

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-4/97 ordered sheet pg-1

Disposed. date- 8/01/96

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O.A/T.A No. 262/96

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SECTION OFFICER (Judi.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ST No, 262496

Sri. M. H. Maj. & Ors. Applicant(s)
-versus-

Union of India & Ors. Respondent(s)

Mr. P.K. Goswami, A.C. Baruwa. Advocates for Applicant(s)
" R. Baruwa, M. K. Chandy, B.D. Konow,

Mr. A.K. Choudhury, A.C.S.C. Advocates for Respondent(s)

Office Notes Date Courts' Orders

15.11.96 Learned Sr. counsel Mr. P.K.

This application is in form and within time C. F. of Rs. 50/- deposited vide IPO/RD No 349072 Dated 13.11.96
In the opinion of the learned Sr. counsel Mr. P.K. Goswami for the applicants. Learned Addl. C.G.S.C. Mr. A.K. Choudhury for respondent No. 1. None for the State of Nagaland and other respondents. The applicants pray for permission to join together in this single application under Rule 4(5) (a) of the C.A.T (Procedure) Rules 1987. Permission is granted as the conditions laid down in the rules are fulfilled.

19.11.96

19.11.96

Notice issued to the concerned parties

Vide D. No. 3858 to 3864

Dt - 22.11.96

Bar

19.12.96

Issue notice on the respondents to show cause as to why this application should not be admitted. Returnable on 8.1.97.

List for show cause and consideration of admission on 8.1.1997.

contd...

15.11.96

Heard learned Sr.counsel Mr P.K. Goswami on the interim relief prayer. The respondents are directed to produce a copy of the minutes of the Review Selection Committee dated 26.7.96 and the records relevant to the minutes on 8.1.97. Further the respondents shall not appoint respondent No.6, Sri Basant Kumar Singh, to the IPS Nagaland Cadre without prior leave of this Tribunal pending admission of the application.

Member

3-1-97

3-1-97

Learned Sr.counsel Mr.P.K.

Goswami for the applicants. Mr.G.K. Bhattacharjee with Mr.G.N.Das for respondent No.6, Shri Basant Kumar Singh, have submitted show cause on his behalf. Copy of show cause has been served on the counsel of the applicant. Mr.A.K.Choudhury Addl. C.G.S.C. for respondent No.1 & 3 submits that respondent No.1 will not submit the show cause but will rely on the reply and the written statement of respondent No.2, the State of Nagaland. None is present for respondent No.2, State of Nagaland, or any show cause has been received from them. No show cause has been received from the other respondents.

Mr.A.K.Choudhury submits an affidavit dated 6-1-97 from respondent No.3 sworn by the Chairman, Union Public Service Commission, New Delhi claiming privilege regarding production of Minutes of the Review Selection Committee held on 26-7-96 in connection with the

8-1-97 selection of the respondent No.6 to the IPS, Nagaland Cadre. However he submits a confidential sealed cover No.F.7/13(1)/95-A/S stated to contain the Minutes of the Review Selection Committee Meeting held on 26-7-96 at Shillong in terms of para 5 of the affidavit dated 6-1-97 for respondent No.3. Mr. Choudhury further submits that the records relevant to the minutes are with the respondent No.2, the State of Nagaland. As stated above, however, none is present for the State of Nagaland, respondent No.2. Mr. P.K. Goswami submits that he desires to be heard on the claim of privilege by respondent No.3.

In the circumstances stated above the matter for Admission is adjourned to 29-1-97 to enable the State of Nagaland and other respondents to be present.

List for consideration of Admission and for hearing on the claim of privilege for production of records by the respondent No.3 on 29-1-97. The sealed cover mentioned above will be opened on 29-1-97 in Court, if necessary on that day. In the meantime it will be kept under the safe custody of the Court Officer.

Send copy of this order to the Chief Secretary, Government of Nagaland, Kohima on behalf of respondent No.2. In view of the submission of learned Addl.C.G.S.C as above the Respondent No.2, is directed to produce the records relevant to the Minutes on 29-1-97 before this Tribunal.

Copy of this order may be sent to the counsel of the parties.

Pl. comply and
dated 8-1-97.

8/1/97

9.1.97

Copy of order add.

8.1.97 issued to
the counsel of parties
and respondent No.2.

lm
8/1

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Member

29.1.97

Learned senior counsel Mr P.K.Goswami for the applicants present. Mr S.Ali, learned Sr.C.G.S.C/prays for 10 days time to file written statement. Similarly, Mr C.T.Jamir, learned Government Advocate appearing on behalf of respondents No.2, 4 and 5 also prays for 10 days time to file written statement. Prayer allowed.

As per our earlier order dated 8.1.97 the Tribunal has directed the respondents to produce relevant records pertaining to the Minutes of the Review Selection Committee meeting held on 26.7.96 at Shillong. Though this Tribunal has passed the order on 8.1.97 records have not been produced before this Tribunal today. However, we allow another 10 days time for production of records by the respondents. The respondent No.3, Union Public Service Commission claims privilege regarding those records. That matter will be considered on the next date. Mr G.K.Bhattacharya, learned counsel appearing on behalf of respondent No.6 prays for an order directing the respondents not to appoint any officer to the post of IGP until the disposal of the application. However, we are not inclined to give any direction at this stage. The authority may appoint other than the respondent No.6 in the vacant post of IGP if so advised. However, such appointment shall be subject to the result of this application.

List this case on 10.2.97 for written statement. Thereafter, the applicant may file rejoinder by 20.2.97. On that day date of admission shall be fixed.

As ordered by this Tribunal on 8.1.97 the Minutes of the Review Selection Committee meeting held on 26.7.96 at Shillong shall be kept in the safe custody of Court Officer and produce it on the date.

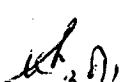
69
Member

Vice-Chairman
8.2.97

Copy of order dtd 28.1.97
allow to the counsel
of parties.


30.1.97

Minutes of the Review Selection Committee meeting held on 26.7.96 at Shillong has been submitted by Mr.C.T.Jamir, Govt Advocate Nagaland under sealed cover in the court and same has been kept in safe custody of the Court Officer.



pg

N 372

6.2.97

- 1) WJS has been filed on Q-6.
- 2) Affidavit filed on R-3.
- 3) Service report are still awaited.
- 4) Memo of appearance filed by Addl. C.G.S.C. Mr A.K. Chowdhury from Respondent No. 3.

W/
6/2

10.2.97

Mr.C.T.Jamir, Govt. Advocate, Nagaland prays for short adjournment. Prayer allowed.

Mr. S.Ali, Sr.C.G.S.C. also prays for sometime on behalf of Mr. A.K.Chowdhury, Addl. C.G.S.C. to file written statement as an exceptional case. We allow time till 14.2.97. If no written statement is filed within 14.2.97 the case will proceed without written statement at the risk of the respondents.

6/2
MemberS. H. S.
Vice-Chairman

trd

- 1) Service reports are still awaited.
- 2) Writ Petition filed by Mr. A.C. Borbora on Respondent No. 6.

W/
6/2

14.2.97

Written statement has been filed by respondents No.2, 4 and 5. Copy of the written statement was served only yesterday. Mr A.C.Borbora, learned counsel appearing on behalf of the applicants prays some time to file rejoinder. The applicants may file rejoinder within 7 days from today and before filing copy of the said rejoinder shall be ~~fix~~ served on all the respondents. So ~~fix~~ far Union Public Service Commission is concerned no written statement has been filed. There is also no prayer for further extension of time. Accordingly the case will proceed without the written statement of UPSC-respondent No.3.

List on 14.3.97 for hearing.

6/2
MemberS. H. S.
Vice Chairman

25.2.97 against affidavit of Respondent No. 6 by the UPSC, Respondent No. 6 and against WJS filed by Respondent No. 3, 4 & 5.

pg
W/
6/2

(6) 14.2.97 This Tribunal directed the

Union Public Service Commission, respondent No.3, for production of the Minutes of the Review Selection Committee held on 26.7.1996 by an order dated 15.1.1996. Respondent No.3 has filed those Minutes under sealed cover claiming privilege. However, respondent No.3 submitted that these may be looked into by the Tribunal. But, at the time of hearing Mr A.K. Choudhury, learned Addl. C.G.S.C., has not been able to show any ground for claiming privilege. Accordingly we reject the prayer. The sealed cover is opened in presence of the learned counsel for the parties.

Mr C.T. Jamir, learned Government Advocate, Nagaland, has submitted another sealed cover. Mr Jamir submits that the sealed cover contains the Minutes of the Selection Committee and the relevant documents. These are opened. Mr A.K. Choudhury may look into.

The respondent Nos.3 and 4 have filed a written statement after the order dated 14.2.1997. By the said order this Tribunal declined to grant any further extension of time. But, on 3.3.1997 the said respondents have filed the written statement, however,

3.3.97

Memo of appearance filed by Mr. A.K. Choudhury, learned Addl. C.G.S.C.

Counter Affidavit filed by in Respndt. No. 3 & 4.

In
D.W. student to be joined due
to his son B.D.

13/3

13.3.97

Rejoinder filed by the applicant against the counter filed by Res. No. 3 & 4. dt. Pf/127-132

14.3.97

Heard the learned counsel for the, The application is admitted. As per our order 14.2.97 the case is taken up for hearing.

This Tribunal directed the Union Service Commission, respondent No.3, for pro of the Minutes of the Review Selection Con held on 26.7.1996 by an order dated 15.1. Respondent No.3 has filed those Minutes under cover claiming privilege. However, responder submitted that these may be looked into Tribunal. But, at the time of hearing Mr A.K. learned Addl. C.G.S.C., has not been able to any ground for, claiming privilege. Accordir reject the prayer. The sealed cover is in presence of the learned counsel for the partie

Mr C.T. Jamir, learned Government Nagaland, has submitted another sealed cover. Jamir submits that the sealed cover contains Minutes of the Selection Committee and the documents. These are opened. Mr A.K. may look into.

The respondent Nos. 3 and 4 submitted written statement after the order dated 15.1.97. By the said order this Tribunal declined any further extension of time. But, on the said respondents have filed the written statement, however, without seeking permission. The said two respondents have submitted an affidavit stating, interalia, that the written statement not be filed as the counsel Mr A.K. was indisposed. We have heard Mr P.K. learned counsel for the applicant, Mr G.K. learned counsel for the respondent, No. 3 and Mr C.T. Jamir on this point and after hearing the written statement.

We have heard Mr P.K. Goswami by Mr A.C. Borbora on behalf of the respondent No. 4 and Mr A.K. Choudhury, learned Addl. C.G.S.C. Mr C.T. Jamir, learned Government Advocate and Mr G.K. Bhattacharyya appearing for the 6 respondents at some length. After the hearing we find that certain important records namely, relevant records regarding selection of the 22 candidates in the DPC Meeting on 28.12.1988 and also the records regarding

O.A.No.262/96

18-3-97 14.3.97

y of the order
of - 14-3-97 prepared
sent to despatch
ion on 18-3-97.

Police duty served
R. No — 51

evaluation of respondent No.6 and the gradings given have not been produced by the respondent Nos. 2 and 3. The State of Nagaland also has not submitted the important document, namely, comparative evaluation of the officers before the first meeting, namely, 28.12.1988. We are sorry to record that in spite of our order for production of those documents the said documents have not been produced. We, therefore, direct the State of Nagaland to produce the relevant records as indicated above on the next date. We also direct the Under Secretary, Union Public Service Commission, to produce the documents and also the other documents he relied on in his affidavit on the next date.

List it on 25.4.97 for further hearing.

Member



Vice-Chairman

pg

6
Monogram


Vice-Chairman

pg

23

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only serve on

Sur LID by
2, 4, 5 & 6.
affidavit by
2 & 4.
decls Sur LID
R. No. 6, 2, 4 & 5
de against 4/5
7. R. No. 2, 4 & 5
de against 4/5
R. No. 6/7 by R. No.
application for
3 & 4.

OA/TA/GP/PA/MP No. 262 of 1996

9

OFFICE NOTE	DATE	ORDER
1) Notice duly served R. No. 6.	23.5.97	Heard in part. List it on 27.5.97 for hearing as first item.
2) Writ Petition filed by R. No. 2, 4, 5 & 6.		68 Member
3) Counter affidavit in case of R. No. 6.		
4) Response in K.W. by R. No. 6, 2, 4 & 5	27.5.97	Heard Mr P.K. Goswami, learned counsel for the applicant, assisted by Mr A.C. Borbora, Mr G.K. Bhattacharyya, assisted by Mr B.K. Sharma, on behalf of respondent No.6, Mr C.T. Jamir, learned Government Advocate, Nagaland and Mr A.K. Choudhury, learned Addl. C.G.S.C. on behalf of respondent No.3. Today Mr Jamir has placed certain records as per the list and Mr A.K. Choudhury also has submitted the minutes of the Selection Committee of the 1988 selection held on 28.12.1988. Office to keep all the records in safe custody.
5) Response in K.W. against Counter affidavit - R. No. 3 & 4.		
6) An application for leave to file by R. No. 6.		
18.12.97 Copy of order dtd 16.12.97 issued to the respondents No.6 & Registered Post vide Dispatched No. 3752-53 Dd. 18.12.97 B.S.	16.12.97	Certain points requires clarifica- tion. Mr M.K. Choudhury, learned counsel appearing on behalf of the applicant submits that he is not in a position to make submission today. He needs some time. Let the respondent No.6, Shri Basant Kumar Singh, DIG shall personally appear before this Tribunal on 6.1.98 at 10-30 A.M. Registry to send notice through Director General of Police, Nagaland. List on 6.1.1998 for hearing.
		68 Member
		Signature Vice-Chairman

OFFICE NOTE

DATE

ORDER

19/12/97.

6.1.98

Heard the learned counsel for

No. CIGPOL/BR/PF-1/BKS/97 dtd 20.11.97

the parties. Hearing concluded.

Judgment reserved.

The above letter received by the
Registry from Shri B.K.Singh,
D.I.G respondent No.6 at
Flag 'A'.

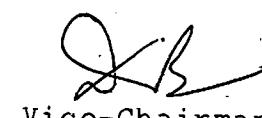
19/12/97

nkm


Vice-Chairman

4.3.98

Judgment pronounced in open court.
The application is disposed of. No order as
to costs.

6
Member

Vice-Chairman

12.3.98
Copy of the Judgment
Issued to the
parties vide d.No.
645 to 651.

nkm

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

O.A.No. 262 of 1996

4.3.1998
DATE OF DECISION.....

!! Shri M. Hesso Mao and four others (PETITIONER(S))

Mr P.K. Goswami, Mr A.C. Borborā

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

Mr A.K. Choudhury, Addl. C.G.S.C.,
Mr C.T. Jamir, Govt. Advocate, Nagaland,
Mr G.K. Bhattacharyya and Mr G.N. Das.

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

THE HON'BLE MR 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 ? *yes*
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.

D. Baruah

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWÁHATI BENCH

Original Application No.262 of 1996

Date of decision: This the 4th day of March 1998

The Hon'ble Mr Justice D.N. Baruah, Vice Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. Shri M. Hesso Mao
2. Shri S. Akanglemba Jamir,
3. Shri T.M. Wati
4. Shri Jangtaulang Changkija
5. Shri N.N. Walling.Applicants

By Advocates Mr P.K. Goswami, Mr A.C. Borbora.

- versus -

1. The Union of India, represented by the Secretary, Ministry of Home Affairs, New Delhi.
2. The State of Nagaland, represented by the Chief Secretary, Government of Nagaland.
3. The Union Public Service Commission, represented by The Secretary, Union Public Service Commission, New Delhi.
4. The Review Selection Committee of the Union Public Service Commission, Constituted to reconsider the case of Shri Basant Kumar Singh for Selection to the Indian Police Service Cadre of Nagaland.
(Represented through the Chief Secretary to the Government of Nagaland, Kohima and/or the Secretary, UPSC, New Delhi).
5. The Commissioner and Secretary, Home Department, Government of Nagaland, Kohima.
6. Shri Basant Kumar Singh, Deputy Inspector General (Border). Chumukedima, Dimapur.
7. Mr Ajit Narayan, Inspector General, Border Security Force, Shillong.Respondents

Mr A.K. Choudhury, Addl. C.G.S.C.,
Mr C.T. Jamir, Government Advocate, Nagaland,
Mr G.K. Bhattacharyya and Mr G.N. Das for respondent No.6.

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v1

O R D E R

BARUAH.J. (V.C.)

In this application the applicants have challenged the decision of the Review Committee held on 26.7.1996 for review of the case of the respondent No.6 for selection to IPS Cadre, Nagaland and also prayed for a direction to the respondents not to act upon the recommendation of the Review Selection Committee on the ground of material irregularities in the selection process and that the decision taken by the Review Selection Committee was contrary to the directions given by the Tribunal on 27.6.1995.

2. Facts for the purpose of disposal of this application may be narrated as follows:

All the applicant Nos.1 to 5 are members of the Indian Police Service (IPS for short) (Nagaland Cadre). They have been serving in their respective posts. The applicants state that to their knowledge no adverse remarks had been made by the authority concerned against them. They also say that the 6th respondent was not a suitable person for selection for recruitment to the IPS. He was not found suitable by the Selection Committee held prior to 1.3.1986. The departmental proceeding had also been initiated against him in 1978 and after the conclusion of the disciplinary proceedings he was found guilty of the charge and penalty was imposed on him by the Disciplinary Authority accordingly. The applicants have also stated that while he was serving as Superintendent of Police, several complaints had been received against him. His performance as Superintendent of Police in Mon District was not found satisfactory. He was also found unfit for holding an independent charge of a district. He was asked to go on

R2

leave and in his place another officer was posted. He had adverse remarks in his ACR in the year 1983 and subsequent years viz. 1985, 1986 and 1987. Therefore, he approached the Hon'ble Gauhati High Court by filing Civil Rule 1028/87 challenging the action of the authorities in giving promotion to his juniors overlooking his case. The said Civil Rule was disposed of with direction to the respondents that the ACR containing adverse remarks against the 6th respondent should not be taken into consideration at the time of making the selection. During the pendency of the said Civil Rule the 6th respondent filed yet another Writ Petition before the Hon'ble Gauhati High Court (Civil Rule No.102 K/90) challenging two Select Lists prepared by the two Selection Committees constituted in 1988 and 1989. He complained in the said Civil Rule that he was left out unreasonably by the Selection Committees acting upon uncommunicated or belatedly communicated adverse remarks made in his ACR. This Civil Rule was transferred thereafter to this Tribunal and the same was registered and numbered as Transfer Application No.4/93. This application was heard and disposed of by this Tribunal giving following directions:

"i) The respondents are directed to constitute a Review DPC to consider the case of the applicant for selection to the IPS Cadre for the State of Nagaland, under the Scheme for the initial constitution of the IPS Cadre of Nagaland as on 20.12.1980.

ii) The Committee will not take into account the adverse remarks contained in the ACRs of the applicant for the years relevant for above consideration.

iii) The Committee shall consider whether applicant is fit to be selected after evaluating his merit and grading him afresh and then comparing it with the grading earned by those officers of NPS who were included in the Select List prepared by the Selection Committee on 28.12.1988 and thus arrive at a relative assessment.

AB

"iv) If the Review DPC happens to select the petitioner he shall be given notional induction to the initially constituted cadre with all benefits as per the rules except the year of allotment and seniority which shall be determined by the Central Government in accordance with the relevant rules."

Though this Tribunal directed the Review Selection Committee to consider the case of the 6th respondent without taking into consideration of adverse remarks, the Tribunal at the same time made it clear that the Committee should consider the case of the applicant for selection to the IPS cadre for the State of Nagaland and grading him afresh and then comparing the grade earned by those officers of Nagaland Police Service who were included in the select list made in 1988. The Tribunal directed to make relative assessment on merit as quoted above.

3. Pursuant to the said direction of the Tribunal in the said case, a Review Selection Committee was constituted under Regulation 3 of the Indian Police Service (Appointment by Promotion) Regulation, 1955 (for short The Regulation) to consider the case of the 6th respondent for selection to the IPS Cadre (Nagaland). According to the applicants the constitution of the Selection Committee itself was not in accordance with the rules inasmuch as the 5th member is to be an officer nominated by the Government of India not below the rank of a Joint Secretary. The applicants state that in the instant case Inspector General of Border Security Force (IGP, BSF for short), Shillong, not an officer equivalent to the rank of Joint Secretary, was not qualified to be a member of the committee in question.

4. The aforesaid Review Selection Committee had its sitting at Shillong on 26.7.1996. The Review Committee after ignoring the adverse remarks contained in the ACRs of the 6th respondent found him fit for appointment to IPS

Cadre (Nagaland) at its initial constitution. The Committee also recommended that the 6th respondent be included at serial No.4A, i.e. below the name of Shri Lukhi Sema whose place was at serial No.4 and above the name of Shri M. Hesso Mao who was in serial No.5 of the select list prepared by the Selection Committee on 28.12.1988. The applicants submit that it was incumbent on the Review Selection Committee to make comparative assessment of the merit of the 6th respondent with that of other officers of Nagaland Police Service (NPS for short) who were selected by the Selection Committee on 28.12.1988. The applicants further state that as per the direction given by the Tribunal, Nagaland Government ought to have placed before the Review Selection Committee all the relevant records of the applicant as well as other five officers (the present applicants) who were selected by the earlier Selection Committee, for the purpose of making proper comparison after evaluating the merit of the applicants and to place him in the proper place in the selection list. The applicants further submit that to their best knowledge this was never done by the Government. As a result placing of the 6th respondent at 4A was not just and proper.

5. The applicants also contend that the selection committee on 28.12.1988 made the selection by applying the provision laid down under Section II of the Scheme for initial constitution of the IPS Cadre of Nagaland. The applicants also submit that the Review Selection Committee constituted in pursuance to the direction given by the Tribunal did not apply the same procedure as laid down in the Scheme. On the other hand it applied the procedure laid down under Regulation, 1955 and therefore both selection having been made on the basis of different

yeardsticks.....

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yardsticks was not just and proper. The selection of the applicant and fixation of seniority, therefore, are not sustainable in law.

6. On coming to know about the selection of the Review Selection Committee and placement of the 6th respondent at serial No.4A of the Select List prior to 28.12.1988 the applicant immediately submitted representation to the Chief Secretary, who was member of the Review Selection Committee, Nagaland drawing his attention to the aforesaid anomalies and irregularities in the selection. The applicant also challenged the placement of the 6th respondents at serial No.4A on the ground that this was not done in accordance with the directions given by the Tribunal and also in utter disregard to the relevant rules. No action was taken on the aforesaid representation submitted by the applicants. On the other hand a letter dated 19.9.1996 issued by the Deputy Secretary to the Government of Nagaland to the Under Secretary, UPSC, the approval of the Government of Nagaland of the minutes of the Review Selection Committee dated 2.7.1996 was communicated.

