

50/100
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Kalita
21.11.17

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No:- 294/03

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Name of the Appellant(s): Srii Anuendhati Kalita

Name of the Respondent(s): CEO 2008

Advocate for the Appellant:- Mr B. Sarma
Mr. D.K. Kalita

Advocate for the Respondent:-

Rly Counsel

Notes of the Registry	date	Order of the Tribunal
Application is filed but not in time	26.12.2003	Present: Hon'ble Mr Justice B. Panigraha, Vice-Chairman HOn'ble Mr K.V. Prahaladan, Administrative Member.
Rs. 100 deposited de IPO/B/ No. 773 387448 and 26/12/03		Heard Mr B. Sarma, learned counsel for the applicant. Mr S. Sarma, learned counsel for the respondents, has submitted that he will take necessary instructions from his client within reasonable time. Since the applicant was kept incharge on ad hoc basis in the post of Junior Scientific Officer, let the present status quo as on today continue till the next date.
<i>1/CDR Register 26/12/03</i>		Let four copies of the application be served upon the
Steps taken:		

26.12.2003

learned counsel for the respondents in course of the day.

The matter shall appear on 27.1.2004 for hearing on admission.

K.V.Prahalan
Member

B
Vice-Chairman

Received 4 copies
for the respondents
Sarita
H.P. Reg/mc4
12-1-04

nkm

20.2.2004

Heard Mr. B. Sarma, learned counsel for the applicant and also Dr. M.C. Sarma, learned counsel for the respondents.

The application is admitted, call for the records. Issue notice to the parties.

List on 25.3.2004 for orders.

Meanwhile, there is no bar to implement the Office Order No.34/2003 (TTC & MECH) dated 16.12.2003.

K.V.Prahalan
Member (A)

mb

27.2.04

Present: Hon'ble Mr. Shanker Raju, Judicial Member.

Hon'ble Mr.K.V.Prahalan, Administrative Member.

List this case on 8.3.04 along with R.A.No.1 of 2004.

K.V.Prahalan
Member (A)

J
Member (J)

bb

8.3.2004

Post the matter before the next Available Division Bench.

Meanwhile status quo will continue.

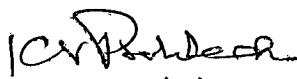
Member (A)

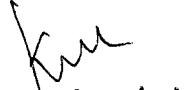
bb

1.4.04 Heard counsel for the applicant.

Hearing concluded.

The application is allowed in terms
of the order recorded separately.


Member (A)


Member (J)

pg

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

294 2003.
O.A. / R.A. No. of

1.4.2004
DATE OF DECISION
OF JUDGMENT

Smt Arundhati Kalita APPLICANT(S).

Sri Bipul Sarma ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

Union of India & Ors. RESPONDENT(S).

None present for the respondents. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER

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

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Ho'ble Judicial Member

Final

4

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 294 of 2003.

Date of Order : This the 1st Day of April, 2004.

The Hon'ble Shri Kuldip Singh, Judicial Member.

The Hon'ble Shri K.V.Prahladan, Administrative Member.

Smt. Arundhati Kalita,
W/o Shri Arup Kumar Goswami,
Railway Qrs. No. 167/B,
East Maligaon, Guwahati-11.

... Applicant.

By Advocate Sri Bipul Sarma.

- Versus -

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

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

3. Deputy Chief Personnel Officer,
(Gaz), Office of the General Manager,
Personnel, N.F.Railway,
Maligaon, Guwahati-11.

4. Dy.Director, Estt.Gaz(Cadre),
Railway Board, Rail Bhawan,
New Delhi.

... Respondents.

By Advocate (None present for the respondents)

O R D E R

KULDIP SINGH, MEMBER(J)

Heard Sri B.Sarma, learned counsel for the applicant.

None present for the respondents. However, we proceed to hear the matter under the provision of Rule 15 of the Central Administrative Tribunal (Procedure) Rules 1987.

2. This application has been filed challenging the arbitrary reversion of the applicant from the post of Junior Scientific Officer (Gr.B) which she was holding purely on ad hoc basis to the post of Senior Scientific Research Assistant i.e. her substantive post. The applicant submitted that vide order dated 24.2.93 issued by the Railway Board a Junior Scale Group B post was created which was subsequently designated as Junior Scientific Officer.

Onward
This may be filled up by transferring a regular post from

fru

contd..2

Traffic or Mechanical or Personnel Branch of their own Railway. The applicant belongs to Traffic branch and was thus posted to the post of Junior Scientific Officer. The applicant continued to work but suddenly the order dated 16.12.2003 was issued by the General Manager(P), N.F.Railway, wherein it was mentioned that the post of JSO is restored back to Mechanical Department with immediate effect and as a consequence thereof the applicant who was posted as JSO was ordered to be reverted to her substantive post of Sr. Scientific Research Assistant. The applicant thereafter filed an O.A. and this Tribunal vide order dated 26.12.2003 directed to maintain status quo. Notice was issued to the respondents.

3. The respondents filed their written statement contesting the case. In the affidavit the respondents pleaded that the post of JSO was created for operation in the psycho-technical cell by variation of a post of equivalent rank from the mechanical department and the said order also stated that the applicant who was working as Sr. Scientific Research Assistant was empanelled for promotion to the post of JSO Gr.B purely on ad hoc basis with the stipulation that this would not confer her any claims for regular promotion to Gr.B service and seniority. By the impugned order dated 16.12.2003 the post of JSO was restored back from the office of the Chief Safety Officer, N.F.Railway to the Mechanical Engineering department to which the post belonged. Consequently the order of reversion has been passed. Thus the respondents in the O.A. has taken a plea that the post of JSO is no more available to the applicant since the post has been restored to the mechanical department. Keeping in view the various considerations of administrative convenience the decision was taken to restore the post.

4. We have heard the learned counsel for the applicant at length. We find from the record that there was no order of abolition of the post of JSO. The post has been created by order dated issued by the Railway Board which is still in force and the General Manager cannot overriding the orders passed by the Railway Board. Though the respondents have denied the allegation that this order has been passed to accommodate some other person from Personnel department but the fact remains that the post has not yet been abolished by the Railway Board and continued till today. This fact has been established by letter dated 22.4.96 (Annexure-G) written by the Executive Director Traffic Research (Psych.), wherein it has been clearly mentioned that as regards post of JSO is concerned, the N.F.Railway may fill up the post on local basis from its own sources and the present arrangement of utilising a Calcutta based JSO is dispensed with. Thus we find that the order of reverting the applicant to the post of Sr. Scientific Research Assistant has been passed in an arbitrary manner as the ~~post~~ post of JSO is still exist and has not been abolished and the applicant has a right to be continued to the post of JSO though purely on ad hoc basis. Since the sources to fill the post include the traffic department to which the applicant belongs to.

Accordingly we allow the O.A. and quash and set aside the order dated 16.12.2003 reverting back the applicant to the post of Sr. Scientific Research Assistant. *on the same terms and condition as on Ad hoc basis for No order as to costs.*

K.V.Prahladan
(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER

Kuldeep
(KULDIP SINGH)
JUDICIAL MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

केन्द्रीय अधिकारिक अधिकारक
Central Administrative Tribunal
Guwahati Bench
Date: 10 DEC 2003
Guwahati Bench

(In application u/s 19 of the Administration Tribunal
Act, 1985)

OA NO. 294 /2003

Smti. Arundhati Kalita - Applicant

-VS-

Union of India & others - Respondent.

