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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No 01/251/2007

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

E.P/M.A No 18/2008

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SECTION OFFICER (Judl.)

skelis
09/10/07

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:
ORDERS SHEET

1. Original Application No. 251/07
2. Mise Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) A. K. Sarkar -vs- Union of India & Ors

Advocate for the Applicants:- K. N. Chaudhury, Ms. R. S. Chaudhury
M. Mahanta

Advocate for the Respondents:- Railway advocate

G. Basumatari, Esq. case for Resp't. No. 3

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed C. F. for Rs. 50/- deposited via IPO/BD No. <u>326641778</u> Dated <u>80-8-07</u>	<u>20.9.07</u>	<p>The applicant joined Railway service in 1977 and holding various posts. Presently he is serving as Senior AEA/T-I. A DPC was held by the UPSC to consider eligible Group-B officers for promotion to Group-A service, wherein the applicant's name was placed in the extended panel. He filed representation on 24.2.06 for his promotion to Group-A. Finally he was not inducted to Group-A service and he was not eligible for promotion. He approached the Public Information Officer, Railway Board seeking information under the RTI Act 2005 about his non induction to Group-A on 11.6.07. He was informed that his name was considered by the DPC held on 26.2.02 and 27.2.02 against the panel. However the recommendations of the DPC could not be acted upon so far due to disciplinary cases pending against him. According to the applicant during the said period of DPC or prior that no</p>

Petition is being for issue
whereas one received.

AP/
13/9/07

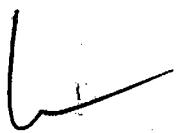
20.9.07 disciplinary proceeding was pending against him. Aggrieved by the said action of the respondents he has filed this O.A. praying for his promotion to Group-A with effect from 5.3.02 in terms of the recommendation of the DPC.

Heard Mr.K.N.Choudhury, learned Senior counsel assisted by Mrs.R.S.Choudhury for the applicant and Dr.J.L.Sarkar, learned Railway standing counsel for the respondents.

When the matter came up learned counsel for the respondents wanted to take instruction. Considering the issue involved the O.A is admitted. Issue notice to the respondents.

Post on 14.11.07 for further order.

By way of interim order this court directs that pendency of this application shall not be a bar for the respondents to consider the case of promotion of the applicant.


Vice-Chairman

21.2.07

pg

Pl. issue notices

14.11.2007

Notice & order sent
to D/Section for
issuing to respondents
nos 1 and 2 days
regd. A/10 post

Call 10/07

D/No-902,903

DT= 28/9/07

8/11/07 Abb/

12/11 Service report awaiting.
Notice duly served to
on R-7 was not b'leef
on 22/11/08


(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman

02.01.2008 No written statement has been filed in this case. Dr. M. C. Sarma, learned Railway counsel appearing for the Respondents prays for four weeks more time to file Written Statement.

Call this matter on 01.02.2008
awaiting reply from the Respondents.

1m

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

01.02.2008

No written statement has yet been filed by the Respondents. Dr. M.C. Sarma, learned Railway Counsel appearing for the Respondents undertakes to file written statement by 8th February, 2008.

The Applicant has filed Misc. Petition No. 18 of 2008 to implead U.P.S.C as party Respondents No.3 in this case.

Having heard the learned counsel appearing for both the parties, the prayer to implead the U.P.S.C. is allowed.

PL. issue Notice ... having Headquarters at Dhoipur House, New Delhi, represented through the Secretary, is permitted to be impleaded as Respondent No.3 in this case. Learned counsel appearing for the Applicant undertakes to carry out the correction of the cause title of the Original Application and to file an extra copy of the O.A, and required postage by 8th February, 2008 for issuance of notice for newly added Respondents No.3.

Registry to issue notice to the Respondent No.3 (UPSC); requiring the said Respondent No.3 to file reply/counter/written statement by 7th March, 2008.

~~conta/~~

4
O.A.251 of 2007

As per order dt. 1/2/08
notice send to D/section
for issuing to resp.
no- 3 by regd. A/D

Post.

(P.S.)
1/2/08
D/No-1091

Dt = 15/2/08

01.02.2008

Call this matter on 10th March,

2008.

(Khushiram)
Member(A)

(M. R. Mohanty)
Vice-Chairman

Lm

15.2.08

W.Ps filed by 15.3.2008
Respondents copy
served.

Ans
15/2/08

W.Ps filed.

M
15/3/08

Notice duly served

on R-3.

(P.S.)
26/3/08

in this case reply has already been filed
by the Railways. Mr. Mahanta, learned
counsel appearing for the Applicant seeks
time to file rejoinder.

Mr. M. U. Ahmed, learned Addl. Standing
Counsel appearing for the Union of India
states that U.P.S.C. having received notice
have already entrusted the matter to Mr. G.
Baishya, learned Sr. Standing Counsel
appearing for the Union of India. On behalf of
Mr. G. Baishya, Sr. Standing Counsel
appearing for the Union of India,
Mr. M. U. Ahmed, Addl. Standing Counsel
appearing for the Union of India prays for
adjournment.

Call this matter on 30th April, 2008
awaiting rejoinder from the Applicant and
reply from the U.P.S.C

4
(M. R. Mohanty)
Vice-Chairman

Lm

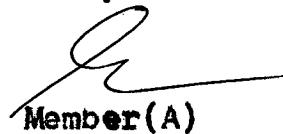
= 5 = 04 251 107

order dt. 10/4/08
issuing to both the
parties.

l/c
17/4/08.

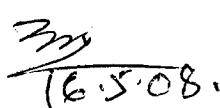
10.4.08 This case was posted to
30.4.2008, is now postponed/
re-scheduled to be listed on
16.5.08.

Send copies of this order to
both parties.


Member (A)

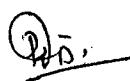

Vice-Chairman

- ① W/s filed.
- ② Rejoinder not filed.


16.5.08.

21.5.08

Rejoinder submitted
by the Applicant.
Copy served.


R.P.

19.05.2008

Mr. Madhurya Mahanta, learned
counsel appearing for the Applicant has filed
rejoinder in Court to-day; after serving a copy
on Mr. G. Baishya, learned Sr. Standing
Counsel appearing for the U.P.S.C.
Mr. M. Mahanta undertakes to serve a copy of
rejoinder on Dr. M. C. Sarma, learned
Counsel appearing for the Railways by 23rd
May, 2008.

Mr. G. Baishya, learned Sr. Standing
Counsel appearing for the U.P.S.C.
undertakes to file reply/written statement for
the U.P.S.C by 13th June, 2008.

Call this matter 13th June, 2008.


(M.R. Mohanty)

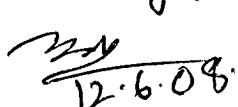
Vice-Chairman

lm

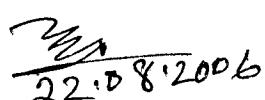
W/s filed by
the Respondent No. 3.
undertaking given
for service copy.


R.P.

The case is ready
for hearing.


12.6.08.

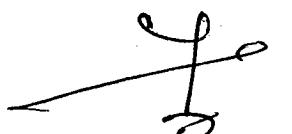
The case is ready
for hearing.


22.08.2008

13.06.08 In this case written statement and
rejoinder have already been filed by the
Respondents. UPSC, the newly added
Respondent, has also filed a written
statement today.

In the aforesaid premises this
matter is set for hearing on
25.08.2008.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

O.A.251/2007

25.08.2008

Mr.M.Mahanta, learned counsel appearing for the Applicant is present. Dr.M.C.Sharma, learned counsel appearing for the Railways has sent a letter of absence seeking adjournment. Mr.G.Baishya, learned counsel appearing for Respondent No.3(UPSC) is present.

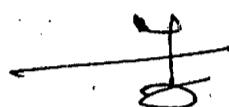
Call this matter on 25.09.2008 for hearing.

The case is ready
for hearing.

/bb/

24.9.08


(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman

25.09.2008

Mr.K.N.Choudhury, learned counsel for the Applicant is present. Dr.M.C.Sharma, Learned Counsel for the Railways has filed a leave note. Mr.G.Baishya, learned Sr. Standing Counsel, is however present in Court representing Respondent No.3.

Call this matter on 3rd October, 2008
for hearing..

lm


(S.N.Shukla)
Member(A)


(M.R.Mohanty)
Vice-Chairman

03.10.2008

Call this matter on 11.11.2008 for hearing.

/bb/


(S.N.Shukla)
Member (A)


(M.R.Mohanty)
Vice-Chairman

7
X
O.A.251 of 07

11.11.08 On the prayer of Dr. M.C. Sarma, learned counsel for the Railways, call this matter on 8th December, 2008 for hearing.

The case is ready for hearing.

SN
5.12.08


(S.N. Shukla)
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm

08.12.2008 Mr. M. Mahanta, learned counsel for the Applicant and Dr. M.C. Sarma, learned counsel for the Railways are present.

The case is ready for hearing.

SN
16.12.08

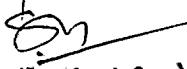
Call this matter on 17th December, 2008.


(S.N. Shukla)
Member(A)

lm

17.12.2008 Mr M. Mahanta, learned counsel for the Applicant, Dr M.C.Sarma, learned counsel for the Railways and Mr G.Baishya, learned Sr.Standing counsel for Respondent No.3 are present.

Call this matter on 19.01.2009 for hearing.


(S.N. Shukla)
Member(A)


(M.R. Mohanty)
Vice-Chairman

pg

19.1.09 No Bench is available.
List on 26.3.09 for hearing.


C.O.

8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No251 of 2007

Sri Anil Kumar Sarkar

Applicant

Versus

Union of India & others

Respondents

Against the Order dated 25.02.2009

In view of the above order of the Tribunal
and the facts of the case, it is directed

Call this matter on 16.03.09 for hearing.

Send copies of this order to the Applicant
and the Respondents.

[M.R. Mohanty]
Vice-Chairman

cm

Initiated on 16.03.2009 With the consent of the parties' counsel
before the Vice-Chairman, this case is directed to be listed on 25.03.2009
for hearing.

and the learned Counsel for the

Applicant and the Respondents

(A.K.Gaur)
Member (J)

/bb/

25.03.2009

Mr.M.Mahanta, learned counsel for the Applicant

states that Mr.K.N.Choudhury, Sr. Advocate is not
prepared to argue with the case today and as such he
prays for some time. Dr.M.C.Sarma, learned counsel for
the Railways submits written argument and the same is
placed on record. Learned counsel for the Applicant is
directed to submit written argument, if any, by the next
date.

24.03.09

List the case before the next Division Bench on
05.05.2009 for final disposal. It is made clear that the
case shall not be adjourned on the next date on any
ground whatsoever.

(Khushiram)
Member (A)

(A.K.Gaur)
Member (J)

/bb/

9
O.A.251/07

05.05.2009. Call this matter on 23rd June 2009 for hearing


(M.R. Mohanty)
Vice-Chairman

lm

14.05.2009 Dr. M.C. Sarma, learned counsel for the Railways, prays to list this matter on 19.05.2009 before Division Bench. He undertakes to inform the counsel for the Applicant about his prayer for preponement of the hearing of this case.

