

50/100  
**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

*Karibi*  
31.1.19

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

OA No. 244/96

Enr. S. Chaudhury

VS-

Applicant(s)

Division of Ordnance & as.

Respondent(s)

Mrs. D. Lankar M.Chad Advocates for the applicant(s)

Mr. S. Ali & C.G.S.C. Advocates for the Respondent(s)

Office Notes	Date	Courts' Orders
This application is in form and within time C. F. of Rs. 50/- deposited vide IPO BD No 444596 Dated 21.10.96	16.10.96	Mr. M.Chanda for the applicant. Mr. S.Ali, Sr. C.G.S.C. for the respondents.
<i>Notice</i> 6/10/96 Dy. Registrar		Heard Mr. Chanda 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 29.11.1996.
		Heard counsels on the interim prayer. Promotion of respondent No.4 to Office Superintendent will be subject to the result of O.A.

6  
Member

15.11.96  
Notice issued @ the  
Cooperative parlor  
rule D. No. 3797 Dt 19.11.96

trd  
M  
17/10

29.11.96 Mr. M. Chanda counsel for the applicant. Written statement has not been submitted.

List for written statement and further order on 30-12-96.

6  
Member

lm  
m  
29/11

Service reports are still awaited.  
W/Statement has not been submitted.

Notice duly served on R.No. 4

~~Service reports are still awaited.  
W/Statement has not been submitted.~~

28/11

(2)

O.A. 244/96.

17-1-97  
1) Notice duly served  
on R. No - 4.

2) w/statement has  
not been filed.

30.12.96

Mr J.L. Sarkar for the applicant  
Mr S.Ali, Sr.C.G.S.C for the respon-  
dents.

Written statement has not been  
submitted.

List for written statement and  
further orders. on 20.1.1997.

(2) J.L. Sarkar and S.Ali

6  
Member

17-2-97

pg

20.1.97

Learned counsel Mr M. Chanda for  
the applicant. Written statement has not  
been submitted.

List for written statement and  
further orders on 17.2.97.

6  
Member

1) Notice duly  
served on Q-4.

2) Service reports  
are still awaited  
R-1-3.

3) Written Statement  
has not been filed. pg  
W/ 20/1

4) NO appearance  
has not been filed.

on  
17/2

17.2.97

Three weeks time is granted to Mr S.  
Ali, learned Sr. C.G.S.C., to file written statement  
as a last chance. This case relates to Shillong.  
The case will be taken up at Shillong. The date  
will be notified later.

6  
Member

Vice-Chairman

1) NO written statement  
has been filed.

2) Memo of appearance  
has been filed.

rs  
22/8

1.7.97

The learned counsel for the parties  
submit that the case is ready for hearing.  
Let this case be listed for hearing on 26.8.97.

6  
Member

Vice-Chairman

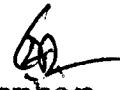
nkm

dr  
2/8

(3)

3

17.9.97 Case is ready for hearing.  
List on 15.1.98 for hearing.

  
Member

  
Vice-Chairman

W/S has not been filed.

1) Notice duly served  
on R.Nos. 4.

2) Service reports are  
still awaited on  
R.Nos. 1-3.

pg  
19/1

15.1.98 Let the case be listed for  
hearing on 26.3.1998.

  
13/1

  
Member

  
Vice-Chairman

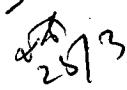
1) Notice duly served on  
R.Nos. 4.

2) the others R.Nos. 1-3  
are still awaited.

pg  
26.3.98  
9

3) No W/S has been filed.

~~ON THE PRAYER OF~~  
Let the case be listed for  
hearing on 26.6.98.

  
26/3

  
Member

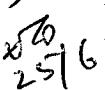
  
Vice-Chairman

1) Notice duly served on  
R.Nos. 4. The other

reports are still awaited.

2) No W/S has been filed.

pg  
26/3

  
25/6

1) No W/S has been filed. 26.6.98

2) Notice duly served on R.Nos.

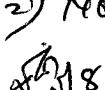
1-3. The others are still awaited.

28/7

1) Notice duly served on  
R.Nos. 4. The other reports

are still awaited.

2) No W/S has been filed.

  
26/8

Leave. Admit 1-29-7-98.

By ad.

29-7-98 Mr. M. Chanda learned counsel  
appearing on behalf of the applicant  
prays for 3 weeks time. Mr. S. Ali,  
learned S. R. C. G. S. C. has no objection.  
Prayer is allowed.

List it on 21-8-98 for hearing.

P!

  
Member

  
Vice-Chairman

lm

W/S  
30/7

(4)

O.A. 244/96

21-8-98

Case is adjourned to 25-8-98  
for hearing. List on 25-8-98 for  
hearing.

6  
Member

  
Vice-Chairman

lm

RS  
21/8

1) Notice duly served 25-8-98 before adjourned to 10.9.98.  
on R.No. 4. The others  
are still awaited.

2) W.P. is not serial.

10.9.98

Mr. J.L.Sarkar, learned.

3) Notice duly served  
on R.No. 4. Other respondents  
are still awaited.

4) No. W.P. has been filed.

2nd  
8-11

counsel appearing on behalf of  
the applicant submits that he  
is indisposed, therefore he is  
not in a position to argue the  
case today. Mr. S.Ali, learned  
Sr. C.G.S.C. also prays for adjourn-  
ment. Accordingly the case is  
adjourned till 9.11.98.

List on 9.11.98.

6  
Member

  
Vice-Chairman

Written Statement

filed on behalf of trd  
R.No. 1, 2 & 3 with RS  
a proper for acceptance.

Ok W.P. vide MP.  
No. 269/98. filed by  
Mr. S.Ali, Sr.C.G.S.C.

9.11.98 Division Bench is not available.  
Case is adjourned to 10.12.98.

By Order

9-12-98

pg

Written Statement has  
been filed.

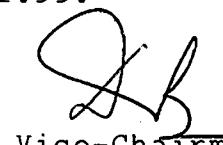
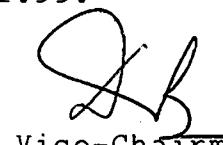
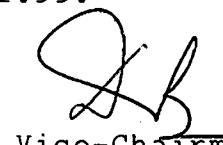
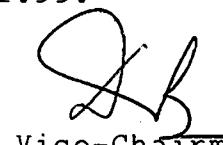
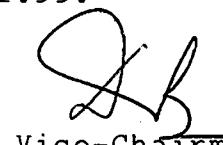
10.12.98

Mr A.K.Choudhury, learned Addl.  
C.G.S.C. on behalf of Mr S.Ali prays  
for adjournment as Mr Ali is unable  
to attend the Tribunal due to his

9/12/98

O.A. 244/96

(5)

Notes of the Registry	Date	Order of the Tribunal
<u>12-1-99</u> Written statement has been filed.	10.12.98	Mr A.K. Choudhury, learned Addl.C.G. S.C. on behalf of Mr S.Ali prays for adjournment as Mr Ali is unable to attend the Tribunal due to his indisposition. List on 13.1.99 for hearing.   Member
<u>21-1-99</u> Written statement has been filed.	13.1.99	There is no representation. Case is adjourned till 22.1.1999.   Member
<u>25.1.99</u> Mr S. Ali, Advocate for Respondent No. 4. Written statement has been filed.   Member	22.1.99	Adjourned to 27.1.99.   Vice-Chairman
<u>28-1-99</u> Written statement has been filed.	27.1.99	On the prayer of Mr M. Chanda, learned counsel for the applicant the case is adjourned till 29.1.99.   Member
<u>2.2.99</u> Rejoinder has been filed by the applicant advocate as per v.n. 99-107	29.1.99	Adjourned to 10.2.99.   Vice-Chairman
<u>9-2-99</u> Written statement has been rejoined. to be filed as on 21.2.1999	10.2.99	Adjourned to 17.2.99.   Vice-Chairman
	17.2.99	Adjourned to 24.2.99.   Vice-Chairman
	24.2.99	Parvenue   Vice-Chairman

(6)

Notes of the Registry	Date	Order of the Tribunal
16-2-99 Written statement of Rejinder has been filed.	25.2.99	Pass over. B/o <u>Bur</u>
17.2.99 Affidavit of Rejinder Laskar filed by the applicant Advocate against The Writer of statement.	26.2.99	Pass over 1/3.99 B/o <u>Bur</u>
	4.3.99	Adjourn to 10.3.99. By order. <u>DR</u>
	10.3.99	Heard learned counsel for the parties. Hearing concluded. Judgement delivered in the open court, kept in separate sheets. The application is disposed of. No order as to costs.
9-3-99 1) Written Statement and Rejinder has been filed. 2) Rejinder against writer of statement has been filed.	trd	<u>DR</u> Member Vice-Chairman
20.4.99 Copies of the judgment have been sent to the D/Secy for issuing the same to the parties through Regd. No 15 APP/		
Issued vide despatch No. 1403 to 1407 dt. 20.4.99		
10pm 13.5.99		

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A.NO. 244 of 1996

DATE OF DECISION... 10.3.99.....

Shri Sudhangshu Choudhury,

(PETITIONER(S))

Mr. J.L.Sarkar, Mr. M.Chanda.

ADVOCATE FOR THE  
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Mr. A.Deb Roy learned Sr.C.G.S.C.

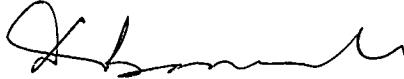
ADVOCATE FOR THE  
RESPONDENTS.

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

THE HON'BLE SRI 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.



CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 244 of 1996.

Date of decision : This the 10th day of March, 1999.

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

HON'BLE SRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

Shri Sudhangshu Choudhury,  
Son of late Suresh Chandra Choudhury,  
Satyasai Vihar,  
Nongrimbah Road, Laitumkhrah,  
Shillong-793003

Applicant.

By Advocate Mr. M.Chanda.

-versus-

1. Union of India,  
represented by the Secretary,  
Ministry of Home Affairs,  
Govt. of India, New Delhi.
2. The Registrar General of India,  
New Delhi-110011.
3. The Director of Census Operations,  
Arunachal Pradesh,  
Shillong.
4. Shri Mahesh Chandra Das,  
Head Assistant,  
Office of the Director of  
Census Operations, Arunachal Pradesh,  
Shillong-793003. Respondents.

By Advocate Mr. A.Deb Roy, learned Sr. C.G.S.C.

O R D E R

BARUAH J. (V.C.).

This application has been filed by the applicant seeking certain directions to the respondents.

The applicant was appointed Upper Division Clerk in the year 1969. In 1980 he was promoted to the post of Accountant on ad hoc basis. Later on he was

Contd....

reverted to the post of Upper Division Clerk on 4.7.1983. The 4th Respondent was promoted to the post of Accountant after reversion of the applicant. The applicant was later on promoted to the post of Assistant on ad hoc basis. After reversion of the applicant the 4th Respondent was promoted as Head Assistant. Sometime thereafter the applicant was involved in a criminal case. In the year 1983 there were two vacancies. Both the vacancies were reserved for Scheduled Caste but due to non-availability of candidate one post was dereserved. Departmental Promotion Committee Meeting was held in and in the said Departmental Promotion Committee Meeting the candidature of the applicant was also considered and accordingly he was assessed. At that time the criminal case referred to above was pending in a court of law, therefore, sealed cover procedure was adopted. But subsequently the said sealed cover was opened by the authority for consideration of his promotion on receipt of the final verdict of the court where the applicant was acquitted. However though the applicant was found fit for promotion, he was not promoted. Being aggrieved the applicant submitted Annexure-7 representation dated 28.4.95 and thereafter another Annexure-7(a) representation dated 5.4.1996. Both the representations were not disposed of. Hence the present application.

l2

Contd...

2. We have heard Mr. Chanda, learned counsel appearing on behalf of the applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C. Mr. Chanda submits that after the applicant was exonerated from the criminal case and found fit for promotion his promotion ought to have been considered but it is not known why his case was not considered.

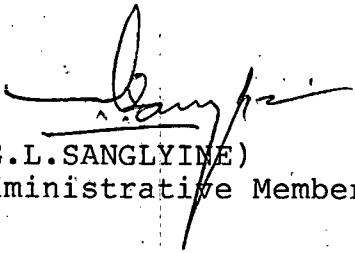
3. We have perused the records and the application. From the papers available before us, we find no ground why the case of the applicant was not considered. Due to paucity of materials we cannot decide the matter. Accordingly we dispose of this application with direction to the respondents to dispose of Annexure-7 and 7(a) representations dated 28.4.95 and 5.4.96 respectively by a reasoned order. The applicant may also file a fresh representation giving details of his grievances within a period of 15 days from the date of receipt of this order. If such representation is filed by the applicant within the said period, the respondents shall consider the said representation also and dispose of all his representations by a reasoned order within two months from the date of receipt of the representation of the applicant.

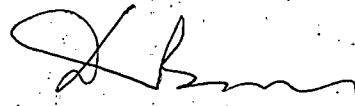
4. With the above directions the application is disposed of.

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Contd...

5. Considering the facts and circumstances  
of the case, we however, make no order as to costs.

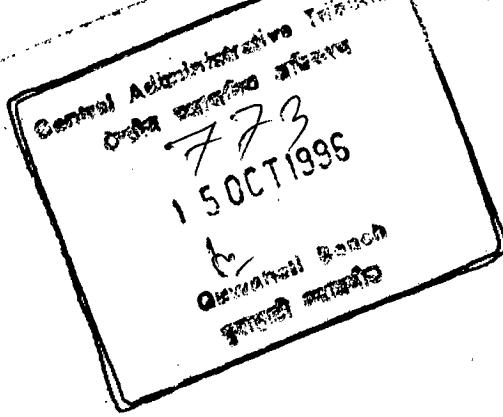
  
(G.L. SANGLYINE)  
Administrative Member

  
(D.N. BARUAH)  
Vice-Chairman

trd

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

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



O.A. No. 244 /96

Shri Sudhangshu Choudhury

-versus-

Union of India & Ors.

I N D E X

Sl.No.	Annexure	Particulars	Page No.
1	-	Application	1-20
2	-	Verification	21
3	1	Promotion Order dt.10.1.80	22-24
4	2	Order dt. 4.7.1983	25
5	3	Order dt. 8.6.93	26
6	4	Promotion Order dt.1.10.90	29
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9A	7(a)	Representation dt. 5-4-96	57(a)-57(c)
10	8	Representation dt.5.6.95	58-59
11	9	Seniority List as on 1.8.92	60

Filed By

W. H. Ali

Advocate

Copy in hand  
over to Mr. S. Ali  
c.c.c.  
W. H. Ali  
7-10-96

13  
Filed by the applicant  
in accordance  
with the Act  
Dated 21/10/96

1. Particulars of the Applicant.

Shri Sudhangshu Choudhury

Son of late Suresh Chandra Choudhury

Satyasai Vihar

Nongrimbah Road, Laitumkhrah,

Shillong-793003

..... Applicant

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2. Particulars of the Respondents :

1. Union of India,

represented by the Secretary,

Ministry of Home Affairs,

Govt. of India, New Delhi.

2. The Registrar General of India,

New Delhi-110011.

3. The Director of Census Operations,

Arunachal Pradesh,

Shillong.

4. Shri Mahesh Chandra Das,

Head Assistant

Office of the Director of Census Operations,

Arunachal Pradesh,

Shillong-793003.

..... Respondents.

3. Particulars for which this application is made.

This application is made for grant of consequential service benefits including promotion from the date of

Contd...P/3

Sudhangshu Choudhury

promotion of his junior Respondent No. 4 right from the cadre of Accountant/Assistant with effect from 8.6.83 and also to the cadre of Head Assistant from the date of promotion of respondent No. 4 and for a direction to consider the case of the applicant for promotion in the existing vacancy of Office Superintendent which is likely to be filled up following the DPC scheduled to be held on 8.10.96 and for a direction to restrain the respondents not to promote the respondent No. 4 in the isolated post of Office Superintendent vacant in the office of the Director, Census Operation and also for a direction to grant the benefit of seniority and monetary benefits by holding Review DPC from the date of promotion of respondent No. 4 in the cadre of Accountant/Assistant/ Head Assistant in view of the Judgement and Order dated 4.3.93 passed in Special Case No. 1/78 by the learned Special Judge, Shillong.

4. Jurisdiction.

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

5. Limitation.

That the applicant further declares that the application is filed within the prescribed time limit of the Central Administrative Tribunals Act, 1985.

6. Facts of the case.

6.1 That the applicant is a citizen of India and as such he is entitled to all the rights and privileges

Contd....P/4

Sudhangshu Choudhury

guaranteed by the Constitution of India.

6.2 That the applicant was initially appointed as Upper Division Clerk (in short U.D.C.) with effect from 4.12.1969 under the Director of Census Operations, Arunachal Pradesh, Shillong, the employees in the office of the Director of Census Operations, Arunachal Pradesh are not transferable outside the office of the Director, Census Operations, Arunachal Pradesh under borne in cadres distinct and separate for this single office.

6.3 That the applicant was promoted against the vacant post of Accountant in the office of the Director Census Operations, Arunachal Pradesh, Shillong vide Office Order No. ARA.12013/3/79-Estt. dated 10.1.1980 but the said promotion was termed as adhoc although the post was regular one but the promotion was given to the applicant only on adhoc basis. Be it stated that the post of Accountant thereafter re-designated as and or ~~merged~~ merged with the post of Assistant. It is specifically mentioned in the said promotion order dated 10.1.1980 that this promotion case will be put up to the next DPC Meeting for regularisation and it is further stated that if the DPC Meeting could not be called for with six months from the date of promotion all the promotees would be reverted to their respective posts held before their promotions. It was also stated that if the DPC finds that anyone not suitable for regular promotion to the post held by him/her due to adhoc promotions he or she will be reverted back without assigning any reason. The relevant portion of the promotion Order dt. 10.1.80 are quoted below :

Contd...P/5

*S. N. Dhar* *Chowdhury*

" The following officials in the establishment of the Director of Census Operations, Arunachal Pradesh are hereby promoted to the posts as shown against them purely on temporary and ad-hoc basis. These ad-hoc promotions shall not entitle to any seniority in the grade concerned and that the adhoc promotions do not entitle them to any claim for promotion confirmation etc. in the grade. These promotions would not confer any right on the persons concerned to claim regular promotion to the grade and would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

The adhoc promotions are also made on the condition that these cases will be put up to the next DPC meeting for regularisation. In case, if the DPC meeting cannot be called for within six months from the date of their promotions, all the promotees will be reverted to their respective posts held before their promotions. Further, if the DPC finds anyone not suitable for regular promotion to the post held by him/her due to adhoc promotions he or she will be reverted back without assigning any reason."

That in view of the aforesaid condition the adhoc appointees were within six months from 10.1.1980 due to be reverted to their respective posts unless DPC meeting was

Contd...P/6

Sudhangshu Choudhury

8

so called within the period and or the DPC was called did not find him/her suitable for promotion to such posts. Non reversion within such period i.e. within or shortly after 10.7.1980 would, under the conditions in the order of adhoc promotion would signify/implies/mean automatic regularisation of the appointment as initially allowed by promotion on adhoc basis or at least required to be treated as regular after such date.

The above position was also in conformity and in accordance with the orders/instructions of the Govt. of India which debar continuance of adhoc appointments including appointments on promotions beyond a period of one year vide C.S.D.P. & A.R.O.M. No. 22011/675-Estt (D) dated 30.12.76, DR & AROM.No. 22034/1/86-Estt (D) dated the 30.12.76, DR & AROM. A.R. O.M. No. 22034/1/86-Estt (D) dated 29.4.77, M.H.A. D.R. & A.R. O.M. No. 36011/14/83-Estt (CST) dated the 30th April, 1980 & D.P. & A.R.O.M. No. 39021/35/78-Estt (D) dated 24.11.1979. The applicant was not reverted within six months from the promotional post of Accountant and was not reverted from the said promotional post even within one year of adhoc ~~promotion~~ appointment on promotion as permissible under Government of India's Order and the applicant was allowed to continue to the post of Accountant continuously from 10.1.1980 to 3rd July, 1983 i.e. more than 3 years at a stretch including authorised/sanctioned period of leave.

A copy of the promotion order dated 10.1.1980 is annexed hereto and the same is marked as ~~Annexure-1~~ Annexure-1.

Contd...P/7

Sudhansu Choudhury

6.4 Most surprisingly the Director of Census Operation, Arunachal Pradesh, Shillong respondent Nos. 4 issued order of reversion in respect of the applicant vide Office Order No. ARA/12011/2/79-Estt dated 4.7.1983 whereby the applicant was reverted from the post of Accountant to the post of Upper Division Clerk and the reversion Order is passed without affording any reasonable opportunity and in total violation of principle and natural justice and also in total violation of the relevant service rules and the reversion of the applicant from the post of Accountant to the Post of UDC was a punishment without affording any reasonable opportunity to the applicant, and this reduction of grade/post was neither in terms of reversion contained in the order of promotion nor in accordance with the Govt. of India's Order regarding adhoc appointment. The order of reversion was passed in gross violation of principle of natural justice. In this connection it may be stated that no reasons was assigned in the order of reversion issued on 4.7.1983.

A copy of the order dated 4.7.1983 is annexed hereto and the same is marked as Annexure-2.

6.5 That your applicant further begs to state that at the relevant time a Criminal proceeding was initiated against the applicant by the Superintendent of Police, CBI, Shillong on the allegation of misappropriation at total sum of Rs. 8,556.05 which was alleged to have been entrusted to the applicant for remitting to the concerned

Contd...P/8

*Sankha Chandra*

Deputy Commissioners/Additional Deputy Commissioners of different districts in Arunachal Pradesh while he was serving as Cashier during 1975-76 in the office of the Director of Census Operations, Government of Arunachal Pradesh, Shillong. In fact the reversion order was passed following the initiation of Criminal Proceeding by the CBI which was registered before the Special Judge at Shillong as Special Case No. 1/1978. The applicant also reliably came to know that although reason of the reversion was not stated in the order of reversion dated 4.7.1983 but the order of reversion was passed due to pendency of Criminal Proceeding before the Special Judge, Shillong. Therefore the reversion of the applicant was bad in law.

6.6 That your applicant also begs to state that the post of Accountant against which the applicant was promoted vide Order dated 10.1.1988 was a single isolated post of Accountant in the office of the Director of Census Operations, Arunachal Pradesh, Shillong and the respondent No. 4 was promoted immediately after reversion of the applicant to the isolated post of Accountant with effect from 8.6.1983 under Order No. ARA. 32012/3/83-Estt. dated 8.6.1983. Be it stated that respondent No. 4 Shri M.C. Das belongs to Scheduled Caste Community and therefore not entitled to be promoted against any isolated post treating the same as reserved post but the authorities of the respondents promoted the respondent No. 4 against the unreserved vacancy after reverting the

Contd.. P/9

Sudharsan Chaudhury

present applicant. Therefore the promotion of respondent no. 4 is irregular, illegal and in total violation of the relevant service rules and law. In this connection it may be stated that at the relevant time when the applicant was reverted from the post of Accountant following the order dated 4.7.83 and immediately thereafter the respondent No. 4 was promoted to the said post of Accountant vide order dated 8.6.1983 but at the relevant time there was no service rule which permitted to fill up the isolated post of Accountant by a candidate of reserved category on regular basis. In fact the relevant service rules rather supported the case of the present applicant where it is specifically mentioned that an even/adhoc employees continues for more than one year at a stretch in a promotional post should not be reverted on the ground of pendency of departmental or criminal proceeding but in the instant case the respondents made a clear departure from the existing relevant service rule by reverting the applicant to the cadre of UDC as because the post of Accountant was a regular post in the office of the Director, Census Operations, Arunachal Pradesh, Shillong therefore authorities ought to have allowed the applicant to continue in the promotional post of Accountant in terms of the existing service rules.

A copy of the order dated 8.6.1983 annexed hereto and the same is marked as Annexure-3.

