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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 3/2003

R.A/C.P No.

E.P/M.A No. MP 4/03

1. Orders Sheet.....OA.....Pg. 1.....to. 3
2. Judgment/Order dtd. MP 4/2003 Page 1 102 11026.3 03
1.8.16.2003.....Pg. 1.....to. 4 Dismissed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....OA 3/2003.....Pg. 1.....to. 22
5. E.P/M.P. 4/03.....Pg. 1.....to. 3
6. R.A/C.P.....Pg.....to.....
- ✓ 7. W.S.....Pg. 1.....to. 9
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

15/11/17

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 3/03
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s): Ardhendu Chakraborty

- Vs. -

Respondent(s): W.O.I. Form

Advocate for the Applicant(s): Mr. U.K. Nair, Miss U. Das

Advocate for the Respondent(s): Cafe

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time. <u>Contempt Petition</u> is filed / <u>not filed</u> C.F. for Rs. 50/- deposited vide IPO/B/ No. <u>74605386</u> Dated <u>21.1.03</u></p> <p>NO. Synopsis has been filed. <u>11C Dr. Registrar 23/1/03</u></p> <p>Steps taken with envelopes.</p>	<p>27.1.2003</p> <p>mb</p>	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S.K. Hajra, Administrative Member.</p> <p>List again on 26.2.2003 for admission alongwith M.P.</p> <p>Member <u>[Signature]</u> Vice-Chairman <u>[Signature]</u></p>
	<p>26.2.2003</p> <p>mb</p>	<p>List again on 26.3.2003 for admission alongwith O.A.</p> <p>Vice-Chairman <u>[Signature]</u></p>
	<p>26.3.2003</p> <p>mb</p>	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S. Biswas, Member (A).</p> <p>Heard Miss U. Das, learned counsel for the applicant and also Dr. M.C. Sarma, learned counsel for respondents.</p> <p><u>mb</u> The application is admitted Call for the records.</p>

5

O.A. 3/2003

26.3.2003

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

Notice prepared and sent to Dls for filing the Respondent No. 1 to 5 & Legal A/O.

Heard Ms. U. Das, learned counsel for the applicant and also Dr. M.C. Sarma, learned counsel for the respondents.

The application is admitted.

Call for the records.

List on 30.4.2003 for order.


Member


Vice-Chairman

30.4.2003

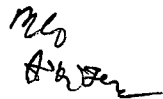
Heard Dr. M. C. Sarma, learned counsel for the respondents who has stated that the written statement is filing in course of the day. Accordingly, the case may now be listed for hearing on 9.6.2003. The applicant may file rejoinder, if any, within two weeks from today.


Vice-Chairman

No rejoinder has been filed.

mb

9.6. Heard in part.
List again on 10/6/2003.

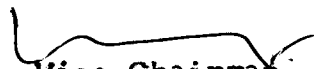


10.6.2003

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

List the matter on 18.6.2003 for hearing. On that day Dr. M.C. Sarma, learned Bly. counsel shall produce the connected file.


Member



Vice-Chairman

bb

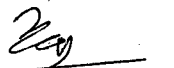
26.5.03

W.S. Submitted by the Respondents.




6.6.03.

No rejoinder has been filed.


17.6.03.

O.A.3 of 2003.

Notes of the Registry

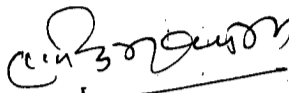
Date

Orders of the Tribunal

18.6.2003

Heard learned counsel for the parties. Judgment delivered in open Court, kept in separate sheets.

The application is dismissed in temrs of the order. No costs.


Member


Vice-Chairman

bb

*Recd copy
by
2/7/03
for Resp. Dr*

15.7.2003

*Copy of the Judgment
has been sent to the
Office for issuing the
same to the applicant
as well as by post.*

HS

Notes of the Registry

Date

Orders of the Tribunal

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~Rxx~~ No.3.of 2003.. ~~xxx~~

DATE OF DECISION 18.6.2003.....

... Sri Ardhendu Chakraborty APPLICANT(S).

... Mr,U,K,Nair & Ms.U.Das.. ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

... Union of India & Others.. RESPONDENT(S).

... Dr.M.C.Sarma, Standing Counsel for the Railways ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN

THE HON'BLE MR. R.K.UPADHYAYA, ADMINISTRATIVE MEMBER.

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

Judgment delivered by Ho'ble Vice-Chairman.



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 3 of 2003.

Date of Order : This the 18th Day of June, 2003.

THE HON'BLE MR. JUSTICE D. N. CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR. R. K. UPADHYAYA, ADMINISTRATIVE MEMBER.

Sri Ardhendu Chakraborty
Permanent Way Supervisor
Under Senior Section Engineer
New Guwahati.

. . . . Applicant.

By Advocates Mr.U.K.Nair & Ms.U.Das.

- Versus -

1. The Union of India
Represented by the General Manager(P)
N.F.Railway, Maligaon
Guwahati.

2. The Divisional Railway Manager
N.F.Railway, Lumding.

3. The Senior Divisional Engineer
N.F.Railway, Lumding.

4. The Senior Divisional Engineer
N.F.Railway, Maligaon.

. . . . Respondents.

By Dr.M.C.Sarma, Standing counsel for the Railways.

O R D E R

CHOWDHURY J.(V.C.):

The following are the reliefs prayed for in this application in the following circumstances:

"8.1. To set aside and quashed the impugned orders dated 17.7.2000 and 19.7.2000 with a further direction towards the Respondents to promote him to the post of Junior Engineer-II with retrospective effect i.e. date on which his immediate junior was promoted to the post of Junior Engineer-II with all consequential service benefits including arrear salary and seniority etc.

8.2. To direct the respondents to treat the service of the applicant w.e.f.3.6.2000 to 18.7.2000 on duty and to pay his salary accordingly of the said period and to regularise the same."

1. By office order dated 6.2.1998 the respondents authority communicated the empanelment of the Supervisor Permanent Way as JE/G.II/P.Way in the scale of pay Rs.5000-8000/- on the strength of office order dated 23/28.1.1998 and promoting the persons mentined in the list to officiate

Contd./2

as JE/Gr.II/P.Way and posted accordingly. The name of the applicant^{did} also appear in the said list. The said order was followed by office order dated 10.3.1998 transferring and posting the applicant as JE/Gr.II/P.Way/CPR under SE(P-Way)/CPR. According to the applicant, the order dated 10.3.1998 transferring and posting him in the promotional post was not formally communicated to him nor to his controlling authority. In the absence of any communication the applicant contended that the promotional order was not implemented by the respondents authority illegally. The applicant also mentioned the order dated 3.2.2000 transferring and posting the P.Way subordinate which also cited the name of the applicant as JE/II/P.Way under Sr.DEN, Lumding. According to the applicant, he could come to know about the said order only on 1.6.2000 and immediately submitted a representation on the same date to the concerned authority. The applicant further pleaded that on receipt of the same his immediate superior in his communicated dated 1.6.2000 spared the applicant and directed him to follow promotion order and join where he was asked. By the said communication Sr.Engineer further wrote to him that he did not receive any communication dated 10.3.1998 promoting him to officiate as JE/Gr.II/P.Way. The applicant thereafter submitted his representation to the Assistant Engineer, Guwahati stating his grievances. The applicant thereafter moved the authority for the appropriate remedy. By the impugned order dated 17.7.2000 the applicant^{was} informed that the life of the panel for promotion as JE/II had already been expired on 9.2.2000 therefore question for promotion of the applicant did not arise unless he ^{succeeds in} a fresh selection. The applicant also assailed the communication dated 19.7.2000 issued by the Assistant Engineer, N.F.Railway, Guwahati directing him to resume as P.Way Supervisor wherein he was also intimated that the period from 3.6.2000 to 18.7.2000 i.e. from the date of his sparing to DRM(P)P,

Lumding to the date of coming back from DRM(P), Lumding was treated as leave due. Hence this application assailing the legality of the action of the respondents. According to the applicant, though the order of promotion was given it remained uncommunicated to the applicant, therefore he could not join the duty.