7. We heard learned counsel appearing on behalf of all. Learned Sr. Counsel Mr P.K. Goswami appearing on behalf of the applicants, submitted before us that as per the direction given by the Tribunal the Review Selection Committee did not consider the case of the 6th respondent. Learned counsel submitted that it was incumbent on the Review Selection Committee to make comparative assessment of the merit of the respondent No.6 with that of the officers of NPS selected by the Selection Committee at the time of initial constitution of the IPS cadre and the same having not been done the selection and recommendation of the 6th respondent was neither in accordance with law nor in terms of the direction given by this Tribunal. Mr Goswami further submitted in support of his contention that

AB pursuant.....

to the directions given by this Tribunal in the aforesaid T.A.No.4/93 a selection committee was constituted, but it was not in accordance with the Regulation 3 read with the Schedule of the IPS (Appointment by Promotion) Regulation 1955, as the 5th member was an officer below the rank of the Joint Secretary which was contrary to the Rules. Therefore, the constitution itself was illegal and the selection made by such committee, therefore, was not sustainable in law. Learned counsel also submitted that the review selection committee was to make comparative assessment of the merit of the 6th respondent with the officers of NPS selected at the time of initial constitution of the IPS cadre of Nagaland and the same having not been done, the selection of 6th respondent was illegal. The entire process was vitiated by error of law and contrary to the directions. Mr Goswami also submitted that the selection of initial constitution of IPS cadre of Nagaland was made by the concerned selection committee on 28.12.1988 by following the provisions laid down in Section 11 of the scheme for initial constitution. But the subsequent review committee in its sitting on 26.7.1996 did not apply the procedure as laid down in the scheme and in the Regulations 1955. Therefore, while recommending the 6th respondent the selection committee adopted two different yardsticks which is contrary to the direction given by the Tribunal. The committee without considering the relative merits of the applicants recommended for placing the 6th respondent at serial No.4A that is below 4 and above 5. This was absolutely arbitrary and without any basis and therefore, liable to be set aside.

8. Mr A.K. Choudhury, learned Addl. C.G.S.C. and Mr G.K. Bhattacharyya, learned counsel for respondent No.6, on the other hand strenuously argued in support of the case.

9. On the rival contentions of the learned counsel for the parties now it is to be seen whether the recommendation given by the selection committee in its sitting on 26.7.1996 at Shillong can sustain in law and whether the 6th respondent can be inducted in the IPS Cadre on such recommendation.

10. A scheme was prepared for constitution of IPS Cadre for the State of Nagaland with effect from 1.3.1986. Section II relates to initial constitution of the cadre. It reads as follows:

"The initial constitution of the Cadre shall be by appointment by the Central Government of Officers of the cadre through selection of members of the State Police holding Class I posts who are atleast substantive in a post of Dy.S.P. and who have completed not less than 6 years of service (whether officiating or substantive) in a post of Deputy Superintendent of Police.

As per note I of the said Scheme, cases of all the officers referred to in the Scheme shall be considered by the Selection Committee set up for the purpose under the Chairmanship of the Chairman or a Member of the Union Public Service Commission. The said committee shall prepare in order of preference a list of such officers who are found by the committee suitable for appointment to the service. The recommendation of the committee is required to be sent to the UPSC for approval. The officers finally approved by the UPSC shall be appointed by the Central Government to the IPS subject to availability of vacancies in the State.

Section IV of the Scheme refers to the method of recruitment after the initial constitution. It reads as follows:

"Recruitment to the Indian Police Service after the initial constitution of the Cadre shall be in accordance with the Indian Police Service (Recruitment) Rules, 1954."

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11. Regulation 3 of the Regulations, 1955, deals with the constitution of the committee to make selection. As per the said provision a Selection Committee for a State Cadre or a Joint Cadre specified in Column II of the Schedule be constituted consisting of the Chairman, UPSC or where the Chairman is unable to attend, any other member of the Commission representing it and other member specified in the corresponding entry of Column III of the Schedule. Regulation 5 of the Regulations, 1955, deals with the preparation of the list of suitable officers.

12. The first contention of the learned counsel for the applicant was that the constitution of the committee was illegal inasmuch as the 5th member was not qualified to be a member of the Committee as his position was below the rank of Joint Secretary, Government of India. Though this point was stressed at the time of initial hearing of the case, however, the learned counsel had abandoned the said point as there was nothing to show that the IGP, BSF, Shillong, was an officer below the rank of Joint Secretary. In view of that we do not consider the said point.

13. Regarding the selection, however, the learned counsel for the applicant strenuously urged that it had not been done in accordance with law and in terms of the order dated 27.6.1995 passed in T.A.No.4/93. This Tribunal, in the aforesaid order, directed the respondents to constitute a Review DPC to consider the case of the 6th respondent for selection to the IPS (Nagaland Cadre) under the Scheme for the initial constitution of the IPS Cadre of Nagaland as on 20.12.1988. It was further directed that the committee should consider without the adverse remarks contained in the ACRs of the 6th respondent for the years relevant for consideration. The committee should consider whether the applicant was fit to be selected after evaluating.....

evaluating his merit and grading him afresh and then comparing it with the grading earned by those officers of NPS who had been included in the Select List prepared by the Selection Committee on 28.12.1988 and thus arrive at a relative assessment.

14. The learned Government Advocate, Nagaland, placed before us the minutes of the meeting of the Review Selection Committee contained in UPSC File No.F.7/13(1)/95-AIS. We have perused the minutes. From the minutes it appears that the Review Selection Committee was constituted under the Regulations, 1955, though as per the Scheme for initial constitution it should be in the manner prescribed under the Scheme and not under Regulations, 1955. Comparison of the provisions under the Scheme and under the Regulations, 1955, for selection are not identical. The Regulations, 1955, is applicable only after the initial constitution. Therefore, as submitted by Mr P.K. Goswami we find that this was not done in terms of the order passed by this Tribunal. The Tribunal very clearly directed that a committee should be constituted as per the Scheme and the 6th respondent's case ought to be considered as if the said committee was constituted for deciding it as on 28.12.1988 and not on the date on which this present Selection Committee was constituted. Para 6 of the minutes shows that pursuant to the direction of this Tribunal the Selection Committee considered the case of Shri B.K. Singh for selection to IPS Cadre of Nagaland at its initial constitution as on 28.12.1988. The committee examined the service record of Shri B.K. Singh up to the year 1987 ignoring the adverse remarks made in the ACRs. The committee, on an overall assessment of the service records of Shri B.K. Singh assessed him as 'Fit' for appointment to IPS Cadre of Nagaland at its initial.....

initial constitution. Sub para 6 of the minutes reads thus:

"On the basis of this assessment, the Committee recommends that the name of Shri B.K. Singh be included at S.No.4A below the name of Shri Lukhei Sema (S.No.4) and above the name of Shri M. Hesso Mao (S.No.5) in the Select List prepared by the Selection Committee on 28.12.1988 for appointment of SPS officers to IPS cadre of Nagaland at its initial constitution."

From the entire minutes, we do not find anything regarding the comparative assessment of the 6th respondent with the applicants. The learned counsel for the applicants submitted that the applicants' records had not been sent. The learned Government Advocate did not place anything before us to show that their records had been sent. Besides, on what basis the committee found that the position of the 6th respondent should be below serial No.4 and above 5 and numbered as serial No.4A? We find nothing in the record. This, in our opinion, is contrary to the direction given by this Tribunal by order dated 27.6.1995. Therefore, the assessment and placement in order of preference was contrary to the direction of this Tribunal and arbitrary and therefore, cannot sustain in law.

15. Accordingly we set aside the recommendations of the Selection Committee and send back the case with direction to the respondents to consider the case afresh in strict compliance of the direction given by this Tribunal in Transfer Application No.4 of 1993. As the matter is long pending this must be done at any early date, at any rate within a period of three months from the date of receipt of the order.

AB

16. With the above observation the application is disposed of. However, in the facts and circumstances of the case we make no order as to costs.

G. L. Sanglyne
(G. L. SANGLYNE)

MEMBER (A)

4.3.98

D. N. Baruah
(D. N. BARUAH)

VICE-CHAIRMAN

nkm

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH.

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

TITLE OF THE CASE : O.A. NO. 262 OF 1996.

APPLICANTS.

Shri M. Hesso Mao & Others ...

-VERSUS-

Union of India & Others ...

RESPONDENTS.

I N D E X

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Filed by- 25
B. D. Kumar
(Aircode) 43/11/96.

28
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH.

D.A. NO. 262 OF 1996

BETWEEN

1. Shri M. Hesso Mao
Inspector General of Police (Intelligence)
Head Quarter, Kohima, Nagaland.

2. Shri S. Akanglemba Jamir,
Inspector General of Police
(Police Head Quarter),
Head Quarter, Kohima, Nagaland.

3. Shri T.M. Wati,
Deputy Inspector General of Police
(Range/NAP) Dimapur,
Head Quarter, Dimapur, Nagaland.

4. Shri Jangtaulang Changkija,
Deputy Inspector General of Police
(Range) Kohima, Head Quarter Kohima,
Nagaland.

5. Shri N.N. Walling,
Deputy Inspector General of Police(CID),
Head Quarter Kohima, Nagaland.

(P)

...APPLICANTS.

-AND-

✓ 1. The Union of India (Represented by the Secy. Ministry of Home, Nagaland)
2. The State of Nagaland.
(Represented by the Chief Secy. Govt. of Nagaland),
Contd...3.

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3. Union Public Service Commission,

Represented by the Secretary,

Union Public Service Commission,

Shahjahan Road, New Delhi.

4. Review Selection Committee of the

Union Public Service Commission,

Constituted to reconsider the case

of Shri Basant Kumar Singh for

Selection to the Indian Police Service

Cadre of Nagaland.

(Represented through the Chief Secretary

to the Govt. of Nagaland, Kohima and/or the Secretary, UPSC, New Delhi.)

5. The Commissioner and Secretary,

Home Department, Govt. of Nagaland,

Kohima.

6. Shri Basant Kumar Singh,

Deputy Inspector General (Border),

Chumukedima, Dimapur.

7. Mr. Ajit Narayan,

Inspector General, Border Security Force,

Shillong.

... RESPONDENTS.

Contd... 4.

DETAILS OF APPLICATION

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

The application is made challenging and impugning the following:-

(i) The action of the Government of Nagaland in approving the minutes of the Review Selection Committee held on 26.7.96 at Shillong to review the case of Respondent No. 6, viz, Shri Basant Kumar Singh to the Indian Police Service Cadre by letter dated 19.9.96.

(ii) Proceedings of the Review Selection Committee of the Union Public Service Commission (hereinafter referred to as the UPSC) held on 26.7.96 at Shillong to reconsider the case of the Respondent No.6 and the follow up action if any thereto.

-AND-

(iii) For a direction to the Respondents not to act upon the recommendations of the Review Selection Committee in view of material irregularities in the Selection process and deviation from directions given by this Hon'ble Tribunal on 27.6.95, in Transfer Application No. 4/93 (Civil Rule No. 102(K) of 1990 and/or for Directions to comply with the observations

/directions of this Hon'ble Tribunal contained in the aforesaid Judgment and order dtd. 27.6.95.

2. JURISIDCTION OF THE TRIBUNAL

The applicants declare that the subject matter of the application and the action against which they want redressal, is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The applicants further declare that this application is within the limitation prescribed U/S 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE

4.1. That the applicants are all Indian citizens having their permanent residence in Nagaland and as such entitled to the rights and privileges guaranteed under the Constitution of India and the laws of the land. They are also members of the Scheduled Tribes (Hills).

4.2. That all the applicants herein are members of the Indian Police Service Cadre of Nagaland and over the years they have been rendering their services with utmost sincerity, integrity and devotion.

Contd...6.

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None of the applicants has ever been communicated with any adverse remark in their service career till date. Pursuant to the recommendations of the Selection Committee constituted by the UPSC under the "Scheme for Initial Constitution of the Indian Police Service Cadre of the State of Nagaland" a batch of 22 State Police Service Officers including the applicants were appointed to the Indian Police Service (here-in-after referred to as the IPS), w.e.f.

1.3.86.

A copy of the notification dated 18.1.89, issued by the Ministry of Home Affairs, Govt. of India constituting the initial Indian Police Service Cadre of Nagaland is annexed hereto and marked as ANNEXURE-'1'.

4.3. That the Respondent No.6, viz, Shri Basant Kumar Singh was not considered suitable by the aforesaid Selection Committee on over all assessment of his Service Records and as such was not appointed to the Nagaland Cadre at the initial constitution.

4.4. That the Respondent No.6 who joined the State Police Service of Nagaland on 22.7.64, faced a Departmental proceeding initiated against him in 1978 and vide order dated 14.4.81, he was inflicted with penalties by the disciplinary authorities upon being

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found guilty of the charges levelled against him.

A copy of the Order dated 14.4.81, bearing No. PER/VIG/21/78 (2), issued by the Secretary, Govt. of Nagaland (P & AR) Department is annexed hereto and marked as ANNEXURE-'2'.

4.5. That during his functioning as Superintendent of Police, there has been a series of complaints of serious nature against the Respondent No.6, lodged by his superior officers. By a letter dated 18.8.84, the Deputy Inspector General of Police (Range), Kohima addressed to the Inspector General of Police, Nagaland, complained about refusal by the Respondent No.6, to perform law and order duties during 'Bandh' and Independence day.

A copy of the letter dated 18.8.84, is annexed hereto and marked as ANNEXURE -'3'.

4.6. That while the Respondent No. 6, was serving as Superintendent of Police in the Mon District, Nagaland his performance was found to be unsatisfactory and was also found unfit for holding independant charge of a District.

In this context your applicants annex

Contd...8.



hereto a letter dated 14.10.85, bearing No. C&J-14/82, issued by Commissioner, Nagaland to the Home Commissioner, Kohima and the same is marked as ANNEXURE- '4'

The applicants also annex hereto a copy of the letter dated 2.9.86, issued by the Home Commissioner to the Secretary (Home) Police Branch, Kohima and the same is marked as ANNEXURE- '5'.

4.7. That after the aforesaid orders the Respondent No. 6, was granted earned leave and another police officers was posted as Superintendent of Police, Mon.

In this context, your applicants annex hereto a W.T. Message, dated 19.9.86 and the same is marked as ANNEXURE- '6'.

4.8. That the applicants beg to state that there have been adverse remarks in the Annual Confidential Reports (here-in-after referred to as ACR) of the Respondent No.6, in the year 1983 and also consecutively for the years 1985, 1986 and 1987.

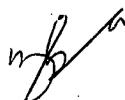
4.9. That the Respondent No.6 approached the Hon'ble Gauhati High Court in Civil Rule No. 1028/87

Contd...9.



challenging promotion of his juniors and denial of promotion to him and also against belated communication about adverse entries made in his ACR for the year 1983. By judgment and order dtd. 30.7.93, passed by the Hon'ble Gauhati High Court in the aforesaid case it was directed that ACR where adverse remarks were recorded against him shall not be considered by any authority if there is any occasion in future.

4.10. That during the pendency of the aforesaid case the Respondent No.6 filed yet another writ petition before the Hon'ble Gauhati High Court (Civil Rule No. 102(K)/90) challenging two Select Lists prepared by the Two Selection Committees constituted in 1988 and 1989 respectively under Indian Police Service (Recruitment) Rules, 1954 and the Select List prepared by the Departmental Promotion Committee (DPC) on 17.7.90. In the said petition it was alleged by the Respondent No.6 /writ petitioner that he was left out in the Selection by acting upon uncommunicated or belatedly communicated adverse remarks made in his ACRs. In the said writ petition a prayer was also made for setting aside the Select List as well as for a direction to consider the case of promotion of the writ petitioner to the post of Deputy Inspector General of Police, w.e.f. 1.8.86 and promotion to the Indian Police Service at the time of initial



constitution of the Cadre in Nagaland w.e.f. 1.3.86.

4.11. That the aforesaid Civil Rule was transferred to this Hon'ble Tribunal and was registered as Transfer Application No. 4/93 & C.R. No. 102(k)/90).

4.12. That the matter was heard by this Hon'ble Tribunal and vide order dated 27.6.95, the application was disposed of. While this Hon'ble Tribunal held the view that it was not necessary to quash the Select Lists of 1988 and 1989, this Hon'ble Tribunal however gave the following directions:-

(i) The Respondents are directed to constitute a Review DPC to consider the case of the applicant for selection to the IPS Cadre for the State of Nagaland, under the Scheme for the initial constitution of the IPS Cadre of Nagaland as on 20.2.1988.

(ii) The Committee will not take into account the adverse remarks contained in the ACRs of the applicant for the years relevant for above consideration.

(iii) The Committee shall consider whether applicant is fit to be selected after evaluating his merit and grading him afresh and then comparing it with the grading

covered by those officers of NPS who were included in the Select List prepared by the Selection Committee on 28.2.1988 and thus arrives at a relative assessment.

(iv) If the Review DPC happens to Select the petitioner he shall be given notional induction to the initially constituted Cadre with all benefits as per the Rules except the year of allotment and seniority which shall be determined by the Central Government in accordance with the relevant rules.

A copy of the aforesaid order dated 27.6.95, passed by this Hon'ble Tribunal in Transfer Application No. 4/93 is annexed hereto and marked as ANNEXURE -'7'.

4.13. That it is clear from the aforesaid order of the Tribunal that while directing for constitution of a Review Selection Committee to consider the case of the Respondent No. 6 to the IPS Cadre without taking into account the adverse remarks contained in the relevant ACRs, this Hon'ble Tribunal however made it abundantly clear and directed the Committee to consider the case of the Respondent No.6 only after evaluating his merit and grading him afresh and then



comparing such grading with the grading earned by those officers of Nagaland Police Service who were included in the Select List, prepared by the Selection Committee on 28.2.88. This Hon'ble Tribunal also directed to make relative assessment of merit.

4.14. That pursuant to the directions given by this Hon'ble Tribunal a Review Selection Committee was constituted under Regulation 3 of the Indian Police Service (Appointment by Promotion) Regulation, 1955 to consider the case of Respondent No.6 for selection to the Indian Police Service Cadre of Nagaland. The applicants beg to state that apart from the Chairman, UPSC, Chief Secretary, Additional Chief Secretary (Home), Director General of Police of Nagaland, one Shri Ajit Narayan, Inspector General of Border Security Force, Shillong was appointed as the fifth member of the Selection Committee. It is stated that under Regulation 3 read with the Schedule to the Indian Police Service (Appointment by Promotion) Regulation, 1955 the fifth member has to be a nominee of the Govt. of India not below the rank of a Joint Secretary. In the instant case, the Inspector General of BSF, Shillong being not equivalent to the rank of a Joint Secretary is not qualified to be a member of the Selection Committee in question and as such the constitution of the Selection Committee vis-a-vis its transactions and proceedings are not in accordance with law.

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✓ 4.15. That the aforesaid Review Selection Committee held its sitting at Shillong on 26.7.96. Your applicants have reliably learnt that in the aforesaid sitting the Review Committee examined the Service Records of the Respondent No.6 upto the year 1987 and after ignoring the adverse remarks in the ACR the Committee assessed the Respondent No.6 as 'fit' for appointment to the IPS Cadre of Nagaland at its initial constitution. Your applicants further learnt that on the basis of this assessment the Committee recommended that the name of the Respondent No.6 be included at serial No. 4A i.e., below the name of Sri Lukhi Sema (Sl. No. 4) and above the name of Sri M. Hesso Mao (Sl. No. 5) in the Select List prepared by the Selection Committee on 28.12.88 for appointment of IPS officers for Nagaland Cadre at its initial constitution. It is also understood that the Committee did not make any fresh grading as per norms nor compared with the gradings received by the other officers including the petitioners as per assessment made by the Selection Committee failed to comply with the directing of this Hon'ble Tribunal in its aforesaid order dt. 27.6.95 which has vitiated the proceedings.

4.16. That the applicants beg to state that although this Hon'ble Tribunal directed the Review



14.

Selection Committee to evaluate the merit of Respondent No. 6, expressly after fresh gradation of relevant ACRs the adverse entries made wherein were directed to be ignored, there was however no fresh gradation given in his relevant ACRs by the concerned authorities before the sitting of the Selection Committee. Thus there was no way nor any material basis whereby the Selection Committee would have evaluated the merit of the Respondent No. 6 based on comparisons with the gradings earned by other officers in their respective relevant ACRs on the evaluation of which such officers were included in the Select List on 28.9.88.

4.17. That your applicants beg to state that it was encumbent on the Review Selection Committee to make comparative assessment of the merit of the Respondent No.6 with that of the officers of NPS selected by the Selection Committee at the time of initial constitution of the IPS Cadre of Nagaland and the same having not been done the impugned Selection and Recommendation of the Respondent No. 6 is neither in accordance with law nor in accordance with the directions given by this Hon'ble Tribunal.

4.18. That your applicants beg to state that after the directions given by this Hon'ble Tribunal the concerned authorities of the Nagaland Government

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15.

ought to have made fresh gradation in the relevant ACRs of the Respondent No. 6 and then place the same before the Review Selection Committee alongwith the relevant ACRs of all the Nagaland Police Service Officers whose cases for promotion were considered by the Selection Committee on 28.2.88 for the purpose of the initial constitution of the IPS Cadre of Nagaland. To the knowledge of the applicants this was never done and no steps whatsoever were taken by the concerned authorities in the State Government for fresh gradation of the ACRs of the Respondent No. 6 in terms of this Hon'ble Tribunal's directions and as such the Review Selection Committee was not fed with these vital materials to conduct the entire exercise of selection as per law as well as in terms of this Hon'ble Tribunal's directions. The Review Committee on its own also did not make a fresh grading as required.

4.18(A) That the selection for the initial constitution of the IPS Cadre of Nagaland was made by the concerned Selection Committee on 28.12.88 by following and applying the provision as laid down Under Section II of the Scheme for the initial constitution of the IPS Cadre of Nagaland. However to the knowledge of the applicants the Review Selection Committee holding to sitting on 26.7.96 did not apply the same procedure as laid down in the scheme and purportedly applied the procedure laid down under the Indian Police Service (Appointment by Promotion) Regulation, 1955 and as such both the selections having been made on the basis of different yardsticks, the impugned proceedings vis-a-vis selection of the

Respondent No.6 is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

4.19. That after coming to know about Selection of the Respondent No. 6 and recommendations of the Review Selection Committee for placement of the name of the Respondent No.6 at Serial No. 4A in the Select List prepared on 28.12.88, the applicants herein immediately submitted representations to the Chief Secretary who was a member of the Review Selection Committee, Nagaland drawing his attention to the aforesaid anomalies and irregularities in the purported Selection by the Review Committee and drew his attention towards the fact of recommending the Respondent No. 6 without making any relative assessment of the gradings earned by the various officers with that of the Respondent No. 6. The Applicants further requested the Chief Secretary to advise the Review Committee to follow this Hon'ble Tribunals directions in letter and spirit and to consider the service records of the Respondent No. 6 only after his fresh gradation before taking any decision to induct him to the IPS in the initial constitution.

