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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

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Dropped Date-29/08/2003

O.A/T.A No. 306/2001

R.A/C.P No. 10-21/03

E.P/M.A No.

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

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

ORDER SHEET

Original APPLICATION NO. 306 OF 2001

APPLICANT (S) B.K.P. Gupta

RESPONDENT (S) W.O.I. Joms

ADVOCATE FOR APPLICANT(S) M. Chanda, Mrs. N.D. Goswami, G.N. Chakraborty

ADVOCATE FOR RESPONDENT(S) CASE

Notes of the Registry	dated	Order of the Tribunal
<p>This application is in form But not in time Coordination Petition is filed not filed vide A.P. No. C.F. for Rs. 50/- deposited vide IPO/B2 No. 56423.567 Dated <u>30.7.2001</u> <u>10/8/01</u> Dy. Registrar.</p> <p>Notice prepared and sent to D/S for cross the Respondent No 1 to 6 by Regd A/D Vide D/No <u>3088 to 3093</u> dttd <u>17/8/01</u> <u>16/8/01</u> Service Report in 15/0 Respondent No 2, 3, 4 Completed <u>20/8/01</u></p> <p>① No written statement has been filed. <u>30</u> <u>17.10.01</u></p>	<p>14.8.01 mb</p> <p>18.9.01 NS 14/8/01</p> <p>mb</p> <p>18.10.01 bb</p>	<p>The application is admitted. Call for the records. List on 18/9/01 for further order.</p> <p><u>K. Ushar</u> Member</p> <p><u>[Signature]</u> Vice-Chairman</p> <p>List on 18/10/01 to enable the respondents to file written statement.</p> <p><u>K. Ushar</u> Member</p> <p><u>[Signature]</u> Vice-Chairman</p> <p>On the request made by Ms. J. Das, appearing on behalf of the respondents four weeks time is allowed to the respon- dents to file written statement. List on 3.12.2001 for further order.</p> <p><u>K. Ushar</u> Member</p>

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No. written statement
has been filed.

By
29.11.01

No written statement
has been filed.

By
17.2.02

No. written statement
has been filed.

By
13.3.02

No. written statement
has been filed.

By
16.4.02.

No. written statement
has been filed.

By
10.5.02.

16.5.2002

WPS submitted
by the Respondents No. 4.

By

3.12.2001

Mr. S. Sarma, learned counsel appearing
for the respondents prays for time for filing
written statement. Four weeks time is
allowed to the respondents to file written
statement.

List the case on 8.1.2002 for further
order.

Member (J)

Member (A)

bb

8.1.02

List on 8.2.2002 to enable the
respondents to file written statement.

Member

Vice-Chairman

mb

8.2.02

List on 14.3.2002 to enable the
respondents to file written statement.

Member

Vice-Chairman

mb

14.3.2002

List the case on 11.4.2002 to
enable the respondents to file written
statement.

Member

Vice-Chairman

bb

11.4.02

List on 13/5/2002 to enable the
Respondents to file written statement.

Member

Vice-Chairman

mb

13.5.02

List on 11.6.2002 to enable the
Respondents to file written statement.

Member

Vice-Chairman

mb

11.6.02

The Respondents have filed the written
statement and the applicant also received
copy of the same. The case may now be
listed for hearing on 22.7.2002.

Member

Vice-Chairman

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0A206/201/312

Notes of the Registry	Date	Order of the Tribunal
	22.7.2012	The case is adjourned to 26.7.2012 as the witness present did not sit today. Mls A/L J 22.7
	26.7.	Writ on 30.7/2012 by further hearing. Mls A/L J 26.7
	30.7.	Heard Mr. M. Chandra, Learned Counsel for the applicant & Mr. V. R. Nair, Learned Counsel for the respondent. Hearing concluded. Judgment reserved. Mls A/L J 30.7.
	6.8.02	Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs. IC (Whan) Member Vice-Chairman

Judgment dtd 6/8/02
Communicated to the
parties comm and the
applicant.
Dr

mb

Notes of the Registry	Date	Order of the Tribunal

Order of the Tribunal

M

OA 206/2nd/3/1

Notes of the Registry	Date	Order of the Tribunal
	22.7.2002	The case is adjourned to 26.7.2002 as the Division Bench did not sit today. ms A.K. Jha 22.7
	26.7	Left on 20/7 from another hearing. ms A.K. Jha 26.7
	29.7	Heard Mr. M. Chanda, learned Counsel for the applicant Mr. U.K. Wadga, learned Counsel for the respondent. Hearing concluded. Judgment reserved. ms A.K. Jha 29.7
6.8.02		Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

mb

Member

Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal
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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 306 of 2001

Date of Decision. 6-8-2002.

- Shri Brij Kishore Prasad Gupta

Petitioner(S)

Mr M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakraborty

Advocate for the
Petitioner(s)

-Versus-

- The Union of India and others

Respondent(s)

Mr J.L. Sarkar, Mr S. Sarma and
Mr U.K. Nair

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.306 of 2001

Date of decision: This the 6th day of August 2002

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

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Brij Kishore Prasad Gupta,
Wireless Telecom Maintainer/1/TSK,
N.F. Railway,
Tinsukia, Assam.

.....Applicant

By Advocates Mr M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakraborty.

- versus -

1. The Union of India, through the
General Manager,
N.F. Railway,
Maligaon, Guwahati.
2. The General Manager (P),
N.F. Railway,
Maligaon, Guwahati.
3. The Chief Signal & Telecommunication Engineer,
N.F. Railway,
Maligaon, Guwahati.
4. The Chief Personnel Officer,
N.F. Railway,
Maligaon, Guwahati.
5. The Divisional Railway Manager (P),
N.F. Railway,
Tinsukia, Assam.
6. The Divisional Signal Telecommunication Service,
N.F. Railway,
Tinsukia.

.....Respondents

By Advocates Mr J.L. Sarkar, Mr S. Sarma and
Mr U.K. Nair.

.....

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O R D E R

CHOWDHURY. J. (V.C.)

The application under Section 19 of the Administrative Tribunals Act, 1985 has arisen and is directed against the action of the respondents in not providing the consequential benefits in terms of the Judgment and Order passed by the Tribunal on 4.5.1998 in O.A.No.218 of 1996.

2. Brief facts for the purpose of adjudication are as follows:

The applicant in the aforementioned O.A. sought for a direction from this Tribunal for promoting the applicant to the post of Telecom Inspector Grade III in terms of the order dated 31.12.1990 with effect from 1.4.1991 and all the consequential benefits.

3. The applicant was earlier promoted to the post of Telecom Inspector Grade III from the post of Wireless Telecom Maintainer and pursuant to the said order he joined the post of Telecom Inspector Grade III at Mariani, but continued to occupy the Railway Quarter at Tinsukia. A disciplinary proceeding was initiated against the applicant vide Memorandum dated 25.9.1990. By order dated 31.12.1990 the applicant was reverted to the post of Wireless Telecom Maintainer in the scale of pay of Rs.1320-2040 for a period of three months with non-cumulative effect. Since the applicant was not promoted to the post of Telecom Inspector Grade III, i.e. the post from which he was reverted, after expiry of the period of three months, the applicant moved the authority and failing to get redressal of his grievances he moved the Tribunal by way of the aforementioned O.A. By Judgment and Order dated 4.5.1998 the Tribunal disposed of the said O.A. with the following observation:

"On hearing the learned counsel for the parties it is now to be seen whether the applicant was entitled to get his original post of promotion after the expiry of the period mentioned in the Annexure XI order dated

31.12.1990.....

31.12.1990. Annexure XI order is very clear that the applicant was reverted to the post of WTM for a period of three months with non cumulative effect. Therefore, in all fairness the authority ought to have promoted the applicant immediately after 31.3.1991. The denial of such promotion in our opinion is unreasonable and arbitrary.

In view of the above we dispose of this application with direction to the respondents to promote the applicant to the post of Telecom Inspector Grade III in terms of the Annexure XI order dated 31.12.1990, i.e. from 1.4.1991 and he shall get all the consequential benefits including his entitlement to be considered for promotion to the next higher grade."

The Judgment and Order of the Tribunal was not given effect to by the respondent authority. The applicant moved a Contempt Petition which was registered and numbered as C.P.No.34 of 1998 for noncompliance of the direction issued by the Tribunal. By order dated 23.3.1999 the C.P.No.34/1998 was closed on the basis of the statement made by the learned counsel for the alleged contemners that the order of the Tribunal dated 4.5.1998 in O.A.No.218/1996 was given effect to. Even so by order dated 29.2.1999 the applicant was restored as TCM/Gr.III, i.e. JE/II in the scale of pay of Rs.5000-8000 and posted as JE/II/TSK. By another order dated 18.3.1999 the applicant was promoted as JE/Tele/I in the scale of pay of Rs.5500-9000 and posted at Tinsukia. The benefit of the said promotion was given with effect from 1.3.1993. In the order it was also mentioned that he would get proforma fixation of pay and not arrear. The applicant thereafter moved a Misc. Petition for reopening the Contempt Petition. The Tribunal by order dated 27.4.2001 dismissed the Misc. Petition leaving it open for the applicant to move an appropriate application before the Tribunal. Hence this application praying for the following.....

following directions:

That the respondents be directed to grant the arrear pay for promotion posts, post wise w.e.f. 01.04.91 to the applicant for his promotions given on 01.04.91 and 01.03.93 on different scales of pay till the date of actual restoration order passed in favour of the petitioner.

