

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

OA. 9, 10, 11, & 28/2008

✓ O.A. /TA/ NO. 10/08-2008 ~~2008~~

R.A. /CP/NO.2015

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SECTION OFFICER (JUDL.)

P.S. 29/7/2015

23/7/2015

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

1. Original Application NO. 10 / 2008

2. Misc Petition No. _____

3. Contempt Petition No. _____

4. Review Application No. _____

Applicant(S) Tomy Riba VS Union of India & Ors

Advocate for the Applicants Dr. J. L. Sarkar, Mr. M. Chandra,
Mr. S. Nath, Mrs. M. Dutta

Advocate for the Respondant (S) M. K. Sharma Adl. C. C. S. C.

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed in the Registry No. 66F848940, SD No. 66F848939, Date 20.01.2008	21.01.2008	On being mentioned by Dr. J. L. Sarkar, learned counsel appearing for the Applicant, this case is taken up in presence of Mr. G. Baishya, learned Sr. Standing Counsel for the Union of India; on whom a copy of the this O.A. has already been served.
Steps taken with Envelope.		2. Heard Dr. Sarkar, learned counsel appearing for the Applicant.
Rm-15/- only Extra Charge received bar R-6 to 8.		3. The Applicant received promotion from the post of Diesel Engine Driver to the post of Diesel Technician in the year 2002. By an order dated 2nd January, 2008, he has, virtually, been asked to be reverted from the post of Diesel Technician to that of Diesel Engine Driver and he has impugned the said order dated 02.01.2008 in the present O.A. filed under Section 19 of the Administrative Tribunals Act 1985.
		4. It is the case of the Applicant that before passing the above said reversion order, no opportunity was given to

Notes of the Registry

Date

Order of the Tribunal

21.01.2008

On being mentioned by

Dr. J. L. Sarkar, learned counsel appearing for the Applicant, this case is taken up in presence of Mr. G. Baishya, learned Sr. Standing Counsel for the Union of India; on whom a copy of the this O.A. has already been served.

2. Heard Dr. Sarkar, learned counsel appearing for the Applicant.

3. The Applicant received promotion from the post of Diesel Engine Driver to the post of Diesel Technician in the year 2002. By an order dated 2nd January, 2008, he has, virtually, been asked to be reverted from the post of Diesel Technician to that of Diesel Engine Driver and he has impugned the said order dated 02.01.2008 in the present O.A. filed under Section 19 of the Administrative Tribunals Act 1985.

4. It is the case of the Applicant that before passing the above said reversion order, no opportunity was given to

Steps taken with Envelope.

21/01/08

Rm-15/- only Extra

Charge received bar R-6 to 8.

21/01/08

21.01.08

him(Applicant) to have his say in the said matter and, as such, the impugned order dated 02.01.2005 is an outcome of gross violation of principle of natural justice.

5. A prima-facie case having been made out by the Applicant; this case is admitted.

Notices be issued to the Respondents requiring them to file their reply by 20th February, 2008.

6. The impugned order dated 02.01.2008, so far it relates to the Applicant and the private Respondents, is hereby stayed ad - interim and, as a consequences, the Respondents should allow the Applicant to continue and discharge duties in the post on Diesel Technician and should not disturb him from that post without leave of this Tribunal. While passing this ad interim order, liberty is hereby granted to the Respondents to file their objection to the interim prayer made in this O.A, and to this ad interim order.

7. Send copies of this order to the Respondents alongwith notices. ^{Copies} be also handed over to the counsel appearing for both the parties.

Call this matter on 20.02.2008.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

21.21.1.08

P1. Issue notice to the Respondents
2-3 copies of this order.

Order copies be sent to the counsel of both the parties.

Copy of the order

dt 21.01.08 received
on 28.1.08 on behalf
of Mr. B. B. B. B.
(Sr. C.G.S.C. (AT))

Rupashu
Advocate

lm

Notice & order sent to
D/Section for issuing
to resp. nos. 1 to 8 by
regd. A/D post.

25/01/08. D/No 346 to 353
Dt = 11/2/08.

Order dt 21/01/08 received
by hand by both the parties.

o.A. 10/08

13

20.02.2008

Mr. S. Nath, learned counsel for the Applicant is present. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents prays for six weeks time to file written statement. Prayer is allowed.

Notice duly served

on R-8 - (A/D card at file of o.A. 9/08).

Call this matter on 07.04.2008 awaiting written statement from the Respondents.

10/3/08

W/s not filed

4.6.08

Lm

07.04.2008

Written statement has not been filed as yet in this case. Call this matter on 14.05.2008 awaiting written statement from the Respondents.

(Khushiram)
Member (A)

W/s not filed

13.5.08

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

14.05.2008

No written statement has been filed in this case.

28.8.08

W/s filed by the Respondents.
copy served.

Q.A.

Call this matter on 12.06.2008 awaiting written statement from the Respondents.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

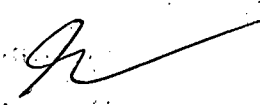
/bb/


O.A. 10/08-4

12.06.2008

No written statement has yet been filed by the Respondents. On the prayer of learned Standing Counsel appearing for the Respondents, time till 30.06.2008 is granted for filing written statement.

Call this matter on 30.06.2008.


(Khushiram)
Member(A)

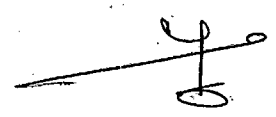

(M.R. Mohanty)
Vice-Chairman

30.06.08

Written Statement is undertaken to be filed by 04.07.2008, after serving copies thereof on the Advocate for the Applicants.

Mr M.Chanda, learned counsel appearing for the Applicant undertakes to file rejoinder by 18.08.2008.