List this matter on 19.05.2009 for hearing.

lm

3
18.5.09


(M.R. Mohanty)
Vice-Chairman

19.05.2009 On the request of Dr. M.C. Sarma, learned counsel for the Railways, this matter has been listed to-day for hearing.

Learned counsel for the Applicant has filed a letter of absence till 29th May 2009.

In the aforesaid premises, call this matter on 23rd June 2009.


(N.D. Dayal)
Member(A)


(M.R. Mohanty)
Vice-Chairman

lm

23.06.2009

On the request of learned counsel for both the parties, call this matter on 24.07.2009 for hearing.

3
23.7.09


(M.R. Mohanty)
Vice-Chairman

/bb/

OA. 251/2007

24.07.2009 Heard Mrs.R.S.Choudhury, learned counsel for the Applicant; Dr.M.C.Sarma, learned counsel for the Railways and Mr.G.Baishya, learned counsel for the UPSC in part.

The case is ready for hearing.

3/
6.8.09.

Call this matter on 07.08.2009 for further hearing.


(M.K.Chaturvedi)
Member (A)


(M.R.Mohanty)
Vice-Chairman

/bb/

07.08.2009

Call this part heard matter on

13.09.2009.

The case is ready for hearing.

3/
12.8.09.


(M.K.Chaturvedi)
Member (A)


(M.R.Mohanty)
Vice-Chairman

/bb/

13.08.2009 Heard Mrs. R. S. Choudhury, learned counsel appearing for the Applicant and Dr. M. C. Sarma, learned counsel for the Railways and Mr. G. Baishya, learned Sr. Standing counsel for the U.P.S.C and perused the materials placed on record.

Hearing concluded. Judgment reserved.


(M.K.Chaturvedi)
Member(A)


(M.R.Mohanty)
Vice-Chairman

/lm/

21.08.2009 Judgment pronounced in open
Court. Kept in separate sheets.
Application is dismissed. No costs.

*Received
26/8/09*

*(M.K. Chaturvedi)
Memoer(A)*

*(M.R. Mohanty)
Vice-Chairman*

lm

*Received
for Sri Baisiha
Utpalparna Bhawadison
26/8/09*

*Received
Nehru & Naths
Advocate
26/8/09*

28/8/09

Judgment order dtd
21/8/2009 send to the
D/Section for issuing
to the Applicant 2
Respects, Regd post
and free copies of
both side standing
Counsel for leg hand.

D/Na 9849-9852 *28/8/09*

Attd 31/8/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....
O.A. No. 251 of 2007.

DATE OF DECISION: 21-08-2009.

Sri Anil Kumar Sarkar.

.....Applicant/s

Mr K.N.Choudhury, Mrs R.S.Choudhury & M.Mahanta

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Dr M.C.Sarma, Railway counsel for Res. Nos. 1-2 & Mr G.Baishya,
Sr.CGSC, for Respondent No. 3

.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR M.K.CHATURVEDI, ADMINISTRATIVE MEMBER

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 their Lordships wish to see the fair copy of the judgment ? Yes/No.

✓
Vice-Chairman/Member(A)

14

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI :

O.A. No. 251 of 2007

Date of Decision : 21st day of August, 2009.

HON'BLE MR. M.R. MOHANTY, VICE-CHAIRMAN
HON'BLE MR. M.K. CHATURVEDI, ADMINISTRATIVE MEMBER

Sri Anil Kumar Sarkar
Senior AFA/T-I, N.F. Railway
Resident of T/Flat No. 476/D
Nambari, Maligaon
Guwahati, Assam, PIN- 781011.Applicant

By Advocates : Mr. K.N. Choudhury, Ms. R.S. Choudhury & Mr. M. Mahanta

•Versus•

1. The Union of India
Represented by the Secretary
To the Govt. of India
Ministry of Railways
Rail Bhawan, New Delhi.
2. The General Manager
North East Frontier Railway
Maligaon, Guwahati- 11.
3. The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi- 110011.Respondents

By Advocates : Dr. M. C. Sarma, Railway Advocate for Res. Nos. 1&2.
Mr. G. Baishya, Sr. Standing Counsel for Res. No. 3.



ORDERM.K.CHATURVEDI, MEMBER(A)

The Applicant joined in Northern Railway as Junior Clerk on 04.11.1977. He was promoted to various posts and, while serving as Senior AFA/T-I in the office of the Financial Adviser and Chief Accounts Officer of N.F. Railway at Maligaon, a DPC was convened by UPSC (on 26 and 27.02.2002) to consider eligible Group B Officers (of Accounts Department) for their substantive promotion to Group A/Jr. Scale of Indian Railways Accounts Service (IRAS). In the said DPC the Applicant's name was also considered (being eligible and within the zone of consideration against the vacancies of N.F. Railway for the year 2001-02) and, accordingly, his name was placed in the extended select panel.

2. On different dates, 11 FIRs were lodged against the Applicant, by CBI, under Section 120B/420 IPC and Section 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 and, accordingly, cases were registered against the Applicant. Subsequently, during 2004, the aforesaid 11 cases were amalgamated into 3 cases being numbered as Special Case Nos.59/04, 60/04 and 62/04. Basically the allegation against the Applicant was in regard to the payment of escalation bills and freight escalation to various firms.

3. On 13.08.2003, 01.09.2003 and 05.11.2003, four numbers of Memorandum of charges were issued against the Applicant (alleging some irregularities regarding payment of escalation bills and freight escalation) and on the basis of the said four memos, four departmental

proceedings were initiated (at three different places i.e. at New Delhi, at Kolkata and at Guwahati) which are still pending.

4. In this Original Application filed under Section 19 of the Administrative Tribunals Act 1985 the Applicant has prayed for a direction on the Respondents to promote the Applicant to the Group-A (Jr. Scale) of Indian Railways Accounts Service with effect from 05.03.2002 in terms of the recommendations of the DPC held on 26.02.2992 and 27.02.2002, wherein the name of the Applicant figured in the extended panel.

5. We have heard Mrs R.S.Choudhury, learned counsel appearing for the Applicant and Dr M.C.Sarma, learned counsel for the Respondents No.1 & 2 (Railways) and Mr G.Baishya, learned Sr. Standing counsel appearing for Respondent No.3 (U.P.S.C) at length and perused the materials placed before us.

6. Our attention was invited during course of hearing, to O.M.No.22022/4/91-Estt.(A) dated 14.09.1992 issued by the Govt. of India in the Ministry of Personnel, Public Grievances and Pensions. Para 7 of the said O.M reads as under:

“A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the charges against him and the provisions contained in this OM will be applicable in his case also.”



7. In terms of the above memorandum, the Railways also issued circular dated 30.03.1993. Para 6 of the said circular reads as under :

"A Government servant who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the Departmental Promotion Committee. He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and also provisions contained in this letter will be applicable in his case also."

8. Dr M.C.Sarma, learned counsel for the Respondents submitted that under the above noted provisions, a Govt. servant in respect of whom a charge sheet has been issued, after recommendation of his case by DPC and before actual promotion, then his case should be deemed to be in sealed cover and no promotion need be given to him till finalization of cases in his favour.

9. The applicant was charge sheeted, in 4 disciplinary proceedings, before grant of actual promotion. Hence it was not possible for the Respondents to promote the Applicant (in terms of the recommendation of DPC) until finalization of the Departmental Proceedings.

10. In the above discussed premises, we hold that the Respondents cannot be directed to act upon the recommendation of DPC of February 2002 (till disposal of the Departmental Proceedings) to grant promotion to the Applicant.



11. Learned counsel for the Applicant, in course of hearing, pointed out that several of the juniors (of the Applicant) having received promotions in question between February 2002 (when the DPC recommended the names) and August 2003 (when charge sheets were issued against the Applicant); the Respondents ought to have granted promotions to the Applicant during the said period i.e. before issuance of the charge sheets. This factual allegation, which has not been raised in the O.A, was sought to be substantiated by just producing copies of promotion orders at the hearing itself.

12. The learned counsel for the Respondents, at the hearing, invited our attention to the promotion order dated 21.04.2003 (issued by the General Manager of N.F.Railway) wherein several officers were granted only ad-hoc promotions. He explained that the ad-hoc promotions were not based on DPC recommendations.

13. In view of the above discussions, we find no merit in this case and that Respondents had acted as per the Memorandum and guidelines issued by the Government/Railways. Applicant need wait till disposal of Departmental Proceedings.

14. In the result, the O.A is dismissed. No costs.

Chaturvedi
 (M.K.CHATURVEDI)
 ADMINISTRATIVE MEMBER

Yahan's
 2/08/09
 (M.R.MOHANTY)
 VICE CHAIRMAN

33 SEP 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO.

Sri Anil Kumar Sarkar.
..... Applicant
- Vs -

The Union of India & Anr.
..... Respondents

SYNOPSIS

The Applicant herein had joined the Northern Railway as a Jr. Clerk on 4.11.77. Since joining his services under the Railway Authorities, the Applicant had been promoted to various posts and presently serving as Senior AFA/T-I, in the office of the Financial Adviser and Chief Accounts officer, N.F.Railway, Maligaon. On 26.2.2002 and 27.2.2002 a DPC was convened by the UPSC to consider eligible Group-B officers of Accounts Department for their substantive promotion to Group A/Jr Scale of Indian Railways Accounts Service (IRAS), wherein the Applicant's name was placed in the extended panel. The Applicant had filed a representation dated 24.2.06 before the Secretary, Railway Board with a prayer to promote him to the post of Group A. Thereafter vide letter dated 21.12.06 the Dy. Chief Accounts Officer, N.F.Railway, Maligaon informed the Applicant that his appeal was forwarded to the Railway Board who had examined and taken a decision that since he has not been inducted to Group A service of IRAS and therefore he is not eligible for promotion to JA Grade. The Applicant, finding no other alternative, approached the Public Information Officer, Railway Board seeking information under the RTI Act, 2005 about the reasons for his non-induction to the Group-A post during the year 2002 vide representation dated 11.6.07. The Applicant received reply to his representation dated 11.6.07 from the Public Information Officer, Railway Board on 24.8.07 whereby he was informed that his name was considered by the DPC held on 26.2.02 and 27.2.02 against the vacancies of N.F.Railway for the year 2001-02 and was placed by the DPC in the extended panel. However, the recommendations of the DPC could not be acted upon so far due to disciplinary cases pending against him. Being highly aggrieved by the impugned action of the Respondent authorities in denying promotion to the Applicant to the post of Group-A/Jr. Scale of IRAS on the basis of the recommendations of the DPC convened by the UPSC on 26.2.02 and 27.2.02 purportedly on the ground of disciplinary proceedings against the Applicant preferred this Original Application.

