

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

4

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 10/2004

R.A/C.P No.

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

Original Application No:- 10/04/

Contempt Petition No: _____

Review Application No: _____

Name of the Applicant(s): Sri Birendra ch. Ghosh

Name of the Respondant(s): L.O.I. Fong

Advocate for the Applicant:- Mr. A. Ahmed

Advocate for the Respondent:- Raj S.C., Dr M.C-Senora

Notes of the Registry	date	Order of the Tribunal
	13.1.2004	<p>Heard Mr.A.Ahmed, learned counsel for the applicant.</p> <p>The O.A. is admitted, call for the records. Issue notice to the parties.</p> <p>Fix it on 5.3.2004 for order.</p>
<p>20.12.03,</p> <p>bb</p> <p>5.3.2004</p>		<p>The respondents may file written statement within four weeks. List on 6.4.2004 for order.</p>
	mb	

Notice issued vide
D.No-174 to 197
Dtd- 5.2.04.

22/12.4.04

6.4.2004 On the plea of learned counsel
for the respondents four weeks time
is given to the respondents to file
written statement.

List on 10.5.2004 for order

10/5/2004
Member (A)

mb

10.5.2004 Present: The Hon'ble Shri Mukesh Kumar
Gupta, Member (J).

The Hon'ble Shri K.V.Prahlad
Member (A).

Dr.M.C.Sharma, learned Standing
counsel for the Railways, makes a
request for adjourning the matter by
four weeks, as he is yet to receive the
complete instructions from the respondents.
Adjourned on his request for
10.6.2004.

10/6/2004
Member (A)

10/6/2004
Member (J)

bb

10.6.04.

Written statement has been
filed. List the case for hearing on
21.7.04.

10/7/2004
Member (A)

lm

21.7.04.

Present: Hon'ble Mr.K.V. Sachidanandan
Judicial Member.
Hon'ble Mr.K.V.Prahladan, Administrative
Member.

When the matter came up for
hearing, the learned counsel for the
applicant prays for time to file rejoinder.
Four weeks time is granted to file
rejoinder.

Post the matter on 28.8.04. for
hearing.

10/8/2004
Member (A)

10/8/2004
Member (J)

lm

NO rejoinder has
been filed

13/20/8/04

20.12.2004

List on 03.02.2005 for hearing.

K. D. B. S.
Member (A)

mb

25.4.05.

Post the matter on 12.5.05.

V. S. S.
Vice-Chairman

lm

12.5.2005

At the request of Dr. M.C. Sarma,
learned counsel for the respondents,
the case is adjourned. post on
31.5.2005.

K. D. B. S.
Member (A)

V. S. S.
Vice-Chairman

mb

31.5.05.

At the request of Mr. S. Sengupta,
learned counsel for the Railway, case
is adjourned to 9.6.05.

K. D. B. S.
Member

V. S. S.
Vice-Chairman

lm

09.06.2005

Heard learned counsel for the
parties. Hearing concluded. Judgment
delivered in open Court, kept in separate
The application is dismissed in terms of
the order.

K. D. B. S.
Member

V. S. S.
Vice-Chairman

mb

me
15/6/05
Rly. Counsel
CAT

16.6.05

Copy of the order
has been sent to the
Office for issuing
The same to the
applicant by post.
me

11-5-05
No rejoinder has been
filed.
4 W/S has been filed.
me

8-6-05
No rejoinder has been
filed.
me

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

O.A. No. 10 of 2004.

DATE OF DECISION: 09.06.2005.

Sri Birendra Chandra Ghosh

APPLICANT(S)

Mr. Adil Ahmed

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

The General Manager, N. F. Rly. & Ors.

RESPONDENT(S)

Dr. M.C.Sharma

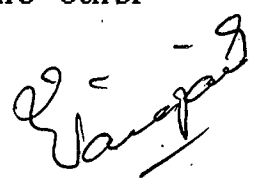
ADVOCATE FOR THE
RESPONDENT(S)

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.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 10 of 2004.

Date of Order: This, the 9th Day of June, 2005.

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

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

Sri Birendra Chandra Ghosh
S/o Late Dharani Kanta Ghosh
Driver/Passenger/NBQ (under
Senior Section Engineer/Loco/NBQ/NF Railway)
Resident of Chapaguri Road
North Bongaigaon
P.O: & P.S: Bongaigaon
Dist: Bongaigaon, Assam.

..Applicant.

By Advocate Mr. Adil Ahmed.

- Versus -

1. The General Manager (P)
N. F. Railway, Maligaon
Guwahati - 11.
2. The Divisional Railway Manager (P)
N. F. Railway
Alipurduar Junction
P.O: Alipurduar Junction
Dist: Jalpaiguri
West Bengal.
3. The Chief Personnel Officer
N. F. Railway, Maligaon
Guwahati-11.
4. The Senior Section Engineer
/Loco/NBQ, New Bongaigaon
Dist: Bongaigaon, Assam.

... Respondents.

By Dr. M. C. Sharma, Railway counsel.

ORDER (ORAL)

SIVARAJAN, J.(V.C.):

The applicant has challenged the corrigendum dated 31.12.1983 to the seniority list (Annexure-A) by which his seniority in the post of Engine Cleaner has been down graded from Sl. No. 259 to Sl. No.