2. The respondents submitted its written statement denying and disputing the claim of the applicant that he was not aware of the order of promotion of 1998 in his favour. It was stated that the other persons who were junior to the applicant carried out the promotion order but the applicant was mysteriously silent for more than two long years. According to the respondents, the panel for promotion was approved by the competent authority on 29.1.1998 and validity of the panel expired on 29.1.2000. In the written statement the respondents authority also asserted that three of the four junior colleagues of the applicant at his place of posting at Guwahati were spared to carry out their transfer order to various places. There is not justification to hold that the said order also did not reach the applicant. ^{applicant apparently} The wanted to continue in the old place of posting ^{different} instead of accepting promotion in place, contended the respondents.

3. We have heard Mr.U.K.Nair, learned counsel for the applicant and also Dr.M.C.Sarma, learned Standing counsel for the Railways. Mr.U.K.Nair in his persuasive manner contended that the order of promotion did not reach the applicant therefore he could not join the new place of posting. In support of his plea Mr.Nair's reference to the communication dated 1.6.2000 (Annexure-5 to the O.A.) issued by the Sr.Engineer (P.Way), N.F.Railway, New Guwahati to the applicant as well as the communication dated 11.7.2000 (Annexure-7 to the O.A.) sent by the Assistant Engineer, N.F.Railway, Guwahati addressed to DRM (P), Lumding by itself cannot be decisive factor to hold that the applicant was not aware of the order of promotion. An official act is

presumed to be acted regularly unless contrary is proved. On the other hand, the records produced by the Railway authority runs counter to the plea of the applicant. From the records it appears that by communication dated 2.9.1998 the Office of the DRM(P), Lumding advised the Sr.Engineer(P-Way), Guwahati & New Guwahati, N.F.Railway to furnish ^{upto date} the position as to the resumption report of the applicant assuming higher charge as PW.I/Gr.III. The said communication reflected the anxiety ^{authority to ascertain} of the the reasons as to why the applicant did not resume his duty. The said communication also indicated that from the staff concerned no reasons were ascribed for not joining and resuming in the higher post. The plea of the applicant that he was not aware of the order of promotion to the next higher rank vide order as far back in January, 1998 cannot be accepted also on the basis of the materials on record. It seems that a move was made at the administrative level for posting the applicant under Chief Engineer (HQ)'s office at Maligaon so that he could have a quarter near Central Hospital for treatment of his sister who was seemingly suffering from some acute syndrom of "AUTO IMMUNE THROMOCYTOPENIC PURPURA" as reflected from the communication by the Hon'ble Member of Parliament addressed to the Hon'ble Minister of Railways. In the set of circumstances, we do not find any illegality in the impugned communications dated 17.7.2000 (Annexure-8 to the O.A.) and 19.7.2000 (Annexure-9 to the O.A.) requiring intereference for judicial review.

The application is, therefore, liable to be dismissed and accordingly stands dismissed.

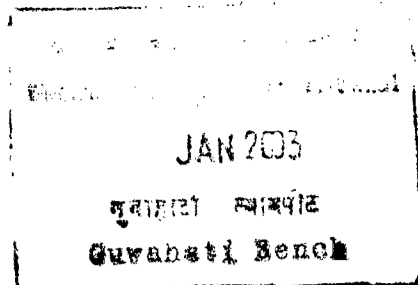
There shall, however, be no order as to costs.



(R.K.UPADHYAYA)
ADMINISTRATIVE MEMBER



(D.N.CHOWDHURY)
VICE CHAIRMAN



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : D.A. No. 3 of 2003

BETWEEN

Shri Ardhendu Chakraborty Applicant.

AND

Union of India & ors..... Respondents.

I N D E X

Sl.No.	Particulars	Page No.
1.	Application	1 to 13
2.	Verification	14
3.	Annexure-1	15, 16
4.	Annexure-2	17
5.	Annexure-3	18
6.	Annexure-4	19
7.	Annexure-5	20
8.	Annexure-6	21
9.	Annexure-7	22
10.	Annexure-8	23
11.	Annexure-9	24

Filed by :

Alsha Das

Regn.No.:

File :c:\WS\ARDHENDU

Date :

Filed by
the applicant through
Asher Das
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

O.A.No. 3 of 2003

BETWEEN

Sri Ardhendu Chakraborty,
Permanent Way Supervisor
under Senior Section Engineer,
New Guwahati.

..... Applicant.

- AND -

1. The Union of India.
Represented by the General Manager(P)
N.F.Railway, Maligaon,
Guwahati.
2. The Divisional Railway Manager,
N.F.Railway, Lumding,
3. The Senior Divisional Engineer,
N.F.Railway, Lumding.
4. The Senior Divisional Engineer,
N.F.Railway, Maligaon.

..... Respondents.

PARTICULARS OF THE APPLICATION

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

This application is directed against the inaction on the part of the respondents in not posting the applicant as Junior Engineer-II after his selection to the said post. This application is also directed against the action of the Respondents in issuing the impugned orders dated 17.7.2000 by which his prayer for specific posting order has been rejected and 19.7.2000 by which his service period w.e.f. 3.6.2000 to 18.7.2000 has been treated as on leave without any valid reason.

