No.POL.4/51/67 directed that the benefits and privileges as sanctioned to the Emergency Commissioned Officers & Short Service Commissioned Officers by the Govt. of India, shall also be extended to such officers in respect of employment in Nagaland State Civil Service.

.....2/-

24.2.68 - Applicant offered on appointment by the Home Dept. , Govt. of Nagaland and the applicant joined the service as Deputy Superintendent of Police w.e.f. 26.2.68.

24.11.79 - Notification issued by Govt. of Nagaland publishing Nagaland Police Service (Class-I & Class-II) Rules 1967.

31.1.81 - Applicant was permanently absorbed in Nagaland Police Service under the said Rule. ~~ANN-1~~
ANN-1 (Page-21)

✓ 20.11.82 - In due consideration of his representation for counting of Military Service towards fixation of seniority in the cadre of D.S.P. of Nagaland Police Service , the Govt. of Nagaland vide ANN-2 memorandum dated 20.11.82 gave seniority to the Applicant w.e.f. 2.7.76. Thus he became a member of 1976 batch of N.P.S..

29.5.84 - Seniority list of D.S.P. published showing applicant's position in serial No-2, 1976 batch. ~~ANN-4x~~ 4 & 5 (page-26/27)

3.4.85 - Order issued , cancelling the benefit of past service towards fixation of seniority ANN-6 (page-30)

12.4.85. -

Govt. of published another seniority list pushing down the applicant in seniority position in view of not taking account the past Military Service. ANN-7 (page-30)

Being aggrieved for the applicant filed Civil Rule No-21 (K)/89 allowed by the Hon'ble Guwahati High Court by judgement dated 7.3.91 directing restoration of seniority to the applicant.

1989 -

During the pendency of the aforesaid Civil Rule selection for promotion to I.P.S. held on Eligible Officers upto 1979 batch ~~was not~~ were considered ignoring the applicant since he was pushed down from 1979 batch to 1981 batch.

14.3.90 -

Juniors to the applicant promoted to I.P.S. ANN-8 (page-34)

Inspite of aforesaid judgement in the Civil Rule seniority of the applicant not restored and the applicant continued to suffer.

1992 -

Further selection held for the I.P.S. however ⁱⁿ the clear disregard of the aforesaid judgement in the Civil Rule seniority of the applicant not restored and he was shown ^{be of} in the 1981 batch instead of 1976 batch.

~~xxxx~~

.....4/-

Even with such loss of seniority the applicant was
selected and placed at serial No.3 of the
selection list below one ~~On~~ Suja Ao of 1978
batch .

6.6.91 - Order fixing year of allotment issued and the
juniors of the applicant assigned year of allotment
as 1986 ANN-a (page-35)

22.3.93 - After much delay and damage to the applicant
aforesaid order of the Hon'ble High Court
complied with. The seniority of the applicant
restored as 1976 batch . ANNEXURE -10 (Page-37)

March 1993 - Home Commissioner , Nagaland by his letter
requested the Govt of India to appoint the
applicant to I.P.S against the vacancy to be
caused on retirement of one Sri. Insa Manon Ao
I.P.S w.e.f. 30.4.93. However, no action was
taken . ANNEXURE - 11 (page . 38) .

8.4.93 - ^{Two} To move juniors of 1978 batch promoted to I.P.S
ANNEXURE - 12 Page 39 .

25.3.95 - Select list for promotion to ~~XXXX~~ I.P.S
prepared and the applicant's position is at

serial No.1. However till date he has not been appointed to I.P.S.

5.6.95 to 1.7.95 - Applicant successfully completed the first Induction Training Course held at National Police Academy. This training is imparted to officers who are likely to be promoted to I.P.S.

27.9.95 - Applicant made representation for redressal of his grievances. On this the D.G.P. Nagaland addressed letter dated 30-9-95 to the Addl. Chief Secretary, Nagaland, urging for redressal of grievance of the applicant. This letter sufficiently proves the injustice as well as the outstanding qualities of the applicant. ANNEXURE-15 & 16 (page-44/47)

3.7.96 - Minutes of the selection committee meeting of 1995 duly approved.
ANNEXURE-17 (page-49)

3.7.96 - The D.G.P., Nagaland by his further letter urged upon the Govt. for early action in the matter. ANNEXURE-18 (page-50)

.....6/-

6.9.96 - Govt. of Nagaland issued notification promoting the applicant retrospectively in the N.P.S. Cadre on the basis of the principle of "NEXT BELOW RULE". By this notification the applicant has been granted retrospective promotion from the date of such promotion granted to his juniors one Shri N.N.Ngallie. Be it stated here that said Shri Ngik Ngallie has been promoted to I.P.S. vide ANNEXURE-8 Notification dated 14.3.90 and has been assigned year of allotment as 1986, ANNEXURE-19 (page-52)

31.5.97 - Date of retirement of the applicant on attaining the age of superannuation i.e. 57 years. However if he is promoted to I.P.S. his such retirement will be 31.5.98.

S U B M I S S I O N

1* Applying the principle of ~~"NEXT BELOW RULE"~~ "NEXT BELOW RULE" ~~THE~~ the applicant should be deemed to be promoted to I.P.S. in the year 1990. When his juniors were so promoted to vide ANN-8 notification dated 14.3.90. This Principle has already been applied towards granting retrospective promotions to the applicant in the N.P.S. cadre vide ANNEXURE-19 order dated 6.9.96.

2* The applicant cannot be made to suffer for no fault

.....7/-

of his own. Inaction on the part of the respondents ~~XXXX~~ cannot take away the right of the applicant. Had his seniority been restored in time in terms of the Hon'ble High Court's order he would have been promoted to I.P.S. long back.

3* In any case his name being in the select list of 1995 at serial No.1 and so also in the earlier select list of 1992 (Without restoration of seniority), he should be deemed to be promoted to I.P.S. with retrospective effect i.e. from 1990, ~~XXXX~~ when his juniors were so promoted vide ANN-8 notification, dated 14.3.90. ~~Case law refuses~~

1. (1985) 1. SCC, 48
2. AIR ~~XXXX~~ 1996 SC 2165
3. (1996) 7. SCC, 759.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

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

Title of the case : O.A. No. 219 of 1996

Shri M.T.B. Nair ... Applicant

- Versus -

Union of India & Ors. ... Respondents

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For use in Tribunal's Office :

Date of filing : 1-10-96

Registration No. : O.A 219/96

[Signature]
31/10/96

REGISTRAR

Copy received on
A. H. Choudhary
Asst. Dir. Chd. Div.

31
Filed by
Shri M.T.B. Nair
1-10-96

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A. No. 219 of 1996

BETWEEN

Shri M.T.B. Nair, Commandant,
1, Nagaland Armed Police Battalion,
Chumukedima, Nagaland

... Applicant

AND

1. The Union of India,
represented by the Secretary,
Ministry of Home Affairs,
New Delhi
2. The Union Public Service Commission,
represented by its Chairman,
1, Shahjahan Road,
Dholpur House, New Delhi.
3. The Director General of Police,
Nagaland, Kohima.
4. The State of Nagaland represented by
the Secretary (Home) Nagaland ... Respondents

DETAILS OF APPLICATION

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

That the instant application is not directed against any particular order but is directed against injustice being all along meted out to the applicant. In the instant application, the applicant seeks for a direction to the respondents to the effect that he should be deemed to be promoted to Indian Police Service in 1990 and his year of allotment as 1986.

2. JURISDICTION OF THE TRIBUNAL :

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

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3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed by the Constitution of India. Presently the applicant is serving as a Commandant of 1st Nagaland Armed Police Battalion under the Government of Nagaland at Chumukedima.

4.2 That the applicant was initially granted Emergency Commissioned Officer in the Indian Army with effect from ~~27.9.63~~ 27.9.63 and was released on 5.2.68 in accordance with the phased programme and at the time of his release, the applicant was holding the rank of acting Captain.

4.3 That in 1967, the Government of India, Ministry of Home Affairs framed the released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1967 (hereinafter referred to as the Rules) with the express intent of rehabilitation of Emergency Commissioned Officers and by memo No. Pol.4/51/67 dated 21.9.68, the Chief Secretary to the Govt. of Nagaland, Kohima directed that the benefits and privileges

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as sanctioned to the Emergency Commissioned Officers and Short Service Commissioned Officers by the Govt. of India dated 4.10.67 in respect of employment in Central Services shall also be extended to such officers in respect of employment in Nagaland State Civil Service.

4.4 That the applicant was offered an appointment on contract basis by the Home Department, Police Branch of the Government of Nagaland, Kohima to a temporary post for two years only on 24.2.68 and the applicant accordingly joined the services as Deputy Superintendent of Police in the Nagaland Police Department with effect from 26.2.68. Thereafter the applicant duly applied for his permanent absorption ; but instead of being permanently absorbed, the applicant continued to serve on contract basis as extended by the Government of Nagaland from time to time.

4.5 That the Government of Nagaland was pleased to frame Nagaland Police Service (Class I and Class II) Rules, 1967 by a notification dated 24.11.77 (hereinafter referred to as the Police Rules). The applicant being fully eligible for his permanent absorption and regularisation under the said Rules and the Inspector General of Police, Nagaland having appreciated the utility of the applicant's service alongwith two of his similarly placed colleagues, strongly recommended the case of the applicant before the Special Secretary to the Government of Nagaland Home Department, Kohima. The Government of Nagaland, in consideration of the case of the applicant alongwith two

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othersx, was pleased to absorb the applicant to the regular Nagaland Police Service (Class-II) on the recommendation of the Nagaland Public Service Commission by notification dated 31.1.81.

A copy of the said notification dated 31.1.81 is annexed hereto as ANNEXURE-1.

4.6 That the applicant on being regularised in the service, prayed before the Government of Nagaland for fixation of the seniority ~~xxxxxx~~ vis-avis the regular employees taking into account the complete period of Military Commissioned Service. The Government of Nagaland was pleased to issue an office memorandum after considering the representation of the applicant and it was intimated therein that the applicant would be given the benefit of complete Military Commissioned Service in the matter of pay fixation and seniority in the cadre of Deputy Superintendent of Police of Nagaland Police Service. In this view of the matter, the applicant was given the seniority with effect from 2.7.86

A copy of the aforesaid O.M. dated 20.11.82 is annexed hereto as ANNEXURE-2.

Further a copy of the letter dated 23.2.83 is annexed hereto as ANNEXURE-3.

4.7 That by an office memorandum dated 29.5.84, the Government of Nagaland was pleased to publish the seniority list of Dy. Supdt. of Police/Asstt. Commissioner of Nagaland Police Service as on 1.4.84. The seniority list was published in accordance with rules in force and the

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names of the promotees and direct recruits were arranged in order of ~~seniority~~ select list and merit list drawn up by the Departmental Promotion Committee and the Nagaland Public Service Commission. In the said seniority list, the name of the applicant alongwith his two similarly placed colleagues about whom mention has been made above was at the top of the said list. In the seniority list, it was specifically stated that the complete period of commissioned service in the Indian Army has been given to the officess at Sl. Nos. 1 to 3 viz. your applicant and the similarly placed colleagues for the purpose of fixation of seniority in accordance with the Government of India's letter dated 4.10.67 and the Government of Nagaland's memorandum dated 20.11.82. It was further clearly stated that in the seniority list the seniority of the applicant and two of his similarly placed colleagues is final and no further representation will be entertained as against them. The Government of Nagaland also issued letter dated 3.11.83 in consideration of the representation received from various officers against the decision at Annexure-2 dated 20.11.82 stating therein that the benefit of complete period of Military Commissioned Service given to three officers viz. Shri P.D. Lama, Shri Mulk Singh and Shri M.T. B. Nair (the applicant) vide O.M. dated 20.11.82 for counting of seniority etc. in the cadre of Deputy Supdt. of Police of the Nagaland Police Service Class-II stands. In the seniority list published vide O.M. dated 29.5.84, the applicant's position was at Sl. No. 2 and counting the Military Commissioned Service, he came an incumbent of 1976 batch.

