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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. 400/2001
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SECTION OFFICER (Judl.)

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

APPLICATION NO. 400 / 2001

Applicant (S) Mozorangan Roy

Respondant(S) U.O.P. Pans

Advocate for the Applicant: U.K. Nair, U.K. Goswami, Min U. Das

Advocate for the Respondant: Mr. B.K. Sharma, Rly. Standing Counsel.

Notes of the Registry	Date	Order of the Tribunal
This application is in form but not in the Consolidation Petition as filed vide M.P. No. 238/2001 C.F. for Rs. 500 deposited vide IPO/BD No. 64788500. Dated..... 27.9.2001	8.10.01	List the case on 15.11 alongwith M.P. 238/2001 for admission. Member: <u>ICUShan</u> Vice-Chairman: <u>[Signature]</u>
<u>[Signature]</u> Dy. Registrar	15.11.01	List on 6/12/01 to enable the Rly. counsel to obtain necessary instructions. Member: <u>ICUShan</u> Vice-Chairman: <u>[Signature]</u>
<u>[Signature]</u>	6.12.01	Mr. U.K. Nair, learned counsel appearing for the applicant states that he does not want to press this application and prays for withdrawing the application. prayer accepted. The application is dismissed on withdrawal. No order as to costs. Member (J): <u>[Signature]</u> Member (A): <u>ICUShan</u>

Steps taken alongwith money of Rs. 500

[Signature] 5/10/2001

7/12/01
Copy of the order has been sent to the office for filing the same to the L/Adm for the parties
[Signature]

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केन्द्रीय प्रशासनिक अविचारण
Central Administrative Tribunal
3 OCT 2001
गुवाहाटी न्यायपीठ
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : D.A. No. 400 of 2001

BETWEEN

Shri Monoranjan Roy Applicant.

AND

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

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Filed by : Usha Das

Regn.No.:

File : MANORANJAN

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act.1985)

O.A.No. 400 of 2001

Filed by
the applicant through
Advocate
26/9/2001

BETWEEN

Shri Monoranjan Roy
S/o Late Jitendra Kr.Roy
Resident of Railway Qtr.No.92/D
Central Gate Region, Maligaon,
Guwahati-11.

..... Applicant.

VERSUS

1. Union of India,
Represented by the Secretary to the Govt.of India,
Ministry of Railway, Rail Bhawan,
New Delhi-1.
2. The General Manager,
N.F.Railway, Maligaon.
3. The Divisional Railway Manager (Personnel)
N.F.Railway, Lumding.
4. The Divisional Electrical Engineer
N.F.Railway, Lumding.
5. The Asstt. Electrical Engineer
N.F.Railway, Guwahati.
6. The Asstt. Personnel Officer
N.F.Railway, Guwahati.

..... Respondents.

PARTICULARS OF THE APPLICATION

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

This application is directed against the order
issued under Memo No.CS/P/Ghy/1 dated 12.8.91 issued by the
Asstt.Personnel Officer, N.F.Railway, Guwahati. This
application is also directed against the action of the

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respondents in not considering the case of the applicant in terms of the Judgement and order dated 28.3.95 passed in 127/92 by this Hon'ble Tribunal inspite of repeated representations made by the present applicant.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

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, privileges and protection guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the applicant belongs to the lower stratum of the society and because of his poverty he could not prosecute his further study after doing matriculation. Having come to know about certain vacancies occurred in the office of the Asstt. Electrical Engineer, Guwahati, the applicant submitted his application for his appointment as Khalasi in the said office. The applicant along with his said application furnished all the necessary documents and testimonials. The aforesaid news of vacancy came to the

notice of some other candidates and accordingly they have also submitted their application in the office of Asstt. Electrical Engineer, Guwahati for the post of Khalasi. The application of the applicant was forwarded by the Asstt. Electrical Engineer to the Divisional Electrical Engineer on 8.2.90 by a letter bearing No.E/227/1 dated 8.2.90.

A copy of the said forwarding letter dated 8.2.90 is annexed herewith and marked as Annexure-1.

4.3. That the Asstt. Electrical Engineer, Guwahati directed the applicant to report to the office of Divisional Electrical Engineer, Lumding for appointment as Khalasi and as per such direction the applicant reported the officer of the Divisional Electrical Engineer (DEE) and from there he was appointed as Khalasi in the office of the Asstt. Electrical Engineer, Guwahati. To that effect a memo was issued to the applicant directing him to submit the same in the office of Asstt. Electrical Engineer, Guwahati at the time of his reporting. Accordingly the applicant, submitted the said memo and office order was issued to him wherein it has been stated that the applicant has reported office on 23.2.90 and he has been working as Khalasi in the pay scale of Rs.750-940 against the existing vacancy.

A copy of the said order dated 23.2.90 is annexed herewith and marked as Annexure-2.

4.4. That the applicant while working as Khalasi was getting a pay scale of Rs.750-940. After such appointment applicant was working sincerely and he was allotted with the work of a Messenger. During his service tenure he had to

attend the office at Lunding also however, to that effect official duly pass was issued to him.

4.5. That surprisingly enough the Asstt. Personnel Officer issued an order dated 12.8.91 by which the service of the applicant was virtually terminated. In fact the Asstt. Personnel Officer (APO) is not the Competent Authority as such the appointment of the applicant was approved by the Divisional Electrical Engineer as per the office order No.E/227/1 dated 20.12.90.