केंद्रीय प्रशासनिक अधिदरण
Central Administrative Tribunal

13 SEP 2001

गुवाहाटी न्यायपीठ
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A.NO. 251 OF 2007

Sri Anil Kumar Sarkar

....APPLICANT

- VS -

The Union of India and Others

....RESPONDENTS

I N D E X

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Filed by: MADHURYYA MAHANTA

Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

(An Application under Section 19 of the Administrative Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 251 OF 2007

BETWEEN

Sri Anil Kumar Sarkar,
Senior AFA/T-I. N.F.Railway
Resident of T/Flat No. 476/D
Nambari, Maligaon,
Guwahati, Assam
PIN-781011

.....Applicant

-AND-

1) The Union of India

Represented by the Secretary to the Govt. of India
Ministry of Railways, Rail Bhawan,
New Delhi

2) The General Manager

North East Frontier Railway,
Maligaon,
Guwahati-11

*Respondents

DETAILS OF THE APPLICATION

*3/ The Secretary,
Union Public Service
Commission, Dholpur House,
Shahjahan Road, New Delhi-110011

(Impleaded as Resp. No-3, vide order
dated 3/2/08)

(As
14/2/08)

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

The Applicant is aggrieved by the decision of the Railway Board in denying him promotion to the Group-A/Jr. Scale of Indian Railways Accounts Service in spite of being selected and empanelled by the DPC held on 26.2.2002 and 27.2.2002.

2. JURISDICTION OF THE TRIBUNAL

Anil Kumar Sonowal
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Filed by - & the Applicant
through - Madam Mohan
Advocate

13/09/07

Advocate

Sanjay 23
 Amit Kumar

The Applicant declares that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The Applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985 as the decision of the respondent authorities came to the knowledge of the Applicant only on 24.8.07.

4. FACTS OF THE CASE

4.1 That the Applicant states that he joined Northern Railway as a Junior Clerk in the office of the Deputy Controller of Stores, Shakurbasti, Ranibagh on 4.11.1977. Since joining his services under the Railway authorities, the applicant had been promoted to various posts and presently he is serving as Senior AFA/T-I, in the office of Financial Adviser and Chief Accounts Officer, North East Frontier Railway, Maligaon. The Applicant states that during his entire service period he has rendered sincere, honest and dedicated service to the department concerned.

It is pertinent to mention herein that during his service tenure, the Applicant passed Appendix-II and Appendix-III examination held in the year 1983 and he was awarded cash prize under the sanction of the President for securing highest marks in App-III examination.

4.2 That while the Applicant was serving as Senior Accounts Officer, a Departmental Promotion Committee (DPC) was convened by the UPSC on 26.2.2002 and 27.2.2002 to consider eligible Group-B officers of Accounts Department for their substantive promotion to Group-A/Jr. Scale of Indian Railways Accounts Service (IRAS) against the vacancies for various Zonal Railways/Production Units. The Applicant further states that being eligible and within the zone of consideration, his name was also considered by the DPC held on 26.2.2002 and 27.2.2002 against the vacancies of N.F.Railway for the year 2001-02 and accordingly his name was placed by the DPC in the extended panel. However, for reasons best known to the respondent authorities, the applicant was not promoted to the post of Group-A/Jr. Scale.

4.3 That during the period 1994-95 when the Applicant was serving as Assistant Accounts Officer in Central Store Accounts (Bills) in the Office of

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the Financial Adviser and Chief Accounts Officer (Open Line), N.F.Railway, Maligaon, he was entrusted with the duties and responsibilities of supervision of the entire works of the Central Store Accounts Sections, including supervision of the bills of various firms involved in manufacturing and supplying of cast iron sleeper plates to N.F.Railway. It was in pursuance of the discharge of these duties that certain allegations were made against him which ultimately culminated in the General Manager, N.F.Railway, Maligaon issuing four numbers of memoranda of charges out of which two memoranda of charges were issued on the same date i.e. on 13.8.03 and others were issued on 1.9.03 and 5.11.03 respectively. On the basis of the said memoranda of charges four departmental proceedings were initiated against the Applicant at three different places i.e. Delhi, Kolkatta and Guwahati and being aggrieved by such action of the authorities, the Applicant filed O.A.No. 29/05 before the Central Administrative Tribunal, Guwahati Bench for directions for amalgamations of the above four charges and for hearing at the Headquarters of N.F.Railways at Maligaon. However the Hon'ble Tribunal vide Order dated 15.2.05 was pleased to dismiss the O.A.No. 29/05.

4.4

That being aggrieved by the decision of the Hon'ble Tribunal the Applicant approached the Hon'ble Gauhati High Court by filing a writ petition challenging the Order dated 15.2.05, which was numbered as W.P.(C) No. 1591/05. The Hon'ble Gauhati High Court vide Order dated 9.3.05 was pleased to dispose of the same by directing that all the four proceedings were to be taken up for hearing at the headquarters of N.F.Railway at Maligaon. However since four different enquiry officers were appointed, the Applicant filed Review petition before the Hon'ble Gauhati High Court against the Order dated 9.3.05 and the same was disposed of with direction to the respondent authority to appoint only one officer to be the enquiry officer in all the four departmental proceedings to be completed preferably within a period of three months. It is pertinent to mention herein that the said disciplinary proceedings are still pending against the Applicant. It is also relevant to mention herein that based on the similar charges on which disciplinary proceedings have been initiated against the applicant, the Central Bureau of Investigation (CBI) have also filed 11 cases against the applicant which were later amalgamated into 3 cases bearing numbers Special Case Nos. 59/04, 60/04 and 62/04. The applicant states that in all these 3 cases, the CBI has not yet framed charges against the applicant.

Anil Kumar
Sarkar

4.5 That the Applicant, having felt aggrieved filed a representation dated 24.2.06 before the Secretary, Railway Board with prayer to promote him to the post of Group A, pursuant to his selection as aforementioned. Thereafter vide letter dated 21.12.06, the Dy. Chief Accounts Officer, N.F.Railway, Maligaon informed the Applicant that his appeal was forwarded to the Railway Board who had examined and taken a decision that since he has not been inducted to Group A service of IRAS and therefore he is not eligible for promotion to JA Grade.

Copies of the representation dated 24.2.06 and letter dated 21.12.06 are annexed herewith and marked as Annexures 1 and 2 respectively.

4.6 That although the Applicant's name was considered for promotion in the year 2002, but he had no information as to whether he was selected for promotion and, if so, why he had not been given promotion till date. The Applicant, finding no other alternative, approached the Public Information Officer, Railway Board seeking information under the Right to Information Act, 2005 about the reasons for his non-induction to Group-A of IRAS post during the year 2001-02, with all official notings and vigilance report etc. vide his representation dated 11.6.07.

A copy of the said representation dated 11.6.07 is annexed herewith and marked as Annexure-3.

4.7 The Applicant received reply to his representation dated 11.6.07 from the Public Information Officer, Railway Board on 24.8.07 whereby he was informed that his name was considered by the DPC held on 26.2.02 and 27.2.02 against the vacancies of N.F.Railway for the year 2001-02 and he was placed by the DPC in the extended panel. However, the recommendations of the DPC could not be acted upon so far due to disciplinary cases pending against him. At this stage, it is pertinent to mention herein that as on 26.02.02 and 27.02.2002, the dates of which the proceedings of the DPC were held no disciplinary proceeding was pending against the applicant and, therefore, there was no justifiable reason for the respondent authorities to deny the applicant his legitimate right of promotion to the post of Group-A/Jr. Scale. From the information and documents received from the respondent authorities, it is very much clear that the respondent authorities proceeded on a wrong footing while

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denying the applicant his due promotion. Though in the information given to the applicant, it has been stated that the recommendation of the DPC in his case was kept in a sealed cover, yet the same was neither done nor could have been done in respect of the applicant as no case / disciplinary proceeding was pending against the applicant as on that date. Further, as reflected from the minutes of the DPC proceedings, it will be noticed that the DPC proceeded on the basis as if disciplinary proceedings pending against the applicant. It will be further noticed that the authorities themselves were not clear as to whether chargesheet had been issued / decision to issue chargesheet had been taken in the case of the applicant. Since the said fact was not clear, it was decided by the DPC to seek further clarification from NFR before the decision could be taken on his promotion. It is thus evident that the case of the Applicant was never kept under "sealed cover", which fact came to be unfolded from the information received by the Applicant from the Public Information Officer, Railway Board under the RTI Act. In fact, the documents received from the authorities reveal the colourable exercise of powers by the authorities, in as much as, the case of the applicant has been kept hanging without any decision being taken on the same. It is evident that the authorities could not have adopted the "sealed cover" procedure and interestingly the notings in the file reveal that the authorities could not decide about the action to be taken in the case of the Applicant. Hence the Applicant is legally entitled to the directions prayed for in the Original Application.

Copies of the document received by the Applicant from the Public Information Officer, Railway Board are annexed herewith and marked as Annexure-4 series.

5. GROUND FOR RELIEF/S WITH LEGAL PROVISIONS

5.1 For that the impugned action of the respondent authorities in denying promotion to the Applicant to the post of Group-A/Jr. Scale of IRAS on the basis of the recommendations of the DPC convened by the UPSC on 26.2.02 and 27.2.02 purportedly on the ground of disciplinary proceedings is unfair and unreasonable and is in complete violation of the rights guaranteed under Article 14 and 16 of the Constitution of India.

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 5.2 For that the respondent authorities failed to take note of the law laid down by the Hon'ble Apex Court that promotion cannot be withheld merely because some disciplinary / criminal proceedings are pending against the Government Servant. Until such time chargesheet is filed it cannot be said that either a Disciplinary proceeding/Criminal case is pending. On 26.2.02 and 27.2.02, no such proceedings were pending to withhold the recommendations of the DPC. Therefore the respondent authorities acted arbitrarily in denying promotion to the Applicant.

5.3 For that the documents furnished to the Applicant under the provisions of Right to Information Act, 2005, would reveal that the respondent authorities were in state of utter confusion. A responsible authority like the respondent ought not to have acted in a manner as has been done in the instant case. Admittedly on the date when the DPC considered the promotion of the Applicant neither a disciplinary proceeding nor a criminal case as has been understood by the Apex Court in **AIR 1991 SC 2010, Union of India-vs- K.V.Jankiraman and ors.** were pending against the Applicant. Therefore question of adopting sealed cover procedure and/or withholding the recommendation of the DPC, in the instant case, does not and cannot arise. From the inter departmental communications made over the Applicant under the RTI Act, 2005, reveals that the respondent authorities did not give effect ^{to} _{to} the recommendation of the DPC on the purported ground that the disciplinary proceeding was pending against the Applicant. Since there is no legal justification to take such a view, the action of the authority, is, therefore arbitrary, capricious and discriminatory and, as such, the same cannot withstand judicial scrutiny.

5.4 For that the decision of the respondent authorities was perverse in nature and was the result of non-application of mind to the relevant facts and circumstances of the case including the legal provisions in this regard. Since the decision of the respondent authorities in denying the promotion of the applicant was taken only on the ground of pending departmental proceeding so the decision is bad in the eye of law.

5.5 The Hon'ble Apex Court in a catena of decisions has held that the consideration of the case of an employee for promotion, selection grade,

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crossing of efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of any preliminary enquiry/ criminal investigation against him.

