

100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No..... 246/2004

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet..... 3 Pg..... 1 to..... 3

2. Judgment/Order dtd..... 12/08/2005 Pg..... 01 to..... 05

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... 246/2004 Pg..... 1 to..... 13

5. E.P/M.P..... Pg..... to.....

6. R.A/C.P..... Pg..... to.....

7. W.S..... Pg..... 1 to..... 6

8. Rejoinder..... Pg..... 1 to..... 3

9. Reply..... Additional Rejoinder Pg..... 1 to..... 2

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.)

13/11/12

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App./Misc. Ptn/Cont. Ptn/Rev. App.

246/2004

In O.A.

Name of the Applicant(s) Sri Mukhlal Saha

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

Advocate for the Applicant Mr. Asil Ahmed

Counsel for the Railway/C.G.S.C. Addl. C.G.S.C. M. M. Ahmed

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
	29.10.2004	Heard Mr. A. Ahmed, learned counsel for the applicant. Mr. B.C. Pathak, learned Addl.C.G.S.C. was present on behalf of the respondents.
This Original application has been filed by the applicant with all requests for the respondent alongwith I.P.O. No. 501 file No. 20 Q 115440 dated 26/11/2004.		The Application is admitted, call for the records, returnable within four weeks.
		Notice to be issued by the Registry. List it for orders on 29.11.2004.
28/10/04 Section 8(1)(a)(i)	29.11.2004	Mr. A. Ahmed, learned counsel for the applicant and Mr. D. Baruah, learned counsel on behalf of Mr. B.C. Pathak, learned Addl.C.G.S.C. was present.
Notice & order sent to D/Section for issuing to resp. Nos. 1 to 5 by regd. A/D POST.		Four weeks time is granted to the respondents to file written statement. List on 3.1.2005 for orders.
22/11/04 Pls		1/cr Prakash Member

bb

1) 91R is awaited till today.
2) 150 NTS has been filed.
N 31/12/04

12
03.01.2005None for the respondents.
List on 10.01.2005 for orders.*Kr. Parikh*
Member (A)

mb

10.01.2005 None for the parties. List on
20.01.2005 for orders.*Kr. Parikh*
Member (A)19-8-05

mb

15/2 - aaworthd

No. w/s Kar-secy. 20.1.05

10.

Mr. A. Ahmed, learned Advocate is present for the applicant. The terms of C.G.S.C had expired last month and no new appointment has been made. Accordingly another opportunity is given to the respondents to file written statement.

S.O. to 30.3.2005.

*R.**Kr. Parikh*
Member

Vice-Chairman

29-3-05

No. w/s Kar-secy.

pg

30.3.2005 Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Mr. A. Ahmed, learned counsel for the ~~responsible~~ applicant is absent. Mr. M. U. Ahmed, learned Addl. C.G.S.C. for the respondents seeks further time for filing written statement. List on 26.4.2005.*G. Sivarajan*
Vice-Chairman25-4-05

No. w/s Kar-secy. 87ed.

25-4-05

Notice duly served

mb

on resp. No - 1

10.5.2005 Mr. A. Ahmed, learned counsel for the applicant is present. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents seeks time for filing written statement. Post on 01.06.2005. Written statement in the meantime.

Kr. Parikh
Member (A)

Vice-Chairman

mb

(3) 3
C.A. 246/2004

Office Notes	Date	Order of the Tribunal
	01.06.2005	Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents wants time for filing written statement. Post on 23.6.2005. No further time will be granted. No. written statement filed by the respondents.
<i>22/6/05</i>	mb	<i>KV Balachandran</i> Member
<i>27.6.05</i> W/S filed by the Respondents.	23.6.2005	Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that written statement is being filed. Post on 02.08.2005 for hearing.
<i>28/6/05</i>	mb	<i>Q-Jayaram</i> Vice-Chairman
<i>13.7.05</i> Rejoinder filed by the Applicant.	2.8.05	After hearing the matter at some length counsel for the applicant submitted that he wants to get instruction. Post on 12.8.05 for hearing.
<i>28/7/05</i>	pg	<i>KV Balachandran</i> Member
<i>1.8.05</i>	12.8.2005	Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order.
<i>11.8.05</i> Additional Rejoinder submitted by the Applicant.	mb	<i>Q-Jayaram</i> Vice-Chairman
<i>11.8.05</i> The case is ready for hearing.		

25/8/18
Add Grade.

26.8.05

Cpy. of the budget
was sent to
the Office. for issuing
the same to the
applicants by post.