2. LIMITATION:

The applicant states that the instant application has been filed seeking a relief against the impugned orders dated 17.7.2000 and 19.7.2000 and there has been some delay in filling this application and as such as a measure of abandon caution a separate Miscellaneous Application along with this O.A. explaining the delay.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

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, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the applicant in the instant case is aggrieved by the action of the respondents in not posting him as Junior Engineer-II even after his selection. The applicant presently is holding post of Permanent Way Supervisor and his next promotional post is Junior Engineer-II. The applicant was called for written test and viva voce conducted by the respondents for promotion to the post of Junior Engineer-II. On receipt of such call the applicant appeared in both the examinations and fared well the respondents thereafter, issued an order dated 6.2.98 by which applicant had been shown to be empaneled as Junior Engineer-II and he was given posting under Senior Divisional Engineer, Lunding. The aforesaid order dated 6.2.98 was followed by another

dated 10.3.98 by which he was given the specific order of posting at Chapormukh under Senior Divisional Engineer, Lumding. However, the aforesaid order dated 10.3.98 was never communicated to the applicant nor he was spared from his Office to join as Junior Engineer-II at Chapormukh. After a long lapse of time the respondents issued yet another order dated 3.2.2000 by which the applicant has been transferred from Lumding to Maligaon in the capacity of Junior Engineer-II. Till 1.6.2000 the applicant had no knowledge about the aforesaid two orders dated 1.3.98 and 3.2.2000. On 1.6.2000 the applicant came to know about the existence of above two orders and made a representation praying for sparing him from the post of PWS. On receipt of the said order the applicant was spared w.e.f. 2.6.2000 enabling him to join the post of Junior Engineer-II however, in the said order of sparing there has been no indication as to where he should join. The respondents taking into consideration the sparing order dated 1.6.2000 never allowed the applicant to join his duty as Junior Engineer-II. Situated thus the applicant made a representation dated 6.7.2000 highlighting his grievances. The Asstt. Engineer on receipt of the said representation wrote a letter dated 11.7.2000 to the DRM(P), Lumding, highlighting the fact that no intimation was made to him regarding posting of applicant and no order was communicated to him regarding his promotion etc. The DRM(P) on receipt of the said letter issued the impugned order dated 17.7.2000 stating the fact that since life of the panel for promotion to Junior Engineer-II has already expired, the question of giving promotion to the present applicant does not arise. The aforementioned order was followed by another order dated 19.7.2000 addressing to the present applicant that the period w.e.f. 3.6.2000 to 18.7.2000 i.e. from the date of sparing to the date of rejoining duty as PWS will be treated as leave. The

17

applicant made several requests to the authority concern but same yielded no result in positive. The applicant thereafter, made request to the concern union and the union took up the matter but nothing came out positive. Hence, the present applicant having no other alternative has come before this Hon'ble Tribunal seeking an appropriate relief.

This is the crux of the matter for which the applicant has come under the protective hands of this Hon'ble Tribunal seeking an appropriate relief and the detail facts are given below.

4.3. That the applicant initially got his appointment as Permanent Way Mistry(now redesignated as Permanent Way Supervisor) in year 1989 (19.4.89). Thereafter his service was regularised on 6.6.98 and the regularisation was given effect w.e.f. 19.4.89 i.e. from his initial date of recruitment as apprentice. Next promotional post of Permanent Way Supervisor is Junior Engineer-II and as per the recruitment Rule the criteria for such promotion is written test and viva voce.

4.4. That the applicant is eligible for promotion to the post of Junior Engineer-II and accordingly the respondents called him for the written test and viva for promotion to the said post of Junior Engineer-II. The applicant appeared in the said examination as well as viva and got selected. The Respondents to that effect issued an order dated 6.2.98 by which the applicant has been given the posting under Senior Divisional Engineer, Lunding.

A copy of the said order dated 6.2.98 is annexed herewith and marked as Annexure-1.

12

4.5. That the applicant states that Annexure-1 order of promotion and posting dated 6.2.98 was given effect as regard the other selected employees but no order was issued by the controlling authority of the applicant sparing him to join the post of Junior Engineer-II at Lumding. It is pertinent to mention here that the Divisional Railway Manager, Lumding issued an order dated 10.3.98 by which the applicant was given the specific posting at Chapormukh, Lumding in the capacity of the Junior Engineer-II and the copy of the said order was communicated to all concerned including GM (P), Maligaon. However, the said order dated 10.3.98 was never formally communicated to the applicant nor to his controlling authority so that he can be spared from his present place of posting. Since the applicant as well as his controlling authority, Senior Section Engineer, New Guwahati, was ignorant about the order dated 10.3.98 the promotion order dated 6.2.98 was never implemented in case of the present applicant. Surprisingly enough the Respondents i.e. GM (P), issued an order dated 3.2.2000 by which applicant was given transferred as Junior Engineer-II under Senior DM, Lumding. The Respondents again never communicated the said order dated 3.2.2000 to the present applicant as well as his controlling authority. The applicant on 1.6.2000 could come to know about orders dated 3.2.2000 and 10.3.98 and immediately on 1.6.2000 he made a representation to the concerned authority highlighting the factual aspect of the matter.

Copies of the orders dated 10.3.98, 3.2.2000 and the representation dated 1.6.2000 are annexed herewith and marked as Annexure-2,3 and 4 respectively.

19

4.6. That the Senior Section Engineer, New Guwahati on receipt of the annexure-4 representation of the applicant immediately issued an order 1.6.2000 highlighting the fact that no copy such orders promoting and posting the applicant as mentioned above have been communicated to him and as such no action in this regard could be taken at that relevant point of time. However, by the said order dated 1.6.2000 the applicant has been immediately spared and direction has been given to resume duty as per the promotion and posting order without specifying the office etc.

A Copy of the said order dated 1.6.2000 is annexed herewith and marked as Annexure-5.

4.7. That the applicant although wanted to resume his duty as Junior Engineer-II in the place of posting mentioned in the Annexure-3 order dated 3.2.2000 but surprisingly enough he was never allowed to resume his duty and situated thus he made a representation dated 6.7.2000 praying for his specific posting in terms of the order of promotion and posting.

A Copy of the said representation dated 6.7.2000 is annexed herewith and marked as Annexure-6.

4.8. That the respondents on receipt of the representation dated 6.7.2000 filed by the applicant, issued an order dated 11.7.2000 addressing to DRM(P), Lunding highlighting the factual aspect of the matter as to how he has not been given effect of his promotion order as mentioned above. The said letter dated 11.7.2000 clearly indicated the fact that the higher authorities of the respondents although promoted the applicant and after such promotion also posted him in the said promotional post but the

20

said orders were never communicated to the applicant as well as his controlling authority enabling him to carry out the order.

A copy of the said order dated 11.7.2000 is annexed herewith and marked as Annexure-7.

4.9. That the applicant kept on preparing the matter before the respondents but nothing came out positive, nor he was allowed to resume his duty as Junior Engineer-II. The applicant also took the help of the union in this regard but same did not help him in getting posting as Junior Engineer where other selected persons are still enjoying the said promotional post. In the midst of these correspondence the respondent i.e. the Divisional Railway Manager (P), Maligaon, issued an order dated 17.7.2000 addressing to the Senior Section Engineer intimating the fact that the promotion given to the applicant could not be given effect to as the panel of promotion expired on 9.2.2000. Surprisingly enough the copy of the said order dated 17.7.2000 was once again not forwarded to the applicant.

A copy of the aforesaid order dated 17.7.2000 is annexed herewith and marked as Annexure-8.

4.10. That the applicant begs to state that the respondents from the above facts showed their columns in discharging their official duties and such action has caused him irreparable loss and injury, whereas other similarly situated employees are still enjoying the benefit at such promotion. In fact the respondents with a malafide intention to harass the applicant, willfully and deliberately suppressed the orders of promotion and posting only to accommodate some others. The respondents being a model employer, ought not to have suppressed these orders to harass the applicant and to deprive him from his legitimate claim at promotion.