That the respondents be directed to grant his further promotion to the scale of Rs.6500-10,000/- w.e.f. 3.7.98 i.e. the date from which his junior Shri U.K. Biswas was promoted to the said post and also to pay arrears etc incidental to the said promotion.

That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to arrear salary with effect from 1.4.1991 to till the actual date of restoration of the applicant to the promotional post of TCI Grade III in the pay scale of Rs.5000-8000 w.e.f. 1.3.1993 from the date of promotion of immediate junior of the applicant.

4. The respondents contested the case and submitted their written statement. In the written statement the respondents stated that the applicant was not entitled for arrear salary on the face of Rule 228 of the Indian Railway Establishment Manual Volume I, 1989. The applicant did not shoulder the duties/responsibilities of the higher grade post. He was given the benefit of proforma fixation, increment benefits, seniority etc. The respondents stated that in terms of the Judgment and Order of the Tribunal dated 4.5.1998 in O.A.No.218/1996 the applicant was given all the benefits. It was stated that he was given the monetary benefit from the date he had joined the duty but not paid arrears as he did not shoulder higher responsibility of higher grade. It was also stated that there was no specific direction in the Judgment dated 4.5.1998 to pay arrears to the applicant.

In.....

In reply to the claim of the applicant of further promotion as SE/Tele in the scale of pay of Rs.6500-10500, at least with effect from 3.7.1998 when his junior Shri U.K. Biswas was promoted, the respondent authority stated that the applicant was called for the written examination for selection of the post on 5.5.2000, but the applicant could not come out successful. Therefore, the question of depriving the applicant of his promotion to the post of SE/Tele was not justified.

5. We have heard the learned counsel for the parties at length. Mr M. Chanda, learned counsel for the applicant, stated and contended that the respondent authority acted illegally and without jurisdiction in refusing to provide the applicant the monetary benefit on the purported plea of Rule 228 of the IREM. The learned counsel contended that the aforementioned provision was held to be ultra vires by the Ernakulam Bench of the Central Administrative Tribunal in the case of P. Thyagarajan and others Vs. Union of India and others reported in (1992) 19 ATC 839, M. Balakrishnan Nair Vs. Divisional Personnel Officer, Southern Railway and others, reported in (1995) 29 ATC 32 and D.L. Deshpande Vs. The Divisional Railway Manager and others, reported in 1998 (1) SLJ (CAT) 88. The learned counsel also referred to the following decisions:

1. Shri Rai Singh Vs. Union of India and others, reported in 1990 (1) SLJ (CAT) 637.
2. Ramesh Chander and another Vs. R.S. Gahlawat and others. reported in (1993) 24 ATC 759.

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3. Vasant Rao Roman Vs. Union of India Through the Central Railway, Bombay and others, reported in 1993 Supp (2) SCC 324.
4. Vasant Rao Raman Vs. Union of India, reported in 1993 SCC (L&S) 590.
5. Ram Niwas Vs. Union of India and others, reported in 1997 (2) SLJ (CAT) 324.

6. Strenuously opposing the contention of the applicant, Mr U.K. Nair, learned counsel for the respondents, referred to the judgment of the Tribunal dated 4.5.1998 in O.A.No.218/1996 and submitted that the Tribunal ordered the respondents to promote the applicant to the post of Telecom Inspector Grade III from 1.4.1991 and he was to be given all consequential benefits including his entitlement to be considered for promotion to the next higher grade. The Tribunal did not direct for giving him the arrear salary. The learned counsel also referred to Rule 1302 of the Indian Railway Establishment Code Volume II corresponding to F.R.73. Mr Nair submitted that in deference to the Judgment and Order of the Tribunal the applicant was given due promotion with retrospective effect. At the same time it took all factors into consideration and taking all the relevant consideration including public interest, the authority, after objective assessment decided to provide the applicant with the proforma fixation. There was no illegality on the part of the respondents, contended Mr Nair. The learned counsel, in support of his contention also referred to the decisions of the Supreme Court in the State of U.P. and another Vs. Ved Pal Singh and another, reported in (1997) 3 SCC 483, Abani Mahato Vs. Kanchan K.

Sinha.....

Sinha and others, reported in (2000) 9 SCC 527 and Vinod Bhanti Vs. State of Bihar and others, reported in 2000 SCC (L & S) 417.

7. We have given our anxious consideration in the matter. On the face of the decision of the Ernakulam Bench in P. Thyagarajan's case (Supra) and M. Balakrishnan's case (Supra) followed by the Bangalore Bench of the Tribunal in D.L. Deshpande (Supra), it would not be permissible on the part of the respondents to act upon Para 228 of IREM. Para 228 of the IREM is reproduced below:

"228. Erroneous Promotions- (i) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff of full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types-

- (i) Where a person has not been promoted at all because of administrative error, and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."


In P. Thyagarajan's case followed by the later decision, Ernakulam Bench of the Tribunal struck down the following sentence from para 228 of the IREM:

"No arrear on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post."

8. This Bench by its earlier Judgment and Order directed the respondents to promote the applicant and to provide him all the consequential benefits. The expression "consequential benefits" is an adjective which means following as an effect, or result or outcome, resultant, consequent, following as logical conclusion or inference, logically consistent (Webster's Encyclopedic Dictionary of the English Language). As a direct result of the promotion, the applicant was to be given the benefit that accrued due to the promotion. The applicant was already promoted vide order dated 17.10.1989. By the order of the Disciplinary Authority dated 31.12.1990 the applicant was reverted to the post of WTM/Gr. I for a period of three months with non-cumulative effect. On the expiry of the period he was to be restored to that position and the Tribunal accordingly ordered to that effect. If the applicant could not discharge duties and responsibilities of the post he could not be blamed for that. The applicant was made to suffer due to administrative lapses for which was not responsible. We find no justification for not allowing the arrear of emoluments to the applicant in the post of TCM/Gr.III, i.e. JE/II with effect from 1.4.1991 and the scale of JE/Tele/I with effect from 1.3.1993. The decisions of Ved Pal Singh (Supra) and Abani Mahato (Supra) of the Supreme Court relied upon by Mr Nair are decisions on facts and the facts of those cases are totally distinguishable.

9. The respondents are accordingly directed to make payment of the arrear to the applicant within three months from the date of receipt of the order.

10. The application is accordingly allowed. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O.A. No. 306/2001

Shri B. K. P. Gupta : Applicant

- Versus -

Union of India & Others : Respondents.

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Date

Filed by

Advocate

Filed by the applicant
through advocate Shri
G. N. Chakravarty

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No. 306/2001

BETWEEN

Shri Brij Kishore Prasad Gupta,

Wireless Telecom Maintainter/1/TSK,

N. F. Rly, Tinsukia,

P. O. Tinsukia,

Assam.

..... Applicant

-AND-

1. The Union of India,
Through the General Manager,
N. F. Rly, Maligaon, Guwahati-11
2. The General Manager (P),
N. F. Rly, Maligaon, Guwahati-11
3. Chief Signal & Telecommunication Engineer,
N. F. Rly, Maligaon,
Guwahati-11
4. Chief Personnel Officer,
N. F. Rly, Maligaon, Guwahati-11
5. Divisional Railway Manager (P),
N. F. Rly, Tinsukia, Assam.
6. Divisional Signal Telecommunication Service,
N. F. Rly, Tinsukia.

..... Respondents.

Brij Kishore Prasad Gupta

DETAILS OF THE APPLICATION

1. Particulars of order against which this application is made.

This application is made praying for a direction upon the Respondents to pay all arrears and consequential financial benefits to the applicant in terms of the judgment and order passed by this Hon'ble Tribunal on 4.5.98 in O.A. No.218/96 which have become due to the applicant consequent upon the restoration of his promotion w.e.f. 1.4.91 following the said judgment and order dated 4.5.98 since the said arrears have been denied to the applicant vide the impugned order No.E/254/26(N) Pt-IV dated 18.3.99 of General Manager (P), N. F. Rly, Maligaon and memorandum No.E/T-39/1/V(N)Tele/II dated 23.3.99 of Divisional Railway Manager(P), N. F. Rly, Tinsukia although his promotion has been restored w.e.f. 1.4.91 with necessary fixation/fitments of pay and increments following the judgment and order dated 4.5.98 of this Hon'ble Tribunal.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation 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, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant initially joined in the N. F. Rly on 4.12.66 as WTM Gr-III/Wireless Telecom Maintainer at Katihar under the TCI/KIR and continued in the

Brig Vishore Prasad / Gupta

same post upto February, 1972. Subsequently, he was under leave without pay for a period of three years from 1972 to 1975.

4.3 That the applicant was then transferred to Lumding where he joined on 15.2.75 as WTM Gr.-III on 30.3.1978, the applicant was promoted as WTM Gr.I and posted at Tinsukia and accordingly joined at Tinsukia.

4.4 That thereafter the applicant was further promoted to the post of TCI Gr.III on the basis of selection held on 24.3.88 and was posted at Rangia vide office order No.E/254/26(N) Pt.III dated 24.3.88. But the applicant could not avail of the said promotion since he was not spared by the DSTE/TSK and thus he was deprived of joining the promoted post for no fault of him. Subsequently, he was considered for promotion as TCI/III in 1989 and was promoted vide order No.E/283/159(N)Pt.-IV dated 17.10.89 of CSTE(P), Maligaon with his posting at Mariani where he had joined in December'89.