I N D E X

Sl No.	Annexure	Particulars	Page No.
1.	A	Copy of office order No. 34/2003 (TTC & MECH)	18 - 18
2.	B	Copy of letter dt. 24/2/93 of Railway Board.	19 - 21
3.	C	Copy of letter dated 17/8/93	22 -
4.	D	Copy of letter dated 1/4/94	23
5.	E	Copy of office order dt. 5/12/97	24
6.	F	Copy of letter dt. 6/10/95	25 - 26
7.	G	Copy of letter dt. 22/4/96	27
8.			
9.			

*File by
Dipak Kumar Kalita
Advocate*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH
AT GUWAHATI

O.A. NO. /2003

Smti. Arundhati Kalita - Applicant

-VS-

Union of India & ors - Respondent

SYNOPSIS OF THE CASE.

Date	Particulars	Annexure	Page No.
24/2/93	On being recommendation of the High Powered Committee Psycho-Technical cells have interalia decided the revised Gazetted set up and accordingly post of Jr. Scientific officer has been created in each Zonal Railway.	B	19-20
17/8/93	Railway respondent has informed Member, Staff, Rly. Board and action has been taken to utilise the post sparing from the post of Traffic or Mechanical or Personnel deptt. till regular selection criteria are laid down.	C	22
1/4/94	Addl. General Manager, NF. Railway informed that the post could not be filled in regular manner as there	D	23

contd...2.

Date	Particulars	Annexure	Page No.
6/10/95	<p>is no guideline in what manner the post of Junior Scientific officer can be filled, either through UPSC or from Group 'B' selection. However, in order to operate, a person has been deputed temporarily for this post, till further instruction from Railway Board.</p> <p>Director/RDSO (Research, Design & Standards Organisation) issued circular to each Zonal Railway regarding the fixing up follow up action to be taken by them and also instructed and requested to create the post of Sr. Scientific Research Assistant in each Zonal Railway.</p>		25-26
22/4/96	<p>The RDSO The Research, Design and Standards Organisation vide letter dt. 22/4/96 written to the Chief Safety officer with a direction to fill up the post from within their own resources out of the cadre of Traffic, Mechanical and Personnel.</p>	6 -	27

contd...3.

Date	Particulars	Annexure	Page No.
5/12/97	Accordingly post has been created in the N.F.Railway and Smti. Arundhati Kalita, from Traffic Department has been empannelled for the post on adhoc basis.	E	- 29
16/12/03	On 16/12/03 She was reverted to her substantive post on being restoring back the post of Mechanical department. Be it to be mentioned that your applicant belongs to Traffic Deptt. and she was holding the post on adhoc basis as there is no such regular selection nor any process for selection and modality has been formulated. Now by virtue of reverting her to the post as , the respondent authority intended to fill up the said post by another adhoc appointee though the post has not been abolished	A	17 - 18

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT GUAAHATI

ORIGINAL APPLICATION NO. /2003

Smti. Arundhati Kalita,
W/o. Shri Arup Kumar Goswami,
Railway Qrs. No. 167/B,
East Maligaon, Guwahati - 11.
... Applicant.

-VS-

1. Union of India,
Through the General Manager,
N.F.Railway/Maligaon,
Guwahati - 11.
2. General Manager(Personnel)
N.F.Railway/Maligaon,
Guwahati - 11.
3. Deputy Chief Personnel Officer
(Gaz), Office of the General
Manager/Personnel, N.F.Railway,
Maligaon, Guwahati-11.
4. Dy.Director, Estt.Gaz(Cadre),
Railway Board, Rail Bhawan,
New Delhi.
... Respondent.

DETAILS IN APPLICATION.

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

contd...2

M
Amalgamated rights

The present application has been made against the arbitrary reversion of the applicant from the post of Jr. Scientific officer, Group-B to the post of Senior Scientific Research Assistant i.e. to her substantive post by order dt. 16/12/03 with a view to fill up the post of Jr. Scientific officer by ~~another Ad-hoc~~ reverting her ~~from~~ ~~from~~ from the post which is arbitrary and illegal.

A copy of the impugned order is enclosed herewith as Annexure-A to this petition.

2. JURISDICTION OF THE TRIBUNAL

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

3. KUNUTATUIB?

The applicant further declares that the application is filed within the limitation period prescribed under section 21 of the Administrative Tribunal Act, 1985.

4. FACT OF THE CASE.

4.1 That the applicant is the citizen of India and as such she is entitled to all the rights and privileges as guaranteed under the Constitution of India.

4.2 That your applicant joined in N.F. Railway service in the year 7th April, 1994 as Senior Scientific Research Assistant under the office of Chief Scientific Officer which is under the Operation Department/N.F.Rly.

4.3 That your applicant is a Master degree holder in Psychology with having practical knowledge and experience in the line.

4.4 That Ministry of Railway, Govt. of India in the year 1993 i.e. the Railway Board has decided and recommended by a High Power Committee to create a Psycho-Technical cell in the Zonal Railway with a view to conduct psychological test of certain cadres of recruitment made by the zonal Railway in their respective zone so that frequent accidents in operation of ~~train~~ trains can be ~~averted~~ smoothly. The aforesaid psychological test shall have to be conducted by Junior scientific officer by their respective Railway which is earlier conducted by Research Design and Standards Organisation (RDSO) of Indian Railway having Headquarters at Lucknow. In order to remove the difficulties of conducting psychological test it was decided by the Railway Board to create posts in zonal Railway to be set up in the zonal Railway and for the purpose Jr. Scientific officer/Group-'B', 7 posts have been created. View taken by the Railway Board that psychological test for the new recruits from the recruitment Board ^{would} be conducted jointly by Sr. Scientific officer/ Jr. Scientific officer of the zonal Railway and a Sr. Personnel officer/Divisional Personnel officer from the Railway and for which RDSO would organise a brief course on test administration and evaluation for a week or so on each zonal Railway for Personnel officers and

contd4.

- 4 -

completed by April, 30, 1993. For this reason post has been sanctioned by the Railway Board with the concurrence of the Finance Directorate of the Ministry of Railways.

Copy of the aforesaid sanction
of the Gaz. post in Group 'B' by the
Railway Board is annexed as Annexure-B.

4.5 That in the aforesaid sanctioned letter 7 posts of Jr. scale of Group 'B' have been sanctioned by the Railway Board, out of which 2 for RDSO, 1 each for Central Wailway, N.E.Railway, N.F.Railway, S.C.Rly and S.E.Railway. It is also stated that in the aforesaid sanction letter at the relevant point of time there are 4 posts at RDSO/Lucknow and out of that 2 should be retained with RDSO and 2 shall be transferred one each to NE and S.E.Railway. It was also stipulated that Central Railway, N.F.Rly, S.E.Railway should find a post by transferring a regular post from Traffic or Mechanical or Personnel branch of their own Railway. In the aforesaid sanction letter it was also stipulated that N.F. and S.C.Railway should provide one post of Jr.Scientific officer by 31.3.1993 and accordingly sanction of Ministry of Railways has been accorded for that.

Copy of the aforesaid sanction letter
is enclosed herewith as Annexure-C.

4.6 That on 17th August/93 a D.O. letter has been issued by the General Manager/N.F.Railway on the subject of setting up of Psycho-Technical unit on zonal Rly informing that one post of Sr.Scientific Research Assistant(Psychology) has been created by necessary

contd...5.

Anilak. halit

matching surrender and requisition for the same has also been placed with the Railway Recruitment Board, Guwahati and for which advertisement in this regard will be floated shortly. But so far for one Gaz. post of Jr. Scientific officer in terms of the direction of the Railway Board has been temporarily arranged by transferring one post of ADMO (Group 'A') which has also not permissible as per Board's directive. However, arrangement has been made temporarily upto 16/8/93, and also took a decision to utilise a regular post of Traffic or Mechanical or Personnel department as per direction given by the Railway Board vide their letter dt. 24/2/93 for which action will be taken by the department. It is also requested in the said letter to clarify as to the modality to be followed for filling up of the post of Jr. Scientific officer.