At L.

6

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.**

O.A. No. 246 of 2004.

DATE OF DECISION: 12.08.2005

Sri Mukh Lal Sahu APPLICANT(S)

Sri Adil Ahmed ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Others RESPONDENT(S)

Shri M.U. Ahmed, Addl.C.G.S.C. 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.

G. Sivaranjan

X

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 246 of 2004

Date of Order : This the 12th day of August 2005

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

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

Sri Mukh Lal Sahu
T/No. 2066, Painter,
No. 2, Sub Depot,
Office of the Commandant,
222 Advance Base Ordnance Depot,
C/o - 99 APO.

... Applicant.

By Advocate Mr. Adil Ahmed.

- Versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Defence, New Delhi - 1.
2. The Commandant,
222, Advance Base Ordnance Depot,
C/o - 99 APO.
3. Sri B.K. Jha,
Painter, T/No. 2355,
Office of the Commandant,
222 Advance Base Ordnance Depot,
C/o - 99 APO.
4. Sri Y.N. Sharma,
Painter, T/No. 2455,
222 Advance Base Ordnance Depot,
C/o - 99 APO.
5. Sri S.D. Prashad,
Painter, T.No. 2479,
Office of the Commandant,
222 Advance Base Ordnance Depot,
C/o - 99 APO.

... Respondents.

By Mr. M.U. Ahmed, Addl. C.G.S.C.

ORDER (ORAL)SIVARAJAN. J. (V.C.)

The applicant is a Painter in the Office of the 2nd respondent. He had passed the trade test for promotion to the post of Painter Mate in the year 1987. His name was included in the Select List. The validity of the said list was only for a period of 1½ year. Since no vacancy occurred during the validity of the said list, he could not be promoted. In the year 1990 another trade test was conducted. Three persons - Respondents No. 3 to 5 appeared and passed the said trade test and they were promoted in the vacancy, which arose thereafter. The applicant, it would appear, had not challenged the promotion given to the Respondents No. 3 to 5 who are juniors to the applicant in the post of painter. The Union in which the applicant was a member took up the matter by its letter dated 17.12.2003 before the 2nd respondent. The case of the applicant alongwith 13 others who became qualified in the year 1987 but not promoted was reconsidered and they were promoted with seniority w.e.f. 2nd August 1992. It is the grievance of the applicant that though he was senior to the Respondents No. 3 to 5 he was not given promotion with retrospective effect from the date of promotion of the Respondents No. 3 to 5.

2. The Respondents have filed written statement. They have admitted the fact that the applicant had passed the trade test for promotion to the post of Painter Mate in the year 1987 but he could not be promoted for want of vacancy. They have further submitted that the respondent conducted the trade test during the year 1990; the applicant did not appear in that trade test. Respondents No. 3 to 5 appeared and passed in the said trade test and they were promoted to



the post of Painter Mate in the vacancy, which arose thereafter. It is stated that there is no provision in the relevant rules giving indefeasible right to the applicant whose name appeared in the Select List to get promotion and there is no provision under the rules prohibiting the Respondents to fix the time limit of the Select List. It is further stated that the 2nd respondent has discretionary power in the matter of appointment, promotion and discipline etc in respect of Industrial Personnel working in the depot and by applying his power the applicant alongwith some other selected individuals were promoted even though the "Selection List" as prepared by the Board of Officers during 1987 was lapsed. The applicant had filed rejoinder reiterating the averments made in the application.

3. We have heard Mr. A. Ahmed, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C. for respondent Nos. 1 and 2. Though the counsel for the applicant has pointed out that Respondent Nos. 3 to 5 were juniors to the applicant, counsel was not able to place before us the relevant rules which enable the applicant to successfully contend that since the applicant had passed the trade test in the year 1987, he should have been promoted in the next arising vacancy without insisting for appearing in the trade test conducted during subsequent year. The respondents in their counter-affidavit, as already noted, stated that there is no provision in the rules which enable them to consider the applicant's case after expiry of the Select List for a particular year or with regard to the non requirement of appearing in the trade test conducted in the subsequent years.