4.5 That on his joining at Mariani, the applicant retained his departmental quarter at Tinsukia in order to avoid interruption of education of his children.

Such retention of quarter was not allowed by the Respondent department and departmental proceeding was drawn up against the applicant under Discipline & Appeal Rules (DAR), placing him under suspension w.e.f. 17.8.90 vide memo No. N/SS/Punishment/Pt.II-TS dated 17.8.90.

Since the retention of quarter was highly essential for the applicant for the sake of his children's education at Tinsukia, therefore the applicant, while under suspension, submitted an appeal on 22.10.90 to the respondent praying for revocation of his suspension and requesting for reversion to his former post of WTM/HS.Gr.I in order to accommodate him at Tinsukia till the availability of a post of TCI/Hi at Tinsukia.

Brij Kishor Prasad Gupta

4.6 That the Enquiry Officer submitted his report on 17.12.90 to the Disciplinary authority in which he reported that the charges of Article I, II and III had been established and also recommended interalia to consider the appeal dated 22.10.90 of the applicant and to allow the applicant to join in his former post of WTM Gr.I at Tinsukia.

Accordingly, the suspension of the applicant was revoked w.e.f. 17.12.90 vide letter No.N/55/Punishment/Pt.II/TS dated 21.12.90 and the applicant was allowed to join at Tinsukia on 21.12.90 subject to DAR Proceedings.

// 4.7 That subsequently the Disciplinary Authority informed the applicant vide letter No.N-55/Punishment/Pt.II/TS dated 31.12.90 that the explanation of the applicant in regard to the memo No.N/55/Punishment/Pt.II/TS dated 25.9.90 was not found satisfactory and hence punishment was imposed vide order dated 31.12.90 and the relevant portion of the order is quoted hereunder :-

"Shri B. K. Prasad Gupta, TCI/Gr.III/MXN in scale of Rs.1400-2300/- (R.P.) is reverted to WTM/Gr.I in scale of Rs.1320-2040/- (R.P) for three months with non-cumulative effect".

(A copy of the order dated 31.12.90 is annexed hereto as Annexure-I)

4.8 That on expiry of the period of reversion of three months aforesaid, the applicant submitted an appeal on 29.5.91 before the Divisional Signal and Telecommunication Engineer, N. F. Rly, Tinsukia stating all facts and praying for the restoration of his promotion as TCI/III and his posting at Tinsukia since one Shri J. Saikia, TCI/III/TSK was under order of transfer to DBRT on promotion. The appeal of the applicant was forwarded on 29.5.91 by the Divisional Railway Manager, Tinsukia to the CSTE(P), Maligaon for necessary action.

Brig Vishnu Prasad Gupta

(Copy of the application of appeal dated 29.5.91 and copy of the forwarding letter dated 29.5.91 are annexed hereto as **Annexure-II** and **Annexure-III** respectively.)

4.9 That thereafter, the applicant approached the respondents time and again repeating his aforesaid appeal and ultimately submitted an appeal on 2.2.95 to the DSTE, Tinsukia through proper channel and the DSTE, Tinsukia forwarded the same to the Chief Signal Telecommunication Engineer, Maligaon for consideration of his prayer of restoration to the post to which he was earlier promoted. But the respondents remained unmoved.

(Copy of the application of appeal dated 2.2.95 is annexed hereto as **Annexure-IV**).

4.10 That most surprisingly, after expiry of the punishment period on 31.3.91, the applicant was not restored to his promoted post of TCI/III but on the other hand, the persons junior to the applicant had been promoted. The applicant therefore, submitted another appeal on 22.2.96 praying for the restoration of his promotion w.e.f. 1.4.91 i.e. the day on which his period of punishment came to an end. Surprisingly, the respondents remained unmoved and took no initiative to consider the appeal of the applicant.

(Copy of the application dated 22.2.96 is annexed hereto as **Annexure-V**).

4.11 That the applicant had again submitted his last appeal on 18.8.96 reiterating his prayer as before but the respondents showed their usual apathetic attitude and took no initiative to do justice whatsoever in the instant case.

4.12 That at this stage, having exhausted all his efforts to get justice and finding no other alternative, the applicant ultimately approached this Hon'ble Tribunal

Brij Kishore Prasad Gupta

through OA No.218/96 for protection of his legitimate rights and praying for direction upon the respondents for restoration of his promotion as TCI/III wef 1.4.91 and payment of all consequential benefits. The Hon'ble Tribunal after hearing both the sides at length, was pleased to pass it's judgment and order on 4.5.98 in OA No.218/96 with the following directions to the Respondents :-

"In view of the above we dispose of this application with direction to the respondents to promote the applicant to the post of Telecom Inspector Gr.III in terms of Annexure-XI order dated 31.12.90 i.e. from 1.4.91 and he shall get all the consequential benefits including his entitlement to be considered for promotion to the next higher grade."

(Copy of the judgment and order dated 4.5.98 in OA. No.218/96 is annexed hereto as Annexure-VI).

From the above judgment, it is clear beyond any doubt that applicant would get his promotion wef 1.4.91 and would also get all consequential benefits which means interalia the arrears of promotion post etc also.

4.13 That since the respondents did not complied with the directions of the judgment dated 4.5.98 even after a lapse of six months since the judgment was passed, the applicant filed a contempt petition on 12.11.98, before this Hon'ble Tribunal and the Hon'ble Tribunal was pleased to pass its order on 23.3.99 in C.P. No.34/98 in OA No.218/96 which is quoted below :-

"Mr. B. K. Sharma, learned counsel for the alleged contemnors informs this Tribunal that the order has since been complied with. Mr. M. Chanda, learned counsel for the petitioner submits that he has no instruction in this regard. However, on the submission of Mr. B. K. Sharma we find no ground to proceed with the case. However, if on a later date it transpires that the order is not implemented the petitioner may renew his prayer.

Brij Vishnu Prasad Gupta

The contempt petition is closed".

(Copy of the judgment and order dated 23.3.99 is annexed hereto as Annexure-VII).

4.14 That eventually, the respondents vide their order No.E/T-39/I/V(N) Tele issued on 24.2.99 i.e. after a lapse of more than 9 months since the judgment dated 4.5.98 was passed, restored the applicant as TCI/III in the scale of Rs.5000-8000/- impliedly from 1.4.91 which was due to him from as back as 1.4.91 and posted him at Tinsukia.

Immediately thereafter, the applicant was further promoted as JE/Tele/I in the scale of Rs.5500-9000/- and posted at Tinsukia vide order No.E/254/26(N) Pt.IV dated 18.3.99 and this promotion was made effective w.e.f. 1.3.93 i.e. from the date on which his immediate junior Shri U.K. Biswas was promoted to the said grade.

The applicant was also entitled for a further promotion as SE/Tele in the scale of Rs.6500-10,000/- at least w.e.f. 3.7.98 when his immediate junior Shri U. K. Biswas was promoted to the said post but the applicant was not considered for the said promotion at that time due to perpetual inaction of the respondents in respect to this applicant for years together as narrated in the proceeding paragraphs. Subsequently, after the passing of the judgment and order dated 4.5.98 of this Hon'ble Tribunal, and the events thereafter, the respondents called the applicant for a selection test for the said promotion to the scale of Rs.6500-10,000/- vide letter dated 5.5.2000 as a mere formality and eventually disqualified him in a planned manner thus depriving him of the said promotion.

(Copy of order dated 24.4.99, dated 18.3.99 and dated 5.5.2000 are annexed hereto as Annexure-VIII, IX and X respectively).

Brij Kishore Prasad Gupta

4.15 That consequent upon the restoration of the applicant as TCI/III, vide order dated 24.4.99, the proforma fixation of his pay regularising his annual increments was done vide memorandum No.E/T-39/1/V(N)Tele/II dated 23.3.99 but surprisingly it was indicated therein that monetary benefit would be admissible w.e.f. 25.2.99 only i.e. from the date of shouldering responsibility thus intending to deprive the applicant of his arrears on promotion.

Similarly, in the order dated 18.3.99, although the promotion in the scale of Rs.5500-9000/- was made effective w.e.f. 1.3.93, it was mentioned that -

"He will get proforma fixation of pay (not arrear)".

Accordingly, no arrear on account of restoration/promotion has been granted to the applicant.

This apart, in proforma fixation of pay as shown in the order dated 23.3.99, the scale of Rs.5500-9000/- w.e.f. 1.3.93 has not been taken into accounts.

Thus all the arrears which the applicant is legitimately entitled to, has been denied to the applicant on a vague plea of "shouldering responsibility" even though it was categorically directed in the judgment and order dated 4.5.98 in O.A. No.219/96 to pay all consequential benefits to the applicant.

4.16 That due to the impugned action of the respondents aforesaid and non-payment of arrear monetary benefit to the applicant in utter violation of the judgment and order dated 4.5.98 in O.A. No.218/96, the applicant submitted a misc. petition before this Hon'ble Tribunal praying for re-opening of the contempt petition No.34/98 (in OA No.218/96) disposed on 23.3.99.

The Hon'ble Tribunal, after examining the Misc Petition passed its order dated 27.4.2001 in M.P. No.39/2000 and observing that in view of the facts

Brij Vishwanath Prasad Gupta

contended in the Misc. Petition the petitioner may assail the action of the respondents through an appropriate proceeding.

