

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDERSHEET

Original Application :

Mise Petition No.

Contempt Petition No :

11/03 in C.A 289/2002

Review Application No.

Applicants:- Md. M. Rahman

Respondents:- A.S. Chaudhury D.G.M. Railways

P.C. Kumar SDGM of O&R

Advocate for the Applicants:- Mr. S. Huda, Mr. A. Hoi

Advocate for the Respondents:- Railway Counsel

Notes of the Registry Date Order of the Tribunal

This Contempt petition has been filed by the Counsel for the applicant regarding wilful and Malicious and disobedience of this Hon'ble Tribunal's order dated 8.5.2003 passed by the Hon'ble Tribunal in C.A. 289/2002. 1m

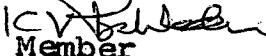
27.8.03

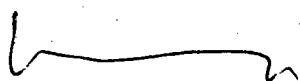
Present: Hon'ble Mr. D.N. Chowdhury
Vice-Chairman.

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

Issue notice to show cause casts to why the contempt proceedings shall not be initiated against the alleged contemners.

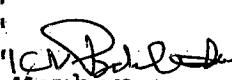
List on 25.9.03. for orders.

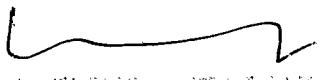

Member


Vice-Chairman

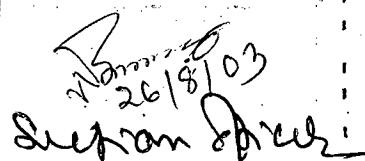
25.9.2003

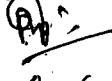
put up after service on 21.10.
2003.


Member


Vice-Chairman

bb


Subramanian


Secty no/ taken
27/8/03

CP. 41/03

v

-2-

12/9/03

Notice is prepared and
sent to Despatch
Section for issuing
to the parties.

✓JS
12/9/03

21.10.2003

Heard Mr. S. Huda, learned coun-
sel for the applicant.

Await service report and list
the case on 7.11.2003.

Vice-Chairman

bb

Issued vide Despatch
No. 1944 - 1946 dated

15/9/03

✓JS
16/9/03

7.11.03

No Bench today.
Adjourned to 28.11.03.

BS/0

28/11/03

No Bench today.
Adjourned to 1.12.03.

BS/0
b)

17.12.2003

List on 24.12.2003 before the
Division Bench for orders.

KV Prahadan
Member (A)

✓JS
15.12.03

Appearance has been
filed by the Rly. counsel.

mb

24.12.2003 Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.

24.12.2003 Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
The Hon'ble Mr. K.V. Prahadan, Member (A).

✓JS
23/12/03

Show cause reply has
been filed by the Rly. counsel.

✓JS
13/12/03

Received Copy The
Order Dtd - 24.12.03

Heard learned counsel for the
parties.

The C.P. is dismissed in terms
of the order passed in separate sheets.
No order as to costs.

KV Prahadan
Member

Vice-Chairman

✓JS
21.04

Received clearly
for the respondents
N.F. Rly. / m/s
12-1-04

mb

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

~~XXXXX/RXXXXX~~. C.P., NO. 41/2003.

DATE OF DECISION 24.12.2003.

Md. Majibur Rahman

.....APPLICANT(S).

Mr. S. Huda

.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

U.O.I. & Ors.

.....RESPONDENT(S)

Mr. S. Sen Gupta

.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. Justice B. Panigrahi, Vice-Chairman.

THE HON'BLE Mr. K.V. Prahladan, 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 their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble ~~Member~~ Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No. 41 of 2003.

Date of Order : This ~~ix~~ the 24th Day of December, 2003.

THE HON'BLE MR. JUSTICE B. PANIGRAHI, VICE CHAIRMAN.

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

Md. Majibur Rahman,
Son of Late Mafiz Ali,
resident of North Jalukbari,
P.O. Jalukbari, District. Kamrup,
Assam

• • • Applicant.

By Advocate Mr. S. Huda.

- Versus -

1. Sri A.S. Chaudhury,
D.G.M./G/NF Railways,
Maligaon,
2. Shri P.C. Kumar,
S.D.G.M.
N.F. Railway, Maligaon.
3. Sri Umar Singh Chaudhury,
Chairman, N.F. Railway.

• • • Contemnors.

By Mr. S. Sengupta.

O R D E R

PANIGRAHI J. (V.C.) :-

is

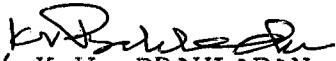
This application for initiation of contempt against the respondents for purported violation of the order passed by this Tribunal in O.A. 289/2002 by not giving effect to the order of the Tribunal. It is indicated in the order that the respondents shall review the matter of promotion of the applicant in the light of the observations made in the Judgment and pass appropriate order within one month from the date of receipt of the order. The alleged contemnors on the contrary have taken plea that they have complied with the order of the Tribunal and communicated the order vide letter dated 20.06.2003. In the affidavit-in-reply the respondents reiterated the same thing by stating that they have complied with the order passed by the Tribunal.