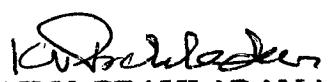
Gh

4. We find that the 2nd respondent in spite of the above had considered the case of the applicant alongwith a few others who had passed the trade test in the year 1987 and could not be promoted during the validity of the Select List in January 2004 and the applicant and similarly situated persons were promoted to the post of Painter Mate with seniority w.e.f. 2nd August 1992 evidenced by Annexure - B order. In the absence of materials and Rules, Regulations, executive orders to the contra the 2nd respondent cannot be faulted for giving promotion to the applicant only w.e.f. 1992. This is for the reason that the Respondent Nos. 3 to 5 who had passed the trade test in the year 1990 were promoted between the year 1990 and August 1992. If retrospective promotion is given to the applicant from the date on which the Respondents No. 3 to 5 were promoted that will adversely affect their prospects. They can be affected by any order passed by the 2nd respondent in the matter of promotion only if their earlier promotion as Painter Mate contrary to the Rules/Regulations/Executive Orders in force. As already noted the applicant did not place before us any Rules or Executive Orders supporting stand taken by him.

5. In the circumstances, we have no other alternative but to dismiss the application. We do so. Notwithstanding the above, if the applicant is able to place any Rules or Executive Orders available in the department for promoting persons in the next arising vacancy when he had passed the trade test for promotion to the said post in the earlier year without appearing for the trade test in the next year, certainly he can make representation before the 2nd respondent. In that case the 2nd respondent will consider the claim of the applicant with notice to the applicant and Respondent Nos. 3 to 5 and other

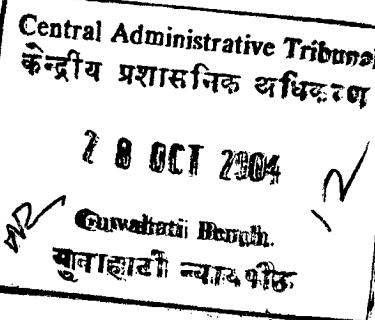


persons likely to be affected and pass appropriate orders in accordance with law.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G.SIVARAJAN)
VICE CHAIRMAN

/mb/



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

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

ORIGINAL APPLICATION NO. 246 OF 2004

BETWEEN

Shri Mukh Lal Saha

... Applicant

-Versus-

The Union of India & Others

... Respondents

LIST OF DATES AND SYNOPSIS

Annexure-A is the photocopy of Representation Dated 17th December 2003.

Annexure-B is the photocopy of letter No.1519/PC/XI/01/EST Dated 3rd January 2004.

The Application is made against the impugned Office Order No.1519/PC/XI/01/EST Dated 3rd January 2004 issued by the Office of the Respondent No.2 by which your Applicant's claim for seniority and promotion on the above of the Respondent No.3 to 5 was rejected.

RELIEF SOUGHT FOR:

That the Hon'ble Tribunal may be pleased to direct the Respondents particularly Respondent No.2 to give the seniority and promotion of the Applicant on the above to his juniors i.e. Respondents No.3 to 5 on the basis of his passing of his Trade Test in the year 1987 for the post of Painter Mate/Painter OG.

M. Saha

That the Hon'ble Tribunal may be pleased to direct the Respondent to give the promotion to the Applicant in the post of Painter Mate/Painter OG from the year 1987 with all consequent financial and service benefit which is entitled to the Applicant.

To Pass any other relief or relieves to which the Applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

To pay the cost of the application.

INTERIM ORDER PRAYED FOR:

At this stage Applicant does not seek any interim relief but if the Hon'ble Tribunal may deem fit and proper may pass any order/orders.

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28 OCT 2004
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 246 OF 2004.

BETWEEN

Shri Mukh Lal Sahay
T/No.2066, Painter,
No.2, Sub Depot,
Office of the Commandant,
222 Advance Base Ordnance Depot,
C/o 99 APO.

...Applicant

-AND-

1. The Union of India represented by the
Secretary to the Government of India,
Ministry of Defence, New Delhi-1.

2. The Commandant,
222, Advance Base Ordnance Depot,
C/o 99 APO.

3. Shri B.K.Jha,
Painter, T/No.2355,
Office of the Commandant,
222 Advance Base Ordnance Depot,
C/o 99 APO.

4. Shri Y.N.Sharma
Painter, T/No.2455,
Office of the Commandant,
222 Advance Base Ordnance Depot,
C/o 99 APO.

Misra

Filed by
Shri Mukh Lal Sahay
Applicant
14
Shri J. J. J.
H. J. J.
Shri J. J. J.
Advocate
Advocate
AHMED
Advocate

5. Shri S.D.Prashad,
 Painter, T.No.2479,
 Office of the Commandant,
 222 Advance Base Ordnance Depot,
 C/o 99 APO.

... Respondents

1) DETAILS OF THE APPLICATION PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

The Application is made against the impugned Office Order No.1519/PC/XI/01/EST Dated 3rd January 2004 issued by the Office of the Respondent No.2 by which your Applicant's claim for seniority and promotion on the above of the Respondent No.3 to 5 was rejected.

