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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

ORIGINAL APPLICATION NO. 65/96
MISC. PETITION/CONTENT PETITION/DECLARATORY APPLICATION NO. _____
(O.A.) _____

Chandra Kanta Das APPLICANT(S)

VS.

U.O. 1 & 2 RESPONDENT(S)

Mr. Anil Sharma Advocate for Applicant(s)

Mrs. Binaya Dutta
Dr. P. Petha

Mr. A.K. Choudhury Advocate for Respondent(s)

Add. C.G.S.C.

OFFICE NOTE	DATE	ORDER
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This application is in form and within time. C.F. of Rs. 50/- deposited vide IPO/BD No 345583 dated 19.3.96

1.5.96

Learned Sr.counsel Mr A.Sarma with Mrs B.Dutta and Dr P,Petha for the applicant. Learned Addl.C.G.S.C Mr A.K.Choudhury for respondent No.1 and Dr Y.K.Phukan for respondent No.2.

Learned Sr.counsel Mr A.Sarma moves this application for the applicant. However, issue notice on the respondents before admission to show cause as to why this application should not be admitted and reliefs sought should not be granted. Returnable on 3.6.96.

List on 3.6.96 for show cause and consideration of admission. Pendency of consideration of admission of this O.A shall not be a bar for the respondents, particularly respondent No.1, to dispose of the representations of the applicant as contained in Annexure 6, 6(a), 6(b) and 6(c) of this O.A. Steps within 2.5.96.

Mr. Anil Sharma
20/5/96
PAB

Requisite amount
examined v. no. 980-87
by 7.5.96 30.5.96
by BPS. Notice duly served on respondent No. 2

Ben 17 show cause in next week.

[Signature]
Member

OFFICE NOTE	DATE.	ORDER.
<p><i>show cause sh not be R.W -</i></p> <p><i>50 19/7</i></p>	<p>3-6-96</p> <p>lm</p>	<p>Learned counsel Mr.A.Sarma for the applicant. Learned Addl.C.G.S.C. Mr.A.K.Choudhury for the respondent No.1. Dr.Y.K.Phukan Sr.Government Advocate, Assam for respondent No.2.</p> <p>Show cause has not been submitted. Mr.A.K.Choudhury and Dr.Phukan prays for six weeks time for filing show cause before admission. Prayer is allowed.</p> <p>List on 22-7-1996 for show cause and consideration of admission.</p> <p><i>60</i> Member (A)</p> <p><i>S</i> member(J)</p>
<p><i>D Notice duly served on op. No. 2.</i></p> <p><i>2) w/ statement sh not be R.W.</i></p>	<p>22-7-96</p> <p>lm</p>	<p>Learned Sr. counsel Mr.A.Sarma for the applicant. Learned Addl.C.G.S.C. Mr.A.K.Choudhury and Dr.Y.K.Phukan Sr.Government Advocate, Assam are present for the respondents. Dr.Phukan prays for six weeks time for filing show cause.</p> <p>List for consideration of Admission and disposal of show cause on 30-8-96.</p> <p><i>60</i> Member</p>
<p><i>29/8</i></p>	<p>30.8.96</p>	<p>Dr. P. Petha for the applicant. Mr. A.K.Choudhury, Addl.C.G.S.C. for respondent No. 1 is present and has submitted written statement, copy of which has been served on the counsel of the applicant today and on G.A., Assam.</p> <p>Ms M. Das, G.A. Assam for respondent No. 2 prays for one month time to file show cause. Prayer allowed.</p>

30.8.96

List for show cause by respondent No. 2 and for consideration of admission on 30.9.96.

Complete reply has been filed on Respdt. no. 1. at page 39-46.

[Signature]
Member

*56
27/9*

trd

30-9-96

Learned Addl.C.G.S.C. Mr. A.K. Choudhury for respondent No.1. None for the applicant and respondent No.2. Adjourned for consideration of Admission on 13-11-96.

Notice duly served on OP. No. 2.

Show Cause ab Respdt no 2. has not been filed.

[Signature]
Member

*56
12/11*

lm

[Signature]
30/9

13.11.96

Learned Addl.C.G.S.C Mr A.K.Choudhury for the respondents. None for the applicant and other respondents.

Respondent No.2 has not submitted any show cause reply.

List for consideration of admission as a last opportunity on 13.12.1996.

Show Cause Reply has not been submitted by Respdt no. 2.

[Signature]
Member

*56
12/12*

pg

[Signature]
14/11

13.12.96

Sr.counsel Mr A.Sharma for the applicant. Mr A.K.Choudhury, Addl.C.G.S.C fore respondents No.1. Dr Y.K.Phukan for respondent No.2 prays for further time to submit show cause.

List for consideration of admission and show cause on 9.1.97.

Show Cause Reply has not been submitted by Respdt no. 2.

[Signature]
Member

*56
21/97*

pg

[Signature]
16/12

9-1-97

None is present. List for consideration of Admission on 24-1-97.

List on 9-2-97.
M/2871

pg
M/911

ba
Member

4.2.97

It is submitted that Mr A. Sarma, learned counsel for the applicant, is indisposed and prays for one months time. Learned Government Advocate, Mrs M. Das, has no objection. Mr S. Ali, learned Sr. C.G.S.C., has also no objection.

Let this case be listed on 3.3.97.

ba
Member

SB
Vice-Chairman

nk m
M/612

3.3.97

Heard Mr. A.Sarma, learned counsel appearing on behalf of the applicant.

The application is disposed. No order as to costs.

Detailed order contained in separate sheets.

ba
Member

SB
Vice-Chairman

13.3.97

trd
M/11/3/97

Copy of The final order has been sent to The Despatch Section for issuing the same to the parties.

kh.
13/3
Issued vide

D.No. 758 to 760

D, 13.3.97.

kh.

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

D.A. NO. 65 of 1996
T.A. NO.

DATE OF DECISION 3.3.1997

Sri Chandra Kanta Das

(PETITIONER(S))

Mr. A.Sarma

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr. A.K.Choudhury, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

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

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

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? *NO*
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 ? *NO*

Judgment delivered by Hon'ble Vice-Chairman.

J. Baruah

2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 65 of 1996

Date of Order : This the 3rd day of March, 1997.

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

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

Sri Chandra Kanta Das
S/o Sri L.K. Das
Commissioner and Secretary,
Department of Revenue etc.
Assam Civil Secretariat,
Dispur, Guwahati. Applicant

By Advocate Mr. A.Sarma.
-versus-

1. The Union of India,
represented by the Secretary to the
Government of India,
Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel & Training,
North Block,
New Delhi 110001.
2. The State of Assam,
represented by the Secretary
to the Government of Assam,
Personnel Department,
Dispur, Guwahati. Respondents.

By Advocate Mr. A.K.Choudhury, Addl. C.G.S.C.

O R D E R

BARUAH. J. V.C.

Heard Mr. A.Sarma, learned counsel appearing on behalf
of the applicant.

Applicant in this application has prayed for a
direction to consider the representations made by the
applicant and to have the ACRs mentioned for the relevant
years recorded by the Chief Secretary Shri H.N.Das
excluded from consideration and also further direction to

the Government of India to circulate in the Screening Committee all the relevant papers including the remarks made by the Secretary for the relevant period etc.

2. The facts for the purpose of disposal of this application are;

Shri H.N.Das, the then Chief Secretary while he was holding the post of Director, Training, and also the post of Chairman, Gauhati Tea Auction Centre, had made entries in the ACRs of the applicant with adverse remarks which according to the applicant was uncalled for. The applicant being aggrieved filed an application before this Tribunal (O.A. No. 47 of 1993). The said application was in due course disposed of on 1.8.1994 by this Tribunal expunging the aforesaid remarks. The respondents took up the matter before the Supreme Court. Supreme Court however refused to interfere with the decision of that part of the Tribunal's order. In spite of the order passed by the Tribunal; confirmed by the Supreme Court remarks made in the ACRs of the applicant were not expunged. Hence the present application.

3. Notice was issued to the respondents. The respondent No. 1 i.e. Union of India has filed written statement. In the written statement paragraph B (ii) of the said respondent stated as follows :

"Having regard to the overall performance of the officer after excluding the disputed remarks from consideration, the competent authority was of the view that the applicant's case for empanelment would need further examination."

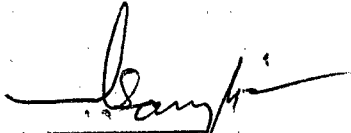
Again in paragraph 6.31 of the written statement of the said respondents it is further stated as follows :

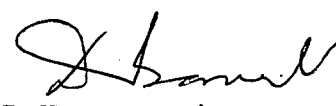
"With reference to the averments made in para 6.31, the answering respondent respectfully submit that since the adverse report of the applicant for the year 1990/91 has already been

expunged and in pursuance of the clause 11 of the Central Staffing Scheme, the case of the applicant for special review for his initial assessment is already in progress, the contentions raised by the applicant are not tenable."

4. We have heard Mr. A.Sarma, learned counsel appearing on behalf of the applicant. In view of the statement made in the written statement of the Respondent No. 1, in our opinion it will be expedient if the respondents consider the case of the applicant as early as possible at any rate within a period of 3 months from the date of receipt of the copy of this order and communicate its decision to the applicant. We make it further clear that if the applicant is still aggrieved with the decision of the respondents he shall be at liberty to approach this Tribunal if so advised.

With the above observations we dispose of this application. Considering the entire facts and circumstances of the case we make no order as to costs.


(G.L. SANGLYINE)
Administrative Member


(D.N. BARUAH)
Vice-Chairman

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH.

INDEX SHEET

Cause Title : O.A. 65 of 1996.

Name of the Parties : Chandra Kanta Das

... Applicant

Versus

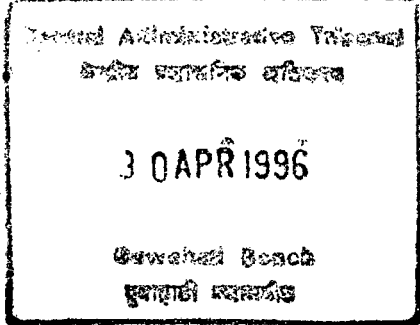
Union of India & Ors.

... Respondents.

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Received copy
A.K. Choudhury
Asst. Secy
24/4/96

Centre Reply on Reply no. 39-46



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH

BETWEEN

Chandra Kanta DasApplicant

And

The State of Assam & Ors.Respondents.

1. Particulars of the applicant:

i) Name of the applicant: Chandra Kanta Das

Name of the applicant's : Sri L.K. Das
father.

Age of the applicant: 47 Years.

ii) Designation and particular: Officer of the Indian

Administrative Service
currently holding the charge
of Commissioner and Secretary,
Departments of Revenue etc.,
Dispur, Guwahati.

iii) Address for service of Assam Civil Secretariat,
notice. Dispur, Guwahati.

2. Particulars of Respondents 1. The Union of India,
represented by the Secretary
to the Government of India
in the Ministry of
Personnel, Public
Grievances and Pension,
Department of Personnel

Filed by
Chandra Kanta Das
----- Applicant
Through
Smt. Binaya Dutta
Advocate
28/4/96

2.

Training, North Block,
New Delhi- 110001.

2. The State of Assam, represented by the Secretary to the Government of Assam, Personnel Department, Dispur, Guwahati.

3. Particulars of the orders against : Non disposal of the which application is made. applicant's representations and arbitrary , action in transmitting the ACRs for the periods 1990-91 and 1991-92.

4. Jurisdiction of the Tribunal : The subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation: This application is within the time prescribed under Section 21(1)(b) of the Central Administrative Tribunal Act, 1985, applicant's representations dated 29.6.94, 6.8.94, 6.9.94 and 19.11.95 having remained undisposed of.

6. FACTS OF THE CASE:

6.1 The applicant is an officer of the Indian Administrative Service (hereinafter called the Service).He joined the Service in 1975 and was confirmed in service on completion of the probation period. Since his confirmation in the service in 1977 he has held important/key assignments at

the appropriate levels of seniority. The applicant had, all along, an unblemished record of service and had performed his duties in the various key assignments he held, to the full satisfaction of his superiors. However, for the first time adverse entries were made in ACRs initiated by Sri H.N.Das for the year 1990-91.

6.2 That Sri H.N.Das, while holding the post of Director, Training, and also the post of Chairman, Gauhati Tea Auction Centre, on 21.11.90 sent a telex message to Sri K.A.Ardhanageswaran, Special Secretary, Ministry of Commerce, Government of India, New Delhi, requesting the Special Secretary to prevail upon M/s. Brooke Bond, Lipton and J.V.Gokal to participate in the tea auction at the Gauhati Tea Auction Centre, as the aforesaid three companies together purchased about 60% of the teas auctioned at the Gauhati Auction Centre and as these companies had not participated in the auctions held in the previous two weeks the brokers had withdrawn about 50% of the teas catalogued for auction.

6.3 That Sri H.N.Das, forwarded a copy of the telex to the Principal Private Secretary to Chief Minister, Assam stating : "Copy (not on original) to PPS to Chief Minister, Assam. This has reference to the discussion I have had with the Chief Minister on November 11, 1990. It is absolutely essential that the State Government create an atmosphere congenial to the functioning of these three companies because their further non-participation in the auctions will break up the morale of the smaller buyers

and put the very existence of the Gauhati Tea Auction Centre in doubt. "The Chief Minister endorsed the aforesaid copy to the Chief Secretary and the Chief Secretary in turn endorsed it to the applicant, who held the post of Commissioner & Secretary, Home and Political and the relevant time, with the remark" please discuss".

6.4. That the applicant submitted to the Chief Secretary an analysis of the information obtained from the Gauhati Tea Auction Centre stating that in the first seven months of the relevant year more teas were auctioned at the Gauhati Auction Centre and that M/s. Brooke Bond had already purchased 50% of the tea they purchased in the previous year and the other two aforesaid companies Lipton and J.V.Gokal had already purchased 60% and 65% respectively of the teas they purchased in the previous year, and that their absence from the auctioning is not likely to effect the industry as a whole. The applicant also suggested that a cess on tea sent to other auction centres may be imposed to prevent withdrawal of tea from Gauhati Auction Centre. The applicant also drew the attention of the Chief Secretary to the annexed ~~xxxx~~ copy "at flag 'A'" wherein the observation of Sri H.N.Das is found. Thereafter for reasons best known to the Chief Minister, as Sri H.N. Das had previously discussed the issue with the Chief Minister, the Chief Minister~~x~~ ordered the suspension of Sri H.N.Das and he was placed under suspension with effect from 26.11.90. That the Assam Ministry was dismissed on 28.11.1990 and Assam was brought under President's rule with immediate effect. On the same day suspension of Sri H.N.Das was withdrawn and he was appointed to the post as the Chief Secretary.