2. Mr. S. Huda, learned counsel for the applicant has highlighted that it is not at all compliance as claimed by the respondents. One Member of the selection committee is not competent to take a decision in the matter. Therefore, the purported decision taken by the sole member of the committee is per se wrong. Mr. S. Sengupta, learned counsel for the respondents contested the aforesaid decision and brought to our notice the statement made in the written statement to the Original Application which/quoted below :-

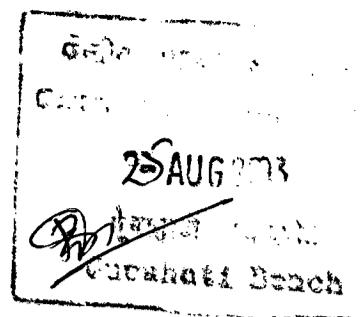
"contended that the case of the applicant was duly considered. The applicant qualified in the written test, but since in the viva-voce test he could not do well he could not be promoted. As regards the entries in his ACR, the respondents contend- ed that the ACR reflected the service profile of the applicant. The adverse entries were communicated to him and the applicant was given the opportunity to represent. The representation submitted by the applicant was considered and the same was not found acceptable to the authority. No illegality, as such was committed, contended the respondents."

3. In view of the fact situation, we find that the respondents have complied with the order passed by the Tribunal, whether it is improperly done or correctly. If the applicant is aggrieved by such decision, he may take appropriate steps in appropriate forum.

With the observations made above, the C.P. stands dismissed. No order as to costs.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(B. PANIGRAHI)
VICE CHAIRMAN



1

M. M. Khan
Padiwan
Filed
20.8.2003
Advocates
20.8.2003

DISTRICT : KAMRUP.

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI.
(CIVIL ORIGINAL CONTEMPT JURISDICTION)**

CONTEMPT PETITION NO. 41 OF 2003

IN THE MATTER OF :

An application under Section 17 of
the Central Administrative Tribunal
Act, 1985 read with Sections 12, 14
and 15 of the Contempt of Courts
Act, 1971;

-AND-

IN THE MATTER OF :

Violation and/or willful
disobedience of this Hon'ble
Tribunal's Order dated 8.5.2003
passed in Original Application
No.289 of 2003.

-AND-

M.J. Majibur Rahman

IN THE MATTER OF :

Md. Majibur Rahman,

Son of Late Masiz Ali,

resident of North Jalukhali,

P.O. Jalukhali, District Kamrup,

Assam, presently residing at

Railways quarter, East Maligaon,

Guwahati, Assam.

APPLICANT/PETITIONER

-VERSUS-

1. Shri A.S. Chaudhury,

D.G.M./G/NF Railways,

Maligaon,

2. Shri P.C. Kumar,

S.D.G.M.,

N.F. Railway, Maligaon.

3. Shri Amar Singh Chaudhary,

Chairman, N.E.Railways.

CONTEMNERS.

The Humble Petition of the
Applicant Petitioner above
named-

MOST RESPECTFULLY SHEWETH.

1. That being aggrieved and dissatisfied with the
inaction of the Contemners, this applicant petitioner
approached this Hon'ble Tribunal for his promotion and
this Hon'ble Tribunal by its judgment and order dated
8.5.2003 passed in O.A. No.289/2003 directed the
Respondents-authorities-contemners to reconsider the matter
of promotion of the applicant-petitioner afresh taking into
consideration the facts that the adverse entry dated
23.7.2001 had been quashed, but the authorities-contemners

had not paid any heed to the same and without any basis and without any reason by order dated 20.6.2003 shows the inability to promote the applicant-petitioner, and as such, this Contempt Application before your Lordship is being filed under Section 17 of the Central Administrative Tribunal Act, 1985 read with Sections 12, 14 and 15 of the Contempt of Courts Act, 1971.

A copy of the judgment and order dated 8.5.2003 and a copy of the communication dated 28.6.2003 are annexed herewith and marked as ANNEXURES-1 & 2 to this petition.

2. That the Applicant-petitioner begs to state that all the relevant facts had been set out in the O.A. No.289/02 and all the relevant annexures also had been annexed to the aforesaid petition and your Lordship may be pleased to call for the records of the O.A. No.289/2002 at the time of disposal of this Contempt Application.

3. That in view of the facts as stated above and particularly in the context of the materials on record thereby willfully disobeyed or disrespect the legal and valid orders passed by this Hon'ble Tribunal and thus the Respondents-contemners have gone out of the way by not implementing the Hon'ble Tribunal's order dated 8.5.2003.

4. That the petitioner further begs to state that he went to the Office of the Respondent Nos.1, 2 and 3 along with the orders of this Hon'ble Tribunal but they did not care even to give a glance at the aforesaid orders of this Hon'ble Tribunal.

It needs to be mentioned here that after passing of the Hon'ble Tribunal's orders he has visited the Offices of the Respondents more than 100 times but the Respondents did not pay any heed. Thus the Contemners/Respondents have been avoiding action in respect of compliance of this Hon'ble Tribunal's order and thus went to the extent of disregarding the directions of this Hon'ble Tribunal.

