

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 20/2007

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SECTION OFFICER (Judl.)

*Mahanta
20/9/07*

GENERAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ADDRESS SHEET

1. Original Application No. 20/07
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) Bipragit Datta vs Union of India & Ors

Advocate for the Applicant(s) K. Paul, J.P. Chankhan

A. Saonam

Mrs. K.K. Borowal

Advocate for the Respondent(s) Railway Counsel

Notes of the Registry	Date	Order of the Tribunal
1. Application is in form is filed C. F. for Rs. 50/- d.p.o. vide I.P.C/D.D P...266.351.214 D.d...24.1.07..... <i>(Signature)</i> Dy. Registrar	5.2.2007	Present: The Hon'ble Mr. K.V. Sachidanandan Vice-Chairman. The Applicant had earlier came before this Tribunal in O.A. No.2/2005 and vide order dated 6.3.2006 directed the Respondents to open the sealed cover and promote the Applicant, if found fit by holding Review DPC within three months from the date of receipt of the order. The Respondents complied with the order and promoted the Applicant with notional benefits with effect from 20.4.1998 i.e., the date his junior was promoted. <i>(Signature)</i>

Petition's copy of
the Respondents fifth
for some more
envelops have been
submitted.

The Applicant submitted
representation before the Respondents
for payment of arrears salary from the
date his junior was promoted which

04.20/07

- 2 -

Contd.

5.2.2007

was rejected by the Respondents vide order dated 31.10.2006. Hence this O.A.

Heard Mr.K.Paul, learned counsel for the Applicant and Dr.J.L.Sarkar, learned Standing counsel for the Railways.

Notice & order sent to
D/Section for issuing
to resp. nos. 1 to 5 received
by hand.
D/No- 191 to 196
DT= 15/2/07.

Considering the issue involved in this case the O.A. is admitted. Issue notice to the Respondents. Six weeks time is granted to the Respondents to file reply statement.

Post on 19.03.2007.

Service Completed.

Vice-Chairman

/bb/

19.3.07.

Counsel for the respondents prays for time to file written statement. Let it be done. Post the matter on 23.4.07.

Member

Vice-Chairman

lm

No WIS has been
filed.

19.4.07.

23.4.2007

Present: The Hon'ble Mr. G. Shanthappa
Member (J)

The Hon'ble Mr.G.Ray, Member(A)

Case called. Mr.K.Paul, learned counsel for the Applicant is present. Neither the Respondents nor the counsel for the Respondents is present. Though sufficient time has been granted Respondents have not filed reply statement. We grant four weeks more time to the Respondents to file reply statement.

Call the case on 23.05.2007.

AA. 20/2007

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23.4.2007 Present: The Hon'ble Mr. G. Shanthappa
Member (J)

The Hon'ble Mr. G. Ray, Member (A)

Case called. Mr. K. Paul, learned counsel for the Applicant is present. Neither the Respondents nor the counsel for the Respondents is present. Though sufficient time has been granted Respondents have not filed reply statement. We grant four weeks more time to the Respondents to file reply statement.

No Wts has been filed.

22.5.07


Member (A)


Member (J)

/bb/

23.5.2007

Mr. K. Paul, learned counsel for the Applicant is present. Mr. K. K. Biswas, learned Railway counsel sought for further time to file reply statement. Four weeks' time is granted to the Respondents as a last opportunity to file reply statement.

No Wts filed.

21.6.07

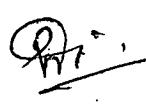
Post on 22.06.2007.

25.6.07
Wts filed by
the Respondents. page
1 to 8. Copy not
served to the Applicant.

/bb/


Vice-Chairman

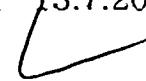
22.6.2007

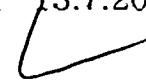

Mr. K. K. Biswas, learned Railway counsel submitted that reply statement has been filed, copy of which is served on the counsel for the Applicant. Let it be brought on record if it is otherwise in order.


Mr. K. Paul, learned counsel for the Applicant requested that the matter may be listed for hearing.


The case is ready
for hearing.

12.7.07


Post the case on 13.7.2007 for
hearing.


Vice-Chairman

O.A. 20/07

-4-

13.7.07. Counsel for the respondents has submitted that he has not prepared the case and he prays for adjournment. Post the matter on 27.7.07.

The case is ready
for hearing

34
26.7.07

Vice-Chairman

1m

27.7.2007 Heard Mr.K.Paul, learned counsel for the Applicant and Mr.K.K.Biswas, learned counsel for the Railways.
Judgement is reserved.

Vice-Chairman

bb

2.8.2007

Judgment pronounced in open
Court, kept in separate sheets.

The O.A. allowed to the extent indicated in the detailed order. No costs.

Vice-Chairman

/bb/

13.8.07.
C. Copy of the
judgment has been
collected by the
L/Advocates for the
parties.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No.20 of 2007

DATE OF DECISION: 02.08.2007

Shri Biprajit Dutta

.....Applicant/s

Mr.K.Paul

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Mr.K.K.Biswas, Railway Counsel.

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

V.K.S
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 20 of 2007

Date of Order: This, the 2nd day of August, 2007.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN.

Shri Biprajit Dutta
Executive Engineer
Office of the General Manager/Con.
N.F.Railway, Maligaon
Guwahati-781 011.

..... Applicant.

By Advocates S/Shri K.Paul, J.P.Chauhan & A.Sarmah

- Versus -

1. Union of India
Represented through the General Manager
N.F.Railways, Maligaon
Guwahati-781 011.
2. The General Manager/Con
N.F.Railway, Maligaon
Guwahati-781 011.
3. Principal Chief Engineer
N.F.Railway, Maligaon
Guwahati-781 011.
4. Chief Personnel Officer
N.F.Railway, Maligaon
Guwahati-781 011.
5. Chief Engineer (Con-2)
N.F.Railway, Maligaon
Guwahati-781 011.
6. Dy. Chief Personal Officer (Con)
N.F.Railway, Maligaon
Guwahati-781 011.

...Respondents.

By Mr.K.K.Biswas, Railway Counsel.

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O R D E RSACHIDANANDAN, K.V. (V.C.) :

The Applicant is presently working as Executive Engineer (XEN) Senior Scale in Construction Organisation under General Manager/Construction, Maligaon. He was promoted as such from 20.04.1998, the date on which his juniors were promoted, vide office order No.21/2006(Engg) issued by the General Manager (P) dated 02.06.2006. While the Applicant was working as Assistant Engineer/Con at Dimapur, a Memorandum of Charges was issued against him on 28.06.1997. During that time the DPC for promotion to the post of the Executive Engineer was held on 17.04.1998 and some of his juniors were promoted as Executive Engineer but the Respondents have adopted seal cover procedure in Applicant's case. He was fully exonerated from the charges by this Hon'ble Tribunal vide order dated 09.05.2002 passed in O.A. No.310/2001. The Respondents had taken up the matter before the Hon'ble Gauhati High Court in W.P.(C) No.7809/2002 and the Hon'ble High Court vide its order dated 08.01.2004 upheld the orders of this Tribunal. The order dated 09.05.2002 in O.A. No.310/2001 has become final. But the



Respondents did not consider the case of the Applicant for promotion as Executive Engineer. Being aggrieved by the said inaction of the Respondents, the Applicant filed another O.A. bearing No.2/2005 for opening the sealed cover and to give him promotion. This Tribunal vide order dated 06.03.2006 directed the Respondents to open the sealed cover and promote the Applicant if found eligible. Pursuant thereto, the Respondents vide Office Order No.21/2006 (Engg) dated 02.06.2006 (Annexure-D) promoted the Applicant as Executive Engineer Senior Scale on ad hoc basis w.e.f. 20.04.1998 i.e., the date when his juniors were promoted to Senior Scale. However, the Applicant was promoted w.e.f. 20.04.1998 on notional basis and the order directed that he would be entitled to the monetary benefits from the date of taking over charge. Applicant assumed charges on 02.06.2006 itself. He made representation on 02.06.2006 before the General Manager (Con) for fixation of pay as Executive Engineer Senior Scale w.e.f. 20.04.1998 as per extent rules and guidelines (Annexure-E), but the Respondents did not pay any heed to his request. He submitted another representation on 25.09.2006 (Annexure-F) before the General Manager requesting

to make payment of arrear salary w.e.f. 20.04.1998 which was disposed of by the Respondents vide their order dated 31.10.2006 (Annexure-G) wherein his request was rejected. Aggrieved by the said action on the part of the Respondents, the Applicant has filed this O.A. seeking the following reliefs:-

" Your Lordships may direct the respondents to release the arrear salary of the applicant w.e.f. 20-4-1998 till 01-06-2006 in the post of Executive Engineer, Senior Scale, within a stipulated time period alongwith costs, and/or be pleased to pass any such further or other order/orders as Your Lordships may deem fit and proper."

2. The Respondents have submitted their reply statement contending that though the order of punishment was set aside by this Tribunal vide order dated 09.05.2002 in O.A. No.310/2001 which was also upheld by the Hon'ble High Court vide order dated 08.01.2004 the sealed cover could not be opened due to pendency of another disciplinary proceeding against the Applicant. The Respondents complied with the order of this Tribunal dated 06.03.2006 and opened the sealed cover wherein the DPC considered the Applicant fit for promotion to the Senior Scale Executive Engineer and promoted him to Senior Scale



on ad hoc basis notionally w.e.f. 20.04.1998 i.e., from that when his juniors were promoted and his pay and allowances etc. were given him from the date he shouldered higher responsibilities. The Competent Authority who considered the case of the Applicant for promoting him to the Senior Scale Executive Engineer on adhoc basis in the sealed cover system following the orders of the Tribunal mentioned above did not find it justified to grant arrear pay and allowances to the Applicant for the period from 20.04.1998 to 01.06.2006 as he had not actually shouldered the duties and responsibilities to which he was promoted. The decision of the competent authority was taken comprehensively on the strength and face of the Railway Board's circular dated 23.02.2007 (Annexure-A of the reply statement). His claim for arrear pay and allowances in the higher scale is not admissible although proforma benefit was given to him from 20.04.1998. The action of the competent authority in opening of sealed cover system is quite legal, valid and proper and were taken with proper justification and after due application of mind. No unfair action was caused to the Applicant and no statutory rules or prevailing procedures were violated. Therefore, the O.A. having

no merits is liable to be dismissed, claimed the Respondents in their reply statement.

3. Heard Mr. K.Paul, learned counsel for the Applicant and Mr.K.K.Biswas, learned counsel for the Railways.

4. Learned counsel for the parties have taken my attention to the various pleadings, materials and evidence placed on record. Learned counsel for the Applicant would argue that the Applicant is entitled to get arrears of pay and allowances from when his juniors were promoted i.e., 20.04.1998 to 01.06.2006 since the Respondents had deliberately delayed his promotion in not opening the sealed cover even after the judgment was passed by the Hon'ble High Court affirming the orders of this Tribunal whereas his juniors were promoted way back on 20.04.1998. The Respondents in one pretext or the other were dragging the matter in not opening the sealed cover. Had sealed cover was opened at the appropriate time he could have been promoted long back. The right thing had not been done at the right time. Learned counsel for the Respondents, on the other hand, persuasively argued that the Rules that have been laid down by the Railway Board (Annexure-A of the

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reply statement) stipulates that an employee is entitled for higher pay and allowances only when he holds higher duties and responsibilities. The promotion is prospective and therefore, the Applicant cannot claim the monetary benefit with retrospective effect that too from the date when his juniors have already been promoted earlier and are holding higher responsibilities.

5. I have given due consideration to the arguments, materials and evidence placed on record. The Applicant had earlier assailed the legitimacy of the action of the Respondents in imposing a major penalty of reduction of his pay by one stage in the time scale of pay in O.A.310/2001 and finally after considering all the aspects of the matter this Court vide its order dated 09.05.2002 set aside and quashed the order of penalty dated 08.11.2001. The operative portion of the said order is reproduced herein below:-

"...On analysis, the Inquiry Officer held that the charges were not established. It may be mentioned that though there was one charge, the Inquiry Officer for the purpose of his convenience split the charge into two articles and on evaluation of the materials he exonerated the applicant from the charge. The



Disciplinary Authority purported to disagree with the Inquiry Officer though no disagreement is discernible. On analysis of the entire evidence on record the Disciplinary Authority itself in its disagreement note conceded that if the samples were more the results would have been different and the gravity of the charge might have come down. Under Rule 10 the Disciplinary Authority having regard to the findings of the Inquiry Officer is to independently act upon the matter. He is free to differ from the report of the Inquiry Officer by citing reasons in writing and thereafter he may remand the case to the Inquiry Officer for further enquiry or he may on the basis of the materials on record give his own finding on the charge and pass appropriate order. We have already indicated the full text of the purported disagreement, which is no disagreement at all. The materials on record also otherwise did not establish the guilt of the charged official. In the circumstances, the order of penalty imposed on the applicant is wholly unjustified. The imposition of penalty vide order dated 30.11.1999/20.11.2000 since has been withdrawn, no order is necessary from this Tribunal. We, however, set aside and quash the order of penalty dated 8.11.2001.

