

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 297/03
R.A/C.P No.
E.P/M.A No. 11/04

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SECTION OFFICER (Judl.)

Dahita
21/11/17

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: - 297 / 2003

Mise Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Name of the Appellant(s): Sri Sukumar Das

Name of the Respondent(s): U. O. I. & ops.

Advocate for the Appellant: - Mr. M. Chanda
Mr. G. N. Chakraborty

Advocate for the Respondent: - Mr. S. Nath
Mr. S. Choudhury

Standing Counsel Rly.

Notes of the Registry	date	Order of the Tribunal
This application is in form but not in time	17.2.2004	List on 8.3.2004 alongwith M.P. 11/2004.
Correspondence Petition is filed / not filed C.P. for - Rs. 50/- C.P. filed vide IPO/B/2004/No. 11G.378388		
Dated 19/2/04.....	bb	
	8.3.2004	Heard Mr. M. Chanda, learned counsel for the applicant.
The date of validity of the IPO of this case has been expired on to-day.		The O.A. is admitted, issue notice to the parties, returnable by four weeks.
		List on 7.4.2004 for order.
23/12		
The learned advocate for the applicant may be asked to submit new IPO as two IPO is expired.	bb	
23/12		

Kr Deka
Member (A)

19/2
The L/Advocate for the applicant has filed new IPO no. 11G.378388 on 19.2.04 against this case. RL.

Notice & order dt. 8/3/04
 Sent to D/Section 7.4.2004
 for issuing to
 respondent nos - 122,
 along with ^{order of} M.P. - 11/04.

XXXXXX

XXXXXX

XXXXXX

Mr. B.C. Pathak, learned Standing
 counsel for the Railways is on accom-
 modation. Four weeks time is given
 to the Railways to file reply.

List on 17.5.2004.

ICP
 Member (A)

bb

17.5.2004

On the plea of learned counsel
 for the respondents four weeks time
 is given to the respondents to file
 written statement. List on 17.6.04
 for orders.

Written statement
 not filed.

*DR
 17-6-04*

ICP
 Member (A)

mb

17.6.04.

Present: The Hon'ble Mrs. Bharati
 Roy, Judicial Member.
 Hon'ble Mr. K. V. Prahladan, Admini-
 strative Member.

The learned counsel for the
 Respondents prays for adjourn-
 ment to file counter reply. On
 earlier occasion also opportu-
 nities were granted. We, there-
 fore, finally granted three weeks
 time to file counter reply. Let
 this case be listed before the
 next available Division Bench.
 In the meantime, the applicant
 may file rejoinder if any, with-
 in the next date.

KV Prahladan
 Member (A)

G
 Member (J)

lm

3

Notes of the Registry	Date	Order of the Tribunal
1) W/S has been filed by the respondents.	15.9.2004	<p>The matter has been already adjourned three times since 7.4.2004. Even though there is no justification for granting any further adjournment in the matter, on the request of learned counsel for the respondents we grant last and final adjournment for filing written statement. In case, the written statement is not filed on the next date and the matter is sought to be adjourned, the officer responsible for filing written statement shall be saddled with costs and the costs shall be recovered from the personal pocket of the concerned officer.</p> <p>The matter is accordingly adjourned to 4.10.2004.</p>
2) S/R is awaited.		
3) NO A/D cards received by this Registry.		
ND 11/10/04		
7.10.2004		
W/S has been filed by the Respondents	pg	
	4.10.2004	<p>Ms. U. Das, learned Advocate for the respondents stated that written statement is being filed today with copy to the learned Advocate for the applicant. The applicant, in case so desires, may file rejoinder, if any, within three weeks from today with advance copy to the learned counsel for the apply respondents.</p> <p>List the matter for hearing on 29.11.2004.</p>
Service Report is still awaited by Respondents NOS: 1 & 2.		
1) W/S has been filed on behalf of the Respondents	mb	
2) Rejoinder has not been filed by the applicant.		
ND 25/11/04		
22-303		
no rejoinder, hearing		

29.11.2004

Adjourned to 20.1.2005 for hearing

for hearing.
for hearing.

for hearing.

*AB**K.V.Prahla*
Member

bb

20.1.05.

The learned counsel for the applicant states that the applicant wants to file rejoinder in the matter, and for that purpose he seeks adjournment to file rejoinder before the next date with advance copy to the learned counsel for the Respondents. Stand over to 1.3.05.

K.V.Prahla
Member*R.*
Vice-Chairman28.2.05

The Case is ready for hearing

AB

Case is ready for hearing.

AB

lm

01.03.2005 Present : The Hon'ble Mr. K.V.Prahla

Administrative Member.

List on 16.03.2005 for hearing.

K.V.Prahla
Member (A)

mb

16.3.2005 At the request made by learned counsel for the parties the case is adjourned to 23.3.2005 for hearing.

K.V.Prahla
Member*R.Siva*
Vice-Chairman

bb

23.3.2005 Present : The Hon'ble Mr. Justice S. Sivarajan, Vice-Chairman. The Hon'ble Mr. K.V. Prahla, Member (A).

At the request of learned counsel for the parties list on 27.4.2005 for hearing.

K.V.Prahla
Member (A)*R.Siva*
Vice-Chairman

mb

27.4.2005 No Division Bench. List on
16.5.2005 for hearing.

Q. J. Jagtap
Vice-Chairman

mb

17.5.05

Rejoinder submitted
by the Applicant.

Q. J. Jagtap
Case is ready for hearing.

16.5.2005

Mr. S. Sarma, learned counsel for the
Railways seeks adjournment. Post on
9.6.2005.

K. P. Bhattacharya
Member

Q. J. Jagtap
Vice-Chairman

bb

09.06.2005 At the request of learned counsel
for the parties, the case is adjourned
to 18.7.2005.

K. P. Bhattacharya
Member

Q. J. Jagtap
Vice-Chairman

mb

18.7.2005

Mr. S. Nath, learned counsel for
the applicant seeks for short adjourn-
ment. Ms. B. Devi, learned counsel for
the respondents has no objection. Post
on 26.7.2005.

K. P. Bhattacharya
Member

Q. J. Jagtap
Vice-Chairman

mb

26.7.2005

Heard learned counsel for the parti-
es. Judgment delivered in open Court, kept
in separate sheets.

The O.A. is disposed of in terms of
the order.

K. P. Bhattacharya
Member

Q. J. Jagtap
Vice-Chairman

bb

22.8.05
Copy of the order
has been sent to the
Office for issuing
the same to the applicant
as well as to the
Rly. Adm. for the
respondent.

Q. J. Jagtap

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

O.A. No. 297 of 2003.

DATE OF DECISION: 26.07.2005

Sri Sukumar Das

APPLICANT

Mr. M.Chanda

**ADVOCATE FORTHE
APPLICANT(S)**

VERSUS -

N.F.Railway & Others

RESPONDENT(S)

Ms. B. Devi

**ADVOCATE FOR THE
RESPONDENT(S)**

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

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

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

Judgment delivered by Hon'ble Vice-Chairman.

8 - 9
Varjave

6

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 297 of 2003.

Date of Order: This, the 26th Day of July, 2005.

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

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

Sri Sukumar Das
Son of late Sushil Chandra Das
Office of the Deputy Chief Engineer
(Construction)/Silchar
P.O: Silchar, Cachar
Assam. Applicant.

By Advocates S/Shri M. Chanda, G. N. Chakraborty, S. Nath & S. Choudhury.

- Versus -

1. The Union of India
Represented by the General Manager
(Construction), N.F.Railway
Maligaon, Guwahati - 781 011.
2. The Deputy Chief Engineer (Construction)/
Survey, N.F.Railway, Maligaon
Guwahati-781 011
(formerly Deputy Chief Engineer/
Construction/N.F.Railway/Silchar). Respondents.

By Advocate Ms. B. Devi.

ORDER (ORAL)

SIVARAJAN, J. (V.C.) :

The applicant while working as Chief Inspector of Works in the N.F.Railway, Lalabazar, he was promoted as Assistant Engineer on adhoc basis on 13.1.1989 (Annexure-1). Accordingly, he joined as Assistant Engineer/Construction, Lalabazar on 6.2.1989. While working as such, he was terminated from service and was reverted back to Group 'C' as IOW/Con/Gr.I on 19.10.1994 (Annexure-7). The

[Signature]

applicant approached this Tribunal by way of O.A. No.218/1994 against the reversion order. The Tribunal by judgment dated 27.7.1998 set aside the said order and directed re-instatement of the applicant in the post of Assistant Engineer. The respondents took up the matter before the Gauhati High Court in Civil Rule No.5717/1998. The said case was disposed of on 30.4.2002 by directing the applicant to make a representation before the respondents. The applicant accordingly submitted his representation dated 3.8.2002 (Annexure-15). The same was disposed of by communication dated 4.9.2002 (Annexure-17). This order is impugned in this application.

2. Mr. M. Chanda, learned counsel for the applicant submits that while reverting the applicant from the post of Assistant Engineer two of his juniors Shri G. Sinha Roy and Shri Sandeep Sarkar were holding the post of Assistant Engineer on adhoc basis and that this fact was pointed out to the respondents in the representation. Counsel submits that immediately on receipt of the representation, the respondents had reverted Shri Sandeep Sarkar from the post of Assistant Engineer evidenced by order No.13/2002 dated 3.9.2002. Counsel further submits that it is clear that there is a vacancy in the post of Assistant Engineer which can be provided to the applicant since his junior was reverted as per the said order. Counsel submits that the respondents are willfully declining the promotion to the applicant to the post of Assistant Engineer on adhoc basis in spite of the fact that there exists a vacancy. Counsel further submits that the applicant had officiated in the post of Assistant Engineer on adhoc basis for certain period but he was not paid the salary for that period. Counsel also drawn our notice to the averment made in para 12 of the written statement wherein, according to the counsel, respondents

9/2

have admitted the said fact. Counsel submits that positive direction must be issued to the respondents to appoint the applicant to the post of Assistant Engineer on adhoc basis in the existing vacancy and also to pay the salary for the period during which he had served as Assistant Engineer.

3. Ms. B. Devi, learned counsel appearing on behalf of Mr. S. Sarma, learned Railway counsel for the respondents, based on the averments made in the written statement and on the basis of the Annexure-16 communication submits that the respondents presently do not want to fill up the vacancy of Assistant Engineer on adhoc basis. She also relied on various averments against the applicant in regard to his eligibility for the said post.

4. We have considered the rival submissions. Admittedly, the decision of this Tribunal in O.A. No.218/1994 was taken up by the respondents before the Gauhati High Court in Civil Rule No.5717/1998: The operative portion of the judgment was extracted by the applicant in his representation (Annexure-15). The first part of the said extracted portion of the same reads thus:

"For the view we are taking in the matter we are not opining anything on this argument of the learned counsel for the petitioner in view of the fact that in April, 1999 Sri G. Sinha Roy had stolen a march over Sri Sukumar Das, he could not be allowed to continue on ad hoc basis. It cannot be disputed that a person working on ad hoc basis has no right to continue unless some of his junior continues on ad hoc basis. Of course, a senior person can be ignored for ad hoc appointment or for continuing on ad hoc basis for valid reason."

The applicant was directed to make representation, in case, any of his juniors is continuing in class-II service on adhoc basis. The respondents were also directed to pass a reasoned order on the

Jpt

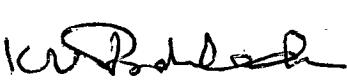
representation. It is on that basis the applicant had submitted the representation dated 3.8.2002 (Annexure-15). As already noted, one of the applicant's junior, namely, Shri Sandeep Sarkar who was continuing as AEN/Con/D/MLG on adhoc basis was terminated by order dated 3.9.2002 (Annexure-16). So far as the other person, namely, Shri G. Sinha Roy who was originally promoted as Assistant Engineer on adhoc basis is concerned, he had passed the departmental test and on that basis he has been regularly promoted as Assistant Engineer. The respondents in the impugned order had clearly stated the aforesaid two circumstances. The resulting position is that none of the junior to the applicant on the date of passing the impugned order was holding the post of Assistant Engineer on adhoc basis. Now, the observation of the Gauhati High Court, which has been extracted hereinabove, is relevant. The High Court has clearly pointed out that a person working on adhoc basis has no right to continue unless some of his juniors continue on ad hoc basis. In the present case, as already noted, none of the juniors of the applicant are presently holding the post of Assistant Engineer on adhoc basis. In the circumstances, the applicant has no right to insist that he must be promoted to the post of Assistant Engineer on adhoc basis. In the circumstances, the claim of the applicant for promotion to the post of Assistant Engineer on adhoc basis has no merit as of today. This does not mean that the respondents can appoint anybody to the post of Assistant Engineer on adhoc basis if there exists any vacancy for the said post. As and when the respondents want to, fill up the said vacancy on adhoc basis, necessarily it has to be done on the basis of seniority alone unless there are any invalidating circumstances. We find that the respondents in the written statement have made certain

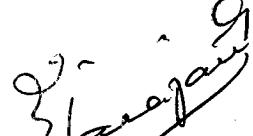


averments about the performance of the applicant. Unless it is borne out by records, certainly it cannot be a ground for non-consideration of the applicant's case in the event of filling up the vacant post of Assistant Engineer.

5. The only other case of the applicant is that he has not been paid the arrears of salary for the period during which he had worked as Assistant Engineer on adhoc basis. There are certain averments in the written statement from which it would appear that there is some substance. If factually the respondents have not paid the salary to the applicant for the period during which he had worked as Assistant Engineer on adhoc basis, certainly the respondents will pay the same to the applicant within a period of three months from the date of receipt of this order.

The Original Application is disposed of as above. The applicant will produce this order before the concerned respondent for compliance of the later part of this judgment.


 (K.V.PRAHLADAN)
 ADMINISTRATIVE MEMBER


 (G.SIVARAJAN)
 VICE CHAIRMAN

BB

1 DEC 2003

गुवाहाटी बैच

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

O.A. No. 297/2003

Sri Sukumar Das

-vs-

Union of India & Ors.