5. That the petitioner begs to submit that the contemnors are solely responsible for the willful disregard/disobedience of this Hon'ble Tribunal's orders inviting contempt of this Hon'ble Tribunal, and as such, they are liable to be punished under the Central Administrative Tribunal Act,1985 as well as under the Contempt of Courts Act,1971.

6. That the petitioner begs to submit that there has been willful disobedience of your Lordships order, inasmuch as, the orders of this Hon'ble Tribunal were submitted before the Contemnors/Respondents well ahead of time, but the Contemnors/Respondents had not paid any heed for implementing the orders of this Hon'ble Tribunal, which shows utter lack of respect to the mandate of this Hon'ble Courts orders dated 8.5.2003.

7. That it is respectfully submitted here that by not implementing the Hon'ble Court's order the Contemnors have committed an offence of Contempt of Courts within the meaning of Section 2(b) of the contempt of Courts Act

for which they are liable to be dealt with severely under the provisions of Section 17 of the Administrative Tribunal Act and the provisions of Contempt of Courts Act more particularly under Sections 12, 14 and 15 of the aforesaid Act. The offence alleged is also violative of the other provisions of law under the Constitution of India.

8. That as stated above, it is gathered that the Contemnors had not taken any appropriate steps for implementing the mandatory direction of this Hon'ble Tribunal. Thus there is systematic disobedience of this Hon'ble Tribunal's orders and mandatory direction, and as such, it is *prima facie* an appropriate case that the Contemnors should be dealt with strictly.

9. That the utter disrespect shows to the mandatory direction of this Hon'ble Tribunal proves that the Contemnors have the least respect to the direction given by this Hon'ble Tribunal and thus by their own action they have made themselves liable to be punished under the

appropriate provisions of the Administrative Tribunal Act as well as the Contempt of Courts Act.

10. That the inaction on the part of the Contemnois is contemptuous, and as such, this Hon'ble Tribunal may draw up a Contempt Proceedings under the Contempt of Courts Act to protect the interest of the petitioner.

11. That for the preservation of the purity of the judicial process as well as for the preservation of the Rule of Law, this petition has been filed for taking appropriate action.

16. That this petition is filed bonafide and for the
interest of justice.

It is, therefore, prayed
that your Lordship may be
pleased to admit this petition,
issue notice upon the Contemnors

M.J. Nawab Khan Rohan

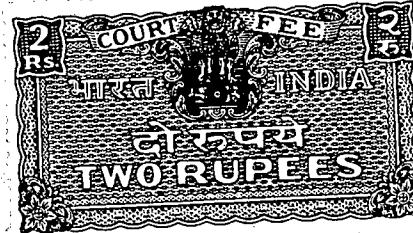
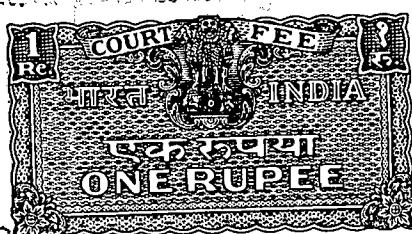
to show cause as to why the Contemnors should not be dealt with in accordance with the appropriate provisions of the Central Administrative Tribunal Act and the Contempt of Courts Act and as to why the appropriate proceedings under the Contempt Courts Act read with the provisions of Central Administrative Tribunal Act should not be drawn up against the Contemnors and on perusal of the records and upon hearing the parties, cause or causes that may be shown, your Lordship may be pleased to allow this petition holding the Contemnors guilty under the Contempt of

Ms. Marilat Rahman
15

Courts Act and punish them accordingly for committing the offence under the provisions of the aforesaid Acts for not complying with the directions of this Hon'ble Tribunal contained in its order dated 8.5.2003 passed in Original Application No.289/2002 and/or pass such further orders as your Lordship may seem fit and proper under the facts and circumstances of the instant case.

And for this act of kindness, the petitioner, as in duty bound shall ever pray.

VERIFICATION



11
27

AFFIDAVIT

I, Md Majibur Rahman, son of Late Mafiz Ali, aged about 43 years, resident of North Jalukbari, P.O. Jalukbari, District Kamrup, by profession service, presently residing at Railway Quarter, East Maligaon, Guwahati, Assam, do hereby solemnly affirm and declare as follows :-

1. That I am the applicant/petitioner in the accompanying application and as such I am fully acquainted with the facts and circumstances of the case.
2. That, the statements made in the Affidavit and in paragraphs 3 - 11 of the written statement are true to my knowledge, those made in paragraphs 1 - 2 of the petition are matters of records derived therefrom which I believe to be true to my information and the rest are my humble submissions made before this Hon'ble Court.

And I sign this affidavit on this 11th day of August, 2003 at Guwahati.



Identified by me :

A. H. Ali
Advocate's clerk.

Md. Majibur Rahman
DEPONENT

Solemnly affirmed and declared before me by the deponent who is identified by A. H. Ali
Advocate on this 11th day of August, 2003 at Guwahati.