6. The application is accordingly allowed. There shall, however, be no order as to costs."

The Respondents have taken up the matter before the Hon'ble High Court in W.P.(C) No.7809/2002 and after



elaborate discussion the High Court while upholding the order of this Tribunal observed as under:-

"..... We do not find any infirmity in the order passed by the Central Administrative Tribunal, We cannot say that exercise of jurisdiction by the Tribunal is not a proper exercise of the discretion by the Tribunal in the facts and circumstances of the present case.

4. In view of the above, the petition stands disposed of. However, there shall be no order as to costs."

But thereafter also, the Respondents had not done anything to open the sealed cover nor did they initiate further proceeding. Therefore, Applicant had to file O.A. No.2/2005 before this Tribunal and vide order dated 06.03.2006 this Tribunal had directed the Respondents to open the sealed cover. The operative portion of the order is quoted below:-

"7. Therefore, we are of the considered view that in the facts and circumstances of the case the sealed cover has to be opened and the applicant has to be promoted if he is otherwise found fit by holding a Review DPC within a time stipulation of three months from the date of receipt of a copy of this order.

8. We therefore direct the respondents to open the sealed cover and promote him if found eligible hold a Review DPC within a time frame of three months from the date of receipt of a copy of

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this order and communicate/report the same to the applicant.

The O.A. is accordingly disposed of. No order as to costs."

Pursuant to the aforesaid order of this Tribunal, the Respondents passed the order dated 02.06.2006 which is also quoted as follows:-

"

N.F.RAILWAY

OFFICE ORDER NO.21/2006 (Engg)

Shri Biprajit Dutta, AXEN (CON) MLG, on being empanelled for promotion to Senior Scale on ad-hoc basis as XEN and posted in Construction Organisation under GM/CON/MLG.

Shri Dutta is promoted to Sr. Scale (ad-hoc) on notional basis from the date his junior promoted to Sr. Scale (ad-hoc) i.e. 20-04-98 and actual monetary benefit will be given to him from the date he takes over the charge in the Sr.Scale post on ad-hoc basis.

Shri Dutta is also to be given monetary benefit of 80% upgradation for placement in higher scale Rs.8000-275-13500/- w.e.f. 25-04-2003.

This issues with the approval of Competent Authority.

Sd/-
(S.P.Sengupta)
APO/GAZ
For General Manager (P)"



Thereafter also, the Applicant submitted representation (Annexure-E) with the request to take necessary action for fixation of his pay from 20.04.1998 as per extent rules and guidelines which was again reminded on 25.09.2006. Thereafter his case was rejected by the Respondents vide order dated 31.10.2006 stating that the Applicant had shouldered higher responsibility of the post of Executive Engineer Senior Scale only from 02.06.2006, therefore, question of giving monetary benefit from 20.04.1998 does not arise in this case.

6. The crux point to be considered in this case is as to whether the Applicant can be granted actual arrear of pay and allowances w.e.f. 20.04.1998 the date when his juniors were promoted or only from the date he assumed higher duties and responsibilities. In support of his contention, learned counsel for the Respondents has relied on Rule 228 of the Indian Railway Establishment Manual (IREM in short) Volume I (Page 65). For better elucidation Rule 228 of the IREM Volum-I is reproduced below:-

"228. Erroneous Promotions.-(I)
Sometimes due to administrative errors, staff are over-looked for



promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:-

- (i) Where a person has not been promoted at all because of administrative error, and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

Relying in above Rule of the IREM learned counsel for the Respondents argued that if a staff has lost promotion due to administrative error should, on promotion, be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the



date of promotion and his pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. He also argued that this principle had been adopted by the Hon'ble Supreme Court in its decision in the case of **Union of India & Another vs. Tarsem Lal & Others**, reported in (2006) 10 SCC 145, and held that in view of the decisions in the case of **Virender Kumar vs. Avinash Chandra Chadha**, reported in (1990) 3 SCC 472 and in C.A. No.8904 of 1994 in **Union of India vs. P.O.Abraham** decided on 13.08.1997, the Tribunal and High Court were not justified in holding that the Applicant is entitled to pay and allowances from the date proforma promotion was given. In the said judgment in **Tarsem Lal** (supra) the Court referred to the decision in **Virender Kumar** (supra) wherein the Supreme Court held that respondents therein will not be entitled to the higher salary on principle of 'no work no pay' as they have not actually worked in that post. Therefore, learned counsel for the Respondents argued that since the instant Applicant had not worked during the aforementioned period, he is not entitled to get higher salary. This Court is in respectful agreement with the dictum laid down by

the Hon'ble Supreme Court in the aforesaid case. But on going through the aforesaid decision is appears that the Supreme Court analyzed the entire situation of the said judgment on the premises when the Applicant therein could not be promoted due to administrative error. But in the instant case it is not an administrative error but administrative latches.

Learned counsel for the Applicant has taken my attention to a celebrated decision of the three Judges Bench of the Supreme Court in the case of **Union of India & Others vs. K.V.Janakiraman & Others, reported in (1991) 4 SCC 109**. The Hon'ble Supreme Court at paragraphs 24 & 25 of the said judgment observed as under:

"24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of

denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will be applicable in such cases."

In the said celebrated judgment the Hon'ble Supreme Court laid down the dictum that if the delay is attributable to the employee, he may not be entitled to get any arrear pay and allowances. In the given case, it is apparent that non-promotion of the Applicant at the appropriate time is not due to an administrative error but because of willful and deliberate default on the part of the administration. The contention of the Applicant is that when this Court passed the order on 09.05.2002 setting aside the order of penalty, the Respondents

could have opened the sealed cover and promoted the Applicant if found eligible which was not done in this case. The Respondents have filed W.P.(C) No.7809/2002 before the Hon'ble Gauhati High Court challenging the order of this Tribunal. The said W.P.(C) was disposed of by the Hon'ble High Court vide its judgment dated 08.1.2004 affirming the order of this Tribunal and thus the order of this Tribunal dated 09.05.2002 has become final. Assuming that pendency of the Court proceeding will grant exemption to the Respondents for taking a decision on the side of the administration, it appears that the Respondents could have acted upon and opened the sealed cover immediately after the disposal of the W.P.(C) No.7809/2002 by the Hon'ble High Court on 08.01.2004, copy of which was issued on 22.01.2004 but the same was not done in this case. The impugned action of the Respondents again dragged the Applicant to this Tribunal in O.A. No.2/2005 and only on the dictates of this Tribunal on 02.06.2006 Respondents had become alert/active and opened the sealed cover and promoted the Applicant. Assuming that the Applicant is not entitled to get any arrear pay and allowances from the date 20.04.1998 on the ground that Court proceedings were pending before

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this Tribunal and thereafter before the Hon'ble High Court, the Respondents are not justified in not granting the benefit at least from the date of the receipt of the judgment of the Hon'ble High Court i.e., 22.01.2004. The further delay in the matter is, in no way, attributable to the Applicant. Due to the inaction on the part of the Respondents in opening the sealed cover again dragged the Applicant to approach this Tribunal in O.A.2/2005 and only after the order of this Tribunal dated 06.03.2006 the Respondents acted upon and opened the sealed cover which they could have done much earlier. Therefore, it is apparent that the action of the Respondents in delaying the promotion is not an administrative error but a willful and deliberate inaction for obvious reason not to grant the benefit to the Applicant.

7. In the conspectus facts and circumstances of the case and upon hearing counsel for the parties and also in view of the dictum laid down in the case of **K.V.Janakiraman** (supra), I am of view that Applicant is entitled to get arrear pay and allowance from 22.04.2004 (three months concession is given to the Respondents in processing the matter

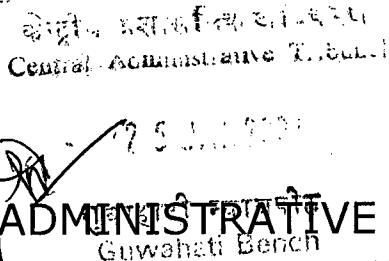
after the judgment of the Hon'ble High Court dated 22.01.2004) till 01.06.2006. Accordingly, Respondents are directed to release/pay the Applicant the actual arrear pay and allowance for the period from 22.04.2004 till 01.06.2006 in the post of Executive Engineer Senior Scale within a period of three months from the date of receipt of this order. It is also made clear that if the Applicant has been given monetary benefits of 80% upgradation in higher scale Rs.8000-275-13500/- w.e.f. 25.04.2003 as per Annexure-D order dated 02.06.2006 the balance/difference need be paid.

8. The Original Application is allowed to the extent indicate above. In the circumstances, there shall be no order as to costs.



(K.V. SACHIDANANDAN)
VICE CHAIRMAN

/BB/



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

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

ORIGINAL APPLICATION NO. 20 OF 2007.

Shri Biprajit Dutta **APPLICANT.**

-versus-

The Union of India & Ors. **RESPONDENTS.**

I N D E X.

Sl.No.	Particulars of Documents	Annexure No.	Page No.
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Signature of the applicant.

For use in the Tribunal's office

Date of filing:-

Registration No.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH::GUWAHATI.

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

ORIGINAL APPLICATION NO. 20 OF 2007.

Shri Biprajit Dutta **APPLICANT.**

-versus-

The Union of India & Ors. **RESPONDENTS.**

LIST OF DATES.

Date : Particulars

09-05-2002 Judgment and order passed by this Hon'ble Tribunal in O.A. No.310/2001 setting aside and quashing the order of penalty dated 08-11-2001. [ANNEXURE-A; PAGE]

08-01-2004 Judgment and order passed by the Hon'ble Gauhati High Court in W.P.(C) No.7809/2002, upholding the order dated 09-05-2002 passed by this Hon'ble Tribunal in O.A. No.310/2001. [ANNEXURE-B; PAGE]

06-03-2006 Judgment and order passed by this Hon'ble Tribunal in O.A. No.2 of 2005 directing the respondents to open the sealed cover kept in respect of the applicant and promote him as Executive Engineer in the Senior Scale if found eligible. [ANNEXURE-C; PAGE]

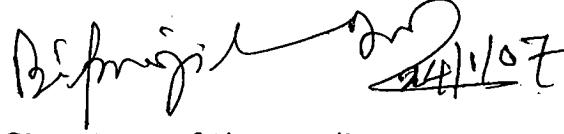
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02-06-2006 Applicant promoted to Senior Scale as Executive Engineer with effect from the date his junior was promoted to Senior Scale, i.e., 20-04-1998. [ANNEXURE-D; PAGE]

02-06-2006 Representation submitted to the authority concerned for fixation of his pay as Executive Engineer in the Senior Scale with effect from 20-04-1998 and for making all payments at the earliest. [ANNEXURE-E; PAGE]

25-09-2006 Applicant again submitted a representation for payment of arrear salary w.e.f. 20-04-1998. [ANNEXURE-F; PAGE]

31-10-2006 Applicant's request for release of arrear salary w.e.f. 20-04-1998 rejected by the respondents. [ANNEXURE-G; PAGE]

21/22-01-1993 Railway Board's circular regarding payment of arrear salary on promotion after clearance of disciplinary proceeding. [ANNEXURE-H; PAGE]


Signature of the applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 20 OF 2007.

Shri Biprajit Dutta
Executive Engineer
Office of the General Manager/Con.
N.F. Railway, Maligaon,
Guwahati - 781011. **APPLICANT.**

-VERSUS-

1. The Union of India,
Represented through the General Manager,
N.F. Railway, Maligaon, Guwahati-781011.
2. The General Manager/Con
N.F. Railway, Maligaon, Guwahati-781011.
3. Principal Chief Engineer,
N.F. Railway, Maligaon, Guwahati-781011
4. Chief Personnel Officer,
N.F. Railway, Maligaon, Guwahati-781011.
5. Chief Engineer (Con-2)
N.F. Railway, Maligaon, Guwahati-781011.

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Biprajit Dutta
(By) PROSIT DUTTA through
for Prakash Chakraborty, Advocate
24.1.07

6. Dy. Chief Personnel Officer (Con),
N.F. Railway, Maligaon, Guwahati-781011.

... **RESPONDENTS.**

DETAILS OF APPLICATION:

1. Particulars of the order against which the application is made:-

The applicant is aggrieved by the impugned order conveyed vide communication No.E/112/21/CON Pt.V dated 31-10-2006 whereby the petitioner's claim for monetary benefit/arrear salary in the post of Executive Engineer, Senior Scale, with effect from 20-04-1998, has been rejected by the respondents.

2. Jurisdiction of the Tribunal:-

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation:-

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:-

4.1 That the applicant is a citizen of India and is entitled to all the rights and privileges guaranteed by the Constitution of India and the laws framed thereunder.

4.2 That the applicant is working as Executive Engineer (XEN) Senior Scale in Construction Organisation under General Manager/

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20/10/2007
Guwahati
N.F. Railway
(Applicant/21/10/07)

Construction/Maligaon. He has been promoted to Senior Scale from the date his junior was promoted to Senior Scale, i.e., 20-04-1998 vide office order no. 21/2006(Engg.) issued by the General Manager(P) dated 02-06-2006.'

