

50/100

8

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

(DESTRUCTION OF RECORD RULES, 1990)

M.P-112/03 ordered pg-1 to 2

Disposed Date-23/12/03

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SECTION OFFICER (Judl.)

( SEE RULE -4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI  
....

ORDER SHEET

Original Application No : 362 / 2002  
Misc. Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicant (s) Girish Ch. Baruah

Respondent (s) Not -Vs- 2 ORS

Advocate for the Applicant (s) A. Ahmed

Advocate for the Respondent(S) Case A-K Choudhury

Notes of the Registry	Date	Order of the Tribunal
<p>This is application in form C. F. for Rs. 50/- deposited vide IP No. 525393 Dated 08.10.02</p> <p>By, Registrar N. S. M. 11/11/02</p>	8.11.02	<p>Heard learned counsel for the parties.</p> <p>Application is admitted. Call for records. Returnable by four weeks. List on 11.12.02 for orders.</p> <p>1 C. S. Sharma Member Vice-Chairman</p>
<p>Slts. Inured. No fee preferred and sent to DLS for time. The Respondent No 1 to 5 by Regd. A.D.</p> <p>D/O No. 3176 W 80 Dtd 26/11</p>	11.12.02	<p>Mr. A.K. Choudhury, learned Addl. C.G.S.C. appearing on behalf of the respondents prayed for time for filing written statement. Prayer is allowed. List on 9.1.2003 for orders.</p> <p>1 C. S. Sharma Member Vice-Chairman</p>

2

(2)

9.1.2003

Present:- The Hon'ble Mr. Justice  
V.S. Aggarwal, Chairman  
The Hon'ble Mr. K.K. Sharma

No. Written Statement  
has been filed.

Written statement has already been  
filed. List the case for regular hearing  
on 5.2.2003.

30  
8.1.03

K.K. Sharma  
Member

V.S. Aggarwal  
Chairman

bb

Written statement filed 5.2.03  
by the respondent  
No- 1 to 5 at page  
39 to 46.

30  
9.1.03

present : The Hon'ble Mr Justice D.N.  
Chowdhury, Vice-Chairman  
The Hon'ble Mr S.K. Hajra,  
Member (A).

The case was posted for hearing and  
in fact the matter was taken up for hearing.  
In course of hearing it was found that  
the respondents unable to place the record  
including the DPC proceeding. Mr A.K.  
Choudhury, learned Addl.C.G.S.C at that  
stage prayed for some time for production  
of record.

List again on 21.2.03 to enable the  
respondents to produce the records.

Sun  
Member

[Signature]  
Vice-Chairman

pg

21.2.2003

Present : The Hon'ble Mr. Justice D.N.  
Chowdhury, Vice-Chairman.  
The Hon'ble Mr. S. Biswas,  
Administrative Member.

Adjourned on the prayer of  
Mr. A. Ahmed, learned counsel for the  
applicant. List on 25.3.2003 for  
hearing.

S. Biswas  
Member

[Signature]  
Vice-Chairman

mb

Notes of the Registry

Date

Order of the Tribunal

25.3.2003

Put up again on 27.3.2003  
for hearing on the prayer of Mr.  
A. Ahmed, learned counsel for the  
applicant.

Member

Vice-Chairman

mb

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

The Hon'ble Mr S.Biswas, Admn. Member

Mr A.K.Choudhury, learned Addl.C.G.S.C  
has pointed out that this matter was not  
in the regular supplementary list and the  
parties were aware of the case at 11 A.M.  
The case is accordingly adjourned.

List again on 1.5.2002 for hearing.

Dy.Registrar to explain as to  
why the case was not listed  
in regular supplementary list  
and report in course of the  
day.

Member

Vice-Chairman

By order

C.S. Div. Division been ended not sit  
today. The case is adjourned  
to 12/6/2003  
MP

SO (J) to explain today itself  
27.3.03

NS  
27/3/03

Reply as above

While typing the supplementary  
cause list for 27TH March 2003 four  
MPs were filed in O.A.No. 127,128,137,  
and 131/99. I was asked to list the  
MPs alongwith the O.A. emidiatly as the  
case were part heard,

In the process I forget to type |  
O.A.362/2002. When I recalled the same,  
the supplementary cause list alongwith  
the case file had already been sent to  
Hon'ble V.C and Member(A). Today morning  
I type the same.

I have not done the same intentiona-  
lly. I may kinly be Excused.

Submitted above explanation in my  
kindly the court.

DR

SO (J)

27.3.03

Sir, Really I have written this.

28/3

SO (J) 28/3

ASK  
SO (J) to be  
Convey in file  
28/3

of 362/02

O.A. No. 1

Notes of the Registry

Date

Order of the Tribunal

30/4/03

Rejoinder has been filed by the applicant.

NS  
30/4/03

The case is ready for hearing.

30  
11.6.03

12.6.2003 Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman  
The Hon'ble Mr. R.K. Upadhyaya Administrative Member.

Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. prayed for adjournment of the case. There was no objection from the other side.

Accordingly the case is adjourned. List the case again for hearing on 7.7.2003.

*[Signature]*

Member

*[Signature]*

Vice-Chairman

bb

7.7.03. Division Bench did not sit today. The case is adjourned to 12/8/03.  
M/S  
H/S

12.8.03

Adjourned. List for hearing on 29.8.03.

*[Signature]*

29.8.2003 Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. K.V. Prahaladan Administrative Member.

In course of hearing Mr. H.N. Sarma, learned Sr. Counsel for the applicant, stated that he wants to amend the application and therefore requested for one week time to amend the same.

Prayer allowed. List the case on 8.9.2003 enabling the applicant to file an amended application.

5/9/03

As per order dated 29/8/03 the applicant has not been filed any amendment petition to this Registry.

NS  
5/9/03

*[Signature]*  
Member

*[Signature]*

Vice-Chairman

bb

Office Note	Date	Tribunal's Order
	8.9.2003	Present : The Hon'ble Mr. K.V. Prahala- dan, Member (A).
		List again on 23.10.2003 for orders.
		<i>K.V. Prahala- dan</i> Member
	mb	
	23.10.03	There is no Bench today. The OA to be put up alongwith M.P. No. 112/03 on 14.11.03.
		B/O h
	14.11.03	No Bench today. Adjourned to 28.11.03.
		B/O h
W/S and Reply has been filed.	28.11.03	No Bench today. Adjourned to 1.1.04.
		B/O h
<u>22.12.03</u>	17.12.2003	List on 23.12.2003 for orders.
		<i>K.V. Prahala- dan</i> Member (A)
<u>8.1.04</u>	mb	
Amendment petition has been submitted by the Applicant.	23.12.03	My Amendment is allowed vide order passed in M.P.112/03. Written statement be filed within four weeks List before the next available Division Bench for hearing.
		<i>K.V. Prahala- dan</i> Member
		<i>B.</i> Vice-Chairman
The case is ready for hearing.	pg	
<u>20.1.04</u>		

Office Note	Date	Tribunal's Order
<p>The case is ready for hearing.</p> <p><u>M</u> 24.2.04</p> <p>5.5.04</p> <p>Additional Ws submitted by the respondents.</p> <p><u>Ans.</u></p> <p>The case is ready for hearing.</p> <p><u>20</u> 11.5.04</p>	<p>21.1.2004</p> <p>bb</p> <p>25.2.04</p> <p>pg</p>	<p>Present: The Hon'ble Shri Bharat Bhushan Judicial Member.</p> <p>The Hon'ble Shri K.V.Prahladan Administrative Member.</p> <p>Mr.A.Ahmed, learned counsel for the applicant and also Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents were present.</p> <p>Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. seeks two weeks time to file additional written statement in respect to the amended application filed by the petitioner. Not opposed by the petitioner.</p> <p>Allowed. List the case on 17.2.2004 for hearing.</p> <p><u>ICP</u> Member(A)</p> <p><u>P</u> Member(J)</p> <p>Present : The Hon'ble Sri Shanker Raju Judicial Member.</p> <p>The Hon'ble Sri K.V.prahladan Administrative Member.</p> <p>In the light of U.P.Jal Nigam case a reference having been heard at Principal Bench where the decision is awaited.</p> <p>List this case on 16.3.04.</p> <p><u>ICP</u> Member(A)</p> <p><u>he</u> Member(J)</p>

b

16/6/04

12.5.2004 Present : The Hon'ble Sri Mukesh  
Kumar Gupta, Member (J)  
The Hon'ble Sri K.V.  
Prahlanan, Member (A).

1) The amendment has  
been filed by the  
applicant as per  
order dated 23.12.03  
in M.P. NO. 112/03 at  
Flag 'A'.

It is stated that learned Sr.  
counsel for the applicant Mr. H.N.  
Sarma is not available today. List  
before the next Division Bench.

*K.V. Prahlanan*  
Member (A)

*[Signature]*  
Member (J)

mb

2) Addition written  
statement has been  
filed on behalf of  
respondent at Flag 'B'

NS  
18/6/04

17.6.04

Hearing concluded,  
order reserved.

*By order*  
*[Signature]*

28.7.2004 Judgment delivered in open Court,  
kept in separate sheets. The application  
is dismissed. No order as to costs.

Judgment copy  
received  
*[Signature]* mb  
29/07/04  
(Applicant)

*K.V. Prahlanan*  
Member (A)

17.8.04

Copy of the  
judgment has been  
sent to the office  
for ready use  
to the applicant and  
copy of the same  
forwarded to the  
M.C.S.C. for  
reference.



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CENTRAL ADMINISTRATIVE TRIBUNAL : **GUWAHATI** BENCH  
AT **GUWAHATI**

NO. O.A. 362 of 2002

DATE OF ORDER: 28 /07-2004

**Sri Girish Chandra Borah**

Petitioners

**Mr. H.N. Sarma**

Advocate for the  
Petitioner (s)

Versus

**U.O.I. & Ors.**

Respondent (s)

**Mr. A.K. Chaudhury, Addl. CGSC**

Advocate for the  
Respondent (s)

C O R A M :

1. The Hon'ble **Mrs. Bharati Ray, Member (J)**
2. The Hon'ble **Mr. K.V. Prahaladan, Member (A)**

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporter or not ?
3. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble **Mrs. Bharati Ray, Member (J)**

\* \* \* \* \*

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 362/2002

Date of order : This the 28th day of July, 2004

The Hon'ble Mrs. Bharati Ray, Member (J)

The Hon'ble Mr. K.V. Prahaladan, Member (A)

Sri Girish Chandra Borah,  
Head Clerk,  
Office of the Executive Engineer(Electrical),  
Gauhati Electrical Division,  
Central Public Works Department,  
Gauhati - 15. ... Applicant

By advocate Mr. H.N. Sarma

A N D

1. The Union of India,  
Secretary to the Govt. of India,  
Ministry of Urban Affairs,  
New Delhi 110 011.
2. The Director General(Works)  
Central Public Works Department,  
Nirmal Bhavan,  
New Delhi 110 011.
3. The Additional Director General  
of Works,  
Eastern Region, C.P.W.D  
Nizam Palace,  
Kolkata 20.
4. Superintending Engineer  
(Co-ordination) Circle,  
Central Public Works Department,  
Eastern Region, Nizam Palace,  
Kolkata 20.
5. The Superintending Engineer  
(Electrical) Guwahati Electrical  
Circle, Central Public Works  
Department, Guwahati 21. ... Respondents

By Mr. A.K. Choudhury, Addl.CGSC

O R D E R

Mrs. BHARATI RAY, MEMBER(J)

Heard Mr. H.N. Sarma, learned counsel for the  
applicant and Mr. A.K.Choudhury, Addl.CGSC, for the  
respondents.

2. We have gone through the facts of the case and material papers placed before us.

3. The applicant was initially appointed as Lower Division Clerk (LDC) in the Central Public Works Department in the year 1965. He was promoted to the post of Upper Division Clerk (UDC) in the year 1979. Thereafter vide office order dated 31.03.1992 he was promoted to the post of Head Clerk. While the applicant was holding the post of Head Clerk his name was considered in the DPC held in 1998 and subsequently vide order dated 17.4.98 the applicant was promoted to the post of Superintendent but the applicant on personal grounds refused to accept promotion/ shoulder higher responsibility vide representation dated 12.5.1998 addressed to Director General of Works, CPWD, New Delhi. It is the contention of the applicant that as per the letter dated 17.4.1998 the applicant is eligible for promotion to the post of Superintendent after one year from issuing the earlier promotion order. But the respondents did not consider the applicant for promotion after one year although the applicant was eligible to be considered in terms of his seniority position.

4. The respondent no.2 issued another promotion order of the Office Superintendent vide office order dated 6/7 August 2002 wherein the name of the applicant was not included. The applicant, therefore, approached this Tribunal in OA 273/2002 challenging the order dated 6/7-8-2002 and the said OA was disposed of with a direction to the applicant to make a representation

before the respondent no.2 within ten days from the date of receipt of a copy of the order and the respondents were directed to pass a reasoned order within one month from the date of receipt of the representation and communicate the same to the applicant. Accordingly the applicant made a representation on 30.08.2002 which was disposed of by respondent vide order dated 23.9.2002 whereby the applicant was informed that his case was examined but in view of his own written request for refusal to shoulder higher responsibility his case for promotion to the of Office Superintendent was not considered and in view of his fresh willingness his case would be considered in the next DPC. The applicant has enclosed the letter dated 23.9.2002 as Annexure I. (at page 38 to the OA). Being aggrieved by the said letter the applicant has filed this instant OA seeking for an order quashing the same.

5. However, during the pendency of this application the respondents considered the case of the applicant through a review DPC on 03.01.2003. The said review DPC did not recommend the case of the applicant as the CR was recorded as average on 4(four) occasions by the reviewing officer. Being aggrieved by the same the applicant has challenged the same by way of an amendment.

6. It is the contention of the applicant that review DPC did not consider the case of the applicant as the CR was recorded as average on four occasions. Out of these, on two occasions the reporting officer reported

6.

the CR as very good but the reviewing officer recorded it as average without any application of mind and without recording any reason and without giving any opportunity to the applicant although the applicant did not work under the reviewing officer. Therefore, the recording of CR as average is illegal and unsustainable in law.

7. On going through the counter reply filed by the respondents we could find that, the respondents have disposed of the representation of the applicant as per the order of this Tribunal in OA 273/2002 stating therein that the applicant could not be considered in the subsequent DPC because of his refusal to shoulder higher responsibilities and he will be considered in the next review DPC. By that time the applicant had already considered by the next DPC held on March, 2001. Therefore, it is not correct to say that applicant was not considered in the subsequent DPC held in 2001 but the applicant was found unfit for promotion based on ACR grading. The respondents have produced the CR<sup>graphical</sup> before us. From the CR we find that the applicant has been graded as Very Good during the period 1.4.97 to 23.7.97, Average during the period 24.7.97 to 31.3.98, 1.4.98 to 31.3.99, 1.4.99 to 31.3.2000, 1.4.2000 to 31.3.01 and Very Good from 1.4.01 to 3.10.01 and 5.10.01 to 28.1.02. Regarding period from 29.1.02 to 31.3.02 it is mentioned as not required. Therefore, in the four years the applicant has got Average. Therefore the final grading/remarks is given as Average. On going through the record we find that the contention of the applicant that the reporting

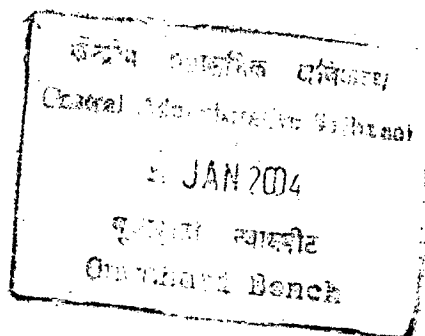
officer reported the CR as very good but the reviewing officer recorded it as average without any application of mind and without recording any reason and without giving any opportunity to the applicant although the applicant did not work under the reviewing officer. But from the record we find that reason has been assigned for downgrading the CR by the reviewing officer. That being the position we do not find any reason to interfere with the findings of the DPC. Applicant has been considered by the DPC in 2001 and 2002 but because of the ACR he could not be promoted. One has <sup>the</sup> right to be considered for promotion but has no right for promotion. In this case the applicant has been considered and could not be recommended for promotion because of the ACR. Therefore, we do not find any reason to interfere with the decision of the DPC.