28.2.81 The applicant was initially appointed as Apprentice Inspector of works (for short I.O.W.) Grade III under General Manager/Construction, N.F.Railway, Maligaon.

5.6.82 The applicant was appointed as I.O.W. Grade III on regular basis.

1.1.84 The applicant was promoted as I.O.W. Grade III.

29.10.86 The applicant was further promoted as I.O.W. Grade I in the scale of Rs. 2000-3200 under Executive Engineer/Construction/N.F.Railway, Lalabazar.

3.12.87 The applicant was promoted to the post of Chief Inspector of Works (for short C.I.O.W.) in the scale of Rs. 2375-3500/-.

13.1.89 The applicant was promoted as Assistant Engineer issued from the office of the General Manager (Construction), N.F.Railway, Maligaon on ad hoc basis.

2.2.89 The applicant was appointed as Assistant Engineer/Construction/Lalabazar.

6.2.89 The applicant joined as Assistant Engineer/Construction/ Lalabazar.

31.10.91 The applicant was transferred from Lalabazar to Kumarghat-Agartala survey and posted at Kumarghat.

1.3.93 The applicant was regularized against restructuring/existing vacancies of C.I.O.W. in the scale of Rs. 2375-3500/- by order dated 26.11.93/1.12.93 issued by the General Manager(P), N.F.Railway, Maligaon.

12.7.94 That the applicant was transferred to Tinsukia from Kumarghat as Assistant Engineer/Construction/ Tinsukia (ad hoc).

28.7.94 The applicant received letter from the Deputy Chief Engineer/Construction/Silchar regarding certain outstanding bills when he was posted in Lalabazar Bairabi Project.

19.8.94 The applicant submitted his reply explaining the detailed position.

1.9.94 The Executive Engineer/Kumarghat-Agartala Survey/Dharmanagar issued a reply to the applicant by letter dated 1.9.94 against his reply dated 19.8.94.

19.10.94 The applicant was terminated from service and he was reverted back to Group 'C' as IOW/Construction/ Grade I with immediate effect by an office order No. 228/94.

31.10.94 The applicant received the order of 19.10.94.

10.1.95 During the pendency of the case, the General Manager/Construction issued an office order No. 22/95 reverting the applicant as Chief Inspector of Works/Con instead of Inspector of Works/Con/Grade I.

30.1.95 The Executive Engineer/con/G.C./Tinsukia was passed Office Order No. 1/95 terminating the ad hoc promotion of the applicant as Assistant Engineer/con instead of Inspector of works/con/Grade I.

9.2.95 The General Manager/con has fixed the pay of the applicant as Chief Inspector of Works with effect from 3.12.1987.

14.2.95 The General Manager/con transferred the applicant to Amguri as Chief Inspector of Works under Deputy Chief Engineer/Con/Amguri.

17.4.97 Respondents filled up Post of Asstt.Engineer on deputation basis from the state Govt.deliberately ignoring the case of the applicant.

27.7.98 The judgment and order passed in O.A. No. 218/94.

30.4.02 The Writ Petition being numbered as Civil Rule No.5717 of 1998 preferred by the Respondents before the Hon'ble Gauhati High Court against the judgment and order dated 27.7.98 came up for hearing and the same was disposed of,wherein it was held that if any of the junior,is there the applicant may prefer representation before the authority.

3.8.02 The applicant submitted the judgment and order dated 30.4.2002 to the competent authority.

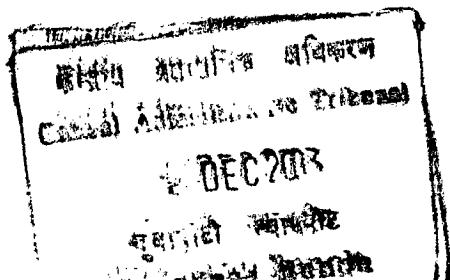
3.9.02 By an office order No.13/2002 terminating the ad hoc promotion of Sri Sandeep Sarkar and reverting him back to his substantive post of Sr. SE(W), Construction,with a malifide intention to deny the benefit of ad-hoc,promotion to the applicant

4.9.02 Impugned order was passed rejecting the representation of the applicant and further stated that ad hoc promotion of Sri Sandeep Sarkar has already been discontinued.

16.6.03 Hon'ble tribunals order dated 16.6.03 in O.A 123 of 2003.

PRAYER

- 8.1 That the order of termination of ad hoc officiation of Group-B of the applicant as Assistant Engineer/Construction (ad hoc/Tinsukia and his reversion to Group 'C' as IOW/Construction Grade-I by order dated 19.10.1994 be set aside and quashed, with all consequential benefits including monetary benefits.
- 8.2 That the Office order No. 22/95 dated 10.1.95 issued by the General Manager/Con/N.F.Railway/Maligon and consequent office order No. 1/95 dated 30.1.95 issued by the Executive Engineer/Con/G-C/Tinsukia and Office Order No. 35/9 dated 14.2.95 issued by the General Manager/Con/Maligaon be set aside and quashed with all consequential benefits including monetary benefits.
- 8.3 That the impugned order issued vide letter bearing no. E/283/CON/G(Engg) Pt.X, dated 4th September, 2002 be set aside and quashed.
- 8.4 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to be reinstated to the post of Asstt. Engineer(Construction) on ad hoc basis with all consequential service benefits including monetary benefit at least with effect from 19.10.1994.
- 8.5 Costs of the application.
- 8.6 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALIATI BENCH**

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No 297/2003

Sri Sukumar Das : Applicant

- Versus -

Union of India & Others : Respondents

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Date. 26. 12. 03

Filed by
Surjat Choudhury
Advocate

Sukumar Das

Filed by The Applicant
Through Surjat Choudhury
Advocacy

on 26. 12. 03.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative
Tribunals Act, 1985)

O. A. No. 297 /2003

BETWEEN

Sri Sukumar Das
Son of Late Sushil Chandra Das
Office of the Deputy Chief Engineer
(Construction)/Silchar
P.O. Silchar, Cachar,
Assam.

Applicant

-AND-

1. The Union of India,
Represented by the General Manager,
(Construction), N.F.Railway,
Maligaon, Guwahati-781011
2. The Deputy Chief Engineer (Construction)/
Survey, N.F.Railway, Maligaon,
Guwahati-781 011
(formerly Deputy Chief
Engineer/Construction/N.F.Railway/Silchar).

Respondents

Sukumar Das

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned order dated 4.9.2002 rejecting the representation of the applicant dated 3.8.2002, wherein it is prayed for reinstatement of the applicant's service to the post of Asstt. Engineer (Construction) on ad hoc basis with all consequential service benefits including monetary benefits till such time juniors are allowed to continue to higher posts on ad hoc basis and further prayed for a direction upon the respondents for immediate reinstatement of the applicant to the cadre of Asstt. Engineer on ad hoc basis against the vacant post occurred due to reversion of Sri S.Sarkar, junior to the applicant.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

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

Srekumar Das

4. Facts of the Case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. He is a member of the Scheduled Caste Community. He passed the Diploma in Civil Engineering from Silchar Polytechnic, Silchar, District-Cachar, Assam in the year 1976.

4.2 That the applicant was initially appointed as Apprentice Inspector of Works (for short I.O.W.) Grade III under General Manager/Construction, N.F.Railway, Maligaon with effect from 28.2.1981. After successful completion of Apprentice period he was appointed as I.O.W. Grade - III on regular basis in the same Construction Organisation with effect from 5.6.1982. He was promoted as I.O.W. Grade III with effect from 1.1.1984 and further promoted as I.O.W. Grade I with effect from 29.10.1986 in the scale of Rs. 2000-3200 and posted under Executive Engineer/Construction/ N.F.Railway, Lalabazar.

4.3 That in the year 1987 there were vacancies of Chief Inspector of Works (for short C.I.O.W.) in the scale of Rs. 2375-3500/- . He was found suitable and eligible for the post of C.I.O.W. and was promoted as such with effect from 3.12.1987.

4.4 That there occurred vacancies of Assistant Engineers in the same Construction organization and considering the

Sukhram Dass

eligibility and suitability of the applicant he was promoted as Assistant Engineer by Office Order No. 13/89 dated 13.1.1989 issued from the office of the General Manager (Construction), N.F.Railway, Maligaon, Guwahati-11. The promotion was on ad hoc basis and reads as under :-

“Sri Kukumar Das, CIOW/Con/LLBR is temporarily appointed to officiate in Class-II service as AEN/CON on ad hoc basis and posted as Offg. AEN/CON/Bairabi under XEN/CON/LLBR vice Sri J.Bhattacharjee, AEN/Con transferred”.

The said order stipulated the condition that the promotion is fortuitous and ad hoc and will not confer upon the applicant any claim for retention, regular approval and absorption in Class-II service and seniority over their seniors.

It is stated that by the same office order one of the juniors to the applicant Sri G.Sinha Roy, IOW Grade-I/Jiribam, was temporarily appointed to officiate in Class-II service as Assistant Engineer/Construction on ad hoc basis. The same conditions of fortuitous and ad hoc promotion were also applicable to Sri Sinha Roy. The promotion order of Sri Sinha Roy reads as under :-

“The senior scale post of XEN/Con/SCL on being vacated by sri K.M. Burma vice item 1 above is temporarily downgraded to

Sreekrishna Deka

J.S./Class-II, and Sri G.Sinha Roy, IOW/Grade-I/Jiribam is temporarily appointed to officiate in Class-II service as AEN/CON on ad hoc basis and posted against this post."

Copy of the Office order dated 13.1.1989 is annexed herewith and marked as **Annexure-1**.

4.5 That by an office order No. 8/89 dated 2.2.1989 the Chief Engineer/ Construction/ N.F.Railway, Silchar passed order appointing the applicant as Assistant Engineer/Construction/Lalabazar. The applicant thereafter joined as Assistant Engineer/Construction/ Lalabazar with effect from 6.2.1989.

Extract of the copy of the office order dated 2.2.1989 is annexed as **Annexure-2**.

4.6 That the applicant was transferred from Lalabazar w.e.f. 31.10.1991 to Kumarghat-Agartala Survey as Assistant Engineer/Kumarghat-Agartala Survey and posted at Kumarghat.

4.7 That as explained above, the applicant was working as Assistant Engineer (Group B) at Kumarghat. Before promotion an Assistant Engineer (Ad hoc) the applicant was promoted as CIOW w.e.f. 3.12.1987 on ad hoc basis which is also explained above. In short, his promotion as Assistant Engineer (ad hoc) was from CIOW (Adhoc). While working as Assistant Engineer (Adhoc), his

Sukhendu Das

regularization to the post of CIOW by process of suitability was considered and as a result of suitability test for the said post of CIOW he was found suitable. His promotion was thereafter regularized against restructuring/existing vacancies of CIOW in scale Rs. 2375-3500/- with effect from 1.3.1993, by order dated 26.11.1993/1.12.1993 issued by the General Manager (P), N.F.Railway, Maligaon. The position of the applicant in the cadre of CIOW is that he was ad hoc CIOW with effect from 3.12.1987 and regular CIOW with effect from 1.3.1993.

Copy of the order-dated 26.11.93/1/12/93 is annexed as **Annexure-3**.

- 4.8 That the applicant was transferred to Tinsukia from Kumarghat as Assistant Engineer/Construction/Tinsukia (adhoc) with effect from 12.7.94. He had been discharging his duties efficiently.
- 4.9 That while working as Assistant Engineer/Construction/Tinsukia (adhoc) the applicant received some letters regarding certain outstanding bills relating to the period when he was in the Lalabazar Bairabi Project and posted at Lalabazar. The applicant received letter from the Deputy Chief Engineer/Construction/Silchar dated 28.7.94. This letter contained the following in the last para :-

Sreekanth Rao.

"Your reply should reach this office immediately as such the action has already been initiated for DAR action against you."

The applicant submitted his reply on 19.8.94 explaining the detailed position.

Copies of the letter dated 28.7.94 and applicant's reply dated 19.8.94 are annexed as **Annexure-4** and **5** respectively.

4.10 That the applicant has not received any information from the Deputy Chief Engineer/Construction/Silchar against his reply dated 19.8.94. However, the applicant begs to state that in his representation dated 19.8.94 he mentioned reference to Executive Engineer/Kumarghat-Agartala Survey/Dharmanagar. Thereafter the Executive Engineer/Kumarghat-Agartala Survey/Dharmanagar issued a reply to the applicant by letter dated 1.9.1994.

Copy of the letter dated 1.9.94 is annexed as **Annexure-6**.

4.11 That the applicant begs to state the fact that the correspondence between the Deputy Chief Engineer/Construction/Silchar and the letter of Executive Engineer/Kumarghat-Agartala Survey/Dharmanagar to apprise the Hon'ble Tribunal regarding the factual position. The details of the facts will be narrated if and when called for. It is stated that the Deputy Chief Engineer/Construction/Silchar had

Sukheroyate Dr.

developed animosity against the applicant for his reply dated 19.8.94 and the Executive Engiener/Kumarghat-Agartala Survey/Dharmanagar was also unhappy for explaining the position at Kumargha and Lalabazar. It is further stated that although the Deputy Chief Engineer/Construction in his letter dated 28.7.94 has mentioned about the DAR action, no DAR action has been initiated against the applicant. The actual position regarding the Bills as mentioned above is that the applicant had no responsibility regarding the bills. Actually the bills were not in the jurisdiction of the applicant. The applicant's letter dated 19.8.94 caused annoyance to the respondents. However, the applicant begs to state that as a disciplined Railway Officer he has fully cooperated with the officers and has also taken the extra burden and cleared three out of four bills and another one is in the process of clearance.

It is stated that the post of Deputy Chief Engineer/Construction/Silchar has since been redesignated as Deputy Chief Engineer/Survey/N.F. Railway/Maligaon and as such the particular in Respondent No.2 has been given accordingly.

