

of 100 6  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P- 241/2001 ordered pg-1 to 2 INDEX

allowed. Dated- 8/01/02

O.A/T.A No. 408/2001

R.A/C.P No.....

E.P/M.A No. 241/2001

1. Orders Sheet. O.A. 408/2001 Pg.....1 .....to.....4 .....
2. Judgment/Order dtd. 9/10/2002 Pg.....1 .....to.....8 .....allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A. .... 408/2001 .....Pg.....1 .....to.....10 .....
5. E.P/M.P. .... 241/01 .....Pg.....1 .....to.....6 .....
6. R.A/C.P. .... NIL .....Pg.....to.....
7. W.S. .... filed by the Respondents Pg.....1 .....to.....7 .....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM No.4  
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:GUWAHATI.

ORDERS SHEET

APPLICATION NO.

408/2001 (6A)

Applicant (s) P.K. Deka

Respondent(s) N.O.I. 90M

Advocate for the Applicant: R. B. Deka

Advocate for the Respondent: Railway Counsel, B.K. Sharma

Notes of the Registry	Date	Order of the Tribunal
Petition filed vide M.P. No. 241/2001, C.R. for Rs. 100/- and vide IPO/80/66788553	11.10.01	List on 19.11.01 alongwith M.P. 241/2001, for admission.
Dated... 1.10.2001		I C C Sharma Member
<i>Pl. issue notice to the respondent.</i>	19.11.01	List again after three weeks to enable the respondents to file objection if any.
<i>20/11/01</i>		List on 10.12.2001 for further orders.
		I C C Sharma Member
Notice already served. vide D/No 4025 to 4027 alongwith M.P. 241/01.	10.12.01	None is present for the respondents. List again on 18.12.01 for admission.
<i>1) Service report as 20/11/01. 2) No. Reply has been filed.</i>		I C C Sharma Member
		<i>20/12/01</i>

18.12.01

List on 8.1.2002 to enable the respondents to file objections if any. No further time will be granted after the next date.

IC Usha

Member

Vice-Chairman

mb

8.1.02

Heard learned counsel for the parties.

The application is admitted. Call for the records.

List on 11.2.2002 for order.

IC Usha

Member

Vice-Chairman

mb

11.2.02

List on 18.3.2002 to enable the respondents to file written statement.

By  
15.3.02

IC Usha

Member

Vice-Chairman

mb

18.3.02

Post the matter for hearing on 22.4.2002. The Respondents may file written statement, if any, within three weeks from today.

By  
19.4.02

IC Usha

Member

Vice-Chairman

mb

22.4.2002

Prayer has been made on behalf of Mr.R.Dutta, learned counsel for the applicant for adjournment of the case on personal ground.

Prayer is allowed. List the case on 30.5.2002 for hearing.

By  
29.5.02

Vice-Chairman

mb

30.5. The case is adjourned to 25.7.2002 as Wuppenooran did not sit today.

By  
A.G.12  
30/6

(3) . .

O.A. 408/2001

Notes of the Registry Date

Order of the Tribunal

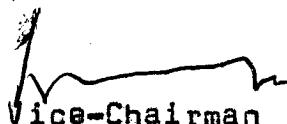
2.7.02

Miss U.Das, learned counsel appearing on behalf of the learned Railway counsel has stated that the respondents authority is filing the written statement within a short time. List the matter on 19.7.2002 for hearing. In the meantime, the respondents are directed to submit the written statement within two weeks. The applicant may file rejoinder, if any, two weeks thereafter.

*3*  
18.7.02

K C Usha

Member



Vice-Chairman

mb 1m

19.7.02

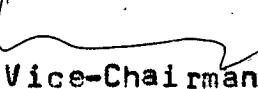
Miss U.Das, learned counsel appearing on behalf of Mr. B.K. Sharma, learned Sr. Standing counsel for the Railway prays for adjournment on personal ground. Prayer is allowed. List on 21.8.2002 for hearing. No further adjournment shall be granted to the Respondents.

No. Wks has been  
Visted.

*3*  
26.8.02

K C Usha

Member



Vice-Chairman

mb

21.8.02

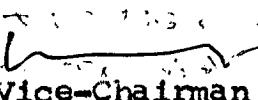
On the prayer of Mr. S. Sarma learned Standing counsel for Railway two weeks time is allowed for filing of written statement. No further adjournment will be granted.

List on 10.9.02 for orders.

1m

K C Usha

Member



Vice-Chairman

Order of the Tribunal

Notes of the Registry Date

10.9.02

4

No written statement  
has been filed.