3. In view of the above discussion, we are of the view that the applicant is not entitled to get the relief prayed for. OA is devoid of any merit and is dismissed accordingly with no order as to costs.

  
(K. V. PRAHALADAN)  
MEMBER (A)

  
(BHARATI RAY)  
MEMBER (J)

MD



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GAUHATI BENCH, GAWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE  
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. 362 OF 2002.

Sri Girish Chandra Borah -Applicant

-Versus-

The Union of India & Ors. Respondents

I N D E X

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Filed by

Adil Ahmed

(Advocate)

(\*  
Filed by  
Shri Girish Chandra  
H

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GAUHATI BENCH, GAWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE  
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. 362 OF 2002.

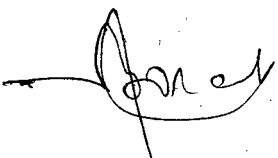
B E T W E E N

- 1] Sri Girish Chandra Borah,  
Head Clerk, Office of the  
Executive Engineer  
(Electrical)  
Gauhati Electrical Division,  
Central Public Works  
Department,  
Gauhati- 15.

- Applicant

-AND-

- 1] The Union of India  
represented by the Secretary  
to the Govt. of India  
Ministry of Urban Affairs,  
New Delhi- 110011.



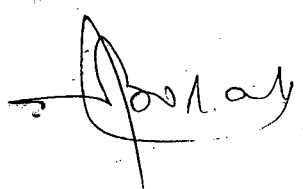


- 2] The Director General (Works)  
Central Public Works  
Department, Nirmal Bhawan New  
Delhi- 110011.
- 3] The Additional Director  
General of Works, Eastern  
Region, C.P.W.D., Nizam  
Palace, Kolkata- 20.
- 4] Superintending Engineer,  
(Co- ordination) Circle,  
Central Public Works  
Department, Eastern Region,  
Nizam Palace, Kolkata- 200020.
- 5] The Superintending Engineer  
(Electrical) Guwahati  
Electrical Circle, Central  
Public Works Department,  
Guwahati- 21.

-Respondent

DETAILS OF THE APPLICATION:

- 1] PARTICULARS OF THE ORDER AGAINST WHICH  
THE APPLICATION IS MADE:



This is application is made against the letter No. 2/19/2002 EC IV dated 23<sup>rd</sup> September 2002 issued by the office of the Respondent No. 2 and against the finding/decision of the review DPC 3/1/2003 holding the petitioner as unfit for promotion to the post of Office Superintendent from Head Clerk and consequent refusal to promote by the Respondent authorities".

2] JURISDICTION OF THE TRIBUNAL:

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

3] LIMITATION:

The applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4] FACTS OF THE CASE:

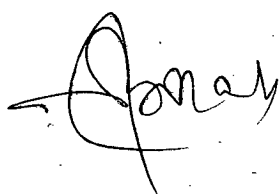
*For ab*

Facts of the case in brief are given below:

4.1] That your humble applicant is a citizen of India and as such he is entitled to all rights and privileges guaranteed under the Constitution of India. He is now aged about 58 years.

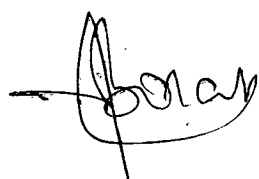
4.2] That your applicant begs to state that he was appointed as Lower Division Clerk in the Central Public Works Department in the year 1965. He was promoted to upper Division Clerk in the year 1979 on Merit Basis. He was promoted to the post of Head Clerk on Merit basis vide Office Order No. 9(55)92/Sec/Cal/2477 dated 31-03-1992. Now he is working as Head Clerk under the Office of the Executive Engineer Guwahati Electrical Division No. II Central Public Works Department, Guwahati-15.

Annexure-A is the photocopy of the Office Order No. 9(55)92/Sec/Cal/2477 dated 31-03-1992.



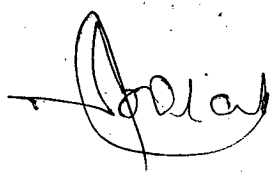
4.3] That your humble applicant begs to state that he was promoted to the post of Office Superintendent vide Office Memo No. 05-06-98 EC IV(C) under Office Order No. 68 of 98 dated 17<sup>th</sup> April 1998. In this Office Order name of your applicant appeared in Serial No. 15. It is pertinent to mention here that that in the said promotion list it is made clear that "The individual concern that in case they do not joined as Circle Officer Superintendent at the place of posting, it will be presumed that they are not interested in the promotion for the post and that would amount to refusal of promotion and which will render then debar for further consideration for this post for the period of one year. The written refusal of promotion if any by the promotees may be forwarded to this Directorate as soon as it is given. In case the promotees do not give their refusal in writing, they should be relieved of their duties immediately after expiry of the period of 45 days and LPC issued."

Annexure-B is the photocopy of the Office Memo No. 05-06-98 EC IV (C)



under Office order No. 68 of 98 dated 17<sup>th</sup> April 1998.

4.4] That your humble applicant begs to state that he was promoted to the post of Office Superintendent vide Office Memo No. 05-06-1998 EC IV(C) under Office Order No. 68 of 98 dated 17<sup>th</sup> April 1998. In this Office Order name of your applicant appeared in Serial No. 15. It is pertinent to mention here that in the said promotion list it is made clear that "The individual concern that in case they do not joined as Circle Office Superintendent at the place of posting, it will be presumed that they are not interested in the promotion for the post and that would amount to refusal of promotion and which will render them debar for further consideration for this post for the period of one year. The written refusal of promotion if any by the promotees may be forwarded to this Directorate as soon as it is given. In case the promotees do not give their refusal in writing, they should be relieved of their duties immediately after expiry of the period of 45 days and LPC issued."

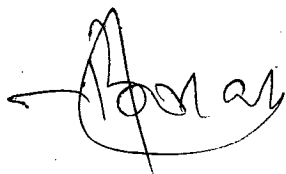


Annexure-B is the photocopy of the Office Memo No. 5/6/98 EC IV(C) under Office Order No. 69 of 98 dated 17<sup>th</sup> April 1998.

4.4] That your applicant begs to state that due to his personal problem he refused the said Promotion Order dated 17<sup>th</sup> April 1998 of Office Superintendent vide his letter dated 17<sup>th</sup> May 1998. In this letter it has been clearly stated by the applicant to the Respondent No. 2 that he has differed his promotion for the post of Office Superintendent for the time being due to his personal problem at that time. As per condition laid down by the Respondent No. 2 in the said promotion order your applicant is eligible for promotion to the post of Superintendent after one year from issuing the earlier Promotion Order.

Annexure-C is the photocopy of letter dated 12<sup>th</sup> May 1998.

4.5] That your applicant begs to state that as per revised seniority list dated 30-01-1997 of Head Clerks in CPWD at all India Level as

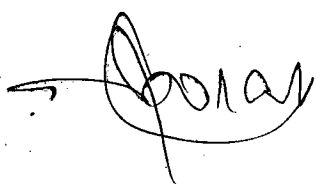


01-01-1996 applicant's position is in serial No. 90, and as per Provisional Seniority List dated 16-11-2000 of Head Clerks in CPWD under Region B as on 01-07-2000 applicant's position is in serial No.3.

Annexure-D is the photocopy of Extracts of Seniority List of Head Clerk in All India Level as on 01-01-1996.

Annexure-E is the photocopy of Seniority List of Head Clerk in Region B dated 16-11-2000.

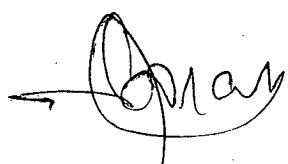
4.6] That your applicant begs to state that the Respondent No. 2 has issued another promotion Order of the Office Superintendent vide No. 5/20/2002-EC IV(C) under Office Order No. 155 of 2002 dated 6/7 August 2002. In the said promotion Order name of your applicant was not included, although your applicant is entitled for consideration of next promotion from the year 1999, i.e., after one year of his refusal of promotion to the post of Office Superintendent as per earlier promotion order

→ 

issued by the Respondent No. 2 dated 17-04-1998 (Annexure-B). Most surprisingly altogether 13 Junior Persons have superseded your applicant vide above-mentioned promotion order dated 6/7 August 2002.

Annexure-F is the photocopy of promotion Order vide No. 5/20/2002-EC IV(C) under Office Order No. 155 of 2002 dated 6/7 August 2002.

4.7] That your applicant begs to state that he is the Senior most Head Clerk in this region. But most surprisingly the Respondents did not consider his names for next promotion, i.e., to the post of Office Superintendent. Being aggrieved by this your applicant filed an Original Application No. 273 of 2002 before this Hon'ble Tribunal challenging the impugned Office Memorandum dated 06/07 August 2002 (Annexure-F). The Hon'ble Tribunal disposed of the said original application in the admission stage by directing the applicant to file representation or appeal before the authority assailing the order so that the authority at the first instance can look into the matter.



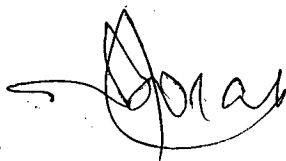


Accordingly, the Hon'ble Tribunal direct the applicant to prefer an appeal or representation before the Respondent No.2 within ten days from the date of receipt of the order. If such application is filed by the applicant, the Respondents shall consider the same and pass a reasoned order within one month from the date of receipt of representation or appeal and communicate the same in the applicant. It is needless to say the it will always be open to the applicant to raise all the grounds, which he has already advanced in this application.

MP  
Annexure-6 is the photocopy of the judgment and order dated 27-08-2002 passed by this Hon'ble Tribunal in O.A. No. 273 of 2002.

4.8] That your applicant begs to state that he has filed the representation on 30-08-2002 before the Respondent No.2 through proper channel as per direction of this Hon'ble Tribunal.

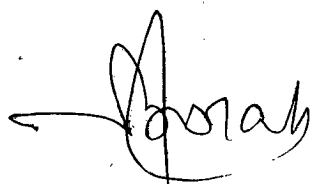
Annexure-H is the representation date 30-08-2002 submitted by the applicant before the Respondents.



4.9] That your applicant begs to state that the Office of the Respondent No. 2 vide his letter No. 2/19/2002 PC IV dtd. 23<sup>rd</sup> September 2002 dispose of the said representation of the applicant in a very casual and vague manner. Most surprisingly, the said letter issued by a Section Office of the Office of the Respondent No. 2 who is not competent to issue such type of letter. The said letter it has been stated that the case of Sri G.C. Bora has been examined but in view of his own written request for refusal to soldier higher responsibility his case for promotion to the of Office Superintendent was not considered. However, in view of his fresh willingness his case could be considered in the next DPC. Sri G.C. Nora, Head Clerk may please be informed accordingly.

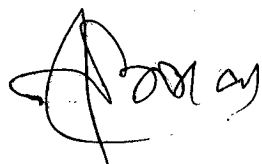
Annexure-I is the photocopy of letter No. 2/19/2002 PC IV dtd. 23<sup>rd</sup> September, 2002.

4.10] That the applicant begs to state that the Respondent No. 2 in their Office Order No. 68 of 1998 dated 17-04-1998 at Annexure-B it has been clearly stated that the individual



concerned in case they do not join as Circle Office Superintendent at the place of posting it will be presumed that they are not interested in promotion of this post and that would amount to refusal of promotion and which will rendered them debar for further consideration for this post for a period of one year.

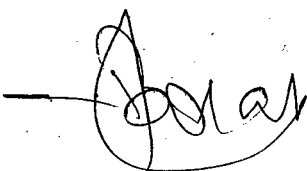
It is also pertinent to mention here that one Mrs. Anju Chadha, Heard Clerk who was promoted to the post of Office Superintendent on 27-04-2001 by the Respondent No. 2. She refused the promotion on that year but she was again considered for promotion vide Office Order No. 155 of 2002 dated 06/07 August 2002 (Annexure-F). From this it is clear who have refused promotion in earlier occasion they are again considered after one year. The Office of the Respondent No.2 issued the said letter dated 23<sup>rd</sup> September 2002 to the applicant is only to cover up their negligence. As such, fresh willingness cannot be a ground for the Respondent No. 2 to reconsider the applicant's promotion to the post of Office Superintendent. Hence, it is a fit case to be interefered by the Hon'ble Tribunal to give direction to the



Respondents to consider applicant's promotion to the post of Office Superintendent since year 1999 (i.e., after one year of his refusal to the post of Office Superintendent) with all consequential service benefits. Hence, finding no other alternative your applicant compelled to approach again before this Hon'ble Tribunal for seeking justice in this matter.

4.11] That your applicant begs to state that the Respondents have issued the promotion order dated 6/7 August 2002 against the Government Circular and also against their own Memorandum. Your applicant has got reason to belief that the Respondents are resorting colourable exercise of power to accommodate the persons of their interest.

4.12] That your applicant begs to state that the action of the Respondents are illegal, arbitrary, violative of the principle of natural justice. The acts of the Respondents whimsical. It is further stated that the Respondents have acted with a mala fide intention to deprive the applicants from their legitimate rights.



4.13] That your applicant begs to state that he has made prima facie case against the respondents for not giving his due promotion to the post of Office Superintendent. The principle of balance of convenience lies very much in favour of the applicants and in view of the matter the applicants pray for an interim order directing the Respondents not to implement said impugned promotion order dated 06/07 August 2002 at Annexure-F or one post of Office Superintendent may be kept reserved for the applicant.

4.14] That your applicant begs to submit that the applicant is aged about 58 years and he is at the verge of retirement.

4.15] That your applicant begs to state that as per his knowledge there no vigilance case/disciplinary proceeding pending or contemplated against him nor any adverse remark in ACR communicated to the applicant. As such, it is a fit case to interfere by this Hon'ble Tribunal to protect the interest of the applicant.



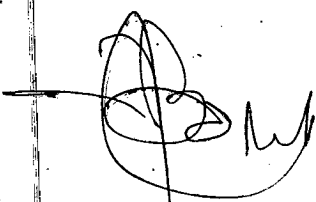
4.16] That your applicant submits that the procedure adopted by the authority in the case of applicant is improper, *ala fide*, illegal and without jurisdiction.

4.17] That your applicant submits that in any view of the facts and circumstances it is a fit case for passing interim order protecting the interest of the applicant.

4.18] That this application is filed *bona fide* for the interest of justice.

4.19] That the respondents erred in law in a most arbitrary manner held the petitioner to be unfit for promotion in the review DPC held on 03-01-2003 and arbitrarily deprived the petitioner from getting his promotion and quashing the said decision, direction may be issued to promote the petitioner forthwith with retrospective effect."

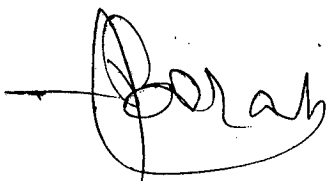
4.20] That the respondents did not consider the case of the petitioner in a fair, just and non-discriminatory and responsible manner nor the service record of the petitioner were

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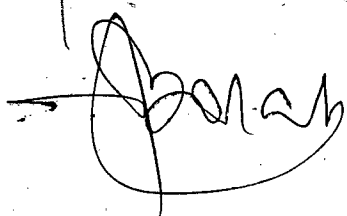
considered except the C R which were also recorded in violation of the provisions of various office Memo relating to recording of CR of an employee in respect of C R for the period 24-07-1997 to 31-03-1998, 01-04-1998 to 31-03-1999, 01-04-1999 to 31-03-2000 and 01-04-2000 to 31-03-2001 and illegally refused to promote the petitioner to the next higher grade which action is not sustainable in law."

4.21] That the DPC constituted by the respondent erred in law and facts is not recommending the case of the petitioner for promotion and the said decision is violative of the O.M. No. 22011/5/86-ESTT(D) dated 10-04-1989 in as much as the DPC did not assess the suitability of the petitioner on the basis of service record but it took in to consideration only the CR illegally recorded in violation of the various instructions issued by the Government from time to time."