4.12 That most surprisingly by an office order No. 228/94 dated 19.10.1994 the temporary ad hoc officiation in Group B service of assistant Engineer/Construction (Adhoc)/Tinsukia of the applicant has been terminated and he is reverted back to Group 'C' as IOW/Construction/Grade-I with immediate effect. No

Sukumar Das

reason in the reversion has been shown in the said Office Order dated 19.10.1994. It is stated that there has not been any occasion of reduction of cadre of assistant Engineer calling for the reversion of the applicant. It is also stated that there has not been any disciplinary action against the applicant. The order of reversion and termination of ad hoc promotion came as a surprise and shock to the applicant. It is further stated that the applicant has been reverted as pick and choose basis without any regard towards the rule of seniority. The applicant begs to state that the junior of the applicant who was promoted as Assistant Engineer on ad hoc basis along with the applicant has not been reverted and his ad choc promotion as Assistant Engineer has not been terminated. It is categorically stated that his juniors still working at the relevant time as Assistant Engineer/Construction (on adhoc basis). In view of the rule of seniority also the applicant cannot be reverted from the post of Assistant Engineer/Construction (ad hoc) when his junior is still allowed to continue in the ad hoc promotion. The applicant received the order of 19.10.1994 on 31.10.1994.

Copy of the order dated 19.10.1994 is annexed as Annexure-7.

4.13 That the applicant begs to state that he was promote as Assistant Engineer from the post of CIOW. However, he has been regularly promoted as CIOW on suitability test

Sukhbir Singh Ds

with effect 1.3.1993. As such even if any valid and genuine termination of the ad hoc promotion is called for, he should be reverted to the post of CIOW and not IOW Grade I as has been done by the Office Order dated 19.10.1994.

4.14 That the applicant states that the reversion order is the result of mala fide exercise by the respondents having no nexus with the vacancy position in Assistant Engineer's cadre or adhocism. This is very clear from the fact that his junior is still continuing as Assistant Engineer/Construction on ad hoc basis.

4.15 That during the pendency of the case the General Manager/Con has issued Office order No. 22/95 dated 10.1.95 reverting the applicant as Chief Inspector of Works/Con instead of Inspector of Works/Con/Grade I to have immediate effect. Thereafter, the Executive Engineer/Con/G.C./Tinsukia has passed office order No. 1/95 dated 30.1.95 terminating the adhoc promotion of the applicant as Assistant Engineer/Con instead of Inspector of Works/Con/Grade-I. These orders have been issued in modification of the order of reversion dated 19.10.1994. By order under Memorandum No. 25/95 dated 9.2.95 the General Manager/Con has also fixed the pay of the applicant as Chief Inspector of Works with effect from 3.12.1987. The General Manager/Con has also issued Office Order No. 35/95 dated 14.2.1995 transferring the applicant to Amguri as Chief Inspector of Works under Deputy Chief Engineer/Con/Amguri.

Sukhendar Das

Copies of orders dated 10.1.1995, 30.1.1995, 9.2.95, 14.2.1995 and Tribunals' Order dated 17.11.94 are annexed as Annexure- 8,9,10,11 and 12 respectively.

4.16 That the Hon'ble Tribunal was pleased to pass an interim order that pending hearing for interim relief respondents shall not give effect to the impugned order dated 19.10.94 and that the applicant may be allowed to continue to officiate in Group 'B' post from where he was reverted if the post was still vacant. It is stated that there are vacant posts of Assistant Engineers. Even then the respondents have passed the aforesaid order reverting the applicant from the post of Assistant Engineer to the post of Chief Inspector of Works.

4.17 That in view of the pendency of the case and the order of the Hon'ble Tribunal dated 17.11.1994 the respondents ought not to have issued the orders dated 10.1.95, 30.1.95 and 14.2.95 and in any event if any order was to be passed the Hon'ble Tribunal's permission ought to have been taken.

4.18 That the Junior of the applicant has been allowed to continue as Assistant Engineer/Adhoc but the applicant has been reverted from the said post.

Srekeemar Dr.

4.19 That the reversion orders have been passed without any show cause notice and that the action is arbitrary.

4.20 That in terms of provisions in Section 19(4) of the A.T. Act, 1985, the respondents have no power to issue the said orders.

4.21 That the applicant has not been paid salaries for November, 94, December' 94 and January' 95. He has been paid salary for February' 95 as Chief Inspector of Works which he has received under protest.

4.22 Being highly aggrieved by the impugned order of reversion dated 19.10.94 and consequential order dated 10.1.95, 30.1.95 and 14.2.95 the applicant approached this Hon'ble Tribunal through O.A. No.218/94. The said Original Application was vehemently contested by the respondents by filing written statement. However, the said Original Application which was numbered as O.A. No. 218/94 finally disposed of setting aside the impugned Office order dated 19.10.94, 10.1.95 and 30.1.95 and the Hon'ble Tribunal also directed the respondents to reinstate the applicant to Group B post of Assistant Engineer (Construction) adhoc forthwith by the respondent no.1 at any rate within 1 month from the date of receipt of the order of the Hon'ble Tribunal and the matter of consequential benefits left open to the applicant to agitate the same after his reinstatement and also directed the respondents to

Sukhdev Singh

decide the same if the same is brought before them by the applicant.

A copy of the judgment and order passed in O.A.

No. 218/94 on 27.7.1997 is annexed as **Annexure-13**

4.23 That it is stated that in the judgment and order dated 27.7.1997 the Hon'ble Tribunal held that the entire action of the respondents reverting the applicant is contrary to rule and there was no adequate explanation furnished by the respondents in their written statement regarding such arbitrary action and also not explained the action of the respondents regarding his placement one post below than the substantive post held by the applicant at the relevant time while the impugned order of reversion is passed. More so, in view of the fact that his junior Sri G.Sinha Roy was allowed to continue for a longtime even after the reversion of the applicant from the post of Asstt. Engineer on ad hoc basis.

4.24 That the respondent Union of India being aggrieved by the judgment and order dated 27.7.98 preferred a writ petition before the Hon'ble Gauhati High Court almost after a lapse of 1 year under Article 226 of the Constitution of India. The said Writ Petition being numbered as Civil Rule No.5717 of 1998 (Union of India and Others Vs. Sukumar Das)' came up for hearing on 30th April, 2002 before the Hon'ble Gauhati High Court and the same was disposed of by the Hon'ble High Court on 30th April 2002 with the following direction and observation :

Sukumar Das.

"7. In the aforesaid facts and circumstances, we dispose of this writ petition with the observation that by virtue of the judgment and order of the Tribunal the Respondent Sri Sukumar Das cannot be allowed to hold the post on ad hoc basis in class-II service. We may mention here that the Motion Bench while admitting the writ petition had stayed the judgment and order of the Tribunal dated 27.07.98. However, we leave it open to the Respondent that if any junior to him in Class-III service is continuing in Class II service on ad hoc basis or has been appointed on ad hoc basis, he may make necessary representation in that behalf to the applicant and if any such representation is made the same will be disposed of expeditiously, preferably within a period of 1 (one) month of its filing and it would be appreciated if the same is disposed of by a speaking order. Needless to mention that if a representation is made and an order as aforesaid is passed and Sri Sukumar Das is aggrieved of the same, he may challenge the same before an appropriate forum.

8. The writ petition is allowed in the aforesaid terms. No costs."

Sukumar Das

observation passed by the Hon'ble High Court that a senior person can be ignored from ad hoc promotion/appointment only for a "valid reason" but in the instant case the present respondent could not put forward any justifiable reasons or valid grounds for passing the impugned order dated 19.10.94. The Hon'ble High Court also specifically observed as follows"

"It cannot be disputed that a person working on ad hoc basis has no right to continue unless some of his juniors continue on ad hoc basis."

In the instant case apart from Sri G. Sinha Roy the respondent has subsequently promoted Sri Sandeep Sarkar on ad hoc basis as Asstt. Engineer who is placed in serial No.23 of the seniority list of supervisor published as on 1.10.2001 whereas the present applicant is placed in the serial no. 17 of the same seniority list. Be it stated that Sri Sandeep sarkar who is junior to the present applicant appointed/promoted to the cadre of Assistant Engineer on ad hoc basis after appointment/promotion of Sri G.Sinha Roy allowed to continue in the said post on ad hoc basis even after passing of impugned order of reversion dated 19.10.94 but surprisingly when this fact is brought to the notice of the respondent Union of India by the applicant by his representation dated 3.8.2002 which was submitted following the direction passed by the Hon'ble High Court vide its judgment and

Sukumar D/o.

order dated 30.4.2002 in Civil Rule No. 5717 of 1998. But surprisingly the General manager(Construction) passed an Office Order No. 13/2002 on 3.9.2002 terminating the ad hoc promotion of Sri Sandeep Sarkar with immediate effect placing him in his substantive position in Group C as Senior SE(W) Construction, no reason is specified for reversion of Sri Sandeep Sarkar and on the next day i.e. on 4th September, 2002 passed the impugned order rejecting the representation of the applicant dated 3rd August, 2002 contending inter alia that Sri G.Sinha Roy has already been promoted as AXEN on his passing the selection in the year 1999, whereas question in the instant application is whether the impugned order of reversion dated 19.10.1994 passed against the applicant is valid in the facts and circumstances of the instant case.

It is further stated in the impugned order dated 4.9.2002 that the ad hoc promotion of Sri Sandeep Sarkar has already been discontinued and vague assurance is given to the applicant that his case for ad hoc promotion will be considered whenever the ad hoc promotion arrangement is treated necessary in future.

The aforesaid action of the respondents firstly in terminating the ad hoc promotion of Sri Sandeep Sarkar on 3rd September 2002 who is junior to the applicant without any valid reason and more so when the post of Asstt. Engineer is available for such ad hoc accommodation is highly arbitrary, unfair and illegal

Sukhdev Singh
D/o.

and the same has been passed in colourable exercise of power with a mala fide intention to deny the ad hoc promotional benefit to the present applicant. Moreover to avoid proper implementation of the Hon'ble High Court order dated 30.4.2002 passed in Civil Rule No. 5717 of 1998. Secondly, the impugned order of rejection of his representation is bad in law as because the post for ad hoc promotion is available after passing the order of reversion of Sri Sandeep Sarkar who was promoted on ad hoc basis to the post of Asstt. Engineer.

In the facts and circumstances stated above the impugned order dated 4th September, 2002 is liable to be set aside and quashed.

Copy of the Gauhati high Court's Judgment and Order dated 30.04.2002, Representation dated 3.8.2002, Office order dated 3.9.2002 and rejection order dated 4.9.2002 are annexed herewith as **Annexure-14,15,16 and 17** respectively.

4.25 That it is stated that in the instant case the passing of the impugned order dated 3.9.2002 and 4.9.2002 makes it abundantly clear that the respondents made all along an effort to deny the benefit of ad hoc promotion to the cadre of Asstt. Engineer on the pretext and the passing of the impugned order dated 19.10.1994, 10.1.1995 and 30.1.1995 now established beyond all

Sukheram D/o.

doubts that the same has been passed on extraneous consideration and not in public interest. Therefore, the applicant is entitled to be reinstated to the post of Asstt. Engineer on ad hoc basis in the vacant post now available due to reversion of Sri Sandeep Sarkar junior to the applicant with all consequential benefits including monetary benefits at least with effect from 19.10.1994.

In the facts and circumstances stated above the applicant has no other alternative remedy but to approach this Hon'ble Tribunal for grant of adequate relief.

4.26 That it stated that there are large number of vacancies of Assistant Engineers are available under the respondents in the Construction Survey Wing of N.F.Railway, Maligaon. But due to non-availability of employees of the feeder grade they could not filled up those sanctioned vacancies of Assistant Engineer in various projects of railways including the available vacancies in project in which applicant had worked. It is relevant to mention here in as much as at least 5(five) post of Assistant Engineers were filled up on deputation basis by employees of the Govt. of Assam, which would be evident from the letter bearing Dy.C/Con/Tsk-II dated 17.04.1997. By the letter dated 17.04.1997 one Sri Dipu Dutta and Sri Ashim Kr. Hazarika were allowed to join on deputation basis as Assistant Engineer at Tinsukia, therefore it is quite

Snehasree Das

clear that the post of Assistant Engineer are available but the respondents deliberately reverted the applicant from the post of Assistant Engineer and never consider his case for promotion on ad-hoc basis to the post of assistant Engineer in spite of the fact that juniors of the applicant had been allowed to continue. It is categorically stated that those deputationist were still working in the Railways on deputation basis. Therefore applicant is mated out with hostile discrimination and the said action of the respondents is in violation of Article 14 and Article 16 of the constitution.

A copy of the letter dated 17.04.1997 is enclosed herewith and marked as **Annexure-18**

4.27 That it stated that the applicant earlier approached this Hon'ble Tribunal with the same grievances by filing an O.A which was registered as O.A No.123 of 2003 but the same was withdrawn by the applicant due to certain defects with the liberty to refile the same. Hence the present application.

A Copy of the Hon'ble Tribunals order dated 16.06.2003 is annexed herewith and marked as **Annexure-19**

4.27 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

Sukhdev Ds.

- 5.1 For that, no reason has been assigned for terminating the ad hoc promotion of Sri Sandeep Sarkar junior to the applicant in the termination order dated 3.9.2002.
- 5.2 For that, Sri Sandeep Sarkar junior to the applicant in the cadre of Senior S.E.(W) Cons. Was promoted on temporary basis to the cadre of Asstt. Engineer and allowed to continue even after passing of the impugned order dated 19.10.1994. As such give rise to further cause of action in the instant case of the applicant.
- 5.3 For that, the General Manager could not assign any valid reasons or grounds in the impugned order dated 4.9.2002 for rejecting the claim of the applicant for reinstatement to the post of Asstt. Engineer on ad hoc basis with all consequential service benefit including monetary benefit.
- 5.4 For that, the termination of the ad hoc promotion of Sri Sandeep Sarkar by the General Manager (Construction) is mala fide and the same is done in colourable exercise of power.
- 5.5 For that, no valid ground is assigned by the respondent for discontinuation of ad hoc promotion of the present applicant when the same is granted to his juniors, including Shri G.Sinha Roy, prior to his regular selection as AEN.

