

30/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

M.P-111/2002 ordersheet Pg-1  
allowed date 05/09/2002

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 374/2000

... *Hriday Rajan Das* . . . APPLICANTS  
versus.

Union of India & ors . . . . . Respondents.

FOR THE APPLICANT(S) *Mr. B. K. Sarma*  
ADVOCATE

*Mr. S. Sarma*  
*Mr. U. K. Gowan*

FOR THE RESPONDENT(S)

*C. G. S. C.*

Notes of the Registry

DATE

COURT'S ORDER

3.11.2000 Present : Hon'ble Mr. Justice D.N.  
Chowdhury, Vice-Chairman.

Heard Mr. S. Sarma, learned  
counsel for the applicant.

Issue notice to the respondents  
to show cause as to why this applica-  
-tion should not be admitted. Returnable  
by four weeks.

List on 30.11.00 for show cause  
and admission.

*[Signature]*  
Vice-Chairman

List on 1.12.2000 for admission on  
the prayer of Mr S. Sarma, learned counsel  
for the applicant.

*[Signature]*  
Vice-Chairman

Mr. S. Sarma, learned counsel for the  
applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C.  
for the respondents.

Admit. No further notice need be sent.  
Call for the records. Written statement within  
four weeks. List on 3.1.2001 for further orders.

*[Signature]*  
Vice-Chairman

Application is in  
but not in time  
for admission. Petition is  
admitted / not admitted C.F.  
for Rs. 50/- deposited  
vide No. 503425  
Dated 15.10.2000

*[Signature]*  
Dy. Registrar

*Requisite 3 copies*

*15/11/00*

*15/11/2000*  
*3/11/2000*

30.11.00

1.12.0

Notice prepared and sent to  
D/S for issuing the respondent  
No 1 to 3 by Regd A/D vide  
D/No 2633 w 2635 dtd 15/11/00

① Service report are  
still awaited.

② No. Show cause has been  
filed.

*29/11/2000*

3.1.01

List on 5.5.2.01 to enable the respondent to file written statement.

2-1-2000

① Service report are still awaited.

Vice-Chairman

② No. W/s has been filed.

lm

By  
2.1.01

Notice duly served on Respondent No. 1, RN-283 are awaited  
4/1/2001.

5.2.01

Four weeks time is allowed to enable the respondents to file written statement on the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C.

List on 8.3.2001 for written statement and further orders.

Member

Vice-Chairman

No. W/s has been filed.

VS  
7/3/01 trd

8.3.01

List on 26.4.01 to enable the respondents to file written statement.

No. written statement has been filed.

Member

Vice-Chairman

26.4.01

List on 29.5.01 to enable the respondents to file written statement.

By  
25.4.01

28-5-2001

Member

Vice-Chairman

No. W/s has been filed.

lm

29.5.01

No written statement has so far been filed by the respondents. Four weeks time is given to the respondents for filing of written statement.

List for orders on 27-6-2001.

No. written statement has been filed.

Vice-Chairman

By  
26.6.01

bb

Notes of the Registry	Date	Order of the Tribunal
	27.5.01	<p>Respondents have already been granted sufficient opportunities to file written statement. Mr.A.Deb Roy learned counsel for the respondents has again prayed four weeks time to file written statement. As a matter of last opportunity, four weeks and no more time is granted to file written statement. Rejoinder, if any, may be filed within two weeks thereafter.</p> <p>List on 21-8-2001.</p> <p>IC (Sharma) Member</p> <p>Vice-Chairman</p>
<p>No written statement has been filed.</p> <p><u>20.9.01</u></p>	21.8.01	<p>List on 21/9/01 to enable the respondents to file written statement.</p> <p>IC (Sharma) Member</p> <p>Vice-Chairman</p>
<p>Order dtd. 21/9/01 communicated to the Hon'ble Council.</p> <p><u>26.9.01</u></p>	21.9.01	<p>No written statement so far been filed despite time granted. Mr.A.Deb Roy, learned Sr. C.G.S.C. stated that he has already informed all the respondents and no reply has been received so far. Mr. Deb Roy, again sought for time to file written statement.</p> <p>List on 12/10/01 for order.</p> <p>Copy of this order communicated to Mr. A.Deb Roy, learned Sr. C.G.S.C. for necessary instructions.</p> <p>Vice-Chairman</p>
<p>No written statement has been filed.</p> <p><u>11.10.01</u></p>	12.10.01	<p>No written statement so far filed by the respondents. List the case for hearing on 3.12.01. The respondents may file written statement within 3 weeks.</p> <p>IC (Sharma) Member</p> <p>Vice-Chairman</p>
<p>No written statement has been filed.</p> <p><u>29.11.01</u></p>		

Notes of the Registry	Date	Order of the Tribunal
<p>3.12.2001</p> <p>At the request of Mr.A.Deb Roy, learned Sr.C.G.S.C hearing is adjourned.</p> <p>List on 8.1.2002 for hearing.</p> <p>Member (J)</p> <p>bb</p>	<p>3.12.2001</p>	<p>At the request of Mr.A.Deb Roy, learned Sr.C.G.S.C hearing is adjourned.</p> <p>List on 8.1.2002 for hearing.</p> <p>Member (A)</p>
<p>8.1.2002</p> <p>30.1.2002</p> <p>Copy of the Judgement has been sent to the D/Sec for info. The fine to the applicant was well to H.C.C.S.C. in the Report.</p> <p>bb</p> <p>NS 10/01/02</p> <p>30/1/02</p>	<p>8.1.2002</p>	<p>Heard learned counsels for the parties. Hearing concluded, judgment delivered in open Court, kept in separate sheets.</p> <p>The application is allowed in terms of the order. No order as to costs.</p> <p>Member</p> <p>Vice-Chairman</p>

b

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.374 of 2000

Date of Decision 8.1.2002....