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Copies of the aforesaid letter dated 3.11.83 and O.M. dated 29.5.84 alongwith the seniority list are annexed hereto as ANNEXURES-4 and 5 respectively.

4.6 That most surprisingly and to the utter shock of the applicant, the Government of Nagaland without any prior notice to the applicant arbitrarily issued an order on 3.4.85 whereby it was directed that the note below the seniority list (Annexure-5) as regards counting of seniority of the applicant and two others stood cancelled for reasons whatsoever was assigned therein.

A copy of the said order dated 3.4.85 is annexed hereto as ANNEXURE-6.

4.7 That the applicant made representation against the aforesaid arbitrary decision as contained in the order dated 3.4.85, but the same failed to evoke any response. But in the meantime on the basis of the said decision dated 3.4.85, the Government of Nagaland vide Office Memorandum dated 12.4.85 published yet another seniority list of Dy. Supdt. of Police as on 1.1.85. In the said memorandum, it was stated that the seniority to the applicant and two others was wrongly given and accordingly, by that seniority list, the applicant was placed below seven other officers who in fact were juniors to the applicant.

A copy of the said office memorandum dated 12.4.85 is annexed hereto as ANNEXURE-7.

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4.8 That being aggrieved with the wholly unjustified and arbitrary decision of the Government of Nagaland denying the benefit of Army seniority, the applicant moved the Hon'ble Gauhati High Court, Kohima Bench by way of filing Civil Rule No. 21(K)/89 praying inter alia to quash the aforesaid order and restore the benefit of Army seniority granted earlier, to him by the Govt. of Nagaland. The Hon'ble Gauhati High Court by its judgment dated 7.3.91 struck down the impugned order of the Govt. of Nagaland and directed the Government of Nagaland to restore the seniority of Nagaland Police Service of the applicant. The applicant craves the leave of this Hon'ble Tribunal to refer to and rely upon the aforesaid judgment at the time of hearing of the case.

4.9 That in 1989 during the pendency of the aforesaid case, the selection committee was constituted under Rule 9 of the Indian Police Service (Appointment by Promotion) Regulation 1955 for preparing a select list for promotion to I.F.S. from amongst the State ~~Rax~~ Police Service Officers and accordingly, the Nagaland Police Services officers were considered uptill the 1979 batch (the applicant is of 1976 batch) and prepared a select list consisting of 14 Nagaland Police Service Officers who were subsequently promoted to I.P.S. in the year 1990. In this selection, the case of the applicant was not considered in view of the impugned Government order although he belongs to 1976 batch of Nagaland Police Service Officer and although he had excellent service report. The promotions were effected

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vide notification No. I-141013/2/90-IPS-I dated 14.3.90 and and the juniors to the applicant were promoted. Thus had the impugned order not been issued, the applicant would be been considered for promotion to I.P.S. and in view of his excellent service record would have been promoted to I.P.S. alongwith his junior batchmate.

A copy of the notification dated 14.3.90 is annexed hereto as ANNEXURE-8.

4.10 That the applicant states that after the aforesaid judgment restoring the seniority of the applicant it was incumbent upon the respondents to consider the case of the applicant as of 1989 when his juniors were so considered for being promoted to IPS ; but not to speak of such consideration even the seniority of the applicant was not restored for a pretty long time. Despite the clear judgment and direction of the Hon'ble Gauhati High Court, the Government of Nagaland kept on draggingg feet in issuing the revised order inspite of repeated requests and representations made by the application to the Govt. of Nagaland.

4.11 That the indifference of the Government of Nagaland to the Hon'ble High Court's judgment continued till 1992 when another selection committee for consideration of the Nagaland Police Service Officers for promotion to the IPS and prepration of select list. In the seniority list of Nagaland Police Service Officers prepared for the selection, the Govt. of Nagaland in clear disregard to the Hon'ble High Court's judgment shown

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the applicant's seniority to be of 1981 and not 1976. As a result of this wilful misrepresentation, the select list prepared by the Selection Board put the applicant at Sl. No. 3 of the select list behind Mr. Onen Suza Ao belonging to 1978 batch of the Nagaland Police Service and since there were only two vacancies in the I.P.S. (State Forest Service quota for Nagaland State), the applicant was again left out from being appointed to IPS.

4.12 That in the meantime, the seniority of the officers who were promoted to IPS alongwith year of allotment was fixed vide letter No. I.15011/4/89-IPS.I dated 6.6.91 according to which the juniors of the applicant were assigned year of allotment as 1986.

A copy of the said letter dated 6.6.91 is annexed hereto as ANNEXURE-9

4.13 That after much damage done to the applicant, finally the Govt. of Nagaland after repeated and numerous representations issued an order vide Home Department Government of Nagaland Memo No. Pol-1/PF/68/82 dated 22.3.93 restoring the seniority of the applicant as of 1976 of Nagaland Police Service. Thus the relief granted by the Hon'ble High Court was given to the applicant after two years.

A copy of the order/corrigendum dated 22.3.93 is annexed hereto as ANNEXURE-10.

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4.14 That the applicant states that the Home Commissioner, Nagaland by his letter No. Pol-1/Estt/10/82 (Vol. X) dated Nil ^{March} /1993 requested the Government of India, Ministry of Home Affairs to appoint the applicant to IPS against the vacancy to be caused by retirement of one Shri Imsumanen Ao, IPS on superannuation with effect from 30.4.93. However, no action was taken on this letter.

A copy of the said letter dated March 1993 is annexed hereto as ANNEXURE-11.

4.15 That in view of the above position, two more officers were appointed to IPS vide notification No. I-14013/5/93-IPS-I dated 8.4.93. Mr. Onensuja Ao whose name figured in the promotion order is junior to the applicant having belonged to 1978 batch as against the applicant's seniority of 1976.

A copy of the said notification dated 8.4.93 is annexed hereto as ANNEXURE-12.

4.16 That the selection committee constituted in 1995 for considering the promotion of State Police Service Officers to the IPS approved a select list on 25.3.95 putting the applicant at Sl. No. 1 ; but even after a lapse of more than 16 months, the applicant has not been appointed to IPS.

A copy of the select list dated 25.3.95 is annexed hereto as ANNEXURE-13.

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4.17. That in the meantime, the applicant has successfully completed the first Induction Training Course held at SVP National Police Academy from 5.6.95 to 1.7.95. Be it stated here that this training programme is for officers for State Police Service who are likely to be promoted to IPS .

A copy of the certificate issued to the ~~petition~~ applicant in this behalf is annexed hereto as ANNEXURE-14.

4.18 That having not received proper justice in the matter of his promotion to IPS the applicant made a representation on 27.9.95 highlighting his grievances therein. On receipt of the said representation dated 27.9.95, the Director General of Police, Nagaland has addressed a letter dated 30.9.95 to the Addl. Chief Secretary, Home, Nagaland. This letter sufficiently proves the injustice as well as the outstanding qualities of the applicant.

A copy of the representation dated 27.9.95 is annexed hereto as ANNEXURE-15.

A copy of the letter dated 30.9.95 is annexed hereto as ANNEXURE-16.

4.19 That the applicant states that the minutes of the Selection Committee meeting of 1995 has been duly approved vide letter No.Pol-1/Estt/10/82(Pt) dated 3.7.96.

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A copy of the letter dated 3.7.96 is annexed hereto as ANNEXURE-17.

4.20 That the applicant states that having regard to the genuine grievances of the applicant, the Director General of Police, Nagaland vide his letter No. PHQ(A-1) 33/PF/80 dated 3.7.96 has urged upon the Addl. Chief Secretary, Home, Nagaland to take an ^{early} ~~xxx~~ action in the matter.

A copy of the said letter dated 3.7.96 is annexed hereto as ANNEXURE-18.

4.21 That the Govt. of Nagaland has issued a notification No. Pol-1/PF/63/82 dated 6.9.96 promoting the applicant retrospectively in the N.P.S. Cadre on the basis of the principles of "Next Below Rule". By this notification the applicant has been granted retrospective promotion from the date of his junior Shri N.N. Ngullie was so promoted. It will be very pertinent to mention here that this junior of the applicant Shri N.N. Ngullie has been promoted to IPS vide Annexure-8 notification dated 14.3.90 and he has been assigned the year of allotment as 1986. Thus applying the same principle, the applicant whose name is already was in the select list for promotion to IPS is entitled to be promoted to IPS at least with effect from the date when his juniors was so promoted vide notification dated 14.3.90 (Annexure-8) and his year of allotment should be fixed in 1986 with assignment of higher seniority above ~~the~~ his juniors.

A copy of the said notification dated 6.9.96 is annexed hereto as ANNEXURE-19.

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4.22 That the applicant states that he is due for retirement on superannuation in the N.P.S. on completion of 57 years of age on 31.5.97 and thus there is only 9 months left. However, if in the meantime he is promoted to IPS, his age of retirement on superannuation will be 58 years and on such an eventuality he will be retired from service with effect from 31.5.98. Thus there is urgency in the matter and it is most respectfully prayed that the Hon'ble Tribunal would be pleased to dispose of the case as expeditiously as possible as a very special case.

4.23 That the applicant states that although in this application he has claimed seniority over his juniors with assignment of year of allotment as 1986, he does not have any grievance against the promotion of his juniors and thus he has not arrayed them as party respondents in this O.A. The 1986 batch of promotee IPS officers are due for next promotion only in July 1999. Such promotion is to the selection grade which is admissible to the officers only on completion of 13 years of service. Thus before the said promotion is granted, the applicant will retire from service on superannuation and he will not get the benefit of the said promotion. Thus there is no occasion for the applicant to array the said officers as party respondents to this proceeding. Accordingly, the said officers are not necessary party to this proceeding. Furthermore, what is challenged in the instant application is not any seniority dispute but only in respect of

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inaction on the part of the official respondents and the policy of deprivation adopted in respect of the applicant. The facts as stated above being admitted facts and there being no seniority dispute ^{with} ~~that~~ any of the officers the officers above whom the applicant has claimed seniority with year of allotment as 1986 are not necessary party to the instant proceeding.

4.24 That the applicant states that the aforesaid facts and circumstances make it abundantly clear that he has been made a victim of the circumstances and he has not been promoted to IPS due to long apathy and non-challant attitude shown by the official respondents but for which he would have otherwise promoted to IPS long back atleast in 1990 that is the year in which his juniors were so promoted. He was also deprived in the year 1993 in view of non-fixation of his grade-seniority pursuant to the Hon'ble High Court's judgment mentioned above. Now even after inclusion of his name in the select list of 1991 at Sl. No. 1, the applicant has not been promoted to IPS. Time is fast running out and now a stage has come in which the applicant finds himself in a very awkward situation. As stated above, he is due to retire in May 1997 and if he not promoted to IPS before that ~~date~~ date, he will not only lose his valuable right of promotion to IPS but also will lose one year of valuable service inasmuch as when he will be promoted to IPS, his retirement age will be 58 years unlike the N.P.S. in which the retirement age is 57 years and in that view of the ~~matter~~ facts and circumstances, it is a fit case for passing an interim

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order ~~directing the~~ protecting the interest of the applicant and also to pass an order for expeditious disposal of the instant application.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the impugned action~~n~~/inaction on the part of the respondents are not sustainable and the applicant is entitled to proper relief in view of the attending facts and circumstances of the case.

5.2 For that the Hon'ble High Court having passed the Judgment in favour of the applicant with restoration of his seniority, the respondents ought not to have delayed the matter by more than 2 years and thereby ought not to have deprived the chances of promotion of the applicant.