5.6 For that the respondent authorities at no point of time took into consideration the fact that no memorandum of charge/charge- sheet was issued against the applicant at the point of time when the promotion of the applicant was considered by the DPC.

5.7 For that the respondent authorities, without any legal justification has denied promotion to the applicant. The said omission has resulted in grave and serious prejudice to the applicant in addition to the fact that such impugned action smacks of colourable exercise of power. Hence, this Hon'ble Tribunal in exercise of its powers may be pleased to direct the respondent authorities to consider the case of the applicant and give him the due promotion with retrospective effect, i.e. from the date on which other similarly situated persons were promoted.

5.8 For that it is evident that the decision taken by the respondent authorities had been taken mechanically without application of mind to the relevant factors. The reasons other than relevant and bonafide had been taken note of while taking the impugned decision.

5.9 For that, in the backdrop of the facts and circumstances that have been narrated hereinabove, it is apparent that the decision of the respondent authorities in denying the promotion to the applicant is in clear violation of Article 14 and 16 of the Constitution of India in addition to being totally opposed to principles of acting fairly.

6. DETAILS OF REMEDIES EXHAUSTED

That the Applicant declares that he has no other alternative and efficacious remedy available to him except by way of this instant application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT

That the Applicant declares that no such application, writ petition or suit has been filed 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. RELEIF SOUGHT FOR

Under the facts and circumstances stated above, the Applicant humbly prays that this Hon'ble Tribunal may be pleased to admit this application and notice be issued to the respondents to show cause as to why the releifs sought for by the Applicant should not be granted, call for records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs: -

- 8.1 Direct the respondent authorities to promote the Applicant to the Group-A/Jr. Scale of Indian Railways Accounts Service with effect from 5.3.02 i.e. date on which the other similar situated persons were promoted. In terms of the recommendation of the DPC held on 26.2.02 and 27.2.02, wherein the name of the Applicant figured in the extended panel.
- 8.2 Any other relief(s) that the Applicant may be entitled to under the facts and circumstances and/or as may deem fit and proper by this Hon'ble Tribunal considering the facts and circumstances of the case. On such promotion being granted with effect from 5.3.02, the Applicant may further be granted the benefits attached to such notional/retrospective promotion.
- 8.3 Cost of the application.

9. PARTICULARS OF THE I.P.O

- i. I.P.O. NO.:
- ii .Date of Issue:
- iii. Issued From:
- iv. Payable at:

10. DETAILS OF ENCLOSURES

As stated in the index.

Sanjay
Kumar

Atul

VERIFICATION

I, Sri Anil Kumar Sarkar, son of Sri Chandra Kanta Sarkar, aged about 54 years, resident of Resident of T/Flat No. 476/D Nambari, Maligaon, Guwahati, Assam, Pin-781001, do hereby state and verify that I am the Applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in paragraphs 1, 2, 3, 4.1(pt), 4.2, 4.3(pt), 4.4(pt), 4.6(pt), 4.7(pt) & 10 of the accompanying application are true to the best of my knowledge and those made in paragraphs 4.1(pt), ~~4.2~~ 4.3(pt), 4.4(pt), 4.5, 4.6(pt), 4.7(pt), those made in paragraph 5 are true to my legal advice and derived from records and rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 13th day of September, 2007 at Guwahati.

Anil Kumar Sarkar

DEPONENT

To
The Secretary Railway Board,
Ministry of Railways,
Railway Board,
Rail Bhawan,
New Delhi - 1.

(Through FA & CAO/N.F.Rly/MLG)

Sub:- Appeal for promotion to J. A. Grade.

Sir,

It is reliably learnt that I have been inducted to Group 'A' for the year 2001-2002 along with my batch mate Shri Kamlesh Chakraborty. Subsequently, Shri Chakraborty has been promoted to J.A. Grade. It is not understood as to why my case of induction/promotion has not been issued.

Incidentally, I would like to submit that major penalty charge memorandums have been served on me only on 13.08.2003 i.e. after 16 months from the date of issue of circulation order of induction to Group 'A' of Shri Chakraborty.

In this connection, I would like to draw your kind attention to the provisions contained in the Railway Board's Letter No. E/74/0/Pt.XV(C) dated 30.3.93. As per this Railway Board's letter, promotion can only be held up in the following conditions: -

- (a) Govt. servants under suspension;
- (b) Govt. servant in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending;
- (c) Govt. servants in respect of whom prosecution for a criminal charge is pending;

I was not covered by any of the above conditions. Therefore, there cannot be any reasons to withhold my induction to Group 'A'.

In view of the above, I would, therefore, request you to kindly re-consider my case and give me my due promotion/induction along with my batch mate, Shri Kamlesh Chakraborty.

Yours faithfully,

dated 24/2/06

(A. K. SARKAR)

Sr. AFA/T-I/N. F. Railway,
Maligaon/Guahati.

Dated 24.02.2006

*Certified to be
true copy
M. Mehta
Adv.*

*Advance copy sent
through fax by
Dy. CPO/S; P.K. Singh.*

*Recd
24/02/06*

Office of the
FA & Chief Accounts Officer
N.F. Railway/Maligaon.

No. PNO/AD/82/516

Dated: 21.12.06.

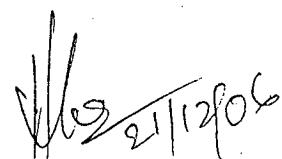
To,
Shri A. K. Sarkar,
Sr.AFA/T-I
N.F. Railway/Maligaon.

Sub: Appeal for promotion to JA Grade.

Ref: Your appeal addressed to Secretary,
Railway Board dated 24.02.06.

Your appeal was forwarded to Railway Board who have examined and intimated that since you have not yet been inducted to Gr-A service of IRAS, you are not eligible for promotion to JA Grade.

This is for your information.


(A. S. Hoipingson)
Dy. CAO/G

*Certified to be
true copy
M. Malakar
Adv.*



मात्रा में दिनांक
मिलाया गया 21/06/07
क्रमांक 132635314
काउन्टर नं: 2, ऑफिस कोड: 2
टोपी ऑफिस रोड
नई दिल्ली, PIN: 110011
From: A K SARKAR, GYI11
Wt: 20 grams, Taxes: Rs. 3.00
Amt: 23.00, 21/06/2007, 11:56

Rly. Board
किसी डाकघर में
At what Office NDL

यहाँ से जाना किया है

Whether crossed

मेल की तारीख
Date sent 4/6/07

Sub:- Supply of documents and information.

54E 676522

With due respect, I beg to state that the following documents and information
under the Information Act may please be arranged to supply to me. An Indian Postal
Order for Rs. 10/- (Rupees ten) only (vide No. 54E 676522 dated 04.06.07) is enclosed
herewith.

1. My juniors have been inducted to Group-'A' service, but I have not been
inducted though I was supposed to be inducted during the year 2001-02 or prior. Reasons
of non-induction to Group-'A' service may be furnished to me with all official noting and
vigilance report etc. thereon.

2. The names of officers whose induction to Group-'A' service are kept in seal
cover during the year 2000-01 to 2003-04 may be furnished to me including myself.

3. The rule under which induction to Group-'A' service is done and kept in seal
cover may also be made available to me.

The above information may please be supplied to me.

DA/As above.

Yours faithfully,

4/6/07
(A. K. SARKAR)

Sr. AFA/T.I,
N. F. Railway, Maligaon,
Guwahati, Assam.

Add for communication:-

T/Flat No. 476/D,
Nambari, Maligaon,
Guwahati, Assam.
Pin - 781011.

*Certified to be
true copy
M. Melvyn
Adv.*

Recd on
13/24/07
out 24/8/07

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By Registered Post

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAS (RAIL MANTRALAYA)
(RAILWAY BOARD)**

RIGHT TO INFORMATION CELL

No.RTI Cell/2007/414

New Delhi, Dated: 13.8.2007

Shri A.K. Sarkar,
Sr. AFA/T-1,
N.F. Railway,
Maligaon, Guwahati.

**Sub: Information sought under Right to Information
Act-2005.**

Dear Sir,

Kindly refer to your letter dated Nil, which was received in this office on 27.6.2007, seeking information under the Right to Information Act, 2005.

The requisite information as received from the Directorate concerned, is enclosed herewith.

In case, you are not satisfied with the information, you may prefer an appeal within 30 days as provided in the Act to the Appellate Authority viz. Additional Member (Commercial) Railway Board, New Delhi.

DA: As above.

line
13/8/07
(B.L. Meena)
Public Information Officer
Railway Board.

C:\CFC\Final Reply-English.doc214

*Certified to be
true copy
M. Mahanty
R.D.*

No. RTI/Cell (2007) 414

No.E(GP)2007/1/46

BS

Sub: Information sought by Shri A.K.Sarkar, Sr.AFA/T.I.,
N.F.Railway, Maligaon, Guwahati, Assam.

Item No.1

Shri A.K.Sarkar, a Group 'B' officer of Accounts Department/N.F.Railway was considered by the DPC held on 26-27.2.2002 against the vacancies of N.F. Railway for the year 2001-02. His name was placed by the DPC in the Extended Panel. However, the recommendations of the DPC could not be acted upon so far due to disciplinary cases pending against him. Relevant copy of notings including vigilance Dte.'s advice are enclosed (Annexure-I)

Item No.2

The names of Group 'B' officers of Accounts Dept. who were considered against the vacancies of 2000-01 to 2003-04 for promotion to Jr. Scale/Group 'A' of IRAS but recommendations in respect of whom were kept by the DPC in 'Sealed Cover' are as under:-

S.No.	Name of officers (S/Shri)	Railway
1	P.D.More	CR
2	Gauri Shanker	NR
3	R.C.Mishra	NER
4	A.K.Sinha	NER
5	N.C.Ghatak	NFR
6	A.K.Sarkar	NFR
7	G.S.Murthy	SCR

contd....2.

Item No.3

Rules and regulations relating to appointment of Group 'B' officers into Group 'A' of various Railway Services are broadly contained in the procedure for conducting DPCs contained in Board's letters No.E(GP)97/1/5 dated 7.7.1997 and 6.9.2002(copies enclosed) (Annexure-II and III).

Instructions regarding Sealed Cover procedure in respect of regular promotions of Railway officers from Group 'B' to Group 'A' are contained in Railway Board's letters No.E(D&A)92 RG6-149(B) dated 21.1.1993 and 22.10.1993 and further revised/clarified vide Railway Board's letters No.E(D&A)2001 RG6-39 dated 24.1.2003 and 16.12.2003, No.E(D&A)2003 RG6-14 dated 29.7.2003, and No.E(D&A)2003 RG6-15 dated 7.5.2004(copies enclosed).