6.5. That the applicant submits that immediately after Sri H.N.Das was appointed as the Chief Secretary, the applicant was asked by the Chief Secretary to vacate the official quarters, the applicant was occupying in the Dispur Capital Complex as Secretary, Home and Political, within seven days and this was followed by notice dated 11.1.1991 ordering the applicant to immediately vacate the quarter.

6.6. That by letter dated 7.5.91 Respondent No. 2 asked for an explanation from the applicant in respect of the applicant's recording of the Annual Confidential Report of a subordinate officer. The applicant duly submitted his explanation on 12.5.91 setting forth the circumstances which led to the recording of the ACRs in question. However, without affording the applicant any opportunity of being heard and without consideration of the facts and circumstances of the case the Government's displeasure was communicated to the applicant by letter dated 21.9.91. The applicant submitted a representation against the aforesaid letter dated 21.9.91 once again setting forth all relevant facts and circumstances of the case and eventually by letter dated 18.11.91, the letter conveying the displeasure of the Government was withdrawn with intimation to the Government of India.

6.7. That the applicant brought to the notice of the then Adviser to the Governor (Sri I.P.Gupta) in-charge of personnel ~~the~~ apprehensions that arose due to the aforesaid actions of Sri H.N.Das, the Chief Secretary, and by a note dated 8.5.91 requested the Adviser (G) in-charge of personnel that the ACR of the applicant be initiated by an officer other than Sri H.N.Das.

6.8. That the President's rule in the State was revoked and on 30.6.91 a new ministry assumed office in the

State. That the applicant received Memo No. AAI.62/91/6 dated 20.9.91 issued by the Additional Chief Secretary, Government of Assam, requiring the applicant to submit an explanation for writing the aforesaid note dated 25.11.90^x "... with the intention to mislead the Government which prompted the Government to place Sri H.N.Das, IAS, under suspension ... etc."

6.9. That the applicant submitted his explanation on 27.9.91, setting forth the analysis of the information supplied by the Gauhati Auction Centre with the comments thereon and stated that the aforesaid statements do not warrant the conclusion as stated by the letter dated 20.9.91. No decision thereon has been till date communicated to the applicant inspite of reminders.

6.10. That by letter dated 29.10.91 the Secretary to the Government of Assam, Personnel Department, Dispur, communicated to the applicant adverse remarks in his ACR covering the period 1.4.90 to 12.11.90 and 28.11.90 to 31.3.91. It was for the first time in the applicant's career as an officer of the Indian Administrative Service that adverse remark was entered in his ACR.

6.11. That the ACRs for the aforesaid periods were initiated by Sri H.N.Das who was prejudiced against the applicant, as is evident from the aforesaid actions, and the apprehensions expressed to the Adviser (G) to the Governor became a reality. The adverse remarks were unfair, untrue and biased besides the ACR being in violation of All India Service (confidential) Rules, 1970. According to the instructions of the Government

7.

of India a strict schedule is to be followed in recording, reviewing and accepting the ACRs of members of the Service, The concerned officer should have served under the supervision of the recording, reviewing and accepting authority for a period of atleast three months. If the aforesaid instructions were followed, the applicant's ACR would have been recorded by Shri H.N. Das the then C.S. and would have been reviewed by the Adviser to the Governor and accepted by the Governor by 31.5.91. Since the Advisers ~~de~~mitted office on 30.6.91 Shri H.N. Das appears to have become the sole authority without any one to review and accept the arbitrary, unfair and unjust ACRs.

6.12. That on 27.1.92 the applicant filed a representation against the impugned ACRs. As no reply to the representation had been received and as the impugned ACRs with the adverse remarks thereon would most unjustly and unfairly affect the service career of the applicant, the applicant had approached the Central Administrative Tribunal, Gauhati Branch.

6.13. That on 14th July, 1991 a display advertisement was published under the heading 'an Appeal' in the local news papers calling for information on terrorists. The aforesaid 'appeal' was issued in the name of the Commissioner, Home and Political giving his office and residence telephone numbers, although the applicant had not issued or authorised the issue of the aforesaid 'appeal'.

6.14. That the applicant had reasons to believe that the aforesaid 'appeal' had been authorised by Sri H.N.Das, and in any event no such 'appeal' could have been issued without the knowledge and approval of Sri H.N.Das. The applicant, in the subsequent meeting with Sri H.N.Das pointed out that the

'appeal' was not only against the Government instructions but has placed the security of the applicant and his family members in jeopardy.

6.15. That in the issue dated 8.11.92 of the Assamese weekly 'Janakranti' published from Gauhati, a news item appeared stating that Sri H.N.Das, by letter No.AAI.62/91/17 had informed the Government of India that some IAS officers including the applicant had links with terrorists in the North East, without mentioning to which department of the Central Government the aforesaid letter was sent.

6.16. That the applicant at once brought the news item to the notice of Sri H.N.Das, requesting him to officially contradict the news item or a copy of the aforesaid letter be made available to the applicant for his defence. The news item was not officially denied by the Government or Sri H.N.Das nor a copy had been made available to the applicant for his defence, but subsequently in the issue of the Assam Tribune dated 13.11.1992 a news item appeared stating that "no such letter had been sent to the Government of India recommending any action against any Government official" without however denying the existence of the aforesaid letter.

6.17. That being aggrieved because there was no response from Respondent No.1, the State Government, with regard to the representation No.CPRD.1/91/129 dated 27.11.92 and also no reply to the letter No.CPRD.1/92/123 seeking either denial of the article in the 'Janakranti' or a copy

of the letter No.AAI.62/91/17 dated 1.8.92 so that the applicant can have defence against the totally false, baseless and malicious accusations, the applicant approached the Hon'ble Central Administrative Tribunal's' Act, 1985, seeking the quashing of the adverse remarks conveyed by letter No.AAI.78/88/40 dated 29.10.91 and the communication to the Government of India by letter No.AAI.62/91/17 dated 1.8.92 and that the empanelment of the applicant for the post of Joint Secretary, Government of India, may not be held up for the non disposal of the representations made by the applicant.

6.18. That Sri H.N.Das had deliberately delayed the recording of the ACR of the applicant. If the time schedule as required by the instructions of the Government of India was followed, the ACRs of the relevant periods would have been reviewed during the President's Rule by the Advisors to the Governor and the Governor would have been the accepting authority. In view of the commendations given by the Advisors to the Governor who had followed the performance of the applicant during the 7 months' of President's Rule when the applicant was the Commissioner and Secretary, Home and Political, the adverse entries would have been expunged at the reviewing stage as the bias of Sri H.N.Das was known to the Advisors, and the performance of the applicant as Commissioner and Secretary, Home and Political was appreciated by the Advisors.

6.19. That according to the provisions of the Manual of instructions for State's Special Branch of Police, the collection of intelligence on matters relating to insurgency etc. is the responsibility of the Special Branch of Police.

According to the Manual the source of intelligence should not be disclosed and should be kept protected. It is the Special Branch that collects and verifies information from various sources and authenticates the information. This being the practice followed by the Government, the publication of an appeal in the newspapers giving the name of the Commissioner, Home and Political with his address and residence telephone numbers so that the public could give the information on insurgency and extremist activities shows lack of bonafide on the part of Sri H.N.Das.

6.20. That the grounds on which Sri H.N.Das based his letter linking the applicant with extremists in the North East are not discernable, more so considering the fact that the applicant held the key post of Commissioner and Secretary Home and Political and functioned in that capacity throughout the President's Rule and even later, and also considering the fact that the Advisors to the Governor had commended the applicant's performance during the aforesaid period of time. The applicant was also made the Nodal Officer during the Prime Minister's visit to the State on 2.2.91. The applicant held the key post of Commissioner and Secretary, Home and Political during the period when the anti insurgency operation in the State was the most intensive. This only shows that Sri H.N.Das, was not only prejudiced and biased against the applicant but was also very vindictive to the extent of sending a letter to the Home Ministry, Government of India, linking the applicant with the extremist activities in the North East. One fails to understand how the Chief Secretary could have written to the Government of India associating the applicant with extremist activities and at the same time by public advertisement request the public to give information

concerning terrorists and extremist activities to the applicant. These contradictory stand of the Respondent is inexplicable and leads to the conclusion that the Sri H.N. Das, the then Chief Secretary, was blinded by bias and hostility towards the applicant. The assessment of the Advisors who ~~were~~ closely followed the performance of the applicant belies the biased, unjust and uncalled for remarks entered in the ACRs of the applicant and the communication to the Government of India.

6.21. That the excellent commendations given by the Senior Advisor, Sri K.N.Prasad, the Advisors Sri I.P.Gupta and Sri P.P.Srivastav were forwarded to the Chief Secretary, Sri H.N.Das, and were to be placed in the applicant's personal file. Knowing well the attitude and assessment of the Senior Officers, Sri H.N.Das delayed recording of the ACRs until the departure of these Senior Officers.

Copies of the aforesaid commendations of the Senior Advisor and the other Advisors to the Governor are annexed hereto and are marked as Annexures-1 and 2, 2A respectively.

6.22. That the State of Assam, stated before the Hon'ble Administrative Tribunal that the representation dated 27.1.92 was under consideration and that the Hon'ble Administrative Tribunal should take up the matter after disposal of the representation. The representation was made on 27.1.92 and in 1993 the Respondent No.2 stated that the representation was under consideration and only on 7.8.95 the adverse remarks were expunged by Respondent No.2 and by Memo No.AAI.78/88/47-A dated 7.8.95 communicated to the Secretary to the Government of India, Ministry of Personnel,

Public Grievances and Pensions, Department of Personnel & Training that the adverse remarks contained in the ACRs for the periods 1.4.90 to 12.11.90 and 28.11.90 to 31.3.91 that were sent to the Government of India by Assam Government ~~xxxx~~ letter No.AAI-78/88/40 dated 26.12.91 stood expunged.

6.23. That the reporting authority, Sri H.N.Das, had also made adverse remarks in the ACR of the applicant for the year 1991-92. The applicant made representation in January, 1992 and the adverse remarks were expunged. The same reporting authority, Sri H.N.Das, had prepared the ACRs for the years 1992-93 and 1993-94. No adverse remarks for the years 1992-93 and 1993-94 has been communicated to the applicant. Since the recording authority by his actions has found to be prejudiced and biased against the applicant and had further reason to be hostile to the applicant due to the applicant's petition to the Hon'ble Tribunal the applicant can reasonably expect that there could be under assessment which could be more harmful to the applicant as there would be no opportunity of representation being made.

6.24. That on 14.9.94 Respondent No.2, the State of Assam, approached the Hon'ble Supreme Court with a Special Leave Petition, being Civil Appeal No.9561 of 1995 against the judgement and order dated 1.8.94 passed by the Central Administrative Tribunal, Gauhati Branch, in O.A.No.47 of 1993 and moved an application praying for adinterim exparte stay stating that if the stay was not granted the purpose of moving the Hon'ble Supreme court would become infructuous and the petitioner would be put to heavy and irreparable losses. It is not understood how the State of Assam was put to heavy and irreparable loss because of the judgement and order of the Hon'ble Tribunal.

6.25. That ^{at} the hearing the Counsel for the Appellant, the State of Assam, submitted that the parties to the case are agreed that the adverse remarks by the Hon'ble Tribunal against Sri H.N.Das should be expunged and the State of Assam does not press the appeal on merit. The Hon'ble Supreme Court while disposing of the appeal stated in the judgement dated 20.10.95

"We expunge all the adverse remarks contained in the impugned order of the Tribunal against Sri H.N.Das, the Chief Secretary. The Tribunal's order would now remain with this modification." That the Hon'ble Tribunal in its interim order dated 17.3.93 directed the Union of India not consider or take into account the adverse remarks against the applicant conveyed by letter No.AAI.78/88/40 dated 29.10.91 or any other communication by the Government of Assam to the Government of India, if any, in the matter of considering expansion of the applicant for the post of Joint Secretary, Government of India. The interim order was made absolutely by judgement and order dated 1.8.94 and judgement of Supreme Court dated 20.10.95. *

A copy of the interim order dated 17.3.93 and judgement and order dated 1.8.94 are annexed hereto and are marked as Annexures-3 and 4 respectively.

6.26. That the applicant has been the Commissioner and Secretary for Panchayat and Rural Development from July 1991 to April, 1995, in the period when the Government of India and the State Government had laid great emphasis on promoting self-government and rural development. During the period the new Panchayat Act was enacted in Assam, Panchayat elections were held after a gap of thirteen years and Panchayats were involved in poverty alleviation and rural development. With emphasis laid on self-government promotion and rural development and poverty alleviation programmes by the State and the

Union Government, no officer would have been kept for ~~over~~ almost four years in such a department unless the Officer showed exceptional ability, integrity and extra-ordinary devotion to duty. The work done by the applicant in the Department was appreciated by the Ministry of Rural Development, Government of India.

A copy of the letter from the Secretary, Ministry of Rural Development is annexed hereto and is marked as ANNEXURE-5.

6.27 That the applicant had made representations to the Government of India on 29.6.49, 6.8.94, 6.9.95 and again by letter dated 14.11.95 requesting for speedy disposal of the aforesaid representations. The representations have remained unanswered upto now and the action taken on the request of the applicant to be assessed for empanalment for the post of the level of Joint Secretary in the Government of India by taking into consideration the ACRs upto the year 1989-90 is not known.

Copies of the aforesaid representations are annexed hereto and marked as ANNEXURE 6, 6A, 6B, and 6C.

6.28 That the ACRs with the adverse entries were sent to the Union Government on 26.12.91 without the applicant being given any opportunity of being heard on the adverse remarks unjustly and vindictively entered in his ACR by Sri H.N.Das and that the Government of India in all probability have circulated the said ACRs with the adverse remarks among the Screening Committee Members for empanalment of officers, as the adverse remarks were expunged only in 1995 and in all likelihood the interim order dated 17.3.93 passed by the Hon'ble Tribunal in O.A.No.47/93 directing the Union of India "not to consider or take into account the adverse remarks against the applicant conveyed vide letter No.AAI.78/88/40 dated 29.10.91 or any other communication by the Government

of Assam to the Government of India, if any, as indicated in the application, in the matter of considering empanelment of the applicant for the post of Joint Secretary to the Government of India, was not available before the Screening Committee and the representation against the aforesaid adverse remarks were not forwarded to the Union Government, though proviso to Rule 10 of the All India Services (Confidential Rolls) Rules 1970 requires that if there be delay of over 12 months in expunging the remarks the State Government is to forward to the Central Government the reason for the delay and the copies of representation against the adverse remarks. The above infirmities appeared to have caused grave prejudice to the applicant in as much as the applicant's name did not appear to have figured in the list of officers empaneled pursuant to the Screening Committee held in 1994. Such exclusion of the applicant is attributable to no other reason than the facts set forth hereinabove.