----- Shri Hriday Ranjan Das -----  
----- Petitioner(S) -----

----- Mr.B.K.Sharma, Mr.S.Sarma & Mr.U.K.Goswami -----  
----- Advocate for the -----  
----- Petitioner(s) -----

-Versus-

----- Union of India & Others. -----  
----- Respondent(s) -----

----- Mr.A.Deb Roy, Sr.C.G.S.C. -----  
----- Advocate for the -----  
----- Respondent(s) -----

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

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters 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.

NO

A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.374 of 2000.

Date of Order : This the 8th Day of January, 2002.

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

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

Shri Hriday Ranjan Das  
S/o Late Haripada Das  
Presently working as Chief Engineer, Telecom  
N.E.Zone, Ashram Road, Mitra Building  
Ulubari, Guwahati-7. . . . Applicant.

By Mr.B.K.Sharma, Mr.S.Sarma &  
Mr.U.K.Goswami.

- Versus -

1. The Union of India  
Represented by the Secretary to the  
Government of India, Ministry of Communications  
New Delhi.
2. The Senior Deputy Director  
General (Building Works)  
20 Ashoka Road, Sanchar Bhawan  
New Delhi-1.
3. The Chairman & Managing Director  
Bharat Sanchar Nigam  
Sanchar Bhawan, New Delhi-1. . . Respondents.

Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C.) :

This is an application under Section 19 of  
the Administrative Tribunals Act, 1985 seeking for the  
following reliefs :

"To direct the Respondents to give  
effect to the promotion of the  
Applicant as Chief Engineer as

ordered vide Annexure-1 & 2 orders dated 10.7.98 & 20.8.98 retrospectively i.e. from 1995 the year in which the Applicant become entitled to be promoted as such with all consequential benefit, salary, etc.

To direct the Respondents to treat promotion of the Applicant as Superintending Engineer given in 1990 as a regular promotion with all consequential benefits.

To set aside and quash that part of the condition imposed vide Annexure -1 & 2 orders dated 10.7.98 and 20.8.98 by which it has been ordered that the Applicant would continue to draw the salary in the existing pay scale of JAG.

To direct the Respondents to pay the salary to the Applicant in the prescribed pay scale of Chief Engineer with retrospective effect consequent upon, his promotion as Chief Engineer with all consequential benefits."

2. The applicant entered into the services of respondents in 1967 (7.1.67) as Asstt. Engineer. He was promoted to the post of Executive Engineer in July, 1973. During 1984-85 the applicant functioned as Superintending Engineer on adhoc basis from which post he was reverted on return of the incumbent. He was again promoted to the post of Superintending Engineer in the year 1990. It was pleaded that his promotion was pursuant to a regular DPC selection, but in the order he was said to be promoted on adhoc basis. Thereafter he was further promoted as Chief Engineer by an order dated 10.7.98. The applicant pleaded that to the best of <sup>his</sup> knowledge he was so



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promoted pursuant to a selection. The post of Superintending Engineer is in the Junior Administrative Grade (JAG) and that of Chief Engineer<sup>is</sup> in the Super Administrative Grade (SAG).

3. The order of promotion dated 10.7.98 was modified and vide order dated 20.8.98 the applicant was posted as Chief Engineer (C), Telecom, Guwahati. It was stated at the Bar that subsequently after institution of the O.A. the applicant was transferred from Guwahati wherefrom he retired on December, 2001 as Chief Engineer. The applicant represented before the authority for regularising his service as Chief Engineer in view of the vacancy available since 1990. That apart, he also prayed before the authority for giving him the higher pay scale of Chief Engineer since he was holding higher responsibility. The applicant pleaded that as Chief Engineer he was entitled for the pay scale of Rs.18400-500-22400/-, but instead he was given the pay scale of Superintending Engineer in the Junior Administrative Grade. Failing to get appropriate remedy from the authority the applicant approached this Hon'ble Tribunal for redressal of his grievances.

4. The respondents despite opportunities granted did not submit any written statement. Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents stated that he wrote to the concerned Department, but did not get any response from them. We do not like to make any comment on the sorry state of affairs. In the absence of

written statement, it becomes difficult to adjudicate the matter, though in the absence of any rebuttal by the respondents the facts pleaded may be treated as admitted.

5. We have heard Mr. B. K. Sharma, learned Senior counsel for the applicant and also Mr. A. Deb Roy, Sr. C.G.S.C. appearing on behalf of the respondents. Mr. Sharma stated and contended that his earlier appointment as Superintending Engineer in the year 1990 though described as an adhoc appointment, for all intents and purposes that was a regular appointment so much so that the appointment to the post of Superintending Engineer was made on the basis of regular DPC. The learned Sr. Counsel for the applicant submitted that since the promotion was made as <sup>per</sup> the Recruitment Rules his case was considered by the DPC on adjudicating merit vis-a-vis the seniority. The promotion was made against the regular vacancy and therefore, the promotion for all intents and purposes was to be treated as regular in the post of Superintending Engineer in the year 1990. Mr. Sharma in support of his contention referred to the decision in I. K. Sukhija and Others - Vs - Union of India and Others reported in (1997) 6 SCC 406 as well as in Rudra Kumar Sain and Others - Vs - Union of India and Others reported in (2000) 8 SCC 25. We are, however, not inclined to decide the issue in the absence of any materials on record and direct the authority to look into that aspect of the matter considering the materials