S. H. Ali
MAGISTRATE

Magistrate
11th August 2003

-12-

Annex-1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.289 of 2002

Date of decision: This the 8th day of May 2003

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

The Hon'ble Mr S. Biswas, Administrative Member

Md. Majibur Rahman
S/o Late Mafiz Ali
Resident of North Jalukbari,
P.O. Jalukbari, District- Kamrup, Assam,
Presently residing at Railways Quarter,
East Maligaon,
Guwahati, Assam.

By Advocates Mr S. Huda and Mr A. Hai.Applicant

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Railways Communication Ministry,
Railways Services Board,
New Delhi.

2. The General Manager (P),
N.F. Railway, Maligaon,
Guwahati.

3. The Deputy General Manager/G,
N.F. Railway,
Maligaon, Guwahati.

4. The Assistant Deputy General Manager,
N.F. Railway,
Maligaon, Guwahati.

By Advocate Mr S. Sengupta, Railway Counsel.Respondents

.....
O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

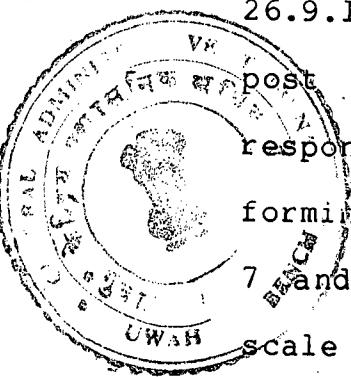
The following are the reliefs claimed in this application:

i) To set aside and quash the impugned result of the selection test dated 10.5.2002 published by the respondent authority.

ii) To direct the respondent Railway Authority to promote the applicant to the post of O.S.-II in the scale of pay of Rs.5,500/- to Rs.9,000/- per month considering the distinguished service rendered by the applicant to the Railways during his service career

iii) To direct the respondent Railway Authority to expunge the adverse remarks recorded in the A.C.R. of the applicant illegally.

2. Brief Facts :

The applicant was appointed as Senior Clerk on 26.9.1988 and in course of time he was promoted to the post of Head Clerk by order dated 13.3.1997. The respondent authority decided to hold a selection for forming a panel for promotion to eight posts (Unreserved-7 and SC-1) of Office Superintendent Grade II in the scale of pay of Rs.5,500-9000 and accordingly a Notification was issued on 25.2.2002. In the said Notification the name of the applicant also appeared at serial No.8. The Notification indicated the dates for Written test and Viva-Voce test. The applicant appeared in the written test. The result of the written test for the post of Office Superintendent Grade II was published vide Notification dated 3.4.2002 and in the list of successful candidates the name of the applicant appeared at serial No.3. As per the said Notification the date of Viva-Voce test was fixed on 10.4.2002. The applicant, in terms of the aforementioned Notification, accordingly appeared at the Viva-Voce test. The result of the selection was finally published on 10.5.2002 and the applicant was not empanelled. Hence this application assailing the legitimacy of the action of the respondents for not promoting the applicant on the basis of the said selection.

3. In this application, the applicant has also assailed the action of the respondents whereby some adverse entries were made in his ACR about which he was intimated vide communication dated 23.7.2001. The applicant submitted his representation against the adverse entries on 17.8.2001, but the same was rejected vide order dated 31.8.2001. The applicant thereafter submitted another representation dated 21.8.2002 before the competent authority and by order dated 23.8.2002 the same was also rejected.

4. The respondents submitted their written statement and contended that the case of the applicant was duly considered. The applicant qualified in the written test, but since in the viva-voce test he could not do well he could not be promoted. As regards the entries in his ACR, the respondents contended that the ACR reflected the service profile of the applicant. The adverse entries were communicated to him and the applicant was given the opportunity to represent. The representation submitted by the applicant was considered and the same was not found acceptable to the authority. No illegality, as such was committed, contended the respondents.

5. We have heard Mr S. Huda, learned counsel for the applicant, and Mr S. Sengupta, learned Railway Counsel at length. Mr Sengupta fairly placed before us the full records. It would first be appropriate to deal with the adverse remarks communicated to the applicant. The full text of the adverse remarks are reproduced below:

"In your confidential report for the year ending 31.03.2001, the following adverse remarks have been recorded:

3. Departmental abilities
(merits/demerits) to include
comments on:
(c) Keenness/Promptness and : Requires
efficiency Improvement
(g) Amenability to discipline : Undisciplined

6. Reliability : Not reliable

7. Relation with others:

- (a) those above)
- (b) those below)
- (c) the public (if his duties): Relations are
entail his coming into) not cordial
contact with public/)
railway users))

13. (b) Does he maintain his : No, needs
office files neatly? improvement

(c) Does he maintain his : Training is
books, codes, Diary necessary
and Reminder memo book
etc.

(e) Is his disposal prompt : Requires
improvement

2. It is not the intention that these remarks should, in any way discourage you, but it is desired that they should enable you to know and rectify your defects.

Representation, if any, against the adverse remarks has to be made within one month.

.....

