

30/100

5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 327/2002

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(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI
....

ORDER SHEET

Original Application No : 327 / 2002

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant (s) Ghaneswar Nath

Respondent (s) Not Lias -Vs-

Advocate for the Applicant (s) P.K. Roy Chowdhury, C.K. Das

Advocate for the Respondent(s) A. Khan & B.K. Kar.
CASE

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in order not in time for admission. 27/9/02 29 575318 27/9/02 Dr. B. B. Das NB 30/9/02</p> <p>1) <u>NO slips</u> 2) <u>NO notice served on respondents.</u> 3) <u>not pet</u> <u>Shri. P. K. Roy Chowdhury machine is</u> <u>out of order.</u> 10/10/02</p>	<p>3.10.02</p> <p>11.10.2002</p> <p>24.10.2002</p>	<p>Heard Mr. A. Khan learned counsel for the applicant. List on 11.10.02 to enable the appli- cant to take necessary steps.</p> <p>10/10/02 Member</p> <p>10/10/02 Vice-Chairman</p> <p>Two weeks time is given to the applicant to take necessary steps on the matter. List on 24.10.2002 for admission.</p> <p>10/10/02 Member 5</p> <p>10/10/02 Vice-Chairman</p> <p>A prayed by the appellant, the case is adjourned to 6/11/2002 for admission.</p> <p>10/10/02 A. B. Das 24/10/02</p>

Steps received.

6.11.02 List again on 20.11.2002 to enable the applicant to take necessary steps.

Member

Vice-Chairman

mb

20.11.02 List again on 21.11.2002 for admission.

Member

Vice-Chairman

mb

21.11.02 The application is admitted. Call for the records.

List on 23.12.2002 for orders.

Member

Vice-Chairman

mb

23.12.02 List on 28.1.2003 to enable the respondents to file written statement.

Member

Vice-Chairman

mb

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

The Hon'ble Mr. S.K. Hajra, Administrative Member.

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

Further four weeks time is allowed to the respondents to file written statement.

List on 25.2.2003 for written statement.

Member

Vice-Chairman

mb

Steps taken notice prepared and sent to S/s for filing the Petition No. 1456 to Regd. A.I.A. 2/12/02
DINo 32744/79 dtl 4/12/02

No written statement has been filed.

27.1.03

No written statement has been filed.

24.2.03

Notes of the Registry

Date

Order of the Tribunal

25.2.2003

The respondents are yet to file written statement though time granted. Put up again on 26.3.2003 to enable the respondents to file written statement as a last chance.

No. Written statement has been filed.

25.3.03

WS filed in the Court on 26.3.2003 & kept in the file.

26.3

mb

26.3.2003

Written statement has been filed. The case may now be listed for hearing on 9.5.2003. The applicant may file rejoinder, if any, within two weeks from today.

Vice-Chairman

28.3.03

WS submitted by the Respondents.

28.3

No. Rejoinder has been filed.

8.5.03

9.5.03

It has been stated by Mr A.Khan learned counsel for the applicant that he has received the copy of the written statement today only. He requires some more time to go through it. Prayer allowed.

List again on 4.6.03 for hearing.

S.O.

Member

Vice-Chairman

pg

W.B. Diversion Bench did not sit today. The case is adjourned to 10.6.2003.

10.6.03

(2) 2
O.A. 327/2002

10.6.2003 Present : The Hon'ble Mr. Justice
D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. R.K. Upadhyaya,
Member (A).

On the prayer of Mr. A. Khan,
learned counsel for the applicant
the case is adjourned. List again
on 10.7.2003 for hearing.

(Signature)
Member

(Signature)
Vice-Chairman

mb

10.7. Division Bench did not sit today,
The case is adjourned to 12/8/2003

12/8/2003
A

12-8-03

Adjourned. List for
hearing on 2.9.03.

(Signature)
By order.

2.9.03

Passed over for the day.

(Signature)
Member

(Signature)
Vice-Chairman

lm

3.9.2003

Heard counsel for the parties.
Judgment delivered in open Court, kept
in separate sheets.

The application is disposed of in
terms of the order. No order as to costs

(Signature)
Member

(Signature)
Vice-Chairman

bb

copy has been filed.

(Signature)
9.7.03

25.9.2003

Copy of the order
has been sent to the
office for issuance
the fine to the applicant
as well as to the
S.C.G.S.C. for the
record.

AS
25/9/03

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./XXX.No. 1111 327 of 2002.

DATE OF DECISION 3.9.2003.

..... Sri Ghaneswar NathAPPLICANT(S).

..... Mr. P.K. Roy. Choudhury. C.K. Das. A. Khan &ADVOCATE FOR THE
B.K. Kar.APPLICANT(S).

-VERSUS-

..... Union of India & OthersRESPONDENT(S)


..... Mr. A. Deb Roy. Sr. C. G. S. C.ADVOCATE FOR THE
.....RESPONDENT(S).