Ans

365(A). The applicant wants a direction to the respondents to fix the seniority of the applicant as in the earlier seniority list at Sl. No.259 as on 1.4.1980 and to give all consequential service benefits including promotion, seniority and other monetary benefits. The applicant, it is seen, has made representations dated 8.6.1984 (Annexure-B), 26.2.1999 (Annexure-D) and a Lawyer's notice dated 17.5.2003 (Annexure-E). It is also seen that the Divisional Railway Manager (P) has issued a communication dated 20.6.1995 (Annexure-C) wherein it is stated that since the decision of seniority was taken at HQ/PNM, nothing can be done at divisional level that too after a lapse of 12/13 years.

2. We have heard Mr. A. Ahmed, learned counsel for the applicant and Dr. M. C. Sharma, learned Railway counsel appearing for the respondents. Though Dr. Sharma has raised a preliminary objection regarding maintainability of this application counsel submitted that on the merits also the applicant has no case. Mr. Ahmed, counsel for the applicant submits that the applicant was originally appointed as Engine Cleaner on 13.5.1965 and it is with reference to the said date applicant's seniority in the post of Engine Clearer was fixed at Sl. No.259. Counsel further submitted that no reason has been stated in Annexure-A for changing the seniority from Sl. No.259 to Sl. No. 365(A). He submitted that the applicant is not presently in possession of the order appointing him as Engine Cleaner on 13.5.1965. Dr. Sharma has placed before us the relevant records from where it could be clearly ascertained that the original appointment of the applicant was as a Substitute Khalasi on 13.5.1965 and that while working as such the applicant was selected as Engine Cleaner by a Selection Committee and after undergoing a medical check up and obtaining a

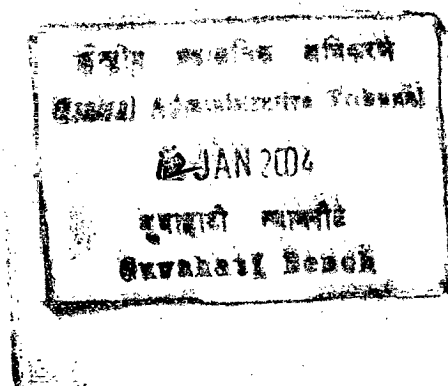
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medical fitness certificate he was appointed as Engine Cleaner from May, 1966. Admittedly, the seniority list as on 1.4.1980 is that of Engine Cleaners. The post of Substitute Khalasi is different from Engine Cleaner. In the circumstances, unless there is a specific order from the Railways to treat the services rendered by the applicant as Substitute Khalasi for the purpose of reckoning seniority in the post of Engine Cleaner the applicant cannot claim that his seniority in the post of Engine Cleaner should be with reference to his initial appointment as Substitute Khalasi. In the instant case the seniority of the applicant in the post of Engine Cleaner as on 1.4.1980 was initially fixed with reference to his initial appointment as Substitute Khalasi i.e. on 13.5.1965. Since this fixation of seniority list was found to be a mistake, same was set right by issuing a corrigendum. Notwithstanding the fact that the applicant has not been afforded an opportunity individually in view of the long lapse of time and in view of the facts ascertained from the records maintained by the Railways, we do not think it proper on our part to direct the respondents to afford any opportunity to the applicant at this distance of time. That apart, Dr. Sharma has brought to our notice that the impugned order was passed after holding numerous discussions with the N. F. Railway Mazdoor Union which is evident from the corrigendum dated 31.12.1983/13.2.1984 at Annexure-A itself.

Taking into consideration all the aspects of the matter, we do not find any merit in this application and accordingly same is dismissed. In the circumstances, we make no order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH, GAWAHATI.

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

ORIGINAL APPLICATION NO. *10* OF 2004.

Sri Birendra Chandra Ghosh,

- Applicant.

-Versus-

The General Manager N.F. Railway & Others

-Respondents.

LIST OF DATES AND SYNOPSIS

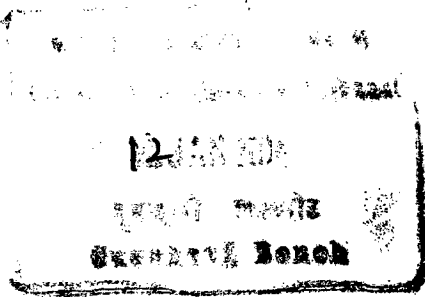
- Annexure-A Photocopy of corrigendum No. E/301
/34th/PNM/MU/HQ/81 dated 31-12-
1983.
- Annexure-B Photocopy of representation dated
08th June 1984.
- Annexure-C Photocopy of the letter No.617-B
dated-20-06-1999.
- Annexure-D Photocopy of one of such
representation of the applicant
dated 26-02-1999.
- Annexure-E Photocopy of the advocate notice
dated 17-05-2003.

Push.

10

This application is not made against any particular order but it is made for re-fixation of seniority of the applicant in accordance with his earlier seniority list and this application is also made with a prayer before this Hon'ble Tribunal to give direction to the Respondents for re-fixing the seniority of the applicant above his juniors along with all service benefits including promotion, increment, etc. with retrospective effect.

Prash.



Filed by
Shri Birendra Chandra
Ghosh
Applicant
Through [Signature]
(Adv. AHM (B))
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH, GAWAHATI.

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

ORIGINAL APPLICATION NO. **10** OF 2004.

B E T W E E N

Sri Birendra Chandra Ghosh,
S/o Late Dharani Kanta Ghosh,
Driver/Passenger/NBQ (under
Senior Section Engineer/Loco/
NBQ/NF Railway)
Resident of Chapaguri Road,
North Bongaigaon,
P.O. & P.S.-Bongaigaon,
Dist.- Bongaigaon, Assam.
- Applicant.