6.7 That your applicant begs to state that the respondents No. 4 was thereafter promoted to the post of

Contd.. P/10

*S. N. Chhangte Chaudhury*

Head Assistant with effect from 17.12.1990 and subsequently regularised in the said post of Head Assistant and the applicant was also promoted on adhoc basis as Assistant with effect from 20.8.1990 and this promotion on adhoc basis was granted on consideration that the criminal case is pending against the applicant before the learned Special Judge, Shillong. Be it stated that the said adhoc promotion which was granted vide Estt. Order No. ARA.11032/4/87-Estt. dated 1.10.1990 the same was granted after due consideration and recommendation of the DPC in the Directorate of Census Operations, Arunachal Pradesh, Shillong. However a condition was stipulated in the promotion order that until further order that the Government reserve the right to cancel the adhoc promotion and revert at any time the Government servant to the post from which he was promoted.

A copy of the promotion ~~date~~ order dated 1.10.1990 is annexed hereto and the same is marked as Annexure-4.

6.8 That the learned Special Judge delivered a Judgement of the Special Case No. 1 of 1978 on 4.3.1993 after considering all aspects. The learned Special Judge held that although the Accused is found guilty under Section 409/468 IPC 5(1) (2) P.C. Act but instead of sentencing with imprisonment under the above sections, I gave him the benefit of Section 4 of the Probation of offenders Act and it is expedient to release him on Probation of good conduct and with no bond with a condition that the accused will not commit such offence in future, and it was further observed by the learned

Contd...P/11

Sudhangan Choudhury

Special Judge that since the accused has been given the benefit of under Section 4 of Probation ~~xxx~~ of Offenders Act he is also entitled to the benefit under section 12 of the same Act so that his service career may not be affected and it is further observed that it is to be made clear that the service of the accused should not be affected in any way as he has been given the benefit of Section 12 of Probation of Offenders Act so that the accused/petitioner may not loose his service. The relevant portion of the Judgement and order dated 4.3.93 passed in Special Case No. 1 of 1978 is quoted below :

"From the observation made above, I hold that although the accused is found guilty U/s 409, 468 IPC 5(1)(2) P.C. Act, but instead of sentencing him with imprisonment under the above Sections, I gave him the benefit of Section 4 of the Probation of Offenders Act and it is expedient to release him on Probation of good conduct and with no bond with a condition that the accused will not commit such offence in future.

Before I part with the case in question, I would like to say that since the accused has been given the benefit U/s 4 of a Probation of Offenders Act he is also entitled to the benefit U/s 12 of the same Act so that his service career may not be affected. It is to be made clear that the service of the accused should not be affected in any way

Contd....P/12

*Sudhagaran Chandra*

as he has been given the benefit of Section 12 of Probation of Offenders Act so that the accused may not loose his service.

Therefore, I also hold that though Sri Sudhangshu Choudhury is found guilty but this will not affect his service in any way as he has been given the benefit U/s 12 of the Probation first Offenders.

A copy of this Judgement be sent to his Department for information and necessary action."

From the above Judgement and Order it is quite clear that the learned Special Judge very specifically held that the service of the applicant should not be in any way affected as he has given benefit under Section 4 of the Probation of Offenders Act and therefore also entitled to the benefit under Section 12 of the Probation of Offenders Act and a copy of the said Judgement was also forwarded to the respondents. Therefore in view of the aforesaid judgement and order dated 4.3.93 passed in Special Case No.1/78 by the learned Special Judge, Shillong the applicant is entitled to all consequential service benefits including promotion from the date of promotion of his junior i.e. respondent No.4 in the cadre of Accounts/Assistant, Head Assistant including monetary benefit by holding a review DPC/DPC or by giving the effect of the sealed cover procedure, if any adopted by the respondents. In this connection it may be stated that the applicant is very much entitled to promotion to the post of Accountant/Assistant

Contd... P/13.

Sudhangshu Choudhury

with effect from 10.1.1980 or from the date of promotion of respondent No. 4 in the cadre of Accountant/Assistant and the applicant is further entitled to promotion to the post of Head Assistant with effect from 20.8.90 alongwith monetary benefit and seniority in the respective cadre stated above. The applicant is also entitled to be promoted to the vacant post of Office Superintendent. In this connection it May be stated that a DPC is scheduled to be held on 8.10.96 for consideration of promotion to the post of Office Superintendent in the Directorate of Census Operations, Arunachal Pradesh. The DPC/Meeting at New Delhi in the office of the Registrar General, India, ~~New~~ Ministry of Home Affairs, Mansingh Road, New Delhi therefore the Hon'ble Tribunal be pleased to direct the respondents to consider the case of the applicant for promotion to the post of Office Superintendent treating the applicant senior to respondent No. 4 and further be pleased to direct the respondents not to promote respondent No. 4 and further be pleased to pass any other order or orders as deemed fit and proper under the facts and circumstances stated above.

Copy of the Judgement and Order dated 4.3.93 passed in Special Case No. 1/78 is annexed hereto and the same is marked as Annexure-5.

6.9 That in view of the Judgement passed by the learned Special Judge, Shillong in the Special Case No. 1/78 the applicant has now acquired a valuable and legal right for grant of retrospective promotion benefit and

Contd... P/14

Sachin Chaudhary

also in view of the aforesaid Judgement the applicant ought to be declared senior to respondent No. 4 for all purposes including the promotion to the post of Office Superintendent.

6.10 That immediately on receipt of the Judgement and Order dated 4.3.93 passed in Special Case No. 1/78 the respondents have regularised the adhoc promotion of the applicant which was granted in the cadre of Assistant the respondents was pleased to grant the regularisation benefit to the applicant in the cadre of Assistant with effect from 4.3.93 vide Order No. ARA.18031/1/90 (Part - I) dated 20.7.94 i.e. from the date of pronouncement of the judgement in the criminal proceeding. Therefore in view of the same the applicant is entitled retrospective promotion in the cadre of Accountant/ Assistant, Head Assistant with retrospective effect by holding Review DPC with all consequential service benefits.

A copy of the promotion Order dated 20.7.94 is annexed hereto and the same is marked as Annexure-6.

6.11 That your applicant submitted a detailed representation for restoration of his promotion order dated 10.1.80 and for treating the promotion order dated 10.1.80 as continuous and also prayed for restoration of his seniority above respondent No. 4 and also for grant of promotion to the post of Head Assistant with effect from 20.8.90. But to no result. The applicant again thereafter submitted another representation dated 5.4.96 and 5-6-96 addressed to the Director of Census Operations, Arunachal

Contd... P/15

Sudhangan Chaudhury

Pradesh, Shillong where the applicant inter alia prayed for consideration of his promotion to the vacant post of Office Superintendent in view of the Judgement and Order dated 4.3.1993 passed in Special Case No. 1/78. But to no result. The applicant is apprehending that the authorities may consider the respondent No.4 for promotion to the post of Office Superintendent in the ensuing DPC. Therefore it is necessary that the respondents to be restrained from promoting the respondent No.4 to the post of Office Superintendent without considering the case of the present applicant.

Copy of the representation dated 20.6.95 and representation dated 5.4.96, <sup>5-6-96</sup> are annexed as Annexure 7 and 8 respectively.

6.12 That your Applicant came to know from a reliable source that the case of the applicant was forwarded for consideration for promotion to the post of Office Superintendent by the office of the Director, Census Operations, Arunachal Pradesh, Shillong under letter No. ARA.18031/1996 (Part-I) dated Shillong 14.6.96 therefore Hon'ble Tribunal be pleased to direct the respondents to produce the aforesaid letter dated 14.6.96 before the Hon'ble Court for perusal of the Hon'ble Tribunal with a copy to the applicant.

6.13 That your applicant begs to state that it is a fit case for interference of the Hon'ble Tribunal and there is no other alternative except filing this application before this Hon'ble Tribunal.

Contd.. P/16

Sachrangshu Chaudhury

6.14 That your applicant further begs to state that even in the seniority list published as on 1.8.1992 in the cadre of Upper Division Clerk the applicant is shown as seniormost U.D.C. and his name is figured at serial No. 1 whereas the name of the respondent No. 4 is figured at serial No. 2 therefore the applicant being the seniormost in the cadre of UDC entitled to be considered on priority basis for all purposes including promotion of Accountant/Assistant, Head Assistant and Office Superintendent.

A copy of the provisional seniority list in the cadre of U.D.C. published as on 1.8.1992 is annexed hereto and the same is marked as Annexure-9.

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

7. Reliefs sought for :

Under the facts and circumstances stated above, the applicant prays for the following reliefs :

1. That the respondents be directed to treat the applicant in continuous service to the post of Accountant/Assistant in terms of promotion order issued under letter No. ARA.12013/3/79-Estt dated 10.1.1980 (Annexure-1) and also in terms of the learned Special Judge, Judgement and Order dated 4.3.93 in Special Case No. 1/78 and further be pleased to direct the respondent to consider the retrospective promotion in respect of the applicant by holding Review DPC/DPC in the cadre of Accountant/Assistant granting all consequential service benefit including monetary benefit from the date of promotion of the respondent No.4.

Contd... P/17

Srolhangen Choraling

2. That the respondents be directed to promote the applicant to the post of Head Assistant from the date of promotion of respondent No. 4 to the post of Head Assistant.
3. That the respondents be directed to consider promotion of the applicant to the vacant post of Office Superintendent treating the applicant senior to respondent No. 4.
4. That the Hon'ble Tribunal be pleased to declare the applicant is senior to respondent No. 4 in the cadre of Accountant/Assistant, as well as in the cadre of Head Assistant.
5. That the respondents be directed to grant of consequential service benefits including monetary benefit to the applicant from the date of promotion of respondent No. 4.
6. To pass any other order or orders as deemed fit and proper under the facts and circumstances stated above in this application.

The above reliefs are prayed on the following amongst other -

-G R O U N D S-

1. For that the applicant is senior to respondent No. 4 in the cadre of U.D.C. therefore the applicant acquired a valuable and legal right for promotion in all cadres including the

Contd...P/18

Sudhangshu Choudhury

cadre of Assistant/Accountant, Head Assistant and Office Superintendent with all consequential benefits from the date of promotion of the respondent No.4.

2. For that the reversion from the adhoc promotional post of Accountant is contrary to the existing relevant rules and regulations.
3. For that the Judgement and Order dated 4.3.93 passed in Special Case No. 1/78 specifically directed by the Special Judge that the service career of the applicant should not be affected in any way.
4. For that in view of the Judgement and Order dated 4.3.93 passed in Special Case No. 1/78 the applicant is entitled to retrospective promotion in the cadre of Accountant/Assistant Head Assistant from the date of promotion of respondent No. 4, with all consequential service benefits including monetary benefits.
5. For that the applicant being seniormost in the cadre of UDC and being illegally superseded in the cadre of Accountant/Assistant/Head Assistant is entitled to be considered for promotion to the post of Superintendent being senior to respondent No.4.
6. For that the applicant be treated as senior to respondent No. 4 in all the cadres such as Accountant/Assistant and Head Assistant..

Contd.....P/19

S. Nalhargam Chondhup

7. For that the promotional post of Accountant/Assistant, Head Assistant are being isolated post in the office of the Director, Census Operations, Arunachal Pradesh, Shillong the ~~xxx~~ respondent No. 4 should not have been promoted treating the same as reserved post.
8. For that the post of Office Superintendent is isolated post therefore respondent 4 cannot be considered for promotion to the said post as on the ground that respondent 4 belongs to Scheduled Caste Community.
9. For that the applicant is seniormost UDC as shown in the seniority list published as on 1.8.1992.
10. For that non-consideration of the case of the applicant in the matter of promotion in the cadre of Assistant/Accountant, Head Assistant alongwith respondent No. 4 is violative of Article 14 and 16 of the Constitution of India.
11. For that the order of reversion of the applicant from the post of Accountant was issued without following the principle of natural justice.
12. For that the applicant being seniormost entitled to be declared as regular Accountant/Assistant in terms of the promotion order dated 10.1.1980 and also in terms of the Judgement and Order dated 4.3.93 passed in Special Case No. 1/78.

Contd...P/20

*S. Nolhengen Chonahap*

8. Interim reliefs prayed for :

During the pendency of this application before the Tribunal the applicant prays for the following relief :

1. The the respondents be directed not to promote the respondent No. 4 to the vacant of Office Superintendent till final disposal without leave of this Hon'ble Tribunal.

The above reliefs are prayed on the grounds explained in paragraph 7 of this application.

9. That the applicant declares that he has not filed any other application/case in any other Court or Tribunal.

10. That the applicant declares that there is no other remedy under any rule and the Hon'ble Tribunal is the only remedy.

11. Particulars of I.P.O.

Postal Order No. : 444596

Date of Issue : 7-10-96

Issued from : G.P.O., Guwahati.

Payable at : G.P.O., Guwahati

12. An Index showing particulars of the enclosures is enclosed.

13. Documents

As per Index.

*Sachin Chondu*

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

I, Shri Sudhangshu Choudhury, Son of late Suresh Chandra Choudhury, aged about 56 years, resident of Satyasai Vihar, Nongrimbah Road, Laitumkhran, Shillong, applicant in this Original Application do hereby declare that the statements made in this application are true to my knowledge and belief and I have not suppressed any material facts.

I, sign this verification on this the 7th day of October, 1996 at Guwahati.

Place : Guwahati

*Sudhangshu Choudhury*

Signature

Annexure-1

No. ARA.12013/3/79-Estt.  
GOVERNMENT OF INDIA  
Ministry of Home Affairs,  
Office of the Director of Census Operations, Arunachal  
Pradesh, Shillong-793003.

O R D E R

Dated, Shillong-793003 the 10th January, 1980

The following officials in the establishment of the Director of Census Operations, Arunachal Pradesh are hereby promoted to the posts as shown against them purely on temporary and ad-hoc basis. These ad-hoc promotions shall not entitle to any seniority in the grade concerned and that the adhoc promotions do not entitle them to any claim for promotion confirmation etc. in the grade. These promotions would not confer any right on the persons concerned to claim regular promotion to the grade and would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

The adhoc promotions are also made on the condition that these cases will be put up to the next DPC meeting for regularisation. In case, if the DPC meeting cannot be called for within six months from the date of their promotions, all the promotees will be reverted to their respective posts held before their promotions. Further, if the DPC finds anyone not suitable for regular promotion to the post held by him/her due to adhoc promotions he or she will be reverted back without assigning any reason."

*Attested*  
*Abhijit*  
*AV*

Sl. No.	Name	Present post held	Promotion post with scale of pay	Remarks
1	Shri A. Roy Choudhury	Statistical Assistant	Tabulation Officer (Rs. 550-25-750-EB-30-900/- P.M.)	
2	Shrimati B. Purkayastha	Computer	Statistical Asstt. (Rs. 425-15-500-EB-15-560-20-700/- P.M)	
3	Shri P. Choudhury	-do-	-do-	

Contd...

1	2	3	4	5
4	Shri A.C.Bhattacharjee	-do-	-do-	
5	Kumari Florance Stafford	-do-	-do-	
6	Shri Proful Ch.Das	Asstt. Compiler Computer, (Rs. 330-10-380-EB- 12-500-EB-15-560 P.M.)		
7	A.C.Bhattacharjee	-do-	-do-	
8	Shri B.C.Das	-do-	-do-	
9	Shri M. Talukdar	-do-	-do-	
10	Shri A.C.Haloi	-do-	-do-	
11	Shri Jatirmoy Bhatta-	Asstt. Compiler Computer (Rs. 330-10-380-EB- 12-500-EB-15- 560 P.M)		
12	Shri P B Dutta	Accountant	Assistant (Rs. 425-15-500-EB-15-560- 20-700 P.M.)	
13	Shri S.Choudhury	U.D.Clerk	ExDx&Exk Accountant (Rs. 425-15-500-EB-15- 560-EB-20-660/-P.M)	
14	Shri R.R.Das	L.D.Clerk	U.D.Clerk (Rs. 330-10-380-EB-12- 500-EB-15-560/-P.M.)	
15.	Shrimati Gita Das Astapathi	-do-	-do-	
16.	Shri S.R.Das Choudhury	-do-	-do-	
17.	Shri B.Das Gupta	-do-	-do-	

The above adhoc promotions will take effect from 10th January, 1980. Those who are on leave, their promotions will be effective from the date on which they resume their duties.

In case of Smti F.Stafford, Computer, she will be reverted as soon as the candidate sponsored by the Staff, Service Commission job his/her duties. Similarly, Shri J.Bhaggacharjee also will be reverted to his original post of Asstt. Compiler if any candidate from other Census Directorates joins his/her duties on transfer as per the recruitment Rules.

Contd...:

Other conditions which are not incorporated in this order will also be applicable to all the above mentioned officials as per instructions and orders issued by the Government of India from time to time.

Sd/- M.B.Rai

Director of Census Operations, Arunachal  
Pradesh : Shillong-793003.

11 JAN 1980

Mem No. ARA.12013/3/79-Estt(Pt.) Dated, Shillong-793003  
the 11 JAN 1980

1. The Pay & Accounts Officer(Census), Ministry of Home Affairs, AGCR'S Buildings, New Delhi-110002 for favour of information.
2. All the officials concerned.
3. All the D.C./A.D.C.'s/E.A.C.'s/CO's of the concerned officials
4. Personal File of all official concerned.
5. Accounts Section for information and necessary action.
6. File No. ARA-12011/2/79-Estt.
7. Office Order File

Sd/- Illegible 11.1.80  
(S.R.V.Rao)

Asstt Director of Census Operations,  
for Director of Census Operations,  
Arunachal Pradesh, Shillong-3

*APENED*  
*Open*  
*AN*

Annexure-II

No. ARA.12011/2/79-Estt.  
GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS

OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS : ARUNACHAL  
PRADESH : SHILLONG

O R D E R

Dated Shillong, the 4th July/  
1983.

In supersession of this office order No. A.R.A.  
12013/3/79-Estt. dt. 10.1.1980, Shri S.Choudhury,  
Accountant is until further order, reverted to the post  
of Upper Division Clerk with effect from the forenoon of  
July 4, 1983.

Sd/- M.B RAI,

Director of Census Operations,  
Arunachal Pradesh, Shillong-3

Memo No. ARA.12011/2/79-Estt. Dated Shillong the 26/7/1983

Copy to :

1. The Pay and Accounts Officer (Census) Ministry of Home Affairs, A.G.C.R. Building, New Delhi-2.
2. Account Section (Local) for information and necessary action.
3. Shri S. Choudhury, for information.
4. Personal File.
5. Service Book
6. Office Order File.
7. File No. ARA.32012/3/93-Estt.

*Amrit  
AM  
RN*  
Sd/- Illegible

(A. Pyrtuh)  
Dy. Director of Census Operations,  
Arunachal Pradesh, Shillong-3

Government of India  
Ministry of Home Affairs  
Office of the Director of Census Operations  
ARUNACHAL PRADESH

No.ARA.32012/3/83-Estt. Dated, Shillong-793003 the 8th June, 1983.

O R D E R

On the recommendation of the Departmental Promotion Committee, the undermentioned officials in the Directorate of Census Operations, Arunachal Pradesh, Shillong are appointed by promotion on regulars basis in a temporary capacity to the posts shown against their names in Col 3, with effect from the date shown against each in cl.5 :-

Sl. No.	Name & Designa- tion	Stat. Assisn <del>x</del> Post to which pay promoted	Scale of Post to which pay promoted	Date from which promo- ted
1	2	3	4	5
1	Shri C.K. Barman Computer	Stat. Assistnat	Rs. 425-700	6.6.83
2	Shri A.R. Sharma Draftsman	Artist	Rs. 425-700	6.6.83
3	Smti N.Sen Majumdar U.D.Clerk	Assistant	Rs. 425-700	6.6.83
4	Shri M.C.Das U.D.Clerk	Accountant	Rs. 425-640	With imme- diate effect.
5	Shri H.B. Marbani- ang, Jr. Gestener Operator	Record Keeper	Rs. 225-305	-do-
6	Shri K.Rabha Daftry	J.G.Operator	Rs. 210-270	-do-
7	Shri Ram Narayan Peon	Daftry	Rs. 200-250	-do-

*Attested  
Rai  
PN*  
Sd/- M.B.Rai,  
Director of Census Operations,  
Arunachal Pradesh, Shillong-3

Memo No.ARA.32012/3/83-Estt Dated, the 8th June, 1983.  
Copy to :

1. The PAO (Census) A.G.C.R.Bldgs, New Delhi 110002.
2. Account Section. (Local) for information and N.A.
3. All officials concerned (4) Personal Files
5. Service Books (6) Office Order File

Sd/- Illegible  
(A Pyrtuh)  
Deputy Director of Census Operations,  
Arunachal Pradesh, Shillong

Annexure-4

GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS  
OFFICE OF THE DIRECTORATE OF CENSUS OPERATIONS, ARUNACHAL  
PRADESH : A.P. SECRETARIAT BUILDING (3rd Floor)  
SHILLONG-793001

No. ARA 11032/4/87-Estt

O R D E R

On the recommendation of the Departmental promotion Committee, Shri S. Choudhury, U.D.C. in the Directorate of Census Operations, A.P. Shillong is hereby promoted to the post of Assistant in the Scale of Pay of Rs. 1400-40-1800-EB-50-2300/- P.M. on purely temporary and adhoc basis w.e.f. the forenoon of August 20th 1990, until further orders. The promotion is purely temporary and the post created specifically in connection with the 1991 Census work and will not confer any right for regular promotion.

The promotion shall be "until further order" that the Government reserve the right to cancel the adhoc promotion and revert ~~the~~ at any time the Government servant to the post from which he was promoted.

Sd/- N. Sen, Majumdar  
Asstt. Director of Census Operations,  
Arunachal Pradesh, Shillong-2.

Memo No. ARA 11032/4/87-Estt Dt. Shillong the Oct '1990  
Copy to :-

1. The Pay & Accounts Officer (Census), Ministry of Home Affairs, A.G.C.R. Building, New Delhi-110002.
2. Shri S. Choudhury, Assistant.
3. Personal File
4. Account Section (Local for information and necessary action.)
5. Office Order File

Sd/- Illegible  
(N. Sen Majumdar)  
Asstt. Director of Census Operations  
Arunachal Pradesh, Shillong

*AA&M cd*  
*Shri*  
*PN*

IN THE COURT OF THE SPECIAL JUDGE : AT SHILLONG

Special Case No. 1 of 1978

Union of India  
(C.B.I./S.P.E.),  
Shillong :::: Complainant

-versus-

Shri Sudhangshu  
Choudhury :::: Accused

For the Complainant :::: Shri J.S.Terang, Advocate  
Sr. P.P. (C.B.I), Shillong

For the Accused :::: 1. Shri N.K.Deb  
2. Shri S.S.Das

Defence Counsels

Date of Judgement :::: 4.3.93

JUDGEMENT AND ORDER

Attended  
Other  
PN

Contd.....2/-

JUDGEMENT AND ORDER

The prosecution story in brief is that the accused Shri Sudhangshu Choudhury was posted and functioned as a Cashier during 1975-76 in the Office of the Director of Census Operations, Govt. of Arunachal Pradesh at Shillong. During the said period, the accused was alleged to have misappropriated a total sum of Rs.8556.05p entrusted to him for remitting to the concerned Deputy Commissioners/Additional Deputy Commissioner of different Districts in Arunachal Pradesh for payment to the staffs of Census Operations posted at their respective Districts in the interior for salary and arrears pay and allowances etc. by forging the Office copy of the forwarding letters and also falsifying Office records in the Directorate of Census Operations, Govt. of Arunachal Pradesh, Shillong.

1. On 23.4.1977, Superintendent of Police, CBI, Shillong registered a case against the accused Shri S. Choudhury on the basis of source information report and got investigated the case by Shri G.D.Gupta, Inspector of Police, CBI, Shillong. On completion of the investigation sanction for prosecution was obtained from the competent authority, and then submitted charge-sheet against the said accused in the Court of Special Judge, Meghalaya, Shillong.