on record. Mr.B.K.Sharma next submitted that the applicant since was discharging his duty as a Chief Engineer by virtue of his promotion vide order dated 10.7.98 he is entitled for the higher pay scale in the post of Chief Engineer. Mr.Deb Roy, learned Sr.C.G.S.C. appearing on behalf of the respondents on the otherhand referred to the order of promotion dated 10.7.98 which clearly indicated that the Superintending Engineer including the applicant who were officiating on adhoc basis would hold the charge of the post of Chief Engineer with a clear condition pointing out that they would draw the salary in the existing pay scale of J.A.G. until further order. The said order since <sup>is</sup> ~~not~~ modified the applicant cannot claim the higher pay scale of Chief Engineer of S.A.G. rank. Mr.Deb Roy submitted that the applicant assumed the higher post knowing the conditions fully well. One cannot refuse higher pay scale merely because of the conditions specified. It all depends on the statutory rules regulating such situation. The Chapter-IV of the F.R. regulates the pay of Govt. officer. The relevant rules namely F.R.22(I)(a) (1) is quoted below :

"Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the

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relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, opinion is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees twenty-five, whichever is more."

6. The promotion order no doubt mentioned that those persons including the applicant would continue to draw the salary in the existing pay scale of J.A.G. until further order. F.R.22 provides the authority with that power, but then the applicant was ordered to hold the charge of higher responsibility. The applicant was due for promotion. The Office Memorandum issued by the Government of India, D.O.P.T. No.18/12/85-Estt.(Pay-I), dated 18.7.86 and O.M.No.2/8/97-Estt..(Pay-II) dated 11.3.98 also indicated that F.R.22 (I)(a)(1) Will apply in all those cases of pay fixation where the promoted persons fulfils the conditions of eligibility prescribed in the relevant rules for promotion. As per the said instruction the restrictions of F.R.35 are not to be invoked where a Government servant holding the post in substantive or temporary or officiating capacity is promoted or appointed in substantive or temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant rules, to another post carrying duties and responsibilities of greater importance. Admittedly, the applicant was discharging higher responsibility in a higher postt. In this circumstances, there is no justification for denying him higher pay scale from the date of assumption to the post of Chief Engineer. The respondents are accordingly directed to provide the

higher pay scale of Chief Engineer from the date of assumption of higher post of Chief Engineer in terms of the O.M. dated 18.7.86 and 11.3.98. Mr. B. K. Sharma, learned Sr.counsel for the applicant submitted that the applicant was entitled for promotion to the post of Chief Engineer in the year 1995 itself, instead he was promoted to the said post in 1998. Mr.Sharma stated that the post of Chief Engineer was vacant and the applicant was eligible for the said post in 1995 and therefore his case was to be considered in 1995. Mr.Deb Roy, Sr.C.G.S.C, however, submitted that in the absence of any materials on record nor direction can be issued. We are fully in agreement with Mr.Deb Roy on this aspect and leave the said matter to be decided by the authority.

7. In this circumstances, we direct the applicant to make a fresh representation to the authority indicating all his grievances for antidating his promotion to the post of Chief Engineer w.e.f.1995 within a month from the date of receipt of the order. If such representation is made, the authority shall consider the same and pass a reasoned order within three months from the date of receipt of the representation.

8. In view of our decision made above, we direct the respondents for giving the salary to the applicant in the prescribed pay scale of Chief Engineer in

terms of Office Memorandums mentioned above from the date of assumption of the post Chief Engineer. The respondents are directed to pay the arrear salary within three months from the date of communication of the order.

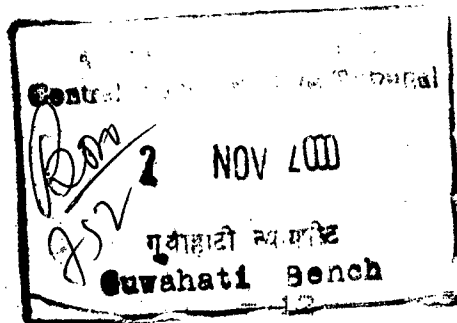
The application is thus allowed.

There shall, however, be no order as to costs.

  
( K.K.SHARMA )  
ADMINISTRATIVE MEMBER

  
(D.N.CHOWDHURY )  
VICE CHAIRMAN

bb



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Title of the case : OA No. 374/2000

BETWEEN

Shri Hriday Ranjan Das.

... Applicants

- versus -

Union of India & Ors.

... Respondents

I N D E X

<u>SL. No.</u>	<u>Particulars of the documents</u>	<u>Page No.</u>
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Filed by :

Ujjwal Kr. Gowanani  
Advocate



Filed by:-  
The Applicant-  
through 12  
Ujjal K. Goswami  
Advocate

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

O.A. No. 374 of 2000

BETWEEN

Shri Hriday Ranjan Das,  
S/o Late Haripada Das, presently  
working as Chief Engineer, Telecom  
N.E. Zone, Ashram Road, Mitra  
Building, Ulubari, Guwahati-7

... Applicant

AND

1. The Union of India,  
represented by the Secretary to the  
Government of India, Ministry of  
Communication, New Delhi.
2. The Senior Deputy Director  
General (Building works),  
20 Ashoka Road, Sanchar Bhawan,  
New Delhi-1.
3. The Chairman & Managing Director,  
Bharat Sanchar Nigam,  
Sanchar Bhawan, New Delhi-1.

... Respondents

DETAILS OF APPLICATION.

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

This application is not directed against any  
particular order but is directed against deprivation of  
the Applicant from getting his due promotion and lawful  
pay commensurating to his work pertaining to the post  
being held by him.