Copy of the letter dt. 17/8/1993 is annexed as Annexure-1.

4.7 That again on 1/4/94, Addl. General Manager/ N.F. Railway has written to the Adviser (Management Services), Railway Board asking certain clarification regarding methodology and mode of recruitment in order to fill up the post of Group 'B' Gaz. post i.e. Jr. Scientific officer in N.F. Rly though the Psycho-Technical cell has been created. Due to non-receipt of the clarification presently it was decided to fill up the post drafting a Mechanical officer against

contd...6

a Gazetted post released temporarily till receiving instruction from the Railway Board.

Copy of the aforesaid letter dt.

1/4/94 is enclosed herewith as

Annexure-D.

4.8 That again on 6/10/95 office of the Director General/Psychology, Lucknow has written to the Railway Board asking steps to be taken in respect of the recommendation made by the High Powered Committee on Psycho-Tech. cells in the Zonal Railways and also highlighted in the aforesaid letter that difficulties are being experienced by the Zonal Railways in managing the work in Psycho-Tech. Cell which is to be conducted by the cell without having certain experienced and qualified personnel and in view of the observation of the Railway Accident Inquiry Committee, 1968. The Director General/Psychology highlighted that person ~~whose~~ whose service should be utilised by Chief Scientific ~~officer~~ Research Assistant or Sr. Scientific Research Assistant holding Master's degree in Psychology so that test will be done by well qualified and responsible staff so that they become neither a mere routine nor a source of harrassment to the staff. He also highlighted in the aforesaid letter that Central, NF, South Central and SE Railways have already created one post each of Sr. Scientific Research Assistant. The post of Central and NF Railways are already manned and recruitment of incumbents for South Central and SE Railways has already been finalised. Therefore, instruction has

contd...7

been issued by RDSO to create Psycho-Technical cells in each Zonal Railway.

4.9 That again on 22/4/96 Executive Director Traffic Research (Psych) has given direction to the Chief Safety Officer, N.F.Railway that the sanction for the Gazetted and non-Gazetted personnel comprising Psycho-Technical cells on Zonal Railways has already been given by the Railway Board and also noted by the Director that the post of Sr.Scientific Asstt. (Psychology) has also been created but the post of Jr.Scientific officer is yet to be created. Board has also given direction to create the post of Jr. Scientific officer and that is to be created from within their own resources out of the cadres of Traffic, Mechanical or Personnel department. However, it is also clarified that Group 'A' post of the Medical Department cannot obviously be used. It was directed that the matter is within the competence of N.F.Rly for which specific sanction of the Board has already given. By virtue of the aforesaid letter pursue of the matter locally so that the post of Jr.Scientific officer in N.F.Railway becomes available and accordingly your applicant has been appointed who was Sr.Scientific Research Assistant in Psycho-Technical cell in the department of Traffic and has been empanelled for promotion to the post of Jr.Scientific officer, Group 'B' purely on adhoc basis on 5/12/97 in conformity with the sanction and direction made by the Railway Board on being recommended by the High Powered Committee

contd...8

on Psycho-Technical cell working under R.D.S.O.

Copy of the aforesaid apptt.

letter is enclosed herewith as

Annexure-E. ~~S F S G~~ G.

4.10 That your applicant begs to submit that the aforesaid policy to create the post of Jr. Scientific officer under the Psycho-Technical cell under RDSO has been taken into account and it has been decided to create on being recommended of the High Powered Committee in order to avert frequent Railway accidents. The same has been recommended on the basis of the review of the Railway Accident Inquiry Committee report for which your applicant has been placed as Jr. Scientific officer from 5/12/97 on adhoc basis, but the modalities for recruitment of the post of Group 'B' post as Jr. Scientific officer has been formulated and no such clarification has been received from the Railway Board in what manner the post of the Jr. Scientific officer shall have to be filled up and till such clarification has been received, NFRailway is not in a position to fill up the said post on regular manner. Hence N.F.Rly on the direction and the instruction and sanction given by the Railway Board as well as RDSO, the post of Jr. Scientific officer has been created sparing a post of Traffic deptt. having requisite ~~qualification~~ qualification on adhoc basis and since then the Psycho-Technical cell of N.F.Railway has started functioning to carry out testing of various recruitments of N.F.Railway such as

contd...9

Station Master, Driver etc. and for which she was given specific training under RDSO.

4.11 That recently inspite of having such aforesaid direction of the Railway Board your applicant who was given adhoc promotion has been reverted to her substantive post of Sr. Scientific Research Assistant without sparing her from concerned department as she was reverted due to non-restoration of the post of Mech. Department. This is done in a very arbitrary manner though the post has not yet been abolished which is created under the direction given by the Railway Board as well as under the recommendation of the ~~High~~ High Powered Committee. The instant reversion order has been issued by the Chief Personnel officer, office of the General Manager (Personnel) to fill up the aforesaid post by another incumbent from Personnel branch or any other department by reverting her from the aforesaid post.

4.12 For that it has been crystal clear and imminent from the aforesaid office order that your applicant has been reverted to her substantive post from the adhoc post in order to fill up the same post by another adhoc appointee. As the post shall have to be manned by another incumbent but no regular selection can be held as there is no such guide line and manner for regular selection as well as the way how the post will be filled up by direct recruits or regular selection from Group 'B' is not yet formulated. A circular and direction issued by the Railway Board and correspondence made between N.F.Rly and Railway Board

contd...10

it is revealed that no such selection is yet to be held to fill up the post. Hence reverting your applicant back to her original post with a motive to fill up the same by another adhoc promotee is imminent which cannot be done by the Railway authority.

4.13 For that the order of reversion by the Rly Authority reverting your applicant to her substantive post is the violation of normal procedures as because she is holding the post since 1997 till ~~xxxxx~~ the date as no regular selection has been held nor the post has been abolished till date. This has been done by the Rly. authority to place another person in the aforesaid post on adhoc basis which is illegal. Inferior motive of the Railway authority is to fill up the post by another adhoc appointee is bad and your ~~xxx~~ applicant apprehends that the office of the General Manager(Personnel) is going to fill up the post of Jr. Scientific officer by another appointee sparing from any other department and under no circumstances adhoc appointee can be replaced by another appointee. Hence reversion order is liable to be set aside and quashed.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS.

5.1 For that action of the respondent is solely illegal, arbitrary and violation of principle of natural justice as well as fundamental rights of the applicant.

5.2 For that in no circumstances adhoc appointee can be replaced by another adhoc appointee until and unless a regular selection is held.

5.3 For that till date there is no such policy and mode has been formulated and no such guide line has been issued by the Railway Board in what manner the post of Jr. Scientific officer shall have to be filled up i.e. by direct recruitment through UPSC or by way of regular Group 'B' selection as per existing norms. Hence the Railway authority is not able to take any decision regarding the mode of filling up of the aforesaid post for which adhoc arrangement has been made as per direction issued by RDSO.

5.4 For that no such direction has been given while issuing the impugned order to spare post of the Traffic department in which your applicant belongs before issuing the aforesaid reversion order though the post of the Mechanical department has been restored back nor indication ought to have been issued by the respondent authority to spare your petitioner from the Traffic department in order to hold the post of Jr. Scientific officer on adhoc basis.

5.5 For that the respondent authority are taking steps to fill up the post on adhoc basis ~~expelling~~ replacing your applicant by another adhoc appointee and your applicant apprehends that Railway authority intended to fill up the post by another appointee replacing her which is illegal and bad in law and liable to set aside.

5.6 For that if a regular selection is held your applicant should be allowed for appearing for any regular selection for such Group 'B' post and till such regular

selection is made your applicant is allowed to continue in the aforesaid post but in no circumstances she should be replaced by another adhoc appointee.

