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X  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

MP-238/97 ordered sheet pg-1

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Disposed Date- 17/9/97

O.A/T.A No. 26/96.....

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUJARATI BENCH ::::::: GUJARATI

ORIGINAL APPLICATION NO. 26/196

MISC. PETITION/CONTempt PETITION/REVIEW APPLICATION NO.

(D.A.)

Applicant: Ch. Bora ALIAS (S)

VS.

W.C.I. (T.O.U.) REPRESENTATIVE (S)

J.L. Sarcar Advocate for  
Applicant(s)

M. Ali Advocate for  
Respondent(s)

OFFICE NOTICE	DATE	CHIEF
Application is filed within three months of R.C. No. 10000 Filed vide H.O. B.I. No. <u>3118/0</u> Dated <u>15/2/96</u>	<u>8-3-96</u>	<p>Learned counsel Mr.J.L.Sarcar for the applicant. Learned Sr.C.G.S. Mr.S.Ali for the respondents.</p> <p>The applicant has submitted that due to pendency of departmental proceedings against him the result of selection for promotion to the post of Inspector of Customs and Central Excise held on 4th,5th and 6th September 1991 had been kept in sealed cover. The contention of the applicant in this application is that the respondents have not carried out the prescribed six monthly review of sealed cover. As a result the applicant has been deprived of his promotion. In this application the applicant prays for opening of the sealed cover and to give effect to the same and, if not found suitable after opening the sealed cover, the applicant may be promoted on adhoc basis to the post of Inspector of Customs and Central Excise in the light of instructions and guidelines issued by the Government of India.</p>

Issue notice on the respondents to show cause why this application should not be admitted. List for

OFFICE NOTE

DATE.

O.R. No.

8-3-96

show cause and for consideration of admission on 23-4-1996.

Member

Re quisites are filed  
on 18.3.96 & (contd)  
V.W. 697 - 708 & 361m

✓ 19/3

25.4.96

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

Notice served on respondents No 2, 3, 10 and 11. Service report on other respondents awaited. Mr Ali seeks time to file show cause on behalf of official respondents. One month time allowed.

List on 29.5.96 for show cause and consideration of admission.

Member

pg

30.5.96

Learned counsel Mr J.L. Sarkar for the applicant. Learned Sr. C.G.S.C., Mr S. Ali for the respondents. No show cause has been filed.

Heard Mr Sarkar for admission. Perused the contents of the application and the reliefs sought. The application is admitted. Issue notice on the respondents by registered post. Six weeks for written statement. List on 15.7.96 for written statement and further orders.

Heard counsel of the parties on the interim relief prayer. Pendency of this application will not be a bar for the respondents to review the sealed cover as prescribed by rules and promote the applicant on adhoc basis if found suitable

Q/XAXOPX/BAXMXX No. 26 of 1996

OFFICE NOTE	DATE	ORDER
<u>4-6-96</u> Copy of order issued to the L/ Advocates for the parties vide d.o.s. 22	30.5.96	in all respects. Copy of the order may be furnished to the counsel for the parties.
<u>4/6</u>		<i>60</i> Member (A)
<u>w/ statement - hs not been b/w</u>	15-7-96	Learned Sr.C.G.S.C. Mr. S. Ali for the respondents. Written statement has not been submitted. List for written statement and fur- ther order on 7-8-96.
<u>6/8</u>	1m	<i>60</i> Member
<u>w/ statement - hs not been b/w</u>	7.8.96	Mr M.Chanda for the applicant. Mr S. Ali, Sr.C.G.S.C for the respondents. Written statement has not been submit written statement Mr Ali, seeks further one month time to file written statement List on 3.9.96 for written statement and further orders.
<u>2/9</u>		<i>60</i> Member
<u>w/ statement - hs not been b/w</u>	3.9.96	Mr M.Chanda for the applicant. No for the respondents. No written statement has been submitted. List for hearing on 3.10.96. In the meantime the respondents may submit written statement.
<u>1/10</u>		<i>60</i> Member
	pg M/3/9	

C.H. 26/96

OA/TA/CP/RA/MP No. of 19

OFFICE NOTE	DATE	ORDER
1) Notice duly served on Reps No - 2, 3, 10, 11 & 12 2) w/statement has not been submitted.	3.10.96	Mr J.L.Sarkar for the applicant. S.Ali, Sr.C.G.S.C for the respondents List for hearing on 22.11.96. As the written statement has not been submitted, respondents may submit the same with copy to the counsel of the applicant.
	pg M 31/10	<i>60</i> Member
1) Notice duly served on Reps No - 2, 3, 10, 11 & 12 2) w/statement has not been submitted.	22.11.96	L earned counsel Mr.M.Chanda for the applicant. Learned Mr.C.G.S.C. M.P.S. Ali for the respondents. Written statement has not been submitted. List for hearing on 30-12-96.
20-1-97 1) Notice duly served on R.No - 2, 3, 10, 11 & 12 2) Notices on Reps No - 8 returned unserved. 3) w/statement has not been submitted.	30.12.96	<i>61</i> Member Mr J.L.Sarkar for the applicant. Mr S.Ali, Sr.C.G.S.C for the respondents. Written statement has not been submitted. List for hearing on 21.1.1997.
	pg M 21/1	<i>62</i> Member
	21.1.97	Mr J.L.Sarkar for the applicant. Mr S.Ali, Sr.C.G.S.C for the respondents. List for hearing on 17.2.1997.
	pg M 21/1	<i>63</i> Member

(5)

OA 26/96

14-2-97

1) Notice duly served on R- 2, 3, 10, 11 and 12.  
2) Notice un-served on R-8.  
3) R- 1, 4-7, 9, are still awaited.  
4) NO W/S does not file.  
5) NO appearance has been filed.

M  
14/2

17.2.97

19.3.97

Let this case be listed for hearing on

6  
Member

nkm

M  
20/2

5

Vice-Chairman

19.3.97

On the request of the learned counsel for the parties this case be listed for hearing on 29.4.97.

6  
Member

nkm

20.2.97

Vice-Chairman

W/S filed on 6th of

R. m. 1, 2 & 3.

29-4-97

On the request of the learned counsel for the parties this case be listed for hearing on 4-6-97.

6  
Member

Vice-Chairman

1) Notice duly served on R. 2, 3, 10, 11 & 12.  
2) Notice un-served on R-8.  
3) Respt. 1, 4-7, 9 are still awaited.  
4) No appearance has been filed.  
5) W/S filed on 6th of  
on O.P. nos 1-3.

lm

fr  
30/4

4.6.97

6  
Member

trd

fr  
5/6

Vice-Chairman

31-3-97

on 6th

1) Addl. W/S filed on 6th  
2) W/S and Addl. W/S has been filed.

5/6

30.6.97

Judgment delivered in open court kept in separate sheets. The application is allowed. No order as to costs.

6  
Member

Vice-Chairman

3.7.97

nkm

copy of the judgment  
has been issued to the  
Applicant alongwith Regd.  
Nos. 1 to 3 vide D.A.O.  
2260 to 2262 on 2.7.97.

kh-

31.7.97

Despatched vide  
D/Nos. 2591 to 2595  
Through Regd. w/15  
A.D. on 31.7.97.

kh

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI-5.

O.A. NO. 26/96  
T.A. NO.

DATE OF DECISION.

30.6.1997

Sri Arun Chandra Bora

(PETITIONER(S)

Mr.J.L.Sarkar with Mr.M.Chanda

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr.S.Ali, Sr.C.G.S.C.

ADVOCATE FOR THE  
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN  
THE HON'BLE SHRI G.L.SANGLYINE, MEMBER,ADMINISTRATIVE

1. Whether Reporters of local papers may be allowed to see the Judgment ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the judgment ? *no*
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble SHRI G.L.SANGLYINE, MEMBER

*Sanglini*  
30/6/97

9

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.26/96

Date of Order: This the 30<sup>th</sup> the Day of June 1997.