A copy of the said termination order dated 12.8.91 is annexed herewith and marked as Annexure-3.

4.6. That the applicant begs to state that from the aforesaid impugned order it is clear that the pay bills maintained by one Shri J.N.Khakhari (O.S)(P) electrical under Asstt. Personnel Officer, Guwahati kept the payment record of the applicant and due to his long absence same could not be located and hence the order of termination has been issued. In fact prior to termination no verification of the records of the service of the applicant was made.

4.7. That from the Annexure-3 it is clear that due to non availability of records, the service of the applicant was terminated. Again it is clear that the official records of the applicant could not be traced out as one Mr.J.N.Khakhari O.S.remained absent from duty for long time. The respondents kept on paying him the salary for more than one year and now for want of records, the service of the applicant has been terminated. Situated thus the

applicant preferred DA No.127/92 before the Hon'ble Central Administrative Tribunal, Guwahati. The Hon'ble Tribunal was pleased to dismiss the said DA vide its judgement and order dated 28.3.95.

A copy of the said judgement is annexed herewith and marked as Annexure-4.

4.8. That the applicant begs to state that the Hon'ble Tribunal while dismissing the DA was pleased to direct the respondents to consider the case of the applicant taking into consideration the CBI Inquiry. It is pertinent to mention here that the respondents requested the CBI to investigate into the some cases wherein the respondents had doubts. Pursuant to the said requests, the CBI authority charge-sheeted some of the Khalasis on 31.12.93 and basing on this a special case No.13(e)/97 has been registered before the Hon'ble Special Judge, Assam under Section 120 B; 420 ; 468 ; 471 IPC and under section 13(I)(d) read with section 13(2) of the Prevention of Corruption Act.

A copy of the said Charge-Sheet is annexed herewith and marked as Annexure-5.

4.9. That the applicant begs to state that in the said case his name was not there nor he has been summoned as an witness. The Hon'ble Special Judge vide its order dated 5.8.98 has held that some of the accused are not guilty of the charges.

The applicant craves leave of the Hon'ble Tribunal to produce the copy of the said order dated 5.8.98 at the time of hearing of the case.

4.10. That the applicant begs to state that the respondents took a plea of fraudulent appointment in case of applicant and accordingly submission was made by the respondents in DA No.127/92. However, the Hon'ble Tribunal in absent of any such documentary evidence remanded back the matter to the Railway Authority to take appropriate steps taking in to consideration the CBI Inquiry. It is pertinent to mention here that CBI authority has investigated the matter and held some of the Railway officials guilty of some fraudulent appointment but, no such case has filed by CBI against the applicant. From the above, it is most surprising that the respondents have taken a plea that the applicant's appointment is also take one and hence termination order was issued. The respondents have not issued any notice or information before issuance of the said termination and abruptly terminated his service without offering him any opportunity of hearing.

4.11. That the applicant begs to state that the respondents have acted illegally in terminating the service of the applicant. On the other hand the respondents have virtually casted stigma on the applicant without offering any reasonable opportunity of hearing. On this score alone the impugned order of termination is liable to be set aside and quashed.

4.12. That the applicant ventilating the grievances has been pursuing his matter before the concerned authority but till date nothing has been done so far in this matter. The applicant has been representing his matter before the concerned authority but nothing has come out in positive.

Having no other alternative, the applicant has filed this Original Application praying for setting aside the order of termination with a further direction to reinstate him with full back wages.

Copies of some of the representations preferred by the applicant are annexed herewith and marked as Annexure-6 colly.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the respondents in terminating the service of the applicant is illegal, arbitrary and same is violative of Principles of Natural Justice.

5.2. For that the applicant being appointed on regular basis after following the due process of law, the respondents ought not to have terminated his service in such a manner and without following the law. The applicant being a holder of Civil post is entitled to a notice before his termination. But in the instant case the respondents have chosen not to issue any such notice as required under law and as such same is not sustainable in the eye of law and liable to be set aside and quashed.

5.3. For that the impugned order of termination has been issued as a measure of punishment basing on certain complaint and as such same is not sustainable in the eye of law and liable to be set aside and quashed.

5.4. For that the impugned order of termination depicts total non application of mind by the respondents as the same has been issued only on the ground that no records pertaining to the service of the applicant could be found out in the office of the respondents and the person dealing with those official papers has left the office without any information. On such a ground very essence of the impugned order is not sustainable and liable to be set aside and quashed.

5.5. For that there being a judgement in favour of the applicant wherein a specific direction has been issued to look into the matter and as such the matter of the present applicant required to be considered more so when the CBI authority and Hon'ble Special Judge has given clearance regarding the mode of his appointment.

5.6. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

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

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

- 8.1. To set aside and quash the impugned termination order dated 12.8.91 and to reinstate the applicant in the post of Khalasi with full back wages and seniority w.e.f. 12.8.91.
- 8.2. Cost of the application.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicant does not pray for any interim order at this stage.

10.

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

- 1. I.P.O. No. : 66 788500
- 2. Date : 27/9/2001
- 3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

M. Roy

VERIFICATION

I, Shri Monoranjan Roy, son of Late Jitendra Kr.Roy, aged about 45 years, resident of Railway Qtr.No.92/D, Central Gotanagar, Maligaon, Guwahati-11, do hereby solemnly affirm and verify that the statements made in paragraphs 2.3, 4.1, 4.4, 4.6, 4.10, 4.11, & 5 to 12..... are true to my knowledge and those made in paragraphs 1, 4.2 - 4.3, 4.5, 4.7 to 4.9 & 4.12 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 25th day of Sept. of 2001.