2. JURISDICTION OF THE TRIBUNAL :

The Applicant declares that the subject matter of

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the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The Applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and as such he is entitled to all the rights and privileges as guaranteed under the Constitution of India.

4.2 That the Applicant who is presently serving as the Chief Engineer, Telecom, N.E. Zone, Guwahati had entered into the services of the department way back in 1967 (7.1.67) as Asstt. Engineer. Thereafter he was promoted as Executive Engineer in July '73. During 1984-85 the Applicant functioned as Superintending Engineer on adhoc basis from which post he was reverted on return of the incumbent who had gone abroad on deputation. The Applicant was again promoted as Superintending Engineer in the year 1990. Although his such promotion was pursuant to a regular DPC selection, in the order he was said to be promoted on adhoc basis. Thereafter, he was further promoted as Chief Engineer by an order dated 10.7.98. To the best of knowledge of the Applicant he was so promoted pursuant to a selection. Be it stated here that the post of

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18/08/98

Superintending Engineer falls in the Junior Administrative Grade (JAG) and that of Chief Engineer in the Super Administrative Grade (SAG).

A copy of the order dated 10.7.98 is annexed hereto as Annexure-1 and the copy of the order dated 20.8.98 is annexed as Annexure-2.

4.3 That the Applicant states that upon his promotion as Chief Engineer, he has been discharging the duties and functions attached to the said post having full technical and supervisory control over 5 Superintending Engineer's and 11 Executive Engineer's. He has been carrying out all the functions of a regular Chief Engineer, executing all the financial and administrative power. In fact he is holding the charge of two Chief Engineer's since last 12 years, he is looking after the entire construction activities on behalf of the Chief General Manager, Assam Telecom Circle, N.E. Telecom Circle and Task Force and for that purpose he has to undertake tour extensively.

4.4 That the Applicant states that although he was promoted as Superintending Engineer 10 years back in the year 1990 but his such promotion was described as adhoc. However, he was given his such promotion pursuant to his selection by a regular DPC. He has also been given all service benefits including his further promotion as Chief Engineer. In this connection it will be pertinent to mention here that the Respondents have used the expression adhoc towards promotion of the Applicant as Superintending Engineer purportedly on

Wcr app.

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ground of some seniority dispute amongst the officers junior to the Applicant. Such seniority dispute has got no connection with the seniority position of the Applicant whatsoever and his promotion. The position has been fully explained in the numerous representations submitted by the Applicant. Instead of repeating the contentions raised therein, the Applicant craves leave of the Hon'ble Tribunal to refer to the said representations annexed hereto and the statements made therein be treated as the statements made in this O.A. in support of the relief sought for.

4.5 That the Applicant states that the pay scale prescribed for the post of Superintending Engineer is Rs. 14,300-22,400/- and for that of Chief Engineer is Rs. 18,400-22,400/-. The Applicant has reached the stage of Rs. 17,500/- in the pay scale of Superintending Engineer to which post he was promoted in the year 1990. Be it stated here that in the year 1990 the Applicant was promoted against one of the 25 available vacancies. Be it further stated here that taking his promotion as Superintending Engineer the Applicant become eligible for promotion as Chief Engineer in the year 1995 and vacancies were/are also available. Thus the promotion of the Applicant as Chief Engineer effected by the Annexure- 1&2 orders should atleast relate back to 1995 if not earlier.

4.6 That the Applicant state that after his aforesaid promotion as Chief Engineer as stated above he has been shouldering the duties, responsibilities and status of a Chief Engineer, like that of any other regular Chief

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Engineer However, the Applicant has been made of work and carry out the functions and duties in the higher post of Chief Engineer without giving him the benefit of pay admissible to the said post and instead is being paid at a lower scale of pay i.e. in the pay scale of the post of Superintending Engineer. Whatever may be the condition imposed towards making the Applicant to function in a higher post at a lesser pay would be an inconsiderable contract and violative of the well established principle of service jurisprudence namely "Equal Pay for Equal Work". The Applicant is now left with only about 1 year of service and if he is not paid his pay in the prescribed pay scale of Chief Engineer, apart from being loser in the monthly pay, same will also seriously tell upon his pensionary benefits.

4.7 That being aggrieved by the aforesaid illegalities, the Applicant submitted numerous representations urging for grant of Chief Engineer's pay scale. He also represented for regularisation entitling him to all consequential benefits. Such representations were preceded by his earlier representations urging for his promotion as Chief Engineer

Copies of such representations are annexed hereto as Annexure-3 series.

4.8 That the Applicant states that it is an admitted position that he has been discharging the duties functions and responsibilities of higher and greater importance having been promoted as Chief Engineer than that of Superintending Engineer and as such there is no

MAJ

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earthly reason as to why he should be deprived of the pay scale attached to the post of Chief Engineer. This has also got the scansion of fundamental rules. The Applicant craves leave of the Hon'ble Tribunal to rely upon the relevant provisions of the fundamental rules.

4.9 That the Applicant states that his promotion as Superintending Engineer although has been described to be on adhoc basis, could not have remained the same, in view of the fact that he was so promoted pursuant to a selection conducted by a regular DPC and that he was continuing in the post for 8 years i.e. up to 1998 when he was allowed to take over charge of the post of Chief Engineer. This being the position taking his promotion as Superintending Engineer to be regular from the date of his promotion as such the Applicant should be entitled to all consequential benefits including his promotion as Chief Engineer from 1995 instead of 1998 with all consequential benefits. As already stated above, so far as the seniority position of the Applicant is concerned the same is admittedly undisputed and the Applicant cannot be made to stagnate for no fault of his own. Timely action of the Respondents would have facilitated timely promotion of the Applicant as Superintending Engineer and consequently as Chief Engineer with all the financial benefits. However, the Applicant has been made a victim of the inaction on the part of the Respondents.