4.3 That the applicant was issued with a memorandum of charges on 28-06-1997 when he was working as Assistant Engineer/Con, N.F. Railways at Dimapur. During this time, the DPC for promotion of the applicant as Executive Engineer was held on 17-04-1998. Some juniors of the applicant were promoted as Executive Engineer and the respondents adopted the sealed cover procedure in the case of the applicant. The applicant was fully exonerated from the charges by this Hon'ble Tribunal by order dated 09-05-2002 passed in O.A. No.310/2001. The matter was taken up before the Hon'ble Gauhati High Court in W.P.(C) No.7809/2002 and by order dated 08-01-2004, the Hon'ble High Court has also upheld the decision of this Hon'ble Tribunal and the order dated 09-05-2002 in O.A. No.310/2001 has become final.

A copy of the Judgment and Order dated 09-05-2002 passed by this Hon'ble Tribunal in O.A. No.310/2001 is annexed hereto and marked as **ANNEXURE- "A"**.

A copy of the Judgment and Order dated 08-01-2004 passed by the Hon'ble Gauhati High Court in W.P.(C) No.7809/2002 is annexed hereto and marked as **ANNEXURE – “B”**

4.4 That even after the order dated 09-05-2002 in O.A. No.310/2001 attained finality, the respondent did not consider the case of the applicant to the post of Executive Engineer. Being aggrieved the applicant filed O.A. No.2/2005 before this Hon'ble

Tribunal praying for a direction towards the respondents to open the sealed cover in respect of the applicant and to give him promotion to the Senior Scale from the date his juniors were promoted in 1998 alongwith all other consequential benefits.

4.5 That the aforementioned original application came to be disposed of on 06-03-2006 by directing the respondents to open the sealed cover and promote him if found eligible, to hold a Review DPC within a time frame of three months from the date of receipt of a copy of the order and communicate the same to the applicant.

A copy of the said order 06-03-2006 passed by this Hon'ble Tribunal in O.A. No.2/2005 is annexed hereto and marked as **ANNEXURE - "C"**.

4.6 That, thereafter, vide Office Order No.21/2006 (Engg) dated 02-06-2006 issued by the respondents, the applicant was promoted to Senior Scale as Executive Engineer with effect from 20-04-1998, i.e., the date when his juniors were promoted to Senior Scale.

A copy of the said office order dated 02-06-2006 is annexed hereto and marked as **ANNEXURE - "D"**.

4.7 That the applicant assumed the charge of Senior Scale as Executive Engineer in Construction organisation of N.F. Railway on 02-06-2006. The applicant vide communication dated 02-06-2006 addressed to the General Manager/Con, made a request for fixation of his pay etc. from 20-04-1998 as per extant rule and guideline of Railway Board, and for making all payments at an early date.

A copy of the said communication dated 02-06-2006 is annexed hereto and marked as **ANNEXURE- "E"**.

4.8 That the respondents did not pay heed to the said request made by the applicant for arrear pay and allowances. The applicant submitted another representation on 25-09-2006 addressed to the General Manager stating his grievances and requesting him to make payment of arrear salary with effect from 20-04-1998.

A copy of the said representation dated 25-09-2006 is annexed hereto and marked as **ANNEXURE- "F"**.

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4.9 That the representation submitted by the applicant, came to be disposed of by the respondents, by an order communicated vide Memo.No. E/112/21/CON Pt.V dated 31-10-2006. By this communication, the claim of the applicant for monetary benefit in the Senior Scale as Executive Engineer with effect from 20-04-1998, has been rejected.

A copy of the impugned order conveyed vide communication dated 31-10-2006 is annexed hereto and marked as **ANNEXURE - "G"**.

4.10 That the impugned order conveyed vide communication dated 31-10-2006 is in violation of the rules and guidelines framed by the Railway Board for regulating payment of arrear salary after completion of disciplinary proceeding as per R.B.E. No.14/93 communicated vide No.E(D&A) 92RG6-149(B), dated 21/22-01-1993. According to this circular, where proceedings are not delayed at the instance of the employee or clearance of the disciplinary proceedings is not on account of non-availability of evidence due to acts attributable to the employee, the authority cannot deny arrear of salary to the employee concerned.

A copy of the Railway Board's circular R.B.E. No.14/93 is annexed hereto and marked as **ANNEXURE- "H"**.

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4.11 That in the instant case, the respondents have committed undue delay in finalisation of disciplinary proceedings held against the applicant. The alleged incident to which the charge relates took place during 1994-95. The charge memo was served on the applicant on 28-06-1997. Thereafter, inquiry was held and the Inquiry Officer in his report dated 25-02-1999 recorded the finding that the charges were not substantiated against the applicant. The disciplinary authority did not agree with the Inquiry Report and penalty was imposed on the applicant vide order dated 08-11-2001 which was, however, set aside and quashed by this Hon'ble Tribunal on 09-05-2002 in O.A. No.310/2001. The respondents further carried the matter to the Hon'ble Gauhati High Court by way of filing a writ petition being W.P.(C) No.7809/2002 but the Hon'ble High Court vide judgment and order dated 08-01-2004, refused to interfere, finding no infirmity with the order passed by this Hon'ble Tribunal.

Therefore, the respondents in all fairness ought to have opened the sealed cover in respect of the recommendation made by the Departmental Promotion Committee (D.P.C.) and the applicant ought to have been given promotion to the Senior Scale from the date his juniors were promoted w.e.f. 17-04-1998. However, no such step was initiated by the respondents, and the applicant was compelled to approach this Hon'ble Tribunal, once again, through O.A. No.2 of 2005 which came to be disposed of on 06-03-2006 with the direction to the respondents to open the sealed cover and promote him if found eligible.

Thereafter, the respondents vide order dated 02-06-2006 promoted the applicant as Executive Engineer in the Senior Scale with effect from 20-04-1998 but they have denied the arrear salary to the applicant with effect from the said date which is in contravention of the

Railway Board's Circular dated 21/22-01-1993. Hence, the present application has been filed against such denial of arrear salary.

5. Grounds for relief with legal provisions:-

5.1 For that there is no justification for denying monetary benefit to the applicant from 20-04-1998 in the Senior Scale as Executive Engineer. The ground cited by the respondents for denying such monetary benefit to the applicant is that the applicant has not shouldered the higher responsibility of the post of Senior Scale from 20-04-1998. This ground is not tenable because the applicant was kept out of the promoted post for no fault of his.

5.2 For that the respondents also took the ground that the promotion of the applicant is on adhoc basis for denying him monetary benefit from 20-04-1998. The respondents have conveniently lost sight of the fact all his juniors who have been so promoted on 20-04-1998 were on adhoc basis too. Nevertheless they have been given the full benefit of the promoted post i.e., Executive Engineer (Senior Scale). Therefore the respondents cannot subject the applicant to discrimination and deny him the monetary benefit on the fragile plea that the promotion is on adhoc basis.

5.3 For that the reasons put forth by the respondents for denying the arrear salary to the applicant are not in accordance with the Railway Board's circular. The said Circular on the other hand makes it clear that the authority cannot deny arrear salary if the employee concerned is not at fault for delay in the clearance of the disciplinary proceeding. The Apex Court in the case of K.V. Jankiraman, reported in (1991) 4 SCC 109, has made it clear that arrear salary cannot be

denied if the employee is kept out of work for no fault on his part. The Apex Court in the abovementioned case held as follows:

"The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him."

Therefore, the respondents, in all fairness, ought to have released the arrear salary due to the applicant, for the period, w.e.f.20-04-1998 till 01-06-2006, and the failure in this regard has violated the fundamental and other legal rights of the applicant.

5.4 For that the respondents cannot be permitted to take advantage of their own wrong. On one hand they have stated that since the applicant has not shouldered responsibility in the higher post, therefore salary for that period is denied. But the fact remains that the applicant was kept out of the higher post by the respondent themselves, due to delaying tactics adopted by them, as explained in paragraph 4.11 hereinabove, to deprive the applicant from his legitimate claim.

5.5 For that if the applicant does not get any monetary benefit for the period in question then his promotion as Executive Engineer in the Senior Scale with effect from 20-04-1998, will remain as a mere 'paper decree' only without any material benefit to the applicant.

5.6 For that the delay on the part of the respondents in the finalisation of the disciplinary proceedings held against the applicant, which was initiated vide charge memo dated 28-06-1997, has brought untold miseries on the applicant. Even after his complete exoneration

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High Court
12/1/07

from the charge, the respondents carried the matter to the Hon'ble High Court but the Hon'ble High Court refused to interfere with the matter. If, the respondents had opened the sealed cover in respect of the applicant after the order was passed by the Hon'ble High Court on 08-01-2004, instead of waiting till 02-06-2006, then in that case, the applicant could have got the monetary benefit in the promoted post in the year 2004 itself. But, the respondents did not open the sealed cover at that point of time and only after the judgment and order dated 06-03-2006 in O.A. No.2/2005 was delivered, the applicant was promoted as Executive Engineer in the Senior Scale. The applicant had to approach the court of law three times, viz., O.A. No.310/2001, W.P.(C) No.7809/2002 and O.A. No.2/2005, and each time the judgment came in his favour. But the respondents instead of honouring the verdict given by the Court, chose to further victimise and harass the applicant by denying him arrear salary in the promoted post vide impugned order dated 31-10-2006. The applicant, is therefore, not only entitled to the arrear salary with effect from 20-04-1998, but this Hon'ble Tribunal may be pleased to order the respondents to pay exemplary costs to the applicant for the pain and anguish suffered by him for all these years.

6. Details of the remedies exhausted:-

The applicant declares that he has availed of all the remedies available to him under the relevant rules.

7. Matters not previously filed or pending with any other court:-

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other

authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought:-

In the premises aforesaid, it is most respectfully prayed that Your Lordships may be graciously pleased to admit this application, issue necessary notices, call for the records of the case and after hearing the cause/causes being shown and upon perusal of the records, Your Lordships may direct the respondents to release the arrear salary of the applicant w.e.f. 20-04-1998 till 01-06-2006 in the post of Executive Engineer, Senior Scale, within a stipulated time period alongwith costs, and/or be pleased to pass any such further or other order/orders as Your Lordships may deem fit and proper.

And for this act of kindness, the humble applicant as in duty bound, shall ever pray.

9. Interim order, if any prayed for:-

Nil.

10. Particulars of Bank Draft/Postal Order:-

I.P.O. No. 26 G 351214 Dated: 24-1-07

11. List of enclosures:-

As stated in the index.

VERIFICATION.

I, Shri Biprajit Dutta, son of Late B.C. Dutta, aged about 48 years, working as Executive Engineer in the Office of the General Manager/Con., N.F. Railway, Maligaon, Guwahati-11, and residing in Railway Bungalow No. 294/D, Sarada Colony, Maligaon, Guwahati-781011, Dist-Kamrup, Assam, do hereby verify that the contents of paragraphs 4.1 to 4.11 are true to my knowledge and paragraphs 5.1 to 5.6 are believed to be true on legal advice and that I have not suppressed any material fact.

Date:- 25/1/07
Place:- Guwahati


Biprajit Dutta
25/1/07

Signature of the Applicant.

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ANNEXURE- A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.310 of 2001

Date of decision: This the 9th day of May 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Biprajit Dutta,
Assistant Engineer/Con.,
N.F. Railway, Kumerghat,
Tripura.
By Advocate Mr R. Dutta.

.....Applicant

- versus -

1. The Union of India, represented by
The Secretary, Railway Board,
Rail Bhawan, New Delhi.

2. The Chairman, Railway Board,
Rail Bhawan, New Delhi.

3. The General Manager/Con.,
N.F. Railway, Maligaon,
Assam.

4. The Deputy Chief Personnel Officer/Con.,
N.F. Railway, Maligaon,
Assam.

.....Respondents

By Advocate Mr B.K. Sharma, Railway Counsel.
and Mr S. Sarma.

.....
ORDER (ORAL)

CHOWDHURY.J. (V.C.)

In this application under Section 19 of the
Administrative Tribunals Act, 1985 the applicant has
assailed the legitimacy of the action of the respondents
in imposing a major penalty thereby reducing his pay by
one stage in the time scale of pay in the following
circumstances:

Certified *True Copy*

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Advocate

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The applicant is working for gain under the respondents as Assistant Engineer. While he was so serving he was served with a memorandum dated 28.6.1997 containing the statement of articles of charge accompanied by the statement of imputations of misconduct or misbehaviour in support of the articles of charge. The articles of charge alleged against the applicant are as follows:

"That, Shri Biprajit Dutta while posted and functioning as Assistant Engineer (Construction) N.F. Railway, Dimapur since 1993, committed gross misconduct in as much as that he had received and accepted undersized stone ballast for a quantity of 193.800 cu.m. from M/s Dhirumal, Contractor of Dholdoli-Bokajan Sector, Assam during the year 1994-95 in pursuance of the contract agreement vide No.CON/L-D/8 dt. 5.2.94 without performing any proper sieve analysis as per contract agreement and thereafter shown received the correct sized stone ballast of 193.800 cu.m. in stack No.KL-I, KHKT-IC, K-I, KB-I and DMV-2 and later on, passed the bill of Rs.1,02,549.00 for payment to the said contractor for the said quantity of undersized stone ballast by causing undue financial loss to the Railway Department and corresponding gain to the said contractor.

The aforesaid acts of omission and commission on the part of said Shri Biprajit Dutta, AEN, N.F. Railway, tantamounts to the violation of the conduct Rule 3(1),(i), (ii) & (iii) of Railway Service Conduct Rule/1966."