Sealed
20/7/07
DDE1607

11/07/07
DDEC0607

Sub: Promotion of Gr.'B' officers of Accounts Department to Gr.'A'/Jr Scale of Indian Railway Accounts Service(IRAS)

(A Departmental Promotion Committee (DPC) was convened by the UPSC on 26th and 27th February, 2002 to consider eligible Group 'B' officers of Accounts, Deptt. for their substantive promotion to Group 'A'/Jr. Scale of IRAS against the vacancies for various Zonal Railways/Production Units in the promotion quota for the Examination Years 1999 & 2000 (Vacancy years 2000-2001 and 2001-02 respectively). A copy of the minutes of DPC, which have been approved by the UPSC, is placed at S.No.8.) The DPC recommended total 62 officers, including 13 in Extended panel, for promotion to Gr'A' Jr. Scale of IRAS. Out of the 62 recommended officers, 20 officers (list at S.N.18) ceased to be in service before the date of effect of the recommendations of the DPC i.e. 5/3/2002. As such, those 20 officers could not be promoted in terms of the instructions contained in DOP&T's OM dated 12.10.1998. After obtaining approval of Board and MR, promotion orders of 37 officers were issued, vide notifications dated on 29.4.2002 and 31.5.2002, placed at S.No. 9, & 10 respectively. Promotion orders of the remaining five officers could not be issued, due to the reasons given against each :

S.No.	Name of the officer S/Shri	Rly	Remarks
1.	R.P.Tripathi	CR	Under going penalty.
2.	P.D.More	CR	In sealed cover.
3.	Gauri Shanker (SC)	NR	In sealed cover
4.	A.K.Sinha	NER	In sealed cover
5.	A.K.Sarkar (SC)	NFR	In the case pending against him, it was not clear if chargesheet has been issued/decision to issue chargesheet has been taken.

2. File No. E(GP) 2000/1/57 wherefrom the DPC's recommendations were processed, was referred to DV(E)-I on 27.9.2002 for advice relating to promotion of officers in Sealed Cover. However, the said file has not been received back in E(GP) Branch so far, despite reminders. In response to the last reminder, Vig. Dte has informed (S.No.7) that the said file could not be traced. G(Branch) has been requested to issue a search memo for tracing the file. However, since issue of promotion orders in some of the cases is getting delayed, this file has been reconstructed.

3. The present position in respect of the five officers, not promoted so far, is as under :-

(i) In the case of Shri R.P.Tripathi, the penalty imposed on him on 1.1.2002 has been over w.e.f. 1.1.2003 (S.No.12,13 & 6/1). Hence promotion orders may, perhaps be issued in respect of him.

(contd)

(ii) A penalty has been imposed on Shri P.D. More on 23.7.2002, reference Vig. Dte's report at S.No.6. Hence, the recommendations of DPC in his case have become in-fructuous in terms of extant orders.

(iii) In the case of Shri Gauri Shankar, chargesheet issued on 22.2.2001 is still pending (S.No.6). His case would, therefore, continue to be in Sealed Cover.

(iv) In the case of Shri A.K. Sinha, a report from N.E.Rly regarding vigilance/D&A position is awaited.

(v) Regarding Shri A.K. Sarkar, it is not clear from NFR's letter at S.No 17 whether a chargesheet has been issued/filed in the court of Law in respect of the pending case. So, the matter need to be further checked up from NFR before a decision can be taken on his promotion.

4. Approval of the competent Authority (MR) is therefore, solicited to the substantive appointment of Shri R.P. Tripathi into Group 'A'/Jr. Scale of IRAS, is w.e.f. 01.1.2003.

DDG(GP)

JDE(GP)

EDE(GC)

AM (Sd/-) and chargeMS Adv. (Sd/-)

Secretary

FC

MR

St. H.P. 20/3/03
DDE(GP)

UHM

25/3/03
EDT/HC
Dmkt. EDE Please
EDT
DUE I
Contd. replyV.V. - del
JDE(GP)
21/3/0321/3/03
Adv. 25/3/0326/3/03
Chander Mohan

3. Keeping in view the advice tendered by Vig. Dte. on pre-page, it is felt that Sealed Cover procedure is neither applicable in the case of Shri A.K. Sarkar of N.F. Railway nor in the case of Shri A.K. Sinha of N.E. Railway. Hence, approval of MR may also be solicited for substantive appointment of S/Shri A.K. Sarkar (N.F. Railway) and A.K. Sinha (N.E. Railway) into Group 'A'/Jr. Scale of IRAS w.e.f. 5.3.2002 i.e. the date on which UPSC communicated their approval to the recommendations of the DPC.

20/4/03

DDE(GP)

1. 2/4/03
08/4/03
DDE(GP)

20/4/03
8/4/03
SD/ C(GP)

JDE(GP)

V.W. deh.
JDE(GP)

EDE(GC)

9/4/03

AM(Staff)

✓ may kindly approve para 2 on
prepage and para 3 above.

ADV(Vig.)

Re give comments in respect of para 2.

10/4/03
EDE(GC)

Secretary

EDVE

10/4/03

MS

DVE

16/4/03

FC

Centd M/S

MR

In case of Shri A.K. Sinha Position is same as
that on prepage.

EDVE

Adv(Vig.)

✓ 17/4/03

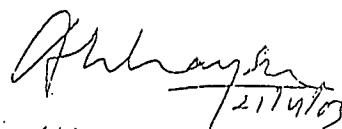
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From prepage

The latest position of cases against Shri A.K.Sarkar is as follows: -

SN	RC NO.	STATUS AS ON 21.4.2003
1	R-013/99	CBI has recommended Prosecution + RDA (Major). CVC have advised Prosecution + RDA (Major) in its first stage advice. Case sent back to CVC by FC for reconsideration of its advice. CVC have reconfirmed their earlier advice of Prosecution + RDA (Major) after reconsideration. Cases sent by FC to CVC second time for reconsideration.
2	R-014/99	CBI has recommended Prosecution + RDA (Major). CVC have advised Prosecution + RDA (Major) in first stage advice. Cases sent by FC to CVC for reconsideration.
3	R-015/99	CBI has recommended Prosecution + RDA (Major). CVC have advised Prosecution + RDA (Major) in first stage advice. Cases sent by FC to CVC for reconsideration.
4	R-016/99	CBI has recommended Prosecution + RDA (Major). CVC have advised Prosecution + RDA (Major) in first stage advice. Cases sent by FC to CVC for reconsideration.
5	R-020/97	CBI has recommended Prosecution + RDA (Major). CVC have advised Prosecution + RDA (Major) in first stage advice. Cases sent by FC to CVC for reconsideration.
6	R-021/97	CBI has recommended Prosecution + RDA (Major). CVC have advised Prosecution + RDA (Major) in first stage advice. Cases sent by FC to CVC for reconsideration.
7	R-023/97	CBI has recommended Prosecution + RDA (Major). CVC have advised Prosecution + RDA (Major) in first stage advice. Cases sent by FC to CVC for reconsideration.
8	R-024/97	CBI has recommended Prosecution + RDA (Major). CVC have advised Prosecution + RDA (Major) in first stage advice. Cases sent by FC to CVC for reconsideration.
9	R-008/00	CBI has recommended Prosecution. Cases Pending with FA&CAO for comments.
10	R-009/00	CBI has recommended Prosecution. Cases Pending with FA&CAO for comments.
11	R-010/00	CBI has recommended Prosecution. Case sent to CVC for first stage advice with comments of "No action against Shri Sarkar by Railway Board (FC)"

In case of Shri A.K. Sinha, the position is same as that on NP/4.


Akshay Sharma
DVE-1/21.4.2003

EDVE

Confd M17

ADV/VIG.

SECY.

MS

FC

MR

From Pre-page:-

As is clear from the notings of DV(E)I, there are as many as 11 cases registered by CBI against Shri A.K.Sarkar. In all these 11 cases, the CBI have recommended prosecution against Shri Sarkar. In 8 of these cases, the CVC have advised sanction for prosecution along with initiation of Regular Departmental Action (RDA) for major penalty. It is also noteworthy that the advice of the CVC was given after reconsideration in four cases (S.No.1 to 4 reference DV(E)I's notings) at the request of Railway Board (FC). Now, these four cases have been sent by FC to CVC for reconsideration for second time and cases at S.No.5 to 8 have been sent to CVC for reconsideration by the Board (FC). The 9th and 10th cases are under process in NFR for obtaining CVC's first stage advice. The 11th has been sent to CVC for first stage advice.

It may be noted that the CBI's recommendations for prosecution against Shri Sarkar had been received, as early as in October 2001 but due to difference of opinion between DA (FC) and the CVC, the sanction for prosecution/DAR proceedings could not commence so far.

Against this background, it appears to be rather incongruent at this stage to consider Shri Sarkar for processing his case for substantive appointment into Group 'A' Scale of IRAS without first coming to a final decision about the sanction of prosecution and RDA for major penalty.

S.K. Malik
(S.K. Malik)
EDV(E)
21.4.03

Adviser Vigilance

I endorse EDV(E) comments in
respect of Dr A.K. Sarkar.

T. S. Goni
21/4
Adm'ty.

Secretary

I agree

MS

D. I. S. C. W.

FC

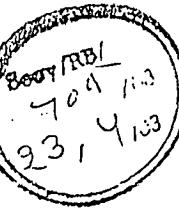
23/4/2003

MR

24/4/2003

Agree
22/04

Secretary



858-FC
23/4

PS
24/4/2003

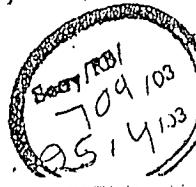
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Agree
25/4

"Urgent Pl."

Sd/-
JDE(GP)
28.5.2003

Shri A.K.Sarkar, a Group 'B' officer of Account Department/N.F.Railway was considered and selected for promotion to Group 'A'/Jr. Scale of IRAS, by the DPC held by UPSC on 26th and 27th Feb. 2002. The DPC's recommendations are effective from 5th March 2002. Due to disciplinary cases pending against him as reported by Vigilance Dte. vide page 6-7/n, the said DPC's recommendations in respect of Shri A.K.Sarkar have not so far been acted upon.

2. In terms of instructions contained in DOP&T's O.M. dated 14.9.92, 'Sealed Cover' procedure is applicable in the following circumstances:-

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

2.1 Further, instructions have been issued under Board's letter No.E(D&A)2001RG-39 dated 24.1.2003 that the stage for invoking 'sealed cover' procedure should be treated as the one where on conclusion of the investigation, conscious decision has been taken by the Disciplinary Authority for initiating disciplinary proceedings.

3. It, however, appears that as on 5th March 2002, i.e. the date of effect of the DPC's recommendation, none of the conditions requiring invoking of 'Sealed Cover' procedure has been fulfilled. As such, Vigilance Directorate may like to see for further advice.

DDE(GP)

JDE(GP)

EDE(GP)

EDV(E)

11 Case has been registered by CBI against Shri A.K.Sarkar vide letter at N.R.G. the letter portion may be put up

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27/8

There are eleven cases of prosecution sanctioned
against Shri Sankar besides 11 cases of FIR under
Major penalty proceedings approved by the DA.
Details are at at/ fby FIA

~~EDF/AC~~ 11 Cases of prosecution have been sanctioned
against him. The prosecution advice & Initiation D.P.O.I
of major penalty D.R.Cases received from C.R.C on 10.1.2002 (FIA)
which is prior to 5.3.02. In view of the above stand taken
by Vigilance earlier remains stand good

Abhay Singh

27/5/02
5/9

EDF/AC
See
- 9/9
S.D.P.C
Com. 22

Abhay Singh

5/9/03
S.D.P.C

2167
29/8/02

Certified to be
true copy
H. Malhotra
Adv.