5.3 For that there is no dispute that the applicant has maintained all along a very good service career and all his ACRs are with outstanding remarks and accordingly, there is no impediment for his promotion with effect from the date when his ~~x~~ juniors were so promoted to the IPS inasmuch as the said juniors have not got better marks, better ACRs than the ~~xxxx~~ applicant.

5.3 For that the applicant having granted belatedly the retrospective promotion in reference to his juniors applying the principle of "Next Below Rule" well known to the service jurisprudence, there is no earthly reason as to why the same principle should not be applied to the

Contd...P/16.

applicant in case of promotion to IPS and thereby to grant him promotion with effect from 1990 i.e. from the date when his junior was so promoted to IPS. Consequently the applicant is also entitled to his year of allotment as 1986 with higher seniority on his juniors.

5.4 For that it is a case of ~~of~~ apathy and non-challant attitude adopted by the respondents but for which the grievances of the applicant would have been redressed long back. After the judgment delivered by the Hon'ble Gauhati High Court in the year 1991 there remained nothing against the applicant and the respondents ~~sought~~ to have impleaded the Judgment immediately and thereby his case should have been placed before the review D.P.C. for consideration of his case for promotion to IPS with effect from 1990. Now after inclusion of his name in the select list, there is no question of such review DPC and he is simply required to be promoted to IPS with effect from 1990 i.e. the date when his juniors were so promoted to IPS.

5.5 For that the applicant has been further deprived of his promotion to IPS in the year 1993 because of non-fixation of his seniority and/or restoration of the seniority pursuant to the High Court's Judgment and thereby he was placed at Sl. No. 3 of the select list. The respondents also failed to take into consideration the letter dated nil of March 1993 issued by the Home Commissioner Nagaland to the Ministry of Home Affairs, New Delhi urging for promotion of the applicant to the vacant post.

Contd.....P/17

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Even on the basis of the wrongly fixed seniority because of which he was placed at Sl. No. 3, otherwise ~~kk~~ had his seniority been restored, the applicant's position would have been at Sl. No. 1.

5.6 For that the various ~~communications~~ made by the official respondents are pointer to the fact that great injustice has been done to the applicant and this Hon'ble Tribunal is required to pass appropriate order ~~directing~~ protecting the service interest of the applicant. It is a case of long deprivation of admissible service benefits and accordingly, the injustice so long meted out to the applicant is required to be eradicated.

5.7 For that the official respondents have resorted to abuse of the process of law by delaying the matter but for which the applicant would have been promoted to IPS long back. In spite of the fact that he ~~is~~ is an officer with outstanding ACRs has been lagging behind his juniors and still continuing in N.P.S.

5.8 For that it is a case of hostile discrimination and there is flagrant violation of Articles 14 and 16 of the Constitution of India inasmuch as the applicant has been discriminated in the matter of his promotion to IPS for no fault of his own.

5.9 For that it is a clear ~~xxx~~ example of deprivation and accordingly judicial interference/review is called for in the instant case with appropriate relief to the applicant.

Contd....P/16

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5.10 For that in any view of the matter, the impugned action/inaction on the part of the respondents are not sustainable and the applicant is entitled to the appropriate relief as has been prayed for in the instant application.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative remedy than to come under the protective hands of this Hon'ble Tribunal.

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

The applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of this application before any authority, and/or Court or any other Bench of this Hon'ble Tribunal nor such application, writ petition or suit is pending before any of them.

8. RELIEFS PRAYED FOR :

Under the facts and circumstances stated above, the applicant most respectfully prays that the instant application be admitted, records be called for and upon hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to grant the following reliefs :

- (i) To direct the respondents to promote the applicant to IPS with effect from 1990 with year of allotment

Contd.....P/19.

as 1986 and assigning seniority above his juniors
i.e. from the date when his juniors were so promoted
to Indian Police Service.

- (ii) Upon such promotion to IPS with effect from 1990
the applicant be granted all consequential benefits
including arrear salary etc.
- (iii) Cost of this application
- (iv) Any other relief or reliefs to which the applicant
is entitled or as may be deemed fit and proper by this
Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, the Hon'ble
Tribunal may be pleased to direct the respondents to
promote the applicant to I.P.S.

10.....

The application is filed through Advocate

11. PARTICULARS OF THE I.P.O. :

- | | |
|------------------|---------------|
| (i) I.P.O. No. | : 8 09 346831 |
| (ii) Date | : 29-8-96, |
| (iii) Payable at | : Guwahati. |

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

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

I, Shri M.T.B. Nair, son of late V.M. Nair, aged about 56 years, Commandant, 1st Nagaland Armed Police Battalion, Chumukedima, Nagaland, the applicant do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 1 to 4 and 6 to 12 are true to my knowledge ; those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the 13th day of Oct. 1996.

M.T.B. Nair

- COPY -

GOVERNMENT OF NAGALAND
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
(PERSONNEL BRANCH)

NOTIFICATION

Dated Kohima, the 31st Jan '81.

No. PAR.4/30/77 : In terms of provision to rule 5 of the Nagaland Police Service (Class I & II) Rules, 1977 and on the recommendation of the Nagaland Public Service Commission, the Governor of Nagaland is pleased to absorb the following Deputy Superintendents of Police/ Assistant Commandants who are now on contract/deputation, to the regular Nagaland Police Service (Class II) in the scale of pay of Rs. 500-35-745- EB-35-1025-EB-40-1225/-PM plus innerline Compensatory Allowance @ 20% of basic pay subject to a maximum of Rs. 400/- P.M. and all other allowances as are admissible under rules from time to time in Nagaland with immediate effect :-

1. Shri M.T.B. Nair.
2. Shri Mulk Singh.
3. Shri S. W. Yaden.
4. Shri P.D. Lama.
5. Shri Chubanungba Sangtam .
6. Shri Zaku Angami.
7. Shri M.V. Chakhesang.
8. Shri Tripongse Sangtam.
9. Shri Thungbemo Lotha .

Sd/-(A.SHANMUGAM)
Secretary to the Govt. of Nagaland.

No. PAR.4/30/77

Dated Kohima, the 31st Jan. '81.

Copy to :-

1. The Accountant General , Nagaland, Kohima .
2. The Commissioner, Nagaland, Kohima.
3. The Inspector General of Police, Nagaland, Kohima .
4. All Social Secretaries/Secretaries/Addl. Secretaries/ Joint Secretaries to the Government.
5. The Secretary to Chief Minister .
6. All Deputy Commissioners/Addl. Deputy Commissioners.
7. All Superintendents of Police/Commandant NAP Battalions.
8. The P.S. to all Ministers/Ministers of State.
9. The P.S. to Chief Secretary .
10. The Publisher, Nagaland Gazette, Kohima for publication.
11. Police Branch.
12. Spare Copies for personal files of the Officers concerned.

Sd/- (A. SHANMUGAM)
Secretary to the Govt. of Nagaland.

Handwritten:
1.10.86

// 22 //

ANNEXURE - 2.

GOVERNMENT OF NAGALAND
HOME DEPARTMENT : POLICE BRANCH

No. POL-1/Estt/12/82(Vol.I)
Dated Kohima, the 20 Nov'82

OFFICE MEMORANDUM

Subject :- COUNTING OF SERVICES RENDERED AS EMERGENCY
COMMISSIONER OFFICER FOR SENIORITY ETC.

Considering the representations submitted by the Officers of the Nagaland Police Services who have been released from the Emergency Commissioned/Short Service Commissioned in the matter of seniority etc. and in pursuance of Government of India's Notification No. 31/1/61-Estt(B) dated 4th October'1967, the Government of Nagaland have decided to give the benefit of the completed period of military Commission Service in the matter of pay fixation and seniority in the cadre of Deputy Superintendent of Police of the Nagaland Police Service (Class II).

2. On release by the Army authority, the following officers were appointed/regularised by the Government of Nagaland to the Nagaland Police Service on contract with effect from the date shown against their names :-

<u>Name of Officer</u>	<u>Date of appointment in Nagaland Service</u>	<u>Regularised</u>
1. Shri P.D. Lama	9.11.1968	31.1.1981
2. Shri M.T.B. Nair	1.11.1968	31.1.1981
3. Shri Mulk Singh	26.2. 1968	31.1.1981

3. The benefit of completed period of military service which is taken into account for the purpose of fixation of seniority etc. in the cadre of Deputy Superintendent of Police of Nagaland Police Service are shown against the names of the Officers as below :-

1. Shri P.D. Lama :- Joined as ECO on 6.10.63 and released 1-6.68 Service rendered is 4 years 7 months 25 days. Hence his seniority would be counted w.e.f. 6.6.76
2. Shri M.T. B.Nair:- Joined as ECO on 2.2.64 and released on 1.9.68 . Service rendered as ECO is 4 years 6 months 29days. Hence his seniority would be counted with effect from 2.7.76 .

3. Shri Mulk Singh :- Joined as ECO on 27.9.63 and released on 5.2.68. service rendered as ECO is 4 years 4 months 8 days. Hence his seniority would be counted w.e.f. 23.9.76 .

Sd/-

(Z. OBFD)

Chief Secretary .

No. POL-i/ESStt/12/82/(Vol.I)

Dtd Kohima, 20th Nov '82

Copy to :-

1. The Accountant General, Nagaland, Kohima.
2. The Inspector General of Police, Nagaland, Kohima .
3. All the Superintendents of Police/ Commandants .
4. All the Officers concerned .
5. The Guard file .

Sd/-

(Banup Z Jamir)

Joint Secretary to the Govt.
of Nagaland .

attested
Sd/-
Advocate
1.10.86

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ANNEXURE - 3) 54

GOVERNMENT OF NAGALAND
HOME DEPARTMENT :: POLICE BRANCH

NO.POL-1/PF/3/82

Dt. Kohima, the 23rd Feb'83

To,

The Accountant General,
Nagaland, Kohima.

Sub :- FIXATION OF PAY IN RESPECT OF POLICE OFFICERS.

Sir,

I am directed to say that the following officers of the Nagaland Police service who had been in the Army as Commissioned Officers have been given the benefit of military commissioned service for fixation of pay and seniority in the cadre of Dy. S.P. of NPS (Class- II Gazetted) vide order No. POL-1/EST/12/82 (Vol.1) dated 20/11/82 (Copy enclosed).

The benefit of completed period of military Commissioned service which is taken into account for the purpose of fixation of pay and seniority is shown against each of the officer as below :-

Name of Name of Officer	Joined as Joined as ECO	Released as Released	Released completed completed period as commissio- ned	Completed Date Date apptt. in N/Iser vice	Regula- tion Regula- tion
1.	2.	3	4	5	6
1. Shri P.D. Lama	6.10.19.3	1.6.8	4y 7m 27d	9.11.6.8	31.1.81
2. Shri M.T.B. Nair	2.2.1964	1.9.68	4y 7m	1.11.68	31.1.81
3. Shri Mulk Singh	27.9.63	5.2.68	4y 4m 9d	26.2.68	31.1.81
7.D.N.I.					
		SI.	1.3.6.81		
			2.1.781		
			3.21.9.81		

Attested
1/10/86

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On the date their services have been regularised by the Government all the above Officer were drawing pay at the stage of Rs. 955/- p.m. in the scale of Pay of Rs. 500/- 35-745-EB-35-1025 - EB-40-1225/- p.m.

New view of Government decision to give the benefit of completed period of military commissioned service for the purpose of pay fixation and seniority their pay may be fixed at Rs. 1105/- on 31.1.1981 with of next increment as shown against their named above .

An early action in the matter is appreciated .

Yours faithfully,

Sd/-

(Tali Longkumar)
Deputy Secretary (Home Deptt.)

NO.POL-1/PF/3/82

Copy to :

All officers concerned .

Sd/-

(Tali Longkumar)
Deputy Secretary ,
(~~Home Secretary~~ Deptt.)