3

30.9.02

1m

1.10.02

Heard Mr. R. Dutta learned counsel for the applicant and also Mr. S. Sarma learned counsel for the respondents. No written statement so far filed by the respondents though numerous time was granted to the respondents. The case may now be listed for hearing on 1.10.02.

Vice-Chairman

Hearing concluded. Judgment reserved. Mr. S. Sarma learned counsel for the respondents may produce the relevant records by 4.10.02.

IC (Usha)

Vice-Chairman

3.10.02

1m

4.10.

The respondents did not produce any records till date. However, they have filed a written statement on 31/10/2002 which may kindly be seen at page no 14A.

The respondents did not produce any records till date. However, they have filed a written statement on 31/10/2002 which may kindly be seen at page no 14A.

4.10.2002

Judgement delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

IC (Usha)

Member

Vice-Chairman

30.10.2002

Copy of the budget  
has been sent to the  
Office for issuing the  
same to the applicant  
as well as to the  
LIA for records.

SK

b

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

~~C.A./R.A. No.....~~ 408 of 2001.

DATE OF DECISION. 9th Oct 2002

**Shri Pradyut Kumar Das**

APPLICANT(S)

**Sri R. Dutta.**

ADVOCATE FOR THE APPLICANT

VERSUS

**Union of India & Ors.**

RESPONDENT(S)

**Sri B.K. Sharma, and S. Sarma**

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.**



Y

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 408 of 2001.

Date of Order : This the 9<sup>th</sup> Day of October, 2002.

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

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

Shri Pradyut Kumar Bas,  
Assistant Engineer/Con,  
N.F.Railway, Silchar . . . Applicant

By Advocate Sri R.Dutta.

- Versus -

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

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

3. The Chief Personnel Officer,  
N.F.Railway, Maligaon,  
Guwahati-11. . . . Respondents.

By Sri B.K.Sharma, Railway standing counsel.

O R D E R

CHOWDHURY J. (V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking for direction upon the respondents for inclusion of name of the applicant in the panel for the post of Assistant Engineer (Group B) in the year 1995 in the following circumstances.

2. The applicant on obtaining the B.E. degree in Civil Engineering discipline had applied for the post of Inspector of Works (IOW Grade-I), who was appointed as such in the scale of pay of Rs.2000-3200/- in the year 1988. He was promoted to the post of Chief Inspector of Works (CIOW) in the scale of Rs.2375-3500/- on 12.1.94. The aforementioned two posts are Group C post of the N.F.Railway. While serving

as such the applicant applied through proper channel for appearing in the Combined Engineering Services Examination conducted by the Union Public Service Commission in 1992 and was selected for Group A Engineering service under the Central Government. He was allotted to Border Road Organisation under the Ministry of Surface Transport, Government of India and appointed as Assistant Executive Engineer. The Railway authority spared him vide a communication dated 28.6.94 to join the post of Assistant Executive Engineer(Civil) under the Ministry of Surface Transport and the applicant joined the post on 4.7.94. The applicant after joining the post applied to the General Manager(P) N.F.Railway, Maligaon, for retention of his lien in the parent department for 2 years vide his application dated 22.10.94. The applicant thereafter applied for repatriation to his substantive post vide his letter No.PKD/112/215/950925/E 1 dated 28.9.95 addressed to the General Manager (P), N.F.Railway, Maligaon and the applicant in fact was repatriated to the post of CIOW on 3.4.96. The applicant further pleaded that during the period while he was working in Border Road Organisation under the Ministry of Surface Transport, Government of India the respondents authority held two selections for filling up Group B posts. One selection was against 30% post that was to be filled up by Limited Departmental Competitive Examination (LDC) and another against 70% quota. The LDC was held in the year 1995 and the other selection was held in 1996. The applicant's grievance was that though it was incumbent on the authority to provide adequate advance notice to the applicant but in the instant case he was not served with any such notice

and thereby denied him an opportunity to appear in the selection process. Thus he was deprived of his consideration both in the year 1995 and 1996. In the application the applicant contended that as per Railway Board's letter No. E(NG)11-68/AP/6 dated 16.6.71 and No.E(NG)1-83/AP/3 dated 14.3.83 the period of lien on railway is treated to be period on deputation to other department. In this application the claim of the applicant is based on para 206.1 of Indian Railway Establishment Manual (IREM) Vol.I. As per the said provision employees under deputation are also eligible for being considered for promotion. Since the applicant was not considered for promotion nor he was intimated of the selection process enabling him to appear in the test the applicant moved the authority by filing a representation on 13.12.98 which remains unattended to. Hence this application praying for a direction for consideration of his claim.

