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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓
O.A/T.A No. 44/2003.....

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SECTION OFFICER (Judl.)

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(RULE - 4)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
.....

ORDER SHEET

Original Application No. 44/03

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (s) Subhasish Das

- Vs. -

Respondent (s) H.O.I. Gang

Advocate for the applicant (s) A.K. Roy, H.R. Obing

Advocate for the respondent (s) Case.

Lima-Dapang

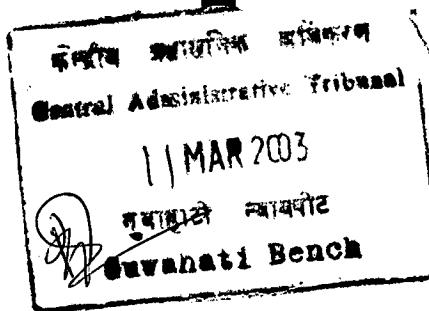
Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time C. Petition is filed / not filed C.F. for Rs. 50/- deposited via P.O/BY No. 7.1607098 Dated 10.3.2003.</p> <p><i>[Signature]</i> By. Registrar.</p>	17.3.2003	<p>Mr. A.K. Roy, learned counsel for the applicant stated that he is not pressing the application at this stage. The application is accordingly dismissed as not pressed with liberty to re-file the application if he so advised.</p> <p><i>[Signature]</i> Vice-Chairman</p>

Steps taken along with
envelops. mb

26.3.2003

Copy of the order
has been sent to the
Office for issuing
the same to the L/Adv.
for the Applicant.

HS



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Administrative Tribunal Act 1985)

Original Application No. 44 / 2003

Shri Subhasish Das

..... Applicant

- Vs -

Union of India & Ors.

..... Respondents.

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Filed by :

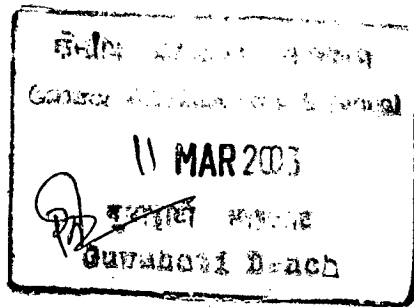
For Use in the Office :

Advocate :

Signature

Date :

Date :



Filed by the applicant
Shri Subhasish Das
through -
Ashok Kumar Ray.
Advocate.
11/3/03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

- BETWEEN -

Shri Subhasish Das
S/o. Shri Sailesh Ch. Das
R/o. Qrt. No. 559/A,
Arabinda Colony,
Alipurduar Junction,
Dist - Jalpaiguri (W.B).
Pin - 736 123

.. .. Applicant

- AND -

1. Union of India, represented by
the General Manager (Con),
N.F. Railway, Maligaon,
Guwahati - 781 011
2. The General Manager(P)
N.F. Railway, Maligaon,
Guwahati - 781 011
3. The Chief Signal Telecom Engineer(Con-II)
N.F. Railway, Maligaon,
Guwahati - 781 011
4. Divisional Signal & Telecom Engineer(Con)
N.F. Railway, Alipurduar Junction,
(W.B), Pin - 736 123

.. .. Respondents

Subhasish Das.

1. PARTICULARS OF ORDERS AGAINST WHICH THIS APPLICATION IS DIRECTED :

- (a) This application is directed against the action of the respondents in considering the ACR of the applicant for the year 1999-2000 as adverse in the selection for promotion to the post of Asstt. Signal & Telecom Engineer though it is fact that the said remark in the ACR has been reconsidered and charged to good.
- (b) Unlawful and whimsical recording of ACR for the year 1999-2000 as adverse without considering the relevant fact.
- (c) Unneecessary delay in reviewing the remark in the ACR for the year 1999-2000 and placement of wrong ACR for the said year before the selection committee due to which applicant has been given less marks i.e. '1' (one) for the year 1999-2000 without considering the other relevant fact and without any reason whatsoever.
- (d) Non ^{inclusion} ~~inclusion~~ the name of the applicant in the final ^{only} selection list for promotion to the post of Asstt. signal and Telecom Engineer (in short ASTE).