HON'BLE JUSTICE MR.D.N.BARUAH, VICE-CHAIRMAN  
HON'BLE SHRI G.L.SANGLYINE, MEMBER(ADMINISTRATIVE).

1. Sri Arun Chandra Bora.  
Tax Assistant,  
Customs, and Central Excise,  
Government of India  
Department of Revenue  
Ministry of Finance  
Jorhat, Assam. . . . . Applicant.

By Advocate Mr.J.L.Sarkar and Mr.M.Chanda.

-Vs-

1. Union of India  
through the Secretary to the Govt. of India  
Dept. of Revenue, Govt of India,  
Ministry of Finance  
New Delhi.

2. The Commissioner,  
Customs and Central Excise,  
Shillong.

3. The Deputy Collector(P&V)  
Customs and Central Excise  
Shillong.

4. Sri Prabin Deori  
Inspector  
Office of the Asst.Commissioner,  
Customs and Central Excise,  
Govt of India,  
Ministry of Defence,  
Guwahati.

5. Sri Dilip Krishna Sonowal  
Inspector,  
Customs and Central Excise,  
Shillong.

6. Sri Sarabendu Nandi  
Inspector,  
Customs and Central Excise,  
Govt. of India  
Shillong.

7. Sri J.P.Bora  
Inspector.  
C/o.Commissioner, Custims and Central Excise,  
Govt. Of India, Shillong.

8. Sri Bindyajit Deb Choudhury  
Inspector  
Customs and Central "xcise  
Dibrugarh

9. Sri A.K.Chankraborty,  
Inspector,  
Customs and Central Excise,  
Agartala.

contd/-

10. Sri Sankar Bhadra  
Inspector,  
Customs and Central Excise.  
Govt. of India,  
Dhubri.

11. Sri A.D. Choudhury  
Inspector  
Customs and Central Excise  
Silchar.

12. Sri Shyamapada Ghosh  
Inspector  
Customs and Central Excise,  
Tinsukia. ... Respondents.

By Advocate Mr. S. Ali, Sr. C.G.S.C.

O R D E R.

SANGLYINE, MEMBER(A) :

The applicant, Shri Arun Chandra Bora, is a Tax Assistant in the Commissionarate of Customs and Central Excise, Government of India and he is working as such in Jorhat. He is aggrieved because he was denied promotion to the post of Inspector and therefore he has submitted this application before this Tribunal. According to him a Departmental Promotion Committee (DPC for short) was held on 4th, 5th and 6th September, 1991. He was considered by the DPC but the result of his case was kept under sealed cover. It is his contention that this is illegal because the Memorandum of Article of charges against him was issued only on 19.2.1992 and there was no disciplinary proceeding pending against him as on the date of the DPC. Learned counsel, Mr. M. Chanda relies on the judgment of the Hon'ble Supreme Court in Union of India, Vs- K.V. Jankiraman reported in AIR 1991 SC 2010 in support of this contention. Thereafter he had appeared several

contd/-

times in interview for the post of Inspector but the result in his case was kept under sealed cover, whereas his juniors were promoted. The last of such DPCs was held in 1994 as a result of which 16 of his juniors were promoted superseding him vide Establishment order No.328/1994 dated 28-11-1994 (Annexure-6). The respondents 1,2 and 3(hereinafter mentioned as respondents) have neither disposed of the disciplinary proceeding nor have they undertaken the six monthly review of the sealed cover though such review is prescribed in respect of cases where there is delay in completion of the disciplinary proceeding. According to the policy of the Government of India when disciplinary proceedings are not concluded even after the expiry of two years from the date of meeting of the first DPC which kept its finding in respect of the Government servant in a sealed cover, a review is to be taken for considering adhoc promotion of the affected employee subject to certain prescribed conditions. The respondents have denied him this adhoc promotion also. Under the circumstances the applicant feels aggrieved and has sought the following reliefs:

- (1) That the respondents be directed to open the findings of the DPC which is kept under sealed cover held on 4th,5th & 6th September, 1991 and the sealed cover be given effect to with all consequential service and monetary benefits.
- (2) That if the applicant is not found suitable for promotion after opening the sealed cover of the DPC findings held on September, 1991 in that event the applicant be considered for promotion to the post of Inspector on adhoc basis in the light of

the instructions and guidelines issued by the Government of India.

2. The respondents have contested the application of the applicant and submitted written statement and through the submissions of Mr.S.Ali, learned Sr.C.G.S.C. In the written statement they have stated :

"His case has been duly considered by the D.P.Cs and the findings of the D.P.Cs have been kept in a sealed cover in terms of Minister's letter No.22011/5/ 36-Estt(B) dated 10-4-89 as and when the case of the applicant is over then the sealed cover will be over."

They have further stated that :

"six monthly reviews could not be held that the matter is under process."

Notices were issued on 3-4-1996 to the other respondents by Registered post. We presumed that they had been received by the addressees. No contest is however, forthcoming from any of them.

3. We have heard the learned counsel. The respondents have not disputed the existence of the policy as incorporated in para 6.8 of this application. The applicant is not under suspension though disciplinary proceeding against him is pending since 19-2-1992. According to the aforesaid policy of the respondents the applicant has two rights, namely,

- i) the right of six monthly review of his sealed cover, and
- ii) the right of being considered for an adhoc promotion as the disciplinary proceeding against him is pending since 19.2.1992, which is more than 2 years from the date his result was placed under sealed cover.

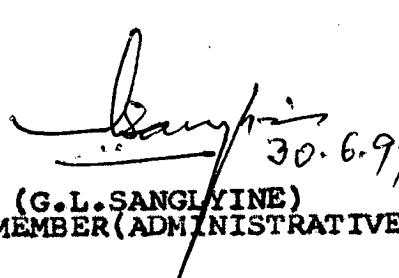
From the facts of the case it appears that the respondents have denied both of them to the applicant. The respondents cannot resile from their professed policy. They have done so however in this case of the applicant. We hold that their action is unfair and unjust. We therefore, direct the respondents to forthwith undertake the six monthly review of the sealed cover/covers in respect of the applicant and take consequential action as a result thereof. Secondly, if it is found on review that the applicant is not liable to be promoted, the respondents shall consider the desirability of giving him adhoc promotion to the post of Inspector keeping in view the conditions stipulated in the policy aforesaid. These exercises shall be completed by the respondents within forty five days from the date of receipt of this order by the Respondent No.2.

The application is allowed in terms of the directions above. No order as to costs.

I agree



(D.N.BARUAH)  
VICE-CHAIRMAN

  
30.6.97  
(G.L.SANGLYINE)  
MEMBER(ADMINISTRATIVE)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. No. 26 of 1996

Shri A.C.Bora

-versus-

Union of India & Ors.

D-  
Through Meenakshi Choudhury  
Filed by the applicant  
Advocate

LIST OF DATES

Sl.No.	Date	Particulars	Paragraph & Page
1	1980 1985 1988	The applicant initially appointed as Lower Division Clerk in the Custom and Central Excise Deptt. in 1980 and thereafter promoted as Upper Division Clerk in the year 1985 and thereafter posted as cashier in the year 1988 in the office of the Custom and Central Excise Jorhat and again promoted as Tax Assistant. Presently serving as Tax Assistant.	6 (1)
2	20.9.91 19.2.92	The respondents No. 4 to 8 who are juniors to the applicant promoted to the post of Inspector following recommendation of D.P.C. (Departmental Promotion Committee) vide office order No. 201/90 but the applicant apprehending that his findings of D.P.C. might have been kept under sealed cover wrongly, as the departmental proceeding was subsequently initiated through Memorandum of charge-sheet bearing No.	6 (2)

Contd..