The A.C.R. is an important input to ascertain the career profile of an employee. The recording of an ACR is a serious matter. It is to be recorded with full responsibility. This is basically to improve the efficiency of the officer. Therefore, they are to be intimated with their defects so that they can improve. In the instant case, only the bare opinion of the Reporting Officer was registered in an abstruse manner, which only reflects the ipso dixit of the officer. The recording of such kind of entries impedes the right of presenting an effective representation by the affected employee. When an officer makes the remark he must eschew of making vague comments besmirching the service career of its subordinate. The representations submitted. They were also not properly attended to. Both the authorities passed cryptic orders stating that they could not accept the representations. There is a procedure prescribed for recording the ACR. The intention

behind.....

behind is to make an objective assessment of the service graph of the employee and not a subjective assessment. In the instant case the recording of the ACR is contrary to the procedure prescribed and the very object of recording of ACR. The adverse entries made in the ACR and communicated vide order dated 23.7.2001 are accordingly quashed. Consequently, the cryptic orders dated 31.8.2001 and 23.8.2002 rejecting the representations of the applicant stand quashed.

6. The DPC proceedings were placed before us. The DPC proceedings indicated that out of twentyfour candidates, eight (unreserved) including the applicant secured 60% marks and qualified for interview. Three candidates belonging to the SC community secured more than 20% marks and became eligible to appear in the viva-voce test. The viva-voce test was held on 10.4.2002. Out of a total of eleven candidates ten appeared. One candidate could not appear being on sick list. However, absentee test was held on 6.5.2002. The Committee recommended seven persons. As regards the applicant, it was recorded that the applicant qualified in the written test, but he was not found suitable in the viva-voce test. Moreover, the ACR of the applicant for the year ending 31.3.2001 contained adverse remarks and the adverse remarks were communicated to him vide letter dated 20.3.2001. The appeal of the applicant against the adverse remarks also remained unchanged by the competent authority. The said panel in course of time was approved.

7. From the records it appears that the applicant, an unreserved candidate, obtained 23.45 marks out of 35 marks in the written test, whereas in the viva-voce test

he.....

he secured 05 against 15 marks. In the Personality address leadership, the applicant was shown to have obtained 10 marks out of 20 marks and from Record of service he was given 08 marks out of 15 marks and for seniority he was given 12 marks out of 15 marks. The applicant was allotted a total of 58.45 marks and he was shown to have failed. Naturally, while considering the case of the applicant for promotion, the authority acted on the purported ACR which is now set aside. We enquired from the learned Railway Counsel as to how the 20 marks earmarked for Personality address leadership were allotted. In answer, the learned Railway Counsel submitted that this evaluation is made basically by the Committee on the basis of partly from the recordings in the ACRs and partly from the personal interview. This allotment of 15 marks and 20 marks in Personality address leadership in our view is seemingly arbitrary, taking into consideration the situation and condition. No justification was assigned as to how a person who secured 23.45 marks in Professional ability written test could come down to 05 in viva-voce test. This is seemingly arbitrary. In our view the respondents fell into error in not considering the case of the applicant for promotion in the right perspective.

8. Another lacuna that we find in the adverse entries in the ACR for the year ending 31.3.2001 is that the Reviewing Authority was not provided the opportunity to review and that part has been kept blank. The authority before whom the representations were filed failed to take these factors into consideration which caused great injustice to the applicant.

9. On consideration of all the aspects of the matter we direct the respondents to reconsider the matter of

promotion.....

promotion of the applicant afresh taking into consideration the fact that the adverse entries dated 23.7.2001 is quashed. The respondents are accordingly directed to review the matter of promotion of the applicant in the light of findings and observations made above and pass appropriate order accordingly for promotion of the applicant within one month from the date of receipt of the order.

The application is allowed to the extent indicated.

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

Sd/ VICE-CHAIRMAN

Sd/ MEMBER (A)

TRUE COPY

প্রতিলিপি

Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

28/5

NORTHEAST FRONTIER RAILWAY

Office of the
General Manager (P)
Maligaon.

No. O.A No.289 of 2002

Dated:- 20-06-2003.

To
Md. M. Rahman,
Head Clerk,
Vigilance Office,
Maligaon.

Sub: Hon'ble CAT/GHY's order judgement dated
08-05-2003 in OA No.289/2002

Md. M. Rahman

,Vs-
U.O.I & Others.

As per Hon'ble CAT/Guwhati's order dated 08-05-2003, the adverse entries dated 23-07-2001 in the ACR for 2000-01 are to be quashed. In line with this, the adverse entries have been expunged and the final grading has been upgraded to 'Good'.

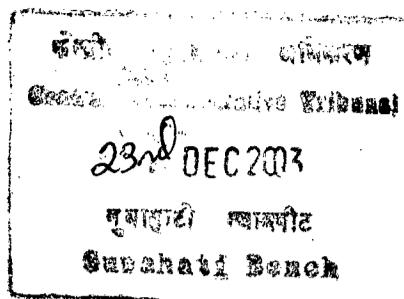
Based on the above, the selection panel dated 08-05-2002 has been considered afresh. The records of service marks which is based on the ACRs will now become 9. There will be no other change involved pertaining to Professional ability, Viva-Voce, Personality address, Leadership & Seniority. With the above increase total marks works out to 59.45, which is still short of 60 marks, which is the minimum. It is seen that under professional ability, you have secured $23.45+5=28.45$ marks against 30 marks which is the minimum required. This marks have been given by the Selection Committee for written examination and Viva-Voce which is not affected by the ACR entries in any way.