(Copy of the order dated 27.4.2001 in M.P. No.39/2000 is appended herewith as Annexure -XI).

4.17 That the applicant begs to state that non-fixation of his pay in accordance with rules and the respondents' denial to pay the applicant the arrears on promotion with retrospective effect is a continuing wrong against the applicant which gave rise to a recurring cause of action each time he was paid salary which was not computed in accordance with the rules.

The applicant also begs to submit that it is the settled law that when a court has ordered consequential benefits, it includes arrears for promotion post also and therefore in the instant case, the order dated 4.5.98 in OA No.218/96 passed by this Hon'ble Tribunal ought to have been carried out by the respondents in the same spirit and denial of arrears for promotion post to the applicant is opposed to the principle established by law.

4.18 That the applicant further begs to state that the non-restoration of his promotion as TCI-III w.e.f. 1.4.91 following the completion of his punishment period on 31.3.91 was not due to his own fault but for the administrative reasons/lapses of the respondents only and the applicant made untiring persuasions for his restoration of promotion keeping himself in readiness all the time for shouldering the responsibilities as or when ordered. When the respondents subsequently granted promotion to the applicant w.e.f. 1.4.91, it means that they accepted the fact of their administrative lapses as the cause of denial of promotion earlier and accordingly they granted the proforma fixation of pay also w.e.f. 1.4.91 to the applicant, and as such the respondents do not have the right to deny the arrears to the applicant. The

Brij Kishore Prasad Gupta

principle laid down by the Apex Court in Vasant Rao Raman Vs. U.O.I with reference to the judgment passed by the Jabalpur Bench of CAT clearly spells out that in case of proforma fixation, arrears should be paid.

4.19 That the denial of the respondents to pay arrear of promotion post to the applicant on the ground of "non-shouldering of responsibilities" is not tenable in the eye of law since the applicant was ever ready to shoulder the responsibilities which he rather insisted on, but he was prevented from doing so because of the non-issuance of the appropriate order by the respondents to restore his promotion for years together until they were compelled to do so by the order of the Hon'ble Tribunal dated 4.5.98 in OA No.218/96.

Further denial of arrear pay on promotion post ^{under} of the policy of "non shouldering of responsibilities" does no longer hold the field as per the settled law. In P. Thyagarajan & Ors. Vs. U.O.I & Ors. an identical provision in Railway Board's circular dated 15/17-9-1964 stating that "no arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts" was set aside by the Hon'ble Ernakulam Bench of this Tribunal and since then this provision incorporated in IREM stands quashed by the Ernakulam Bench of the Tribunal.

Justice M. Rama Jois of the Karnataka High Court, in his "Services under the State", under the caption "Denial of arrears" has stated the following principle :-

"Where according to service rules, the pay of an official is fixed with effect from a particular date any condition imposed by the Government in the order fixing the pay which disentitles the official from drawing the arrears of pay from that date is illegal".

Brj. Vishore Prasad Gupta

In view of above principles laid down by the Hon'ble Courts, the denial of arrear pay to the applicant in the instant case is utter violation of the settled laws which exhibits the disregard of the respondents to the law.

4.20 That the applicant begs to state that the respondents are well aware of their lapses and injustice done in the instant case and it is understood that the Railway Headquarters, Guwahati issued one letter No.E/254/26(N)Pt.VI dated 1.3.99 also to the DRM, Tinsukia asking for fixation of responsibility for miscarriage of justice in the instant case and the Hon'ble Tribunal may be pleased to direct the respondents to produce the said letter dated 1.3.99 before the Hon'ble Tribunal for perusal and proper disclosure of facts.

4.21 That the arbitrary and illegal actions of the respondents violating all canons of law, and denial of arrear pay to the applicant have caused immense financial loss to the applicant for no fault of his but as the sheer outcome of the administrative mischiefs resorted to by the respondents and the applicant finding no other alternative, is approaching this Hon'ble Tribunal for protection of his legitimate rights and appropriate relief.

4.22 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that the applicant was deprived of his arrear pay for promotion post which he was legitimately entitled to.

5.2 For that in accordance with the order & judgment passed by this Hon'ble Tribunal on 4.5.98 in OA No.218/96, the applicant is entitled to get all consequential benefits following his promotion which interalia includes the arrear pay also.

Brij Kishore Basak Gupta

- 5.3 For that in accordance with the settled law, the respondents granting promotion and proforma fixation of pay to the applicant w.e.f. certain retrospective date i.e. 1.4.91 have no right to deny arrear pay accrued as a consequence/incidence of such promotion and proforma fixation of pay.
- 5.4 For that the unexplainable and inordinate delay incurred in promoting the applicant which ultimately gave rise to arrear pay was not due to the fault of the applicant but owing to administrative negligence/lapses of the respondents.
- 5.5 For that the applicant was prevented from shouldering responsibilities of higher posts due to perpetual inaction of the respondents leading to non-restoration of the applicants promotion in time which caused accumulation of arrear pay.
- 5.6 For that the persons junior to the applicant were promoted in time suppressing the promotion of the applicant which the applicant ought to have got on 1.4.91 itself.
- 5.7 For that the applicant was deprived of his promotion to the scale of Rs.6500-10,000/- which he was due to get on 3.7.98 i.e. the date on which his junior Shri U. K. Biswas was promoted since the applicant was deprived of contesting with those junior persons at the relevant time for the said promotion due to inaction of the respondents.
- 5.9 For that the applicant acquired a legal and legitimate right for promotion to the scale of Rs.6500-10,000/- w.e.f. 3.7.98 and also arrear pay on all the promotion posts w.e.f. 1.4.91 on the basis of proforma fixation to be done w.e.f. 1.4.91 post wise.

Brij Kishore Prasad Gupta

6. Details of remedies exhausted.

That the applicant states that he has no other alternative and other efficacious remedy than to file this application. All his efforts and persuasions have gone unheeded by the respondents.

7. Matters not previously filed or pending with any other court.

The applicant further declares that he had earlier approached this Hon'ble Tribunal for his grievances pertaining to promotion and the Hon'ble Tribunal vide its judgment passed on 4.5.98 in OA No.218/96 ordered the respondents for granting promotion to the applicant w.e.f. 1.4.91 along with all consequential benefits which includes arrear pay of promotion post also. But since the respondents granted only the promotion to the applicant w.e.f. 1.4.91 and denied the consequential arrear pay and have thus been depriving the applicant from his legitimate pay computed not in accordance with rule, giving rise to a continuing and recurring cause of action, the applicant, as a follow-up of this Hon'ble Tribunal's order dated 27.4.2001 in his Misc. Petition No.39/2000 (in OA No.218/96), is filing this application.

Save and except the above, the applicant has not previously filed ^{any} application No.218/96, Writ Petition or Suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the 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 humbly prays that your Lordships be pleased to grant the following reliefs :

Brig. Vishal Prasad Gupta

- 8.1 [That the respondents be directed to grant the arrear pay for promotion posts, post wise w.e.f. 01.04.91 to the applicant for his promotions given on 01.04.91 and 01.03.93 on different scales of pay till the date of actual restoration order passed in favour of the petitioner.
- 8.2 That the respondents be directed to grant his further promotion to the scale of Rs.6500-10,000/- w.e.f. 3.7.98 i.e. the date from which his junior Shri U. K. Biswas was promoted to the said post and also to pay arrears etc incidental to the said promotion.
- 8.3 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to arrear salary with effect from 1.4.1991 to till the actual date of restoration of the applicant to the promotional post of TCI Grade III in the pay scale of Rs. 5000-8000 per month and also to the cadre of J.E. Tele/I in the pay scale of Rs. 5500-9000 w.e.f 1.3.1993 from the date of promotion of immediate junior of the applicant.]
- 8.4 Costs of the application.
- 8.5 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.
9. Interim order prayed for.
- During pendency of this application, the applicant prays for the following relief :-
- 9.1 That the Hon'ble Tribunal be pleased to observe that pendency of this application shall not be a bar to consider the reliefs prayed in the original application.
10. This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I.P.O. No. : 56 423007
ii) Date of issue : 30-7-2011
iii) Issued from : G.P.O., Guwahati.
iv) Payable at : G.P.O., Guwahati.

12. List of enclosures.

As stated in the index.

Brj Kishore Pasai Gupta

VERIFICATION

I, Shri Brij Kishore Prasad Gupta, Wireless Telecom Maintainer/1/TSK, N.F. Rly, Tinsukia do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this the 8th day of ^{August}~~July~~, 2001.

Brij Kishore Prasad Gupta.

Annexure-I

N.F.Railway

NOTICE OF IMPOSITION OF PENALTIES UNDER ITEM 9i) (ii) & (iii) RULE 6 (i) & ITEM (I), (iii) OF RULES 6 (V) of R.S. (D.A.) RULES, 1968.

No. N/55/PUNISHMENT/PF.1/TS

Dated 31.12.90

To

Sri B.K. Prasad Gupta,
Designation TC1/Gr.III/MXN
THRO : TC1/Tsk

With reference to your explanation to the Memorandum No. N/55/Punishment Pt. II/1S dated 25.9.90 you are hereby informed that your explanation is not considered satisfactory and the undersigned has passed the following orders :

1. Gone through the enquiring report in details.
2. All the charges are established.
3. The following order is passed

"Shri B.B.Prasad Gupta, TC1/Gr. III/MXN in scale of Rs. 1400/- 2300/- (RP is reverted to WTM/Gr. I in scale of Rs. 1320 – 2040 (RP) for three months with non-cumulative effective.