Call this matter on 19.08.2008.


(M.R. Mohanty)
Vice-Chairman

19.08.2008

Mr.M.U.Ahmed, learned Addl. Standing counsel for the Union of India, undertakes to file the written statement by 22.08.2008. He has, however, served a copy thereof on Mr.M.Chanda, learned counsel for the Applicant.

Mr.M.Chanda (who has received a copy of the written statement) undertakes to file a rejoinder by 09.09.2008.

Call this matter on 09.09.2008 expecting rejoinder from the Applicant.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

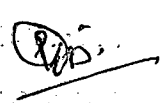
/bb/

N/s not filed.

33
18.08.2008

28.8.08

W/s filed by the Respondents.
Copy served.



Rejoinder not filed.

33
8.9.08

0A-10/08 5-

09.09.08

Mr M.Chanda, learned counsel for the Applicant has filed rejoinder after having served a copy thereof on the Respondents. Mr M.U.Ahmed, learned Addl. Standing counsel prays for four weeks time to examine the matter.

Call this matter on 03.11.2008 for order.

(Khushiram)
Member(A)

10.9.08
Rejoinder submitted
by the Applicant.
Copy served.

Q.A.

The case is ready
for hearing.

pg

03.11.2008

In this case written statement and rejoinder have already been filed by the parties.

Call this matter for hearing on 15.12.2008.

(S.N. Shukla)
Member (A)

(M.R. Mohanty)
Vice-Chairman

nkm

The case is ready
for hearing.

12.12.08.

15.12.2008

Mrs U. Dutta, learned counsel appearing for the Applicant and Mr. M. U. Ahmed, learned Addl. Standing counsel appearing for the Respondents are present.

Call this matter on 04.02.2009.

(S.N.Shukla)
Member (A)

3.3.09

Reply to Rejoinder
filed by the Respondent
Copy Served.

/lm/

04.02.2009

Call this matter on 23.03.2009 for hearing.

(M.R.Mohanty)
Vice-Chairman

Q.A.

6 -
0A.10/08

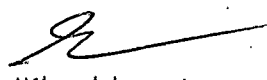
the case is ready
for hearing.


23
20.3.09.

23.03.2009

Mrs.U.Dutta states that O.A. Nos. 9/2008, 10/08, 11/2008 & 28/2008 are identical and similar matter and these matters may be adjourned to be taken up on 25.03.2009.

Prayer is accepted. List the matters on 25.03.2009 for hearing. It is made clear that no adjournment shall be granted on that date on any ground whatsoever.


(Khushiram)
Member (A)



(A.K. Gaur)
Member (J)


/bb/


3/3

25.03.2009

Heard counsel for the parties. For the reasons recorded separately, this case stands disposed of.


(Khushiram)
Member (A)


(A.K. Gaur)
Member (J)

/pg/

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.9, 10, 11 & 28 of 2008.

Date of Order : This the 25TH day of March, 2009.

THE HON'BLE MR A. K. GAUR, JUDICIAL MEMBER

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

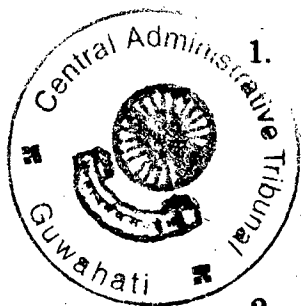
O.A.No. 9 of 2008

**Shri Mardo Zirdo
Son of Shri Tamar Zirdo
Working as Diesel Technician
Station Director,
All India Radio, Itanagar,
Arunachal Pradesh**

.....Applicant

By Advocate Mr M.Chanda & S.Nath

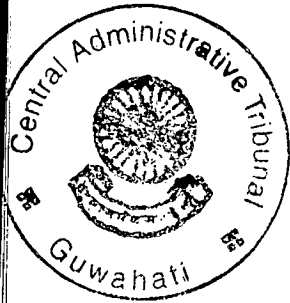
-Versus-



- 1. Union of India,
Represented by Secretary to the
Government of India,
Ministry of Information & Broadcasting,
Shastri Bhawan 'A' Wing,
New Delhi-110001.**
- 2. Prasar Bharati Broadcasting Corporation of India
represented by the Chief Executive Officer,
Parliament Street, New Delhi-110001.**
- 3. The Director General,
All India Radio,
Prasar Bharati Broadcasting Corporation of India
Akashvani Bhawan,
Parliament Street, New Delhi-110001.**
- 4. The Chief Engineer (EZ)
All India Radio & Doordarshan,
Akashvani Bhawan,
4th Floor, Eden Gardens, Kolkata-1.**
- 5. Deputy Director General (NE)
All India Radio, Chandmari, Guwahati-781003.**
- 6. The Chief Engineer (NEZ)
All India Radio & Doordarshan**

Dr P.Katoti Building,
Near Ganeshguri Flyover,
Ganeshguri, Guwahati-781006.

7. The Station Director,
All India Radio,
Itanagar, Arunachal Pradesh - 791111.
8. Md Mahibul Islam
Son of Late Ataur Rahman
Diesel Engine Driver,
Office of the Superintending Engineer,
(HPT), All India Radio, Guwahati-1.
9. Shri Lalmuankima
Diesel Engine Driver,
AIR Aizawl,
O/o Station Director,
All India Radio, Aizwal, Mizoram
10. Station Director
All India Radio
Guwahati-3.
11. Station Director,
All India Radio, Aizwal,
Mizoram



..... Respondents

By Advocate Shri G.Baishya, Sr.C.G.S.C

O.A. 10 of 2008

Shri Tomi Riba
S/o Shri Gokar Riba
Working as Diesel Technician,
Station Director,
All India Radio,
Itanagar, Arunachal Pradesh

.....Applicant

By Advocate Mr M.Chanda & S.Nath

-Versus-

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2. Prasar Bharati Broadcasting Corporation of India
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Son of Late Ataur Rahman
Diesel Engine Driver,
Office of the Superintending Engineer,
(HPT), All India Radio, Guwahati-1.