2. The applicant submitted his written statement of defence denying and disputing the allegations mentioned in the chargesheet. In the written statement the applicant stated that the sieve analysis by the applicant was done in strict adherence to the clauses mentioned in the contract agreement. He referred to the clauses mentioned in the contract agreement and specifically stated that in the joint-surprise check conducted at Dimapur by the Central Bureau of Investigation (CBI) for shorty with the association of the RSO, the said authority took samples from one stack with the help of spade/shovel and performed the sieve analysis without following the procedure prescribed and hence there was a difference of result.

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The authority conducted an enquiry and examined witness.

The Executive Engineer Incharge was examined and the Inquiry Officer examined the said officer as a Technical Officer and asked questions as to how samples were to be taken from each stack. The Executive Engineer made the following statement before the Inquiry Officer:

"For every 50 cu.m. of Ballast a sample of point 0.028 cu.m. has to be collected from different parts of a stack selected at random to make a representative sample of the ballast stack. AS a technical man AEN/CON supposed to know the sieve analysis process.

"At the very begining of the check I made Mr G.P. Jaiswal and Mr. D.B. Singh understand that a Qnty. of one bow of sample = .028 cu.m./0.03 cu.m. of Ballast is to be taken at random from different parts of the stack for each 50 cu m. of Ballast Qnty.

But at the site Mr D.B. Singh stated that due to shortage of time he will collect only one or two sample from each stack of Ballast. Considering that Shri D.B. Singh had special power I did not further insisted for more sample."

The Executive Engineer was specifically asked by the Inquiry Officer whether he was satisfied with the Sieve analysis by the CBI officer. His answer was as follows:

"I was not satisfy with the sample collection. Samples were collected by two Constables of the CBI branch and our khalashi were not permitted to draw the samples. They have not collected required no. of samples at random."

One Shri Pallab Kanti Das, EX IOW/CON/DMV was also examined on behalf of the Railway Authority, who made the following statement:

"That Sir, on 31.3.95 I had been asked by my superior official Mr B. Datta, AEN/C/DMV to attend site on 1.4.95 to accompany the investing Official. Accordingly I attended site first at KHKT and DMV along with my superiors.

That Sir,

Shri D.B. Singh inspector/CBI/ Silchar had taken leading part with the help of Sri J.P. Jaiswal RSO/TSK and they made a team with Shri B.N. Parial EX-XEN/C/DMV, B. Dutta EX-AEN/C/DMV, Suresh Kumar authorised representative of contractor M/s DAIRUMAL and with myself.

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instruction

That Sir, Shri D.B. Singh inspector CBI/Silchar instructed to dig the Ballast stacks at least middle part of stacks for performing sieve analysis accordingly as per his/ the contractor, site representative dig out the ballast with the help of kata. Kodal and hand punja in one location. Shri D.B. Singh asked his man, a constable (Name not known) for taking sample with the help of spade and Belcha-from the middle part of the stacks.

That Sir, as per his advise his man collected the samples each from one stacks except 1 stack no KL-1 from a particular one location. I along with my XEN, AEN/CON and contracts representative has pointed out that the process of collecting the sample is not as per CA clause, but the investing Officials did not heard our request and collected the sample saying that they had no time.

After collecting the sample they asked us for seive analysis and accordingly we had done the seive analysis with the help of no screening boxes 0.305X0.305X0.305 mtr. sample, 0.20X0.20X0.20 cum. for ballast retained on 50 mm. 2 mesh and 0.10X0.10X0.14 cum for

Ballast past through 20mm² mesh and the result was calculated by XEN/CON/DMV and placed on memorandum an prepared by Shri D.B. Singh, Inspector CBI/Silchar.

Sir, Since the samples are not collected properly and the results are showing beyond permissible limit, I personally along with my AEN/C/DMV had given a representation justifying the reasons for maximum undersize Ballast to Shri Singh inspector CBI/Silchar though his acknowledgement and requested him again for proper calculation of sample but they did not need our request."

The concerned officer Shri G.P. Jaiswal RSO/CBI/DRRT was also examined by the Inquiry Officer. He was specifically asked as to the procedure of conducting the sieve analysis. The officer answered that "it was left upon the choice of the technical officers (Parial, Executive Engineer and B. Dutta) where from samples would be drawn and I believe being experienced officers they have acted as per rules." The charged official was also examined. On conclusion of the enquiry, the Inquiry Officer submitted his report and on evaluation of the materials on record exonerated the officer. On receipt of the report a copy of

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the same was sent to the applicant for information vide letter dated 23.9.1999. The said letter also communicated the disagreement memo of the Disciplinary Authority. The full text of the disagreement memo of the Disciplinary Authority is reproduced below:

"DISAGREEMENT MEMO OF THE DISCIPLINARY AUTHORITY.

The Inquiry Officer has concluded that charges against Shri B. Dutta, AEN/CON/KUGT were not established.

In this regard, I do not agree with the findings of the I.O. My reasons for not agreeing with the findings are as under :-

i) It has been said that samples taken for surprise check were not as per norms specified in para 1.7-2.2 of Railways agreement, as per which one sample for each 50 Cum volume of ballast stack should have been taken. For the total quantity of ballast of 1739.973 Cum, roughly 35 samples should have been taken, as against 6 samples of surprise check.

The sampling provided in the Contract Agreement is basically for the Officer/Supervisor to test check the ballast including sieve analysis and not for surprise checks, conducted by the Vigilance.

ii) All the 6 samples show variation for specifications in regard to under size ballast, which is as high as 21.43% in one sample.

It is however, conceded that if the samples taken were more, the results would have been different and gravity of charge might have come down. This observation is based on the fact that stacks varied in size from 66 Cum to 706 Cum, which is a very wide variation."

The applicant submitted his representation and thereafter by order dated 30.11.1999/21.02.2000 the authority imposed a major penalty of reduction to a lower stage in the time scale of pay for a period of one year with cumulative effect which will not have the effect of postponing the future increment of his pay. The applicant preferred an appeal before the President of India, which was subsequently, at the instance of the respondents

addressed.....

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addressed to the Railway Board and the appeal preferred before the Railway Board on 2.2.2001 is yet to be disposed of. The applicant thereafter moved this Tribunal by way of the present O.A. While the matter was pending, the penalty order was withdrawn vide memo dated 16.10.2001. In the said memo it was specifically indicated that the order of penalty of reduction to a lower stage for a period of one year with cumulative effect which would not have the effect of postponing the future increment of his pay was incorrect and accordingly the same was withdrawn without prejudice. Subsequently, vide order dated 8.11.2001 the respondents imposed the penalty of reduction of pay by one stage in the same time scale for a period of one year. It also indicated that reduction of pay would have cumulative effect of postponing his future increments. The applicant amended his application thereafter questioning the legitimacy of the penalty imposed.

4. The respondents submitted their written statement denying and disputing the contentions of the applicant.

5. We have heard Mr R. Dutta, learned counsel for the applicant and Mr B.K. Sharma, learned Sr. counsel assisted by Mr S. Sarma, Advocate, representing the respondents at length. We have already indicated the nature of the materials in support of the allegation. The main allegation that the applicant without performing the relevant analysis as per the contract agreement leading to the payment of 1011/- was not proved and established. The allegation of embezzlement and commission alleged against the applicant was not established in the enquiry proceeding. The Inquiry Officer in his report, on evaluation of the evidence, clearly found that the samples drawn from the stacks for

sieve.....

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sieve analysis on 1.4.1995 were far from norms specified in para 1.7-2.2 of the Railway's contract agreement No.CON/I-D/8 dated 5.2.1994. The charge for acceptance of 193.734 cu m undersized ballast was not established on the basis of the result of the surprise check. The Inquiry Officer found that another field check eliminated the controversy. On analysis, the Inquiry Officer held that the charges were not established. It may be mentioned that though there was one charge, the Inquiry Officer for the purpose of his convenience split the charge into two articles and on evaluation of the materials he exonerated the applicant from the charge. The Disciplinary Authority purported to disagree with the Inquiry Officer though no disagreement is discernible. On analysis of the entire evidence on record the Disciplinary Authority itself in its disagreement note conceded that if the samples were more the results would have been different and the gravity of the charge might have come down. Under Rule 10 the Disciplinary Authority having regard to the findings of the Inquiry Officer is to independently act upon the matter. He is free to differ from the report of the Inquiry Officer by citing reasons in writing and thereafter he may remand the case to the Inquiry Officer for further enquiry or he may on the basis of the materials on record give his own finding on the charge and pass appropriate order. We have already indicated the full text of the purported disagreement, which is no disagreement at all. The materials on record also otherwise did not establish the guilt of the charged official. In the circumstances, the order of penalty imposed on the applicant is wholly unjustified. The imposition of penalty vide order dated 30.11.1999/

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21.02.2000 since has been withdrawn, no order is necessary from this Tribunal. We, however, set aside and quash the order of penalty dated 8.11.2001.

6. The application is accordingly allowed. There shall, however, be no order as to costs.

SD/VICE CHAIRMAN
SD/MEMBER (A)

TRUE COPY

প্রতিক্রিয়া

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20/1/02
Section Officer (S)
Central Administrative Tribunal
Supreme Court, Guwahati
Assam, India

तारीख Date of application for the copy.	संस्था सूचत करने का निश्चय तारीख Date fixed for notifying the requisite number of stamps and folios.	देने की तारीख Date of delivery of the requisite stamps and folios.	प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	तारीख Date of making over the copy to the applicant.
20/11/07	20/11/07	20/11/07	22/11/07	22/11/07

IN THE GAUHATI HIGH COURT
**(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)**

WRIT PETITION (C) NO.7809/2002

PETITIONERS

1. Union of India
2. The Chairman,
Railway Board, Rail Bhawan,
New Delhi
3. The General Manager/Construction,
NF Railway, Maligaon, Guwahati-11, Assam
4. The Deputy Chief Personnel Officer/Construction,
NF Railway, Maligaon, Guwahati-11, Assam

By advocates : Mr S Sharma,
Mr DK Sarmah,

RESPONDENT

**Biprajit Dutta, Assistant Engineer/Construction,
NF Railway, Kumerghat, Tripura**

By advocates : Mr R Dutta,
Mr K Paul,
Mr JP Chouhan,
Mr A Sarma,
Mr DK Dey,

Certified to be true Copy

Advocate

BEFORE

HON'BLE THE CHIEF JUSTICE MR PP NAOLEKAR
HON'BLE MR JUSTICE AH SAIKIA

Date of hearing/ judgement
And order

JUDGEMENT AND ORDER (ORAL)

(Naolekar, CJ)

Heard Mr S Sharma, learned counsel for the petitioners and Mr R Dutta, learned counsel for the respondent.

2. The material facts which are necessary for adjudication of the question raised in this appeal are that the respondent Shri Biprajit Dutta, while working as Assistant Engineer in North Eastern Frontier Railway was served with a memorandum/ chargesheet dated 28-6-97 containing the statement of articles of charge accompanied by the statement of imputation of misconduct or misbehaviour in support of the articles of charge. After holding a departmental enquiry on the charges served on the respondent, the Enquiry Officer submitted the report exonerating the respondent from the charge. The disciplinary authority did not agree with the findings arrived at by the Enquiry Officer and, therefore, after service of due notice as required under the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter shall be referred to as "the Rules, 1968") the disciplinary authority found the respondent guilty of charge and imposed a punishment of penalty or reduction of pay by one stage in the same time scale for a period of one year. This will have the cumulative effect of postponing the respondent's future increments. Aggrieved by the said order of imposition of penalty the respondent approached the Central Administrative Tribunal, Guwahati by moving a petition under Section 19 of the Administrative Tribunals Act, 1985. The Central Administrative Tribunal entertained the petition and set aside the order passed by the disciplinary authority imposing penalty on the respondent. The Tribunal on appreciation of the materials placed on record reached to the conclusion

8/2

7.7.11-1

that in fact as per the order of the disciplinary authority itself there was no discrepancy between the reasoning and the findings arrived at by the Enquiry Officer as well as that by the disciplinary authority. On this finding the Central Administrative Tribunal has set aside the order of the disciplinary authority imposing punishment on the respondent. Aggrieved by this order passed by the Central Administrative Tribunal the present petition has been filed.

3. The only submission made by the learned counsel for the Railways is that on account of the fact that imposition of penalty under Rule 6 of the Rules, 1968 being made appealable under Rule 48, the Administrative Tribunal could not have exercised jurisdiction to entertain and adjudicate upon the petition filed by the respondent under Section 19 of the Administrative Tribunal Act unless and until the respondent exhausted his remedy provided under the relevant Rules. Section 20 of the Administrative Tribunals Act prohibits the Tribunal ordinarily to admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The phraseology used in this section clearly indicates that ordinarily the Tribunal shall not exercise the jurisdiction of entertaining the application under Section 19 unless it is satisfied that alternative remedies available to the claimant have been exhausted by him. The restriction imposed under Section 20 has to be followed and adhered to by the Tribunal ordinarily, but that does not take away the jurisdiction of the Tribunal to entertain an application even if the claimant has not exhausted the remedies provided under the relevant Rules. It is a rule of discretion and the discretion is left to the Tribunal to entertain or not to entertain an application where the remedy as provided under the relevant service Rules. The words used under Section 20 puts a balance on the side of

✓ J.H.