The copies of the aforesaid representations were also sent to the Respondent No.3 as well as Home Secretary, Government of India.

A copy of one such representation submitted by the applicant No. 2 is annexed hereto and marked as ANNEXURE-'8'.

Your applicants crave leave to produce the copies of similar representations submitted by many other officers who were inducted into the initial constitution and who felt aggrieved by the impugned Selection in question.

4.20. That inspite of the aforesaid representations, nothing has been done either to rectify the defects and irregularities of the impugned Selection in question and by letter dated 19.9.96 bearing No. POL-3/ESTT/31/92, issued by the Deputy Secretary, Govt. of Nagaland to the Under Secretary, UPSC the approval of the Govt. of Nagaland of the minutes of the Review Selection Committee dated 26.7.96, was communicated.

A copy of the aforesaid letter dated 19.09.96, bearing No. POL - 3/ESTT /31/92, issued by the Deputy Secretary to the Govt. of Naaland is annexed hereto and marked as ANNEXURE -'9'.

4.21. The Applicants state that the proceedings dtd. 26.7.96 have not been made available and the applicants could not therefore annex the same. The Hon'ble Tribunal may give necessary directions to the Respondents to produce the said proceedings and all connected records.

4.22. The Selection Committee which such on 28.17.88 and prepared the Select List for initial constitution of the IPS Cadre had certain norms in assessing the merits of the officers including the applicants. If the said norms are



of Respondent No.6, he could not have been considered to be suitable as his Service Records (even without the adverse ACRs) are such that Respondent No.6 could not have fulfilled the stipulated norms which were adopted in judging the applicants and other officers. It may also be mentioned that even subsequent Selection Committee found Respondent No.6 unsuitable earlier without even taking note of the adverse ACRs and as such the impugned Selection is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

4.23. The Applicants beg to state that this Hon'ble Tribunal may be pleased to direct the Respondents to produce the Service Records of all the officers including the applicants and Respondent No.6. It is stated that the service records will reveal the position that the service records of the applicants are far superior to the service records of Respondent No.6. Under the circumstances, on a proper application of mind, the Review Committee could not have placed Respondent No.6 at Sl. No. 4A above the applicants. The service records of the Applicants and the Respondent No. 6 being what they are, no reasonable body could have considered Respondent no.6 to be superior to the applicants. This is the position even after excluding the Adverse ACRs of Respondent No.6.

Accordingly onthe available materials the Respondent No.6 could not have been considered suitable to fit. In anycase, Respondent no.6 could never be considered to be superior to the applicants ont he basis of the available records.

4.24. The Selection Committee which were in 1988 adopted norms which required at least two "outstanding" /"very good" in the relevant ACRs for five years, in order to qualify. The said norm was applied in respect of the officers considered by the Selectin Committee including the applicants. The Respondent No.6 was also considered and was found unfit. Even after excluding the adverse ACRs now, the service recods of Respondent No.6 as such that he would not fulfil the said norms. It is therefore stated that if the Review Selection Committee applied the same test/norm which was applied in respect of the applicants, it could not have found the Respondent no.6 suitable or fit on the basis of this Service Record. It is, therefore, stated that the Review Selection Committee failed to apply the proper and relevant norms/test in assessing the merit of Respondent No.6 and as such, its recommendations are vitiated and the purported approval of the Govt.of Nagaland is entirely illegal.

4.25 That impugned recommendation of the Review

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Selection Committee and the impugned approval of the Govt. of Nagaland on 19.9.96 are illegal and highly prejudiced to the interests and rights of the applicants. If the Respondent No. 6 is inducted to the IPS on the basis of the impugned actions, it will cause irreparable damage to the applicants and unsettle service matters which have settled down over the years. It is, therefore, in the interest of justice that this Hon'ble Tribunal will be pleased to call for the records and examine the matter including the question as to whether directions of this Hon'ble Tribunal have been complied with or not.

426. That the applicants pray that this Hon'ble Tribunal be pleased to permit the applicants of this application to move jointly under Sec. 4(5)(a) of the Administrative Tribunals Act as the grievance and reliefs sought in this application are common.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS.

That being highly aggrieved by the aforesaid actions of the Respondents as well as the constitution and proceedings of the Review Selection Committee dated 26.7.96, purportedly selecting the Respondent No.6 for appointment to the IPS Cadre, of Nagaland at its initial constitution and his placement at serial No. 4A of the initial Select List dtd. 28.12.88, the humble applicants beg to move this application before this Hon'ble Tribunal on amongst others the following :-

GROUND

5.1. For that the Constitution of the Review

Contd...21.

Selection Committee is not in accordance with law and as such the transactions made and proceedings and minutes of the said Selection Committee is automatically vitiated in the eye of the law.

5.2. For that the fifth member of the Review Selection Committee being not a member of the rank of a Joint Secretary to the Government of India nor equivalent to the said rank, the constitution of the Selection Committee was not in accordance Regulation 3 of the IPS (Appointment by Promotion) Regulation, 1955 read with the Schedule thereto.

5.3. For that the impugned selection was done mechanically and without any material basis and as such the same is not a lawful selection and is liable to be set aside.

5.4. For that after the directions of this Hon'ble Tribunal to the Respondents not to take into account the adverse entries made in the ACRs of the Respondent No. 6 for the purpose of consideration of his case for promotion, the Respondents as well as the Review Selection Committee ought to have appreciated the fact that ignoring of the adverse entries made in the relevant ACRs of the Respondent No. 6 would by itself not make the Respondent No. 6 an automatic choice for selection and that any selection



of the said Respondent had to be strictly on the basis of comparative evaluation and assessment of the respective merits of the Respondent No.6 as well as other officers in the fray.

5.5. For that inspite of the clear directions by this Hon'ble Tribunal to the Respondents to make fresh gradation of the Relevant ACRs of the Respondent No. 6 after ignoring adverse entries therein as existed earlier, the concerned authorities of the State of Nagaland ought to have taken steps for making such fresh gradations and then place the same before the Review Selection Committee and the same having not been done in the instant case the whole exercise of selection has been vitiated at the very beginning itself. In any case Review Selectin Committee ought to have undertaken the said exercise and then make the required comprises and the same not having done the impugned actions are illegal and without jurisdiction.

5.6. For that in the absence of fresh gradations of the relevant ACRs of the Respondent No. 6 there was absolutely no material basis before the Review Selection Committee so as to make any comparative evaluation and assessment of merit worth its name and as such the impugned Selection is liable to be set aside.

5.7. For that to the knowledge of applicants the relevant ACRs of the first batch of 22 officers who were inducted into the initial constitution of the Indian Police Service Cadre of Nagaland were also neither placed before nor considered by the Review Selection Committee in its sitting dated 26.7.96, and as such there was no material whatsoever on the basis of which the Review Selection Committee could have evaluated the comparative merit.

5.8. For that there was no evaluation made nor any comparison of the respective gradings earned by the various officers was done apropos to this Hon'ble Tribunal's directions vis-a-vis provisions contained in the IPS (Appointment by Promotion) Regulation, 1955 and the Scheme for Initial Constitution of the IPS Cadre in Nagaland and as such the impugned selection is liable to be set aside.

5.9. For that neither under the 1955 Regulation nor under the Scheme it is permissible to appoint anybody in the IPS Cadre without making comparative assessment of the relative merits based on the relevant records including the gradings of the competing incumbents entered in their relevant and respective ACRs and the same having not been followed in the instant case the impugned selection is illegal and liable to be set aside.

5.10. For that the Review Selection Committee erred in law as well as in facts and thereby proceeded on an erroneous footing to declare the Respondent No.6 as 'fit for appointment' and his induction at S1. No. 4A merely by ignoring the adverse remarks in his ACRs for the relevant years and not looking for any basis whatsoever on which a comparative evaluation of merit could have been legitimately and rationally made.

5.11. For that the impugned selection is not only against the letter and spirit of this Hon'ble Tribunal's directions but also against the relevant provisions of law governing appointment of IPS officers through promotion and as such the same is liable to be set aside.

5.12. For that the Review Selection Committee ignored the material particulars on records viz, the minutes of the Selection Committee dated 28.12.88, as well as, the minutes of 7.11.89, which clearly spelt out the fact that the said Committees did not take into consideration the uncommunicated Adverse remarks in the ACRs of the officers while assessing their suitability and that yet the Respondent No.6 failed to come through on merit.

5.13. For that the Review Selection Committee

ignored the fact that the applicants as well as the other incumbents inducted into the initial composition of the IPS Cadre of Nagaland had in any case much better Service Records and gradings than that of Respondent No.6 and as such the impugned selection is unsustainable.

5.13A. For that the Review Selection Committee failed to apply relevant norms and ignored relevant factors and took into account irrelevant and extraneous consideration and as such, its recommendations are vitiated and liable to be set aside.

5.13B. For that the Review Selection Committee failed to comply with the directions of this Hon'ble Tribunal as it failed to make a fresh grading or compare with the gradings earlier received by other officers.

5.13C. For that on a proper application of merit to the relevant records in the light of the relevant norms the Review Selection Committee could not have reasonably found Respondent No.6 to be suitable or fit nor could it have found been superior to the applicants.

5.14. For that to the knowledge of the petitioner the minutes of the Review Selection Committee dtd. 26.7.96, do not at all reflect any fresh gradation in



the relevant ACRs of Respondent no. 6 nor any comparison and/or relative evaluation of merits and the whole exercise was gone through mechanically and in undue haste without application of mind and as such the impugned Selection is liable to be set aside.

5.15. For that no reasonable person properly instructed in law would have arrived at the decision taken and recommendations made by the Review Selection Committee as has been done in the instant case and as such the impugned actions and proceedings are liable to be set aside.

5.16. For that the Review Selection Committee was guided by extraneous and irrelevant considerations in the matter of adjudging the suitability of Respondent No.6 for promotion and as such the Respondents are liable for a direction for reconsideration of his case for promotion in accordance with law as well as directions given by this Hon'ble Tribunal in the light of the facts and circumstances stated in this application.

5.17. For that assuming that despite all the facts stated hereinbefore pertaining to the Service career of the Respondent No.6 he was considered eligible and qualified for promotion, even in that case there was no way whereby his merit could have been evaluated on a superior note than that of the

applicants as well as other incumbents inducted into the initial composition of the Nagaland Cadre.

5.18. For that the action of Respondents and the impugned selection are ultravires the Regulations as well as the Scheme and the existing instructions circulated by the Govt. of India governing promotion/selectin of IPS officers.

5.19. For that the impugned selection as well as the recommendation for placement of Respondent No. 6 at serial No. 4A of the initially constituted Cadre are perse unfair, inequitable, prejudicial and irrational and the same will materially affect the service career of the applicants and deprive them of all consequential benefits.

5.20. For that while the selection to the initial constitutionof the Cadre made in 1988 was by following and applying the procedure prescribed under the scheme for initial constitution of the IPS Cadre of Nagaland the same procedure has not been followed nor applied in case of the Review Selection purportedly made on 26.7.96 and as such in view of applicatin of different yardsticks for selection, the impugned proceedings as well as the selection of the Respondent No. 6 are perse discriminatory and violative of Articles 14 and 16 of the Constitution of India.

5.21. For that in any view of the matter the impugned actions as well as the proceedings of the Review Selection Committee dtd. 26.7.96, vis-a-vis the follow-up action, if any, are illegal, ultravires and unconstitutional and the

same are liable to be declared so.

6. DETAILS OF REMEDIES EXHAUSTED.

That the applicants have submitted representations to the appropriate authorities, but nothing has been done by the Respondents and as such, they have no other alternative or efficacious remedy except filing of this application.

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

The applicants further declare that they have not previously filed any application, writ petition or any suit before any Court of Law or any other authority and/or other Bench of the Tribunal regarding the matter in respect of which the instant application is filed and that no such application, writ petition or suit is pending before any such Forum.

8. RELIEFS SOUGHT:

Under the facts and circumstances and the grounds set forth in this application, the applicants pray that this Hon'ble Tribunal may be pleased to call for the relevant records including the following:-

- (a) Minutes of the Review Selection Committee dated 26.7.96 held for the purpose of considering the case of Shri Basant Kumar Singh viz., Respondent No. 6 for selection to IPS Cadre of Nagaland at its initial constitution and all

Contd...29.



connected records.

(b) Records pertaining to gradations including fresh gradations, if any, made in the ACRs of the Respondent No. 6 from the year 1983 to the year 1987.

(c) Service Records and material particulars of the encumbent Police Officers including the applicants, including all records in respect of the proceedings of the Selection Committee in connection with the initial constituted of the Cadre.

-AND-

Issue notice to the Respondents to show cause as to why prayers made in this application shall not be allowed and on perusal of the records and after hearing the parties on the cause or causes that may be shown, may be pleased to grant the following reliefs:-

(i) the constitution of the Review Selection Committee constituted in pursuance to this Hon'ble Court's directions and under Regulation 3 of the Indian Police Service (Appointment and Promotion) Regulation, 1955 which held its sitting on 27.6.96, is illegal

Contd...30.

and not in accordance with law.

(ii) Declaring the actions of the concerned authorities of the Nagaland Govt. in not grading afresh the relevant ACRs of the Respondent No.6 and not feeding the Review Selection Committee with the same as illegal and unconstitutional.

(iii) To set aside the proceedings, recommendations and minutes of the Review Selection Committee dt. 26.7.96, pertaining to the consideration of the case of promotion of the Respondent No.6 and purportedly recommending his imposed position at Sl. No. 4A in the initially constituted of the Nagaland Cadre of IPS.

(iv) To set aside the approval of the Govt. of Nagaland contained in the letter dtd. 19.9.96 (ANNEXURE-'9').

(v) Directions to the Respondents to reconsider the entire matter of selection strictly in accordance with the relevant provisions as well as the directions given by this Hon'ble Tribu-

nal and/or any other relief which may be considered just and fair.

9. INTERIM ORDER/RELIEF PRAYED FOR:

Pending disposal of the application, the applicants pray for the following interim reliefs:-

(i) That no follow up action be taken and/or order passed pursuant to the impugned selection and recommendation made by the Review Selection Committee dated 27.6.96 and the purported approval dtd. 19.9.96

AND/OR

(ii) Directions not to act upon the aforesaid recommendations of the Review Selection Committee for the purpose of giving /effecting any promotion in the hierach IPS Cadre in Nagaland.

AND/OR

(iii) Not to finalise the case of Respondent No.6 and/or appoint him to the IPS Cadre.

(iv) Any other relief or reliefs, to

which the applicants are entitled under the law and the equity and which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

10.

The instant application is filed through B.D. Konwar, Advocate.

11. **PARTICUALRS OF THE IPO**

(I) I.P.O. NO. 349072

(ii) DATE ... 13/11/96.

(iii) Payable at : Guwahati.

12. **LIST OF DOCUMENTS:**

As stated in the Index.

Contd... 33.



VERIFICATION.

I, Shri N.N. Waching 5/0
 aged about 5 years, presently serving as Dy Inspector
 General of Police (C.I.D) 4 Q.R. Kohima, Nagaland do
 hereby solemnly verify that I am one of the applicants
 in this case and authorised by the other applicants
 to sign the verification on their behalf as well, I
 verify that the statements made in this verification
 and in paragraphs 1 to 3, 4.148, 4.8 to 4.11, 4.13 to 4.18,
 4.21 to 4.25 & 6 to 11 are true to my knowledge,
 those made in paragraphs 4.2, 4.4, 4.5, 4.6, 4.7, 4.12,
 4.19 and 4.20 being matters
 of records and true to my information derived there-
 from and those made in paragraphs 5 (5.1 to 5.21)
 are believed to be true on legal advise. I have not
 suppressed any material facts.

And I sign this verification on this 10th
 day of November, 1996 at Guwahati.

Date :-

Signature

N.N. Waching

TO BE PUBLISHED IN THE GAZETTE OF INDIA, PART-I, SECTION 2.

(34)

NO. I-14011/12/88-IPS-I

Government of India/Bharat Sarkar
Ministry of Home Affairs/Grish Mantralaya

New Delhi, the 18th January, 1989.

NOTIFICATION

Under Sub-rule(6) of Rule 4 of the Indian Police Service (Recruitment) Rules, 1954 read with Note 1 to Section II of the Scheme for the initial constitution of the Indian Police Service Cadre of Nagaland, the President is pleased to appoint the following 22 State Police Service Officers to the Indian Police Service from 1st March, 1986:-

1. Shri R.S. Jamir X
2. Shri Nungshiliba Ao
3. Shri Mungkholen Sitalhou X
4. Shri Lukhai Sema
- ✓ 5. Shri M. Hesso Mao
6. Shri Amrit Lal Mehta
- ✓ 7. Shri S. Akanglemba Jamir
- ✓ 8. Shri T.M. Wati
- ✓ 9. Shri Jangteulong Changkija
- ✓ 10. Shri N.N. Walling
11. Shri N. Aonochot Ao
- ✓ 12. Shri M.B. Kar X
13. Shri Chomomo Kikon
14. Shri Taku Jamir
15. Shri S.R. Dasgupta
16. Shri C.P. Giri
17. Shri Kelhousithie Kire
18. Shri Imkonglemba Jamir
19. Shri H.K. Rengma
20. Shri M. Obanglemba Ao
21. Shri G.K. Rengma
22. Shri J. Bandalgoshi Ao

B.M. Arora

(B.M. ARORA)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA.

2012/20/88

To

The Manager,
Government of India Press,
Faridabad.

.....2/-

Shri Kelhousithie Kire,
Commandant, 4th NAP Battalion,
Thizama, Nagaland.

*Altakiby
S. D. Konwar
13/1/96 (Astu)*

35

(0137)

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

APRIL

Dated Kohima, the 14th April, 1981.

No. 1101/VIG/23/78/2) Whereas disciplinary proceedings were drawn against Shri Ch. Basant Kumar Singh, SF (OD), vide Memorandum No. IAR-4/129/77 dated the 10th November, 1978.

And Whereas Shri R. Hussain, Tribunal for Disciplinary Proceedings of the Vigilance Commissioner, Nagaland, Kohima, was appointed as Inquiry Officer to enquire into the charges framed against Shri Ch. Basant Kumar Singh, SF (OD), held him guilty and a copy of the inquiry report submitted by the Inquiry Officer was forwarded to Shri Ch. Basant Kumar Singh, SF (OD) vide Memorandum No. IAR/VIG/81/18 dated the 26th Feb 1981.

Now, therefore, in the light of the findings of the aforesaid Inquiry Officer and after taking into consideration the advice of the Nagaland Public Service Commission and all other factors including Shri Ch. Basant Kumar Singh, SF (OD)'s representation dated 26th February, 1981 on the show cause notice, the Governor of Nagaland considers that the requirements of the case will be met if the following penalty under Rule 7(v) of the Nagaland Services (Discipline and Appeal) Rules, 1967 is imposed on Shri Ch. Basant Kumar Singh, and orders accordingly:

- (1) The pay of Shri Ch. Basant Kumar Singh shall be reduced to a lower stage of Rs. 1100.00 (Rupees eleven hundred) only in the time scale of pay of Rs. 1100-60-1300-(PB)-50-1500/- p.m. for a period of 3 years from the date of his resumption of duty.
- (2) The officer shall not earn increment of pay during the aforesaid period of 3 years.
- (3) This reduction will not have the effect postponing the future increments of his pay on expiry of the period of 3 years.

By order and in the name
of the Governor, Nagaland

Sd/- A. Chauragain,

Secretary to the Govt. of Nagaland (P&AR) Deptt)

No. 1101/VIG/81/78(2) Dated Kohima, the 14th April, 1981.

Copy to :-

1. Shri Ch. Basant Kumar Singh, SF (OD), Office of the M.F., Kohima
2. The A.G. Nagaland, Kohima
3. The I.O.P. Nagaland, Kohima
4. The Secretary, NISB, Nagaland, Kohima
5. The Treasury Officer, Kohima
6. Personnel Branch
7. Guard Filed

Sd/- A. Chauragain,

Secretary to the Govt. of Nagaland (P&AR) Deptt)

Attested by
B. D. Komiya
12/11/96 (Alt)

GOVERNMENT OF NAGALAND
OFFICE OF THE D.Y. INSPECTOR GENERAL OF POLICE (R)
KOHIMA - 796001 NAGALAND

NO. DIG(R) PUL-120(1)84-85/
Dated Kohima, the 18th Aug/04.

✓ 19 To The Inspector General of Police,
Nagaland 796001 Kohima.

Subject: REFUSAL BY AN OFFICER TO PERFORM LAW AND DUTIES
DURING "BANDH" AND INDEPENDENCE DAY.

Sir,

I have the honour to submit herewith the report in connection with the subject cited above and to state that on 14/8/04 there was a "Bandh" observed by the "All the opposition parties in the North Eastern Region in which the opposition parties in Nagaland had decided to concentrate their activities to disrupt the normal functions of the Govt machinery in Kohima town. Apart from the "Bandh" from the opposition parties the UG's and N.S.P. also firmly decided to observe so called Nagaland Independence Day. This coincidence of the "Bandh" to be observed by the opposition parties and so called Nagaland Independence Day to be observed by the UG's and N.S.P. posed a great law and order problem. To face this challenge, a comprehensive security arrangement has been done with the approval of IGP and prepared by Superintendent of Police, Kohima with the consultation of DIG(R). In the meeting of the office chamber of IGP, it was decided to utilized services of all available police officers including PHQ staffs and 4 N.A.P. officers. Accordingly, all the available police officers were deployed including DIG(PHU). Though it is out of place to mention, but the IGP himself was checking and running around even in the middle of the night to make sure that law and order is maintained at any cost.

But to our great surprise and shame to know on 14/8/04 that Shri Basant Kumar S.P. Crime PHQ had refused to perform law and duties on the ground that he is too senior to perform law and order duties and had sent a red ink handwriting order to SP(Kohima) to entrust the junior to perform law and order duties.

Contd/-2

Office of the I.G.P. Nagaland
Kohima
Recd/No. 2/1-22 Dt. 25/8/04
File No. 2/1-22
V. Halligan N.C.

Attested by:
B. P. Roman
13/11/96 (Adv.)

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Photostate copy of his handwriting chit sent to SP(Kohima) is enclosed herewith. Since the Law and Order problems was continued till 15/8/84, he was entrusted to be over all incharge of Security in the ground during the Independence Day function, but he did not appeared in the ground for duty nor did not informed any one for his inability to perform duties.