Sd/- A. Sarkar

DSTE/Tsk
Signature & designation of the
Disciplinary Authority.

C/- DRM(P) S & T/Tsk (for information and necessary action)

D/- TC1/Tsk (for information and necessary action).

When the notice is issued by an authority then the disciplinary authority, here quote the authority passing orders. Here quote the authority/acceptance/rejection of explanation if penalty imposed.

AN APPEAL AGAINST THIS LIST TO
THE AUTHORITY PASSING THE ORDERS (THE NEXT IMMEDIATE SUPERIOR)

*Attested
by
D. J. S.*

ACKNOWLEDGEMENT

THIS PORTION MUST BE DETACHED, SIGNED & TO RETURN TO THE OFFICE
OF ISSUE ; DRM (E&T)/Tsk.

I hereby acknowledge receipt of four (R.I.P. No. Dt. Conveying the orders
passed on my explanation to the charge sheet No.

Station :

Date :

Signature or Thumb Impression of
Employee & designation.

*Attested
S. S. S. S.*

Annexure-II

To

The Divisional & Telecommunication Engineer,
N.F. Railway/TINSUKIA

Sub Promotion of TCI/III in scale Rs. 1400-2300/-.

Sir,

With due respect I beg to state under the following few lines for your kind attention and favourable consideration please.

That Sir, on being selected, myself resumed on promotion as TCI/III at MOM on 21.12.89 on administrative interest. But sorry to regret that I could not vacate my Rly Quarter at TSK Rly Colony due to education of my son and daughter which I have already intimated vide my earlier letter dated 30.7.90 seeking permission to retain my quarter at TSK.

But instead of consideration of my application, I have been placed under suspension, imposed punishment holding DAR enquiry and reverted to my former post w.e.f. 1.1.1991 vide your letter NO. N/55/Punishment/Pt-11/TS dated 31.12.90 for 3 (three) months non cumulative effect, due to non-vacation of the Rly quarter at TSK.

In view of the above I have been compelled to accept the above and accepted accordingly due to educational facilities of my children with a request to arrange my position as TC1/III at TSK as and which vacancy arise. Now it is learnt that Sri J. Saikia, TCI/III/TSK is under order of transfer to DBRT on promotion.

I therefore like to request you kindly arrange my posting on promotion as TCI/III at TSK for which I shall be highly obliged.

Thanking you,

Yours faithfully,

Sd/-

(B.K.P.GUPTA)

Date 29th May 1991

Copy to

1. The CSTE/P/MLG for information and necessary action please.

(B.K.P.GUPTA)

*Approved
Sd/-
Adm.*

Annexure-III

N.F. RAILWAY

No. E/T-39/M/V/Pt.11 (TCI)

Office of the DRM (P)/TSK

Dated 29.9.1991

To

CSTK(P)/MLG

N.F. Railway,

Sub: Appeal submitted by Shri B.K.P. Gupta, now WTM/Gr.I/TSK

Sending herewith appeal submitted by Shri B.K.P. Gupta Ex. TCI/111/MXN now WTM/Gr.1/TSK for his promotion as TCI/III in scale Rs. 1400-2300 at TSK for your necessary action.

It is mentioned here in that Shri B.K.P. Gupta WTM/Grade 1 TSK was promoted earlier as TCK/Gr. III in scale Rs. 1400-2300 in terms of your office order No. E/283/159(N)/Pt. IV dt. 17.10.89 and he resumed at MIN on 21.12.89. In terms of your letter No. E/283/169(N) Pt. IV dt. 28/29-11-90 and DSTE/TSK's reverted to his former post in MTM/Gr. 1 in scale Rs. 1320-2040 w.e.f. 1.1.91 for period of 3 (three) months (NC.)

DE/1(one)

For DAM/P/TSK

Copy forwarded for information and necessary action to :

DSTE/TSK This is in reference to his office note No. N/55/Staff/Pt.II/TSK dated 29.3.91.

For DRM (P)/TSK

*Accepted
for file*

Annexure-IV

Advance copy by post

To
The Divisional Signal & Telecomm.
Engineer,
N.F. Railway
Tinsukia(Assam)

(Through Proper Channel)

Sub: Promotion of TCI/Grade III.

Ref: CSTE(P) MLG's Office order No. E/283/150(W) Pt. IV Dated 17-18-1989 and
DRM(P)/Tsk's office order No. E/192/1/w/S & T (Pt-I) dated 28.11.89

Sir,

With due respect I beg to state that vide above cited letter I was promoted as
TCI/Gr. III with the posting at MIN and I resumed my duty on 21.12.1989.

But due to ill luck as I was not vacated my Rly. Quarter at TSK (due to
education of my children I was put under suspension w.e.f. 17.8.1990 and
compelled to submit unwillingness for the post of TCI/Gr. III at MXN with a request
for posting at TSK as TCI/Gr. III.

But the then DSTE/TSK revoked suspension w.e.f. 21.12.1990 and after
DAP reverted in my formal post for a period of 3 (three) months w.e.f. 1st January,
1991 only.

Subsequently the post of TCI/Gr. III has been secured at TSK on promotion
order of Sri J.S.Saikia TCI/Gr. III with posting order of DBRT as TCI/Gr. II was filled
up by Sri A.K. Das, DR/TCI/Gr. III.

Though my 3(three) months punishment has been coupted on 31st March,
1991, I have not yet restored as TCI/Gr.III for which I applied in the month of May
1991 but no response has been received till now.

Accessed for
P. S. Das

In view of the above you are therefore requested to arrange my promotion on TCI/Gr.III w.e.f. 1st April, 1991 as ordered N. Ors. Considering the post was available at TSK accordingly with monitoring benefit as well as surety for which I shall be highly oblige.

Yours faithfully,

(B.K.Prasad Gupta),
EX-TCI/Gr.III/MXN now WTA/TSK

Copy to

1. /MLG /CSTE/MLG for your fair judgment please.

Place : Tinsukia (Assam).

Dated 2.2.95

Yours faithfully,

(B.K.P. Gupta)
EX-TCI/Gr.III/MXN now WTA/1/TSK

*Accepted
22/2/95
A. S.*

Annexure-V

ADVANCE COPY BY REGD. POST WITH A/D

To
The Divisional Signal and Telecommunication Engineer
North East Frontier Railway,, Tinsukia

(Through Proper Channel)

Sub : Appeal for Submission of documents in the Court of Law in connection with my promotion as TCI/Gr. III as well as TCI/Gr. II.

Ref : My earlier appeal dated 2.5.89 and 29.5.91.

Sir,

With regards, I do hereby like to request you into following few lines for your kind consideration please.

That Sir, in terms of my earlier appeal cited above, on going through the preliminary enquiry with the record, the following facts come to my notice, which has shown para wise as given below :-

- (i) That Sir, in terms of CSTE(P) MLG's order No. E/254/26(N) PT-III dated 24.3.88, I have been selected for the post of TCI/III in scale of Rs. 1400-2300/-
- (ii) That Sir, in terms of CSTE(P) MLG's order No. E/254/26(N) PT-III dated 31.3.89, I have been transferred from TSK to RNT on promotion as TCI/III in scale of Rs. 1400-2300 But for want of sparing I could not avail the same.
- (iii) That Sir, though the post of TCI/III was available at TSK due to transfer of Sri P.K. Adhikari, TCI/III/TSK to NSO was filled by Md. Ors. Vide CSTE(P) MLG's order No. E/254/26(N) Pt-III dated 16.1.89
- (iv) That Sir, subsequently I was considered for promotion to TCI/III vide CSTE(P) MLG's order No. N/284/159(N) Pt-IV dt 17.10.89 and posted at MXN, I have applied for retention of my Gr. At TSK, on educational ground of my children, while I was enjoying my promotion at MXN, but without any permission of retention of my Qtr. At TSK the then DSTE/TSK placed me under suspension and processed DAR against me. Considering no other

*Attested and
Signed
D. J. A. S.*

alternative I was compelled to surrender my promotion with a request that if vacancy may available at TSK may I consider for the same.

(v) That Sir, my request was consider for the same and I was reverted accordingly for a period of three month holding DAR from 1.1.91 to 31.3.91 vide DSTE/TSK's L/No. N/55 punishment/PT-II/TS dated 31.12.1990. But though the vacancy of TCI/III was available at TSK w.e.f 1.4.1991, I was not restored with my promotion as TCI/III.

(vi) That Sir, it is learnt that CSTE(P) MLG vide his letter No. E/283/159 (N) Pt-IV dated 28/29-11-1990 allowed as to retain beyond my punishment period, which I cannot agree as there is no such records of the letter is available neither at CSTE(P) MLG's office nor at DSTE/TSK's office and at DRM(P) TSK's office.

(vii) That Sir, during the period from 31.3.88 to till the date of my appeal dated 29.5.91, so many junior's to as have already been promoted superseding my own legitimate claim.

In view of the above facts, it reveals, though I have been selected for the post of TCI/III by the Hon'ble Committee Members of Selection Board of Headquarters. I have intentionally deprived due to the lack of declare from Headquarters as well as the then executive of TSK Division, but the competent authority not yet regreated my selection proceedings for the discontinuation or disachievement of my career.