4.10 That in view of the facts and circumstances stated above and the Applicant having failed to get any

4/10/2001

redressal departmentally is now constrained to approach this Hon'ble Tribunal by way of filing this OA and the same has been filed bonafide and to secure the ends of justice.

5. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that prima facie action of the Respondents in making the Applicant to work in a higher post with the pay scale of a lower post is illegal and such a position imposed on the Applicant is inconsiderable.

5.2 For that the impugned action of the Respondents have resulted in violation of Article 14 and 16 of the Constitution of India and so also the principle of "Equal pay for Equal work".

5.3 For that there should not have been any delay towards promotion of the Applicant as Chief Engineer and what ever formalities were required to be carried out, ought to have been carried out by the Respondents more particularly in view of the fact that there is no seniority dispute in relation to the position of the Applicant in the gradation list.

5.4 For that timely action of the Respondents would have earned the Applicant his regular promotion as Superintending Engineer & Chief Engineer in time entitling him to all consequential benefits and accordingly it is a fit case to invoke the power of relaxation if need be to grant the reliefs sought for by the Applicant.

5.5 For that under no circumstances, the Applicant

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could be deprived of his pay and allowances of the post of Chief Engineer which he is presently holding and duties, responsibilities and functions of which post he has been discharging like that of any other regular Chief Engineer

5.6 For that the Respondents are not entitled to impose any inconsiderable condition in violation of justice and fairplay and conditions of service and so also the principle of Equal pay of Equal work.

5.7 For that as per the provisions of the FR the pay of the Applicant is required to be fixed taking into account the pay scale of Chief Engineer

5.8 For that in any view of the matter the impugned action is liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

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

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed

*Applicant*



before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 (To direct the Respondents to give effect to the promotion of the Applicant as Chief Engineer as ordered vide Annexure- 1 & 2 orders dated 10.7.98 & 20.8.98 retrospectively i.e. from 1995 the year in which the Applicant become entitled to be promoted as such with all consequential benefit, salary, etc.

8.2 To direct the Respondents to treat the promotion of the Applicant as Superintending Engineer given in 1990 as a regular promotion with all consequential benefits.

8.3 To set aside and quash that part of the condition imposed vide Annexure-1 & 2 orders dated 10.7.98 and 20.8.98 by which it has been ordered that the Applicant would continue to draw the salary in the existing pay scale of JAG .

8.4 To direct the Respondents to pay the salary to the

1/12/98

Applicant in the prescribed pay scale of Chief Engineer with retrospective effect consequent upon his promotion as Chief Engineer with all consequential benefits. ]

8.5 Cost of the application.

8.6 Any other relief/reliefs to which the Applicant is entitled to.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of this application, it is further prayed that Your Lordships would be pleased to issue a direction to the Respondents to pay to the Applicant his current pay in the pay scale prescribed for the post of Chief Engineer and/or be pleased to pass such further order/orders as Your Lordships may deem fit and proper.

10. ....

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 26 503 425
- ii) Date : 15/10/2000
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

*Handwritten signature*

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

I, Shri Hriday Ranjan Das, aged about 58 years, son of Late Haripada Das, presently working as Chief-Engineer, Telecom, N.E. Zone, Ashram Road, Mitra Building, Ulubari, Guwahati-7, do hereby solemnly affirm and verify that the statements made in paragraphs 4'1, 4'3 - 4'6, 4'8 - 4'10 of the accompanying application are true to my knowledge; those made in paragraphs 4'2, & 4'7 and are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 3rd day of November 2000.

*Hriday Ranjan Das*

No. 1-1/95-CWG  
Government of India  
Ministry of Communications  
Department of Telecommunications  
Sanchar Bhavan, New Delhi-110001.

ORDER Dated: 10th July, 1995.

The President is pleased to order that the following Superintending Engineers (Civil) who are officiating on ad-hoc basis will hold the charge of the post of Chief Engineer (Civil) indicated against each. They will continue to draw the salary in the existing pay scale of J.A.G. until further order.

S.No	Name (S/Shri)	Present posting	Posted as
1	H.R. Das	SSW (C), o/o CE(C), Calcutta	CE(C), Deptt. of Posts, Bangalore
2	K.A. Kalyana- krishnan	SE(C) TCC-I, Chennai	CE(C), Telecom Chennai
3	S.K. Dutta	SE(C), TCC Patna	CE(C), Telecom Jaipur
4	A.C. Jana	SE(C), TCC Bhubaneswar	CE(C), Telecom Guwahati.
5	J.C. Sathi	SE(C) TCC Guwahati	CE(C), Telecom Chandigarh
6	C.M. Ramesa Rao	SE(HQ) o/o CE(C) Telecom, Bangalore	CE(C), Telecom Bangalore

2. This order will not confer any right on the above officers to regular promotion or seniority in the grade of Chief Engineer (C).

3. Assumption of the charge may be furnished to all concerned.

*Mohinder Singh*  
Mohinder Singh  
ASSTT. DIRECTOR GENERAL (CW)

C.E. (C)	
S.E. (H.C.)	
S.S.W. (C)	
S.E. (H.Q.)	
C.A.O.	
S.W. (C)	
A.S.W. (C)	
S.O.	

Attested  
Advocate  
certified to be  
true copy.