*Attended  
D  
PdV*

2. On consideration of Charge, the Charges U/s 409, 468 IPC and Section 5(2) read with Section 5(i) (c) of P.C. Act 1947 (Act II of 1947) were framed against the accused by the then Special Judge, Mr. H.Nongrum. Accused pleaded not guilty to the said charges. During the trial

prosecution examined as many as 32 Nos. of witnesses, however, the examination-in-chief of P.W. 32 was inconclusive and same was later dropped as prosecution could not produce him on the target date fixed by the Court.

4. Defence adduced no evidence and took the plea of complete denial. Accused was examined U/s 313 Cr.P.C.

5. Heard the argument at length from learned Sr.P.P., C.B.I Mr. J.S.Terang as well from learned defence Counsels Mr. S.B.Choudhury and Mr. N.K.Deb.

6. The first point to be considered is whether the accused was a public servant or not at the relevant time?

On this point, it is in the evidence of P.W. 23 that the accused was appointed vide Ext. 219 by the then Asstt. Director, Census Operations Arunachal Pradesh, Shillong. The accused also did not dispute of the said fact, and admitted in his statement that vide Ext.220 signed by Shri J.K.Borthakur, the then Director of Census Operations, Arunachal Pradesh, Shillong requiring him to work as Cashier during the relevant period. Hence it can be safely concluded that accused was a public servant during the relevant period.

7. The next point for consideration is whether prosecution has proved the sanction or not U/s 6(1) (c) of P.C. Act, 1947?

P.W. 26 Shri J.C.Bhuyan was examined by prosecution and proved sanction order Ext.232 by identifying the signature of Sri P.Padmanabha, the then Registrar General of India and the basis of his identifying the signature of Shri P.Padmanabha is because of the fact that he used to receive many letters from the Office of Registrar General

of India on which the signature of P. Padmanabha as Registrar General appeared on those letters when P. Padmanabha was in service Shri P. Padmanabha retired from service during 1986 so the prosecution could not examine him before the Court. After going through Ext. 232, the sanction order, it is found that he mentioned that he was a competent authority to remove the accused from service and after fully and carefully examining the materials before him, satisfied that prima-facie case is made out against the accused Shri S. Choudhury, accordingly, he accorded the sanction vide Ext. 232. The defence argued that since sanctioning authority was not examined there is no evidence to show who placed the necessary documents before him and what materials sanctioning authority had before him is not known without examining the sanctioning authority. Hence prosecution case does not stand and it should fail on this count alone. Prosecution has pointed out para 11 of Ext. 232 sanction order that sanctioning authority was satisfied after going through the materials placed before him before according sanction, hence it is not required for prosecution to prove of that satisfaction. Prosecution has referred AIR 1973 S.C. 2131 in support of his contention that where the facts constituting the offence appear on the face of the sanction accorded by the Competent authority, it is not necessary for the prosecution to lead separate evidence to show that the relevant facts were placed before the competent authority and it cannot be said that the prosecution has failed to prove that the competent authority has accorded his sanction without applying his mind to the facts of the case. I am of the view that the submission of Sr. P.P. CBI is tenable on this point.

*Att. M/sed  
Dhruv  
A.M.*

8. Therefore in view of the above ruling cited and in view of the facts as mentioned in Ext. 232, it is clear that the ingredients required to prove a valid sanction are fully complied by the prosecution.

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9(1) Another point for consideration is whether the accused was in the capacity entrusted with the amount involved in this instant case and whether he had dominion over it, and whether accused has misappropriated an amount of Rs. 8556.05p.

(i) It is in evidence that accused drawn an amount of Rs. 3252.15p on 31.3.75 vide Cash Book Ext. 51(1) entry at page 240 and the said amount was not paid till 8.7.76 and the accused retained the said amount upto 8.7.76. The evidence also shows that of the said amount, an amount of Rs. 1251.60p was sent by forwarding letter Ext. 9 to D.C.Khonsa vide Bank Draft No. 234356, Ext. 35 on 8.7.76. On the same date an amount of Rs. 360/- was also sent to D.C. Ziro by forwarding letter Ext. 9(3) by Bank Draft No. CW-234457. The said Draft was purchased by the accused vide Draft Purchase Application Ext. 217. On the same day an amount of Rs. 649.80p was sent to A D C Pasighat by forwarding letter Ext. 9(4) vide Draft No. 234355 Ext. 240. This Draft was purchased by accused vide Draft Purchase Application Ext. 213. On the said date another amount of Rs. 360.00 was sent to D.C. Along by forwarding letter Ext. 9(5) through Bank Draft No. CW-234354 Ext. 97, and this Draft was purchased by accused vide Draft Application Ext. 214. On 30.7.76 the accused sent an amoung of Rs. 300.75/- by forwarding letter Ext. 9(6) vide Draft No. CY-538003 Ext. 112, and this Draft was purchased by accused from Bank vide Draft Purchase Application Ext. 211. The remaining amount of Rs. 330/- was shown paid by the accused in Cash in Shillong without giving any date to Sri P.C. Das P.W. 15 vide Ext.74. Actual payees receipts. (This Ext.74 was not available even after a long search) However, since there was no cross-examination on the said Ext. 74, the same is taken to have been duly proved.

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W.H.W.  
D.W.

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On perusal of the documents exhibited in this Court, it is found that the accused never shown disbursement of the above amounts in Ext. 228 as no entry was made by the accused. So far showing the payment of the said amount on 5.4.75 in cash Book Ext. 51 is concerned, I find there is no entry to that effect in Ext. 51 as argued by the prosecution and also mentioned in the charge-sheet.

The prosecution examined number of witnesses and got proved the different A.P.Rs (Actual paying receipts) by which the staff have received the amounts only in July, 1976, but I feel to go in that detail would unnecessarily lengthen the Judgement. However, the fact remains that by the evidence available on record, it shows that accused withdrawn the amount of Rs. 3253.15p on 31.3.75 towards Arrear Special Pay for the period from October 1974 to December 1974 for the staffs of Census Operations posted in the interior of Arunachal Pradesh and the said amount was only accounted for by him only in July 1976 and during the said period it appears that the amount was retained by him. The evidence also shows that no entry of payment was made by the accused in the Cash Book Ext. 51 and Ext. 228.

10(2) Evidence also disclosed that accused was having in hand as per Cash Book Ext. 51 page 240 a sum of Rs. 1049.70p on 31.3.75 towards T.A. Bills payment for the staffs Census Operations attached to ADC Pasighat. The entire amount of Rs. 1049.70p was falsely shown to have been sent to ADC Pasighat through forwarding letter No. ARG.29018/1/74-Cash dt. 8.4.75 (not exhibited). The accused made false entry of payment of the said amount in Cash Book Ext. 51 vide Ext.51(6) but in fact the said amount was sent only on 31.5.75 by five (5) different Bank Drafts as under :-

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D.W.*

(i) Out of the total amount of Rs. 1049.70p an amount of Rs. 407.10p was sent to D.C. Khonsa vide Bank Draft No. 269726 dt. 30.5.75 Ext. 31 for an amount of Rs. 621.60p (including an amount of Rs. 214.50p, another amount towards T.A.) and Ext. 205 is the Application for Purchase of Bank Draft. The said Bank Draft was sent vide forwarding letter Ext. 17.

(ii) From this total amount of Rs. 1049.70p, an amount of Rs. 60/- was sent to D.C. Bomdela through Bank Draft No. 269725 dt. 30.5.75 Ext. 108. The accused obtained the said Draft by Application for Bank Draft Ext. 204. The said Bank Draft was sent vide forwarding letter Ext. 69 dt. 31.5.75.

(iii) Out of a sum of Rs. 1049.70p, an amount of Rs. 330/- was sent to D.C. Along through Bank Draft No. 269727 dated 30.5.75 Ext. 85 (This draft was for Rs. 560.00 inclusive of Rs. 330.00). This draft was purchased by accused on 30.5.75 vide Bank Draft Purchase Application Ext. 206. The prosecution did not exhibit the forwarding letter by which the aforesaid Bank draft was sent to D.C. Along.

(iv) Out of this total sum of Rs. 1049.70 an amount of Rs. 80.00 was sent to ADC Pasighat through Bank draft. No. 269723/- 30.5.75 Ext. 236 for an amount of Rs. 468.20p (Inclusive of Rs. 80/-). This draft was purchased vide draft purchase Application dated 30.5.75 Ext. 202. The prosecution did not exhibit the forwarding letter by which the said draft was sent.

(v) Out of Rs. 1049.70p, an amount of Rs. 172.00 was sent by Bank Draft No. 269722 (not exhibited) dt. 30.5.75 for a total amount of Rs. 657.00 (inclusive of Rs. 172.00) This Bank

*Accused  
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draft was purchased by the accused vide draft Purchase Application Ext. 201 dt. 30.5.75. Prosecution did not exhibit the forwarding letter by which the said amount has been sent.

In respect of the above instances, prosecution examined number of witnesses and also proved different A.P.Rs which the staffs showed receipts of payment after 31.5.75. However, to make reference to all those evidences would unnecessarily lengthen the Judgement. The facts as could be seen is that the accused appeared to have withdrawn the above amount of Rs. 1049.70p, on 31.5.75, but retained the same till 31.5.75 and falsely shown to have sent the amounts on 8.4.75 vide entry in Cash Book Ext. 51 and also through forwarding letter No. ARG/29018/1/74-Cash dt. 8.4.75, whereas in fact the said amount was sent only on 31.5.75 to different D.Cs and A.D.Cs and till that date, he retained the amount with him.

11(3) It is in the evidence, that the accused drawn an amount of Rs. 267.60 on 26.2.75 vide Cash Book Ext.51 page 224 towards arrear D.A. for Census Operation staffs posted in different places at Arunachal Pradesh. Out of the said amount he had false shown that amount Rs. 180.00 was paid out of the said sum of Rs. 267.60 by inflating actual amounts of the five Bank drafts. The particulars of the said drafts, their forwarding letters and drafts Purchase Application with their Exhibits are as under :

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(i) Draft No. 853473 dt. 4.3.75 (Ext.23). This draft was purchased vide Ext. 186 dt. 4.3.75. This draft was forwarded by the accused by Ext.5 forwarding letter to D.C. Khonsa. In fact this draft was for an amount of Rs. 1920.40 p whereas the accused inflated the amount of Rs.1920.40p to

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Rs. 1997.80 as shown in Cash Book Ext. 51 and thereby falsely shown an excess amount of Rs. 77.40 p to have been paid.

(ii) Draft No. 853468 dt. 4.3.75 (Ext. 239). This draft was purchased vide Ext. 185 dt. 4.3.75 and was forwarded by accused vide Ext. 59 forwarding letter to ADC Pasighat. This draft was in fact for an amount of Rs. 726.40, whereas the accused shown the amount of Rs. 767.80 in Cash Book Ext. 51 on 5.3.75 and thereby falsely shown excess amount to have been paid to the tune of Rs. 41.40p.

(iii) Draft No. 853470p dt. 4.3.75 (Ext. 90). This draft was purchased vide Ext. 184 dt. 4.3.75 and forwarded by accused to D.C. Along. In fact this draft was for Rs. 505.80p whereas the accused shown this amount as Rs. 527.40p in the Cash Book Ext. 51, thereby falsely shown to have paid an excess amount of Rs. 21.60.

(iv) Draft No. 853467 dt. 4.3.75 (not exhibited). This draft was purchased by the accused vide Ext. 187 dt. 4.3.75 for an amount of Rs. 555.80p and was forwarded to D.C. Ziro. The said amount of the draft was inflated by the accused in the Cash Book Ext. 51 as Rs. 577.40p thereby shown an excess amount of Rs. 21.60 p.

(vi) Draft No. 853471 dt. 4.3.75 (Ext. 114). This draft was purchased by accused vide Ext. 183 dt. 4.3.75 for an amount of Rs. 465.30p and was forwarded to D.C. Bomdela vide forwarding letter Ext. 71 dt. 5.3.75. This amount was shown as Rs. 483.30 in Ext. 51 Cash Book by the accused, hence an excess amount of Rs. 18.00 from the amount mentioned in the said draft.

In the above manner, the accused appears to have inflated the total amount of Rs. 180.00 (when he showed less in the Bank Drafts and more in the Cash Book Ext. 51 Page 231 as indicated above).

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The evidence further shows that for adjustment of the amount of Rs. 267.60 is concerned, the accused deposited the said amount only during August, 1976 through the following Bank Drafts :

(a) Bank Draft No. 538891 dt. 9.8.76 (Ext.110) for an amount of Rs. 18.00. The said Bank draft was purchased vide Ext. 209 Draft Purchase Application dt. 9.8.76 and forwarded to D.C. Bomdila on 11.8.76 by forwarding letter Ext. 70.

(b) Bank Draft No 1538897 dt. 9.8.76 (Ext.94) for an amount of Rs. 21.60. The said Bank draft was purchased by Draft Purchase Application dt. 9.8.76 (Ext.210) and forwarded to D.C. Along on 11.8.76 vide Ext. 93 forwarding letter.

(c) Bank draft No. 538893 dt. 9.8.76 for an amount of Rs. 21.60p vide Bank draft Purchase Application dt. 9.8.76 Ext. 216 and forwarded to D.C. Ziro on 11.8.76 by Ext. 9(14) forwarding letter.

Besides the above Bank drafts, the accused also forwarded an amount of Rs. 257.40p to D.C. Khonsa vide Draft No. 538894 dt. 9.8.76 vide Ext. 38 which was purchased by the accused through Ext. 215 and forwarded to D.C. Khonsa vide forwarding letter Ext.6.

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It seems that the accused made good the amount of Rs. 267.60p by the above Bank drafts wherein some other amounts payable to those staffs were also appears to have been included. However, there is no entry of payment in respect of the above drafts in Ext. 228 or Ext. 51 of the Cash Books.

Therefore in view of the above evidence, it shows that the accused retained an amount of Rs. 267.60p with him from 26.2.75 to August 1976 and besides he falsely showed paid an amount of Rs. 180/- by inflating the amount off

dt. 5.3.75 in the Cash Book and tried to show that he had made the payment.

12(4) It is also in the evidence that the accused drawn an amount of 741.00 on 6.1.75 vide entry at page 203 of Ext. 51 the Cash Book, towards T.A. Claims of staffs. Out of the said amount, he had shown payment of Rs. 180/- on the same day and the remaining balance amount of Rs. 561.00 was in hand on that day. The entry at page 216 of Ext. 51 shows that accused falsely shown payment of Rs. 561.00 by clubbing the said amount with the pay and allowances of Sri P.C. Choudhury (Rs. 484.20 + Rs. 561.00 = Rs. 1045.20). A perusal of Ext. 87 Bank Draft it appears that accused simply sent an amount of Rs. 484.20 only to D.C. Along towards the pay and allowances of Shri P.C. Chaudhury and no other amount of Rs. 561.00 as shown by accused in the Cash Book was ever remitted to D.C. Along. The evidence further shows that the amount of Rs. 5551.00 was actually sent only in August 1976 by the following Bank Drafts and Cash Payment. The details are as under :

(a) Rs. 246.00 was sent by accused on 16.8.76 vide Bank Draft No. CY-530437 to D.C. Khonsa and the said draft was purchased by the accused vide Application for Draft Purchase Ext. 208.

(b) Rs. 180/- was sent by accused through Bank Draft No. CY-538894 dt. 9.8.76, whereas the total amount of the draft was for Rs. 257.40 (Rs. 180 + 77.40) to D.C. Khonsa. This draft was purchased by accused vide Ext. 215.

(c) As per evidence, the accused paid an amount of Rs. 135- to Sri P.C. Das P.W. 28 who proved his signature vide Ext. 233(5).

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① N.M.  
P.W.

Hence, by the above evidence, it shows that the accused retained the said amount of Rs. 561.00 with him from 6.1.75 to August, 1976 and vide entry dt. 6.2.75 at page 216 vide Ext.51 falsely showed payment of the said amount of Rs. 561.00.

In view of the above facts mentioned above, the prosecution submitted that the said amounts of Rs.3252.15, Rs. 1049.70 Rs. 267.60 & Rs. 561.00 were made good by the accused subsequently after some period of time as indicated above. Hence, it proves that there was temporary misappropriation of the said amounts as shown above. He also submitted that the accused also admitted of the above position in his statement recorded under Section 313 Cr. P.C. before the Court. The prosecution also further contended that though the misappropriation is of temporary nature, however, the accused is liable to be punished. He referred to AIR 1983 SC 174 support of his contention. From the facts and circumstances of what has been discussed above, it would appear that the accused had retained the different amounts as indicated above for some period of time and made good the same subsequently. The accused in his statement admitted the facts of retention but threw all the blame on Shri K.C.Kaur who was the drawing and disbursing Officer and what the accused did was only under the instruction and direction of drawing and disbursing Officer undwr whom he was functioned as a Cashier. However, the accused could not produced any oral or documentary evidence in support of his claim that his commission and commission of the offence was under the instruction and direction of the drawing and disbursing Officer Mr. K.C.Kaur. As such, his plea of retaining the amount under the instruction and direction of Shri K.C.Kaur do not hold water

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and subordinate though he has to carry out the order of his superior but should not have followed any illegal orders specially when no written order is in existence. Therefore, the omission and commission ~~of~~ the accused throwing the blame to his drawing and disbursing Officer could not exonerate or absolve him of the said offence.

From the above discussion, it would go to show that the accused was at the relevant time entrusted with the respective amounts on the different dates and has retained of the said amounts which he temporarily misappropriated and made payment subsequently. The accused who was at the relevant time a cashier was not in the capacity entrusted with the money and had dominion over it, hence the ingredients of Section 409 is found well established whereby the accused is liable for the said omission and commission.

The evidence also discloses vide entry at page 16 of Ext. 228 has shown an amount of Rs. 3525 to have been received from S.B.I. Shillong against Bill Number R/16 on 29.5.75. Thereafter, on 30.5.75 again shows to have deposited the same with SBI, Shillong vide entry at page 17 of ext. 228 and thereby shows expenditure of the amount of Rs. 3525.00 in the Cash Book. Thereafter, once again he had reflected at page 18 on the receipt side to have received the Bank Draft of different amount totalling Rs. 3525.00 in addition to other amount. This amount of Rs. 3525.00 was a break up of Rs. 487.60; Rs. 690.30; Rs. 407.10; Rs. 450.00; Rs. 1100.00 and Rs. 390.00. The evidence as available on record appear to be insufficient to prove that the accused has misappropriated the said amount of Rs. 3525.00. The different staffs member who were examined as P.Ws also never stated that they have not received their dues. All of them

*Attested  
Dhru  
P.W.*

stated that they have received their dues though late. The late payment as stated by the staffs who were examined as P.Ws is due to communication problem. No. doubt, the aforesaid entry in the cash book vide Ext. 228 regarding the said amount may appear to be false and without supporting Vouchers, but since the prosecution has not been able to conclusively proved the misappropriation of the said amount, the same cannot be said to have been misappropriated by the accused person.

The next question to be determined in this case is whether the accused committed the offence of forgery or not. With regard to the said point as per the evidence already highlighted in the preceding paragraphs, it would appear that the accused had made false entries showing sending of the amount by Bank Drafts and sometimes made payment in cash at the relevant dates but in fact the said amounts were never sent on the dates which he ought to have been sent or paid, but sent or paid the said amounts at a subsequent period after a lapse of some months and one year or above where the same were remitted to the staffs of the Census Operation working Some of the staff who were posted in A.P. in a different places in Arunachal Pradesh/were examined as P.Ws and they have stated in court that they have received the amount subsequently. They also stated that they used to receive their pay etc. late. Besides the above, the different Bank Drafts exhibited before this Court also corroborates the above facts showing that the accused has ent the Bank Drafts at a later period though the payment were shown to have entered on the date the amount was received from the Bank, but payment to the staffs were made at a much later date thereby making himself liable under section 468 I.P.C.

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paid*

In view of the above facts, I feel that there is sufficient ground to conclude that the accused is found to have committed the offence under Section 468 IPC.

So far the charge of Section 5(1) (c) P.C. Act is concerned, there is no doubt that the accused Shri S.C. Choudhury was a public servant at the relevant time and this has been well proved as per my discussion in the forgoing paragraphs. The accused as a public servant falsely shown to have sent the remittance of the different amounts on the particular dates, whereas those amounts were never sent to the staffs on the said date where the same should have been sent. But the accused sent the remittance only subsequently after a lapse of some months or one year and above. In this way the accused is found to have abused his official position and retained the said amount with him which amounted to temporary misappropriation for which the accused is not allowed to do so.

In view of the above, it is clear that all the ingredients of section 5(1) (c) of P.C. Act is made out and as such, the accused is found to have committed the offence u/s 5(1) (2) of P.C. Act also.

Before I part with the judgement in question, it may be mentioned here that the said amount of Rs. 3252.15p Rs. 1049.70; Rs. 267.60; and Rs. 561.00 have been entered in the Cash Book vide exhibit 51 by 1 at page 240 for an amount of Rs. 3252.15p on the receipt side, Rs. 1049.70 on the payment side of exhibit 51 page 240. So also Rs. 267.60 was shown on the receipt side on 26.2.75 to have been entered in the Cash Book Ext. 51 page 224 and an amount of Rs. 561.00 dt. 6.2.75 was entered in Ext. 51 page 216 which was on the receipt side and the payment side. All the entries of the said amounts were made by the accused person and were signed by the drawing and disbursing Officer Shri K.C. Kaur. As per the evidence of P.W.s 21, 23, 24, 28 & 30, it is not disputed that the entries in the Cash Book is to be made by the Cashier, but it has to be put up to the drawing and disbursing Officer for his signature who is to verify the correctness of Bank Drafts

& other vouchers before the entries were signed. Further, since the cash was on the joint custody, the drawing and disbursing Officer should have been very careful and ~~xxx~~ particular in putting his initials and signature in the entries and to satisfy himself about the correctness of the entries made. Shri K.C.Kaur was examined as P.W. 32 of which his examination in-chief was inconclusive and since the prosecution failed to produce him on the target date fixed by the court, he was dropped. Whatever evidence is available from his part shows that he admitted about the Cash Book Ext. 51 and also stated that the withdrawal of Rs. 3235.15 is reflected in Ext. 51 against Bill No. R/79 and against those entries he has initialed vide Ext. 51(1) on page 240. He further stated that Ext. 233 is the Bill Register and Ext. 233(1) (a) is the entry relating to Arrear & Special Pay from October, 1974 to December, 1974 & the amount reflected therein is Rs. 3235.15p where he also put his initials vide Ext. 223(1) (c) of that entry. He also stated that though Ext. 223(1) (a) and Ext. 51(1) are related to the same Bill Number R/79, under the handwriting of Shri S. Choudhury, the amount in Ext. 51(1) does not tally with Ext. 223(1) (a). If that to be the position if the amount as appearing in Ext. 51(1) is of the same bill number as the one appearing in Ext. 51(1) is of the same bill number as the one appearing in Ext. 223(1) (a), but the amount appearing in Ext. 223(1) (a) is not tally with the amount in Ext. 51(1), how then Shri K.C.Kaur, the drawing and disbursing Officer put his signature thereon. This is the instance among others that Shri K.C.Kaur P.W. 32 who is expected to be more responsible as the drawing and disbursing Officer signed the said entries without applying his mind and without caring to verify the actual position. I wonder why Shri K.C.Kaur was made as a witness in this case, I feel for the interest of

*After agreed  
By Mr. D.N.*

justice, the Department concerned should initiate action which is deemed fit and proper against Shri K.C.Kaur for his lapses as a drawing and disbursing Officer at the relevant period.

In view of what has been discussed above, I find that the accused Shri Sudhangshu Choudhury is guilty of the offence under Section 409/468 IPC read with Section 52 and 51 (C) of P.C. Act, 1947.