Thus you have failed to qualify in the professional ability and also in the total marks even after considering the adverse entries in the ACR for 2000-01 as expunged. As such it is not possible to empanel you for promotion to the post of OS-II.

This is for your information.

20-6-03
(Mrs. P. Lakra)
Senior Personnel Officer (RP)
For General Manager (P)
Maligaon.

*Central Record Dept
S.P.O. Sh. at
20-6-03*



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

IN THE MATTER OF :

G. P. No. 41 of 2003

(Arising out of O. A. No. 289/2002)

Md. Majibur Rahman

... Applicant

Petitioner

Vs.

1. Sri A. S. Choudhury

Deputy General Manager/G,

H. F. Railway, Maligaon.

2. Sri P. C. Kumar

Senior Deputy General Manager,

H. F. Railway, Maliccon.

3. Sri Amarsingh Chowdhury

N. F. Railway.

• • • Countermeasures

Respondents

- AND -

IN THE MATTER OF :

Show cause reply for and on behalf of the Contemners/Respondents to the Contempt Petition filed by the abovesaid petitioner and the Hon'ble Tribunals' Order dated 27.8.03 for showing cause as to why contempt proceedings should not be initiated.

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महाराष्ट्र राज्य न्यायालय
मुख्यमंत्री, मालिगांव
पृ. सो. राज्य, मालिगांव
SECRETARY TO G. M.
M. F. RAILWAY, MALIGAON

-: 2 :-

The humble show cause reply ~~of~~ for and on behalf of the answering respondents/contemners respectfully submitted as under :

1. That, the opposite parties/contemners have gone through the contempt petition and ~~understood~~ the ~~contempt~~ of the petition.
2. That, the contempt petition is not maintainable under law and fact of the case and the petitioner has wrongly interpreted the Judgement as a whole.
3. That, the applicant has misconstrued the Judgement and has brought unwarranted allegations against the aforesaid alleged contemners. There is no designation as Chairman, M. F. Railways.
4. That, for the sake of brevity, save and except the statement of the petitioner which are specifically admitted herein below, or, which are borne on records all other allegations as made in the contempt petition are denied here-with.
5. That, with regard to allegations as made at paragraph 1 of the petition, it is submitted that -
 - (i) the factual aspect etc. of the case has already been furnished in the Written Statement filed by the respondents in O.A. No. 289 of 2002 and hence for brevity, the repetition has been avoided.

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The opposite party/respondents crave leave of the Hon'ble Tribunal to permit them to refer to those, if required, during hearing of the case.

b) the above contempt petition was moved by the above said petitioner (who was applicant in O.A. No. 289/02) before this Hon'ble Tribunal on 27.8.2003 alleging wilful, intentional and deliberate dis-obedience by the answering respondents to comply with the Order dated 8.5.2003 passed by the Hon'ble Tribunal in O.A. No. 289 of 2002 and non-disposal of the applicant/petitioners' representation submitted as per Hon'ble Tribunal's directions.

A copy of the said Order of the Hon'ble Tribunal dated 3.5.2003 has been attached to the petition as Annexure-I to the Contempt petition.

6. That, the relevant extracts of the Hon'ble Tribunal's Orders dated 8.5.2003 are as under :-

In the instant case, the recording of A.C.R. is contrary to the procedure prescribed and the very object of recording of A.C.R.. The adverse entries made in the A.C.R. and communicated vide Order dated 23.7.2001 are accordingly quashed."

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N.F. RAILWAY, MALIGAON

"From the records it appears that the applicant, an unreserved candidate, obtained 23.45 marks out of 35 marks in the Written test, whereas in the Viva-voce test he secured 05 against 15 marks.

In the Personality address leadership, the applicant was shown to have obtained 10 marks out of 20 marks and from Record of Service he was given 08 marks out of 15 marks. The applicant was allotted a total of 58.45 marks and he was shown to have failed.

Naturally, while considering the case of the applicant for promotion, the authority acted on the purported A.C.R. which is now set aside

"This allotment of 15 marks and 20 marks in personality address leadership in our view is seemingly arbitrary No Justification was assigned as to how a person who secured 23.4 marks in professional ability written test could come down to 05 in Viva-voce test. This is seemingly arbitrary"

"On consideration of all the aspects of the matter we direct the respondents to reconsider the matter of promotion of the applicant afresh taking into consideration the fact that the

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प. सो. रेलवे, मालिगाँव
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N. E. RAILWAY, MALLIGAON

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adverse entries dated 23.7.2001 is quashed.