It was a God's will that nothing has happened on 15/8/84, where there were lot of informations that Bombs will be thrown at the VIP's and Officials, but if something had happened on that day, "What will be the acts of that officer, who was absent and deserted his most important post/duty. If we continue to allow such type of non-co-operative attitude, having the superiority and inferiority complex b/w the part of so called claimed to be too senior officer and refused to perform Law and Order duties, it will bring a very bad name in the deptt and such behaviour of indiscipline by an officer in the rank of S.P. must be stopped once for all.

It is therefore, suggested that a matter may be taken up at your level and the officer concern may be taken to task severely, so that others may not follow his bad foot step in the Nagaland Police deptt in future.

You're faithfully,


18/8

(LUKHEI SEMU)

(Dy. Inspector General of Police, (R))

Kohima :: Nagaland.

NO.DIG(R)POL-120(1)84-85/

Dated Kohima, the 18th Aug/84.

Copy to:-

- 1) The Superintendent of Police, [for information.
Kohima :: Nagaland.]

Dy. Inspector General of Police, (R)
Kohima :: Nagaland.

Attested by:
B. D. Kowar
13/11/88 (Advocate)

CONFIDENTIAL

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GOVERNMENT OF NAGALAND
OFFICE OF THE COMMISSIONER NAGALAND: KOHIMA :

NO. CNJ-14/82
Dated Kohima, the 14th Oct. '85.

To

The Home Commissioner,
(Police Branch), Kohima.

SUB :- TRANSFER OF SHRI A.L. MEITA S.P. MON.

Sir;

In inviting a reference to your letter NO. POL-1/PF/97/82 dated 9/10/85 on the subject cited above, I write to inform you that I agree with the Deputy Commissioner, Mon's views about posting out of the Superintendent of Police, Mon at an early date.

Further the Superintendent of Police, Zunibebote may also be transferred immediately as his performance as Superintendent of Police is not up to the mark. These two officers are found unfit for holding independent charge of Districts and as such, such officers may be deployed in the PBO under direct supervision of the Inspector General of Police.

The Govt. decision in both the cases may please be conveyed at an early date.

Yours faithfully,

Gen of the I.G.P. Nagaland
Kohima.

No. 110. 99 - D1. 16/10

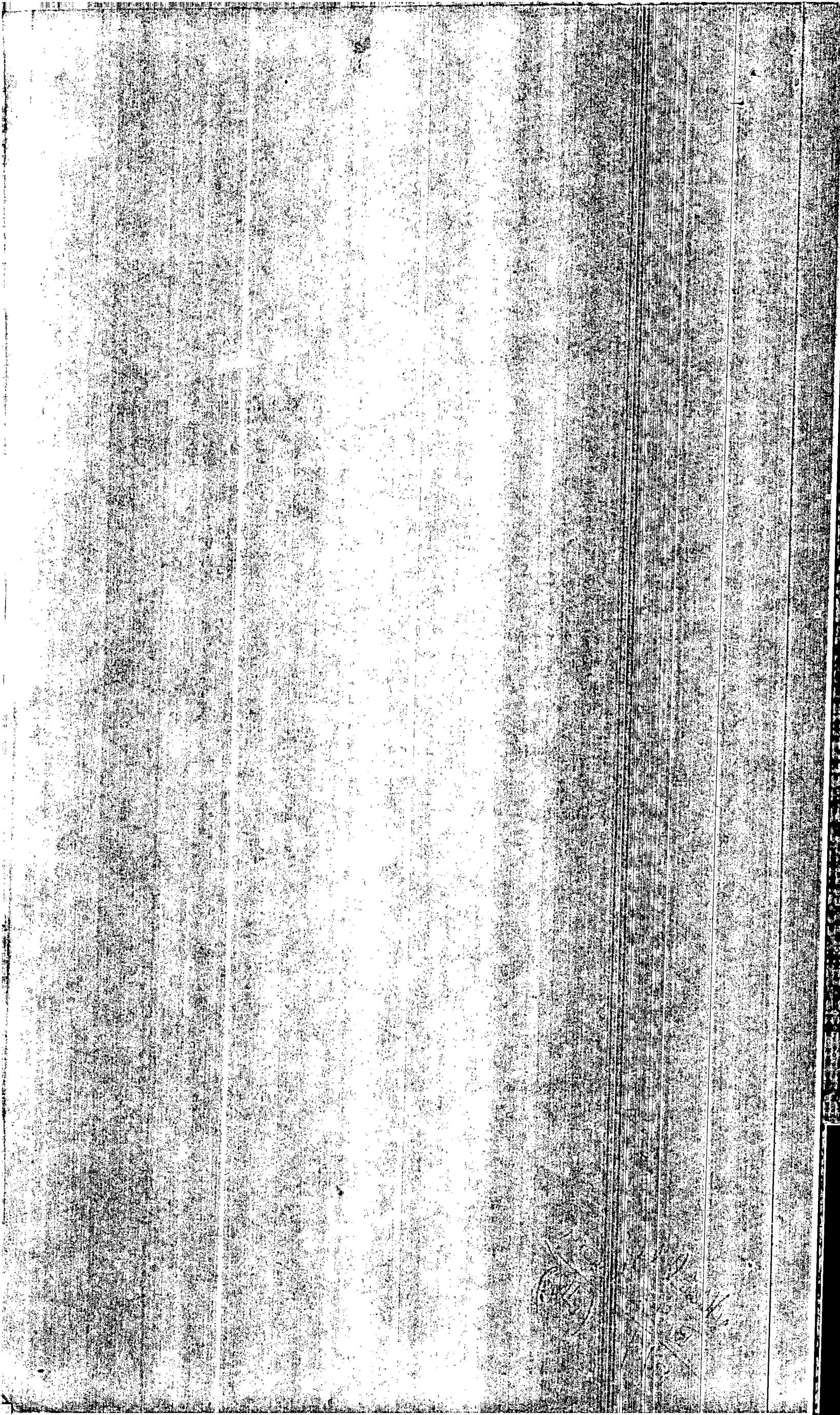
N. JAKILU)
Commissioner.

NO. CNJ-14/82 // Dated Kohima, the 15th Oct. '85.

Copy to :- The Inspector General of Police, Kohima.

(N. JAKILU)
Commissioner.

Attested by
B. D. Komaw
13/11/85 (A.W.)



P.D. Malaviya.

Annexure - 5

6) (39)

PHD(A-I) 14/80

2nd Sept'86

My dear Lalhuma,

I am forwarding herewith an application for 3(three) months leave from Shri Basant Kumar, SP Mon.

2. The situation in Non district is rather critical at the moment and I doubt whether Shri Basant Kumar would be able to handle it adequately. I, therefore, request that leave may be sanctioned to him with immediate effect and Shri C.P. Giri may be posted as S.P. Mon and Shri A. Mehta may be posted as AIG(DPS) and Shri Tokho Soma may be posted as C.S.O., Nagaland Secretariat.

3. I would be very grateful if the Government orders could be conveyed immediately.

Yours sincerely,

(P.D. Malaviya)

Shri Lalhuma,
Secretary (Home),
Police Branch,
Kohima.

Attested by:-
B. S. Komwar
13/11/96 (A.D.)

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17/64

M/T MESSAGE

FLYING

FROM

1. HOMELESS
KOHIMA

TO

1. IGP JAGALAND
KOHIMA

INFO

1. COMMISSIONER JAGALAND
KOHIMA
1. AIG SUPPLY
AIG ADMINISTRATION

BY HAND

1. DISPOL. HOD

FOL-1/Entt/25/02(PT) DATED 10/9/1986 (.) GOVERNMENT HAVE
DECIDED TRANSFER AND POSTING OF SHRI C.R. GURU AT
(SUPPLY) AS S.P. HOD IN PLACE OF SHRI BAPANIE KUMAR
WHO IS BEING GRANTED EARNED LEAVE FOR 30 DAYS WITH
EFFECT FROM 11.9.1986 (.) SHRI BAPANIE KUMAR IS DIRECTED
DIRECTED TO HAND OVER CHARGE OF PIGMENTATION OF
POLICE HOD TO SHRI GURU WITHIN 5(FIVE) DAYS FROM
THE DATE OF ISSUE OF THIS SIGNAL (.) FARA (.) SHRI
B. HESSO HOD AIG (ADM) WILL LOOK AFTER CHARGE OF AIG
(SUPPLY) IN ADDITION TO HIS OWN DUTIES TILL FURTHER
ORDER (.) CONCERN HANDING/TAKING OVER CHARGE (.) ORDER
FOLLOWS (.) PATTERN MOST URGENT

PO.FOL-1/Entt/25/02(PT) : Dated Kohima, the 10th Sept/86,
Copy to :-

1. The O/C, Police Wireless, Kohima for transmission
of the above message to 'Dispol' HOD immediately.

1. (Signature)
Secretary to the Government of Nagaland
Home Department Kohima.

Attested by:
B. S. Komar
13/10/86 (A.M.)

6K (41)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Transfer Application No.4 of 1993
(Civil Rul. No. 102 (k) of 1993 - H.C.)

Date of decision: This the 27th day of June 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Basant Kumar Singh
Resident of Chumukedima
Kohima, Nagaland.

.... Applicant

By Advocate Shri G.K. Bhattacharyya

-versus-

1. State of Nagaland
through the Chief Secretary,
Government of Nagaland,
Kohima, Nagaland.
2. Home Commissioner,
Government of Nagaland,
Kohima, Nagaland.
3. The Director General of Police,
Police Headquarter,
Nagaland, Kohima.
4. Union of India
through the Secretary,
Government of India,
Ministry of Home Affairs,
Central Secretariat,
New Delhi.
5. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.

.... Respondents

By Advocate Shri S. Ali, Sr. C.G.S.C. and
Government Advocate, Nagaland.

.....

ORDER

CHAUDHARI, J. V.C.

Reasons:

This is a transferred writ petition from the Hon'ble
Guahati High Court (For the sake of convenience the applicant



Attested by: Konwar
B. D. (Adv)
12/11/95 (Adv)

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will be described as the petitioner).

2. Heard the learned counsel for the petitioner and the learned Sr. C.G.S.C. for respondent Nos. 4 and 5. We had no advantage of hearing the State of Nagaland and its authorities who are respondent Nos. 1 to 3 as none has appeared for them at the hearing. The said respondents have however filed a written statement contesting the petition. We have perused the same. The Union of India and UPSC (Respondent Nos. 4 and 5), have not filed any written statement.

3. The petitioner was working as the Superintendent of Police (Border Affairs), Nagaland, at the time of filing the writ petition in the High Court on 14.12.1990 (at Kohima Bench) under Article 226 read with Article 311 of the Constitution of India. He has prayed for following reliefs:

- i) By issuing an appropriate writ/order or direction ^{fix 4/25} the select lists prepared by the Selection Committee for the years 1988 and 1989 respectively and by the Departmental Promotion Committee for the year 1990 dated 19.7.1990 (wherein the name of the petitioner was not included for promotion to the post of DIG Police) be quashed as being illegal unconstitutional, null and void and be set aside;
- ii) The respondents be directed to consider his case for promotion without taking into account the adverse entries in his Annual Confidential Reports;
- iii) A writ of mandamus or any other appropriate writ or order be issued directing the respondents:
 - a) to promote him to the post of DIG Police with effect....

KCC

Attested by
B. S. Konwar
Dated: 13/11/96

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effect from 1.2.1986, and

b) to accord him promotion to the IPS at the time of initial constitution of the IPS Cadre for the State of Nagaland with effect from 1.3.1986 with all consequential service benefits.

4. Relief sought by clause (iii)(a) above no longer survives as the learned counsel for the petitioner has stated that the petitioner has been promoted to the ex-cadre post of DIG with effect from 16.6.1986 notionally and has been confirmed with effect from 23.4.1984 in the Nagaland State Service by order issued by the Government of Nagaland dated 23.11.1993.

5. The points that, therefore, need consideration for the purpose of the remaining reliefs are as follows:

- 1) Whether the Select lists of 1988, and 1989 require to be quashed?
- 2) Whether the petitioner is entitled to be given promotion with retrospective effect from the date of initial constitution of the IPS service cadre for the State of Nagaland? And if so, whether with effect from 1.3.1986?
- 3) Whether alternatively the petitioner is entitled to be given promotion with retrospective effect to the IPS Service Cadre from any other subsequent year?
- 4) Whether respondents are required to be directed to consider giving promotion to the petitioner either as under point No.2 or as under point No.3 above without reference to the adverse connotations in the Annual Confidential Reports?
- 5) What relief?



Attested by
B. S. Kousal
13/11/96 (Adv.)

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Section 8: Information by an

therefore discussed together.

7. In connection with these points it is necessary to note that by judgment and order dated 30.7.1993 passed by the Hon'ble Gauhati High Court in Civil Rule No.1028/87/5(K)/88 with Civil Rule No.102(K) of 1990 it has been directed that all the ACRs where adverse remarks were recorded (against the petitioner) shall not be considered by any authority if there is any occasion in future.

8. The material averments made in the petition and the facts stated therein are as follows:

9. The petitioner joined the Nagaland State Police Service as Deputy Superintendent of Police on 22.7.1964. In the year 1976 he was placed under suspension due to involvement in a criminal case. He was eventually discharged from that case. However, certain penalties were imposed upon him in a disciplinary proceeding on 14.4.1981. Thereafter he resumed duty on 23.4.1981.

10. On 24.4.1984 he submitted a representation to the Government (of Nagaland) requesting for confirmation in the post of Deputy Superintendent of Police/Deputy Commandant and for promotion to the rank of Deputy Inspector General of Police to which post his juniors had already been promoted. That representation was directed to be considered within a reasonable time by order dated 13.9.1984 passed by the Hon'ble Gauhati High Court in C.R. 571/84. However, instead of giving him relief another officer junior to him, namely, I. Ao was promoted on 6.2.1986. The petitioner filed a representation against the same on 15.2.1986. As no response

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Attested by: B. W. Johnson
(Adv.)
13/11/96

was received to that representation he sent a reminder on 28.5.1987 to the Inspector General of Police. The petitioner thereafter filed the instant writ petition in the High Court. The Government was directed to complete the process of consideration of the claim of the petitioner for promotion within 4 months by interim order dated 1.6.1989 in the said petition. As even then he was not promoted the petitioner filed Contempt Petition No.13(K) of 1990 in which show cause notice was issued to the respondents by the High Court on 6.9.1990. The respondents contended in their counter affidavit dated 6.8.1990 in that proceeding that the superior officers of the petitioner were not satisfied with his performance from 1981 onwards and he had earned adverse remarks in his ACRs. The adverse entry in the ACR of 1983 was communicated to him on 14.8.1985. He filed a representation against it on 20.8.1985. That was not disposed of. Subsequently on 4.8.1988 the adverse remarks entered for the years 1985, 1986 and 1987 were communicated against which also he filed a representation but no reply was received.

11. The case of the petitioner for promotion to Indian Police Service was considered by the Selection Committees in 1988 and 1989 but his name was not included in the select lists because of the existence of aforesaid adverse entries though his representations had been pending. Similarly he was not considered by the DPC on 1.7.1990 for the post of DIG for the same reason.

12. Thereafter on 5.11.1990 the respondent No.3 conveyed to the petitioner the same adverse remarks as were recorded for the year 1987. His representation against it also was not considered.

13. In the aforesaid background the petitioner inter alia avers that the DPC and the Selection Committees have

erroneously.....

hsc

Attested by: *B. S. K. Hosur*
B. S. K. Hosur (Adv.)
13/4/95 (Adv.)

erroneously and illegally ignored his case for promotion, that the adverse entries have been taken into account to his prejudice for denying him promotion without disposing of his representations, that officers junior to him have been promoted, that the adverse entries are recorded malafide and are unjustified, that the respondents have acted in an arbitrary manner, their action is malafide and he has been treated with discrimination and that he has been superseded by ignoring his legitimate claim which action is unfair, unreasonable and unjust and is violative of Articles 14 and 16 of the Constitution.

14. The respondents (No.1 to 3) have denied in their written statement the various allegations made by the petitioner and it is not necessary to set out all those denials. The principal contention of the said respondents is that in fact the case of the petitioner was considered twice for promotion once in 1988 and again in 1989 but the Selection Committee did not consider his merit in his performance in the post of ~~1988~~ 1989.

15. It is submitted that the above contention is negatived by a fact that ACPs were not issued to the petitioner in the month of April 1989 and the ACPs for the period from 1987 to 1988 were not issued into account. It is to be noted that the petitioner was issued ACPs from 1987 onwards but not in the month of April. The ACPs of the petitioner in the month of April for the years upto 71.72,1988 were issued but the ACPs for the month of April 1989 were not issued.

16. The above contention is negatived by the fact that

Attested by:
B. G. Karmal
13/11/89 (Adv.)

for promotion to higher grade is done on the basis of seniority and the merit is a comparative factor; and that although the petitioner had no adverse remarks of serious nature in his ACRs when his merit was compared with the merit of the other eligible officers his merit was found lower because of which he was not recommended for promotion.

17. The position that emerges from the written statement therefore is that there is no dispute over the seniority and eligibility of the petitioner for being considered for promotion, that he was not found fit for promotion by the Selection Committees owing to the adverse remarks in his ACRs and also because he was found to rank lower in comparative merit with other officers although the adverse remarks were not of serious nature. It is however abundantly clear that the adverse remarks in the ACRs had come in the way of the petitioner for not being found fit for promotion whether at the initial constitution of the service or later on. This circumstance however stands wiped out by the judgment of the High Court dated 30.7.1993.

18. The High Court was dealing with the ACRs for 1983, 1985, 1986 and 1987 which were not upto the mark and was pleased to observe that these were communicated after considerable length of time and that too at the time of consideration of promotion of the petitioner and the representations were still pending and held thus:

"Therefore, the respondents erred in law in not promoting the writ petitioner to the post of Deputy Inspector General of Police and allowing his juniors to supersede him" and that

"The respondents ought to have discarded the adverse remarks while considering the promotion of the writ petitioner to the next higher grade."

While....

lal

Attested by
B. D. Kumar
13/11/98 (Adv.)

While no opinion was expressed on the submission of the learned counsel for the petitioner but it was further held that

"in my opinion the writ petitioner is entitled to get relief on the grounds stated above. I may only record here that all the ACRs where adverse remarks were recorded shall not be considered by any authority if there is any occasion in future."

19. It was noticed in the judgment that the IPS Cadre was constituted in January 1989 though the service was constituted with effect from 1.4.1986. However the claim of the petitioner for selection in the initial constitution of the IPS Cadre for Nagaland made in (C.R.No.102(K)) was not considered for want of jurisdiction and the petition was transferred to this Tribunal.

20. With respect, in view of the findings recorded by the Hon'ble High Court it must necessarily be held that the respondents have wrongfully denied promotion to the petitioner taking into account the adverse remarks. His Lordship has also disapproved the supersession of the petitioner by junior officers. The contention of the contesting respondents that the petitioner was not found fit on relative assessment without reference to adverse remarks also did not find favour with the High Court. We also do not find any merit in that contention which is repeated before us having regard to the tenor of the written statement.

21. The petitioner is thus entitled to be considered for promotion without reference to the ACRs. The question however is from what date?



Attested by
B. D. Komal
13/11/2018 (Adv.)

As mentioned in para 20 of the statement in the written statement that the Selection Committee Meeting was held on 28.2.1988 to consider induction of Members of the NPS to IPS at its initial constitution. The applicant was considered at that meeting which means he was eligible. Although the principal relief sought by the petitioner relates to the date of initial constitution of service he has not produced the relevant rules governing that selection nor the learned Advocate appearing for him has made the same available to us. In the same way the respondents have not chosen to do so. Since that was essential for deciding this case effectively it was due to our own efforts that we could get it from record of some other case.

23. The IPS Cadre of Nagaland was constituted under the "Scheme for the Initial Constitution of the IPS Cadre of Nagaland" with effect from 1st November 1986. It was provided under the scheme that the initial constitution of the cadre shall be by appointment of officers of the cadre through selection of members of State Police holding Class I posts who are atleast substantive in a post of Deputy Superintendent of Police and who have completed 6 years of service in that post. The cases of all such officers were to be considered by a Selection Committee. The year of allotment of the selected officers was to be determined ad hoc by the Central Government in the manner stated but the year was limited to the year to which his immediate senior in the Nagaland State Police Service who was selected to the IPS Cadre of Nagaland at its initial constitution.

hsc

Attested by: K. R. Kondan
P. D.
B/11/86 (Adv.)

24. The IPS (Regulation of Seniority) Amendment Rules, 1989, published vide Notification issued by the Government of India on 27.1.1989, while providing the same manner as under the scheme noted above provided that the seniority shall be determined after taking into account the length of service and the responsibilities of posts held by the officer as reflected in pay or nature of duties, or in both.

25. Having regard to above provisions even if the petitioner is directed to be reconsidered with reference to the initial constitution of the cadre the question of assigning appropriate year of allotment and determination of seniority in respect of him is a matter to be decided by the Central Government and we cannot give any direction in that behalf.

26. However, recruitment to the Cadre of IPS after the initial constitution of Nagaland cadre will be regulated in accordance with the Police Service (Recruitment Rules) 1954 (as provided in the Scheme) and the IPS (Regulation of Seniority) Rules, 1988.

27. We are therefore inclined to direct a Review DPC to be constituted to consider the case of the applicant for selection to the IPS Cadre for the State of Nagaland under the Scheme as on 28.12.1988 when the meeting to consider induction of members of the NPS to IPS at its initial constitution was held.

28. In view of our above conclusions we do not think it necessary to quash the select lists of 1988 and 1989 and answer point No.1 in the negative.

We answer point No.2 in the affirmative in terms of....

Attested by:
B. D. Kowal
13/11/98 (Adv.)

1/1/98

of directions given below to constitute Review DPC.

We hold that since question of promotion from any subsequent date after initial constitution of the cadre is not compatible with the principal relief claimed, viz. selection at initial constitution and would need different considerations and as the learned counsel for the applicant has stated that relief be considered with reference to initial constitution of the cadre alone, that question cannot be gone into and is left open to be considered by the respondents in the event the applicant is not selected for appointment from the initial constitution of the IPS Cadre. Point No.3 is answered accordingly.

Point No.4 is answered in the affirmative in terms of directions given below:

29. In answer to point No.5 following order is passed:

ORDER

i) The respondents are directed to constitute a Review DPC to consider the case of the applicant for selection to the IPS Cadre for the State of Nagaland, under the Scheme for the initial constitution of the IPS Cadre of Nagaland as on 20.12.1988.

ii) The Committee will not take into account the adverse remarks contained in the ACRs of the applicant for the years relevant for above consideration.

iii) The Committee shall consider whether applicant is fit to be selected after evaluating his merit and grading him afresh and then comparing it with the grading earned by those officers of NPS who were included in the Select List

prepared....

Attested by: *K. K. Kowal*
B. D. (Advocate)
13/11/88

prepared by the Selection Committee on 28.12.1988 and thus arrive at a relative assessment.