Mano Ranjan Roy

Signature.

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8 Set

N.F.

N.F.Railway.

No.E/227/1

Dated 8.02.90

From AEE

To:DEE/NF Rly
LMG

Sub: Engagement of substitute Khalasi (Sc)

Ref:

Application submitted by the following staff for engagement as substitute Khalasi are sent for your kind ~~and~~ disposal please.

- (1) Shri M.Roy.
- (2) " S.Dey.

ATTESTED
Abarna
23/2/92
Advocate

Copy for information to:-

- (1) Shri Monoranjan Roy,
C/O T. Kheklary.
- 2) Shri S.Dev.
C/O Shri D.P.
CPO Office.

They are advised to attend office on 23.02.90 along with original certificate.

Sd/- 8.2.90

Asstt.Elect.Engineer.

Attested
Advocate.

N.F.Railway

Estt.Order No. _____ of 1990.

In terms of DRM(P) Elect./Lunding Office Order No.E/227/1 dt. 20.02.90 Sri Manaranjan Roy (SC), S/Khalashi is reported to the office on 23.02.90 and since than Sri Roy has been wrking under Assistant Elect.Engineerin office, Guwahati as Khalashi in scale at Rs.750-950- in existing vacancy.

This issue approved by APO/GHY.

No.E/227/1

Copy for information and necessary action:-

- 1.FA & CAO/MLG
- 2.Staff concerned.

Sd/-

ATTESTED
R. S. Das
23/6/92
Advocate

Attested
[Signature]
Advocate.

N.F.Railway.

No.CS/P/GHY/1

Dated 12-8-91

From

To

Sub:

Ref:

To whom it may concern.

Sri Monoranjan Roy claims to be a railway employee in electrical Department and says that his records and pay bills were maintained by Sri J.N.Khakhari, OS(P) Electrical under APO/GHY. However, Sri Khakhari has been absenting for a long time and the undersigned has not been able to locate any records regarding appointment, Pay etc. of Sri Roy, So there is no question of ~~making~~ making payment in his favour at this moment. Sri Roy is not working now as far my instruction.

Sd/-

Asstt. Personnel Officer.

ATTESTED
Abanua
 23/8/92
 Advocate

Attested
[Signature]
 Advocate.

- 19 -

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.127 of 1992.

Date of Order : This the 28th Day of March, 1995.

Justice Shri M.G.Chaudhari, Vice-Chairman.

Shri G.L.Sanglyine, Member (Administrative)

Shri Monoranjan Roy,
son of late Jitendra Kumar Roy,
Aged about 37 years,
resident of Railway Qr.No.92/D,
Central Gotanagar, Maligaon,
Guwahati-11.

. . . Applicant.

By Advocate Shri H.Rahman.

- Versus -

1. Union of India
represented by the General Manager,
N.F.Railway, Maligaon, Guwahati-11.

2. General Manager,
N.F.Railway, Maligaon, Guwahati-11.

3. Jvl.Railway Manager, (Personnel)
N.F.Railway, Lumding.

4. Divisional Electrical Engineer,
N.F.Railway, Lumding.

5. Asstt.Electrical Engineer,
N.F.Railway, Guwahati.

6. Asstt.Personnel Officer,
N.F.Railway, Guwahati.

. . . Respondents.

By Advocate Shri B.K.Sharma.

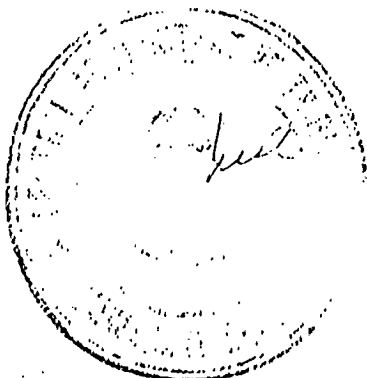
O R D E R

CHAUDHARI J (V.C)

The applicant applied for the post of Khalasi (Group IV) and he was directed by the Assistant Electrical Engineer, Guwahati to the office of the Divisional Electrical Engineer, Lumding for appointing him as Khalasi. Accordingly he reported and was ^{purportedly} appointed as Khalasi. It is stated by the applicant that he submitted the memo

contd... 2/-

Attested
ADAS
Advocate.



issued by the Divisional Electrical Engineer in the office of the Asstt. Electrical Engineer's office at Guwahati and in exchange of the memo the formal office order was handed over to him. His scale of pay was Rs. 750-940/-. While he was working at the office of Asstt. Electrical Engineer at Guwahati he was being sent to work at Luding office. According to him he has worked in this manner since the date of his appointment i.e. 23.2.90 without any break. He was however, instructed by the Asstt. Personnel Officer, Guwahati not to come to the office from 12.8.91. A memo to that effect was issued to him on the same day i.e. 12.8.91. He was not thereafter allowed to perform duty nor his pay bill was prepared or salary paid. Aggrieved by the same he submitted an appeal to the appropriate authority but did not received any reply. He has challenged the said action of the respondents namely ^{posting him} off duty from 12.8.91 in this application which was filed on 30.6.92. The applicant prays that the respondents be directed to allow him to continue in service together with full benefit of backwages from the date of termination and to give him continuous service benefit from the date of his appointment. He also prays for quashing the order dated 12.8.91.