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:

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 is working as a civilian employee under the Respondent No.2. He has been discharging his duties under the Respondent No.2 since 1969.

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4.3) That your Applicant begs to state that as per Promotion Rule I he appeared in the Trade Test for the post of Painter Mate/Painter OG conducted by the Board of Officers during the year 1987. Accordingly he passed the above said Trade Test in the year 1987. The result of the Trade Test was published in DO PT-I. After that the Respondent No.3 to 5 who are junior to the instant Applicant also appeared in the Trade Test for the post of Painter Mate/Painter OG in between 1988 to 1991. They had also passed the said Trade Test for the promotion to the post of Painter Mate/Painter OG. But surprisingly the Office of the Respondent No.2 had promoted the Respondent No.3 to 5 to the post of Painter Mate/Painter OG in between 1988 to 1991 without considering the name of the instant Applicant who is senior to the Respondent No.3 to 5 and also passed his Trade Test for promotion to the post of Painter Mate/Painter OG in the year 1987. The Applicant took up the matter to the Authority concern and lastly one Shri M.N.Mazumdar, the President of Workers Union, 222 ABOD filed a Representation vide his letter No.1087/INDWF/X/WU Dated 17th December 2003 before the Respondent No.2 requesting him to take steps for correction of seniority of the Applicant. The Office of the Respondent No.2 vide their letter No.1519/PC/XI/01/EST Dated 3rd January 2004 stated that "On thorough scrutiny of the case it is seen that the Board through which the above named individual was qualified was operative for one and half (1½) years. The individual could not be promoted during the period for want of vacancy, T/N.2355, 2455 and 2479 who were qualified in the subsequent years have been promoted consequent upon occurrence of vacancy in the subsequent years. Later on, the case of 14 individuals who were qualified in 1987 and were not promoted, including the above named individual, was reconsidered in 1992 as revealed from the records and accordingly the individual has been promoted with the seniority w.e.f. 02 August 92. In view of the above, it is intimated that there is no anomaly in seniority so far as the promotion of the individual is concerned".

From the above quoted letter dated 3rd January 2004 the Office of the Respondent No.2 rejected the claim of Applicant's seniority and promotion on the above of Respondent No.3 to 5. Hence finding no other alternative your Applicant is compelled to approach this Hon'ble Tribunal for seeking justice in this matter.

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Annexure-A is the photocopy of Representation Dated 17th December 2003.

Annexure-B is the photocopy of letter No.1519/PC/XI/01/EST Dated 3rd January 2004.

4.4) That your Applicant begs to state that the Office of the Respondent No.2 issued the letter dated 3rd January 2004 in a mechanical manner and also without applying their mind. The Respondent has admitted that your Applicant was passed the Trade Test and qualified in the year 1987. It was operative for one and half (1½) years and he could not be promoted for want of vacancy. After that T/No.2355, 2455 and 2479 i.e. Respondent No.3 to 5 who were qualified in the subsequent years been promoted consequent upon occurrence of vacancy. In the above said letter the Respondent has stated that the Trade Test for promotion to the higher post is only operative for one and half (1½) years. As such it is very clear that the Applicant's Trade Test for the post of Painter Mate/Painter OG was in force since 1987 to the middle of 1989. But without appearing for further Trade Test for the post of Painter Mate/Painter OG for subsequent years how and what basis the Office of the Respondent No.2 can promote your Applicant with the seniority w.e.f. 2nd August 1992. Moreover he was promoted in the year 1992 after his juniors i.e. Respondent 3 to 5 has been promoted earlier with the seniority. Hence the action of the Respondents particularly the Respondent No.2 is illegal, whimsical, mala-fide and also not sustainable in the eye of law.

4.5) That your Applicant begs to state that the Office of the Respondent No.2 in a very casual manner has rejected the claim of the Applicant's seniority and promotion on the above of his juniors. The Respondent No.2 did not properly scrutinize the records and the relevant documents relating the case of the Applicants.

4.6) That your Applicant begs to state that he has served under the Respondent No.2 for more than 34 years without any blemish in his service career. He has served very honestly. Now he is at the verge of his retirement but he has been deprived from his due seniority and promotion.