Chief Engineer (Civil)  
A. R. Kano, Guwahati  
Dr. No. 1583  
Date: 10/7/95

(1998) 5 SCC 27

GOVT. OF INDIA  
MINISTRY OF COMMUNICATIONS  
DEPARTMENT OF TELECOMMUNICATIONS  
SANCHAR BHAVAN, 20, ASHOKA ROAD, NEW DELHI-110001

No.1-1/95-CWG

Dated: 20.8.98

ORDER

In partial modification of this Deptt's order of even no. dated 10.7.1998, the posting orders in respect of the following officers are revised as under.

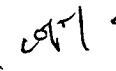
<u>S.No.</u>	<u>Name</u>	<u>Present posting</u>	<u>Posted as</u>
1.	Shri H.R.Das	SSW(C), o/o CE(C) Calcutta	CE(C), Telecom Guwahati
2.	Shri A.C.Jana	SE(C), TCC Bhubaneswar	CE(C), Deptt. of Posts Bangalore

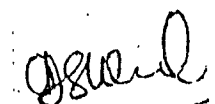
2. The other terms & conditions of the order dated 10.7.1998 will remain same.

  
(MOHINDER SINGH)  
ASSTT. DIRECTOR GENERAL (CW)

Copy to:

1. The officers concerned.
2. CGM(T), Assam Circle, Guwahati/NE Circle, Shillong/W.B. Circle, Calcutta/Orissa Circle, Bhubaneswar.
3. CPMG, Karnataka Circle, Bangalore.
4. CE(C), Telecom, Calcutta/Guwahati/Patna.
5. CE(C), Deptt. of Posts, Delhi/Bangalore.
6. Office Order Bundle.

*Attested  
by  
Advocate  
Certified to be true* 

  
(C.P.S. VERMA)  
SECTION OFFICER (CWG)

To  
**The Chairman,**  
Telecom Commission,  
Department of Telecom,  
New Delhi.

Sub:- Long standing grievances ; case of Sri H.R.Das.

THROUGH PROPER CHANNEL.

Sir,

Kindly refer to my innumerable reminders since 1990 and the last one dated 27th. August, 1997 duly forwarded by Chief Engineer , Calcutta which will speak for itself. However to recapitulate I would like to bring the following facts before you once again.

1. I joined the Department in January, 1967 as Class-II direct recruit and promoted on regular basis to the post of EE in July, 1973 and again promoted to the S.E. in July, 1984, on adhoc basis and then demoted for want of post and again promoted to the S.E. in Oct., 1990 on adhoc basis and stagnating in the scale of S.E. since January, 1993.
2. Surprisingly all my seniors bearing staff Nos. 90001 to 90030 were regularised and promoted except the officers bearing staff No. 90031 to 90045; although all are confirmed Executive Engineer and officiating in the post of Superintending Engineer.
3. Last regularisation in the post of Supdt. Engineer took place in 1986 thereafter no regularisation took place notwithstanding 3 to 4 vacancies of Superintending Engineer fell through between the year 1987 to 1989 and more in the subsequent years. In 1987 Sri S.Dutta and 1989 Sri Surendra Nath and Sri S.J.Sundararajan were all promoted as Chief Engineer and in 1988 a post of Superintending Engineer was created for E-10B Exchange.

... Affected  
Wingman  
Advocate  
certified to be true copy

4. <sup>of which</sup> My regularisation is unnecessarily held up for no reason whatsoever as a result I am deprived of Selection Grade since 1991 notwithstanding a number of selection grade post is lying vacant.

5. Further i.e. from December, 1997 to February, 1998, five post of Chief Engineers are lying vacant but my promotion is not yet initiated although I fulfill the eligibility criteria.

6. I would, therefore, fervently request you to look into the matter and pray for justice without any further delay.

Lastly I would like to state that post of Chief Engineer, Calcutta is falling vacant in April, 1998, I would be highly obliged if I am given posting at Calcutta on my promotion. In this connection it may be stated that I will retire on 31.12.99 i.e. less than two years from now.

*H.R. DAS*  
7. / 11 / 97

( H.R. DAS )

Superintending Surveyor of Works  
Telecom Civil Planning Circle  
Calcutta. •

Copy to:-

1. The Sr. D.D.G.(B/W) for information and necessary action.

To

23rd February, 1998

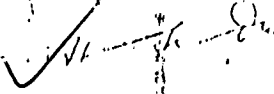
**The Chairman,**Telecom Commission, Deptt. of Telecom,  
New Delhi**Sub : Long Standing grievances ; case of Sri H.R.Das****(Through proper channel)**

Sir,

Kindly refer to my innumerable reminders since 1990 and the last one dt. 27.8.1997 duly forwarded by Chief Engineer, Calcutta which will speak for itself. However to recapitulate I would like to bring the following facts before you once again.

1. I joined the Deptt. in Jan.'67 as Class-II direct recruit and promoted on regular basis to the post of EE in July, 1973 and again promoted to the post of SE in July '84 on adhoc basis and then demoted for want of post and again promoted to the post of SE in Oct. '90 on adhoc basis and stagnating in the scale of SE since Jan., 1993.
2. Surprisingly all my seniors bearing staff Nos. 90001 to 90030 were regularised and promoted except the officers bearing staff No. 90031 to 90045, although all are confirmed EEs and officiating in the post of S.E.
3. Last regularisation in the post of S.E took place in 1986 thereafter no regularisation took place notwithstanding 3 to 4 vacancies of S.E fell through between the year 1987 and 1989 and more in the subsequent years. In 1987 Sri S.Dutta and in 1989 Sri Surendra Nath and Sri S.J. Sundararajan were all promoted as C.E and in 1988 a post of S.E was created for E-10B Exchange.
4. My regularisation is unnecessarily held up for no reason whatsoever as a result of which I am deprived of Selection Grade since 1991 notwithstanding a number of selection grade posts are lying vacant.
5. Further i.e. from Dec., 1997 to Feb, 1998, 5 posts of C.Es are lying vacant but my promotion is not yet initiated although I fulfill the eligibility criteria.