2. The application is resisted by the respondents. The main contention of the respondents is that the applicant was never employed as an employee of the Railway Administration and he has misrepresented the facts in this application. It is stated that the applicant had not crossed the channel of selection nor he was appointed

contd... 3/-

Attested
[Signature]
 Advocate.

will

with the railway administration. The claim of the applicant that he has worked with the railways is based upon forged documents. In that connection it is stated that many cases of fraudulent appointments had come to surface beginning with the case of one Sajal Kr. Deb (who had filed O.A.174/87) and after investigating into the matter one J.N.Khakhari an employee of the railways has been suspended and a disciplinary enquiry is started against him on a grave suspicion of his involvement in the fraud. Mr B.K.Sharma now informs that the said person has since been compulsorily retired by way of punishment. It is contended that the Annexures produced alongwith the application are incomplete and they are denied. It is denied that any memo was issued or any formal order of appointment was issued to the applicant as alleged. The memo produced by the applicant Annexure-3 is a fraudulent document. It is also contended that the record in the office of DRM(P), Lumding does not show that the applicant had worked under AEE at Guwahati as Khalasi. It is also contended that there is no approval to the appointment of the applicant by the APO, Guwahati. It is contended that there is no record to support the fact that the applicant worked as Khalasi in AEE, Guwahati's office. It is also contended that there is no post of Khalasi in the office establishment of AEE.

3. At Annexure-1 to the application is a memo issued by Assistant Personnel Officer with the statement 'To whom it may concern' states that although the applicant claims to be a railway employee in Electrical department and

contd..... 4/-

*WAS
incate.*

well

says that his records and pay bills are maintained by J.N.Khakhari, Office Superintendent(P), Electrical department under APO, Guwahati but the APO was not able to locate any record regarding his pay bills and other documents etc. It is also mentioned that Shri Khakhari has been absent for a long time. This is also denied by the respondents. At Annexure-2 to the application is purported to be a copy of a letter issued by AEE to DEE, N.F.Railway, Lumding on the subject of engagement of substitute Khalasi; forwarding application purported to be made for engagement as substitute Khalasis with an endorsement against the name of the applicant in which he is advised to attend the office on 23.2.90 alongwith original certificates. This is denied by the respondents in para 6 of the written statement. Annexure-3 to the application is purported to be issued in terms of DRM(P)Elect./Lumding office order No.E/227/1 dated 20.2.90 stating that the applicant reported to the office on 23.2.90 and since then he has been working under the AEE, Guwahati as Khalasi in the scale of Rs.750-950/- in an existing vacancy. It is also stated that its issue is approved by APO/Guwahati. The applicant has relied on this Annexure to support his contention that he was appointed. The respondents deny in para 8 of the written statement having issued any such letter or order by any competent authority and allege that it seems to be a fraudulent document. They also state that the records do not show the applicant to have been working under AEE, Guwahati nor any approval of his appointment by the APO, Guwahati. The respondents have produced copies of letters dated 30.1.92

contd.... 5/-

Attested

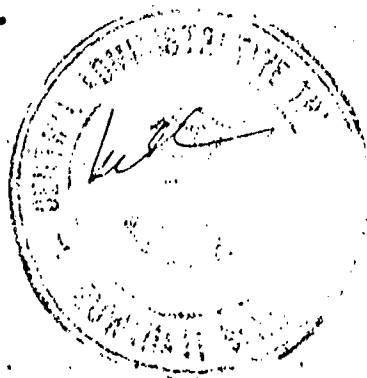
 Attestor



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and 31.1.92 as Annexures to the written statement. By the letter dated 30.1.92 the office of APO, Guwahati made enquiries from DRM(P) Lumding and asked him to furnish information as to whether the letter dated 20.2.90 was in fact issued by DRM(P) Lumding's office, whether the applicant worked as substitute Khalasi in Lumding Division prior to 23-2-90 and to send such documents if any as were available in support of the status of the applicant as substitute Khalasi. The letter dated 31.1.92 is the reply from the Divisional Personnel Officer, Lumding to APO, Guwahati to the aforesaid letter. It is stated in that letter that there was no file bearing No.E/227/1 maintained in his office and the applicant seems to have joined with a forged document. Similar information was given in respect of other employees mentioned in that letter. Out of those other persons the persons mentioned at serial No.4 and 5 had also filed O.As in this Tribunal being O.A.35/92 and 47/92 respectively which have already been dismissed by us. The respondents have also annexed a letter addressed by APO, Guwahati dated 27.5.92 to the Assistant Labour Commissioner(Central), Guwahati. It appears that the applicant had raised a dispute before the Assistant Labour Commissioner in respect of his being allegedly put off from the duty. It was explained in the letter of APO that the application of the applicant for engagement as substitute Khalasi was only forwarded to DEE but that no file bearing No.E/227/1/290 in connection with which the letter relied upon by the applicant ^{was purported to be issued} was maintained by the office of DRM(P)/Lumding and consequently the conciliation proceedings were requested to be dropped.