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4.11. That the respondents after issuance of the aforesaid order dated 17.7.2000 issued another order dated 19.7.2000 addressing to the applicant with a direction that he should join his duty as Permanent Way Supervisor, under Sr. Section Engineer, New Guwahati immediately and his service from the period w.e.f. 3.6.2000 to 18.7.2000 would be treated as an leave. It is pertinent to mention here that vide Annexure-5 order dated 1.6.2000, the applicant was spared by his controlling authority enabling him to resume his duty in the promotional post but the respondents did not allow him to resume his duty and under such a peculiar situation the applicant had no other option to remain absent from his present place of posting.

A copy of the said order dated 19.7.2000
is annexed herewith and marked as
Annexure-9.

4.12. That the applicant begs to state that from the facts narrated above it is crystal clear that the respondents had a clear intention not to provide him the promotional benefit. There is no denial at the fact that applicant had cleared the selection process and also there is no dispute regarding the eligibility and willingness of the applicant for such promotion. The plea taken by the respondents in the impugned Annexure-8 communication clearly indicates the fact that the respondents have not applied their mind in issuing the order. This fact is clear from the date mention in the order regarding expiry of panel as "9.2.2000". The Annexure-3 order dated 3.2.2000 showed the applicant as a holder of the post of Junior Engineer-II and by the said order he was transferred to another place as Junior Engineer-II. The promotion was made first effective by an order dated 3.2.98 and as such the panel of promotion can not be said to expired on 9.2.2000 under

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any circumstances, as reflected in the impugned order dated 17.7.2000. Even if the panel is expired, this happened due to non communication and under suppression of orders and for that the applicant under no circumstance can be blamed. The instant case is not a case where the promotion order could not be given effect to due to the circumstances beyond the control of the authority, rather in the instant case the communication method and the casual approach adopted by the respondents in handling the matter of promotion shows their total non application of mind and same smacks malafide on their part. In such a situation and apparent in action on the part of the respondents, the Hon'ble Tribunal may be pleased to direct the respondents to promote the applicant to the post of Junior Engineer-II with a further direction to post him as such within a stipulate time frame with all consequential service benefits etc.

4.13. That the applicant beg to state that the controlling authority of the applicant released him from the post of Permanent Way Supervisor enabling him to hold the post of Junior Engineer-II but unfortunately he was not allowed to resume his duty. In the midst of aforesaid eventualities the respondents allowed the impugned order dated 19.7.2000 by which the period from his release till the date resumed his duty as Permanent Way Supervisor i.e. w.e.f. 3.6.2000 to 18.7.2000 has been treated on leave. The applicant having no other alternative had to approach the authority concern for doing the needful in this matter but nothing came out positive. The applicant made a request to the Union for taking up his case and accordingly Union took up the case of the applicant and persuaded the matter on his behalf with the higher authority but nothing came out positive. The higher authority of the respondents assured the applicant regarding redressal of his grievances but even after such assurance nothing

27

came out positive. Situated thus the applicant now have come before this Hon'ble Tribunal seeking an appropriate relief.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the Respondents in not implementing the promotion and posting order issued in favour of the applicant is highly illegal, arbitrate and same is not sustainable in the eye of law and liable to be set aside and quashed.

5.2. For that admittedly applicant was selected by the selection committee and he was empaneled as Junior Engineer-II and the respondents have even issued the posting order of the applicant but same was never communicated to the applicant as well as his controlling authority in time and virtually such inaction on the part of the respondents illegally deprived the applicant from his legitimate claim of promotion and as such aforesaid action on the part of the respondents may be termed as an arbitrary action and appropriate direction may be issued to the respondents to promote the applicant to the post of Junior Engineer-II with retrospective effect i.e from the date from which his immediate junior was promoted to the post of Junior Engineer-II with all consequential service benefit including seniority and arrear salary etc.

5.3. For that the inaction on the part of the respondent in respect of official communication and implementation of promotion order in respect of present applicant is highly illegal, arbitrary and same depicts total non application of mind by the respondents.

24

5.4. For that the respondents have acted illegally in issuing the impugned order dated 17.7.2000 specifying the fact that the life of the panel expired w.e.f. 9.2.2000. The instant case is not a case where the promotion order could not be given effect to due to the circumstances beyond the control of the authority, rather in the instant case the communication method and the casual approach adopted by the respondents in handling the matter of promotion shows their total non application of mind and same smacks malafide on their part. On this score alone the impugned order dated 17.7.2000 is liable to be set aside and quashed.

5.5. For that the respondents have acted illegally in depriving the applicant from his due promotion and in issuing the impugned order dated 19.7.2000 by which the period w.e.f. 3.6.2000 to 18.7.2000 has been treated as on leave due. The controlling authority of the applicant released him from the post of Permanent Way Supervisor enabling him to resume his duty as Junior Engineer-II after his due empanelment but the higher authority never allowed him to work as Junior Engineer-II and sent him back to his original post and the period thereafter, was forcefully treated as on leave by issuing the aforesaid impugned order dated 19.7.2000 and as such same is not sustainable in the eye of law and liable to be set aside and quashed.

5.6. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

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

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quashed the impugned orders dated 17.7.2000 and 19.7.2000 with a further direction towards the Respondents to promote him to the post of Junior Engineer-II with retrospective effect i.e. date on which his immediate junior was promoted to the post of Junior Engineer-II with all consequential service benefits including arrear salary and seniority etc.

8.2. To direct the respondents to treat the service of the applicant w.e.f. 3.6.2000 to 18.7.2000 on duty and to pay his salary accordingly of the said period and to regularise the same.

20

8.3. Cost of the application.

8.4. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Under the facts and circumstances of the case the applicant does not pray for any interim order at this stage.

10.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 76 605336
2. Date : 20/1/03
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

27

VERIFICATION

I, Sri Ardhendu Chakraborty, aged about 38 years, at resident of Bamunimaidan, I hereby solemnly affirm and verify that the statements made in paragraphs 2, 3, 4, 10, 12, 5 to 12..... are true to my knowledge and those made in paragraphs 1, 4, 2, 4, 3-4, 9, 4, 11, 4, 13 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 16th day of Jan of 2003.

Ardhendu Chakraborty

Signature.

- 15 -

29

6/2

ANNEXURE-1.

NORTHEAST FRONTIER RAILWAY

OFFICE ORDER

The following transfer posting and promotion are ordered to take immediate effect.

Group 'A' The following Supervisor P.Way in scale Rs.4500/- - 7000/- who have been empanelled as JE/G.II/P.Way in scale Rs.5000/- - 8000/- under this office Memorandum No.F/266/4 Pt.IV(E) dated 23/28.1.98 are hereby temporarily promoted to officiate as JE/G.II/P.Way in scale Rs.5000/- - 8000/- and posted as under with immediate effect.