-AND-

- 1] The General Manager (P),
N.F. Railway, Maligaon,
Guwahati-11.

Ghosh.

- 2] The Divisional Railway
Manager (P), N.F. Railway,
Alipurduar Junction,
P.O.- Alipurduar Junction,
Dist.-Jalpaiguri,
West Bengal.
- 3] The Chief Personnel Officer,
N. F. Railway, Maligaon,
Guwahati-11.
- 4] The Senior Section Engineer
/Loco/NEQ, New Bongaigaon,
P.O.-New Bongaigaon,
Dist.- Bongaigaon, Assam.

-Respondents

DETAILS OF THE APPLICATION:

- 1] PARTICULARS OF THE ORDER AGAINST WHICH THE
APPLICATION IS MADE:

This application is not made
against any particular order but it is made for
re-fixation of seniority of the applicant in

Phosh.

accordance with his earlier seniority list and this application is also made with a prayer before this Hon'ble Tribunal to give direction to the Respondents for re-fixing the seniority of the applicant above his juniors along with all service benefits including promotion, increment, etc. with retrospective effect.

2] JURISDICTION OF THE TRIBUNAL:

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

3] LIMITATION:

The applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4] FACTS OF THE CASE:

Phash

Facts of the case in brief are given below:

4.1] That your humble applicant is a citizen of India and as such he is entitled to all rights and privileges guaranteed under the Constitution of India.

4.2] That your applicant begs to state that he was appointed as Engine Cleaner under the D.M.E./APDJ/N.F. Railway at Bongaigaon on 13-05-1965. He was promoted to the post of Second Fireman on 01-06-1973 and he was promoted to the post of Fireman on 03-09-1981. Thereafter, he was promoted to the post of Diesel Assistant (DAD) with effect from 1982 to 1997 and from 1997 to 04-02-2001 he served as a Driver (Goods)/NBQ. Now he has been serving as Driver/passenger/NBQ under Senior Section Engineer/ Loco/NBQ, N.F. Railway at New Bongaigaon since 05-02-2001 till date. He will go on retirement on 31-01-2004.

4.3] That your humble applicant begs to state that the applicant's seniority as Engine Cleaner and Second Fireman was changed by the

Blush.

Respondent No. 2 vide his Corrigendum No. E/301 /34th/PNM/MU/HQ/81 dated 31-12-1983 from Serial No. 259 to 365 B. Moreover, the date of appointment of the applicant as Engine Cleaner was also changed as 13-05-1966 in place of 13-05-1965.

Annexure-A is the copy of corrigendum No. E/301 /34th/PNM/MU/HQ/81 dated 31-12-1983.

4.4] That your humble applicant begs to state that in the above said corrigendum issued by the Respondent No. 2 no reasons or causes have been shown by the Respondent No. 2 regarding change of applicant's Seniority and date of appointment of the applicant. After receiving the said corrigendum your applicant immediately filed a representation before the Respondent No. 2 on 8th June 1984 praying for correcting of his seniority position and date of appointment and place it at the earlier place, i.e., at Serial No. 259 and show the date of birth as 13-05-1965.

Chash.

Annexure-B is the copy of representation dated 08th June 1984.

4.5] That your applicant begs to state that the office of the Respondent No.2 vide his letter No.617-B dated 20-06-1995 informed your applicant that "since decision of seniority was taken at Headquarter/PNM nothing can be done at Divisional level that too after lapse of 12/13 years". The content of the above letter was a vague one, because your applicant time to time files many representations before the authority concerned about the alleged lapse committed by the Respondents. After that your applicant also filed many representations before the Respondents but nothing has been done by the Respondents in this regard or any satisfactory reply or reasons or causes have been given by the Respondents about Down Grading the Seniority of the applicant and also the change of date of appointment of the applicant.

Annexure-C is the photocopy of the letter No.617-B dated-20-06-1999.

Brook.

Annexure-D is the photocopy of one of such representation of the applicant dated 26-02-1999.

4.6] That your applicant begs to state that he has also served an advocate notice dated 17-05-2003 to the respondents but nothing has been done by the Respondents. Your applicant is going to be retire from service on 31-01-2004. till now the Respondents have given any reply or reasons for Down Grading the Seniority of the Applicant. Hence finding no other alternative remedy your applicant has been compelled to approach this Hon'ble Tribunal seeking justice in this matter.

Annexure-E is the photocopy of the advocate notice dated 17-05-2003.

4.7] That your applicant begs to state that he has made prima facie case against the respondents for not giving any reason about the Down Grading Seniority of the applicant. The principle of balance of convenience lies very

Blash

much in favour of the applicants.

4.8] That your applicant begs to state that your applicant is going to be retire from the service on 31-01-2004 but till now respondents have not taken any steps or action in this matter.

4.9] That your applicant begs to state that as per his knowledge there no vigilance case/ disciplinary proceeding pending or contemplated against him nor any adverse remark in ACR communicated to the applicant. As such, it is a fit case to interfere by this Hon'ble Tribunal to protect the interest of the applicant.

4.10] That your applicant submits that the procedure adopted by the authority in the case of applicant is improper, mala fide, illegal and without jurisdiction.

4.11] That your applicant submit the action of the Respondents are violative to the natural

Phosh.

justice and also in violation to the fundamentals rights granted under the constitution of India.

4.12] That your applicant submits the action of the respondents are illegal, arbitrary, whimsical and also colorable exercise of power.

4.13] That this application is filed bona fide for the interest of justice.