6. Details of remedies exhausted.

Sukhdev Ds.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

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

The applicant further declares that he had previously filed an application which was registered as O.A. No. 218 of 1994 before this Hon'ble Bench of the Central Administrative Tribunal regarding the subject matter of this application and the applicant further declares that no such other application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the order of termination of ad hoc officiation of
Group-B of the applicant as Assistant

not passed

Sukhdev Das.

Engineer/Construction (ad hoc/Tinsukia and his reversion to Group 'C' as IOW/Construction Grade-I by order dated 19.10.1994 be set aside and quashed, with all consequential benefits including monetary benefits.

8.2 That the Office order No. 22/95 dated 10.1.95 issued by the General Manager/Con/N.F.Railway/Maligon and consequent office order No. 1/95 dated 30.1.95 issued by the Executive Engineer/Con/G-C/Tinsukia and Office Order No. 35/9 dated 14.2.95 issued by the General Manager/Con/Maligaon be set aside and quashed with all consequential benefits including monetary benefits.

8.3 That the impugned order issued vide letter bearing no. E/283/CON/G(Engg) Pt.X, dated 4th September, 2002 be set aside and quashed.

8.4 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to be reinstated to the post of Asstt. Engineer(Construction) on ad hoc basis with all consequential service benefits including monetary benefit at least with effect from 19.10.1994.

8.5 Costs of the application.

8.6 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

Sukhendar Das

9.1 Pendency of the Original Application shall not be a bar for the respondents to appoint/promote the applicant to the post of Assistant Engineer occurred due to reversion of Sri Sandeep Sarkar following the Office Order dated 3.9.2002.

10.

This application is filed through Advocates.

11. **Particulars of the I.P.O.**

i)	I. P. O. No.	:	116.378388
ii)	Date of Issue	:	19.2.04
iii)	Issued from	:	
iv)	Payable at	:	

12. **List of enclosures.**

As given in the index.

Sreekanth Dr.

VERIFICATION

I, Shri Sukumar Das, Son of Late S.C.Das, aged about 48 years, resident of Tinsukia, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 26th day of December, 2003.

Sukumar Das

Annexure-1

Office of the General Manager(Con),
Maligaon, Guwahati
Office Order No. 3/89

The following postings are ordered to take immediate effect.

1. Sri K.M. Burma, XEN/C/SCL is posted temporarily as XEN/SURVEY for Kumarghat-Agartala Survey against newly created post.
2. Shri S.R.Das, CPWI/CON/DMR is temporarily appointed to officiate in Class-II service as AEN on ad hoc basis and posted as Offg. AEN/Survey/DMR against the newly created post for Kumarghat-Agartala Survey.
3. Shri Sukumar Das, CIOW/CON/LLBR is temporarily appointed to officiate in Class-II service as AEN/CON on ad hoc basis and posted as Offg. AEN/CON/Bairabi under XEN/CON/LLBR vice Shri J.Bhattacherjee, AEN/CON transferred.
4. The Senior Scale post of XEN/CON/SCL, on being vacated by Shri K.M.Burma vice item (1) above, is temporarily downgraded to JS/Class-II, and Shri G.Sinha Roy, IOW/Gr.I/Jiribam is temporarily appointed to officiate in Class-II service as AEN/CON on ad hoc basis and posted against this post.

The above fortuitous and ad hoc promotion will not confer upon them any claim for retention/regular approval and absorption in class-II service and seniority over their senior.

This issues with the approval of the competent authority.

Sd/- Illegible
13.1.89
for General Manager(Con)

No. E/283/CON/G(Engg) Pt. II Dated 13.1.89

Copy forwarded to :

1. GM(P)/MLG
2. CEs/Con/I,II,III, MLG

Sd/- Illegible
13.1.89
for General Manager(Con)

Attested
Savitri Choudhury
Ad. Officer
on 26/12/03

Annexure-2

Office of the Chief Engineer (Con)
Silchar

Office Order No. 8/89

Dated 2.2.89

In terms of GM/CON/MLG's letter No. W/348/CON/K-A/2 dated 13.1.89, Shri Sukumar Das, CIOW/CON/Ramnathpur has been promoted on ad hoc basis in the Jr. Scale (Class-II) vide Shri J.Battacharjee, AEN/CON/LLBR on transfer. As such following orders are issued for re-distribution of workload of L-S Project.

1. Shri Sukumar Das, AEN(Ad hoc) Class-II, will be in charge of the section from Ch. 40900 (m) to 44000(m).
2. Shri Chiramoy Dy. IOW/CON/LLBR will be in charge of the Section from Ch. 27000(m) to 40900(m).
3. Shri dilip Kumar Roy, IOW/Gr. II/LLBR will be in charge of the Section from Ch.0(m) to 40900(m).
4. Shri A.T.Sen, IOW/Gr. I/LLBR will be in charge of the Stores, works and maintenance at Lalabazar.
5. Shri Srikanta Das CIOW/CON/LLBR will be in charge of the erection of the bridge 69 including procurement of necessary materials.
6. Shri J.Battacharjee, AEN/CON/LLBR will hand over the charge of works between Ch. 44000(m) to 48150(m) to Shri S.C.L. Mecha, XEN/CON-II/LLBR and will be relieved for survey organization in terms of GM/CON/MLG's letter No.W/348/CON/K-A/2 dated 13.1.89.
7. Shri R.S.Battacharjee, IOW/Gr. III/LLBR will be in charge of the section from Ch. 44000(m) to 46000(m)
8. Shri R.P. Deka, IOW/Gr.III/LLBR will assist Shri R.S.Battacharjee.
9. Shri Subir Mukherjee, IOW/Gr.II/LLBR will in charge of the section from Ch. 46000(m) to 47150(m).
10. Shri B.K.Choudhury, IOW/Gr. II/LLBR will be in charge of the section from Ch. 47150 (m) to 48150(m).
11. Shri A.K.Sen, IOW/CON/LLBR will be in charge of the section from Ch. 0 to 40900m. He will also be in charge of P. Way works up to Bairabi.

A. Dasgupta
Surjyadeep
Advocate
on 26/12/03

12. Shri D.C. Roy, XEN/CON-I/LLBR, will be in charge of all the works from Ch. 0 to 44000(m), stores, establishment and budget etc.
13. The above orders will take effect from the date Shri J.Bhattacharjee, AEN/CON/LLBR, hand over the charge to Shri S.C.L. Meena and if spared.

Sd/- Illegible
Chief Engineer(Con)
N.F.Railway, Silchar

No. E/283/CON/SCL/Pt. III
Copy forwarded to :-

Dated 2.2.89

1. GM/CON/MLG
2. CE/CON-II/MLG
3. Dy. CE/CON-I, II & III/SCL.
4. Dy. CE/CON/K-A Survey/MLG.
5. XEN/CON/L-8/S-J & D-K.
6. SAO/CON/SCL
7. Staff concerned
8. FA & CAO/CON/MLG

Sd/- Illegible
Chief Engineer(Con)
N.F.Railway, Silchar

Annexure B

Result of the suitability test for the post of Chief Inspector of Works in scale Rs. 2375/- (P) against restructured existing vacancies w.e.f. 1-3-93.

Result of the suitability test for the post of Chief Inspector of Works in scale Rs. 2375/- (P) against restructured existing vacancies w.e.f. 1-3-93.

The following candidates have been found suitable for promotion :-

SN.	Name.	Designation & place of posting.
1)	Shri. Sukumar Das (SC),	AER (ad-hoc) GM/MLG.
2)	C. M. Mondal (SC),	ICW/Gr.I/GM/MLG.
3)	" G. S. Sinha Roy (SC),	AER (ad-hoc) GM/MLG.
4)	" S. C. Sivani,	ICW/Gr.I/TKG/KIR/Sr.DEN/KIR.
5)	" B. Mukherjee,	AER (ad-hoc) GM/MLG.
6)	" H. P. Paul,	ICW/I/2TS/ APD/Sr.DEN/APD.
7)	" P. K. Das (SC),	ICW/I/MLG, Sr.DEN/MLG.
8)	" H. Bhadra,	ICW/I/MTP/Calcutta.
9)	" A. K. Dutta,	ICW/I/PGS, Sr.DEN/PGS.
10)	" K. Halder,	ICW/I/E/KIR, Sr.DEN/KIR.
11)	" S. C. Barman (SC),	ICW/I/MLG, Sr.DEN/MLG.

Note: The above result has been approved by GM on 26-11-93.

Ch. Manager 26/11/93
for GENERAL MANAGER (P)MLG.

10. E/203/44/Pt.XXIV(E)Loose.

Man. on, dated 26.11.93.

Copy to :- 1. GM/MLG. 2. GM/MTP/Calcutta. 3. CFDE/MLG.
4. Sr.DEN/KIR, APD, IIG, TSK, MLG.
5. DRM(P)KIR, APD, IIG & TSK.

Ch. Manager 26/11/93
for GENERAL MANAGER (P)MLG.

11/11/93.

SPG/E
E
JG
G/T

Ch. Manager
26/11/93
for GENERAL MANAGER (P)MLG.

Ch. Manager
26/11/93
for GENERAL MANAGER (P)MLG.

*Admitted
Sug. & Closely
Adviseable
on 26/12/03.*

Annexure-4

Confidential

N.F.Railway

Office of the Dy. Chie Engineer/CON/SCL.

No. SCL/CON/1

dated 28.7.94

To

Shri Sukumar Das
Ex. AEN/CON/LLBR
Now AEN/CON/Survey/SCL

Sub: Submission of final bill along with other relevant documents of CAs of L-B Section.

The following CAs executed under your supervision and work was completed during your period as AEN/CON/LLBR, it implies that final bill and record are to be prepared and submitted by you. I regret to state that till date though repeated reminders issued to you, you are not paying any heed for the submission of the final bill and record thereof. Vide this Office Order o. 19/94 circulated vide No.E/283/CON/G/Pt.V dated 31.5.94 it was clearly mentioned that your release from this Office is subject to submission of the final bill but without submission of the final bill you left this office and joined new place of posting without taking spare letter from the undersigned which you have violated the instructions and normal rules.

Due to non submission of the final bill and record the case is lying pending since more than 4 years for which this Office could not finalise the outstanding cases. The finalisation work of this office is lingering and closure of Audit and Accounts cases are held up for non finalisation of the outstanding CAs. Recently one case referred by UCO Bank/KKJ to this office relating the CA record not submitted by you which involves legal litigations.

Therefore, you are warned that you may please attend this office and submit the final bill and record with proper clarification etc. The pending C.A. nos. are given as below

CA No. CON/SCL/59 dated 14.3.82 M/S Mishra Bro-
CA No. CON/SCL/60 dated 19.3.82 thers.
CA No. CON/SCL/61 dated 13.2.82
CA No. CON/SCL/191 dated 22.3.83
CA No. CON/SCL/141
CA No. CON/SCL/81

Your reply should reach this office immediately as such the action has already been initiated for DAR action against you.

Sd/- Illegible
28.7.94
Dy. C.E.(Con).

Alkaled
Sujit Chakraborty
Advocate
01/26/12/03

Confidential

Annexure-5

To : Dy. CE/Con/SCL (for personal attention of Sri N.G.Neware)

Sub : Submission of final bill along with other relevant Documents of CAs of L-B Section.

Ref : Your Confdl. Letter No. SCL/CON/1 dated 28.7.94.

Sir,

In reference to the above, I beg to state that I have joined my new assignment on 12.7.94 on getting due spare letter from your office under your clear signature vide Office Order No. 20/94 under endorsement No. E/283/CON/G/Pt.V/755 dated 20.6.94 and formal Office Order No. 19/94 vide endorsement no. E/283/CON/G/Pt.VI/696 dated 31.5.94. In the above said spare letter under your signature you have spared me w.e.f. 30.6.94, rather forced me to spare on or before 30.6.94 as it has been clearly mentioned that extension if any beyond 30.6.94 will be on my own leave account. As per your instruction in the said spare letter for submission of final bills and record thereof of L-B project, I beg to state that I have duly submitted the same and further detail position relating to the CAs mentioned in your above letter is given below :-

CAs No. :-

CA No. CON/SCL/59 dated 14.3.82 Pertaining to M/S
CA No. CON/SCL/60 dated 19.3.82 Brothers.
CA No. CON/SCL/61 dated 13.2.82
CA No. CON/SCL/191 dated 22.3.83

In connection with the above CAs it is found from the records that the works against the above CAs was physically stopped from 1986. Further it is also stated for your information that at that time AEN/Con-I/LLBR was the custodian of the bills against the above CAs when I was merely an IOW/Con-III/LLBR to look after the field works and do the accountal of stores only and I was not empowered to do any recording in M.B., Level Books, etc. But subsequently when I was promoted to AEN/CON/LLBR in 1989 the section pertaining to the above CAs was not under my control.

However, the records pertaining to stores, the same has been handed over to IOW/Con/SCL as directed in spare letter which has been acknowledged by XEN/KAS/DMR at SCL vide his No. W/311/CON/Survey/KA Stores/6/756 dated 20.6.94. However, though I have received your letters when I was AEN/KA Survey giving instruction to finalise the above CAs, but I was not spared or directed by my XEN to do so. So, in this respect I am not at all responsible in this matter of finalisation of the above CAs. However, on your instruction I could able to

Alkaled
Surajit Chaudhury
Advocate
26/12/03

collect some of the MBs, level books from MAR and also from your office which has been ascertained from the then AEN/C-1/LLBR(Shri A.K.Sen). These are :

1. Level book of initial level of CON/SCL/429 dated 31.1.89
2. CON/SCL/430 dated 31.1.89
3. CON/SCL/432 dated 31.1.89 - which are required for finalisation of the CAs as referred to your above letter. I have pursued personally in your office, but none are ready to give the same due to shortage of Record Sorter in office. However, if the same are made available to me, giving a reasonable time, I will try to finalise the same.

Regarding CAs No. CON/SCL/141 & CON/SCL/81 I beg to state that the final bills against the above two CAs have already been given to you in the month of March 94, but you have made partial payment to the contractor.

That Sir, though I have been spared with effect from 30.6.94 A.N. till date no L.P.C. has been handed over either to me or sent to my new place of posting for which I am not getting the salary for the month of July & August, 94, which may kindly be looked into and arrangement may please be made to send the L.P.C. immediately.