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1	2	3	4
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III(10)A/CIB-Vig/4/91-150 dated  
19.2.1992 under rule 14 of Central  
Civil Services (Classification,  
Control and Appeal) rules, 1965.

3      11.3.1992      The applicant submitted his reply      6 (4)  
26.3.1992      vide letter dated 11.3.92, against  
21.7.1993      the chargesheet and departmental  
                    proceeding started <sup>on</sup> 26.3.1993 and  
                    the said proceeding completed  
                    on 21.7.1993. No communication  
                    has been received as regards ~~findings~~  
                    <sup>W.</sup> ~~holdings~~ of the departmental  
                    proceeding.

The applicant in his representation dated 11.3.93 addressed to Deputy Collector (P&V) Central Excise stated ~~that~~ the factual position that one Shri L.C.Gogoi, L.D.C. actually misappropriated the Govt money, which was admitted by Shri Gogoi, L.D.C. in his written statement dated 27.5.92, 9.10.92 and 2.7.94 and deposited Rs. 18,728/- in three instalments. The applicant submitted representations dated 22.7.94, 30.11.94, 5.5.95 and 1.6.1995, requesting the Authority to expedite the findings of the disciplinary proceedings.

4      31.5.95      The Deputy Collector (P&V) Customs      6 (5)  
14.6.95      and Central Excise, informed to      Annex. 4&5  
23.6.95      the applicant that the matter has  
                    been referred to vigilance commission for advice. The applicant

Contd....

1

2

3

4

submitted further representation dated 14.6.95, The Deputy Commissioner, (P&V) Shillong informed the applicant <sup>on 21-6-95</sup> that necessary action regarding disciplinary proceeding is taken, but unfortunately no finding is communicated to the applicant.

5 28.11.95 The applicant appeared in the selection on 7 times, since 1991 for promotion to the post of Inspector but results were kept in sealed cover. Again 15 juniors of the applicant have been promoted vide Office Order No. 318/94 dated 28.11.94 superseding the applicant. 6 (6)

6 4.9.91 The proceeding of the selection for promotion to the post of Inspector held on 4th, 5th, and 6th September 1991 but the result was wrongly kept under sealed cover, although there was no departmental proceeding pending against the applicant. ~~xxxxxxxxxxxxxx~~ during the relevant time and the applicant appeared in the above selection and Respondent No. 4 to 8 who were juniors to the applicant were promoted to the post of Inspector vide Establishment Order No. 201/90 dt. 20.9.91 and also vide Establishment Order No. 328/94 dated 28.11.94 and also violated the six monthly review procedure for promotion of the applicant and also did not consider his case for promotion <sup>per</sup> on ad-hoc basis as/instruction of the Central Government. 6 (7)

5.9.91  
6.9.91  
20.9.91

Relied on : (1) 1991 (iv) SCC 109 (K.V. Janakiraman Vs. Union of India).

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Form No.2  
See Rule 11(b)I

Report on the scrutiny of Application

Presented by....M. Chanda.....

DAIRY NO :

Applicant(s).....A.C. Barua.....

Date of presenta-  
tion :

Respondent(s).....M. D. I.....

Nature of grievance.....Promotion

No. of applicants.....1.....

No. of Respdt(s)....12 (Twelve)

CLASSIFICATION

Subject.....(No. ....) Department.....Central Excise...  
.....(No. ....)

1. Is the application in the proper form : **XS**
2. Whether name, description and address of all the parties been furnished in the cause title ? **XS**
3. (a) Has the application been duly signed and verified ? **XS**  
(b) Have the copies been duly signed ? **XS**  
(c) Have sufficient number of copies of the application been filed ? **XS**
4. Whether all the necessary parties are impleaded **XS**
5. Whether English translation of documents in a language other than English or Hindi been filed ? **XS**
6. Is the application in time ? **XS**
7. Has the Vakalathnama/Memo of appearance/authorisation been filed ? **XS**
8. Is the application maintainable ? **XS**
9. Is the application accompanied by IPO/DD for Rs.50/- ? **XS**
10. Has the impugned orders original/duly attested been filed ? **XS**
11. Have legible copies of the annexures duly attested been filed ? **XS**
12. Has the index of documents been filed and pagination done properly ? **XS**
13. Has the applicant exhausted all available remedies ? **XS**
14. Has the declaration as required by item 7 of Form I been made ? **XS**
15. Have required number of envelopes bearing full address of the respdts. been filed ? **No**
16. (a) Whether the relief sought for arise out of single cause of action : **XS**  
(b) Whether any interim relief is prayed for ? : **XS**
17. In case an M.A. for condonation of delay is filed, is it supported by an affidavit of the applicant ? **XS**
18. Whether this case can be heard by single Bench : **XS**
19. Any other point : **XS**
20. Result of the scrutiny with initial of the scrutiny clerk : **XS**

IPO 311810

dt. 15.2.96

Жизнь

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सामाजिक  
प्रश्नों का विवेचन

260 VITALE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

16 FEB 1996

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

O.A. No. 26 /96

Shri Arun Chandra Bora

-Vs-

Union of India & Others.

I N D E X

S.l. No.	Annexure	Particulars	Page No.
1	-	Application	1-18
2	-	Verification	19
3	1	Memorandum of Chargesheet	
4	2	Representation dt. 11.11.93	
5	3	Representation dt. 1.6.95	
6	4	Copy of letter dt. 31.5.95	
7	5	Copy of letter dt 23.6.95	
8	6	Copy of Estt. order dt. 28.11.94	

Filed by :

Arun Ch. Bora,  
Advocate

Arun Ch. Bora

1. Particulars of the Applicant.

Sri Arun Chandra Bora

Tax Assistant,

Customs and Central Excise,  
ment

Govern/ of India

Dept of Revenue

Ministry of Finance

Jorhat, Assam

..... Applicant

2. Particulars of the Respondents

1. Union of India

through the Secretary to the Govt, of India

Dept. of Revenue, Govt. of India,

Ministry of Finance

New Delhi

✓ 2. ~~Ex~~ The Commissioner

Customs and Central Excise,

Shillong

✓ 3. The Deputy Collector (P&V)

Customs and Central Excise

Shillong.

4. Sri Prabin Deori

Inspector

Office of the Asst. Commissioner,

Customs and Central Excise,

Govt. of India,

Ministry of Defence,

Guwahati.

Sri Arun Chandra Bora

5. Sri Dilip Krishna Sonowal  
Inspector  
Customs and Central Excise,  
Shillong
6. Sri Sarabendu Nandi  
Inspector  
Customs and Central Excise  
Govt. of India  
Shillong
7. Sri J.P.Bora  
Inspector  
Commissioner, custom & central Excise  
Govt of India, Shillong.
8. Sri Bindyajit Deb Choudhury  
Inspector  
Customs and Central Excise  
Dibrugarh
9. Sri A.K.Chakraborty,  
Inspector,  
Customs and Central Excise,  
Agartala
10. Sri Sankar Bhadra  
Inspector,  
Customs and Central Excise,  
Govt. of India,  
Dhubri

*From Ch.Bora*

11. Sri A.D.Choudhury  
Inspector  
Customs and Central Excise  
Silchar

12. Sri Shyamapada Ghosh  
Inspector  
Customs and Central Excise,  
Tinsukia ..... Respondents

3. Particulars for which this Application is made.

This application is made with a prayer for direction to open the findings of the DPC to the respondents which is kept illegally under sealed cover held on September, 1991 and the sealed cover be given effect to with all consequential service and monetary benefits and if the applicant is not found suitable for promotion after opening the sealed cover of the DPC findings held on September, 1991 in that event the applicant be considered for promotion to the post of Inspector of Central Excise and Customs on adhoc basis in the light of the instructions and guidelines issued by the Government of India.

Contd..

*Amal. Basu*

4. Limitation

That the applicant declares that this application is within the limitation prescribed under section 21 of the Administrative ~~XXXXXXX~~ Tribunals Act, 1985.