S. No. 5

41

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

New Delhi, dt. 7.7.97

No. E (GP) 97/1/5

The General Managers/OSDs,
All Indian Railways & Production Units etc.

Sub: Procedure for conducting DPCs -
Promotion from Group 'B' to Group 'A'

A number of representations are received in Board's office regarding promotion of Group 'B' officers to 'Group 'A'/Jr. Scale of various Services. The representations indicate that the officers are not adequately informed about the DPC Procedure.

A "Note" on the extant procedure for conduct of 'DPC' for promotion from 'Group 'B' to 'Group 'A' is enclosed for information and guidance.


(A.V.M. KUTTY)

Joint Director, Estt. (Gaz. P.)
Railway Board

Copy to:-

Officers
Delhi.

Secretary General, Indian Rlys Promotee
Federation Room No. 268, Rail Bhawan, New

ISSUED
RECORDED
Signature
Date

Certified to be
true copy
R. M. Mohapatra
A.O.

(1) Departmental Promotion Committee Procedure
for
Promotion from Group 'B' to Group 'A'

Promotion of Group 'B' officers of Indian Railways to Group 'A' Junior Scale, where the Recruitment Rules so provide, is done through Departmental promotion Committees (DPC) which are convened by UPSC.

The following procedure is adopted for conducting the DPC.

(1) Composition of DPC

Minimum status of the officers who should be Members of the DPC for Group 'A' / Jr. Scale is Deputy Secretary to the Government of India or above. Chairman or a member of the UPSC will preside at the meeting of the DPC. Generally, three officers from the Ministry of Railways are nominated as Members of the DPC, one of them being an SC or ST officer.

(2) Vacancy distribution amongst Railways/Production Units.

The promotion quota vacancies in Group A/Junior scale of various Services as per relevant Recruitment Rules are distributed among the different Railways/Production Units in the following manner:

i) 50% of such vacancies are distributed according to Rosters prepared on the basis of the Group A cadre strength of the Service on each Railway/Unit.

ii) Remaining 50% of such vacancies are distributed taking into account the extent of length of service of Group B Officers of the Department on different Railways/Units.

(3) The zone of consideration

For the purpose of determining the number of officers who will be considered for promotion, the field of choice will be restricted as under with reference to the number of vacancies proposed to be filled by promotion in the year.

No. of vacancies	No. of officers to be considered
1	5
2	8
3	10
4 and above	10 + 1/2 (No. of vacancies in excess of 3) V.g. if 11 then, excess of 3 10 + 1/2 (11-3) = 10 + 1/2 (8) = 10 + 4 = 14 where 'X' = No. of vacancies.

(4) Assessment of confidential Reports

Confidential Reports are based on inputs on the basis of which assessment is to be made by each DPC.

- The DPC should consider CRs for equal number of years in respect of all officers considered.
- The DPC should assess the suitability of the officers on the basis of their service record and with reference to the CRs for five preceding years. However, in cases where the qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR have been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year.
- Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider CRs for the years preceding the period in question and in case even this is not available the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered. If this is also not possible all available CRs should be taken into account.
- Where an officer is officiating in the next higher grade and has earned CRs in that grade his CRs may be considered but no extra weightage may be given merely on the ground that he has been officiating in the higher

Procedure for preparing year-wise panels when DPC for vacancies of different years are held together.

Where the DPC could not be held in a year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedure:

- i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year, separately.
- ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- iii) For the purpose of evaluating the merit of the officers while preparing yearwise panels, as mentioned above, the scrutiny of the record of service of the officers should be limited to the records that would have been available had the DPC met at the appropriate time. For instance, for preparing a panel relating to the vacancies of 1994, the latest available records of service of the officers upto the period ending March 1994 should be taken into account and not the subsequent ones. However, if, on the date of the meeting of the DPC, departmental proceedings etc. are in progress and under the existing instructions sealed cover procedure is to be followed, such procedure should be observed even if departmental proceedings etc. were not in existence in the year to which the vacancy related.
- iv) Prepare a 'select list' by placing the select list of the earlier year above the one for the next year and so on.
- v) While promotions will be made in the order of consolidated select list such promotions will have only prospective effect, as indicated in Para 6(d) above, even in cases where the vacancies relate to earlier year(s).

(e) The DPC should not be guided merely by all grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in CRs.

(f) In case of each officer an overall grading should be given. The grading shall be one among (i) Outstanding (ii) Very Good (iii) Good (iv) Average and (v) Unfit.

(5) Selection Procedure

Having regard to the levels of posts to which promotions are made and the nature and importance of duties attached to the posts a 'benchmark' grade is determined. For the promotions to Group 'A' posts from lower groups, the benchmark would be 'Good'. However, officers graded as 'Outstanding' would rank *en bloc* senior to those who are graded as 'Very Good' and they would in turn rank *en bloc* senior to those who are graded as 'Good' and placed in select panel accordingly, upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder grade.

(6) Promotions from the panel

a) Appointments from the panel shall be made in order of names appearing in the panel for promotion.

b) Before making actual promotion of the officers it must be ensured that no disciplinary/Criminal proceedings are pending against the officer.

c) Where the appointing authority is the President of India, the recommendation of the DPC should be submitted to the Minister in charge of the Department concerned for acceptance of the recommendation.

d) The date of UPSC's letter communicating the Commission's approval to the panel or the date of the actual promotion of the officer whichever is later, is reckoned as the date of regular promotion of the officer.

(8) Provisions relating to SC/ST officers

In promotion by selection to posts/services in the lowest rung in Group 'A', selection against the vacancies reserved for SC and ST will be made only from those SC/ST officers, who are within the normal zone of consideration. Where adequate number of SC/ST candidates are not available within the normal field of choice, it may be extended to five times the number of vacancies and the reserved candidates coming within the extended field of choice should also be considered against the vacancies reserved for them. If candidates from SC/STs otherwise finding place on the panel, on the basis of merit with due regard to seniority, on the same basis as others are lesser in number than the number of vacancies reserved for them, the difference should be made up by selecting candidates of these communities, who are in the zone of consideration irrespective of 'bench mark' but who are considered fit for promotion.

(9) Procedure in respect of Government Servants under suspension etc.

Guidelines issued in this matter under Board's letter No. E(D&A) 02 RGG-149 (B) dated 21.01.93 amended from time to time shall be followed.

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS,
(RAILWAY BOARD)

New Delhi Dt. 6-9-2002

No.E(GP)97/1/5

The General Managers/OSDs,
All Indian Railways & Production Units etc.

Sub: Procedure for conducting DPCs-promotion from Group 'B' to
Group 'A'.

Reference Board's letter of even number dated 7.7.97, under which a Note
on the procedure for conducting DPCs for promotion from Group 'B' to Group
'A' was circulated for information and guidance. These DPCs are conducted by
the Union Public Service Commission.

2. In terms of para 5 of the Note referred to above, for the promotions to
Group 'A' posts from lower groups, though the benchmark would be 'Good',
officers graded as 'Outstanding' would rank en-bloc senior to those who are
graded as 'Very Good' and they would, in turn, rank en-bloc senior to those who
are graded as 'Good' and placed in the select panel accordingly, up to the number
of vacancies, officers with the same grading maintaining their inter-se seniority in
the feeder grade.

3. The Deptt. of Personnel & Training has issued revised instructions
regarding procedure for conducting DPCs. Accordingly, para 4(f) of the "Note"
mentioned in para 1 above may be treated as deleted and para 5 of the "Note" may
be read as under:-

"Having regard to the levels of posts to which promotions are made and the
nature and importance of duties attached to the posts, a benchmark grade is
determined. For the promotions to Group 'A' posts from lower groups, the
benchmark would be "Good". The DPC shall grade the officers as 'fit' or 'unfit'
only with reference to the benchmark of "Good". Only those who are graded 'fit'
by the DPC shall be included and arranged in the select panel in order of their
inter-se seniority in the feeder grade. Those officers who are graded 'unfit' by the
DPC shall not be included in the select panel. Thus, there shall be no supersession
in promotion among those who are graded 'fit' by the DPC".

4. The above change in the DPC procedure for promotion of Group 'B'
officers to Group 'A' of various Railway services may please be circulated for
information and guidance of all concerned.

V/Vyadehi

(V. Vaidehi)

Jt. Director Estt.(GP)
Railway Board

Copy to:
The Secretary General, Indian Railways Promotee Officers Federation, Room No.
268, Rail Bhawan, New Delhi.

Certified to be
true copy
M. Malanta
Adv.

✓/s filed today by Dr. M.C. Sarma, Rly. Counsel. copy not served on other side posted on 10.3.08 (Guwahati) 6/2/08

केंद्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

Q6 15 FCB 2008

गुवाहाटी बायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

IN THE MATTER OF

O.A.251/2007

Shri Anil Kumar Sarkar ... Applicant
Versus
Union of India & Another ... Respondents
AND

IN THE MATTER OF

Written Statement on behalf of the respondents.

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Submitted.

Date :

MCS
Dr. M.C. Sarma
06/02/2008
Railway Counsel

Dr. M. C. Sarma
M.Com, Ph.D., LL.B.
Advocate, Gauhati High Court.
Railway Advocate, Central Administrative Tribunal,
Guwahati

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

15 FEB 2007

गुवाहाटी बायपोर्ट
Guwahati Bench

Filed by
Date 06/02/08

Dr. M. C. Sarma
M.Com, Ph.D., LL.B.
Advocate, Gauhati High Court.
Railway Advocate, Central Administrative Tribunal,
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

IN THE MATTER OF

O.A.251/2007

Shri Anil Kumar Sarkar ... Applicant

Versus

Union of India & Another ... Respondents

AND

IN THE MATTER OF

Written Statement on behalf of the Respondents.

The answering respondents respectfully SHEWETH:

1. That the answering respondents have gone through a copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which have been borne on records all other averments/allegations as 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 respondents have confined their replies to those points/allegations/averments of the applicant which are found relevant for enabling the Hon'ble Tribunal to take a proper view of the matter in question.