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

THE HON'BLE MR. K.V. PRAHALADAN, 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 ~~Member~~ Vice-Chairman.



X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 327 of 2002.

Date of Order : This the 3rd Day of September, 2003.

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

THE HON'BLE MR.K.V.PRAHALADAN, ADMINISTRATIVE MEMBER.

Sri Ghaneswar Nath
S/o L.C.Nath

T/No.2665, Mazdoor

4.Sub Depot, 222 Adv. Base Ordnance Depot

C/o 99 APO, District: Kamrup, Assam.

. . . Applicant.

By Advocates Mr.P.K.Roy Choudhury, C.K.Das, A.Khan & B.K.Kar

- Versus -

1. Union of India
Through the Secretary of Defence
Government of India, Ordinance Branch
New Delhi.
 2. The Director General of Ordinance
(Service OS-8C), Master General Ordinance Branch
Army Head Quarters
New Delhi - 110 011.
 3. Master General
Head Quarter Eastern Command
Ordinance Branch, Fort William
Kolkata-2.
 4. Commandant, Administrative Officer
Advance Base Ordinance Branch
222 Army Post Office
C/o 99 APO.
 5. Sri Bikul Das
T/No.2667, Mazdoor Electrician
222 Army Post Office
C/o 99 APO.
 6. Sri Ranjit Ghosh
T/No.2516 Mazdoor Yard Group
222 ABOD, C/o 99 APO
residing at Amsing, Jorabat
P.S: Satgaon, Guwahati-27
Dist: Kamrup, Assam.
- Respondents.

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

O R D E R

CHOWDHURY J.(V.C.):

The controversy pertains to promotion from the
post of Mazdoor to Electrical Mate in the following
circumstances:

Contd./2

1. The applicant was initially appointed as Helper on 20.8.1983 under the respondents at EME Comp. Section of 4 Sub-Depot. According to the applicant, amongst the Mazdoors, he was the senior most and he passed the trade test on 8.12.1995. The said trade test was a test held for promotion of the Mazdoor to Electrical Mate. The applicant alongwith respondent Nos.5 & 6 appeared in the said test. The applicant's name in the trade test was shown at Sl.No.2 and the name of the respondent no.5 was at Sl.No.3. According to the applicant, the other person i.e.respondent no.6, who was junior to him, was figured at Sl.No.1. The applicant was ^{hope and} holding the expectation of promotion to Electrical Mate in view of the fact that he had passed the trade test. Instead the respondents promoted respondent no.5 and 6 overlooking genuine claim of the applicant. The applicant submitted representation on 20.2.2001 before the authority. By the impugned communication dated 26.2.2001 the respondents informed that there was only one authorised post of Electrical Mate in their depot. The respondent No.5 who belongs to SC category had been promoted from Mazdoor to Electrical Mate against Roster Point No.1 which goes to SC candidate. The respondent No.6 was promoted to Electrical Mate, that too against their authorisation of one Electrical Mate, in compliance of the directions of this Bench and Army Headquarters. The respondents further asserted that though the applicant was appointed on 20.8.1983, he was posted from 21 Mountain DOU and reported on 15.9.1990. As per existing procedure his seniority was counted from the date on which he was taken on the strength of the depot. His seniority, therefore, was shown at Sl.No.3 and his case for promotion would be considered in his turn. The applicant assailed the legitimacy of the communication and moved this Tribunal challenging the action of the respondents as arbitrary and unlawful.

2. The respondents submitted its written statement in support of its stand. In the written statement the respondents reiterated its stand taken in the impugned communication. In the written statement the respondents clarified that the respondent No.5 was promoted from Mazdoor to Electrical Mate on the basis of result of the trade test and as per 40 point roster. As per 40 point roster introduced by the Govt. the first post which was reserved for SC candidate was lying vacant and carried forward due to non availability of SC candidates from last 30 years and since respondent No.5 was SC candidate and had qualified the trade test for Electrical Mate, it was filled up by giving promotion to him. The respondents reiterated that at the time of initial promotion from Mazdoor to Electrical Mate, there was no SC candidates, and hence the vacancy was filled up by the general candidate and the vacancy of SC was carried forward. As regards the promotion of the respondent No.6, the respondents asserted that the said respondent was promoted to the Electrical Mate in view of the direction issued by this Tribunal in its judgment and order dated 30.11.1999 passed in O.A.167 of 1997. In the written statement the respondents also asserted that the applicant belonged to general community and he secured 2nd position in the trade test and his name was at Sl.No.4 in the seniority list. The respondent No.5 had to be promoted to Electrical Mate in the circumstances set out above.

3. We have heard Mr.Asalam Khan, learned counsel appearing for the applicant and also Mr.A.Deb Roy, learned Sr. C.G.S.C. for the respondents at length.