4.22] That the petitioner was found fit and recommended for promotion by the DPC held in the year 1998 to the rank of Office Superintendent-Grade-II on the basis of CR and other



records. The respondent although were required to consider the case of the petitioner after one year of his non-acceptance, i.e. in the year 2000, they did not consider which they described as their mistake. Latter on after filing of the case, the respondent considered the case of the petitioner through a review DPC on 03-01-2003. The said review DPC did not recommend the case of the petitioner as the CR was recorded as average on 4(four) occasions by the reviewing Officer. Out of those, on two occasions, the reporting Officer reported the CR as very good but the reviewing officer recorded it as average without any application of mind and without recording any reason and without giving any opportunity to the petitioner and although the petitioner did not work under the reviewing Officer. These recording of CR as average is illegal and unsustainable in law and fact in as much as down grading of entry from very good to average or from outstanding to very good without giving opportunity to the petitioner is not permissible under the law. Further, the said recording of CR as average having been adverse to the petitioner for which the DPC did not recommended, it was

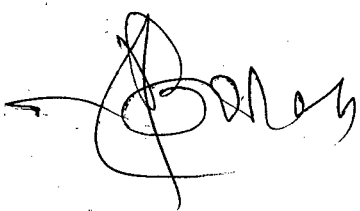




never communicated to the petitioner and the said un-communicated remark ought not to have been taken note of to deprive the petitioner from his legitimate promotion of entire action of the respondents, to refuse to promote the petitioner is illegal, unjust, improper and made with motive which is other than bona fide.

4.23] That while writing the review report in CR as average the review officer did not furnish any reason and it was written in gross violation of existing instructions to that effect and the petitioner having been found very good or outstanding cannot be down graded to average which is violative of the provision of law for the time being in force and as such refusal of promotion of the petitioner on such unsustainable ground is illegal, and arbitrary and as such necessary direction may be issued to promote the petitioner forthwith with retrospective effect prior to the date of promotion of his juniors by setting aside the impugned decisions.

5] GROUNDS FOR RELIEF WITH LEGAL PROVISION :



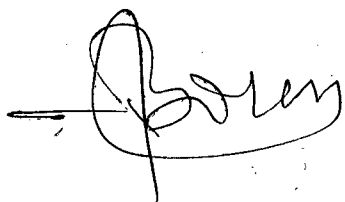
5.1] For that, due to the above reasons narrated in detail the action of the Respondents is in prima facie illegal, mala-fide, arbitrary and without Jurisdiction.

5.2] For that, there is violation of provision of existing Central Public Works Department Manual, Volume-I regarding promotion of the individual.

5.3] For that, the Respondent No. 2 has not shown any reason or causes for issuing promotion order dated 6/7 August 2002 without considering the promotion of the applicant. Hence, the same are liable to be set aside and quashed.

5.4] For that, the action of the Respondents is highly illegal, arbitrary and also violative of guidelines of Promotion Policy.

5.5] For that, the Respondents have not scrutinized the seniority list of the Head Clerks properly and thoroughly. Hence, the

A handwritten signature in dark ink, appearing to read 'Boray', is located at the bottom left of the page. The signature is stylized with a large, looping initial 'B'.

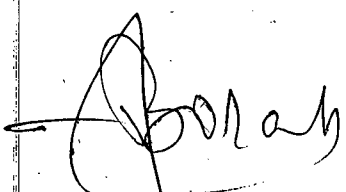
impugned promotion order is liable to be set aside and quashed.

5.6] For that, the Respondents have violated the Articles 14, 16 and 23 of the Constitution of India.

5.7] For that, being a model employer the Respondents cannot deprive the promotion of the applicant without any justification and reason.

5.8] For that, in any view of the matter the action of the respondents are not sustainable in the eve of law and as well as fact.

5.9] For that the recording in the CR of the petitioner as average after he was earlier found to be very good and recording of reviewing officer as average against the reporting officers report as very good is illegal unjust, unfair and untenable and is violative of the various instruction of the department to that effect. The petitioner having been found very good in the previous



period illegally downgraded in the report as average without giving him any opportunity of hearing which is other than bona-fide and the decision taken on such illegal report refusing promotion to the petitioner is liable to be set aside and quashed with; direction to promote the petitioner forthwith with retrospective effect.

5.10] For that the respondent authorities erred in law and in violation of the provisions of department instructions and memorandums as well as departmental manual in passing the impugned order and illegally denied the legitimate promotion due to the petitioner which is not sustainable in law.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds of the time of hearing of this instant application.

6] DETAILS OF REMEDIES EXHAUSTED :

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this

*Borah*

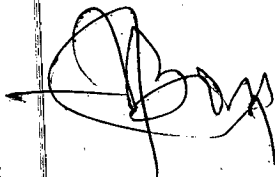
Hon'ble Tribunal under Section 14 of the administrative Tribunal Act. 1985.

7] MATTERS NOT PREVIOUSLY FILED OR  
PENDING IN ANY OTHER COURT :

That the applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, authority, nor any such application, writ petition or suit is pending before any of them.

8] RELIEF SOUGHT FOR:

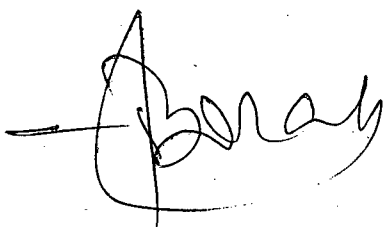
Under the facts and circumstances stated above the applicants most respectfully prayed that your Lordship may be pleased to admit this application, call for records of the case, issue notices to the Respondents as to why the relief and relives sought for by the applicant may not be granted and after hearing the parties



and the cause or causes that may be shown your Lordships may be pleased to direct the Respondents to give the following relief:

8.1] That the Hon'ble Tribunal may be pleased to set aside and quashed the impugned office Memorandum No. 5/20/2002-EC IV (C) issued under Office Order No.155 of 2002 dated 6/7 August 2002 issued by the Respondent No. 2 and may be pleased to direct the respondents to consider the applicant's promotion to the post of Office Superintendent since 1999 (i.e., after one year of refusal of his promotion with all other consequential benefits entitled by the applicants.

8.2] That the Hon'ble Tribunal may be pleased to set aside and quash the finding of the review DPC dated 03-01-2003 and to direct the respondent authorities to promotion the petitioner forthwith to the rank of Office



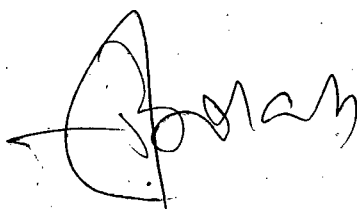
Superintendent with retrospective from the date prior to the promotion of his juniors.

8.3] To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.

8.4] Cost of the Case.

9] INTERIM ORDER PRAYER FOR :

The Applicant most respectfully prays for interim order from this Hon'ble Tribunal that the Hon'ble Tribunal may be pleased to stay the Impugned office Memorandum No. 5/20/2000-EC IV(C) issued under Office Order No. 155 of 2000 dated 6/7 August 2002 issued by the Respondent No. 2 at Annexure-F and may be pleased to reserve one post of Office Superintendent for the applicant till disposal of this case.



10] APPLICATION IS FILLED THROUGH  
ADVOCATE.

11] Particulars of I.P.O. :

I.P.O. No.

Date of issue

Issued from

Payable at

12] LIST OF ENCLOSURES :

As stated above.

*[Handwritten signature]*



AFFIDAVIT

I, Sri, Girish Chandra Borah, Head Clerk, office of the Executive Engineer (Electrical). Guwahati Electrical Division, Central Public Works Department, Guwahati- 15 do hereby solemnly affirm and say as follows:

1] That I am the applicant in O.A. No. 362 of 2002 and also the petitioner of the instant petition and as such I am acquainted with the facts and circumstances of the case.

2] That the contents of this affidavit and the statements made in paragraphs of the above petition are true to my knowledge and those made in paragraphs are being matters of records derived therefrom I believe to be true and those made in the rests are my humble submissions before this Hon'ble Tribunal.

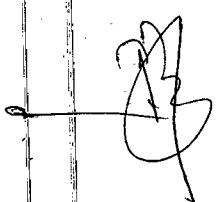
I sign this affidavit on this the       day of 2004 at Guwahati.

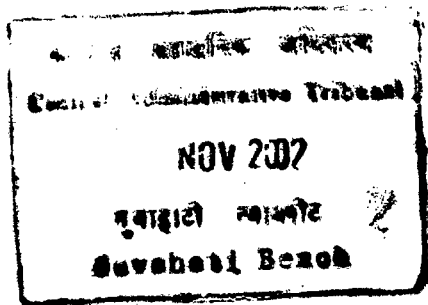
Identified by :

*Girish ch Borah*  
Deponent

Advocate

Solemnly affirmed me by the Deponent who is identified by Mr. Adil Ahmed, Advocate.





IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION OF 19 OF THE  
CENTRAL ADMINISTRATIVE TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 362 OF 2002.

Shri Girish Chandra Borah -Applicant.

-Versus-

The Union of India & Others, -Respondents.

I N D E X				
Sl.No.	Particulars	Page No.		
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4.	Annexure- B	19 to 21		
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7.	Annexure- E	26 to 28		
8.	Annexure- F	29 to 31		
9.	Annexure- G	32 to 34		
10.	Annexure- H	35 to 37		
11.	Annexure- I	38		

Filed by

Advocate

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2. 1002  
3. 1002  
2002

(Pl. Ar. + Ver. 400)

(Adv. ANME)

Filed by  
Girish Chandra Borah  
Applicant  
Shri  
Through  
(Abul AHMED)  
Husnat.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION OF 19 OF THE  
CENTRAL ADMINISTRATIVE TRIBUNAL ACT 1985).

ORIGINAL APPLICATION NO. OF 2002.

BETWEEN

Shri Girish Chandra Borah,  
Head Clerk, Office of the  
Executive Engineer (Electrical)  
Guwahati Electrical Division,  
Central Public Works Department,  
Guwahati-15.

1992  
01  
Supt

-Applicant.

-AND-

- 1] The Union of India represented by  
the Secretary to the Government of  
India Ministry of urban Affairs,  
New Delhi - 110011.
- 2] The Director General (Works) Central  
Public works Department, Nirman  
Bhawan New Delhi- 110011.
- 3] The Additional Director General of  
Works, Eastern Region, C.P.W.D.,  
Nizam Palace, Kolkata-20.

4] Superintending Engineer,  
(Co-ordination) Circle,  
Central Public Works Department,  
Eastern Region, Nizam Palace,  
Kolkata-700020.

5] The Superintending Engineer (Elec-  
trical) Guwahati Electrical Circle,  
Central Public Works Department,  
Guwahati-21.

-Respondents.

I] DETAILS OF THE APPLICATION

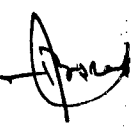
II] PARTICULARS OF THE ORDER AGAINST WHICH  
THE APPLICATION IS MADE:

This application is made against the letter  
No. 2/19/2002 EC IV dated 23<sup>rd</sup> September 2002  
issued by the Office of the Respondent No. 2.

2] JURISDICTION OF THE TRIBUNAL

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

3] LIMITATION



- 3 -

The applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4] FACTS OF THE CASE:

Facts of the case in brief are given below:

4.1] That your humble applicant is a citizen of India and as such he is entitled to all rights and privileges guaranteed under the Constitution of India. He is now aged about 58 years.

4.2] That your applicant begs to state that he was appointed as Lower Division Clerk in the Central Public Works Department in the year 1965. He was promoted to upper Division Clerk in the year 1979 on Merit basis. He was promoted to the post of Head Clerk on Merit basis vide Office Order No. 9(55)92/Sec/Cal/2477 Dated 31-03-1992. Now he is working as Head Clerk under the Office of the Executive Engineer Guwahati Electrical Division No. 1 Central Public Works Department, Guwahati-15.

Annexure-A is the photocopy of the Office Order No. 9(55)92/Sec/Cal/2477 Dated 31-03-1992.

*Amish*

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- G -

4.3] That your humble applicant begs to state that he was promoted to the post of Office Superintendent vide Office Memo No. 5/6/98 EC IV(C) under Office Order No. 68 of 98 dated 17<sup>th</sup> April 1998. In this Office Order name of your applicant appeared in Serial No. 15. It is pertinent to mention here that in the said promotion list it is made clear that "The individual concern that in case they do not joined as Circle Office Superintendent at the place of posting, it will be presumed that they are not interested in the promotion for the post and that would amount to refusal of promotion and which will render them debar for further consideration for this post for the period of one year. The written refusal of promotion if any by the promotees may be forwarded to this Directorate as soon as it is given. In case the promotees do not give their refusal in writing, they should be relieved of their duties immediately after expiry of the period of 45 days and LPC issued."

Annexure-B is the photocopy of the Office Memo No. 5/6/98 EC IV@ under Office order No. 68 of 98 dated 17<sup>th</sup> April 1998.

4.4] That your applicant begs to state that due to his personal problem he refused the said Promotion Order dated 17<sup>th</sup> April 1998 of Office Superintendent vide his letter dated 17<sup>th</sup> May 1998. In this letter it has been clearly stated by the

- Pooch

applicant to the Respondent No. 2 that he has differed his promotion for the post of Office Superintendent for the time being due to his personal problem at that time. As per condition laid down by the Respondent No. 2 in the said promotion order your applicant is eligible for promotion to the post of Superintendent after one year from issuing the earlier Promotion Order.

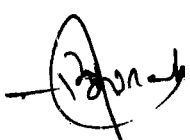
Annexure-C is the photocopy of letter dated 12<sup>th</sup> May 1998.

4.5] That your applicant begs to state that as per revised seniority list dated 30-01-1997 of Head Clerks in (PWD) at all India Level as 01-01-1996 applicant's position is in serial No. 90, and as per Provisional Seniority List dated 16-11-2000 of Head Clerks in (PWD) under Region B as on 01-07-2000 applicant's position is in serial No. 3.

Annexure-D is the photocopy of Extracts of Seniority List of Head Clerk in All India Level as on 01-01-1996.

Annexure-E is the photocopy of Seniority List of Head Clerk in Region B dated 16-11-2000.

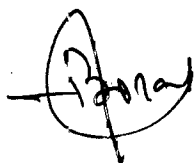
4.6] That your applicant begs to state that the Respondent No.2 has issued another promotion



order of Office Superintendent vide No. 5/20/2002-EC IV(C) under Office Order No. 155 of 2002 dated 6/7 August 2002. In the said promotion order name of your applicant was not included, although your applicant is entitled for consideration of next promotion from the year 1999, i.e., after one year of his refusal of promotion to the post of Office Superintendent as per earlier promotion order issued by the Respondent No. 2 dated 17-04-1998 (Annexure-B). Most surprisingly altogether 13 Junior Persons have superseded your applicant vide above-mentioned promotion order dated 6/7 August 2002.

Annexure-F is the photocopy of promotion order vide No. 5/20/2002-EC IV(C) under Office Order No. 155 of 2002 dated 6/7 August 2002.

4.7] That your applicant begs to state that he is the Senior most Head Clerk in this region. But most surprisingly the Respondents did not consider his names for next promotion, i.e., to the post of Office Superintendent. Being aggrieved by this your applicant filed an original application No. 273 of 2002 before this Hon'ble Tribunal challenging the impugned Office Memorandum dated 06/07 August 2002 (Annexure-F). The Hon'ble Tribunal disposed up the said original application in the admission stage by directing the applicant to file representation or appeal before the





-7-

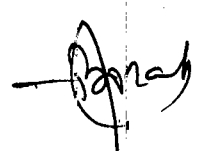
authority assailing the order so that the authority at the first instance can look into the matter. Accordingly, the Hon'ble Tribunal direct the applicant to prefer an appeal or representation before the Respondent No. 2 within ten days from the date of receipt of the order. If such application is filed by the applicant, the Respondents shall consider the same and pass a reasoned order within one month from the date of receipt of representation or appeal and communicate the same to the applicant. It is needless to say that it will always be open to the applicant to raise all the grounds, which he has already advanced in this application.

Annexure-6 is the photocopy of the judgment and order dated 27-08-2002 passed by this Hon'ble Tribunal in O.A. No. 273 of 2002.

4.8] That your applicant begs to state that he has filed the representation on 30-08-2002 before the Respondent No. 2 through proper channel as per direction of this Hon'ble Tribunal.

Annexure-H is the representation dated 30-08-2002 submitted by the applicant before the Respondents.