M. S. A. S.

4.7) That your Applicant submits that the Respondents have violated the provision of guideline regarding promotion.

4.8) That your Applicant submits that the Respondents have resorted the colourable exercise of power to deprive the Applicant. The action of the Respondents is arbitrary and whimsical.

4.9) That this application is made bona fide and for the ends 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 particularly the Respondent No.2 is in *prima facie* illegal, *malafide*, arbitrary and without jurisdiction.

5.2) For that, the Respondents particularly Respondent No.2 did not applied his mind properly in preparing the promotion list of Painter Mate/Painter OG and as such it appears to be bias also there has been serious miscarriage of justice.

5.3) For that, the Respondents the Respondents particularly the Respondent No.2 have completely mis-conceived the facts and relevant guidelines for promotion of the Applicant and consequently come to an erroneous decision and as such the actions of the Respondents are illegal and *mala-fide* and violative of principle of natural justice.

5.4) For that, the Respondents are model employer cannot be allowed to adopt a discriminatory treatment to the Applicant.

5.5) For that, the Applicant had not passed the Trade Test of the Painter Mate/Painter OG by back door policy. He was selected through proper procedure and rules. Hence, the Respondents cannot deny the benefit of promotion to the Applicant.

5.6) For that, the Respondents have rejected the claim of the Applicant by a very casual manner and also without applying their mind

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properly and as such the rejection of the claim of the Applicant by the Respondent is not sustainable in law as well as in fact.

5.7) For that, the Applicant is a victim of hostile discrimination and thereby the Respondents violated the principle of administrative fair play and Article 14, 16 & 21 of the Constitution of India.

5.8) For that, due to negligence of the Respondents, the Applicant cannot suffer and as such, the actions of the Respondents are illegal, arbitrary, mala-fide and without jurisdiction.

5.9) For that, in any view of the matter the action of the Respondents are not sustainable in the eye of law.

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

6) DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious and remedy available to the Applicant except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

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 applicant most respectfully prayed that Your Lordship may be pleased to admit this application, call for the records of the case, issue

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notices to the Respondents as to why the relief and relieves sought for the Applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relieves.

- 8.1) That the Hon'ble Tribunal may be pleased to direct the Respondents particularly Respondent No.2 to give the seniority and promotion of the Applicant on the above to his juniors i.e. Respondents No.3 to 5 on the basis of his passing of his Trade Test in the year 1987 for the post of Painter Mate/Painter OG.
- 8.2) That the Hon'ble Tribunal may be pleased to direct the Respondent to give the promotion to the Applicant in the post of Painter Mate/Painter OG from the year 1987 with all consequent financial and service benefit which is entitled to the Applicant.
- 8.3) To Pass any other relief or relieves to which the Applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.
- 8.4) To pay the cost of the application.

9) INTERIM ORDER PRAYED FOR:

At this stage Applicant does not seek any interim relief but if the Hon'ble Tribunal may deem fit and proper may pass any order/orders.

- 10) Application is filed through Advocate.

11) Particulars of L.P.O.:

L.P.O. No. :- 206, 115440
 Date of Issue :- 26.10.2004
 Issued from :- Guwahati G. P.O.
 Payable at :- Guwahati

M. Salik

12) LIST OF ENCLOSURES:

As stated above.

.....Verification

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✓
-V E R I F I C A T I O N-

I, Shri Mukh Lal Sah~~s~~ T/No.2066, Painter, No.2, Sub Depot, Office of the Commandant, 222 Advance Base Ordnance Depot, C/o 99 APO do hereby solemnly verify that the statements made in paragraph nos. 4.1, 4.2, 4.4, 4.5, 4.6 — are true to my knowledge, those made in paragraph nos. 4.3 — are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 22nd day of October, 2004 at Guwahati.

M. Lal
Shri Mukh Lal Sah~~s~~

ANNEXURE-A

1087/IN DWF/X/W

17 Dec 2003

To
The Commandant
222 A B O D
C/O 99 Ape

In the Matter of Promotion
in respect of M L Sahu,
Painter T/No 2066

Dear Sir,

It is submitted that T/No 2066 Painter M L Sahu has been discharging his duty in the instalation since 1970. It is stated that the individual had appeared in the trade test for promotion to Painter Mate in the year 1980 and qualified accordingly.

That T/No 2355, 2455 and 2479 were also appeared in the trade test during the subsequent years who were junior to above named Mr. Sahu and Promoted from the subsequent Board held during the subsequent year. There after they have been Promoted supersiding the senior most work man Sri M L Sahu. This course of action taken by Personnel Officer seems to be wrong.