Sd/-Illigible,
23/2/63.

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Dr
Advocate
1.10.86

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26/11/82

ANNEXURE - 4

GOVERNMENT OF NAGALAND
HOME DEPARTMENT :: POLICE BRANCH

OFFICE MEMORANDUM

NO. POL-1/Estt/12/82
(Vol-I)

Dt. Kohima , the 3rd Nov. '83

Sub:- SENIORITY IN THE CADRE OF NAGALAND POLICE
SERVICE (CLASS - II)

All the representations received from various officers of the Nagaland Police Service relating to their seniority have been carefully examined in the light of the existing rules and other Govt. standing orders and to say that Govt. could not find out any reason to reconsider its decision which was taken and circulated vide office Memorandum of even number dated 20th Nov, 82 in accordance with Govt. of India Notification No. 31/1/61-Estt(B) dated 4.10.1967. The benefit of completed period of military commissioned service given to there officers namely S/Shri P.D. Lama, M.T.B. Nair and Mulk Singh vide Office Memorandum of even number dated 20th Nov. 82 for counting of Seniority etc. , in the cadre of Deptt. of Police of the Nagaland Police Service (Class-II) stands .

Sd/-

(KERISAL)

Deputy Secretary to the Govt. of
Nagaland .

To,

allotted
B. N. Advait
1.11.86

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ANNEXURE - 5

GOVERNMENT OF NAGALAND
HOME DEPARTMENT ;; POLICE BRANCH

OFFICE MEMORANDUM

NO.POL-1/Estt/22/82(Vol-I)
Dt. Kohima, the 29th May/84

SUB :- TENTATIVE SENIORITY LIST OF DEPUTY SUPDTS.
OF POLICE/ASSTT. COMMDT. OF THE NAGALAND
POLICE SERVICE .

The undersigned is directed to circulate herewith a tentative seniority list of Deputy Sepdt. of Police/Assistant Commandants as on 1.4.84 for information of all concerned. Any commission/error in the list may be intimated to this Department in writing within 60 days from the date of issue of this Memorandum. No complaint /objection will be entertained after the expiry of this period .

2. The seniority has been fixed according to Rules in force. The names pf Promoters and direct recruits have been arranged in order of select list and merit list drawn by the Departmental Promotion Committee and the Nagaland Police Service Commission respectively .

Sd/- Daniel Kent
Home Commissioner & Secretary
to the Govt. of Nagaland .

Memo No. POL-1/Estt/12/82(Vol-I) Dt. Kohima, the 24 May/84

Copy to :

1. The Inspector General of Police, Nagaland, Kohima .
2. P.S. to Chief Secretary .
3. All the Officers concerned .
4. All the Supdt. of Police/Commdts etc. of NPS .
5. Personal file of the Officer concerned .

Handwritten signature
Advocate
1-10-86

Sd/- Illigible

(KRISAL)

Deputy Secretary to the Govt. of

-28-

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TENTATIVE SENIORITY LIST OF DEPUTY
SUPERINTENDENT OF POLICE ASSTT.
COMMDT.? OF THE NAGALAND POLICE
SERVICE AS ON
71.1.84/

ANNEXURE -5 (Contd.)

S/No.	Name	Direct/ Promotee	Date of appoint- ment in the rank of Inspt.	Date of appoint- ment in the rank of Dy. S.P./Asstt. Comdt.	Permanent temporary as Dy.S.P.
1.	Shri P.D. Lama	Direct	-	31.1.81	Temporary
2.	Shri M.T.B. Nair	"	-	31.1.81	"
3.	Shri Mulk Singh	"	-	31.1.81	"
4.	Shri T.P. Chakhesang	"	-	16.5.77	"
5.	Shri N.N. Ngullio	"	-	13.8.77	"
6.	Shri Sharif Ali	Promotee	11.9.70	23.8.78	"
7.	Shri Ononsuja Ao	Direct	-	31.7.78	"
8.	Shri K. Lomponok	Promotee	17.7.71	23.8.78	"
9.	Shri L. Thechama Lotha .	Direct	-	31.7.78	"
10.	Shri Kovisalie Angami	Promotee	17.7.71	23.8.78	"
11.	Shri G! Rongma	Promotee	17.7.71	23.8.78	"
12.	Shri L.L.Doungel	Direct	-	10.8.70	"
13.	S.T. Sangtan	Direct	-	10.8.79	" Since
14.	Shri Berkumzuk Ao	Direct	-	20.8.79	" left
15.	Shri S.W.Yaden	Direct	-	31.1.81	" NPS
16.	Shri Chubanungba Sangtam .	Direct	-	31.1.81	"
17.	Shri Holto Angami	Direct	-	31.1.81	"
18.	Shri Zeku Angami	Direct	-	31.1.81	"
19.	Shri Tripengse	Direct	-	31.1.81	"
20.	Shri M.V. Chakhosang	Direct	-	31.1.81	"
21.	Shri Thungbomo Lotha	Direct	-	31.1.81	"
22.	Shri M. Nath	Promotee	17.7.71	23.3.81	"
23.	Shri Lamkhotang	Direct	-	18.12.81	"
24.	Shri D.S. Rawat	Promotee	20.12.81	23.3.81	"
25.	Shri Jongpongung- sang Ao.	Direct	-	18.12.81	"
26.	Shri R?K? Sinha	Promotee	11.9.73	18.12.81	"
27.	Shri G. Viccasse	Direct	-	18.12.81	"
28.	Shri P.C. Chakrav- arty	Promotee	11.9.73	23.3.81	"
29.	Shri L.Talimeren Ao	Direct	-	13.12.81	"

Contd....

gmsd
B-2
Advocate
1.10.86

- 22 -

ANNEXURE -5 (Contd.)

30. Shri Punathung Lotha	Promotee	11.9.73	23.3.81	Temporary
31. Shri Peulu Frank Zeliang	Direct	-	18.12.81	"
32. Shri V.C.G. Verghese	Promotee	11.9.73	23.3.81	"
33. Shri Indongshilu Ao	Promotee	11.9.73	23.3.81	"
34. Shri M. Chasio	Direct	-	15.6.82	"
35. Shri T. Throngakui Sangtam .	Direct	-	15.6.82	"
36. Shri K. Josoph	Promotee	9.9.74	29.7.82	"

The benefit of completed period of commissioned service in the Indian Army is given to the Officer at Serial No. 1 to 3 for the purpose of seniority in accordance with Govt. of India's letter No. BI/1/61/Esstt (B) dated 4.10.67 and this Department O/M No. Pol-1/Esstt/12/82 (Vol-I) dated 20.11.82. Seniority from serial one, two and three is final and no further representation will be entertained .

Noted
B - St
Adm
1.1.86

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ANNEXURE - 6

GOVERNMENT OF NAGALAND
HOME DEPARTMENT
POLICE BRANCH

O R D E R

Dated Kohima, the 3th April '85

NO. POL-1/Estt/12/82(Vol.I)A : The note below the tentative seniority list of Deputy Superintendents of Police/ Assistant Commandants of the Nagaland Police Service & issued under this Department's Office Memorandum of even number dated 29th May, 84 is hereby cancelled.

Sd/- Daniel Kent
Home Commissioner & Secretary
to the Government of Nagaland

No. Pol-1/Estt/12/82(Vol-I)

Dated Kohima, the 3.4.85 .

Copy to :

1. The Inspector General of Police, Nagaland, Kohima .
2. P.S. to Chief Secretary .
3. All concerned Officers .
4. All the Superintendents of Police and Commandants of Nagaland Armed Police .
5. Personal files of the Officers concerned .

21/4/85
B. K.
Advocat
1.10.86

Sd/-

(A.K. Biswas)
Additional Secretary
to the Govt. of ~~ANNEXURE~~
Nagaland .

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GOVERNMENT OF NAGALAND
HOME DEPARTMENT

ANNEXURE - 711

NO. POL-I/Estt/12/82(Vol-I)

Dated Kohima, the 12th
April '85.

O F F I C E M E M O R A N D U M

SUB :- Final Seniority List of Deputy Superintendents
of Police /Assistant Commandants of the Nagaland
Police Service .

The undersigned is directed to refer to this Deptt's O.M. of even number dated 29th May, 1984 and to say that in course of security of the representations received against the tentative Seniority List circulated under the aforesaid O.M., it has come to the notice of the Govt. that S/Shri M.T.B. Nair, Mulk Singh and P.D. Lama were not appointed in terms of the provisions contained in the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1967 but were appointed in Nagaland Police Service (Class-II) as direct recruits through a special selection committee. The provisions contained in rule 6(I) (b) of the aforesaid Rules, 1967 for giving weightage of military Service in matter of seniority are, therefore, not applicable in their cases .

2. Keeping the above position in view and the decision of the Govt. that the seniority of persons whose appointment on contract/deputation is followed by regularisation should be counted from the date of decision to absorb in regular service and other relevant factors, the ~~inter~~ seniority of all the persons shown in the tentative Seniority List , except those who have since left the service and those who are not qualified for appointment to regular cadre of Dy. S.P. in terms of provision to Rule 4 (ii) (c) of the Nagaland Police Service Rules, 1977 has been refixed. A final Seniority List of Deputy Superintendents of Police as on 1st January, 1985 is accordingly circulated herewith for information and guidance of all the members of the service.

Sd/-

D. KENT

Home Commissioner & Secretary to
the Govt. of Nagaland .

No. POL-1/Estt/12/82(Vol.I) :: Dated Kohima, the 12th April '85

ANNEXURE - 7 (Condt.)

Copy to :

1. The Inspector General of Police,
Nagaland, Kohima (10 copies)
2. All Superintendents of Police.
3. All Commandants of Armed Battalians .
4. All members of the Service as per
Seniority List .
5. Personal files of the concerned
officers .

Sd/-

(A. K. BISWAS)
Additional Secretary to the Govt
of Nagaland .

Attache
B-2
Advocate
1.10.86

Final Seniority list of Deputy Superintendents of Police/Assistant
Commandants of the Nagaland Police Service as on 1.1.1985 .

Sl. No.	Name of the Officers	Direct recruit Promotes	Date of apptt. in the Grade of Insptr.in respect of promotee	Date of apptt. in the Grade of Dy. S.P.	Remarks
1.	Shri T.P. Chakhosang	Direct recruit	-	15.5.1977	
2.	Sgri N.N. Ngullie	-do-	-	13.8.1977	
3.	Shri Sharif Ali	Promotee	11.9.1970	23.8.1978	
4.	Shri Onensuja Ao	Direct recruit	-	31.7.1978	
5.	Shri K. Lemponok	Promotee	17.7.1971	23.8.1976	
6.	Shri L. Thechamo Lotha	Direct recruit	-	31.7.1978	
7.	Shri S.T. Sangtam	-do-	-	10.8.1979	
8.	Shri Burkumzuk Ao	-do-	-	20.8.1979	
9.	Shri M.T.B. Nair	-do-	-	31.1.1981	Appointment on contract/deputation of the Officers at serial No. 9-17 was regularised with effect from 31.1.1981 through the Nagaland Public Service Commission. The decision to absorb them in the Nagaland Police Service was taken by the Government on 10.12.1980 against direct recruitment quota for the year 1980. According to the O.M. No. APB-2/10/71 dated 12/8/75 issued by the Home Department seniority of this category of officers is counted from the date of decision of such absorption. Names of all these officers have therefore, been placed above the promotees of 1981 batch.
10.	Shri Mulk Singh	-do-	-	31.1.1981	
11.	Shri P.D. Lama	-do-	-	31.1.1981	
12.	Shri Chubungha	-do-	-	31.1.1981	
13.	Shri Holto Angami	-do-	-	31.1.1981	
14.	Shri Zaku Angami	-do-	-	31.1.1981	
15.	Shri tripongse Sangtam	-do-	-	31.1.1981	
16.	Shri M.V. Chakhesang	-do-	-	31.1.1981	
17.	Shri Thungbemo Lotha	-do-	-	31.1.1981	
18.	Shri D.S. Rawat	Promotee	20.12.1971	23.3.1981	
19.	Shri Lamkhotang Singsit	direct recruit	-	18.12.1981	
20.	Shri Imdongshilu Ao	Promotee	11.9.73	23.3.1981	
21.	Shri P. Jongponngsing Ao	direct recruit	-	18.12.1981	
22.	Shri R.K. Sinha	Promotee	11.9.1973	23.3.1981	
23.	Shri G. Vicashe Sema	direct recruit	-	18.12.1981	
24.	Shri P.C. Chakravorty	Promotee	11.9.1973	23.3.1981	
25.	Shri L. Talimeren Ao	direct recruit	-	18.12.1981	
26.	Shri Punathung Lotha	Promotee	11.9.1973	23.3.1981	
27.	Shri Peulu Frank Zeliang	direct recruit	-	18.12.1981	
28.	Shri V.C.G. Vergheese	Promotee	11.9.1973	23.3.1981	
29.	Shri K. Joseph	Promotee	9.9.1973	29.7.1982	
30.	Shri M. Chasie	direct recruit	-	15.6.1982	
31.	Shri T. Throngakui Sangtam	-do-	-	15.6.1982	
32.	Shri				

Sd/-

(A.K. Biswas)

Additional Secretary to the Govt.
of Nagaland .