2. JURISDICTION :

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

3. LIMITATION :

That the applicant also declares that this application is made within the time limit as has been prescribed under section 21 of the administrative Tribunal Act 1985.

contd....

Subhash D.

4. FACT OF THE CASE :

(i) That the applicant is a citizen of India and at present working as senior signaling Engineer (in short S.S.E) under the Dy.Chief Signal and Telecom Engineer (in short Dy.C.S.T.E)/ Con/Apdj).

(ii) That the applicant states that the respondents initiated a process of selection for promotion to the post of Asstt. Signal & Telecom Engineer (in short A.S.T.E)Gr.-B, and accordingly all the eligible candidate who was within the Zone of consideration was called for. The applicant, as per his seniority position, was also called for and he appeared in the written test on 14.12.2002. In the said written test the applicant did his best and secured first position in merit list. The result of the written examination has been published vide letter dated 27.1.2003.

Copy of the letter dated 27.01.2003
is annexed herewith as ANNEXURE - 'A'

(iii) That after being selected, the applicant was called for the viva-voce vide letter dated 18.2.2003. The applicant appeared in the viva-voce on 24.2.2003 in the chamber of CSTE/Maligaon and did his best securing the top position.

Copy of the letter dated 18.2.2003
is annexed herewith as ANNEXURE - 'B'

(iv) That recently, from some reliable source, the applicant came to know that his name has not been included in the final selection list for the reason that his ACR for the year 1999-2000 has been placed as Adverse before the selection committee.

Subhash D.

contd....

- (v) That the applicant states that total marks for the selection is two hundred out of which one hundred and fifty (150) marks for written test, twenty five (25) is for viva-voce and twenty five is for ACR. The A.C.R. marks is divided as follows :-

Good - 3

Very Good - 4

Average - 2

Adverse - 1

In the selection past five years A.C.R. are considered for promotion to the next higher post.

- (vi) That the applicant states that one adverse entry was made by the Divisional Signal & Telecom Engineer/Adj for the year 1999-2000 and the same was communicated to him by the CSTE/CON vide letter dated 17.3.2000. After receiving the said communication the applicant submitted his representation dated 30.3.2000 stating in details and thereby requested to review the A.C.R., but the respondent remain silent and hence he submitted his reminder dated 01.3.2001 and 10.9.2002.

Copy of the representation dated 30.3.2000 and reminders dated 01.3.2001 and 10.9.2002 are annexed herewith as ANNEXURES - C₁, C₂ & C₃ respectively.

- (vii) That after the reminders of the applicant, the CSTE/Maligaon vide his letter dated 20.9.2002 asked the DSTE/Alipurduar Junction to send parwise remarks for consideration of the appeal/representation.

- (viii) That inspite of the aforesaid letter, the A.C.R. file of the

Subhash Da

contd...

applicant was send very lately and placed the A.C.R. before the selection committee as adverse for the year 1999-2000. Be it stated that the authority has considered his appeal and expunge the adverse remark and ^{rewrite} ~~repete~~ it as good on 5.2.2003. ^{only} The adverse remarks for the year 1999-2000 has been change to good by the Divisional Signal & Telecom Engineer/Apdj and the same has been counter signed by the Dy.Chief Signal & Telecom Engineer/Apdj.