With regards,

Yours faithfully,
Sd/- Illegible

Dated : 19.8.94

(Sukumar Das)
AEN/Con/TSK on leave

Copy forwarded for favour of information

Please to :

1. CE/Con-II/MLG
2. CE/Con-III/MLG
3. GM/Con/MLG
4. Dy.CE/Con/TSK
5. XEN/KAS/DMR at SCL

(Sukumar Das)
AEN/Con/TSK on leave

Annexure-6

Confidential

Office of the Executive Engineer/KAS/DMR at Silchar,
N.F.Railway

No. E/34/Con/KAS/GAZ/1071

Date 1.9.1994

To
Shri Sukumar Das
Ex. AEN/CON/TSK

Sub : Submission of final bill along with other relevant documents of CAs of L-B Project.

Ref : Your letter No. Nil, Date :- 19.08.1994.

In reference to the above, vide para 3 of your conf. Letter no. quoted above.

1) You have stated that "however, though I have received your letters when I was AEN/K.A. Survey, giving instruction to finalise the above CAs, But I was not spared or directed by my XEN to do so. So, in this respect I am not at all responsible I this matter of finalisation of the above C.A.s".

2) In this connection, following points are given to repudiate your charges :-

a) The following letters have been issued to you by Dy. CE/C/SCL/for submission of final bills

- 1) W/44/CON/SCL/646 dated 30.4.93
- 2) -do- 917 dated 11.6.93
- 3) -do- 1047 dated 30.6.93
- 4) -do- 1217 dated 03.8.93

5. Confidential letter No.

- i) SCL/CON/I dated 22.11.93
- ii) SCL/CON/I dated

*Ansdest
Sengupta
Adholeya
26/12/03*

- iii) SCL/CON/I/1866 dated 20.12.93
- iv) SCL/CON/I dated 21.12.93
- v) SCL/CON/I dated 25.4.94 wherein XEN/KAS and then was specifically requested not to give you any work for 15 days.
- vi) W/44/CON/L-B/SCL/P-II dated 31.5.94

3) At that time you have received all the letters and in good spirit, never raised any question about your sparing etc. as because from August/'93 onwards, you were continuously staying at SCL and shared personally every responsibility in survey recess work. From Dec/'93 onwards, when I took personal charge of preparing the estimate and report, your personal contribution was still less. So the excuse of your not specifically sparing for finalisation of bills of L-B project does not stand and are lame excuses.

4) In Dy. CE/C/SCL's office order No. circulated vide Dy. CE/C/SCL's letter No. 20/94, E/283/Con/G/PV/755 dated 20.6.94. You have been given time upto 30.6.94 to finalise and submit final bills and records of L.P. project. But from your letter it is seen that you have left SCL and joined your new assignment without submission of final bill and other records of pending CAs. In the meantime, you have submitted the following final bills :

- i. CON/SCL/536 - on July/'93
- ii. CON/SCL/417 - on 21.1.94
- iii. CON/SCL/390 - on 21.1.94
- iv. CON/SCL/146 - on 28.2.94

So, it is clear that you had time and opportunity to prepare bills and finalise C.As, in spite of other engagement, if any.

6. While showing reasons for late submission of your T.A.Bills, you have signed the letter No.E/34/Con/KAS/GAZ/TA dated 23.6.94 (on behalf of XEN/KAS/DMR) wherein you have stated reasons for delay, among other, as follows : - "for

finalisation of final bills of L-B project and for shortage of official to prepare the bills".

7. On 25.3.94, while submitting C.C.VI and final bill of C.A. No. :- CON/SCL/583 dated 25.2.92, you have shown reason for delay in submission as :- "Badly engaged with other final bills of L.B. Project."

8. C.C.III and final bill of C.A. No. CON/SCL/589 dated 21.9.92 has been submitted by you with reasons for late submission as :- "Badly engaged with other final bills of L.B. Project."

9. A statement is enclosed showing your movement to SCL, LLBR, Ramnathpur etc. (Annexure-A). The purpose of all these movements must be L.B. project only as at that time. You had no specific work at SCL except the preparation of final bills. In your T.A. journals, as shown against item No. (2), (3), (4) and (9) you have specifically mentioned the object of journey as " for final bill work", "final bill (L.B)" etc.

It clearly indicates that you had been given time, opportunity etc. for preparation of final bills of L.B. project.

10. It will be seen from para 5,6,7,8 above that you had time and opportunity to prepare and submit final bills and you actually were engaged in this job. So your excuse as stated in para 1 above are unfounded, baseless and lame excuses for not finalizing the C.A.s in such a long time.

11. The physical work of preparation of draft report and estimate has been practically over in April/May/1994 and every body had an easy time. Only the typing work and vetting estimate were going on from then onwards. One IOW was solely engaged for these works.

So you did not have any other work except finalisation of L-B project C.As. for which you could devote your whole time.

12. Considering all the above points, I am totally convinced that you have raised all these lame excuses to cover up your failure to comply with the letters of Dy. CE/Con/SCL.

Sd/-Illegible

S.K.Bose
XEN/KAS/DMR at Silchar.

Copy to :

1. GM/Con/MLG for information and necessary action.
2. CE/Con-II/MLG
3. CE/Con-III/MLG
4. Dy. CE/Con/SCL
5. Dy. CE/Con/TSK

Sd/-Illegible

S.K.Bose
XEN/KAS/DMR at Silchar.

ANNEXURE-6

EXTRACT FROM

Movement of Shri Sukumar Das, AEN/KAS

1. 7.3.93 to 8.3.93 - SCL, AMC - 2222
2. 10.3.93 to 13.3.93 - LLBR, Ramnathpur (for final bills)
3. 20.3.93 to 22.3.93 - SCL (final bill works).
4. 30.3.93 to 5.4.93 - SCL for final bill works (L.B.Project).
5. 15.4.93 to 20.4.93 - SCL
6. 24.4.93 to 3.5.93 - SCL
7. 26.2.93 to 1.3.93 - SCL
8. 11.1.93 to 25.1.93 - SCL
9. 26.1.93 to 2.2.93 - SCL (for preparation of final bills of L-B project at SCL)

Annexure-7

NORTH EAST FRONTIER RAILWAY

Office of the General Manager(Con)
Maligaon

OFFICE ORDER No 228/94

The temporary ad hoc officiation in Group-B of Shri Sukumar Das, AEN/CON(Ad hoc) TSK is hereby terminated and he is reverted back to Group -C as IOW/CON/Gr.I with immediate effect.

This issues with the approval of competent authority.

Sd/- N.R.Chakraborty
Dy. COP/CON
For General Manager(Con)

No.E/191/26/CON/1

Dated 19/10/1994

Copy forwarded for information and necessary action to :

1. FA & CAO/CON/MLG.
2. CE/CON/I,II,III, & IV/MLG
3. DAO/TSK
4. Secy. To GM/CON/MLG
5. Officer concerned.
6. XEN/CON/TSK
7. OS/P/CON/MLG

Sd/- N.R.Chakraborty
Dy. COP/CON
For General Manager(Con)

AP/Asstt
Surjit Choudhury
Sd/-
on 26/12/03

Annexure-8

N.F.Railway.

OFFICE ORDER NO : 22/95

In modification of this office order No. 228/94 issued under No. E/191/26/CON/1 dated 19.10.1994 the temporary ad hoc officiation in Group 'B' of Shri Sukumar Das, AEN/CON (Ad hoc)/TSK is hereby terminated and he is reverted back to Group 'C' as CIOW/CON instead of IOW/CON-I as he has been promoted as such on regular measure due to restructuring of cadre, to have immediate effect.

This issues with the approval of Competent Authority.

(C.Saikia)
SPO(Con)
For General Manager(Con)

No.E/191/26/Con/1

Dated 10.1.95.

Copy forwarded for information and necessary action to :

1. FA & CAO/CON/MLG
2. CE/CON/I,II,III & IV
3. DAO/TSK
4. Secy. to GM/CON/MLG
5. Officer concerned
6. Dy. CE/CON/TSK
7. XEN/CON/TSK
8. DOS(P)/CON/MLG

(C.Saikia)
SPO(Con)
For General Manager(Con)

File No. 1
Served by
Advocate
on 26/12/03

Annexure-9

NORTH EAST FRONTIER RAILWAY

Office of the Executive Engineer(Con/G-C Tinsukia),

OFFICE ORDER NO. 1/95

In terms of GM/CON/MLG's Office Order No. 22/95, issued under No.E/191/26/CON/1 dated 10.1.95 the temporary Ad-hoc officiation in Group-B of Shri Sukumar Das, AEN/CON/Adhoc/TSK is hereby terminated and reverted back to Gr-C as C.IOW/CON, instead of IOW/CON/I. This is in modification of GM/CON's office order No. 228/94 issued under No. E/191/26/CON/1 dated 19.10.94.

In view of above mentioned modification, Shri Sukumar Das is posted as C.IOW/CON/TSK in modification of this office order No. 5/94 issued under No. E/283/CON/GC/TSK/255 dated 31.10.94.

This issues with the approval of CE/CON/III/MLG.

Sd/- Illegible
Executive Engineer (CON)/G-C
N.F.Railway : Tinsukia

No.E/283/CON/G-C/TSK/Gaz/372 Dt. : 30.01.1995

Copy to :-

1. CE/CON/III/MLG - This is in ref. To his L/No. E/283/Con/C/ Engg/Pt.VII dated 25.1.95
2. FA & CAO/CON/MLG
3. CE/CON/I,II,III & IV
4. DAO/TSK
5. Secy. to GM/CON/MLG
6. SPO/CON/MLG
7. Sri Sukumar Das - at office 01.02.958. Copy for office order
9. Copy for N.G.Staff file.

Executive Engineer (CON)/G-C
N.F.Railway : Tinsukia

Alasdair
Surjat Choudhury
Advocate
on 26/12/03

Annexure-10

Office of the General Manager(CON),
Maligaon

MEMORANDUM NO. 25/95

Shri Sukumar Das, AEN/CON/TSK has been reverted to Group-'C' as CIOW, Shri Das was promoted as CIOW/CON on ad hoc basis with effect from 3.12.87 and subsequently was promoted as regular measure in scale Rs. 2375-75-3200-EB-100-3500(RPS). On reversion as CIOW/CON his pay is regularized as under :-

Pay fixed as on 3.12.87	-	Rs.2375.00
(In terms of XEN/C/LLBR's		
(O.O.No.23/87 dt. 4.12.87)		
Pay raised as on 1.12.88	-	Rs. 2450.00
" " " 1.12.89	-	Rs.2525.00
" " " 1.12.90	-	Rs.2600.00
" " " 1.12.91	-	Rs.2675.00
" " " 1.12.92	-	Rs.2750.00
" " " 1.12.93	-	Rs.2825.00
" " " 1.12.94	-	Rs.2900.00

(C.SAIKIA)
SPO/CON
For GENERAL MANAGER(CON)

No. E/205/CON/1(TECH)

Dated 9.02.1995

Copy forwarded for information and necessary action to :

1. FA & CAO/CON/MLG
2. DAO/TSK
3. XEN/CON/TSK
4. Staff concerned.

Sd/- Illegible

(C.SAIKIA)
SPO/CON
for GENERAL MANAGER(CON)

*Allected
Surjit Choudhury
Advocate
on 26/12/08*

Annexure-11

NORTHEAST FRONTIER RAILWAY

Office of the General Manager(CON), Maligaon

MEMORANDUM NO. 35/95

The following transfer and posting are ordered to take immediate effect :-

1. Shri Sukumar Das, AEN/CON/TSK under XEN/CON/TSK in scale of Rs. 2375-3500/- (RPS) is hereby transferred to Amguri and posted under Dy. CE/CON/AGI in his same capacity, pay and scale.
2. Shri S.K.Bala, IOW/CON/Gr-III under XEN/CON/TSK in scale of Rs. 1400-2300/- (RPS) is hereby transferred and posted and Amguri under Dy. CE/CON/AGI in his same capacity, pay and scale.
3. Shri N.K.Deori, IOW/Gr-III under XEN/CON/TSK in scale of Rs. 1400-2300/- (RPS) is hereby transferred to Amguri and posted under Dy. CE/CON/AGI in his same capacity, pay and scale.
4. The BRI's working under Dy. C.E./CON/AGI and XEN/CON/TSK who are having Civil Engineering Diploma may be assigned IOW's work as well after explaining the matter to them properly.

This is as per order of CE/CON/III.

(S.SAIKIA)
SPO/CON
for GENERAL MANAGER(CON)

No. E/283/CON/2/GC)/Pt-II

Dated 14.2.1995

Copy forwarded for information and necessary action to :-

1. FA & CAO/CON/MLG
2. DAO/TSK
3. Dy.C.E./CON/TSK
4. XEN/CON/TSK
5. Staff concerned.

(S.SAIKIA)
SPO/CON
for GENERAL MANAGER(CON)

*Admitted
Surjithendu
Advocate
on 26/12/03*

Annexure-12

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O.A. No. 216/94

Sri Sukumar Das : Applicant

-vs-

Union of India & Ors.

P R E S E N T

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMN.)

For the Applicant : Mr. J.L.Sarkar

Mr. M.Chanda

For the Respondents : Mr. B.K.Sharma, Rly. Advocate.

DATE COURT'S ORDER

17.11.94 Heard Mr. J.L.Sarkar for the applicant. Application is admitted. 8 weeks for written statement. Issue notice to the respondents to show cause as to why interim relief as prayed should not be granted. Returnable on 6.12.94. Application to be listed for hearing as to interim relief on 6.12.94. At this stage Mr. B.K.Sharma seeks to appear for the respondents on notice. He wants time to obtain instructions. Mr. Sharma is requested to file a memo of appearance in due course. Pending hearing for interim relief the respondents shall not give effect to the impugned order dated 19.10.94. The applicant may be allowed to continue to officiate in Group B post from where he is reverted if the post is still vacant. The post, however, shall not be filled until further orders, if it is not already filled by any other person. This Ad-interim order shall be without prejudice to the rights and contentions of both the parties at the hearing on interim relief.