Sd/- Illegible 4.3.93

Special Judge  
Shillong

Att'd  
Orally  
ADM

Later on, heard the accused Shri Sudhangshu Choudhury on the point of sentence and the accused prayed for mercy and requested for a lenient view from the Court on the ground that what omission and commission was done by him was not of his own but on the instruction and direction of the Superior Officer and also in view of the fact that the period taken in this case was about 14 years, and by that the accused has suffered financially and mentally. Further the accused also submitted that he being the earning member of the family Court may consider his prayer for considering lenient view in this case as no offence was committed by him earlier. Accused also submitted that he operated from heart surgery.

This instant case was registered since 1988 and only after the lapse of about 14 years, it has been the light of the day. There is no evidence to show that the accused has committed any offence earlier. The period taken in this case no doubt has affected the accused person financially and mentally and considering the facts and circumstances of the case and the amount involved, I feel that the accused deserved to be treated leniently and it is a fit case in which the benefit of Section 4 of the Probation of Offenders Act be granted to the accused person.

*Attested  
Dhaka  
ASD*

From the observation made above, I hold that although the accused is found guilty u/s 409, 468 IPC 5(1) (2) P.C. Act but instead of sentencing him with imprisonment under the above Sections, I gave him the benefit of Section 4 of the Probation of good conduct and with no bond with a condition that the accused will not commit such offence in future.

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Before I part with the case in question, I would like to say that since the accused has been given the benefit U/s 4 of a Probation of Offenders Act he is also entitled to the benefit U/s 12 of the same Act so that his service career may not be affected. It is to be made clear that the service of the accused should not be affected in any way as he has been given the benefit of Section 12 of Probation of Offenders Act so that the accused may not loose his service.

Therefore, I also hold that though Shri Sudhangshu Choudhury is found guilty but this will not affect his service in any way as he has been given the benefit U/s 12 of the Probation first Offenders.

A copy of this Judgement be sent to his Department for information and necessary action.

The documents seized during the investigation may also be returned to the person from whom they will seize after the expiry of the appeal period.

*Appealed  
Dhruv  
Dhruv*

Sd/- Illegible 4.3.93  
Special Judge, Shillong

Annexure-56

No. ARA.18031/1/90 (Part-I)

Government of India  
Ministry of Home Affairs/Govt Mantralaya  
Office of the Director of Census Operations  
Arunachal Pradesh

Dated Shillong 20 JUL 1994

ORDER

In pursuance of the judgement and order in the Court of the Hon'ble Special Judge at Shillong in the matter of Special Case No. 1 of 1978 - Union of India(CBI/SPE) Shillong vrs. Shri S.Choudhury, and on the recommendation of the Departmental Promotion Committee, the services of Shri S.Choudhury, in the Post of Assistant in this Directorate is hereby regularised w.e.f. 4.3.93 i.e., the date of judgement and order of the case.

2. On the recommendation of the DPC, Shri S.Choudhury is also allowed to cross the Efficiency Bars which were withheld during the prosecution of the case against him in the Court of Law.
3. In case of any overpayment for one reason or the other Shri Choudhury shall have to refund the amount in one instalment.

Sd/- A.K.PAUL,  
Asstt. Director of Census Operations.  
Arunachal Pradesh, Shillong-3

Memo No. ARA 18031/1/90 (Part-I) Dt. Shillong the 20 JUL 1994  
Copy to :

*Attened  
On 20/7/94  
DN*

1. The Registrar General, India, Ministry of Home Affairs, 2/A Mansingh Road, N.Delhi-110011 for favour of his kind information. He is also informed that necessary action on his letter No. 27/23/93-Ad.IV dt. 4.4.94 has already been taken.
2. The Pay & Accounts Office (Census) MHA, AGCR Building, N.Delhi-110002 for favour of his information.
3. Shri S. Choudhury, Asstt. for information.
4. Estt. Section for information and necessary action.
5. Accounts Section for information and necessary action.
6. Office Order File.

Sd/- Illegible 20.7.94  
Asstt. Director of Census Operations  
Arunachal Pradesh  
Shillong-793003

To

The Registrar General, India  
Ministry of Home Affairs,  
21A, Mansingh Road,  
New Delhi-110011.

(THROUGH PROPER CHANNEL)

SUB : Reversion of Shri S. Choudhury (now again Assistant) from the post of Accountant - (now Assistant) in the Directorate of Census Operations, Arunachal Pradesh - irregularity and illegality therein contained.

Sir,

Most respectfully, I would submit the following for favour of your kind considerations and orders :-

1. That Sir, I had joined service in the office of the Director of Census Operations, Arunachal Pradesh, Shillong in the post of Upper Division Clerk with effect from 4.12.1969.

2. That Sir, the employees in the office of the Director of Census Operations, Arunachal Pradesh are not transferrable outside this office and are borne in cadres distinct and separate for this single office.

3. That Sir, I was promoted, under order No. ARA. 12013/3/79-Estt dated 10th January, 1980 of the Director of Census Operations, Arunachal Pradesh, Shillong, to the post of Accountant (since re-designated as and or merged with the post of Assistant) with effect from 10th January 1980.

3.1 That all the promotions allowed under the order aforesaid were against regular vacancies but allowed on ad-hoc basis, subject to the following conditions (specifically stated in second paragraph of the order) :-

- a) "That these cases will be put up to the next DPC meeting for regularisation."
- b) That "In case, if the DPC meeting cannot be called for within six months from the date of their promotions, all the promotees will be reverted to their respective posts held before their promotions."

Contd.....

*Affected  
M/s  
DN*

&

c) That "if the DPC finds anyone not suitable for regular promotion to the post held by him/her due to adhoc promotions, he or she will be reverted back without assigning any reason."

(Copy of the order enclosed as Annexure-I.

4.0) That under the conditions attached to the order of ahoc promotions, as detailed above, unless DPC meeting was called within six months from 10th January 1980 or if the DPC does not find any of the promotees under the order ibid suitable for his/her such promotion, he/she was to be reverted back without assigning any reason.

4.1 That in view of the aforesaid condition, the ad-hoc appointees were, within six months from 10th January, 1980, (i.e. by 10th July, 1980 or any near about date) due to be reverted to their pre-promotion post, unless DPC was called within this period and/or the DPC so called did not find him/her suitable for promotion to such posts.

Non-reversion within such period (i.e. within or shortly after 10th July 1980) would, under the conditions in the order of ad-hoc promotion ibid would signify/implies mean automatic regularisation of the appointment as initially allowed by promotion on ad-hoc basis or at least required to be treated as regular after such date.

4.2 That the above position was also in accord with orders/instructions of the Govt. of India which debar continuance of ad-hoc appointments (including appointments on promotions) beyond a period of one. year (vide C.S.D.P. & A.R.O.M. No. 22011/675-Estt (D) dated 30.12.76, DR & AROM No. 22034/1/86-Estt (D) dated the 29.4.77, M.H.A. D.R. & A.R. O.M. No. 36011/14/83-Estt (CST) dated the 30th April, 1980 & D.P & AR O.M. No. 39021/35/78-Estt (D) dated the 24th November, 1979).

Contd.....

*After  
Ans  
J.M.*

Annexure-7 (Contd.)

4.3 That in the context of the above mentioned orders of the Govt. of India, the Hon'ble Delhi High Court held in G.P. Sarabhai - Vs. Union of India (1983 Lab.I.C. 1910) & Dr. (Mrs) D. Marwah - V.E.S.I.C. (CPW No. 3743/82 dated 20.12.84) that " if a temporary ad-hoc appointment continues beyond a period of one year, it will be treated as a regular appointment.".

4.4 That Central Administrative Tribunals have also, in may a cases held the same view (vide Dr (Mrs) Prem Lata Choudhuri -vs- E.S.I.C (1988) ATR 196; (1987) A.T.C.379, etc.).

4.5 That I was not reverted from the promoted post of Accountant on or about 10th July, 1980, in terms of reversion from the promoted post, as contained in order of ad-hoc promotion & as detailed in Para 4.1 herein above.

That I was also not reverted from this promoted post even within 1 year of adhoc appointment on promotion, as permissible under Govt. of India's order and the Court rulings on the subject cited above.

Hence under the implied conditions flowing from the conditions specified in my order of promotion ibid (vide details in paras 3.1-4.1 herein above) as also under the aforesaid order of the Govt. of India & their fall out as laid down by the Courts of Law & the Administrative Tribunals (vide details in Paras 4.2-4-4 herein above), due to continuance of my aforesaid appointment on promotion beyond 10.7.80/10.1.80, my appointment to the post of Accountant on promotion was required to be treated as regular for all purposes.

4.6 That in fact I had served as & held the post of Accountant continuously from 10th January, 1980 - 3rd July 1983 (i.e. more than 3 years at a stretch) including authorised sanctioned period of leave.

5. That notwithstanding the above position of fact and law, suddenly I was served by the Director of Census

*After  
given  
by*

Contd....

Operations, Arunachal Pradesh in order No. ARA.12011/2/79-Ex Estt dated 4.7.83 reverting me from the post of Accountant to the post of Upper Division Clerk.

(Copy enclosed as Annexure II)

The was done without offering me any reasonable opportunity of defence & hence in violation of prohibition against such act as contained in rule 14(1) and 16 (1) of Central Civil Services (Classification Control & Appeal) Rules, 1965 - more so as reversion is a punishment under rule 11 of the Rules ibid.

This reduction in grade/post was neither in terms of reversion, contained in the order of promotion (vide details in paras 3.1-4.1 herein above) nor in accordance with Govt. of India's orders regarding adhoc appointments; the order was made in violation of principles of Law on the relevant issues, as laid down in Court rulings & the rulings of various Central Administrative Tribunals (vide details in Paras 4.2 - 4.5 herein above) and also in violation of prohibition in rule 14(1) and 16(1) of Central Civil Services (Classification, Control & Appeal) Rules, 1965. The order of reversion dated 4.7.83 ibid is, therefore, bad in Law & is liable to be held as void ab-initio.

6.0 That it may not be out of place to point out here that there was a single regular/core post of Accountant in this office during the relevant time.

And that while I was entertained against or held this post upto 3rd July, 1983, my junior Shri M.C.Das was promoted to this post on regular basis with effect from a earlier date (i.e. 8.6.83) under order No. A.R.A.32012/3/83-Estt dated the 8th June, 1983.

*Appended  
While  
& JV*

(Copy of seniority list of UDC and copy of order dated the 3rd July, 1983 enclosed as Annexures III & IV).

Contd.....

6.1 That promotion of Shri M.C.Das to the post of Accountant on regular basis with effect from 8th June, 1983 while I was holding this single regular post from 10th January, 1980 to 3rd July, 1983 was, thus in fact and deedm irregular & illegal - the regular promotion having been allowed against no regular vacancy in the post of Accountant.

6.2 That in case, however, a second post of Accountant was created with effect from 8th June, 1983 (or from any earlier date), I do have nothing to say against his promotion except pointing out the fact that with my illegal reversion except pointing out the fact that with my illegal reversion from the post of Accountant w.e.f. 4.7.83, no other appointment to this post was made; this in fact confirmed that there was a single post of Accountant in the office; and that there was no regular vacancy in the post of Accountant on 8.6.83 for allowing Shri M.C.Das promotion there against on regular basis since my reversion (unjust & illegal no doubt) was ordered on 4th July, 1983 ~~and~~ only.

6.3 That the vacancy in the single post of Accountant in this office in which I was promoted on 10th January, 1980 was not a reserved one for SC/ST, to which group Shri M.C. Das reportedly belongs.

*Attested  
Dhruv  
D.D.V*  
This fact is also confirmed by the fact of my promotion thereagainst & my holding the same for more than 3 years at a stretch.

6.4 That no order on reservation, in force during the relevant time, provided for filling in a vacancy in reserved quota for SC/STs by a general candidate either on achoc or regular basis (here ad-hoc at first which subsequently became fit for treating as a regular appointment under (a) conditions of initial ad-hoc appointment, (b) orders of the Govt. of India on the subject of ad-hoc appointments and

Contd....

their regularisation & (c) principles laid down in court rulings, detailed in paras 3.1-4.5 herein above on the issue of regularisation of ad-hoc appointments), continuing with the process/arrangement for years together (here more than 3 years) and then reverting the promoted general candidate to create vacancy for filling in by a SC/ST candidate treating thus created vacancy as a reserved one for listed classes.

6.5 That my reversion, even if made to create a reserved vacancy for filling in by a SC/ST candidate (here my Junior Shri M.C.Das) is, thus, outside the scope of post in reserved quota for listed classes.

After all, no order provides for reversion of a general candidate after his holding the post for more than 3 years at a stretch to create a reserved vacancy for filling in by a junior SC/ST candidate.

My reversion from the post of Accountant was, thus, not in accordance with any order of the Govt. of India in matter of filling a vacancy in reserved quota; my reversion was thus patently irregular and manifestly illegal & is liable to be held void ab-initio.

6.6. That in case my reversion had nothing to do with creating a vacancy for treating as reserved for SC/ST, then also my reversion was irregular and illegal.

(vide details in Paras 3.2-5 herein above)

*Afterwards  
when  
D.K.*

7. That I was, thereafter, again promoted to the post of Assistant on purely temporary and ad-hoc basis under order No. ARA.11032/4/87-Estt dated October, 1990 giving the promotion retrospective effect from 20th August, 1990. The appointment was regularised with effect from 4.3.93.

(Copies of the orders enclosed as Annexure V & VI)

(i) This did not mitigate the injustice done to me by earlier reversion with effect from 4th July, 1983, as aforesaid & (ii) lowering me in the order of inter-se

Contd.....

## Annexure-7 (Contd.)

seniority vis-a-vis my junior Shri M.C. Das who was, irregularly and illegally allowed promotion to the post of Accountant with effect from 8th June, 1983, as detailed herein above and was thus made senior to me in the post of Assistant (the post of Accountant having since merged with or re-designated as Assistant.)

8. That in the wake of this illegal and irregular reversal of the order of seniority in the post of Assistant, my above named junior Shri M.C. Das, who was illegally made my senior in the post of Assistant, was allowed further promotion to the post of Head Assistant (a single post in the office & not a reserved one for SC/ST) with effect from 20th August, 1990. This was done without setting right the injustice done to me in matter of my illegal reversion from the post of Accountant (and thereby making my junior UDC Shri M.C. Das, my senior in the post of Accountant/Assistant) and hence without considering me for such promotion and regularisation ahead of or at least with extension of such benefits to my junior UDC Shri M.C. Das .

9.0 That during the relevant time of my reversal (in fact from the year 1976) till 4.3.93 a.c. B.I instituted criminal proceedings was pending against me in the competent Court of Law.

An that on the conclusion of the proceedings aforesaid on 4.3.93, my second time promotion to the post of Assistant on ad-hoc basis was regularised. The order of regularisation dated 20th July, 1994 specifically mentioned of regularisation from "the date of judgement and order of the case."

*Attested  
Bwlh  
pdv*

(Copy of order at Annexure VI)

9.1 That this reference to the date of judgement and order in the criminal case in matter of regularisation of my adhoc service as Assistant implied that (a) my earlier reversion from the post of Accountant (now Assistant) w.e.f. 4.7.83, (b) consequential lowering my position in inter-se seniority as Assistant vis-a-vis my junior UDC

Contd....

58  
-58-  
64

Shri M.C.Das and (c) supersession by the aforesaid Shri M.C.Das in promotion to the post of Head Assistant were all the direct result of the pendency of the criminal case ibi

9.2 That in the last but three paragraphs of judgement and order dated 4.3.93, the Hon'ble Court had specifically ordered "It is to be made clear that the service of the accused Should not be affected in any way .. and again restated this position in last but two paragraphs of the judgement and order by use of the words" this will not affect his service any way....."

9.3 That following the judgement and order dated the 4th March, 1993 ibid, I was administered an warning and given an advice by the Director of Census Operations, Arunachal Pradesh under his O.M. No. ARA.18031/1/90 (Part-I) dated the 18th July 1994 which stated specifically that this was issued in pursuance of instructions from your end.

(Copy of the O.M. enclosed as Annexure VII)

This being a warning, is not a punishment under Central Civil Services (Classification, Control and Appeal) Rules - 1965 vide absence of this in the list of punishment in rule 11 of the Rules.

9.4 That the criminal case and all associated aspects thus finally ended. But the adverse actions (during the pendency of the case) which materially affected my service viz. (a) my reversion from 4.7.93 from the post of Accountant (now Assistant), (b) my loss of seniority vis-a-vis my junior UDC Shri M.C. Das in the post of Assistant and (c) my supersession by the aforesaid Shri M.C. Das in promotion to the post of Head Assistant in the office of the Director of Census Operations, Arunachal Pradesh have not yet been reversed.

*Attended  
While  
DW*

The non-reversal of these actions which seriously affected my service i.e. your honour would appreciate, contrary to or violative of the orders of the Hon'ble Court

Contd.....

dated 4.3.93, which in fact debarred the Department from affecting my service in any way.

And hence in compliance with the judgement and order of the Hon'ble Court dated 4.3.93, all the above adverse actions are required to be reversed immediately.

9.5 That I may mention here that despite my repeated representations ending with my representation dated 18th August, 1994, the Director of Census Operations, Arunachal Pradesh have not yet removed/reversed the above listed adverse effects to my service; notwithstanding the fact that this non-action or delay in taking action in this regard is likely to complicate matter further - apart from the issue of contempt of Court in matter of non-abiding by the Court's specific direction/order.

#### PRAYER

In the above premises, I pray unto your gracious self to issue necessary orders/directions to the Director of Census Operations, Arunachal Pradesh to strictly comply with the part of the judgement and order dated 4.3.93 of the Hon'ble Court debarring any adverse effect on my service and the Law on regularisation of ad-hoc appointments; and in so acting to :-

(a) reverse/cancel/supersede the patently irregular and manifestly illegal order of my reversion with effect from 4th July, 1983 from the post of Accountant (now Assistant) vide his order No. ARA.12011/2/79-Estt. dated 4th July, 1983 and to treat my promotion to this post as continuous from 10.1.80 and regular for all intents and purposes.

(b) restore my seniority above my junior UDC Shri M.C.Das in the post of Assistant,  
and

Contd...

Attested  
Only  
D.W

Annexure-7 (Contd.)

(c) eliminate the element of my supersession to the post of Head Assistant by the aforesaid junior Shri M.C.Das by considering and allowing me promotion to the post of Head Assistant with effect from 20.8.90, the date from which my junior aforesaid was allowed ~~w~~ such promotion.

And for these acts of your kindness, I shall ever pray.

Yours faithfully,

Enclo : As stated above

Annexure-I-VI

Sd/- S.CHOUDHURY

Dated Shillong the  
28th April/95

Assistant  
Directorate of Census Operation  
Arunachal Pradesh, Shillong-3

*Accepted  
Over  
SDV*

To

The Director of Census Operations,  
Arunachal Pradesh, Shillong

Sub : Application for the post of Office Superintendent.

Sir,

In response to the advertisement No. ARA.11013/1/80-Est dtd. 28.2.96 in the Employment News for the post of Office Superintendent in the Estt. of Directorate of Census Operations, Arunachal Pradesh, Shillong I beg to offer myself as a candidate for the same. Necessary particulars in support of my candidature are furnished below for favour of your kind action.

1. Name in Full (Block letters) : SUDHANGSU CHOUDHURY
2. Address for correspondence : Directorate of Census Operations, Arunachal Pradesh, Shillong.
3. Date of Birth : 16th October, 1940
4. Whether you belong to SC/ST (if 'Yes' please attach a certificate to the effect) : No
5. Educational qualification & other qualifications : P.U. (Com). Attended the Asstt. Refreshers course conducted by the ISTM, N. Delhi from 6.3.1995 to 31.3.95 and also attend the special programme on pension and Other Retirement Benefits from 10.7.95 to 14.7.95.
6. Brief service particulars

Name of the organisation	Scale of pay	From	Period	Whether held on regular or adhoc basis
1. O/o the Superintendenting Engineer, NEFA, Shillong (now Arunachal Pradesh)	Rs.60-125/- P.M. (Pre Revised)	9.7.1965	3.12.69	As a typist on regular basis
2. O/o the Director of Census Operations (re Revised) Now Arunachal Pradesh, Shillong. 2040	Rs.130-300 Rs.1200-	4.12.69	09.1.80	As U.D.C. on regular basis.

Contd...:

1	2	3	4	5
B. O/o the Director Census Operations, Arunachal Pradesh, Shillong	425-640 (Pre - Revised) Now Rs.1400- 2300	10.1.80 3.7.83		As a Account and on adhoc basis
4. -do-	Rs.130-300/- (Pre-Revised)	4.7.83	19.8.90	As UD Clerk on regular basis
5. -do-	Rs.1400-2300	20.8.90 to 3.3.93		As Asstt. on adhoc basis
6. -do-	-do-	4.3.93 to date		As regular basis on the basis of Court order.

That Sir, I had joined service in the office of the Director of Census Operations, Arunachal Pradesh, Shillong in the post of UD Clerk from 4.12.69.

That Sir, I was promoted under Order No. ARA.12013/3/79-Estt. dtd.-10th January 1980 of the Director of Census Operations, Arunachal Pradesh, Shillong to the post of Accountant (since redesignated as and merged with the post of Assistant) with effect from 10th January, 1980. The promotion was given on adhoc basis though I fulfilled all the conditions for getting regular promotion. My regular promotion and further promotion was held up on account of the fact that I was involved in the court case about 19 years back in the year 1977. The Hon'ble Court has taken its own time of 16 years to pronounce the judgement in my favour with an instruction to this Department 'not to effect my services'. But then till date I am not given my past benefit of services in the form of promotion to higher posts even to the post of Office Superintendent which was actually due to me being the senior-most, man in the cadre. Rather my junior was picked up for promotion on regular basis in the higher posts like Assistant, Head Assistant etc. by superseding me when I was under subjudi. In this connection I submitted my representation dated 28.4.1995 and 10.1.96 but response is still awaited (Copies of representations are enclosed for ready reference).

Contd..

That Sir, it is my humble prayer to you kindly consider my case in the circumstances stated above for the post of Office Superintendent which is likely to be filled up on deputation basis.

Youss faithfully,

Dated Shillong  
the 5.4.1996

Sd/- S.Choudhury  
Assistant,  
O/o the DCO, Arunachal Pradesh,  
Shillong

C E R T I F I C A T E

Certified that there is no disciplinary action is either pending or contemplated against the officer and his vigilance is free from all angles.

Signature of Head of Office

Attest  
R.Wu  
DW

Registered

To

The Registrar General, India  
Ministry of Home Affairs,  
2/A Mansingh Road  
New Delhi-110011.

Dated Shillong, the 5th June, 1995

Sub : Reversion of Shri S. Choudhury (now again Assistant) from the post of Accountant - (now Assistant) in the Directorate of Census Operations-Arunachal Pradesh- Irregularity and illegality therein contained.

Sir,

I beg most humbly and respectfully to refer to my representation dated 28.4.1995 addressed to you on the subject quoted above and submit to you once again for your kind decision at the earliest of your convenience.

In fact Sir, I was driven to court of justice about 17 years back in the year 1983. The Hon'ble Court has taken its own time of 17 years to pronounce the judgement in my favour and during this long period I was deprived from any regular promotion inspite of my best and sincerest service as seniormost Assistant.

That Sir, since I remained under subjudice in the Court of justice on account of some unexplored charges my junior superceded me and by virtue of his holding the higher post his claim for further promotion to the post Office Superintendent is being established. His candidature is now being considered against a vacant post of Office Superintendent ignoring my claim for this post. Since this is a single cadre post, hence my agony. Once my junior by 6 years in service and 9 years by age is promoted to the post by superceding me I have no chance to get any lift during my remaining about 3 years of service before superannuation.

Under the circumstances stated above it is my humble submission kindly to issue necessary instructions to provide me chance to get promotion in the post of Office Superintendent which is currently lying vacant in this office under your kind disposal.

Contd....

Your kind action is solicited.

Yours faithfully,

Sd/- S. CHOUDHURY  
Assistant

O/o the Director of Census Operations,  
Arunachal Pradesh, Shillong.

Copy to the Director of Census Operations, Arunachal Pradesh,  
Shillong for information.