5.7 For that the aforesaid post of Jr. Scientific officer has been created under the guide lines in order to carry out regular recruitment tests adopted by the Railway Recruitment Board for which the post has been sanctioned and Railway authority has created the post. As the post has not been abolished your applicant has right to continue in the aforesaid post till a regular selection is made.

5.8 For that in any view of the matter the action of the respondent is not sustainable in eye of law as in no circumstances an adhoc appointee can be replacee by another adhoc appointee.

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

6. DETAILS OF REMEDIES EXHAUSTED.

The applicant declares that there is no other alternative and efficacious remedy of the applicant except invoking the jurisdiction of the Hon'ble Tribunal under section 19 of the Administrative Tribunal Act, 1985.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING
BEFORE ANY OTHER COURT.

The applicant further declares that she has not filed any application, writ petition or any suit in respect of the subject matter of the instant application before any other court, authority nor any such

application, writ petition, suit is pending before any of the authority.

8. RELIEF SOUGHT FOR.

Under the facts and circumstances stated above the applicant most respectfully prays that your Lordship may be pleased to admit this petition and direct the respondent authority to give the following relief:-

8.1 That the Hon'ble Tribunal may be pleased to direct that the applicant may be allowed to continue to hold the post till regular selection is held.

8.2 That your applicant shall not be replaced by another adhoc appointee violating norms, settled provision of law and the applicant is to be allowed to continue in the post in pursuance to the direction given by the Railway Board and recommendation of the High Powered Committee as the post has been created in the interest of the Railway which is most important post and your applicant has sufficient qualification and experience in this line and she can not be replaced by another adhoc appointee till a regular selection is made and she may be allowed to continue in her post and allowed to take part in any such selection regularly to be held and until and unless modalities and policies for regular for regular selection is formulated and till abolition of the post, your applicant should not be replaced or reverted to her substantive post by any other adhoc appointee.

8.3 For that the impugned order of reversion dt. 16/12/03 is bad in law and that should be set aside

contd...14

- 14 -

and quashed on the count of principle of natural justice as well as non-application of mind.

8.4 For that in order to continue in the post respondent authority may be directed to spare post of traffic department by issuing office order/notification on being restoring the post of Mechanical department.

8.5 For that pass any other order or orders as seem fit and proper by this Hon'ble Tribunal on perusing the factual matrix of the case as stated above.

9. INTERIM ORDER PRAYED FOR.

Pending decision of this application the applicant seeks to issue of the following interim order -

That the Hon'ble Tribunal may be pleased to set aside and quash the order of the Chief Personnel officer dt. 16/12/03 and the applicant may be allowed to continue in her post and shall not be replaced by another adhoc promotee till a regular selection is held.

-AND-

That your applicant may please be allowed to continue in her post by

contd...15

keeping abeyance of the office order dt. 16/12/03 till the abolition of the post or till her regular selection is made and in no circumstances she should be replaced by any adhoc appointee and pass such any other order/orders as this Hon'ble Tribunal may deem fit and proper.

10. APPLICATION IS FILED THROUGH ADVOCATE.

11. PARTICULARS OF THE I.P.O.

- i) IPO No. 11 4-387448
- ii) Date 24/12/03
- iii) Payable at : IPO issued from Guwahati and payable at Guwahati.

12. LIST OF ENCLOSURES:

As stated above.

Contd...Verification.

VERIFICATION.

I, Smt. Arundhati Kalita, w/o. Shri Arup Kumar

Goswami aged about 37 years at present residing in Rly.

Qrs. No. 167/B, East Mligaon, Guwahati-11, Dist. Kamrup,

Assam do hereby solemnly affirm and verify that the

statements made in paragraphs 4.8 to 4.13

are true to my knowledge, those made in
paragtaphs 4.1 to 4.7 are true to my

information derieved from records and the rests are

my humble submission before this Hon'ble Tribunal. I am

duly authorised to swear this Verification.

And accordingly I sign this Verification on
this 29 th day of December, 2003 at Guwahati.

Arundhati Kalita
SIGNATURE. 24/12/03

ANNEXURE - A

N. F. Railway

OFFICE ORDER NO.34/2003(TTC & MECH)

The following orders are issued with immediate effect:-

(1) One regular Group 'B' post of AME of Mechanical Department, which was variated for operation as AME(Safety) and subsequently as Jr. Scientific Officer vide GM(P)/MLG's Office Order No.84/94(Traffic) dtd.1/5-4-1994 and 202/97(Mech) dtd.5-12-1997 is hereby restored back to Mechanical Department with immediate effect.

(2) As a consequence, Smt.Arundhati Kalita, Sr.Scientific Research Asstt. in Scale Rs.1640-2900/5500-9000, who was promoted to the post of JSO(Gr.'B') purely on adhoc basis, vide this office order dated 05-12-1997, is hereby reverted to her substantive post of Sr.Scientific Research Asstt. in Scale Rs.5500-9000/- under CSO/MLG with immediate effect.

This issues with the approval of General Manager/N. F. Railway.

(P. K. Singh)
Dy. Chief Personnel Officer(Gaz)
For General Manager (P)

E/283/82/Pt.XVII(O)

Maligaon, dated 16-12-2003

Copy forwarded for information & necessary action to:-

- (1) Secretary, Railway Board, New Delhi-110001.
- (2) DG/TR(P)/RDSO/Lucknow-226011.
- (3) All PHOD/HOD/DRM/CWM/NFR
- (4) FA&CAO(EGA&PF)
- (5) CPRO/DGM(G)
- (6) PS to GM, ASY to AGM
- (7) NFRPOA/NFRPOA/NFRMU/NFREU/MLG
- (8) OS(EO/BILL)/MLG
- (9) Officer concerned.

SMT. A. KALITA,
JSO/HQ

(P. K. Singh)
16/12/03
Dy. Chief Personnel Officer(Gaz)
For General Manager (P)

written to
me
by
Mr.
K. K. Kalita
Advocate

ASSAM FRONTIER RAILWAY.

Office of the
General Manager(P)/NF Rly.
Maligaon/Cuwahtali- 781011

No. B/41/120/29(0)

Dt. 11 - 05- 1993

To

The Director, Estt. (Gazetted Cadre),
Railway Board,
New Delhi.

Sub : Gazetted post for Psycho-technical Cell.

Ref : Board's letter No.87E(GC)4-14(Dup)(39)
dated 24.2.93 and 22.4.93.

.....

The Board vide their letter dt. 24.2.93 have conveyed sanction to the operation of a Junior Scale/ Group-B post to be designated as Junior Safety Scientific Officer in Psycho-technical Cell, by transferring a regular post from Traffic or Mechanical or Personnel Branch. As these three Departments are not in a position to spare a post for this purpose, one post of ADMO(Group-A) of this railway is being utilised temporarily to operate the post of Junior Scientific Officer, as agreed to by CMO and approved by the General Manager. The Board in their letter dt. 22.4.93 have further communicated that the Psycho-technical Cell of the Zonal Railways will be under the control of Chief Safety Officer for initial two years and thereafter it will be under the control of Chief Personnel Officer.

2. As mentioned above, the post of Junior Scientific Officer(JS/Group-B) is now ready for operation by temporary transfer of a post of ADMO(Group-A). In regard to filling up of this post, max no instructions/orders has so far been received from the Board. Therefore, Board are requested to kindly send the details, viz: whether the post will be manned by a direct recruit from UPSC, or to be filled up by a Group-B Officer to be selected through positive act of existing Group-B selection or by transferring an Officer(JS/GR. B) from an identified Department, if any.

3. An early reply is requested to enable this railway to operate this post in Psycho-technical Cell by an incumbent to be placed against this post.