7.7.7

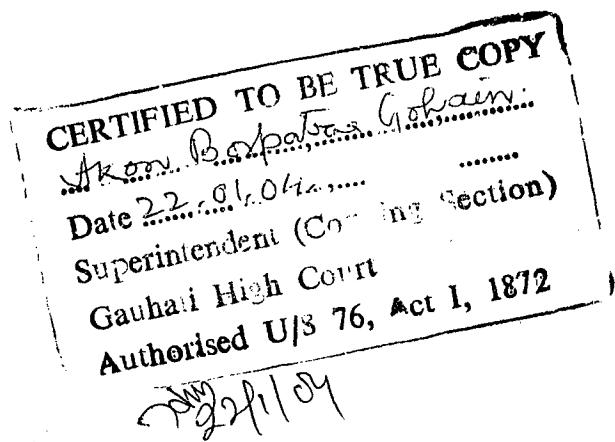
not entertaining an application ordinarily when the alternative remedy is provided under the relevant service rules and it is in the exceptional circumstances of cases the Tribunal can exercise jurisdiction to entertain an application under Section 19 although the claimant has not exhausted the remedy provided under the relevant service rules. In the present case exercise of jurisdiction by the Tribunal in entertaining the petition filed by the respondent cannot be said to be an exercise beyond the competence of the Tribunal, when the Tribunal has entertained the petition, and we do not find any infirmity in the order passed by the Central Administrative Tribunal. We cannot say that exercise of jurisdiction by the Tribunal is not a proper exercise of the discretion by the Tribunal in the facts and circumstances of the present case.

4. In view of the above, the petition stands disposed of. However, there shall be no order as to costs.

Sgt. Atsalia
Judge

S/ P.P. Mardikan
Chief Justice

PN 6848
29/1/04



**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.2 of 2005

Date of decision: This the 6th day of March 2006

Hon'ble Shri B.N. Som, Vice-Chairman (A)

Hon'ble Shri K.V. Sachidanandan, Vice-Chairman (J)

Shri Biprajit Dutta
Assistant Executive Engineer/Pl-2
General Manager/Con's Office
N.F. Railway, Maligaon,
Guwahati - 781 011.

.....Applicant

By Advocate Sri K. Paul.

Versus -

1. The Union of India,
Represented through the General Manager,
N.F. Railway, Maligaon,
Guwahati - 781 011.
2. The General Manager/Con,
N.F. Railway, Maligaon,
Guwahati - 781 011.
3. Principal Chief Engineer
N.F. Railway, Maligaon,
Guwahati - 781 011.
4. Chief Personnel Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011.
5. Chief Engineer (Con-2),
N.F. Railway, Maligaon,
Guwahati - 781 011.
6. Dy. Chief Personnel Officer (Con),
N.F. Railway, Maligaon,
Guwahati - 781 011.Respondents

By Advocate Mr S. Sarma, Railway Counsel.

.....

S
Certified to be true copy

S

Advocate

OR DEF (ORAL)

SACHIDANANDAN, VICE-CHAIRMAN (D)

The applicant is working as Assistant Executive Engineer, under the respondents' establishment. He was issued with a memorandum of charges on 28.6.1997. The DPC for promotion of the applicant as Executive Engineer was held on 17.4.1998. It is also averred in the O.A. that some juniors of the applicant were also promoted as Executive Engineer. However, the respondents had adopted the sealed cover procedure in the case of the applicant. The grievance of the applicant is that the applicant was fully exonerated from the charges by this Tribunal by order dated 9.5.2002 passed in O.A.No.310 of 2001 and therefore the applicant is entitled for promotion to the post of Executive Engineer. Being aggrieved by the inaction of the respondents the applicant has filed the present O.A. seeking the following reliefs:



"In the premises aforesaid, it is therefore, prayed for that the Lordships of this Hon'ble Tribunal may be pleased to admit this application, call for the records and after hearing the parties and upon perusal of the records be pleased to direct the respondents to open the sealed cover in respect of the applicant and to give him promotion in 1998 along with all other consequential benefits and/or be pleased to pass any such further or other order/orders as your Lordships may deem fit and proper."

2. The respondents have filed a detailed written statement contending that the currency of the panel in the said DPC expired before the completion of the disciplinary proceedings initiated against the applicant and therefore the sealed cover was not opened. The

-26-

53

applicant was considered for promotion in the subsequent DPCs held in 2000, 2001, 2002 and 2003 but the applicant was not found fit for promotion due to below bench marking and the vigilance case instituted at the instance of the S.P., CBI. Therefore, the sealed cover of the applicant could not be opened.

3. Mr K. Paul, learned counsel for the applicant and Mr S. Sarma, learned Railway Counsel are present. The learned counsel for the parties have taken us to various pleadings and materials placed on record.

4. We have heard the learned counsel for the parties and their arguments and given due consideration. The crux point to be considered is regarding "opening of the sealed cover adopted in the DPC held in the year 1998" and this Tribunal by order dated 9.5.2002 in O.A.No.310/2001 had exonerated the applicant from the said charges. It will be profitable to quote here the operative portion of the order dated 9.5.2002:



..... We have already indicated the full text of the purported disagreement, which is no disagreement at all. The materials on record also otherwise did not establish the guilt of the charged official. In the circumstances the order of penalty imposed on the applicant is wholly unjustified. The imposition of penalty vide order dated 10.11.1999/21.2.2000 since has been withdrawn, no order is necessary from this Tribunal. We, however, set aside and quash the order of penalty dated 8.11.2001."

5. The matter was taken up before the Hon'ble Gauhati High Court in Writ Petition (C) No.7809 of 2002 and by order dated 8.1.2004 the Hon'ble High Court has also upheld the decision of this Tribunal and the order dated 9.5.2002 in O.A.No.310/2001 has become

L

final. The operative portion of the order of the Hon'ble Gauhati High Court is worth quoting:

"..... In the present case exercise of jurisdiction by the Tribunal in entertaining the petition filed by the respondent cannot be said to be an exercise beyond the competence of the Tribunal, when the Tribunal has entertained the petition and we do not find any infirmity in the order passed by the Central Administrative Tribunal. We cannot say that exercise of jurisdiction by the Tribunal is not a proper exercise of the discretion by the Tribunal in the facts and circumstances of the present case."

In view of the above, the petition stands disposed of. However, there shall be no order as to costs."

6. The contention of the respondents is that there are subsequent proceedings against the applicant and therefore, the

sealed cover could not be opened. We are of the view that it is not in conformity of the legal position since the cloud that was prevailing prior to 1998 when the DPC was held and the applicant's selection was withheld and kept in sealed cover it has to be opened since the applicant was exonerated and the benefit has to be granted to the applicant if he is otherwise fit for promotion. The Hon'ble Supreme

Court in Anand Kumar Vs. Prem Singh and others, 2001 SCC (L&S)

742 and S.N. Dhingra and others Vs. Union of India and others, (2001)

3 SCC 125, has held that the DPC at the relevant time has to be considered since if at the relevant time the applicant was eligible he would have been promoted at that point of time and therefore the sealed cover procedure is being adopted. The benefit of this should be given to the applicant.

7. Therefore, we are of the considered view that in the facts and circumstances of the case the sealed cover has to be opened and the applicant has to be promoted if he is otherwise found fit by

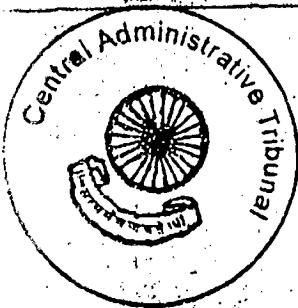
holding a Review DPC within a time stipulation of three months from the date of receipt of a copy of this order.

8. We then ^{for} direct the respondents to open the sealed cover and if found eligible hold a Review DPC within a time frame of three months from the date of receipt of a copy of this order and communicate/report the same to the applicant.

The O.A. is accordingly disposed of. No order as to costs.

sd/ VICE CHAIRMAN (A)

sd/ VICE CHAIRMAN (J)



nkm

Date of Application : 17.3.06

Date on which copy is ready : 17.3.06

Date on which copy is delivered : 17.3.06

Certified to be true copy

N. Sonowal
17.3.06
Section 151 (1) (J) (d)
C. A. T. C. shall Benach
Guwahati S.

AK
17/3/06

NERAILWAY

OFFICE ORDER No. 21/2006(Engg.)

Shri Biprajit Dutta, XEN/CON/MLG, on being empanelled for promotion to Senior Scale on ad-hoc basis, is promoted to Sr. Scale on ad-hoc basis as XEN and posted in Construction Organisation under GM/CON/MLG.

Shri Dutta is promoted to Sr. Scale(ad-hoc) on notional basis from the date his junior promoted to Sr. Scale(ad-hoc) i.e. 20-04-98 and actual monetary benefit will be given to him from the date he takes over the charge in the Sr. Scale post on ad-hoc basis.

Shri Dutta is also to be given monetary benefit of 80% upgradation for placement in higher scale Rs.8000-275-13500/- w.e.f. 25-04-2003.

This issues with the approval of Competent Authority.

Sengupta
(S.P. Sengupta)

APO/GAZ

For GENERAL MANAGER(P)

No.E/28.3/31 PL-XVIII(6)

Date. 02-06-06

Copy for information and necessary action to :-

~~XGM/CON/MLG~~

2PCE, CPO, CVO, CE(CON-2)MLG

3FA&CAO/CON/MLG, Dy.CPO/CON/MLG

4.PPS to GM/CM(CON), AY to AGML, PS to PCE

5.GIS/NERPOA, NERPOA, NERIIL, NERMIU/MLG

6.Officer concerned.

Sengupta
(S.P. Sengupta)

APO/GAZ

For GENERAL MANAGER(P)

Certified to be true Copy

SS
Advocate

100/- to 150/-

- 30 -

5/1/23

To
 The General Manager/Con
 N F Railway Maligoan GHY 11

Date 02-06-2006

Respected Sir,

Sub: Assuming the charge of Senior Scale post as Executive Engineer in construction organization of N F Rly. wef 02-06-2006

Ref: GM/P/MLG'S Office Order no 21/2006 (Engg) under letter reference No E/283/31 Pt-XVIII(O) Dated 02-06-2006

Apropos the GM(P)'s order no as referred above I here by assume the charge of XEN/CON under GM/CON/ N F Railway Maligoan wef 02-06-2006.

As the order of promotion is to be effective from 20-04-1998 I would request you please take necessary action for fixation of my pay etc from 20-04-1998 as per extend rule & guide line of Railway Board for making all payments at an earliest and oblige there by.

Thanking you with due regards.

Yours faithfully

(BIPROJIT DUTTA)

EXECUTIVE ENGINEER/CON
 PLANNING Maligoan GHY-11

Copy forwarded for kind information & necessary action pl.

- (1) Sec to GM/N F Rly & GM/CON/N F Rly
- (2) PPS to GM/N F Rly & GM/CON/N F Rly
- (3) Pr CE, CPO, CVO, CE/CON-2/MLG
- (4) FA & CAO/CON/MLG, CE/CON/1,3,4,5,6,7/MLG
- (5) Dy CE/CON/PL, Design, General, Tender I ii, Survey
 Dy CPO/CON/MLG & All field Dy's.
- (6) GS/NFROA, NFRPOA, NFREU, NFRMU/MLG

Seen

Certified to be true Copy

Advocate

To

Date 25-09-2006

The General Manager,
(For his kind personnel attention)
N.F.Railway, Maligaon,
Guwahati-11.

(Through proper channel)

Sub: Prayer for justice through implementation of Hon'ble CAT/GHY judgment in to-
to vide OA-02/2005.

Ref: (1) Your Office Order No.21/2006(Engg.) dated, 2.6.06.
(2) Rly. Board's circular No.14/93 under letter No.E(D&A)92RG-6-149(B)
dated 21/22-1-93.

Most Respected Sir,

I have the honour to state you that the Hon'ble CAT/GHY had made clear judgment on 6th March' 2006 under para NO.6 with reference to Hon'ble Supreme Court judgment in "Anand Kumar Vs Prem Singh & others 2001 SCC(L&S)742 & S.N.Dhingra & Others Vs Union of India & Others (2001) 3 SCC 125" that all the benefit is to be given retrospectively to the applicant if the applicant was eligible at the relevant time of DPC'1998.

The matter is also highlighted in Rly. Board's Circular No.14/93 under para No.3 regarding payment of arrear Bill when the employee is exonerated beyond doubt. In my case the enquiry officer found that no charges were established which was confirmed through the judgment of Hon'ble CAT/GHY on OA 310/2001 and also upheld the said judgment by Hon'ble High Court/GHY against writ petition No.7809/2002 of Railway.

That Sir, the punishment was imposed forcefully to deprive an innocent Railway employee from his due promotion which was established through the number of judgment of Hon'ble Court as already highlighted.

Under the above circumstances may I request you please arrange to make payment of Arrear salary Bill w.e.f. 20.4.1998 to give proper honour of Hon'ble Court judgment & Rly. Board's Circular and oblige thereby.

Thanking you with regards.

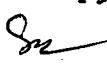
DA : As above.