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Attested
Advocate.



contd... 6/-

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4. The applicant belongs to scheduled caste community. The fact that he had applied for engagement as Khalasi is clear even from Annexure-2 to the written statement. The question however, is whether in pursuance of that application the applicant was factually appointed or not? According to the respondents he was not so appointed at all. It is also their case that the appointment order purported to be produced by the applicant at Annexure-3 is not genuine because there was no order passed by DRM(P)Elect./Lumding office bearing No.E/227/1 dated 20.2.90 as no such file was in existence in that office. The applicant has however, not produced any order of appointment. Same question arose before us in other petitions one of them being O.A.33/92 which was disposed of by us by order dated 10.8.94. The case of the applicant in that case was similar to the case of the present applicant. It was his contention that after he had submitted an application to AEE he was directed to report to duty and was engaged as Khalasi though no formal appointment letter was issued to him and he continued to work as Khalasi and was being paid salary. However, he was served with a notice to explain as to why his appointment should not be terminated because it had been done in a fraudulent manner and it was not in accordance with the recruitment rules.

The case of the respondents in that case was that the very entry of the applicant was not in pursuance of any order of appointment and a case of fraud had surfaced and enquiry was being made in that connection. The appointment of the applicant (in that case) thus was not an appointment and

contd... 7/-

Attested
Advocate.

the applicant had no locus standi to seek relief. The relief sought by the applicant was similar namely, that the order of termination of his service be quashed and he be allowed to continue in service in the post where he was working. We have examined the circumstances of alleged fraud as well as the question as to whether the appointment of the applicant in that case could be regarded as void ab-initio not being valid at the inception itself which did not create any right in the applicant as was urged by Mr B.K.Sharma. We have noticed the relevant case law on the point. We held that although having regard to the various circumstances noted by us the applicant in that case may not be directly responsible for the illegality or irregularity in the appointment and could have been himself a victim of fraud on the part of some officers, since the termination of service of the applicant was not based on the ground of fraud it amounted only to termination simpliciter. That was not a case where we would be inclined to interfere. We therefore maintained the order of termination and dismissed the application. The facts and circumstances and the points that arise in the instant case are similar and in fact the applicant appears to be one of those persons who were removed on similar ground at about the same time. The decision in that case would squarely apply to the instant case.

5. In the instant case there is no order of termination as such. By Annexure-1 to the application dated 12.8.91 the respondents had refused to recognise the claim of the applicant to have been in their service. Assuming therefore

contd... 8/-

Attested

[Signature]
Advocate.



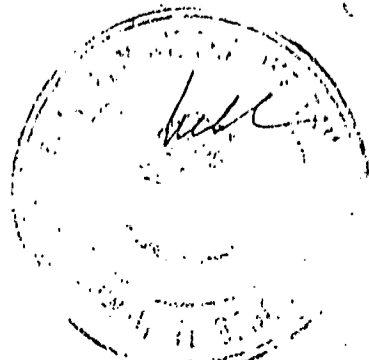
24

that the allegation of the applicant that he was orally told by the AEE(P) not to come to the office that does not amount to passing an order of termination and the question of it being punitive in nature does not arise. This is a case where somebody is claiming to be an employee of the railways whereas the railways deny that fact. There is no material from which the claim of the applicant that he has been a railway employee can be upheld. All that the documents produced and the averments made in the application would go to show is only that the applicant had made an application seeking an employment but there is no material to show that that was accepted by the respondents by making an appointment in his favour. The material produced by the applicant does not appear to be genuine and there is no reason to disbelieve the explanation given by the respondents in the written statement. The applicant has not denied the statements made by the respondents in the written statement. It is thus difficult for us to hold that the applicant has been an employee of respondents and has been illegally prevented from working so as to grant the relief as prayed by him. In addition to the material in the instant case as considered above and in the light of the order in O.A.33/92 we are inclined to dismiss the application.

6. Mr Rahman strenuously urged that the applicant has been made a victim by some officers of the Railways for which he cannot be blamed and it is harsh upon him to be deprived of the employment which was the source of his livelihood and the Railways cannot deprive him of the

contd... 9/-

Attested
[Signature]
Advocate.



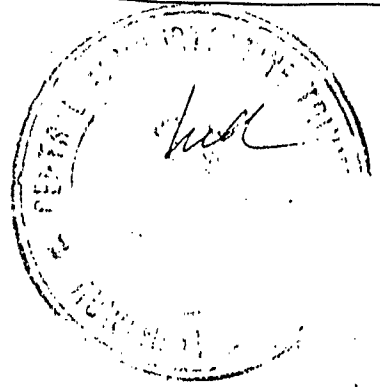
employment for some mischief of their own officers. We do appreciate the force of this submission and sympathise with the applicant for his plight. However, we find it difficult to compel the respondents to treat him as their employee in the absence of any valid appointment. It is not therefore possible to accept the submission of Mr Rahman that an order of reinstatement should be passed. Mr Rahman also submitted that the respondents may hold a proper enquiry and give an opportunity to the applicant to establish his innocence as the allegation of fraud would attach a blemish to him. We think that what we propose to observe in the next paragraph will suffice to meet the end of justice.

7. We would like to observe as follows with the hope that the respondents will try to do the maximum for the applicant in the light of these observations in as much as the applicant deserves sympathy to be shown.

8. In our opinion, the whole thing having developed in a haphazard manner and the possibility of some amount of prejudice having been caused to the applicant does not stand completely ruled out having regard to the circumstances interalia that he may not be directly responsible for the illegality or irregularity in the appointment and could have been himself a victim of fraud on the part of some officers, that rightly or wrongly he has worked with them and it has not as yet been proved in any proceeding or enquiry that he was a party to the fraud the allegation of fraud contained in the written statement may not come in the way of the applicant for being considered for appointment in future if any regular post would be available

contd... 10/-

Advocate.