V. N. BRAHMO
(A. K. BRAHMO)
DY.CPO/IR
For GENERAL MANAGER (P)

.....

(i) Annexure-B

1. The R.D.S.O. & I.L.D.
2. The Zonal Railways
(including BOBs)

2/13/93 (D.P.)

M. Delhi, dt. 24-2-93.

1. The General Manager
of Indian Railways.

2. Director General
R.D.S.O.
Lucknow.

Sub : Gazetted posts for Psycho-technical Cells.

(i) The Board, based on the recommendations of a High Power Committee on Psycho-technical Cells, have inter alia decided that the revised gazetted set-up of these Cells at RDSO and Zonal Railways should be as under :-

Grade	Existing gazetted set-up	Revised gazetted set-up
SA Grade	1	1 (for RDSO)
JA Grade	-	1 (for RDSO)
Mr. Scale	-	4 (1 each for ER, NR, SR & WR)
Mr. Scale/ Group 'B'	8	7 (2 for RDSO & 1 each for CR, NE, NF, SJ & E)
	9	13

The requirement of posts for the revised gazetted set-up should be met by adjustments as under :-

(a) SA Grade : 1 post for RDSO. The post is already available in RDSO. It is being operated by utilising the post of CCS/R, Southern Railway in terms of Board's letter No.92E(GC)4-9(487) dated 25-6-92.

(b) JA Grade : 1 post for RDSO. RDSO should find the post by transferring a regular post of some other department in RDSO itself. This should be done by March 31, 1993.

.....2/-

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Confidential
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Advocate

OS
S. 1/1/93

(from prepage)

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(c) Sr.Scale: 4 posts i.e. one each for Eastern, Northern, Southern and Western Railways. The existing Jr.Scale/Group 'B' posts of Jr.Scientific Officer at Calcutta, New Delhi, Madras and Bombay at present under RDSO may be transferred one each to Eastern, Northern, Southern and Western Railways respectively and these 4 posts may be upgraded by the respective zonal Railways to Sr.Scale as Senior Scientific Officer by transferring a regular senior scale element from Traffic or Mechanical or Personnel Departments of the respective Railway.
(This should be done by March 31, 1993)

(d) Jr.Scale/ Group 'B': 7 posts i.e. 2 posts for PDSO, 1 post each for CR, NE, NF, SC and SF Railways. RDSO at present has 4 posts at Hqs(Lucknow). 2 should be retained with RDSO and 2 should be transferred, one each to NE and SF Railways. The Central, Northeast Frontier and South Central Railways should find the post by transferring a regular post from Traffic or Mechanical or Personnel Branch of their own Railway. (RDSO should transfer one post of Junior Scientific Officer to NE and SF Railways before March 31, 1993. Central, NE and SC Railways should provide one post of Junior Scientific Officer by March 31, 1993).

3. Accordingly, sanction of the Ministry of Railways is hereby accorded to the transfer/adjustment of posts indicated at items (b), (c) and (d) of para 2 above.

4. Officers of Psycho-technical cells on the Railways and RDSO will belong to one cadre.

5. The Psycho-technical cells on the Zonal Railways will function under the administrative control of the concerned Zonal Railway. Both, Psycho-tests for specified categories of staff recruited by Railway Recruitment Boards (such as Assistant Station Masters, Assistant Drivers, McCormen) being presently conducted by Junior Scientific Officer (Psycho) RDSO, Lucknow and in-service selections being presently conducted by Junior Scientific Officer (Psycho) at Delhi, Calcutta, Bombay and Madras would be undertaken by Senior Scientific Officers/Junior Scientific Officers posted on Zonal Railways as soon as the incumbents are in position.

: 5 :

Procedure for new recruit. through Railway Recruitment. Exams would be conducted jointly by Senior Scientific Officer/Scientific Officer on Zonal Railway and a Senior Personnel Officer/Divisional Personnel Officer from the Railway. RDSO would organise brief courses on test administration and evaluation for a week or so on each Zonal Railway for Personnel Officers, and completed by April 30, 1993.

6. Details of adjustments of posts made in accordance with this sanction may please be advised early.

7. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

B.K. Minz

(Ms. B.K. Minz)
Dy. Director, Estt. Gaz. (Cadre)
Railway Board

No. 87E(CC)4-14(Dup) [397]

New Delhi, dt. 24-2-93.

Copy forwarded to :

1. The FA&CAOs, All Indian Railways.
2. The Director Finance, RDSO, Lucknow.
3. The Chairman, All Railway Recruitment Boards.
4. The ALAI (Railways) 40 copies.

B.K. Minz

(Ms. B.K. Minz)
Dy. Director, Estt. Gaz. (Cadre)
Railway Board

Copy to : Adv(MS), EL(Safety), EIE(GC), DE(RRB), JS(G), JS(C), ELEN, JD(GP), E(O)III and F(E)I Branches, Railway Board.

Annexure - C

~~SECRET~~
17/8/93

✓
✓

DO. No. E/41/105 Pt. XII(T).

August 17, 1993

Dear Sh. Rao,

Subs Getting Up of Psycho-Technical Units on Zonal Railways.

S.H.12 | Reft Your DO No. 91/Safety-1/20/8 dt. 20.7.93.

So far non-gazetted post is concerned in terms of Board's letter No. E(NG) II/92/PO/1090/1 dated 8.4.93, one post of Sr. Scientific Research Asstt. (Psychology) in scale Rs. 1640-2900/- has already been created by non-annual matching r/s under vide memorandum No. E/41/95/pt. III(T) dt. 22.6.93. The requisition has also been placed with the Rtd./Guwahati and the advertisement in this regard is being floated shortly.

So far gazetted post is concerned in terms of Board's directive conveyed under their letter No. 07-E(CC)4-14(Dup)/39 dt. 24.2.93 a proposal was sent to the Railway Board under the Railway's letter No. E/41/120/29(0) dt. 14.5.93 to operate the post of Sr. Scientific Officer by temporarily transferring one post of ADMO(Group-A) and the Board was also requested in the said letter to issue instructions/orders as to how the post should be filled i.e. whether the post will be manned by a direct recruit from IIT/ISI, or to be filled up by a Group 'B' Officer to be selected through positive set of existing Group 'B' selection or by transferring an officer (J3/Gr. 'B') from an identified Deptt. This was followed by a reminder dt. 11.6.93. However, no clarification has yet been received. The Railway Board, meanwhile, vide their letter No. 07-E(CC)4-14(Dup)/39 dt. 19.7.93 have indicated that this Railway's proposal to operate a post of ADMO as Sr. Scientific Officer is not acceptable, but this arrangement may be continued up to 16.8.93 and a regular post of Traffic or Mech. or Personnel Deptt. should be utilized as per direction given by the Railway Board under their letter No. 07-E(CC)4-14(Dup)/39 dt. 24.2.93. Action is being taken accordingly.

3. I would, therefore, request you to kindly clarify as to the methodology to be followed for filling up of this post of Sr. Scientific Officer.

With kind regards,

Yours sincerely,

(Giridhar)

✓

Sh. MK Rao
Member Staff
Railway Board
Delhi

Without fail
true copy
Giridhar

-23-

Ameen-D

E. V. VIJESWARAM?

D.O.No.E/41/120/99(0).

My dear Malhotra,

Dt. 1-4-1994.

Sub:- Gazetted posts for Psycho Technical Colln.

Reft:- Your D.O.No.87B(CC)4-14(Dup)
dt. 30/3/1994.