Copy of the order be supplied to the counsel of the parties.

Sd/- M.G.Chaudhari

Vice-Chairman

Sd/- G.L.Sanglyine,

Member(Admn.)

Addressed
Suryit Choudhury
Advocate
on 26/11/94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annexure-13

Original application No. 218 of 1994.

Date of Order - This the 27th day of July, 1998
THE HON'BLE MR. JUSTICE D.N.Baruah,, VICE-CHAIRMAN.
THE HON'BLE MRG.L.Sanglyine, ADMINISTRATIVE MEMBER.

Sri Sukumar Das
Son of Late Sushil Chandra Das
Office of the Executive engineer
(Construction)/Gauge Conversion
N.F.Railway, Guru Nanak Market
Hijuguri, Tinsukia-786125

...Applicant

By advocate S/Shri A.Roy, M.Chanda.

-AND-

1. The Union of India,
Represented by the General Manager,
(Construction), N.F.Railway,
Maligaon, Guwahati-781011
2. The Deputy Chief Engineer (Construction)/
Survey, N.F.Railway, Maligaon,
Guwahati-781 011
(formerly Deputy Chief
Engineer/Construction/N.F.Railway/Silchar).
3. Shri G.Sinha Roy,
Assistant Engineer (Construction),
Working under Deputy Chief Engineer
(Construction)/Survey, N.F.Railway,
Maligaon, Guwahati-781011

...Respondents

By advocate Shri B.K.Sharma, Railway Counsel.

*A. Dashed
Suryajit Chandra Das
Advocate
01/26/12/03*

ORDER

G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

The applicant was an Inspector of Works Grade-I since 29.10.1986. He was promoted to the post of Chief Inspector of Works on ad hoc basis on 3.12.1987. He was regularized in this post on 1.3.1993. In the meantime, on 13.1.1989, he was temporarily appointed to officiate in Class II service as Assistant Engineer(Construction) on ad hoc basis and posted at Lalabazar vice Shri J.Bhattacharjee transferred. From Lalabazar he was transferred to Kumarghat-Agartala Survey and thereafter to Tinsukia with effect from 12.7.1994. On 19.10.1994 his temporary ad hoc officiation in Group 'B' as Assistant Engineer was terminated and he was reverted to group 'C' post as Inspector of Works (Con), Grade-I. The applicant is aggrieved with the order of termination and reversion. According to the applicant the respondent no.3 Shri G.Sinha Roy, was promoted to the same rank of Assistant Engineer by the same order on 13.1.1989. He was not however, reverted though he was junior to the applicant. On the other hand, he has been allowed to continue to work as Assistant Engineer on ad hoc basis. Further, the applicant has submitted that though he was a regular Chief Inspector of Works with effect from 1.3.1993 he was not reverted to that post but to the post of Inspector of Works which is a post one grade below. The above actions of the respondents, according to the applicant, are a result of mala fide exercise of power by the respondents. Moreover, the respondents had arbitrarily terminated his service in Group

'B' and reverted him to an inappropriate post in Group 'C' without giving him any opportunity of being heard. The Original Application was admitted before this Tribunal on 17.11.1994. Thereafter on 10.1.1995 the General Manager(Con.) N.F.Railway, Maligaon modified the order dated 19.10.1994 and reverted the applicant to the post of Chief Inspector of Works (Con) instead of Inspector of Works (Con) Grade-I. Consequent to this order dated 10.1.1995 (Annexure-H), the Executive Engineer(Con), Tinsukia also revised the order dated 31.10.1994 vide order dated 30.1.1995 (Annexure-I). The contention of the applicant is that these two orders dated 10.1.1995 and 30.1.1995 are illegal orders as they were issued during the pendency of this Original Application.

2. We have heard learned counsel of both sides. The Office Order No. 228/94 dated 19.10.1994 terminated the temporary ad hoc officiation of the applicant in Group 'B' post of Assistant Engineer (Con) and reverted him to a Group 'C' post of Inspector of Works (Con) Grade-I. There is no reason given therein why the ad hoc promotion of the applicant was terminated. In the written statement it has been stated in para 7 that the post from which the applicant was reverted was no longer vacant. It is not therefore the case of the respondents that the post was abolished or that the applicant was no longer vacant. It is not therefore the case of the respondents that the post was abolished or that the applicant was no longer required in the post. They have not also shown as to who had occupied the post resulting to

vacation of the same by the applicant. The respondents do not deny that respondent no.3, Shri G.Sinha Roy, is junior to the applicant and he was promoted by the same order dated 13.1.1989 and that he is continuing as Assistant Engineer (Con) in Jogighopa Project. They have stated that there is no infirmity towards continuation of Shri G.Sinha Roy. They do not explain however, what are the factors contributing to his continuation when the applicant who is senior was discontinued in Group 'B' ad hoc service. The applicant was transferred from Lalabazar to Kumarghat and then to Tinsukia. If the post in Tinsukia from which the applicant was reverted was no longer vacant as stated by the respondents, the respondents have not explained why the applicant could not be transferred to another vacancy in some other places. Secondly, the respondents have not stated in the impugned order dated 10.10.1994 why the applicant, who was a Chief Inspector of Works, was reverted to a post below his rank, that is, to the post of Inspector of Works, Grade-I. They did not give any reply in para 8 of the written statement regarding this situation. After hearing counsel of both sides on this order dated 19.10.1994 we are of the view that the impugned order is liable to be set aside on the above mentioned grounds.

3. The Office Order No. 22/95 dated 10.1.1995, Annexure-H, and the Office Order No. 1/95 dated 30.1.95, Annexure-I, repeated the termination of the temporary ad hoc officiation of the applicant as Assistant Engineer, Construction and modified the impugned order dated

10.10.1994 to the extent that reversion of the applicant should be to the post of Chief Inspector of Works, Construction instead of Inspector of Works, Construction, Grade-I. We had admitted this Original Application by which the impugned order dated 10.10.1994 has been challenged on 17.11.1994. We had by the interim order dated 17.11.1994 directed the respondents that they shall not give effect to the impugned order dated 19.10.1994. After that the order dated 10.1.1995 and the order dated 30.1.1995 above were issued by the respondents and the applicant was subsequently allowed to amend the Original application impugning the aforesaid two orders. We are of the view that the respondents cannot by these orders tinker with the impugned order dated 10.10.1994 touching the very issues which are under scrutiny of the Tribunal. Such orders in our opinion are non est in law and therefore not sustainable. They are liable to be set aside.

4. In the light of the above, we hereby set aside the office order No. 228/94 dated 19.10.1994 as well as the office order No. 22/95 dated 10.1.95 and office order No. 1/95 dated 30.1.1995. We direct the respondents to reinstate the applicant to the Group 'B' post of Assistant Engineer, Construction (Ad hoc) forthwith; at any rate, within one month from the date of receipt of this order by the respondent No. 1. We leave the issue of consequential benefits open to the applicant to agitate after his reinstatement and to the respondents to decide in the matter, if it is brought before them by the applicant. The

applicant is at liberty to agitate if he is still aggrieved. Further, we make it clear that this order does not debar the respondents from taking appropriate action according to rules and law regarding the adhoc officiation of the application in the Group 'B' post of Assistant Engineer, Construction.

5. The application is disposed of as indicated above. No order as to costs.

Sd/- VICE-CHAIRMAN
Sd/- MEMBER(ADMIN)

Annexure-14

IN THE GAUHATI HIGH COURT

(The High Court of Assam , Nagaland , Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh)

CIVIL RULE NO. 5717 of 1998

1. Union of India
Represented by the General manager
N.F.Railway(Construction), Maligaon,
Guwahati.
2. Deputy Chief Engineer(Construction/Survey),
N.F.Railway, Maligaon, Guwahati.

APPELLANTS

-versus-

Sri Sukumar Das,
Son of late Sushil Ch. Das
Office of the Executive Engineer(Construction),
Gauge Conversion, N.F.Railway,
Gurunanak Market, Hijiguri,
Tinsukia

RESPONDENT

P R E S E N T

HON'BLE THE CHIEF JUSTICE MR. R.S.MONGIA
THE HON'BLE MR. JUSTICE P.G.AGARWAL

For the Petitioner	:	Mr. B.K.Sharma Mr. P.K.Tiwari, Advocates
For the Respondent	:	Mr. B.C.Das Mr. M.Chanda, Advocates
Date of hearing	:	30.4.2002
Date of Judgment	:	30th April, 2002

JUDGMENT AND ORDER (ORAL)

R.S.MONGIA, CJ.

The Respondent herein, Shri Sukumar Das, while working as Chief Inspector of Works (Construction), a Class

*Allover
Sarjita Choudhury
Stamps
on 26/12/03*

III post, was appointed temporarily to officiate in Class II Service as Assistant Engineer (Construction) on ad hoc basis vide Order No. 13 of 1989 dated 13.01.89. The said order reads as under :

"Shri Sukumar Das, CIOW/CON/LLBR is temporarily appointed to officiate in Class-II service as AEN/Survey/CON on ad hoc basis and posted as Offg. AEN/CON/Bairabi under XEN/CON/LLBR vice Shri J.Battacharjee, AEN/CON/transferred.

2. By the same order dated 13.02.89 one Shri G.Sinha Roy, a Class III Officer was also temporarily appointed to officiate in Class-II service as Assistant Engineer on ad hoc basis. The order is as under :

"The Senior Scale post of XEN/CON/SCL, on being vacated by Shri K.M. Burma vide item (1) above, is temporarily down graded to JS/Class-II, and Shri G.Sinha Roy, IOW/Gr.I/Jiribam is temporarily appointed to officiate in Class-II service as AEN/CON on ad hoc basis and posted against this post".

3. On 19.10.1994 Sri Sukumar Das was reverted as Inspector of Works (Construction) Grade-I. This order was made subject matter of challenge before the Central Administrative Tribunal by way of O.A. No. 218/94. The challenge to the order was primarily on two grounds: (i) Sri Sinha Roy was junior to the applicant Sri Sukumar Das in Class III service. Both the applicant Sri Sukumar Das and Sri G.Sinha Roy had been promoted on ad hoc basis to Class-II Service. The applicant being senior to Sri G.Sinha Roy, he could not have been reverted while his junior had been retained

in Class-II service; and (ii) that the applicant Sri Sukumar Das had been promoted on ad hoc basis in Class-II to the post of Assistant Engineer from the post of Chief Inspector of Works, whereas he was reverted as Inspector (1) Grade-II which is a lower post than the Chief Inspector of Works.

4. During the pendency of the Original Application before the Central Administrative Tribunal another order was issued by the official respondents dated 10.01.95 modifying the order dated 19.10.94 reverting Sri Sukumar Das to the post of Chief Inspector of Works (Construction) instead of reverting him to the post of Inspector of Works (Construction) Grade-I.

5. Dehors of any further facts, suffice it to mention that the Central Administrative Tribunal found that in view of the fact that Sri G.Sinha Roy continuing on ad hoc basis, the applicant could not have been reverted as Sri G.Sinha Roy was junior to the applicant Sri Sukumar Roy. That was the primary basis for quashing the order of reversion of Sri Sukumar Roy. The order dated 27.07.98 of the Central Administrative Tribunal has been made subject matter of challenge in this writ petition by the Union of India.

6. Learned counsel for the petitioner argued that in fact after the judgment of the Central Administrative Tribunal the case of Sri Sukumar Das as well as Sri Sinha Roy was considered for regular promotion to Class -II in 1999 and Sri Sinha Roy was found fit for promotion on regular basis whereas Sri Sukumar Das either did not appear for selection and consideration for promotion to Class-II service or had not been found fit. Be that as it may, the fact remains that

assuming Sri G.Sinha Roy was junior to Sri Sukumar Das, in the year 1999, he stole a march over Sri Sukumar Das either by not appearing in the selection or by not being found fit for Class-II service. If that be so, the question of Sri Sukumar Das continuing on adhoc basis in Class-II service will only arise if/any of his junior in Class-III is continuing or has been appointed to Class-II service on ad hoc basis. This factual aspect is not forth coming before us from either of the parties. In passing, we may also mention here that the learned counsel for the petitioner argued that Sri Sukumar Das had been reverted not only on the ground that there was no post in Class-II where he worked as the work had come to an end, but also because of his work not being satisfactory. For the view we are taking in the matter we are not opining anything on this argument of the learned counsel for the petitioner in view of the fact that in April, 1999 Sri G.Sinha Roy had stolen a march over Sri Sukumar Das, he could not be allowed to continue on ad hoc basis. It cannot be disputed that a person working on ad hoc basis has no right to continue unless some of his junior continues on ad hoc basis. Of course, a senior person can be ignored for ad hoc appointment or for continuing on ad hoc basis for valid reason.

7. In the aforesaid facts and circumstances, we dispose of this writ petition with the observation that by virtue of the judgment and order of the Tribunal the Respondent Sri Sukumar Das cannot be allowed to hold the post on ad hoc basis in class-II service. We may mention here that the Motion Bench while admitting the writ petition had stayed

the judgment and order of the Tribunal dated 27.07.98. However, we leave it open to the Respondent that if any junior to him in Class-III service is continuing in Class II service on ad hoc basis or has been appointed on ad hoc basis, he may make necessary representation in that behalf to the applicant and if any such representation is made the same will be disposed of expeditiously, preferably within a period of 1 (one) month of its filing and it would be appreciated if the same is disposed of by a speaking order. Needless to mention that if a representation is made and an order as aforesaid is passed and Sri Sukumar Das is aggrieved of the same, he may challenge the same before an appropriate forum.

8. The writ petition is allowed in the aforesaid terms. No costs.

Sd/- R.S.Monghia
Chief Justice

Sd/- P.G.Agarwal
Judge

To

**The General Manager,
N.F.Railway (Construction)**

Malligaon, Assam - 781 001, India.