The respondents are accordingly directed to review the matter of promotion of the applicant in the light of findings and observations made above and pass appropriate order accordingly for promotion of the applicant within one month from the date of receipt of the order

7. That, on the basis of the Judgement and Order dated 8.5.2003 passed in O.A. No. 289 of 2002, the competent authorities have carefully examined the case and reviewed the case of the applicant as ordered by the Hon'ble Tribunal expunging the adverse A.C.R. for 2000-2001 and graded him 'Good'. But it submitted that even after grading him 'Good', the applicant was not found to be eligible for promotion to this Supervisory post of Office Superintendent, Grade II as even after reconsideration it was found that -

(i) he has failed to qualify in the 'Professional ability' and

(ii) in the 'Total marks' column even after expunging the adverse remarks and re-grading him as 'Good' and assignment of marks taking his grading as 'Good' also, he failed to ~~mark~~ secure the qualifying marks in the aggregate in the selection.

As, in the selection for Supervisory cadre, the minimum requirement of marks as required under selection rules embodied in Railway Codes, Manuals and Railway Board's Circulars/instructions etc. are to be mandatory observed;

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there appeared to be no scope to declare the petitioner/applicant as a selected hand and thus to promote him to the post of Office Superintendent Grade II.

It is blatantly an incorrect assertion/allegation that the Authorities/Contamors had not paid any heed to promote him and the order dated 20.6.2003 (Annexure-2 to the petition) was issued without any basis or reason as alleged.

8.(a) That, with regard to averments allegations made at paragraphs 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the petition it is to submit herein that the allegations are completely uncalled for and false and hence all the allegations are emphatically denied herewith.

(b) There has been no dis-respect or dis-obedience not to speak ^{of} wilful dis-respect or dis-obedience in the matter of the implementation of the Hon'ble Tribunal's Order dated 8.5.2003 as alleged by the petitioner.

From the Annexure-2 of the petition (i.e. Railway Administrations' reply letter dated 20.6.2003 addressed to the applicant/petitioner) it will be well evident that the petitioner/applicant's case (i.e. promotion matter) was well considered by the competent authorities of the Railway Administration in the light of the Hon'ble Tribunal's Order dated 8.5.2003 passed in O.A. No. 289 of 2002 and that it was observed that even after expunging the adverse remarks of the Confidential report (ACR for 2000-01) and

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M.R. RAILWAY/MALWAAR

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final grading him as 'Good', he failed to secure qualifying marks in the professional ability column i.e. in the total marks of the professional ability column, he could secure only 28.45 marks against 30 marks which is the minimum qualifying marks and in the total marks column he could secure only 59.45 marks which falls short of 60 marks as qualifying marks. It is also to mention herein that securing the qualifying marks in each of the above columns separately i.e. ^{aggregate} 'Professional ability' and 'Total Marks' columns is a must for eligibility for being empanelled in the selection for the post of Office Superintendent Grade II.

(c) From the following text of the reply given by the Railway Administration to the applicant vide letter dated 20.6.2003, addressed to the complainant (a copy of which has been annexed as Annexure 2 to the Complaint petition) it will be well evident that there had been due compliance of the Hon'ble Tribunal's Order dated 8.5.2003 and there had been no delays or laches in the compliance of the Hon'ble Tribunal's Order :

"As per Hon'ble Central Administrative Tribunal,

Guwahati's Order dated 8.5.2003, the adverse entries dated 23.7.2001 in the A.C.R. for 2000-01 are to be quashed. In line with this, the adverse entries have been expunged and the final grading has been upgraded to 'Good'.

Based on the above, the Selection Panel dated 8.5.2002 has been considered a fresh.

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SECRETARY TO G. M.
M. F. RAILWAY, MALIGAON

The records of Service marks which is based on A.C.R.s will now become 9.

There will be no other change involved pertaining to professional ability, Viva-Voce, Personality address, Leadership & Seniority.

With the above increase total marks works out to 59.45, which is still short of 60 marks, which is the minimum.

It is seen that under 'Professional ability' you have secured $23.45 + 5 = 28.45$ marks which is the minimum required.

This marks have been given by the Selection Committee for written examination and Viva-voce which is not affected by the A.C.R. entries in any way.

Thus you have failed to qualify in the Professional ability and also in the total marks even after ~~consideration~~ considering the adverse entries in the A.C.R. for 2000 - 01 as expunged.

As such it is not possible to empanel you for promotion to the post of Office Superintendent Grade II."

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कृ. श्री. रेणु, शालीगंगा
SECRETARY TO G. M.
M.P. RAILWAY, MALLIGANDI

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(d) It is completely an incorrect allegation that the Respondents/Contemners had not paid any heed for implementing the Orders of the Hon'ble Tribunal or there has been any lack of respect to the mandate of the Hon'ble Tribunal dated 8.5.2003 or respondents are liable to be punished under the provisions of the Central Administrative Tribunal Act 1985 as well as under the Contempt of Court's Act 1971 as alleged in paragraph 5, 6 and 7 of the contempt petition.