4. Mr.Asalam Khan, learned counsel for the applicant, contended that the post of Electrical Mate which was filled up by the respondents was a solitary post and therefore the

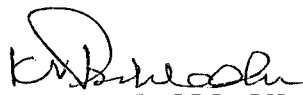
respondent authority fell into obvious error in promoting the respondent no.5 by taking aid of reservation policy against a single post. Mr.Khan submitted that this was contrary to the law laid down by the Hon'ble Supreme Court in Post Graduate Institute Of Medical Education & Research, Chandigarh vs. Faculty Association & Others reported in (1998) 4 SCC 1. Mr.Khan contended that reservation of the single post amounted to total exclusion of the general community of the public, which was not permissible. Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents, referred to its 40 point roster declared by the Central Govt. vide Office Memorandum dated 30.11.1981.

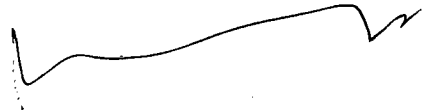
5. From the materials placed before us it appears that the authority promoted the respondent No.5 to the post of Electrical Mate against reserved vacancy as per 40 point roster. As per 40 point roster introduced by the Govt. the first vacancy was reserved against SC candidate. Prior to the promotion of respondent no.5 the post was filled up by unreserved candidate in the absence of suitable SC candidate and the vacancy remained unfilled for the last 30 years. The authority accordingly carried forward the vacancy. In the set of circumstances we do not find any illegality in the action of the respondents in promoting respondent no.5 against the roster vacancy. Needless to state that the promotion of respondent no.5 in the manner alleged was also the subject matter in O.A.167/1997 which was disposed of by this Bench on 30.11.1999. The Bench did not intervene in the matter, on the other hand, directed the respondents to hold a review DPC and consider the case the respondent no.6. On the basis of the order of the Tribunal the respondent no.6 was also promoted to the post of Electrical Mate. In the set of circumstances, we do not find any illegality in the action of the respondents in promoting respondent no.6 to the post of Electrical Mate

requiring judicial review. Mr.A.Khan, learned counsel for the applicant, submitted that amongst the Mazdoors, the applicant is now the seniormost, even though his junior i.e. respondent no.5 was promoted from Mazdoor to Electrical Mate. The applicant was holding the same post since 20.8.1983. Mr.A.Deb Roy, learned Sr. C.G.S.C. however, submitted that though the applicant was appointed on 20.8.1983, he was posted to the department from 21 Mtn DOU and reported on 15.9.1990 and therefore his seniority was counted from the date on which he was taken on the strength of the department. Refuting the submission of Mr.A.Deb Roy, Mr.A.Khan, learned counsel for the applicant, pointed out that the applicant was serving as helper at EME Comp. Section of 4 Sub-Depot and was transferred to the 4 Sub-Depot, 222 ABOD, C/o 99 APO on 15.9.1990 in the same capacity. The applicant came to the aforesaid division on transfer and posting and therefore there cannot be any justification for not counting his seniority from 20.8.1983. In the absence of materials on record it is difficult to determine this issue in this O.A. In the normal course if the applicant was transferred and posted in a post by the department in public interest, in that case, the applicant's seniority was therefore to be counted as his earlier seniority. The applicant may take up the issue with the department for computing his seniority w.e.f. 20.8.1983. In that case, it is open to the department to decide the issue as per law. The issue of seniority is not relevant today since the applicant is the seniormost amongst the Mazdoors as on today. In the written statement the respondents stated that as the applicant is the seniormost amongst the Mazdoors his case for promotion to the post of Electrical Mate would be considered against future vacancy as per his turn.

For all the reasons stated above, se do not find any justification to intervene in the matter at this stage. We however, leave the matter of the applicant to the respondents for consideration for promotion to the post of Electrical Mate against any available vacancy as per law. With this, the application stands disposed of.

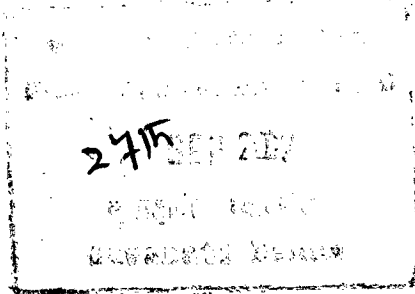
There shall, however, be no order as to costs.


(K.V.PRAHALADAN)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN

bb.

3/10/02



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Filed by
Ghaneswar Nath through

Aslam Khan
Advocate
27-9-02

No. 327 of 2002.

Sri Ghaneswar Nath.....Applicant.

- Vs -

Union of India and others.Respondents.

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Petition	1 to 10.
2.	Verification	11.
3.	Result of Trade Test Dated 25.1.96 (Annexure-I)	
4.	Representation dt.20.2.01 (Annexure-II)	
5.	Reply dated 26.2.01 (Annexure-III)	

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

Ghaneswar Nath

An application under Section 19 of the Central
Administrative Tribunal Act, 1985.

O.A. No. 327 of 2002.

Sri Ghaneswar NathApplicant.

- Vs -

Union of India and othersRespondents.