Sl.No	Name.	Designation, scale and working under	Now Posted as
1.	Shri D.Pandey	Supervisor(P.Wa) Sr.DEN/KIR Rs.4500/- 7000/-	JE/G.II/P.Way under Sr.DEN/KIR Rs.5000/- - 8000/-
2.	,, Ganga Prasad	-do-/Sr.DEN/KIR	-do- Sr.DEN/KIR
3.	,, M.K.Gogoi	-do-/Sr.DEN/TSK	-do- Sr.DEN/TSK
4.	,, U.Dasgupta.	-do-/Sr.DEN/MLG	-do- Sr.DEN/MLG
5.	,, G.Dhar	-do-/Sr.DEN/KIR	-do- Sr.DEN/KIR
6.	,, A.Chakraborty	-do-/Sr.DEN/LMG	-do- Sr.DEN/LMG
7.	,, Sumitra Das.	-do-/Sr.DEN/MLG	-do- Sr.DEN/MLG
8.	,, B.C.Barman	-do-/Sr.DEN/TSK	-do- Sr.DEN/TSK
9.	,, U. Saikia	-do-/Sr.DEN/TSK	-do- Sr.DEN/TSK
10.	,, D.Guha	-do-/Sr.DEN/TSK	-do- Sr.DEN/TSK
11.	,, A.P.Chowdhury	-do-/Sr.DEN/KIR	-do- Sr.DEN/KIR
12.	,, P.K.Sarma	-do-/Sr.DEN/APDJ	-do- Sr.DEN/APDJ
13.	,, D.K.Sarma	-do-/Sr.DEN/MLG	-do- Sr.DEN/MLG
14.	,, M.Sonowal(ST)	-do-/Sr.DEN/TSK	-do- Sr.DEN/TSK
15.	,, M.K.Das	-do-/Sr.DEN/APDJ	-do- Sr.DEN/APDJ
16.	,, R.Haque	-do-/Sr.DEN/APDJ	-do- Sr.DEN/APDJ
17.	,, S.Kalita	-do-/Sr.DEN/APDJ	-do- Sr.DEN/APDJ
18.	,, M.U.Boro(ST)	-do-/Sr.DEN/TSK	-do- Sr.DEN/TSK
19.	,, Gautam Banerjee	-do-/Sr.DEN/KIR	-do- Sr.DEN/KIR
20.	,, Sibeagar Roy	-do-/Sr.DEN/APDJ	-do- Sr.DEN/APDJ
21.	,, S.C.Sen.	-do-/Sr.DEN/APDJ	-do- Sr.DEN/APDJ
22.	,, D.Sarkar	-do-/Sr.DEN/APDJ	-do- Sr.DEN/APDJ

GROUP B

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

1. Shri B.S.Sidhu, SE/P.Way/BOE under Sr.DEN/KIR is transferred on his existing pay and scale and posted as SE/P.Way/BOE(incharge) against the existing vacancy.
2. Shri D.R.Bose, SE/P.Way under Sr.DEN/KIR is hereby pposted as SE/P.Way/KIR(incharge) against the existing vacancy.
3. Shri I,Ekka, JE/L/P.Way/Dhumdangi under Sr.DEN/KIR is hereby transferred on his existing pay and scale and posted as SE/I/P.Way/TMH.
4. Shri V,K.Choudhury, SE/P.Way/Manihari under Sr.DEN/KIR is hereby transferred on his existing pay and scale and posted as JE/I/P.Way/Dhumdangi.
5. Shri N.R.Mitra, JE/Gr-II/P.Way under CE/Maligaon is transferred on his existing pay and scale and posted as JE/Gr-II/P.Way under Sr.DEN/LMG.

Attested
W.D.
Adv.

28.1.98 21
27.1.2000

6. Shri P.DAs, JE/Gr-II/P.Way/GUR under Sr.DEN/APDJ is transferred on his existing pay and scale and posted as JE/Gr-I/P.Way under CE/Maligaon against the higher grade vacancy.

- Note:1. This issues with the approval of Competent Authority
2. Transfer order of Shri P.DAs, Je/II/P.Way, R.Dasgupta, JE/P.Way and A.M.Ansari, JE/P.Way (SL.NO.6,7,8) have been issued as per their own request as such they are not entitled for transfer pass joining time and allowance etc. as per extent rule.

for GENERAL MANAGER(P) MALIGAON

No;E/283/37/Pt-XXIII(E

Maligaon,dated:6.2.98

Copy forwarded for information and necessary action to:-

1. DRM(P)KIR, APDJ LMG.
2. DRM(W)KIR, APDJ, &LMG.
3. Sr.DEN/Maligaon.
4. Dy.CE/TD/Maligaon.

DS.

for GENERAL MANAGER (P) MALIGAON.

Attested
As on
Adm.

North East Frontier Railway

Annexure-2

Office of the
Divisional Rly. Manager (P)
Lumding.
10.3.98

OFFICE ORDER

The following transfer/ Promotion and postings are ordered to take immediate effect,

Group 'A'

In terms of GM(P)/MLG's O.O.No.E/283/37/Pt-CRIII(E) dated 8/9-2-98, the following Supervisor (P.way) in scale Rs.4500/- -7000/- who have been empanelled as JE/Gr-II/.P.Way in scale Rs.5000/- - 8000/- are hereby temporarily promoted to officiate as JE/Gr-II/P-Way and posted as under with immediate effect.

- | | |
|--------------------------------|--|
| 1. Shri A.Chakraborty, PMM/NCC | Now posted as
JE/Gr-II/P-Way/CPR under
SE(P-Way)/CPR vice Shri R.K.Dev |
| 2.,, Sumitra Das, PMM/GHY | JE/Gr.ii/P-Way/ im LMG control
as BTS/LMG |
| 3.,, U.Das Gupta, PMM/NCC | JE/Gr.II/P-Way/HRD under SE/
P-Way/DPB vice Shri S.Sarkar |
| 4.,, D.K.Sarma, PMM/GHY | JE/Gr-II/P-Way/LMG under AEN/RS |

Group 'B'

1. Shri R.K.Das JE/Gr.II/P-Way/CPK is now posted as JE/Gr.II/P-way/NC at CPR under SE/P-Way/CPK.
2. Shri S.Sarkar, JE/Gr.II/HRD is now transferred and posted as JE/Gr.II/P-Way at Badarpur Control/BPB on his existing pay and scale under SE(P-Way)/BPB.

This has the approval of Sr.DEN/Lumding

For DRM(P)/Lumding

No.E/283/3(P.I)/LM(E)

Dated 10.3.98

Copy forwarded for information and necessary action to:-

1. GM(P)/LLG
2. Sr.DEN/I,II,III & IV, Lumding
3. AEN/LLG, CPK, GHY, NGS & DPC
4. DMO/LMG
5. SE/Bill at office
6. Staff copy
7. Copy for P/Case
8. P.I/CPK, (P) & (H)/LMG, BPB & LFC

For DRM(P)/Lumding

Attested
Lumding
Adm.

29.1.2000

N.F. Railway.Office Order.

The following transfer and posting orders take immediate effect.

The following P.Way subordinate are transferred on their existing grade & scale posted under CE/Maligaon against the workcharged post at their own request.

1. Sri.P.Ram, SSE/P.Way under Sr.DEN/Maligaon.
2. ,, M.Kalita, SE/P.Way under Sr.DEN/LMG.
3. ,, Samir Chakraborty, JE/II/P.Way under Sr.DEN/LMG.
4. ,, S.Ahmed, JE/II/P.Way under Sr.DEN/APDJ.
5. ,, A.Chakraborty, JE/II/P.Way under Sr.DEN/LMG. *PWS*
6. ,, G.Malakar, JE/I/P.Way under Sr.DEN/APDJ.