5. Jurisdiction

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

6. Facts of the case

6.1 That the applicant is citizen of India and as such, he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. The applicant is presently serving as Tax Assistant under the Asstt. Collector, Customs and Central Excise, Government of India, Jorhat. The applicant was initially appointed as L.D.C. in the year 1980 and he was posted at Shillong Customs and Central Excise Office. Thereafter he was ~~again promoted~~ ~~tax the post~~ transferred and posted at Jorhat as Lower Division Clerk (in short LDC). Thereafter he was again promoted to the post of Upper Division Clerk in the year 1985 and posted at Dibrugarh Customs and Central Excise Office. The applicant thereafter again posted to Jorhat in the office of the Asstt. Collector, Customs and Central Excise as cashier in the year 1988. He also promoted to the grade of Tax Asstt. in the scale of Rs. 1350-2200 and continued to serve at Jorhat Customs and Central Excise Office.

Contd. P/6

*Arun Ch. Bera*

6.2 That the respondents have initiated a disciplinary proceeding against the applicant in the month of February 1992 whereas juniors of the applicant namely respondent nos. 4-8 were considered for promotion by the DPC and promoted vide Order No. 201/90 dated 20.9.1991 although the applicant apprehends that his case of promotion for the post of Inspector might have kept under sea;rd cover as there was a disciplinary proceeding initiated against him on the ground alleging pendency of disciplinary proceedings. Be it stated that Memorandum of Article of Charges was issued to the applicant by the respondent no. office of the Customs and Central Excise, Shillong vide through Memorandum No. II(10) A/CIB-Big/4/91-150 dated 19.2.92 whereby allegation of misappropriation of Govt. money amounting Rs. 37,428 in connection with bill No. 173/GO/SDA/91 dated 15.7.1991 is brought against the applicant. It is further stated in the Article of Charges that the applicant has deposited the said amount of Rs. 37,428 to State Bank of India Jorhat on 7.8.1991 under cheque No. 36 from the cash money in which result of shortages of Rs. 37,428 in cash Jorhat Division. Thus charges were brought under Rule 14 of CCS (CCA) Rules 1965.

A copy of the Memorandum of chargesheet dated 19.2.92 is annexed as Annexure 1.

6.3 That the applicant begs to state that the order of promotion of respondents 4-8 which was issued under Estt. Order No. 201/90 dt. 20.9.91 could not be obtained in spite of the best efforts of the applicant therefore the Hon'ble Tribunal be pleased to direct the respondents to

produce the promotion order ~~Maxx201/91~~ dated 20.9.91 whereby private respondents no. 4-8 promoted to the grade of Inspector for perusal of the Hon'ble Reibunal.

6.4 That on receipt of the Memorandum of chargesheet dated 19.2.92 the petitioner submitted his ~~re~~ply vide his reply under letter dated 11.3.92 but the hearing of the departmental proceeding started from 26.3.93 and the said proceeding was completed on 21.7.93. The Deputy Collector (Audit) Customs and Central Excise, Shillong was appointed enquiry officer. That after completion of the Departmental Proceeding no communication was received as regard the findings of the disciplinary authority regarding the charges brought against the applicant. The applicant thereafter submitted number of representations to the competent authorities for expeditious disposal of the departmental proceedings. The applicant vide his representation dt. 11.3.93 which was addressed to the Deputy Collector (P&V) Central Excise Shillong whereby the petitioner also stated the factual position as regard allegation of misappropriation of Govt. money brought against him whereby the applicant the applicant stated that one Sri L.C.Gogoi, LDC infact actually ~~misappropriated~~ misappropriated the Govt. money which is also admitted by Sri L.C.Gogoi LDC and deposited an amount of Rs. 18,728/- in three installments vide his ~~representation~~ written statement dated 27.5.92, 7.10.92 and 2.2.94 respectively whereas the petitioner was charged for misappropriation

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of the Govt. money amounting to Rs. 47,428/- and the Disciplinary Proceeding although completed on 21.7.93 but till date no findings is communicated to the applicant, but the applicant is denied promotion to the grade of Inspector on the ground of alleged pendency of departmental proceedings. The applicant vide his representations dated 22.7.94, 30.11.94, ~~22~~ 5.5.95, 1.6.95 requested the Shillong Collectorate to expedite the disciplinary proceeding as the pendency of the disciplinary proceeding deprived him from his legitimate promotion to the cadre of Inspector.

A copy of the representations dated 11.11.93 and 1.6.95 are annexed as Annexure 2 and 3 respectively.

65. That the applicant begs to state that the Dy. Collector (P&V) Customs and Central Excise, Shillong vide his letter No. C. No. II(8) CIU-Vig/18/95/261 dt. 31.5.95 informed the applicant that the matter has been referred to Vigilance Commission for advise and the reply is still awaited, however the applicant vide his letter dt. 14.6.95 requested the Dy. Collector (P&V), Central Excise, Shillong to intimate the reference under which the matter has been referred to Central Vigilance Commission so that the applicant may request the Central Vigilance Commission to expedite their decision as regard the case of the applicant. The Dy. Commissioner (P&V) Shillong again vide his letter No. C. No. XI(8)-CIU-Vig/18/95/253 dt. 23.6.95 informed the applicant that necessary action is being taken from the Headquarter Office but unfortunately till date no

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*Anuradha Bon*

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finding as regard the pending disciplinary proceeding is communicated to the applicant.

A copy of the letter dated 31.5.95 and 23.6.95 are annexed as Annexure 4 and 5 respectively.

6.6. That the applicant begs to state that during the pendency of the disciplinary proceeding the applicant the applicant was denied promotion illegally since 1991. The applicant was allowed to appear in all the departmental examination, interview and physical fitness test for promotion to the grade of Inspectors but the findings of the DPC was kept under sealed cover on the ground of pendency of disciplinary proceedings. Be it stated that the applicant had appeared 7 times in the interview in the post of ~~Inspector~~ Inspector since 1991 in the Customs and Central Excise and the result of the interview was kept under sealed cover procedure, whereas 53 juniors of the applicant were promoted to the post of Inspectors in the meantime. The list of promotion order issued by the respondents to the Grade of Inspectors on 28.11.94 vide Establishment Order No. 328/94 whereby 15 juniors have been promoted in supersession of the claim of the applicant. Be it also stated that there are two source of promotion ~~particularly~~ ~~toothlessnessfixTaxAssistan~~ from the cadre of Tax Assistant one is Inspector and the other is to the post of Deputy Office Superintendent level II, but the applicant is denied promotion in the cadre of Inspector as well as in the cadre of Deputy Office Superintendent level II.

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6.7 That the applicant further begs to state that during the year 1990 there was no disciplinary proceeding was pending against the applicant and the applicant at the relevant time appeared in the interview for promotion to the post of Inspector on the 4th, 5th and 6th September, 1991 but the respondents kept the result of the interview under sealed cover procedure in violation of the existing departmental rules. As there was no disciplinary proceeding pending at the relevant time when he appeared in the interview in the year 1991 therefore the respondents were not permitted under the relevant service rules to keep the result of the said interview under the sealed cover whereas the juniors of the applicant namely private respondents No. 4-8 were promoted vide Esstt. Order No. 201/90 dated 20.9.91. Therefore the respondents are now duty bound to open the sealed cover which was kept in violation of the departmental rules and the same to be given effect to and in the event of applicant if not find suitable he should be promoted to the cadre of Inspector with all consequential service benefits. The applicant on number of occasions submitted several representations for expeditious disposal of the disciplinary proceeding but the respondents are silent and thereby irreparable loss caused to the applicant.