(c) It is emphatically denied that -

- (i) there has been any disobedience, not to speak of wilful dis-obedience, to the Hon'ble Tribunal's Order; or,
- (ii) the respondents/contemners had not paid any heed for implementing the orders of the Hon'ble Tribunal's Order or shown any lack of respect to the Hon'ble Tribunal's Order; or,
- (iii) the order of the Hon'ble Tribunal has not been implemented or that any offence of Contempt of courts within the meaning of Section 2 (b) of the Contempt of Court's Act or that the respondents are liable to be dealt with under the provisions of Section 17 of the Administrative Tribunal Act and provisions Sections 12, 14 and 15 or violation of any of the provisions of

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the Contempt of Court's Act or of the provisions under the Constitution of India; or,

(iv) there has been any dis-obedience not to speak of systematic dis-obedience to the Hon'ble Tribunal's Order; or,

(v) no appropriate action were taken by the Railway Administration for implementing the Hon'ble Tribunal's Order inspite of his visiting the office for more than 100 times or so; or,
the applicant visited the office for more than 100 times or so

(vi) any dis-respect were shown by the respondents to the Hon'ble Tribunal's Order and for that the respondents have made themselves liable to be punishment under the provisions of the Administrative Tribunal's Act or Contempt of Courts Act; or,

(vii) there has been any inaction or contemptuous Act on the part of the Railway Administration for which respondents are to be put under the Contempt of Court's Act; or,

(viii) the purity of the Judicial process or Rule of Law has been violated; or,

(ix) the petition has been filed bona fide.

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SECRETARY TO G. M.
M. P. RAILWAY, MALIGAON

It is to submit herein that, from the submissions in the foregoing paragraphs to this reply, it will be quite evident that, all the allegations of the petitioner are quite false, unfounded and baseless and that :

- a) there has been no delay not to speak of intentional delay as alleged, in complying with/obeying the orders of the Hon'ble Tribunal's Order dated 8.5.2003 in O.A. No. 289 of 2002 after receipt of the Order/representations from the petitioners, and
- b) it took only some minimal time to collect relevant records and informations and taking all necessary steps for examination of the case de-novo and arranging a reply after due consultation of the law and extant rules etc. framed by President of India under Article 309 of the Constitution of India.

9. That, all actions in the case has been taken in terms of rules and fact of the case and no ill-intention can be imputed against the contemners.

10. That, in view of the facts and circumstances stated above, the contempt petition is liable to be closed.

There ~~was~~ is no deliberate and wilful dis-respect/ dis-regard of the orders passed by the Hon'ble Tribunals as alleged by the petitioner.

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अप्राप्यता के समय,
कृ. श्री. रमेश, मालेगांव
SECRETARY TO G. M.
M.P. RAILWAY, MALLIGANJ

The respondents have acted bonafide in the matter and all the actions in the case have been taken on good faith considering the ~~fact~~ of the case and law and rules involved in the case.

It is further submitted that the respondents have got highest regard for this Hon'ble Tribunal and ~~that~~ for any un-intentional omission or commission on the part of the respondents in respect of the Judgement and Orders in question, the respondents/the contemnors hereby tender unconditional apology before this Hon'ble Tribunal.

11. That, in view of the above, the Contempt petition is not maintainable and is liable to be closed.

..... Affidavit.

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 श. श. राजेश. शास्त्री
 T. S. SECRETARY TO G. M.
 N.F. RAILWAY, MALIGAON

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A F F I D A V I T

I, A. S. Choudhury aged about 46 years, by occupation Railway Service, working as Secretary to G.M. N. F. Railway, Maligaon do hereby solemnly affirm and declare as follows :

1. That, I am ~~the one of the Contemners/Respondent in the Case of~~ ~~the~~ ~~Mr. R. K. Deka~~ and as per work distribution, the representation of the employees/applicant/petitioner was dealt with in my office and as such I am fully conversant with the matter and am also competent to swear this affidavit, through names Sri A.S. Choudhury/ Amar Singh Choudhury and Sri P. C. Kumar, N.F. Railway's name have been shown as Contemners in the Hon'ble Tribunal's show cause notice dated 27.8.03.
2. That, the reply of the Railway Administration on O.A. No. 289 of 2002 dated 20.6.2003 furnished to the petitioner was finalised in the Personnel Branch of the N. F. Railway by the respondents and has approval of competent authority and as such I am fully conversant with the matter.
3. That, the statements made in this affidavit and in paragraph 1 of this show cause reply are true to my knowledge

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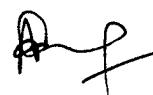
and those made in the paragraphs 5, 6, 7, 8(b), 8(c) and 8(d),
being matter of records and are true to my information
derived therefrom which I believe to be true and the
rest are my humble submission before this Hon'ble
Tribunal.

AND I sign this affidavit on this the _____ of
December 2003.

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Filed by :

Sukomol SonGupta-
(S. Son Gupta)
Railway Advocate,
Guwahati.


NORTHEAST FRONTIER RAILWAY
MALIGAON : GUWALIATI-11.

(D E P O N E N T)

नेत्रप्रबन्धक के सचिव
पू. सो. रेलवे, मालीगाँव
SECRETARY TO G. M.
N.E. RAILWAY, MALIGAON