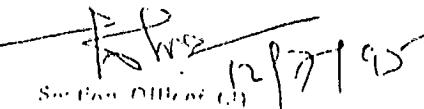
iv) If the Review OPC happens to select the petitioner he shall be given notional induction to the initially constituted cadre with all benefits as per the rules except the year of allotment and seniority which shall be determined by the Central Government in accordance with the relevant rules.

30. The Original Application is partly allowed in above terms. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMIN)

TRUE COPY
classified


Sd/- VICE CHAIRMAN
12/11/96

Section Officer
Central Office
12/11/96
12/11/96
12/11/96

Attested by:
B. S. Kumar
B. S. Kumar (Advocate)
13/11/96

The Chief Secretary,
Nagaland, Kohima.

(Through proper channel).

Sub:- REPRESENTATION.

Sir,

Most respectfully and humbly I beg to state that through reliable source it has been learnt that consequent to an order passed by the Central Administrative Tribunal, Guwahati Bench, Guwahati on Transfer Application No.4/93 (CR-102/90) Shri. Ranbir Kumar Singh versus State of Nagaland and Others, a special Review DPC was held in Shillong, Meghalaya on July 26, 1996 which was presided over by the Chairman, UPSC. I have also reliably learnt that the said Review DPC had a short sitting and decision was taken without observing the conditions set out by the CAT, Guwahati Bench. I beg to reproduce the operative order passed by the CAT, Guwahati Bench, -

i) The respondents are directed to constitute a Review DPC to consider the case of the applicant for selection to the IPS cadre for the State of Nagaland, under the scheme for the initial constitution of the IPS Cadre of Nagaland as on 20.2.1968,

ii) The Committee will not take into account the adverse remarks contained in the ACRs of the applicant for the years relevant for above consideration.

iii) The Committee shall consider whether applicant is fit to be selected after evaluating his merit and grading him afresh and then comparing it with the grading earned by those officers of NPS who were included in the Select List prepared by the Selection Committee on 28.2.1988 and thus arrive at a relative assessment.

iv) If the Review DPC happens to select the petitioner he shall be given notional induction to the initially constituted cadre with all benefits as per the rules except the year of allotment and seniority which shall be determined by the Central Government in accordance with the relevant rules. -

It may be observed that order para (i) and (ii) are conditioned by order para (iii) and (iv). Order para (iii) states that the merit of the officer is to be evaluated by grading him afresh and then comparing it

Attested by: Nominal
B. S. J. K. N. S. (Advocate)
13/11/98

...2/-

with the grading earned by those officers of NPS who were included in the Select List prepared by the Selection Committee for the initial constitution and thus arrive at a relative assessment. The CAT order is very implicit in regard to evaluating the overall performance and conduct of the officer for grading him afresh to facilitate the grading earned for comparing with the grading earned by the officers of NPS who were included in the Select List for the initial constitution by the Selection Committee. It is said that the Selection Committee which was constituted to prepare the Select List after scrutinising the service records of those NPS officers prepared the Select List in which the grading in the ACRs was only a component. I tend to construe that the Hon'ble CAT, Guwahati Bench had all these aspects in their mind while passing the order and passed the order in the manner as it is mentioned. The Hon'ble Guwahati High Court while disposing of the Writ Petition of Shri. Basant Kumar Singh which was registered as Civil Rule No.102/90 struck down the adverse ACRs of the officer on technical ground for not communicating the adverse ACRs timely. While I have no suggestion to make about the modalities to be followed by the Review DPC for evaluating the merit of the officer and grading him afresh for comparing with the grading earned by those officers of NPS who were included in the Select List by the Selection Committee for the initial constitution, the Review DPC does not appear to be given any discretion to follow a shortcut method. I have a fear that the Review DPC has taken decision to select the officer for induction at the initial constitution without evaluating his merit and grading him afresh and then comparing it with the grading earned by those officers of NPS who were inducted to the IPS cadre in the initial constitution. I beg to state that Shri. Basant Kumar Singh was penalised by reducing his pay to a lower stage of Rs.1,100/- in the time scale of pay of Rs.1100-50-1300-(E8)-50-1500/- p.m. for a period of 3(three) years from the date of his resumption of duty vide order No.PER/VIG/21/78(2) dated 14.4.81 on culmination of a disciplinary enquiry instituted against him (copy enclosed as Annexure-I). The Selection Committee for preparing Select List for the initial constitution is said to have scrutinised the service records and ACRs of NPS officers of 5(five) years

Attested by: *D. Kowdai*
D. D. D. Kowdai (Advocate)
13/11/96

pertaining to 1981 to 1985. I am afraid if an officer who was undergoing penalty would be considered fit for induction to the IPS in the initial constitution.

Following documents which are related to discussion and correspondence on the conduct and performance of Shri. Basant Kumar Singh are submitted for your kind perusal:-

- 1) Letter No.DIG(R)POL-120(1)/84-85 dated 18.8.84 submitted by DIGP(Range), Kohima, Nagaland on the subject 'Refusal by an officer to perform law and order duties during bandh and Independence Day'.
- 2) Comments of the then acting IGP Shri. R.S. Jamir dated 25.10.84.
- 3) Letter No.CND-14/82 dated 14.10.85 written by Commissioner, Nagaland to the Home Commissioner, Police Branch, Kohima reporting on the performance of Shri. Basant Kumar Singh as S.P. Zunheboto.
- 4) Copy of D.O. No.PHQ(A-1)19/80 dated 2.9.86 sent by the then IGP, Shri. P.D. Malaviya to Shri. Lalhuma, Secretary, Home, Police Branch mentioning about his doubt about ability of Shri. Basant Kumar Singh to handle the critical situation in Mon District adequately.
- 5) Signal No.POL-1/ESTI/25/82(PT) dated 10.9.86 sent by Home Secretary, Government of Nagaland to IGP Nagaland intimating Government decision for immediate transfer of Shri. Basant Kumar Singh from Mon District.

I, therefore, beg to request you to kindly advise the Review DPC to follow the Hon'ble CAT directives in letter and spirit. I also beg to state that the Review DPC may carefully scrutinise his service records objectively and without any bias and evaluate his overall performance and conduct for grading him afresh and then only take decision for his induction to IPS in the initial constitution. I humbly hope that the Review DPC would be objective in its approach and would follow the Hon'ble CAT's order in letter and spirit. I beg to inform the Government that if an order is issued inducting the officer to IPS in the initial constitution without following the Hon'ble CAT's order in letter and spirit, I shall be compelled to seek Court's intervention.

Enclo: As above.

Yours faithfully,

Attested by:
B. D. Konwal
B. D. Konwal
13/11/86 (Advocate)

...4/-



Copy to:-

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-11.
2. The Home Secretary to the Government
of India, Ministry of Home Affairs,
North Block,
New Delhi-1.
3. The Secretary to the Govt. of India,
Ministry of Home Affairs,
P & AR,
North Block,
New Delhi-1.

Attested by:-
R. D. Kowar
13/11/96 (Advocate)

Annexure - 9

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GOVERNMENT OF NAGALAND
HOME DEPARTMENT : POLICE ESTT. BRANCH

NO.POL-3/ESTT/31/92 : Dt. Kohima, the 19th Sept. '96.

To

The Under Secretary,
Union Public Service Commission,
Dhalsi House, Shahjahan Road,
New Delhi.

(Attn. Shri. N. Namashivayam, Under Secretary).

Sub: REVIEW SELECTION COMMITTEE MEETING DATED
26.7.96 TO REVIEW THE CASE OF SHRI. BASANT
KUMAR SINGH FOR PROMOTION TO IPS CADRE OF
NAGALAND.

Sir,

I am directed to refer to your letter
No.F.7/13(1)/95-AIS dated 8.8.96 on the subject
cited above and to convey approval of the Government
for the minutes of the Review Selection Committee
meeting held on 26.7.96 at Shillong.

Yours faithfully,

Sd/-

(B.B. DEY)

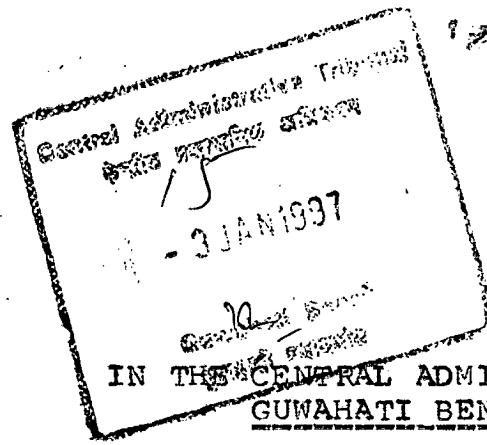
Deputy Secretary to the Govt. of Nagaland.

NO.POL-3/ESTT/31/92 : Dt. Kohima, the 19th Sept. '96.

Copy to:-

The Under Secretary to the Govt. of India,
Ministry of Home Affairs, New Delhi alongwith
a copy of the minutes as referred to above.

Attested by
B. D. Kumar
B/11/26 (Advocate)



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

O.A.No.262 of 1996.

Shri M.Hesso Mao and others .

... Applicants.

-Versus-

The Union of India and others.

... Respondents.

IN THE MATTER OF :

Written statement on behalf of
Respondent No.6 .

I, Shri Basant Kumar Singh, Deputy Inspector
General of Police (Border), Chumukedema, Dimapur,
Nagaland do, hereby, solemnly affirm and state as follows:-

1. That I am serving as the Deputy Inspector
General of Police (Border), Chumukedema, Dimapur,
Nagaland under the Govt. of Nagaland. I have been im-
pleaded as the Respondent No.6 in the abovenoted original
application. I have gone through a copy of the application
served on me and have understood the contents thereof.
Save and except whatever is specifically admitted in this
written statement; the other statements and contentions
made in the application may be deemed to have been
denied.

Recd copy
AK Chumukedema
Addl C/o SC
31/1/97

Recd
31/1/97

contd...

2. That with regard to the statements made in paragraph 4.1 and 4.2, the same can be taken as being substantially correct .

3. That with reference to paragraph 4.3, this deponent begs to state that the Selection Committee, while assessing this deponent's service records, took into consideration adverse remarks in his A.C.R.'s which ought to have been discarded and both the Hon'ble High Court and this Hon'ble Tribunal had held that the deponent was wrongfully denied promotion .

4. That the statements made in paragraph 4.4 does not have any relevance now after the judgments passed by the Hon'ble High Court and this Hon'ble Tribunal .

5. That with reference to paragraph 4.5 of the application, this deponent begs to state that he was not aware of the letter dated 18.8.84 mentioned in the first paragraph and that he had come to know about the same for the first time after perusal of the application but the same does not have any relevance in view of the judgments passed by the Hon'ble High Court and this Hon'ble Tribunal subsequently.

6. That the communications referred to in paragraph 4.6 also do not have any relevance to the issue involved in the instant case and this deponent was not even aware of the existence of such communications . However, it was never the stand of the authority in the earlier Civil Rules

and applications before this Tribunal that because of the said communications, the deponent was deprived of his promotion and it is not open to the applicants to bring in these communications at this stage to deprive the deponent of promotion.

7. That with reference to paragraph 4.7, this deponent begs to state that he had applied for and he was granted leave and obviously another officer was posted.

8. That with reference to paragraphs 4.8 and 4.9, this deponent begs to state that the Hon'ble High Court, after considering the entire matter, by judgment dated 30.7.93 in Civil Rule No.1028/87(5(K) 88), among others, held that all the A.C.R's where adverse remarks were ^{not} recorded would be considered by any authority if there was any occasion in future.

A copy of the Judgment dated 30.7.93 is annexed herewith and marked as Annexure-I.

9. That the statements made in paragraphs 4.10, 4.11, 4.12 and 4.13, being matters of record, are admitted to the extent borne out by the records and judgments.

10. That with reference to statements made in paragraph 4.14, this deponent begs to state that the applicants have confused and misread the judgment passed by this Hon'ble Tribunal. This Hon'ble Tribunal, by order dated 27.6.95, directed that a Review D.P.C. be

4.

constituted to consider the case of the applicant for Selection to the I.P.S. cadre of the state of Nagaland, under the scheme for the initial constitution of the I.P.S. Cadre of Nagaland as on 20.2.88 and not under Regulation 3 of the I.P.S. (Appointment by Promotion) Regulations, 1955. The Constitution of the Selection Committee under the Scheme is different than that of the said Regulation and as such the Constitution of the Selection Committee was in order.

A copy of the Scheme for initial constitution is annexed herewith and marked as Annexure-II.

11. That with reference to paragraphs 4.15, 4.16, 4.17, 4.18 and 4.18(A), this deponent begs to state that in pursuance of the direction given by this Hon'ble Tribunal, a Review Selection Committee, as envisaged under the Scheme, held a meeting on 26.7.96 to consider the case of this deponent for promotion to the I.P.S. cadre of Nagaland at its initial constitution and the Committee made the recommendation as per the Scheme. The other allegations and submissions made in the said paragraphs are denied. The recommendation of the Review Selection Committee along with the records from the State Govt., views of the Central Govt. on the recommendations of the Review Selection Committee and the representations received from some I.P.S. officers including the representation of the I.P.S. Association of Nagaland had been placed before the U.P.S.C. for their consideration and the U.P.S.C. had

contd...

approved the recommendations of the Review Selection Committee in its meeting held on 26.7.96 and the U.P.S.C. , by letter No.F.7/13(1)/95-AIS dated 8.11.96, informed this fact to the Govt. of India, Ministry of Home Affairs . The Ministry of Home Affairs , by letter dated 11.11.96 , had informed the Chief Secretary to the Govt. of Nagaland about the approval by the U.P.S.C.

Copies of the aforesaid letters are annexed herewith and marked as Annexure-III and IV respectively.

12. That with reference to paragraph 4.19, this deponent begs to state that he was not aware of the representations filed by the applicants but submits that the representations were misconceived.

13. That with reference to paragraph 4.20, this deponent begs to state that it appears that the representations submitted by the applicants and also the representation filed by the I.P.S. Association of Nagaland were placed before the Commission and that Commission, after considering the same alongwith the recommendations, had approved the same. After the receipt of the letter dated 19.9.96 of the Govt. of Nagaland approving the minutes, the U.P.S.C. has since also approved the recommendation (Annexure-III and IV)

14. That with reference to paragraph 4.21, this deponent begs to state that the minutes of the proceedings of the Review Selection Committee are not required to be made available to the applicants.

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6.

15. That the statements made in paragraph 4.22 are denied and this deponent submits that the Review Selection Committee was held in pursuance to the judgment passed by this Hon'ble Tribunal and the Committee reconsidered the case of the deponent as per provisions of the Scheme and the same is in order.

16. That the statements made in paragraphs 4.23, 4.24 and 4.25 are denied and this deponent begs to state that the same are assessment made by the applicants. This deponent states that, as directed by this Hon'ble Tribunal, the Review Selection Committee made the recommendations by applying the same yardsticks and norm as laid down in the Scheme and that the Selection Committee is the best authority to have made the recommendations.

17. That the grounds taken in paragraph 5 of the application have no merit whatsoever and the same are misconceived. However, the advocate for the deponent will make oral submissions at the time of hearing.

18. This deponent states and submits that he already had to face harassment for the last several years and the instant application is without any merit and liable to be dismissed with cost.

Contd....

VERIFICATION

I, Shri Basant Kumar Singh, Deputy Inspector General of Police (Border), Sumukedema, Dimapur, do hereby, solemnly affirm and declare that the statements made in paragraph No. 4, 5, 9, 12, 14, 16, 17 & 18 of this written statement are true to my knowledge, those made in paragraph No. 2, 3, 6, 7, 8, 10, 11, 13 & 15 being matters of records, are believed to be true to my informations derived therefrom and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this .. day of January, 1997 at Guwahati.

TSQ
(BASANT KUMAR)
Deponent.

(8)

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Annexure-I.

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:TRIPURA:
MIZORAM AND ARUNACHAL PRADESH)

CIVIL RULE NO.1028/87/5(K)/88.

CIVIL RULE NO.102(K) of 1990.

Basant Kumar Singh ... Petitioner.

-Versus-

State of Nagaland & Ors ... Respondents.

PRESENT

THE HON'BLE MR.JUSTICE S.N.PHUKAN.

For the petitioner : Mr.R.S.Bedi,
Advocate.

For the respondents: Mr.I.Jamir,
Govt.Advocate.

Date of hearing : 26.7.93, 28.7.93, 29.7.93
and 30.7.93.

Date of Judgment : 30.7.93.

JUDGMENT AND ORDER (ORAL)

By this common Judgment and order, I propose to dispose of two writ petitions filed under Article 226 of the Constitution and registered as Civil Rule No.1028/87/5(K)/88 and Civil Rule No.102(K) of 1990. The writ petitioner is a member of the disciplined force, namely, Nagaland Police Service and it is really unfortunate that the petitioner has approached this Court for not getting promotion in due course. I hope and trust in future, the authority concerned

Attested
Jeniel
Advocate

contd...

would take appropriate action so that members of Police force need not come to this Court to seek relief as this is necessary to keep up the morale of the Police force who are the guardian of law and order of the country.

2. The writ petitioner joined directly as Deputy Superintendent of Police in Nagaland Police Service. It may be stated that at the relevant time, there was no duly framed service rules under Article 309 of the Constitution. Such rules were framed only in the year 1977.

3. Though there was a criminal case against the petitioner which ended in 'Final Form' i.e. during investigation, the investigating machinery did not find any case against the petitioner, however, in view of the criminal investigation, the petitioner was kept under suspension and during the period of suspension, a fresh departmental proceeding was drawn up.

4. By the final order dated 14.4.1981 the following punishments were imposed :-

(I) The pay of Shri Ch. Basant Kumar Singh shall be reduced to the lower stage of Rs.1100.00 (Rupees eleven hundred) only in the time scale of pay of Rs.100-50-1300-(EB)-50-1500/- P.M. for a period of 3 years from the date of his resumption of duty.

(II) The Officer shall not earn increment of pay during the aforesaid period of 3 years.

contd...

*Javelur
Adv.*

(10)

(III) This reduction will not have the effect postponing the future increment of his pay on expiry of the period of 3 years.

This order is available in the counter-affidavit filed in Civil Rule No.102(K) of 1990. On the same date i.e. 14.4.1981 the suspension order was also revoked and the period of suspension was treated as on duty for all purposes except for pay and allowances which would be the same as already drawn during the period of suspension. This order is available at Annexure-C to the first writ petition filed by the present petitioner which was registered as Civil Rule No.571 of 1984. I may only add here that notwithstanding allowing the writ petitioner to draw any amount more than his subsistence allowance during the period of suspension by the above order is bad in law inasmuch as the law is well settled that before passing such order the delinquent officer has to be given a reasonable opportunity to show-cause, which was not done in the case in hand. But as this matter has not been challenged in the present two writ petitions I am not passing any order in this aspect.

4. As stated above, the petitioner approached this Court filing a writ petition under Article 226 of the Constitution which was registered as Civil Rule No.571 of 1984 and it was disposed of by order dated 13.9.84 which is available at Annexure-B/C of the writ petition registered as Civil Rule No.1028 of 1987. The writ petition was closed as an assurance was given by the learned Advocate General of the State that the representation of the writ petitioner would be considered. Thereafter the petitioner was informed

*Shaukat
Adv.*

contd...

by memorandum dated 1.2.1985 issued by the Home Commissioner and Secretary, Government of Nagaland vide Annexure-C to the writ petition registered as Civil Rule No.1028/87/5(K) of 1988. Paragraph 3 of the said letter is relevant for the purpose and it is quoted below:

"In view of the position explained above, Shri B.K.Singh is entitled to confirmation in the Nagaland Police (Class-I) Service with effect from 23.4.1984 and accordingly his case for confirmation is being processed. As regards his claim for promotion, he will be considered for the ex-cadre post of D.I.G. of Police as and when vacancy occurs".

5. As till date, the petitioner has not been promoted to the post of Deputy Inspector General of Police, the present two petitions have been filed. It may be stated that the writ petitioner was confirmed with effect from 1.8.1988 vide notification dated 8.8.88 which is available at Annexure-I to the counter filed in the above Civil Rule No.1028/87/5(K) of 1988.

6. The substance of both the counter-affidavit filed on behalf of the respondents is that the petitioner could not be promoted as his record was not upto the mark and in other words the Annual Confidential Reports for 1983, 1985, 1986 and 1987 were not upto the mark.

7. Heard Mr.Bedi, learned counsel for the writ petitioner and Mr.I.Jamir, learned Govt. Advocate.

*Shivam
Adv.*

contd...

8. At the time of hearing the personal file of writ petitioner has been made available alongwith the note sheets. Normally note sheets are not available to be perused by others. But the learned Government Advocate agreed to allow Mr. Bedi to peruse the note sheets and it was duly recorded by this Court vide order dated 28.7.93 passed in Civil Rule No.1028/87/5(K) of 1988. I have also perused the note sheets and I find that the file was put up the Chief Minister of the State through the Chief Secretary and in the minutes recorded on 16.6.86, it was decided to promote the writ petitioner to the next higher post i.e. Dy. Inspector General of Police vide Note Sheet at page 55. From the note sheets at page 47 n, I find that it was also decided that the petitioner would be confirmed w.e.f. 23.4.84. But for the reasons not known and it is also not clear from the record why this order was not communicated. I also find from the note sheets that subsequently the higher official was misled inasmuch as it was recorded that the effect of the punishment imposed on the petitioner would be over only on 27.1.87 which was absolutely incorrect. Presumably, because of the above notes and orders promise was made by the above letter to the Home Commissioner regarding confirmation of the writ petitioner and also his promotion to next higher post. I do not want to say anything more regarding subsequent promotion of other junior officers for obvious reasons.

*Govind
Adv.*

contd..

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Therefore, in view of the above order of the Home Commissioner and the order of the highest authority the petitioner ought to have been promoted to the post of Dy. Inspector General of Police on or after 16.6.86 and should have been confirmed w.e.f. 23.4.1984.

10. Regarding Annual Confidential Reports, I find that all the Annual Confidential Reports have not been produced. Along with the counter-affidavit in Civil Rule No.1028 of 1987/5(K) of 1988, Annual Confidential Reports of the writ petitioner for the years 1983, 1984, 1985, 1986 and 1987 have been annexed. The Annual Confidential Report for the year 1982 is not available. In the A.C.R. for the year 1981 I find no remark by the Reviewing Officer. Similarly, in the A.C.R. for the year 1983 there is remark of the Reviewing Officer.

11. According to the writ petitioner, the adverse remarks in the A.C.Rs. were communicated to him just on the eve of promotion and that he has been superseded by 8 officers of Nagaland Police Service.