- (ix) That the applicant states that minimum fifteen marks in five years ACR is required for the promotion to the post of ASTE. But, in the instant case, due to negligence of the authority and due to wrong placement of ACR for the year 1999-2000, applicant has got thirteen marks i.e. two marks less from the required marks. Had the good remark in the A.C.R. of 1999-2000 was placed before the selection committee, the applicant would have surely selected for next promotion.
- (x) That the selection committee accepted the A.C.R. in toto without any cross verification and without giving any reason whatsoever due to for which the selection committee has given one marks for the adverse entry for the year 1999-2000. Be it stated that as per the verdicts of the Apese court, the selection committee is required to cross verify of the ACR and give the reason for the same, but the same has not been done in the instant case and hence applicants name has not come in the ~~final~~ final list for promotion.
- (xi) That the applicant states that since his date of appointment i.e. 7.11.1989, he has never earned adverse remark except the year 1999-2000 which was wrongly entered and his other relevant

Subhashi Dv.

contd...

records are also good and hence the same should have been considered by the selection committee. But the same has not done and hence he is going to be deprived of his due promotion illegally and arbitrarily.

- (xii) That at present there are eight posts of ASTE are vacant and only five persons has been finally selected for promotion. As the name of the applicant has not been included in the final list, he submitted one representation dated 6.3.2003 and thereby request to promote to the post of ASTE/Group - B.

Copy of the representation dated 6.3.2003
is annexed herewith as ANNEXURE - 'D'

(5) GROUND FOR RELIEFS :

(i) For that the selection committee should not have accepted the ACR in toto without any cross verification and reasons and hence applicant has been given less marks i.e. only two(2) for the ACR of 1999-2000 in violation of the verdict of the Apese Court.

(ii) For that it is the negligence of the respondents in delaying to dispose of his appeal/representation against the adverse entry in ACR for the year 1999-2000 due to which the applicant has been deprived of getting promotion.

(iii) For that the respondents has wrongly made the adverse entry in the ACR for the year 1999 -2000 without considering the all relevant fact.

(iv) For that as the applicant secured good marks in written test and viva-voce and in other performances and hence he should not have been deprived of his due promotion only for a wrong only in the ACR for one year, more so when the same has been changed.

contd....

Subash Da

5. (v) For that the action of the respondents is illegal, arbitrary and whimsical in as much as the applicant is going to be deprived of his due promotion illegally.

(vi) For that the action of the respondents is illegal in as much as the same violates the fundamental rights of the applicant as has been guaranteed under Article 14 and 16 of the constitution of India.

(vii) For that the action of the respondents is against the principle of natural justice and administrative fair play and hence same is not sustainable in the eye of law.

(viii) For that at any rate the action of the respondents is not maintainable and liable to be quashed.

6. DETAILS OF REMEDIES EXHAUSTED :

7 That the applicant states that he has availed all the remedies as stated in paragraph 4 of this application but failed and hence there is no other alternative remedy to her other than to approach this Hon'ble Tribunal.

7. MATTER NOT PREVIOUSLY FILED OR PENDING BEFORE ANY COURT :

That the applicant further declares that he has not filed any application, writ petition or suit regarding the matter before any court, or any other bench of this Tribunal nor any such petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the fact and circumstances stated above the applicant prays for the following reliefs :-

i) To direct the respondents to promote the applicant to the post of ASTE/Group-B alongwith his juniors by considering the ACR for the year 1999-2000 as good.

Subscribed By

contd...

ii) To pass any other further order or orders as your Lordships may deem fit and proper.

iii) Cost of the application.

9. INTERIM RELIEFS PRAYED FOR :

Under the fact and circumstances stated above the applicant prays that your Lordships may please to direct the respondents to keep ^{one} ~~are~~ post of ASTE/Group-B vacant till the disposal of this application. *adly.*

10.

11. PARTICULARS OF I.P.O. :

i) I.P.O. NO.	:	7G 607098
ii) Date of Issue	:	10/03/03
iii) Payable at	:	Guwahati

12. LIST OF ENCLOSURES :

As stated in the Index.

contd..

Subscribed Dan.