....Respondents

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

O.A. 11 of 2008

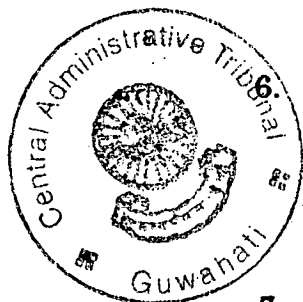
Shri Binanda Borah
S/o Late Rupai Borah
Working as Diesel Technician,
Station Director,
All India Radio,
Itanagar, Arunachal Pradesh

.....Applicant

By Advocate Mr M.Chanda & S. Nath

-Versus-

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7. The Station Director,
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Itanagar, Arunachal Pradesh - 791111.
8. Md Mahibul Islam
Son of Late Ataur Rahman
Diesel Engine Driver,
Office of the Superintending Engineer,
(HPT), All India Radio, Guwahati-1.
9. Md Azad Ali
Diesel Engine Driver,
O/o Station Director,
All India Radio, Guwahati-3
10. Station Director
All India Radio
Guwahati-3.

....Respondents

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



O.A.28 of 2008

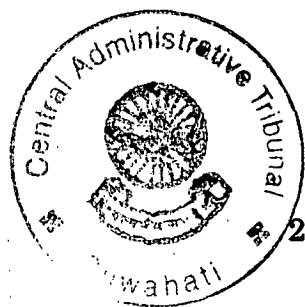
Shri Manuj Hazarika
S/o Late Kulai Hazarika
Working as Diesel Engine Driver,
Station Director,
All India Radio,
Chandmari, Guwahati-3.

.....Applicant

By Advocate M.Chanda & S.Nath

-Versus-

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Dr P.Katoti Building,
Near Ganeshguri Flyover,
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7. The Station Director,
All India Radio,
Chandmari, Guwahati - 781003.
8. Station Director,



All India Radio, Gangtok,
Gangtok, Sikkim-737101.

9. Md Mahibul Islam
Son of Late Ataur Rahman
Diesel Technician,
Office of the Station Director,
All India Radio, Gangtok,
Gangtok, Sikkim-737101.

.....Respondents

By Advocate Mrs M. Das, Addl.C.G.S.C.

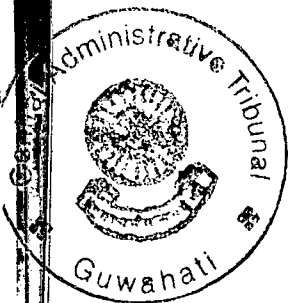
ORDER

A. K. GAUR (MEMBER-J)

As the points and controversy involved in all the aforesaid cases are similar and identical, all the Original Applications are disposed of by a common Judgment. The O.A.No.9 of 2008 has been treated as leading case.

2. In all the O.As, the validity of order dated 2.1.2008 has been challenged on the ground of violation of principle of natural justice & fair play, as well as on the ground of delay and laches on the part of respondents in reverting the applicants from the post of Diesel Technician to Diesel Engine Driver, on the basis of Directorate's instructions dated 26.9.07, issued after a lapse of about six to eight years.

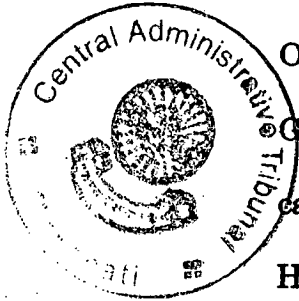
All the applicants are presently working as Diesel Technician in the office of Station Director, All India Radio, Itanagar, Arunachal Pradesh except the Applicant of O.A.No.20/08, Manik Hazarika, who has been reverted to the post of Diesel Engine Driver and joined the said post on 27.1.2008 in the office of the Station Director, Guwahati. All the applicants were appointed in the cadre of



Diesel Engine Driver (hereinafter to be referred as DED) in the pay scale of Rs.950-1500/- after being found suitable in the selection conducted by the respondents. The next avenue of promotion of the applicants from 'DED' was available in the cadre of Diesel Technician.

3. As per recruitment Rule, 3 years service is necessary for consideration of promotion from the cadre of Diesel Engine Driver. The post of Diesel Technician is required to be filled-up 100% by promotion, failing which the post may be filled by direct recruitment.

The applicants after being found suitable in the DPC held by All India Radio, Itanagar and Station Director, AIR, Gangtok in O.A.No.20/08 were promoted and appointed as Diesel Technician in Grade Rs.4000-6000/- vide order dated 31.3.2000 and 9.10.2002 in two cases (O.A.9/08 & 10/08) and order dated 10.5.2002 in the case of M. Hazarika (O.A.No.20/08).



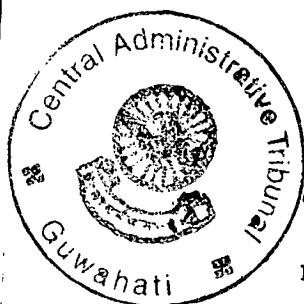
4. According to the applicants the then Chief Engineer, Eastern Zone vide its letter dated 19.9.2001 instructed all the AIR/Doordarshan Station and offices, quoting the reference of Directorate letter dated 18.7.2001 and 20.9.2000 to take necessary action for filling of the vacant post of local cadres like Technicians, Helper, Diesel Technicians, Diesel Engine Driver etc. in compliance with directorate's instruction on the basis of local seniority.