3. The respondents entered appearance but no written statement was filed. Mr.S.Sarma, learned counsel appearing on behalf of the respondents prayed for time for filing written statement, which we declined on the facts and circumstances. We, however, allowed the respondents to submit the relevant records by 4.10.2002. Instead a written statement was filed on 4.10.2002. It may be stated herein that the applicant presented this Original Application on 8.10.2001. Alongwith the O.A. the applicant also preferred an application explaining the delay in not filing the application within the period prescribed in terms of Sub-section 3 of the Section 21 of the Administrative Tribunal's Act, 1985. We issued notices on the respondents on the aforesaid application, which was numbered and registered as Misc.Case No. 241 of 2001. The said application was finally disposed on 8.1.2002 and the Tribunal accepted the application to be heard in merit. Upon hearing the parties on 8.1.2002 delay

was accordingly condoned in the absence of anything mala-fide or deliberate delay. Notice was also issued on the O.A. for admission on 23.10.2001 and after hearing the parties the O.A. was admitted on 8.1.2002. The respondents, however, chose not to file the written statement within the prescribed period mentioned in Rule 12 of the CAT procedures Rules, 1987. We, ..., allowed the respondents to file written statement by our orders dated 11.2.2002, 8.3.2002, 2.7.2002 and 21.8.2002 and finally by our order dated 10.9.2002 we ordered for hearing without the written statement. Hearing was concluded on 1.10.2002 and thereafter as mentioned, we allowed the respondents to file records. Instead of records, the respondents submitted written statement. Though the written statement was not filed within the time allowed also into consideration under Rule 12(5) we, however, took the written statement and the contents of the written statement shall be dealt with in course of time.

4. We have heard Mr.R.Dutta, learned counsel for the applicant and Mr.S.Sarma, learned counsel for the respondents at length. The issue revolve round the interpretation of para 206.1 of the IREM Vol.I Rules governing the promotion of subordinate staff are recommended by Chapter 2 of the rules. Rules defined frequency of selection, composition of the Selection Committee, selection procedure by statutory device. Rules also provided for consideration of the case of the employees on deputation so that their cases are also not excluded for consideration. The relevant rule, namely, Rule 206.1 is re-produced below :

"Consideration of Employees on deputation - In cases where employees eligible to take the selection are abroad on deputation/ secondment and are not likely to return in a few months time, the selection held in their absence should be finalised without waiting for their return. On their return they should be called for the first selection held thereafter and on the basis of their performance in the selection they should be considered for proforma inclusion in the panel framed during their absence abroad. If an employee is thus included in the panel

no arrears would be payable to him and entitlement to pay in Group 'B' would commence only from the date of his actual officiating promotion. For the panel thus enlarged Board's approval should be obtained. In respect of eligible employees who are on deputation to offices/establishments, within the country, it should be ensured that adequate advance notice is given to such employees and they are considered at the selection without fail."

As per the statutory provision the employees who are abroad on deputation or secondment and not likely to return in their absence also selection may be finalised without waiting for their return. However, on their return they should be called for the first selection held thereafter and on the basis of their performance the selection they should be considered for proforma inclusion in the panel framed during their absence abroad. No such provision is indicated. Similar provision though not available in respect of the deputationist within the country, Mr.Dutta submitted that it was incumbent on the authority to give adequate advance notice to the employees and that they are considered at the selection without fail. Mr.Dutta, the learned counsel submitted that the said provision is in conformity with Article 14 and 16 providing protection of law and equality before the law. Mr.S.Sarma, the learned counsel for the respondents however submitted that the rules are to be read and interpreted by giving ordinary and common meaning. According to Mr.Saram the deputationist abroad are distinctly from the deputationist within the country. In the case of deputationist abroad their cases are required to be considered on return by calling them in the first selection held thereafter and on the basis of their performance in the selection and their case is considered for proforma inclusion during the absence abroad. In the case in hand the applicant was within the country and on his repatriation he appeared against 30% LDC held in March 1990 and he was selected and promoted as Assistant Engineer Group B by order dated 12.6.1998. Mr.S.Sarma, learned counsel for the respondents also pleaded that the application was time barred. We are

not inclined to go again those issue of limitation in view of our earlier order dated 8.1.2002 passed in Misc.Petition No.241/2001 accepting the application to be heard in merit. We are also not impressed with the contention of the respondents to that effect that the applicant did not apply for the post notified in 1994, which was finalised in 1995. No materials were furnished by the respondents to show and establish that intimation was given to the applicant as required under the law. Mr.S.Sarma, learned counsel for the respondents referred to the statement made in Para 8 of the written statement, wherein the respondents made averments to that effect that the applicant was sent prior intimation in terms of the provisions mentioned in the IREM. The said contention of the respondents could not persuade us to accept the said plea based on the written statement filed after when the Tribunal fixed the hearing. Even otherwise, the said averment made in Para 8 of the written statement by any is not substantiated / producing the records. Needless to state that verification of the pleadings is one of the essence of the pleadings. The aforesaid averment made by the respondents to that effect that prior notices were issued to the applicant in the facts and circumstances of the case, therefore, cannot be accepted.