3. That the respondents respectfully beg to submit that the matter as it stands at present is beyond the jurisdiction of the Hon'ble Tribunal as per indications given by the applicant himself in paragraph 4.4 of the O.A. The applicant stated that being aggrieved by the dismissal of O.A.29/05 vide order dated 15.02.2005 the applicant approached the Hon'ble Gauhati High Court by filing on 15.02.2005 writ petition No.1591/2005 and a review petition on 09.03.2005. The applicant has indicated that the ~~XX~~ review petition was "disposed of with direction to the respondent authority to appoint only one officer to be the enquiry officer in all the four proceedings to be completed preferably within a period of three months. It is pertinent to mention herein that the said disciplinary proceedings are still pending against the Applicant". The applicant nowhere mentioned as to what finality the

Copy Received.
Madhuri M.L.C.
06/02/08

ग्रन्थालय
सरकारी बुक्स एवं अधिकारी, गुवाहाटी
Central Library
Government Books and Manuscripts Library
Guwahati

Hon'ble Gauhati High Court's order dated 09.03.2005 has reached by the date the present O.A. was filed in the Hon'ble Tribunal. No indication has been given as to what step, if any, has been taken by the applicant before the Hon'ble High Court so as to leave the field open and clearly for interference by the Hon'ble Tribunal. In view of this position, respondents beg to submit that the application is a fit case for dismissal for want of jurisdiction.

While on the subject mentioned by the applicant in paragraphs 4.3 and 4.4 of the application, the respondents beg to state that a large number of serious financial irregularities were detected against the applicant for transactions involving him as Assistant Accounts Officer during 1994-95 and these led to issue of four major penalty memoranda against him at various dates. In addition, the CBI has also filed 11 cases against the applicant. The respondents are trying their very best to proceed with the DAR cases as early as possible but are handicapped in their effort by various factors including co-operation from the applicant for quick resolution of the cases.

4. That the application suffers from want of a cause

केन्द्रीय प्रशासनिक विधि विभाग
Central Administrative Tribunals
परिवेश as Assistant Accounts Officer in 1994-95, a large
number of irregularities were detected and it was estimated
that his alleged involvement led to loss of over Rs.3 crores
गुवाहाटी न्यायपाल
Guwahati Bench
cases are under finalisation but the preponderance of the

available evidence on record has left the respondents with no alternative but to exercise abundant caution in all matters concerning the service of the applicant. The claim for cause of action would thus appear to be negative under the circumstances. Viewed in this light, the application merits dismissal for want of a cause of action.

5. Parawise comments:

5.1. That as regards paragraph 4.1 the respondents beg to state that they have no remarks to offer as the facts stated therein are matter of record which the applicant is put to the proof thereof.

5.2. That as regards paragraph 4.2, the respondents beg to state that the applicant is well aware of the reasons why his promotion was affected by his own alleged misdemeanours and irregularities committed in 1994-95, well before the DPC held in 2002. The background

of the acts of commission and of omissions involving the applicant may be found in Original Application No.29/05 which the applicant himself has referred to in paragraph 4.3 of the application and which the Hon'ble Tribunal admittedly dismissed vide order dated 15.02.05 as stated. In this connection the respondents beg to point out that the issue of the memoranda of charges in August, 2003 was the consequence of enquiries started over a period of more than two years during which the applicant was made aware of the enormity of the financial irregularities committed by him and his present plea of ignorance and innocence can best be described as only strange and vain, to say the least.

5.3. That as regards paragraph 4.3, the respondents have to respectfully submit that the Hon'ble Tribunal was pleased to dismiss the O.A.29/05 on the basis of the pleadings submitted by the respondents at the time of hearing.

5.4. That in regard to paragraph 4.4, the respondents beg to submit that, as pointed out paragraph 3 of this Written Statement, the applicant has not indicated as to what finality the Hon'ble Gauhati High Court's order dated 09.03.2005 had reached by the date the present O.A. was filed. No indication has been given as to what step, if any, has been taken by the applicant before the Hon'ble High Court so as to leave the field open for intervention by the Hon'ble Tribunal. It is therefore respectfully submitted that this position has left the question of jurisdiction wide open.

5.5. That as regards paragraphs 4.5 and 4.6, the respondents beg to submit that final induction of the applicant in Group A service of IRAS on the basis of the DPCM held in February, 2002 could not be carried out on account of evidence of irregularities allegedly committed by the applicant during his service career in 1994-95. The enormity of the irregularities committed and the extent of public fund involved in the transactions in question required careful handling and time. While the irregularities came to light before the DPC proceedings, these were not yet brought on record so as to prejudice the said proceedings, thus the respondents taking a neutral stand at the time to ensure fairness. This should not, the respondents beg to submit, mean that the applicant had a clean record for deserving final empanelment in Group A service of I.R.A.S. at the time. The ongoing enquiries at various stages prevented the respondents from

finally promoting the applicant in due course of time.

5.6. That as regards paragraph 4.7, the respondents beg to state that the recommendations of the DPC could not be acted upon due to disciplinary cases pending against the applicant. This would be apparent from the material furnished by the applicant at page 14 of the O.A. Although the DPC was held in February, 2002, notings furnished at page 20 of the O.A. clearly states that "the CBI's recommendations ~~xxx~~ for prosecution against Shri Sarkar had been received as early as October, 2001.." It is therefore crystal clear as to why it was not possible for the respondents to act upon the recommendations of the DPC and consequently presented steps being taken to effect the applicant's promotion.

In this connection, respondents beg to draw kind attention of the Hon'ble Tribunal to the notings at page 21 of the O.A. wherein reference has been made to the procedure for "Sealed Cover". Under these provisions Government servants in respect of whom a charge sheet has been issued and those in respect of whom prosecution for a criminal charge is pending should be subjected to the Sealed cover procedure. In other words such Government servants cannot be promoted until the clouds are cleared through finalisation of the pending cases. It is submitted that in respect of the applicant charge sheets under DAR procedure as well as prosecution of CBI cases are both pending. Thus, it is not possible for the respondents to act upon the recommendations of the DPC and effect promotion in respect of the applicant until finalisation of the pending DAR and CBI cases, clearly in view of the fact that public interest is involved.

In this connection, the respondents also beg to state that in taking the decision not to act upon the recommendations of the DPC and to adopt the "Sealed Cover" procedure respondents were guided by public interest and that there was no colourable exercise of power as the respondents acted strictly within their domain and jurisdiction.

Under the circumstances it is submitted that for the reasons explained above the applicant has no case and cause of action, that the application having been filed without jurisdiction and as the allegations of colourable exercise of power being without foundation, the Hon'ble Tribunal be pleased to dismiss the O.A.

with costs.

....P..5....

केंद्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

15 FEB 2006

गुवाहाटी न्यायालय
Guwahati Bench

(5)

VERIFICATION

I, Shri A. S. Hopingsom, son of Late Sh. A. S. Satalung, aged about 49 years and at present working as Dy. CAO/4, N.F.Railway, Maligaon, do hereby solemnly affirm that the statements made in paragraphs 1 to 5 are true to the best of my knowledge and information based on records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 5/1/-
February day of January, 2008.


Signature-
Anup Shraway Hopingsom
Designation

केन्द्रीय प्रशासनिक अधिदरण
Central Administrative Tribunal
15 FEB 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

न. ५३३ रोड गोदार, गुवाहाटी-
प्रधान दोस्रा नंबर अफॉर्ट, गुवाहाटी-
Deputy Chief Accounts Officer (C)
S.D. No. Maligaon, Assam-781001

File in Court on.....
Court Officer.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. No. 251/2007

Anil Kumar Sarkar
57

Sri Anil Kumar Sarkar.
..... Applicant
- Vs -

The Union of India & Ors.
..... Respondents

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Filed By: Madhuryya Mahanta.

Madhuryya Mahanta

Advocate.

19 MAY 2008

गुवाहाटी न्यायालय
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

58
Anil Kumar Sarkar
Advocate
-Through-
Madhurya
19/05/08

IN THE MATTER OF

O.A. No. 251/2007

Sri Anil Kumar Sarkar.

.....Applicant

-Vs-

The Union of India and Others.

.....Respondents

-AND-

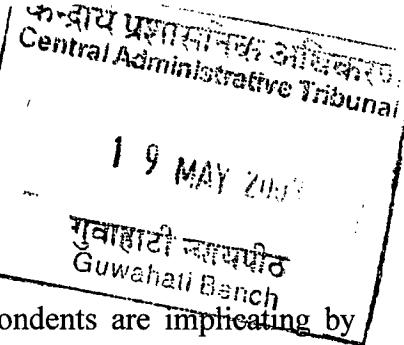
IN THE MATTER OF:

A rejoinder filed by and on behalf of the Applicant to the written statement submitted by the respondent nos. 1 and 2

MOST RESPECTFULLY BEGS TO STATE:

1. That the Applicant begs to state that he has received a copy of the written statement submitted by the respondent nos. 1 and 2 and has understood the contents thereof. At the outset, prior to replying to the various statements made in the written statement, the Applicant states that none of the statements made therein shall be deemed to be admitted save and except those which are specifically admitted herein below.
2. That with regard to the statements made in paragraphs 1 and 2 of the written statement the Applicant has no comments to offer.
3. That the statements made in paragraph 3 of the written statements are categorically denied by the Applicant. That the Applicant states that the statements made in the said paragraph are not only vague but the same do not

copy
Sarkar
19/05/08



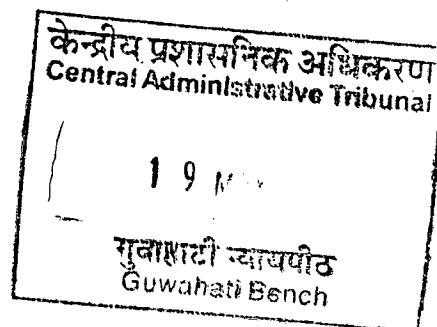
even clearly indicate as to what the answering respondents are implicating by making such statements. It is essential to note that the instant Original Application is in no way connected to the earlier round of litigation since the cause of action is entirely different. Be it stated herein that the Applicant has sought for promotion on retrospective basis in the instant Original Application, considering the fact that on the date when the Departmental Promotion Committee has held its meeting in 2002, no proceeding had been initiated against the Applicant. In this connection the Applicant reiterates the statements made in paragraph 4.7 of the Original Application.

It is stated that the said statements with regard to the earlier round of litigation i.e. O.A. No. 29/05 as well as the orders passed by the Hon'ble Gauhati High Court in W.P.(c) No.1591/05 were made by the Applicant in order to approach this Hon'ble Tribunal with clean hands and no malafide motive. However the respondent authorities have failed to understand the crux of the matter at hand and by a vain attempt have tried to juxtapose the facts of the earlier round of litigation with the facts of the instant case.

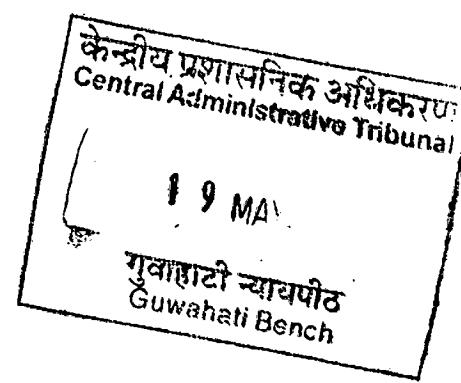
In this context it is humbly stated that the matter at hand falls within the jurisdiction of this Hon'ble Tribunal and hence the statements made contrary thereto are denied. Further as is evident from the statements made paragraph 4.7 of the O.A., the Hon'ble High Court while disposing the Review Petition had specifically directed the appointment of one enquiry officer for all the four departmental proceedings and had further directed for completion of the enquiries within a period three months. The Respondents have in a most unfair and prejudicial manner continued the departmental proceedings for more than three years from the date of issue of the order of the Hon'ble High Court as such it is now not open to the respondents to question the delay, if any, which has occurred in filling the instant Original Application.