(B. DUTTA)
Executive Engineer/Con,
N.F.Rly., Maligaon

Copy to Honble CRB & CVC for kind information & necessary action please. This is with reference to my earlier letter dated 28/21-02/04-06 & 01-06-2006 regarding Justice.

Certified to be true Copy


Advocate

-32-

Northeast Frontier Railway

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

No. E/112/21/CON Pt.V

Dated: 31.10.2006

To
 GM/CON,
 N. F. Railway,
 Maligaon.

(Attention: Shri A. Saikia, Dy.CPO/CON)

Sub: Promotion to Sr. Scale – Shri Biprajit Dutta, XEN/CON (Adhoc).

Ref: GM/CON's letter No. E/174/CON/(CAT) dated 26.10.2006.

Shri Biprajit Dutta, was ordered to be promoted to Sr. Scale on adhoc basis as XEN and was posted under GM/CON vide this office order No. 21/2006 (Engg), endorsement No. E/283/31/Pt.VIII (O) dated 02.06.2006. It was also indicated in the said order that Shri Dutta is promoted to Sr. Scale on adhoc basis, on notional basis, from the date of his junior promoted to Sr. Scale (Adhoc) and the actual monetary benefit will be given to him from the date he takes over the charge of the Sr. Scale post on adhoc basis.

As Shri Dutta has not shouldered the higher responsibility of the post of Sr. Scale from 20.04.98, the question of giving him the monetary benefit does not arise in this case. Moreover, the promotion to Sr. Scale is on adhoc basis.

Shri Dutta may be informed accordingly.

*Sengupta
 31/10/06*
 (S. P. Sengupta)
 APO(Gaz)
 for General Manager (P).

*Shri Biprajit Dutta
 31/10/06 P. - P.M. and reply
 21/10/06 Dutta*

*Certified to be true Copy
 S.P.
 Advocate*

R.B.E. No. 14/93

Subject : Promotion from Group 'B' to Group 'A' and within Group 'A' of Railway Officers against whom disciplinary/Court proceedings are pending – Procedure and guidelines to be followed.

No. E(D&A) 92RG6-149(B), dated : 21.1.1993

In supersession of all instructions contained in *Board's letter No. E(D&A)88RG6-21, dated 21.9.1988 [Bahri's RBO 1988-II, 244 (RBE 21/1/88) & 2.7.1990* on the above subject, the procedure and guidelines laid down below shall be followed in the matter of promotion from Group 'B' to Group 'A' and within Group 'A' of Railway Officers against whom disciplinary/Court proceedings are pending.

2. *Cases of Govt. to whom Sealed Cover Procedure will be applicable* – At the time of consideration of the cases of Government servants for empanelment, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 *Procedure to be followed by DPC in respect of Govt. Servants under cloud* – The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC including 'Unfit for Promotion' and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed. Findings regarding suitability for promotion to the grade/post of in respect of Shri
..... (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri
..... "The proceedings of the DPC need only contain the note "The findings are contained in the attached sealed cover". The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the

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Con

Advocate

findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 *Procedure by subsequent DPCs* – The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. *Action after completion of disciplinary case/criminal prosecution* – On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegation against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the Railway servant who has been promoted, as mentioned above will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution, where the authority denies arrears of salary or part of it, it will record the reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denial of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

3.1 If any major penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 However, in the case of *ad-hoc* promotions from Group 'B' to Group 'A' and promotions within Group 'A' (Upto and including promotions to SA Grade) those imposed with the minor penalties censure, stoppage of passes/PTOs, recovery from pay and withholding of

25 JUN 2007

गुवाहाटी विधायिका
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A.No. 20 of 2007.

Sri Biprajit Dutta...Applicant.

-Vs-

Union of India and others...Respondents.

IN THE MATTER OF:

WRITTEN STATEMENT BY THE
RESPONDENTS.

The answering Respondents above-named most respectfully sheweth:

1. That the answering Respondents have gone through the copy of the application filed by the above named Applicant and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations made in the application are hereby emphatically 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 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 Respondents beg to state that for want of the valid cause of action for the Applicant the application merits dismissal as the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear and candid from the statements made hereunder.
4. That with regard to the paragraphs 4.1, 4.2 and 4.3, it is stated that the averments of the Applicant are admitted only to the extent of their admissibility in records.
5. That with regard to the statement made under para 4.4 in the O.A. it is stated that the prayer of the Applicant in O.A No.02/05 was to open the sealed cover and give him promotion to the senior scale from the date of his junior promoted in the year 1998 along with all consequential benefits. The Hon'ble Tribunal set aside the order of punishment imposed following the memorandum of major penalty charge sheet issued on 28.6.97 to

the Applicant. The Hon'ble CAT's order was upheld by the Hon'ble High Court by order dated 8.1.04. Since another Disciplinary Proceeding was impending against the Applicant and a memorandum of minor penalty charge was issued on 10.5.04 the sealed cover could not be opened.

6. That with regard to the averments made under paras 4.5 and 4.6 of the O.A. it is stated that the Respondents complied with the Hon'ble Tribunal's order dated 6.3.06 and opened the sealed cover wherein the DPC considered him fit for promotion to the Senior Scale as Executive Engineer and the Applicant was promoted to Senior Scale on adhoc basis notionally from the date his junior promoted to the Senior Scale on adhoc basis i.e from the date 20.4.98 and his Pay and Allowances etc. were given him from the date he shouldered the responsibility in the higher grade post in accordance with the Railway Board's order No E(NG)I-2005/PM-1-34 CC dated 23.2.07 and thus the orders of the Hon'ble Tribunal mentioned above was complied with by the Respondents.

Photo copy of the Board's above letter is enclosed as ANNEXURE-A.

7. That with regard to the averment made by the Applicant under para No.4.7 of the C.A. it is stated that the Applicant got the benefit of promotion to the Post of Senior Scale, Group-B on adhoc with effect from 20.4.98 on notional basis and the payment of Pay and Allowances etc. had been paid to him from the date he shouldered the higher responsibility i.e. from 2.6.06 admissible as per Rules according to Railway Board's Circular mentioned in the foregoing para i.e Para-6.

8. That with regard to the averment made by the Applicant under para No. 4.8 it is stated that the competent authority who considered the case of the Applicant for promoting him to the Senior Scale in the capacity of Executive Engineer on adhoc basis in the sealed cover system following the orders of the Tribunal mentioned above did not find it justified towards granting the arrear Pay and Allowances to the Applicant for the period from 20.4.98 to 1.6.06 as he had not actually shouldered the duties and performed the responsibility of the higher grade post to which he was promoted on adhoc basis. The decision of the competent authority was taken comprehensively on the strength and face of the Railway Board's Circular mentioned above under the ANNEXURE-A.

9. That with regard to the averment made by the Applicant under para 4.9 in the O.A. it is stated that the Respondents offer no comments so far the matter relates to the fact supported by records.

69
Placed at the pleasure of
Mr. Chinti personnel to the
Court. Date: 20.07.2011

10. That with regard to the averment made by the Applicant under paras 4.10 and 4.11 in the O.A the Respondents reiterate their submission that since the Applicant did not shoulder the higher grades' responsibilities in the post of Senior Scale as Executive Engineer, Group-B adhoc from the date of 20.4.98, his claim for Pay and Allowances in the said higher scale is not admissible although a proforma benefit was given to him from the date he was given the promotion on adhoc basis i.e. from 20.4.98. The Applicant in O.A. No.02/2005 prayed for only consequential benefits like arrear Pay and Allowances vide its order on 6.3.06. Hence, raising of the issue for consequential benefits of arrear Pay and Allowances is not tenable in the eye of law by filing the subsequent Court case.
11. That the Respondents respectfully submit that this Original Application of the Applicant suffers from Res-Judicata, Waiver, Acquiescence and Doctrine of Lapses and Laches.
12. That it is submitted that the actions in the matter of granting promotion to the Applicant "by opening the sealed cover system" as directed by the Hon'ble Courts of law and taken by the Respondents were quite legal, valid and proper and have been taken by the competent authorities with proper justification and after due application of mind and on all careful considerations and, hence, the present case of the Applicant is based on wrong premises and suffers from misconception and misrepresentation of laws and rules on the subject.
13. That in view of what have been submitted in the foregoing paras of the Written Statement none of the grounds for relief as mentioned in para-5 of the Applicant and relief sought for in paragraph 8 of the Application are not substantial under law and fact of the case and the Applicant's prayers are liable to be rejected ab initio and in limine.
14. That the Respondents respectfully submit that no unfair action was caused to the Applicant and there was no violation of any statutory rules or prevailing procedures. Whatever action taken against him were all taken within the ambience of law and framework of the Railways' own set of Rules.
15. That the Respondents humbly submit by reiterating the submission in the foregoing paragraph that the present O.A having no merits is liable to be dismissed with cost.

16. That under the facts and circumstances of the case as stated in the foregoing paragraphs of the Written Statement the instant application is not maintainable in law and fact of the case and, hence, liable to be dismissed.

17. That the Respondents crave leave of this Hon'ble Tribunal to file Addl. Written Statement/Re-Joinder, if any, for the ends of justice.

-VERIFICATION-

I, Sri Pradeep Kumar Singh.....S/O.....Bhupinder Singh.....aged about.....44.....years, working in the capacity of Dy.C.P.O./Gazet.....N.F.Railway, Maligaon, do hereby solemnly affirm and verify the contents of paragraphs to are derived from the records, and I believe them to be true to my knowledge and information and that I have not suppressed any material facts and the paragraphs to are my humble and respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this 22nd day of June, 2007, at Guwahati.

Place : Guwahati.

Date. 22-6-07

Pradeep Kumar Singh
SIGNATURE OF THE DEPONENT.

1. द्रुत उपर्युक्त विवरादार
2. Chief Personnel Officer
3. श्री विवर्युक्त, ग्राहक-78101
4. श्री. ग्राहक-78101
5. श्री. ग्राहक-78101

To

The Registrar,
Central Administrative Tribunal,
Guwahati

Received Service Copy
K. Paul, Advocate
22/6/07

5

1122-1123

OFFICE OF THE
GENERAL MANAGER (P)
MALTCAON.
DATE: 9/23/2007.

FIGN- 505
NO. 5/205/0 PL-XII (C)

**Sub-Rectification of Administrative Error-Correction of
Proforma Promotion-Payment of a/cruel Hon'ble
Apex Court's Judgement dated 21/9/2005.**