Board's letter dt. 24/2/93 and further clarification given to this Railway under Board's letter dt. 19/7/93 deal with the subject of transfer of a post from another 3 nominated departments for operation as Jr. Scientific Officer. There have been no instruction as to how to fill up the post of Jr. Scientific Officer despite the matter having been specifically taken up by this Railway in para 2 of this Railways letter dt. 11/6/93, namely whether the post to be manned by a direct recruitment from UPSO or to be filled up through positive action of selection etc. No clarification has come from the Board despite a number of reminders and D.O. letters dt. 24/6/93 & 29/7/93 to the Board's office. Executive Director(GC), Sri Sivaraman was also spoken to on 22/6/93 by Dy.CPO/Gazetted and he was informed that instructions regarding filling up of this gazetted post is yet to be finalized at the Board's end.

Under the circumstances, we were unable to fill up this post so far. However, in view of the urgency expressed in your letter, we have now filled up the post drafting a Mechanical Officer against a Gazetted post released temporarily from the Mechanical Cadre. This arrangement will be continued till we get instructions from Board.

Yours sincerely,

Sri R.K.Malhotra,
Adviser(Management Services),
Railway Board,
New Delhi.

(E. V. VIJESWARAM)

Copy to: CSO (The post of AME/MLG should immediately be re-designated as Jr. Scientific Officer and the present incumbent should be posted against the same. As Jr. Scientific Officer, Schedule of duties will be as laid down in the Board's letter and in addition will also include the safety duty at present allotted to him till further orders.)
CME (*RECORDED*)

Copy to: CPO to issue necessary orders immediately on date.

Addl. O.M.

*With thanks
for your
kindly
attention
D.S. 11/4/94
Advocate*

-24-

205

Amherst - E

~~SK 109~~

H F RAILWAY.
OFFICE OFF R NO. 202/97(MECH) Dt. 5.12.97

1. Sh. A K Roy Chowdhury, AME/Safety/HQ is transferred in the same capacity and posted as AME/Desgn/HQ against the x existing vacancy.
2. On vacation of the post of AME/Safety/HQ by Sh. Roy Chowdhury, the post is re-deignated as Jr.Scx Scientific Officer(JSO)/HQ, for operation in Psycho-technical Cell/HQ under CSO/NF Railway.
3. Smt. Arundhati Kalita, Sr.G Scientific Research Ass't in scale Rs. 1640 - 2900/- on being empanelled for promotion to the post of JSO/Gr.B purely on adhoc basis, is appointed to officiate as JSO/Gr.B/HQ on adhoc basis, against the arrangement vide SR.No.2 above.

The promotion of Smt. Kalita to JSO/Gr.B will be on the basis of her seniority and will not confer on her any claim for regular progression to Gr.B service and seniority.

4. Sh. MK Majumder, AME/DSI/SGUJ is temporarily transferred along with his post to HQ/MLG for a short time only.

This issues with the approval of Competent Authority.

1957-1960
C. N. Brahmo

By CFO/G
for General Manager(P)

W3. 1/41/120/29(0)

MLG, at. 5.12.97

No.E/41/120/29(0) N.C.
Copy forwarded for information & n/saction to :-

1) CME, CRSE, CMPE(D), CWE, SDGM, FA&C4O, COM & CSO/HIC

1) CME, CRSE, CMPE(D), CWE, SICHI, FAUJIND, CSE, ECE & (PE) / HIG (3) All DRMS & DIM(P) / NE

2) FA&CAO(EGA) & (PF)/MIG (3) All DRMS & DR
3) DRMS to FA&CAO/MIG (6) EO/BILL

3) SPO/T (5) PS to GM/MLG (6) EO/Bill
- (7) DPM/SCSU (8) DGM/C

3) SPO/1 (8) Sr.IPF/DSL/SGUJ (9)
2) DFO/KIR (8) Sr.IPF/DSL/SGUJ (9)

7) DAO/Kir (8) S.P.W.A. B.M.
10) E/pass (11) Officers concerned

(10) E/Pass. (11) Officers concerned

for General Manager(P)

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ANNEPUS E. F.

Ministry of Railways
Central Technical Services
Central Technical Services
SEARCH DESIGNS & STANDARDS ORGANISATION
LOKNOOP-226011

No. PTC/PP/III/3 (Vol. III)

Dated: 6.10.95.

SN-18

The Secretary/Estt. (NG)
Railway Board,
Rail Bhavan,
New Delhi.

Sub: Follow-up action on the recommendation of the High Powered Committee on Psycho-Tech. Colls - Setting up of Psycho Technical Units on Zonal Railways.

Re: Board's letter No.E(NG)II/92/PO/RSSO/1
dated 23.8.95.

Four posts each of Chief Scientific Research Assistants and Senior Scientific Research Assistants were sanctioned by the Board vide their letter No.ENG/II/92/PO/RDSO/1 dated 8.4.95 for the Psycho-technical Cells to be set-up on the Zonal Railways. These posts were ordered to be created by the Railways from within their existing resources by matching surrender as directed in Board's letter No.E(NG)II/92/PO/RDSO/1 dated 30.3.94. The sanctioned complement of officers and Scientific Assistants were required to undertake work pertaining to psycho-technical testing on decentralised pattern both for direct recruitments as well as inservice selections for the categories and stages identified vide Board's letter No.E(NG)I/92/PM1/22 dated 26.9.94 as recommended by the High Power Committee on Psycho-technical cells and accepted by the Board.

2. In terms of the Board's above quoted letter, the sanction for the non-gazetted technical posts for the Zonal Railways has been held in abeyance and the Zonal Railways have been directed to manage the work by drawing the services of Traffic/Electrical/Mechanical Inspectors.

3. In this connection, it is submitted that :-

(i) Psycho-technical testing is a professional activity and cannot be performed satisfactorily by inspectorial cadres who do not possess requisite academic and professional qualifications for the work. Both test administration and interpretation thereof require professional skills and knowledge, which cannot be imparted through orientation and short training programmes.

(ii) In view of the multiplicity of the categories and stages at which psychological tests are now required to be conducted, complement of officers and technical staff as already sanctioned by the Board, are absolutely necessary. In fact, difficulties are being experienced by the Zonal Railways in managing

Works: 12, Cenotaph First Street
P.O. Box 6902 Madras - 0000018

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entomological
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the work of direct recruitment and inservice testing with the help of four assistant officers, earlier borne on the rolls of KSO and now placed under their administrative control.

(iii) Psycho-technical testing is to be conducted for personnel selection and it would not be administratively desirable to expose the contents and methodology of testing to a large number of inspectorial cadres who are to be associated only on short tenure basis. This will have deleterious effect on quality and standard of testing as also the integrity of the system. Inspectors can at best be utilised for routine assistance in conduct of the test programmes. Their deployment cannot be a substitute for professional assistance to be rendered by Chief Scientific Research Assistant or Senior Scientific Research Assistants holding Master's Degree in Psychology. In this connection, the observations of the Railway Accident Inquiry Committee - 1968, as contained in Para 310, is reproduced below:-

"...We also hope that when the stage arrives for the application of these tests in the selection of personnel, such tests will be handled by well-qualified and responsible staff so that they become neither a mere routine nor a source of harassment to the staff".

(iv) It is understood that Central, NF, South Central and South Eastern Railway have already created one post each of Senior Scientific Research Assistant. The posts on Central and NF Railways are already manned and recruitment of incumbents for South Central and South Eastern Railway has already been finalised. Implementation of the orders of the Board being almost half way through, stalling the process would be a retrograde step when the posts are justified on the grounds of workload as well as worth of charge.

4. In view of the foregoing Board are requested to review their decision and order for creation of four posts each of Chief Scientific Research Assistants and Senior Scientific Research Assistants by the Zonal Railways, as originally sanctioned.

DA: Nil.

Copy to:

- (1) The Executive Director (Safety), Railway Board, Rail Bhavan, New Delhi.
- (2) The Chief Safety Officers, All Indian Railways.