5. On consideration of the materials on record it emerges that the applicant was spared from Railway in 1994 to join the post of Assistant Executive Engineer (Civil) under the Ministry of Surface Transport. The applicant was repatriated to the post of CIOW on 3.4.96. The applicant was on deputation. During the aforesaid period there was LDC against 30% of the vacancies in the year 1995 and another selection was held against 70% quota in the year 1996. Materials on record did not indicate that the applicant was atleast intimated with advance notice as enjoined in the rules. The philosophy of Article 14 and 16 are ingrained in Para 206.1. Fairness is

inbuilt in the scheme of para 206.1 for providing fair treatment. Eligible employees who are on deputation to office or establishment within the country is to be informed with adequate advance notice for their participation at the selection. The materials on record did not indicate that said steps were taken. The applicant immediately after repatriation appeared in the 30% LDC held in March 1998 in which he was selected and promoted to Assistant Engineer Group 'B'. The applicant stated that he stood second in the merit list of the examination. As alluded earlier the scheme of 206.1 and the object of Article 14 and 16 is to attain justice and provide fairness to the eligible persons. In the sphere of public employment any action taken by employer must also be judged in the context of Article 14 and 16 of the Constitution, informed with fairness. Article 16 guaranteed right to be considered in the merit for the post to which the employees eligible. A person on deputation cannot be denied the right to be considered for promotion. The applicant already submitted his application for empaneling his name in 1995 in accordance with para 206.1. The said representation remained unattended for no valid reason. <sup>materially</sup> The records produced by Mr. Sarma also did not indicate that applicant's case was considered by the authority in the light of the statutory provision.

6. On consideration of all the aspects of the matter we accordingly direct the authorities to consider the case of the applicant for inclusion in the panel framed during the period of his absence to avoid injustice. We direct the respondents to consider the case of the applicant for proforma inclusion in the panel during his absence by taking into consideration his result in the first selection in 1998 after joining of the applicant. The respondents are accordingly directed to take all the necessary steps

as per law, keeping in mind the observations and directions made above with utmost dispatch and conclude the exercise within three months from the receipt of the order.

The application is allowed to the extent indicated.

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

K. K. Sharma  
( K.K.SHARMA )  
ADMINISTRATIVE MEMBER

( D.N.CHONDHURY )  
VICE CHAIRMAN

केन्द्रीय प्रशासनिक अधिकार सभा  
Central Administrative Tribunal  
8 OCT 2001  
गुवाहाटी न्यायालय  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

O.A. No. 408 of 2001

Shri Pradyut Kumar Das ... Applicant.

VERSUS

Union of India & others .. Respondents

INDEX

Sl. No	Particulars of document	Annex No.	Page
1.	Application	--	1 to 9
2.	Applicant's representation dated 31.12.1998.	A/1,	10.

08/10/01  
(Pradyut Kumar Das)  
Signature of the applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI.

O.A. No. of 2001

Shri Pradyut Kumar Das  
Assistant Engineer/Con,  
N.F.Railway, Silchar. .... Applicant.

VERSUS

1. Union of India, represented through the General Manager, N.F.Railway, Maligaon, Guwahati-11, Pin- 781011.
2. The General Manager, N.F.Railway, Maligaon, Guwahati -11. Pin. 781011.
3. The Chief Personnel Officer, N.F.Railway, Maligaon, Guwahati-11. Pin. 781011. ... Respondents.

1. Grievance in respect of which the application is filed:

Non-consideration for proforma inclusion in the panel of Assistant Engineer Group-B against 30% quota Limited Departmental Competitive Examination held in 1995.

2. JURISDICTION.

The applicant submits that the Hon'ble Tribunal has jurisdiction over the matter of the case.

3. Limitation.

The applicant submits <sup>that</sup> as he was expecting a decision on the issue on the basis of his representation and he was passing through a very bad time he could not file the application within the period of limitation prescribed and therefore has filed a miscellaneous petition separately before the Hon'ble Tribunal for condonation of the delay.