Sd/- S. CHOUDHURY  
Assistant

O/o the Director of Census Operations,  
Arunachal Pradesh, Shillong

*Attached*  
*① w.*  
*b/w*

as Annexure ~~9~~ - 9

PROVISIONAL SENIORITY LISTS OF U.D.C. AS ON 1.8.92.

SCALE OF PAY : Rs. 1,200-30-1,560-EB-40-2,040/-

Sl. No.	Name & date of birth.	Weather SC/ST	Educational qualification.	Date of entry into Govt. service.	Date of appt. to the grade, X	Weather promoted or direct confirmation.	Remarks.
1.	Shri S. Choudhury 16.10.40	Neither	P.U.	9.7.65	4.12.69	Direct.	
2.	Shri M. C. Das. 1.6.49.	S.C.	H.S.L.C.	29.5.70	21.11.70 1.3.76	Promotee.	Officiating as Asstt. on regular basis w.e.f.. 8.6.83
3.	Shri R. R. Das. 1.12.50	Neither	School Final Exam.	9.5.70	6. 9.80 1. 8.85.	Promotee.	Officiating as UDC on regular basis w.e.f. 6.9.80.
4.	Smti G. D. Astapati 1.9.45	-do-	H.S.L.C.	11.5.70	6.9.80	Promotee.	-do-
5.	Shri S. R. Das Choudhury. 3.2.50	-do-	H.S.L.C.	2.6.70	6.9.80	Promotee.	-do-
6.	Shri B. Das Gupta. 16.7.48.	-do-	H.S.L.C.	6.7.70	6.9.80	Promotee.	-do-

*Onwards*

( H. SEN MAJUMDER ),

Asstt. Director of Census Operations (A),  
Arunachal Pradesh, Shillong-3.

*Attentive  
Date  
ADM*

SP170892.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

In the matter of

O.A. No. 244 of 1996

Shri Sudhangsu Choudhury

- versus -

The Union of India & Others

- A N D -

In the matter of

Written statements submitted by the

Respondents No. 1,2, and 3

The humble Respondents submit their written statements as follows :-

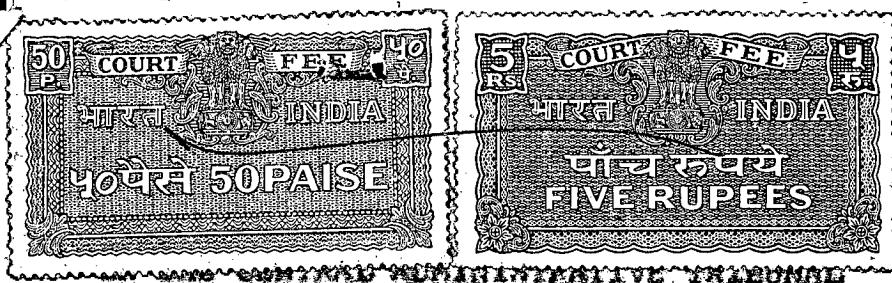
1. That with regard to the statements made in paras 1,2,3,4 and 5 of the application the Respondents have no comments.
2. That with regard to statements made in paras 6.1 and 6.2 of the application, the Respondents beg to state that the Respondents have no comments.
3. That with regards to the statement made in para 6.3 of the application, the Respondents beg to state that the appointment order promoting the applicant to the post of Accountant on purely ad hoc basis with effect from 10.1.80 had set clear terms and conditions on his ad hoc promotion to the post of Accountant. But due to the start of 1981 Census the biggest administrative exercise in the country when every officers and staff were busy with its organisations, the DPC could not be convened within six months from the date of his promotion order. But his non-reversion to his original post of UDC did not at all signify/imply or mean automatic regularisation of his ad hoc promotion.

*JCLR*

All regular promotions have to be placed before the DPC for consideration and only on the recommendation of the DPC regular appointment by promotion to any post can be made.

4. That with regard to the statement made in para 6.4 of the application, the Respondent beg to state that due to the 1981 Census the DPC could be convened only on 6.6.83. In that DPC his name along with other 2 (two) UDC's was placed before the DPC for consideration for promotion either the post of Accountant or Assistant. Both the posts were, however, reserved for SC., being carried forward reservation from 1969 in case of the post of the Accountant and from 1980 in case of the post of Assistant. But the DPC could not consider his case because he was facing prosecution in court of law and the conclusion of the proceeding of which he was found guilty. Had he not been facing prosecution in a court of law, he would have been considered for promotion to the post of Assistant higher than the post of Accountant. Though this post according to the roster, was reserved for the Scheduled Caste, being a carried forward vacancy from 1980, but as there was only one S.C. candidate for consideration for promotion and being the junior most among the three eligible candidates, it was proposed to consider him for promotion to the post of Accountant a post lower than the post of Assistant also a reserved vacancy for S.C. But as the applicant was facing prosecution in a court of law his case could not be considered for promotion to the post of Assistant. This very decision of the DPC was kept in the sealed cover

KCR



GURAHITYI BENCH

C.A. No. 244 /96

sri ...S. Ch. ...  
versus

Union of India & Ors.

26  
S. Ch. ...  
Chandrapur

Know all men by these presents that the above named applicant(s) do hereby nominate constitute and appoint Shri J.L.Sarker, N.Chanda, A.Roshid and B.Banerjee, Advocates and such of the undermentioned Advocates as shall accept this Vakalethana to be by true and lawful Advocates to appear and act for me in the matter noted above and in connection therewith and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me and on my behalf and I agree to ratify and confirm all acts so done by the said Advocates as mine to all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocates will be bound to appear or act on behalf.

In witness whereof I hereunto set my hand on this the day of 1996.

Advocates

1. Shri J.L.Sarker	2. Shri N.Chanda
3. Shri A.Roshid	4. Shri B.Banerjee
5. Shri A.Bagupra	6. Shri B.Banerjee

And accepted

W. Chanda  
S. Ch. ...  
D. Ch. ...

Mr. J. L. Adv.  
We need me  
this case  
Date  
1996

as per procedure. And subsequently the sealed cover was opened by the DPC members for consideration of his promotion on receipt of the final verdict of the Honourable Court. So his junior, Mrs. N. Sen Majumder to the post. As a result he had to be reverted from 4.7.83 on his return from leave. But sanction for the post of Assistant was later on discontinued when it was vacated <sup>by</sup> Mrs. N. Sen. Majumder's taking voluntary retirement and the applicant who was still facing prosecution in a court of law, could not be considered for promotion to the said vacant post of Assistant. His contention that no notice was given to him before his reversion is untenable because promotion order itself clearly stated that he was liable to reversion to any time without assigning any reason thereof. Moreover, whether regular or ad hoc notice is not necessary in case of reversion to a lower post. It is necessary only in case of termination of services. (Proceedings of the DPC is annexed thereto as Annexure-1).

5. That with regard to the statements made in para 6.5 of the applicant, the Respondents beg to state that as per standing order official facing prosecution in a court of law cannot be considered for promotion. The DPC was unable to consider his case for promotion. Therefore, he had to be reverted to make room for official with integrity. When a post of Assistant was created for the 1991 Census, the applicant was, however, promoted to the post of ad hoc basis from 20.8.1990. Because of his prosecution was still pending in a court of law, he could not be considered for regular promotion. However, subsequently, the sealed cover was opened by the DPC members for

JKR

- 4 -

consideration of his promotion in receipt of final verdict of the Honourable Court.

6. That with regards to the statements made in paras 6.6. of the application, the Respondents beg to state that the single post too comes under the rule of reservation of SC/ST except when it is filled up for the first time. The post of Accountant, later redesignated as Asstt. by 4th Central Pay Commission was first held by Mrs. N. Sen Majumder (General) and second by Mr. P.B. Dutta (General). With the availability of qualified SC candidate the post had to be reserved for that candidate. Reservation of ad hoc promotee can be effected even after more than five years of service, if DPC cannot recommend their promotion. The same case applied to the applicant. (Copy of the Department of Personal & A. Rs. O.M. No.1/9/74-Estt (SCT) dated 29.4.75 is annexed thereto as Annexure-2).
7. That with regard to the statement made in para 6.7 of the application the Respondent beg to state that they have no comments.
8. That with regards to the statements made in para 6.8 of the application, the Respondents beg to state that the service of the applicant has not at all suffered. On the basis of the judgement of the Special Judge in case No.1/78 he was regularised in the post of Assistant and was also promoted to the post of Head Assistant. He is, therefore not entitled to any consequential benefit either financial or otherwise.
9. That with regards to statements made in para 6.9 of the application, the Respondents beg to state

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workshop as well, by the committee for the conference.

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difficult to define as definitely as can be done.

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to test the effectiveness of the yoke), and all else can be

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Este ocazie de a prezenta o serie de rezultate obținute în cadrul proiectelor de cercetare și dezvoltare

29 DEC 1968  
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For our students who have come to us from other schools, we have prepared a special program to help them adjust to our school environment.

and especially when the author is not well known, it is best to use the name of the author in the title of the book.

Согласно здешнему законодательству в 1955 году

### Conceitos de Identidade

On the 4th of January, 1840, the following resolutions were passed:

that the same is not correct and hence deceitful.

That with regard to the statements made in para 6.10 of the application, the Respondents beg to state that the Respondents have no comments the same being matter or records.

10. That with regards to the statements made in para 6.9, 6.10, 6.11 of the application, the Respondents beg to state that the applicant is not entitled to any retrospective benefit. He was found guilty by the Special Judge in case 1/78 and had been imprisoned he would have lost his job. But the Special Judge put him on probation for good conduct in order to retain his job. Besides retaining his job he has been regularised in the post of Assistant from 4.3.1993 and has been promoted to the post of Head Assistant on regular basis from 1.1.97. The judgement has not stated that he should be promoted with retrospective effect. It only says that his service will not be affected. His service as it was on the date of the judgement was not affected to his advantage. Instead on the basis of the judgement, he was regularised in the post of Assistant and later on promoted to the post of Head Assistant.

11. That with regards to the statement made in para 6.12 of the application, the Respondents beg to state that it is fact that the applicant's name was forwarded to the RGI alongwith that of Respondent No. 4 for consideration for appointment by transfer on deputation to the post of Office Superintendent when both of them applied for the same in response to advertisement. But neither of them was considered by the RGI's office due to the fact that they cannot be appointed by transfer on deputation in a cadre.



post. (Copy of letter No. ARA. 18031/1/96 dated 14.6.96 is attached thereto as annexure-3)

12. That with regards to the statements made in para 6.13 of the application, the Respondents beg to state that the Respondent No. 4 has been promoted all along against vacancy reserved for SC, being carried forward reserved vacancies. With the Govt. of India's drive to fill up backlog reserved vacancies since 1988, the DPC has done the right thing by recommending Respondent No. 4 for promotion to the vacancies reserved for SC.
13. That with regards to the statements made in para 6.14 of the application, the Respondents beg to state that in the post of UDC the Respondent No. 4 can never be senior to the applicant. But he can be senior to the applicant in higher post due to his getting promotion earlier than the applicant against vacancy reserved for SC.
14. That with regards to the statement made in para 7 of the application regarding relief sought for, the respondents beg to state that the applicant is not entitled to any relief apart from what he has been given by the Office by way of promotion to the post of MA as a result of the Special Judge Order in case No. 1/78 putting him in probation for good conduct and he has no claim whatsoever on the posts reserved for SC/ST as long as candidates from these communities are available for promotion to the vacant posts reserved for them.
15. That regarding grounds of the application the Respondents beg to state that none of the grounds is maintainable in law as well as in facts and hence the application is liable to be dismissed.

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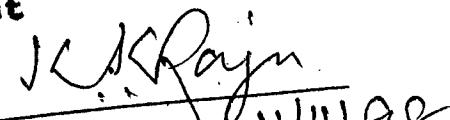
16. That with regards to statements made in paras 8, 9, 10, 11, 12, and 13 of the application the Respondents have no comments.

17. That the Respondents submit that the application has no merits and as such liable to be dismissed.

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

I Shri K. Kamaraju, Deputy Director of Census Operations, Arunachal Pradesh, Shillong being competent to do hereby solemnly declare that the statements made in paras 1 to 17 are true to my knowledge, those made in paras in above written statements are true to my information and the rests are my humble submissions before this Hon'ble Tribunal and I sign the verification on this Eleventh the day of November 1998 at Shillong.

Declarant

  
11/11/98  
K. K. Raju  
000 Deputy Director of Census Operation  
Arunachal Pradesh, Shillong-3

MINUTE OF THE MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE OF THE OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ARUNACHAL PRADESH, CHILONG HELD ON 6.6.83 IN THE OFFICE CHAMBER OF THE DIRECTOR OF CENSUS OPERATIONS, ARUNACHAL PRADESH, CHILONG TO CONSIDER THE CASES OF PROMOTION AND CONFIRMATION OF THE OFFICIALS OF DIRECTORATE OF CENSUS OPERATIONS, ARUNACHAL PRADESH, CHILONG

P R O M O T I O N

1. Statistical Assistant :- According to the seniority list of the Computers, it is found that only Shri C. K. Barman is eligible for promotion to the post of Statistical Assistant. The DPC after going through his ACR during the last five years, find that Shri Barman is fit for promotion to the post of Statistical Assistant. The DPC, therefore, recommended that Shri C. K. Barman be appointed to the post of Statistical Assistant w.e.f. 6.6.83.

2. Artist :- According to the seniority list of Draughtsmen, Smti Renu Malakar and Shri A. R. Sharma both Draughtsmen are eligible for promotion to the post of Artist. Smti Renu Malakar is senior most Draughtsman, she is, however, on deputation to the office of the Director of Census Operations, Assam, Gauhati. Since on earlier occasion, she had refused in writing to accept the post, her case cannot now be considered for promotion. The case of Shri A. R. Sharma is, therefore, considered. After going through his ACR, the DPC find him fit for promotion to the post of Artist. The DPC, therefore, recommended that Shri A. R. Sharma be promoted to the post of Artist w.e.f. 6.6. 1983.

3. Accountant and Assistant :- Since there was no Accountant eligible for promotion to the post of Assistant, the Upper Division Clerks with not less than 6(six) years' regular service in the grade of Rs. 330 - 560/- were considered for promotion to the posts of Accountant and Assistant was, therefore, considered jointly from among the following eligible Upper Division Clerks :-

1. Shri S. Choudhury
2. Smti N. Sen. Majumder
3. Shri MC Das ( Scheduled Caste)

W. B. M. 3  
(H. B. M. 3)  
Chairman

W. B. M. 3  
(A. P. T. C. 3)  
Member (GT)

W. B. M. 3  
(B. T. G. 3)  
Member

Attested

J. K. Ray  
11/11/98

Deputy Director of Census Operation  
Arunachal Pradesh Shillong-3

Both the posts of Assistant and Accountant were reserved for Scheduled Caste candidates. But as the lone Scheduled Caste Candidate in the Junior most in order of seniority the DPC decided that the post of Assistant be treated as unreserved but the reserved post be carried forward to the next recruitment year. The post of Accountant is, however, treated as reserved and after going through the Character Rolls of the above officials and assessment of their inter-se merits without according higher grade to the Scheduled Caste Candidate the DPC recommended that Smti N. Sen. Majumder be promoted to officiate in the post of Assistant <sup>w.e.f. 6/6/98</sup> and Shri M. C. Das (SC) be promoted to the post of Accountant reserved for Scheduled Caste. In the event of the post of Assistant being abolished or in the event of Shri S. Choudhury, who is currently going prosecution in a court of Law and whose case of promotion is being considered separately by the DPC, is exonerated of the charges framed against him, is found suitable for promotion to the post of Assistant as per <sup>his</sup> merits, Smti N. Sen. Majumder will stand reverted to the post of Upper Division Clerk. Shri MC Das (SC) who has been recommended by the DPC for promotion to the post of Accountant reserved for the SC Candidate will continue in the post of Accountant as long as that post continues.

4. Record Keeper : - The DPC after going through the ACR of Mr. H. B. Marbaniang, Jr. Gasetner Operator, find him suitable for promotion to the post of Record Keeper. Hence, the DPC recommended that Shri Marbaniang be promoted to the post of Record Keeper w.e.f. the date of joining.

5. Jr. Gasetner Operator : - The DPC after going through the ACR of Shri K. Rabha, Daftary find him suitable for promotion to the post of Jr. Gasetner Operator. The DPC, therefore, recommended that Shri K Rabha be promoted to the post of Jr. Gasetner Operator w.e.f. the date of joining.

6. Daftary : - According to the seniority list of Shri K. K. das is the seniormost peon. The DPC after going through the ACR of Shri K.K. das declared him unfit for promotion. The case of Shri Ram Farayan

(H. B. Pai)

(A. P. K. T. H. K.)  
Member (SC)

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(H. T. SINGH)  
Member

Attested

J. C. Rayamajhi  
11/11/98

Deputy Director of Census Operation  
Arunachal Pradesh Shillong-3

Who is the next in seniority, is considered. After going through his ~~69~~ <sup>80</sup> AGM the DPC find him suitable for promotion to the post of Daftry. The DPC, therefore, recommended that Shri Ram Haneyan be promoted to the post of Daftry w.e.f. the date of joining.

C O M P I R M A T I O N

1. Cartographer : - The DPC after going through the Character Rolls of Shri D. N. Ram, Cartographer find him suitable for appointment on substantive capacity as Cartographer. The DPC, therefore, recommended that Shri D. N. Ram be appointed on substantive capacity as Cartographer w.e.f. 16.5.82.

2. Hindi Translator : - The DPC after going through the Character Rolls of Shri A. K. Mishra, Hindi Translator find him suitable for appointment on substantive capacity as Hindi Translator. The DPC, therefore, recommended that Shri A. K. Mishra be appointed on substantive capacity as Hindi Translator w.e.f. 23rd January, 1983.

3. Computors : - The DPC after going through the Character Rolls of the following persons : -

- i) Shri Prafulla Chandra Das, Computer
- ii) Shri Abdul Goney, Computer
- iii) Shri Parimal Chandra Das, Computer
- iv) Shri Atul Chandra Das, Computer
- v) Shri A. C. Bhattacharjee, Computer

find all of them suitable for appointment on substantive capacity as Computer. The DPC, therefore, recommended that the following Computors be appointed on substantive capacity w.e.f. the date shown against their names : -

- i) Shri Prafulla Chandra Das - 6.9.82
- ii) Shri Abdul Goney - 6.9.82
- iii) Shri Parimal Chandra Das - 6.9.82
- iv) Shri Atul Chandra Das - 23.2.83
- v) Shri A. C. Bhattacharjee - 23.2.83

*W. B. P.M.*  
( M. B. P.M.)  
Chairman

*A. P.M.T.U.*  
( A. P.M.T.U.)  
Member (ST)

*H. C. DINGH*  
( H. C. DINGH )  
Member

*Attested*

*J. K. Ray*  
11/11/98

Deputy Director of Census Operation  
Arunachal Pradesh Shillong 3

4. Sr. Stenographer : - The DPC after going through the Character Rolls of Shri A. C. Paul, Sr. Stenographer find him suitable for appointment on substantive capacity as, Sr. Stenographer. The DPC, therefore, recommended that Shri A.C. Paul be appointed on substantive capacity as Sr. Stenographer w.e.f. 6.9.82.

5. Draughtsman : - The DPC after going through the Character Roll of Shri S. Baishey, Draughtsman find him suitable for appointment on substantive capacity as Draughtsman. The DPC, therefore, recommended that Shri Baishey be appointed on substantive capacity as Draughtsman w.e.f. 26.9.82.

6. Sweeper : - After going through the Character Roll of Shri. Dhian Singh, Sweeper the DPC find him suitable for appointment on substantive capacity as Sweeper. The DPC, therefore, recommended that Shri. Dhian Singh be appointed on substantive capacity as Sweeper w.e.f. 23rd Feb 83.

7. Peon : - The DPC after going through the Character Rolls of Shri T. B. Thapa, Peon find him suitable for appointment on substantive capacity as peon. The DPC, therefore, recommended that Shri T. B. Thapa be appointed on substantive capacity as Peon w.e.f. 17-8-81.

8. Chowkidar : - The DPC after going through the Character Roll of Shri Usman Varia, Chowkidar find him suitable for appointment on substantive capacity as Chowkidar. The DPC, therefore, recommended that Shri Usman Varia be appointed on substantive capacity as Chowkidar w.e.f 23rd February, 1983. *Carried that integrity Certificates in respect of all the above officials have been issued.*

Ap/6/83

( M. B. RAI )

Chairman

( A. PYRTUH )

Member (ST)

Ap/6/83

( M. T. SINGH )

Member

Attested

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J. K. Raju  
11/11/98

Deputy Director of Census Operation  
Arunachal Pradesh Shillong 3

Annexure - 2

194

Department of Personnel & A.R. O.M. No. 1[9]74-Estt.(SCT), dated 29th April 1975 to all Ministries etc.

Subject:—Reservation for Scheduled Castes and Scheduled Tribes in services—Single vacancy arising in a recruitment year.

Attention of the Ministry of Finance, etc. is invited to Ministry of Home Affairs O.M. No. 1[9]74-Estt.(SCT), dated 29th April 1975 to all Ministries etc. O.M. No. 2[24]63-Estt.(D) dated the 4th December, 1963 read with O.M. No. 1[11]69-Estt.(SCT), dated 2nd September, 1964, which provide *inter alia* that, if there be only one vacancy in any recruitment year, it should be treated as unreserved, irrespective of its falling at a reserved point. This provision results in a situation where by in small cadre, where recruitment is occasional and generally not more than one vacancy arises at a time, the Scheduled Castes and Scheduled Tribes are unable to get any benefit out of the orders providing reservations for them.

2. The matter has been considered in the light of the judgement of the Supreme Court dated the 11th October, 1973 in the case of *Areli Ray Choudhury vs. Union of India (Railway Ministry) and others*, and it has now been decided that in para 1 referred to in para 1 above, while in cases where only one vacancy occurs in the initial recruitment year and the corresponding roster point happens to be for a Scheduled Caste or Scheduled Tribe, it should be treated as unreserved and filled accordingly and the reservation carried forward to subsequent three recruitment years as hitherto, in the subsequent year(s), even if there is only one vacancy, should be treated as "Reserved" against the carried-forward reservation from the initial recruitment year and a Scheduled Caste/Scheduled Tribe candidate, if available, should be appointed if that vacancy, although it may happen to be the only vacancy in that recruitment year(s). For instance, if a single vacancy arises in the initial recruitment year 1975, and it falls at a reserved point in the roster, it will be treated as "unreserved" and filled accordingly in that year but the reservation would be carried forward to subsequent recruitment year(s). In the first subsequent year, i.e., 1976, if, again, a single vacancy occurs, then it should be treated as reserved against the reservation carried forward from 1975, and a Scheduled Caste/Scheduled Tribe candidate, as the case may be, should be appointed against that vacancy, in spite of the fact that the vacancy happens to be the only vacancy in that recruitment year. In the event of a Scheduled Caste/Scheduled Tribe candidate not being available to fill the reserved vacancy in 1976, the reservation would be further carried forward to 1977 and 1978, when also a single vacancy, if any, arising in those years should be treated as "reserved" against the carried-forward reservation, whereafter, the reservation will lapse.

3. In this Department's O.M. No. 16[5]74-Estt.(SCT), dated 11-6-1974, it was clarified that a recruitment year during which only a single vacancy arises and hence gets treated as unreserved need not be counted as an effective year towards the period for which the reserved vacancy is to be carried forward. Since a single vacancy arising in a year will now also be treated as reserved in the manner indicated in para 2 above, the orders contained in this Department's O.M. dated 11-6-1974 are hereby cancelled. The year in which no vacancy arises will, however, continue to be ignored, as at present, for purposes of counting the effective years towards the period of carry-forward.