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Page No</u>
1.	List of index	1
2.	Petition of the applicant	
3.	Result of the Trade Test dated 25.1.96 (Annexure-I)	
4.	Representation of the Applicant dated 20.2.01 (Annexure-II)	
5.	Reply dated 26.2.01 (Annexure-III)	

Filed by

Advocate.

Particulars of the applicant:

Sri Ghaneswar Nath,
Son of L. C. Nath
T/No.2665, Mazdoor,
4.Sub Depot, 222 Adv. Base Ordnance Depot,
c/o 99 APO. District: Kamrup, Assam.

Particulars of the respondents:

1. Union of India,
Through the Secretary of Defense,
Govt. of India, Ordnance Branch, New
Delhi.
2. The Director General of Ordnance
(Service OS-8C), Master General Ordnance
Branch, Army Head Quarter, New Delhi-
110011.
3. Master General,
Head Quarter Eastern Command, Ordnance
Branch, Fort Willaim, Kolkatta-2.
4. Commandant, Administrative Officer,
Advance Base Ordnance Branch, 222 Army
Post Office, C/o 99 APO.
5. Sri Bikul Das,
T/No.2667, Mazdoor Electrician,
222 Army Post Office, C/o 99 APO.
6. Sri Ranjit Ghosh,
T/No.2516 Mazdoor Yard Group,

222 ABOD. C/o 99 APO, residing at Amsing,
Jorabat, P.S.-Satgaon, Guwahati-27,
District: Kamrup, Assam.

1. Particulars of the order against which the application is made :

This application is made against the order of promotion of Mazdoor to Electrical Mate under the Civil Establishment branch at Satgaon working in 222 ABOD. C/o 99 APO to (a) T/No.2667 Sri Bikul Das i.e. the respondent No.5 and (b) T/No.2516 Sri Ranjit Ghosh i.e. the respondent No.6 in the Depot Station by the respondents instead of the applicants communication made to the respondents on 26.2.2001 (Annexure -III).

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which the applicant wants redressal is within the jurisdiction of the Tribunal.

3. Limitation:

The applicant further declares that the applicant is within the limitation period as prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

(1.1) That the Applicant having T/No.2665 was appointed as a helper on 20.8.83 at the EME Comp. Section of 4 Sub-Depot. Thee he continued to serve as a Mazdoor

Ghansar Nath

sincerely and to the satisfaction of all his superiors and as such he was very popular.

(1.2) That the Applicant begs to state that he was transferred to the 4 Sub Depot, 222 ABOD, C/o 99 APO from the 21 Mtn. DOU on 15.9.90 in the same capacity. The Applicant continued to serve in the said post very sincerely and efficiently without any blemish from his superiors.

(1.3) That the Applicant states that the Respondent No.5 was appointed on 16.1.90 and the Respondent No.6 was recruited as a Mazdoor on 19.1.84 under the Respondent authorities and as such the Applicant is senior to both the Respondent Nos.5 and 6 as per the date of recruitment.

(1.4) That the Applicant states that the Respondent Authorities on 8.12.95 held a Trade Test for Electrical Mate for promoting the persons serving as a Mazdoor to Electrical Mate. In the said Trade Test, the Applicant along with Other candidates including the Respondents No.5 and 6 also appeared in the said exam. The results of the said test were declared on 25.1.96 wherein the names of the successful candidates including the names of the Applicant and the Respondents also appeared. The name of the Applicant appeared at Sl.No.2 while the name of the Respondent Nos.5 and 6 appeared at Sl.No.3 and 1 respectively

A copy of the result dated 25.1.96 is annexed hereto and marked as Annexure-I.

(1.5) That the Applicant states that the Respondent No5 belonged to a Schedule Caste category while the Respondent No.6 belonged to General Class category.

(1.6) That the Applicant states that as your Applicant was legitimately expecting that he will be promoted to the post of Electrical Mate which is a single post as he is senior to both the Respondents No.5 and 6, he suddenly came to learn that the Respondent Authorities in complete violation of the existing Rules have promoted the Respondent No.5 to Electrical Mate with effect from 10.5.97 as per DO Pt No.0702/Civ dt.16.5.97 in spite of the fact that the post of Electrical Mate is a single post.

(1.7) That the Applicant further states that thereafter the Respondent Authorities promoted the Respondent No.6 to the post of Electrical Mate without taking into account the fact that the post of Electrical Mate is a single post and also not considering the fact that the Applicant is senior than that of the Respondent No.6.

(1.8) That being aggrieved by the arbitrary and illegal action on the part of the Respondent Authorities in promoting the Respondent No.5 and 6 to the post of Electrical Mate, your Applicant on 20.2.2001 submitted a representation to the Respondent No.4 highlighting his grievances with a prayer that he should be promoted to the post of Electrical Mate forthwith.

A copy of the representation dated 20.2.2001 is annexed hereto and marked as Annexure-II.