4. Facts of the case.

4.1 That, the applicant is a citizen of India and therefore entitled to rights and privileges guaranteed under the Constitution of India.

4.2 <sup>22.8.88</sup> That, the applicant is a graduate engineer in Civil Engineering discipline from the Gauhati University. The applicant was appointed as Inspector of Works (in short IOW) Grade I in scale of Rs.2000--3200/- on 22.8.88 by direct recruitment. He was promoted to the post of Chief Inspector of Works (in short CIOW) in scale of Rs.2375 -- 3500/ on 12.1.94. These posts are Group C posts of N.F.Railway

4.3 That, the applicant applied through proper channel for appearing in the Combined Engineering Services Examination conducted by the Union Public Service Commission in 1992 and was selected for Group-A Engineering Service under the Central Government. The applicant was allotted to Border Road Organisation under the Ministry of Surface Transport, Government of India and was appointed as Assistant Executive Engineer

( in short AEE ). The applicant was spared from the railway under General Manager(P), N.F.Railway, Maligaon's letter No. E/283/44 Pt. XXIV(E) dated 28.6.94 ~~to join~~ to join the post of Assistant Executive Engineer(Civil) under the ministry of Surface Transport and the applicant ~~joined~~ joined the post on 4.7.94.

~~4.4~~ Thaa, para 1404 of the Indian Railway Establishment Manual ( in short IREM ) vol. I provides, ~~inter-alia~~, that a permanent railway servant/a temporary railway servant who have completed 3 years service, ~~is~~ selected on the basis of a forwarded application to a post in the central government or any Public Sector Undertaking owned by the central government or state government, his lien may be retained in parent department for a period of 2 years. If the employee concerned is not permanently absorbed within a period of 2 years from the date of his appointment to the new post, he should immediately on expiry of the period of 2 years either resign from railway service or revert to his parent office.

~~4.5~~ That, the applicant after joining the post of Assistant Executive Engineer(Civil) in the Border Road Organisation applied to the General Manager(P), N.F.Railway, Maligaon for retention of his lien in the parent department for 2 years vide his application dated 22.10.94. Thereafter, the applicant applied to the General Manager(P), N.F.Railway, Maligaon for his reparation to his substantive post vide his letter No. PKD/112/215/950925/E 1 dated 28.9.95 and was reparation back to the post of CIOW on 3.4.96

and was posted as CIOW, N.F.Railway, Dibrugarh, ✓

4.6 That, during the period of applicant's period of working in the Border Road Organisation under the ministry of Surface Transport, Government of India, 2 selection- one against 30% posts to be filled in by Limited Departmental Competitive Examination (in short LDCE) and another against 70% quota were held in the year 1995 and 1996 respectively <sup>M.N.F.R.O.Y</sup> but the applicant was neither informed nor called to appear in these examination held to select candidates for the post of Assistant Engineer Group-B in scale of Rs.2000-3500/ to which the applicant in his capacity of IOW/CIOW had normal avenue and his juniors were called. The applicant getting the information about the selection for the post of Assistant Engineer Gr.B applied on 16.1.95 for inclusion of his name as a candidate for the post of Assistant Engineer Gr.B against 30% LDCE posts. But he was not called or allowed to sit for the written examination. He was also not called to appear in the selection held in the year for the post of Assistant Engineer Gr.B that was held in February-March 1996.

4.7 That, under Railway Board's letter No. E(NG) 11-68/AP/6 dated 16.6.71 and No. E(NG) 1-83/AP/3 dated 14.3.83 the period of lien on railway is treated to be period on deputation to other department.

4.8 That, para 206.1 of IREM vol.1 provides that in cases where employees eligible to take the selection are abroad on deputation/secondment and are not likely to return in a few months time, the sele-

1995 Limit Deployment  
Ex  
1996-70%. See an  
See

the selection held in their absence should be finalised without waiting for their return. On their return they should be called for the first selection held thereafter and on the basis of their performance in the selection they should be considered for proforma inclusion in the panel formed in their absence. It is further provided that eligible employees who are on deputation within the country it should be ensured that adequate advance notice is given to such employee and they are considered without fail.

4.9 That, the first selection held for the post of Assistant Engineer Gr.B in the N.F.Railway after repatriation of the applicant was in the year 1998 for ~~the post~~ 30% LDCE and the applicant appeared in the selection and was selected for the post of Assistant Engineer Gr.B and his merit position was second in the selection. The applicant was promoted to the post of Assistant Engineer Gr.B and he assumed the charge of Assistant Engineer/1, New Bongaigaon on 21.7.98.