4. In this Department's O.M. No. 10[37]74-Estt. (SCT), dated 3rd February 1975, it has been clarified that, although in the case of promotions by selection from Class III to Class II, within Class II and from Class II to the lowest rung or category in Class I there is no carry-forward of reservation from year to year, when a vacancy falling on a reserved point in the roster is treated as unreserved due to its being the only vacancy during the year of promotion, the reservation due against the reserved point should be carried forward to the subsequent three recruitment years. These orders would continue to apply to the promotions to the posts mentioned therein, and in conjunction with the instructions contained in para 2 of this O.M. the single vacancy occurring in the year, subsequent to the initial year of recruitment should be treated as reserved even though it may be a single vacancy in that year, in other words, the reservation carried-forward on account of there being only one vacancy during the initial year of promotion, should be adjusted by treating the vacancy arising in the subsequent year(s) as reserved, even though there might be only a single vacancy in that subsequent year(s).

5. The note below the roster in Annexure I and note (2) below the roster in Annexure II to Ministry of Home Affairs O.M. No. 1[11]69-Estt.(SCT), dated 22-4-70 and not (1) below the roster prescribed in Department of Personnel and Administrative Reforms O.M. No. 1[3]72-Estt.(SCT), dated 12-3-1973 be amended as follows—

"If there are only two vacancies to be filled in a particular year, not more than one may be treated as reserved. If there be only one vacancy in a particular year which falls on a reserved point in the roster, it will be treated as unreserved in the first instance and filled accordingly but the reservation should be carried forward to subsequent year(s). In the subsequent year(s) of recruitment, the reservation should be applied by treating the vacancy arising in that year as reserved even though there might be only a single vacancy in that subsequent year(s)."

6. The instructions contained in this O.M. relate only to the reservations and "carry-forward" in respect of a single vacancy. In cases other than those relating to a single vacancy, instructions relating to reservation and "carry-forward" as contained in MHA OMs, dated 4-12-1963 and 2-9-1964 read with O.M. No. 27[25]63-Estt.(SCT), dated 25-3-1970 and O.M. No. 1[4]70-Estt.(SCT), dated 11-11-1971 will continue to apply.

7. Ministry of Finance etc. are requested to bring the above instructions to the notice of all the concerned authorities under their control.

Ministry of Home Affairs letter No. U. 13019[1]75-AP dated 28-9-1977 to the Chief Secretaries to the Government of Arunachal Pradesh and Mizoram

Subject:—Percentage of reservation for Scheduled Tribes in appointments made by direct recruitment and by promotion in the Services under the Union Territories of Arunachal Pradesh, Mizoram—Exchange of reserved vacancies.

I am directed to say that the question whether the reservations for Scheduled Tribes in direct recruitment to Group A (Class I) and Group B (Class II) posts under the Union Territory of Arunachal Pradesh where the vast majority of the population consists of Scheduled Tribes, and there are no Scheduled Castes in the Union Territory could be enhanced had been raised at the meeting of the Home Minister's Advisory Committee on Arunachal Pradesh held on 16th November, 1974 when it was agreed that it should be examined whether the vacancies reserved for Scheduled Castes could be utilised for Scheduled Tribes in the same year, instead of after 3 years. The matter has been examined and Government of India have now decided that as there is a large population of Scheduled Tribes in the Union Territories of Arunachal Pradesh and Mizoram and as Group A and B posts/services under these two Union Territories are also exempt from the purview of the Union Public Service Commission, while the prescribed percentages of reservation viz., 15% for Scheduled Castes and 7½% for Scheduled Tribes in direct recruitment on an all India basis by an open competition and 16-2-3% for Scheduled Castes and 7½% for Scheduled Tribes in direct recruitment on an all India basis, otherwise than by an open competition should continue to apply to direct recruitment to Group A (Class I) and Group B (Class II) posts/services under these two Union Territories, the unutilised vacancies reserved for Scheduled Castes in the respective categories of posts/services under the two Union Territory Administrations may be exchanged in favour of Scheduled Tribes every year, instead of only in the third year of carry-forward as under the existing instructions contained in para 3 of the Ministry of Home Affairs Office Memorandum No. 27[25]63-Estt.(SCT), dated 25-3-1970. The period of carry forward of the remaining unutilised reserved vacancies if any after the exchange referred to above, will still continue to be 3 years, as before.

2. It has also been decided by the Govt of India that the same principle of exchanging every year the unutilised reserved vacancies for Scheduled Castes in favour of Scheduled Tribes, instead of only in the third year of carry-forward may be applied also to posts filled by promotion in the services of the Union Territories of Arunachal Pradesh and Mizoram to which the scheme of reservation in promotion applies. In the case of promotion by selection in or to Group B (Class II) and to the lowest rung of Group A (Class I), there is already a provi-

Annexure 3

Annexure - 3

**CONFIDENTIAL**

**SPEED POST**

Government of India  
Ministry of Home Affairs  
Office of the Director of Census Operations  
Arunachal Pradesh: SHILLONG - 793 003

14 JUN 1996

No. ARA. 18031/1/96 (Part-I) Dt. Shillong, the

To,

The Registrar General, India,  
Ministry of Home Affairs,  
2/A, Mansingh Road,  
NEW DELHI - 110 011

Sub :- FILLING UP OF THE POST OF OFFICE SUPDT.

Sir,

I have the honour to inform you that as per instruction from the Office of the Registrar General India advertisement for filling up of the post of Office Superintendent on deputation in this Directorate was given in the Employment News/Rozgar Samachar but not a single application has been received till last date of receipt of application except for the applications from two candidates of this office. One of the two candidates is the Head Assistant Shri M.C. Das who has completed three years of regular service in the post of Head Asstt. in the month of March this year and the other is the Assistant Shri S. Choudhury of this office. Their applications alongwith ACRs for the last five years are enclosed herewith for favour of your kind consideration. A representation of Shri S. Choudhury for considering him for promotion to the post of Office Supdt. is also enclosed with his application. Shri S. Choudhury the Assistant of this office is in fact senior to Shri M.C. Das the present Head Asstt. as U.D.C. Shri S. Choudhury (General) was appointed in this Directorate as UDC on transfer w.e.f. 4.12.69 whereas Shri M.C. Das (SC) was recruited directly as LDC on 29.5.70 and promoted to UDC with effect from 21.11.70. Subsequently, Shri S. Choudhury was promoted to the post of Accountant/Assistant w.e.f. 10.1.80 on ad hoc basis. But he was again reverted to the post of UDC with effect from 4.7.83 perhaps because a CBI case was initiated against him in the year 1977. Reasons for his reversion was, however, not available in any record of this office. On the other hand Shri M.C. Das ^ promoted to the post of Accountant/Assistant w.e.f. 8.6.83 on regular basis after the reversion of Shri S. Choudhury, on the ground that the post was reserved for SC as it was a case of promotion. Thereafter Shri M.C. Das ^ promoted to the post of Head Assistant w.e.f. 17.12.90 and subsequently regularised in this post. The judgement of the Court case of Shri S. Choudhury was passed on 4.3.93 and according to the judgement his ad hoc services in the post of Assistant was regularised w.e.f. the date of verdict i.e., 4.3.93. Shri S. Choudhury was not given any past benefit of his services in this office except for notional increments (for fixation of his pay) which was held up after he was reverted from the post of Asstt. to the post of UDC for court case against him and also except for the benefit of regularisation in the post which of Asstt. which he was holding on ad hoc basis since 20.8.90. The DPC while considering the notional increments in view of the judgement of the court found him fit for promotion as recorded in the report kept in seal covers and was such the DPC approved of his ad hoc service in

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*Attested*

*J.K. Raju*

*11/7/98*

Deputy Director of Census Operation  
Arunachal Pradesh Shillong 3

the post of Asstt. for regularisation with effect from the date of verdict of the Court of Law. Shri S. Choudhury had lost all the promotions which he would have got but for the court case, there were only one post of Accountant/Asstt. and Head Asstt. in this Directorate which could have been treated as unoccupied because of single post. On this ground Shri S. Choudhury has submitted several representations to the O/O the EGI through proper channel with a prayer for allowing him the benefit of notional promotions to all the posts w.e.f. the same dates of promotions of his junior Shri Mohan Ch. Das (the present Head Asstt.) to these posts, but so far no reply has been received from the O/O the RGI. As a matter of fact in the judgement of the Court it has not been specifically mentioned that Shri Choudhury should get all the past benefit of his services. However, it was stated that "the service career of Shri S. Choudhury may not be affected in any way" although in the judgement he was asked to give a written undertaking that "he will not commit such offence in future". Copy of the judgement was forwarded to RGI vide this office letter of even number dated 12.3.93. A copy of the same is enclosed for favour of your ready reference. Letter of even no. dt. 14.7.93 (copy enclosed) may also kindly be referred to.

A comparative statement regarding appointments and promotions of Shri S. Choudhury and Shri M.C. Das has been prepared, and enclosed herewith in order to enable the O/O the Registrar General, India to examine the case and representations of Shri S. Choudhury in details, and to arrive at a firm decision as to who may be promoted to the post of Office Supdt. In this connection it may kindly be noted that in view of the final report of SIU the post of Office Supdt. in this office should be filled up by promotion only in order to reduce the number of surplus staff.

Orders regarding promotion to the post of Office Supdt. may kindly be issued within the stipulated period of three months from the date of receipt of final report of SIU.

Encl : As stated above.

Yours faithfully,

(A. K. PAUL)  
Asstt. Director of Census  
Operations, Arunachal Pradesh,  
Shillong - 793 003.

4. Copy of the judgement  
of Court.

5. Copy of letter No. ARA. 18031/  
1/96 (Part-I) dt. 14.7.93.

6. Copy of letter No. ARA. 31037/1/93  
Ext. dt. 12.3.93.

Deputy Director of Census Operation  
Arunachal Pradesh, Shillong 3

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Statement showing the Appointment and Promotions with remarks in respect of Shri M.G. Das, Head Asstt. and Shri S. Choudhury, Asstt. in the Directorate of Census Operations, Arunachal Pradesh, Shillong

Shri S. Choudhury, Asstt.	Remarks	Shri M.C. Das, Head Asstt.	Remarks
1. Appointed as UDC on transfer w.e.f. 4.15.69		1. Appointed as LDC on 29.5.70	
2. Promoted to the post of Accountant/Asstt. w.e.f. 10.1.80 on ad hoc basis	CBI case was initiated against him in the yr. 1977. He was reverted to the post of UDC w.e.f. 4.7.83 without assigning any reason. It is implied that a CBI case was initiated against him.	2. Being SC, Shri M.C. Das was promoted to the post of UDC w.e.f. 21.11.70 superseding the senior (general) LDCs	
3. Was reverted to the post of UDC w.e.f. 4.7.83 on the date of resuming duties after leave.	Regular promotion was not given to Sri S. Choudhury as a Court case was going on against him.	3. Promoted to the post of Acctt./Asstt. w.e.f. 8.6.83 on regular basis.	Shri M.C. Das (SC) was given regular promotion to the post of Acctt./Asstt. on the ground that there would be ultimately only one post of Acctt./Asstt. and Shri S. Choudhury although senior to Shri Das could not be considered for promotion to this post as a Court Case was going on against him and besides, as per Roster this post is reserved for SC.
4. Promoted again to the post of Asstt. on 20.8.90 on ad hoc basis against temporary post created for 1991 Census. He continued in the post of Asstt. on ad hoc basis against the permanent post of Asstt. which was available on the promotion of Shri M.C. Das to the post of HA w.e.f. 17.12.90.		4. Promoted on ad hoc basis to the post of H.A. w.e.f. 17.12.90 as Shri P.B. Dutta holding the post of HA was promoted to the post of Office Supdt.	
5. He was given regular/promotion to the post of Asstt. w.e.f. 4.3.93 i.e., the date of judgement passed by the Court of Law.	Shri S. Choudhury's ad hoc service in the post of Asstt. was regularised on the approval of DPC according to the judgement of the Court that "the service career" of Shri Choudhury "may not be affected in any way". In the judgement of the Court it has not been, however, mentioned that Sri Choudhury should be given past benefit of services; rather it was mentioned that he should give an undertaking to the office that "he will not commit such offence in future".	5. Promoted to H.A. on ad hoc basis w.e.f. 17.12.90 and regularised w.e.f. 26.3.93.	His services was regularised w.e.f. 26.3.93 in the post of H.A. as there was no other eligible candidate for regular promotion and besides, as per roster this post is reserved for SC and Shri Das is S.C.

*Attested*

*J.W. Raju*  
11/11/98

20/11/96

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Tiled by  
Chanchal  
Advocate

for Respondent No: 4  
2/11/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH:GUWAHATI

O.A.NO. 244/96

Shri S. Choudhury ..... Applicant

Versus -

The Union of India & Ors.

IN THE MATTER OF :

Written statements submitted by the

Respondent No. 4 .

The humble Respondent submits his Written

Statements as follows :

1. That the Respondent No. 4 in O.A. No. 244/96 O.A. No. 244/96 received notice along with the copy of O.A. in time .

2. That on receipt of the notice in O.A. 244/96 from the Registry of the Hon'ble Tribunal he prepared to file Written Statements in the case but the Officials of the Census Dpartment prevented the Respondent on the plea that the Department will file written Statement on his behalf of also and his case will be defended by the Department hence he did not filed his Written Statement in the case .

3. That on seeing the Written Statements of the Respondents No. 1, <sup>on 22/11/99</sup> ~~1st~~ 2 & 3 of the O.A., the Respondent No. 4 found to his surprise that in the Written Statements he has not been shown as Respondent No.4 by the Department and hence he is compelled to file this Written Statement in Defence of his own case

4. That before submitting parawise reply in O.A. the Respondent No. 4 begs to state that he fully supports the contents of the Written Statements submitted by the Respondents No. 1 ,2 & 3 but he adds the following in ~~1st~~ support of his <sup>case</sup> and prays before the Hon'ble Tribunal to refer the Written Statements of the Respondents No.1, 2 & 3 at the time of hearing of the case .

5. That the application is barred by limitation as the Respondent No. 4 has superseded the applicant on 6.6.83 vide D P Cdtl. 66,83 and promoted as <sup>2nd</sup> Accountant which post was reserved for S.C.

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in U.D.C. *Yea-*

6. That the Respondent NO. 4 is direct recruit, and the applicant was absorbed in service as U.D.C. who came from other Department.

7. That the applicant belongs to general category while the Respondent NO. 4 belongs to Schedule Caste Community.

8. The case of the applicant could not be considered by the D.P.C. *Yea- in 1993* as he was involved in criminal case before Special Judge.

9. That the post of Assistant and Accountant both were reserved for Schedule Caste candidates.

10. That the D.P.C. after due consideration of the facts and merit of the case of the applicant as well the Respondent No. 4, decided to allow the Respondent No. 4 to continue as Accountant and against the reserved quota which is permanent one.

11. That out of two reserved posts the post of Assistant has been *Yea-* made by the DPC *un* reserved due to non-availability of S.C. candidate.

12. That after serving as Accountant with effect from 8.6.83, the Respondent NO. 4 got promotion to the post of Head Assistant with effect from 17.12.90 and at that time the applicant was allowed to work as Assistant against

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*Cab.* <sup>MC</sup> the vacancy caused by Shri ~~a-e~~ Das, Respondent No. 4 due to his promotion to the post of Head Asstt. With effect from 17.12.90.

13. That the Respondent No. 4 has been promoted to the post of Office Superintendent by the Registrar General of India vide Order No. 11/12/94- Ad. IV dated 16.10.96 in the pay scale of Rs. 1640 – 2900.00 per month with effect from 23.10.96 or the date of his taking charge of the post. The Respondent No. 4 received the promotion order on 30.10.96 and he joined on 31.10.96 accordingly.

Annexure – R/1 is the copy of promotion order of the Respondent No. 4 issued by the Deputy Director, office of the Registrar General of India, New Delhi.

14. That the applicant has been convicted by the Special Judge No.1/78 under Section 409/468 I.P.C. with 52 & 51 ( c ) P.C. Act, 1947 but released on probation of offenders Act.

Annexure – R /2 is the photo copy of Judgment passed by the Hon'ble Special Judge in case No. 1/78 u/s 409/468 I.P.C. with section 52 and 51 ( c ) P.C. Act, 1947.

15. That vide Annexure – R/1 , the Respondent has been directed that <sup>probation</sup> he will be on promotion for a period of two years and he has already completed

2 years 3 months and the authority has sent the assessment report to the Registrar General of India on 21.1.99 as asked by him for confirmation of the Respondent No. 4 in the said post and it is expected that the confirmation of the Respondent will be done at an early date as the Registrar General has himself asked for assessment report from the Director Census Operation, Arunachal pradesh .

16. That with regard to para 7 regarding reliefs sought for the Respondent begs to state that the applicant being a general candidate is not entitled to any of the reliefs sought for and as such , the application is liable to be dismissed .

17. That regarding grounds for relief, the Respondent submits that in view of the facts and circumstances narrated above none of the grounds is maintainable in law as well as in facts and as such the application of the applicant is liable to be dismissed .

18. That your Respondent Submits that that the applicant has no case to stand and as such the same is liable to be dismissed .

Verification

I, Mohan Chandra Das, Respondent No. 4 do hereby solemnly declare that the statements made in para 1, 2, 3, 4, 5, 6, 7, 8, 9 are true to my knowledge and those made in paras 10, 11, 12, 13, 14, 15... of the Written statements are true to my information derived from the records and the rests are my humble submissions before this Hon'ble Tribunal.

Date:- 25.1.99

Place :- Guwahati

*Mohan Chandra Das*  
Declarant.

Annexure R/1

BY SPEED POST

"HMG GOVERNMENT OF INDIA"

Ref. No. 11/12/94-Ad.IV

सरकारी भवान  
GOVERNMENT OF INDIA

गृह मंत्रालय

MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA

भारत के लागू रजिस्ट्रार का कार्यालय  
OFFICE OF THE REGISTRAR GENERAL, INDIA

दिल्ली, नेटवर्क 2/A, Mansingh Road,  
New Delhi, the 16th October, 1996

TB

ORDER

On the recommendation of the Departmental Promotion Committee, the Registrar General, India is pleased to appoint the following Head Assistant in the office of the Director of Census Operations, Arunachal Pradesh as Office Superintendent in the pay scale of Rs.1640-60-2600-EB-75-2900 by promotion in the same office in a temporary capacity with effect from 23.10.96 or the date of his taking charge of the post, whichever is later and until further orders:

1. Shri M.C. Das
2. He will be on probation for a period of two years.
3. He should exercise his option for pay fixation under FR 22 (a), (1) within one month from the date of promotion.

*Onwards*  
(K. VIVEKANAND)  
DEPUTY DIRECTOR

No. 11/1/96-Ad.IV

Copy to:

New Delhi, the 16th October, 1996

1. Director of Census Operations, Arunachal Pradesh, Shillong (with one spare copy for the individual concerned).
2. Pay & Accounts Officer (Census), MHA, AGCWM Building, New Delhi.
3. Records Assistant, RG's Office.
4. Order file.

*Onwards*  
(K. VIVEKANAND)  
DEPUTY DIRECTOR

Received (S)  
Rome 10/10/96  
Rome 10/10/96



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JUDGEMENT AND ORDER

The prosecution story in brief is that the accused Shri Sudhangshu Choudhury was posted and functioned as a Cashier during 1975-76 in the Office of Director of Census Operations, Govt. of Arunachal Pradesh at Shillong. During the said period, the accused was alleged to have ~~been~~ misappropriated a total sum of Rs. 8556.05p entrusted to him for remitting to the concerned Deputy Commissioners/ Additional Deputy Commissioner of different Districts in Arunachal Pradesh for payment to the staffs of Census Operation posted at their respective Districts in the interior for salary and arrears pay and allowances etc. by forging the Office copy of the forwarding letters and also falsifying Office records in the Directorate of Census Operations, Govt. of Arunachal Pradesh, Shillong.

1. On 23.4.1977, Superintendent of Police, CBI, Shillong registered a case against the accused Shri S. Choudhury on the basis of source information report and got investigated the case by Shri G.D. Gupta, Inspector of Police, CBI, Shillong. On completion of the investigation, sanction for prosecution was obtained from the competent authority, and then submitted charge-sheet against the said accused in the Court of Special Judge, Meghalaya, Shillong.

2. On consideration of Charge, the Charges u/s 409, 468 IPC and Section 5(2) read with Section 5(i)(c) of P.C. Act 1947 (Act II of 1947) were framed against the accused by the then Special Judge, Mr H. Nongrum. Accused pleaded not guilty to the said charges. During the trial



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prosecution examined as many as 32 Nos of witnesses, however, the examination-in-chief of P.W. 32 was inconclusive and same was later dropped as prosecution could not produce him on the target date fixed by the Court.

4. Defence adduced no evidence and took the plea of complete denial. *Accused was examined U/S 313 Cr.P.C.*

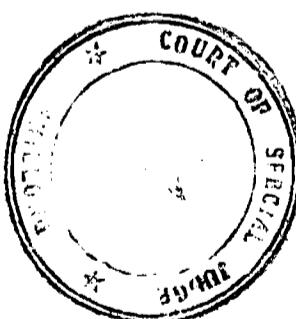
5. Heard the argument at length from learned Sr.P.P., CBI Mr J.S Terang as well from learned defence Counsels Mr S.B. Choudhury and Mr N.K. Deb.

6. The first point to be considered is whether the accused was a public servant or not at the relevant time ?

On this point, it is in the evidence of P.W. 23 that the accused was appointed vide Ext.219 by the then Asstt. Director, Census Operations Arunachal Pradesh, Shillong. The accused also did not dispute of the said fact, and admitted in his statement that vide Ext.220 signed by Sri J.K. Borthakur, the then Director of Census Operations, Arunachal Pradesh, Shillong requiring him to work as Cashier during the relevant period. Hence it can be safely concluded that accused was a public servant during the relevant period.

7. The next point for consideration is whether prosecution has proved the sanction or not U/s 6(1)(c) of P.C. Act, 1947 ?

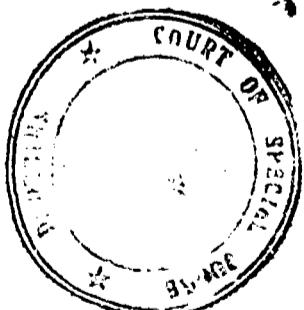
P.W. 26 Shri J.C. Bhuyan was examined by prosecution and proved sanction order Ext.232 by identifying the signature of Sri P.Padmanabha, the then Registrar General of India and the basis of his identifying the signature of Shri P.Padmanabha is because of the fact that he used to receive many letters from the Office of Registrar General of India on which the signature of P.Padmanabha as Registrar General appeared on those letters when P.Padmanabha was in service.



- 3 -

Shri P. Padmanabha retired from service during 1986 so the prosecution could not examine him before the Court. After going through Ext. 232, the sanction order, it is found that he mentioned that he was a competent authority to remove the accused from service and after fully and carefully examining the materials before him, satisfied that prima-facie case is made out against the accused Sri S. Choudhury, accordingly, he accorded the sanction vide Ext. 232. The defence argued that since sanctioning authority was not examined there is no evidence to show who placed the necessary documents before him and what materials sanctioning authority had before him is not known without examining the sanctioning authority. Hence prosecution case does not stand and it should fail on this court alone. Prosecution has pointed out para 11 of Ext. 232 sanction order that sanctioning authority was satisfied after going through the materials placed before him before acceding sanction, hence it is not required for prosecution to prove of that satisfaction. Prosecution has referred AIR 1973 S.C 2131 in support of his contention that where the facts constituting the offence appear on the face of the sanction accorded by the Competent authority, it is not necessary for the prosecution to lead separate evidence to show that the relevant facts were placed before the Competent authority and it cannot be said that the prosecution has failed to prove that the competent authority has accorded his sanction without applying his mind to the facts of the case. I am of the view that the submission of Sr. P. P. CBI is tenable on this point.

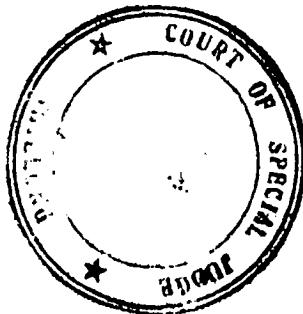
8. Therefore in view of the above ruling cited and in view of the facts as mentioned in Ext. 232, it is clear that the ingredients required to prove a valid sanction are fully complied by the prosecution.