Since the case of my promotion has already been delayed I am willing to wait till 30.4.98 when the post C.E(C) Calcutta will fall vacant and I fervently request you to kindly promote and post me as CE(C) at Calcutta as I have only 20 months of service left before my superannuation and thereby the Deptt. can also avoid expenses on TA & DA for the incumbent.

  
(H.R.Das)Superintending Surveyor of Works,  
Telecom Civil Planning Circle, Calcutta

Copy to Sr.DDG(BW),DOT,New Delhi for information &amp; necessary action.



To  
The Hon'ble Minister of State,  
Ministry of Communication,  
Sanchar Bhawan,  
New Delhi.-110001.

Sub:- Regularisation/ Promotion to the post of  
Chief Engineer(C)- case of Sri H.R.DAS, S.S.W.,  
Telecom civil planning circle, Calcutta.

(Through proper channel)

Sir,

I would like to invite your kind attention to the following facts before you for your kind consideration.

1. I, joined this department in January 1967. as Assistant Engineer and now holding the post of Superintending Engineer since 1990.
2. Last regularisation of post of Superintending Engineer took place in 1986. Thereafter no regularisation of post of Superintending Engineer was done although one post in 1987, and one post in 1988 and two posts in 1989 fell vacant due to promotion of three Superintending Engineer to Chief Engineer and creation of one S.E.'s post in 1988 for E-10B Exchange.
3. As per rule, regularisation is to be done yearwise as per the existing vacancy, but inspite of the said vacancy the Department never cared to either regularise me nor did the administration ever replied to my innumerable representations.
4. Now six posts of Chief Engineer(Civil) are lying vacant since November 1997 but I am deprived of promotion because I am not regularised for no fault of mine. Copy of my last representation dated 5.5.98 is also enclosed.

I shall remain ever grateful if you kindly look into the matter sympathetically and take early decision.

Thanking you,  
Encls:- As Above.

Yours faithfully,

(H. R. DAS)

Superintending Surveyor of Works  
Telecom Civil Planning Circle, Calcutta

Copy to:- 1) The Sr. DDG(BW), Sanchar Bhawan, New Delhi for information and necessary action.

18.6.98  
Superintending Surveyor of Works,  
Telecom Civil Planning Circle, Calcutta.

From : H.R. Das,  
Chief Engineer (Civil),  
Department of Telecom Services,  
Sanchar Bhavan,  
20, Ashoka Road,  
New Delhi - 110 001.

To : The Senior D.D.G. (BW),  
Department of Telecom Services,  
Sanchar Bhavan,  
20, Ashoka Road,  
New Delhi - 110 001.

No.15(52)98/CE-NEZ/GH/3021

Dated - 23-05-2000

Sub : - Regularization in the grade of Superintending Engineer.

Sir,

Please refer to my innumerable reminders (16/17 Nos) on the above subject but not a single reply is received as yet.

I would like to invite your attention that officers having staff No.90031 to 90045 are all regular Executive Engineer and do not have any dispute in their seniority list in the grade of Executive Engineer since their seniority is fixed on the basis of initial constitution.

There is a dispute in the seniority list in the grade of Executive Engineer for all officers bearing Staff No.90046 onwards.

Hence, there is no hitch in regularizing officers having Staff No.90031 to 45 in the grade of Superintending Engineer in view of the vacancies available since 1990.

In the past a number of Superintending Engineers and Chief Engineers were promoted as per the availability of post without considering the requisite number of personnel available or not in the zone of consideration.

If you look to the past; Superintending Engineers and Chief Engineers were regularized in the post of Superintending Engineer/Chief Engineer on the basis of eligible candidates & availability of vacancies. No regularization were withheld for want of requisite number of personnel in the zone of consideration, I would therefore request you not to follow double standard in our case as it reveals discrimination amongst the officers of the same cadre.

35 Hence, I would again request you to regularize undisputed regular Executive Engineer for Staff No.90031 to 45 as per vacancies available in 1990 without any further delay.

In case no reply is given to this letter within a month's time, I shall have no other alternative left than to approach C.A.T. for getting justice.

Yours faithfully,

ae (H.R. Das)  
Chief Engineer (Civil),  
D.T.S., Assam Zone,  
Guwahati.

Copy to :-

1. The Secretary, D.T.S., New Delhi for information & necessary action please.
2. The Member (Production), D.T.S., New Delhi for information & necy. Action.

ae  
hee  
23/5  
(H.R. Das)

From : H.R. Das,  
Chief Engineer (Civil),  
Department of Telecom Services,  
Assam Zone,  
Guwahati - 781 007.

To : The Chairman,  
Telecom Commission,  
Sanchar Bhavan,  
20, Ashoka Road,  
New Delhi - 110 001.

( Through Senior D.D.G. (BW), D.T.S., New Delhi )

No.15(52)98/CE-NEZ/GH/ 2996

Dated - 17-05-2000

Sub : - Grant of Chief Engineer's pay scale.

I am continuously working since 26.8.98 as Chief Engineer (Civil), Guwahati as per the Directorate's Order No.1-1/95-CWG dated 10.7.98. I am holding higher responsibility of Chief Engineer as any other Chief Engineer in the department. My present basic pay is Rs.17500/=.