- Note: 1. This issues with the approval of competent authority.
 2. They are not entitled to get composite transfer grant joining time and transfer pass etc. as per extant rules.

(S.R.Nandy)
 Asstt. Personnel Officer (Engg.)
 for General Manager (P): LMG.

NO.E/203/37/Pt.XXIII(E).

Maligaon, dated 3.2.2000.

Copy forwarded for information and necessary action to -

1. FA & CAO/Maligaon.
2. CTE/Maligaon.
3. Sr.DEN/APDJ, LMG & Maligaon.
4. DRM(P)/APDJ & LMG.
5. Dy.CE/TD/Maligaon.
6. PA to CE/Maligaon.

for General Manager (P): MLG.

ad/-3.2.2000

*Attested
 by
 Advocate*

Annexure-4

To
Sr. SE/NGC
N.F.Rly.

Sub:- Promotion of JE/II/P.Way from PWS.
Ref:- EA/96(E) date 3/6/99 of DRM (P) LMG.

Sir, ~~_____~~

With reference to the above letter issued by DRM(P) LMG. It appears that vide GM(P) o.o.No.283/3(PWD)/LM(E) dt.10.3.98 myself promoted to officiate as JE/II/Pay in the scale 5000-8000.

But sorry to write you that neither spared me for joining as JE/II/P.Way till date nor communicate any promotion order as JE/II/P.Way at NGC.

More over, I have not refused to accept promotion as JE/II/P.Way.

You are therefore requested to look into the matter immediately & do needful so that my self join as JE/II/P.Way and at the other hand all the PWS of my colleagues already effected their promotion as JE/II/P.Way.

Thanking You,

Yours faithfully

Date.1.6.2k

Ardhendu Chakraborty
P.Way Supervisor, NGC

DRM(P)/LMG
GM9P)/MLG

For information and necessary action please.

Attested
by
Adv.

N.F.Railway

R.B.G.L.
N.F.O.48.

Annexure-5

No.E/2-T-35
From.SSE/P.Way/NGC

Date.1.6.2000
To.Shri Ardhendu Chakraborty, PWS/NGC

Sub:Promotion of JE/II/P-Way from PWS against
DRM/P/LMG/ letter No.FA/36/(E) of 3.6.99
Ref:Your appeal No.NIL Date.1.6.2000

In response to your above appeal I am to inform you that no such letter mentioned in your letter has been received from any corres. to the undersigned.

Considering your letter you are hereby spared and directed to follow your promotion order and join where you have been asked.

Please inform where you have to join so that DRM(P)LMG may be asked to said your LPC for preparing your salary and otherhand from tomorrow i.e.(2.6.2000) your attendance will not be maintained from this end.

Senior Engineer(P-Way)
N.F.Railway.New Guwahati

Copy to DRM(P)LMG for information

Please a copy of the above appeal attached herewith for kind information

Copy to DRM/VV/GHY, AEN/GHY for information

please as advised by you a copy of the above appeal is enclosed herewith

Copy to GP(P)MLG for information please.

Senior Engineer(P-Way)
N.F.Railway.New Guwahati

Attested
W.S.
Adn.

DRM
|
ASST Engr
|
Sr Engr

Annexure-6.

To,
AEN/GHY.,
N.F. Railway.

Sir,

Sub:- Promotion to JE-II (P-Way) sparing memo.

Ref:-DRM(P)/LMG's O.O.NO.E/283/3.P.W.I./LMG(E) dt. 10.03.98,
L/No.EA/96(E) dt.3.6.99 and SSE/P-Way/NCC spare Memo
bearing no.E/2(T)-35 dt.01.06.2000.

I beg to submit the following for favour of your kind consideration and early favourable action please.

That Sir, I was promoted to JE-II (P-Way) vide DRM(P) LMG's O.O. of 10.3.98. There being abnormal delay in my sparing the DRM(P)/LMG vide his letter dt.03.06.2.99 to SE(P)way/MLG desired to know if I assumed the charge of JE-II or refused to accept promotion but still I was not spared.

That Sir, I perferred an appeal to the SSE(P-Way)/NCC on 01.06.2000 copy enclosed requesting him to look into the matter and do the needful so that my promotion may be effected.

That Sir, the SSE(P-Way)/NCC vide his no E/2(T)-35 dt.01.06.2000 directing me to join "Where you have been asked" endorsing copy there of to DRM(P)/LMG DEN/W/GHY, AEN/GHY and GMP/MLG. Without endorsing any copy to the subordinate under when I am to join.

It is apprehended that I may not be allowed to join any where on the strength and going to face a lot of troubles and therefore, pray to your benevolent honout to kindly look into the matter and do the neeffull so that I may get the coveted promotion without delay without delay, without any loss of seniority if necessary under any subordinate under your kind control.

I would also pray to your kind honour to kindly allow me to work under your kind control till my fate is finally decided by our judicious honour and oblige. If I any wrong I may be excused.

With regards,

Your faithfully,

Date: 06.07.2000

Ardhendu Chakraborty.
PWS/NCC.

Attested
u/s on
Adv

Annexure-7

N.F.Rly.

Office of the
Assistant Engineer, N.F.Rly.
Guwahati.
dated.11/7/2k.

No:-E/1-296

To,

DRM (P) LMG.
N.F.Rly.

Sub: Promotion of Sri A.Chakraborty PWS/NCC as JE/Gr.II

In reference to subject mentioned above, it is intimated you that on 30.5.2000. Sri A.Chakraborty had submitted an appeal to SSE(P.Way)NCC stating that he has been promoted as JE/II/P.W vide DRM(P)LMG's Office order No.E/283/3/PWI/LMG(E) dt.10.3.98. But he has not been spared by SSE(P.Way)NCC for joining him at his place of posting as JE/P.Way/Gr.II. Accordingly on the ground of appeal of Sri Chakraborty SSE(P.Way)NCC spared him from his section vide his No.E/2-T-35 dt.1-6-2000 to join his duty where he had been posted vide DRM(P)LMG's above quoted office order. because SSE(P.Way)NCC did not received any precaution/posting order of Sri A.Chakraborty..

Now again on 7.7.2000 Sri Chakraborty attended this office and submitted an appeal stating regarding his promotion and posting. This office has also not received any promotion and posting order of Sri Chakraborty. Therefore on the ground of appeal of Sri Chakraborty he is directed to your office for his further duty to join as JE/Gr.II at his place of posting if he is promoted and posted.

DA:-appeal.

Assistant Engineer
N.F.Rly,Guwahati.

Copy forwarded for information and necessary action to:-
(I) Sr.DEN/MLG (II)DRM(WM)GHY (III)SE(P.Way)NCC
(IV) Staff concerned.

Assistant Engineer
N.F.Rly,Guwahati.

18.3.98

Attested
WAM
Adv.

- 23 -

Annexure-8.

N.F.Rly.

Office of the
 Divil.Rly.Manager (P).
 Lumding, dtd: 17/07/2000,

No.EA/96(E)

To,
 SSE(P-Way)/NCC.