4.10 That, as the applicant was not called during the period of his deputation and as he was selected to the post of Assistant Engineer Gr.B in the very first selection of LDCE against 30% quota, he represented to the General Manager (P), N.F.Railway, Maligaon on 31.12.98 for proforma inclusion of his name in the panel formed in the year 1995 by holding LDCE against 30% quota. But neither any action was taken nor any reply was

any reply was issued to the applicant. The applicant pursued the matter and submitted reminders but without any result.

A copy of the representation dated 31.12.98 is annexed herewith as Annexure A/1.

4.11. That the applicant was forcibly kidnapped by a group of armed miscreants on 7.9.99 while he was inspecting the railway line near Golakganj, in Dhubri district, Assam and was confined in some remote place and was released on 29.9.99. The applicant was transferred to Silchar as Assistant Engineer/Con and he joined there on 4.11.99.

5. Grounds for relief:

5.1 That, the applicant was on deputation and should have been called in the LDCE held in 1995 when he was eligible to appear and he applied for allowing ~~to~~ him to appear in the Limited Departmental Competitive Examination .

5.2 That, the applicant was selected to the post of Assistant Engineer Gr.B against 30% LDCE quota in the very first selection held, after his repatriation, in the year 1998 and stood 2nd in the examination in the merit list.

5.3 That, the applicant is entitled to be considered for inclusion in the panel of 1995 formed after LDCE for the post of Assistant

Engineer Gr. B in terms of para 206.1 of the IREM Vol.1 as the selection was finalised without calling him in the selection held by way of LDCE in 1995 and selection against 70% held in the year 1996 although it was known to the respondents that the applicant has lien in his substantive post and he has opted to be reappointed and the applicant was within the zone of consideration.

5.4 That, no special selection was held to set right the situation created by non calling the applicant .

**6. Details of remedies exhausted:**

The applicant submitted his representation to the General Manager(P), N.F.Railway on 31.12.98 followed by reminders but without any results.

**7. Particulars of previous application if any:**

The applicant further declares that he had not previously filed any such application, 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. Relief Sought:**

Under the circumstances stated above

Contd ... P/8

8/8

the applicant humbly prays that the Lordships of this Hon'ble Tribunal may be pleased to:-

issue direction to the respondents to consider inclusion of the applicant's ~~name~~ name in the panel formed for the post of Assistant Engineer Gr.B in scale of Rs. 2000-3500 after holding Limited Departmental Competitive Examination in the year 1995 and or such other direction as deemed fit by the Hon'ble Tribunal and for this act of kindness the applicant as duty bound shall ever pray.

9. Interim relief:

NIL

10. Particulars of Application fee:-

Indian Postal Order No. 66 788553 dated 10.01 for Rs. ~~Fifty~~ (Rs. 50/-) only is enclosed.

11. Enclosures :

Transcript in Annex

As in Index.

VERIFICATION.

817

Contd ...P/9.

VERIFICATION.

I,shri Pradyut Kumar Das son of shri Pijush  
Kanti Das aged about 39 years working as  
Assistant Engineer/Con, N.F.Railway, Silchar do  
hereby verify that the contents of para 3,4.1 to 4.3,  
4.5,4.6, 4.9 to 4.11, 6,7,10 are true to my knowl-  
dge and those in para 4.4, 4.7 and 4.8 are true to  
my information which I believe to be true and the  
rest are my submission to the Hon'ble Tribunal  
and I have not suppressed any material fact.

And I sign this verification on this 8<sup>th</sup>  
day of October 2001 at Guwahati.

Date 08/10/01

Place-Guwahati.

  
08/10/01 (Pradyut K. Das)  
Signature of the applicant.

.....

Annexure A/1

To,  
The General Manager (P),  
N. F. Rly., Maficaon,  
Guwahati - 11.

( Through Proper Channel ).

Sub: Prayer for consideration for proforma inclusion in the panel framed on basis of 30% LDCE held on 21st and 22nd Jan'95.

Sir,

With due respect and humble submission I like to submit the following for your kind consideration and necessary order please.

That Sir, I joined N.F.Rly. as I.O.W. Gr-I in scale 2000-3200/- on 22/2/88 against graduate quota and subsequently I was promoted to the post of C10W in scale 2375-3500/- on 12/01/94.