CHARGESHEET

Office: CRI/ACB/SHILLONG AT GEN. District KARANGPur Charge Sheet No. 28 Date 31/5/96
 Station: SOURCE First information report No. PC/31(A)/93-SIC; Date 31/12/93

Name, address & occupation of complainant or informant.

1. Name & address of accd. persons sent up for trial.		2. Names & addresses of accd. persons not sent up for trial. Whether arrested or not arrested, including absconders (show absconders in red ink)	3. Property (including weapons found with particulars) of where, when & by whom found and whether forwarded to Magistrate.	4. Names & addresses of witnesses	5. Charges or information offence and circumstances with it, in which and under what section charged.
In Custody	On bail or recognizance				
1. Sri Jitendra Thakuria, the then GS/P/N. F. Rly/Qty. (Retired) Vill & P.O. Ualguri, P.S. Ualguri, Distt- Darrang (Assam). (On bail)			As per list enclosed	As per list enclosed.	Mixed.
2. Sri Krishna Kr. Das, the then Hd. Clerk under C/SG(M)/1-FN/Halgion. (Not arrested)					
3. Sri Ramati Das, S/O Sri Fagen Devi, Das Vill:- Pub-Pipala, P.O.-: Ittananda, P.S. Patsala, Distt:- Darrang (Assam) (Arrested, now on bail)					
4. Sri Sunil Malakar, S/O Lt. Abani Malakar, Pandu New Colony (near P.C. Store), Guwahati, Tr. No. 8B-83C- C/C. (Arrested, now on bail)					
5. Sri Ithiram Rajbanshi, S/O Lt. Gob ram Rajbanshi, Vill:- Lakuchi Bargaon, P.O.-: Borakohara, P.S. :- Kamalpur, Distt:- Karangpur (Assam). (Arrested, now on bail)					
6. Sri Swapan Kr. Das, S/O (Lt) Suren Das, Pandu New Colony (near P.C. Store), Guwahati. (Arrested, now on bail)					
7. Sri Siba Prasad Rajbanshi, S/O Sri Chansram Rajbanshi, Haligon Baripara, P.O.-: Pandu, Guwahati. (Arrested, now on bail)					

Attested
[Signature]
 Advocates.

Contd...2/-

The brief fact of the case as alleged in the FIR is that while Sri Jitendra Khakhlari posted and functioning as office Suptt. (Personnel) (GS/P), N.F. Rly, Guwahati under Asstt. Personnel officer (APO) N.F. Rly, Guwahati during the year 1990-91 entered into a criminal conspiracy with Sri Krishna Kumar Das, the then Head clerk under CG/G/II/N.F. Rly, Guwahati and in pursuance thereof issued/got issued fake and forged appointment/posting orders in favour of 14 nos. persons and also transfer letter to them and thereafter those persons got appointed as khalasi in Electrical Deptt. on the strength of such fake and forged documents.

During investigation it has revealed that a panel list of selected candidates for appointment in Group-D category under the electrical department in Pandu, Maligaon, Guwahati during the period from June '90 onwards was prepared by the Railway department approved by CPO on 31/8/89 and no candidates for appointment in electrical department was appointed prior to June 1990. The appointment in Group-D category in electrical department was arranged from the office of the Asstt. Personnel officer (APO), N.F. Rly, Guwahati.

Investigation has revealed that Sri Jitendra Khakhlari the then office Suptt. in O/O the APO/N.F. Rly/Guwahati in connivance with 5 persons had issued the following 5 Nos. fake posting orders in favour of their names as under:
 Letter No. E/283/2 dtd. 12/3/91 issued to SBF/AC, Ghy in favour of Sri Lalul Borgohain as khalasi from A.P.O., Ghy.
 Letter No. E/227/1 dtd. 12/11/90 issued to Sr. SF/N.F. Rly, Pandu in favour of Sri Banker Gowala as Khalasi from Sd. Elec. Engr., Guwahati.
 Letter No. E/227/1 dtd. 15/3/91 issued to Electrical Foreman/TL, Pandu in favour of Sri Biranjan Biswas (SC) as Khalasi from APO, Guwahati.
 Letter No. E/283/2 dtd. 27/3/91 issued to SBF/Low Guwahati in favour of Sri Ranjit Nathak as Khalasi from APO, Guwahati.
 Letter No. E/227/1 dtd. 13/11/90 issued to SF/EPK(P), in favour of Sri Swapan Kr. Das as Khalasi (Power) from Asstt. Engr., Guwahati. All the above mentioned letters were prepared and signed by Sri J. Khakhlari the then CG/G/II/N.F. Rly.

Sri Khakhlari had also issued the following fake posting orders in connivance with the persons concerned in favour of themselves with the genuine signature of Sri S.C. Das, the then A.E./E/Guwahati as under: -

- 1. Lett. order of 1990 under Endst. No. E/283/2 dtd. 11/12/90 signed on 10/12/90 in favour of Sri Hatan Rajbanshi as Khalasi posted under SF/IDM/ALG.
- 2. Lett. order No. 107 of 1991 under Endst. No. E/283/2 dtd. 30/1/91 signed on 31/1/91 in favour of Sri Siba Prasad Singh as Khalasi posted under Sr. SF/AC/Ghy.
- 3. Lett. order No. 96 of 1990 under Endst. No. E/283/2 dtd. -11-90 in favour of Sri Animesh Ali as Khalasi posted under Sd. Engr.
- 4. Letter No. E/283/2-1602 dtd. 20/10/90 issued in favour of Sri Titikrishna Rajbanshi as Khalasi addressed to SBF/Pandu dated on 22/1/90.
- 5. Letter No. E/227/1 dtd. 10/5/90 in favour of Sri Rabindra Ch. Biswas as Khalasi addressed to SF/Guwahati signed on 1/90
- 6. Letter No. E/227/1-95 dtd. 18/10-1-90 addressed to SF/GHY in favour of Sunil Senkar as Khalasi posted under Sd. Engr.