12. It has been admitted by the respondents in the counter filed in Civil Rule No.102(K) of 1990 vide paragraph 10 that the representations filed against the adverse remarks by the writ petitioners were not disposed of. An interesting statement has been made in paragraph 22 of the said counter which runs as follows :-

"..... Although the petitioner had no adverse remarks of serious nature in his ACRs when his merit was compared with the merit of the

*General
Adv.*

contd...

other eligible officers his merit was found lower because of which he was not recommended for promotion."

In view of the above statement, this court directed the learned Govt. Advocate to produce all the Annual Confidential Reports, but unfortunately only some ACRs were produced.

13. Before I proceed further, let me consider the law regarding adverse entry in the A.C.R.

14. In Gurdial Singh Eijji Vs. State of Punjab, (1979) 2 S.C.C. 369, it was held by the Apex Court that the adverse entry in the A.C.R. cannot be acted upon till opportunity for representation against has been afforded and the representation was duly considered.

15. In Brij Mohan Singh Chopra Vs. State of Punjab (1987) 2 S.C.C. 188, the Apex Court held that whenever an adverse entry is awarded to a government servant, it must be communicated to him for the purpose of giving him an opportunity to improve his work and to make representation. It was also held that if such a representation is made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. According to their Lordships making of a representation is a valuable right to a government employee and if the representation is not considered, it is bound to affect him in his service career.

contd..

*Parvez
Adv.*

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16. In the State of Haryana Vs. P.C. Wadhwa, (1987) 2 S.C.C. 602, the Apex Court held that the object of making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performances, conduct and character, as the case may be and that the adverse remarks should not be understood in terms of punishment, but really it should be taken as an advice. It was further held that the whole object of the making of adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay.

17. The Punjab and Haryana High Court in Kehar Singh Vs. The State of Punjab, 1991 (5) S.L.R.658 held that representation against adverse remarks if pending, adverse remarks cannot be taken into consideration for the purpose of promotion. I am in respectful agreement with the views expressed in the above decision.

18. Coming to the case in hand in addition to the fact that all the A.C.Rs were not make available and that apart there are defects in the ACRs as stated above, the adverse remarks were communicated after considerable lapse of time and that too at the time of consideration for promotion. The respondents have admitted that the representations filed by the petitioner against the said adverse remarks are still pending. Therefore, the respondents erred in law in not promoting the writ petitioner to the post of Dy. Inspector General of Police and

*S. S. Patel
Adv.*

contd...

allowing his juniors to supersede him. The respondents ought to have discarded the adverse remarks while considering the promotion of the writ petitioner to the next higher grade.

19. Mr. Bedi has urged that the ACRs in which adverse remarks were recorded were written by the officers junior to him after their promotion to the higher grade. I need not express any opinion in this regard as in my opinion the writ petitioner is entitled to get relief on the grounds stated above. I may only record here that all the A.C.Rs where adverse remarks were recorded shall not be considered by any authority if there is any occasion in future. I say so on the ground stated above and the defects in the A.C.Rs.

20. It may be stated that the I.P.S. Cadre was constituted in January, 1989 though the service was constituted w.e.f. 1.4.1986. According to Mr. Bedi there are four posts of D.I.G. in the cadre of I.P.S. Mr. Bedi has also stated that at present there are 8 posts of equivalent rank. Therefore, there will be no difficulty for this Court to pass appropriate orders in case of the writ petitioner.

21. Another fact which is quite surprising is that all the officers who were junior the writ petitioner were promoted temporarily subject to regularisation by the D.P.C. In this connection I may refer to Annexure-B-1 to the counter filed in C.R.N o.1028/87/51(K) of 1988. But inspite of direction given by this Court, no proceeding of the

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Arvind
Adv.

(17)

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Departmental Promotion Committee has been placed before this Court except the minutes of such committee held on 17.7.1990. Therefore, I can safely hold that officers who were Junior to the writ petitioner were promoted without processing their cases by duly constituted Departmental Promotion Committee.

22. In Civil Rule No.102(K) of 1990, the writ petitioner has claimed his selection in the initial Constitution of the I.P.S. Cadre for Nagaland. This is outside the purview of this Court in view of the Central Administrative Tribunal Act, 1985. The writ petitioner may seek redress in the appropriate forum for his selection in the initial constitution of I.P.S. Cadre. Accordingly, it is directed that the said Civil Rule No.102(K) of 1990 may be transferred to the Hon'ble Central Administrative Tribunal at Gauhati and for the purpose of this Court, this may be treated as disposed of. However, office shall keep copies of all the records, namely, the writ petition, counter affidavit, Annexures etc. in the record of Civil Rule No. 1028/87/5(K) of 1988 as in this Judgment, I have quoted from the counter affidavit filed in that case.

23. In Misc. Case No.116 of 1987 by order dated 21.9.87, a Division Bench of this Court, in which I was a party, it was directed that during the pendency of the Civil Rule, namely, C.R. No.1028 of 1987/5(K) of 1988 if any promotion is made in supersession of the petitioner that will be subject to the out-come of the Civil Rule.

contd...

Ravinder
Adv.

24. In view of the above interim order, there will be no difficulty to pass an appropriate orders in this regard.

25. Situated thus, I direct the respondents to treat the petitioner as confirmed w.e.f. 23.4.1984 and the seniority list shall be accordingly modified. The writ petitioner shall be deemed to have been promoted to the post of Dy. Inspector General of Police w.e.f. 16.6.1986 notionally, but he shall not be entitled to get any back salary till date. From today onwards, he shall be posted as D.I.G.P. in a post which is not in the cadre of I.P.S. and he shall be entitled to draw the salary of the D.I.G.P. from today i.e. 30.7.1993. While fixing the salary of D.I.G.P. nationally, the increments shall be counted from the above date i.e. 16.6.1986 without any arrear payment. If necessary an additional post shall be created by the respondents to accommodate the petitioner in the post of D.I.G.P. outside the I.P.S. cadre. The above period of national promotion shall be counted for all other service benefits including pension and pensionary benefits. I further direct that the adverse entries made in the A.C.Rs for the relevant years shall not be taken into consideration by any authority for any purpose in view of what has been stated above.

With the above direction, both the petitions are disposed of with further direction that the Civil Rule No.102(K) of 1990 may be transferred to the Hon'ble Central Administrative Tribunal at Gauhati as stated above. No costs.

*Sarwarul,
Adv.*

Sd/-S.N.Phukan,
Judge.

(19)

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Annexure-II.

No.16/69/76-IPS

Government of India/Bharat Sarkar,
Ministry of Home Affairs/Grih Mantralya.

New Delhi, the 10.12.87.

To

The Chief Secretary,
Government of Nagaland,
Kohima.

Sub :- Scheme for the initial constitution of
the Indian Police Service Cadre of Nagaland.

Sir,

In continuation of this Ministry's Teleprinter
Message of even number dated 31.10.85, I am directed to
convey the approval of the Central Government to the scheme
for the initial constitution of Indian Police Service Cadre
of Nagaland (copy enclosed) which has been finalised in
consultation with the Government of Nagaland.

2. So far as the process of selection of the
eligible officers for consideration for appointment to
the IPS at the initial constitution is concerned, it is
requested that particulars of all eligible officers and
their up-to-date character rolls may pleased be sent to
U.P.S.C. under intimation to this Ministry at an early
date for necessary action as required under Section II of
the scheme.

Yours faithfully,

Sd/-N.S.Sharma
Under Secretary to the Govt.of India.

Attested
Parvinder
Adv.

contd...

SCHEME FOR THE INITIAL CONSTITUTION OF THE INDIAN POLICE
SERVICE CADRE OF NAGALAND

SECTION I : INTRODUCTION.

The India Police Service cadre for the State of Nagaland shall be constituted with effect from the 1st March, 1986 . The cadre schedule as at Appendix I has been incorporated in the schedule to the Indian Police Service (Fixation of Cadre Strength) Regulation , 1955.

SECTION II : INITIAL CONSTITUTION OF THE CADRE :

The initial constitution of the Cadre shall be by appointment by the Central Government of Officers of the cadre through selection of members of the State Police holding Class I posts who are atleast substantive in a post of Dy. S.P. and who have completed not less than 6 years of service (whether officiating or substantive) in a post of Deputy Superintendent of Police .

Cohtd.....

*Ganesh
Adv.*

3.

NOTE I :-

The cases of all the officers mentioned above shall be considered by a Selection Committee set up for the purpose under the Chairmanship of the Chairman or a Member of the Union Public Commission. The Committee shall prepare, in order of preference a list of such officers who are adjudged by it suitable for appointment to the service. The recommendations of the Committee shall be referred to the Union Public Service Commission for approval. Only such of the officers as are finally approved by the Commission shall be appointed by the Central Govt. to the Indian Police Service subject to availability of vacancies in the State Cadre.

NOTE II :

In the event of any of the police officers of the State Police service, Class I, do not being selected for appointment to the Indian Police Service, the posts held by them on a regular basis which are proposed to be included in the Indian Police Service Cadre shall be deemed to be excluded from the Indian Police Service Cadre of Nagaland so long as the posts are held by them. Such ex-cadre posts will be retained by the Government of Nagaland until their holders waste out.

SECTION : III.

Any post in the cadre remaining unfilled after appointment of Officers by the method indicated in Section II shall be filled in accordance with the provision contained in section IV of this Scheme.

Kareem
Adv.

(22)

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SECTION IV RECRUITMENT AFTER THE INITIAL CONSTITUTION :

Recruitment to the Indian Police Service after the Initial constitution of the Cadre shall be in accordance with the Indian Police Service (Recruitment) Rules, 1954.

SECTION V : TRAINING :

Candidates selected to the Indian Police Service by method indicated in Section II may be required to attend Refresher Course or they may be attached anywhere for training for a period as may be specified by the Central Government.

SECTION VI : CONDITIONS OF SERVICE :

The condition of Service of all persons appointed to the Indian Police Service shall be the same as specified in the Rules / Regulations framed under the All India Services Act, 1951 as in force from time to time.

SECTION VII : SENIORITY:

(a) The year of allotment of Officers selected at the initial constitution shall be determined adhoc by the Central Government on the recommendations of the State Govt. and in consultation with the Union Public Service Commission having due regard to the length of service and the responsibilities of posts as reflected in pay or nature of duties or both, provided that the year of allotment of an officer so arrived at shall be limited to the year to which his immediate senior in the Nagaland State Police Service, who is selected to the Indian Police Service Cadre of Nagaland at its initial Constitution obtained.

Forwarded
Ad.

contd...

b) Officers appointed to the Indian Police Service after the initial constitution in accordance with section IV of this scheme⁸ shall have their seniority determined in accordance with the provisions of the Indian Police Service (Regulation of Seniority) Rules, 1954.

SECTION VIII : PAY:

The pay of the Officers selected at the initial constitution shall be fixed in the junior or senior scale of pay in accordance with such principles as the Central Government, may in consultation with the State Government, determine.

SECTION IX: TRANSITIONAL ARRANGEMENTS:

Till such time as the Indian Police Service Cadre of Nagaland is able to provide the suitable officers, the post of Inspector General of Police and one post of Deputy Inspector General of Police may be filled by deputation of members of the IPS from other Cadres/joint Cadres in terms of Rules 6 of the Indian Police Service (Cadre) Rules, 1954. Other vacancies may be filled by allowing State Police service Officers to officiate in the cadre posts.

SECTION X: AMENDMENT TO THE INDIAN POLICE SERVICE (RECRUITMENT) RULES, 1954 ETC. CONSEQUENT UPON THE CONSTITUTION OF THE CADRE.

The Indian Police Service (Recruitment) Rules, 1954, the Indian Police Service (Regulation of Seniority) Rules, 1954, and the Indian Police Service (Pay) Rules,

contd..

Govind
Adv.

1954, on the constitution of the Indian Police Service Cadre of Nagaland are being amended on the lines indicated in Appendix-II.

AMENDMENT PROPOSED TO BE MADE TO THE IPS (RECRUITMENT) RULES, 1954, IPS (REGULATION OF SENIORITY) RULES, 1954 AND THE IPS (PAY) RULES, 1954, ON THE CONSTITUTION OF THE INDIAN POLICE SERVICE CADRE OF NAGALAND :

INDIAN POLICE SERVICE (RECRUITMENT) RULES, 1954:

After sub-rule (s) of the Rules 4 of the Rules, the following sub-rule shall be added, namely:-

"(6). Notwithstanding anything herein before contained in this Rule in relation to the State of Nagaland, recruitment to the state cadre on its initial constitution shall be made by such method, as the Central Government may, after consultation with the State Government and the Commission Prescribe".

INDIAN POLICE SERVICE (REGULATION OF SENIORITY) RULES, 1954.

After Rule 5-D, the following rules shall be added, namely :-

" 5-E seniority of Officers appointed to the service at the initial constitution of the Cadre of Nagaland.

Notwithstanding anything contained in these Rules in relation to the State of Nagaland, the year of allotment and the seniority of officers appointed to the

contd..

*Dorrell
Adv.*

(25)

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service at the time of the initial constitution of the State Cadre shall be determined by the Central Government in the following manner:-

The year of allotment of Officers appointed through selection from amongst the substantive members of the Nagaland State Police Service shall be determined ad-hoc in consultation with the UPSC and the State Government after taking into account the length of service and responsibilities of posts held by the officers as reflected in pay or nature of duties on both, provided that the year of allotment of an officer so arrived at shall be limited to the year to which his immediate senior in the Nagaland State Police service, who is selected to the Indian Police Service Cadre of Nagaland, at its initial constitution, obtains:

INDIAN POLICE SERVICE (PAY) RULES , 1954:

After Rule 10-E , the following Rules shall be added namely:-

STATEMENT SHOWING THE PROPOSED STRENGTH FOR THE FORMATION OF AN IPS CADRE IN THE STATE OF NAGALAND.

1. Senior posts under the State Government	... 22
Inspector General of Police	... 1
Deputy Inspector General of Police	... 4
Assistant Inspector General of Police	... 3
Superintendent of Police (DEF)	... 8
Commandants (ANP Battalions)	... 4
Additional Superintendent of Police	... 2

22

*Ramnath
Adv.*

contd..

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2. Senior posts under the Central Government	.. 9.
3. Posts to be filled by promotion in accordance with rule 9 of the IPS (Recruitment) Rules, 1954 (33 % of 1 and 2 above)	.. 10.
4. Posts to be filled by direct recruitment (1 and 2 minus 3 above)	.. 21
5. Deputation reserve (20 % of 4 above)	.. 4
6. Leave reserve (5 % of 4 above)	.. 1
7. Junior posts (20.5% of 4 above)	.. 4
8. Training reserve (10.59% of 4 above)	.. 2
Total direct recruitment	= 32
Promotion posts	... 10
Total authorised strength	= 42

" 10-F) Fixation of pay and scales of pay of Officers appointed to the IPS on the initial Constitution in the State of Nagaland.

Notwithstanding anything contained in these Rules in relation to the State of Nagaland, the pay of Officers appointed to the Indian Police Service at the time of initial constitution of the State Cadre shall be fixed in the junior or senior scales of pay in accordance with such Principles as the Central Government in consultation with the State Government determine. "

...

*For ever
Adv.*

Annexure-IV-III

No.F.7/13(1)/95-AIS.

8.11.96.

The Secretary
 Govt. of India,
 Ministry of Home Affairs,
New Delhi.

(Attn. Shri M.L. Miglani, Under Secretary).

Subject :- Review Selection Committee meeting dated 26.7.96
 to review the case of Shri B.K. Singh for
 promotion to IPS Cadre of Nagaland.

Sir,

I am directed to refer to your letter No.I.14011/25/
 91-IPS.I dated 8.10.96 and Govt. of Nagaland letter No.PO1-3/
 Estt/31/92 dated 19.9.96 on the subject mentioned above and
 to say that the recommendations of the review Selection Committee
 which met on 26th July, 1996 to reconsider the case of Shri
 Basant Kumar Singh an SPS Officer of Nagaland for selection to
 IPS Cadre of Nagaland at its initial constitution, records
 received from the State Govt., views of the Central Govt. on
 the recommendations of the Review Selection Committee & the
 representations received from some IPS officers including the
 representation of IPS association of Nagaland were placed
 before the Commission for their consideration.

On consideration of the various issues involved &
 keeping in view the directions of the Hon'ble Central Adminis-
 trative Tribunal, Guwahati Bench as contained in their
 Judgement dated 27th June, 1995, the Commission have approved
 the recommendations of the Review Selection Committee as
 contained in the minutes of its meeting held on 26th July, 1996,
 without any modification.

Yours faithfully,

Sd/- N.Namasivayam
 Under Secretary
 Union Public Service Commission
 Tele No. ..

Attested
 Enclosed.
 Advt.

contd..

No.F.7/13(1)/95-AIS. New Delhi 8.11.1996.

Copy by Speed Post to the Chief Secy, Govt. of Nagaland, Home Deptt. (Police Estt.Branch), Kohima (Attn. Sh.B.B.Dey, Dy. Secy), dossier of Shri B.K. Singh is being returned herewith. Receipt of the same may kindly be acknowledged.

2. Copy to Resident Commissioner, Govt. of Nagaland, Nagaland House, Aurangzeb Road, New Delhi.

(N.Namasivayam),
Under Secretary,

...

Annexure-III. IV

By special post.Most Immediate
Confidential.

Nb.1.14011/25/9 - ..

Government of India Bharat Sarkar,
Ministry of Home Affairs Griha Mantralaya.

New Delhi, the 11.11.1996.

To

The Chief Secretary,
Government of Nagaland,
Home Deptt.(Police Estt.Branch),
Kohima.

(Attn : Shri B.B.Dey, Deputy Secretary).

Sub :- Review Selection Committee Meeting dated
26.7.96 to review the case of Sh.B.K.Singh
for promotion to IPS Cadre of Nagaland.

Sir,

I am directed to say that Union Public Service Commission, vide letter No.F.7/13(1)/95 -AIS dated 4.11.1996 (Copy enclosed) has approved recommendation of Review Selection Committee meeting which met on 26.7.96 to consider the name of Shri B.K. Singh for promotion to IPS cadre of Nagaland at its initial constitution. Nagaland, prepared by Review Selection Committee on 26.7.96.

2. State Govt. may please see for further necessary action at their end.

Yours faithfully,

Sd/- (P.S. Pillai)
Under Secretary to the Govt. of India,
Tele Nb.3011359.

Attested
P.S. Pillai
Adv.

...

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO. 262/96

SHRI M HESSO MAO AND ORS APPLICANTS

-VS-

UNION OF INDIA AND OTHERS RESPONDENTS 3.

A F F I D A V I T

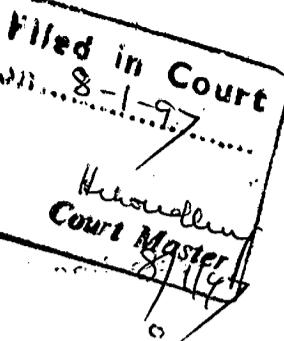
I, J M Qureshi, aged 63 years, Chairman, Union Public Service Commission, New Delhi, w.e.f. 30.9.96 AN - 1.10.96 FN do hereby solemnly affirm and respectfully submit as follows:-

1. That the Central Administrative Tribunal Guwahati Bench, Guwahati vide their interim order dated 5.11.1996 in OA No.262/96 have directed the respondents to produce a copy of minutes of the Review Selection Committee dated 26.7.1996 and the records relevant to the minutes on 8.1.1997.

2. I, as Chairman of the Union Public Service Commission, w.e.f. 1-10-96 FN am in control of and in-charge of its records.

3. I have carefully read and considered the relevant records and have come to the conclusion in respect of them as under:

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JMS



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D
Filed by Mr. Choudhury
8-1-97
Addl. Central Govt.
Standing Counsel.



Details of item for
which privilege is
claimed

Union Public Service Commission relating to the meeting of the Review Selection Committee held on 26-07-96 to reconsider the case of Sh. B.K. Singh for selection to IPS Cadre of Nagaland at its initial constitution as on 28.12.1988 in pursuance of the Hon'ble C.A.T., Guwahati Bench Judgement dated 27.6.95 in T.A. I find that the records relevant to the application are the minutes of the meeting of the Review Selection Committee held on 26-07-96 to reconsider the case of Sh. B.K. Singh for selection to IPS Cadre of Nagaland at its initial constitution as on 28.12.1988 in pursuance of the Hon'ble C.A.T., Guwahati Bench Judgement dated 27.6.95 in T.A.

Date . No. of
of meeting pages

26-7-96 4(FOUR)



(10) 81

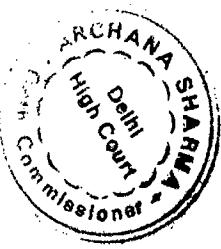
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These are unpublished official records relating to the affairs of the State and their disclosure will cause injury to public interest and will materially affect the freedom and candour of expression of opinion in the determination and execution of public policy.

4. I do not, therefore, give permission to anyone under section 123 of the Indian Evidence Act, 1872, to produce the said documents or to give any evidence derived therefrom, and claim privilege under the said Act.

5. However, I respectfully point out that I have no objection whatsoever to the documents in regard to which privilege has been claimed, being produced for perusal by the Hon'ble Central Administrative Tribunal only, for satisfying themselves about the bonafides and genuineness of the privilege.

JWS



6. I realise the solemnity and significance attached to the exercise of power under section 123 of the Indian Evidence Act, 1872 and privilege is not being claimed on the ground of expediency, or to avoid an embarrassing or inconvenient situation or because it is apprehended that the documents, if produced, would defeat the case of the Union Public Service Commission which is a constitutional body discharging its constitutional obligations with justice equity and fairplay as per constitutional and legal norms.

Solemnly affirmed at New Delhi, this
6th day of January, 1997.

JM Qureshi
6/11/97
(J M Qureshi)
Chairman
Public Service Commission
Dependent

VERIFICATION

I, J M Qureshi, do hereby solemnly affirm and state that the contents of paragraphs 1 to 6 are true to my knowledge.

J M Qureshi
6/11/97
(J M Qureshi)
Chairman
Union Public Service Commission
Dependent

Certified that the deponent
is a true copy.

Shri..... J. M. Qureshi
Chairman
U.P.C.C. New Delhi

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affidavit

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to . . .
knows

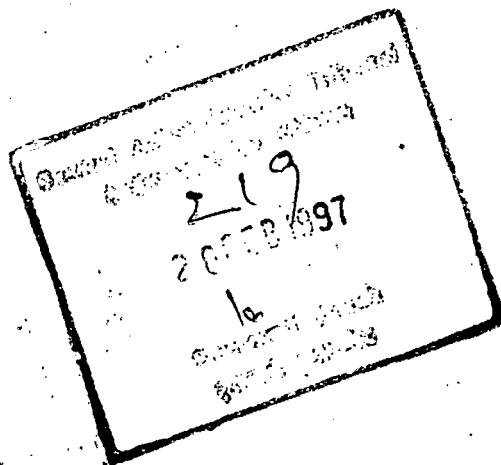
Oath Commissioner's Name Date

6 JAN 1002

Filled in Court
ON
Court Master

91
115
Filed by
C.T. Jamir
on 14-2-97
Junior Govt. Advocate, Nagaland
Guwahati High Court,
Guwahati

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI
BENCH AT GUWAHATI :



IN THE MATTER OF :

C.A. 262 of 1996:

Shri M. Hesso Mac & ors

... APPLICANT

-Versus -

Union of India & ors.