6.8 That the respondents have promoted juniors of the applicant in the year 1994 vide Estt. Order No. 328/94 dated 28.11.94 but the case of the applicant kept under sealed cover and the promotional benefits is denied to the applicant to the cadre of Inspector on the ground pendency

of disciplinary proceedings. This is also in total violation of the guidelines of the Govt. of India. The relevant portion of the guidelines of the Central Government servant in respect of whom disciplinary proceeding is pending is quoted below :

" Six-monthly Review of sealed cover cases.

17.7.1 It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case if a Government servant in a sealed cover is limited to the barest minimum. It has, therefore been decided that the appointing authorities concerned should review comprehensively comprehensively the cases of a Govt. servant whose suitability for promotion to a higher grade has been kept in a sealed cover in the expiry of six months from the date of convening the first DPC which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/ criminal prosecution and the further measures to be taken to expedite their completion.

Sealed cover procedure for confirmation

17.7.2 The procedure outlined in the preceding ~~paragraphs~~ paras, should also be followed in considering the claim for confirmation of an officer under suspension, etc.

*Anuradha Basu*

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### Procedure for ad hoc promotion

17.8.1 In spite of the six monthly review referred to in para 17.7.1 above, there may be some cases where the disciplinary case/criminal prosecution against Government servant are not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad hoc promotion keeping in view the following aspects :-

- (a) Whether the promotion of the officer will be against public interest;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is no likelihood of the case coming to a conclusion in the near future;
- (d) Whether the delay in the finalization of proceedings, departmental or in a Court of Law, is not directly or indirectly attributable to the Government servant concerned; and

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Frank Ch. Bern

(e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceeding or criminal prosecution arose out of the investigations conducted by the Bureau.

17.8.2 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on adhoc basis. Where the Government servant is considered for ad hoc promotion the DPC should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

17.8.3. After a decision is taken to promote a Government servant on an adhoc basis, an order of promotion may be issued making it clear in the order itself that -

*Arun Ch. B...*

(i) the promotion is being made on purely adhoc basis and the adhoc promotion will not confer any right for regular promotion; and

(ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel at any time the adhoc promotion and revert the Government servant to the post from which he was promoted".

xxx

From the above it is quite clear that the respondents did not follow the above instructions in respect of the present applicant and no six months review is made in the light of the guidelines quoted above. Further the disciplinary proceeding was initiated vide Office Memorandum dated 19.2.92 and even after completion of about 6 years the case of the applicant has not been considered by the respondents even for adhoc promotion whereas the applicant is legally entitled to promote on regular basis in terms of the findings of the DPC which is illegally kept under sealed cover in the 1991 whereas juniors of the applicant have been promoted in the month of September 1991 but the result of the applicant of the interview held on illegally kept under sealed cover procedure. The respondents ought to have considered him even for adhoc promotion if the applicant is not found selected on the basis of the findings of the DPC of 1991.

6.9 That the applicant have suffered irreparable loss in his service career due to illegal action of the respondents in the matter of his promotion to the post of Inspector therefore in view to restrain the respondents from illegal action the Hon'ble Tribunal be pleased to direct the respondents to open the sealed cover which is kept under sealed cover in the year 1991 before issuance of chargesheet dated 19.2.1992 and if the applicant is not found suitable after opening the sealed cover of 1991 DPC in that event the case of the applicant shall be considered for adhoc promotion in the light of the guidelines and instructions mentioned above.

6.10 That this is a fit case where the Hon'ble Tribunal be pleased to interfere for protection and rights of the present applicant.

6.11 That this application is made bonafide and for the ends of justice.

7. Reliefs sought for

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

✓. That the respondents be directed to open the findings of the DPC which is kept under sealed cover held on 4th, 5th, & 6th September, 1991 and the sealed cover be given effect to with all consequential service and monetary benefits.

*Arun Ch. Bora*

2. ✓ That ~~was~~ if the applicant is not found suitable for promotion after opening the sealed cover of the DPC findings held on September, 1991 in that event the applicant be ~~not~~ considered for promotion to the post of Inspector on adhoc basis in the light of the instructions and guidelines issued by the Government of India.

3. To pass any other order or orders as deemed fit and proper under the facts and circumstances narrated above.

4. Costs of the case

The above reliefs are prayed on the following amongst other

-G R O U N D S -

1. For that there was no disciplinary proceeding pending against the applicant in the year 1991 when the DPC was held on September, 1991 for promotion to the post of Inspector.

2. For that the result of the applicant of the DPC held on September, 1991 was kept under sealed cover in total violation of the instructions and guidelines of the Government of India.

*Arun Ch. Bora*

3. For that result of the juniors of the applicant were declared in the month of September, 1991 and they were declared promoted to the cadre of Inspector.
4. For that chargesheet was issued to the applicant only on 19.2.92 but the DPC was held on ~~September~~ 1991 and result also declared in the month ~~of~~ September, 1991 of the said DPC.
5. For that the case of the applicant was not reviewed for promotion in the light of the instructions and guidelines issued by the Government of India.
6. For that the case of the applicant even not considered for adhoc promotion to the post of Inspector.
7. For that the disciplinary proceeding intentionally delayed by the respondents with a view to deprive the applicant from his legitimate promotional avenues.
8. For that the applicant have incurred a heavy financial loss and promotional avenues due to delaying tactics adopted by the respondents.
9. For that the applicant have cooperated with the departmental authorities in respect of departmental proceedings even then the same is delayed intentionally by the respondents.

*Armen Ch. Bod*

8. Interim Reliefs prayed for :

During the pendency of the case the applicant prays for the following interim reliefs :

1. That the respondents be directed to consider the case of the applicant for promotion to the post of Inspector till final disposal of this case.

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

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

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

11. Particulars of I.P.O.

Postal Order No. : 311810  
Date of Issue : 15-2-96  
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.

Annexur

VERIFICATION

I, Sri Arun Chandra Bora, son of Lal Jibanch Bora  
aged about 38 years working as Tax Assistant, Customs  
and Central Excise, Jorhat Assam applicant in this  
application do hereby solemnly affirm and declare  
that the statements made in this application are true  
to my knowledge and belief and I have not suppressed  
any material fact.

I sign this verification on this the  
day of 27 February, 1996.

Arun Ch. Bora

Arun Ch. Bora

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OFFICE OF THE COLLECTOR OF CUSTOMS AND CENTRAL EXCISE  
SHILLONG

M E M O R A N D U M

C No. II(10)A/CIU-VIG/4/91 150

Dated Shillong the 19th Feb. 1992

The undersigned proposes to hold an inquiry against Shri A.C.Bora, Cashier under Rule 14 of the Central Civil services (Classification, Central and Appeal) Rules 1865. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of the imputations of mis-conduct or mis-behaviour in support of each earticle of charge is enclosed (Annexure-II). A list of documents by which, and a lisr of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

2. Shri A.C.Bora, Cashier is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an inquiry will be held only in respect of those article of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. Shri A.C.Bora, Cashier is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuse to comply with the provisions of Rule 14 of the C.C.S. (C.C.A.) Rules 1965 or the orders/directions issued in pursuance of the said Rule the inquiring authority may hold inquiry against him ex parte.

Annexure-1

## Annexure -1 (contd.)

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ANNEXURE - I

Statement of article of charge framed against Shri A.C. Bora, Cashier, Customs & Central Excise, Jorhat.

Article of charge

That the said Shri A.C. Bora while posted and functioning as cashier in Divisional Office, Jorhat during the period from 4.10.88 till date is alleged to have misappropriated Govt. money amounting to Rs. 37,428/-. Further, it is alleged that Sri Bora, cashier deposited an amount of Rs. 37,428/- to SBI, Jorhat, from the cash-in-hand thereby made running a shortage in cash of Jorhat Division.

Shri Bora, by the above act, exhibited lack of integrity, devotion to duty and acted in a manner un-becoming of a Govt. servant and thereby contravened the provisions of Rule 3(1)(i), (ii) & (iii) of the C.C.S (Conduct) Rules 1964.