(viii) That Sir, since administration fails to comply with my genuine claim of promotion and neither replied my appeal nor yet restore considering the justice delayed and judgement denied. I would like to call DANIEL to the subject and request you to accord your permission to proceed to submit the documents to the court of law.

I also like to add herein if no reply into the subject may I get within 15 days, deem to have permitted. I will compelled to submit the document to the court of law so that may I get compensation from the person involved into the subject for loss of prestige and peace of family as well as monitoring benefit.

(ix) That Sir, the benefit of my promotion of TCI/III as well as TCI/II will be viewed seriously on my pensionary benefit for the above ill justice of administration. A copy of statement for sanitary benefit is enclosed.

Attest at
S. A. A. A.

Under the above circumstances I request you to kindly examine the depth of the issue and arrange my due promotion with full monetary benefit as well as seniority accordingly for which I shall be obliged.

Date 22.02.1996

Yours faithfully,

Sd/-

(B.K.PRASAD TUPTA)

Ex. TCI/III/MXN

Now WTM/I TSK

Copy forwarded for information and necessary action to :

1. Hon'ble General Manager/North East Frontier Railway/Maligaon.
2. Hon'ble Chief Vigilance Officer (Sr. Dy. Gr. Manager, N.F.Rly./Maligaon.
3. Hon'ble Chief Signal & Telecommunication Engineer, N.F.Rly/Maligaon.
4. Hon'ble Chief Communication Engineer/N.F.Rly/Maligaon.
5. Hon'ble Chief Personnel Officer/N.F.Rly./Maligaon.
6. Hon'ble Chief Personnel Officer/Administrative/N.F.Rly/Maligaon.
7. Hon'ble Dy. Chief Signal & Telecommunication Engineer(Tele),N.F.Rly/Maligaon.
8. Hon'ble Officer on Special Duty/Indian Rly/N.F.Rly/Maligaon.
9. Hon'ble Divisional Railway Manager/N.F.Rly/Tinsukia.
10. Hon'ble Divisional Personnel Officer/N.F.Rly/Tinsukia

Dated 22.2.1996

Yours faithfully,

N/TC/SSL/Pt.I/TSK92054)

Forwarded for favourable consideration please.

Sd/-

(B.K.PRASAD TUPTA)

Ex. TCI/III/MXN

Now WTM/I TSK

*Attested
DD
Adm*

- (1) Promoted to TCI/III Dated : 31.03.89
B.K.Prasad Gupta 01.03.89 Due increment

And others 01.03.90

- (1) I.S.Mazumdar
(2) S.N.Sinha
(3) Md. Ayub Khan
(4) Dipak Das

Promotion with J. Saikia TCI/II/DBRT

- (2) Due promotion as TCK/II Dated 14.02.1991 Due increment
with Junior Sri J. Saikia 14.02.1992 Do
as ordered vide CSTE/P/MLG's 14.02./1993 Do
order No.E/254/26(N) Pt:VI 14.02.1994 Do
Dt. 14.02.1991 14.02.1995 Do

Further Sri J.Saikia TCI/II/DBPT called to appear in the selection of TCI/II in scale of Rs. 2000-3200.

Sri Shiwaji Das, TCI/III/MLG junior to me promoted and posted as TCI/II at TSK in PRS.

Devi
Ad

4/5/98

45

Annexure-VI

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original application No. 218 of 1996

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

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

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

Shri B.K.Prasad Gupta,
WTM/1/TSK
N.F.Railway, Tinsukia

By Advocate Mr. M. Chanda

...Applicant

-vs-

1. The Union of India, through the
General Manager, N.F.Railway,
Maligaon.
2. The Chief Signal & Telecommunication Engineer,
N.F.Railway, Maligaon.
3. The Chief Personnel Officer
N.F.Railway, Maligaon.
4. The Divisional Railway Manager(F),
N.F.Railway, Tinsukia,
5. The Divisional Signal Telecommunication Service,
N.F.Railway, Tinsukia.

By Advocate Mr. B.K.Sharma, Railway Counsel

ORDERBARUAH J.(V.C.)

This application has been filed by the applicant seeking certain directions.

*Noted
B.K. Sharma*

2. Facts for the purpose of disposal of this application are :

At the material time the applicant was working as Wireless Telecom Maintainer (WTM for short) Grade.

1. [By Annexure III order dated 17.10.1989 he was promoted to the post of Telecom Inspector Grade III and as per the said order of promotion he joined at Mariani in that post. After joining at Mariani the applicant still continue to occupy the Quarter at Tinsukia. Accordingly a memorandum dated 25.9.1990 was issued to the applicant to show cause why action should not be taken against him. The applicant submitted his explanation to the aforesaid memorandum. However, the authority was not satisfied with the explanation given by the applicant. Accordingly by Annexure XI Order dated 31.12.1990 he was reverted to the post of WTM Grade in the scale of pay of Rs. 1320-2040 for a period of three months with non-cumulative effect. As per the said Annexure XI order after expiry of the period of three months the applicant ought to have been promoted to the post of Telecom Inspector Grade III. However, this was not done. Thereafter, there were certain communication between the Divisional Railway Manager (P) and the N.F. Railway, Headquarter. The applicant also prayed that he ought to be promoted to the original post of Telecom Inspector Grade III at Tinsukia as and when such post would fall vacant. However, in his request, he made it clear that if that was not possible he should be immediately promoted to the post of Telecom Inspector Grade III. This was, however, not done. Hence the present application.

3. We have heard Mr. M. Chanda, learned counsel for the applicant and Mr. B.K. Sharma, learned Railway counsel, Mr. Chanda submits that as per Annexure-XI order dated 31.12.1990 the authority was bound to promote the applicant after March 1991. According to Mr. Chanda this promotion was denied arbitrarily and

illegally. Mr. B.K.Sharma, however, submits that because of the option given by the applicant the matter got delayed. Mr. Sharma further submits that the matter is now pending in the Headquarter. However, nothing has been done.

4. [On hearing the learned counsel for the parties it is now to be seen whether the applicant was entitled to get his original post of promotion after the expiry of the period mentioned in the Annexure XI order dated 31.12.1990. Annexure XI order is very clear that the applicant was reverted to the post of WTM for a period of three months with non cumulative effect. Therefore, in all fairness the authority ought to have promoted the applicant immediately after 31.3.1991. The denial of such promotion in our opinion is unreasonable and arbitrary.] //

5. In view of the above we dispose of this application with direction to the respondents to promote the applicant to the post of telecom Inspector Grade III in terms of the Annexure XI order dated 31.12.1990, i.e. from 1.4.1991 and he shall get all the consequential benefits including his entitlement to be considered for promotion to the next higher grade.]

6. The application is accordingly disposed of. However, considering the facts and circumstances of the case we make no order as to costs.

SD/- VICE-CHAIRMAN Dtd
Sd/ MEMBER (A) 4.5.98

Notionally - Not

1. 4.91 → Telecom Insp Gr III

1. 3.93 → S

Gr II

R 2281

(1998) (1) CAT 88

DL Deshpande v The Director of the Div Rm & as

CAT 88

(1990) 1 CAT 437

All consequential benefits

In The Central Administrative Tribunal

Guwahati Bench: Guwahati

ORDER SHEET

APPLICATION NO. CP 34 OF 1998

OA. 218 OF 96

Applicant(s)

Sri B.K. Prasad Gupta

Respondent(s)

Sri Rajendra Nath and ors

Advocate for Applicant(s)

Mr. M. Chanda

Advocate for Respondent(s)

23.3.99 Mr B.K.Sharma, learned counsel for the alleged contemnors informs this Tribunal that the order has since been complied with. Mr. M. Chanda learned counsel for the petitioner submits that he has no instruction in this regard. However, on the submission of Mr. B.K.Sharma we find no ground to proceed with the case. However, if on a later date it transpires that the order is not implemented the petitioner may renew his prayer.

The contempt petition is closed.

Sd/ VICECHAIRMAN

Sd/MEMBER (A)

*Attested
Advocate*

ANNEXURE-VIII

N.F.RAILWAY
OFFICE ORDEROffice of the Divl. Railway Manager,
(P), N.F.Railway, TinsukiaDated 24th February, 1999

Sri B.K.P. Gupta, W.T.M./Gr.I/TSK was promoted to the post of TCI/III in the scale of Rs. 1400-2300/- vide this Office Order No. E/192/I/V/S & N (Pt. I dated 28.11.1989 and subsequently reverted to the post of WTM in scale of Rs. 1320-2030/- for a period of 3 months w.e.f. 1.1.91 to 31.3.91 is now hereby restored as TCM/Gr. III i.e. JE/II in the scale of Rs. 5000-8000 and posted as JE/II/TSK

This issue with the approval of DSTE/TSK.