(1.9) That the Applicant states that thereafter on 26.2.2001 your Applicant received a reply of the representation dated 20.2.01 from the respondent authorities wherein the Respondent Authorities have

clearly stated that the Respondent no.5 have been promoted to the post of Electrical Mate which is a singly post because of the fact that the respondent 0.5 falls under the Schedule Cast category and is promoted as such as the said post goes to a schedule cast candidate as per Poster Point No.1. By the said letter it also replied that the Respondent No.6 is promoted to the post of Electrical Mate in compliance with the direction of the Hon'ble CAT, Guwahati and Army HQ as well.

The Applicant states that according to the Respondent Authorities the Applicant who was appointed on 20.8.83 was posted to this depot from 21 Mtn. DOU and he reported on 15.9.02 and as per the existing procedure, the seniority will be counted from the date on which he has taken on the strength of the depot. In this connection your Applicant begs to state that the post where your Applicant had served previously prior to his transfer is similar to that of the present post

A copy of the reply dated 26.2.200 is annexed hereto and marked as Annexure-III.

(1.10) That the Applicant is an Indian Citizen and as such is entitled to all the rights and privileges as guaranteed under the Constitution of India.

(1.11) That the Applicant states that as the Applicant is senior to both the Respondent Nos. 5 and 6 as per the date of appointment hence the Applicant should be promoted to the post of Electrical Mate from the post of Mazdoor and the same being not done by the Respondent Authorities, the Applicant is highly prejudiced and as such although being senior to the Respondent Nos.5 and 6 he has to serve in a post lower than the post of the Respondent Nos.5 and 6 and to be humiliated in front of others. Furthermore, as the Applicant although being

senior than the Respondent Nos. 5 and 6, he is being compelled to serve in a lower post than that of the Respondent Nos. 5 and 6.

(1.12) That the Applicant claims that he should be promoted to the Electrical Mate in the depot.

5. Grounds for relief with legal provision:

Under the facts and circumstances stated above, the Applicant prays for the following reliefs:-

- (i) That as the Applicant is senior to both the Respondent Nos. 5 and 6 as per the date of recruitment; hence he should be immediately promoted to the post of Electrical Mate - the post to which the Applicant is legitimately entitled to the single vacant post of the Electrical mate.
- (ii) That as the post of the Electrical Mate is a single vacant post, hence there should not be any reservation to that post. In this connection the Applicant states that in respect to reservation in a single post cadre the law has been stated in the Judgement of the Hon'ble Supreme Court dated 17.4.1998 in Post Graduate Institute of Medical Education & Research, Chandigarh - Vs - Faculty Association and others and series of cases reported in (1998) 4 SCC 1. It was held therein that there cannot be any reservation in a single post cadre. In para 34 of the said Judgement it was held :

"In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general

members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent."

(iii) The cost of the suit.

(iv) To pass order/orders which may deem fit and proper on the following grounds:

G r o u n d s

1. For that the Ordinance Department concerned under the Head Quarter, Eastern Command neglecting the fill up of the single post lying vacant under the circumstances.

2. For that the SC/ST candidates should not have been considered as monopoly where there is only one or for unduly disturbing the legitimate claims of the other communities that even the post is happened to be as per 40 point roster.

3. That the Applicant has rendered hard and sincere service as a Mazdoor under the Respondent Authorities since 20.8.1983 and thereafter through his hard labour, the Applicant was successful in the Trade Test conducted by the Respondent Authorities for promoting the Mazdoor to the Electrical Mate. Your Applicant coming out successfully in the said Trade Test legitimately believes that he will now be promoted to the Electrical Mate and moreover he being the senior most person to have passed the said Trade Test, hence the said post should be legally given to the Applicant.

6. Details of the remedies exhausted:

That the Applicant declares that he has availed of all the remedies available to him under the Civilian Establishment Branch Rules etc.

The Applicant filed representation to the Respondent No.4 on 20.2.2001 (Annexure-II) and the Respondent gave his reply on 26.2.2001 (Annexure-III).

7. Matters not previously filed or pending with any other Court:

The Applicant further declares that he has not previously filed any 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, suit is pending before any of them.

8. Relief sought:

In view of the facts and circumstances narrated above, the Applicant prays that he is entitled to be promoted to the post of Electrical Mate from Mazdoor as per the result of the Applicant in the Trade Test for Electrical Mate on 8.12.95 and also as per his seniority.

9. Interim order if any prayed for:

Pending the final decision, the appointment of T/No.2667 Sri Bikul Das and T/No.2516 Sri Ranjit Ghosh in the Electrical Mate be stayed till the final decision of this case.

10. Particular of the Bank Draft/Postal Order filed in respect of the Application fee of Rs.50/- is paid on _____.

11. List of enclosures.

As per index.

.....Verification.

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

I, Shri Ghaneswar Nath son of L. C. Nath
aged about 40 years, at present working as a Mazdoor,
T/No.2665 in the office of the 4 Sub. Depot, 222 Adv.
Base Ordinance Depot, C/O 99 APO, in the district of
Kamrup, Guwahati, Assam, do hereby verify that the
contents made in paragraphs 1 to 10 are true to my
personal knowledge and paragraph 11 are believed to be
true on legal advice and that I have not suppressed any
material facts.