VERIFICATION

I, Shri Subhasish Das, S/o. Shri Sailesh Ch. Das, aged about 36 years, resident of Qrt. No. 559/A, Arabinda Colony, Alipurduar Junction, Dist. Jalpaiguri, (W.B) Pin - 736 123 do hereby verify that the statements made in paragraphs 1 to 12 are true to my personal knowledge and submissions made therein, I believe the same to be true as per legal advice and I have not suppressed any material fact at the case.

And I sign this verification on this the 11th day of March 2003 at Guwahati.

Date : 11-3-2003

Place : Guwahati

 Subhasish Das

I.E. RAILWAY

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

No. E/254/14 PL.VI (O)

Dated: 27-01-2003

To

CSIE, CSTE/Con/MLG.

Dy.CSTE/MW/MLG.

Dy.CSTE/Con/MLG.

Sr.DSTE/LMG & KIR.

✓ Dy.CSTE/CON/APDJ.

DRM(P)/LMG, APDJ & KIR.

Sub: Selection for the post of ASTE/Group-'B' against 70%
vacancies held on 14-12-2002 & 18-01-2003.

The following candidates under your control have qualified in the written
examination held on 14-12-2002 & 18-01-2003 in connection with selection of
ASTE/Gr-B against 70% vacancies:-

1. Shri Subhasis Das, SSE/Sig/Con/APDJ.
2. Shri S. Chandra Sekhar Rao, SSE/T/LMG.
3. Shri Sambhu Sengupta, SSE/S/CON/MLG.
4. Shri Ajoy Kr. Deb, SSE/Tele/SGUJ.
5. Shri J.K.L. Das, SSE/Sign./KNE
6. Shri Gulab Singh, SSE/SIG/CON/NCB.
7. Shri Sushil Kumar Dutta, SSE/MW/TSK.
8. Shri Raja Pradhan, SSE/MW/NJP.

You are requested to advise the above named staff under your control to
obtain physical fitness certificate for the post of ASTE/Group-'B' from their
nearest Railway Hospitals and send the same to reach Dy.CPO/Gaz. on or before
11-02-2003 positively.

Since the date of viva-voce test is likely to be fixed in the middle of
February 2003, the candidates concerned should also be advised to keep
themselves in readiness to appear before the same at short notice.

Please acknowledge receipt.

ch
27.1.03
(S.K.CHOWDHURY)

APO/GAZ.

For General Manager (P)

Attested by

Adv
16/3/03
Advocate.

DY.CSTE(CON)/APDJ - 11 -

ANNEXURE - B

14

NORTHEAST FRONTIER RAILWAY

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

No E/254/14 P.V(O)

Dated 18.02.2003

To,
CSTE, CSTE (CON)/MLG.
DY.CSTE/MW/MLG.
DY.CSTE/CON/MLG.
Sr.DSTE/LMG & KIR.
✓ DY.CSTE/CON/APDJ,
DRM(P)/KIR, APDJ & LMG.

Sub:- Selection for the post of ASTE/Group-B against 70% vacancies

Ref:- This office letter of even number dated 27.01.2003.

The Viva-voce test for the above mentioned selection will be held on 24.02.2003 (Monday) at 10.00 hours in the chamber of CSTE/Maligaon

You are, therefore, requested to direct the following candidates under your control to appear in the above Viva-voce test accordingly, on the above date, time & venue -

- ① Shri Subhasish Das, SSE/SIG/CON/APDJ
2. Shri S. Chandra Sekhar Rao, SSE/I/LMG
3. Shri Sambhu Sengupta, SSE/S/CON/MLG
4. Shri Ajoy Kumar Deb, SSE/Tele/SGUJ
5. Shri J.K.L. Das, SSE/Sig/KNE
- ⑥ Shri Gulab Singh, SSE/SIG/CON/NCB
7. Shri Sushil Kumar Dutta, SSE/MW/ISK
8. Shri Raja Pradhan, SSE/MW/NJP

It may please be noted that the candidates concerned will be allowed to appear in the Viva-voce test of said selection on 24.02.2003, subject to submission of Physical fitness certificates obtained from their concerned Medical Authorities

Since physical fitness certificate of Shri S. Chandra Sekhar Rao, SSE/I/LMG is yet to receive in this office, Shri Rao should be advised to produce the same while coming to attend the viva-voce test

CSK
18.2.03
(S K CHOUDHURY)
APO/GAZ
The GENERAL MANAGER(P)

Attested by

Adv
16/3/03
Advocate.