As per G.I., Department of Personnel & Training O.M. No.18/12/85-Estt (Pay I) dated 18.7.86 and O.M. No.2/8/97-Estt (Pay II, dated 11.3.98 (copy enclosed for ready reference), my pay should have been fixed in the scale of Rs.18400-500-22400 but so far I have not been given this pay scale in spite of the repeated reminders.

I.T.S. officers and the officers in the Finance Wing of Department of Telecom Services are getting their pay fixed as per above i.e. at higher pay scale on their ad hoc promotion.

I do feel this is discriminatory treatment to me, as such, I would request you to intervene in the matter and extend justice as early as possible.

Yours faithfully,

Encl : As above.

*H. R. Das*  
Ae (H.R. Das)

Advance copy forwarded to the Chairman, Telecom Commission, New Delhi for his kind information and necessary action please.

Copy to the Member (P), Department of Telecom Services, New Delhi.

*H. R. Das*  
Chief Engineer (Civil)

*Attended  
Advocate  
continued to be true copy.*

*o/c  
huc  
27/5*

these cases, the principles of Natural Justice should be complied with by giving the Government servant a show cause notice and opportunity to be heard before passing any order affecting him.

F.R. 32. Deleted.

F.R. 33. When a Government servant officiates in a post the pay of which has been fixed at a rate personal to another Government servant, the Central Government may permit him to draw pay at any rate not exceeding the rate so fixed or, if the rate so fixed be a time-scale may grant him initial pay not exceeding the lowest stage of that time-scale and future increments not exceeding those of the sanctioned scale.

F.R. 34. Deleted.

F.R. 35. The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under these rules.

#### GOVERNMENT OF INDIA'S ORDERS

(1) No restriction of officiating pay in cases of regular cadre promotion.—Under the existing orders, provisions of FR 35 operate only in respect of appointments by transfer on deputation. Recently a question was raised as to whether the said provisions of FR 35 would also apply to cases of promotions within the cadre.

The matter has been considered. It has been decided that the restrictions of officiating pay under FR 35 should not be invoked in respect of regular cadre promotions where the employee becomes due for promotion, falls within the zone of consideration and fulfils all qualifications prescribed for promotion.

[G.I., M.H.A., Dept. of Per. & A.R., O.M. No. F. 1/23/80-Estt. (Pay)-10, dated the 5th August, 1981.]

(2) Restriction of officiating pay under FR 35 in cases of cadre promotion not on regular basis.—In Order (1) above it was decided that the restrictions of officiating pay under FR 35 should not be invoked in respect of regular cadre promotion where the employee who becomes due for promotion, falls within the zone of consideration and fulfils all the qualifications prescribed for promotion.

2. It has been decided that in cases of appointments on promotion in the normal line within the cadre but which are not on regular basis, the pay may be restricted under FR 35 so as not to exceed the basic pay by more than the amounts shown below:—

- |      |  |   |
|------|--|---|
| *(a) | For employees in receipt of basic pay up to Rs. 8,000 p.m. | 15% of the basic pay subject to a maximum of Rs. 1,000 p.m.   |
| (b)  | For employees in receipt of basic pay above Rs. 8,000 p.m. | 12½ % of the basic pay subject to a maximum of Rs. 1,000 p.m. |

3. It has also been decided that in the cases where pay in the manner indicated above comes to more than the minimum or at the minimum of the promotional posts, the employee concerned will be allowed pay at the minimum of the scale.

[G.I., Dept. of Per. & Trg., O.M. No. 18/12/85-Estt. (Pay-I), dated the 18th July, 1986 and O.M. No. 2/8/97-Estt. (Pay-II), dated the 11th March, 1998.]

(3) Promotion not on regular basis — pay to be fixed under FR 22 (I) (a) (1) initially and restricted under FR 35.—Prior to the issue of this Department's Notification No. 1/10/89-Estt. (Pay-I), dated 30-8-1989, amending FRs 22, 22-C, 30 and 31, FR 22-C was applicable for pay fixation on promotion on regular as well as on *ad hoc* basis. It has, however, now been provided in the amended rule that FR 22 (I) (a) (1), will apply in all those cases of pay fixation where the promoted persons fulfil the conditions of eligibility prescribed in the relevant rules for promotion. With the issue of the said amendment, it has become necessary to specify under what circumstances, the restrictions imposed under FR 35 and as communicated in GIO (2) above would apply.

2. The matter has been considered and it has been decided that in cases of appointment on promotion in the normal line within the cadre but which are not on regular basis, initially the pay may also be fixed under FR 22 (I) (a) (1). If there is substantial increase in pay so fixed, the pay may be restricted under FR 35 in accordance with the provisions contained in O.M. No. 18/12/85-Estt. (Pay-I), dated 18-7-1986 and modified *vide* No. 18/26/86-Estt. (Pay-I), dated 29-7-1987 [GIO (2) above].

3. The effect of this order is that restrictions under FR 35 are not to be invoked where a Government servant holding the post in substantive or temporary or officiating capacity is promoted or appointed in substantive or temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance.

[G.I., Dept. of Per. & Trg., O.M. No. 1/10/89-Estt. (Pay-I), dated the 22nd October, 1990.]

(4) Fixation of pay on promotion to STS Group 'A' where prescribed conditions for promotion are not fulfilled.—The question of fixation of

\* Takes effect from 1st August, 1997.

For references to FRs 22, 22-C, 30 and 31 see the corresponding provisions in the new FR 22.

After this  
unofficial  
circulated to be  
true copy

Subj: to be  
functioning  
elucidation