4.9] That your applicant begs to state that the office of the Respondent No. 2 vide his letter



No. 2/19/2002 P C IV dtd. 23<sup>rd</sup> September 2002 dispose up the said representation of the applicant in a very casual and vague manner. Most surprisingly, the said letter issued by a Section Officer of the Office of the Respondent No. 2 who is not competent to issue such type of letter. The said letter it has been stated that the case of GC Bora has been examined but in view of his own written request for refusal to soldier higher responsibility his case for promotion to the post of office superintendent was not considered. However, in view of his fresh willingness his case could be considered in the next DPC. Sri G C Bora, Head Clerk may please be informed accordingly.

Annexure-I is the photocopy of letter No. 2/19/2002 P C IV dtd. 23<sup>rd</sup> September 2002.

4.10] That the applicant begs to state that the Respondent No. 2 in their office order No. 68 of 1998 dated 17-04-1998 at Annexure-B it has been clearly stated that the individual concerned in case they do not join as Circle Office Superintendent at the place of posting it will be presumed that they are not interested in promotion of this post and that would amount to refusal of promotion and which will rendered them debar for further consideration for this post for a period of one year.

*[Handwritten signature]*

It is also pertinent to mention here that One Mrs. Anju Chadha, Head Clerk who was promoted to the post of Office Superintendent on 27-04-2001 by the Respondent No. 2. She refused the promotion on that year but she was again considered for promotion vide Office Order No. 155 of 2002 dated 06/07 August 2002 (Annexure-F). From this it is clear who have refused promotion in earlier occasion they are again considered after one year. The Office of the Respondent No. 2 issued the said letter dated 23<sup>rd</sup> September 2002 to the applicant is only to cover up their negligence. As such, fresh willingness cannot be a ground for the Respondent No. 2 to reconsider the applicant's promotion to the post of Office Superintendent. Hence, it is a fit case to be interfered by the Hon'ble Tribunal to give direction to the Respondents to consider applicant's promotion to the post of Office Superintendent since year 1999 (i.e., after one year of his refusal to the post of Office Superintendent) with all consequential service benefits. Hence, finding no other alternative your applicant compelled to approach again before this Hon'ble Tribunal for seeking justice in this matter.

4.11] That your applicant begs to state that the Respondents have issued the promotion order dated 6/7 August 2002 against the Government Circular and also against their own Memorandum. Your applicant has got reason to belief that the

Anju

Respondents are resorting colourable exercise of power to accommodate the persons of their interest.

4.12] That your applicant begs to state that the actions of the Respondents are illegal, arbitrary, violative of the principle of natural justice. The acts of the Respondents whimsical. It is further stated that the Respondents have acted with a mala fide intention to deprive the applicants from their legitimate rights.

4.13] That your applicant begs to state that he has made prima facie case against the respondents for not giving his due promotion to the post of Office Superintendent. The principle of balance of convenience lies very much in favour of the applicants and in view of the matter the applicants pray for an interim order directing the Respondents not to implement said impugned promotion order dated 6/7 August 2002 at Annexure-F or one post of Office Superintendent may be kept reserved for the applicant.

4.14] That your applicant begs to submit that the applicant is aged about 58 years and he is at the verge of retirement.

4.15] That your applicant begs to state that as per his knowledge there is vigilance case/ disciplinary proceeding pending or contemplated

*Agreed*

against him nor any adverse remark in ACR communicated to the applicant. As such, it is a fit case to interfere by this Hon'ble Tribunal to protect the interest of the applicant.

4.16] That your applicant submits that the procedure adopted by the authority in the case of applicant is improper, mala fide, illegal and without jurisdiction.

4.17] That your applicant submits that in any view of the facts and circumstances it is a fit case for passing interim order protecting the interest of the applicant.

4.18] That this applicant is filed bona fide and for the interest of justice.

5] GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1] For that, due to the above reasons narrated in detail the action of the Respondents is in prima facie illegal, mala-fide, arbitrary and without jurisdiction.

5.2] For that, there is violation of provision of existing Central Public Works Department Manual, Volume-I regarding promotion of the individual.

5.3] For that, the Respondent No. 2 has not shown any reason or causes for issuing promotion

*Amah*

order dated 6/7 August 2002 without considering the promotion of the applicant. Hence, the same are liable to be set aside and quashed.

5.4] For that, the action of the Respondents is highly illegal, arbitrary and also violative of guidelines of Promotion Policy.

5.5] For that, the Respondents have not scrutinized the seniority list of the Head Clerks properly and thoroughly. Hence, the impugned promotion order is liable to be set aside and quashed.

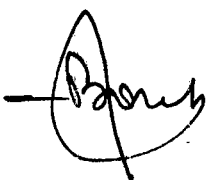
5.6] For that, the Respondents have violated the Article 14, 16 and 21 of the Constitution of India.

5.7] For that, being a model employer the Respondents cannot deprive the promotion of the applicant without any justification and reason.

5.8] For that, in any view of the matter the action of the respondents are not sustainable in the eye of law and as well as fact.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

B. DETAILS OF REMEDIES EXHAUSTED:



That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

That the applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, 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 applicants most respectfully prayed that your Lordship may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relives sought for by the applicant may not be granted and after hearing the parties and the cause or causes that may be shown your Lordships may be pleased to ~~admit~~ ~~the application~~ ~~and~~ ~~may be pleased to~~ direct the Respondents to give the following relief:

- [Signature]

8.1] That the Hon'ble Tribunal may be pleased to set aside and quashed the impugned Office Memorandum No. 5/20/2002-EC IV (C) issued under Office Order No. 155 of 2002 dated 6/7 August 2002 issued by the Respondent No. 2 and may be pleased to direct the respondents to consider the applicant's promotion to the post of Office Superintendent since 1999 (i.e., after one year of refusal of his promotion with all other consequential benefits entitled by the applicants.

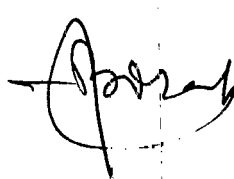
8.2] To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.

8.3] Cost of the Case.

9] INTERIM ORDER PRAYED FOR:

The applicant most respectfully prays for interim order from this Hon'ble Tribunal that the Hon'ble Tribunal may be pleased to stay the Impugned Office Memorandum No. 5/20/2002-EC IV(C) issued under Office Order No. 155 of 2002 dated 6/7 August 2002 issued by the Respondent No. 2 at Annexure-F and may be pleased to reserve one post of Office Superintendent for the applicant till disposal of this case.

10] Application Is Filed Through Advocate.





121 Particulars of I.P.O.:

I.P.O. NO. 76575393

Date of Issue 8.10.2002

Issued from Guwahati G.P.O.

Payable at Guwahati

131 • LIST OF ENCLOSURES:

As stated above.

...Verification.

*(Signature)*

VERIFICATION

I, Shri Girish Chandra Borah, Head Clerk, Office of the Executive Engineer (Electrical) Guwahati Electrical Division, Central Public Works Department, Guwahati-15 do hereby solemnly verify that the statements made in paragraphs are true to my knowledge, 4.1, 4.8, 4.10 to 4.13 — those made in paragraphs 4.2, 4.3 to 4.6, 4.7, 4.9 are being matters of records are true to information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and rest are my humble submissions before this Hon'ble Tribunal I have not suppressed any material facts.

And I sign this verification today on this the 3<sup>rd</sup> day of October, 2002 at Guwahati.

Girish Chandra Borah  
Declarant.

17-  
15-  
GOVERNMENT OF INDIA  
CENTRAL PUBLIC WORKS DEPARTMENT

No. 9(55)92/SE(C)/Cal'd 2477

Dated:- 31.3.92.

OFFICE ORDER

Undermentioned UDCs are hereby promoted as Head Clerk on purely temporary basis in the scale of pay of Rs. 1400-40-1800-EB-50-2300/- from the date of actual assuming charges of higher posts untill further orders. On promotion they shall be on probation for a period of 2 (Two) years.

Seniority basis		Merit basis	
1)	S/Shri B. Karmakar.	1)	S/Shri S.K. Banik.
2)	" S.R. Bhattacharjee.	2)	" Jadu Prasad.
3)	" M.K. Roy.	3)	" G.C. Bora.
4)	" K.D. Ram. (SC)	4)	" A.B. Das.
5)	Smt. Ava Rani Bardhan.	5)	" K.R. Boro. (ST)
6)	" Pratima Chanda. (SC)	6)	" S.K. Naskar. (SC)
7)	" Parul Dutta.		

Consequent on above promotion the following transfer/posting of promotees are hereby ordered with immediate effect in the interest of Public service.

Sl.No.	Name	From	To	Remarks
1.	S/Shri B. Karmakar	SCD/CPWD Siliguri.	DCD/CPWD Dinhata.	Existing Vacancy.
2.	" S.R. Bhattacharjee	BCED/CPWD BBSSR.	RCD/CPWD Raigang	"
3.	" M.K. Roy	DCD/CPWD Dhanbad	MCD/Malda CPWD.	"
4.	" K.D. Ram.	CCM /CPWD Gauhati	MCD-I/CPWD Imphal	"
5)	" Ava Rani Bardhan	CCDII/CPWD Calcutta.	DCE/CPWD Dhanbad	"
6)	" Pramita Chanda	CCCI/CPWD Calcutta	ICDI/CPWD Islampur.	"
7)	" Parul Dutta	CCCI/CPWD Calcutta	ICDII/CPWD Islampur.	"
8)	" S.K. Banik	CCDIV/CPWD Calcutta	MCDII/CPWD Imphal	Vice S.P. Mukherjee
9)	" Jadu Prasad	PCED/CPWD Patna	PCED/CPWD Patna	Existing Vacancy
10)	" G.C. Bora	ACC/CPWD Gauhati	AAWD /CPWD Gauhati	Vice Shri M.L. Sinha
11)	" A.B. Das	CCCI/CPWD Calcutta.	MCD/CPWD Berhampur	Existing Vacancy
12)	" K.R. Boro	ACC/CPWD Gauhati	GEDII CPWD Gauhati	Vice Shri S.K. Mukherjee.
13)	" S.K. Naskar	CCDV/CPWD Calcutta	TCD/CPWD Agartala	Vice P.C. Ghose

Contd. 2

- 18 -

The promotion UDCs will have to intimate their acceptance/refusal of promotion within 10 days for Calcutta and 15 days for outstations of the issue of this order. The concerned controlling officers are hereby requested to obtain written acceptance/refusal of promotion from the promoted persons and to communicate the same to this office within the date specified above. No conditional acceptance of promotion will be entertained.

In case no intimation about acceptance/refusal of above promotion/posting is received from the promoted person within the specified date their promotion are liable to be cancelled without further reference. The controlling officers are also requested that if any vigilance/disciplinary case is pending or contemplated against any promoted, the effect of promotion should not be given to him and the fact may please be communicated to this office forthwith.

The officials who accept promotion may please be relieved immediately without waiting for substitute as per instructions of higher authorities.

Superintending Engineer,  
Coordination Circle (EZ),  
CPWD, Calcutta-20

Copy to :-

1. The Director General of Works, CPWD, Nirman Bhawan, New Delhi.
2. The Chief Engineer (EZ), CPWD, Calcutta.
3. The Chief Engineer (IEB), CPWD, Siliguri.
4. The Chief Engineer (NEZ), CPWD, Shillong.
5. All SEs/SSWs/EEs of CPWD in region 'B'.
6. The Secretary, CPWD, Staff Association (EZ) Calcutta.
7. The Regional Secretary, CPWD Non-Gazetted Office Staff Association, Cal-20.

EA to Superintending Engineer,  
Coordination Circle (EZ),  
CPWD, Calcutta-20

Nirman Bhawan, New Delhi  
Dated the April 17th, 1998.

OFFICE ORDER No.68 of 1998

The Director General of Works is pleased to promote the following Head Clerks from the scale of pay of Rs.5000-8000 to the post of Circle Office Superintendent in the scale of Rs.5500-175-9000, on regular basis with effect from the date they assume charge of the post.

S.No.	Name of the officer S/Shri	Whether SC/ST/OC
1.	V.B. Desai	OC
2.	P.R.H. Kurup	OC
3.	K. Mahalingam	OC
4.	S. Rajagopalan	OC
5.	Adil Singh	SC
6.	K. Ashok Kumar	OC
7.	M.S. Sachdeva	OC
8.	P.K. Guha	OC
9.	L. Prasao	ST
10.	G.G. Kulkarni	OC
11.	N.D. Bhatia	OC
12.	S.K. Banik	OC
13.	Jadu Prasad	OC
14.	S.K. Naskar	SC
15.	G.C. Borah	OC
16.	K.R. Baro	ST
17.	B. Ganapathy Bahu	ST
18.	Sarjung Singh	OC
19.	Arvind Kumar Srivatava	OC
20.	Smt. Poonam Kapil	OC
21.	Daniel Nathaniel	OC
22.	Kishan Chand	OC

- They will be on probation for a period of two years from the date they assume charge as Circle Office Superintendent.
- Consequent on their promotion as Circle office Superintendent, their posting/transfers are made as under:-

S/ Name of the No. Officer S/Shri	Whether SC/ST/OC	Office at present working	Office to which posted	Remarks
1. 2.	3.	4.	5.	6.
1. V.B. Desai	OC	On Deputation DRAT, Mumbai	Nagpur Cen. Cir. CPWD, Nagpur	Against existing vacancy
2. P.R.H. Kurup	OC	Trichur Cent. Div. CPWD,	Silliguri Cent. Cir.(IBB) CPWD	-do-

Contd. 2

Attested  
[Signature]  
[Signature]

1. K. Mahalingam	OC	Pondichery Cent. Div. CPWD, Pondichery	Malda Cen. Circle, CPWD, Malda	-do-
4. S. Rajagopalan	OC	CCD-II Chennai CPWD, Chennai	Murshiedabad Cen. Cir. Murshiedabad	-do-
5. Adil Singh	SC	Div-17, PWD/17, Delhi	SSW-III, PWD NCTD, Delhi	Vice Smt. Purnima Kandir transferred
6. K. Ashok Kumar	OC	Trivandrum C.D.	Jodhpur C.C., CPWD, Jodhpur	Against existing vacancy
7. H.S. Sachdeva	OC	ACD-V, Delhi	PWD E.C-II, Delhi	Against existing vacancy
8. P.K. Guha	OC	Cooch Behar C.D-I CPWD, Behar	Cooch Behar C.C., CPWD, Behar	-do-
9. L. Prasad	ST	Patna C.D-I	Patna C.E.C., Patna	-do-
10. G.G. Kulkarni	OC	Pune C.E. Div. CPWD, Pune	Bhopal C.C., CPWD, Bhopal	-do-
11. H.D. Bhatia	OC	Indore C.E. Div. Indore	Bhopal C.E.C. CPWD, Bhopal	-do-
12. S.K. Banik	OC	C.C.D-IV, Calcutta	C.C.C.-I, Calcutta	-do-
13. Jadu Prasad	OC	P.C.E.D, Patna	CE(EZ)II, Patna	-do-
14. S.K. Naskar	SC	Bhubaneswar C.D-II	Silchar C.C., CPWD, Silchar	-do-
15. G.C. Borah	OC	S.C.D, Guwahati	Guwahati E.C. CPWD	-do-
16. K.R. Baro	ST	G.E.E.D-II, Guwahati	Assam Cen. Cir-I	-do-
17. B. Ganapathy Babu	ST	H.C.D-II, Hyderabad	SSW(SZ-II), Hyderabad	-do-
18. Sarjung Singh	OC	P.C.D-II, Patna	SSW(EZ)-II, Patna	-do-
19. Arvind Kumar Sripataya	OC	Lucknow C.E. Div	CE(NZ-III), Jaipur	-do-
20. Smt. Poonam Kapi	OC	P.W.D-13, Delhi	CE(ODZ), Delhi	-do-
21. Daniel Nathania	OC	Exchn. Div., Delhi	SSW Elect-I, Delhi	Vice Sh. S.K. Beri transfer
22. Kishan Chand	OC	E.D.-V, Delhi	DCC-IX, Delhi	-do-

The following postings/transfers in the grade of Circle Office Supdt. from their present place of posting due to their request and administrative reasons are made as under:-

Sl No. of the Officer S/Shri	Whether SC/ST/OC	Office at present working	Office to which posted	Remarks
1. Smt. Purnima Kandir	OC	SSW-III, Delhi: PWD,	SSW Elect-II, CPWD, Delhi	Against existing vacancy
2. S.K. Beri	OC	SSW-Elect-I, Delhi	D.C.E.C-I, Delhi	-do-

*Handwritten signatures and initials:*  
 A.K. El  
 Jil  
 Ashwate

All concerned officers are requested to relieve the promotees without waiting for their substitutes to join new assignments by making internal arrangements, that is to say by allowing handing over charge to the Senior UDCs where necessary subject to the condition that they are found fit from Vigilance angle by the concerned Superintending Engineers. So far as this Directorate is concerned, it is certified that no case is pending or being contemplated against them and they are free from Vigilance angle. It may be made clear to the individuals concerned that in case they do not join as Circle Office Superintendent at the place of posting, it will be presumed that they are not interested in promotion for this post and that would amount to refusal of promotion and which will render them dubar for further consideration for this post for a period of one year. The written refusal of promotion, if any, by the promotees may be forwarded to this Directorate as soon as it is given. In case the promotees don't give their refusal in writing, they should be relieved of their duties immediately after expiry of the period of 45 days and LPC issued.