Sub: Promotion of JE/II/P-Way from PWS
 Ref: Your L/No.E/2(1)35 dt.1-6-2000.

In reference to your letter number cited above it is intimated that since the life of the panel for promotion as JE/II has already been expired on 9/2/2000, question of giving effect of promotion to Shri Ardhendu Chakraborty PWS/NCC does not arise at this stage unless he has further been selected a fresh for promotion as JE/II.

This has the approval of Sr.DEN/LMG

for Divil.Rly.Manager(P),
 N.F.Rly. Lumding.

Copy to: -AEN/BHY for information and n/action in reference to his to his letter No.E/1/296 dt.11/7/2000.

for Divil.Rly.Manager(P),
 N.F.Rly. Lumding.

Panel given effect
The order did not
reach in 509
could not be
— not Com.
 IRM Pra

Attested
 with
 Adv.

CA 388/99.

24 -

Annexure-9

N.F.Rly.

No:-E/1-335

Office of the
Assistant Engineer, N.F. Railway
Guwahati.

dated. 19.7.2k.

To,
Sri A.Chakraborty.
PWS/NCC under
SSE (.Way) NCC.

Sub:- Resumption.

Ref:- DRM(P) LMG's, No.EA/96(E) dated 17.7.2k
and SSE(P.Way)NCC's L/No.E/2-T/35
dated.1-6-2000.

You are hereby directed to resume as PWS
under SSE(P.Way)NCC and please note that the period from 3-6-2000
to 18.7.2000 i.e. from the date of your sparing to DRM(P)LMG to
the date of coming back from DRM(P)LMG will be treated as leave
due.

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—
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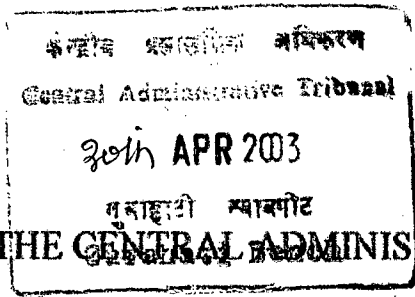
Assistant Engineer.
N.F.Rly, Guwahati.

Copy to : (I) SSE(P.Way)NCC (II) DRM(P) LMG
(III) DEN(W)GHY.

Assistant Engineer
N.F.Rly, Guwahati.

Attested
Wam
Adv.

Filed in the Court
16/04/2003



Filed by
M. M. C. SARMAN
Advocate.
30/4/03
28
Shri P. R. / Mallick
Guwahati-28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH, GUWAHATI.

IN THE MATTER OF:

O.A. 3/2003

Shri Ardhendu Chakraborty Applicant

Versus

Union of India and others Respondents

-AND-

IN THE MATTER OF:

Written statement for and on behalf of the
Respondents.

The answering respondents most respectfully SHEWETH
as under:

1. That the answering respondents have gone through a copy of the application filed and have understood the contents thereof. Save and except those statements which are specifically admitted herein below or those which are borne on records all other averments/allegations as made in the application are emphatically hereby denied and the applicant is put to the strictest proof thereof.
2. That for the sake of brevity, meticulous denial of each and every allegations/statement in the application has been avoided. Thus the answering respondents have confined their replies to those points/allegations/averments of the applicant which are found relevant for enabling a proper decision on the matter.

39
Chief Personnel Officer (A)
S. P. Rly. / Maligaon
Guwahati. 88

:2:

3. That the application suffers from want of a valid cause of action. The applicant has no valid cause of action or right to file this application as will be clear from submissions made hereafter.

4. That the application suffers from deliberate wrong representation and a misconception about the facts, procedures and rules.

5. That the application is time-barred by over one year and seven months without proper justifications for delay in submissions. Thus the answering respondents beg to submit that on this ground itself the application merits dismissal.

6. (a) That as regards statement made in para 4.1 of the application the answering respondents have no comments to offer except to submit that the records available with the application will stand for his claim.

(b) That as regards para 4.2 the answering respondents beg to deny the allegation that respondent did not post him as Junior Engineer II even after selection. The applicant himself submitted with the application a copy of the office order No.E/283/3 (PE)/Lm (E) dated 10/3/98 as annexure -2 posting him as Junior Engineer II at Chaparmukh under Senior Engineer (Permanent Way)/Chaparmukh. The order clearly stated that the promotion of Shri Chakraborty (at serial no. 1) was to take immediate effect. A copy of this order was endorsed to the staff concerned (serial no. 6 of endorsement) as also to his controlling officers such as Senior Divisional Engineer and Assistant Engineers at New Guwahati and Chaparmukh. The answering respondents therefore beg to state that this statement on the part of the applicant is an attempt to deliberately misleads the Hon'ble Tribunal about an important factual position relating to the case.

40
Enter Personnel Officer (A)
C. P. Rly. / Maligaon
Guwahati. 98
:3:

It is to be noted that there was no delay in issuing the posting order as the results of the selection were announced on 6/2/98 (Annexure 1 of the application) and the posting order was issued on 10/3/98 (Annexure 2 of the application).

The answering respondents do not accept the claim of the applicant that from March, 1998 upto 1/6/2000 he was not aware of the order for promotion issued in his favour on 10/3/98. The promotion order dated 10/3/98 (annexure 2 of the application) contained promotion orders for three more colleagues of Shri A. Caakraborty, all of them junior to Shri Chakraborty. Since all these three Juniour Permanent Way Mates (PWMs) carried out their promotion orders it is not understood how Shri Chakraborty as the seniormost PWM at Guwahati area kept silent for two long years in a mysterious way. The conclusion that may be drawn is that either he intended to stay at his old place of posting by foregoing promotion for same personel reasons or he wanted to forego his promotion without making a commitment about the same. In either case, since a selection panel remains valid only for two years from the date of its approval by the competent authority or till exhausted, whichever is earlier (as per para 220(a) of Indian Railway Establishment Manual) and as the panel in this case was approved by competent authority on 29/1/98 the validity of the panel expired as 29/1/2000. In view of this restriction on the life of the panel it is not possible to promote Shri Chakraborty at this late stage.

While on this subject, it is further submitted that as for back as 3/6/99 the applicant was asked vide letter No. EN/96(E) by Divisional Engineer (P) Lumding to intimate that office if he had carried out his promotion as ordered on 10/3/98 or if he had refused his promotion. This letter sent through his immediate superior (PW1/New Guwahati)

41
Enter Personnel Officer (A)
A. P. Rly. / Maligaon
Guwahati-78

elicited no response from the applicant. It therefore appears clear that the applicant never responded to the query contained in the letter from the controlling office at Lumding Division keeping that office in the dark about his promotion. This also proves that his claim about lack of knowledge about his promotion order was false.

A copy of this letter dated 3/6/99 is enclosed

Herewith as Annexure 'A'

(C) That as regards para 4.3 and 4.4 the answering respondents have no remarks to offer.