I do hope your good office would be kind enough to look in to the matter and viable steps may please be taken for Promoting the above name senior most work man Sri M L Sahu.
Thanking you.

Yours faithfully,


(Shri M N Mazumder)
President of the Union

Handled Not
by JC 11c CR
17/1/03

Attched
J. L. A. D.

63 Jan 2004

CIVIL ESTABLISHMENT BRANCHPROMOTION IN RESPECT OF I/NO 2066 PAINTER
SHRI ML SAHJ

1. Reference 222 ABOD Workers Union letter No 1087/INDWF/x/WU dated 17 Dec 2003.
2. On thorough scrutiny of the case it is seen that the Board through which the above named individual was qualified was operative for 17 years. The individual could not be promoted during the period for want of vacancy. I/No 2355, 2455 and 2479 who were qualified in the subsequent years have been promoted consequent upon occurrence of vacancy in the subsequent years. Later on, the case of 14 individuals who were qualified in 1987 and were not promoted, including the above named individual, was reconsidered in 1992 as revealed from the records and accordingly the individual has been promoted with the seniority wef 02 Aug 92.
3. In view of the above, it is intimated that there is no anomaly in seniority so far as the promotion of the individual is concerned.

Capt *[Signature]*
Personnel Officer (Civ)

Shri MN Mazumdar
President, 222 ABOD
Workers Union

[Signature]
A. K. M. A. K. M. A.

✓ 27 JUN 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI,
Guwahati Bench
AT GUWAHATI BENCH.

pw 67

Motin Ud Din Ahmed, M.A.B.Sc.II, B2
Addl. Central Govt. Standing Counsel
Counsel, Dec 2005

23/6/05

IN THE MATTER OF :

O.A. NO. 246/04

Sri Mukh Lal Sahu ----- Applicant.

-Vs-

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

-AND-

IN THE MATTER OF :

Written Statement submitted by the
Respondant Nos 1 to 5

WRITTEN STATEMENTS :

The Humble answering Respondants submit
their Respondants as follows :

1. (a) That I am the Commandant officer, 222
Agrim Sthai ^{Ayudh} Bhandar, 222 Advance Base ord Depot. C/o. 99
APO & Respondant No. 2 in the above Case. I am
acquainted with the facts & circumstances of the case,
I have gone through a copy of the application served on
me and have understood the contents thereof. Save and
except whatever is specifically admitted in this written
statements, the contentions and statements made in the
application may be deemed to have been denied. I am
competant and authorised to file written statements on
behalf of all the Respondants.

Contd.....2.

(b) The application is filed unjust and unsustainable both on facts and law.

(c) That the application is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.

(d) That the application is also hit by the Principles of waiver, estoppel and acquiescence and liable to be dismissed.

2. That with regard to the statement made in para 1 of the application, the answering Respondant beg to state that mere inclusion of name in list of selected candidates does not acquire an indefeasible right to be promoted in any post in the absence of any specific rule entitling him for the promotion. A Select List and/or waiting list can not be kept in infinitum in view of the Principle and/or reason underlying the limitation of the Period of life of the list for one year & six months is to ensure that other qualified persons are not deprived of their chances for promotion in the succeeding years.

3. with regard to the statement made in paras 2 and 3 of the applicant, it is stated that the matter relates to the provisions of the Administrative Tribunal Act, 1985 and the rules made there under accordingly save (except) what appears there from, the respondents beg to offer no comments.

4. That with regard to the statements made in paras 4.1 and 4.2 of the application it is stated that the same are matters of record. Nothing beyond record is admitted.

5. That with regard to para 4.3, it is stated that the factual matters in connection with the promotion of the applicant has been elaborately explained in the preceding para 1. It is reiterated that the applicant had appeared in the trade test for promotion to the rank of Painter Mate during 1987 and he was qualified by the Board of Officers. The "selection list" is valid for a period of one year and six month as explained above and due to the non availability / non occurrence of vacancy, the applicant could not be promoted to his next higher rank i.e. Painter Mate during the above period. The respondents Nos. 3 to 5 had appeared in the trade test conducted by the depot authorities during 1990. They were qualified and subsequently promoted consequent upon occurrence of vacancy. The applicant did not appear in the trade test conducted by the depot authorities during 1990 and as the vacancies were filled up by the successful candidates as selected by the Board of Officers, 1990, the applicant could not be promoted during 1990-91. However, the applicant along with some successful candidates as selected by the Board of Officers, 1987 was promoted in Aug 1992. As such, no discriminatory treatment was meted out to the applicant. Further, it is pertinent to mention here that any promotion is ~~so~~ subject to availability of the vacancy/ post and in conformity with the rules. There is no provision in the relevant rules giving indefeasible right to the applicant whose name appeared in the Select List to get promoted. There is no provision