... RESPONDENTS.

- A N D -

IN THE MATTER OF :

Written Statement on behalf
of Respondent Nos, 2, 4 and 5.

WRITTEN STATEMENT :

I, Shri C.P. Giri, son of Lati Ramilal Giri
aged about 48 years, by profession Service, resident
of Kohima, Nagaland
do hereby solemnly affirm and declare as follows :

1. That I am the Home Secretary to the Government
of Nagaland. I am conversant and acquainted with the
facts and circumstances of the case. I am also competent
and authorised to file this written statement on behalf
of Respondents 2, 4 and 5.
=

2.

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2. That the statements made in paragraphs 1 to 3 of the application are admitted.

3. That the statements made in paragraph 4.1 to 4.4 of the application are being matters of records, this deponent does not admit anything which are contrary to and inconsistent with the records.

4. That the statements 4.5, 4.6 and 4.7 of the application are being matters of records, this deponent does not admit anything which are not borne out by records. However, the letter of the Commissioner, Nagaland dated 4.10.85 bearing No. C&J-14/82 (Annexure 4 to the application) mentioning that the officer is unfit to hold independent charge of district pertains to the period of his posting as S.P. Zunheboto district.

5. That the statements made in paragraphs 4.8 to 4.13 are admitted being matter of records.

6. That the statements made in paragraph 4.14 of the application are denied to the extend that the Inspector General of B.S.F., Shillong is not equivalent to the rank of a Joint Secretary and he is not qualified to be a member of the Selection Committee under Regulation 3 read with the Schedule to the Indian Police Service (Appointment by Promotion) Regulation, 1955. This deponent begs to state that under Regulation 3 of the Indian Police Service (Appointment by Promotion) 1955, an Inspector General of Police of the Indian Police Service Cadre is

equivalent ...

equivalent to a Joint Secretary to the Government of India and as such, the appointment of Shri Ajit Marayan, Inspector General of Border Security Force, Shillong was in accordance with the relevant provisions of law.

7. That with regard to the statements made in paragraphs 4.15 to 4.18 of the application this deponent begs to state that this Hon'ble ~~Quarantine~~ Tribunal passed an order in T.A. No. 4 of 1993 vide judgement dated 27.6.95 and ordered as follows :

i) The respondents are directed to constitute a Review DPC to consider the case of the applicant for selection to the IPS Cadre for the State of Nagaland, under the Scheme for the initial constitution of the IPS Cadre of Nagaland as on 20.2.1988.

ii) The Committee will not take into account the adverse remarks contained in the ACRs of the applicant for the years relevant for above consideration.

iii) The Committee shall consider whether applicant is fit to be selected after evaluating his merit and grading him afresh and then comparing it with the grading earned by those officers of NPS who were included in the Select List., prepared by the Selection Committee on 28.2.1988 and thus arrive at a relative assessment.

iv).....

(iv) If the Review DPC happens to select the petitioner he shall be given nitional induction to the initially constituted cadre with all benefits as per the rules except the year of allotment and seniority which shall be determined by the Central Government in accordance with the relevant rules."

As per the direction of the Hon'ble Tribunal the Review Selection Committee meeting was held at Shillong on 26.7.96 and the Review Selection Committee decided to recommend the case of Respondent No. 6 to be inducted in the IPS under the Scheme for initial constitution of IPS in Nagaland placing him at serial No. 4A i.e. below the name of Sri Lukhai Sema (Sl.No. 4) and above the name of Shri M.Hesso Mao (Sl.No.5) in the Select List prepared by the Selection Committee on 28.12.88 after an over all assessment of the service records of Respondent No. 6. As regards the grading of the officers including the applicant it was for the Review Selection Committee to consider and this deponent submits that no order was passed by this Tribunal as regards fresh gradation by the State of Nagaland. However, this deponent further begs to state that the State Government submitted all the required information to the UPSC in the requisite proforma duly filled in which included seniority list of NPS officers as on 1.6.86, ACRs of the Respondent No. 6 from 1983 to 1989, requisite

certificate

certificate of integrity and vigilance clearance vide letter No. POL-3/ESTT/31/92 dated 11.10.95.

8. That with regard to the statements made in paragraph 4.19 of the application, this deponent begs to state that the Government of Nagaland received representation from 12 IPS officers on different occasions and the same is under consideration by the Government.

9. That with regard to the statements made in paragraph 4.20 of the application this deponent begs to state that although the State Government of Nagaland has communicated their approval of the Review Selection Committee report, the representations submitted by the IPS officers in regard to the Review Selection Committee proceeding in respect of respondent No. 6 and steps are being taken by the State Government for further necessary action.

10. That the statements made in paragraphs 4.21 to 4.24 of the application relate to the process of Review Selection Committee. These statements are within the knowledge of UPSC and as such this deponent has nothing to comment on the same.

11. That the grounds made in paragraphs 5 and 5.1. to 5.21 are mere repetitions of the statements made in the foregoing paragraphs, this deponent reiterates the statement

made

made hereinabove. However, it is respectfully submitted that the respondent No. 2, 4 and 5 have complied with the order/direction of this Hon'ble Tribunal passed on 27.6.95 in Transfer Application No. 4/93 (Civil Rule No. 102(K) of 1990).

12. That the statements made in paragraphs 6 and 7 are not admitted by this deponent.

13. That the reliefs sought for are not tenable either in law or on facts and the application is liable to be rejected.

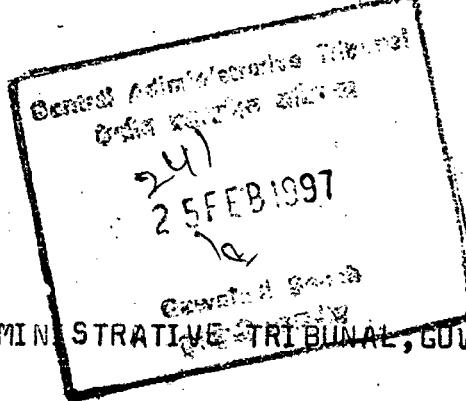
VERIFICATION

I, C.P.Giri, Home Secretary to the Government of Nagaland, Kohima do hereby solemnly affirm and verify that the statements made in paragraphs 1,2,6,8 to 13 are true to my knowledge and those made in paragraphs 3,4,5 and 7 are true to my information derived from records which I believed to be true.

I sign this verification on this the 12th day of February, 1997 at Guwahati.


C.P.GIRI
DEPONENT.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.



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Filed by: M.K. Choudhury
Advocate
29/2/1997

In the matter of :-

D.A.No.262/96

Shri Hesso Mao & others

.... APPEI CANTS

- Versus -

Union of India & Others

.... RESPONDENTS.

- AND -

In the matter of :-

Written Rejoinder by the

Applicants ~~against~~ the Affidavit filed
by the Chairman, Union Public Service
Commission claiming privilege.

REJOINDER

I, Shri N.N.Walling, Deputy Inspector General of Police (C.I.D.), Kohima, Nagaland do hereby solemnly affirm and state as follows :-

1. That I am the Applicant No.5 in this case and as such conversant with the facts of the case. I am also authorised by the co-applicants in this case to file this rejoinder on their behalf as well.

2. That I have gone through the Affidavit filed by the Chairman, Union Public Service Commission claiming privilege over the documents pertaining to Review

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C. M. Alyan
25/2/97

24/2/97
M. D. Choudhury

Selection Committee dated 26-07-96, and I have noted the contents of the said Affidavit.

3. That as regards the contentions made in para 3 of the affidavit, I deny and dispute that disclosure of the Minutes of the proceeding of the Review Selection Committee's meeting held on 26-7-96 will cause any injury to public interest or will materially affect the freedom and candour of expression of opinion in determination and execution of public policy, as claimed.

4. That the statements made in paragraph 4 of the Affidavit and the stand stated to have been taken by the Chairman, Union Public Service Commission ~~are~~ unsustainable in law as well as facts of the present case. The conditions precedent U/S.123 of the Evidence Act are absent in this case and hence the power U/S.123 of the said Act cannot be applied to withhold or deny permission to perusal of the Minutes in question. The Minutes in question are documents not covered by the ambit of Sec.123 of the Evidence Act.

5. That with further reference to the statements made in paragraph 4 of the Affidavit, I respectfully state that the Review Selection Committee in question having not claimed any privilege over the Minutes of the meeting dated 26.7.96, the Chairman, Union Public Service Commission has no power and authority either to claim privilege over the said Minutes or any documents relevant and connected thereto nor has the power to withhold the same.

6. That as regards the statements made in paragraph 5 of the Affidavit, I respectfully submit that the applicants being the persons affected by the impugned action and the impugned selection made by the Review Selection Committee, no part of the records including the minutes in question can be withheld from the Applicants as well as the other Respondents of this case. It is respectfully submitted that such withholding will be opposed to public interest as well as the principles of natural justice and fairplay.

7. That the statements made in paragraph 6 of the Affidavit are not correct and the same are denied. Privilege has been purportedly claimed as a routine course. It is respectfully submitted that public interest involved in the administration of justice outweighs the interest, if any, behind the claim of privilege of the documents in question in the instant case and as such the claim is untenable and is liable to be rejected.

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

I, Shri N.N. Walling, presently serving as ~~As~~ Inspector General of Police (C.I.D.), H.Q. Kohima, Nagaland do hereby solemnly verify that I am one of the Applicants in this case and authorised by the other Applicants to sign this verification on their behalf as well. I verify that the statements made in paragraphs 1 to 7 are true to my knowledge and belief.

And I sign this verification on this the 20 th day of February, 1997 at Guwahati.


DEPONENT.

2 FEB 1997

C. A. No. 262/96

Shri M. Hesso Mao & Ors. ... Applicants

- Versus -

The Union of India & Ors. ... Respondents

IN THE MATTER OF :

Rejoinder of the applicants against
the Written Statement filed by the
Respondent No. 6.

On behalf of the applicants, it is stated as follows :

1. That a copy of the written statement filed on behalf of the respondent No. 6 has been served on the counsel for the applicants. The applicants have gone through the same and understood the contents thereof.
2. That all the statements made in the written statement of the respondent No. 6, hereinafter referred to as 'the Written Statement' which are not specifically admitted hereinbelow, may be deemed to be denied. Further the statements which are not borne out of records are also denied.
3. That with regard to the statements made in paragraphs 1 and 2, the applicants offer no comments.
3. That with regard to the statements made in paragraph 3 of the written statement, the applicants

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beg to ~~state~~ reiterate what have already been stated in paragraph 4.3 of the O.A.

4. That with regard to the statements made in paragraphs 4, 5 and 6 of the written statement, the applicants deny that the averments made in paragraphs 4.4, 4.5 and 4.6 of the O.A. have no relevance now. The statements made therein show the past conduct of the respondent No. 6.

5. That with regard to the statements made in paragraph 7 of the written statement, the applicants reiterate what have been stated in paragraph 4.7 of the O.A.

6. That with regard to the statements made in paragraph 8, the applicants while admitting that the Hon'ble High Court by judgment dated 30.7.93 inter alia held that the adverse remarks of the respondent No. 6 would not be considered by any authority, stated that by the said judgment and order, the Hon'ble High Court did not give any positive direction for promotion of the respondent No. 6 notwithstanding the comparative merits of other incumbents.

7. That the averments made in paragraph 9 of the written statement do not require any comment.

8. That the statements made in paragraph 10 of the written statement are denied and disputed. It is

denied that the applicants have confused and misread the judgment passed by this Hon'ble Tribunal! The applicants state that by order dated 27.6.95, this Hon'ble Tribunal inter alia directed that the review D.P.C. shall consider whether the Respondent No.6 herein is fit to be selected after evaluating his merit and grading him afresh and then comparing it with the grading earned by those officers of N.P.S. who were included in the select list prepared by Selection Committee on 28.2.88 and thus arriving at a relative assessment. The applicants beg to reiterate that the constitution of the Selection Committee as well as its transaction and proceeding are not in accordance with law.

9. That with regard to the statements made in paragraph 11 of the written statement, the applicants deny that the Review Selection Committee made the recommendation as per this Hon'ble Tribunal's directions and as per the Scheme. In this context I reiterate and reaffirm what have already been stated in the D.A. The review Selection Committee examined the service record of the Respondent No.6 and after merely ignoring the adverse remarks in the ACR, the Committee assessed the Respondent No.6 as fit for appointment to the I.P.S. Cadre of Nagaland at its initial constitution. The Committee did not make any fresh grading as per norms and it also did not compare with the gradings received by the other officers including the applicants. The Selection Committee failed to comply with the clear and unambiguous direction of this Hon'ble Tribunal in the

order dated 27.6.95. The applicants deny the correctness of the statements made by the Respondent No.6 that the recommendation of the review Selection Committee alongwith the records had been placed before U.P.S.C. The applicants state that it was incumbent on the part of the Review Selection Committee to make comparative assessment of the merit of the Respondent No.6 with that of the officers of the N.P.S., selected by the Selection Committee at the time of initial constitution of the I.P.S. cadre of Nagaland and the same having not been done, the selection and recommendation of the Respondent No.6 is not in accordance with the direction given by this Hon'ble Tribunal and is also not in accordance with law.

10. That with regard to the statements made in paragraphs 12 and 13 of the Written Statement, the applicants reiterate that have already been stated in paragraphs 4.19 and 4.20 of the O.A. I further deny that Representations submitted by as many as 12 I.P.S. Officers were either considered by the State Government or by the Union Public Service Commission.

11. That the averments made in paragraph 14 are denied. The proceeding dated 26.7.96 are required to be examined by this Hon'ble Tribunal in order to determine the real issue in controversy between the parties. Without the said records it may not be possible/ to arrive at a just and proper decision

12. That the averments made in paragraph 15 are denied. The applicants while reiterating their statements made in paragraph 4.22 of the O.A. beg to state that, the Committee did not consider the case of the deponent in the manner as has been directed by this Hon'ble Tribunal as well as by following the provisions of the Scheme.

13. That the averments made in paragraph 16 of Written Statement are denied. The review Selection Committee, while making the recommendation in favour of the Respondent No.6, did not comply with the direction of this Hon'ble Tribunal and as such, the impugned recommendation is not sustainable. The Respondent No.6 could never be considered to be superior to the applicants on the basis of available records. There was no comparative assessment of merits of the Respondent No.6 with that of the applicants and this recommendation is not sustainable. It is specifically denied that the Review Selection Committee recommended the Respondent No.6 by applying the same yard-stick as was applied to the applicants.

14. That the statements made by the Respondent No.6 in paragraph 17 of the Written Statement are denied and the applicants reiterate and reaffirm what have been stated in paragraphs 5.1 to 5.21 of the O.A.

15. That with regard to the statements made in paragraph 18, the applicants state that the harassment alleged to have been faced by the Respondent No.6 does not confer him with any legal right to be placed above the applicants. I however deny that there was any question of harassing the Respondent No.6 in the facts of the case.

VERIFICATION

I, Shri N. N. Walling the applicant
No. 5 do hereby verify and state that the statements
made above in paragraphs 1 to 15 are true to my knowledge
I am also duly authorised by the other applicants to sign
this verification on their behalf.

And I sign this verification on this the 20th
day of February 1997.

Walling

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P. 47
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

IN THE MATTER OF :

O.A. No. 262/96

Shri Hessor Mao & others

... APPLICANTS

- Versus -

Union of India & others

... RESPONDENTS.

- AND -

IN THE MATTER OF

Rejoinder of the Applicants against
the Written Statement filed by
Respondent Nos. 2, 4 and 5.

REJOINDER

I, Shri N.N. Walling, Deputy Inspector General of Police (C.I.D.), Kohima, Nagaland do hereby solemnly affirm and state as follows :-

1. That I am the Applicant No. 5 in this case and as such conversant with the facts of the case. I am also authorised by the co-applicants in this case to file this rejoinder on their behalf as well.
2. That I have gone through the Written Statement filed by the Respondent Nos. 2, 4 and 5 and noted the contents therein.

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24/2/97
B. Bhattacharya
24/2/97
J. S. S.

3. That save and except where it is specifically admitted hereinafter, all the statements averments made in the Written Statement are denied. Moreover, I do not admit anything that is not borne out of records. Statements not specifically admitted shall be construed to have been denied.

4. That I respectfully state that the deponent of the Written Statement viz., the Home Secretary to the Government of Nagaland is not competent to verify and submit written statement on behalf of the Respondent No.2, viz., the Review Selection Committee of the Union Public Service Commission.

5. That as regards the statements made in paragraph 4 of the Written Statement, I reiterate that Annexure-4 letter dated 14.10.85 appended to the application clearly indicates that the Respondent No.6 was found ~~unfit~~ by the competent authority as an officer unfit for holding independent charge of Districts.

6. That the statements made in paragraph 6 of the Written Statement are denied and I reiterate those made in para 4.14 of the application. I beg to state that even under the Scheme for Initial Constitution of I.P.S Cadre of the State of Nagaland, the Inspector General of B.S.F. is not qualified to be a member of the Union Public Service Commission's Review Selection Committee.

7. That as regards the statements made in para 7 of the Written Statement, I state that the contentions raised about the Review Selection dated 26.7.96 are misconceived and incorrect and I deny the same. I deny that the Review Selection Committee's proceeding was as per this Hon'ble Tribunal's directives given in T.A. No.4 of 1993. While reiterating the statements made in paragraph 4.15 to 4.18 of the application, I state that while the Committee or the concerned authority did not make any fresh grading of the service records of Respondent No.6 nor compared the same with that of the applicants, I further deny that the Committee has even made any fresh subjective or objective assessment of the service records of Report No.6, on any material basis. It is denied that no order was passed by this Hon'ble Tribunal as regards fresh gradation by the State of Nagaland as alleged. I further deny that the State Government submitted all relevant records and required informations before the Review Selection Committee or that the Committee arrived at its decision on the basis of relevant and material documents vis-a-vis informations. I respectfully submit that no comparative assessment worth the name was made by the Committee while recommending the Respondent No.6 for appointment to the IPS Cadre of Nagaland at its initial constitution and purportedly placing him at Sl.No.4-A of the Initial Select List dated 28-12-88.

8. That as regards the statements made in paragraphs 8 and 9 of the Written Statement, I respectfully state that in view of the representations submitted by as many as

12 aggrieved IPS Officers of the Nagaland Cadre drawing the attention of the Government to the anomalies and irregularities in the purported selection of Respondent No.6, the Government of Nagaland ought not to have accorded approval to the minutes of Review Selection as was promptly given in the instant case. I respectfully submit that the State Government accorded its approval to the minutes without application of mind and without regard to the directions given by this Hon'ble Tribunal in TA No.4 of 1993 wherein the State Government was a party respondent.

9. That as regards the statements made in paragraph 10 of the Written Statement, I deny that the Union Public Service Commission and more particularly the Review Selection Committee had taken note of the norms and practice stated in paragraphs 4.21 to 4.24 of the Application in making the purported selection and as such the same is vitiated and liable to be declared illegal.

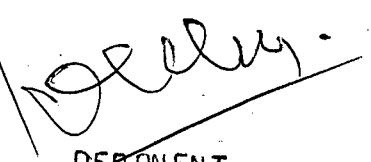
10. That as regards the statements made in paragraph 11 of the Written Statement, I deny that the Respondent Nos.2, 4 and 5 have at all complied with the directions given by this Hon'ble Tribunal in TA No.4/93 and for this reason alone, the impugned action and selection are liable to be struck down.

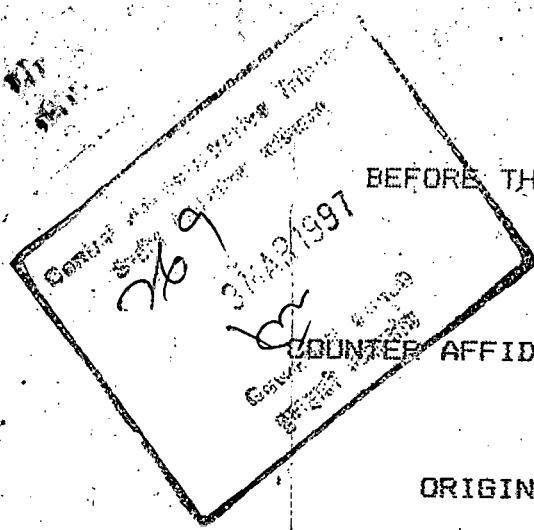
11. That I deny the statements made in paragraphs 12 and 13 of the Written Statement and I respectfully submit that in the facts and circumstances of the case and on the grounds set forth in the Application, the Applicants are entitled to full and complete relief.

VERIFICATION.

I, Shri N.N.Walling, presently service as Deputy Inspector General of Police (C.I.D.), H.Q. Kohima, Nagaland do hereby solemnly verify that I am one of the Applicants in this case and authorised by other Applicants to sign this Verification on their behalf as well. I verify that the statements made in paragraphs 1 to 11 of this Rejoinder are true to my knowledge and information.

And I sign this verification on this the 20 th day of February, 1997 at Guwahati.


DEPONENT.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT No. 3 & 4

IN

ORIGINAL APPLICATION No.262 OF 1996

M. Hesso Mac & Others

Applicants

Vc

Union of India & Others

Respondent

Affidavit of N. Namasivayam aged about 49 years
Son of Sh. N. Nallasivam posted as Under Secretary
(AIS Wing) in the office of Union Public Service
Commission, New Delhi.

DEPONENT.

I, the deponent named above solemnly affirm and state as under:-

1. That the deponent is an officer in the office of Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi and is authorised to file the present Counter Affidavit on behalf of Respondent No.3 & 4.
2. The deponent is also fully acquainted with the facts of the case deposed below:
3. At the outset, the Deponent most respectfully submits that the Union Public Service Commission being a

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M. K. Chesser
Parcels for the Appellants
3/3/97

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Constitutional Body created under Articles 315 to 323 Part XIV (Service under the Union and the States) Chapter-II of the Constitution have to discharge their functions, duties and Constitutional obligations assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions made in the All India Service Act, 1951, separate Recruitment Rules have been framed for IAS/IPS/IFS. In pursuance of these Rules, IPS (Appointment by Promotion) Regulations, 1955, have been made. In accordance with the provisions of the said Regulations, the Selection Committee presided over by the Hon'ble Chairman/Member of the Union Public Service Commission makes selection of State Police Service Officers for promotion to Indian Police Service, based on proposal sent by the concerned State Government including the seniority list and other relevant documents.