ANNEXURE - II

Statement of imputation of mis-conduct or mis-behaviour in support of the article of charge framed against Shri A.Bora, Cashier, Customs and Central Excise, Jorhat.

That the said Shri A.C.Bora while posted and functioning as Cashier in Divisional Officer, Jorhat during the period from 4.10.88 till date is alleged to have misappropriated Govt. money amounting to Rs. 37,428/-. That as per bill No. 173/GO/SDA/91 dated 15.7.91 prepared by Shri L.C.Gogoi Ad-hoc LDC and passed by Shri N.N. Das A.O., Divisional Office Jorhat Shri A.C.Bora Cashier handed over the amount of Rs. 37,428/- drawn in favour of S/Shri J.C. Das and S Dutta Retd. Supdts. of Agartala and Silchar

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SAC*

*Annexure - 2*

## Annexure-1 (Contd.).

Division respectively, to Shei L.C.Gogoi LDC for disbursement. No undertaking or any sort of intimation was received from the said officers for payment of SDA by Jorhat Division.

That, investigations reveal that Sri J.C.Das, Supdt (Retd.) has drawn the arrear SDA of Rs.18,433/- from Agartala Division and Sri S. Dutta, Supdt. (Retd.) has drawn Rs. 13,733/- from Silchar Division executing written undertaking.

That Sri Bora deposited an amount of, Rs. 37,428 to SBI, Jorhat on 7.8.91 under Ch. No. 36 from the cash money in hand which resulted a shortage of Rs. 37,428/- in cash of Jorhat Division. In this regard, an explanation was called from Shri Bora by the Asst. Collector, Customs and Central Excise, Jorhat vide C. No. 41/CON/Acj/91/187 dated 27.8.91. Shri Bora in his reply dated 28.8.91 admitted the facts. Hence it appears that Shri Bora has committed an offence of gross irregularity and negligence in the discharge of official duties.

Thus by the above acts, Shri A.C.Bora, Cashier exhibited lack of integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened the provisions of Rule 3(1) (i) (ii) & (iii) of the CCS (Conduct) Rules 1964.

## ANNEXURE - III

List of documents by which the article of charges framed against Shri A.C.Bora, Cashier Customs & Central Excise Jorhat are proposwd to be sustained.

1. Bill No. 173/GO/SDA/91 dated 15.7.91
2. Cash Book of Jorhat Dist. office.
3. Service Books of Shri Sukhamoy Dutta and Shri J.C. Das, Retd. Supdts.
4. Written undertaking of Shri Sukhamoy Dutta and Shri J.C.Das, Retd. Supdts.
5. Letter C.No. 41/CON/91/187 dated 27.8.91.

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GSS*

*Annexure-1*

## Annexure - 1 (Contd.)

6. Explanation dated 28.8.91 of Shri A.C.Bora, Cashier, Customs & Central Excise, Jorhat.
7. Letter C. No. 41/CON/Acj/91/197 dated 13.9.91.

ANNEXURE -IV

List of witnesses by whom the articles of charge framed against Shri A.C.Bora, Cashier Customs & Central Excise, Jorhat are proposed to be sustained.

1. Shri J.C.Das, Supdt.
2. Shri Sukhamoy Dutta, Retd. Supdt.
3. Shri N.N.Das, A.O., Customs & Central Excise, Jorhat.
4. Shri L.Gogoi LDC, Customs & Central Excise, Jorhat.



## Annexure-2

To

The Deputy Collector (P&V) (By Name)  
Central Excise,  
Shillong.

Sub : Vigilance Inquiry against case No. DC(A)SH/  
Vig/27/92 relating to Memorandum C.No. II/10/  
A/CIU/Vig/4/91 dated 19.2.92 corrs.Reg.

Ref : My petition dated 11.11.93.

Madam,

With reference to the above case in which I am one of the party, beg to submit that Madam for the last 4 years my case is under proceeding under you. As the case is pending for decision I am loosing my seniority together with my promotion.

That Madam, Sri L.C.Gogoi L.D.C. who is the only culprit has already deposited an amount of Rs. 18728.00 in 3 instalments vide his written statements dated 27.5.92, 7.10.92 and 2.2.94 respectively (Copy enclosed Annexure-I/II/III).

That Madam, as per his written statement dated 2.2.94 he has already agreed to pay the rest amount in 20 instalments and after that he has deposited an amount of Rs. 1500/- on 2.2.94 (both the statements enclosed) and he admitted the fact that he has misappropriated the monty.

That Madam, during 1st. hearing held at Shillong on 26.3.93 Sri L.C.Gogoi stated that the letter dated 27.5.92 addressed to the Administrative Officer, Jorhat wherein the amount of Rs. 15,500/- that was refunded back to the department was written under duress. But after that he again refunded an amount of Rs. 3228/- in 2 instalments in the same way on 7.10.92 and 2.2.94. If it was under duress, then why he did not inform it to the higher authority. The amount was deposited inside the office premises and the letters were also written under duress. You may ask all the officers who were present on those days. Further my Defence Assistant on 21.7.93 requested you to obtain a statement from Mr. Raha then Asstt. Collector in this matter. A copy of the statement may kindly be sent to me for my record.

*Abu S.A.N.*

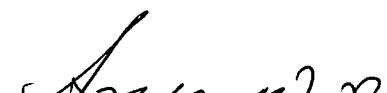
*Anu C. Bon*

## Annexure-2 (Contd.)

That Madam, I handed over the money to Sri Gogoi when he volunteered to disburse the said amount on that day the reason for volunteer was not known to me. On the other hand the disbursement by other officers on pay day is a regular practice which is also admitted by the Administrative Officer, Jorhat during hearing on 26.3.93.

Further, I am to state something on the Proceedings of hearing on 4th June, 1993. In the Ist. para of proceeding Defence Asstt. of Sri L.C.Gogoi Mr. J.N. Buragohain stated that S.D.A. was drawn on 15.7.91. The money was disbursed on 31.7.91. During this 15 days the cashier might have done some correspondence with the concerned officers. But actually the money was drawn on 15.7.91 and disbursed one payment on 15.7.91 and one on 16.7.91 vide Sl.No. 4 and 3 respectively. The question of correspondence does not arise because all the Superintendents were retired from Jorhat Division (Although these two officers were not retired from Jorhat Division it was not known to me).

That Madam, I informed Mr. Sunil Mohon Dutta Supdt. (Rtd.) from Jorhat Division to receive the money drawn against Sl.No. 8 of the said bill who stated that I will not get such a big amount I will get the arrear of 2 or 3 months only. Then I told the Adm. Officer, Jorhat that S.M. Dutta's bill is wrong. He will get only for 2 or 3 months. Then Adm. Officer told me that I do know know about the preparation of the bill. He told me to ask Mr. Gogoi the bill clerk. Then I asked Sri Gogoi about the bill of Sri S.M.Dutta. In reply he stated that this payment does not belong to Sri Sunil Mohon Dutta. It belongs to Sukha Naoy Dutta who retired from Golagaht Range I know him very well. Actually Sri Gogoi knows both the officers very well. Because he is more senior to me at Jorhat Division (These two officers were relieved in the year 1987). Sri Sunil Mohon Dutta may also be asked for this matter.



## Annexure-2 (Contd.)

In the 2nd para Defence Asstt. to Sri L.C.Gogoi stated that the cashier did not send the money to their new place of posting But the bill itself belongs to retired persons who were retired from Jorhat Division. So this statement does not stand.

In para 10 of Proceedings dated 4.6.93 the Defence Asstt. to Sri Gogoi stated that Sri Gogi had never done any disbursement prior to this incident. But Sri Gogoi in almost all pay day used to disburse pay and other bills also. The matter may be verified with the records available in the office and the officers of this office may be asked to verify the genuineness.