under the rules prohibiting the Respondents to fix the time limit as stated above. And the said empanelment/ Select List, is at the best, a condition of eligibility for the purpose of promotion and by itself does not amount to selection or creating right to be promoted unless relevant Rules state to the contrary.

6. That with regard to the statement made in para 4.4 it is requested the Hon'ble Tribunal to refer to our proceeding paras 1 and 4 . Further, it is stated that Commandant has discretionary power in the matter of appointment, promotion and discipline etc. in respect of Industrial Personnel working in this depot and by applying his power the applicant along with some other selected individuals were promoted even though the "Selection List" as prepared by the Board of Officers during 1987 was lapsed. No discrimination was committed by the respondent in the matter of promotion to the applicant and hence allegations made on the respondents through out the para is baseless, unjust and unwarranted and have no merit.

7. That with regard to the statements made in para 4.5 to 4.9, and 5.1 to 5.4 and 5.7 to 5.9 and 6& 7, the answering Respondents submits that, nothing beyond the record is admitted and the allegation levelled against the Respondents are baseless and without any rational foundation since the Respondent/ deponent is a law abiding authority and there is no any such records as alleged till dates such the applicants is put to strictest proof thereof.

8. With regard to para 5.5 it is stated that the applicant was promoted by the depot administration and there was no denial of benefit of promotion to the applicant.

9. With regard to para 5.6 it is stated that there was no rejection of the claim of the applicant as the individual was promoted w.e.f. 02 August, 1992.

10. With regard to paras 8, 8.1 to 8.4 it is stated that applicant had appeared in the Trade Test for promotion to the rank of Paker mate during 1987 before the Board of Officers and ~~as~~ he was selected for promotion. However, due to the non-availability / non occurrence of ~~vacancies~~ vacancies for the post of Packer Mate during the validity period of the Selection List as explained in the preceding paras, the applicant could not be promoted. However, the then Comdt. promoted the applicant on 02 August 1992 even though the validity period of the "Selected List" as prepared by the Board of Officers during 1987 was expired. Hence there was no discrimination in the matter of promotion to the applicant. The prayer made by the applicant through the ibid OA is baseless illegal and unwarranted and be dismissed with cost.

11. That the Respondants submit that the application is devoid of Merit and as such the same is liable to be dismissed.

12. That this Written statement is made bonafide and for the ends of justice & equity.

VERIFICATION

I, Col Harjinder Jit Singh Comdt, Officer, ~~Officer~~ ABOD C/O 99 APO do hereby solemnly declare/ verify that the statement made hereinabove are true to my knowledge, belief and information and nothing being suppressed.

I sign this verification on this 12th day of May, 2005 at Narrangi, Guwahati

HJ
 (Harjinder Jit Singh)
 (H J Singh)
 S I G N A T U R E.
 Colonel
 Commandant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI
Guwahati Bench

O.A.No.246 of 2004

Shri Mukh lal Sahu

...Applicant

-Versus-

The Union of India & Others

...Respondents

-AND-

IN THE MATTER OF

Rejoinder Submitted by the Applicant in the above said
Original Application against the Written statement filed
by the Respondents.

The humble Applicants submit this Rejoinder as follows:

1. That with regard to statement made in paragraph 1(a) of the Written Statement filed by the Respondents of the above said Original Application, the Applicant have no comments and beyond records nothing is admitted.
2. That with regard to statement made in Paragraphs 1(b), (c), (d) & 2 of the Written Statement filed by the Respondents of the above said Original Application, the Applicant begs to state that the same are not true and also misleading to this Hon'ble Tribunal.
- 3) That with regard to statement made in paragraph 3 & 4 of the Written statement filed by the Respondents of the above said Original Application, the Applicant have no comment and beyond record nothing is admitted.
- 4) That with regard to statement made in paragraph 5, 6, 7, 8, 9, 10, 11 & 12 of the Written statement filed by the Respondents, the Applicant

