

F.No. 22012/34/2014-AIS (I)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

\*\*\*

New Delhi dated the 4<sup>th</sup> May, 2023

**ORDER**

**WHEREAS** the name of Sh. Nityananda Borkakoty, an erstwhile SCS officer of Assam (DoB: 30.12.1954) was considered for promotion to the Joint Assam-Meghalaya Cadre of IAS from the year-wise Select List of 2008 and 2008-A but could not be selected as he was graded as 'Unfit' due to a penalty being imposed upon him.

**AND WHEREAS** aggrieved by his non-appointment to IAS, Sh. Nityananda Borkakoty filed an OA No. 40/17/2013 before Ld. CAT, Guwahati Bench submitting that the penalty was later on quashed by the High Court. Based upon this contention and relying upon court judgments, the Ld. Tribunal vide its order dated 02.04.2014 directed the respondent authorities to convene Review SCM for consideration of the case of the applicant for promotion to the post of IAS for the year 2008. The specific directions were as under:

**21. It is also noted that the Selection Committee met on 19.12.200-8 for the vacancies for the year 2007, 2008 during which period the punishment imposed upon the applicant was in existence. On 09.09.2010 the Hon'ble Gauhati High Court set aside the demotion order and the department dropped the proceeding only on 07.06.2012. The next Selection Committee Meeting was held on 09.12.2011.**

**22. As per the ratio laid down by the Hon'ble Supreme Court in the case of C.O. Arumugam and Others vs. State of Tamilnadu 1991 (Sup.) 2 SCC 100, "promotion of persons against whom charge has been framed in the disciplinary proceedings or charge sheet has been filed in criminal case may be deferred till the proceedings are concluded. They may however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall be given the promotion with retrospective effect from the date on which their juniors were promoted.**

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**23. After taking into consideration of the entire conspectus of the case and perusal of the pleadings, materials placed before us, we are of the view that let justice be done by directing the respondents authority to constitute Review DPC for consideration of the case of the applicant for promotion to the post of IAS for the vacancy year of 2008.**

**24. Accordingly, we direct the respondents authority to convey the Review DPC for consideration of the case of the applicant for promotion to the post of IAS for the year 2008.**

**O.A. is accordingly disposed of. No order as to costs."**

**AND WHEREAS** the above directions of the Ld. Tribunal were challenged by the UPSC by way of filing W.P. No. 973/2015 before the Hon'ble Guwahati High Court.

**AND WHEREAS** the Hon'ble High Court vide its order dated 07.03.2019 dismissed the W.P. with the following directions:

**19"....We do not find the instant case to be one which calls for interference by this Court and since the relief could be confined to only notional benefit, if the respondent No. 1 is selected in the Review DPC as directed, the question of availability of vacancies will also not arise.**

**20. In view of the above, the writ petition is dismissed , it is directed that the exercise to convene a Review DPC for consideration of the case of the respondent No. 1 be undertaken and completed within a period of 2(two) months for today in view of the fact that the respondent No. 1 has already retired from the service."**

**AND WHEREAS** in compliance of the above mentioned orders, the Commission convened a meeting of the Review Selection Committee Meeting on 21.11.2022.

**AND WHEREAS** for the year 2008, the Review Committee, on an overall relative assessment of his service records assessed him as 'Very Good'. On the basis of this assessment, the Review Selection Committee recommended the name of Sh. Nityananda Borkakoty (DoB: 30.12.1954) at S.No. 0B above Sr. 1 of Sh. Shankar Prasad Nandi (DoB: 03.12.1956) in the Select List of 2008, as suitable for promotion to IAS of Joint Assam-Meghalaya cadre from Assam segment.

**NOW THEREFORE**, in compliance with order dated 02.04.2014 of Ld. CAT, Guwahati Bench in O.A. No.40/17/2013 read with order dated 07.03.2019 of Hon'ble Guwahati High Court in W.P. No. 973/2015, Sh. Nityananda Borkakoty (DoB: 30.12.1954) shall be deemed to have been notionally appointed to the IAS of Joint Assam-Meghalaya Cadre from the Select List of 2008 w.e.f. **27.02.2009** which is the date from which his immediate junior in the Select List Sh. Shankar Prasad Nandi was appointed to IAS. His name shall now accordingly be inserted at Sr. No. 1A in this Department's notification No. 14015/03/2008-AIS(I)-B dated 27.02.2009 above the name of Sh. Shankar Prasad Nandi. Consequently Sh. Nityanand Borkakoty shall be entitled to Year of Allotment as 2000 and will be placed below Sh. Diwakar Nath Mishra, RR IAS Officer of 2000 batch and above Sh. Shankar Prasad Nandi, Promotee, IAS Officer of 2000 batch accordingly.

(By order and in the name of President)



(Pankaj Gangwar)

Under Secretary to the Government of India  
Ph. No. 23093063

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**New Delhi dated the**

**May, 2023**

Copy to:

1. The Chief Secretary, Government of Assam, Dispur, Guwahati [Kind Attn.: Sh. T.P. Borgohain, Secretary (Personnel)] with the request to inform the officer suitably.
2. Sh. Nityananda Borkakoty through the Secretary, Government of Assam, Dispur.
3. The Secretary, UPSC, Dholpur House, Shahjahan Road, New Delhi (Kind Attn.: Sh. K. V. Gaur, Joint Secretary).



(Pankaj Gangwar)

Under Secretary to the Government of India