6.29. That since all adverse entries recorded by Sri H.N. Das on being questioned by the applicant on the ground of mala fide of Sri H.N. Das were quashed and/or expunged by the appropriate authorities, including this Hon'ble Tribunal and the Hon'ble Supreme Court and the State Government of Assam, it is not reasonable to expect under the above circumstances that the ACRs recorded by Sri H.N. Das for the years 1992-93, 93-94 (i.e. the periods subsequent to those in respect of which ACRs recorded by Sri H.N. Das order quashed/expunged as aforesaid) would be a fair assessment in keeping with the excellent performance of the applicant as noticed by the appropriate authorities. However, the ACRs for the year 1992-93 and 93-94 recorded by Sri H.N. Das although not adverse it may be reasonably apprehended to have been so worded as to effect the applicant's career prospects adversely even without ^{having} ~~able~~ of a positively adverse entries. In view of the facts and Circumstances

circumstances of the instant case it would be in consonance with the principles of equity, justice and good conscience and the principles of natural justice that the applicant's ACRs for 91-92, 92-93, 93-94 recorded as aforesaid by Sri H. N. Das, even if placed before the Committee for empanelment in the normal course of events, may be directed not to be considered by the aforesaid Committee.

6.30. That Sri H.N.Das having ^{shown} above himself to be vindictive and prejudiced against the applicant it is only just and fair that the ACRs for the periods 1990-91, 1991-92, 1992-93 and 1993-94 recorded by Sri H.N.Das be totally excluded from consideration or in the alternative other senior officers who had seen the performance of the applicant during those relevant periods ~~record the ACRs~~.

1991-92: The then Agriculture Production Commissioner who is at present Secretary, Culture, Government of India.

1992-93: Special Commissioner, Special Secretary, Revenue who is now Chairman, Revenue Board, Govt. of Assam.

1993-94: The then Addl. Chief Secretary and Special Commissioner & Special Secretary, Panchayat and Rural Development who is now the Chief Secretary, Govt. of Assam.

6.31. That the officers of the applicant's batch (BR 1975) have already been empanelled and posted as Joint Secretaries to the Government of India. Under normal circumstances applicant's case for empanelment should be taken up for review by now. The ACRs recorded by Sri H.N.Das, are likely to be

circulated among the members of the Screening Committee, with or without the belated expunction of the adverse remarks and without the commendations made by senior officers who had closely followed the performance of the applicant in those relevant years.

7. DETAILS OF REMEDIES EXHAUSTED:

Representations regarding empanelment as Joint Secretary to the Government of India, addressed to the Secretary, Government of India, Ministry of Personnel & Training on 29.6.94. Representation dated 6.8.94, representations dated 6.9.95, 19.11.95.

8. That the applicant further declares that he had not previously filed any application/writ petition or suit regarding the matter in respect of which this application has been made before any court of law or any other authority or other Bench of this Tribunal, nor any such application/Writ Petition or suit is pending before any of this.

9. RELIEF SOUGHT:

In view of the aforesaid facts and circumstances of the case the applicant prays that the Government of India be directed to ⁽¹⁾ consider the representations made by the applicant and to have ⁽²⁾ the ACRs for the aforesaid years recorded by Sri H.N.Das totally excluded from consideration and further to ⁽³⁾ direct the Government of India to

circulated in the Screening Committee all the relevant papers including the commendation made by the Senior Officers during the relevant periods so that a fair and just assessment can be made and no injustice would be committed as regards the empanalment of the applicant for the post of Joint Secretary in the Government of India.

10. INTERIM ORDER PRAYED FOR

That pending disposal of this application the Hon'ble Tribunal may be pleased to direct that the applicant's ACRs for the years 1990-91, 1991-92, 1992-1993, and 1993-94 shall not be taken into consideration for the purpose of empanalment of the applicant for the post of Joint Secretary to the Government of India.

11. That the applicant prays for an oral hearing at the admission stage.

12. Particulars of Bank Draft/ Postal Order in respect of Application Fee. P.O No. 09, 365583 & 19.3.96
Postal Order No. 809 345583 dated 19.3.1996 on Gauhati.

13. List of enclosures.

14. Affidavit.

..Verification.

VERIFICATION

I, Chandra Kanta Das, son of Shri L.K.Das, aged about 47 years, residing at Guwahati, by occupation service, do hereby solemnly clarify that the contents from paragraph 1 are true to my knowledge and belief and that I have not suppressed any material facts.

Chandra Kanta Das

Place : Guwahati

Signature.

Date : 10.4.76



সম্মত জয়ন্তে

K. N. PRASAD

ৰাজ্যপাল
জ্যেষ্ঠ উপদেষ্টা, অসম
দিশপুৰ, গুৱাহাটী-৭৮১০০৬Senior Adviser
to the Governor of Assam
Dispur, Guwahati-781006.

Dear Shri Das,

Having watched your work as the Commissioner, Home & Political for a period of six months, I am conscious of the stress and strain under which you have discharged your duties and responsibilities. You have effectively monitored the law and order situation; and coordinated efficiently with the other departments of the State Govt. as well as the Army.

Your daily briefing of the press was also of a very high order and free from controversy. I have been impressed by your intelligence, integrity and knowledge. I do not remember an occasion when we had to disagree or differ with your advice and suggestions on matters of policy. On the whole, your performance was of a very high order.

I am requesting the Chief Secretary to place its copy on your personal file.

With kind regards,

Yours sincerely,

(K.N. Prasad)

Shri C.K. Das,
Commissioner, Home,
Government of Assam,
Dispur.Copy to: Shri H.N. Das, Chief Secretary to the Govt.
of Assam for favour of placing it in his
ACR Dossier.

A. Hester
Paul Peltz



I.P. GUPTA

ANNEXURE-12

- 21 -

ADVISER
to the
GOVERNOR OF ASSAM
Guwahati- 781006

June 25, 1991

Dear Shri Das,

On the eve of handing over, I am sending this letter as a token of my personal gratitude to you for all the consideration shown to me during my brief stay here. I go from here with a sense of fulfilment - fulfilment not because I have done anything but because I have received in ample measure your unstinted support, cooperation and guidance and you have done your best in your sphere of work.

2. I am confident that with an inner urge for development and by continuing to follow the path of righteousness, all of you, holding important positions in the Government will carry the State still forward on the path of peace and progress. I wish you best of luck and I can assure you I shall cherish the memories of our stay together in Assam.

With regards,

Yours sincerely,

Shri C.K. Das,
Commissioner, Home,
Assam, Dispur.


(I.P. Gupta)

*Attested
Paul Potta*

P. P. Shrivastav
Adviser to the Governor
of Assam.



Dispur
Guwahati-781006
D. O. No. ADV(S)2/90
Date June 25, 1991.

My dear Das,

On the eve of my departure from Assam, after nearly seven months of most interesting and useful stay, may I express my heartfelt gratitude for the teamwork, support and unstinted cooperation given by you?

Together, in complete harmony as teammates, we strove to work in a non-partisan and objective manner with merit, expedition and economy as the ruling criteria, to achieve our objectives of restoration of peace, normal democratic process and speeding up of developmental programme aimed at benefitting the common man. The degree of success achieved is not for us to judge, but it is a matter of great satisfaction for all of us that peace could be restored and elections could be held in a free and fair manner. Our people, whose wisdom, common sense and commitment to democratic norms is the country's greatest asset, voted decisively against secession and violence and for restoration of democratic norms of respect for each other's life and property. Now, we all look forward to an era of progress under the elected leadership and with your assistance and whole-hearted cooperation.

I am happy that the last-minute change in my posting at the centre would enable me to continue my association with you.

With regards,

Yours sincerely,

(P. P. Shrivastav)

Shri C.K.Das
Home Commissioner,
Assam, Dispur.

P.S.

Thanks for all the support given by you.

Unfinished tasks would have to be ~~done~~ completed.
Hope you would not forget.

A. K. Das
Paul Bha

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI, 6

O.A.No.47/93

Sri Chandra Kanta Das, IAS . . . Applicant.
vs.
U.O.I.&ors Respondents.

P R E S E N T

THE HON'BLE MR. JUSTICE S. HAQUE, VICE CHAIRMAN
THE HON'BLE MEMBER SRI G. L. SANGLYNE, ADMN.

For the Applicant, Mr. A. Sarma, Sr. Advocate,
Smt. B. Dutta.

For the Respondents, Mr. A. K. Choudhury, Addl. C.G.S.C.
Mr. Y. K. Phukan, Sr. G.A. Assam.
Mrs. M. Das, G.A. Assam.



17.3.93. Heard learned Senior Advocate Mr Anil Sarma assisted by Smt. B. Dutta on behalf of applicant Shri Chandra Kanta Das, IAS. Perused the statements of grievances and reliefs sought for in this application.

This application is admitted. Issue notice on the respondents under Registered Post. Learned Addl. C.G.S.C. Mr A.K.Choudhury and learned Sr. Govt. Advocate Assam, Mr Y.K.Phukan take notice of this case and pray for six weeks time to file counter. Time allowed as prayed for.

Learned counsel Mr A.Sarma submits for an interim order on the respondents particularly on respondent No.4, the Union of India not to consider the adverse remarks against the applicant as conveyed by letter No. AAI.78/88/40 dated 29.10.91 (Annexure-B) in the matter of consideration of empanelment of the applicant for the post of Joint Secretary to the Govt. of India. Mr Sarma referring to the statements in Para 6.34 to 6.37 of the application, also submits that the applicant apprehends that the communication of the respondent No.2, the Chief Secretary, Govt. of Assam to the Union of India as appearing in the issue 8.11.92 of 'JANAKRANTI' may harm him in the consideration of his empanelment in the post of Joint Secretary to the Govt. of India. Mr Sarma further submits that the respondent No.4, the Union of India may at any time consider empanelment of the Senior I.A.S. Officers for the post of Joint Secretary to the Govt. of India and so an interim order at this stage

contd.

*A. Sarma
Smt. B. Dutta*

contd.

has become necessary to safeguard the interest of the applicant. Mr Y.K.Phukan resists the submissions of Mr Sarma and prays for two weeks time to file objection stating that empanelment may not likely to take place within two weeks. Mr A.K.Choudhury, the learned Addl.C.G.S.C. also makes similar submissions.

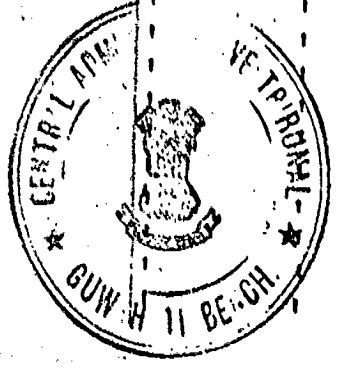


Upon hearing the counsel of the parties, perusal of the grievances in the application and the fact of non-disposal of the representation dated 27.1.92 (Annexure-9) of the applicant coupled with his reasonable apprehension, we consider it just and expedient to pass an interim order/direction as prayed by the applicant.

Accordingly, the Respondents particularly the Respondent No. 4, the Union of India are directed not to consider or take into account the adverse remarks against the applicant conveyed vide letter No.AAI.78/88/40 dated 29.10.91 (Annexure-8) or any other communication by the Government of Assam to the Government of India, if any, as indicated in the application, in the matter of considering empanelment of the applicant for the post of Joint Secretary to the Govt. of India. The respondents are at liberty to approach this

contd.

DATE	COURT'S ORDER
contd.	Tribunal for modification, alteration or cancellation of this interim order if so advised.



List on 11.5.93 for counter and for further orders.

Steps within a week.

SD/ S.HAQE,
VICE CHAIRMAN
SD/G.L.SANGLYINE,
MEMBER (ADMN)

Memo No:- 584

Dt. 12-3-93

Copy for information and necessary action to:-

- 1) The Chief Secretary (Represented by State of Assam, Govt. of Assam, Dispur, Assam. Guwahati-6.
- 2) Mr. H. K. Das, IAS, Chief Secretary, Government of Assam, Dispur, Guwahati-6, Assam.
- 3) The Secretary, Govt. of Assam, Personnel Department, Dispur, Guwahati-6.
- 4) The Secretary (represented by U.O.I.) Ministry of Personnel & Public Grievances, and Pensions, Govt. of India, Department of Personnel & Training, North Block, New Delhi-1.
- 5) Mr. A. K. Choudhury, Addl. C.G.S.C, C.A.T. Guwahati Bench.
- 6) Mr. Y. K. Phukan, Sr. G.A. Assam, ~~XXXX~~ C.A.T, Guwahati Bench.
- 7) Mrs. E. Dutta, Advocate, Guwahati High Court.

[Signature]
12/3/93
Deputy Registrar (J)
Central Administrative Tribunal
Guwahati Branch, Guwahati.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI -5.

O.A. NO. 47/93
I.A. No.

DATE OF DECISION 1.8.1994

Shri C.K. Das

PETITIONER(S)

Shri A. Sarma, Bar-at-Law

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Shri A.K. Choudhury, Addl. C.G.S.C.
Shri S.N. Bhuyan, Advocate General,
Assam.

ADVOCATE FOR THE
RESPONDENT (S)

Shri Y.K. Phukan, Sr. Government
Advocate, Assam and Smt M. Das,
Government Advocate, Assam.

THE HON'BLE JUSTICE SHRI S. HAQUE, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A).

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

Judgment delivered by Hon'ble Vice-Chairman.

*Attended
Paul P. B.*

1.8.94



ORDER

HAQUE.J.

The applicant, Shri Chandra Kanta Das is a senior IAS Officer of the Assam - Meghalaya Joint Cadre. At the relevant time from November 1990 to July 1991 he was the Commissioner and Secretary, Home and Political Department, Government of Assam and thereafter since July 1991 till date he is the Commissioner and Secretary, Panchayat and Rural Development and also of Food and Civil Supplies, Assam. He had a clean service record throughout since July 1977 to 31.3.1990. It was for the first time that adverse entries in his ACRs for the year 1990-91 were communicated to him vide Memo No.AAI.78/88/40 dated 29.10.1991 (Annexure-8). Therefore, he has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying to quash the said adverse remarks and also for a direction on the Respondents not to act upon in any manner prejudicial to him on the basis of letter No.AAI.62/92/17 dated 1.8.1992 issued by Shri H.N. Das, Chief Secretary, Government of Assam (Respondent No.2) to the Government of India, as reported in Newspaper(Annexure-12).