Shri Mukh lal Sahu
Applicant
Hemanta
Arun
(Advocate)
AHMAD

32

begs to state that the same are not true and also misleading to this Hon'ble Tribunal. The Applicant begs to state that he appeared for the trade test for promotion to the rank of Painter Mate during the period 1987 and he was qualified by the Board of Officers but he was not promoted to the rank of Painter Mate. The Respondent No.3, 4 & 5 who are junior to the Applicant had appeared in the trade test for Painter Mate during the year 1990 and they were promoted to the rank of Painter Mate in the year 1990. The Applicant who is senior to the Respondent No.3, 4 & 5 ^{has} ~~was~~ promoted to the rank of Painter Mate in the year 1992. But ~~they~~ ^{the} ~~Applicant~~ ¹⁾ Respondent No.3, 4 & 5 were promoted to the rank of Painter Mate during the year 1990. The Respondents in their written statement has stated that the Applicant could not be promoted to the higher rank i.e. Painter Mate due to non-availability of post during the year 1987 and the selection list is valid for one year six months. After that the Applicant did not appeared in the trade test for the post of Painter Mate but the Respondents on what basis and criteria promoted the Applicant in the year 1992 after his junior who has already been promoted in the year 1990. If the select list according to the Respondents has already been lapse after one and six months in the year 1987 then on what basis the Applicant was promoted in the year 1992 when already junior persons has been promoted to the post of Painter Mate. The Respondents in their written statement in paragraph 10 has stated that the Applicant had appeared for trade test for promotion to the rank of Packer Mate during the year 1987 before the Board of Officers and he was selected for the promotion. But in fact the Applicant never appeared in trade test for Packer Mate during the year 1987, he had only appeared for trade test of Painter Mate in the year 1987 and he was selected by the Board of Officers for promotion to the post of Painter Mate.

From the above, the Written Statement submitted by the Respondents are wholly bereft of substance and no credence ought to be given to it. Thus, in view of the abject failure of Respondents to refute the contentions, averments, questions of law and grounds made by the Applicant in the Original Application filed by the Applicant deserve to be allowed by this Hon'ble Tribunal.

33

VERIFICATION

I, Shri Mukh lal Saha, T/No.2066, Painter, No.2 Sub Depot, Office of the Commandant 222, Advance Base Ordnance Depot, C/o 99 APO do hereby solemnly verify that the statements made in paragraph nos.

1, 2, 3, _____ are true to my knowledge, those made in paragraph nos. 4, _____ are being matters of records are true to my information derived there from which I believe to be true and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 13th day of July 2005 at Guwahati.

Shri Mukh lal Saha

11 JUL 2005

गुवाहाटी बन्धनी
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

O.A.No.246 of 2004

Filed by
Shri Mukh Lal Sahu
...Applicant
through J.J.
(Advocate)
(Advocate) 34

Shri Mukh Lal Sahu

...Applicant

-Versus-

The Union of India & Others

...Respondents

-AND-

IN THE MATTER OF

Additional Rejoinder Submitted by the Applicant in the
above said Original Application.

The humble Applicants submit this Additional Rejoinder as follows:

1. That your Applicant begs to state that he has came to know about his promotion with the seniority to the post of Painter Mate / Painter OG w.e.f. 2nd August 1992 instead of year 1987 as per Respondents Order No.1519/PC/XI/01/Est. Dtd. 3rd January 2004 and he approached this Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati by filing this instant Original Application No.246 of 2004 for seeking justice in this matter.
2. That your Applicant begs to state that in spite of his best effort he could not collect the recruitment rule and procedure to be adopted regarding conducting trade test. As far his knowledge the department policy is that once who had passed trade test for a particular post and he does not need to appear again in this same trade test for the same post. The Hon'ble Tribunal may be pleased to direct the Respondents to produce the recruitment rule and procedural rule regarding trade test etc. and also may be pleased to direct the Respondents to produce the records of status of 13 individual who were qualified in the year 1987 for the post of Painter Mate / Painter OG.

Shri Mukh Lal Sahu

VERIFICATION

I, Shri Mukh Lal Saha, T/No.2066, Painter, No.2 Sub Depot, Office of the Commandant 222, Advance Base Ordnance Depot, C/o 99 APO do hereby solemnly verify that the statements made in paragraph nos.

1, 2 are true to my knowledge, those made in paragraph nos. _____ are being matters of records are true to my information derived there from which I believe to be true and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 11th day of August 2005
at Guwahati.

Shri Mukh Lal Saha

Shri Mukh Lal Saha