5] GROUNDS FOR RELIEF WITH LEGAL PROVISION :

5.1] For that, due to the above reasons narrated in detail the action of the Respondents is in prima facie illegal, mala-fide, arbitrary and without Jurisdiction.

5.2] For that, there is violation of provision of law regarding Down Grading the Seniority of the applicant without giving any cause or reasons of the matter.

Pls. see.

5.4] For that, the action of the Respondents is highly illegal, arbitrary and also violative of guidelines of Promotion Policy.

5.5] For that, the Respondents have violated the principal of natural justice.

5.6] For that the respondents have not properly scrutinized the seniority list and also not applied their mind properly. Hence the same is liable to be set aside and quashed.

5.7] For that the respondent authorities erred in law by Down Grading the Seniority of the applicant and also illegally denied the legitimate right of the petitioner which is not sustainable in law.

5.8] For that, the Respondents have violated the Articles 14, 16 and 23 of the Constitution of India.

Phosh.

5.9] For that, being a model employer the Respondents cannot deprive the promotion of the applicant without any justification and reason.

5.9] For that, in any view of the matter the action of the respondents are not sustainable in the eye of law and as well as fact.

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

6] DETAILS OF REMEDIES EXHAUSTED :

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal under Section 14 of the administrative Tribunal Act. 1985.

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

Plush.

That the applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, 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 applicants most respectfully prayed that your Lordship may be pleased to admit this application, call for records of the case, issue notices to the Respondents as to why the relief and relives sought for by the applicant may not be granted and after hearing the parties and the cause or causes that may be shown your Lordships may be pleased to direct the Respondents to give the following relief:

Push.

8.1] That the Hon'ble Tribunal may be pleased to direct the Respondents to fix the Seniority of the applicant as per earlier Seniority List in Serial No. 259 as on 01-04-1980 and also to give all consequential service benefits including promotion Seniority and other monetary benefits etc..

8.2] To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.

8.3] Cost of the Case.

9] INTERIM ORDER PRAYER FOR :

The Applicant most respectfully prays at this stage no interim order is necessary but if the Hon'ble Tribunal deem fit and proper may be pleased to pass any order or orders.

Perh.

10] APPLICATION IS FILLED THROUGH ADVOCATE.

11] Particulars of I.P.O. : 116 - 387523

I.P.O. No.

Date of issue 28-12-03

Issued from Gwahat.

Payable at

12] LIST OF ENCLOSURES :

As stated above.

Chok.

VERIFICATION

I, Sri Birendra Chandra Ghosh, S/o Late Dharani Kanta Ghosh, Driver/Passenger/NBQ (under Senior Section Engineer/Loco/ NBQ/NF Railway) Resident of Chapaguri Road, North Bongaigaon, P.O. & P.S.-Bongaigaon in the Dist.- Bongaigaon, Assam, do hereby solemnly verify that the statements made in paragraphs 4.1, 4.2, 4.4, 4.7 to 4.9, are true to my know-ledge, those made in paragraphs 4.3, 4.5, 4.6 are being matters of records are true to information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and rest are my humble submissions before this Hon'ble Tribunal I have not suppressed any material facts.

And I sign this verification today on this 12th day of January 2004 at Guwahati.

Sri Birendra ch Ghosh,

N. F. Railway.

C O R I G E N D U M.

Due to recust of the seniority of Engine cleaner and 2nd F/Man as on 1.4.80 published under this office L/No.E/255/SNY dt.12.1.81 and 21.2.81 respectively, the seniority position of the following staff E/Cleaner now 2nd F/Man are refixed as under.

Group 'A' as E/cleaner as on 1.4.80.

Sl No. of S/List of E/Cleaner as on 1.4.80.	Name design. & station.	Date of birth.	Date of appoint as E/C.	Seniority refixed in S/List of E/C as on 1.4.80.
252.	Sri Brojendra Ch.Das.	E/Cleaner/NBQ	19-2-65	243(A)
254.	Md. Hanif.	E/Cleaner/NBQ	2.2.45	16.3.65 243(B)
382.	Sri Manik Narayan Roy.	E/Cleaner/NBQ	4.2.47	30.12.64 7.4.65 243(C)
362.	" Rakhal Ch.Das.	-do-	11.8.46	1.1.65 14.4.65 245(A)
256.	" J.C.Kar.	-do-	15.11.44	13.5.65 365(A)
259.	" B.C.Ghose.	-do-	10.1.44	13.6.66 365(A)
253.	" B K Kar	-do-	3-1-43	15-3-65/17-6-66 365(A)
302.	" Muktipada Chatterjee,	-do-	19.2.47	26.5.65 279(A)
322.	" Mridul Kanti Sikdar.	E/Cleaner/NBQ	1.3.44	1.12.66 384(A)

for Divl.Rly.Manager (P)
Alipurduar Junc.

No.E/301/34th PNM/MU/HQ/81.

Dated 31/12/83.
13/2/84

1). LF/APDJ, NBQ, RPAN. 2). ALF/RNY. 3). etc/DBB.

4). Secy.N.F.Rly.Employce Union/APDJ,NBQ,RPAN,RNY,MBZ & NCB.

5). Secy. N.F.Rly.Mazdoor Union/APDJ,RPAN, NBQ, RNY.

6). CME(P)/MLG.This in ref. to APO(M)/MLG's D.O.No. E/210/III/38/5(M) dt. 27.11.82.

7). GM(P)/MLG for information in reference to his XR No. E/210/III/38/5(M) dt. 22.12.83.

8) Staff concerned through P.F./N.B.C.