Ghaneswar Nath

Signature of the Applicant

42 - RESTRICTED

Annexure - I

Appx 'A' to DO Pt-I No
140/Est dt 25 Jan 96

MAZDOOR TO TAILOR MATE

1. T/No 2444 Maz Sidheswari Bora
2. " 2499 Maz NC Dey
3. / " 2500 Maz Dhiren Das
4. " 2538 Maz T Khanikar
5. " 2553 Maz Praniti Pual
6. " 2569 Maz Sumitra Devi (S/C)
7. " 2623 Maz BB Chetri
8. " 2671 Maz Marjeena Begum
9. " 2734 Maz Uttara Nath
10. " 2745 Maz Bimala Das

MAZDOOR TO SWYER MATE

1. T/No 445 Maz Sita Ram Rai
2. " 2359 Maz S Pardesi (S/C)
3. " 1232 Maz Mahesh Baishya
4. " 2507 Maz BK Das (S/C)
5. " 2520 Maz U Chaudhary
6. " 2535 Maz BK Saikia (S/T)

MAZDOOR TO TINSMITH MATE

1. T/No 252 Maz C Bahadur
2. " 2640 Maz CP Upadhyay
3. " 2648 Maz L Daimari (S/T)

MAZDOOR TO ELECTRICIAN MATE

1. T/No 2516 Maz Ranjit Ghosh
2. " 2665 Maz G Nath
3. " 2667 Maz Bikul Das (S/C)
4. " 2688 Maz MC Das
5. " 2702 Maz Sher Alam
6. " 2746 Maz Mohan Nath

MAZDOOR TO BICYCLE FITTER MATE

1. T/No 2581 Maz AK Chetri
2. " 2726 Maz DN Singh

Contd.....P/2

RESTRICTED

Signature

To

The Commandant
222 Adv Base Ordnance Depot
C/O 99 APO

(Through proper channel)

Subject :- Non receipt of promotion from Mazdoor to
Electrical Mate.

Respected Sir,

With due respect and humble submission, I beg to state the following few lines for your kind consideration and sympathetic order please :-

That sir, I am working in EME Comp Section of 4 Sub Depot since last Apr 1993 as a helper. I was appeared on the Trade Test for Electrician Mate during Oct 1995 and qualified for Electrician Mate as published vide Appx 'A' to DO Pt I No 140/EST dated 25 Jan 96 and my name was appeared in the 2nd position of the list.

That Serial No 1 of the list, T/No 2516 Shri. Ranjit Ghosh and Serial No 3 of the list T/No 2667 Shri. Bikul Das have got their promotion as published vide DO Pt I No 182/EST dt 09 Feb 01 and 0702/CIY dt 16 May 97 respectively and I have not got my promotion inspite of 2nd position in the list. The reason for not getting my promotion till date is not understood. On the other hand, I am senior in service from both the above individuals.

In view of the above, I cordially request you to look into the matter and necessary orders may please be issued for my promotion from Mazdoor to Electrical Mate for which act of kindness I shall remain ever grateful to you.

Thanking you sir,

Yours faithfully,

(Signature)

Dated : 20 Feb 2001

(CHANESWAR NATH)
T/No 2665, Mazdoor
4 Sub Depot
222 APOD
C/O 99 APO

Corlaw

No 1519/PC/VIII/05 /EST

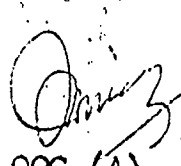
14- Annexure - III

(26 Feb 2001)

CIVIL ESTABLISHMENT BRANCH

PROMOTION FROM MAZDOOR TO ELECTRICIAN
MATE

1. Reference your letter No 5811/1515/RSSD dated 20 Feb 2001.
2. In connection with the application with regard to promotion from Mazdoor to Electrician Mate in respect of T/No 2665 Maz G Nath it is stated that the authorisation of the post of Elect Mate in our depot is only one. Accordingly, the individual bearing T/No 2667 Shri Bikul Das who belongs to SC category had been promoted from Maz to Elect Mate against Roster Point No 1 which goes to SC candidate. On the otherhand, T/No 2516 Shri Ranjit Ghosh is promoted to Elect Mate, that too against our authorisation of one Elect Mate, in compliance with the directions of CAT, Guwahati and Army HQ as well.
3. Secondly, the individual mentioned in his application that he is senior to both the individuals but it is seen from the records held in this office that though he was appointed on 20-08-83 he was posted to this depot from 21 Mtn DOU and reported here on 15-09-90. As per existing procedure his seniority will be counted from the date on which he was taken on the strength of this depot. As such it is intimated that his seniority for promotion from Maz to Elect Mate now stands at 3 of the seniority list and he will be promoted on his own turn.
4. The individual may please be informed accordingly.