A copy of letter dated 10.9.2001 has been filed as Annexure-IV to the main O.A.

5. After having worked for about 6 to 8 years in the cadre of Diesel Technician on regular basis all of a sudden the applicants came

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to know that they are going to be reverted from the post of Diesel Technician following the impugned order dated 2.1.08. In the impugned order it is clearly mentioned that as per directorate's letter dated 26.9.2007 and direction given in the Judgment rendered by Guwahati Bench of the Tribunal in O.A.No.26 of 2007, dated 6.2.2007, filed by one Sri Mohibul Islam DED, AIR Guwahati, a review DPC for promotion of DED to the post of Diesel Technician on zonal seniority basis was held and on the basis of recommendations of DPC, the Diesel Technician earlier promoted on local basis were directed to be reverted to the post of DED with immediate effect. Accordingly, the Diesel Technician earlier promoted on local basis have been reverted on the basis of recommendations of review DPC to the post of DED on the basis of zonal seniority. Most surprisingly the applicants have been reverted without any notice or show cause and the said action of respondents is in clear violation of principle of natural justice and fair play. A copy of the reversion order dated 2.1.08 has been filed as Annexure-5 to the O.A.



6. It is also alleged by the applicants to O.A.No.9 of 2008 that the reversion order has been issued as per directorate's instructions dated 8.1.2001 and 26.9.2007, but the said instructions has not been made available to the applicants. Moreover, the applicants were promoted to the cadre of Diesel Technician vide order dated 31.3.2000, 9.10.2002 and 10.5.2002 respectively following the rules prevailing at the relevant point of time and also on the basis of recommendation dated 28.3.2000. In any case the instructions issued by the Directorate

dated 8.1.2001 and 26.9.07 cannot be made applicable retrospectively for reversion of the applicants. Moreover, the direction issued by the Tribunal vide order dated 6.2.07 in O.A.No.260 of 07 is only to dispose of the representation and the Tribunal has not given any positive direction to promote the respondent No.8 (M.Islam) or to revert the applicants. The order dated 2.1.08 is not transparent and is violative of principle of natural justice.

7. It is also stated by the applicant that Md M.Islam had filed a representation dated 20.6.2000 against promotion of the applicants to the post of Diesel Technician. In reply to the representation of the Respondent No.8 of the leading case the official respondents clearly replied that there is no need to zonalise the cadres. The respondent No.8 (Md M. Islam) was not eligible for consideration for promotion to the post of Diesel Technician at AIR, Itanagar. The claim of (Respondent No.8) Md M.Islam has already been rejected in the year 2001, and any subsequent claim of applicant is barred by principle of estoppel and acquiescence. The instructions contained in letter dated 1.5.2001 is holding the field till date and unless the said instructions issued by Chief Engineer, EZ, AIR, Kolkata are not set aside, the claim of the respondent No.8 (Md M.Islam) is not sustainable in law.

8. In the reply filed by the respondents, it is submitted that the applicants were promoted on the basis of local seniority as per C.E(EZ) Kolkata, circular No.Z.cadre/18(8)/5/2001 dated 19.9.2001 (Annexure-3). According to official respondents, Respondent No.8 Md Mahibul Islam, DED being senior to the applicant represented for



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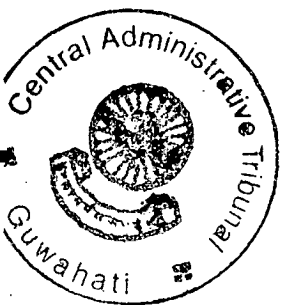
promotion to the post of Diesel Technician and vide letter dated 1.5.2001 he was replied that Diesel Technician being a local cadre post, he would not be eligible for promotion to the post of Diesel Technician at Itanagar. Being aggrieved Respondent No.8 (Md Islam) who is senior to the applicants as per seniority list prepared on zonal basis filed, O.A.No.260/07 and obtained a direction from the Tribunal for deciding his representation within a specified period of time.

9. As the representation of Respondent No.8 (Md Islam) was not decided within time frame, he filed contempt petition which was later on dropped vide order dated 4.1.08 on the written assurance of the respondents. The Director General, AIR, New Delhi vide order dated 26.9.07 in continuation to earlier instructions dated 8.1.01 directed CE (NEZ) AIR & TV Guwhati, to cancel the decision of DPC held earlier, and hold a review DPC for promotion of DED to the post of Diesel Technician on zonal seniority basis.

10. Accordingly, on the basis of the recommendations of the subsequent review DPC, the applicants earlier promoted as Diesel Technician on local seniority basis, have been reverted to the post of DED vide order dated 2.1.08.

It is also submitted by the respondents that the respondents can hold review DPC a-fresh to correct the mistake committed earlier.

11. The applicants filed a detailed rejoinder and submitted that (Md M.Islam) respondent No.8 was not an employee of AIR Itanagar at the relevant point of time and as such respondent No.8 cannot raise



any grievance against promotion of the applicants, which was given effect in the year 2000 on the basis of station basis seniority, as per the clarification received from the office of Chief Engineer, Eastern Zone, Kolkata vide letter dated 19.7.01. It is also stated that the respondent No.8 (M.Islam) remained silent for several years, except submitting repeated representations. In these circumstances the claim of Md. M.Islam (Respondent No.8) is misconceived and deserves to be repelled on the ground of delay & laches..

12. We have heard counsel for the rival parties at length and perused the materials placed on record. It is seen from the record that the representation of respondent No.8 (Md M.Islam) dated 22.5.2000 and 8.1.01 enclosed to the reply clearly indicates that he was fully aware of the promotions of the applicants way back in the year 2000 & 2001, but he remained complacent and silent for several years & has approached the Tribunal in 2007 only, hence his claim for promotion was liable to be rejected on the ground of delay and laches.