DA: Nil. Gautham

(S.K.Singh)
for Director General/Psychology

(S.K.Singh)
for Director General/Psychology

Info from the

कार्यकारी नियंत्रण यातायात अनु० (गनो०)

S. K. Singh

Executive Director Traffic Research (Psych.)

No. PTC/PP/ITI/5

अनरंधान अभियात्प्र एवं मानक संगठन

प्राग् नगर, लखनऊ-226 011

संकोषीकरण : 50921

Government of India - Ministry of Railways
Research Designs & Standards Organisation
Manak Nagar, Lucknow-226011
Telephone: 609211

Dated 1-22-41

My dear Thanga,

५१

Sub : Psycho-Technical on Zonal Railways.

$$S_N = \underline{116}$$

Ref : Your L.O. No. T/2/48/Pt.I dtd. 9.4.96.

Board have issued sanction for Gazetted and Non-Gazetted personnel comprising Psycho-Technical Cells on Zonal Railways via the their letter Nos. 87 E(GC) 4-14(Lup) (39) dtd. 24.2.93 and B(G) II/92/PO/1050/1 dtd. 8.4.93. It is noted that the post of Jr. Scientific Assistant (Psychology) has already been created and is now under operation. The post of Jr. Scientific Officer is yet to be created.

In terms of Board's sanction, the post of Jr. Scientific Officer has to be found by the Railways from within their own resources out of the cadres of Traffic, Mechanical or Personnel department. The post identified for your Railway is a group one and for the purposes of finding this post, a group A post on the medical department cannot obviously be used.

3. This matter is fully within the competence of your
Railway for which specific sanction of the Board already exists.
In my view, no further reference to Board should be necessary.
I understand that other Railways which had to take similar action
have already complied with the Board's orders.

14. I would, therefore, request that you may kindly run this matter locally so that post of Jr. Scientific Officer of your Railway becomes available early and the present import arrangement of utilising a Calcutta based Jr. Scientific Officer is dispensed with.

18 : Nil

Shri. R.K.Thanga,
Chief Safety Officer,
Northern Frontier Railway,
Molagen, GUWAHATI-781011

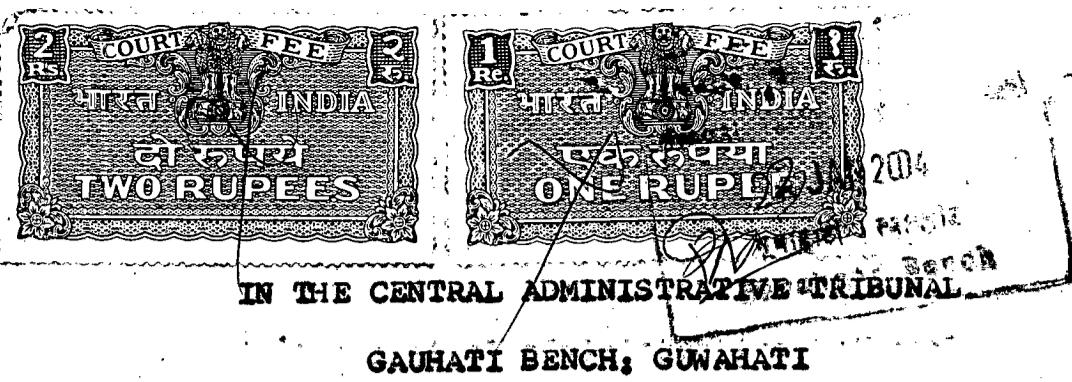
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Yours sincerely,

(S. P. SINGH)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO. 294/2003

Smti. Arundhati Kalita - Applicant

-VS-

Union of India & ors - Respondent

IN THE MATTER OF:

An Affidavit producing certain documents which have relavancy with the facts & circumstances of OA No. 294/2003.

The applicant abovenamed

MOST RESPECTFULLY SHEWETH.

I, Smt. Arundhati Kalita, w/o. Shri Arup Kumar Goswami, aged about 37 years at present residing in Rly. Qrs. No. 167/B, East Maligaon, Guwahati-II, Dist-Kamrup, Assam do hereby solemnly affirm and declare on oath as follows.

1. That I have filed OA No. 294/2003 against the order dt.16/12/03 passed by the Railway respondent and this Hon'ble Tribunal pleased to pass status quo order on 26/12/2003 and by virtue of the aforesaid order I am continuing the post of Jr. Scientific Officer till to-day.
2. That the respondent Railway authority on 12/1/04 has issued official letter to me addressing me as Jr. Scientific officer, NF Railway/Maligaon which I am holding now.

contd...2.

- 2 -

Copy of the letter dt. 12/1/04 is
enclosed herewith as Annexure-I
(at page 4).

3. That in pursuance to the aforesaid office order I have issued letter dt. 13/01/04 to Dy.CPO/Rectt./N.F.Rly as Jr.Scientific officer and on the basis of my aforesaid letter dt. 13/1/04 General Manager(P)/N.F.Railway/Maligaon has also issued letter dt. 16/1/04 to the candidate to appear before me for conducting aptitude test wherein General Manager(P) has addressed me as Jr.Scientific officer.

Copy of the aforesaid letter dt. 13/1/04 and dt. 16/1/04 are enclosed herewith as Annexures-II and III(at page 5,6).

4. That from the perusal of the aforesaid letters it is crystal clear that the ~~affirmative letter~~ Office order dt. 16/12/03 has not been given effect which is impugned in OA No.294/2003 and it is confirmed from the conduct and action on the part of the respondent that they have not yet given any effect of the impugned reversion order dt. 16/12/03.

5. That these 3 letters should be part of the documents of my OA No.294/2003 and the same should be part of the record of the case as the letters were issued by the Railway authority subsequently after passing the order by this Hon'ble Tribunal on 26/12/03.

contd...3.

42

- 3 -

6. That the statement made in the aforesaid Affidavit in para 1 to 5 are true to my knowledge and belief and accordingly I sign this affidavit producing aforesaid documentd before this Hon'ble Tribunal on this day of 23 nd January 2004 at Guwahati.

Amalaki Kalita
SIGNATURE.

- 4 -

- 80 -

ANNEXURE - 1

SN 275

43

N.F. RAILWAY

Office of the
General Manager(P)
Maligaon, Guwahati-11

No.E/Rectt./Comp/93/Pt.II

Dated: 12.01.2004

To
The Junior Scientific Officer,
N. F. Railway/Maligaon.

Sub: Aptitude test of Shri Mukul Ch. Kumar for the post of ASM against
compassionate ground.

CPO/IR has approved for offer of appointment as ASM to Shri Mukul Ch.
Kumar against compassionate ground appointment.

As per extant procedure prior to offer of appointment as ASM in scale
Rs.4500-7000/- Aptitude test of candidate to be conducted.

In view of the above, you are requested to fix the date, time and venue of the
Aptitude test so that the above mentioned candidate may be intimated suitably.

This may please be treated as most urgent.

DA: One circular of Aptitude test.


(K. SAHA)
Dy. CPO/Rectt.
for GENERAL MANAGER(P)/MLG

CERTIFIED TRUE COPY
Dr. *[Signature]*
Advocate

T/2/48/Misc Pt-1

N.F.Railway

Office of the
General Manager(Safety)
Maligaon, Guwahati-11
Date: 13.01.04

To
Dy CPO/Recrt
N.F.Railway

Sub: Aptitude test of compassionate ground ASM.

Ref: Your letter No E/Recrt/Comp/93/Pt.II dated 12-01-04.

In regard to your above mentioned letter, I have fixed up the date of Aptitude-test on 21st January 2004, venue at HQ/MLG. Accordingly you are requested to intimate the candidate to report the JSO/Psycho positively at 10hrs along with his necessary papers.