As per para 11 the bill was prepared for the period on their posting at Jorhat Division. But this ~~xxx~~ particular bill was for the retired Superintendents. So this para also does not stand.

That Madam, when this incident was detected Sri Gogoi was absconded for 2 months and on 21.7.93 when you came down to Jorhat for final hearing he was present at office but subsequently he left office by submitting a leave application. These acts also proved that he is the actual guilt.

Sri Gogoi would have deposited all the misappropriated money but subsequently, our Asstt. Collector gave an order on the note sheet "that since the matter is under inquiry by Hqrs. and same is nearing completion no such adhoc payment should be made till final order is received, so he stopped payment towards the misappropriated money.

On the above circumstances, I humbly pray you that I may kindly be exonerated from the charges charged on me. On the other hand I am already punished by mentally by four and half years.

Yours faithfully,

Sd/- A.C.Bora 5.5.95  
Tax Assistant, Central  
Excise, Jorhat.

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

Sd/- A.C.Bora 5.5.95




## Annexure-3

To

The Deputy Collector (P&V)  
 Central Excise  
 Shillong

(Through proper channel)

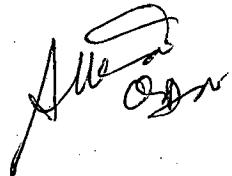
Sub : Vigilance Inquiry against case No. DC(A)SH/Vig/27/92 relating to Memorandum C. No. II/10/A/CIU/Vig/4/91 dated 19.2.92 Corrs Regd.

Ref : My petition dated 11.11.93 and subsequent letter dated 5.5.95.

Madam,

Kindly refer to my above mentioned letters on the above subject.

Inspite of making several request for taking early decision I have heard nothing from you. The case is lying pending with you undecided for a period of nearly 4 years. As the case had not yet been decided, I can presume without any shadow of doubt that I have been given harrassment and also I have deprived of getting promotion which was due on September, 1991. Though it is an evidence from the letter of Sri L.C.Gogoi LDC dated 2.2.94, one of the charged official has admitted that he has misappropriated the money. The fact of which was intimated to you earlier. It is not understood why the case is yet to be decided. If I do not hear from you the fate of the case within one month or two, I have nothing alternative but to take recourse of law to get natural justice. The permission for filing petition either to the court or to the Central Adminisfrative Tribunal may be accorded to me and in case I do not hear from you either about the fate of the case or about according permission for filing petition in the Court/Central Administrative Tribunal, I will presume that the permission has been accorded



Yours faithfully,

Sd/- A.C.BORA 31.6.95  
 Tax Assistant, Central Excise,  
 Jorhat.



## ANNEXURE-4

CUSTOMS &amp; CENTRAL EXCISE : SHILLONG

C.No. II(8)CIU-VIG/18/95/261

Dated 31.5.95

To

Shri A.C.Borah,  
Tax Assistant,  
Customs & Central Excise  
Jorhat.

Sub : Vigilance Inquiry against Case No. DC(A)AH/VIG/  
27/92 relating to Memorandum C.No. II(10)A/CIU/  
-VIG/4/91 dated 19.2.92 - corres regd.

Please refer to your petition dated 5.5.95

The matter has been referred to Vigilance  
Commission for advice. Reply is still awaited.

Sd/- EVA M.R. HYNNIENTA

DEPUTY COLLECTOR (P & V)  
CUSTOMS & CENTRAL EXCISE  
SHILLONG



Annexure-5

REGISTERED CONFIDENTIAL

CUSTOMS AND CENTRAL EXCISE : SHILLONG.

C.No. II (8)/CIU-VIG/18/95/253

Dt. 23.6.95

To

Sri A.C.Bora  
Tax-Assistant  
Customs And Central Excise,  
Jorhat

Sub : Vigilance Inquiry against Case No. DC(A)/AH/VIG/  
27/92 relating to Memorandum C. No. 11(10)A/CIU-VIG/4/  
91 dated 19.2.92 Corres. reg.

Please refer to your letter dated 1.6.95  
regarding your petition dated 5.5.95

Necessary action is being taken from the  
Hqrs. office.



Sd/- EVA M.R. HYNNIEWTA  
DEPUTY COMMISSIONER ( P & V )



CUSTOMS AND CENTRAL EXCISE : SHILLONG

ESTABLISHMENT ORDER NO. 328/1994

DATED SHILLONG THE 28TH NOV. '94

Subject : Estt. Promotions, Transfers and Postings in the grade of Inspector - order Regarding.

## PART-I

## AIR REMOVAL

The following Tax Assistant of Customs and Central Excise are hereby promoted to the grade of Inspector in the scale of pay of Rs. 1640-60-2600-EB-75-2900/- with effect from the date they assume charge of higher posts in the places of posting.

S.l. No.	Name	Pr. Place of Posting
1.	Shri Kshetrimagum Dharamdas Singh	Imphal Cus. Divl. Office
2.	Shri Sankar Kr. Bhadra	Dhubri CEX. Divl. Office
3.	Shri Adhip Dutta Choudhury	Silchar CEx. Divl. Office
4.	Shri Shyamapada Ghosh	Tinsukia CEx. Divl. Offic
5.	Shri Uttam Kr. Saha	Agartala Cus. Divl. Offic
6.	Shri Sibu Bikash Baruah	Guwahati CEx. Divl. Offic
7.	Shri Tilak Upadhyay	Jorhat CEx. Divl. Office
8.	Shri Kailen Luheng	General Br. Hqrs. Shillon
9.	Shri Anthony Lawphnias	Statistics Br. Hqrs. Shill
10.	Shri Prabash Ch. Saha	Dhubri CEx. Divl. Office
11.	Shri W.H. Singh	Dibrugarh CEx. Divl. Offi
12.	Shri Duleswar Pegu	Dibrugarh CEx. Divl. Offi
13.	Shri Tapan Kr. Nag	Silchar CEx. Divl. Office
14.	Shri Kiran Ch. Das	Digboi Cex. Divl. Office
15.	Shri C.A. Lyngwa	Accounts Br.Hqrs. Shillon
16.	Shri Dipen Ch. Bordoloi	Tezpur CEx. Divl. Office

The seniority of the above officers in the grade will be in the order shown above.

✓ from Ch. Box

They are hereby asked to exercise option within one month from the date of promotion as to whether their initial pay should be fixed in the higher post on the basis of FR 22 (C) straightway without any further review on accrual of increment the pay scale of the lower post of their pay on promotion should be fixed initially in the manner as provided under FR.22 (a) (i) which may be refixed under the provision of FR. 22 (c) on the date of accrual of next increment in the scale of pay of lower post. Option once exercised shall be final.

contd -



In the event of refusal of promotion they would be debarred from promotion for a period of one year.

## PART-II

TRANSFERS AND POSTINGS

All the promotees are retained at their respective present places of posting. Final postings as Inspector will be issued later on.

SD/-

(EVA M.R. HYNNIEWTA)  
DEPUTY COLLECTOR (P&V)  
CUSTOMS & CENTRAL EXCISE : SHILLONG

C.No. II(3)19/ET.III/92/6676-2 (A) Dated 29.11.94

Copy forwarded for information & necessary action to :

1. The Sr. P.A. to Collector (Cus. Prev) / P.A. to Collector (CEx), Hqrs. Office, Shillong.
2. The Additional Collector (Cus. Prev) ~~xxxxxxxxxxxxxx~~, NER, Imphal.
3. The Additional Collector (Audit) / (Tech), Collectorate Hqrs. Office, Shillong.
4. The Deputy Collector (CEx), Collectorate Hqrs. Office, Shillong.
5. The Assistant Collector, of Customs/Central Excise Gauhati CEx Division. The copy meant for the concerned officer(s) is enclosed.
6. The Administrative Officer (Hqrs.), Collectorate Hqrs. Office, Shillong. The copy meant for the concerned officer is enclosed.
7. The Superintendent (Statistics), Collectorate Hqrs. Office Shillong. The copy meant for the concerned officer is enclosed.
8. The A.C.A.O (Accts), Collectorate Hqrs. Office, Shillong. The copy meant for the concerned officer is enclosed.
9. Shri/Smti \_\_\_\_\_ for compliance.
10. The P.A.O/A.O of Collectorate Hqrs. Office, Shillong.
11. Accounts I & II/ET.I & II/Confld. Br./CIU-cum-ViG Branch.
12. The General Secretary, Group C Ministerial/Executive Officer Association, Vustoms and Central Excise, Shillong.
13. Guard file.
14. The Superintendent (Training Cell), Hqrs. Office, Shillong.