5811

OOC (A)
Personnel Officer (Civ)

NO 4 SUB DEPOT (RSSD)

Law

15

26/3/2003

26 MAR 2003

Guwahati Bench

Filed by
26/3/03
(A. DEB FOY)
Sr. C. J. C.
G. A. T., Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI.

O.A. NO. 327 OF 2002

Shri Ghaneshwar Nath

- Vs - Applicant

Union of India & Ors.

..... Respondents.

In the matter of :

Written Statement submitted by
the respondents.

The humble respondents beg to submit the Para-Wise
Written Statement as follows :-

1. That with regard to the statement made in para 1 of the application the respondents beg to state that T. No. 2667 Shri Bikul Das was promoted from Mazdoor to Electrician Mate as the result of the trade test, due to caste relaxation and as per 40 point roster maintained by this depot. As per 40 point roster introduced by the Govt. the first post which was reserved for SC candidate was lying vacant and carried forward due to non availability of SC Candidates from last 30 years and since Bikul Das an SC Candidate had qualified the trade test for Electrician Mate, it was filled up by giving promotion to him. It is reiterated that at the time of initial promotion from Mazdoor to Electrician Mate, there

was no SC Candidates, hence the vacancy was filled up by the General Candidate and the vacancy of SC was carried forward (Required Policy is attached herewith for the perusal of Hon'ble Tribunal).

That T.No. 2516 Mazdoor Shri Ranjit Ghosh was promoted to the post of Electrician Mate in view of the directions given by Hon'ble CAT, Guwahati, vide order dated 30 Nov, 1999 and as per the instructions/approval of Army Headquarters (OS-SC (ii) Signal B/371865/OS-SC (ii) dated 10 Nov 2000 (Photo copy attached herewith).

That the applicant, belongs to general community and he secured second position in the trade test and at serial No4 in the seniority list maintained by this depot. (Photo copy attached). T. No. 2667 Shri Bikul Das is of the category Scheduled Caste and as such got his promotion against the SC/ST quota reserved as per 40 point roster. As per 40 point roster, the first vacancy is for SC Candidates. Prior to the promotion of Bikul Das T.No.596 Mazdoor Md Safiq, a general candidate was promoted as there was no SC candidate and SC vacancy was carried forward to the next year. Since there was no suitable SC Candidate who had passed the trade test for Electrician Mate the reserved vacancy for Scheduled Caste remained unfilled from last 30 years. Therefore Shri Bikul Das, who is S/C Candidate and had qualified for Electrician Mate was

✓✓

Contd.....

given promotion. Shri Ranjit Ghosh was promoted to Electrician Mate w.e.f. 10 May 1997 as per the directions of Hon'ble CAT, Guwahati and on the instrs of Army Headquarters as mentioned above. The depot authorities communicated the applicant vide letter dated 26 Feb 2001 intimating the clear position of his promotion to Electrician Mate.

2. That with regard to the statement made in para 2 and 3 of the application, the respondents beg to state that it is stated that the matter relating to the provisions of the Administrative Act, 1985 and Rules made there under accordingly save and except what appears there from the respondents beg to offer no comments.

3. That with regard to the statement made in para 4(1.1) and 4(1.2) of the application the respondents beg to state that the same are matters of record and nothing beyond record is admitted.

4. That with regard to the statement made in para 4(1.3) of the application the respondents beg to state that the same are matters of record and nothing beyond record is admitted. Regarding the contention made by the applicant claiming that he is senior to both the respondents No. 5 and 6, it is stated that he was posted to this depot from 21 Mtn DOU and reported here on 15 Sep 1990. As per existing procedure his seniority will be counted from the date on which he was taken on strength of this depot.

5. That with regard to the statement made in para 4(1.4) and 4(1.5) of the application the respondents beg

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to state that the same are matters of record and nothing beyond record is admitted.

6. That with regard to the statement made in para 4(1.6) of the application the respondents beg to state that the allegations made by the applicant is not admitted and necessary clarification has been given through our preceding paras 1, 2, 3 and 6.

7. That with regard to the statement made in para 4(1.7) of the application the respondents beg to state that reply to the contention made by the applicant has been furnished through our preceding paras 2 and 6.

8. That with regard to the statement made in para 4(1.8) of the application the respondents beg to state that is totally denied. Regarding the promotion of respondent No 5 and 6 to the rank of Electrician Mate, respondent requests the Hon'ble Tribunal to refer to our preceding paras 1 to 3. Regarding the application dated 20 Feb 2001, submitted by the applicant, necessary clarification has been furnished by this depot letter No. 1519/PC/VIII/05/Est dated 26 Feb 2001, as mentioned at Annexure -III to the original application.

9. That with regard to the statement made in para 4(1.9) of the application the respondents beg to state that the Hon'ble Tribunal to refer to our preceding paras 1, 2, 3 and 6. Further, it is stated that promotion to Electrician mate in respect of respondent No5 was made as result of the

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trade test held by the depot authorities and based on the seniority list maintained by this depot and due to caste reservation. Moreover this was very much in consonance with the spirit/policy of 40 point roster maintained by this depot as has been explained in the preceding paras 1 to 3.