9. P. Cases of staff concerned. for Divl.Rly.Manager(P)
Alipurduar Junc.

31.12.83.A.D.

31/12/83

Handwritten signature and initials at the bottom of the page.

17

ANNEXURE - B

To
The Divisional Railway Manager (P),
Alipurduar Junction/N. F. Railway.

Dated, Durgajgaon the 5th June/84.

Through Proper Channel.

Sir,

Sub :- Seniority of Engine Cleaners.

Ref :- Your Letter No. E/30/34th PNM/MU/HQ/81 Dt. 31-12-83.

I beg most respectfully to draw your mind attention to the following facts for favour of your immediate action please.

In the above referred corrigendum I find that my seniority position as Engine Cleaner, which was actually 259., has been lowered down to 365(A) and some persons who have been shown junior to me for last 12 years, have been placed above me without assigning any reasons. For the following reasons I feel that the said corrigendum is erroneous needs immediate correction:-

(1) Two persons of the said corrigendum viz:

a) Shri Manik Narayan Roy (actual seniority position 392 and b) Shri Rakhal Ch. Das (362) cannot claim seniority over me in respect of ~~seniority~~ approval and posting through valid and screening List of E/Cleaner is concerned.

(2) That through the office order No. 32/EE/3/ dt. 3.9.81.

my service as Engine Cleaner was confirmed while names of the two persons did not come up in the list as they are too junior considered for the same.

(3) That in all the cases of regular promotion for Engine Cleaners to ~~Rank~~ F/Man 'C' and subsequently to F/Man 'B' I was called as per my actual seniority position and the persons, who have now been placed above me vide above corrigendum, became eligible for promotion later on.

(4) The above corrigendum, done with a reference to some recognised union and not in any administrative considerations, without assigning any reasons for the same. So, this has not superseded all the previous office orders.

In view of the fact stated above I would request you to please arrange to cancel the above erroneous corrigendum and maintain the condition shown through all the previous office orders.

Thanking you,

Bikendra Ch. Ghose

F/Man 'C'

N 128

Copy to :-

1) CME(P) MLE.

2) EM(P) MLE.

3) AILRA/REQ.

Attended
Q.L.
Adm. To

NO - 617 - B.

N.F. Rly.

Office of the
Divl. Rly. Manager
Alipur Duar. Jn.
Dt. 20.6.95.To
Sri B. C. Ghosh
DAD JNBQ.

Through :- LF JNBQ.

Sub: - Fixing up Seniority.
Ref: - your appeal dt. 25.5.95.

In response to your above
quoted reference this is to inform you
that. Since decision of Seniority was
taken at JNBQ/PRM, nothing can be done
at Divisional level that too after
lapse of 12/13 yrs.

Tr hand over
P1. to the staff
LF
20/6

For Divl. Railway Manager (P)
पू. सी. रेलवे अ. नि. र. म. अ.
N. F. Railway/Alipur Duar Jn.

Attd
Sd/-

TO
The General Manager(P)
N.F.Rly, Maligaon
Guwahati - 11

(Through proper channel)

Respected Sir,

Sub :- Earnest prayer for proper fixation
of my seniority position.

Ref :- DRM(P)APDJ'S L/No.617-B dt.20/6/95.

In connection of the above mentioned subject & DRM(P)/APDJ'S letter under reference due to non response to my representation initially from 8th June/84 from the concerning table properly, once I am compelled to disturb your benevolent capacity for your personal attention to the fact and to issue suitable order for satisfaction of the affected petitioner please.

That Sir, since the published of corrigendum against seniority list of Engine cleaner vide DRM(P)/APDJ'S No.E/30/34th PNM/MU/HQ/81 dt. 31/12/83
13/2/84

I have raised my strong objection regarding irregular fixation of seniority of Engine cleaner through the concerning corrigendum. But due to my illfate instead of my series of representation no fruitful result has been orriented during this more than considerable period except the above reply of DRM(P)/APDJ with the plea that the "seniority was taken at HQ/RM/PNM nothing can be done at divisional level after 12/13 years".

On the otherhand it has come to my notice that in reply to your ~~letter~~ letter No.E/210/III/28/4(M)pt.I dated, 18/12/97 DRM(P)/APDJ has intimated you vide his L/No.617-B/98 dt.29/01/98 "that devastating flood of July/93 no old record is available! But I failed to understand that under what basis & without having any record fixation of my seniority has been taken in to account to prepare in a dark manner?

Under the above with due hope of finalisation of the long outstanding chronic case I am sure that you would be kind enough to look in to the matter early and save the petitioner from the deprivation from his due seniority as per criterion which is co-related with pay & promotion.

Your expedite action is extremely solieited.

Thanking you.

Copy to DRM(P)/APDJ for his kind information further for necessary action please.

Yours faithfully

Birendra chandra Ghosh
(BIRENDRA CH GHOSH)

Driver/Goods/NBQ

Dated,

~~XXXXXX~~ the 26/2/99

R
26/2/99
A.H.
J.S.
A.H.

NOT INSURED

Amount of Stamps affixed

Received a Registered

Addressed to

Addressed to

No.

2573

Date Stamp

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Date Stamp

20
AJAY KANTI ROY
Advocate

ANNEXURE - E

30
P.O. — BONGAIGAON
DIST. — BONGAIGAON
Pin - 783380 (Assam)

17.5.03.

Ref :

Date... 17/5/2003.....