13. It is seen from the record that this Tribunal has already passed interim order dated 21.1.08 in all the aforesaid O.As, except O.A.No.28/08 (M.Hazarika vs U.O.I) by which operation of order dated 2.1.08 has been stayed and the applicants have been directed to discharge the duties of Diesel Technician in the mean time. The said interim order is still continuing till today.

14. Learned counsel for the applicants vehemently urged that the order dated 2.1.08 has been passed in violation of principle of natural justice and fair play. He placed reliance on the decision of



Hon'ble Supreme Court rendered in 2008(7) SCC 394, Babloo Pasi Vs. State of Jharkhand in order to buttress the contention that an order prejudicial to any person cannot be passed without affording him an opportunity. The case reported in 1995 SCC (L&S) 447, M.S.Usmani vs. Union of India & others was cited by the applicants. In the case of M.S.Usmani (supra) the Hon'ble Supreme Court had an occasion to deal the matter of reversion and after a careful analysis of the case observed as follows :-



"The reversion order issued by the Railways appears not only to be unjust but vitiated by error of law. It was passed without affording any opportunity of hearing to the appellants. The appellants have worked on the posts for several years from the date of their promotion. Reverting such persons after a lapse of six to eight years of their promotion in higher scale was wholly unwarranted. In such circumstances the order of reversion was held to be unjust, illegal & violative of principle of natural justice.

Learned counsel for the applicants placed strong reliance on the decision of Hon'ble Supreme Court rendered in 1998 SCC (L&S) 85 - N.K.Durga Devi vs. U.O.I and argued that in view of decisions rendered in 1976(4) SCC 226 - Govt. of A.P vs. Janardhan Rao, 1980 SCC (L&S) 423 - R.R.Verma vs. U.O.I & 1980 (3) SCC 393 - Amrik Singh vs. U.O.I, the position of law is clear that an order passed having civil consequences, if passed in violation of principle of natural justice and without giving hearing to the applicants would be void.

15. Learned counsel for the applicants would further contend that the respondents have passed order dated 2.1.08 arbitrarily and it is well settled that arbitrariness violates Article 14 of Constitution of India. In support of this contention he placed reliance on the decision of

Hon'ble Supreme Court rendered in 2008(4) SCC 720B Govt. of Andhra Pradesh vs. Laxmi Devi.

16. Learned counsel for the applicants strongly argued that a series of representations of Respondent No.8 (M.Islam) to the authority concerned cannot justify a belated approach. He placed reliance on the following decisions in this regard.

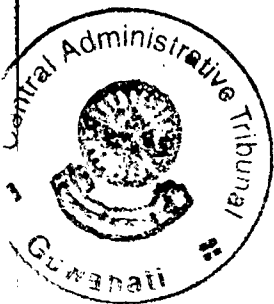
i) 2006 SCC (L&S) 791 Karnataka Power Corporation vs. K.Thangappan

ii) 2007(2) Sacle 325 Shiv Das vs U.O.I & Ors.

17. It is further urged on behalf of the applicants that the respondent No.8 (Md M.Islam) is estopped from challenging the promotion of the applicants after a lapse of several years and the respondents have committed grave illegality in re-holding the review DPC and passing order of reversion against the applicants behind their back. The claim of the respondent No.8 for promotion to the post of Diesel Technician deserves to be rejected on the ground of delay and laches. Reliance has been placed on the decision of Hon'ble Supreme Court reported in 2001 SCC (L&S) 217 - A.J.Fernandis vs. D.R.M. S.C.Railway.

18. It has also been argued on behalf of the applicants that direction given by the Tribunal in O.A.No.26 of 07 filed by Respondent No.8 does not give rise to a fresh cause of action and this view gets full support from the decision of Hon'ble Supreme Court reported in 2008 (10) SCC 115A Jacob vs. Director, Geology & Mining.

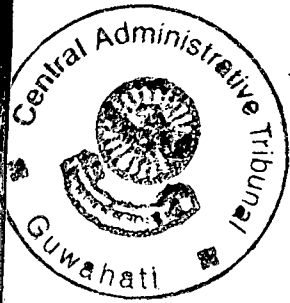
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19. Reliance has also been placed on the decision reported in AIR 2006 SC 2145 U.Raghavendra Acharya vs. State of Kerala in order to buttress the contention that "by reasons of executive instructions an employee cannot be divested and deprived of a vested or accrued right."

No valid reasons have been assigned by the respondents for holding review DPC, rather it appears that the review DPC has been constituted by the official respondents, on the basis of order dated 6.2.07 passed by the Tribunal in O.A.No.26 of 2007 filed by respondent No.8 (M.Isam). A perusal of the Tribunal's order clearly indicates that it did not pass any order for holding review DpC, rather it merely directed the respondents to consider and decide the representation of the applicants within a period of one month. In our considered view the reasons indicated in order dated 2.1.08 for holding review DPC is factually incorrect. The decision of competent authority to consider the case of promotion of Respondent No.8 (M.Islam) on Zonal basis is a decision of recent past, and that too not based on any statutory rule governing the field.

20. In our considered opinion the decision of giving promotion on the basis of Zonal seniority is an executive decision of respondents and in view of the Hon'ble Apex Court decision in U.Raghavedra's case (supra), on the basis of an executive instructions an employee cannot be divested and deprived of a vested or accrued right. The case of the applicants promotion was duly considered and given on the basis of station wise seniority in the year 2000-2001. In these circumstances in the absence of any allegation of violation of statutory rule, the

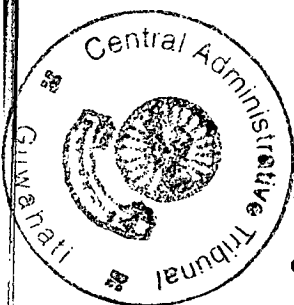


respondents are not entitled to hold a review DPC after a lapse of 6 to 7 years from the date of the promotion of the applicants and that too without affording any opportunity of hearing.