Shri ① & ⑥ to be spared. accordingly
ASR/CLM

No. SD/8/2000-1

Date.-30-8-2000

To.

CSTE/CON/II/MLG
N.F. Railway

Sir,

SUB:- REPLY AGAINST ADVERSE REMARKS.

REF:- YOUR L. NO. CSTE/CON/SS/CR/NG DT. 17-8-2000

With due respect and humble submission, I beg to lay before you the following few lines itemwise for your kind consideration and impartial judgement please :-

ITEM NO. 1:-

That Sir, I put my best efforts and full devotion to the work under my control with best technical ability to execute the work satisfactorily.

ITEM NO. 3(d):-

That Sir, I have always given my full efforts and strict administrative control to the staffs worked under me.

ITEM NO. 3(e) & 31 :-

That Sir, I have always given full supervising control to the staffs worked under me and so far the administrative controlling officer under whom I am working, has never given any displeasure / warning letter to me noting my slack supervision.

ITEM NO. 11&16 :-

That Sir, being SSE/SIG/CON/APDJ, I have no independent office nor staffs under my direct control and I am always engaged to supervision of various contractual works. Staffs being directed to my site of work from SSE/SIG/CON/NCB's office as per direction of DSTE/ASTE/CON/APDJ, considering the work load at site and this too also in a rare occasions like assisting in cable trenching/laying works, during N.I. period of new works etc. & I have always engaged those few Railway staffs (who were very few in numbers). Now, all the signalling works have been executed by contractual agencies & the contractors have always engaged their labour very economically, then the use of labour economically/properly could not be sustained. In every site of my works, I have always engaged the few railway staffs who have come to my site of work for my assistance, have engaged very precious & economically.

ITEM NO. 29 :-

That Sir, I have been directly recruited as SE/SIG after completion of B. Tech.(Electrical) degree from REC/JAMSHEDPUR in first class with distinction and my technical ability in signalling works has never been questioned, so far by anybody neither in writing nor verbally. I have maintained a big yard like GHY

P.I. installation yard and in a typical section like LMG hill section, where the administrative authority has fully satisfied on my works.

ITEM NO. 34 :-

That Sir, the failure of PT. No. 14 at NOQ was not due to myself but because of faulty circuit arrangement & defective machine. The PT failed at 17-00 hrs. on 13-2-2K & disc at 22-00 hrs after due consultation with ASTE/CON/II/APDJ. The PT was set right next day on 14-2-2K at 17-00 hrs i.e. after full 24-00 hrs in presence of ASTE/II/APDJ, ASTE/CON/II/APDJ & DSTE/CON/APDJ.

Under the above, I would like to request your kind honour to make necessary instructions for reviewing the CR and apprise the facts

With regards.

Dt. APDJ

The 30th. Aug. , 2K

Yours faithfully

Subhashis Das
(SUBHASHIS DAS)
SSE/SIG/CON/APDJ

Attested by
Advocate
15/3/03
Advocate.

No:SD/8/2001-01

Dt.01-08-2001

To
CSTE/CON-II
Maligaon
N.F. Railway.

Respected Sir,

Sub:Review of CR for 1999-2000

Ref: My appeal No:SD/2000/8-01
Dated:30-08-2000.

With due respect and humble submission, I beg to lay before you the following few lines for your kind consideration and necessary order please:

That sir, I have been given ADVERSE CR for the year 1999-2000 by Dy.CSTE/CON/APDJ, which was communicated to me vide L/No.CSTE/CON/SS/CR/NG dated 17.8.2000 and I have given prayer to your kind authority for reviewing the same vide Letter as mentioned above.