2. It was alleged in the application that the adverse remarks in the ACRs of Shri C.K. Das for the year 1990-91 were recorded by respondent No.2, Shri H.N. Das out of malice, bias and malafide. Series of acts/actions of respondent No.2 against the applicant have been narrated in the applications to substantiate the allegations of malice, bias and malafide.



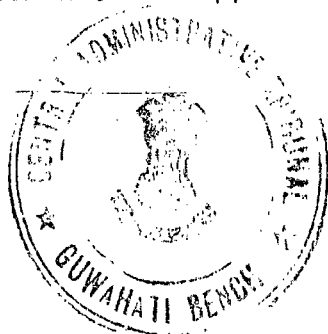
3. The respondents No.1, 2 and 3 contorted the case by filing joint written statement denying all the allegations in the application. The respondent No.2, Shri H.N. Das, the Chief Secretary has filed a separate written statement denying generally various allegations of malice, bias and malafide levelled against him.

4. The respondent No.2 as Chairman, Gauhati Tea Auction Centre sent a telex message on 21.11.1990 to Shri K.A. Archananeswaram, Special Secretary, Commerce Ministry, New Delhi with a copy to the Principal Private Secretary to the Chief Minister, Assam. On 22.11.1990, the Chief Minister endorsed that copy to the then Chief Secretary, Shri P.C. Misra who in turn endorsed it to the applicant (Commissioner, Home) with the remark "please discuss". On 23.11.1990, the applicant submitted a note on the subject to the Chief Secretary who had placed the matter before the Chief Minister with his notes. On 26.11.1990, respondent No.2 was placed under suspension pursuant to the order of the Chief Minister passed below the noting of the Chief Secretary. Perused the relevant endorsement, notes of Shri C.K. Das, notes of Shri P.C. Misra and order of the Chief Minister.

5. The State of Assam was brought under President's Rule with the dismissal of the Assam Ministry on 28.11.1990 followed by withdrawal of suspension order on respondent No.2 and his reinstatement as Chief Secretary to the Government of Assam on that very day. The respondent No.2 immediately asked the applicant verbally to vacate the official quarter in the Dispur Capital Complex within seven days. The applicant was occupying that quarter from January 1985 on allotment. The applicant wrote a letter dated

3.12.1990.....

44
1-8-94



29
3.12.1990 to the Respondent No.2 concerning the verbal order about the quarter with copy to the Secretary to the Governor. Instead of a reply, the applicant was served with notice No.GAG(A)/5/812 dated 11.1.1991 asking him to vacate the official Quarter. The applicant has categorically alleged that there was no legal authority to warrant issuance of notice and such action at the instance of respondent No.2 was only meant to harass him. The respondents have stated that such notices were also served on 56 (fiftysix) others. But the allegation that action was for harassing applicant has not been specifically denied by the respondents nor by respondent No.2.

6. The respondent No.2 by letter No.AAJ/59/84/42 dated 7.5.1991 sought an explanation from the applicant in the matter of recording of ACR of a subordinate officer. The applicant submitted explanation on 12.5.1991 stating the circumstances leading to such recording. But in reply after five months on 21.9.1991, the applicant was communicated with Government's displeasure for his dishonest action in recording the ACR. The applicant by representation dated 10.10.1991 took serious exception and concern for imputing dishonesty and stating that displeasure for alleged dishonest action might cause far reaching harmful consequence to his service career. The applicant also alleged that indicting him on ground of dishonesty (dishonest action) without giving reasonable opportunity of hearing was clear indication/inference of bias and malice in the act of Respondent No.2 for injuring the applicant's service career. The respondents could not give satisfactory answer to these allegation in their written statement. But eventually the said expression of 'displeasure' was withdrawn vide letter dated....

1.8.94



dated 18.11.1991.

7. Apprehending malafide action on the part of respondent No.2, the applicant after recording self assessment/appraisal on 30.4.1991 for ACR 1990-91 and submitting it to the Personnel Department, wrote a note dated 8.5.1991 to Shri I.P. Gupta, the Adviser(G) to the Governor of Assam informing that respondent No.2 on a number of occasions shown personal bias against him and that it would be in violation of the Principles of Natural Justice if Shri H.N. Das was allowed to initiate his ACR and requested to get his ACR initiated by an officer

other than respondent No.2, Shri H.N. Das. The respondent No.2 admitted in the written statement that the applicant did write such letter dated 8.5.1991 to the then Adviser (G) to the Governor.

8. The applicant was asked to submit explanation vide letter No.AAI.62/91/6 dated 20.9.1991 (Annexure-6) within seven days as to why disciplinary action should not be taken against him for submitting note dated 23.11.1990. It was alleged in that letter that his note was factually incorrect with intention to mislead the Government, which prompted the Government to place Shri H.N. Das under suspension. The applicant submitted explanation dated 27.9.1991. No decision on his explanation has been communicated till date inspite of his reminder dated 16.11.1992. The applicant states that in his note dated 23.10.1990 he had only shown the factual position of the subject matter (Tea auction) for the current year 1990 and no incorrect facts were stated to mislead the Government.

We have perused the copy of fax message of Shri H.N. Das

addressed.....

1.8.94



addressed to the Special Secretary, Commerce Ministry containing notes of Shri H.N. Das in the copy to the PPS to Chief Minister, the notes of Shri C.K. Das and Shri P.C. Misra (Chief Secretary) and the order of the Chief Minister thereunder. We find that Shri C.K. Das simply stated the factual position in his notes and there appeared no material of any kind or any hint to mislead the Government which could prompt the Government to suspend Shri H.N. Das. That suspension order was withdrawn on 28.11.1990 by the Governor with clear direction that the order of suspension shall be treated as if it were never made or issued. That being the position, there was no occasion after ten months on 20.9.1991 to ask for explanation from Shri C.K. Das. The allegation of Shri C.K. Das that the action was malicious and mala fide cannot be undermined.

9. Adverse remarks were communicated to the applicant by letter No.78/88/40 dated 29.10.1991. Perused the adverse entries. The applicant alleged that the adverse remarks were not only unfair, untrue and biased, but were in violation of the provisions of AIS (Confidential Rolls) Rules 1970. Instances of breach of these rules in the process of concerned ACR have been alleged by the applicant in paras 6.23 to 6.25 of the application. The rules and the Government of India instructions have prescribed strict time schedule for various stages of initiation to completion of ACRs and this time schedule should be strictly followed by all the concerned authorities. The applicant alleged that his ACR was delayed beyond the period of two months and had the time schedule been maintained by the Respondent No.2 in processing it to different stages after doing his part as

Reporting....



Reporting Officer, then the Advisers/senior Adviser of the Governor would have been the Reviewing Authority. The Respondents in para 14 of the written statement admitted that there was delay in finalising the ACR which was not deliberate. The respondents also stated that the Adviser to the Governor had not seen the performance of the applicant for minimum period of three (3) months and as such question of submission of the ACR of the applicant to the Adviser for review did not arise. This statement of the respondents cannot be accepted because the Advisers of the Governor ruled from 28.11.1990 to 30.6.1991 and thus they had seen the performance of the applicant for seven months and were the reviewing authorities. The replies of the respondents in paras 14 and 15 of the written statement are not acceptable. No satisfactory reply could be given on these points by the Advocate General at the hearing. The respondent No.2 failed to produce any material to show that the adverse entries were made by him bonafide. A vague statement that the basis was the close watch of the performance of the applicant is not sufficient when the adverse remarks are challenged before the Tribunal by the aggrieved officer. Breaches of the rules in the process of the ACRs did occur as alleged.

10. The applicant alleged that the remarks in the ACRs: "sometimes dishonest" was totally unsustainable and arbitrary statement because he continued as Home Secretary when respondent No.2 was the Chief Secretary and in that critical period he discharged duties of Commissioner and Secretary, Home and Political during the entire period of President's Rule. It is submitted that the adverse remarks if not expunged, will cause incalculable harm to the

1.8.74



applicant's.....

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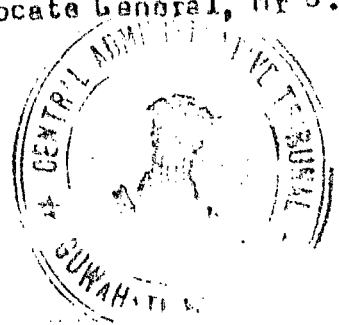
applicant's service career particularly in view of the fact that it will pose an immediate threat to his career in-as-much as his batch of IAS officers (1975) are now due to be considered for empanelment for the post of Joint Secretary, Government of India. The applicant has already completed eighteen years in the IAS. These facts and submissions deserve consideration.

11. The original ACRs for the years 1989-90 and 1990-91 of Shri C.K. Das, IAS have been placed before the Tribunal as called for. We have perused all the remarks/entries of both the years. This process is adopted to know the qualities of standard, efficiency, reputation, responsibility, reliability etc. maintained by Shri C.K.Das in 1989-90, in order to gather our impression/idea if there was any remark any where under any item/column indicating any nature of symptom for any possibility of deterioration in any sphere of works which may possibly justify his earning those adverse remarks in the following year, 1990-91. We find that his ACRs for 1989-90 contained full of remarks of very high order, most excellent and superb in all respects and in all field of works. It is really a pleasure to go through it. No indication of any sort of symptom could be detected anywhere to draw possibility of deterioration in any sphere in future. Therefore, the sudden adverse remarks become suspicious and the allegation of malafide on the part of the Reporting Officer (respondent No.2) cannot be said as unreasonable.

12. The applicant filed representation against the adverse remarks by his letter No.CPRO.1/91/129 dated 27.1.1992. The representation has not been disposed of by the Government till the date of filing the case. Learned

Advocate General, Mr S.N. Bhuyan submitted during hearing

1.8.94



that,.....

that the Tribunal may ask the Government for disposal of the representation even now. But the learned Sr. Counsel Mr Anil Sarma for the applicant submitted that the representation was submitted on 27.1.1992 and the same was not disposed of till filing of the application on 12.3.1993 and thereby the applicant acquired right under Section 20(2)(b) of the Administrative Tribunals Act, 1985 to approach the Tribunal with this application for redressal and the grievance may be decided by the Tribunal. In view of the legal provision, we decide for disposal of the grievances on merit.

13. On 14.7.1991 a display advertisement was published in different newspapers in Assam under the heading, "AN APPEAL" as under:

" AN APPEAL

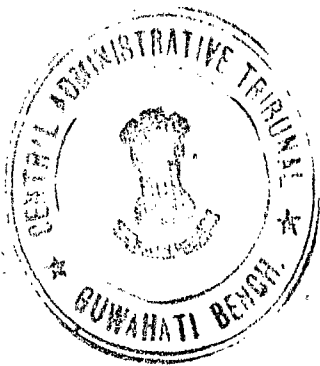
Members of the public are requested to share with the Government any information they may be having or may come across on terrorism and insurgency in the state. The confidentiality of all information will be strictly maintained. The names, addresses etc. of the senders of such information will also be kept secret. Anyone, who is not sure of secrecy, may also write to the Government without giving their own names and addresses but the information given should be specific. All such information may please be forwarded to the officer named below at the following address.

Shri C.K. Das, IAS (by name)
Commissioner, Home & Political,
Govt of Assam, Dispur,
Guwahati-781006,
Phones: 61669 (Office)
61789 (Residence)
GOVT. OF ASSAM" (Annexure-10)

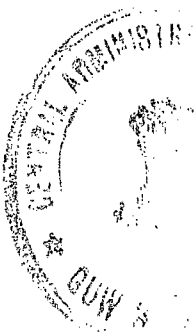
This appeal was issued without the knowledge of Shri C.K. Das although he was then the Commissioner and Secretary, Home and Political Department. Having reason to believe that the "appeal" had been authorised by respondent No.2, Shri H.N. Das, Chief Secretary, the applicant on 14.7.1991

1.8.94

immediately....



immediately contacted respondent No.2 and requested him to suitably amend the "appeal" as it was not only against the Government instructions but also placed him and his family member's security in jeopardy. The applicant stated that he discussed the matter with the Chief Minister on the same day. The next day, 15.7.1991, the applicant wrote letter No.CHP/PS.1/90/214 (Annexure-11) to respondent No.2 on that subject. Perused the contents of the letter. The applicant requested to rescind that "appeal". But the "appeal" was not rescinded and the applicant was transferred to another department on 17.7.1991. Respondents admitted that the "appeal" was issued under the authority of respondent No.2 by stating that it was the duty of the Commissioner, Home and Political to collect information regarding terrorism and insurgency and that there was nothing wrong on the part of respondent No.2 in issuing that appeal. The respondents also stated that if security of the applicant is jeopardised for performing such official duty, then he is not fit to hold the position of responsibility and that there was no malafide involved in issuing the appeal. It is evident that the "appeal" was issued by respondent No.2 without the knowledge and without taking the applicant (Commissioner, Home) into confidence. He should have been taken into confidence before issuing such an "appeal" to public as he and his department (Home) was placed in charge to receive informations of terrorism/insurgency. Truly it must have caused anxiety and tension as to personal and family security. Normally it is the task of the Special Branch of Police to collect information in such matters and if the responsibility of police was invested on Shri C.K. Das, Commissioner, Home (by name) and office, it would have been very fair on the part of respondent No.2 to take ^{the applicant} into confidence before issuing that "appeal" and then only claim of absence of malafide.....



1.8.94

malafide by the issuing authority (respondent No.2) would carry some sense.

14. Absence of bonafide on the part of respondent No.2 in issuing that "appeal" in the name of the applicant can be inferred from the attitude of respondent No.2 as focussed through the statement of defence in para 19 of the written statement. Expressing apprehension of insecurity with reasons by Shri C.K. Das as Commissioner, Home before the respondent No.2, the Chief Secretary for issuance of that "appeal" under his authority and with the prayer to rescind or amend the same, should not have been made a basis by respondent No.2 for making statement that the applicant was not fit to hold such position of responsibility. We may observe that under those circumstances the applicant was right to express his views to the Chief Secretary as the said appeal was issued without his knowledge and without taking him in confidence.