Letter No. E/227/1 dtd. 16/22-10-90 in favour of Sunil Malakar (SC) as Khalasi posted under EC/ANJ.

Investigation has revealed that two appointment letters were issued by Sri J. Khakhlari in favour of Sri Sunil Malakar (SC) and Sri Banker Gowala (SC) vide letter No. E/227/1 dtd. 12/11/90 and letter No. E/227/1-1692 dtd. 11, as Khalasi posted under SF/EPK and SBF/PAO respectively under the genuine signature of Sri S.P. Chaki, the then Asstt. Electrical Engineer, N.F. Rly, Maligaon. Moreover Sri Khakhlari, the then CG/P/NFR/GHY had issued another fake posting order Lett. order No. 10 of 1991 under Endst. No. E/283/2 dtd. 29/1/91 in favour of Sri Ranpati Das as Khalasi showing Sri Ranpati Das was working under SF/DIV and directed to report to EC/ANJ, under the genuine signature of Sri Malachar Das, the then APO/N.F. Rly/Guwahati.

Investigation has revealed that all 13 nos. persons mentioned above had joined in their respective places of posting and continued their services till 12/2/92 on the strength of the said fake appointment/posting orders mentioned above. Most of the Khalasis were shown as appeared from other deptt/units as per reference given in their respective fake posting orders.

[Handwritten signature and initials]

Investigation further revealed that on being doubted Sri G. Saikia, the then APO/HR/Chy in the month of July '91 made a thorough enquiry about the genuineness of their appointment/posting orders and ultimately it was detected that the appointment of these 13 no. Kshalis were not genuine but fake one. Accordingly, show cause notices were served on them for termination vide letter No. CS/P/Chy/Ord/1 all dtd. 21/9/91 and ultimately their termination of services were issued and served on them vide letter No. CS/P/Chy/Ord/1 all dtd. 10/1/92 and No. E/227/1/Pt-11-170-177 all dtd. 12/2/92 & No. E/227/1/Pt-11/165-169 all dtd. 11/12/-2-92 respectively. Hereafter, an enquiry was conducted against Sri Jitendra Khakhari the then CS(P)/HR/Coochabati under the Enquiry Officer Sri A. Saikia, the then APO/HR/G. During enquiry Sri Jitendra Khakhari was found guilty and penalty of compulsory retirement from service was awarded to Sri Khakhari by the then Sr. Divisional Personnel Officer (D. P. Galloway), Ld. The order No. 19(2)/323(0) dtd. 17/12/93 with immediate effect about 6(six) years before retirement.

Investigation revealed that the name of the said 13 no. persons who joined as Kshalis in Elect. Deptt. on the strength of fake posting orders are not figured in the peral list of candidates selected for post in Elect. Deptt. by I.F. Rly. Maligaon and original appointment files and documents are also not available in the official file of Sri J. Khakhari, CS(P) under APO/HR/Coochabati who was the controller of these persons. The originals were copied in presence of witness and no documents/files were recovered in r/c said fake appointment orders of Kshalis in Electrical Deptt. This development was informed to the then APO, G-1 by his letter No. CS/P/HR/C. HR/1 dtd. 25/9/91.

During investigation, it has further revealed that Sri Krishna Kumar Das, the then Head Clerk under I.F. Rly., Maligaon in collusion with connivance with Sri Jitendra Khakhari took Rs. 12,000/- in three instalments from one Sri Durga Das Mandal of Baxpeta Road (Ward) promising him for a job in Railway Department. Thereafter Sri K. Das issued a fake and forged appointment order No. E/227/substitute/1000v. dtd. 3/92 in favour of Sri Durga Das Mandal as Kshali in the scale of pay Rs 750/- to Rs 900/- and signed in the name of Mr. Karjee, Sr. Personnel Officer for General Manager (F), I.F. Rly., Maligaon. Sri K. Das alongwith the said fake and forged appointment order asked Sri Mandal to join there. Sri Mandal did not join in his service on that day. On 22/12/92 Sri Mandal came to CS/HR/Chy. office to report his duties. Sri J. Khakhari, the then APO/Chy, on being doubted to take confirmation of the genuineness of the said appointment order and it was confirmed from CS(P)/HR/Maligaon's office vide letter No. E/227/substitute/1000v. dtd. 22/12/92 that no such letter was issued from this office in the name of Sri Durga Das Mandal. It is also confirmed that the name of Sri Mandal does not appear in the screening list published vide office letter No. E/227/Screening/89 dtd. 24/7/90. A statement U/s. 161 Cr.P.C. was recorded from Sri Durga Das Mandal on 5/8/91.