A long one-year has passed since then, but no judgfull remarks communicated from your side which gives me an immense mental tension considering the future aspects of my service career.

Under the above circumstances, a judicial decision may please be communicated to me whatever it may be and get release me from the agonies.

With regards,

Yours faithfully,

Dated :APDJ
The 1st Aug 2001

Subhashis Das
1-8-01
(SUBHASHIS DAS)
SSE/SIG/CON/APDJ

Attested by

Advocate
13/83
Advocate.

NO : SD/09/02-7

Date: 10/9/02

To
CSTE/CON/II
Maligaon. N.F.Rly.

Respected Sir,

Sub : Review of CR for 1999-2000.

Ref : My Appeal No. 1) SD/2000/8-01 dt. 30-08-2000.

2) SD/8/2001-01 dt. 01-08-2001.

With due respect & humble submission, I beg to lay before you, the following few lines for your kind consideration & necessary review please :-

That Sir, I have been given "ADVERSE CR" FOR THE YEAR 1999-2000 BY Dy.CSTE/CON/APDJ, which was communicated to me vide L/No. C/ASTE/CON/SS/CR/NG dt. 17-8-2000 & I have submitted an appeal to review my case vide appeal no as mentioned above narrating the details in the appeal to your authority.

Now Sir, the examination for selection test of Gr-B (ASTE) will be held very shortly & my name was appeared on the seniority list to appear in the examination. My preparation for the selection is effecting adversely due to immense mental tension for that "ADVERSE REMARKS" & may affect my promotional avenue if I can come out successfully in the written exam.

A long two years has passed since then, but no judge full remarks has been communicated to me so far.

Considering the above, the CR of 1999-2000 may please be reviewed considering the future prospects of my service career & relinquish me from the mental agonies.

Thanking you.

Date : APDJ
THE 10TH SEPT 2002

YOURS FAITHFULLY.

(Signature)
(SUBHASISH DAS)
SSE/SIG/CON/APDJ.

Attested by
(Signature)
10/9/02
Advocate.

No. SD/03/03-1

Dated: 06/03/2003

To,
Chief Signal and Telecommunication Engineer
R. B. Maligaon,
(through proper channel)

Sub. : Review of A.C.R. for the Year 1999 - 2000.

Ref. : My letter nos. I) SD/8/2000-01 Dt. 30.8.2000.
II) SD/8/2001-01 Dt. 01.8.2001 and
III) SD/9/2002-71 Dt. 10.9.2002

Respected Sir,

With due respect and humble submission I beg to lay before you the following few lines for your kind information and necessary action please.

- i) That Sir, I have appeared in the written examination conducted for ASTE- Gr. B' held on 14.12.2002 and I was asked to appear in the viva-voce test which was held on 24.02.2003.
- ii) That Sir, I have come to know from reliable sources that my name is not considered for promotion to ASTE - B'.
- iii) That Sir, it is understood that my name was not considered for want of minimum marks required for C.R.
- iv) That Sir, it is for your kind information that, for the year 1999-2000 adverse remarks was given to my ACR for which I had represented thrice vide letter under reference, but no communication was received till date.
- v) That Sir, now I have come to know from my Field Unit that my representation has been considered and ACR for 1999-2000 has been reviewed by competent authority in favour of me.

Under the above circumstances, I request your honour to kindly consider my case, so that I may be promoted to Group - B and serve the Railway with full satisfaction.

With due regards,

Sincerely Yours

Dated 6 th March, 2003

(Subhashis Das)
SSE/Sig/Con/APDJ

Copy To :

- i) CPO/Maligaon - for his kind information and necessary action please.
- ii) CSTE/Con-I/Maligaon - for his kind information and necessary action please.

(Subhashis Das)
SSE/Sig/Con/APDJ

Attested by
Advocate
6/3/03
Advocate.