*[Signature]*

(SURENDER PAUL)  
Dy. Director (Training)

20/11/98

Copy to -

1. All concerned Superintending Engineer/Ex. Engineer
2. All concerned PAO
3. All officials concerned
4. PA to DA
5. General Secretary, NGOSA, Near Generator Room, I.P. Bhawan, New Delhi
6. Hindi Shakha (for Hindi version).

*[Signature]*  
17/11/98  
(Ran Chand Tongra)  
Section Officer

*[Handwritten signature]*  
Ahoorata

-22- 20 -

5  
ANNEXURE - C

To  
The Director General of Works,  
C.P.W.D., Nirman Bhawan,  
New Delhi-110011

Dated Guwahati the 12th May '98

THROUGH PROPER CHANNEL

Sub : Promotion to the post of Office Superintendent  
- Acknowledgement thereof.

Sir,

While acknowledging your Office Order No.68 of 1998 dated 17.4.1998, I must thank you for your kind offer of my promotion to the post of Office Superintendent in the Guwahati Central Electrical Circle, C.P.W.D., Guwahati-21.

That S-sr, with due apology, I beg to inform you that -

- 1) increased illness of my permanently disabled child which has increased my tension,
- 2) the chronic Hypertension of my wife, and
- 3) consequential illness (Hypertension) of myself has compelled me very reluctantly to defer my acceptance of the post of Office Superintendent for the time being, as I may not do justice to serve as Office Superintendent with such a higher responsibility.

I, therefore, hope that you will very kindly excuse me for the same.

With regards,

Yours faithfully,

(G. C. Borah)  
Head Clerk  
Guwahati Central Division  
C.P.W.D., Guwahati-21

Atty  
Advocate



-24-  
-23-

ANNEXURE - D 8

5/2/96 EC.IV(C)  
Government Of India  
Director General Of Works  
Central Public Works Department

\*\*\*\*\*

107-3  
10/2/97  
D. M. P. D. 10.2.97  
D. M. P. D. 10.2.97

New Delhi, dated 30-1-97

OFFICE MEMORANDUM

Subject:- Revised seniority list of Head Clerks in CPWD  
at all India level as on 01-01-1996.

The undersigned is directed to forward herewith  
the seniority list of Head Clerks in C.P.W.D. as on  
01.01.1996 duly incorporated of objection raised by  
various officials.

All the officers are requested to circulate the  
list amongst Head Clerk working in their Offices for  
their information.

Encl: Seniority list.

(B.S. CHHETTRI)  
Section Officer

To  
All Superintending Engineer (Coord) circle, all Head  
Clerks indicated in this list for the office record.

Copy to :-

1. All SEs/SSWs/DOH/ADOH/EEs etc to circulate the list  
to all the Head Clerks for their information and  
necessary action if any working under them.

(B.S. CHHETTRI)  
Section Officer

Adm  
Adm

No.	Name of Officer	Category	Date of Birth	Date of Seniority	Date of Seniority	Promoted to Grade	Office
1	R.D. UPADHAYAYA	OC	20/11/43	20/10/81	21/07/83	05/01/84	Mumbai promoted as C.S but not joined
2	K.J. JOSEPH	OC	29/03/43	10/03/82	19/01/84	03/12/81	On deputation CAT -DO-
3	A.C. GAWARE	SC	15/07/40	25/11/83	18/05/84	08/08/85	Mumbai -DO-
4	PREMA BALAKRISHNAN	OC	02/09/49	15/11/85	21/12/84	31/12/84	Coimbatore -DO-
5	I.M. SUNDARAM	OC	25/12/39	11/07/88	08/04/85	21/06/85	SE(C) Chennai -DO-
6	JAGJIT SINGH	OC	01/09/49	29/11/87	20/04/85	06/07/85	Elect Divn. VII -DO-
7	G. VIJAYAKRISHNAN	ST	13/06/55	31/01/74	02/01/86	31/01/86	Bangalore -DO-
8	V.S. DESAI	OC	14/04/50	23/01/71	02/12/86	12/01/87	Mumbai -DO-
9	SHAIKH ANWAR	OC	01/06/42	21/01/63	02/12/86	21/08/88	Mysore promotion orders under issue.
10	I. CHINNAN	OC	06/10/41	07/09/62	02/12/86	31/08/88	Mumbai -DO-
11	P.R.M. KURUP	OC	06/06/47	05/12/67	05/12/86	26/12/86	Trichur, order cancelled
12	K. MAHALINGAM	OC	16/04/50	11/02/74	05/12/86	11/12/86	P.C.D. Pondichery
13	S. RAJENDRAN	OC	07/01/51	23/01/74	05/12/86	30/05/87	S.C.D.-III, Bombay.
14	D.M. KOLLIPARA	OC	23/08/40	08/02/61	19/02/87	27/02/87	H.C.D-I, Hyderabad.
15	P.K. BARUA	OC	01/03/50	12/12/75	11/08/87	04/01/71	E Division Delhi, South Block, Jalebi Chowk
16	T.R. DUA	OC	11/12/44	02/11/63	11/08/87	02/02/89	Faridabad CD-II
17	C. KUMAR	ST	04/01/41	13/07/62	11/08/87	24/02/87	ECO-VI
18	PYARE LAL	SC	21/11/46	20/07/68	11/08/87	17/11/87	Faridabad C D
19	RAM DASS	SC	02/01/42	27/05/64	11/08/87	01/09/87	PWD DN 13 (DA)
20	P.V. SUBBA RAO	OC	01/08/44	15/06/64	09/11/87	26/02/88	PCED-II, Madras
21	M. RAVINDRAN	OC	17/06/40	05/05/61	09/11/87	17/12/87	Trivendra Cent. Elect. Div.
22	RAM SHARAD	SC	05/03/40	23/04/63	23/11/87	05/05/88	Dr. R.H.L.H. Div.
23	S.K. MUKHERJEE	OC	06/04/42	19/01/62	06/04/88	06/04/88	NLD Calcutta
24	C. SRINIVASAN	OC	01/11/42	21/09/62	10/06/89	29/06/88	MCED-I Madras
25	K.L. SAMPATHLAL	OC	12/12/39	04/04/60	13/09/88	23/09/88	MCED-III Hyderabad

NIC/CPWD

67

- 23 = 25 -  
- 4 -

77. LEAH MEHAR	ST	02/04/46	27/04/64	01/08/91	23/08/91	ECO-II
78. T.S. SACHDEV	OC	10/01/42	20/03/78	11/11/91	06/12/91	Dr. R.M.L.H. Div.
79. S. SACHA	OC	01/04/52	07/11/78	11/11/91	30/05/92	ACQ-V
80. L. PRASAD	OC	08/03/44	06/02/63	05/12/91	18/05/92	Cooch Behar C. Div-I.
81. SANT SINGH	ST	01/02/42	28/10/65	22/01/92	10/02/92	Patna C. Div-I.
82. SHAM CHAND	OC	14/06/39	01/09/55	07/02/92	27/02/92	Srinagar Cent. Civil Div. Jammu.
83. SATAN SINGH	SC	02/11/44	13/09/63	07/02/92	03/04/92	GTBHE Div. I
84. L. VENKATESH	SC	06/05/39	11/01/65	21/02/92	11/03/92	Hort. East Div...
85. G. S. KULKARNEE	OC	15/12/50	06/02/70	28/02/92	15/06/92	B.C. Div-II (on Deputation CAT.
86. N. D. SHATIA	OC	15/04/40	17/11/60	28/02/92	09/03/92	Pune C. Elect Div.
87. S. K. BANIK	OC	14/01/52	04/02/74	28/03/92	01/05/92	Indore C.E. Div.
88. JABU PRASAD	OC	05/02/42	27/11/62	31/03/92	27/04/92	CCD-VI, Calcutta.
89. S. K. NASKAR	OC	02/01/44	03/01/63	31/03/92	08/04/92	PCED, Patna
90. G. C. SARAH	SC	01/08/51	29/01/79	31/03/92	14/05/92	Bhubaneshwar Central Div- II.
91. K. R. BARO	OC	01/01/45	/ /	31/03/92	30/04/92	GCO Gauhati
92. A. S. DAS	ST	01/12/46	19/07/69	31/03/92	08/05/92	GCED-II Gauhati
93. B. SANKAPATHY BABU	OC	11/08/55	18/11/77	31/03/92	10/06/92	CCD-II, Calcutta
94. SARENG SINGH	ST	28/05/61	20/12/79	18/05/92	06/11/92	HCD-II, Hyderabad
95. ARVIND KUMAR	OC	05/09/42	20/02/63	20/06/92	28/12/92	PCD-II, Patna.
96. SMT. POONAM KAPIL	OC	13/02/54	15/07/75	17/07/92	/ /	Lucknow C.E. Div.
97. DANIEL NATHANIAL	OC	02/01/58	04/09/86	31/08/92	09/09/92	PWD-18 (DA)
98. KISHAN CHAND	OC	31/01/54	02/02/76	31/08/92	01/09/92	Exbhn-Div.
99. DEVI RAM	OC	04/07/58	16/03/78	31/08/92	29/09/92	EO-V
100. SMT. MEENA JOSHI	SC	05/02/49	18/04/69	31/08/92	29/09/92	Simala C.O.
	OC	12/05/55	03/09/77	31/08/92	29/09/92	PWD-Div-10.

NIC/CPWD

68

Government of India - 26 -  
Central Public Works Department

ANNEXURE - E

No.9(59)/Seniority/HC/SE(C)/ER/00/Cal/ 1121

Dated: 16-11-2000

Office Memorandum

A Provisional Seniority list of Head Clerks in CPWD under Region 'B' as on 01.07.2000 is sent herewith. All SEs/ SE(P&A)/ EEs (i/c FO to CE) in CPWD Eastern Zone, IBB Zone, IBB(Mtc.), Patna Zone, North Eastern Zone are requested to circulate the list to all concerned staff and any discrepancies if found, with regards to factual position of ~~the~~ such as DOB, Date of Appointment /Attached Office etc. etc. received from the individual may please be checked with reference to entries in the Service Books of staff and sent to this office for necessary action of this office.

Encl: One

(D.Horo)

Superintending Engineer, Co-Ordination

Copy to:

- 1) The Director General of Works, Central P.W.D., Nirman Bhawan, NEW DELHI-110011
- 2) The Additional Director General of Works(ER), CPWD, Calcutta-20
- 3) The Chief Engineer, EZ-I, II, NEZ, EI, IBBZ, IBBMZ under Region 'B'
- 4) All the Superintending Engineers including Superintending Engineer(P&A), Civil & Elect. Region 'B'
- 5) All the Executive Engineer(Civil & Elect.) under Region 'B'.
- 6) The Secretary, CPWD Staff Association, (EZ), Calcutta-20
- 7) The Regional Secretary, CPWD Non-Gazetted staff Association, Calcutta -20.

Superintending Engineer, Co-Ordination

OFFICE OF THE EE (E)

GEID-II C.P.W.D., City-15

Dy. No. 2956

Date 23/12/2000

let

39

Office of the Superintending Engineer, Co-Ordination Circle, CPWD, Eastern Region,  
Nizam Palace, Calcutta-700020

Attest  
[Signature]  
[Signature]

# Provisional Seniority List of Head Clerk in Region "B" as on 01/07/2000

S.No.	Name	Category	DOB	DOEinCPWD	DOEinGrade	DOCONF	DOSeniority	Office	Remarks
1)	N. Bhatta	UR	01/11/49	24/08/68	18/03/91				
2)	P. K. Guha	UR	08/03/44	06/02/66	10/05/92	01/03/77	05/12/90	GCED-I, Guwahati	
3)	G. C. Borah	UR	01/01/45	17/08/65	30/04/92		05/12/91	BTBhawan P. Divn(EI), Ca	
4)	Reba Deb	UR	01/03/43	05/10/62	05/07/93	01/07/80	31/03/92	GCD, Guwahati	
5)	U. P. Verma	UR	05/10/43	21/02/62	14/12/94	01/09/82	29/06/93	CCED-V, Cal	
6)	P. G. Chakraborty	UR	01/12/45	07/07/65	03/02/95	01/08/84	02/12/94	DCD, Dhanbad	
7)	A. K. Roy	UR	01/02/48	29/07/68	07/12/94	01/08/84	02/12/94	CCED-I, Cal	
8)	E. Beck	ST	03/05/41	17/06/53	27/05/95	01/08/68	02/12/94	CCED-III, Cal	
9)	U. C. Das	SC	01/03/44	09/12/65	09/12/94	06/09/82	02/12/94	CCD-VIII, Cal	
10)	H. S. V. Ramamurthy	UR	01/07/46	02/07/72	01/06/95	01/08/84	02/12/94	AAWD, Guwahati	
11)	Ratna Gupta	UR	17/01/43	05/04/61	20/10/95	01/08/84	23/03/95	BCED, Bhubaneswar	
12)	U. D. Rao	UR	15/07/56		26/04/96		23/03/95	FO to CE(EZ-I), Cal	
13)	G. C. Day	UR	10/11/40		30/03/96		21/03/96	Project Divn, Guwahati	
14)	S. K. Gayen	SC	09/10/52	22/01/79	06/12/97	01/04/84	21/03/96	NLD, Cal	
15)	A. K. Sarkar	UR	03/08/55		22/04/96		21/03/96	MCD-I, Malda	
16)	P. C. Chakraborty	UR	05/03/47		13/09/96		21/03/96	BCD-I, Bhubaneswar	
17)	A. K. Paul	UR	31/12/46		23/04/96		21/03/96	BCD, Barasat	
18)	Simon Lakra	ST	01/02/43		15/07/96		21/03/96	SE(P), EZ-I, Cal	
19)	B. B. Roy	UR	05/11/42				31/05/96	RCD, Ranchi	
20)	S. Chakraborty	UR	01/12/40				05/06/97	PCEC, Patna	
21)	P. K. Mitra	UR	20/11/40				05/06/97	CCC-II, Cal	
22)	K. Rava	ST	27/10/46				05/06/97	SE(P), EI, EZ, Cal	
23)	K. C. Ghosh	UR	01/01/41		12/06/97		05/06/97	MCD-I, Imphal	
24)	B. K. Dutta	UR	12/02/48		14/07/97		05/06/97	Project Divn, Guwahati	
25)	A. K. Mazumdar	UR	10/01/49		09/06/97		05/06/97	CCED-II, Cal	
26)	G. C. Das	SC	01/03/43		16/07/97		05/06/97	CCC-I, Cal	
							05/06/97	CCED-VI, Cal	