(Through Proper Channel)

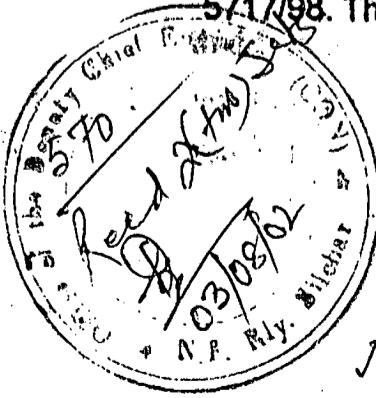
Sub : Representation praying for promotion to the post of Asstt. Engg. (Ad hoc) with all consequential benefits including Monetary benefit at least with effect from 19.10.1994.

Ref : Hon'ble Gauhati High Court Judgment and order dated 30th April 2002 passed in Civil Rule No. 571/1998 (Union of India & Others Vs. Sri Sukumar Das).

Respected Sir, I am writing this letter to you in view of the following:

I like to draw your kind attention on the subject cited above and further beg to state that, the undersigned being aggrieved with the order of reversion to the post of Inspector of Works (Construction) from the post of Asstt. Engineer, Ad. hoc, while junior Sri G. Sinha Roy, allowed to continue in the promotional post of Asstt. Engineer on ad hoc basis, approached the Central Administrative Tribunal, through Original Application No. 218/1994. The Original Application was finally decided by the Hon'ble Central Administrative Tribunal, Guwahati Bench, vide Judgment and order dated 27.7.1998 setting aside the impugned order of reversion issued under office order no. 228/94 dated 19.10.1994 and the consequential Office Order No. 22/95 dated 10.1.1995 as well as the Office Order No. 1/95 dated 30.1.95 also set aside and quashed and further directed to reinstate the undersigned to the Group 'B' post of Asstt. Engineer within one month from the date of receipt of the order.

The said order of the Tribunal carried on appeal by the Union of India & Others before the Hon'ble Gauhati High Court through Civil Rule No. 571/98. The Civil Rule finally decided by Hon'ble High Court with the following:



Plasted
Srijit Choudhury
Advocate
on 26/12/03

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"For the view we are taking in the matter we are not opining anything on this argument of the learned counsel for the petitioner in view of the fact that in April, 1999 Sri G.Sinha Roy had stolen a march over Sri Sukumar Das, he could not be allowed to continue on ad hoc basis. It cannot be disputed that a person working on ad hoc basis has no right to continue unless some of his junior continues on ad hoc basis. Of course, a senior person can be ignored for ad hoc appointment or for continuing on ad hoc basis for valid reason.

7. In the aforesaid facts and circumstances, we dispose of this writ petition with the observation that by virtue of the judgment and order of the Tribunal the Respondent Sri Sukumar Das cannot be allowed to hold the post on ad hoc basis in Class-II service. We may mention here that the Motion Bench while admitting the writ petition had stayed the judgment and order of the Tribunal dated 27.7.1998. However, we leave it open to the Respondent that if any junior to him in Class-III service is continuing in Class II service on ad hoc basis or has been appointed on ad hoc basis, he may make necessary representation in that behalf to the petitioner and if any such representation is made the same will be disposed of expeditiously, preferably within a period of 1 (one) month of its filing and it would be appreciated if the same is disposed of by a speaking order. Needless to mention that if a representation is made and an order as aforesaid is passed and Sri Sukumar Das is aggrieved of the same, he may challenge the same before an appropriate forum.

8. The writ petition is allowed in the aforesaid terms. No costs."

It is quite clear from the above direction of the Hon'ble High Court that if junior persons is allowed to continue in the higher post, than a legal and valid right accrued in favour of the undersigned to continue in the higher post of Asstt. Engineer on ad hoc basis. It is specifically stated that there was no valid

reasons to allow Juniors of the undersigned to the promotional post of Asstt. Engineering on ad hoc basis, in supersession of the claim of the undersigned.

It is further submitted that besides Sri G. Sinha Roy, another junior namely, Sri Sandeep Sarkar has been allowed to continue even after April, 1999 till date who is junior to me and placed in the seniority list as on 1.10.2001 in serial no. 23 while undersigned is placed in serial No.17 of the seniority list of Sup. vr. It is categorically submitted that Sri Sandeep Sarkar is still continuing to the promotional post of Asstt. Engineering on ad hoc basis.

In the facts and circumstances stated above and also in view of the order passed by the Hon'ble High Court on 30.4.2002 the undersigned is entitled to be reinstated to the post of Asstt. Engineer (Construction) on ad hoc basis with all consequential benefits including monetary benefits till such time juniors are allowed to continue to the higher post on ad hoc basis.

An early action is highly desired.

Yours faithfully,

Date : 03-08-2002

Sukumar Das

(SUKUMAR DAS)

Office of the Dy.C.P./C.O.T./S.C.

N.T.P. RAILWAY, SILCHAR

SILCHAR - 788008

Enclo :

1. Copy of the Hon'ble Tribunal order dated 27.7.1998 passed in O.A.218/98.
2. Hon'ble High Court's judgment dated 30.4.2002 passed in Civil Rule No. 5717/98
3. Seniority List of Sr. Supervisor.

Annexure-16

N.F.RAILWAY

Office of the General Manager/Con
Maligaon

OFFICE ORDER - 13/2002

The temporary ad hoc promotion in Gr. B (AEN/CON) of Shri Sandip Sarkar AEN/Con/D/MLG is hereby terminated. He is reverted to his substitute position in Gr. C as Sr. SE(W)/Con with immediate effect.

This issues with the approval of General Manager/Con.

(S.K. BOSE)
APO/CON
For General Manager/Con

No. E/283/CON/G(Engg) Pt.X Date 3.9.2002
Copy forwarded for information and necessary action to :

1. FA & CAO/CON/MLG
2. CE/CON/I,II,III, IV,V & VI
3. Secy to GM/CON
4. Dy.CE/CON/Design/MLG
5. Officer concerned
6. OS/P/C/MLG
7. OS/P/Gaz/C/MLG

Sd/- Illegible
(S.K. BOSE)
APO/CON
For General Manager/Con

Addressed
Sug. Ichoudhury
Advocate
on 26/12/03

Annexure-17

NORTH EAST FRONTIER RAILWAY
OFFICE OF THE GENERAL MANAGER/CON
MALIGAON, GUWAHATI-781011

No. E/283/CON/G(Engg)Pt.X Dated 4th September, 2002

To :

Shri Sukumar Das,
Through Dy. CE/Con/SCL

Sub : Representation dated 3.8.2002 for promotion to the
post of Asstt. Engineer.

Your representation dated 3.8.2002 has been considered.

Since Sri Gautam Sinha Roy has already been promoted as AXEN on his passing the selection in the year 1999, the question of considering ad-hoc promotion with respect to Sri Sinha does not arise. This aspect has also been covered in Hon'ble High Court's judgment dated 22.4.2002.

As regards the promotion of Sri Sandip Sarkar, it is advised that ad hoc promotion has already been discontinued. You will be considered in your turn along with others whenever the ad hoc promotion arrangement is treated necessary in future.

Sd/- Illegible
4.9.02
(R.K.Goyal)
Dy. CPO/Con/MLG
For general Manager/Con.

Attested
Surjit Choudhury
Advocate
on 26/12/03

Annexure-18

N.F.Railway

Office of the General Manager/construction
Maligaon, Guwahati-11.

No.B/Cop/Mlgn/GM
Dy.CE/Con/TSK-II

Sub: Posting of AEN/Con

Shri Dipu Dutta and shri Ashim Kumar Hazarika, Assistant Engineers who have joined from state Govt. on deputation are being posted under you. It is hereby decided that Shri Dipu Dutta may be assigned the supervision of work of mechanical facilities and other civil engineering works at TSK J.

Shri Ashim Kumar Hazarika shall be assigned the work of supervision of mechanical facilities and works in progress at DBRT. You may take further necessary action in this regard on reporting the officers to

Sd/- 17.4.97

Chief Engineer/Con-III
Maligaon

Copy to Dy.CE/Con/TSK-I. He shall release Shri Dipu Dutta. AEN at an early date for working under Dy.CEc-II/TSK.

Chief Engineer/Con-III
Maligaon

Admitted
S. Jitendra
Advocate
on 26/12/03

FROM NO. 4
(SEE RULE 42.)

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Annexure-19

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 123/2003

Misc Petition No:

Contempt Petition No:

Review Application No:

Applicants: - Sixumar Das

Respondents: - Union of India Sons.

Advocate for the Applicants: - Mr. M. Chanda, No. 61, Chakrabarty
Mr. S. Nath,

Advocate for the Respondents: -

Rly. S.C.

Notes of the Registry	Date	Order of the Tribunal
	16.6.2003	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. R.K. Upadhyaya, Member (A).</p> <p>Mr. M. Chanda, learned counsel for the applicant stated that because of formal defect he wants to withdraw the application with liberty to refile it. The application is accordingly dismissed on withdrawal with liberty to the applicant to re-file it, if so desired.</p>

Sd/ VICE-CHAIRMAN

Sd/ MEMBER (A)

Memo. No. 1301

ST. 17-6-3

Copy for information and necessary actions:

(1) Mr. M. Chanda, Advocate, Gauhati High Court
(2) Mr. S. Nath, Advocate, C.A.T.
(3) Rly. Standing Counsel, C.A.T.

Attested
Surjyachoudhury
Advocate
on 26/12/03.

Recd. 17/6/03
Section 278 (a) (i)
17/7/03

Central Administrative Tribunal

- 4 OCT 2004

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O.A. NO 297/03

Sri Sukumar Das.

-vs-

Union Of India & ors.

IN THE MATTER OF:

Written Statement filed by the
respondents.

1. That a copy of the O.A has been served on the respondents and the respondents have gone through the copy of the O.A filed by the applicant and have understood the contents thereof.
2. That save and except the statements which are specifically admitted hereinbelow, other statements made in the O.A are categorically denied. Further the statements which are borne on records are also denied and the applicant is put to the strictest proof thereof.
3. That before dealing with the various contentions made in the O.A the deponent begs to raise the preliminary objection regarding the maintainability of the O.A. The O.A is bad for non-joinder of necessary parties, waiver, estopped and acquiescence. The instant OA is not maintainable as the petitioner has sought relief vide para 8.1 and 8.2 of the OA is barred by resjudicata as the

AMBESWAR SAIKIA
Dy. CHIEF PERSONNEL OFFICER
CONSTRUCTION: 01/10/2004
Filed by
the Respondents Through
Guwahati Bench
4/10/04

Quoted in
Annexure

legality and validity of office order dated 19.10.94, 10.01.94, 30.01.95 & 14.02.95 has already been decided by the Hon'ble CAT/Guwahati (annexure-13 to the OA) and by Hon'ble High Court/Guwahati (vide annexure 14 to the OA) hence relief against such orders cannot be sought as afresh as the same has already been decided.

The Hon'ble High Court had given the liberty to the petitioner to represent before the Railway, and for the disposal of such representation if the petitioner remained aggrieved then he may agitate before the appropriate forum. As such the petitioner can seek relief against the order dated 04.09.02 (vide annexure 17 to the OA) only if he is aggrieved at all and not against the order dated 19.10.94 and so on (annexure 7 to 9 of the OA) and for this reason this instant OA is required to be dismissed inlamine.

The instant OA is not maintainable on the ground of limitation also as the cause of action arose on September/02. The OA is also not maintainable for mis-joinder/non joinder to officer appellates because the office order which is directly is under challenge or observed (vide para 8.1 to 8.3) to be challenged alone was issued by Dy.CPO/Con, has not been made as respondent who has an important role in this matter.

4. That before dealing with the various contentions raised by the applicant the answering respondents beg to place the brief history of the case as follows;

Om Prakash

A.I. Brief History of the Case:-

The applicant in the instant case Shri Sukumar Das was appointed as IOW/III on 28.2.81 thereafter he was promoted upto the post of CIOW on adhoc basis on 03.12.87. While Shri Das was working as CIOW on adhoc basis he was temporarily appointed to officiate in Class-II service as AEN on adhoc basis (Annexure-1 to the OA) and was working as such. In the mean time his promotion as CIOW on adhoc basis was made on regular basis against post due to re-structuring from 1.3.93 (vide annexure-3 to the OA). While Shri Das was working as AEN on adhoc basis he was served some letters from his controlling officer to clear/explain in regard to some pending bills of his tenure (vide annexure-4 to 6 of the OA). Thereafter Shri Das was served an order dated 19.10.94 (annexure-7 to the OA) reverting him from the post of adhoc AEN Group 'B' to his former post of IOW in Group- 'C' and similar letter was also issued (vide annexure 8 to 10 of the OA). Being aggrieved Shri Das has filed a case before this Hon'ble Court bearing No.OA/218 of 94 Sukumar Das -VS- UOI & others wherein the Hon'ble CAT was pleased to grant stay against the termination order dated 19.10.94 on 17.11.94 and the said OA was disposed of on 29.7.98 clearing the termination order dated 19.10.94 with direction to reinstate the applicant (vide annexure 13 to the OA). This order was challenged by the respondents (Railway) before High Court/Guwahati vide CR No.5717/98- UOI and ors. -VS-Shri Sukumar Das. In this appeal Hon'ble High Court was pleased to stay the operation of CAT's order, and after bearing both side the said CR (appeal) was disposed of on 30.4.02 (vide annexure 14 to the OA). In the order the

Om Prakash

Hon'ble High Court was pleased to allow the appeal with the observation/liberty to the respondent (Sukumar Das) ".... We leave it open to the Respondent that if any junior to him in Class-III service is continuing in Class II service on adhoc basis or has been appointed on adhoc basis, he may make necessary representation in that behalf to the applicant and if any such representation is made the same will be disposed of expeditiously, preferably with a period of 1(one) month of its filing and it would be appreciated if the same is disposed of by a speaking order. Needless to mention that if a representation is made and an order as aforesaid is passed and Sri Sukumar Das is aggrieved of the same, he may challenge the same before an appropriate forum. Accordingly, the respondent, the petitioner herein (Sri Das) submitted representation on 3.8.02 (vide annexure-15 to the OA) and the Railway respondent disposed of the same on 4.9.02 (vide annexure 17 to the OA). Being aggrieved with the decision of the Railways as communicated (vide annexure 17 to the OA) and in face of the liberty given by the Hon'ble High Court (vide annexure 14 to the OA) the instant case has been filed.