15. A news item was published on 8.11.1992 in Assamese Weekly "Janakranti" stating that Shri H.N. Das, Chief Secretary, Assam by letter No.AAI.62/91/17 dated 8.11.1992 informed the Government of India, Ministry of Home, that some IAS officers including the applicant had links with the extrimists in the North East and for removing them from service. (Annaxure-12). Perused the news item. The applicant immediately brought it to the notice of Shri H.N. Das, Chief Secretary (Respondent No.2) vide letter dated 11.11.1992 with a copy of the news item requesting either to officially contradict the news item or to give the applicant a copy of that letter for preparing the defence. But the applicant had not received any reply to his letter from respondent



16. A news item in the Assam Tribune dated 13.11.1992 by a Staff Reporter (Annexure-14) disclosed that the Government clarified that no such letter had been sent to the Government of India recommending any action against any Government official. Perused the news item. In this news item it was also stated on the basis of highly informed sources that the Chief Secretary, Shri H.N. Das had sent a report in the first week of August that year (1992) a background of the growth of insurgency in the North Eastern Region with particular reference to Assam. It was further stated in this item that although the Chief Secretary did not recommend any action against any State Government officer, he reportedly mentioned in the report names of three IAS officers stating that the "History of insurgency in the North Eastern Region will not be complete unless the names of Senior IAS officers, Shri P.C. Misra, Shri C.K. Das and Shri Prafulla Sharma are mentioned in it." After such disclosure of reported facts, in the news item, alleged to have been reported by the Chief Secretary, a contradiction either from the Chief Secretary or on his behalf focussing the truth or falsity of the news item would have removed the doubts. But a complete silence without any type of contradiction whatsoever from official quarter only lead to a reasonable presumption that such reports did exist and was sent by the Chief Secretary to the Government of India.

17. It is stated in the application that there was no denial in the so called clarification (news item) about the existence of letter No.AAI.62/91/17. The respondents only denied sending of letter to the Government of India recommending action against the applicant. The respondents jointly or the respondent No.2 individually did not

specifically.....



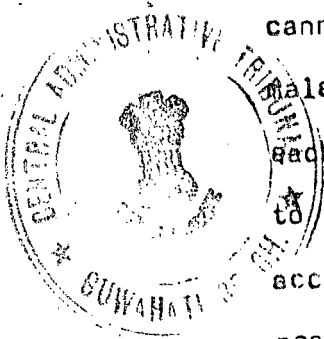
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of specifically deny the fact/sending of letter No.AA1.62/91/19 dated 1.8.1992. Their denial was a vague statement that no letter was sent recommending action against any officer. There was no official contradiction by the Government or by respondent No.2 on behalf of the Government in true sense against the news published on 8.11.1992 in 'Janakranti'. On reading the whole of the two news item dated 8.11.1992 (Assamese) and 13.11.1992 (English), which are not contradicted officially till date, the only reasonable presumption can be drawn is that in the first week of August 1992, the Chief Secretary, Shri H.N. Das sent a report or letter to the Government of India on insurgency matter wherein names of IAS officers including Shri C.K. Das was mentioned.

18. All the instances of acts/actions of Respondent No.2 against or involving the applicant occurred prior to the communication of the adverse remarks vide letter No.78/88/40 dated 29.10.1991 excluding news items Annexures 12 and 14 which occurred in November 1992. Learned Sr. Counsel Mr Anil Sarma submitted that the acts in each of the instances clearly proved the malice, bias and malafide of the respondent No.2 for causing injury to the service career and reputation of the applicant. Learned Advocate General, Mr S.N. Bhuyan submitted that these instances cannot be regarded as evidence to infer malice, bias and malafide. We have very thoroughly examined and scrutinised each of the instances and made our observations from time to time at appropriate stages in this judgment. No reasonable accounts or materials could be placed before us on behalf of respondent No.2 to presume justification of his acts and actions. Considering the overall facts and circumstances in the instances, we hold unhesitatingly that the adverse

remarks.....

1.8.94



remarks in question were recorded by respondent No.2, Shri H.N. Das as the Chief Secretary against Shri Chandra Kanta Das, IAS out of malice, bias and mala fide. These adverse remarks conveyed by the Government letter No.AAI.76/88/40 dated 29.10.1991 of the Personnel Department, Government of Assam, are liable to be expunged. We also have reasons to presume and hold that by the instinct of long preserved malice and bias, the respondent No.2 had reported matters of insurgency to the Government of India in the first week of August 1992, involving the applicant having links with insurgency without any basis and therefore, a direction as sought for is warranted for protection of the applicant

In the result, this application is allowed. The adverse remarks in the ACRs of the applicant, Shri C.K. Das, IAS conveyed by letter No.AAI/78/88/40 dated 29.10.1991 of the Department of Personnel, Government of Assam are hereby expunged. The respondents are directed not to act upon in any manner prejudicial to the applicant's interest pursuant to the report/letter sent by the respondent No.2 in the first week of August 1992 to the Government of India on the subject of insurgency in Assam.

We make no order as to costs.

Sd/- S. HAQUE
VICE CHAIRMAN

Sd/- G.L.SANGLYINE
MEMBER (ADMN)



nkm

Certified to be true Copy
प्रमाणित प्रतिलिपि

[Handwritten Signature]
2/8/94
Section Officer (A)
Central Administrative Tribunal
Guwahati Bench, Guwahati-5
গুৱাহাটী-৫, গুৱাহাটী-৫

B.N. YUGANDHAR
SECRETARY
GOVERNMENT OF INDIA



ग्रामीण विकास मंत्रालय
कृषि भवन, नई दिल्ली - 110 001
MINISTRY OF RURAL DEVELOPMENT
KRISHI BHAVAN, NEW DELHI-110 001

17 May, 1995

My dear Sir,

Thank you for your letter dated 18.04.1995. I wish to compliment you on momentum imparted by you in rural development in the State of Assam. Your sincerity, dedication and hard work was largely responsible for the initiatives to deepen and strengthen Rural Development Programmes. I wish to thank you for all the support you have rendered for our regional conferences at Guwahati and also in the improvement of systems for implementation of Rural Development Programmes in Assam.

2. I have great pleasure in wishing you a very successful tenure as Commissioner-cum-Secretary of Revenue Department. Please do not fail to get in touch with me whenever you happen to be in these parts.

With warm regards,

Yours sincerely,

B.N. Yugandhar
(B.N. Yugandhar)

Shri C.K.Das
Commissioner & Secretary
Revenue Department
Government of Assam
Dispur
GUWAHATI.

*A. K. Das
S. K. Das*

From

C.K. Das,
Commissioner & Secretary,
Government of Assam,
Panchayat & Rural Development
Department,
Dispur, GUWAHATI

To

The Secretary,
Government of India,
Ministry of Personnel &
Training,
North Block Secretariat,
NEW DELHI

Through The Chief Secretary, Assam, Dispur

Subject : Representation regarding empanelment as
Joint Secretary to the Govt. of India

Sir,

I am an officer of the Indian Administrative Service, (Assam - Meghalaya Cadre) belonging to the 1975 batch of regular recruits. I have completed more than 18 years of service and am due to be considered for empanelment for appointment to the posts of the level of Joint Secretary in the Government of India. I apprehend that in spite of my uniformly good record, due to certain remarks in my Confidential Report for the year 1990-91, I may not be considered for empanelment. Hence this representation.

Until the year 1989-90, there has not been even a single instance of any adverse remarks recorded in my Annual Confidential Reports (ACR) being communicated to me. On the other hand, I had always presumed, on the basis of the hard work that I put in the results / output achieved and the appreciation expressed by my superiors, that my ACRs would be nothing short of "Excellent". However, adverse remarks recorded in my ACR for 1990-91, were communicated to me in September, 1991. I have submitted a detailed representation against these adverse remarks in January, 1992. This representation has not been disposed of as yet. In view of the inordinate and deliberate delay in deciding my representation I had no

Attested
Soul P. Bha

29/6/94

option but to appeal to the Central Administrative Tribunal (CAT). CAT, Guwahati Bench, were pleased to direct the Union of India, vide their order No.OA/47/93 dated 17.3.1993, not to take into account or give credence to the adverse remarks relating to the year 1990-91. I am enclosing a copy (Annexure-I) of the order of the CAT.

The Order makes it clear that the adverse remarks recorded in my ACR for the year 1990-91 and conveyed or any other communication by the Government of Assam to the Government of India are not to be considered or taken into account in the matter of considering my suitability for appointment to posts equivalent to the level of Joint Secretary in the Government of India. In accordance with the spirit of this order, my ACR for the year 1990-91 should not have been circulated to the Screening Committee of Secretaries. I apprehend that it would be a grave injustice to me, if the ACR of 1990-91 is (or has been) circulated to the Secretaries. In such an event, merely communicating the CAT order, would not remove the prejudice and bias that may be created in the minds of the evaluating officers, by the adverse entries made on extraneous considerations, in my ACR of 1990-91. In all fairness, the ACR of 1990-91 should not be circulated to the screening committee. If this has not been ensured, I would request that my case should be sent to a different screening committee after removing the ACR OF 1990-91 from my dossier.

Throughout my career I have held a series of appointments (details at Annexure-II) which called for exceptional mental abilities, perseverance and capacity to handle a variety of crisis situations. Assignments such as ADC in the trouble torn Assam-Nagaland border, Commissioner, Home & Political during President's Rule in 1990 and 1991, deputy Commissioner, Kamrup of Assam and my present assignment as Commissioner, Panchayat & Rural Development etc. all call for extra-ordinary dedication and ability to bear high levels of responsibility. It is my impression that I have acquitted myself creditably in all these assignments. My record would show that in each of the assignments I had held, I commanded full confidence of my superiors and they had expressed their appreciation of my performance. The adverse remarks of 1990-91 are entirely out of character with the performance standards that I had set for myself and achieved during my entire career and are a reflection of the bias of the Recording Officer and bear no relation to my actual performance in the particular office I held during the period. The fact that my representation has been deliberately kept pending indicates that there was vindictiveness in recording the remarks as also in

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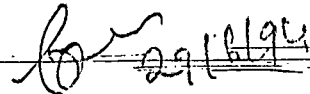
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preventing justice from prevailing by submitting the matter for a decision at the higher levels. It is worth mentioning here that my ACR for 1990-91, to my belief, was neither reviewed nor accepted by any superior authority. It was made final at the recording stage, to the best of my understanding. This deprived me of the benefit of the possible correction, by superior authority, of the deficiencies in recording of the ACR, at the Reviewing and / or accepting stage.

I am confident that if my record prior to 1990-91 is assessed in its proper perspective, I would be considered eligible for empanelment as Joint Secretary.

I am, therefore, submitting this appeal to the Government of India, to assess my suitability for appointment to posts of the level of Joint Secretary by taking into consideration my ACRs upto 1989-90 only. Any assessment made by a Screening Committee of Secretaries, to whom the ACR of 1990-91 was also sent albeit with the orders of the CAT, would not be in accordance with the letter and spirit of the CAT orders and would be grossly unjust to me. If any such assessment has been made, I would request that a review may be ordered urgently by a different Screening Committee so that equity and justice is allowed to prevail in my case.

Yours faithfully,



(C.K. DAS)
Commissioner & Secretary.
Government of Assam,
Panchayat & Rural Development Department
Dispur, Guwahati

No. CPRD.1/92/285

Dtd. Dispur, ~~the~~ August 6, 1994

From C.K. Das,
Commissioner & Secy, Govt. of Assam,
Panchayat & Rural Development Department,
Dispur, Guwahati 781 006.

To The Secretary to the Govt. of India,
Ministry of Personnel, Pension & Public Grievances,
Department of Personnel and Training,
North Block Secretariat,
New Delhi 110001.

(Through Chief Secretary, Assam, Dispur)

Sub. Representation regarding empanelment as
Joint Secretary to the Govt. of India.

Ref. Our letter No. CPRD.1/92/253 dtd. 29.06.94.

Sir,

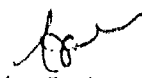
In continuation of the above mentioned representation, I am enclosing herewith a copy of the judgment delivered on 01.08.94 in OA No.47/93 by the Guwahati Bench of the Central Administrative Tribunal. Your kind attention is drawn to the para 18 of the judgment where-in the Tribunal has expunged the adverse remarks in ACR of the undersigned for the year 1990-91 conveyed by Government of Assam's letter No. AAI 78/88/40 dated 29.10.91.

I would, therefore, request you kindly to treat the ACR of 1990-91 at par with the ACR of the previous year i.e. 1989-90 or with the ACRs of the previous five years. Alternatively, the ACR of 1990-91 may kindly be treated as no ACR and ACR of the first 15 years of service instead of 16 years may kindly be taken into consideration for assessing my suitability for empanelment for the post of Joint Secretary to the Govt. of India.

The same recording authority might have recorded my ACRs for the subsequent years after 1990-91 i.e. for the years 1991-92 and 1992-93. At the time of the first review, normally done after two years, my case, in my humble opinion, may not appear to be in any stronger position.

Therefore, I would request your honour kindly to assess my suitability for empanelment for the post of the level of Joint Secretary in the Govt. of India by taking into consideration my ACRs upto 1989-90 only. A review for my case may kindly be ordered urgently so that equity and justice is allowed in my case.

Yours faithfully,



(C. K. DAS)

Encl: as stated above.

*Affected
D.K. Das*

Dated Dispur, the 6th September, 1995

From C. K. Das,
Commissioner & Secretary, Govt. of Assam,
Revenue, Relief & Rehabilitation Deptt.,
Dispur, Guwahati 781006.

To Secretary to the Govt. of India,
Ministry of Personnel Pension & Public Grievances,
Department of Personnel,
North Block, New Delhi 110001.

Sub. Representation regarding empanelment as
Joint Secretary, Govt. of India.

Ref. Our letter No.CPRD.1/92/253 dtd. 29.6.94 and
No.CPRD.1/92/285 dtd. 6.8.94.

Sir,

In continuation of the above mentioned representations (copies enclosed) I am enclosing herewith copies of Govt. of Assam's letter No. AAI 78/88/47 dtd. 7.8.95 expunging the adverse remarks recorded in the Annual Confidential Report of the undersigned for the period from 1.4.90 to 12.11.90 and from 28.11.90 to 31.3.91.

The grievances of the undersigned have been stated in details already in the enclosed representations. The Govt. of Assam has now expunged the adverse remarks recorded in my ACR for the year 1990-91.

Presumably due to the adverse remarks made in my ACR for 1990-91 I was not empanelled for the post of Joint Secretary to the Govt. of India. When the undersigned approached the Central Administrative Tribunal, the Tribunal in its judgement dated 1.8.94 (copy enclosed) ordered expunging of the adverse remarks as according to the Tribunal the adverse remarks were recorded by the reporting authority out of malice, bias and malafide. The State Government has filed an SLP in the Supreme Court against the judgment of

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*As per letter
dated 12.11.90*

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the Central Administrative Tribunal. But as the Supreme Court has not passed any stay order on the operation of the judgment of the CAT the State Government has expunged the adverse remarks from the ACR.