That Sir, I appeared in the combined Engg. services examination conducted by UPSC in 1992 and selected for Group 'A' services of the Central Govt. I was allotted to Border Roads Development Board under Ministry of Surface Transport, Govt. of India as per recommendation of the U.P.S.C. Accordingly I was released from Rly. vide office order No.E/283/14 Pt.XXIV(E) dt.28/06/94 of GM(P)/MLG to join the post of Asstt. Executive Engineer (Civil) under Ministry of Surface Transport. I joined the new post on 04/7/94 and served there till 31/3/96 retaining the post of C10W of N.F.Rly. as per IREM para 1404(iii). Then in the post of C10W of N.F.Rly. as per IREM para 1404(iii). Subsequently I repatriated to my parent post on 03/4/96.

That Sir, as per Rly. Bd's letter no.E(NG)11-68/AP/6 dt.16.6.71 and E(NG)1-83/AP/3 dt.14.3.83 the period of lien on Rly. is to be treated as deputation to other deptt. And an employee on deputation to other deptt. And not to be considered in the selection for promotion as per IREM para 206.1. But during the period of my deputation from 28/06/94 to 31/3/96 two selections for promotion to group 'B' services viz. 30% LDCE in '95 and 70% LGS in Jan'96 were held in which I was not considered, inspite of my written appeal dt.16th. Jan'95 for allowing me to appear in 30% LDCE held in Jan'95.

That Sir, after my repatriation the first selection for promotion to Gr.'B' i.e. 30% LDCE held in March'98 in which I am selected and promoted to AEN Gr.(B) vide GM(P)/ MLG's O.O.No.10/98 (Engg.) dt.12/6/98. I have assumed the charge of AEN/I/NBC on 27/7/98 and continuing in the same post till date.

That Sir, as per IREM Para 206.1. I am supposed to be considered for proforma inclusion in the panel framed vide selection against 30% LDCE in Jan'95.

In view of the above I would request your kind honour to consider my case sympathetically for proforma inclusion in the panel framed in 1995 and oblige thereby.

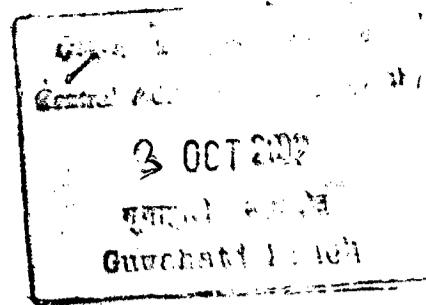
Thanking you,

Yours faithfully,

*(Signature)*  
31/12/98  
(PRADYUT KUMAR DAS)

*A. Datta*  
A. Datta, *Parasuram*  
Ballygunj, Guwahati - 781018

14  
Filed by  
Baldhona, Daudy, Dharma, 31/10/02  
Pradeep K. Das, 28  
28



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A No. 408/2001

Filing & Reply R 12. Shri P. K. Das

Within one month from ... Applicant

Serve a notice - versus -

12(5) may allow filing Union of India & Ors.

2 Reply after the expiry of 12 weeks ... Respondents

Written statement on behalf of Respondents

The answering Respondents beg to state as follows:

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 and the Applicant is put to the strictest proof thereof.
2. That with regard to the statements made in paragraphs 1 and 2 of the OA, the answering Respondents offer no comment on it.
3. That with regard to the statements made in paragraph 3 of the OA, the Respondents state that the OA is hopeless barred by limitation and in the event of granting any relief the incumbent selected earlier will be effected adversely.

Planned vs. actual

= 2 =

4. That with regard to the statements made in paragraphs 4.1 and 4.2 of the OA, the answering Respondents offers no comment on its.

5. That with regard to the statements made in paragraph 4.3 of the OA, the Respondents beg to state that the Applicant, while working as COW (Non-gazetted in NF Railway) in the pay scale of Rs. 2,000-3,200/- was selected through UPSC for appointment as Asstt. Executive Engineer (Civil) in the Border Roads of Engineering Service in the General Reserved Engineer Force Organisation, Ministry of Surface Transport, Government of India in a Group-A pay scale of Rs. 2,200-4,000/- and he was released from Railway on 29.6.94 and he took over the charge of Asstt. Executive Engineer (Civil) on 4.7.94.

6. That with regard to the statements made in paragraph 4.4 of the OA, the answering Respondents offer no comment on it.

7. That with regard to the statements made in paragraph 4.5 of the OA, the answering Respondents beg to state that from the available records nothing for could be established as to his request for retaining his lien. The Applicant on release from Ministry of Surface Transport, Government of India on 31.3.96 on repatriation to his parent department reported back to his duty in NF Railway on 3.4.96 and was posted as CIOW under Senior DEN/NF Railway, Tinsukia.