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9 (1) Another point for consideration is whether the accused was in the capacity entrusted with the amount involved in this instant case and whether he had dominion over it, and whether accused has misappropriated an amount of Rs. 8556.05 p

(i) It is in evidence that accused drawn an amount of Rs. 3252.15p on 31.3.75 vide Cash Book Ext. 51(1) entry at page 240 and the said amount was not paid till 8.7.76 and the accused retained the said amount upto 8.7.76. The evidence also shows that of the said amount, an amount of Rs. 1251.60p was sent by forwarding letter Ext. 9 to D.C. Khonsa vide Bank Draft No. 234356, Ext. 35 on 8.7.76. On the same date an amount of Rs. 360/- was also sent to D.C. Zing by forwarding letter Ext. 9 (3) by Bank Draft No. CW-234457. The said Draft was purchased by the accused vide Draft Purchase Application Ext. 217. On the same day an amount of Rs. 649.80p was sent to A B C Pasighat by forwarding letter Ext. 9 (4) vide Draft No. <sup>234355</sup> CW-234455 Ext. 240. This Draft was purchased by accused vide Draft Purchase Application Ext. 213. On the said date another amount of Rs. 360.00 was sent to B.G. Along by forwarding letter Ext. 9 (5) through Bank Draft No. CW-234354 Ext. 97, and this Draft was purchased by accused vide Draft Application Ext. 214. On 30.7.76, the accused sent an amount of Rs. 300.75/- by forwarding letter Ext. 9 (6) vide Draft No. CY-538003, Ext. 112, and this Draft was purchased by accused from Bank vide draft Purchase Application Ext. 211. The remaining amount of Rs. 330/- was shown paid by the accused in Cash in Shillong without giving any date to Sri P.C. Das P.W.15 vide Ext. 74. Actual payees receipts. (This Ext. 74 was not available even after a long search). However, since there was no cross-examination on the said Ext. 74, the same is taken to have been duly proved.



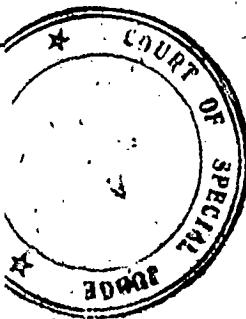
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On perusal of the documents exhibited in this Court, it is found that the accused never shown disbursement of the above amounts in Ext. 228 as no entry was made by the accused. So far showing the payment of the said amount on 5.4.75 in cash Book Ext.51 is concerned, I find there is no entry to that effect in Ext. 51 as argued by the prosecution and also mentioned in the charge-sheet.

The prosecution examined number of witnesses and got proved the different A.P.Rs (Actual paying receipts) by which the staffs have received the amounts only in July, 1976, but I feel to go in that detail would unnecessarily lengthen the Judgement. However, the fact remains that by the evidence available on record, it shows that accused withdrawn the amount of Rs.3252.15p on 31.3.75 towards Arrear Special Pay for the period from October 1974 to December 1974 for the staffs of Census Operations posted in the interior of Arunachal Pradesh and the said amount was only accounted for by him only in July 1976 and during the said period it appears that the amount was retained by him. The evidence also shows that no entry of payment was made by the accused in the Cash Book Ext. 51 and Ext.228.

10(2) Evidence also disclosed that accused was having in hand as per Cash Book Ext.51 page 240 a sum of Rs.1049.70 p on 31.3.75 towards T.A. Bills payment for the staffs Census Operations attached to ADC Pasighat. The entire amount of Rs.1049.70 p was falsely shown to have been sent to ADC Pasighat through forwarding letter No. ARG.29018/1-74-Cash dt. 8.4.75 ( not exhibited). The accused made false entry of payment of the said amount in Cash Book Ext.51 vide Ext.51(6) but in fact the said amount was sent only on 31.5.75 by five(5) different Bank Drafts as under:-

(i) Out of the total amount of Rs.1049.70p an amount of Rs.407.10 p was sent to D.C. Khonsa vide Bank Draft.



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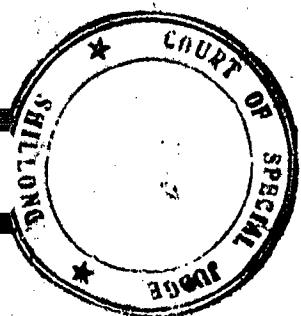
No.269726 dt. 30.5.75 Ext.31 for an amount of Rs.621.60 p (including an amount of Rs.214.50 p, another amount towards T.A.), and Ext. 205 is the Application for Purchase of Bank Draft. The said Bank Draft was sent vide forwarding letter Ext.17.

(ii) From this total amount of Rs.1049.70 p, an amount of Rs.60/- was sent to D.C. Bomdela through Bank Draft No.269725 dt. 30.5.75 Ext. 108. The accused obtained the said Draft by Application for Bank Draft Ext.204. The said Bank Draft was sent vide forwarding letter Ext.69 dt. 31.5.75.

(iii) Out of a sum of Rs.1049.70p, an amount of Rs.330/- was sent to D.C. Along through Bank Draft No.269727 dated 30.5.75 Ext.85 (This draft was for Rs.560.00 inclusive of Rs.330.00). This draft was purchased by accused on 30.5.75 vide Bank draft Purchase Application Ext.206. The prosecution did not exhibit the forwarding letter by which the aforesaid Bank draft was sent to D.C. Along.

(iv) Out of this total sum of Rs.1049.70 an amount of Rs.80.00 was sent to ADC Pasighat through Bank draft No.269723/- 30.5.75 Ext.236 for an amount of Rs.468.20p (Inclusive of Rs.80/-). This draft was purchased vide draft purchase Application dt. 30.5.75 Ext.202. The prosecution did not exhibit the forwarding letter by which the said draft was sent.

(v) Out of Rs.1049.70p, an amount of Rs.172.00 was sent by Bank Draft No.269722 (not exhibited) dt. 30.5.75 for a total amount of Rs.657.00 (inclusive of Rs.172.00). This Bank draft was purchased by the accused vide draft Purchase Application Ext.201 dt. 30.5.75. Prosecution did not exhibit the forwarding letter by which the said amount has been sent.

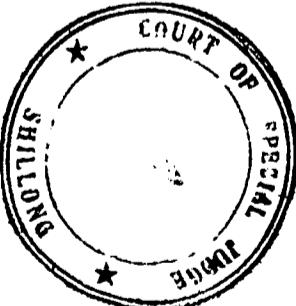


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In respect of the above instances, prosecution examined number of witnesses and also proved different A.P.Rs which the staffs showed receipts of payment after 31.5.75. However, to make reference to all those evidences would unnecessarily lengthen the Judgement. The facts as could be seen is that the accused appeared to have withdrawn the above amount of Rs.1049.70p. On 31.5.75, but retained the same till 31.5.75 and falsely shown to have sent the amounts on 8.4.75 vide entry in Cash Book Ext. 51 and also through forwarding letter No. ARG/29018/1/74-Cash dt. 8.4.75, whereas in fact the said amount was sent only on 31.5.75 to different D.Cs and A.D.Cs and till that date, he retained the amount with him.

11(a) It is in the evidence, that the accused drawn an amount of Rs.267.60 on 26.2.75 vide Cash Book Ext.51 page 224 towards arrear D.A for Census Operation staffs posted in different places at Arunachal Pradesh. Out of the said amount he, had falsely shown that amount Rs. 180.00 was paid out of the said sum of Rs.267.60 by inflating actual amounts of the five Bank drafts. The particulars of the said drafts, their forwarding letters and drafts Purchase Application with their Exhibits are as under:-

(i) Draft No. 953473 dt. 4.3.75(Ext.23). This draft was purchased vide Ext.186 dt. 4.3.75. This draft was forwarded by the accused by Ext. 5 forwarding letter to D.C. Khonsa. In fact this draft was for an amount of Rs.1920.40 whereas the accused inflated the amount of Rs.1920.40p to Rs. 1997.80 as shown in Cash Book Ext.51 and thereby falsely shown an excess amount of Rs. 77.40 p to have been paid.



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(ii) Draft No. 853468 dt. 4.3.75 (Ext. 239). This draft was purchased vide Ext. 185 dt. 4.3.75 and was forwarded by accused vide Ext. 59 forwarding letter to ADC Pasighat. This draft was in fact for an amount of Rs. 726.40, whereas the accused shown the amount of Rs. 767.80 in Cash Book Ext. 51 on 5.3.75 and thereby falsely shown excess amount to have been paid to the tune of Rs. 41.40p.

(iii) Draft No. 853470p dt. 4.3.75 (Ext. 90). This draft was purchased vide Ext. 184 dt. 4.3.75 and forwarded by accused to D.C. Along. In fact this draft was for Rs. 505.80p whereas the accused shown this amount as Rs. 527.40 p in the Cash Book Ext. 51, thereby falsely shown to have paid an excess amount of Rs. 21.60.

(iv) Draft No. 853467 dt. 4.3.75 (not exhibited). This draft was purchased by the accused vide Ext. 187 dt. 4.3.75 for an amount of Rs. 555.80p and was forwarded to D.C. Ziro. The said amount of the draft was inflated by the accused in the Cash Book Ext. 51 as Rs. 577.40 p thereby shown an excess amount of Rs. 21.60 p.

(vi) Draft No. 853471 dt. 4.3.75 (Ext. 114). This draft was purchased by accused vide Ext. 183 dt. 4.3.75 for an amount of Rs. 465.30 p and was forwarded to D.C. Bandela vide forwarding letter Ext. 71 dt. 5.3.75. This amount was shown as Rs. 483.30<sup>483.30</sup> in Ext. 51 Cash Book by the accused, hence an excess amount of Rs. 18.00 from the amount mentioned in the said draft.

In the above manner, the accused appears to have inflated the total amount of Rs. 180.00 (when he showed less in the Bank Drafts and more in the Cash Book Ext. 51 Page 231 as indicated above).



The evidence further shows that for adjustment of the amount of Rs.267.60 is concerned, the accused deposited the said amount only during August, 1976 through the following Bank Drafts:-

- (a) Bank Draft No.538891 dt. 9.8.76(Ext.110) for an amount of Rs.18.00. The said Bank draft was purchased vide Ext. 209 Draft Purchase Application dt. 9.8.76 and forwarded to D.C Bomdila on 11.8.76 by forwarding letter Ext.70.
- (b) Bank draft No. 538897 dt. 9.8.76 (Ext.94) for an amount of Rs. 21.60. The said Bank draft was purchased by Draft Purchase Application dt. 9.8.76(Ext.210) and forwarded to D.C. Along on 11.8.76 vide Ext. 93 forwarding letter.
- (c) Bank draft No. 538893 dt. 9.8.76 for an amount of Rs. 21.60p vide Ext. Bank draft Purchase Application dt. 9.8.76 Ext. 216 and forwarded to D.C. Ziro on 11.8.76 by Ext. 9(14) forwarding letter.

Besides the above Bank drafts, the accused also forwarded an amount of Rs. 257.40p to D.C. Khonsa vide Draft No.538894 dt. 9.8.76 vide Ext. 38 which was purchased by the accused through Ext. 215 and forwarded to D.C. Khonsa vide forwarding letter Ext. 6.

It seems that the accused made good the amount of Rs. 267.60p by the above Bank drafts wherein some other amounts payable to those staffs were also appears to have been included. However, there is no entry of payment in respect of the above drafts in Ext. 228 or Ext. 51 the Cash Books.

Therefore in view of the above evidence, it shows that the accused retained an amount of Rs.267.60 p with him from 26.2.75 to August 1976 and besides he falsely showed paid an amount of Rs.180/- by inflating



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the amount of drafts dt. 5.3.75 in the Cash Book and tried to show that he had made the payment.

12(4) It is also in the evidence that the accused drawn an amount of 741.00 on 6.1.75 vide entry at page 203 of Ext. 51 the Cash Book, towards T.A. Claims of staffs. Out of the said amount, he had shown payment of Rs.180/- on the same day and the remaining balance amount of Rs. 561.00 was in hand on that day. The entry at page 216 of Ext. 51 shows that accused falsely shown payment of Rs. 561.00 by clubbing the ~~paid~~ amount with the pay and allowances of Sri P.C. Choudhury (Rs. 484.20 + Rs. 561.00 = Rs. 1045.20). A perusal of Ext.87 Bank Draft it appears that accused simply sent an amount of Rs.484.20 only to D.C. Along towards the pay and allowances of Shri P.C.Choudhury and no other amount of Rs.561.00 as shown by accused in the Cash Book was ever remitted to D.C. Along. The evidence further shows that the amount of Rs.561.00 was actually sent only in August 1976 by the following Bank Drafts and Cash payment. The details are as under:-

(a) Rs. 246.00 was sent by accused on 16.8.76 vide Bank Draft No.CY-539437 to D.C. Khonsa and the said draft was purchased by the accused vide Application for Draft Purchase Ext. 208.

(b) Rs. 180/- was sent by accused through Bank Draft No. CY-538894 dt. 9.8.76, whereas the total amount of the draft was for Rs. 257.40 (Rs. 180 + 77.40) to D.C. Khonsa. This draft was purchased by accused vide Ext.215.

(c) As per evidence, the accused paid an amount of Rs.135/- to Sri P.D.Das P.W. 28 who proved his signature vide Ext. 233(5).



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Hence, by the above evidence, it shows that the accused retained the said amount of Rs.561.00 with him from 6.1.75 to August, 1976 and vide entry dt. 6.2.75 at page 216 vide Ext.51 falsely showed payment of the said amount of Rs.561.00.

In view of the above facts mentioned above, the prosecution submitted that the said amounts of Rs.3252.15, Rs.1049.70, Rs. 267.60 & Rs. 561.00 were made good by the accused subsequently after some period of time as indicated above. Hence, it proves that there was temporary misappropriation of the said amounts as shown above. He also submitted that the accused also admitted of the above position in his statement recorded under Section 313 Cr.P.C. before the Court. The prosecution also further contended that though the misappropriation is of temporary nature, however, the accused is liable to be punished. He referred to AIR 1983 SC 174 support of his contention. From the facts and circumstances of what has been discussed above, it would appear that the accused had retained the different amounts as indicated above for some period of time and made good the same subsequently. The accused in his statement admitted the facts of retention but threw all the blame on Shri K.C. Kany who was the drawing and disbursing Officer and what the accused did was only under the instruction and direction of the drawing and disbursing Officer under whom he was functioned as a Cashier. However, the accused could not produced any oral or documentary evidence in support of his claim that his omission and commission of the offence was under the instruction and direction of the drawing and disbursing Officer Mr K.C.Kany. As such, his plea of retaining the amount under the instruction and direction of Shri K.C.Kany do not hold water and



- 12 -

subordinate though he has to carry out the order of his superior but should not have followed any illegal orders specially when no written order is in existence. Therefore, the omission and commission of the accused throwing the blame to his drawing and disbursing Officer could not exonerate or absolve him of the said offence.

From the above discussion, it would go to show that the accused was at the relevant time entrusted with the respective amounts on the different dates and has retained of the said amounts which he temporarily misappropriated and made payment subsequently. The accused who was at the relevant time a cashier was no in the capacity entrusted with the money and had dominion over it, hence the ingredients of Section 409 is found well established whereby the accused is liable for the said omission and commission.

The evidence also discloses vide entry at page 16 of Ext. 228 has shown an amount of Rs.3525 to have been received from S.B.I. Shillong against Bill Number R/16 on 29.5.75. Thereafter, on 30.5.75 again shows to have deposited the same with SBI, Shillong vide entry at page 17 of ext. 228 and thereby shows expenditure of the amount of Rs.2525.00 in the Cash Book. Thereafter, once again he had reflected at page 18 on the receipt side to have received the Bank Draft of different amount totalling Rs.3525.00 in addition to other amount. This amount of Rs.3525.00 was a breakup of Rs.487.60; Rs. 690.30; Rs. 407.10; Rs.450.00; Rs.1100.00 and Rs.390.00. The evidence as available on record appear to be insufficient to prove that the accused has misappropriated the said amount of Rs.3525.00. The different staffs member who were examined as P.Ws also never stated that they have not received their dues. All. of them stated that they have received their dues though late. The late payment as stated by the staffs who were examined as P.Ws is due to communication problem. No doubt, the aforesaid entry in the cash Book vide



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Ext. 228 regarding the said amount ~~may~~ appear <sup>to</sup> may be falsified and without supporting Vouchers, but since the prosecution has not been able to conclusively proved the misappropriation of the said amount, the same cannot be said to have been misappropriated by the accused person.

The next question to be determined in this case is whether the accused committed the offence of forgery or not. With regard to the said point as per the evidence already highlighted in the preceding paragraphs, it would appear that the accused had made false entries showing sending of the amount by Bank Drafts and sometimes made payment in cash at the relevant dates but in fact the said amounts were never sent on the dates which he ought to have been sent or paid, but sent or paid the said amounts at a subsequent period after a lapse of some months and one year or above where the same were remitted to the staffs of the Census Operation working in a different places in Arunachal Pradesh. Some of the staffs who were posted in Arunachal Pradesh were examined as P.Ws and they have stated in court that they have received the amount subsequently. They also stated that they used to receive their pay etc. late. Besides the above, the different Bank Drafts exhibited before this Court also corroborates the above facts showing that the accused has sent the Bank Drafts at a later period though the payment were shown to have entered on the date the amount was received from the Bank, but payment to the staffs were made at a much later date thereby making himself liable under Section 468 IPC.

In view of the above facts, I feel that there is sufficient ground to conclude that the accused is found to have committed the offence under Section 468 IPC.

So far the charge of Section 5(1)(c) P.C. Act is concerned, there is no doubt that the accused Shri S. Choudhury was a public servant at the relevant time and this has been well proved as per my discussion in the



- 14 -

foregoing paragraphs. The accused as a public servant falsely shown to have sent the remittance of the different amounts on the particular dates, whereas those amounts were never sent to the staffs on the said date where the same should have been sent. But the accused sent the remittance only subsequently after a lapse of some months or one year and above. In this way the accused is found to have abused his official position and retained the said amount with him which amounted to temporary misappropriation for which the accused is not allowed to do so.

In view of the above, it is clear that all the ingredients of section 51(c) of P.C. Act is made out and as such, the accused is found to have committed the offence u/s 51(2) of P.C. Act also.

Before I part with the judgement in question, it may be mentioned here that the said amount of Rs. 3252.15p Rs.1049.70; Rs.267.60; and Rs. 561.00 have been entered in the Cash Book, vide exhibit 51 by 1 at page 240 for an amount of Rs.3252.15p on the receipt side, Rs.1049.70. on the payment side of exhibit 51 page 240. So also Rs.267.60 was shown on the receipt side on 26.2.75 to have been entered in the Cash Book Ext.51 page 224 and an amount of Rs.561.00 dt. 6.2.75 was entered in Ext. 51 page 216 which was on the receipt side and the payment side. All the entries of the said amount were made by the accused person and were signed by the drawing and disbursing Officer Shri K.C.Kaur. As per the evidence of P.W.s 21, 23, 24, 28 & 30, it is not disputed that the entries in the Cash Book is to be made by the Cashier, but it has to be put up to the drawing and disbursing Officer for his signature who is to verify the correctness of Bank Drafts & other vouchers before the entries were signed. Further, since the cash was on the joint custody, the drawing and



- 15 -

and disbursing Officer should have been very careful and particular in putting his initials and signature in the entries and to satisfy himself about the correctness of the entries made. Shri K.C.Kaur was examined as P.W. 32 of which his examination in-chief was inconclusive and since the prosecution failed to produce him on the target date fixed by the court, he was dropped. Whatever evidence is available from his part shows that he admitted about the Cash Book Ext.51 and also stated that the withdrawal of Rs. 3235.15 is reflected in Ext.51 against Bill No. R/79 and against those entries he has initiated vide Ext.51(1) on page 240. He further stated that Ext.233 is the Bill Register and Ext. 233(1) (a) is the entry relating to Arrear & Special Pay from October, 1974 to December, 1974 & the amount reflected therein is Rs.3235.15 where he also put his initials vide Ext.223(1) (c) of that entry. He also stated that though Ext.223(1)(a) and Ext.51(1) are related to the same Bill Number R/79, under the handwriting of Shri S.Choudhury, the amount in Ext.51(1) does not tally with Ext.223(1)(a). If that be the position, if the amount as appearing in Ext.51(1) is of the same bill number as the one appearing in Ext.223(1)(a), but the amount appearing in Ext.223(1)(a) is not tally with the amount in Ext.51(1), how then Shri K.C.Kaur, the drawing and disbursing Officer put his signature thereon. This is the instance among others that Shri K.C.Kaur P.W. 32 who is expected to be more responsible as the drawing and disbursing Officer signed the said entries without applying his mind and without caring to verify the actual position. I wonder why Shri K.C.Kaur was made as a witness in this case, I feel for the interest of justice, the <sup>should</sup> Department concerned ~~may~~ initiate ~~any~~ action which is deem



- 16 -

deem fit and proper against Shri K.C.Kaur for his lapses as a drawing and disbursing Officer at the relevant period.

In view of what has been discussed above, I find that the accused Shri Sudhangshu Choudhury is guilty of the offence under Section 409/468 IPC read with Section 52 and 51(C) of P.C. Act, 1947.



Later on, heard the accused Shri Sudhangshu Choudhury on the point of sentence and the accused prayed for mercy and requested for a lenient view from the Court on the ground that what omission and commission was done by him was not of his own but on the instruction and direction of the Superior Officer and also in view of the fact that the period taken in this case was about 14 years, and by that the accused has suffered financially and mentally. Further the accused also submitted that he being the earning member of the family Court may consider his prayer for considering lenient view in this case as no offence was committed by him earlier. *Accused also submitted that he was operated from heart surgery.*

This instant case was registered since 1988 and only after the lapsed of about 14 years, it has seen the light of the day. There is no evidence to show that the accused has committed any offence earlier. The period taken in this case no doubt has affected the accused person financially and mentally and considering the facts and circumstances of the case and the amount involved, I feel that the accused deserved to be treated leniently and it is a fit case in which the benefit of Section 4 of the Probation of Offenders Act be granted to the accused person.

From the observation made above, I hold that although the accused is found guilty u/s 409, 468 IPC 5(1)(2) P.C. Act but instead of sentencing him with imprisonment under the above Sections, I gave him the benefit of Section 4 of the Probation of Offenders Act and it is expedient to release him on Probation of good conduct and with no bond with a condition that the accused will not commit such offence in future.

.....



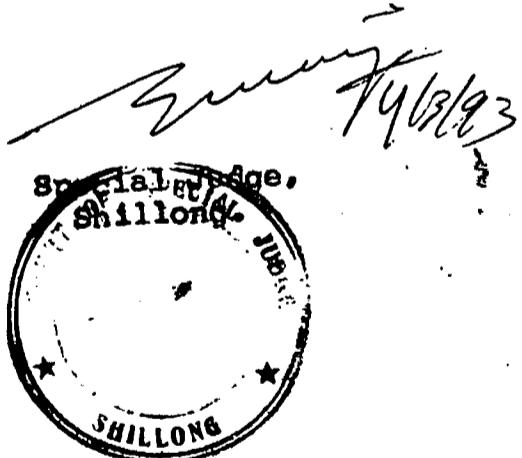
- 2 -

Before I part with the case in question, I would like to say that since the accused has been given the benefit u/s 4 of a Probation of Offenders Act he is also entitled to the benefit u/s 12 of the same Act so that his service career may not be affected. It is to be made clear that the service of the accused should not be affected in any way as he has been given the benefit of Section 12 of Probation of Offenders Act so that the accused may not loose his service.

Therefore, I also hold that though Shri Sudhangshu Choudhury is found guilty but this will not affect his service in any way as he has been given the benefit u/s 12 of the Probation first Offenders.

A copy of this Judgement be sent to his Department for information and necessary action.