10. That with regard to para 4(1.10), of the application the respondents beg to offer no comments.

11. That with regard to the statement made in para 4(1.11), of the application the respondents beg to state that the Hon'ble Tribunal to refer to our preceding para 6 .

12. That with regard to para 4(1.12), of the application the respondents beg to offer no comments.

13. That with regard to the statement made in para 5(1), of the application the respondents beg to state that although the applicant is senior to both the respondents No 5 and 6 in terms of date of appointment but the applicant was taken on the strength of this depot much later than that of the ibid respondents No.5 and 6 as explained in the preceding paras. Further the respondent No.5 was promoted to the post of Electrician Mate based on the result of the Trade Test held by this depot and due to the seniority list and caste relaxation. Further respondent No.6 was promoted to the rank of Electrician mate based on the directions by the Hon'ble CAT, Guwahati and Army Headquarters as mentioned in the preceding paras. Hence the contention made by the applicant through the para is totally denied.

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14. That with regard to the statement made in para 5(ii), (iii) and (iv) of the application the respondents beg to state that Hon'ble Tribunal to refer to our preceding paras 1 to 3. Further, attention is invited to the department of personnel and Administrative Reforms OM No. 1/9/74/-EST(SCT) dated 29.4.1975, which stipulates that where only one vacancy occurs in the initial recruitment year and the corresponding roster point happens to be for SC or ST Candidates, it should be treated as unreserved and filled accordingly and the reservation carried forward to subsequent three recruitment year, but in the subsequent year(s) even if there be only one vacancy, it should be treated as "reserved" against the carried forward reservation from the initial recruitment year and a SC/ST ~~CANDIDATE IF AVAILABLE SHOULD BE APPOINTED IN THE~~ candidate, if available, should be appointed in that vacancy, although it may happen to be the only vacancy in that recruitment years(s). No comments are offered as regards to the reference of Court case as quoted by the applicant and passing of orders on the OA.

15. That with regard to the statement made in para 5(1) of the application the respondents beg to state that is denied since no post is lying vacant for the post Electrician Mate. The post is already filled up by respondent No 5 and one more post is filled up by respondent No. 6, on the directions of CAT, Guwahati and Army Headquarters, as explained in the preceding paras.

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16. That with regard to the statement made in para 5(2) of the application the respondents beg to state that the post of Electrician Mate is a single post and as per 40 point roster the 1st vacancy is for SC Candidate but at the time of the promotion given to earlier personnel T. No. 596 Mazdoor Md Safiq there was no SC candidate and therefore, this vacancy was filled up from the General Candidate and SC vacancy was again carried forward to the next year. Since there was no suitable SC candidate who had passed the trade test in Electrician mate the reserved vacancy for scheduled caste remained unfilled from last 30 years. Subsequently as an SC Candidate qualified the trade test for Electrician mate roster point No. 1 was filled by giving promotion to T. No. 2667 Mazdoor Shri Bikul Das as per the vacancy. The contention made by the applicant in the para is not admitted since there is no merit of the case.

17. That with regard to the statement made in para 5(3), of the application the respondents beg to state that the same are matters of record and nothing beyond record is admitted. Regarding the remaining part of the statement made in the para it is stated that the applicant had secured second position in the trade test held by this depot. With regards to the promotion of respondent No. 5 and 6, it is requested that the Hon'ble Tribunal please refer to our preceding paras 1, 2 and 3. The contention made by the applicant regarding his seniority in appointment than that of respondent No. 5 and 6 is clarified in para 6.

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18. That with regard to the statement made in para 6, of the application the respondents beg to state that no comments are offered. The applicant had submitted his representation dated 20 Feb 2001 and reply thereof furnished to him vide this depot letter No. 1519/PC/VIII/05/EST DATED 26 Feb 2001 stating the relevant information.

19. That with regard to the statement made in para 7, of the application the respondents beg to state that the same are matters of record. T.No. 2667 Shri Bikul Das was promoted to Electrician mate based on the circumstances as mentioned in our preceding paras. T. No. 2516 Shri Ranjit Ghosh was promoted to Electrician mate on the directions of Hon'ble CAT, Guwahati and on the approval of Army Headquarters. The illegal prayer made by the applicant through para 9 be quashed and the OA dismissed with cost.

Verification

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

I, Shri Col M. Rajgopal, presently
working as Commandant, being
duly authorised and competent to sign this verification, do
hereby solemnly affirm and state that the statements made
in para 2 to 17 and 19 are true to my
knowledge and belief and those made in para 1 and 18
being matter of records, are true to my information derived
therefrom and the rest are my humble submission before this
Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 12th day of
March 2003.

Declarant.

Madampath Rajgopal
M Rajgopal
Colonel
Commandant