

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00252/2018

Date of order: This the 23rd day of March 2021

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**

SMT. RUNU TALUKDAR
LATE NARENDRA RAJBONGSHI,
Resident at C/o-Arup Roy of Birkuchi,
In front of LP School, Guwahati-
781026, District- Kamrup (Metro),
Assam.

.....Applicant

By Advocate(s): Sri S.P. Das & P. Kataki

-VS-

1. The Union of India
Represented by General Manager
N.F. Railway, Maligaon, Kamrup(M),
Guwahati-781011.
2. The Northeast Frontier Railway
Represented by the General Manager
(Personnel), N.F. Railway, Maligaon,
Guwahati-781011.

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3. The Divisional Railway Manager
(Personnel), N.F. Railway/Lumding,
PIN-782447, Assam.

.....**Respondents**

By Advocate:- Smt. U. Dutta, Rly. Advocate

ORDER (ORAL)

MANJULA DAS, JUDICIAL MEMBER:



This is third round of litigation. Firstly the husband of the applicant approached this Tribunal by filing O.A. No. 040/00430/2014 and this Tribunal vide order dated 24.12.2014 disposed of the said O.A. by passing the following orders:-

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“After taking into consideration the entire conspectus of the case and as the below average has already been communicated to the applicant. I do not find any merit in the case. However, as the last representation dated 23.09.2014 is pending before the respondent No. I which was received by the department on the same date on 23.09.2014, let justice be done by directing the respondent No. I i.e. General Manager(Personnel), N.F. Railway, Maligaon, Kamrup(M), Guwahati to adjudicate the same within a time frame. Accordingly, I direct the respondent No. I to adjudicate the pending representation dated 23.09.2014 and dispose of the same by passing a reasoned and speaking order and the same is required to be completed before the retirement of the applicant. It is made clear that the decision to be arrived by the respondent authority shall be communicated to the applicant forthwith.”



2. In compliance of the order passed by this Tribunal on 24.12.2014 in O.A. No. 040/00430/2014, the respondent authorities issued Speaking Order dated 28.1.2015 and passed the following orders:-

“1. Sri Narendra Rajbanshi was joined as Khalashi in the year 1976 in Railway service

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and accordingly he was promoted to post of Tech/III(C&W) on 07.08.89 & Tech/II(C&W) on 02.08.95, thereafter he was promoted to post of JE/II(C&W) on 03.04.98 and joined at LMG and he was transferred to GHY on 15.08.2003 under Sr.CDO/GHY.

2. Two Major charge sheets (S/F-5) were issued by Sr.CDO/GHY against Sri Narendra Rajbanshi in the year 2004 & 2005 and applicant was exonerated from the charges level against him.

3. Sri Rajbanshi was declared unsuitable in twice in suitability test for the post of JE/I(C&W) by the competent authority in the year 2005 & 2006 vide DRM (P)/LMG Memorandum No. E/283/I/LM (Carr) dated 17.01.2005 & 27.11.06, which was dully communicated to him.

4. He has been promoted to the post of SSE(C&W) after merging the post of JE/II & JE/I on 10.07.2013.

5. The case has been examined on the representation dated 23.09.2014 of Sri Narendra Rajbanshi, SSE(&W)/GHY who claim for proforma pay protection which is not eligible and cannot be considered as he was not suitable for promotion to the post of JE/I(C&W).

His representation is thus disposed of."



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3. Secondly, being aggrieved with the speaking order dated 28.01.2015 issued by the respondent authority, husband of the applicant filed O.A. No. 040/00047/2015 which was disposed of by this Tribunal on 24.05.2016 and passed the following order:-



“5. In view of the above, we direct the respondent authority to give service benefits w.e.f. 10.07.2013 from which date applicant was promoted to the post of SSE (C&W) within a period of four months from the date of receipt copy of this order.”

4. Against the aforesaid order of this Tribunal dated 24.05.2016 passed in O.A. No. 040/00047/2015, husband of the applicant filed an R.A. No. 040/00002/2017 which was also dismissed by this Tribunal on 10.11.2017 due to lack of required materials. Thereafter, husband of the

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applicant approached before the Hon'ble Gauhati High Court by filing WP(C) No. 1256/2018. Said WP(C) was also dismissed by the Hon'ble Gauhati High Court vide order dated 19.03.2018 with the liberty to avail appropriate remedy before the Central Administrative Tribunal. Hence the instant O.A. has been filed before this Tribunal by the husband of the applicant.



5. In this present O.A., applicant is asking for the following reliefs:-

“8.1 Your applicant prays that this Hon'ble Tribunal may be pleased to admit this application, call for records of the case and on perusal of the records and hearing the parties be pleased to grant the following reliefs to the Applicant:-

To set aside and quash

(i) The impugned memorandum issued by, DRM(P)/Lumding vide No.E/283/1/LM(Carr)

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dtd.17.01.2005, usurping norms and principles of Natural Justice, unilaterally and arbitrarily declared the applicant Non-suitable for promotion to the post of JE/Gr-1(C&W) in scale Rs.5500-9000/-

(Annex-A1; Page- 22 to 24).