Handwritten signature and date:
1.7.86

NO. I-14013/2/90-IPS-I
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

New Delhi - 110001, the 14 March, 90

N O T I F I C A T I O N

In exercise of the powers conferred by sub-rule (I) of rule 9 of the Indian Police Service (Recruitment) Rules, 1954 read with sub-regulation (i) of regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations 1955, the President is pleased to appoint the following members of Nagaland Police Service in the Indian Police Service on probation, and to allocate them to the cadre of Nagaland under sub-rule (i) of rule 5 of the Indian Police Service (Cadre) Rules, 1954. The appointments will take effect from the date of issue of this Notification.

Sl. No.	Name of Officer	Date of birth
1.	S/Shri	
1.	S. Roy Choudhury	1.1.1935
2.	Keviale Angami	1.4.1940
3.	G. Rengma	5.2.1942
4.	M.V. Chakhesang	1.12.1949
5.	S. Imsumeren Ao	1.5.1935
6.	V. Zao	4.4.1938
7.	Ianumeren Ao	1.3.1944
8.	Zambemo Lotha	1.3.1950
9.	M. Yanthan	1.12.1946
10.	S.N. Achumi	1.11.1951
11.	N.N. Ngullie	1.3.1950
12.	L.T. Lotha	21.2.1952
13.	S.T. Sangtam	1.3.1953
14.	Burkumzuk Ao	1.8.1950

Sd/-

(T.C. CHOWDHRY)
UNDER SECRETARY TO THE GOVT OF
INDIA .

NO. I-14013/2/90-IPS-I

Dated the 14th March '90

A copy each is forwarded to :-

1. The Chief Secretary, Govt, of Nagaland, Kohima with reference to their letter No. POL-I/ESTT/10/82/Vol-I dated 7.3.90 with 14 spare copies for officers concerned.
2. The Accountant General, Nagaland, Kohima .
3. The DG & IPS, Nagaland, Kohima .
4. The Secretary, UPSC, New Delhi .
5. 15 spare copies .

Sd/-

(T.C. CHOWDHRY)
UNDER SECRETARY TO THE GOVT. OF INDIA

attested
B. Adroak
1.10.86

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5

ANNEXURE - 9

1.15011/4/88 -IPS.I
Government Of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

New Delhi, the 6.6.91.

To,

The Chief Secretary,
Govt. of Nagaland ,
Kohima .

SUB :- IPS-Nagaland Cadre- Fixation
of Seniority .

Sir ,

I am directed to refer to State Govt.'s letter No. Pol-1/Estt/10/82(Vol.I) (pt) dated the 18th Feb. 1991 on the Subject cited above and to say that the seniority of S/Sh. Imsumeron Ao and thirteen others who were appointed to the IPS after 27th July, 1988 shall be as follows in the Gradation list of IPS Officers of Nagaland x cadre .

2. The details of service in respect of the State Police Service officers appointed to the Indian Police Service by promotion are as follows :-

Sl. No.	Name of the Officer	Date from which holding rank not below that of Dy. S.P. or equivalent	Date of appointment to IPS	Completed years of service rendered in the rank not below that of Dy.S.P. or equivalent	Total weightage in the years in terms of rule 3(3) (ii) of the IPS (Regulation of Seniority) Rules, 1988.	Year of
1	2	3	4	5	6	7

.....2/-

Amended
Advocate
1.10.86

1.	2.	3	4	5	6	7
	S/Sh					
1.	S. Roy Choudhury	12.9.74	14.3.90	15	5	85
2.	Kevisalie Angam	23.8.78	14.3.90	11	4	86
3.	Angami					
3.	G. Rengme	23.8.78	14.3.90	11	4	86
4.	M.V. Chakhesang	30.11.74	14.3.90	15	5	86
5.	S. Insumeran Ao	17.11.64	14.3.90	25	8	86
6.	V. Zeo	16.11.64	14.3.90	25	8	86
7.	Lanumeran Ao	16.7.72	14.3.90	17	5	86
8.	Zambemo Lotha	12.9.74	14.3.90	15	5	86
9.	M. Yanthen	24.9.74	14.3.90	15	5	86
10.	S.N. Achumi	17.9.74	14.3.90	15	5	86
11.	N.N. Ngullie	13.8.77	14.3.90	12	4	86
12.	L.T. Lothe	31.7.78	14.3.90	11	4	86
13.	S.T. Sengupta	20.12.79	14.3.90	10	4	86
14.	Burkuzuk Ao	20.8.79	14.3.90	10	4	86

3. The year of allotment of S/Sh M.V. Chakhesang, S. Insumeran Ao, V. Zeo, Lanumeran Ao, Zambemo Lotha, M. Yanthan and S.N. Achumi has been restricted to 1986 in terms of provision to Rule 3(3) (ii) (c) of the IPS(Regulation of Seniority) Rules, 1988.

The Year of allotment and the inter-se Seniority among them will be in the order in which their names are shown in paragraph 2 above .

The concerned officers may please be informed accordingly .

Hindi version will follow .

Yours Faithfully,

Sd/-

(P.K. JAIN)
Under Secy. To the Govt. of India .
TEL NO. 3012932

NO.I.15011/4/88-IPS.I

Dated the 6.6.91.

Copy to :-

1. The Home Commissioner , Govt. of Nagaland, Kohima (with 14 spare copies).
2. The Accountant General, Nagaland, Kohima .
3. The Secy., UPSC , New Delhi .

For Internal distribution :-

Copies to D.O., Pers. III Pers IV, OSD(P) and 20 copies to Section .

Sd/-
(P.K. JAIN)

Attested
P. Advoca
1.10.91

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ANNEXURE - 10

GOVERNMENT OF NAGALAND
HOME DEPARTMENT ::: POLICE BRANCH

NO.POL/PF/68/82

Dated Kohima, the March
893

C O R R E G E N D U M

Please add the following in the remarks column against S/Shri P.D. Lama, M.T.B. Nair and Mulk Singh appearing at Sl.No. 1,2 & 8 respectively in the annexure of this Department's Notification even number dated 12.2.1993.

" The benefit of complete period of Commissioned Service in the Indian Army is given to the officers at Sl.No. 1 to 3 for the purpose of fixation of seniority in accordance with Govt. of India's letter No. BI/1/61/Estt (B) dated 4.10-67 and this department O/M No. POL-I/ESTT/12 82(Vol-I) dated 20.11.82."

Sd/- P. TALITEMJEN AO
Home Commissioner to the Govt. of
Nagaland .

Dated Kohima, the 23rd March '93

No. POL-I/PF/63/82

Copy to :

1. The Director General of Police ,
Nagaland, Kohima.
2. The P.S. to Chief Minister, Nagaland, Kohima
3. The P.S. to Chief Secretary, Nagaland, Kohima
- 4 . All concerned officers.
5. All the Supdt. of Police and Commandants of
Nagaland Army Police .
6. Personal file of the officers concerned.
7. File No. POL-i/ESTT/12/82(Vol.I)
8. Guard file .

Sd/-

(PAOLAL HANGSINGH)
Deputy Secy. to the Govt. of Nagaland

Shri M.T.B. Nair
Addl. S.P.(OPS)
Dimapur .

Amst 2
B - [Signature]
Advertic
1.10.86

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68

GOVERNMENT OF NAGALAND
HOME DEPARTMENT ; ESTABLISHMENT BRANCH

ANNEXURE - 11

NO.POL-I/ESST/10/82(Vol-10) Dated Kohima the March 1993

To,

The Under Secretary to the Govt. of Andia ,
Ministry of Home Affairs, New Delhi .

SUB :- PROMOTION OF STAFF/POLICE OFFICERS TO IPS .

Sir, I

In ~~invited~~ a reference to the Govt. of India, Ministry of Home Affairs letter No. 1- 14011/15/92-IPS dated Nil along-with a photo copy of UPSC's letter No. F/13/92-AIS dated the 24th Decembor, 1992 on the subject cited above I am directed to submit herewith the proposal for appointment of the state ~~Pa~~ Police Officers into IPS under Rule 9 of the Indian Police Service (Appointment by Promotion)~~by~~ ~~Ex~~ Regulation, 1955 and also in accordance with the selection made by the selection Committee in the meeting held at Kohima on the 28th March, 1992. (A copy of the minuted of the selection committee meeting of 28.3.92 is enclosed herewith for favour of persal and reference)

1. Shri Akangyanger Ao, (ST) -
2. Shri Onensuja Ao, (ST)
3. Shri M.T.B. Nair .
4. Shri Mulk Singh,

The above four officers are at Sl. nos. 1, 2, 3, & 4 of the select List respectively. The officers at Sl.No. 1 & 2 viz S/Shri Akangyanger Ao (ST) may be appointed to the IPS against the existing 2(two) posts of vacancies including one post vacated by Shri S. Roy Choudhury, IPS who retired on attaining supernuation with effect from 1.1.93. These vacancies were intimated to the Ministry vide our letter even number dated 8.3.91 and the same has been confirmed by Ministry vide their letter No. F. 7/13/91-AIS dated 12.3.91-258/c .

The officer at Sl.No. 3 viz Shri M.T.B. Nair of the select list can be considered for appointment to IPS against the vacancy likely to be caused by retirement of Shri Insumeren A Ao , IPS who retire on Supernuation w.e.f. 30.4.93.

It is requested that appointment orders as proposed ~~and~~ above may pleased be issued at the earliest .

Yours Faithfully

(P.TALITEMJEN AO)

Home Commisioner, Nagaland

Enclo: As Stated .

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NO. I-14013/5/93 - IPS.I
Government of India/Bharat sarkar
Ministry of Home Affairs
Grih Mantralaya

New Delhi, the 8.4.93

N O T I F I C A T I O N

In exercise of the powers conferred by sub-rule(i) of rule 9 of the Indian Police Service (Recruitment) Rules, 1954, read with sub-regulation (I) of regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, the President is pleased to appoint the following members of Nagaland Police Service to the Indian Police Service on probation, and to allocate them to the cadre of Nagaland under sub-rule(I) of rule 5 of the Indian Police Service (Cadre) Rules, 1954. The appointment will take effect from the date of issue of this Notification.