To,

1. The Secretary to the Union of India,
Department of Railways,
Central Secretariat,
New Delhi- 1
2. The General Manager (P),
N.F. Rly., Maligaon,
Guwahati-11
3. The Divisional Railway Manager (P),
N.F. Rly., Alipurduar Jn.,
P.O. Alipurduar Jn., Dist. Jalpaiguri, W.B.
- ✓ 4. The Deputy C.M.S.,
N.F. Rly., Maligaon,
Guwahati-11
5. The SSM/Loco/NBQ,
N.F. Rly., New Bongaigaon,
Dist. Bongaigaon, Assam.

NOTICE UNDER SECTION 80 C.P.C.
AS AMENDED UP-TO-DATE

Dear Sir,

Under instruction from my Client Sri Birendra Ch. Ghosh, S/O Late Dharani Kanta Ghosh, Driver/Passenger/NBQ, presently residing at Chapaguri Road, North Bongaigaon, P.S. & Dist. Bongaigaon, Assam, I do hereby serve you this notice U/S 80 C.P.C. as amended up-to-date and I state that my aforesaid Client intends to sue the Union of India owing and representing the Department of Railways, Central Secretariat, New Delhi after expiry of two months after the service of this notice unless reliefs claimed herein below are granted to my said Client within the period of said 2 months. The following particulars of the nature of claim, cause of action and reliefs claimed are given below :-

Contd....P/2

17.5.03.
Ajay Kanti Roy
ADVOCATE
BONGAIGAON, ASSAM

Attested
by
[Signature]


Ref :

Page : 2


Date: 19/5/2003

1. Name & Address of the : Sri Birendra Ch. Ghosh,
Plaintiff/Petitioner S/O Late Dharani Kanta Ghosh,
Driver/Passenger/NBQ
(Under SSE/LOCO/NBQ/N.F.Rly.)
Resident of Chapaguri Road, North Bongaigaon,
P.O., P.S. & Dist. Bongaigaon, Assam.
2. Cause of action : That the Plaintiff (Birendra Ch. Ghosh) was appointed on 13/5/1965 as Engine Cleaner at Bongaigaon under DME/APDJ. On 1-6-73 he was promoted to the Post of 2nd Fireman and thereafter on 3/9/81 he was promoted to the Post of Fireman. The Plaintiff, thereafter was promoted and served as Diesel Asstt (DAD) under the N.F. Rly. w.e.f. 1982 to 1997 and from 1997 to 4-2-2001 as Driver (Goods)/NBQ. The Plaintiff has been serving as Driver/Passenger/NBQ under SSE/LOCO/NBQ/N.F.Rly at New Bongaigaon since 5-2-2001 till date, and his date of Retirement is fixed on 31-1-2004 as per his Service Record.

That the Plaintiff had knowledge about his name at Sl.No.246(A) in the Seniority list as maintained by the defendants. In the year 1981, the Plaintiff came to know that due to some manipulation in his service records, his date of appointment in service was changed as 13-6-1966 in place of 13-5-65 and his name in the Seniority list is shifted to Sl.No. 365-B in place of Sl.No. 246(A). The Changed Seniority list was communicated to the Plaintiff vide letter dtd. 13-2-84, issued by D.R.M.(P), Alipurduar Jn. Immediately after his knowledge about the change of date of appointment and change in the Seniority list, the Plaintiff raised his objections and filed his representations in writing before the Defendants viz. D.R.M.(P), APDJ, C.M.E.(P), MLG, G.M.(P), MLG, AIL-RA/NBQ on the following dates :-


AJOY KANTI ROY
ADVOCATE
BONGAIGAON, ASSAM

Contd....P/3


Ajoy Kanti Roy
Advocate


Ref :

Date 16/5/2003

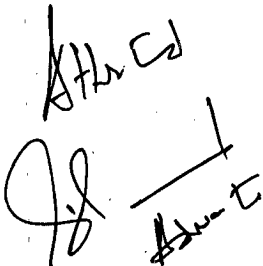
Page : 3

1. First Letter sent on 8th June, 1984 Address to DRM, APDJ(P),
Copy to CME(P), MLG,
G.M.(P), MLG,
AIL RA/NBQ.
2. Second Letter sent on 25.6.90 Through Rly. Mazdoor Union
(Copy to all concerned)
3. Third Letter sent on 7.9.93 " " " "
4. Fourth Letter sent on 18.7.95 " " " "
5. Fifth Letter sent on 30.11.95 Address to General Secretary, N.F.Rly,
Mazdoor Union, Pandu, (Copy to all concerned)
6. Sixth Letter sent on 2.4.96 Address to N.F. Rly. Mazdoor Union,
Pandu Central Office, Pandu.
7. Seventh Letter sent on 5.3.98 Address to Chief Personal Officer,
C.P.O., Maligaon, N.F.Rly.
8. Eighth Letter sent on 26.2.99 Address to G.M. (P), MLG.
9. Ninth Letter sent on 18.9.00 Address to Sr. D.M.F., N.F.Rly. APDJ.
10. Tenth Letter sent on 13.9.02 Address to DRM, APDJ (Copy to all concerned)

The D.R.M.(P), APDJ, vide his Letter bearing No. 617-B/98 dtd. 29.1.98 addressed to G.M.(P), MLG, N.F.Rly, admitted the fact of pendency of matter of promotion of the Plaintiff as per Sl.No. 246-A of the Seniority list as also reflected in his corrigendum No. D/255/I/Seniority dtd. 28.1.98. Again, the D.R.M.(P), APDJ, vide his letter bearing No. 617-B dtd. 20.6.95 informed the Plaintiff to contact at HQ, N.F.Rly, as regards his representations made against his appointment and Seniority. The Plaintiff have been making regular representations pressing his objections and in his last letter dtd. 13.9.2002, he requested the Defendants to take immediate action for finalising the disputes pending before them, but till date no positive reply is caused by the defendants ~~xxx~~ ~~date~~, hence this notice.