4. That the applicants Sh. Hesso Mao & Others have challenged the recommendations of the review Selection Committee which met on 26th July, 1996 to reconsider the case of Sh. B.K. Singh for appointment to IPS Cadre of Nagaland at its initial constitution mainly on the following grounds :-

- i) A Departmental enquiry was initiated against Shri B.K. Singh in the year 1978 and vide order dated 14th April, 1981 a penalty of reduction of his pay to a lower stage was imposed on him.
- ii) There have been adverse remarks in the

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ACRs of Shri B.K. Singh in the years 1983, 1985, 1986 and 1987.

iii) As per provisions of the Promotion Regulations, the fifth member is to be a nominee of the Government of India not below the rank of Joint Secretary. In the instant case, the Inspector General of Border Security Force, Shillong being not equivalent to the rank of Joint Secretary is not qualified to be a member of the Selection Committee and as such, the constitution of the Selection Committee was not in accordance with the Law.

iv) Although the Hon'ble Tribunal directed the review Selection Committee to evaluate the merit of Shri B.K. Singh especially after fresh gradation of relevant ACRs, there was, however, no fresh grading in his relevant ACRs by the concerned authorities before the sitting of the Selection Committee.

v) It was incumbent on the review Selection Committee to make comparative assessment of the merit of the Respondent No.6, Shri B.K. Singh with that of the Officers of Nagaland Police Service selected by the Selection Committee at the time of initial constitution of the IPS cadre of

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Nagaland. The Committee did not make any fresh grading as per norms nor compared with the grading received with the other officers including the petitioners and as such review Selection Committee failed to comply with the directions of the Hon'ble Tribunal.

vi) The review Selection Committee which met on 26th July, 1996 did not apply the same procedure as laid down in the scheme and purportedly applied the procedure laid down under the Indian Police Service (Appointment by Promotion) Regulations, 1955.

vii) The service records of the applicant is far superior to the service record of the Respondent No.6, Shri B.K. Singh and as such on a proper application of mind the review Selection Committee could not have placed Respondent No.6 at S.No.4(a) above the applicants.

viii) The Selection Committee which met in 1988 for selection of SPS Officers for appointment to IPS cadre of Nagaland at its initial constitution adopted norms which required two Outstanding/Very Good in the relevant ACRs for the 5 years. Even after expunction of the adverse remarks, Shri B.K. Singh would have not

JK

fulfilled the said norms. Had the review Selection Committee applied the same norms which was applied in respect of the applicants, it could not have found the Respondent No.6 suitable or fit on the basis of his service records.

5(a) In reply to this averments made by the applicants at the outset the defendant most respectfully submits that the meeting of the Review Selection Committee to reconsider the case of Sh. B.K. Singh has been convened on 26.7.1996 strictly in accordance with directions of this Hon'ble Tribunal as contained in their judgement dated 17.6.1995.

(b) The circumstances leading to Review is that a meeting of the Selection Committee for selection of SPS Officers for appointment to IPS cadre of Nagaland at its initial constitution was held on 28th December, 1988. On an overall assessment of his service records, the Selection Committee did not find Shri B.K. Singh as suitable for appointment to IPS cadre of Nagaland at its initial constitution.

(c) Aggrieved by his non-selection for appointment to IPS, Shri B.K. Singh filed Civil Rule No.102 (K) of 1990 before the Hon'ble Guwahati High Court contending that the Selection Committee have erroneously and illegally ignored his case for promotion to IPS. He also averred that the adverse remarks in his annual confidential reports have been taken into account to his prejudice for denying him promotion without disposing of

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his representation.

(d) That the claim of Shri B.K. Singh for selection in the initial constitution of the IPS cadre of Nagaland made in CR No.102(K)/90 was not considered by the Hon'ble Guwahati High Court for want of jurisdiction and accordingly the petition was transferred to this Hon'ble Tribunal and was registered as TA No.4/93.

(e) That this Hon'ble Tribunal vide judgement dated 27th June, 1995 had disposed of the said transfer application and had directed as under :-

- i) "The respondents are directed to constitute a review DPC to consider the case of the applicant for selection to IPS cadre for the State of Nagaland under the scheme for the initial constitution of the IPS cadre of Nagaland as on 28.12.1988.
- ii) The Committee will not take into account the adverse remarks contained in the ACRs of the applicant for the years relevant for above consideration.
- iii) The Committee shall consider whether applicant is fit to be selected after evaluating his merit and grading him afresh and then comparing it with the grading earned by those officers of IPS who were included in the Select List prepared by the Selection Committee on

28.12.1988 and thus arrive at a relative assessment.

iv) If the Review DPC happens to select the petitioner he shall be given notional induction to the initially constituted cadre with all benefits as per the rules except the year of allotment and seniority which shall be determined by the Central Govt. in accordance with the relevant rules".

(f) That after receipt of necessary proposal and other documents from the Govt. of Nagaland, in pursuance of the directions of this Hon'ble Tribunal a meeting of Selection Committee to consider the case of Shri B.K. Singh for appointment to IPS cadre of Nagaland at its initial constitution was held on 26th July, 1996. The Committee examined the service record of Shri B.K. Singh up to the year 1987. As directed by this Hon'ble Tribunal after ignoring the adverse remarks in his ACRs, the Committee on an overall assessment of his service record upto 1987 assessed Shri B.K. Singh as 'Fit' for appointment to IPS cadre of Nagaland at its initial constitution. As directed by Hon'ble Tribunal, comparing the grading earned by Shri B.K. Singh than that of the grading earned by the other officers who were included in the Select List prepared by Committee which met on 28th December, 1988, the Committee recommended that the name of Shri B.K. Singh be included at S.No.4(a) below the name of Shri Lukhei Sema and

above the name of Shri M. Hesso Mao (S.No.5 in the Select List prepared by the Selection Committee on 28th December, 1988).

6. As regards the contention of the applicant that a penalty of reduction of his pay to lower stage was imposed on Shri B.K. Singh, the Deponent submits that this Hon'ble Tribunal was aware of the fact that certain penalties were imposed upon petitioners in a disciplinary proceeding on 14th April, 1981 and considering all aspects of the case, this Hon'ble Tribunal had directed to review the case of Shri B.K. Singh. The Selection Committee consisting of very high ranking responsible officers and presided over by the then Chairman, UPSC considered the case of Shri B.K. Singh as per directions of this Hon'ble Tribunal. The Selection Committee on an overall assessment of his service records and after ignoring the adverse remarks as directed by the Hon'ble Tribunal assessed Shri B.K. Singh as 'Fit' for appointment to IPS cadre of Nagaland at its initial constitution. As required under Section II of the Scheme for the initial constitution of the IPS Cadre of Nagaland, the State Government referred the recommendations of the review Selection Committee to the UPSC alongwith their views on the recommendations of the Review Selection Committee. The Central Government also sent their observations on the recommendation of the review Selection Committee. Taking into consideration the records of Shri B.K. Singh, the views of the State Government and observations of the Central Government, the Commission have approved the recommendations of

the review Selection Committee as contained in the minutes of its meeting held on 26th July, 1996.

7. Regarding contention of the applicants that there were adverse remarks in the ACR of Shri B.K. Singh, the Deponent submits that this Hon'ble Tribunal in their judgment dated 27th June, 1995 had directed that Selection Committee will not take into account the adverse remarks contained in the ACR of Shri B.K. Singh for the years relevant for consideration. Accordingly after ignoring the adverse remarks the Review Selection Committee on an over-all assessment of his service records assessed Sh. B.K. Singh as 'Fit' for appointment to IPS Cadre of Nagaland at its initial constitution.

8. As regards the participation of Inspector General of BSF in the meeting of Selection Committee, the Deponent submits that one officer not below the rank of Joint Secretary to the Government of India is nominated by the Ministry of Home Affairs as a Member of the Committee. The Inspector General of BSF who participated as nominee of Govt. of India is equivalent to the rank of Joint Secy. to the Govt. of India. However Govt. of India may make further necessary submission in this regard.

9. Regarding contention of the applicants that no fresh grading in the ACR of Shri B.K. Singh was made by the concerned authorities before the sitting of the Selection Committee, the Deponent submits that there was no directions from the Hon'ble Tribunal to rewrite the ACR of Shri B.K. Singh. However, the Hon'ble Tribunal

had directed the Selection Committee to consider whether the applicant is fit to be selected after evaluating his merit and grading him afresh and then comparing with the grading earned by the officers of NPS who were included in the Select List prepared by the Selection Committee on 28th December, 1988. At the initial constitution stage the officers were assessed either as 'Fit' or as 'Unfit'. There is no order of merit system in such cases. This was the procedure adopted by the original Committee which met on 28.12.1988. Adopting the same procedure and in compliance with the directions of this Hon'ble Tribunal, the Review Committee on an overall assessment of his service records graded Shri B.K. Singh as 'Fit' for appointment to IPS cadre of Nagaland at its initial constitution. The officers who were included in the Select List prepared on 28th December, 1988 were also graded as 'Fit'. Taking into consideration the grading assigned by the Selection Committee which met on 28th December, 1988 and the seniority of these officers, the review Selection Committee recommended that the name of Shri B.K. Singh be included at S.No.4(a) in the Select List prepared on 28th December, 1988 for appointment of NPS Officers to IPS Cadre of Nagaland.

10: As regards the contention of the applicant that the review Selection Committee which met on 26th July, 1996 did not apply the same procedure as laid down in the scheme and purportedly applied the procedure laid down under IPS (Appointment by Promotion) Regulation, 1955, the Deponent submits that as per the provisions of the Regulation 5(4) of the IPS (Appointment by

Promotion) Regulations, 1955, the Selection Committee is required to categorise the eligible officers as Outstanding/Very Good/Good/Unfit as the case may be and this categorisation is to be made on an overall relative assessment of their service records. The review Selection Committee which met on 26th July, 1996 on an overall assessment of his service records categorised Shri B.K. Singh as 'Fit' in accordance with the Scheme for the initial constitution of the IPS Cadre of Nagaland and as per the procedure adopted by the Selection Committee which met on 28th December, 1988. Hon'ble Supreme Court in the case of H.L. Dev versus Union of India and others (AIR 1988 SC 1069) have held as under:-

"How to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The Tribunal could not make a conjecture as to what the Selection Committee would have done or to resort to conjecture as to the norms to be applied for this purpose".

The Hon'ble Supreme Court in the case of Nutan Arvind versus UOI and others [(1996/2 SUPREME COURT CASES 488)] have held as under:-

"when a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion,

this court cannot sit over the assessment made by the DPC as an appellate authority".

In their judgement dated 8th November, 1966 the Hon'ble Supreme Court in the case of **Anil Katiyar Vs. Union of India & Others** have held as under:-

"Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgement over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by mala fides.

11. As regards the contention of the applicant that his record is far superior to the service record of Respondent No.6, Shri B.K. Singh, the Deponent submits that the applicant is trying to substitute his own judgment to that of the statutorily set up Selection Committee presided over by the Hon'ble Chairman, Union Public Service Commission. Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. Srikant**

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Chapekhar (JT 1992 (5)SC 638) have also held that even Tribunal cannot substitute his judgement to that of duly constituted Selection Committee. The relevant portion of the judgement reads as under:-

"We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the annual Confidential Report are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. It is not the function of the Tribunal to assess the service record of a Government Servant, and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. This court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was considered for promotion or the consideration was illegal then the only direction which can be given is to

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reconsider his case in accordance with law. It is not within the competence of the Tribunal, in the fact of the present case, to have ordered deemed promotion of the respondent."

12. Regarding contention of the applicant that the Selection Committee which met in 1988 had adopted norms which require 2 Outstanding/Very Good in the relevant ACRs for 5 years and Shri B.K. Singh would have not fulfilled the said norms, the Deponent submits that the norms and yardsticks adopted by the Selection Committee are confidential and the applicant would have no knowledge of the norms adopted by the Selection Committee. It is only imagination of the applicant that for being selected for appointment to IPS at its initial constitution, the officer should have earned 2 Outstanding/Very Good, reports in the relevant 5 years. The review Selection Committee on an overall assessment of his service records assessed Shri B.K. Singh as 'Fit' for appointment to IPS cadre of Nagaland at its initial constitution. This is strictly in accordance with the methodology adopted by the original Committee which met on 28.12.1988.

13. That the case of Shri B.K. Singh has been reviewed strictly in accordance with the directions of the Hon'ble Tribunal. No irregularity has been committed by the review Selection Committee consisting of very high ranking officers and was presided by Hon'ble Chairman of UPSC.

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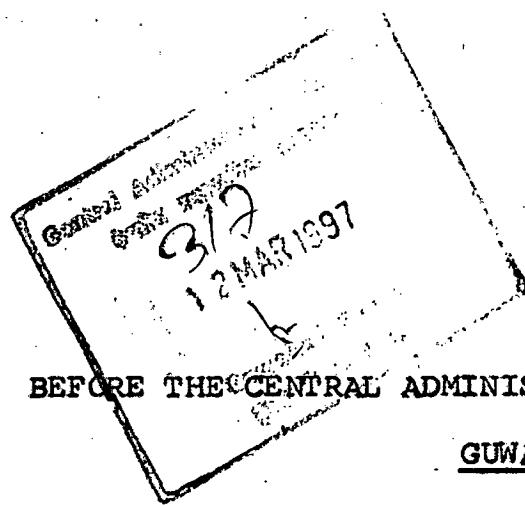
14. That in view of the facts and circumstances as stated above and also taking into consideration the authoritative pronouncements of the Hon'ble Supreme Court, the Hon'ble Tribunal may be pleased to dismiss the instant OA with costs.


D E P O N E N T

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

I, the deponent named above, do hereby declare that the contents of paragraphs 1 & 2 of this Affidavit are true to my personal knowledge, those of paragraphs 3 to 14 of this Affidavit are based on record which I believe to be true; that no part of it is false and nothing material has been concealed.


D E P O N E N T



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

GUWAHATI.

File No: 150
Filed by:
M.K. Choudhury
Advocate
13/3/97

IN THE MATTER OF :

ORIGINAL APPLICATION NO. 262 OF 1996

Mr Hesso Mao & others - Applicants

- versus -

Union of India & ors - Respondents

- And -

IN THE MATTER OF :

Rejoinder of the applicants

against the counter affidavit

filed by Respondent Nos. 3 and 4.

REJOINDER

I, N.N. Walling, Deputy Inspector General of Police (CID), Kohima, Nagaland do hereby solemnly affirm and state as follows :

1. That I am the applicant No.5 in the aforesaid case and, as such, I am conversant with the facts and circumstances of the case. I am also authorised by the co-applicants in this case to file this rejoinder on their behalf as well.

2. That I have gone through the counter-affidavit filed by the Respondent Nos. 3 and 4 and noted the contents therein.

3. That save and except where it is specifically admitted hereinafter, all the statements and averments made in the counter-affidavit are denied. Moreover, I do not admit anything that is not borne out by records. Statements not specifically admitted shall be construed to have been denied.

4. That as regards the statements made in paragraph 3 of the counter-affidavit relating to the constitution and function of the U.P.S.C., the deponent has no comments on the same.

5. That as regards the statements made in paragraph 4 of the counter-affidavit, the deponent states that the grounds on which the impugned selection of the Respondent No. 6 and the proceedings of the Review Selection Committee dated 26.7.96, ^{have been challenged}, are as set-forth in the Application filed by the applicants in this case and the deponent reiterates the said grounds.

6. That as regards the statements made in paragraph 5(a) of the counter-affidavit, the deponent denies that the Review Selection Committee convened

contd...

on 26.7.96 transacted its proceeding strictly in accordance with the directions given in this Hon'ble Tribunal's Judgment dated 17.6.95.

7. That as regards the statements made in paragraphs 5(b) to 5(e) of the counter-affidavit, the deponent states that the same pertains to the case records in Civil Rule No.102(K)/90, subsequently registered as T.A. No.4/93 and the deponent does not admit beyond the case records.
8. That as regards the statements made in paragraph 5(f) of the counter-affidavit, the deponent vehemently denies that the Review Selection Committee made the impugned Selection/Recommendation of the Respondent No.6 by following the directions given by this Hon'ble Tribunal. The deponent respectfully states that no fresh grading was given to the Respondent No.6 to evaluate his merit nor any comparison was made with the gradings earned by the existing I.P.S. Officers of Nagaland Cadre during the corresponding relevant period and, as such, the impugned recommendations recommending the name of Respondent No.6 for selection vis-a-vis for inclusion at Serial No.4-A in the 1988 Select List is unsustainable.

contd...

9. That the statements made in paragraph 6 of the counter-affidavit are not correct and the same are denied. It is denied that the Selection Committee considered the case of the respondent No.6 as per the directions of this Hon'ble Tribunal. The purported assessment of the ~~(xxx)~~ merit of Respondent No.6 was not made by the existing IPS Officers of the Nagaland Cadre was made mechanically and without any material on the record. The deponent states that the impugned Selection/Recommendation was not only violative of the provisions of the Scheme but also of the directions given by this Hon'ble Tribunal in this regard.

As regards the reference made by the State Government to the U.P.S.C. about the recommendations of the Review Selection Committee, the deponent states that in the instant case the State Government ought to have ensured making of fresh gradings in the service record of the Respondent No.6 and ought to have sent all relevant and pertinent records of the respondent No.6 as well as other officers including the applicants for the corresponding relevant period. This having not been done, the entire action of the State Government in this matter is also illegal.

As regards sending its observations on the recommendations of the Review Selection Committee, the deponent states that in spite of being a party respondent in T.A.No.4/93, the Central Government

contd...

also entirely overlooked the directions given by this Hon'ble Tribunal and acted mechanically. Similarly, the U.P.S.C. has also mechanically approved the impugned recommendations of the Review Selection Committee.

10. That the contentions raised in para-7 of the counter-affidavit are not correct and the same are denied. The deponent respectfully states that merely by ignoring the adverse remarks in the ^{the Committee} relevant A.C.Rs of the respondent No.6, could not have made him automatically entitled to selection in the initial I.P.S. Cadre. More so, to be put at serial No.4-A of the original select list ~~xx^{as}~~ has been wrongly done in the instant case.

11. That the deponent denies the statements made in paragraph 8 of the counter-affidavit and reiterates those made in para 4.14 of the Original Application.

12. That the statements made in paragraph 9 of the counter-affidavit are misconceived and misconstrued and the same are denied. It is further denied that there was no direction from this Hon'ble Tribunal for making fresh gradations in the Service Records of the respondent No.6. The Scheme has clearly stipulated about the

contd...

preparation of a Select List by the Selection Committee in order of preference on merit at the initial constitution stage and, as such, it is denied that there was no order of merit system in the selection of I.P.S. cadre of Nagaland at its initial constitution. The deponent reiterates that in the instant case no efforts whatsoever was made by the concerned respondents for grading the respondent No.6 afresh and then for comparison of the same with the gradings earned by the existing I.P.S. Officers during the relevant corresponding period and, as such, the impugned selection of Respondent No.6 was without any material basis and without in accordance with the provisions governing such selection vis-a-vis the directions given by this Hon'ble Tribunal. The deponent denies that without going through the aforesaid exercise of gradation and comparison, the Selection Committee cannot determine any candidate even as 'fit' for selection. It is further denied that any grading could be assigned by the Selection Committee as claimed inasmuch as it is only for the concerned appointing authority to assign or give any gradings and on this count also the impugned recommendation is vitiated.

13. That as regards the statements made in paragraph 10 of the counter-affidavit the deponent denies that the Review Selection Committee made

contd...

any comparative overall assessment of the Service Records of the Officers while selecting the Respondent No.6 and that the impugned Selection was in accordance with the Scheme for initial constitution of Nagaland Cadre and as per procedure. As regards the few decisions of the Supreme Court cited in the counter-affidavit, the deponent craves leave of this Hon'ble Tribunal ^{upon} to submit the ratio and imports of the said decisions at the time of hearing.

14. That the statements made in paragraph-11 of the counter-affidavit are misconceived and the same are denied. It is respectfully stated that any selection process made by the Respondents is not beyond the Judicial Review ability of this Hon'ble Tribunal.

15. That the deponent denies that statements made in paragraph-12 of the counter-affidavit and reiterates those made in paragraphs 4.22 to 4.24 of the Original Application. It is denied that the norms and yardsticks adopted by the Selection Committee are confidential as claimed. The deponent further denies that the Review Selection Committee has made an overall ^{of Respondent No.6} assessment of the Service Records and a comparison

with that of the other officers including the applicants. The deponent further denies that the impugned Selection of the Respondent No.6 as well as his recommendation to be placed at S1.No.4-A are strictly in accordance with the methodology adopted by the Original Committee which met on 28.12.88.

16. That the statements made in paragraph-13 are not correct and the same are denied. The impugned selection as well as their subsequent approval are all illegal, unconstitutional and without in accordance with the directions given by this Hon'ble Tribunal and the same are liable to be set aside.

Verification

VERIFICATION.

Deputy

I, Shri N.N.Walling presently serving as Inspector General of Police (CID), H.Q. Kohima, Nagaland do hereby solemnly verify that I am one of the applicants in this case and authorised by the other applicants to sign the verification on their behalf as well, I verify that the statements made in this verification and in paragraphs 1 to 6 and 8 to 16 — — — are true to my knowledge, those made in paragraphs 7 — — — being matters of records and true to my information derived therefrom and those made in paragraphs — — — are believed to be true on legal advise. I have not suppressed any material facts.

And I sign this verification on this 11 th day of March, 1997 at Guwahati.

C. N. Walling
C. N. Walling

Date :- 11-3-97

Signature.

Filed in Court
on 4.3.97

Bon
Court Master

1 MAR 1997

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Misc. Petition No. 97.
O.A. No. 262 of 1996.

M. Messo Mao & Ors.

... applicants

- vs -

Union of India & Ors.

... Respondent

In the matter of :

An application for acceptance of
the written statement filed by
the respondents No. 3 and 4.

The humble petition on behalf of the
respondents No. 3 and 4

Most respectfully sheweth :-

1. That the above respondents have filed their written statement in the case. The same could not be filed at an early date on account of illness of their counsel (Addl.C.G.S.C).
2. That if the written statement is not accepted, the defence of the respondents will be seriously prejudiced and they will suffer irreparable loss and injury.
3. That this application has been filed bonafide and for ends of justice.

It is, therefore, prayed that the written statement filed by the respondents No.3 and 4 may be accepted by setting aside the order for ex-parte hearing against them.

And for this the respondents shall ever pray.

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

I, Shri A.K.Choudhury, Addl.C.G.S.C
counsel for the respondents No.3 and 4
do hereby verify on behalf of the
respondents that the statements made in
the accompanying application are true
to my knowledge.

And I sign this verification on this
14th day of March, 1997.

A K Choudhury
Addl C.G.S.C
14/3/97