21. We have given our thoughtful consideration to the pleas advanced by the parties counsel and in our considered view the order dated 2.1.2008 is not sustainable in law.

We have also seen from the record that the applicants were found eligible by the DPC held in the year 2000 for promotion as per recruitment rule, and recommended for promotion to the cadre of Diesel Technician by duly constituted DPC in pursuance of circular dated 19.9.01 issued by the then Chief Engineer, Eastern Zone, based on Directorate's letter dated 18.7.01 and 230.9.2000. In view of the aforesaid position the respondents are estopped from holding a review DPC and reopen the matter under the garb of an executive instruction issued.

22. Learned counsel for the respondents submitted that the post of DED & Diesel Technician are of a Zonal Cadre and therefore asked CE(EZ) AIR & DD, Kolkata to decide the case of promotion of DED on zonal level and in spite of that instruction when promotion of DED was done at station seniority basis, the Respondent No.8 (M.Islam), who was senior to the applicants by more than 4 years on zonal seniority basis filed O.A.26/07 in the Tribunal. According to respondents the action of the competent authority to hold a review DPC on zonal seniority basis after canceling the earlier DPC was correct and according to law.



23. We have also seen from the record that draft seniority list of DED of N.E.Zone prepared as on 1.1.2008, is on zonal basis issued for the first time. Prior to this seniority list was never maintained on zonal basis. The decision of the respondents to effect the promotion to the cadre of Diesel Technician on zonal basis is an outcome of an executive instruction of recent past.

In the absence of any violation of statutory rule the applicants were rightly promoted on the basis of station wise seniority.

The claim of Respondent No.8 (M.Islam) at this distant point of time is not sustainable in the eye of law.

In view of our aforesaid observations, all the aforesaid O.As are allowed, the order dated 2.1.08 so far it relates to the applicants in all the O.As are quashed and set aside. Apart from this order dated 16.1.08 (Annexure-12) passed in O.A.No.28 of 2008 (M.Hazarika) is also quashed and set aside.

It would, however, be open to authorities concerned to pass an appropriate order if they consider it necessary in accordance with law.

In the circumstances of the case however, there will be no order as to costs.

TRUE COPY
प्रतिलिपि

अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी न्यायपीठ
Guwahati Bench
गुवाहाटी/Guwahati-5

/pg/

Sd-
Member (J)

Sd-
Member (A)

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गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 10 /2008

Shri Tomy Riba

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 1995- Applicant was initially appointed as Diesel Engine Driver in the office of Station Director All India Radio, Itanagar.
- As per the recruitment rule next avenue of promotion of the applicant is available in the cadre of Diesel Technician. (Annexure- 1)
- 20.06.2000- Respondent No. 8 submitted representation for promotion against the promotion of the applicant and others in the cadre of Diesel Technician in the AIR, Itanagar. (Annexure- 6)
- 01.05.2001- Chief Engineer (EZ) rejected representation of the respondent No. 7 and held that promotion of the applicant and others to the cadre of Diesel Technician at AIR, Itanagar is valid. (Annexure- 7)
- 19.09.2001- Chief Engineer (EZ) instructed all the AIR/Doordarshan station and offices to take necessary actions for filing up the vacant post of the local cadres like Technicians, Helper, Diesel Technicians, Diesel Engine Driver etc. (Annexure- 3)
- 12.09.2002- DPC held on 12.09.02 at All India Radio, Itanagar for consideration of the promotion of the applicant along with others to the cadre of Diesel Technician.
- 09.10.2002- Applicant was promoted to the cadre of Diesel Technician pursuant to the recommendation of the DPC. (Annexure- 2 Series)
- 06.02.2007- Respondent No. 8 approached this Hon'ble Tribunal through O.A. No. 26/07 for direction upon the respondent to consider his promotion to the cadre of Diesel Technician. The said O.A. was disposed of with the direction to respondent No. 8 to file representation and also directed the respondent to consider the representation. (Annexure- 5)
- 02.01.2008- Deputy Director (Engg.) for Chief Engineer (NEZ) without any show cause or notice issued the impugned order of reversion of the applicant and others from the post of Diesel Technician to the post

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Bench

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of Diesel Driver, said action of the respondents is gross violation of principle of natural justice. (Annexure- 4)

Hence this O.A before this Hon'ble Tribunal.

PRAYERS

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned order bearing letter No. CE (NEZ)/1 (36)/2007-S/DPC dated 02.01.2008 (Annexure- 4) so far the applicant is concerned.
2. That the Hon'ble Tribunal be pleased to direct the respondents to restore the applicant to the post of Diesel Technician in terms of promotion order dated 31.03.2000.
3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to stay operation of the impugned order bearing letter No. CE (NEZ)/1 (36)/2007-S/DPC dated 02.01.2008 so far the applicant is concerned till disposal of the Original Application.
2. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar to the respondents for providing the relief as prayed for.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Title of the case : O.A. No. 10/2008

Shri Tomi Riba. : Applicant.

-Versus-

Union of India & Ors. : Respondents.