A copy of Railway Board's letter No.E(NG)I-2005/RBI/2126.C, dated 23/2/2007(RBE No. 27/2007), on the above-mentioned subject is forwarded for information and necessary action. Board's earlier letter dated 2/7/2007 a ref. is also enclosed. The present letter was circulated under GM(E)(ML) 2005/2006/2007/2008/2009/2010/2011/2012/2013/2014/2015/2016/2017/2018/2019/2020/2021/2022/2023/2024/2025/2026/2027/2028/2029/2030/2031/2032/2033/2034/2035/2036/2037/2038/2039/2040/2041/2042/2043/2044/2045/2046/2047/2048/2049/2050/2051/2052/2053/2054/2055/2056/2057/2058/2059/2060/2061/2062/2063/2064/2065/2066/2067/2068/2069/2070/2071/2072/2073/2074/2075/2076/2077/2078/2079/2080/2081/2082/2083/2084/2085/2086/2087/2088/2089/2090/2091/2092/2093/2094/2095/2096/2097/2098/2099/20100/20101/20102/20103/20104/20105/20106/20107/20108/20109/20110/20111/20112/20113/20114/20115/20116/20117/20118/20119/20120/20121/20122/20123/20124/20125/20126/20127/20128/20129/20130/20131/20132/20133/20134/20135/20136/20137/20138/20139/20140/20141/20142/20143/20144/20145/20146/20147/20148/20149/20150/20151/20152/20153/20154/20155/20156/20157/20158/20159/20160/20161/20162/20163/20164/20165/20166/20167/20168/20169/20170/20171/20172/20173/20174/20175/20176/20177/20178/20179/20180/20181/20182/20183/20184/20185/20186/20187/20188/20189/20190/20191/20192/20193/20194/20195/20196/20197/20198/20199/20200/20201/20202/20203/20204/20205/20206/20207/20208/20209/202010/202011/202012/202013/202014/202015/202016/202017/202018/202019/202020/202021/202022/202023/202024/202025/202026/202027/202028/202029/202030/202031/202032/202033/202034/202035/202036/202037/202038/202039/202040/202041/202042/202043/202044/202045/202046/202047/202048/202049/202050/202051/202052/202053/202054/202055/202056/202057/202058/202059/202060/202061/202062/202063/202064/202065/202066/202067/202068/202069/202070/202071/202072/202073/202074/202075/202076/202077/202078/202079/202080/202081/202082/202083/202084/202085/202086/202087/202088/202089/202090/202091/202092/202093/202094/202095/202096/202097/202098/202099/2020100/2020101/2020102/2020103/2020104/2020105/2020106/2020107/2020108/2020109/2020110/2020111/2020112/2020113/2020114/2020115/2020116/2020117/2020118/2020119/2020120/2020121/2020122/2020123/2020124/2020125/2020126/2020127/2020128/2020129/2020130/2020131/2020132/2020133/2020134/2020135/2020136/2020137/2020138/2020139/2020140/2020141/2020142/2020143/2020144/2020145/2020146/2020147/2020148/2020149/2020150/2020151/2020152/2020153/2020154/2020155/2020156/2020157/2020158/2020159/2020160/2020161/2020162/2020163/2020164/2020165/2020166/2020167/2020168/2020169/2020170/2020171/2020172/2020173/2020174/2020175/2020176/2020177/2020178/2020179/2020180/2020181/2020182/2020183/2020184/2020185/2020186/2020187/2020188/2020189/2020190/2020191/2020192/2020193/2020194/2020195/2020196/2020197/2020198/2020199/2020200/2020201/2020202/2020203/2020204/2020205/2020206/2020207/2020208/2020209/20202010/20202011/20202012/20202013/20202014/20202015/20202016/20202017/20202018/20202019/20202020/20202021/20202022/20202023/20202024/20202025/20202026/20202027/20202028/20202029/20202030/20202031/20202032/20202033/20202034/20202035/20202036/20202037/20202038/20202039/20202040/20202041/20202042/20202043/20202044/20202045/20202046/20202047/20202048/20202049/20202050/20202051/20202052/20202053/20202054/20202055/20202056/20202057/20202058/20202059/20202060/20202061/20202062/20202063/20202064/20202065/20202066/20202067/20202068/20202069/20202070/20202071/20202072/20202073/20202074/20202075/20202076/20202077/20202078/20202079/20202080/20202081/20202082/20202083/20202084/20202085/20202086/20202087/20202088/20202089/20202090/20202091/20202092/20202093/20202094/20202095/20202096/20202097/20202098/20202099/202020100/202020101/202020102/202020103/202020104/202020105/202020106/202020107/202020108/202020109/202020110/202020111/202020112/202020113/202020114/202020115/202020116/202020117/202020118/202020119/202020120/202020121/202020122/202020123/202020124/202020125/202020126/202020127/202020128/202020129/202020130/202020131/202020132/202020133/202020134/202020135/202020136/202020137/202020138/202020139/202020140/202020141/202020142/202020143/202020144/202020145/202020146/202020147/202020148/202020149/202020150/202020151/202020152/202020153/202020154/202020155/202020156/202020157/202020158/202020159/202020160/202020161/202020162/202020163/202020164/202020165/202020166/202020167/202020168/202020169/202020170/202020171/202020172/202020173/202020174/202020175/202020176/202020177/202020178/202020179/202020180/202020181/202020182/202020183/202020184/202020185/202020186/202020187/202020188/202020189/202020190/202020191/202020192/202020193/202020194/202020195/202020196/202020197/202020198/202020199/202020200/202020201/202020202/202020203/202020204/202020205/202020206/202020207/202020208/202020209/2020202010/2020202011/2020202012/2020202013/2020202014/2020202015/2020202016/2020202017/2020202018/2020202019/2020202020/2020202021/2020202022/2020202023/2020202024/2020202025/2020202026/2020202027/2020202028/2020202029/2020202030/2020202031/2020202032/2020202033/2020202034/2020202035/2020202036/2020202037/2020202038/2020202039/2020202040/2020202041/2020202042/2020202043/2020202044/2020202045/2020202046/2020202047/2020202048/2020202049/20202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FOR GENERAL MANAGER (P)

ΜΑΤΕΓΑΩΝ

Malaysian
copy of Dr. Bala's letter No. C/MG/2005/PMT/34 (c.c. dated
23/2/2007)

Sub:- Rectification of administrative errors – Grant of proforma promotion – Payment of arrears – Hon'ble Apax Court's Judgement dt.21.09.2008.

A copy of Hon'ble Supreme Court's judgement dt.13.08.1997 in Civil Appeal No.8904 of 1994 (Union of India & Others Vs. P. O. Abraham & Others) upholding the provisions of para 228 of IREM, Vol. I, 1989 regarding non-payment of back wages on proforma promotion was circulated to the Railways alongwith this Ministry's letter No.E(NG)I-2002/PM1/16 dt.02.07.2003. The validity of these instructions has again been upheld by Hon'ble Apex Court recently in Civil Appeal No.4222/2006 arising out of SLP(C) No.23021/2005 in Union of India (through General Manager, Northern Railway & Others) Vs. Shri Tarsom Lal & Others in their judgement dt.21.09.2006. A copy of the above judgement is sent herewith for information and guidance.

Please acknowledge receipt.

हार्षवर्धक का कार्यलय

Office of the
General Manager

ଦିଗ୍ବିଜ୍ୟ

Light

01 MAR 2677

(Chander Shekhar)
Dy. Director, Estt.(NG)I,
Railway Board.

1 New Delhi, Dated 23-02-2007

DA: As above.

No. E(NG)I-2005/PM1/34C.C.

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IN THE SUPREME COURT OF INDIA

Civil Appeal No. 4272 of 2006
(Arising out of SLP (C) No. 23021 of 2005)

Appellants: **Union of India (UOI) and Anr.**

V

Respondent: **Tai Lal and Ors.**

JUDGMENT

Arijit Pasayat, J.

Leave granted.

Union of India and its functionaries call in question correctness of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the present appellants and affirming the order of the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short the 'CAT').

Background facts in a nutshell are as follows:

Respondent filed the Original Application claiming that he was entitled to pay and allowance from the date on which proforma promotion was given and not from the date of actual promotion. Appellants relied on circular dated 15/17 September, 1964 to contend that the claim was untenable.

According to CAT the only question which was to be decided was whether the respondent was entitled for his pay and allowance from August, 2001 on which date he was actually promoted as M.C.M. or with effect from 9.9.1997 from which date he has been given promotion on proforma basis. Appellants denied him the arrears with effect from 9.9.1997 on the ground that he has not worked on the promotional post during the said period and as such he was not entitled for the revised pay from that date. Reliance was placed on paragraph 228 of Indian Railway Establishment Manual (in short 'IREM') Volume I dealing with employees who have lost promotion on account of administrative error. It inter alia provides that in such cases the pay should be fixed on proforma basis and the enhanced pay was to be allowed from the date of actual promotion and no arrears on this account was to be paid for the past period as he did not actually perform duties and responsibilities of the higher post. The Tribunal relying on a decision of this Court in Harbans Singh v. State of Punjab and Ors. (1995 Supp. (3) SCC 471) held that the stand was unsustainable. Tribunal's order was assailed before the High Court.

The High Court as noted above dismissed the writ petition relying on the judgment in Harbans Singh's case (supra).

Learned Counsel for the appellant submitted that the view of the Tribunal as affirmed by the High Court does not reflect the correct position in law. Para 228 of IREM was pressed into service to contend that the Tribunal or the High Court in the instant case did not express any view on the legality of the provision. The CAT and the High Court merely relied on Harbans Singh's case (supra) without indicating as to how the factual scenario of that case has any application to the facts of the present case.

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There is no appearance on behalf of the respondent in spite of notice.

Para 228 of IREM reads as follows:

"228. Erroneous Promotions (I). Sometimes due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:

- i. Where a person has not been promoted at all because of administrative error, and
- ii. Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

This Court has occasion to deal with the same issue in Union of India and Ors. v. P.O. Abraham and Ors., in C.A. 8904 of 1994 decided on 13.8.1997. In that case the appeal was filed against the order of the Ernakulam Bench of CAT. Reliance was placed by the Union of India and its Functionaries in that case on Railway Board's Circular dated 15/17 September, 1964 which inter alia provided as follows:

"No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post."

One Bench of CAT held that clause to be invalid. But in Virender Kumar, General Manager, Northern Railways, New Delhi v. Avinash Chandra Chaudhary and Ors. (1990(3) SCC 472) the view was held to be not correct. The order in Abraham's case (supra) reads as follows:

"This appeal is directed against the order of the Central Administrative Tribunal, Ernakulam Bench, in O.A. No. 649/90 dated 30th September, 1991. Though the appeal challenges the order in its entirety, Mr. Goswami, learned senior counsel for the appellants, fairly stated that the appeal is now confined only to the payment of back-wages ordered to be given by the Tribunal.

By the order under appeal, the Tribunal has allowed the application which challenged the Railway Board Circular dated 15/17 September, 1964. The said Circular inter alia, contains the following clause:

No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.

Consequent to the deletion of the above clause, further directions were given. Learned Counsel submits that the clause, which has been directed to be

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Allied
Advocate
22/6/02
Advocate

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removed, is in accordance with the judgment of this Court in Virender Kumar, General Manager, Northern Railways, New Delhi v. Avinash Chandra Chaudhary and Ors. (1990(2) SCR 769). This Court, in that case, held on principle of 'no work no pay' that the respondents will not be entitled to the higher salary as they have not actually worked in that post. The clause, which has been directed to be deleted by the Tribunal, being in consonance with the ruling of this Court, we are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent this appeal is allowed. The result is that the respondents will be given deemed promotion, if any, before retirement and also the benefit in the matter of fixing pension. No costs."

In view of what has been stated in Virender's case (supra) and P.O. Abraham's case (supra), Tribunal and the High Court were not justified in granting relief to the respondent. Reliance on Harbans Singh's case (supra) was uncalled for. The orders are set aside. The appeal is allowed but in the circumstances without any orders as to costs.

Sd/-.....J
(ARIJIT PASAYAT)

Sd/-.....J
(LOKESHWAR SINGH PANTA)

New Delhi
September 21, 2006.

allied
2nd
22/6/07
Advocate

Ch - 5 JUL 2007

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH..GUWAHATI.

O.A. No. 20 of 2007.

Shri Biprajit Dutta Applicant.

-vs-

The Union of India & Ors. Respondents.

**REJOINDER FILED BY THE APPLICANT TO THE
WRITTEN STATEMENT FILED BY THE RESPONDENTS.**

1. That the applicant has received a copy of the written statement filed by the respondents in the aforementioned Original Application. The applicant has gone through the same and has understood the meaning of the contents thereof and begs to file his rejoinder. In this connection, the applicant respectfully states that the Hon'ble Tribunal on 22-06-2007 was pleased to fix the aforesaid case for hearing on 13-07-2007. The respondents filed their written statement on 22-06-2007 in the aforesaid case. In the copy of the written statement furnished to the applicant, the document marked as ANNEXURE-A, which is a copy of the Railway Board's Circular dated 23-02-2007, was not affixed. Later on, the applicant collected a copy of the said document (Annexure-A), from this Hon'ble Tribunal on 26-06-2007. After going through the said document marked as Annexure-A to the written statement, the applicant felt it necessary to submit a rejoinder. Hence, this application seeking permission of the Hon'ble Tribunal for filing rejoinder to the written statement of the respondents in the aforesaid case. If the

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Biprajit
Ch Biprajit Dutta
Filed by, Ch Biprajit Dutta
through, Krishnendu Paul, Advocate, 5.7.07.

Hon'ble Tribunal is graciously pleased to accord permission, this application may be treated, as the rejoinder itself.

21
Hon'ble Tribunal
C.M. PROST
Bijoya

2. That the prayer made by the applicant in O.A. No.20/2007, is for a direction towards the respondents to release the arrear salary of the applicant w.e.f. 20-04-1998 till 01-06-2006 in the post of Executive Engineer, Senior Scale. It may be pertinent to mention here that by the impugned order dated 31-10-2006, the applicant's claim for monetary benefit/arrear salary in the post of Executive Engineer, Senior Scale, w.e.f. 20-04-1998, has been rejected by the respondents.

3. That in paragraph 5 of the written statement, the respondents have stated that the Hon'ble Tribunal set aside the order of punishment imposed following the memorandum of major penalty charge sheet issued on 28-06-1997 to the applicant. The Hon'ble Tribunal's order was upheld by the Hon'ble High Court by order dated 08-01-2004. Since another Disciplinary Proceeding was impending against the applicant and a memorandum of minor penalty charge was issued on 10-05-2004 the sealed cover could not be opened.

The aforesaid contention was raised by the respondents in the earlier set of litigation, i.e., O.A. No.2/2005, and the Hon'ble Tribunal by its judgment and order dated 06-03-2006, observed as follows:

"The contention of the respondents is that there are subsequent proceedings against the applicant and therefore, the sealed cover could not be opened. We are of the view that it is not in conformity of the legal position since the cloud that was prevailing prior to 1998 when

the DPC was held and the applicant's selection was withheld and kept in sealed cover it has to be opened since the applicant was exonerated and the benefit has to be granted to the applicant if he is otherwise fit for promotion."

Therefore, the respondents are estopped from raising the above contention in the present proceedings to deny him the arrear pay and allowances w.e.f. 20-04-1998.

*Bindi Singh
Constituted
Date 27/07/2012*

4. That the respondents have stated in paragraph 6 of their written statement that they have complied with the Hon'ble Tribunal's order dated 06-03-2006 passed in O.A. No.2/2005 and opened the sealed cover wherein the DPC considered him fit for promotion to the Senior Scale as Executive Engineer and the applicant was promoted to Senior Scale on adhoc basis notionally from the date his junior promoted to the Senior Scale on adhoc basis, i.e., from the date 20-04-1998 and his Pay and Allowances etc. were given to him from the date he shouldered the responsibility in the higher grade post in accordance with the Railway Board's order No.E(NG)I-2005/PM-1-34 CC dated 23-02-2007 and thus the orders of the Hon'ble Tribunal mentioned above was complied with by the respondents.