The same reporting authority who made adverse entries in my ACR for 1990-91 recorded my ACRs for the next three years i.e. 1991-92, 1992-93 and 1993-94. In view of the observations made by the CAT in its judgment mentioned above, I apprehend that my ACRs for the years 1991-92, 1992-93 and 1993-94 may not reflect the actual performance of mine and my grading may simply be not better than "good". Therefore, if my case for empanelment is taken up along with other cases at the time of normal review my chances of getting empanelment may be reduced as for the years after 1989-90 there may not be any outstanding or very good remark in my ACR. In the first 15 years of my service, i.e. 1975-76 to 1989-90 not a single adverse remark was communicated to me. Throughout my career I have held a series of appointments, details of which has been enclosed herewith, which call for exceptional mental ability, perseverance and capacity to handle crisis situations. From July, 1991 to April 1995 i.e. for almost four years I have worked as Commissioner & Secretary, Panchayat & Rural Development Deptt. in the Govt. of Assam. I believe, the Govt. of Assam sent my ACR for 1990-91 with adverse remarks to Govt. of India though my representation against those adverse remarks was pending for disposal and most probably that ACR was also circulated to the members of the Scrutiny Committee along with the ACRs of the first 15 years. Presence of adverse remarks in that one ACR

contd....3

(3)

might have been the reason for my non-empanelment for the post of Joint Secretary to the Govt. of India.

In view of my submissions made above and in my earlier representations to Govt. of India (copies of which are enclosed herewith) I now request your honour kindly to consider recirculation of my ACRs for first 15 years of service only, if possible; and, if not for the first 16 years to another set of Secretaries for scrutiny/screening so that equity and justice is allowed to prevail in my case.

Yours faithfully,

Encl: as stated above.

AG 1/12/25

(C. K. DAS)
Commissioner & Secretary, Govt. of Assam,
Revenue, Relief & Rehabilitation Deptt.
Assam Secretary, Dispur, Guwahati - 6

No. Revcom. 1/95/22

Dated, November 14, 1995.

From : C.K. Das,
Commissioner & Secretary,
Government of Assam,
Revenue Department,
Dispur, Guwahati-6.

To : Secretary to the Govt. of India,
Ministry of Personnel Public Grievance & Pension,
Department of Personnel and Training,
North Block, New Delhi - 110 001.

(Through Chief Secretary, Assam)

Sub : Representation for empanelment for the Post of
Joint Secretary, Government of India.

Ref : My letters No. (1) CPD. 1/92/253 dt. 29-6-94
(ii) CPD. 1/92/285 dt. 6-8-94
(iii) Nil dt. 6-9-95.

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A-50

Sir,

With reference to above I have the honour to enclose herewith a copy of the Supreme Court's order dated 20-12-95 disposing of the Government of Assam's Special Leave Petition No. 2057 of 1994. The Supreme Court has inter alia upheld the order dated 1-8-94 of the Central Administrative Tribunal, Guwahati Bench, expunging the adverse remarks made in the ACR of the undersigned for the year 1990-91.

I therefore request your honour kindly to dispose of my representations at an early date for which I shall remain ever grateful.

Yours faithfully,

C.K. Das

(C.K. Das)

Commissioner & Secretary, Govt. of Assam,
Revenue/Relief & Rehabilitation Deptt.

Dated, November 14, 1995

Enclos: As stated above.

Memo No. Revcom. 1/95/22(A)
Copy to:

Chief Secretary, Assam, Dispur. A copy of the judgement of the Hon'ble Supreme Court (SLP 20572/94) is enclosed herewith.

(Copy addressed to Secy, 209)

Enclos: As stated above.

(C.K. Das)

Commissioner & Secretary, Govt. of Assam,
Revenue/Relief & Rehabilitation Deptt.

...

*Actual
sent file*

Filed in Court
on... 30-8-96...
Court Master

39

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Filed by:-
A.K. Chaudhuri
Addl. Central Govt.
Standing Counsel
30.8.96

O.A. No.65/96

IN THE MATTER OF

Chandra Kanta Das ... Applicant

Versus

The State of Assam & others ... Respondents.

I N D E X

<u>S.No.</u>	<u>Subject</u>	<u>Page No.</u>
1.	Counter Reply on behalf of the Union of India (Respondent No.1)	1-6
2.	Brouchure on Central Staffing Scheme. (Annexure R-1)	7

A.K. Chaudhuri

(Anup Kumar Chaudhuri)
Addl. Central Government Standing Counsel

Received copy
Paul Pelt
30-8-96

Recd
M. S. A. Accn
30/8/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

O.A. NO.65/96

IN THE MATTER OF

Chandra Kanta Das ... Applicant

Versus

The State of Assam & others ... Respondents.

COUNTER REPLY ON BEHALF OF THE UNION OF
INDIA (RESPONDENT NO.1).

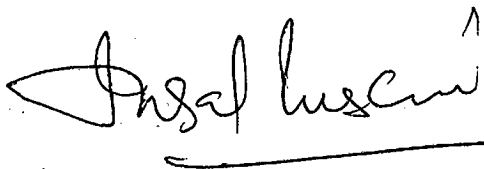
MOST RESPECTFULLY SHEWETH:

I, Jugal Kishore, aged 46 years, son of Shri Harbans Lal, presently working as Desk Officer in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, North Block, New Delhi, solemnly affirm and state as under:-

A. That the deponent is a Desk Officer in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, and has been authorised to file the counter reply on behalf of the Union of India i.e. Respondent No.1. The deponent is also fully acquainted with the facts of the case deposed below.

B. That the deponent has read and understood the contents of the claim application filed by the applicant and in reply thereto, he submits as under:-

(i) Before coming to the para-wise reply to the application filed by the applicant, the answering Respondent crave leave to submit that the posts covered by the Central Staffing Scheme are not reserved for members of any particular Service, including IAS, nor are these posts included in the cadres of any Services. Under the provisions of the Central Staffing Scheme, a 'Suitability List' (known as the panel) of all eligible officers from the All India Services and the Group 'A' Central Services, participating in the Central Staffing Scheme, is drawn on an annual basis for



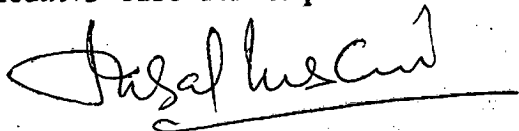
.../-

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Filed by
A.K. Choudhary
Addl. Counsel
30/1/96

making appointment to the posts of Joint Secretary or equivalent in the Government of India. This Suitability List for Joint Secretary and equivalent posts is prepared by the Civil Services Board and in this task the Civil Services Board is assisted by a Screening Committee of Secretaries. The Suitability List approved by the Appointments Committee of the Cabinet, on the recommendations of the Civil Services Board is utilised for making appointments to posts of Joint Secretary and equivalent under the Government of India. It is further submitted that inclusion in the Joint Secretary's Suitability List would not confer any right to such appointments under the Government of India. It is also respectfully submitted that inclusion in the panel of Joint Secretary, i.e. the Suitability List, adjudged suitable for appointment as Joint Secretary or equivalent would be through a process of selection based on the criteria of merit and competence as evaluated by the senior members of the Committee/Board on the basis of the CR dossiers. It would thus be seen that appointments to the posts of Joint Secretary and equivalent to the Government of India can be made from amongst officers of various Organised Services participating in the Central Staffing Scheme, who are empanelled to hold posts at the level of Joint Secretary and equivalent, after following the prescribed procedure laid down in the Central Staffing Scheme. A copy of the latest Brouchure on the Central Staffing Scheme is annexed and marked as 'Annexure R-I'. Clauses 6 to 13 of the Central Staffing Scheme are relevant in order to take an objective view on the application filed by the applicant before the Hon'ble Tribunal.

(ii) In November, 1993, the case of the applicant for empanelment to hold posts at the level of Joint Secretary/equivalent in the Government of India was considered along with other eligible IAS Officers of the 1975 batch. However, the applicant was not recommended for empanelment to hold posts at the level of Joint Secretary/equivalent at the Centre by the competent authority. At the same time, the competent authority took note of the fact that the Hon'ble Tribunal, Gauwahati Bench, had directed consideration of his case for empanelment without reference to his adverse remarks for the years 1990-91 and 1992. Having regard to the overall performance of the officer after excluding the disputed remarks from consideration, the competent authority of the view that the applicant's case for empanelment would need further examination.

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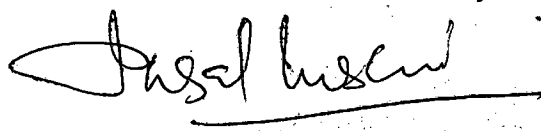
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(iii) Clause 11 of the Central Staffing Scheme provides that a special review may be made in the case of any officer whose CR undergoes a material change as a result of his representation being accepted against recording of adverse comments on his annual confidential report. Keeping this in view and considering that the adverse report of the applicant for the period 1990-91 has been expunged (as confirmed by the Supreme Court), it has now been decided /a special review for the initial empanelment of the applicant may be undertaken. Accordingly, the applicant's case for empanelment to hold posts at the level of Joint Secretary/equivalent at the Centre, in special review for his initial empanelment, is already in progress and a decision will be taken after following the procedure laid down in the Central Staffing Scheme.

PARAWISE REPLY

1. Para 1 needs no reply.
2. Para 2 needs no reply.
3. Para 3 needs no reply so far as this answering respondent is concerned. It is for the respondent No.2 to make necessary submissions in this regard.
4. Para 4 needs no reply as it relates to the jurisdiction of the Hon'ble Tribunal.
5. With reference to para 5 of the application, the answering respondent respectfully submits that the representations of the applicant dated 29.6.1994, 6.8.1994, 6.9.95, could not be considered as the matter was already before the Hon'ble Supreme Court in the Special Leave Petitions filed by the Respondent No.2. However, so far as the period of limitation is concerned, it is for the applicant to prove the veracity of the same.
- 6.1 Para 6.1 of the application is statement of facts/presumptions of the applicant for which he is to prove the veracity of the same. Hence, the answering respondent has no submissions to make in this behalf.
- 6.2 With reference to the averments made in para 6.2, it is for the respondent No.2 to make necessary submissions in this behalf.
- 6.3 With reference to averments made in para 6.3, it is for the respondent No.2 to make necessary submissions in this behalf.
- 6.4 With reference to averments made in para 6.4, it is for the respondent No.2 to make necessary submissions in this behalf.



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6.5 With reference to the averments made in para 6.5, it is for the respondent No.2 to make necessary submissions in this behalf.

6.6 With reference to averments made in para 6.6, it is for the respondent No.2 to make necessary submissions in this behalf.

6.7 With reference to averments made in para 6.7, it is for the respondent No.2 to make necessary submissions in this behalf.

6.8 With reference to averments made in para 6.8, it is for the respondent No.2 to make necessary submissions in this regard.

6.9 With reference to averments made in para 6.9, it is for the respondent No.2 to make necessary submissions in this behalf.

6.10 With reference to averments made in para 6.10, it is for the respondent No.2 to make necessary submissions in this behalf.

6.11 With reference to averments made in para 6.11, it is for the respondent No.2 to make necessary submissions in this behalf.

6.12 With reference to averments made in para 6.12, it is for the respondent No.2 to make necessary submissions in this behalf.

6.13 With reference to averments made in para 6.13, it is for the respondent No.2 to make necessary submissions in this behalf.

6.14 With reference to averments made in para 6.14, it is for the respondent No.2 to make necessary submissions in this behalf.

6.15 With reference to averments made in para 6.15, it is for the respondent No.2 to make necessary submissions in this behalf.

6.16 With reference to averments made in para 6.16, it is for the respondent No.2 to make necessary submissions in this behalf.

6.17 With reference to averments made in para 6.17, it is for the respondent No.2 to make necessary submissions in this behalf. However, so far as the empanelment aspect of the applicant is concerned, the answering respondent crave leave to refer to the submissions made in para B (ii) & (iii) hereinabove.

6.18 With reference to averments made in para 6.18 above, it is for the respondent No.2 to make necessary submissions in this behalf.

6.19 With reference to para 6.19, it is for the respondent No.2 to make necessary submissions in this behalf.

Prasanna Kumar

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6.20 With reference to averments made in para 6.20, it is for the respondent No.2 to make necessary submissions in this behalf.

6.21 With reference to para 6.21, it is for the respondent No.2 to make necessary submissions in this behalf.

6.22 With reference to averments made in para 6.22, it is for the respondent No.2 to make necessary submissions in this behalf.

6.23 With reference to averments made in para 6.23, it is for the respondent No.2 to make necessary submissions in this behalf.

6.24 With reference to averments made in para 6.24, it is for the respondent No.2 to make necessary submissions in this behalf.

6.25 With reference to averments made in para 6.25, it is for the respondent No.2 to make necessary submissions in this behalf.

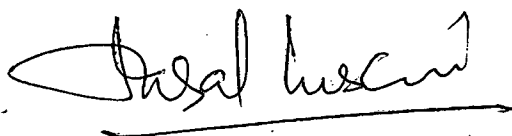
6.26 Para 6.26 needs no reply and the averments made in this para are the assumptions of the applicant and it is for him to prove the veracity of the same. It is, however, presumed that the respondent No.2 would be making necessary submissions in this behalf.

6.27 With reference to averments made in para 6.27, the answering respondent crave leave to refer to the submissions made in para B(i) to (iii) and 5 hereinabove.

6.28 With reference to averments made in para 6.28, the answering respondent crave leave to refer to the submissions made in para B(i) to (iii) above. It is, however, presumed that the respondent No.2 would be making necessary submissions on rest of the averments made in this para.

6.29 The averments made in this para needs no reply and these are the apprehensions of the applicant.

6.30 With reference to the averments made in para 6.30, the answering respondent crave leave to submit that since a decision has already been taken to consider the applicant's case for empanelment to hold posts at the Centre, in special review for his initial empanelment, in accordance with Clause 11 of the Central Staffing Scheme and the matter is already in progress, the contentions raised by the applicant in this para are not tenable.



6.31 With reference to the averments made in para 6.31, the answering respondent respectfully submit that since the adverse report of the applicant for the year 1990-91 has already been expunged and in pursuance of the Clause 11 of the Central Staffing Scheme, the case of the applicant for special review for his initial assessment is already in progress, the contentions raised by the applicant are not tenable.