No. E/T-39/I/V(N) Tele dated 24.2.99

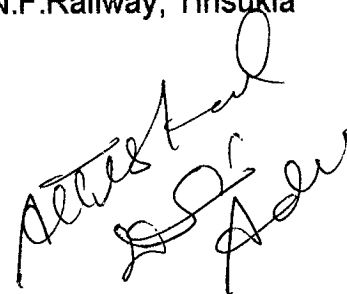
Sd/- Illegible

For Divisional Railway Manager(P)
N.F.Railway, Tinsukia

Copy forwarded for information and necessary action to :

1. GM(P) MLS
2. SPO/E&PC. His proforma fixation to be done early as per courts order.
3. DSTE/TSK
4. DAO/TSK
5. SSE(Tele)TSK
6. SSE(Tele) MXN
7. E/Bill at office
8. Party concerned
9. Spare copy for P/Case

Sd/- Illegible

For Divisional Railway Manager(P)
N.F.Railway, Tinsukia

Annexure-IX

N.F. railway

OFFICE ORDER

Sri B.K.P. Gupta, JE/Tele/II/TSK in scale of Rs. 5000-8000 under DSTE/TSK who has been found suitable for promotion to the post of JE/Tele/I in scale Rs. 5vide this office memorandum of even number dated 15.3.99 is temporarily promoted as JE/Tele/I in scale Rs 5500-9000 and posted at TSK under DSTE/TSK vice Sri S.K. Das who transferred. ✓

Sri Gupta will get effect of promotion benefit w.e.f. 1/3/93 from the date of his immediate junior Shri U.K. Biswas. He will get proforma fixation of pay (net arrear).

This issues with the approval of competent authority.

(A. Saikia)
BPO/Engg.
For General Manager(P)/Maligaon

No. E/254/26(N) Pt. IV

Maligaon, dated 18.3.99

Copy forwarded for information and necessary action to :

1. CSTE/Tele/MLG
2. Dy. CSTE/Tele/MLG
3. DSTE/TSK
4. DRM(P)/TSK
5. IMO/TSK
6. APO/LC/MLG

Sd/-

Illegible

for General Manager(P)/Maligaon
18.3.99

Attested
Adm

Se
25.9.91 (prag WS)
1.2.96.
15.3.99 inst 1.4.91?
CAT order 4.5.98.

Annexure-10

N.F.RAILWAY

OFFICE OF THE
GENERAL MANAGER(P)
MALIGAON

DATED 5/5/2000

No.E/254/26(N)Pt.V

To,

DRM(P)/KIR/APDJ, LM & TSK
DY. CSTE/MW/MIG
DY. CSTE/Tele/CON/MLG
DSTE/Tele/CON/MLGSr, DSTE/LMG
Sr.DSTE/APBJ
DSTE/KTR/DSTE/TSK
ASTE/WB/PNO,Dy. CSTE/
Tele/MLG

Sub : Written Examination for Selection of SE/Tele in scale Rs. 650-1050 (S & T Department.)

Ref : This office letter of even number 21/2/2000

Written examination for selection of SE/Tele is fixed as under :

Date	Time	Place	Paper
20.5.2000 Saturday	10.00 to 1300 hrs. 14.00 to 17.00 hrs.	CSTE's Office -do-	Paper - I Paper - II

The following candidates may be directed to appear for the written examination as per above programme.

Sl.No.	Name of the candidates in order of seniority	Designation	Working under
1	Sri T.T. Baidya	JE/T//MW/BPB	Dy. CSTE/MW/MLG
2	Sri S.K.Dutta	JE/Tele//NJP	DSTE/KIR
3	Sri Dipak Das (SC)	JE/Tele//MW/MLG	Dy. CSTE/MW/MLG
4	Bishnu Neogi	JE/Tele//KIR	
5	D.K.Sinha	JE/T//MW/SOUJ	DY. CSTE/MW/MIG
6	Sri.B.KP.Gupta	JE/T//TSK	DSTE/TSK
7	Sri Md. Ajub Khan	JE/T//KIR	DSTE/KIR
8	Sri Ashim Das	JE/T//LMG	Sr. DSTE/LMG
9	Sri T.K. Das	JE/T//MW/MLG	Dy. CSTE/MLG
10	Sri D.Bora (ST)	JE/T//MLG	Sr. DSTE/LMG

Attested
[Signature]
[Signature]

11	Sri P. Saha (SC)	JE/T//NCB	Sr. DSTE/APJ
12	Sri M.N.Bhowmick	JE/T//MLG	Sr. DSTE/MLG
13	Sri S.Chowdhury	JE/T//MW/RNY	Dy. CSTE/MW/MLG
14	Sri Kamayakha Sarkar	JE/T//Tele/CON	Dy. DSTE/Tele/Con/MLG
15	Sri Bijoy Mazumdar	JE/T//MW/MLG	Dy. CSTE/MW/MLG
16	Sri Kalyan Das	JE/T//MLG	Sr. DSTE/LMG
17	Sri B.N.Sikdar	JE/T//Trg/PNO	ASTE/WS/PNO
18	Sri B. Banerjee	JE/Tel/KIR	DSTE/KJR
19	Sri Dipankar Dey	JE/T//NGC	Sr. DSTE/LMG
20	Sri Sibajee Das	JE/T//Tele/CON	Dy. CSTE/Tele/Con/MLG
21	Dipankar Das	JE/T//APDJ	Sr. DSTE/APDJ

Sd/- Illegible

A.P.O./Signal

For General Manager(P)/MLG

Copy to :

1. CSTE/MLG for kind information please.
2. SSTE/Hqr/MLG. He will please arrange accommodation for holding selection and book peons.

Sd/- Illegible 4.5.2k

For General Manager(P)/MLG

Handwritten signature

ANNEXURE-XI

In The Central Administrative Tribunal

Guwahati Bench: Guwahati

ORDER SHEET

MISC. APPLICATION NO 39 OF 2000

OA. 2148 OF 96

Applicant(s)	Sri Brij. Kishore. Prasad Gupta
Respondent(s)	Union of India & Others
Advocate for Applicant(s)	Mr. M. Chanda
Advocate for Respondent(s)	Mr. B.K.Sharma

27.4.2001

This application has been filed for reopening the contempt petition No. 34 of 1998 since disposed of on 23.3.1999 with the following observation :

"Mr. B.K.Sharma, learned counsel for the alleged contemnors informs this Tribunal that the order has since been complied with. Mr. M. Chanda submits that he has no instruction in this regard. However, on the submission of Mr. B.K.Sharma we find no ground to proceed with the case. However, if on a later date it transpires that the order is not implemented the petitioner may renew his prayer."

It has now been stated that despite the judgement and order of the Tribunal in O.A. No. 218 of 1996 dated 4.5.1998 and the statements made by the learned counsel for the contemnors on 23.3.1999, the Tribunal's order has not been implemented and the respondents wilfully defied the order of the Tribunal. By the order of the Tribunal dated 4.5.1998 the respondents were

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S.S. Adu

27.4.2001

directed to promote the applicant to the post of Telecom Inspector Grade III in terms of the order dated 31.12.1990, i.e. from 1.4.1991 and the applicant would get all the consequential benefits including his entitlement to be considered for promotion to the next higher grade. Pursuant thereto, the respondents restored the applicant to the post of Telecom Inspector Grade III with effect from 1.4.1991 with yearly incremental benefit and he was given pro forma benefit of promotion to the post of JE/Tele/I in the scale of Rs. 5500-9000/- to the extent his immediate junior, Shri U.K. Biswas, with effect from 1.3.1993. According to the applicant benefits with back wages and further promotions.

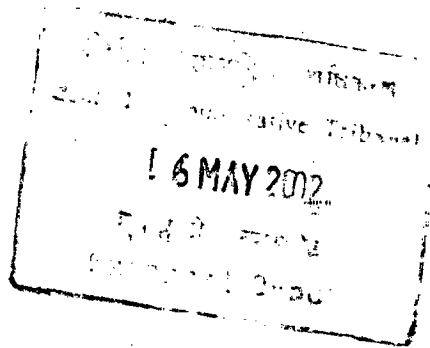
In a contempt proceeding, we are concerned as to whether there was any wilful violation of the judgement and order of the Tribunal dated 4.5.1998. The judgement and order of the Tribunal has been complied with. Mr. M Chanda, learned counsel for the petitioner/applicant, however, submitted that consequential benefits include for providing back wages and further promotion. As alluded, in a contempt proceeding the Tribunal is not concerned with the legality of the order, which can be assailed in an appropriate forum. The Tribunal is only concerned with as to whether there was any wilful violation of the order of the Tribunal. In our view there is no scope for holding the opposite party/respondents guilty of violation of the order of the Tribunal dated 4.5.1998.

For the forgoing reasons, the Contempt Petition stands dismissed.

Sd/- Vice-Chairman

Sd/- Member

Atul Kumar
Adarsh



Filed by
Siddhartha Sanyal
Pradeep Kumar Sanyal
Personnel Office (G2)
Guwahati
18.05.02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A No. 306/2001

Shri BKP Gupta

...Applicant

- Versus -

Union of India & Ors.

...Respondents

PRELIMINARY SUBMISSION :

Under the directives of the Hon'ble Tribunal vide order dated 4.5.98 in OA No. 218/96 filed by the Applicant, the promotion of the Applicant in terms of order dated 31.12.90 had been restored with effect from 1.4.91 as TCI/III in scale Rs. 1400-2300/- vide DRM(P)/TSK Memo No. E/T-39/I/V(N)Tele/II dated 23.3.99 giving proforma fixation and increments etc. Thereafter, consequent upon the restoration of the Applicant as TCI grade/III with effect from, 1.4.91, he had been considered for promotion as JE/I in scale of Rs. 5500-9000/- with effect from 1.3.93 and posted at TSK from the date of his next junior Sri UK Biswas giving proforma fixation of pay in terms of GM(P)/MLG's DD No.E/254/26(N)/Pt.IV dated 18.3.99 and DRM(P)/TSK's memo No. E/T-39/I/V(N)/Tele/Pt.II dated 15/17.6.99.