Ajoy Kanti Roy
ADVOCATE
BONGAIGAON, ASSAM

Contd...P/4


Ajoy Kanti Roy
ADVOCATE
BONGAIGAON, ASSAM

AJOY KANTI ROY
Advocate

P. O. — BONGAIGAON
DIST. — BONGAIGAON
Pin - 783380 (Assam)

Page : 4

Date. 10/5/2003
17.5.03.

Reliefs Claimed :

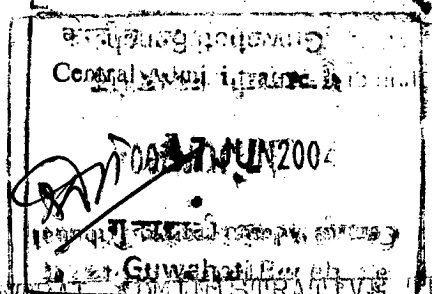
Due to manipulations in change of date of appointment and place in seniority list and due to consequences thereof, the Plaintiff is deprived of his normal promotions, increments, seniority grade, length of service, due benefits and facilities etc. what he would have received in the event of his date of appointment being on 13.5.65 and Seniority Sl.No. 246-A. Because of the change of date of appointment and Sl.No. in Seniority List, many junior colleagues of the Plaintiff have superseded him in getting promotions etc. As such, the Plaintiff has suffered mental, physical as well as financial hardship due to the above mentioned irregularities and negligence caused by the defendants. So, the Plaintiff is entitled for compensation, due benefits, increments, facilities as well as extension in date of his retirement, in the light of the above facts and circumstances, as per the standing provisions of the Railways Act and Rules. The defendants are, therefore, liable to grant the aforesaid claims and relief/reliefs to the Plaintiff within the said period of two months.

The cause of action for filing the suit arose in 1981 when the Plaintiff came to know about the manipulations in his service records, on 8-6-1984, 25-6-90, 7-9-93, 18-7-95, 30-11-95, 2-4-96, 5-3-98, 26-2-99, 18-9-2000, and 13-9-2002, within the jurisdiction of the Hon'ble Gauhati High Court and under the District Court(s) at Bongaigaon.

Yours faithfully,

Ajoy Kanti Roy
(A.K. Roy) 17.5.03
ADVOCATE, BONGAIGAN
BONGAIGAN, ASSAM

Added
1
Abstract



Filed by
Munir
(DA.M.C. Samra)
Advocate
24

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF

OA 10 OF 2004

Shri B.C.Ghosh

Applicant

Versus

General Manager (P),
N.F.Railway & others

Respondents

AND

IN THE MATTER OF

Written Statement on behalf of Respondents

The answering respondents most respectfully

SHEWETH

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

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

(3) That the application suffers from want of a cause of action as the dispute regarding seniority of the applicant was settled long twenty years back when the matter was repeatedly discussed and finalised in numerous discussions in the Permanent Negotiating Machinery with the N.F.Railway Mazdoor Union who raised the matter on behalf of the applicant and others similarly placed in the Divisional as well as the Zonal Headquarter levels. The applicant of the C.A. knows fully well, through the above named labour Union why his seniority was to be recast in the year 1984 and that this was done in the

interest of justice to a whole cadre of staff belonging to the cadre of the applicant, including himself.

(4) That the application is barred by limitation under various provisions of law and particularly under section 21 of the Central Administrative Tribunal Act, 1985.

(5) That the application suffers from wrong representation and lack of understanding of the circumstances and facts relating to the matter.

(6) That the application suffers from want of any merit as will be clear from the facts stated hereinbelow:-

(7) Facts of the case:

(a) Engine Cleaners are group 'D' staff working in loco sheds in Railways. They are recruited from a pool of untrained staff designated as substitute khalashis. Loco substitute khalashis had their normal avenue of promotion to engine cleaners after service a substitute khalashis for some time. Promotion of substitute khalashis to engine cleaners depended on their satisfactory service and on passing a test conducted at the loco shed level and on availability of vacancy etc.

(b) Records reveal that Shri B.C. Ghosh, the applicant, entered service as substitute khalashi on 13.05.1965. He was sent by Loco Foreman, Bongaigaon for medical test to the Divisional headquarters at Alipurduar vide letter No. MED/66 dated 03.04.66 after being selected as Engine Cleaner by the selection committee.

A copy of letter No. MED/66 dated 03.04.66 is enclosed herewith and marked as Annexure A

(c) After medical examination, Shri Ghosh was sent back to the Loco Foreman, Bongaigaon, indicating that he duly qualified medically for his category of post vide Divisional Mechanical Engineer, Alipurduar vide letter No. 227/III dated 07.04.66.

A copy of letter No. 227/III dated 07.04.66 is enclosed herewith and marked as annexure B

(d) It would be clear that the applicant, Shri Ghosh could not have entered service as Engine cleaner on a date earlier than 07.04.66, that is his date for qualifying for the post on medical grounds. Clearly therefore the claim

of the applicant that he was appointed as engine cleaner on 13.05.65 cannot be sustained by the records of medical fitness submitted hereinabove.