Sd/- ~~xxxxxxxxxxxx~~  
M.L.CHAKRABORTY  
ADMINISTRATIVE OFFICER (ESTT)  
CUSTOMS & CENTRAL EXCISE : SHILLONG

Dated  
21/11/94  
P.W.

Filled in Court  
on 12.2.1997

*Bm*  
Court Master

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

GUWAHATI BRANCH :: GUWAHATI.

IN THE MATTER OF :

O.A.No.26/1996

Aruna Chandra Bora,

-Versus-

The Union of India and Others.

- AND -

IN THE MATTER OF :

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

( WRITTEN STATEMENTS )

The humble Respondents submit  
their Written Statements as  
follows :

Before submitting parawise reply of the  
application the Respondents deem it necessary  
to give a brief background of the case for proper  
adjudication of the matter. The brief background  
of the case is as follows :

The case originated from wrong encashment  
of Government money amounting to Rs.37,428.00  
under the direction of Shri M. N. Das,

*P  
m.lulu  
17-2-97*

( Contd. )

Administrative Officer, Customs and Central Excise, Jorhat Division ( now retired ) by a Cheque no. 707528 dated 15-7-91 prepared by Shri A. C. Bora, Cashier, against Bill no. 173/60/SDA/91 dated 15-7-91 prepared by Shri L. C. Gogoi, L. D. C. towards payment of SDA arrear to Shri J. C. Das, Superintendent ( Rs.21,404.00 ) and Shri S. M. Dutta, Superintendent ( Rs.16,024.00 ) who were transferred from Jorhat Division to Agartala Division on 12-6-87 and Silchar Division on 2-1-87 respectively. The bill appeared to have been prepared by Shri L. C. Gogoi, Ad-hoc L. D. C. under the direction of Shri N. N. Das, the then Administrative Officer without consulting the service books of Shri J. C. Das and Shri S. M. Dutta who were transferred as stated above and had drawn their SDA arrear from respective Division. After encashment of 15-7-91, the entire amount was lying with Shri A. C. Bora and the same was handed over to Shri L. C. Gogoi on 51-7-91, that is on the pay day. The entire amount was misappropriated by Shri N. N. Das, Shri A. C. Bora and Shri L. C. Gogoi under the false signature of Shri J. C. Das and Shri S. M. Dutta.

- 1) That with regard to the statements made in Paragraphs 1,2,3,4 & 5 the Respondents have no comments.
- 2) That with regard to the statements made in paragraphs 6.1 and 6.2 of the application the Respondents have no comments the same being matters of record.
- 3) That with regard to the statements made in paragraphs 6.3, 6.4 & 6.5 of the application the Respondents have no comments the same being matters of record.

4) That with regard to the statements made in paragraphs 6.6 of the application the Respondents beg to state that, the promotion of the applicant is illegal and denied by the Respondents, as stated by him, is also not a fact of the case. His case has been duly considered by the D. P. Cs. and the findings of the D. P. Cs. have been kept in a sealed cover in terms of Minister's letter No. 22011/5/36-Estt(B) dated 10.04.89 as and when the case of the applicant is over then the sealed cover will be over. /

5) That with regard to the statements made in Paragraph 6.7 of the application the Respondents beg to state that, in terms of para 17.9 of the Minister's letters cited above, if any vigilance case arise after the recommendation of the D. P. Cs. before he is actually promoted will be considered as if his case has been in sealed cover by the D. P. C. He shall not be promoted until he is completely exonerated to the charges against him. In the instant case also as stated earlier his result of the D. P. C. has been kept in sealed cover.

6) That with regard to the statements made in paragraphs 6.8 of the application the Respondents beg to state that, Six monthly reviews could not be held since the case of the applicant is pending with the Ministry.

7) That with regard to the statements of facts made in paragraph 6.9 of the application the Respondents beg to state that, the opening of the sealed cover does not arise until the applicant is

Revised

fully exonerated in terms of para 17.6.1 of Minister's letter No.F.No. 22011/5/86/Estd.(D) dated 10-4-89.

8) That with regard to the statements made in paragraphs 6.10 and 6.11 of the application the Respondents beg to state that, it is not a fit case to interfere with the Hon'ble Tribunal with the actions taken by the Respondents as the applicant is directly involved in embezzlement of government money which is more than five thousand. In the ends of justice the disciplinary proceeding has been drawn against him.

9) That with regard to the statements 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 sought for.

10) That with regard to the statements made in the grounds of relief sought for the Respondents beg to state that, none of the grounds are maintainable in law as well as in facts.

11) That with regard to the statements made in paragraph 8 of the application regarding interim relief prayed for, the Respondents beg to state that, the applicant is not entitled to interim relief.

12) That with regard to the statements made para 9 of the application the Respondent beg to state that, they have no comments on them.

13) That with regard to the statements made in the submission the Respondents beg to state that the application has no merit and as such the same is liable to be dismissed.

VERIFICATION

I, Shri R. K. Sarkar, Superintendent (Law),  
of Central Excise, Guwahati, as authorised to hereby  
solemnly affirm and declare that the statements made  
in the Written Statement made in paras 1,5,6 & 7  
are true to my knowledge and those made in paras  
2,3,4,8,12 and back ground of the case of the  
written statements are true to my information and  
the rests are my humble submissions made before  
this Hon'ble Tribunal and I sign the verification  
on this 15th day of February, 1997 at Guwahati.

Rathindra Kumar Sarkar

Declarant.  
Superintendent (Law)  
Central Excise  
Guwahati Division

Filed in  
on 15.3.97

Ben  
Court Master

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH:GUWAHATI.

O. A. NO. 26/96.

Arun Chandra Bora

-Versus-

The Union of India & Ors.

-AND-

IN THE MATTER OF:

An Additional Written Statement  
submitted by the Respondents No. 1, 2 & 3

( ADDITIONAL WRITTEN STATEMENT )

The humble Respondents beg to submit  
their Written Statement as follows :

- 1) That, the ~~peti~~ Respondents have already filed Written Statement on 17-2-97 in the above case, that is, O.A. No. 26/96 and the case is otherwise ready for hearing.
- 2) That, in paragraph 6 of the earlier Written Statement with regard to the statements made in paragraph 6.8 of the Original application the Respondents beg to state that, as per ~~instructions~~ instructions from the Ministry this paragraph is

Received  
Adv.  
15.3.97

(Contd.)

38  
S. C. S. C.  
19/3/97  
S. C. S. C.

required to be modified to the extent that in place of "since the case of the applicant is pending with the Ministry" it should be ~~X~~ read as "that the matter is under ~~process of the Ministry~~" .

VERIFICATION -

I, Sri R. K. Sarkar, Superintendent (Law) of Central Excise, Guwahati as authorised do hereby solemnly declare that the statements made in paragraph 1 is true to my knowledge and the statement made in paragraph 2 of the Additional Written Statement are true to my ~~info~~ information .

I, sign this verification today on  
19th day of March, 1997 at Guwahati .

Rathindra Kumar Sarkar  
Superintendent (Law)  
Central Excise  
Guwahati Division