Sl.No.	Name	Category	DOB	DOEinCPWD	DOEinGrade	DOCONF	DOS
28)	R. K. Chowdhury	SC	04/08/44				05/06/97
29)	R. K. Mondal	SC	08/10/42		21/07/97		05/06/97
30)	S. C. Sarkar	SC	08/09/49				05/06/97
31)	B. C. Sarkar	UR	01/03/41		06/06/97		05/06/97
32)	D. Tham	ST	01/04/42		27/06/97		05/06/97
34)	R. K. Ukil	UR	09/03/42		05/06/97		05/06/97
35)	Sankar Dhar	UR	04/04/62				05/06/97
36)	A. C. Sharma	UR	01/01/42		25/06/97		05/06/97
37)	A. K. Das	UR	03/02/45		30/06/97		05/06/97
38)	Amal Kr. Das	UR			09/07/97		05/06/97
39)	M. K. Biswas	SC	29/01/54		03/07/57		05/06/97
41)	P. Bhadui	UR	03/11/40	04/03/63	12/07/99	01/03/82	30/06/99
42)	K. Mullick	SC	09/06/43	05/12/62	30/06/99	01/08/84	30/06/99
43)	S. S. Sinha	UR	13/05/41	05/09/61	02/07/99		30/06/99
44)	S. K. Chatterjee	UR	31/03/42	19/12/62			30/06/99
45)	Baleswar Roy	SC	02/01/44	04/03/63	30/06/99	01/08/68	30/06/99
46)	R. M. Debnath		25/03/57	10/08/82	23/07/99		30/06/99
47)	Samar Biswas	SC	11/01/58	16/06/80	29/07/99		30/06/99
48)	Tapas Mukherjee	UR	28/02/54	04/08/79	14/07/99		30/06/99
49)	Srinarayan Prasad	UR	03/02/44	08/01/63	12/10/99		21/09/99
50)	Karunamoy Das	SC	19/10/42	08/05/63	27/09/99		21/09/99
33)	W. D. Bhutia	ST	14/12/40		06/06/97		05/06/97
27)	A. Majumdar	SC	17/09/40		06/06/97		05/06/97
40)	B. Ram	SC	22/10/40		27/01/98		08/07/97

(D. HOREY)  
Superintending Engineer  
Coordination Circle (ER)

contacts

Sl. No	Name S/Shri	From	To	Remarks
1.	P.R.M. Kurup	Trichu Central Div.	Trivandrum Central Circle.	vice Sh. Rajagopalan
2.	G. Satyanathan	SE(Coord) Chennai.	SE, Central Circle.II Chennai	vice Sh.C. Kulsh Kharan (Retd. 31.7.2002)
3.	S.N.R. Balasubramanian	MC Div. Chennai	Mysore Central Circle	Against existing vacancy
4.	Mrs. Anju Chadha	CE(NDZ.II)	CE(ODZ)NR	Against existing vacancy
5.	N.B. Warik	Mumbai Central Div.6	Siliguri SSW, IBBZ	Against existing vacancy
6.	R.K. Kakar	EE(Consultation)	CE(P&P)	Vice P.L. Swami
7.	Smt. A. Geroqe	President Estates.	Central Store Circle, Netaji Nagar	Against existing vacancy
8.	S. Ravi Chandra	HCED.III	CE(Elect.) Hyderabad	Against existing vacancy
9.	Smt. Reba Dev	CCED.V Kolkata	SE(Coord) Central Circle, Kolkata	Against existing vacancy
10.	Krn. Neelam Walia	ECD.I	DCC.8	Against existing vacancy
11.	Ram Kanwar	PWD Circle.II	Chandigarh C. Circle	Against existing vacancy
12.	Sunil Mathur	Hindan CED, Ghazibad	Lucknow Central Circle.	Against existing vacancy
13.	Kiranjeet Salwan	Hort.(South)	Jalandhar C. Circle	Against existing vacancy
14.	Dhan Pat	DCEC.VI	SE(Elect.) CEC, Patna	Against existing vacancy
15.	A.K. Khanna	PWD ED.I	Allahabad,	vice Sh. J.C. Gupta retire on 31.7.02
16.	Smt. Suman Lata Sharma	ED.III, Delhi.	SE(Elect.) CCEC.II, Kolkata.	Against existing vacancy
17.	Smt. Raj Kumari	PWD Div.3 I	Silchar Central Circle.	vice Sh. E.M. C. Fernandes (refused promotion)
18.	Nek Ram	Delhi	SE, Assam Central Circle.I	Against existing vacancy
19.	D.L. Siddam	Nagpur Central Div.	Nagpur Elect. Circle.	Against existing vacancy
20.	B.B.L. Phull	NDZ.I	DCEC-2	vice Smt. Meena Joshi.
21.	Smt. Meena Joshi	DCEC.II	PWD Circle.8	Against existing vacancy
22.	S. Rajagoplan	Trivandrum	SE(Coord) Chennai.	vice Sh. P.R.M. Kurup
23.	P.L. Swami	CE(P&P)	NDZ.I	Vice B.B.L Phull
24.	N.D. Bhatia	Bhopal CEC, Bhopal	Indore Central Circle	Vice Sh. U.K. Srivastava
25.	U.K. Srivastava	Indore Central Circle.	Bhopal CEC, Bhopal	Vs. Sh. N.D. Bhatia.

Attn: E-1  
JL  
Advocate



- 31 - 29

All concerned officers are requested to relieve the promotes without waiting for their substitutes to join new assignments by making internal arrangements, that is to say by allowing handing over charge to the senior UDCs where necessary, subject to the condition that they are found fit from Vigilance angle by the concerned Superintending Engineers.

Officials concerned are required to join their units of posting immediately and send 2 copies of joining report to this office. If no information regarding joining as Office Superintendent is received within 30 days of the issue of the order, further necessary action will be taken. They should also send certification of having written their self-appraisal and the CRs in respect of the officials working under them.

The officials on promotion may exercise their option under FR-22-1(a)(i) for pay fixation within a period of one month from the date they assume the charge of the higher post.

*Dr. C.V. DHARMARAO*  
(Dr. C.V. DHARMARAO)  
DY. SECRETARY ADMN.

To

1. All concerned PAO.
2. All concerned Superintending Engineer.
3. All Supdt. Engineers(Coord) with the direction that the substitute of the Head Clerks being promoted may be given immediately to avoid delay in filling up the post of O.S.
4. All official concerned.
5. PA to DA
6. Hindi Shakhya (for Hindi version).

*Atk*  
*Adv*

merjee.  
Ghose

(SEE RULE 42<sup>4</sup>)

CENTRAL ADMINISTRATIVE TRIBUNAL  
(GUWAHATI BENCH)

ORDER SHEET

Original Application No. 273/2002

Misc. Petition No.                     

Contempt Petition No.                     

Review Application No.                     

Applicants. Sri G. C. Borah

-Vs-

Respondant(s) U. O. I. Eom

Advocate for the Appellant(s) Mr. A. Ahmud

Advocate for the Respondant(s) C&C

Notes of the Registry

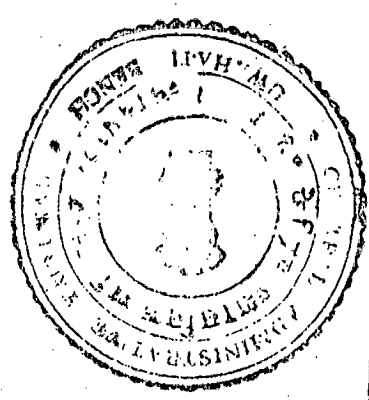
Date

Order of the Tribunal

27.8.02

This is an application under section 19 of the Administrative Tribunal Act., 1985 assailing the legitimacy of the Office order No.155 of 2002 promoting the 25 Head Clerks from the scale of Rs. 5000-8000 to the scale of pay of Rs.5500-175-9000/- by Impugned order No.5/20/2002-E.C.IV(C) dated 6.8.2002 on regular basis. The applicant contended that over looking the seniority the Respondents however, promoted the officers junior to him who are junior in all India seniority as well as regional seniority.

Contd/-



*Handwritten signatures and initials at the bottom of the page.*

Mr. A. Ahmed, learned counsel for the applicant submitted that the applicant earlier by order dated 17th April, 1998 was promoted to the post of office Superintendent from the scale of Rs. 5000-8000/- to the scale of Rs. 5500-175-9000/- on regular basis. However, the said promotion was not accepted by the applicant on personal ground. The learned counsel for the applicant also contended that the impugned order of promotion over looking the genuine claim of the applicant is the violation of Article 16 of the Constitution of India and hence the impugned order liable to be set aside. Mr. A. Deb Roy, learned Sr. C.G.S.C. for the Respondents stated that the applicant ought to have preferred appeal or representation before moving this Tribunal by this application.

Upon hearing learned counsel for the parties, we are of the view that the applicant should file representation or appeal before the authority assailing the order so that the authority at the first instance can look into the matter. Accordingly, We direct the applicant to prefer an appeal or a representation before the Respondent No.2 within ten days from the date of receipt of the order. If such application is filed by the R applicant, the Respondents shall consider the same and pass a reasoned order within one month from the date of receipt of the representation or appeal and communicate the same to the applicant. It is needless to say that it will always be open to the applicant to raise all the grounds which

*[Handwritten signatures and initials]*  
A. Ahmed  
A. Deb Roy

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

contd  
27.8.02

advanced  
he has already taken in this  
application.

Subject to the observation  
made above, the application is  
disposed of. There shall, however, be  
no order as to costs.



Sd/ VICE CHAIRMAN  
Sd/ MEMBER (Adm)

TRUE COPY

*W. S. ...*  
*28/8/02*

Section Chief (A)  
ATTORNEY GENERAL  
Ministry of Justice  
Ottawa, Ontario  
K1P 8L9

*Att. Gen.*  
*[Signature]*  
*Att. Gen.*

To  
The Director General (Works)  
Central Public Works Department  
Nirman Bhawan,  
New Delhi - 110011

(Through Proper Channel)

Reference: Original Application No. 273 of 2002,

Shri Girish Chandra Borah,

Applicant,

-Vs-

The Union of India & Ors.

-Respondents

Subject: Representation submitted by the Applicant as per Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati, Order Dated.27.08.2002 passed in original application No.273 of 2002.

Sir,

Most respectfully, with reference, to the above subject I submit this representation for your kind consideration as follows.

- 1) That Sir, I was appointed as Lower Division Clerk in the Central Public Works Department in the year 1965. I was promoted to Upper Division Clerk in the year 1979 on Merit basis. After that I was promoted to the post of Head Clerk on Merit basis vide Office Order No.9(55)92/SE(C)/Cal/2477 dated.31.03.1992. Now I am working as Head Clerk under the Office of the Executive Engineer (E), Guwahati Electrical Division No.II, Central Public Works Department, Guwahati - 15.
- 2) That Sir, I was promoted to the post of Office Superintendent vide Office Memo No.56/98 IV(C) under office order No.68 of 98 dated 17th April 1998. In this Office Order my name appeared in Serial No.15. It is pertinent to mention here that said promotion list it is made clear "The Individual Concern that in case that do not join as Circle Office Superintendent at the place of posting, it will be presumed that they are not interested in the promotion for the post and that would amount to refusal of promotion and which will render them debar for further consideration for this post for the period of one year. The written refusal of promotion if any by the promotes may be forwarded to this Directorate as soon as it is given. In case the promotes do

Att. 1  
JG  
Adv. 6

not give their refusal in writing, they should be relieved of their duties immediately after expiry of the period of 45 days and LPC issued".

3) That Sir, due to my personal problem I refused the said Promotion Order dated 17th April 1998 of Office Superintendent vide his letter dated 12th May 1998. As per condition laid down in the said promotion I am eligible for promotion to the post of Office Superintendent after one year from issuing the earlier Promotion Order.

4) That Sir, as per revised Seniority List dated 30.03.1997 of Head Clerk in CPWD at all India Level as 01.01.1998 my position is in serial No.90, and as per Provisional Seniority List dated 16.11.2000 of Head Clerks in CPWD under Region B as on 01.07.2000, my position is in Serial No.3.

5) That Sir, another promotion order of Office Superintendent was issued vide No.5/20/2002-ECIV (C) under Office Order No.155 of 2002 dated 6/7 August 2002. In the said promotion order my name was not included, although my name is to be included for next promotion for the year 1999, i.e. after one year of my refusal of promotion to the post of Office Superintendent as per earlier promotion order issued by you dated 17.04.1998. Most surprisingly altogether 13 junior persons have superceded me vide above-mentioned promotion order dated 6/7 August 2002.

6) That Sir, I am the senior most head Clerk in this region. As such being aggrieved by this I filed Original Application No.273 of 2002 before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati, Challenging the office Memo No.5/20/2002-ECIV (C) issued under the Office Order No.155 of 2002 new person has been promoted to the post of Office Superintendent Grade-II by Superceding me.

7) That Sir, the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati vide his order dated 27.08.2002 directed me to prefer an Appeal or a representation before you within 10(ten) days from the date of receipt of the order. If such application is filed by me, the respondents of the Original Application No.273 of 2002 shall consider the same and pass a reasoned order within one month from the date of receipt of the representation or appeal and communicate the same to me. It is also stated by the Hon'ble Tribunal to raise all the grounds, which I have already advanced in the said Original Application.

It is therefore, respectfully prayed your Honour may be pleased to promote me to the post of Office Superintendent Grade-II with all retrospective effect and financial benefit from the date when my junior has been promoted as per facts and circumstances narrated above. There

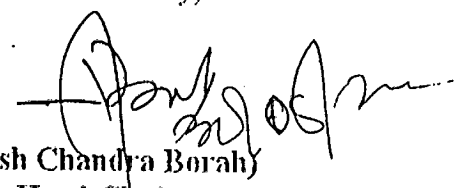
*[Handwritten signature]*  
*[Handwritten signature]*  
*[Handwritten signature]*

one available vacancy as Office Superintendent is laying under Assam Central Circle-II, C.P.W.D., Guwahati - 5 as I am going on superannuation on 31.12.2004.

Thanking you, with anticipation.

Enclosed herewith copy of Order dated.27.08.2002 passed in Original Application No.273 of 2002 by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati.

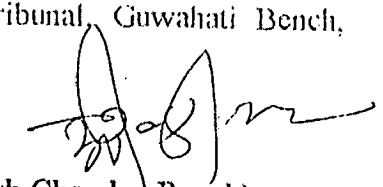
Yours faithfully,

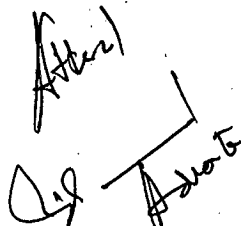
  
(Girish Chandra Borah)  
Head Clerk

Office of the Executive Engineer (E)  
Guwahati Electrical Division No.II  
C.P.W.D., Guwahati - 15

Copy for information and necessary action please:

1. The Secretary to the Government of India, Ministry of Urban Affairs, New Delhi - 110011. Enclose: Copy of Order dated.27.08.2002 passed in Original Application No.273 of 2002 by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati.
2. The Additional Director General of Works, Eastern Region, C.P.W.D., Nizam Palace, Kolkata. Enclose: Copy of Order dated.27.08.2002 passed in Original Application No.273 of 2002 by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati.
3. The Superintending Engineer, Co-ordination Circle, C.P.W.D., Eastern Region, Nizam Palace, Kolkata - 700020. Enclose: Copy of Order dated.27.08.2002 passed in Original Application No.273 of 2002 by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati.
4. The Superintending Engineer (E), Guwahati Central Electrical Circle, C.P.W.D., Guwahati - 21 Enclose: Copy of Order dated.27.08.2002 passed in Original Application No.273 of 2002 by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati.

  
(Girish Chandra Borah)



SL NO 1 (P.)

No.2/19/2002.EC.IV  
Government of India  
Directorate General of Works  
Central Public Works Department  
Nirman Bhawan, New Delhi  
\*\*\*\*\*

Dated the 23 September, 2002.

To

The Ex. K.Keshivan,  
Chief Engineer(E)EZ,  
CPWD, 234/4 AJC Bose, Road,  
Nizam Palace,  
Kolkata-20.

Subject:-O.A.No.273/02 of CAT, Guwahati Bench -- Shri G.C. Borah, Head Clerk,  
GCED.II, CPWD, Guwahati Vs. Union of India & Others regarding  
promotion of Office Superintendent:

Sir,

Please refer to your letter No.26(1)/98-Admn. Vol.II dated 12.9.02 on the subject mentioned above. In this connection, it is stated that the case of Shri G.C. Borah, Head Clerk has been examined. But in view of his own written request for refusal to shoulder higher responsibility his case for the promotion to the post of Office Superintendent was not considered.