Despite getting all consequential benefits like, restoration, higher grades promotion seniority etc. under direction of courts of Law, applicants had filed

Pradeep Kumar Singh
 Dy. Secy. to Govt. of India
 Ministry of Railways
 New Delhi-110001

contempt petition No. 34/1998 of OA No. 218/98 and MA No. 99/2000 before the Hon'ble Tribunal stating that the order of the Hon'ble Tribunal dated 4.5.98 is not complied. The Misc. Application has been dismissed vide their order dated 27.4.2001.

The claim of the Applicant in the present application of payment of arrears of pay is not reasonable under the Railway rules 22B of IREM Vol.I 1989. He has not shouldered duty/responsibility of the higher grade posts. He has already been given proforma fixation, incremental benefits, seniority etc. due to delay in restoration and consequential promotion etc. as admissible under the rules.

For the reasons above, the claim of the Applicant for arrears of pay is not sustainable.

PARAWISE REPLY

1. That the answering Respondents have gone through the copy of the OA as served and they have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, other statements made in the OA are categorically denied. Further the statements which are not born on records are also denied.

2. That with regard to the statements made in paragraphs 4.1, 4.2 and 4.3 of the OA, the answering Respondents does not admit anything contrary to the

Pradeep Kumar Singh
Sd/-
Joint Secretary
C. B. P. & I
Goverment of India

records of the case.

3. That with regard to the statements made in paragraph 4.4 of the OA, it is stated that vide CSTE/MLG's office order No. E/254/26(N)Pt.III dated 31.3.88 the Applicant WTM/I was promoted to TCI/III and posted at RNY under DSTE/APDJ but he was not spared. Further in terms of CSTE(P)/MLG's office order No.E/283/159(N)Pt.IV dated 17.10.89 the Applicant was posted at MXN on promotion as TCI/III in scale Rs. 1400-2300/-.

4. That with regard to the statements made in paragraph 4.5 of the OA, the answering Respondents state that being promoted, as TCI/III at MXN, the Applicant had retained the Railway quarters at Tinsukia without prior permission of his controlling authority on the ground of children's education. On account of the willful occupation unauthorisedly of Rly. Quarter at Tinsukia he was taken up under DAR and placed under suspension with effect from 17.8.90. Thereafter consequent upon the DAR action of Disciplinary authority Applicant was reverted to WTM/I for a period of 3 month NC with effect from 1.1.91 to 31.3.91, vide DSTE/TSK's NIP No. N-SS/Punishment/Pt.II/TS dated 13.12.90.

5. That with regard to the statements made in paragraphs 4.6 and 4.7 of the OA, the Respondents do not admit anything contrary to the relevant records and reiterate and reaffirm the statements made hereinabove.

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Pradip Kumar Singh
By Order Personnel Officer (6)
Sd/- Mr. J. K. Singh
Dated 23.12.91

6. That with regard to the statements made in paragraph 4.8 of the DA, it is stated that the Applicant's appeal dated 25.9.91 for restoration of his promotion as TCI/III/TSK with effect from 1.4.91 after the punishment period was put up to competent authority at Divisional level and also forwarded to CSTE(P)/MLG vide DRM(P)/TSK's I/No.E/T-39/N/V/Pt.II(TCI) dated 29.5.91 for necessary orders in regards to the restoration of Sri Gupta as the post of the Applicant is HQ controlled. However, the Applicant could not be restored as TCI/III with effect from 1.4.99 at TSK because two App; TCI/II in scale Rs. 1400-2800/- had already joined in this cadre vide G.M(P)/MLG's Memo No. E/10/21(N)Pt.IV dated 23.12.91.

7. That with regard to the statements made in paragraphs 4.9 and 4.10 of the DA, the answering Respondents state that the representations of the Applicant for restoration of his promotional post TCI/III at TSK was forwarded timely to GM(P)/MLG/MLG vide DRM(P)/TSK's L/No.E/T-39/V/TCI dated 1.2.96. GM(P)/MLG vide their letter No.E/254/26(N)Pt.III dated 7.2.96 who directed DRM(P)/TSK to post him against higher grade vacancy (i.e. JE/Tele/II and TCI/II) to accommodate Sri Gupta for which justification may be sent to CSTE/MLG for his approval. But due to non availability of the post at TSK the case of the Applicant could not be considered then. In course of action the appeal of the Applicant dated 22.2.96

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Pradeep Kumar Singh
Dy.

given proforma fixation benefit, annual increment etc. and monetary benefit from the date he shouldered duty in the higher grade post. But he was not paid arrears as he was not entitled as per Railway Rules.

10. That with regard to the statements made in paragraph 4.13 of the OA, the Respondents state that the judgment of Hon'ble Tribunal dated 4.5.98 was implemented under instruction of GM(P)/MLG's L/No.E/254/26(N)Pt.IV dated 1.3.99 by giving proforma fixation benefit/notional benefit with effect from 1.4.91 i.e. from the date of expiry of the punishment to the Applicant and thereafter Applicant was considered for consequential benefit of promotion to the post of JE/I and posted at Tinsukia from the date of his immediate junior Sri UK Biswas. He was given monetary benefit from the date he had joined the duty but not paid arrears as he has not shouldered higher responsibility of higher grade. Since there is no specific direction in the judgment to pay arrears to the Applicant the allegation of the Applicant of non implementation of the judgment dated 4.5.98 is baseless, un justified and denied.

Despite this, Applicant had file the CP No. 34/98 and MISB. Application No. 39/2000 which have since been dismissed.

11. That with regard to the statements made in paragraph 4.14 of the OA the Respondents state that the Applicants has already been called for the written

Pradeep Kumar Singh
Dy. Chief Personnel Officer (G)
G. V. R. H. / Bangalore
Gachhad-53

examination to the selection of SE/Tele in scale Rs. 6500-10500/- vide GM(P)/MLG's L/No.E/254/26(N)Pt.V dated 5.5.2000 but he has not come out successful. GM(P)/MLG vide their letter E/254/24/I(N)Pt.II dated 26.5.2000 published the result of written examination where he was not entitled. Therefore the allegation of the Applicant of depriving him of promotion as SE/Tele is baseless, incorrect and not tenable.

12. That with regard to the statements made in paragraph 4.15 of the OA, the Respondents state that in pursuance of this Hon'ble Tribunal's order dated 4.5.98, the Applicant was restored his promotion of TCI/III with effect from 1.4.91 i.e. after expiry of punishment giving proforma fixation benefit and monetary benefit with effect from 25.2.99 from the date he has joined the higher grade post consequent upon the restoration of his promotion as TCI/III with effect from 1.4.91 considered for the promotion of JE/I from the date of his immediate junior and given proforma fixation under Rule 228 of IREM 1989 laid down by the Railway Board. Where the staff have lost his promotion on account of administrative error and considered for promotion in higher grade from the date of his immediate junior, pay in higher grade promotion may be given proforma fixation at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibility of the higher post. As per the above

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Pradeep Kumar Singh
Dy. Chief Personnel Officer (A)
G. S. 124, 1, Maligaon
Gurgaon-122002

rule the claim of the Applicant for payment of arrears is denied.

13. That with regard to the statements made in paragraph 4.16 of the OA, the Respondents does not admit anything contrary to the relevant records and reiterate and reaffirm the statements made hereinabove.

14. That with regard to the statements made in paragraphs 4.18 and 4.19 of the OA, the Respondents state that the Applicant was given proforma fixation under direction of GM(P)/MLG's L/No.E/254/26(N)Pt.IV dated 1.3.99 1.4.91 on completion of punishment. The order of GM(P)/MLG was passed in accordance with the IREM 1989 Rule 228 which is applicable in this case. He is not entitled for arrear as he did not shoulder the duty of the higher post.

15. That with regard to the statements made in paragraph 4.20 of the OA, the Respondents state that the alleged lapses was not willful. The circumstance have been fully explained above. There is delay and laches on the part of the Applicant.

16. That with regard to the statements made in paragraph 4.21 of the OA, the Respondents state that the claim of arrear by the Applicant is not admissible. The Applicant has already been given proforma benefit of pay. Hence the claim of the Applicant is not maintainable.

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Pradeep Kumar Singh
By, Chief Personnel Officer (G)
A. D. Rly. / Mailroom
Gurgaon-122002

17. That the answering Respondents submit that the claim of the Applicant is barred by limitation and there is delay and laches on his part. The instant OA has been filed taking a chance for favourable consideration.

18. That the answering Respondents submit that the claim of the Applicant made in this OA is barred by limitation and also barred under the principles of waiver, estoppel and acquiescence.

19. That under the facts and circumstances stated above the instant OA is not maintainable and liable to be dismissed with cost.

Verification.....

VERIFICATION

I Shri P. K. Singh, aged about 35 years,
son of Shri- Buplal Singh, resident of Maligaon,
Guwahati-11, presently working as
Dy. Chief Personnel Officer, N.F. Railway do hereby verify
and state that the statement made in paragraphs
1 are true to my knowledge and
those made in paragraph 2 to 16 being
matters of records are true to my information derived
therefrom, which I believe to be true and the rest of
my humble submissions before this Hon'ble Tribunal. I
am also authorised to competent to sign this
verification on behalf of all the Respondents.

And I sign this verification on this 15th day of May
April, 2002.

Pradeep Kumar Singh
Deponent
Dy. Chief Personnel Officer (G)
Q. D. Rly. / Maligaon
Guwahati-11