The documents seized during the investigation may also be returned to the person from whom they will seize after the expiry of the appeal period.



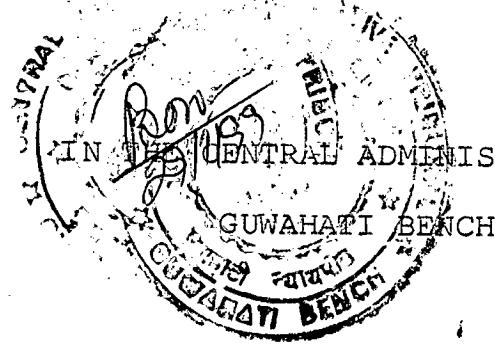
N/o. Addl. DSJ. 93/3

Dated Shillong, the 5<sup>th</sup> February 1993

Copy forwarded to:

The Director of Census Operation  
(Assamachal Pradesh) Daitumkhaw  
Shillong for information and necessary action.

SPECIAL JUDGE  
SHILLONG.



99

Filed by, the applicant,  
Sri N. G. Goswami  
29/11/99  
Jyoti  
Selvani

O. !A. No. 244 of 1996

Sri S. Choudhury

-vs-

Union of India & Ors.

-And-

In the matter of :

Rejoinder submitted by the applicant  
in reply to the written statement  
filed by the Respondent Nos. 1, 2 & 3.

The applicant abovenamed most humbly and  
respectfully begs to state as under :

1. That with regard to the statements made in paragraphs 3, 4 and 5 of the written statement, the applicant categorically denies the same and further begs to state that the statement of the respondents that the post of Accountant was a reserved post for Scheduled Caste since 1969 is not correct rather it is stated that in the Establishment of Directorate Operation, of Census/Arunachal Pradesh at the relevant time there was only one isolated single post of Accountant available, therefore question of reservation of isolated single post of Account cannot arise at all hence the statement is false and misleading. Similarly the post of Assistant was also isolated single in the said establishment of Census Operation, Arunachal Pradesh, Shillong. Hence the contention of the

Contd...

respondents that both the posts of Accountant and Assistant were reserved at the relevant time is categorically denied. The applicant being seniormost was legally entitled for promotion for the post of Accountant and especially on the ground that the applicant was promoted and discharged his duties to the post of Accountant for more than 3 years with effect from 10.1.1980 to 3.7.1983, therefore the applicant has acquired a vested right for continuation to the post of Accountant and the reversion of the applicant from the post of Accountant to the post of Upper Division Clerk vide order dated 4.7.83 was illegal, arbitrary and unfair. In this connection it may be mentioned here that it is settled by the various decisions of the Apex Court as well as different Benches of the Hon'ble Central Administrative Tribunal that there cannot be any reservation in the case of a single isolated post. It is further stated that DPC ought to have considered separately for promotion to the post of Assistant as well as for the post of Accountant. Moreover the post of Assistant as well as the post of Accountant are not analogous post, the authority ought to have constituted a different/separate DPC for consideration of promotion of the eligible candidates. But in the instant case from the statement made in the written statement that both the post of Assistant as well as Accountant had been considered by a single DPC which is not permissible under the law. It is relevant to mention here that the post of Assistant at the relevant time was carrying the pay scale of Rs. 425-700 whereas the post of Accountant was carrying the pay scale of Rs. 425-640. It would be evident from Annexure-3 to the Original Application. It is further stated that the applicant was initially promoted to the

Contd..

post of Accountant being seniormost eligible candidate in the establishment of Census Operation, Arunachal Pradesh although the said promotion was termed as Ad-hoc. However, the applicant was reverted without affording any opportunity or without assigning any reason after discharging his services for more than 3 years without any break. Therefore he has acquired a valuable and legal right for further continuation to the post of Accountant. Therefore the contention of the respondents that the applicant has been considered for promotion only to the post of Assistant at the relevant time in the year 1983 cannot be sustained in the eye of law. As the applicant continued in the promotional post of Accountant for more than 3 years continuously therefore the order of reversion on the ground of pendency of a criminal proceeding is also not sustainable under the law. It is pertinent to mention here that the contention of the respondents that the applicant cannot be considered for promotion to the post of Accountant/Assistant is not correct, rather respondents ought to have adopted sealed cover procedure when a criminal proceeding was pending as per existing rules.

2. That the applicant categorically denies the statements made in paragraphs, 6, 8, 9, and 10 of the written statement and further begs to state that it is settled by the decision of the Apex Court and different Benches of the Central Administrative Tribunal that reservation cannot be applied to an isolated single post. In the instant case the post of Assistant as well as the post of Accountant was isolated post at that relevant time, therefore question of reservation does not arise. It is also stated that the Judgement of

Contd..

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the Learned Special Judge in the case of 1/78 it was categorically directed that the service of the applicant should not be in any way suffer. Therefore the present applicant is entitled to get all consequential service benefits including seniority and monetary benefit from the date of promotion of Respondent No.4 to the post of Accountant.

3. That with regard to the statement made in paragraphs 11, 12, 13, 14, 15, and 17 of the written statement the applicant categorically denies the same and further begs to state that the statement particularly in paragraph 11 of the written statement is false and misleading. Although the proposal for promotion of applicant as well as respondent No.4 to the post of Office Superintendent was initially turned down by the authority vide Annexure-3 to the written statement, however the respondent no. 4 has been promoted to the post of Office Superintendent subsequently ~~and~~ in the pay scale of Rs. 1640-2900 with effect from 23.10.96 vide order dated 16/18.10.96 Annexure R1 to the Written statement filed by the respondent no.4, therefore the non-consideration of the ~~present~~ case of the applicant for promotion to the post of Office Superintendent is highly arbitrary, undair, illegal specially when the respondent No.4 junior to the applicant is considered for promotion to the post of Office Superintendent which is not permissible under the law.

Regarding the contention made in paragraph 13 of the written statement it is stated that even assuming not admitting ~~ff~~ the respondent No.4 is promoted by virtue of his caste by breaking the que even then he cannot be

Contd...

declared senior to the next higher post i.e. Accountant/  
Assistant/Head Assistant.

It is further stated that action of the respondents particularly promotion of respondent No.4 after admission of the Original Application No. 244 of 1996 (Sri S.Choudhury Vs. Union of India & Ors) to the post of Office Superintendent is highly illegal, arbitrary and the same is barred under Section 19 of the Administrative Tribunals Act, 1985, therefore the impugned order of promotion dt. in respect of respondent No.4 ~~dated 16/10/96~~ is liable to be set aside and quashed.

16/10/96

Under the facts and circumstances stated above, the Original Application No. 244 of 1996 is deserved to be allowed with costs.

-6-

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

I, Sri Sudhangsu Choudhury, son of late  
Suresh Chandra Choudhury, aged about 59 years,  
working as Head Assistant, in the office of the  
of  
Directorate/Census Operation, Arunachal Pradesh,  
Shillong, ~~Maxhery~~ applicant in the O.A. No. 244/96  
do hereby solemnly affirm and state that the statements  
made in paragraphs 1 to 3 of this rejoinder are true  
to my knowledge and I have not suppressed any  
material fact.

And I sign this verification on this the  
28th day of January, 1999.

*Sudhangsu Choudhury*  
Signature

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123  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

GUWAHATI

O.A. No. 244 of 1996

Sri S. Choudhury

-vs-

Union of India & Ors.

-And-

In the matter of :

Rejoinder submitted by the  
applicant in reply to the  
written statement filed by the  
Respondent No. 4.

The abovenamed applicant most humbly and  
respectfully begs to state as under :

1. That the applicant categorically denies the statements made in paragraphs 2, 3, 4, 5, 8, 9, 10 and 11 of the written statement and further begs to state that the reservation system is not applicable in the post of Accountant as well as in the post of Assistant in a single isolated post. Therefore since the applicant exonerated from the criminal case pending before the Learned Special Judge, Shillong the applicant is entitled to all consequential service benefits including monetary benefits and also entitled to declare senior to the respondent No. 4 in all the grades namely, Accountant, /Assistant/Head Assistant and also entitled for consideration for promotion to the post of Office Superintendent at least from the date of promotion of respondent No. 4. It is further stated that the promotion of respondent No. 4 is liable to be set aside and quashed on the ground

order  
Contd...

Filed by me on 10/1/96  
Sri S. Choudhury  
123  
6/1/96

-2-

that promotion of respondent No.4 to the post of Office Superintendent has been considered and issued after admission of the O.A. No. 244/96 (S. Choudhury Vs. Union of India & Ors) filed by the present applicant under Section 19 of the Administrative Tribunals Act, 1985 and the Hon'ble Tribunal was pleased to admit the same. Therefore all actions of the respondents particularly the promotion of respondent No.4 to the post of Office Superintendent is illegal, arbitrary and unfair as all the action under Section 19 of the Administrative Tribunals Act is abated.

Under the facts and circumstances stated above, the application is deserves to be allowed with costs.

....verification

VERIFICATION

I, Sri Sudhangsu Choudhury, son of late Suresh Chandra Choudhury, aged about 59 years, working as Head Assistant, in the office of the Directorate of Census Operation, Arunachal Pradesh, Shillong, applicant in the O.A. No. 244/96 do hereby solemnly affirm and state that the statements made in ~~paragraph~~ this rejoinder are true to my knowledge and belief and I have not suppressed any material fact.

And I sign this verification on this the 28th day of January, 1999.

*Sudhangsu Choudhury*  
Signature



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108  
Filed by the applicant  
Through Manik Chanda  
Advocate  
16-2-99.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. No. 244 of 1996

Sri S. Choudhury

-vs-

Union of India & Ors.

-And-

In the matter of :

An additional Rejoinder submitted by  
the applicant.

The applicant abovenamed most humbly and  
respectfully begs to state as under :

1. That your applicant further begs to state that the post of Accountant and Assistant was two separate and distinct cadre in the Establishment of Directorate of Census Operation, Arunachal Pradesh having different scale of pay i.e. Rs. 425-640 for Accountant and Rs. 425-750 for the post of Assistant. At the relevant time when the Departmental Promotion Committee was held on 6.6.1993 for filling up the vacancies i.e. the post of Accountant/Assistant which is evident from Annexure-1 to the written statement where the applicant as well as Shri N. Sen Majumdar and Shri M.C. Das juniors to the applicant were considered for the post of Accountant/Assistant. Therefore the contention of the Respondents that at the relevant time both the posts of Accountant and Assistant were merged together factually not correct, therefore the post of Assistant as well as Accountant were isolated post at that point of time. Hence DPC ~~w~~ought to have been constituted separately for filling up the isolated vacancies of Assistants and Accountants.

Contd..

The applicant being the seniormost accountant ought to have been considered for promotion for the aforesaid posts separately and the question of ~~reservation~~ in the isolated post does not arise as per the relevant rules issued by the Government of India from time to time in the reservation system. It is also disputed that the Respondent has adopted any seal-cover procedure while considering the case of the applicant for promotion to the post of Accountant/Assistant in the DPC held on 6.6.1993. Therefore the Hon'ble Tribunal be pleased to direct the Respondent to produce the seal-cover ~~process~~ proceedings which were adopted in the DPC held on 6.6.93 for perusal of the Hon'ble Tribunal.

That your applicant begs to state that the post of Accountant in the scale of pay of Rs. 425-15-560-EB-20-640 has been notified by letter bearing No. 4/39/82-Ad.I-dated 12.9.1984 published in the Gazette of India; Part II Sec-3, sub-Sec(I) which abundantly make it clear that the post of Accountant is a separate cadre, however the post of Accountant is merged with the post of Assistant vide Govt. of India, Ministry of Home Affairs letter bearing No. 4/40/82-Ad 1 (II) dated 11.10.90.

Assistant  
The post of ~~Accountant~~ also is a ~~distinct~~ cadre in the scale of pay of Rs. 425-15-560-EB-15-560-20-750, which would be evident from the notification issued by the Government of India; Ministry of Home Affairs in their letter No. 4/40/82-Ad.I dated 7.12.1986. It is categorically denied that Smt. N. Sen Mazumdar & Sri N.G.Das are entitled to any preferential treatment in the matter of

Contd...

promotion to the post of ~~Assistant~~ Accountant/Assistant.

Moreover, when both the posts of Accountant/Assistant are isolated single post in the respective cadre, therefore reservation system cannot be applied while filling up those vacancies. And separately, the respondent No.4 cannot be considered on priority basis by virtue of his belonging to scheduled caste community and the applicant is entitled to get promotion by virtue of his seniority position in the cadre of Accountant.

reversion  
It is stated that; the ~~reservation~~ of the ~~application~~ applicant from the post of Accountant with effect from 4.7.83 without following any procedure of law is arbitrary, unfair and the same is violative of Article 14 of the Constitution of India. Moreover the Respondents themselves have violated the terms and conditions laid down in the appointment/promotion order dated 10.1.80.

It is state that the mere reading of Annexure-3 letter bearing No.A-RA 18031/1/96 (Part-1) dated Shillong 14.6.96 whereby the Assistant Director of Census Operation Arunachal Pradesh addressed to the Registrar General India, Ministry of Home Affairs, New Delhi wherein a comparative statement for consideration of promotion of the applicant along with the Respondent No.4 was forwarded where infact the name of the present applicant was recommended by the Assistant Director, Moreover, the answer of all relevant issues involved in the instant case has been dealt by the Assistant director while recommending the name of the applicant for promotion.

Copy of the notification dated 12.9.84, 7.12.84 & ~~next~~ the letter dated 11.10.90 enclosed as Annexures 10, 11, & 12 respectively.

VERIFICATION

I, Sri Sudhangsu Choudhury, son of late Suresh Chandra Choudhury, aged about 59 years, working as Head Assistant, in the office of the Directorate of Census Operation, Arunachal Pradesh Shillong applicant in O.A. No. 244/96 do hereby solemnly affirm and verify the statements made in paragraphs in this additional rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 16th day of February, 1999.

*Sudhangsu Choudhury*

Signature

TO BE PUBLISHED IN THE GAZETTE OF INDIA PART-II SECTION 3-  
SUB-SECTION (i)

No. 4/39/82-Ad.I  
Government of India  
Ministry of Home Affairs  
OFFICE OF THE REGISTRAR GENERAL, INDIA  
\*\*\*

15.3.84

2-A, Hansingh Road,  
New Delhi, the

CEP 1084

NOTIFICATION

G.S.R..... In exercise of the powers conferred by the proviso to article 309 of the Constitution and in supersession of the twenty recruitment rules mentioned in Appendix II to these rules in so far as they relate to the post of Accountant except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to the said post of Accountant in the various offices of the Registrar General, India, the Language Division of the office of the Registrar General of India as well as all the offices of the Director of Census Operations in the States and the Union territories namely :-

1. Short title and commencement :- (1) These rules may be called the office of the Registrar General and ex-officio Census Commissioner for India and the offices of the Directors of Census Operations in States and Union territories (Accountant) Recruitment Rules, 1984.

(2) They shall come into force on the date of their publication in the official Gazette.

2. Application :- These rules shall apply to the post of Accountant in the office of the Registrar General, India, the Language Division of the said office located at Calcutta, and each of the offices of the Directors of Census Operations in the States and Union territories, separately, as specified in the Appendix I to these rules.

3. Number of posts, classification and scale of pay :-

The number of the said post, its classification, and the scale of pay attached thereto shall be as specified in columns 2 to 4 of the Schedule annexed to these rules.

15.3.84  
15.3.84

4. Method of recruitment, age limit, educational and other qualifications, etc.

The method of recruitment, age limit, educational and other qualifications, and other matters relating to the said post shall be as specified in columns 5 to 14 of the Schedule aforesaid :

Provided that the appointing authority concerned may, if it considers necessary or expedient so to do, having regard to the circumstances of the case and for reasons to be recorded in writing, order any vacancy in the said posts in any of the offices to which these rules apply and in relation to which he is the appointing authority to be filled by the transfer of a person holding the same post in any of the other offices to which these rules apply, when the person to be transferred has made a request in writing for such transfer.

Provided further that the persons so transferred shall be placed below all persons already appointed on regular basis to the grade to which he is appointed on such transfer.

5. Disqualification :- No person, -

- (a) who has entered into, or contracted a marriage with a person having a spouse living, or
- (b) who, having a spouse living, has entered into, or contracted a marriage with any person;

shall be eligible for appointment to the said post :

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for so doing, exempt any person from the operation of this rule.

6. Power to relax :- Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

7. Saving :- Nothing in these rules shall affect reservations, relaxation of age limit, and other concessions required to be provided for the candidates belonging to the Scheduled Castes, Scheduled Tribes, and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

25-7  
113  
197

Name of Post	Number of posts	Classification	Rate
1	2	3	4
Accountant	33*	General	Rs.42/-
Detailed break-up shown in Appendix-I		Central Service Group 'C' Non-gazetted Ministerial	500/- 640/-

\*Subject to variation dependent on workload

Qualifications required for direct recruitment

6

Qualifications

(i) Degree, preferably in commerce, of a recognised university or equivalent.

(ii) 3 years' experience in administrative accounts and budget in a Government office or other recognised public institution possessing a thorough knowledge of rules and regulations on accounts, budget and financial matters of Government Departments.

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Period of  
probation,  
if any

Method of Recruitment whether  
direct recruitment or by pro-  
motion or by deputation/ trans-  
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cancies to be filled by  
various methods

By

10

11

Ma . . . . . 2 years

Promotion, failing which  
by transfer on deputation/  
transfer, and failing both  
by direct recruitment.

114  
Annexure - 11  
95

TO BE PUBLISHED IN THE GAZETTE OF INDIA  
PART II SECTION 3 SUB-SECTION(i)/

No. 4/40/82-Ad.I  
Government of India  
Ministry of Home Affairs  
Office of the Registrar General, India

2A MANSINGH ROAD,  
NEW DELHI-110011.

NOTIFICATION

G.S.R... In exercise of the powers conferred by the proviso to article 309 of the Constitution and in supersession of the thirteen recruitment rules mentioned in Appendix II to these rules in so far as they relate to the posts of Assistant/Head Clerk except as respects things done, or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to the said posts of Assistant/Head Clerk in the various offices of the Registrar General, India, the Language Division of the office of the Registrar General, India as well as all the offices of the Directors of Census Operations in the States and the Union territories namely:-

1. Short title and commencement - (1) These rules may be called the office of the Registrar General and ex-officio Census Commissioner for India and the offices of the Directors of Census Operations in States and Union territories (Assistant/Head Clerk) Recruitment Rules, 1984.  
(2) They shall come into force on the date of their publication in the official Gazette.
2. Application - These rules shall apply to the posts of Assistant/Head Clerk in the Language Division of the office of the Registrar General, India, located at Calcutta, and each of the offices of the Directors of Census Operations in the States and Union territories, separately, as specified in the Appendix to these rules.
3. Number of posts, classification and scale of pay - The number of the said post, its classification, and the scale of pay attached thereto shall be as specified in columns 2 to 4 of the Schedule annexed to these rules.
4. Method of recruitment, age limit, educational and other qualifications, etc. - The method of recruitment, age limit, educational and other qualifications, and other matters relating to the said posts shall be as specified in columns 5 to 14 of the Schedule aforesaid:

Provided that the appointing authority concerned may, if it considers necessary or expedient so to do, having regard to the circumstances of the case and for reasons to be recorded in writing, order any vacancy in the said posts in any of the offices to which these rules apply and in relation to which he is the appointing authority to be filled by the transfer of a person holding the same post in any of the other offices.

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Date.....

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to which these

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rules apply when the person to be transferred has made a request in writing for such transfer:

Provided further that the persons so transferred shall be placed below all persons already appointed on regular basis to the grade to which he is appointed on such transfer.

5. Disqualification - No person, -

(a) who has entered into, or contracted a marriage with a person having a spouse living, or  
(b) who, having a spouse living, has entered into, or contracted a marriage with any person, shall be eligible for appointment to the said post:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for so doing, exempt any person from the operation of this rule.

6. Power to relax - Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

7. Saying - Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the candidates belonging to the Scheduled Castes, the Scheduled Tribes, and other social categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

Length of service and conditions prescribed for direct recruits (will apply in the case of promotions)	Period of recruitment, if any.	Method of recruitment both direct re- cruitment or by ap- pointment or by depu- tation/transfer and percentages of the vacancies to be filled by various methods.	In case of recruit- ment by appointment/ deputation/transfer, grades from which promotion/ deputation/transfer to be made.	In case of recruit- ment by appointment/ deputation/transfer, grades from which promotion/ deputation/transfer to be made.	Circumstances in which service Public Service Commission is to be consulted in making recruitment.
9	10	11	12	13	14
No	2 years	Promotion failing which by transfer on deputation/trans- fer, and failing both by direct recruitment.	Promotions Accountant(s) in the respective offi- ces, with 3 years' regu- lar service in the grade (R.425-15-560-EB- 720-640) failing which	Group 'C' Departmental Promotion Committee (for the Language Division, Calcutta)	Not applicable
✓	Upper Division Clerk	Accountant(s) with six years' combined service as Accountant and Upper Division Clerk, and failing both, with 5 years' regular service in the grade (R.350- 10-380-EB-12-500-EB-15-560)	Transfer on deputation/ Transfer:	1. Deputy Registrar Language (Languages) 2. Assistant Registrar Language (Languages) - Chairman 3. Assistant Registrar Governer (Languages) or Liaison or Research Officer (Languages) or Assistant Director of Public Relations (Technical) - Member	1. Group 'A' Officer of the Central Govt. or State preferably belonging to the Schedule I or Schedule II 2. Member
		Officials of the Central Government / State Government holding analogous posts or with 3 and 5 years regular service in posts in the scale of pay of R.425-640 and R.350- 560 or equivalent respectively and possessing the educational qualification and experience prescribed for direct recruit- ment in column 9 (Period of recruit- ment shall be necessarily not less than 5 years)			

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Case of  
part.

1. As per the  
rule of  
pay  
and  
benefit  
of service  
years of  
service  
admissi-  
ble under  
Rule 30  
of the  
CCS (Pen-  
sion) Rules  
1972.

1. Assistant / 71# General Central  
Head Clerk. Detailed Service Group 'C'  
break up Non-Gazetted,  
shown in Ministerial.  
Appendix I

\*subject to variation  
dependent on workload.

2. 3. 4. 5. 6. 7. 8.

4.45-15- Selection No 25 years For the  
-500-E8- (Relaxabi-  
-15-560- lity upto 5 years  
-20-700- for Government  
servants in accordance  
with the instructions or  
orders issued by the  
Central Government.).

Note: The crucial date for  
determining the age limit shall be  
the closing date for receipt of appli-  
cations from candidates in India (other  
than Andaman & Nicobar Islands, and  
Lakshadweep). In respect of posts, the  
appointments to which are made through the  
Employment Exchanges, the crucial date for  
determining the age limit shall, in each case, be the  
last date upto which the Employment Exchanges are  
asked to submit names.

i) Degree of a  
recognition Uni-  
versity or  
equivalent.  
ii) 3 yrs of  
experience in  
ad-ministrative  
and establish-  
ment matters  
in a Government  
Office and  
possessing a  
thorough  
knowl. edge of  
rules and regu-  
lations govern-  
ing such matter  
and office  
procedure.

No. 4/40/82-Ad.I(II)  
 Government of India  
 Ministry of Home Affairs  
 Office of the Registrar General, India

2/A, Mansingh Road,  
 New Delhi, the 11.10.90

To : All Directors of Census Operations  
 in States/U.T.s

Sub : Redesignation of posts of Accountant as Assistant.

Sir,

In continuation of this office letter of even number dated 20.8.90, I am directed to say that consequent on the revision of the Recruitment Rules for the post of Assistant/ Head Clerk published in the Gazette of India vide GSR No.378 dated 23.6.90, the posts of Accountant in your directorate have ceased to exist and the same may please be treated as redesignated as Assistant.

Yours faithfully,

*(Signature)*  
 ( K.D. UPRETI )  
 ASSISTANT DIRECTOR

Printed on file

16th Oct 1990

22/10/90