II From records it reveals that Sri Das (the petitioner was appointed as IOW-III on 28.2.81 and was granted several promotion. While Sri Das working as CIOW on adhoc basis he was appointed to officiate as AEN in class-II service (now call group 'B' service) on adhoc basis (vide annexure-1 to the OA) with the clear stipulation that this adhoc promotion will not confer upon him any claim for continuation regularization or seniority etc. thereof. It is also fact that while Sri Das was working as adhoc AEN, was

Ankumardas

found suitable for promotion as CIOW in scale Rs.2375-3500/- on regular measure (vide annexure 3 to the OA). Further some correspondences were made in regard to clearance/finalization of some pending bills of his tenure (vide annexure 4 to 6 to the OA). Sri Das, the petitioner was terminated/reverted from the post of adhoc AEN to his substantive post of IOW/CIOW vide order dated 19.10.94 (vide annexure-7 to the OA) owing to his incompetency for the post of Group-B. Since the order dated 19.10.94 reflects that he has been reverted to IOW/Gr.1 as such several office orders dated 10.01.95, 30.01.95 & 09.02.95 (Annexure-8,9,10 to the OA) were issued rectifying/clarifying the fact as to Sri Das has been reverted to his substantive post of CIOW (Rs.2375-3500/-) and not as IOW/Gr.1 (Rs.2000/--3200/-). It is accepted that this fact was required to clarify by issuing corrigendum but wrongly it was clarified (vide annexure 8 to 10 of the OA) is regretted. Sri Das had challenged his reversion order before CAT/Guwahati which was allowed by the Hon'ble CAT vide their order dated 27.7.98 (vide annexure-13 to the OA) because the Railway had failed to satisfy/convince the Hon'ble CAT as to why Sri Das was reverted. In fine the order of reversion dated 19.10.94 had not disclosed the fact in regard to incompetency of Sri Das as observed by the higher authority as well as the fact of accommodation of regular incumbents for the post of AEN (Group-B). The respondents crave leave to produce the relevant records based upon which Sri Das was reverted during hearing if advised so. However, CAT/Guwahati's orders dated 27.7.98 (Annexure 13 to the OA) was challenged by the respondent Railway before the appellate Court (High Court/Guwahati) vide No.CR 5717 of 98 wherein the Hon'ble

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High Court was placed to allow the appeal i.e. clearing the CAT's order thereby only with the liberty to the petitioner (Sri Das) as to Sri Das will prefer representation and the Railway respondent will dispose of the same with speaking order and even after (Sri Das is aggrieved he may challenge the same before an appropriate forum (vide annexure 14 to the OA). Further, in face of High Court's directive Sri Das had preferred representation on 3.8.02 (annexure 15 to the OA) which was disposed of on 4.9.02 (annexure 17 to the OA) and the same has been challenged by way of filing the instant OA.

5. That with regard to para 4.1 to 4.7 of the OA the answering respondents while reiterating and reaffirming the statements made above beg to state that the petitioner has stated himself as AEN instead of adhoc AEN and the same is denied.

6. That with regard to the statement made in para 4.8. of the OA, it is submitted that Sri Das was transferred to TSK as he was not functioning satisfactorily at Kumarghat. Respondent crave leave to show the record in regard to his non-satisfactory performance during hearing if advised so because these are the confidential records.

7. That with regard to the statement made in para 4.9 to 4.11 of the OA, it is submitted that as stated above the petitioner's working performance was not satisfactory as such he was transferred from Kumarghat to Tinsukia. Sri Das while working at Kumarghat as adhoc AEN, some bills were remaind uncleared during his tenure as such these

- 67 -
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Om Prakash Singh

correspondences were made with.

8. That with regard to the statement made in para 4.12 and 4.13 of the OA, it is submitted that since Sri Das was not functioning satisfactorily as well as to accommodate the regular incumbent for the post of AEN Sri Das was reverted from the post of adhoc AEN to his substantive post. Since order dated 19.10.94 was issued showing wrongly as to reverted to the post of IOW/Gr.I instead of CIOW inadvertently so another office order was issued instead of corrigendum indicating as to Sri Das has been reverted to his former substantive post of CIOW and not to the post of IOW of IOW Gr.I.

9. That with regard to the statement made in para 14 of the OA it is submitted that Sri Das was reverted owing to his dis-satisfactory functioning and due to non-appearance in the selection meant for promotion as AEN on regular measure. On the other hand Sri G.Sinha Roy to whom he wants to show as to his junior is continuing as AEN, was actually appeared in the selection and was selected so for regular promotion as AEN that is why Sri G.Sinha Roy was allowed to continue.

10. That with regard to the statement made in para 4.15 of the OA it is submitted that as stated above the copies of orders dated 10.01.95, 30.01.95, 09.02.95 etc. were issued as a clarification as to Sri Das has been reverted to his substantive post of CIOW and not to the post of IOW/Gr.I Both these office orders were unwanted and a corrigendum against the office order dated 19.10.94 will suffice the purpose, is regretted.

11. That with regard to the statement para 4.16 to 4.20 of the OA- the answering respondents beg to offer no comments being matter of records and nothing is admitted beyond records.

12. That with regard to the para 4.21 of the OA it is submitted that issue regarding non-payment of salary for the months November/94, December/94 and January/95 is under scrutiny from the records available in the field units. As soon as the records, which pertains to about 10 years old, are traced the position will be clarified. His salary for that month of Feb/95 has been paid.

13. That with regard to the statement made in para 4.22 to 4.24 of the OA it is submitted that petitioner being aggrieved with the reversion order dated 19.10.94 and other connected office orders thereof had filed a case before this Hon'ble Tribunal bearing No.OA/218 of 94, Sukumar Das -VS-UOI and others. In this OA the Railway had failed to place the relevant records based upon which the petitioner was terminated hence the Hon'ble CAT was pleased to allow the OA with their valuable observation. However, being aggrieved with the Hon'ble CAT's order the Railway respondent had preferred an appeal before the Hon'ble High Court at Guwahati bearing No.CR/5717 fo 98- UOI & Others -VS- S.Das. In the writ petition as well as during the hearing of the said writ petition the railway respondent/petitioner were able to place the ground relevant records and facts before the Hon'ble High Court and after hearing both the parties and on observation of records so placed the Hon'ble High Court was pleased to allow the

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appeal quashing the Hon'ble CAT's order) thereby with the liberty to the respondent (Sri Das) to submit the representation before the railway, and on receipt of such representation the railway respondent will dispose of the same with speaking order. Accordingly the Railway respondent herein disposed of the petitioners representation (as directed by Hon'ble High Court/Guwahati dated 03.08.02) on 04.09.02 (vide annexure 17 to the OA) under challenge. Further, the said disposal letter dated 04.09.02 (annexure 17 to the OA) was passed in conformity of railway rules.

14. That with regard to the statement made in para 4.25 of the OA it is submitted that the respondent has quoted malafidely and thus denied the adhoc promotion to the petitioner. Actually the petitioner's performance as an adhoc AEN was not satisfactory, the petitioner was also avoiding to appear in the selection meant for regular promotion as AEN hence he was reverted from the post adhoc AEN. Beside the regularly selected candidates for the post of AEN were required to be accommodated i.e. why Sri Das who was occupying the post of AEN on adhoc measure was reverted. And this fact was upheld by teh Hon'ble High Court and no appeal against the High Court's order was preferred by the petitioner hence Sri Das the petitioner could not raise the question of validity/legality of the issuance of his reversion order. Again in this OA which is barred appeal for RE-ADJUDICATION. Further Sri Sandeep Sarkar, the so called junior to the petitioner has been reverted from the adhoc post of AEN (as enclosed vide annexure 17 to the OA to his substantive post not only to prove the fact as to no any junior to the petitioner is continuing as adhoc AEN as

Om Prakash

stated by the petitioner but the Railway Board is regularly pressing/advising to avoid continuous adhoc promotion as such based on Board's directive the adhoc promotion were discontinued and reversion of Sri S.Das is the consequence of this policy of Board. In fine now a days no any is working/continuing as adhoc AEN under the administrative control of the respondent that is why in the disposal letter it has clearly been mentioned that as and when utilization of adhoc AEN will arise the case of the petitioner may be considered as fresh.

15. That with regard to the statement made in para 4.26 of the OA is submitted that the Railway Board has restricted the Zonal Railways for utilization of adhoc promotee against the vacancy for a long period. Simultaneously in exigencies of service Railway is not debarred from taking technical staff/officers on deputation basis for a fixed tenure from other central/State Government Departments for time bound execution of different projects.
 In this connection, ^{with} Rly. Board's letter No.F(E)II/94/1/1 dated 24.12.98 is enclosed ~~in~~ with this ~~copy~~ ~~marked~~ ~~for~~ ~~information~~. Based upon this Board's directives some eligible officers of State Govt, have been deployed or being utilized against the vacant post of AEN on deputation basis to meet the emergent exigencies of service.

16. That with regard to the statement made in para 4.27- the answering deponent denies the contentions made therein.

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Under the facts and circumstances stated herein above the grounds for relief sought for are neither cogent nor valid specially the relief sought for at Para 8.1 and 8.2 of the O.A. is not maintainable. Hence it is respectfully, submitted that the Hon'ble Court be pleased to dismissed the instant OA with cost.

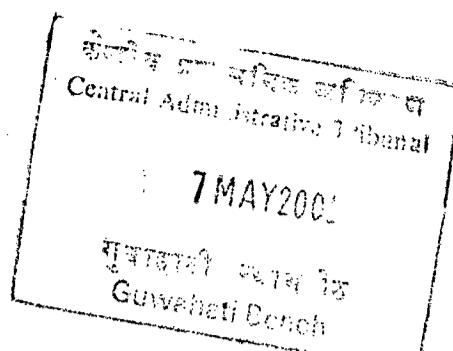
VERIFICATION

I Shri ..AMBESWAR SAIKIA....., aged about 49 years.....
years, son of Late Chandra SAIKIA....., resident
of ..Malignon, Guwahati (Assam).....
presently working as DEPUTY CHIEF PERSONNEL OFFICER /CONSTRUCTION, MALIGAON
N.F. Railway, ~~Lumding~~ do hereby verify and state that the
statement made in paragraphs ..12,.....
are true to my knowledge and those made in paragraph being
matters of records are true to my information derived
therefrom, which I believe to be true and the rest of my
humble submissions before this Hon'ble Tribunal. I am also
authorised and competent to sign this verification on behalf
of all the Respondents.

And I sign this verification on this 1st (First) th day
of October, 2004.

Ambe SAIKIA
(AMBESWAR SAIKIA)
Deponent

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filed by the applicants
through: Subrah Khati
Advocate
18/5/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No. 297/2003

Sri Sukumar Das

-Vs-

Union of India.

-AND-

In the matter of:

Rejoinder submitted by the applicant against the written statement filed by the Respondents.

The applicant above named most humbly and respectfully begs to state as under: -

1. That your applicant categorically denies the statements made in Para 3 as well as other contention stated and raised in Para 4 in the column brief history of the case same and except which are borne on records.

It is further submitted that the contention raised by the applicant in O.A. No. 297/03 is neither barred by law of estoppel nor the same is barred by law of Resjudicata and the contention of the respondents that the Original Application is vague for non joinder of necessary parties is totally misleading and as such preliminary objection raised by the respondents in Paragraph 3 is not sustainable in the eye of law. Moreover reversion cannot be made on the ground of

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incompetency without providing any prior notice to the employee concerned. The question of incompetency of the present applicant has been raised for the 1st time by the Railway Administration in the written statement and the same is now assigned as a basic ground for reversion of the applicant from the post of AEN and as such the said ground is not sustainable in the eye of law.

2. That with regard to the statements made in Para 5, 6, 7, 8 and 9 of the written statement the same are categorically denied and further begs to state that the allegation of unsatisfactory performance cannot be a ground for reversion without providing opportunity to the applicant and it is further stated that contention of the respondents that applicant is reverted to accommodate the regular incumbent for the post of AEN is totally false and misleading and the respondents are put to strictest proof to the same.
3. That with regard to the statements made in paragraph 10 and 12 the applicant begs to say that now 11 years are running but even then salary for the month of November 1994, December 1994 and January 1995 is not yet been paid and now the respondents are stating that as soon as the records are available to the same will be clarified, the manner in which the case of the applicant has been dealt with regarding payment of salary until and unless the specific order is passed by the learned Tribunal the respondents will not pay the due salary to the applicant.
4. That your applicant begs to state that the contention raised by the respondents in paragraph 13, 14, 15 and 16 the same are not correct except those are borne on record. The Hon'ble High Court while disposing the writ petition a specific direction was given to the applicant to make a representation before the Railway

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authority and also directed the Railway authorities to pass a speaking order, moreover, liberty was given to the applicant to approach this Hon'ble Tribunal if he is aggrieved with the decision of the Railway authorities. Since Shri Sarkar, junior of the applicant has been discontinued from the post of AEN, on receipt of the representation of the applicant, the said post is still vacant and as per rule holding the relevant field in the matter of adhoc promotion, the applicant is entitled to be appointed even on officiating basis in the said vacancy which occurred due to reversion of Shri Sarkar.

It appears that the stand of the Railway authorities so far officiating appointment of the in-service candidates to the post of AEN are concerned, the respondents are indifferent towards their interest for appointment even on adhoc basis. The respondents even brought persons on deputation to the post of AEN, ignoring the case of the in-service candidates. It is a settled position of law that an in-service candidate should be considered on priority basis for appointment even on officiating basis than the deputationist or outsiders. So far other contentions are raised in the written statement, the applicant reiterates the statements made in the original application.

5. That in the facts and circumstances, the applicant humbly submits that he is entitled to the reliefs prayed for and the original application deserves to be allowed with cost.

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VERIFICATION

I, Shri Sukumar Das, Son of Late S.C. Das, aged about 50 years, resident of Tinsukia, do hereby verify that the statements made in Paragraph 1 to 5 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 15th day of May, 2005.

Sukumar Das