(ii) The Impugned Speaking Order vide No. E/170/Legal Cell/NS/1911/2015 dated 29.01.2015 passed by the Deputy Chief Personal Officer/MPP for General Manager (P)/MLG, pursuant to order dated 24.12.2014 in O.A. No. 040/00430/2014, passed by the Learned Central Administrative Tribunal, Guwahati Bench **(Annex-A2; Page-25 & 26).**

(iii) The Impugned Compliance Order vide No. E/Court/OA-47/15/CAT/GHY dated 23.08.2016 passed by the APO/3 for Divisional Railway Manager(P), NFR, Lumding, pursuant to order dated 24.05.2016 in O.A. No. 47/2014 by the Learned Central Administrative Tribunal, Guwahati Bench **(Annex-A3; Page-27 & 28).**

8.2) (a) Direct the Respondent authorities to give the Service benefits to the applicant with seniority and with pay Protection for the intervening period with effect from 01.02.2005, having time to time due advancements in pay and increments as availed by his immediate junior. And



release of **arrear pay** within specific time period as decided by this Hon'ble Tribunal.

(b) Direct the respondents to re-fix the pension as the applicant already retired on superannuation on 28.02.2015, by calculating Pay Protection with effect from 01.02.2005.

8.3 Cost of the application.

8.4 Any other relief(s) as this Hon'ble Tribunal may deem fit and proper."

6. During proceeding of the O.A., applicant

Narendra Rajbongshi expired on 20.11.2019.

Thereafter, his wife filed an M.A. No. 040/00008/2020

for including her name as legal representative in

O.A. No. 040/00252/2018. This Tribunal vide order

dated 24.01.2020 allowed the said M.A. No.

040/00008/2020 and directed the Registry to

include the name of Smt. Runu Talukdar as legal

representative of the deceased husband in the

cause title of the aforesaid O.A. From records, it is



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seen that her name was substituted in the O.A. as legal representative.

7. Respondents authorities filed their written statement on 12.04.2019. Amongst other, they have stated that the husband of the applicant, by filing the instant O.A. is raising the same issue again and again as the issue has already been settled by this Tribunal on earlier round of litigation inasmuch as this Tribunal had already granted the same relief to the husband of the applicant w.e.f. 10.07.2013 vide order dated 24.05.2016 in O.A. No. 47/2015. Hence, applicant is now not entitled to seek the same benefit w.e.f. 01.02.2005. They further stated that after the passing of order dated 24.05.2016 in O.A. No. 47 of 2015, husband of the applicant filed a



review application before this Tribunal seeking modification of the said order. They also filed Writ Petition No. 1256/2018 before the Hon'ble Gauhati High Court challenging the order of this Tribunal. But both the petitions were dismissed. The railway respondents vide its order dated 23.08.2016 has already granted the promotional benefits to the husband of the applicant w.e.f. 10.07.2013 in compliance of the order dated 24.05.2016 in O.A. 47/2015 as prayed by the applicant in the said OA. As such, challenge of the order dated 23.08.2016 is not at all sustainable.

8. Respondent authorities further stated that as per Avenue of Channel of promotion/1991, the post of JE/Gr.I is non-selection post and the said



post is filled up by suitability test based on Annual Confidential Report, seniority cum suitability, thorough scrutiny of service records etc. and not at all related with the charge sheet (SF/5) issued on 21.07.2004 and on 25.04.2005 (as per statement of the husband of the applicant). Therefore, the concerned executive (Senior Divisional Mechanical Engineer/Lumding) under whom the concerned employee was working has judged the suitability and on the basis of the Annual Confidential Report of the applicant, he was declared not suitable for promotion to the post of JE/Gr.I which was communicated vide DRM(P)/LMG's letter No. E/283/I/LM(Carr) dtd. 17.01.2005 and DRM(P)/LMG's office order dated 27.11.2006. Hence Sealed Cover Procedure under Disciplinary and Appeal Rule 1968





and Issuing of Charge Sheet (SF/5) and dropping of Charge sheet have no relation with his promotion to the post of JE/Gr.I as opined by the husband of the applicant since the said Charge Sheet were not counted for conducting the suitability test in the year 2005-2006. According to the respondents, performance of the staff is only reflected in his Annual Confidential Report on the basis of which the suitability of one staff is judged at the time of promotion i.e. when his promotion turn is due. The suitability test for the post of JE/I(C&W) in the scale of Rs. 5500-9000/- (old) was conducted in favour of the concerned staff along with others in the year 2015 wherein applicant was declared unsuitable and same was duly intimated to the applicant vide Memorandum dated 17.01.2005. Since the juniors of

the husband of the applicant were declared suitable in the said assessment, therefore his juniors were promoted to the said post of JE/I/(C&W) in the scale of 5500-9000/- for which juniors were drawing higher pay than the husband of the applicant.