7. With reference to averments made in para 7, the answering respondent respectfully submit that, as already submitted in reply to para 5 above, the representations made by the applicant could not be considered as the matter was already before the Hon'ble Supreme Court in the Special Leave Petitions filed by the Respondent No.2.

8. Para 8 of the application needs no reply as it is for the applicant to prove the veracity of the same.

9. With reference to relief sought in para 9 of the application, the answering respondent respectfully submit that the case of applicant for special review for his initial assessment by taking into consideration his ACRs upto the period 1990-91, is already in progress. In view of this, the applicant is not entitled to any relief sought for in this para.

10. In view of the submissions made hereinabove, the applicant is not entitled to any interim relief, as prayed by the applicant in para 10 of the application.

11. Para 11 of the application need not reply.

12. In view of the submissions made hereinabove, the application filed by the applicant deserves to be dismissed. The answering respondent so prays for it.


D E P O N E N T

VERIFICATION:

I, the deponent named above, solemnly affirm and verify that the contents of the above counter reply are based on the official records, which I believe to be true. Legal submissions made therein are true upon legal advice received and believed to be correct. No part of it is false and nothing material has been concealed.

Verified at New Delhi on the 26 day of August, 1996.


D E P O N E N T

Through


(Anup Kumar Chaudhuri)

Addl. Central Govt. Standing Counsel.

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THE CENTRAL STAFFING SCHEME



**GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL & TRAINING)
NEW DELHI**

JANUARY, 1996

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NO.36/77/94-EO(SM-I)
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
DEPARTMENT OF PERSONNEL AND TRAINING

New Delhi - 110 001, the 5th January, 1996.

OFFICE MEMORANDUM

Subject : Central Staffing Scheme - Procedure for selection and appointment of officers to Secretarial posts of and above the rank of Under Secretary to the Government of India and to certain important non-Secretariat posts.

The basic circular on the above subject was issued vide Department of Personnel (Cabinet Secretariat) O.M.NO.33(1)-EO/70 OF 27th October, 1970. Further instructions amending the circular were issued from time to time as approved by Government. All these instructions in force have been reviewed and consolidated, and I have been directed to communicate the following for the information and guidance of all concerned, in supersession of all relevant orders on the subject.

THE APPOINTMENTS COMMITTEE OF THE CABINET

2. The Cabinet Committee on Appointment (known as the ACC), constituted under rule 6(1) of the Government of India (Transaction of Business) Rules, 1961 has the following functions:

- (i) to consider all recommendations and take decisions in respect of appointments specified in Annexure-I to the First Schedule to Government of India (Transaction of Business) Rules, 1961;
- (ii) to consider all recommendations and take decisions in respect of the empanelments specified in Annexure-II to the First Schedule to the Government of India (Transaction of Business) Rules, 1961;
- (iii) to decide all cases of disagreement relating to appointment between the Department or Ministry concerned and the Union Public Service Commission;
- (iv) to decide all cases of disagreement relating to appointments to Board-level positions in the public sector enterprises between the Department or Ministry concerned and the Public Enterprises Selection Board; and
- (v) to consider and decide representations from officers of the rank of Joint Secretary or equivalent and above against adverse remarks in their annual confidential reports.

The functions, in brief, include the power to take decisions on recommendations relating to Secretarial appointment of and above the rank of Deputy Secretary in the Central Government and on proposals for the empanelment of officers of different services covered by the Central Staffing Scheme in the list of officers prepared for making appointments to posts at level of Joint Secretary and above in the Central Government.

THE CENTRAL STAFFING SCHEME:

3. The Central Staffing Scheme has been in operation now for over 30 years. It provides a systematic arrangement for the selection and appointment of officers to senior administrative posts at Centre, excluding posts which are specifically encadred within the organised Group 'A' services or filled by recruitment through the Union Public Service Commission. Some posts of Deputy Secretary and Under Secretary under the Central Government are shown as numbers, without specifying individual posts, in the cadre strength of the Central Secretariat Service. These posts are filled in accordance with the rules of the CSS, and when so filled, stand outside the Central Staffing Scheme. Appointments to all other posts of the rank of Under Secretary and above in the Government of India are filled under the Central Staffing Scheme, by borrowing officer from the All India Services and participating Group 'A' services; the cardinal principle being that all officers who are so borrowed will serve the Government of India for a stipulated tenure on deputation and, thereafter, return to their parent cadre. Their growth, development and career prospects will be mainly in their own Service.

4. The raison d'etre of such a scheme is the Centre's need for fresh inputs at senior levels in policy planning, formulation of policy and implementation of programmes from diverse sources, viz., the All-India Services and the participating organised Group 'A' Services. The services of scientific and technical personnel and professionals in the fields of economics, statistics, law and medicine are, similarly, obtained from officers serving for specified periods on deputation and who return to their respective cadres at the end of tenure. This two-way movement is of mutual benefit to the service cadres and the Government of India.

5. The scope of the Central Staffing Scheme is bound by the following parameters:-

- (i) All posts of the rank of Under Secretary and above in the Government of India may be filled on tenure deputation from the all-India Services and the participating Group 'A' Services of the Central Government, excluding such posts of Under Secretary and Deputy Secretary as are filled by CSS officers.
- (ii) In so far as the officers from the Central Secretariat Services (CSS) are concerned, a specified number of posts at the levels of Under Secretary and Deputy Secretary will be treated as part of their Cadre and posts over and above these will be filled under the Central Staffing Scheme.

- (iii) In terms of the provisions of article 312 of the Constitution, the Indian Administrative Service, the Indian Police Service and the Indian Forest Service are all-India Services common to the Union and the States. Every State cadre of each of these Services provides for a central deputation quota which in turn requires additional recruitment to be made to these Services to provide for trained and experienced members of these services to serve on posts in the Central Government. Accordingly, utilisation of the central deputation quota of different State Cadres is an important factor governing the scale at which officers are borrowed from the various State cadres of these all-India Services. However, no post so filled by a member of any all-India Service on tenure deputation can be deemed to be a cadre post of that Service. Similarly, no individual member of an all-India Service can claim any right to a post or appointment under the Government of India on this ground.

6. The eligibility of officers for holding posts of the level of Under Secretary and above is as given below:-

Level	Years of Service in Group 'A'	Remarks
(1)	(2)	(3)
Under Secretary	5	Officers should be drawing a basic pay of Rs. 2600/- or more.
Deputy Secretary	9	Officers should be drawing a basic pay of Rs. 3200/- or more in the senior time-scale of service.
Director	14	Officers should be drawing at least Rs. 4000/- basic pay in the pay scale of Rs. 3700-5000. Officers belonging to the Central Secretariat Service Cadre should have atleast five years of service in the Selection Grade of CSS (i.e. at level of Deputy Secretary) for being eligible to hold posts of the level of Director under the Central Staffing Scheme.

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Joint Secretary

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Officers should be drawing pay in the scale of Rs.5900-6700 in their respective parent cadre/service OR where an officer is on deputation, he should be on the panel approved by the ACC for the scale of Rs. 5900-6700 in that service/cadre and an officer junior to him on that panel should have been appointed to a post in the scale of pay of Rs. 5900-6700 in that service/cadre. For the All India Services, appointment of at least one officer of the Service of any State Cadre in the scale of Rs. 5900-6700 would be a pre-condition for consideration of the officers of a particular year of allotment.

Officers belonging to the Central Secretariat Service should have eight years of service in the Selection Grade and should have been assessed suitable for the post of Director for a minimum continuous period of three years for being eligible to hold posts of the level of the Joint Secretary under the Central Staffing Scheme.

Additional Secretary 25

Seven years of service in the scale of Rs. 5900-6700 in the parent cadre or service and a minimum of two years of service left for retirement, for all officers other than the Central Secretariat Service. Provided that in respect of officers who had been appointed to the scale of Rs. 2500-2750 (pre-IV Pay Commission) or were included in the panel approved for appointment to posts in the scale of Rs. 2500-2750 under the Central Staffing Scheme on or

before 31.12.1985, a period of 3 years of service in this or equivalent revised scale would be sufficient.

Three years of service in the scale of Rs. 5900-6700 and a minimum of 2 years of service left for retirement in respect of Central Secretariat Service officers.

Secretary

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Minimum of two years of service in a post carrying a basic pay of Rs. 7300 or above. (Note: In the case of All-India Service officers who stand allocated to different cadres, eligibility criteria will apply to the entire batch as soon as one officer of the batch has put in the required 2 years of service on a post carrying basic pay of Rs. 7300/-P.M.)

Stringent criteria of selection would apply to members of all the services.

Empanelment for Senior Management Posts:

7. It has been the practice to draw a suitability list (known as panel) of eligible officers from the All-India Services and Group 'A' Services participating in the Central Staffing Scheme. This exercise is normally conducted on an annual basis, considering officers with the same year of allotment together as one group.

8. At the level of posts of Joint Secretary and equivalent, the Civil Services Board finalises the panel for submission to the ACC. In this work, the Civil Services Board may be assisted by a Screening Committee of Secretaries.

9. The panel approved by the ACC on the recommendation of the Civil Services Board will be utilised for making appointments to posts under the Government of India, but inclusion in the panel would not confer any right to such appointment under the Centre.

10. The cases of such officers who were not included in any panel in a particular year would be reviewed together after a period of two years i.e. when two more annual confidential reports on their performance have been added to their CR dossiers. Another such review may be conducted after a further period of two years.

11. A special review may be made in the case of any officer whose CR undergoes a material change as a result of his representation being accepted against recording of adverse comments on his annual confidential report.

12. The Cadre Controlling authorities would be informed of the names of officers under their administrative control as and when they are included in the panel finalised with the ACC approval.

13. Inclusion in the panel of officers adjudged suitable for appointment as Joint Secretary or equivalent would be a process of selection based on the criteria of merit and competence as evaluated by the senior members of the Committee/Board on the basis of the CR dossiers.

ADDITIONAL SECRETARY/SPECIAL SECRETARY/SECRETARY

14. Selection for inclusion on the panel of officers adjudged suitable for appointment to the posts of Additional Secretary or Special Secretary/Secretary to the Government of India and posts equivalent thereto, will be approved by the ACC on the basis of proposals submitted by the Cabinet Secretary. In this task, the Cabinet Secretary may be assisted by a Special Committee of Secretaries for drawing up proposals for the consideration of ACC. As far as possible, panels of suitable officers will be drawn up on an annual basis considering all officers of a particular year of allotment from one service together as a group. Inclusion in such panels will be through the process of strict selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy-making process. Posts at these levels at the Centre filled according to the Central Staffing Scheme are not to be considered as posts for the betterment of promotion prospects of any service. The needs of the Central Government would be the paramount consideration. While due regard would be given to seniority, filling up of any specific post would be based on merit, competence and the specific suitability of the officer for a particular vacancy in the Central Government.

15. The panels for posts at these levels would be kept with the Cabinet Secretary.

Officers Returning from Foreign Assignment:

16. An officer who is or was on a foreign assignment for a period of two years or more will be considered for empanelment at the level of Joint Secretary only if on return from such an assignment he has served for a period of at least two years in his cadre and has earned two annual confidential reports thereon. Similarly, such an officer will be considered for empanelment at the levels of Additional Secretary/Secretary after he has served for a period of one year in his cadre and has earned one annual confidential report.

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Tenure:

17.01 The fixed tenure of deputation of posting under the Central Government is the heart of the Central Staffing Scheme. Rotation between the Centre and the States, Central Ministries and parent cadres, and headquarters and the field, provide a certain degree of pragmatism to policy formulation and programme implementation from the Central Ministries. Based on the experience gained so far, the periods of tenure at the different levels have been prescribed as under:-

Under Secretary	:	3 years
Deputy Secretary	:	4 years
Director	:	5 years
Joint Secretary	:	5 years

17.02 An officer holding the post of Joint Secretary or equivalent, when appointed to a post under the Government of India at the level of Additional Secretary, would have a tenure of 3 years from the date of appointment as Additional Secretary subject to a minimum of 5 years and maximum of 7 years of combined tenure as Joint Secretary/Additional Secretary. Where an officer remains on leave (either from the Centre or from his Cadre authority or both) on the expiry of his tenure as Joint Secretary till his appointment as Additional Secretary, the leave period shall be counted as tenure deputation.

Additional Secretary	:	4 years, except for cases covered under the previous heading.
Secretary	:	No fixed tenure.

17.03 Every officer shall revert at the end of his tenure as indicated above on the exact date of his completing his tenure. He will, however, have a choice to revert to his cadre on the 31st May previous to the date of the end of his tenure in case personal grounds such as children's education etc., necessitate such reversion. No extension after completion of the full tenure would be allowed.

17.04 The period of training abroad undergone by officers, who were deputed while working in Government of India under Central Staffing Scheme, will not be excluded for the purpose of calculating the tenure at the Centre.

17.05 In cases of officers who underwent training in India the complete period of training will be excluded for the purpose of calculating tenure at the Centre in the following cases :

- (i) Training at the National Defence College, New Delhi.
- (ii) Training at the Defence Services Staff College, Wellington.

- (iii) Training at the Management Development Institute Gurgaon for the National Management Programme.
- (iv) Training at the Institute of Public Administration, New Delhi for the APPA course (only for the first tenure at the Centre). If the selection for the APPA course is towards the end of the first tenure, the officer will get extension of tenure till the end of the course.
- (v) For an officer selected for the Jawahar Lal Nehru Fellowship, only half the period spent on the Fellowship will be counted towards central tenure.

17.06 Officers at the level of Additional Secretary and Joint Secretary having one year or less for superannuation at the end of their Central tenure need not be reverted to their parent cadres and they can be given extension of tenure till they superannuate; provided that an Additional Secretary level officer is not empanelled for the post of Secretary.

17.07 An officer who has served in the following Institutions/Posts for atleast three years will be permitted to count half the period spent in that post towards his central deputation tenure.

- (i) Postings at the Lal Bahadur Shastri National Academy of Administration, Mussoorie.
- (ii) Development Commissioner and Jt. Development Commissioner Kandla Free Trade Zone, Kandla.
- (iii) Planning Advisor, North Eastern Council, Shillong.
- (iv) Advisor (Rural Development), North Eastern Council, Shillong.
- (v) Finance Advisor, Brahmaputra Board, Guwahati.
- (vi) Commissioner (payments), Dhanbad.

17.08 Officers left with a balance tenure of less than a year on return from posting abroad or foreign service shall be reverted by the Establishment Officer to their parent cadres.

17.09 An officer of the Central Secretariat Service will be transferred out of his Ministry/Department at the time of his promotion at each level above Under Secretary, irrespective of the number of years spent by him in that Department at the time of the promotion. (Rotation Policy)

17.10 An officer of Central Secretariat Service will not be attracted by the 'Rotation Policy' if he has less than three years of service left to superannuate from the time his name is included in the Suitability List or Select List.