Sl.No.	Name of the Officer	Date of birth
	S/Shri	
1x		
1.	Shri Akangyanger Ao	1.4.1938
2.	Shri Onensuja Ao	1.1.1944

Sd/-

(P.S. PILLAI)

UNDER SECY. TO THE GOVT. OF INDIA

No. I-14013/5/93-IPS.I,

New Delhi, the 8.4.93

A Copy each is forwarded to :-

1. The Chief Secretary to the Government of Nagaland (Attn. Shri P. Talitemjen Ao, Home Commissioner, Kohima. w.r.t. their letter No. POL-I/ESTT/10/82 (VOL-10) dated 15.3.93 & 21.3.93 (with two spare copies for onward transmission to the officers concerned).
2. The Accountant General, Nagaland, Kohima .
3. The Secretary, UPSC (Attn. Shri N.Namasivayam, Under Secretary).
4. The DG & IGP, Nagaland, Kohima .
5. Shri Yogesh Jha, Asstt., IPS. I Section, MHA.

Sd/-

(P.S. PILLAI.)

UNDER SECY. TO THE GOVT OF INDIA

Handwritten:
a. 11/10/93
1-10/93

CONFIDENTIAL

File No.

Minutes of the meeting of the Selection committee constituted under Regulation 3 of the Indian Police Services (Appointment by promotion Regulation) 1955 for preparation of a list of such members of the State Police Services of Nagaland as are suitable for promotion to the Indian Police service .

The committee met at Kohima on the 25th day of March 1995 at 11 A.M.

The following were present :

1. Smt. otims Bordia, Prsident
Member,
Union Public Service Commission
2. Shri T.C.K. Lotha Member
Chief Secretary,
Nagaland
3. Shri Chuman Lal Member
Director General of Police
Nagaland
4. Shri Talitemjen Ao, Member
Home Commissioner,
Nagaland .
5. Shri Hessô Mao Member
IGP Nagaland .

2. The Committee were informed that the maximum number of state Police Service officers which can be included in the Select list is two. This number has been determined in pursuance of the provision of the Regulation of the Indian Police services (Appointment by Promotion Regulation) 1955.

3. It has been brought to the notice of the Committee that no disciplinary proceedings are pending against any of the eligible officers.

4. The Committee examined the records of the officers (whose names are included in the Annexure) who fulfil the condition of the elligibility and assessed them as indicated against their names. The committee didnt take into

....2/.

amshy
B. Singh
Adm. Secy
1.10.96

consideration the adverse remarks in the ACRs of the officers which were not communicated to them, while assessing their suitability .

5. On the basis of the above assessment, the Committee selected the officers whose names are mentioned below suitable in all respect for promotion to the Indian Police Service and place them in the following order :-

<u>Sl.No.</u>	<u>Name(S/Shri)</u>	<u>Date of Birth</u>
1.	M.T.B. Nair	4.6.40
2.	Peasant Kuma r	1.3.42

6. The Committee was satisfied from the remarks in the confidential reports of the officers selected for inclusion in the list that there was nothing against their integrity .

Sd/-
(OTIMA BORDIA)

Sd/-
(CHAMAN LAL)

Sd/-
(HESSO MAO)

Amended
[Signature]
Advocate
1.10.86

- 42 -

12

<u>Sl. No.</u>	<u>Name</u>	<u>Date of Birth</u>	<u>Overall relative assessment</u>
1.	Basant Kumar	1.3.42	Good (2)
2.	Toluho Sema	31.3.41	Unfit
3.	V.K.Ponoyia	22.12.46	Unfit
4.	V. Angami	1.3.39	Unfit
5.	M.T.B. Nair	4.6.40	Very Good(1)
6.	J.B. Vikhuga	22.10.44	Good
7.	Hotto Angami	1.3.45	Unfit

Sd/-

(OTIMA BORDIA)

Sd/-

(CHAMAN LAL)

Sd/-

(T.C.K. LOTHIA)

Sd/-

(Hesso Mao)

Sd/-

(TALITEM Ao)

Handwritten signature
Advocate
1.10.86

ANNEXURE -14

Sardar Vallabhbhai Patel
N A T I O N A L P O L I C E A C A D E M Y
(MINISTRY OF HOME AFFAIRS, GOVERNMENT
OF INDIA)

HYDERABAD

This is Certify that Shri M.T.B. Nair

has participated in

THE First INDUCTION TRAINING COURSE, 1995

organised at his Academy

From 05-06-1995 to 01-07-1995

Sd/- Illigible,
Course Director .

Sd/ Illigible
Director.

allisted
1-10-96

OFFICE OF THE COMMANDANT
1ST NAGALAND ARMED POLICE BATTALLION
CHUMUKEDIMA, NAGALAND

NO./NAP/A1/

/95

Dtd. Dimapur, the 27th Sep '95

To,

The Director,
Nagaland, Kohima .

Sub:- REPRESENTATION FOR EARLY NOMINATION TO THE IPS
BY PROMOTION ON SPS QUOTA .

Sir,

With reference to the subject cited above I am to present the following facts for your sympathetic consideration and early necessary action please .

1. That I was appointed in the rank of Dy. S.P. in Nagaland Police on 02/11/68 which was regularised by the Govt. of Nagaland w.e.f. 31/01/81 by the Govt. of Nagaland, vide department of P & Ar No. Par-4/30/77 dated 31/01/81.

2. That the Govt. of Nagaland, Home Department vide notification No. 4-Estt/27/82 (PT) dated 09/11/83 has declared the entire period of Army/Police Service be counted towards pensionary and other retirement benefits. To this effect, even the benefit of crossing E.B. on completion of 15 years service in the scale of pay for Dy. S.Ps. was given vide notification No. POL-1/Estt-4/84 dated 08/01/85 and I was given the selection grade scale of pay in the rank of Dy. S.P.

3. That in the tentative seniority list that was published vide NO. POL-1/Estt/12/82 dt. 29/05/84 my name figured at Sl. No. 2 of the order which clearly mentioned that this is the final seniority list ~~consi-~~ ~~deration~~ dering the benefit of commission Military service to Mr. M.T.B. Nair among other Ex-Army Officers. Subsequentk to this an arbitrary order was issued vide order No. POL-1/Estt/12/82 dtd. 03/04/85 cancelling the benefit given in the seniority list .

4. That finding no alternative to the injustice I took shelter of Guwahati High Court vide Civil Rule No. 21(k)89.

...2/-

Handwritten signature and date:
1.11.86

ANNEXURE -15(Contd..)

On 02/03/91 the Hon'ble Court issued the judgement in the aforementioned civil rule ordering the Govt. of Nagaland to give the benefit of commissioned Army Service in the matter of seniority to Mr. M.T.B. Nair and that such an ante-date seniority should be calculated from the date of his absorption in regular service i.e. 31/01/81. In spite of the court having forwarded the order to the Home Commissioner, Nagaland and my subsequent intimation to the Chief Secretary, Nagaland vide No. PHQ (A-1)33/PF/80 dt. 15/06/92 and to the Home Commissioner, Nagaland on 23/10/92; the order of the Hon'ble Court was not implemented. However, after about five months the home deptt. issued a corrigendum vide No. POL-I/PF/6382 dt. 23/03/93 stating that the seniority in the commissioned service in the Indian Army is restored to Mr. M.T.B. Nair among others. In spite of the Hon'ble Court's order in its judgement dt. 02/03/91, subsequent to this, without implementing the order of the Hon'ble Court, a number of Officers of the Nagaland Police Service were promoted to the senior scale and inducted to the IPS. It would be worthwhile mentioning here that, by virtue of the Hon'ble Court's order I would be senior to all of them by three years as they all being to the 1979 batch of NPS as against my seniority of 1976 in the NPS.

All the officers of the 1979 batch would have been placed below me in the seniority list had the Govt. not ignored the hon'ble Court's order in the matter of their seniority as my seniority should have been fixed w.e.f. 22/07/76 and necessary changes incorporated in the existing seniority list of the NPS.

5. As would be seen from the foregoing facts although I am senior to the 1979 batch of the NPS I shall continue to be in the NPS whereas officers of the 1979 batch were considered, promoted and allotted the 1986 batch of IPS. To add insult to injury, my seniority was not even considered in the subsequent selection to the IPS in the year 1992. The Govt. of Nagaland prepared a select list in which I was placed below Sri Onensuja Ao by virtue of the existing seniority although Mr. Onensuja Ao is fairly junior to me by virtue of the revised seniority list that was supposed to have been published by the Govt. as per the Hon'ble Court's order. Subsequently they even were appointed to the IPS ignoring my legitimate seniority over them by virtue of the hon'ble court's order which was not even brought to the

Alotted
B-2
Advocate
1.10.96

notice of the selection committee even after almost
is months from the date of communication of the
judgement order of the Hon'ble Highcourt of Guwahati
(Kohima Bench) to the Govt of Nagaland .

6. In the recent select list I am placed at Sl.No. 1
for appointment to the IPS. A vacancy already exists in this
regard, Furniture, I have also completed the "in service
course" for promotion to the IPS at NPA, Hyderabad, in the
month of July 1995.

I pary your kindness to move the concerned authority
to redress the injustice done to me over decades and issue
my appointment order to the IPS immediately. Subsequent to
this I may also be placed ahead of the ~~seniority~~ senior most
Officer of the 1986 batch (SPS) of the Indian Police Service
and be allotted to the 1985 batch of the IPS as I am three
years senior to them and for which I am entitled to one
year of Seniority in the I.P.S.

Since this is a long pending issue it is requested
the matter may be taken up at the earlist.

Yours faithfully,

Sd/-

(M.T.B. Nairmm NPS.
Commandant 1st Bn. NAP.
Chumukedima, Nagaland .

Allyed
Advocate
1.10.96

30th september, 1995.

Chaman Lal.

30th September 1995.

Though I am not likely to know the outcome of this effort as I will be leaving Nagaland Police shortly, I am prompted by faith in your sense of fairness, Dringing a case of glaring injustice to your notice. This concerns the claim of Shri MIB Nair for insuction into IPS Course of Nagaland.

2. Shri Nair Joined Nagaland Police as Dy. S.P an 2.11.68 after serving in the Indian Army for 11 years including 4 years 9 months in the Commissioners rank. He was duly accorded benefit of the Army services (Commissioned) while fixing his seniority as Dy. SP and allows the crossing of E.B. in the scale of Dy. S.P. an ~~xxxxxxx~~ completion of 15 years of service accordingly. However, for same inexplicable reason, his seniority was later changing and the benefit of Army service accorded to him withdrawn. He had to approach Gauhati High Court to get his earlier seniority restored. Despite a clear ruling from the High Court in his favour. He has not been given the benefit of Army Service in the matter of fixing his seniority in the rank of SP and denied his rightful claim to induction in the IPS. Officers of the NPS far junior to him in service have been inducted into IPS superceding him.

3. I have closely watched the performance of Shri Nair as S.P. Wakha for about two years and I would rate him as one of the best officers of the NPS. My proposal for his posting as Commandant 1st NAP was based on this assessment and within short period of two months he has fully proved my trust in his administrative ability and leadership qualities to handle an important charge.

4. I have discussed this case with Shri Talitemjen As more than once and found him fully aware of the injustice meted out to Shri Nair. I could not understand why such a glaring injustice can not be corrected.

...2/-

Attended
By
Advocate
1.11.95

5. Shri M.T.B Nair has new been brought on the select list and is the seniormost NPS Officer (excluding the case of Shri Basant Kumar Singh) for induction to IPS. It is requested that his case may be forwarded to the MHA even if it means admitting same lapses on the part of Home Department in the matter of fixing and re-fixing his seniority. Justice ~~xx~~ demands it and I am sure, you will support him in getting his due.

6. Representation of Shri M.T.B. Nair in suplicate may please be found enclosed in this connection .

sd/-

(Chaman Lal)

Shri L. Colney .
Addl. CS (Home) Nagaland.
Kohima .