(e) The reason why the applicant had a grievance was that through an act of oversight he was shown in the divisional seniority list published in 1980 as having entered service as engine cleaner on 13.05.65 instead of as a substitute khalashi. In this seniority list, the applicant's name no doubt appeared at sl.no.259. There was therefore an apparent mistake in this list as the applicant, Shri Ghosh only entered service as substitute khalashi on 13.05.65 and NOT as engine cleaner.

(f) This mistake was committed not only in respect of Shri Ghosh but also in some other cases, thereby raising objections from many affected staff who were superseded for no fault of theirs. At this stage organised labour unions raised the matter in the Divisional as well as the Zonal levels of the Permanent Negotiating machinery. As a result of detailed examination of the matter a fresh list of seniority ~~was~~ was published in the corrigendum dated 13.02.84 as indicated in annexure A of the O.A.

(g) It would be clear from the aforesaid submissions that the mistake committed in the original seniority list of 12.01.80 was rectified to show that the applicant ^{entered} service as substitute khalashi on 13.05.65 and not as engine cleaner to ensure that the records reflect the correct position and also ensure that fairness and justice was done to all other staff similarly placed.

(h) The answering respondents beg to submit that it is not the applicant's case that he entered service as engine cleaner on 13.05.65. No evidence has been produced to sustain such a claim.

8. Parawise comments

8.1. That as regards para 4.1 the answering respondents have no remarks to offer.

8.2. That as regards para 4.2 the answering respondents beg to deny that the applicant entered service as engine cleaner on 13.05.1965. In actual fact he entered service as engine cleaner only on 13.06.1966 after he joined as substitute khalashi on 13.05.1965 and on being selected for the post and on being medically qualified for the same.

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It is clarified that at the relevant time the system of recruitment of engine cleaners was such that no one could enter service as engine cleaner without being selected from a pool of substitute khalashis and without passing the required medical test, including a strict eye examination. As regards other claims of service career the applicant is put to a strict proof of the same.

8.3. That as regards paras 4.4, 4.5 and 4.6 it is denied that the applicant was unaware of the reason for downgrading of his seniority. The applicant and some other similarly placed engine cleaners whose seniority was rectified due to the same reasons had moved the matter through recognised trade Unions, who were advised from time to time through normal channels of negotiations about the reasons for such modification. As a regular practice the trade unions do advise members of full details about such matters. The applicant therefore cannot plead ignorance and hence his approach to the Hon'ble Tribunal appears to be without any valid cause of action and is thus considered a fruitless exercise.

8.4. That as regards para 4.7 the respondents beg to state that there is no justification at all to question the revision of the seniority of the applicant for reasons explained above and thus the balance of convenience lies in favour of the respondents.

8.5. That as regards para 4.8 the respondents have no remarks to offer.

8.6. That as regards para 4.9 the respondents state ~~that~~ with due respect that there is no case for intervention in the matter and that the application is fit for dismissal.

8.7. That as regards para 4.10 the respondents beg to deny the averment that action taken was improper, mala-fide, illegal and without justification. On the contrary, the downgrading of the seniority of the applicant was fully justified and a legal act as shown at para 7 above.

8.8. That as regards para 4.11 the respondents beg to emphatically deny that the action taken by them in downgrading the applicant's seniority violated the principles of natural justice and fundamental rights of the applicant.

(5)

8.9. That as regards para 4.12 the respondents beg to deny that their action was illegal, arbitrary and whimsical as the action only corrected the mistake committed in the original seniority list as mentioned in remarks at para 7 above.

8.10. That as regards para 4.13 the respondents beg to deny that the application is filed bonafide and in the interest of justice. On the other the respondents beg to submit that the application has been motivated by a desire to gain unfair advantage over large number of staff senior to him in service and with the mala fide intention of agitation for the sake of agitation and that therefore the application deserves to be dismissed with costs.

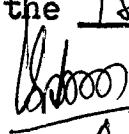
And for this act of kindness as in duty bound the respondents shall ever pray.

-: (6) :-

VERIFICATION

I, Shri S. Behera, aged about 33 years, son of Shri B.C. Behera, at present working as Divisional Personnel Officer, Alipurduar Junction, Northeast Frontier Railway, do hereby solemnly affirm that the statements made in paragraphs 1, 2, 3, 4, 5 and 6 are true to my knowledge and those made in paragraph 7 & 8 are true to my information derived from records which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 18 day of June, 2004.


01/6/04
बि. ए. फ. रेलवे. अलीपुरद्वार जं.
Divisional Personnel Officer
N. F. Railway/Alipurduar Jn.
Signature.

- 30 -

ANNEXURE A

7

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TRUE COPY

No. MED/66
dated 3.4.66

From : ALF/BNGN

To : DME/APDJ

Heard
muu
(M.C. Panja)
Advocate

Sub: Medical examination.

The following sub/Kha who are working in this shed are being directed at yours for their medical examination.

They have been selected as Eng/cleaners by the selection committee.

1. Shri Muktipada Chatterjee.
2. " Birendra Chandra Ghosh.

Sd/

Loco Foreman
Bongaigaon.

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ANNEXURE B

TRUE COPY.

Placed. 43
mu
(M.C. Samra)
Advocate.

No. 227/III
Dated 7.4.66.

From: DME/APDL

To

ALF/BNGN,
H.F. Railway

Sub: Medical examination.

Ref: Your letter No. MED/66 dated 3.4.66.

Shri Birendra Ch. Ghose is spared this
day AN from this end to report at yours for duty.
He has been declared fit in A 1.

Sd/
DME/APDJ.