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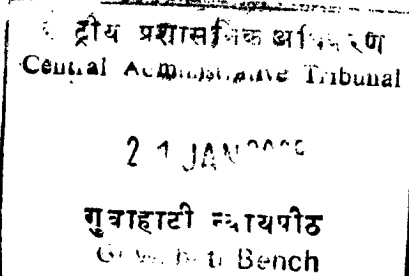
Filed By:

S. Nait.

Advocate

Date:- 21/1/08

Tomi Riba



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O.A. No. 10 /2008

BETWEEN:

Shri Tomi Riba,

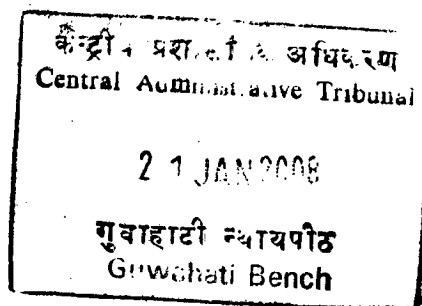
S/o- Shri Gokar Riba,
Working as Diesel Technician,
Station Director,
All India Radio,
Itanagar, Arunachal Pradesh.

-----Applicant.

-AND-

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Information and Broadcasting,
Shastri Bhawan 'A' Wing,
New Delhi- 110001.
2. Prasar Bharati Broadcasting Corporation of India,
Represented by the Chief Executive Officer,
Parliament Street, New Delhi- 110001.
3. The Director General,
All India Radio,
Prasar Bharati Broadcasting Corporation of India,
Akashvani Bhawan,
Parliament Street, New Delhi- 110001.
4. The Chief Engineer (EZ),
All India Radio & Doordarshan,
Akashvani Bhawan,
4th Floor, Eden Gardens, Kolkata- 1.
5. Deputy Director General (NE),
All India Radio, Chandmari, Guwahati- 781 003.
6. The Chief Engineer (NEZ)
All India Radio and Doordarshan
Dr. P. Kakoti Building,
Near Ganeshguri Flyover,
Ganeshguri, Guwahati- 781006.
7. The Station Director,
All India Radio,
Itanagar, Arunachal Pradesh- 791111.

Tomi Riba



8. Md. Mahubul Islam,
Son of Late Ataur Rahman,
Diesel Engine Driver,
Office of the Superintending Engineer,
(HPT), All India Radio, Guwahati- 14.

..... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of the order (s) against which this application is made:

This application is made against the impugned order bearing No. CE (NEZ)/1 (36)/2007-S/DPC dated 02.01.2008 (Annexure- 4) whereby the applicant is sought to be reverted from the post of Diesel Technician to the post of Diesel Engine Driver without any notice or show cause and further praying for a declaration that the promotion of the applicant to the cadre of Diesel Technician in the scale of pay of Rs. 4000-100-6000/- vide order bearing No. ITA.1 (3)/2000-S/4606 dated 31.03.2000 be restored.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. Facts of the case:

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

4.2 That the applicant is presently working as Diesel Technician, in the office of the Station Director, All India Radio, Itanagar, Arunachal Pradesh. He was initially appointed in the cadre of Diesel Engine Driver in the pay scale of Rs. 950-1500/- after being found suitable in the selection conducted by the

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Guwahati Bench

office of the Station Director, All India Radio, Ministry of Broadcasting, Itanagar in the year 1995.

- 4.3 That it is stated that the applicant's next avenue of promotion was available in the cadre of Diesel Technician in the scale of pay of Rs. 380-12-EB-15-560 (now revised to Rs. 1320-30-1560-EB-40-2040). As per recruitment rule, 3 years service is necessary for consideration of promotion from the cadre of Diesel Engine Driver and the post of Diesel Technician is required to be filled up by 100% by promotion, failing which, the post may be filled up by direct recruitment.

A copy of extract of recruitment rule is annexed hereto and marked as Annexure- 1.

- 4.4 That it is stated that the applicant after being found suitable in the DPC held on 12.09.2002 at All India radio, Itanagar, he was promoted/appointed to the cadre of Diesel Technician in the scale of pay of Rs. 4000-100-6000/- vide order bearing No. ITA.1 (3)/2000-S/4606 dated 09.10.2002. Pursuant to the recommendation of DPC order of promotion was issued in respect of the applicant vide order bearing letter No. ITA-1(3)/2002-S/8190 dated 09.10.2002. On the basis of that letter applicant joined to the promotional post of Diesel Technician.

Copy of the recommendation order dated 23.09.2002, promotional order dated 09.10.2002 are enclosed as Annexure- 2 series.

- 4.5 That your applicant begs to say that the then Chief Engineer, Eastern Zone vide its letter bearing no. Z.Cadre/18(8)/S/2001 dated 19.09.2001 instructed all the AIR/Doordarshan station and offices quoting the reference of Directorate letter nos. 14/55/2000-S.IV (A) dated 18.07.2001 and 14/42/2000-S.IV dated 20.09.2000 to take necessary actions for filling up the vacant post of the local cadres like Technicians, Helper, Diesel Technicians, Muster Technicians, Diesel Engine Driver etc. in compliance with the Directorate's instructions.

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Guwahati Bench

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A copy of the Chief Engineer letter dated 19.09.2001 is enclosed as Annexure- 3.