Encl. : As above .

*Attested
By Dr. Advocate
1.10.86.*

79
69-
ANNEXURE - 17

GOVERNMENT OF NAGALAND
HOME DEPARTMENT : POLICE ESTT, BRANCH

NO.POL-1/ESTT/10/82(Pt) : Dt. Kohima, The 3rd July '96

To,

The Under Secretary,
Union Public Service Commission,
Delpur House, Shahjahan Road,
New Delhi - 1100011 .

Sub :- IPS - SELECTION COMMITTEE MEETING
FOR PROMOTION TO NAGALAND CADRE
DURING 1994-95 .

Sir,

I am directed to refer to your
letter No. F. 7/13/95 - AIS dated 19.6.96 on the
subject cited above and to convey approval of the
Government for the minutes of the Selection meeting
held on 25.3.95 at Kohima. The State Government
could not forward observation earlier due to the
receipt of the minutes from U.P.S.C. vide their
letter referred to above .

Yours faithfully,

Sd/-

(B.B. Dey)

Deputy Secretary to the Govt. of Nagaland

ansd
1.10.96.

- 50 -

GOVERNMENT OF NAGALAND
OFFICE OF THE DIRECTOR GENERAL OF POLICE
NAGALAND : KOHIMA

NO.PHQ(A-1)33/PF/80
Kohima, the 3rd July/96

To,

The Addl. Chief Secretary (Home)
Nagaland, Kohima .

Sub: Induction To IPS cadre of Shri M.T.B. Nair
Commandant 1 NAP - Promotion Thereof .

Sir,

I have to invite your personal attention on the subject mentioned above and state that Shri M.T.B. Nair, NPS, Commandant 1st NAP Battalion at present figures in the select List for promotion to the IPS. As it would be evident from the following , his case is a classic example of systematic injustice perpetrated over a decade for no valid reasons :-

- (i) He has been allotted the seniority of 1976 in the rank of Dy. S.P. vide Government Order No.POL-1/Estt/1282(Vol-1) dated 20.11.1982.
- (ii) Arbitrary cancellation of the seniority and allotment to 1981 batch vide Government order No. POL-1/Estt/1282(Vol-1) dated 3.4.1985
- (iii) Shri M.T.B. Nair moved the High Court to undue the injustice .
- (iv) In 1989 during the pendency of the suit, NPS officers upto the seniority of 1979 were considered for promotion to IPS and 14(Fourteen) of them were promoted in 1990 on the basis of the select list .
- (v) High Court struck down the arbitrary order of the Government on 7.3.1991 and restored the 1976 seniority of Shri M.T.B. Nair.
- (vi) In 1992 inspite of the standing ruling of the Hon'ble High Court, the Government ignored the seniority of Shri Nair and prepared a Select List stating that Shri Nair belongs to the 1981 seniority. By virtue of the misrepresentation. Mr. Onensuja who is of 1978 seniority get selected to the IPS leaving aside Mr. Nair. selected to the IPS leaving aside Mr. Nair .
- (vii) On 25.3.1995 the Selection Board put Shri M.T.B. Nair on the top of the Select List but even after repeated reminders and passage of more than one year the Government is not issuing orders in this regard .

..... 2/.

gmsd
R. S. S.
Advocate
1.10.96

- (viii) To undo the injustice Shri Nair should be promoted to the IPS forthwith and be considered for retrospective seniority of the 1985 batch of IPS as he is three years senior in NPS compared to 1979 batch of NPS officers who have been allotted 1986 seniority in the IPS. This is admissible by the IPS (Fixation of seniority by promotion) rules.

2. It may also be pertinent to mention here that Shri M.T.B. Nair has already undergone the pre-induction training programme at National Police Academy, Hyderabad for induction to IPS. It is therefore requested that an early action in the matter may be taken at an early date .

Yours faithfully,

(P.M. Khanna)
Director General of Police,
Nagaland, Kohima

NO.PHQ(A-1)33/PF/80

Kohima the 3rd July/06

Copy to :

1. The Secretary, Union Public Service Commission
Dhampur House, New Delhi.
2. The Joint Secretary (Police). Government of
India ? Ministry of Home Affairs, New Delhi.

(P.N. Khanna)
Director General of Police
Nagaland, Kohima .

gmsd
P.N. Khanna
1.10.86

GOVERNMENT OF NAGALAND
HOME DEPARTMENT :: POLICE ESTT? BRANCH

N O T I F I C A T I O N

Dt. Kohima the 6th Sept '96

No. POL-1/PF/63/82 :: In partial notification of the Department's notification NO. POL-1/Estt/14/82. Dt. 14/82 dt. 14/10/82 and POL-1/Estt/25/82 (Pt) dt. 30/7/93, the Governor of Nagaland is pleased to order officiating promotion of Shri M.T.B. Nair, Deputy Superintendent of Police/Assistant Commandant to the post of Addl. Superintendent of Police /Deputy Comm~~an~~ndent and to the post of Superintendent of Police/Deputy Commandant and to the post of Superintendent of Police Commandant in the scale of pay of Rs. 1570-60-2050-EB-60-2170-70-2450/-P.M. w.e.f. 7.11.85 and 7.10.87 respectively from the date of his Junior Shri N.N. Ngullis's promotion under the provision FR-22-C.

This issues with the approval of the P & AR Department (O & M Ceil) vide Their U.O. NO. 101 dt. 12.8.96.

Sd/- L. COLONEY
Addl, Chief Secretary.

NO. POL-1/PF/63/82

Dt. Kohima, the 6th Sept '96

Copy to :

1. The Accountant General, Nagaland, Kohima
2. The Director General of Police, Nagaland Kohima.
3. The Commandant, 1st NAP Sn. Chumukedima.
4. Shri M.T.B. Nair, Commandant, 1st NAP Bn. Chumukedima.
5. The Publisher, Nagaland Gazette, Kohima for publication in the next issue.
6. Guard file .

Sd/-

(A. KAIKHO)

Under Secretary to the Govt. of Nagaland .

gilled
Be
Advised
1.10.96

53
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

.....

O.A.NO. 219 OF 1996

M.T.B. NAIR

: Applicant

versus

UNION OF INDIA AND OTHERS

: RESPONDENTS

REPLY STATEMENT FILED ON BEHALF OF THE 1ST RESPONDENT

I, P.S. Pillai s/o Late Shri N.P. Pillai working
as Under Secretary to Govt. of India do hereby solemnly
affirm and state as follows:

1. That I have been authorised to file written statement on behalf of respondent No.1 to the original application.
2. That I have gone through the allegations/averments/contentions made in the original application.
3. That all the material which are not specifically admitted are denied. The applicant be put to strict proof thereof which are deemed to be denied.
4. At the outset it is stated that the present application has been filed by the applicant aggrieved by his non-appointment to IPS.
5. That the applicant has not impleaded the Govt. of Nagaland (which is the custodian of service records of the applicant) as respondent in the

Received Gpy.
Mallikarjuna
Admmt
20/1/97

Filed Gpy.
H. H. Choudhary
Adm. Control Govt.
Standing Comm.
20/1/97

instant Original Application. Therefore, the application deserves to be dismissed on account of non-rejoinder of necessary party.

6. That the applicant has claimed his appointment to Indian Police Service above S/Shri Akangyanger Ao and Onensuja Ao, who were appointed to Indian Police Service on 8.4.93, whereas he has not impleaded any of them as party in this application. Therefore, the present application deserves to be dismissed on account of non-rejoinder of necessary party.

7. That the service matters of the State Police Service officers falls under the sole purview of the State Govt. Therefore, necessary submission regarding the matters pertaining to the fixation of applicant's seniority in State Police Service will be made by the State Govt. However, the applicant has not impleaded the Govt. of Nagaland as party in the instant O.A.

8. That the selection of State Police Service officers for promotion to IPS is done in accordance with statutory provisions laid under IPS (Recruitment) Rules, 1954 and IPS (Appointment by Promotion) Regulations, 1955.

9. That the meetings of Selection Committees are

convened by Union Public Service Commission on the basis of list of eligible State Police Service officers furnished by the State Government alongwith their service records direct to the Commission. The proceedings of the Selection Committee Meetings are finally approved by the Commission, as provided under regulation 7 of IPS (Appointment by Promotion) Regulations, 1955. The answering respondent has a very limited role in this whole process.

10. That IPS (Appointment by Promotion) Regulations, 1955 do not provide for review of a Select List finalised and acted upon.

11. That as per regulation 9(1) of IPS (Appointment by Promotion) Regulations, 1955, appointments of State Police Service officers to IPS are made by the Central Government on receipt of specific recommendations of State Government and in the order in which their names appear in the Select List for the time being in force.

12. That the Selection Committee, which met on 28.3.92, prepared a Select List consisting names of 4 State Police Service officers of Nagaland for promotion to IPS. The said Select List was prepared against 2 vacancies and out of these 2 vacancies, one vacancy was available on the date

of meeting and the 2nd vacancy was to occur on 1.1.93 due to superannuation of Shri S. Roychoudhuri on 31.12.92. The name of the applicant was included at Sr.No.3 in the aforesad Select List. The said List was approved by Union Public Service Commission on 24.12.92. The State Govt. vide their letter dated nil (received in this Ministry on 17.3.93) forwarded a proposal for appointments of S/Shri Akangayanger Ao and Onensuja Ao (Sr.Nos.1&2 in the aforesaid Select List) for appointment to IPS. The State Govt. also proposed that the applicant (Sr.No.3) can be considered for appointment to IPS against the vacancy which was likely to occur with effect from 1.5.93 due to superannuation of Shri Imsumeren Ao, IPS on 30.4.93.

13. That IPS (Appointment by Promotion) Regulations, 1955, do not allow appointment to the Service in anticipation of vacancy i.e. no appointment can be made against a vacancy which is to occur from a future date. Therefore, it was not found possible to appoint Shri Nair against a future vacancy. However, S/Shri Akangyanger Ao and Onensuja Ao were appointed to IPS against two vacancies which had occurred prior to 22.3.93 and the same were filled up by appointment of S/Shri Akangyanger Ao & Onesuja Ao vide this Ministry's notification dated 8.4.93. It is pertinent to

mention here that the promotion quota in IPS, in general, is calculated @ 33.1/3% (Senior Duty Posts+Central Deputation Reserve) as stipulated under rule 9 of IPS (Recruitment) Rules, 1954 which deals with recruitment to the Indian Police Service by promotion of State Police Service officers. Sub-rule (2) of ibid rule provides as under:

9(2) The number of persons recruited under sub-rule (1) in any State or group of State shall not at any time, exceed 33 1/3 percent of the number of those posts as are shown against items 1 and 2 of the cadre in relation to that state or to the group of States in the schedule to the IPS (Fixation of Cadre Strength) Regulations, 1955."

But so far as Promotion Quota of IPS cadre of Nagaland was concerned, it is stated that Department of Personnel and Training, vide their notification No.11027/1/86-AIS(I) dated 22.3.1988, inserted sub-rule (3)A under rule 9 of Recruitment Rules, which inter-alia provides as under:

"9(3)A Notwithstanding anything contained in this rule, in relation to the

State of Nagaland the number of persons recruited under sub-rule (1) shall not for a period of five years, exceed at any time 50 percent of the number of those posts as are shown against items 1 and 2 of the cadre in relation to that State in the Schedule to the Indian Police Service (Fixation) of Cadre Strength) Regulations, 1955."

The aforesaid provision was effective for a period of 5 years from 22.3.1988. The said period of 5 years expired on 22.3.1993. No further extension in this regard has so far been sought by the State Govt. As such, the Promotion Quota of IPS cadre of Nagaland stands @ 33 1/3% of (Senior Duty Posts+Central Deputation Reserve).