17.11 Orders for premature reversion to their respective cadres of officers serving under the Central Staffing Scheme may be issued :-

- (a) By the Establishment Officer in cases where the officers want to avail the benefit of promotion in their cadres;
- (b) By the Establishment Officer, with the approval of the Cabinet Secretary, in cases of compassionate/personal grounds where the officer has a balance tenure of six months or less left.

The powers being delegated to the Establishment Officer/Cabinet Secretary will not extend to officers who constitute the "hard core" in organisations like the IB.

- 17.12
- (a) Officers of the Indian Foreign Service appointed to posts under the Central Staffing Scheme would have a tenure of three years.
 - (b) They shall not normally be relieved, except with the approval of the appointments Committee of the Cabinet from a Central Staffing Scheme post before their tenure.

17.13 No lateral shifts of officers from one Ministry/Deptt. to another will normally be considered. However, in the case of Private Secretary to Ministers the policy followed would be :-

- (a) The redeployment of a Private Secretary in the same Ministry/Department as Deputy Secretary or Director is discouraged.
- (b) The Private Secretary (to Minister) who has been empanelled for holding post of Joint Secretary at the Centre should also not be considered for relocation in the same Ministry/Deptt. and the officer should be posted to some other Ministry/Deptt.

Intervals Between Postings on Deputations to the Centre:

18.1 An officer will be considered for deputation to the Central Government on the posts of Under Secretary, Deputy Secretary, Director or Joint Secretary only if he has rendered 3 years service, prior to the proposed date of his appointment at the Centre, in the State Government/Union Territory Administration or in his parent cadre. In the case of All-India Service cadres pertaining exclusively to States in the North-East, namely Assam-Meghalaya, Manipur-Tripura and Nagaland and J & K, the prescribed interval, also known as cooling off period, will be 2 years. For appointments at the level of Additional Secretary to the Government of India or equivalent, the period of cooling off will be one year. No such restriction would apply for appointment to posts at the level of Secretary to the Government of India or equivalent.

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COMPULSORY WAITING

18.2 Where an officer is to be appointed to a post different from the one held previously on account of return from training, or abolition of post etc. he/she shall continue to be borne on the establishments of the organisation in which he/she previously held the post and his/her pay and allowances shall be met by that organisation, till such time he/she assumes charge of a new post. The services of such an officer during the period of his/her compulsory wait can be utilised by the Establishment Officer or by the organisation concerned with the approval of the Establishment Officer, for any specific assignment.

19.1 Any leave taken by the officer on completion of tenure on deputation at the Centre from the Central Government will not be counted towards cooling off period. In other words, this period will be reckoned from the date the officer reports for duty to the State Government, Union Territory Administration or Cadre authority.

19.2 Officers posted as Resident Commissioners, or against similar posts of the State Government in Delhi w.e.f 4/10/93 would get lower weightage when the Central Government considers their names for Central Deputation.

19.3 (a) An officer will ordinarily be debarred for further Central deputation for a 5 years period, if he fails to take up an assignment in pursuance of an order of the Appointments Committee of the Cabinet (ACC) and the cadre authority/State Govt. have not requested for withdrawal of the name from offer list before his name was approved by the CSB for a placement.

(b) The State Govts./Cadre authorities may withdraw an officer from the offer list without rendering him liable to debarment, provided he has not been approved by CSB for a placement; if the request of withdrawal is received after CSB approves an officer for appointment, then he would be liable to be debarred.

(c) A representation against debarment will be considered and decided by the Minister of State and Union Cabinet Minister for Personnel after taking into consideration the views of CSB.

Institutional arrangements:

20. For staffing posts of the rank of Deputy Secretary, Director and Joint Secretary or equivalent, the Appointments Committee of the Cabinet shall be assisted and advised by the Civil Services Board and the Central Establishment Board constituted therefor. The constitution and functions of these Boards are as detailed below:-

The Civil Services Board:

The Civil Services Board shall consist of:-

- (a) Cabinet Secretary : Chairman (ex-officio)
- (b) Secretary (Personnel) : Member (ex-officio)
- (c) One Secretary to the : Member
Government of India
(to be appointed for a year
at a time)
- (d) Establishment Officer : Member-Secretary (ex-officio)
- (e) Secretary of the : Co-opted Member
Administrative
Ministry/Department concerned.

Functions:

It shall be the duty of the Board:-

- (a) to make recommendations, having regard to the merits and eligibility for consideration and availability of officers in the field of choice:
- (i) for appointments to posts of Deputy Secretary, Director and Joint Secretary under the Central Staffing Scheme;
- (ii) for appointment to other non-Secretariat posts which carry a pay scale, the maximum of which is not less than Rs. 5300, but not exceeding Rs. 7300/- when it is proposed to appoint officers of the All-India Services/Central Secretariat Service or those belonging to any of the Services which normally offer officers for manning posts at these levels; (This would include posts in the Public Sector Undertakings except posts filled through the Public Enterprises Selection Board. Cadre posts to which appointments are to be made only from among officers of the concerned cadres are not under the purview of the Board);

to consider and make recommendations on proposals for extension beyond the normal tenure of officers at the level of Joint Secretary on Central deputation and foreign assignment of officers of the rank of Joint Secretary/equivalent and above;

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- (c) to consider and make recommendations to the Appointments Committee of the Cabinet in respect of such cases of premature retirement under rule 16(3) of the All India Services (DCRB) Rules, FR 56(j) or article 459(h) of the Civil Services Regulations as fall within the purview of the Board;
 - (d) to consider the assessment made by the Screening Committee and to make recommendations thereon to the ACC for inclusion of officers in the Joint Secretaries' suitability list; and
 - (e) to advise the Department of Personnel and Training on matters specifically referred to the Board by that Department.

The Civil Services Board shall not, however, be concerned with the recommendations for-

- (i) appointment of members of Indian Foreign Service to posts included in the Foreign Service Cadre which are made on the recommendations of the Foreign Service Board;
- (ii) appointment to posts under the control of the Ministry of Railways which are made on the advice of the Railway Board; and
- (iii) appointments to posts under the control of the Ministry of Defence other than civil posts which are made on the advice of the Services Selection Board or other specified authorities.

The Central Establishment Board:

The Central Establishment Board shall consist of

- | | | | |
|-----|--|---|-------------------------------|
| (a) | Secretary(Personnel) | : | Chairman (ex-officio) |
| (b) | Three Secretaries to the Government of India
(By rotation, for a period of one calendar year) | : | Members |
| (c) | Establishment Officer | : | Member-Secretary (ex-officio) |

Functions

It shall be the duty of the Board-

- (a) to make recommendations for selection for deputation on fellowship training such of the cases as are referred to it by the Government;
- (b) to make recommendations on cases of extension of tenure or foreign assignment cases beyond normally stipulated period as laid down by policy in respect of officers below the rank of Joint Secretary;

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- (c) to make assessment of Central Secretariat Service officers for appointment to the posts of Deputy Secretary and Director in the Ministries/Departments;
 - (d) to consider premature retirement under relevant rules in respect of officers below the rank of Joint Secretary; and
 - (e) to advise the Department of Personnel and Training on matters specifically referred to the Board by that Department.

Procedure for filling Vacancies:

Joint Secretary/Director/Deputy Secretary & equivalent:

21. An important function of the Civil Services Board is to furnish panels of suitable names to the concerned Ministries/Departments for filling the vacancies of Joint Secretary/Director and Deputy Secretary. The procedure for the purpose would be as follows:-
- (i) All vacancies, actual or impending within the purview of the respective Boards shall be expeditiously reported by the Ministry/Department concerned to the Establishment Officer to the Government of India with full details as to the nature and duration of the vacancy, a detailed description of the specific qualifications required, and special qualifications, experience etc., if any, needed in the incumbent. It will be open to the Ministries and departments to indicate at the same time the names of any particular officer or officers whose claims and suitability they wish the respective Boards or the Appointments Committee to consider.
 - (ii) The Establishment Officer, acting on behalf of the Boards shall offer a panel of three names for each vacancy, keeping in view the educational qualifications, service, experience and special training required for effective performance of the job and suggestions of the Ministry/Department as to the field of consideration of persons for the job.

Provided that where a sufficient number of officers possessing the qualifications and experience necessary for the particular post is not actually available, the Establishment Officer may reduce the number of officers so included in the offer list to two or even one.
 - (iii) The Board taking into consideration the offer list will finalise the panel in order of preference for each vacancy of Joint Secretary/Director/Deputy Secretary having regard to the job description, suitability of the candidates, cadre profile, fair representation for women, representation of various organised services, equitable opportunities to officers on the offer list and other relevant

factors. Where a sufficient number of officers possessing the qualifications and experience necessary for a particular post is not actually available, the Board may reduce the number of officers so included in the panel to two or even one.

- (iv) For posts at the level of Joint Secretary, the field of choice will be restricted to officers who are already screened and found suitable to hold posts at this level in accordance with the prescribed procedure.
- (v) The approved list shall be forwarded for submission to the Minister-in-charge for his selection. This should normally be completed within 7 days of the receipt of the panel or, if the Minister is on tour, then within 7 days of his return from tour.
- (vi) In considering the names suggested, every effort should be made by the Ministers to confine the final selection for the vacancy from among the names on the panel, and if any particular case, the names on the panel, are not acceptable, the Ministry concerned will inform the Establishment Officer of the detailed reasons as to why each officer suggested is not considered suitable.
- (vii) The Establishment Officer, may then suggest another panel of names to the Ministry/Department for its consideration and approval of the Civil Services Board.
- (viii) The Establishment Officer will present all relevant material together with his own recommendations, if any, for the consideration of the respective Boards and/or the Appointments Committee of the Cabinet, as the case may be.
- (ix) In all cases which do not require the orders of the Appointments Committee of the Cabinet, final selection shall be made by the Minister concerned on the basis of the recommendations of the respective Boards. All other cases shall be submitted by the Establishment Officer for the final orders of the appointments Committee of the Cabinet.
- (x) (a) Where appointment of IPS/IFS officers is governed by the existing tenure rules under the Central Staffing Scheme, the same would apply.
(b) Where an officer is shifted from a non Central Staffing Scheme post to a post under the Central Staffing Scheme, he/she would normally get a tenure of three years on the second post (subject to an overall ceiling of seven years as in (c) below). In cases where the (unutilised portion) remaining tenure is more than three years, the officer's tenure under the Central Staffing Scheme would be for that period. The same would apply to an officer shifted from a post under the Central Staffing Scheme to a non Central Staffing Scheme post.

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- (c) The maximum continuous tenure on Central Staffing Scheme and non-Central Staffing Scheme posts would be seven years.

21.2 The Civil Service Boards (CSB) shall not be concerned with the recommendations for appointment to the posts at the level of Additional Secretary, Special Secretary or Secretary to the Government of India. In respect of these cases, the Cabinet Secretary shall keep in view the approved suitability lists of officers fit to hold the categories of posts and irrespective of whether the officers are serving in the Government of India or in the States, submit recommendations to the Appointments Committee of the Cabinet.

Upgradation on personal basis:

21.3 Where a Central Sectt. Service officer has less than one year of service to superannuate from the time his name is included in the Suitability List for Directors or the Empanelled List for Joint Secretaries, the post held by him can be upgraded as personal to him to promote him in the same Ministry/Department.

Establishment Officer :

22. An officer of the status of an Additional Secretary to the Government of India in the Department of Personnel and Training shall be designated as the Establishment Officer to the Government of India, and he would be the Secretary to the Appointments Committee of the Cabinet and Member-Secretary of Civil Services Board and the Central Establishment Board.

It shall be his duty inter-alia-

- (i) to receive communications intended for the ACC or the respective Boards and to obtain and communicate their orders to the Ministries/Departments concerned;
- (ii) to keep himself informed of possible or impending vacancies in posts falling within the purview of the ACC or the respective Boards and the availability of officers of the requisite seniority/qualifications and experience for filling such appointments;
- (iii) to keep himself in close touch with the State Governments, the Comptroller & Auditor-General of India and other cadre controlling authorities for the systematic planning and maintenance of supply of suitable officers for manning the deputation posts at the Centre; this will necessarily involve the identification of talent with a view to its development and utilisation;

- (iv) to ensure up-to-date maintenance and proper custody of confidential records of all officers belonging to the IAS and those already appointed or proposed to be appointed to Grade I of the Central Secretariat Service;
- (v) to conduct all correspondence with the State Government, the Comptroller and Auditor-General of India and other cadre controlling authorities or the Ministries concerned in regard to the selection or reversion of officers in connection with the appointments within the purview of the ACC or the respective Boards;
- (vi) to keep himself fully informed of all aspects of senior management (i.e. Joint Secretaries and above and their equivalent) including development of personnel for it;
- (vii) to deal with all matters pertaining to the training and career planning for the IAS and the Central Secretariat Service;
- (viii) to assist in policy formulation for matters relating to training and career planning for the All-India and Central Services; and
- (ix) to maintain liaison with professional institutions in personnel matters.

23. All correspondence between Ministries at the Centre on the one hand and the Comptroller & Auditor-General of India or other Cadre authorities or the State Governments on the other for obtaining the services of officers for appointment at the Centre shall be canalised through the Establishment Officer whenever:-

- (a) the officer whose services are required belongs to an All-India Service or a Central Service Group 'A', a State Civil Service or a State Police Service; or
- (b) the officer is required for a post which is within the purview of the respective Board or the Appointments Committee of the Cabinet.

No Ministry or Department, or autonomous body financed by the Central Government shall obtain or try to obtain the services of officers of an All-India Service or State Service or a Central Service Group 'A' by way of direct correspondence with any State Government or the concerned Cadre Controlling authority.

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24. These instructions do not apply to :-

- (a) statutory appointments to be made by the President of India in accordance with the provisions of the Constitution; or
- (b) appointments of Ambassadors, High Commissioners, Heads of Missions or High Dignitaries under the aegis of the Ministry of External Affairs.

25. Any issue in doubt or dispute regarding the interpretation of these instructions should be referred to the Department of Personnel and Training for decision.

P.V. Jai Krishnan
(P.V. JAIKRISHNAN) 5/1/96

ESTABLISHMENT OFFICER & ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA
DEPARTMENT OF PERSONNEL & TRAINING

To

1. All Ministries/Departments of the Government of India
2. Cabinet Secretariat
3. C & A G.
4. Chairman, U.P.S.C.

Ak Chandler
Ak Chandler
Add. Central Govt.
Standing Counsel