However, in view of his fresh willingness, his case could be considered in the next DPC. Shri G.S. Borah, Head Clerk may please be informed accordingly.

Yours faithfully,

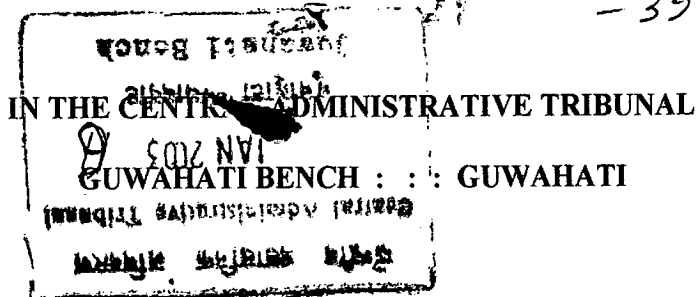
(I.P. NAGPAL)  
SECTION OFFICER

High Court case  
view of 1/2/02  
38/02/02  
PL put up with ref  
1/3/02

2049  
04/11/02

Attached  
1/2/02





In the matter of :

O.A. No. 362/2002

G.C.Borah

.....Applicant.

-Vs -

Union of India and others

.....Respondents.

Written Statements for and on behalf of Respondents Nos. 1, 2, 3, 4,  
and 5.

I, Pyare Lal, Superintending Engineer(Electrical), Central Public Works  
Department, Guwahati-21 do hereby solemnly affirm and say as follows :

1. That I am the Superintending Engineer(Electrical), Guwahati Central Electrical Circle, C.P.W.D., Guwahati and Respondent No.5 in the above case and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statements may be deemed to have been denied. I am authorised to file the written statements on behalf of all the respondents.
2. That with regard to the statements made in para 1, 2, 3, 4.1, 4.2 and 4.3 of the application the respondents beg to offer no comments.

Contd.....P/2

3. That with regard to the statements made in para 4.4, of the application the respondents beg to state that the applicant's name was considered in the DPC held in 1998 and subsequently order for his promotion was issued on 17.4.98 vide O.M. No.5/6/98-EC-IV(C) office order No.68 of 1998. The applicant refused to accept the promotion/shoulder higher responsibility on personal grounds vide his representation dated 12-5-1998 addressed to Director General of Works, CPWD, New Delhi. The date of letter of the applicant for refusal of promotion is 12.5.98 and not 17.5.98. Therefore his name was not considered for promotion for one year as per rules. Subsequently another DPC was held in March 2001 and he was found unfit for promotion to the post of office superintendent based on ACR grading.

A copy of letter dated 12.5.98 is annexed hereto and marked as Annexure- 'A'.

4. That the respondents have no comments to the statements made in paragraphs 4.5 of the application.
5. That with regard to the statements made in para 4.6, of the application the respondents beg to state that DPC was held in March 2001 and the applicant was found unfit for promotion based on ACR grading. The next DPC was held in July 2002 and his name could not be considered due to oversight.
6. That with regard to the statements made in para 4.7, of the application the respondents beg to state that this is a matter of record.
7. That the respondents have no comments to the statements made in paragraphs 4.8 of the application.

Contd....P/3....



8. That with regard to the statements made in para 4.9, of the application the respondents beg to state that are not correct. As per practice the representation(s) are being processed and considered by the competent authority. Only after getting the orders of the competent authority, the reply are being given/communicated by the officers to whom such works are assigned. However, the letter No.2/19/2002-EC-IV(C) dated 23.9.2002 stands withdrawn.

9. That with regard to the statements made in para 4.10 of the application the respondents beg to state that these are not correct The applicant's name was considered in the DPC held in 1998 and subsequently orders for his promotion were issued on 14-7-98 vide O.M. No.5/6/98-EC-IV(C) office order No.68 of 1998. The applicant refused to accept his promotion on personal grounds vide his application dated 12.5.98. His name was, therefore, not considered for promotion for one year as per rules. Subsequently, another DPC was held in March 2001 and he was found unfit for promotion based on ACR grading. The next DPC was held in July 2002 and his name could not be considered due to oversight. The applicant's name will therefore, be considered in review DPC to be held within 3 months' time, and if found eligible he will be given benefits with retrospective effect as per rules taking into account his seniority and ACRs. Consequently, letter No.2/19/2002-EC-IV(C) dated 23.9.2002 stands withdrawn.

10. That with regard to the statements made in para 4.11, of the application the respondents beg to state that are not correct. The name of the applicant was considered in subsequent DPC held in March 2001 and he was found unfit for promotion based on ACR grading. The name of Shri Borah could not be considered in the DPC held in July 2002 due to oversight. There is no colourable exercise of power to accommodate the persons in own interest.

11. That with regard to the statements made in para 4.12, para 9 and 10 above may kindly be referred to. It has not been repeated here for sake of brevity. There is no malafide or illegal intention of the respondents to deprive the applicant from his legitimate rights. The name of the applicant could not be considered due to oversight.
12. That with regard to the statements made in para 4.13 of the application the respondents beg to state that the applicant's name will be considered in a review DPC to be held within 3 months' time, and if found eligible, he will be given benefits with retrospective effect as per rules taking into accounts his seniority and ACRs. Consequently letter No. 2/19/2002-EC-IV(C) dated 23.9.2002 stands withdrawn.

A copy of DG(W) D.O. letter No. 2/19/2002-EC-IV(C) dated 5.12.2002 is enclosed as Annexure - 'B'.
13. That the respondents have no comments to the statements made in paragraphs 4.14 of the application.
14. That with regard to the statements made in para 4.15 of the application the respondents beg to state that the same will be considered and examined by the review DPC to be held within 3 months' time considering the name of Shri Borah for promotion and if found eligible he will be given benefits with retrospective effect as per rules taking into account his seniority and ACRs.
15. That with regard to the statements made in para 4.16, of the application the respondents beg to state that are not correct. There is no malafide or illegal intention. The name of the applicant could not be considered due to oversight.

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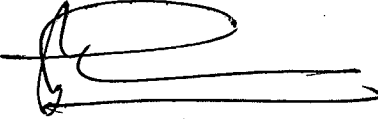
16. That with regard to the statements made in para 4.17, of the application the respondents beg to state that the applicant's name will be considered in review DPC to be held within 3 months' time, and if found eligible, he will be given benefits with retrospective effect as per rules taking into account his seniority and ACRs.
17. That the respondents have no comments to the statements made in para 4.18 of the application.

Verification.....

A handwritten signature in black ink, consisting of a stylized 'P' with a horizontal line extending to the right.

I , Pyare Lal, Superintending Engineer(Electrical), Guwahati Central Elect Circle, Central Public Works Department, Guwahati, being authorised do hereby solemnly affirm and declare that the statements made in paragraphs 1, 2, 4, 7 & 13 of this written statement are true to my knowledge, those made in paragraph 3-6, 5 - 12 + 14 - 16 being matters of record are true to my information derived therefrom and those made in the rest are humble submission before the Hon'ble Tribunal.

And I sign this verification on this 7th day of January, 2003 at  
Guwahati.

  
Deponent.

(ER. PYARE LAL)  
Superintending Engineer (El.)  
Guwahati Central El. Circle,  
CPWD, Guwahati-21

7

The Director General of Works,  
G.P.W.D., Berman Bhowan,  
Map Dohi-110011

Dated Guwahati the 12th May '98

THROUGH PROPER CHANNEL

Sub : Promotion to the post of Office Superintendent  
- Acknowledgement thereof.

Sir,

While acknowledging your Office Order No. 68 of 1998 dated 17.4.1998, I must thank you for your kind offer of my promotion to the post of Office Superintendent in the Guwahati Central Electrical Circle, G.P.W.D., Guwahati-21.

That Sir, with due apology, I beg to inform you that -

- 1) increased illness of my permanently disabled child which has increased my tension,
- 2) the chronic Hypertension of my wife, and
- 3) consequential illness (Hypertension) of myself has compelled me very reluctantly to defer my acceptance of the post of Office Superintendent for the time being, as I may not do justice to serve as Office Superintendent with such a higher responsibility.

I, therefore, hope that you will very kindly excuse me for the same.

With regards.

Yours faithfully,

( B. C. Borah )

Head Clerk

Guwahati Central Division

G.P.W.D., Guwahati-21

Attended  
MR Chandra

Addl. Central Govt.  
Standing Commr

By FAX / MOST IMMEDIATE / CAT CASE

OFFICE ORDER No. 2/19/2002-EC IV

आमंत्रित निदेश

DIRECTOR (ADMINISTRATION)

के.पी.सी. निदेश निदेश

CENTRAL PUBLIC WORKS DEPARTMENT

निदेश प्रशासनालय

DIRECTORATE GENERAL OF WORKS

निदेश भवन

NIRMAN BHAWAN

New Delhi - 110011

200

New Delhi - 110011, the 5<sup>th</sup> Dec., 02 200

**A. MADHUKUMAR REDDY**  
Tel No.3018964

Dear Shri Pyare Lal,

I am writing to you with reference to OA No 302/02 fixed for hearing on 11.12.02 in the Guwahati Bench of CAT filed by Shri G.C. Borah. In the said OA, Shri Borah has claimed benefits of promotion to the post of Office Superintending since 1999 and quashing of OM No.5/20/02-EC-IV(C) dated 6/7<sup>th</sup> August, 2002 since his name was not considered in the DPC (Departmental Promotion Committee) held during 2001 and in July, 2002. You are requested to submit a reply on the behalf of DG(W) in CAT Guwahati Bench on the following lines.

Shri G.C. Borah's name was considered in the DPC held in 1998 and subsequently orders for his promotion were issued on 17.4.98 vide OM No.5/6/98-EC-IV(C) Office Order No.68 of 1998. Shri Borah refused to accept his promotion on personal grounds. His name was, therefore, not considered for promotion for one year as per Rules. Subsequently, another DPC was held in March, 2001 and he was found unfit for promotion based on ACR grading. The next DPC was held in July, 2002 and his name could not be considered due to oversight. Shri Borah's name will, therefore, be considered in a review DPC to be held within three months' time, and if found eligible, he will be given benefits with retrospective effect as per Rules taking into account his seniority and ACRs. Consequently, letter No.2/19/2002-EC-IV(C) dated 23.9.2002 stands withdrawn.

Accordingly, Government Counsel may be engaged immediately and the above details be apprised immediately.

With best wishes.

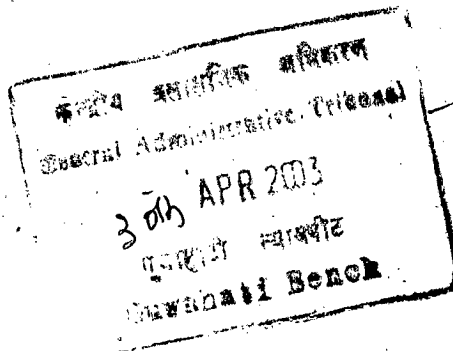
Yours sincerely,

(A. MADHUKUMAR REDDY)

Shri Pyare Lal,  
Superintending Engineer(Elect.),  
Guwahati Central Elect. Circle,  
C.P.W.D.,  
Bamuni Maidan,  
GUWAHATI-781021.

Attested  
H.A. Chandra  
Addl. Central Govt.  
Standing Commr.





Filed by  
Sri Girish Chandra Borah  
applicant  
through  
D.L. Ahmed  
90

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH AT GUWAHATI.

ORIGINAL APPLICATION NO. 362 OF 2002.

B E T W E E N

Sri Girish Chandra Borah

- Applicant

-Versus-

The Union of India & Ors.

-Respondents.

IN THE MATTER OF:

Rejoinder on behalf of the  
applicant in the above noted  
Original Application No. 362 of  
2002.

The humble applicant above named  
begs to file the rejoinder as  
follows:

*[Signature]*

Before submitting the Rejoinder the applicant begs, most respectfully to submit the background of the above Original Application. The applicant was promoted to the post of Head clerk in the year 1992 and presently he is serving in the Office of the Executive Engineer (El.), Guwahati Electrical Division No. II, CPWD, Guwahati-15 under the Respondents. He is now aged about 58 years; he is due for retirement in December 2004. He filed this Original Application for refusal of the respondents to promote him to the rank of Office Superintendent-Grade-II. It is to be stated that the applicant was promoted to the rank of U.D.C. and Head Clerk on consideration of merit as per Rules. It may be stated that applicant was promoted by the respondents to the rank of Office Superintendent-Grade-II in 1998 he having fulfilled the necessary criteria including good remarks in ACR. But due to personal problem the applicant had to forgo the said promotion and in these circumstances the authority is to promote the applicant again after one year in 2000. The Respondents No. 1, 2, 3, 4 and 5 submitted written statement in the above Original Applicant No. 362 of 2002 on

*Paras*

7<sup>th</sup> January 2003. In the said written statement the Respondents have clearly stated that the applicants name was left out of consideration by mistake and stated that it will be considered in review D.P.C. to be held within three months and if found eligible he would be promoted with retrospective effect as per rules taking into account his seniority and ACRs. It may be stated that Office Superintendent-grade-II is a selection post. Accordingly the above said case was fixed for final hearing by the Hon'ble Tribunal. But at the time of hearing the counsel of the respondents submitted a letter which discloses that the review D.P.C. was held on 03-01-2003 and not found by D.P.C. fit for promotion. It is to be noted that in the written statement submitted by the Respondents on 07-01-2003, the respondents have not mentioned about the said review D.P.C. which was held on 03-01-2003. It has also been admitted by the Respondents that the name of Sri G.C. Borah Head Clerk was inadvertently left out by the D.P.C. due to oversight in the last D.P.C. held on 11-07-2002. So this reviewed D.P.C. was held on 03-01-2003 in order to rectify the mistake and omission on their

- Borah

part. Thereafter the Hon'ble Tribunal was pleased to call for records and ACRs of the Applicant from the Respondents to satisfy about bona-fide of the refusal to promote the applicant and the Respondents have produced the entire records and ACRs of the Applicant. The Hon'ble Tribunal also please to allow the counsel of the Applicant to inspect the records. The Counsel of the Applicant after verifying the records found some gross illegality and also some violation to the provision of CPWD Manual Vol.-I. As well as the various office memorandums relating to writing of ACR which is other than bona-fide causing grave injustice to the Applicant in the fag end of the service career of the Applicant.

The Gradation Chart in respect of the applicant submitted by the Respondent before the Hon'ble Central Administrative Tribunal, it may be seen the year wise Grading in C.R., i.e., from 1997-98 to 2001-2002 as under:

---

*[Signature]*

- a) (i) 01.04.1997 to 23-07-1997 Very Good
  - (ii) 24-07-1997 to 31-03-1998 Average
  - b) 01-04-1998 to 31-03-1999 Average
  - c) 01-04-1999 to 31-03-2000 Average
  - d) 01-04-2000 to 31-03-2001 Average
  - e) (i) 01-04-2001 to 03-10-2001 Very Good
  - (ii) 05-10-2001 to 28-01-2002 Good
  - (iii) 29-01-2002 to 31-03-2002 Not required
- /not available

However, the report of the Reporting Officer and Reviewing Officer of ACR for the aforesaid period were as follows:

	<u>Reporting Officer</u>	<u>Reviewing Officer</u>
a) (i) 01-04-1997 to 23-07-1997	Very Good	Very Good ✓
(ii) 24-07-1997 to 31-03-1998	Average	Average
b) 01-04-1998 to 31-03-1999	Average	Average
c) 01-04-1999 to 31-03-2000	Very good	Average
d) 01-04-2000 to 31-03-2001	Very good	Average
e) (i) 01-04-2001 to 03-10-2001	Outstanding	Very good
(ii) 05-10-2001 to 28-01-2002	Good	Good
(iii) 29-01-2002 to 31-03-2002	no report given	

*Amal*

The applicant begs to state that the Officer who wrote the ACR (Reporting Officer) for the period 23-07-1997 to 31-03-1998 and 01-04-1998 to 31-03-1999 was the same person. Similarly the Reviewing Officer who assessed the report for the period 01-04-1998 to 31-03-1999, 01-04-2000 to 31-03-2002 who reported as Average was the same person. Further the reporting officer for the period 01-04-2001 to 03-10-2001 reported the ACR to be outstanding and the subsequent Reviewing Officer reported as very good. Thereafter, also for the period 05-10-2001 to 28-01-2000 the ACR of the applicant was written as good.