14. That in view of the facts quoted in preceding paras, the authorised Promotion Quota of IPS in Nagaland cadre was reduced from 15 to 10 w.e.f. 22.3.93. Accordingly, as on 1.5.93 there were 14 officers in position against authorised quota of 10. As such the Promotion Quota was over-utilised. The State Govt., vide their letter dated 14.5.1993, forwarded a proposal for appointment of the applicant to IPS taking into account the superannuation of Shri Insumeran Ao on 30.4.93. But in view of the circumstances as

narrated herein above, there was no actual vacancy in Promotion Quota of Nagaland cadre and hence Shri Nair could not be appointed to IPS. The State Government was informed accordingly vide the answering respondent's letter dated 19.7.93 (copy enclosed as Annexure R.1).

15. That as regards the Selection Committee Meeting of 1994-95, it is stated that since no vacancy was anticipated to occur during the period of 12 months from the date of meeting held on 25.3.95, the Selection Committee prepared a Select List consisting names of 2 State Police Service officers of Nagaland for promotion to IPS. The applicant's name figures at Sl. No. 1 in the said Select List. The said Select List has been approved by Union Public Service Commission on 22.8.96. It is further mentioned that as on date, the Promotion Quota of IPS cadre of Nagaland is 12 whereas 12 officers are in position. Therefore, there is no vacancy in the Promotion Quota. Hence, it is not possible to appoint the applicant to IPS on the basis of inclusion of his name in the aforesaid Select List prepared by Selection Committee Meeting on 25.3.95.

16. That in view of the foregoing facts, it is stated that the applicant was never entitled/is entitled

for appointment to IPS till date. Hence it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the instant original application.



DEPONENT

(पि० एस० पिल्लै)
(P. S. PILLAI)

अवर सचिव
Under Secretary

गृह मन्त्रालय
Ministry of Home Affairs

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

I, P.S. Pillai S/o Late Shri N.P. Pillai, working as Under Secretary to Govt. of India, Ministry of Home Affairs, do hereby verify that the statements contained in the above paragraphs are true and correct to the best of my knowledge, information and belief and I have not suppressed any material facts in connection with the above case.

Dated this the 9th day of Jan. 1997.



DEPONENT

(पि० एस० पिल्लै)
(P. S. PILLAI)

अवर सचिव
Under Secretary

गृह मन्त्रालय
Ministry of Home Affairs

Amritha RAY
MOST IMMEDIATE

No.I-14013/5/93-IPS.I
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

New Delhi, the

To

The Secretary,
Home Department,
Police Establishment Branch,
Govt. of Nagaland,
KOHIMA.

(Attn. Shri P.Talitemjen AO, Home Commissioner)

Subject: Appointment of SPS officers to the IPS.

....

Sir,

I am directed to refer to State Government's letter No.POL-1/ESTT/10/82(VOL.I) dated 14.5.93 on the above cited subject and to say that DP&T, vide their notification No. 11027/1/96-AIS(I) dated 26.3.1988, has fixed the Promotion Quota of IPS Cadre of Nagaland as 50% of the number of those posts as are shown against items 1 and 2 of the cadre in relation to that State in the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 for a period of 5 years. The period of 5 years has already expired. Unless further extension is granted the promotion quota of Nagaland IPS Cadre stands at 33-1/3% of the number of those posts as are shown against items 1 and 2 of the Cadre Strength. This number comes to 11(32 + 3 = 10.66), whereas 14 officers are in position as on date against Promotion Quota. As such, the promotion quota is over utilised at present.

2. In view of the foregoing facts, it is not possible to accede to the request of State Government for appointment of Shri M.T.B. Nair to the IPS.

Yours faithfully,

(P.S. PILLAI)
UNDER SECY. TO THE GOVT. OF INDIA.

No.I-14013/5/93-IPS.I, New Delhi, the

Copy to Shri R.S. Pandey, Special Commissioner
Government of Nagaland, Nagaland House, New Delhi
for information.

(P.S. PILLAI)
UNDER SECY. TO THE GOVT. OF INDIA.

(62)

Filed by
H. J. J. J.
through
C. T. J. J.
Advocate
on 28-2-97

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI
BENCH : : : GUWAHATI

Filed in Court
on...28-2-97...
[Signature]
Court Master

276
4 MAR 1997
IN THE MATTER OF :-
O.A.S. 219 of 1996
M.T.E. Nair ... Applicant

-Vs-

Union of India & ors.

... Respondents

-And-

IN THE MATTER OF :-

Written statement on behalf of
respondent No. 3 and 4.

WRITTEN STATEMENT OF RESPONDENT No.3 AND 4

I, Shri C.P.Giri son of Late Ravilal Giri
aged about 48 years resident of Kohima, Nagaland do
hereby solemnly affirm and declare as follows:-

1. That I am the Home Secretary to the Government
of Nagaland and I am competent and authorised to file
this written statement on behalf of Respondent No.3
and 4 I am also conversant and acquainted with the facts
and circumstances of the case.

2. That save and except what have been specifically
admitted in this written statement the rest of the State-
ments are deemed to have been denied by the answering
respondents.

2A. That the statements made in paragraph 3 of the
application are not admitted and denied by the answering
respondents.

3. That the statements made in paragraph 4.1 to 4.5
are being matters of record these answering respondents do
not admit anything which are beyond record.

*Received by
Shri C.P. Giri
28-2-97*

[Signature]

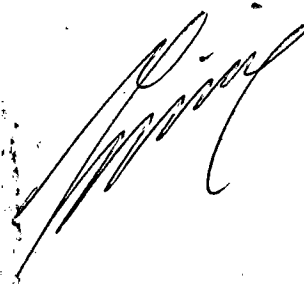
4. That with regard to the statements made in paragraphs 4.6, 4.7 and 4.8 this answering respondent begs to state that the seniority of the applicant and two others were fixed giving weightage of Army Commissioned service in terms of the Government of India letter No. 31/1/61 ESTT(8) dated 4.10.67 vide decision contained in POL-1/ESTT/12/82(Vol-1) dated 20.11.82 and 3.11.83. During 1985 the matter was considered and government decided not to give the benefit of weightage to those officers vide Notification No. POL-1/ESTT/12/82 (Vol-1) dated 12.4.85. Accordingly their seniority was re-casted and Shri M.T.B. Nair's seniority was fixed at Sl.No.9 of the final seniority list of Deputy Superintendent of Police/Asstt.Commandant as on 1.1.85. On receipt of the Judgement dated 7.3.91 passed by the Hon'ble Court in Civil Rule No. 21(K)/89, his seniority was restored vide Addendum No. POL-1/PF/62/82 dated 6.1.96 giving him seniority from 31.7.96.

5. That with regard to the statements made in paragraphs 4.9 and 4.10 and 4.11 these answering respondents begs to state that in view of the pendency of the Civil Rule No.21(K)/89 before the Hon'ble High Court, the name of the applicant could not be forwarded to UPSC for selection to the IPS of 1990 and after the case was disposed of on 7.3.91, copy of which was received on 20.10.92 his seniority was restored vide Office Memo No. POL-1/PF/63/82 dated 12.2.93 in compliance of the Hon'ble Courts order.

6. That the statements made in paragraph 4.12 to 4.14 are being matters of records these answering respondents do not admit anything which are beyond record.

7. That with regard to the statements made in paragraphs 4.15 these answering respondents beg to state that when the proposal was forwarded to the UPSC Shri Onensuja was senior to the applicant as his seniority was not restored till that time.

8. The statement of para 4.16 is admitted to the extent the applicant being at Sl.No.1 of the Select List. But he could not be appointed to IPS for want of vacancy.



9. That statement made in paragraph 4.17 is admitted to the extent that the applicant had attended Induction Training Course. But attending of such training course does not confer the right to induction which is subject to availability of vacancies.

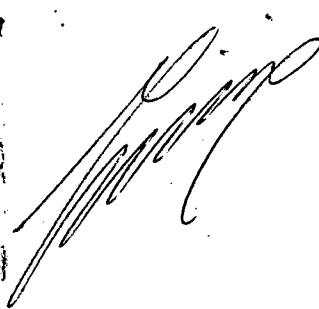
10. That the statements made in paragraph 4.18 of this application the answering respondents beg to state that infact, letter No. PHQ/NGO/1/95/520 dated 30.9.95 forwarding the representation dated 20.7.95 by the applicant was received by the Government on 4.10.95 and immediately after receipt of the said representation, the matter was taken up with the UPSC vide letter No. POL-1/PF/63/83 dated 3.10.96. But for want of vacancy no meeting of the selection committee was held during 1995-96.

11. That the statements made in paragraph 4.19 are admitted and not denied by the answering respondents.

12. That with regard to the statements made in paragraph 4.20 it is stated that the DGP, Nagaland had written a letter to the Addl. Chief Secretary (Home) vide PHQ(A-1) 33/PF/80 dated 3.7.96 on receipt of the letter the matter was taken up but due to non availability of vacant post against promotion quota his promotion to IPS could not be considered.

13. That with regard to the statements made in paragraph 4.21 it is correct to say that vide Notification No. POL-1/PF/63/82 dated 6.9.96 the applicant was given notional promotion in NPS cadre with retrospective effect i.e. from the date from which his juniors were promoted w.e.f. 7.11.85 and 7.10.87. Though his name was already in the Select List his appointment to IPS could not be made for want of vacancy. The IPS cadre strength is reviewed and determined by a Tribunal Review Committee and without vacancy in cadre, appointment of officer in such cadre is not possible.

14. The statement made in para 4.22 is submission of the applicant hence the answering respondent has no comments.




15. That with regard to the statements made in paragraph 4.23 and 4.24 the answering respondents beg to state that in case any order is passed by this Hon'ble Tribunal on or before 31.5.97, giving retrospective promotion to the applicant, others who were promoted ahead of the applicant will be adversely affected and no order may be passed in this regard in their absence.

There are as many as 5(five) Officers over whom the applicant has claimed seniority and any order from Hon'ble Tribunal giving seniority to the applicant over them would agitate them and will open floodgate of litigation. The five Officers are Viz.

- (1) Shri N.N. Ngullie, IPS, Commandant 7 NAP
- (2) Shri S.T. Sangtam, IPS, SP, Mokokchung
- (3) Shri Thechame Lotha, IPS SP, Border.
- (4) Shri Burkumzuk Ao, IPS, Commandant 5 NAP
- (5) Shri Onensuja Ao, IPS, SP(Narcotics)

Therefore, it is humbly prayed that the Officers whose interest would be adversely effected in the event of passing such order as claimed by the applicant, be also made respondents in this instant case. The assumptions of the applicant that promotional avenue of the Officers promoted earlier will not be effected by his promotion and allotment of year of seniority with retrospective effect as 1986 cannot be accepted on its face value without giving an opportunity to these Officers to present their views/opinion before the Hon'ble Tribunal.

16. That with regard to the grounds mentioned in paragraphs 5.1 to 5.10 this answering respondents beg to state that on receipt of the Judgement of the Hon'ble High Court action was initiated to restore his seniority and his seniority was restored vide Addendum No. POL-1/PF/63/63/82 dated 6.1.96 and he was given promotion in the NPS cadre Vide Notification No. POL-1/PF/63/82 dated 6.9.96.



However this Hon'ble Tribunal may be pleased to examine the facts and circumstances of the case and pass necessary order or orders as this Hon'ble Court may deem fit and proper.

VERIFICATION

I, Shri C.P.Giri, Home Secretary, Nagaland do hereby solemnly verify that the statements made in paragraphs, 1, 2, 3, 7, 10 and 13 are true to my knowledge and those made in paragraphs 4, 5, 6, 8, 9, 11, 12 and 14 are true to my information derived from records which I believe to be true.

And I sign this verification on this 26th day of February, 1997 at Guwahati.


(C. P. GIRI)
DEPONENT