(d) That as regards para 4.5 the answering respondents deny the allegation that no order was issued by the controlling authority sparing him to join the promotion post of Junior Engineer II. As stated in para (b) above, three of the four junior colleagues of the applicant at his place of posting at Guwahati were spared for carrying out their transfer order to various places. It is therefore not possible to accept that the applicant was not aware of his promotion order as he has tried hard to make out in his application. If knowing well about his promotion order he had approached the concerned authorities for sparing him, he would have been spared in good time. Since the applicant apparently remained silent he remained in his old post. He also never intimated his controlling office at Lumding about his whereabouts in spite of clear instructions to do so vide letter dated 3/6/99 (Annexure A). It is quite possible that the applicant might have informally approached his immediate superior (Senior Section Engineer, New Gauhati) or other Senior officials such as Assistant Engineer, New Guwahati not to spare him on promotion to Chaparmukh although there is no documentary proof for the same. However, the circumstances surrounding the silence of the applicant

42
Chief Personnel Officer (A)
S. F. Riv. / Maligaon
Guwahati. 98

Seem to point out that there is a strong possibility of such conduct ^{on} as the ^{5:} ⁴² part of the applicant. The applicant is a sufficiently literate subordinate who cannot be expected to ignore his promotion by mere lapse of time unless he had a good enough reason to forego his promotion within the period of validity of the selection panel.

(e) That as regards para 4.6 the answering respondents deny the allegation that the Senior Section Engineer, New Guwahati did not receive upto 1/6/2000 promotion order of the applicant. The very fact that acting on office order No. E/783/3 (PW1) LM (E) dated 10/3/98 three of the applicant's junior PWMs were released on promotion to various locations proves that the promotion order of the applicant was received by the Senior Section Engineer and Assistant Engineer, New Guwahati and others. The Senior Section Engineer, New Guwahati referred in his letter dated 1/6/2000 to letter No.EA/36/(E) of 3/6/99 issued by DRM (P) Lumding (Annexure A) where the order for promotion of the applicant dated 10/3/98 was clearly referred to. The applicant's statement that his immediate superior was not aware of his promotion order cannot therefore be accepted.

(f) That as regards para 4.7 the answering respondents beg to state that the order No. E/283/37/ Pt.xx iii (E) dated 3/2/2000 was issued by the office of the General Manager (P), N.F. Railway, Maligaon on the expectation that the applicant (Shri A. Chakraborty PWM/New Guwahati) had carried out his promotion order issued as far back as 10/3/98, as Junior Engineer Grade II. The applicant not only remained silent about his promotion, he also did not respond to the enquiry about his carrying out of th promotion order made by Divisional Railway Manager,Lumding vide letter No. EA/96 (E) dated 3/6/99. This order dated 3/2/2000 could not be carried out due to the fact that the panel for promotion to Junior Engineer Grade II had already expired on 29/1/2000.

Chief Personnel Officer (A)
S. P. Rly. / Maligaon
Guwahati. 78
:6:

In this connection the respondents beg to state that in his representation to Senior Section Engineer, New Guwahati on 1/6/2000 (annexure 4 of application) and in the representation to Assistant Engineer, New Guwahati on 6/7/2000 (annexure 6 of application) the applicant referred to his promotion order dated 10/3/98 as well as DRM (P) Lumding's letter dated 3/6/99 enquiring if he carried out his promotion. In spite of this clear knowledge the applicant remained in his old place of posting as PWM/New Guwahati. It is therefore clear that the applicant has to bear full responsibility for his not carrying out his promotion for two years without any intimation to DRM (P) Lumding although he was specifically asked to clarify the position.

(g) That as regards paras 4.8 and 4.9 the answering respondents have no remarks to offer except to state that no official prevented him from carrying out his promotion. There is nothing on the records to show that anyone refused to spare him for carrying out the promotion order within the period the panel was in operation.

(h) That as regards para 4.10, the answering respondents beg to deny that anyone had a malafide intention to harass the applicant or had willfully and deliberately suppressed the orders of his promotion and posting only to accommodate some other individuals. It is proved beyond doubt that the applicant was aware of his order for promotion and posting at Chaparmukh but was happy to carry on in his old post at New Guwahati for reasons best known to him. To blame the administration for consequence of his own follies appears to be quite unjustified.

(i) That as regards para 4.11 the answering respondents state that in spite of the fact that the applicant remained absent from his place

of posting at New Guwahati from 3/6/2000 to 18/7/2000 without any authority, this period was treated as leave due and no disciplinary action was taken against him. In normal circumstances, severe disciplinary action is taken in cases of unauthorised absence. In addition to this, the period of absence is also treated as leave without pay. However, in this case the administration appears to have acted with magnanimity and the applicant escaped rather lightly.

(j) That as regards para 4.12 the answering respondents deny the allegations made therein. It is clear that the applicant remained silent for nearly two years after his order for promotion was issued and although three of his juniors were spared on promotion to various other places he remained mysteriously silent in his old lower post at New Guwahati for reasons best known to him. It is to be noted that the date of expiry of the validity of the panel of promotion was 29/1/2000 and the promotion order was issued on 10/3/98. The applicant therefore is himself to blame for his plight and the administration is unable to help him as the validity of the panel has expired before he desired to carry out his promotion order.

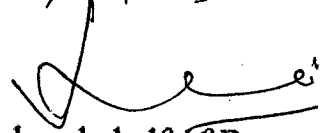
(k) That as regards para 4.13 the answering respondents beg to state that due to expiry of the validity of the panel it is not possible to allow the applicant to carry out his promotion.

It is therefore prayed that the application be dismissed as having no merit at all and the Hon'ble tribunal may kindly consider allowing of costs.

VERIFICATION

I, Shri A. K. Nigam, aged about 47 years, son of Late S. P. Gaurha at present working as Chief Personnel Officer/A do hereby verify that the statements made in paragraphs 1, 2, 3 and 4 are true to my knowledge and those made in paragraphs 5, 6(a) to 6(x) are true to information derived from

records which I believe to be true and the rest are my humble submissions made before the honourable Tribunal. And I sign this verification on this 28th day of April, 2003 at Anwarli.


For and on behalf of Respondents

Chief Person (A)
G. Nigam

- 33-
9- 1 8 Annexure A
46
N. F. Railway

Office of the
Divl. Railway Manager(P)
Landing.

No. ZA/96(E).

Dated 3-3-99

To
SE(P.Way)/
New Guwahati.

Sub :- Promotion of PWI/Gr.III.

Ref :- This office letter No. ZA/96(E)
dated 02-09-98. SN-42-

Reference this letter indicated above, it appears
that vide GM(P)/MLG's O.O.No.E/283/3(PWI)/LM(E) dt. /9-2-98
and DM(P)/LMG's O.O.No.E/283/3(PWI)/LM(E) dated 10-3-98,
Shri Ardhendu Chakraborty has been promoted to officiate as
PWI/Gr.III in scale Rs.5000-8000/-. But this office does not
know whether Shri Chakraborty has assumed the charge of
PWI/Gr.III on promotion or he has refused to accept the
promotion. The information is urgently required which may
be sent immediately.

for Divl. Railway Manager(P)
N.F. Railway, Landing.

Copy to Shri A. Chakraborty, PWI thro' CFMT/NGC to
submit the similar information on his personal behalf imma-
diately.

for Divl. Railway Manager(P)
N.F. Railway, Landing.

dbn/2699

12/11/99
msaw
Advocate.