In this connection, the applicant states that although they have promoted him to Senior Scale w.e.f. 20-04-1998, they have refused to grant him pay and allowance w.e.f. 20-04-1998 on the ground that the applicant has not shouldered the responsibility in the higher grade post in accordance with the Railway Board's circular dated 23-02-2007. But the said Railway Board circular contemplates denial of pay and allowance in cases where promotion is granted as rectification of administrative error, meaning

thereby, in case of promotion of a staff who has earlier lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis his juniors already promoted. However, in the instant case, the said circular of the Railway Board is not applicable because the applicant was purposefully denied promotion despite repeated reminders submitted by him. After the punishment order dated 08-11-2001 was set aside by this Hon'ble Tribunal on 09-05-2002 in O.A. No.310/2001, the applicant submitted a representation dated 03-06-2002 to the respondents praying for opening the sealed cover and to promote him to the next higher post. But the respondents chose to ignore the same. Thereafter, on 09-08-2004, the applicant submitted another representation before the respondents praying for opening the sealed cover in respect of DPC recommendation held in 1998 in the matter of promotion to Senior Scale and for implementation of the same. This representation also failed to evoke any response from the respondents. It may be pertinent to mention here that in spite of standing instruction as well as Circulars of the Railway Board (Annexure H of the present O.A.), the respondents intentionally and deliberately did not open the sealed cover containing the recommendation of the DPC held in the year 1998 in respect of the applicant. It was only when the Hon'ble Tribunal interfered in the matter, in O.A. No.2/2005, did the respondents promote the applicant to the Senior Scale but that has also turned out to be an eyewash because no financial benefits have been released to the applicant in spite of the favourable recommendation of the DPC held in 1998 promoting him to the Senior Scale with effect from 20-04-1998.

Therefore, in case of the applicant, the respondents cannot claim that it is promotion which was not earlier granted on account of administrative error. The repeated representations of the applicant requesting the respondents to open the sealed cover and the fact that he had to approach

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this Hon'ble Tribunal for a direction to the respondents to open the sealed cover, are pointers to the fact that the respondents have intentionally and deliberately denied promotion to the applicant. Therefore, they cannot be heard to say that it was only due to "administrative error", as explained in the Railway Board's Circular dated 23-02-2006, that the applicant was not promoted earlier so as to deprive the applicant from his legitimate dues with effect from 20-04-1998. The said circular is clearly not applicable to the case of the applicant because it was not due to "administrative error" but due to intentional denial on the part of the respondents, that he was not promoted earlier. Thus, the respondents cannot deny pay and allowances to the applicant in the Senior Scale w.e.f. 20-04-1998.

Copies of the aforesaid representation(s) dated 03-06-2002 and 09-08-2004 are annexed hereto and marked as **ANNEXURE – 1 and 2**, respectively, to this rejoinder.

5. That the respondents have stated in paragraph 7 of their written statement that the applicant got the benefit of promotion to the post of Senior Scale, Group-B on adhoc with effect from 20-04-1998 on notional basis and pay and allowances has been paid to him from the date he shouldered the higher responsibility i.e., from 02-06-2006 admissible as per Rules according to Railway Board's Circular dated 23-02-2007.

In this connection, the applicant states that the respondents by taking recourse to the Railway Board's Circular dated 23-02-2007 cannot deny pay and allowances to the applicant w.e.f. 20-04-1998 because of the simple reason that the said Circular of the Railway Board does not contemplate denial of pay and allowances in the higher post in case of promotion on notional basis when there is intentional and deliberate denial of promotion to

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a staff. Only in case of administrative error can there be a direction for grant of pay and allowances in the higher post from the date of shouldering of higher post and denial of pay and allowances from the date of notional promotion. In case of the applicant, the respondents have deliberately and intentionally denied him promotion w.e.f. 20-04-1998 when his juniors were promoted to the Senior Scale. Therefore, subsequently when the respondents have promoted the applicant to the Senior Scale on 02-06-2006 w.e.f. 20-04-1998 but granting pay and allowances in the higher post only from 02-06-2006, they cannot take the plea of administrative error for the delay in promoting him, for denying pay and allowances to the applicant from 20-04-1998.

6. That the respondents have stated in paragraph 8 of the written statement that the decision to deny pay and allowances in the promoted post to the applicant for the period from 20-04-1998 to 01-06-2006 was taken by the competent authority on the strength and face of the Railway Board's Circular dated 23-02-2007.

The above stand of the respondents is clearly ridiculous because when the decision to deny arrear pay and allowances was taken by the respondents as communicated by the impugned order dated 31-10-2006, the aforesaid Circular of the Railway Board was not in existence. Besides, the said Circular contemplates a situation when promotion is delayed due to administrative error. Whereas in the present case, promotion has been intentionally and deliberately denied. Therefore, the Circular cannot come to the aid of the respondents to deny arrear pay and allowances to the applicant.

7. That the respondents in paragraph 10 of their written statement have stated that the applicant prayed for consequential benefits like arrear pay and allowances and the same was allowed by the Hon'ble Tribunal vide order dated 06-03-2006. Hence, raising of the issue for consequential benefits of arrear pay and allowances is not tenable in the eye of law by filing the subsequent Court case.

In this connection the applicant states that the respondents have made a mockery of the order dated 06-03-2006 passed by this Hon'ble Tribunal in O.A. No.2/2005, by promoting the applicant to the higher grade with effect from 20-04-1998 only on notional basis. The respondents have promoted the applicant on paper only without any tangible benefit to the applicant.

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(Anup Singh)
Ans 1051 Dated

8. That the respondents have submitted in paragraph 12 of their written statement that the action in the matter of granting promotion to the applicant "by opening the sealed cover system" as directed by the Hon'ble Court and taken by the respondents were quite legal, valid and proper and have been taken by the competent authorities with proper justification and after due application of mind and on all careful considerations.

In this connection, the applicant states that on one hand the respondents claim to have granted promotion to the applicant as directed by the Hon'ble Tribunal whereas on the other hand when the question of grant of pay and allowances arise in the higher grade, then they claim that the applicant is not entitled for it. Be it stated here that the recommendation of the DPC in 1998 was in favour of promoting the applicant to the Senior Scale w.e.f. 20-04-1998. If the respondents after opening the sealed cover of the DPC recommendation of 1998, decide to promote the applicant to the Senior Scale but grant financial benefit in the higher grade only from 02-06-

2006 instead of 20-04-1998, how can they claim that they have complied with the Hon'ble Tribunal's order by opening the sealed cover. The applicant states that the action of the respondents in promoting the applicant to the higher grade without payment of arrear pay and allowances in the promoted post, is nothing but an eyewash. It is without any justification, illegal and invalid.

9. That the applicant, most respectfully submits that in spite of repeated representations to open the sealed cover in respect of the recommendation of the DPC held in the year 1998 in the matter of promotion to the Senior Scale, the respondents did not pay heed to such representation deliberately and with the intention to deprive the applicant from his legitimate dues. Had the respondents acted in time in opening the sealed cover of the recommendation of the DPC held in the year 1998, soon after the exoneration of the applicant from all the charges, then in that case the applicant would have suffered no serious prejudice. The respondents have failed to dislodge the claim of the applicant for the grant of arrear pay and allowances with effect from 20-04-1998 to 02-06-06 in the Senior Scale. The Hon'ble Tribunal may be pleased to direct the respondents to grant the pay and allowance in the Senior Scale w.e.f. 20-04-1998 within a specific time period alongwith interest and cost.

*By virtue of
(S) PRESENT DATED*

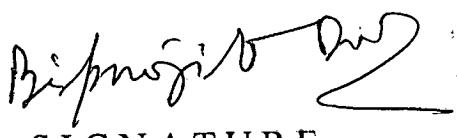
VERIFICATION.

I, Shri Biprajit Dutta, son of Shri B.C. Dutta, aged about 48 years, residing in Railway Bungalow No.294/D, Sarada Colony, Maligaon, Guwahati-781011, do hereby verify that the statements made in paragraphs 1,2,3,4 (in part),5,6,7 and 8 are true to my knowledge and those made in paragraph 4 (in part) are being matters of records true to my information derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

Accordingly, I sign this verification on this the 5th day of July, 2007 at Guwahati.

Date: 5-7-2007.

Place: Guwahati.


SIGNATURE
(BIPRAJIT DUTTA)

To,

The General Manager, (P)
N.F. Railway,
Maligaon, Ghy-11.

Through proper channel.

Sir,

Sub. : Promotion to Sr. scale in Engineering Department.

I have the honour to state the followings for your kind consideration and necessary order please.

That Sir, I am a qualified Engineer possess AMIE (INDIA) from the Institution of Engineers (India) and working as Assistant Executive Engineer group-B posted at K.A project under kind control of G.M. Construction, N.F. Railway.

That Sir, in the year 1994-95 I conducted the sieve test and accepted some quantity of ballast while working as AEN/CON, Dimapur. Thereafter a surprise check was conducted by CBI/Silchar by taking non-representative sample from the middle of the stack and on that basis a Charge Sheet was served to me and an enquiry was conducted by appointing an Enquiry Officer who, INTER-ALIA, held that charges against me were not established. However the G.M./CON, N.F. Railway was kind to disagree with the Enquiry Officer's finding and imposed a punishment of reduction of pay by one stage in the time scale for a period of one year vide dt. 21.2.2002. I preferred an appeal against this. But the appeal was not disposed off. After waiting about one year I filed O.A. 310 of 2001 before hon'ble CAT, Guwahati. During the pendency of the said O.A. before the CAT, Guwahati, my punishment dt. 21.2.2002 was withdrawn and a fresh punishment of reduction of pay by one stage with cumulative effect was issued under GM/CON, N.F. Railway order dt. 8.11.2001. Hon'ble CAT, Guwahati vide judgement and order dt. 9.5.2002 SET-ASIDE the order of the punishment of the GM/CON dt. 8.11.2001.

That Sir, during the pendency of the DAR proceeding DPC was held and a panel was made for promotion AEN/group-B to the Sr. scale and a number of my juniors namely S/Sri (1) G.C. Sarkar, (2) M.K. Pandey, (3) Anil Kumar and (4) U.N. Sonwal were promoted to Sr. scale in the year 1998.

Contd. P.2

Certified to be true

K. Paul

Advocate

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That Sir, under Railway Boards letter No. E (D & A) 92 RG 6.149 (B) dt.22.01.93 the Board issued instruction to the effect that a Railway servant against whom a Charge Sheet has been issued and Disciplinary proceedings is pending the Departmental promotion Committee shall ASSESS the suitability of the Railway servant concerned along with other illegible candidate without taking in to consideration the disciplinary proceeding pending and the Assessment so made shall be kept in a SEAL COVER to be opened on the conclusion of disciplinary proceeding resulting the dropping of allegation against the Railway servant and the Railway servant shall be assigned his promotion with reference to the date of promotion of his next junior.

That Sir, not only the promotion of the junior in the year 1998 there were two further panel of AEN/group-B junior to me recommended by the DPC in the year Jan/2001 and Feb/2002 for promotion to Sr. scale where my name was not considered due to the punishment dt. 21.02.2002 (which was subsequently withdrawn on 8.11.2001 by DA and Set-Aside by the hon'ble CAT, Guwahati).

That Sir, The circumstances as stands now, I stand EXONERATED from the charge as a result of setting aside of the punishment order by the hon'ble CAT, Guwahati and as a result I am to be assigned my position in the panel formulated by DPC in the year 1998 for promotion to the Sr. scale. In case my case was not consider in the year 1998 and SEAL COVER procedure was not adopted then a review DPC has to be held and in case for any reason I am not empanelled than my case is to be consider a fresh on review DPC for the year 2001 or 2002.

Under the circumstances I humbly pray that your honour would be kind enough to issue directives for my promotions with reference to my junior as mentioned earlier and for act of this kindness I shall remain ever grateful to you.

Yours faithfully,

(BIPROJIT DUTTA)

Asst. Executive Engineer,
Ambasa/K-A project,
Construction N.F. Railway

Date : 3rd June/2002

Concurrence
Done
4/6/02

RECEIVED
P.D.W.E.R.

4/6/02
P.D.W.E.R.

R

To:

The General Manager
N F Railway Maligaon
G U W A H A T I - 11
(Through Proper Channel)

via 15/6/2002

Sir,

in

Sub:- Opening of the sealed cover for promotion to Sr. Scale Engineering Department.

Ref:- My representation dated 3.6.2002.

I have the honour to request you to be kind enough to refer my representation dated 3rd June 2002 and order for opening sealed cover in respect of D.P.C. recommendation held in 1998 in the matter of promotion to Sr. Scale in the Engineering branch of N. F. Railway and for implementation of the same.

With regards,

Enclo: Xerox copy of

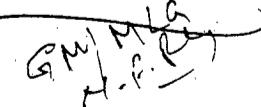
- (1) Promotion Order No.08/98
- (2) Seniority list of Gr.'B' Officer
- (3) Copy of representation dt.03.06.02.

Yours faithfully,


(Biprojit Dutta)

AXEN/Con/N.F.Railway/Pl.,
Maligaon.

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26/8/04

GM

Certified to be true.

K. Paul
Advocate