9. Husband of the applicant filed his rejoinder on 25.06.2019. In his rejoinder, he could not bring out any new materials in support of his contentions made against the respondent authorities.

10. We have heard and considered the submissions made by both the parties. It is clear that he was granted service benefits as prayed by him in earlier round of O.A. but it is not factually correct that due to pendency of disciplinary proceedings,

he was declared non-suitable against non-selection post. Statement made by the husband of the applicant that without holding suitability test is against the Rule in force is also factually not correct. The respondent authorities in their written statement at para 5 has clearly highlighted that –



“As per Avenue of Channel of Promotion/1991, the post of JE/Gr.I is non-selection post and the said post is filled up by suitability test based on Annual Confidential Report, seniority cum suitability, thorough scrutiny of service records etc. and not at all related with the charge sheet (SF/5) issued on 21.07.2004 and 25.04.2005. Therefore, the concerned executive (Senior Divisional Mechanical Engineer/Lumding) under whom the concerned employee was working has judged the suitability



and on the basis of the Annual Confidential Report of the applicant, he was declared not suitable for promotion to the post of JE/Gr.I which was communicated vide DRM(P)/LMG's letter No. E/283/I/LM(Carr) dtd. 17.01.2005 and DRM(P)/LMG's office order dated 27.11.2006. Hence Sealed Cover Procedure under Disciplinary and Appeal Rule 1968 and Issuing of Charge Sheet (SF/5) and dropping of Charge sheet have no relation with his promotion to the post of JE/Gr.I as opined by the husband of the applicant since the said Charge Sheet were not counted for conducting the suitability test in the year 2005-2006."

11. Further it is noted that on earlier round while this Tribunal vide order dated 24.05.2016 disposed

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of the O.A. No. 040/00047/2018, Sri S.P. Das, learned counsel for the husband of the applicant fairly submitted that – “Applicant has already been retired. According to learned counsel, as the applicant has been given promotion to the post of SSE (C&W) after merging the post of JE/II & JE/I on 10.07.2013 which is evident from the Speaking order dated 28.01.2015, therefore, learned counsel prays to give service benefits onwards to 10.07.2013.”



Said submission was not objected by the then railway counsel Sri B.K. Das and agreed to grant service benefits onward to 10.07.2013. Accordingly, this Tribunal directed the respondent authorities to give service benefits w.e.f. 10.07.2013 from which date applicant was promoted to the post of SSE

(C&W) within a period of four months from the date of receipt copy of the order. Thereafter, R.A. No. 040/00002/2017 was filed by the husband of the applicant with the prayer to review the said order dated 24.05.2016 passed in O.A. No. 040/00047/2015 and to direct the respondents to grant service benefits of promotion w.e.f. 01.02.2005 (the date when his juniors were promoted) instead of 10.07.2013. Said R.A. was dismissed by this Tribunal on 10.11.2017 by observing by passing the following orders:-



“6. On examination of the matter, we are of the view that the review applicant, in this RA, have failed to project any ground which falls under Order XLVII, Rule 1, Code of Civil Procedure. Review applicant in this RA is seeking the service benefits from 01.02.2005, i.e., the date on which his juniors were promoted, whereas this court, vide its order, sought to be reviewed, has granted the same

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from 10.07.2013. The court has given reason in pinpointing the date as 10.07.2013, on which date, cadres of JE/II & JE/I was merged. Needless to mention that since this court has granted the relief to the extent as it found justified on the basis of law and facts, if the review applicant is not happy, he should approach the superior court. In our considered view the review applicant is basically challenging the order passed by this Tribunal on 24.05.2016 which is impermissible."

Thereafter, against the order of this Tribunal dated 24.05.2016, he approached before the Hon'ble Gauhati High Court by filing WP(C) No. 1256 of 2018 which was also dismissed by the Hon'ble High Court vide its judgment and order dated 19.03.2018. Relevant portion of the judgment passed in the aforesaid Writ Petition has already been reproduced above.



12. Again by filing the instant O.A., husband of the applicant claims to grant service benefits w.e.f. 01.02.2005 (the date when his juniors were promoted) instead of 10.07.2013 which according to us, not tenable. On earlier round, this court has already given reason in pinpointing the date as 10.07.2013, on which date, cadres of JE/II & JE/I was merged. Since R.A. No. 040/00002/2017 arising out of O.A. No. 040/00047/2017 filed by the husband of the applicant was dismissed by this Tribunal and thereafter, Writ Petition No. 1256/2018 preferred by him was also not entertained by the Hon'ble Gauhati High Court and dismissed the same vide its order dated 19.03.2018, we found that the present O.A. devoid of merit is liable to be dismissed.



13. Accordingly, O.A. stands dismissed. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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