The residential premises of Sri K. Das and Sri J. Khakhari were searched on 21/8/94 and on 20/8/94 respectively. During search some incriminating documents including one private letter dtd. 23/11/92 of Sri Durga Das Mandal of Baxpeta Road and 3 no. different I.F. Rly. official rubber stamps were recovered from the said premises. Sri K. Das and were taken into possession. Therefrom it is evident that Sri K. Das also took money from Sri Mandal promising him a job in Railway Deptt. and he misused his official rubber stamps for this purpose. During the search of the premises of Sri J. Khakhari some incriminating documents were recovered and seized from therefrom illegal transactions are in evidence.

Investigation of Sri Jitendra Khakhari, the then CS(P) under APO/HR/Coochabati, Siba Debbari, Rajendra Anand, Pitham Rajbanshi, Sunil Kalakar, Prakash Ali, Swapan Pr. Das, Sankar Das and Arun Pr. Das were arrested. After interrogation/examination all were produced before the Hon'ble Special Judge, Coochabati for special custody. Vigorous efforts were made during investigation for arresting of Sri Sunil Kalakar, Rajendra Anand, Prakash Ali, Swapan Pr. Das, Rajjit Satish Patel Barqobain but could not arrest due to the lack of their addresses. The above mentioned 5 no. accused persons are absconding.

During investigation the opinion of C.D., Calcutta was sought on the fake appointment/posting orders of 13 no. Kshalis. Conflicting opinions have been offered by the C.D., Calcutta on the said documents. During investigation, a prima facie case u/s. 120B, 120C, 400, 401, 13(2) and Sec. 13(2) r/w Sec. 13(1)(d) of Cr.P.C. is well established against the said suspects. I, therefore, send them to face trial in the court of law under the said sections of law.

The witnesses and documents as per list enclosed will prove the case. It is, therefore, prayed that process may kindly be issued to ensure their attendance in the Hon'ble Court. Prosecution sanction order dtd. 6/5/96 given by competent authority against Sri Krishna K. Das is enclosed. Additional oral or/and documentary evidence/evidences if found, will be adduced.

Attested
[Signature]
 Advocate.

Submitted -
[Signature]
 21.5.96
 Inspector of Police, C.I., C.O.
 Coochabati.

[Signature]
 Advocate.

To,
The General Manager,
N. F. Railway/Maligaon - 11.

Sub : Prayer for re - instatement in service as Electrical Khalashi or any Group D post in scale Rs. 750 - 940/-

Sir,

With due respect I beg to draw your kind attention for under mentioned few lines.

That Sir, I was appointed as Electrical Khalashi in scale Rs. 750 - 940/- under AEE/Guwahati vide letter No, E/227/1 dt. 20.02.1990.

That Sir, I was terminated from service with effect from 12.08.1991 after working satisfactorily from the date of joining.

That Sir, against above termination I seek justice in Honourable "CAT" vide application No. OA-127 of 1992.

That Sir, the Hon'ble "CAT" has delivered the judgement on 28.09.1995 and passed the following order :

1. The charges of fraud has not proved against me.
2. I shall not be thrown out merely on the ground of allegation of fraud made against me prior to termination of my service.
3. It would be permissible in law to consider giving me an employment on sympathetic and humanitarian ground.

That Sir, considering above all facts I request your honour to provide me in any group 'D' service in any department in any place under your control so that a poor family may survive fasting.

Sir, once again I request you to go in to the case sympathetically and passed your valuable order infavour of undersigned for which act I and my family members will remain grateful to you for ever.

With regards,

Yours faithfully,

Dated, Maligaon,
The 22.12.1995.

Rly. Or. No. - 92/D
Central Gotanagar,
Maligaon, Guwahati - 11.

ENCLOSE COPIES ARE :-

1. Original Order of DRM(P)/Elect/LMG. bearing No. E/227/1 dt. 20.02.1990.
2. AEE/GHY's letter addressed to DEE/LMG bearing No. E/227/1 dt. 08.01.1990.
3. Two 2nd Class duty pass No. 687709 & 685467 issued by AEE/GHY & OS/GHY in favour of me.
4. Letter bearing No. CS/P/GHY/1 dt. 12.08.1991 issued by APO/GHY.

With best regards,

Yours faithfully,

(MANORANJAN ROY)

Attested

Advocate
5
6

Copy of CAT
Copy of C.B.I.

Annexure-6, colly.

To

Date: 27.3.2001.

The General Manager

N.F.Railway

Maligaon, Guwahati-11.

Sub.: Prayer for reinstatement in service as Electrical
Khalasi.

Ref.: My representation dated 19.5.2000, 22.12.95 etc.

Sir,

With due respect I beg to say the following lines
for your valuable favour.

That, Sir, I got my first appointment as
Electrical Khalasi in scale Rs.750-940/- under AEE/Ghy vide
order No.E/227/1 dated 20.2.90.

That Sir, on 12.8.91, I was terminated from
service. I seek justice from Hon'ble Central Administrative
Tribunal, Guwahati vide OA No.127/92. On 28.9.95 Central
Administrative Tribunal, Guwahati Bench passed the judgement
for consideration of my case.

That Sir, in CBI Charge-Sheet my name was not
there. Also my name was absent in the order of the Special
Judge, Assam. I am an innocent employee of Railway and my
poor family is now living without food.

That Sir, once again I earnestly request you to
consider my case and I shall remain grateful to you
forever.

Thanking you.

Your's faithfully

(Monoranjan Roy)
Railway Qtr.No.92/D
Central Gotanagar,
Maligaon,Ghy-11.

Attested
[Signature]
Advocate.