It may be stated that the Reporting Officer Sri R C Rangray, Executive Engineer who wrote the ACR for the period from 23-07-1997 to 31-03-1999 as Average bore personal ill feeling against the applicant who influenced the Reviewing Officer Sri R D Golkunda, Superintendent Engineer in this regard against the applicant. When Sri K P Abraham joined as Superintending Engineer become the Reviewing Officer for the period from 01-04-1998 to 31-

*Banay*

03-2001. The applicant who was the Zonal President (NEZ) of CPWD Staff Association had to place various demands of the Association as well as protested openly some of the misdeeds of the aforesaid two officers and as those two officers bore ill feeling against the applicant and with a view to stall the impending promotion of the applicant. They furnished wrong and incorrect report even violating the provisions of the Manual and various guidelines and instructions.

The aforesaid fact is apparent from the subsequent report furnished by the subsequent Reporting Officer Mr. P Chakma, Executive Engineer who joined on transfer of Mr. R C Rangre, Executive Engineer as well as the review furnished by Mr. S K Ray, Superintending Engineer and Mr. A Sinha, Superintending Engineer.

It is submitted that while writing the review report the said Review Officer did not furnish any reason and reports were written in gross violation of the provisions of the guidelines and instructions only to deprive the applicant from promotion.

*(Signature)*

The selection methods of selected posts under CPWD are quoted below as per CPWD Manual, Vol.-I kind perusal of the Hon'ble Tribunal:

Where promotions are to be made selection methods as prescribed in the Recruitment Rules, the DPC shall for the purpose of determining the number of Officers, who will be considered from out of those eligible officers in the grade, restrict the field of choice as under with reference to the number of clear regular vacancies proposed to be filled in the year:-

No. of vacancies	No. of officers to be considered
1	5
2	8
3	10
4	10 + twice the number of vacancies, i.e. $X=2x+4$ where X is Number of vacancies effective from 1-11-1990.

(Signature)



However, in respect of SC/ST, the field of choice will be five times the number of vacancies.

While merit has to be recognized and rewarded advancement in an officer's career should not be regarded as a matter of course but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process. There is misconception about 'Average performance'. While Average may not be taken as adverse remark in respect of an officer, at the same time it cannot be regarded as complimentary to the officer. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable reward in the matter of promotion.

CRs are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence:

*(Signature)*

- i) DPC should consider CRs for equal number of years in respect of all officers concerned for promotion.
- ii) The DPC should assess the suitability of the officers for promotion on the basis of their service records and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the records with particular reference to the CRs for the year equal to qualifying service.
- iii) While holding DPC during a year, the crucial dates for determining the eligibility of officers for promotions would be prescribed as under:-
  - (a) 1<sup>st</sup> July of the year in cases where ACRs are written calendar year-wise.
  - (b) 1<sup>st</sup> July of the year in cases where ACRs are written financial year-wise.

*[Handwritten signature]*

The crucial dates indicated above would be applicable to only such services and posts for which statutory Rules do not prescribe a crucial date.

A note that when juniors who have completed the eligibility period are considered for promotion their seniors would also be considered irrespective of whether they have completed the probation period, should be indicated in the Recruitment Rules in order to ensure that seniors who might have joined late due to various reasons are not overlooked for promotion.

On perusal of relevant CRs for five preceding years of the applicant, it has been observed from the CR records for the period from 23-07-1997 to 31-03-1998; 01-04-1998 to 31-03-1999; 01-04-1999 to 31-03-2000, 01-04-2000 to 31-03-2001, the overall/grading recorded as "Average".

As per the guidelines issued by the G.O.I., D/o Per & Trg. O.M. No. 22011/5/86-

*[Signature]*

Estt(D),<sup>9</sup> dated 10<sup>th</sup> April, 1989 para 6.2.1 (Page No. 40, 41) that C/Rolls are basis inputs on the basis of which assessment is to be made by each DPC. The evolution of CR should be fair, just and non-discriminatory.

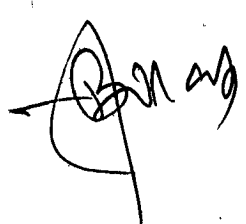
It has further been stated in the said guidelines of M/o Per & Trg. G.O.I. that the DPC should not be guided merely by over all grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs because it has been noticed that some times the overall grading in CR may be inconsistent with the grading under various parameters or attributes.

Further, as per the O.M. No. 51/3/74-Estt.(D), dated 23-05-1995, GOI, DP & AR that no employee should be adversely affected by prejudicial reports recorded without fullest consideration. The Memo of service should invariably be consulted at the time of writing the annual report though the report itself should necessarily be based on the employees performance during the year as a whole.

*Ganay*

The Reporting, Reviewing and endorsing officers should have been acquainted with the work of the official reported upon for at least three months during the period covered by the confidential report. With a view to enabling the reviewing authority discharge his responsibility in ensuring the objectivity of the CRs, it has been decided that where he is not sufficiently familiar with the work of the official reported upon so as to be able to arrive at a proper and independent judgment of his own, it should be his responsibility to verify the correctness of the remarks of the reporting officer after making such enquiries as he may consider necessary, he should also give a hearing to the person reported upon before recording his remarks, but nothing has been done in this regard.

The above made guidelines/instruction have been grossly violated in this case. There must has been calculated attempts on many occasions during the period of CR recorded "Average" grading to spoil the service career of the applicant who is now at the fag end of



his service, due to retirement on superannuation w.e.f. 31-12-2004. There is an instruction of GOI DP & AR OM No. 21011/1/81-Estt (A), dated 05-06-1981 that there may be occasions when superior officer may find it necessary to criticize adversely the work of an officer working under him or he may call for an explanation for same act of omission or commission and taking all circumstances into consideration, it may be felt that while the matter is not serious enough to justify the imposition of the formal punishment of censure, it calls for some formal action such as the communication of a written warning/displeasure/reprimand and the same should be placed in the personal file of the officer concerned. But no such laid down procedures have been followed in the case of the applicant, in the instant case.

For instances, in the case of CR for the period of 23-07-1997 to 31-03-1998 the reporting officer has mentioned in Col. 14, Part-III that the applicant was told to exercise better control over staff. In fact, the said opinion of the reporting officer had

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never been communicated to the applicant in the form of warning letter/displeasure/reprimand report. Rather the applicant was kept in dark for whole period about his act of omission or commission, if at all was there. Thus a great injustice caused to your applicant.

Similar is the case for the period from 01-04-1998 to 31-03-1999 which may be seen from CR recorded in Col. 14, Part-III of CR form in respect of the applicant.

The CR for the period from 01-04-1999 to 31-03-2000 of the applicant has been seen and the reporting officer had assessed the working performance of your applicant in much higher side i.e. "very good" in every respect. But the reviewing officer had overruled the said assessment of without recording any valid reason, but simply ignored the assessment of the reporting officer.

In this connection it may be stated that the Reviewing officer in this case had not been acquainted with the work of your applicant

*[Handwritten signature]*

as he had performed duties directly under the Reporting Officer being he was the head of office. The reviewing officer being a higher officer than that the Reporting Officer, but he was the head of another office and had no direct control over the applicant reported upon. Thus your applicant has been adversely affected by prejudicial review reports recorded without fullest consideration.

A per GOI, DP & AR, OM No. 51/3/74-Estt (D), dated 23-05-1975, the duties of Reviewing/Endorsing officer has been defined under Para (ii) that where the Reviewing officer sufficiently familiar with work of the officer reported upon so as to be able to arrive at a proper and independent judgment of his own, it should be his responsibility to verify the correctness of the remarks of the Reporting officer, after making such enquiries as he may consider necessary, he should also give hearing to the person reported upon before recording his remark. But no such procedures had been followed so far the instant case of your applicant is concord, and thereby caused a great harm to him indirectly.

*Boman*



Similar is the case reported for the period from 01-04-2000 to 31-03-2001 the Reviewing office has again recorded his disagreement with that of Reporting officer without any justification and reason.

Now question arises, that how Reporting/Reviewing officer in this case without coming to the conclusion that despite reasoning/displeasure/reprimand, in relevant column in Part-III of the form of CR relating to assessment by Reporting officer and in that case, a copy of warning/displeasure/reprimand referred to in the CR should have been placed in the CR Dossier as an annexure to the CR for the relevant period.

It is needless to say that unless an opportunity is given to the officer concerned to make a representation in the matter relating to the relevant incident or faults, how one could find his fault and rectify/ improve it and the applicant not giving any opportunity at all nor any of the adverse report has been communicated to him.

*[Handwritten signature]*

There is a general guideline of Government of India that "If the R.O. feels that although a specific incident is not important enough to call for disciplinary proceedings, it is important enough to be specifically mentioned in the CR he should, before making such an entry, satisfy himself that his own conclusion has been arrived at only after a reasonable opportunity has been given to the office reported upon to present his case relating to that incidents.

The review DPC as done in this case has also violated the laid down procedures, and guidelines issued by the competent authority time to time. As per D/O Per & Trg. O.M. No. 22011/5/86-Estt(D), dated the 10<sup>th</sup> April, 1989 Para-6-2-1 (Swamy's compilation on confidential reports of Central Govt. Employees, 2001 edition) it is specifically mentioned that the DPC should make its own assessment on the basis of the entries in the CRs. It has also been mentioned under the said Para of O.M. Sl. No. (f) that when the Reviewing authority or the Accepting authority, as the case may be, has overruled the reporting officer, the remarks of

- Bm ah

the latter authority should be taken as the final remarks for the purposes of assessment, provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the remarks of the reporting officer, reviewing authority and accepting authority are complimentary to each other and one does not; have the effect of overruling the other then the remarks should be read together and the final assessment made by the DPC.

It is stated here that if objective consideration is taken about the service career of the applicant the promotion to the rank of Office Superintendent Grade-II could not have been denied to him. The D.P.C. also did not consider the fact that on his promotion from LDC to UDC and from UDC to Head Clerk was made on satisfactory merit of good service and good confidential report and it was also found to be good while he was promoted in 1998 to the rank of Office Superintendent Grade-II and suddenly he was discarded during the tenure of the

*(Signature)*

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aforesaid two officers which is totally arbitrary and misuse of power and was made with intention which is other than bona fide. As such necessary direction for promotion may be given by your Lordships.

Bona

# Verification

I, Shri Girish Chandra Borah, Head Clerk, Officer of the Executive Engineer (Electrical) Guwahati Electrical Division, Central Public Works Department, Guwahati-15 do hereby solemnly verify that the statements made in ~~paragraphs No.~~ above paragraphs are true to my knowledge and belief.

And I sign this verification today on this the 30th day of April 2003.

Girish ch Borah  
Declarant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : : GUWAHATI

In the matter of :-

O.A. No. 362 of 2002

G.C.Borah ... Applicant

- Versus -

Union of India & Others

... Respondents

Additional written statement on behalf of the  
Respondents (after the amendment of the O.A.)

I, *Pyare Lal*

, Superintending

Engineer (Electrical), Guwahati Central Electrical Circle, Central Public Works

Department, Guwahati-781021, do hereby solemnly affirm and say as follows :-

1. That with regard to the statements made in paragraph 4.19 of amendment of the said original application the respondents beg to state that the name of the applicant was considered by the review DPC held on 3-01-2003. But he was found unfit for promotion based on grading of ACRs. The overall grading based on his last five years' ACRs was found 'Average' by the DPC whereas the bench mark for promotion to the post of Office Superintendent Grade-II is 'Good'. Accordingly he was found unfit by the DPC for the promotion. The findings of the committee have been approved by Director General of Works. There is no question of any arbitrary decision having been taken in this case.

Contd....P/2....

*Union of India & Others*  
*Through - Respondent*  
*Arup Kumar Choudhary*  
29.4.11  
Addl. Central Govt. Standing Counsel  
C. A. T.  
Guwahati

2. That with regard to the statements made in paragraph 4.20 of amendment of the said original application, the respondents beg to state that the confidential report of the applicant has been written as per instructions/guidelines issued by the Govt. Of India. The Confidential report (ACRs) is the final record for making assessment of individual's performance for promotion case . Other service records are not relevent and not considered for promotion as per Govt. rule/policy.

The Superintending Engineer is the reviewing officer and accordingly made a review of the ACR sent by the Reporting officer in respect of applicant. After a proper review, Reviewing officer had observed that the comments made by the reporting officer in respect of the applicant are not consistent with the performance as graded by reporting officer. The DPC has considered the name of the applicant and found him unfit for promotion based on grading of ACRs. In this case respondents beg to state that the promotion case of the applicant has been considered in a fair, just and non-discreminatory and in responsible manner.

8.12.9  
5.9  
DA

3. That with regard to the statements made in paragraph 4.21 of amendment to the said original application, the respondents beg to state that DPC have been constituted for promotion as per guidelines of O.M. No.22011/5/86-Estt(D) dated 10-4-89 and decision taken by the DPC is not violative of the said guidelines.

4. That with regard to the statements made in paragraphs 4.22 and 4.23 of amendment to the original application, the respondents beg to state that the Confidential Report of the officers are written in accordance with instructions/guidelines issued by Govt. of India. The Confidential Report of the officer written by the reporting officer is required to be reviewed by the officer next superior Officer to the reporting officer. In the instant case also same norms have been followed and maintained. The Superintending Engineer of the Circle is the reviewing officer in respect of employees working under various Executive Engineers under his jurisdiction. The grading made by the concerned EE i.e.(Reporting officer) in respect of applicant had been examined by the responsible SE(Reviewing Officer) and recorded his disagreement with that of Reporting Officer which are not influenced by the prejudice against the applicant. The SE in CPWD is the direct Controlling Authority in respect of Divisions under his jurisdiction . He is the officer who can adjudge the performance of any individual official (Group C Staff) of any Division under his control. After due application of mind and utmost care the reviewing officer categorised the grade of the applicant without any bias or prejudice. The SE made his observation in respect of performance of the applicant after making proper assessment of the performance of the applicant and the report of the reporting officer for the period 1-4-99 to 31-3-2000, 1-4-2000 to 31-3-2001 & 1-4-2001 to 3-10-2001.



As per the Governing Instructions the grade "Average" is not considered as adverse grading and hence the comments/gradation in respect of any official is not required to be communicated to the officer reported upon i.e. applicant concerned. In this instant case action taken by the respondents is correct as per laid down guidelines of Govt.

5. That with regard to the statements made in paragraph 5.9, the respondents beg to state that as per Confidential Reports i.e. five years (5 years) Confidential Reports of the petitioner, the Departmental Promotion Committee has found the petitioner as 'Average' and accordingly DPC assessed/ adjudged the petitioner 'unfit' for promotion. The grading made by the concerned EE(Reporting officer) in respect of applicant had been examined by the reviewing officer Viz, SE and recorded his disagreement with that of Reporting officer which are not influenced by any prejudice against the applicant. The SE in CPWD is the direct Controlling Authority in respect of Circle/Divisions under his jurisdiction. SE is the officer who can adjudge the performance of any individual official (Group C) of any division under his control.

6. That with regard to the statements made in this paragraph 5.10 the respondents beg to state that these are not correct. There is no violation of provision of department instruction and memorandum as well as departmental manual. The action taken by the respondents is well within the scope of Rule.

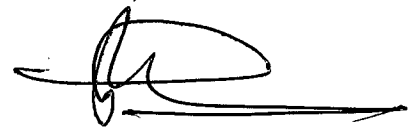
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7. That none of the ground as mentioned by the Applicant are maintainable under the laid down Rules and the OA / amendment application being devoid of any merit and is liable to be dismissed with costs in favour of the respondents.
8. That the application is devoid of any merit and the same is liable to be dismissed with cost.

**VERIFICATION**

I, Pyare Lal, presently working as superintending Engineer (Electrical), Guwahati Central Electrical Circle, Central Public Works Department, Guwahati-21 being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1 - 7 of the application are true to my knowledge and belief, those made in paragraphs 1 - 7 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

AND I sign this verification on this the 28 th day of April 2004

  
Deponent