It is denied that the Applicant has not co-operated with the respondents during the enquiry proceedings. In fact the records of the case, if perused by this Hon'ble Tribunal, would clearly reveal the contrary. The respondents have inordinately delayed the entire disciplinary proceedings and having failed to finalize even a single case till date are now shifting the onus on the Applicant.

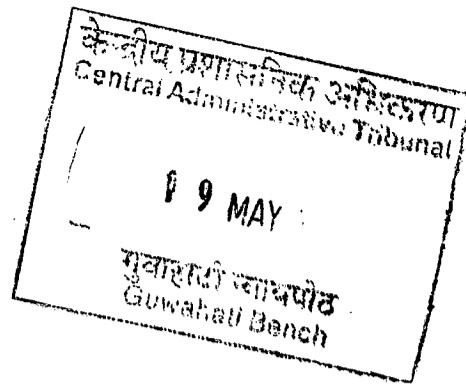
4. That with regard to the statements made in paragraph 4 of the written statement the Applicant states that it is evident once again that the respondent authorities have miserably failed to understand the context of the entire Original Application. Admittedly on the date when the DPC considered the promotion of the Applicant neither a disciplinary proceeding nor a criminal case as has been understood by the Apex Court in **AIR1991 SC 2010, Union of India -vs- K.V. Jankiraman** and Ors. were pending against the Applicant. Therefore the Applicant can in no way be denied promotion since the same would amount to discrimination and arbitrariness.
5. That with regard to the statements made in paragraph 5.1 of the written statement the Applicant has no comment to offer.
6. That the statements made in paragraph 5.2 of the written statement are categorically denied by the Applicant in *seriatim* and reiterates the statements made in paragraph 3 hereinabove.
7. That with regard to the statements made in paragraphs 5.3 of the written statement the Applicant does not have any comments to offer.
8. That while denying the statements made paragraph 5.4 of the written statement, the Applicant reiterates the statements made in paragraph 3 hereinabove for the sake of brevity.
9. That with regard to the statements made in paragraphs 5.5 and 5.6 of the written statement the Applicant does not admit anything which are contrary to and inconsistent with the records of the case and further reiterates the statements made in paragraphs 4.5, 4.6 and 4.7 of the Original Application. It is interesting to note that the respondents have conveniently taken note of the documents which are beneficial to them to some extent and have refrained from making any comments of the DPC which were furnished to the Applicant under the RTI Act and have been annexed to page 18 of the Original Application, wherein it has been categorically held that "Keeping in view the advice tendered by Vig. Dte. On pre-page, it is felt that Sealed Cover procedure is neither applicable in the case of



Shri A. K. Sarkar of N.F. Railway nor in the case of Shri A.K. Sinha of N.E.Railway. Hence, approval of MR may also be solicited for substantive appointment of S/Shri A.K. Sarkar (N.F. Railway) and A.K. Sinha (N.E.Railway) into Group "A"/Jr Scale of IRAS w.e.f.5.3.2002 i.e. the date on which UPSC communicated their approval to the recommendations of the DPC". As such the statements made in the said paragraph are not only contrary to the records of the case but at the same time reflect the malafide intention of the respondent authorities of illegally depriving the Applicant of his legitimate due.



Anil Kumar Sarkar



VERIFICATION

I, Sri Anil Kumar Sarkar, son of Sri Chandrakanta Sarkar, aged about 54 years, resident of Resident of T/Flat No. 476/D Nambari, Maligaon, Guwahati, Assam, Pin-781001, do hereby state and verify that I am the Applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in paragraphs 1, 2, 3, 4, to 8, 9 (পৰি) — the accompanying ~~rejoinder~~ are true to the best of my knowledge and those made in paragraphs 9 (পৰি) — above are true to my information derived from records and those made in paragraph — are true to my legal advice and rest are my humble submission before this Hon'ble Tribunal and I have not suppressed any material fact.

And I sign this verification on this the 17th day of May, 2008 at Guwahati.

Anil Kumar Sarkar
DEPONENT

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL 2008

GUWAHATI BENCH AT GUWAHATI

ORIGINAL APPLICATION NO. 251/2007 Guwahati Bench

गुवाहाटी न्यायपीठ

SHRI A.K. SARKAR

APPLICANT

-VERSUS-

THE UNION OF INDIA & ORS

RESPONDENTS.

The written statement on behalf of the respondent No. 3(UPSC) named above:-

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENT NO. 3 ABOVE NAMED:

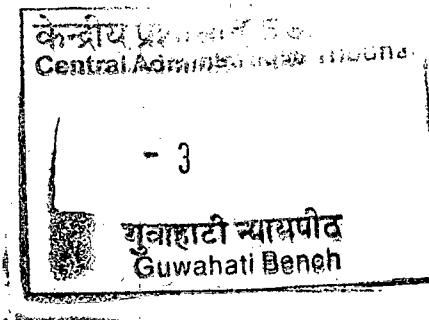
1. That the respondent(UPSC) begs to state that a copy of the Original Application has been served upon it and after going through the same, it has understood the content thereof. The statements which are not specifically admitted by the respondent are deemed to be denied by it.
2. That with regard to the statements made in paragraph 1 of the Original Application, the respondent begs to state that those are matter of records and are within the jurisdiction, domain and concern with the Ministry of Railways and the answering respondent begs to offer no comments.
3. That with regard to paragraph 2 and paragraph 3 of the instant Original Application, the respondent begs to state that those are matter of records and the answering respondent do not admit anything which are not borne out of records.
4. That with regard to paragraph 4.1 of the instant Original Application, the respondent begs to state that those are matter of records and are concerned with the Ministry of Railways and the answering respondent has no comments to offer.

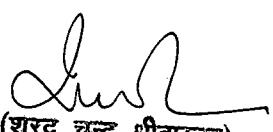

(शरद चन्द्र श्रीवास्तव)
(S. C. SRIVASTAV)
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

File No. 53
Mr. respondent
02-06-08

through Gourhav Baruah
Sri

5. That with regard to paragraph 4.2 of this instant Original Application, the respondent begs to state that the Ministry of Railways forwarded a DPC proposal for substantive promotion to Group 'A' Junior Scale of IRAS against the promotion quota vacancies of vacancy years 2000-01 and 2001-02 on 03.01.2001 which was received in UPSC on 04.01.2001. DPC was held for the post of Asstt. Accounts Officer, Gr. 'A' Jr. Time Scale of IRAS on 26th and 27th February, 2002. Shri A.K. Sarkar was found fit for promotion and was placed in the extended panel for the year 2001-02. The extended panel is to be operated in the event of officers in the regular panel are not available for promotion on account of resignation, death, retirement etc. Minutes of the DPC were forwarded to the Ministry of Railways on 05.03.2002.
6. That with regard to paragraph 4.1 to 4.5 of the instant Original Application, the respondent begs to state that the Ministry of Railways provided vigilance clearance/integrity certificate in respect of applicant. No intimation regarding any charge-sheet issued to the applicant was given to UPSC till the date of DPC. As such, UPSC is not aware of any disciplinary proceedings initiated against the applicant. UPSC is also not aware of O .A. No. 29/2005 filed by the Applicant in CAT, Guwahati and subsequently WP filed in Guwahati High Court and representation made to Secretary, Railway Board.
7. That with regard to paragraph 4.6 of the instant Original Application, the respondent begs to state that the applicant's name was considered for promotion in the DPC meeting held on 26.02.2002 and 27.02.2002 and his name was recommended for promotion in the extended panel as mentioned in para 5 above.
8. That with regard to the paragraph 4.7, the answering respondent begs to state that there are no comments to offer as the statements made in this instant paragraph are concerned with the Railway Board.



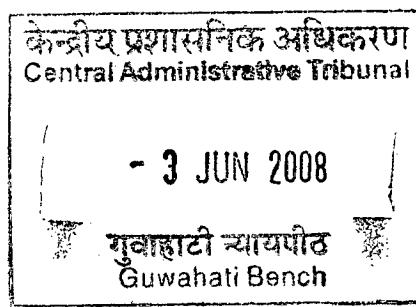

(शरद चन्द्र श्रीवास्तव)
(S. C. SRIVASTAV)
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

9. That with regard to paragraph 5.1 to 5.8 of the instant Original Application, the respondent begs to state that the statement made in those paragraphs are concerned with the Ministry of Railways and as such the UPSC has no comments to offer.

10. That with regard to paragraph 6 and 7, the answering respondent begs to state that those are matter of records and are concerned with the Ministry of Railways and the answering respondent has no comments to offer.

11. That with regard to paragraph 8, the answering respondent begs to state that on receipt of a proposal from the Ministry of Railways, DPC was held for the post of Asstt. Accounts Officer, Gr. 'A' Jr. Time Scale of IRAS on 26th and 27th February, 2002. Shri A.K. Sarkar was found fit for promotion and was placed in the extended panel for the year 2001-2002, Minutes of the DPC were forwarded to the Ministry of Railway on 05.03.2002. Further action lies on the concerned Ministry i.e. in this case with the Ministry of Railways. In so far as UPSC is concerned no specific relief has been sought from it and as such UPSC may be discharged from the memo of parties of the case.

12. That with regard to paragraph 9 and 10, the answering respondent begs to state that those are within the specific knowledge of the applicant and the answering respondent has no comment to offer.

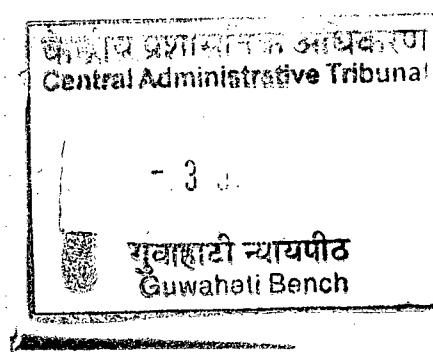


S. C. Srivastav
(स. च. श्रीवास्तव)
(S. C. SRIVASTAV)
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi

VERIFICATION

I, S.C. Srivastav, son of Shri J.C. Srivastava aged about 44 years, Resident of C-142, B-9/9, Panchvati Apartment, Sector 62 in the district of Noida and working as Under Secretary and has been authorized by the Respondent to verify the statements on their behalf. I do hereby verify that the statements in paragraph 5, 6, 7 & 11 are true to my knowledge and those made in paragraph 2, 3, 4 & 10 being matter of record are true to my information arrived therefrom the which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal and I have not suppressed any material facts.

And I sign this verification on this the 26th day of May, 2008 at New Delhi.



SIGNATURE

(शरद चन्द्र श्रीवास्तव)
(S. C. SRIVASTAV)
अवर सचिव/Under Secretary
संघ लोक सेवा आयोग
Union Public Service Commission
नई दिल्ली/New Delhi