A. Kalita
A. Kalita
Jr Scientific Officer
N.F.Ray/Maligaon

O/C.

*✓ (268)
13/1/04
E/Recrt*

CERTIFIED TRUE COPY

*D. K. Kalita
Advocate*

N. F. Railway.

Office of the
General Manager (P)
Maligaon Guwahati-11

No.E/Rectt/Comp./93/Pt. II

Dated 16.01.2004.

To

Shri Mukul Ch. Kumar,
S/O late Uday Ch. Kumar
Ex.Hd. Shroff (Cash & Pay) Maligaon,
Vill & PO- Gatanagar
Guwahati- 781033
Kamrup (Assam)

Sub:- Aptitude Test of compassionate ground ASM.

Ref:- Junior Scientific Officer/MLG's letter No. T/2/48/Misc/ Pt. I
dated 13.01.2004.

In reference to the above, you are hereby instructed to attend for
Aptitude test on 21.01.2004 at 10.00 hrs. in the chamber of Junior Scientific
Officer, N.F.Railway, Maligaon along with necessary papers for appointment
as ASM against compassionate ground.

for General Manager (P)
N.F. Railway/Maligaon

CERTIFIED TRUE COPY

*D. K. Naik
Advocate*

8/5/04

IN The Central Administrative Tribunal
Guwanati Bench, Guwahati.

IN THE MATTER OF:

OA 294/2003

Smt. Arundhati Kalita

Applicant

Versus

Union of India represented

By General Manager, N.E.

Respondents

Railway and others.

AND

IN THE MATTER OF:

Written statement for and on behalf of the
respondent.

The answering respondent most respectfully
SHEWETH as under:

1. That the answering respondents have
received a copy of the application filed and have gone through the
same and have understood the contents thereof. Save and except
those statements which are specifically admitted hereinbelow or those
which are borne on records all other averments/allegations as made in
the application are emphatically hereby denied and the application
put to the strictest order thereof.

2. That for the sake of brevity, meticulous
denial of each and every allegation/statement made in the application
has been avoided. However, the answering respondents have confined
their reply to those points/allegations/averments of the applicant
which are found relevant for enabling a proper decisions on the matter.

Received
Bimal Baruah
Advocate
6/3/04

(2)

3. That the application suffers from want of a proper cause of action. The want of the cause of actions will be clear from the following submissions.

4. That the application suffers from wrong representation and utter lack of understanding of the circumstances and facts relating to the matter on hand as will be amply clear from the submissions made here.

BRIEF HISTORY:

5. At this stage the answering respondents beg to submit a brief of the matter under dispute from their point of view as follows :-

5.1. That in the year 1997 a post of Junior Scientific Officer (JSO)/Headquarters was created for operation in the Psycho-technical cell by variation of a post of equivalent rank from the mechanical department for operation in the operating department of the N.F. Railway under Chief Safety Officer of N.F. Railways. This variation was given effect, to vide office order No. 202/97 (mech) dated 5/12/1997. (Annexure E of application).

5.2. That the said order stated in clear terms that "Smt. Arundhati Kalita, Sr. Scientific Research Assistnt, in scale of Rs. 1640-2900/- on being empanelled for promotion to the post of JSO/Gr. B. purely on ad-hoc basis, is appointed to officiate as JSO/Gr.B. purely on ad hoc basis, against the arrangement vide Sr. No.2 above.

It was also made clear in the said order that "The promotion of Smt. Kalita to JSO/Gr.B. on ad hoc basis will not confer as her any claims for regular promotion to Gr. B. service and seniority."

3

5.3. That vide office order no.34/2003 (TTC
and mech) dated 16/12/2003 the order dated 15/12/1997 was
modified to 1

(a) restore back the post of Assistant Mechanical Engineer from the office of the Chief Safety Officer, N F Railway to the Mechanical Engineering department to which the post belonged and

(b) In consequence of the fact that there was no post of Junior Scientific Officer (GROUP B) from the date of the order, namely 16/12/2003, Smt.Arunchati Kalita had to be reverted to her original post of Senior Scientific Research Assistant in scale Rs. 1640-2900/5500-9000.

It is to be noted that Smt. Arundhati Kalita was promoted on ad-hoc basis without conferring on her any claim for regular promotion to Group B service and seniority, as clearly stated in the office order dated 5/12/1997 (Annexure E of the O A).

5.4. It would thus be clear that reversion of Smt. Arundhati Kalita was because of want of a post. ~~Govt. of India~~ ~~Govt. of Assam~~

6. Parawise comments:-

The answering respondents submit para-wise comments as follows :-

6.1. That as regards paras 4.1, 4.2 and 4.3 on the respondents have no remarks to offer.

6.2. That as regards para 4.4 it is submitted that the post of Jr. Scientific Officer for N.E. Railway was created vide para 2 (d) of Railway Board's letter no. 87E (GC) 4-14 (Dup) (39) dated 24/2/93 (Annexure B of OA). This letters directed that N.E. Railway should find the post by transferring a post from Traffic cr

(4)

Mechanical or Personnel Branch. In consequence, one post of Assistant Mechanical Engineer was redesignated as Junior Scientific Officer/Headquarter vide office order No. 202/97 (Mech.) dated 5/12/97. By the same order Smt. Arundhati Kalita, Senior Scientific Research Assistant in scale Rs. 1640-2900/- was appointed on ad hoc basis to officiate as JSO (Gr.B) without conferring on her any claim for regular promotion to Group B service and seniority.

It may be noted that the redesignation of the post of AME/Safety) as Junior Scientific Officer/Headquarter vide order No. 202/97 (Mech) dated 5/12/97 was an administrative decision taken by keeping in view various considerations of administrative convenience. In the same manner, the decision to restore the post of Junior Scientific Officer to the mechanical department conveyed vide office order no. 34/2003 (TTC & MECH) dated 16/12/2003 was taken in the interest of the administrative. It would not be appropriate to question such a decision.

6.3. As regards paras 4.5 to 4.10 it is submitted that the paras merely describe the decision taken to create the post of Junior Scientific Officer in N.E. Railway and ad hoc appointment of the applicant in the same. Consequently respondents have no comments to offer as them.

6.4. That in regard to para 4.11 and 4.12 it is denied that restoration of the post of Junior Scientific Officer to the Mechanical department was done arbitrarily. It is also denied that the order to revert the applicant to her substantive post was taken in order to fill up the post by another incumbent from the personnel branch. Needless to say, the applicants status as ad hoc Group 'B' officer confers on her no right to promotion to Group 'B' service and seniority as was made clear in office order no. 202/97 (mech) dt. 5/12/97.

Pradeep Kumar Singh
P. E. M.

Pradeep Kumar Singh
S. V. Ray, M.A.
Gopakumar

:5:

6.5. That with regard to paras 4.13 the allegations that the post of Junior Scientific Officer is planned to be filled up by another appointee of another department is denied. It is wrong to question the decision of the administration taken in the overall administrative interest. The limited rights of the applicant as an ad hoc Group 'B' Officer as indicated in the office order dated 5/12/97 will not be interfered with.

It is therefore prayed that the Hon'ble Tribunal be pleased to dismiss the application with costs.

And the respondents shall as in duty bound ever pray.

Verification

I Shri Pradeep Kumar Singh son of Shup Lal Singh aged about 36 Years at present working as Dy. CEO, Gaz. N.F.Railway, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 6.5 are true to my knowledge and the rest are my humble submission before this Hon'ble Tribunal, I am duly authorised to swear this verification.

And I sign this verification on this the 5th day of March, 2004 at Guwahati.

Pradeep Kumar Singh

Dy. CEO, Personnel OM-1/6
S. P. Bly, / Maltgaon
Guwahati-II.