8. That with regard to the statements made in paragraph 4.6 of the OA the answering Respondents while

Pradeep Singh

281

denying the contention made therein beg to state that during the period of Applicant's posting under the Ministry of Surface Transport, Government of India, a notification for filing up of 11 posts for AEN/Group-B in the scale of Rs, 2,000-3,200/- was issued on 17.8.94 vide GM(P)'s letter No. E-254/17-Pt.IV(O) dated 17.4.94 with the closing date of receipt of the application from the eligible volunteers within 30.9.94. The written examination and viva-voce was held on 11.2.95/12.2.95 and 20.4.95 respectively and finalised on 26.5.95. The Applicant did not apply for the above selection, inspite of having intimation may be on the reason that he was already working as a Group-A officer in the higher pay scale in the Ministry of Surface Transport, Government of India.

During the period of Applicant's posting under the Ministry of Surface Transport, Government of India, another notification for filing up of 24 vacancies of AEN/Group-B was issued on 23.9.95 vide GM(P)'s letter No. E/254/17-Pt/VIII(O) dated 23.9.95 with closing date of receipt of applications from eligible volunteers within 30.10.95. The written examination and viva-voce was held on 16.1.96/22.1.96 and 15.3.96 respectively. The finalisation of selection was delayed due to court case but ultimately finalised on 5.12.97. The Applicant as stated earlier inspite of having intimation did not apply within 30.10.95, may because of the fact that he was holding higher post with higher pay scale under the Ministry of Surface Transport, Government of India. It is stated that from the records it is difficult to

establish that he had submitted the so called application dated 16.1.95 for inclusion of his name as a candidate for the post of AEN/Group-B against 30% LDCE and against 70% vacancies. Moreover empanelment of candidate both against 30% LDCE vacancies and 70% vacancies are purely subject to physical appearance of the candidate and obtaining qualifying marks in written examination and viva-voce test.

9. That with regard to the statements made in paragraph 4.7 of the OA the answering Respondents offer no comment on it.

10. That with regard to the statements made in paragraph 4.8 of the OA the answering Respondents while denying the contentions made therein beg to state that after reporting back of the Applicant to his parent department on 3.4.96 on repatriation, another notification for filing up of 10 vacancies of AEN/Group-B was issued on 24.4.96 vide GM(P)'s letter No. E/254/17/PT.V(0) dated 24.4.96 and the Applicant had applied for the same. The written examination and viva-voce tests were held on 7.3.98, 8.3.98 and 25.5.98 respectively and the selection was finalised on 4.6.98 empanalling 7 persons including the Applicant. This was the first Group-B selection of AEN held after repatriation to parent cadre.

11. That with regard to the statements made in paragraph 4.9 of the OA, the Respondents offer no comment on it.

Purdey vs Singh  
29

Pradeep K Singh

12. That with regard to the statements made in paragraph 4.10 of the OA, the Respondents while denying the contentions made therein beg to state that from the available records submitted by Annexure-1 representation dated 26.12.98 could not be established and the Applicant is out to the strictest proof thereof. The Group-B selection against 30% LDCE vacancies is purely a competitive examination and the candidates who appear and qualify in both the written examinations and viva-voce test are placed in the panel in order of merit and thus there is no question of seniority. Therefore proforma promotion of a candidate not appearing in the selection is not admissible in the Railway Rules.

13. That with regard to the statements made in paragraph 4.11 of the OA, the answering Respondents while denying the contentions made therein beg to state that to cover up the limitation the Applicant has narrated the story which has got no nexus with this case. Apart from that the incident took place on 7.9.99 whereas the cause of action arose in the year 1995 and even as on 1999 the period of limitation had lapsed.

14. That with regard to the statements made in paragraphs 5, 6, 7 and 8 of the OA the Respondents while reiterating and reaffirming the statement made above beg to state that there is no ground for granting him the relief as prayed for and the OA is misconceived and same is liable to be set aside and quashed.

15. That the answering Respondents beg to state that

the OA is barred by limitation and same is also bad for non-joined of necessary parties. The instant OA is also hit by principle of waiver estopped and acquiescence and same is liable to dismissed in limine.

16. 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 Pradeep Kumar Singh, aged about 35 years, son of Bhup Lal Singh, resident of Maligaon, Guwahati-11, presently working as Dy. CPO/4, N.F. Railway do hereby verify and state that the statement made in paragraphs 1, 2, 15 and 16 are true to my knowledge and those made in paragraph 3 to 14 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 3rd of October, 2002.

Pradeep Kumar Singh

Deponent

Mr. Chirag Panigrahi  
10, 1st Floor, NFTC  
S. S. Building, Maligaon