- 4.6 That it is stated that the applicant while working is working in the cadre of Diesel Technician on regular basis for about last 5 (five) years but all of a sudden he came to learn that he is going to be reverted from the post of Diesel Technician following the impugned order bearing letter No. CE (NEZ)/1 (36)/2007-S/DPC dated 02.01.2008. It is relevant to mention here that the applicant came to learn about the reversion order dated 02.01.08 and accordingly he obtained a copy of the impugned order dated 02.01.2008 from the wave sight. In the said impugned order dated 02.01.2008, issued by Deputy Director (Engg.) for Chief Engineer (NEZ), it has been stated that as per Directorate's instruction vide order no. 4/1/2001-SIV (A) dated 08.01.2001 and 4/13/2006-S.IV (A) dated 26.09.2007 and the judgment given by the Hon'ble Central Administrative Tribunal Guwahati Bench, Guwahati in O.A. No. 26 of 2007 dated 06.02.2007 on a petition filed by Sh. Mohibul Islam, DED, AIR Guwahati, a review DPC for promotion of Diesel Engine Driver to the post of Technician on Zonal basis was held. On the basis of recommendation of DPC, the Diesel Technicians earlier promoted on local basis are reverted to the post of Diesel Engine Driver in the scale of Rs. 3050-75-3950-80-4590/- and posted at the stations mentioned with immediate effect. In the impugned order of reversion dated 02.01.2008 name of the applicant has appeared in the Sl. No. 3. It is stated that from the impugned order dated 02.01.2008 it appears that the Diesel Technicians earlier promoted on local basis have been reverted on the basis of recommendation of review DPC to the post of Diesel Engine Driver in terms of zonal seniority. Most surprisingly the applicant, who was promoted as Diesel Technician following the rule prevailing at that point of time and also pursuant to the recommendation of DPC vide order bearing letter No. ITA-1(3)/2000-S/4581 dated 09.10.2002 has been reverted without any notice or show cause, and the said action of the respondents is in violation of principle of natural justice, as such the impugned order dated 02.01.2008 is liable to be set aside and quashed so far the applicant is concerned.

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Guwahati Bench

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Copy of the impugned order dated 02.01.2008 is enclosed herewith and marked as Annexure- 4.

4.7 That it appears that the impugned order of reversion dated 02.01.2008 has been issued as per Directorate's instruction vide order no. 4/1/2001-SIV (A) dated 08.01.2001 and 4/13/2006-S.IV (A) dated 26.09.2007 but the said instructions has not been made available to the applicant. Moreover, the applicant was promoted to the cadre of Diesel Technician vide order dated 09.10.2002 following the rule prevailed at that relevant point of time and also on the basis of recommendation of the DPC held on 28.03.2000 as such any instruction issued by the Directorate vide order dated 08.01.2001 and dated 26.09.2007 cannot be made applicable retrospectively for reversion of the applicant from the promotional post of Diesel Technician. As such action of the respondents are not transparent in issuing the impugned reversion order dated 02.01.2008 since the applicant was promoted in the year 2002 following the rule prevailed at that relevant point of time and the applicant has been reverted as per Directorate's instruction issued vide order dated 08.01.2001 and dated 26.09.2007, as such it is apparent that applicant has been reverted operating the Directorate's instruction retrospectively which is not permissible under the law. Moreover, the direction issued by this Hon'ble Tribunal in order dated 06.02.2007 in O.A. No. 26 of 2007 is only to dispose of the representation of the applicant and the Hon'ble Tribunal has not given any positive direction to promote the respondent No. 8 or to revert the applicant. Therefore, the action of the respondents is not at all transparent and the impugned order dated 02.01.2008 is issued in gross violation of principle of natural justice, as such the impugned order dated 02.01.2008 is liable to be set aside and quashed so far the applicant is concerned.

It is relevant to mention here that the Directorate's instruction vide order no. 4/1/2001-SIV (A) dated 08.01.2001 and 4/13/2006-S.IV (A) dated 26.09.2007 has not been made available to the applicant and the applicant in spite of his best effort could not obtain the aforesaid orders. Therefore, the Hon'ble Tribunal be pleased to direct the respondents to produce aforesaid order dated 08.01.2001 and dated 26.09.2007 for perusal of the Hon'ble Tribunal and the Hon'ble Tribunal further be pleased to set aside and quash

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the order dated 08.01.2001 and dated 26.09.2007 so far the applicant is concerned.

- 4.8 That the applicant begs to state that after obtaining the impugned order dated 02.01.2008 from the website it has come to the knowledge of the applicant that the said impugned order of reversion dated 02.01.08 has been issued as per Directorate's order dated 08.01.2001 and 26.09.2007 and the judgment given by the Hon'ble Central Administrative Tribunal Guwahati Bench in O.A. No. 26/2007 dated 06.02.2007. Accordingly, the applicant obtained a certified copy of the order dated 06.02.2007 passed by this Hon'ble Tribunal along with a copy of the O.A. No. 26/2007. In the O.A. No. 26/2007 although the applicant was made a party respondent No. 6 but he did not get any notice from this Hon'ble Tribunal in O.A. No. 26/07, moreover, in the order dated 06.02.07 in O.A. No. 26/07, this Hon'ble Tribunal directed the applicant Md. Mahibul Islam of the O.A. No. 26/07 to file comprehensive representation before the 2nd respondent i.e. the Director General, All India Radio, Sansad Marg, New Delhi and if such representation is filed by the applicant (of the O.A. No. 26/07), the respondent No. 2 shall consider and dispose of the same within three months and pass appropriate orders thereon. As such the Hon'ble Tribunal did not pass any order on the merit of the O.A. No. 26/07 and also did not direct the respondents to revert the present applicant from his post of Diesel Technician. Therefore, the action of the respondents in holding review DPC and thereby as per recommendation of DPC reversion of the applicant from the post of Diesel Technician after about 8 years of his promotion that too without any notice or show cause is arbitrary, illegal and opposed to the principle of natural justice, as such the impugned order of reversion dated 02.01.2008 is liable to be set aside and quashed so far the applicant is concerned.

Copy of order dated 06.02.07 passed in O.A. No. 26/2007 is enclosed herewith and marked as Annexure- 5.

- 4.9 That it is stated that Md. M. Islam, applicant of O.A. No. 26/2007 submitted a representation on 20.06.2000 against the promotion of the applicant from the post of Diesel Engine Driver to the post of Diesel Technician during

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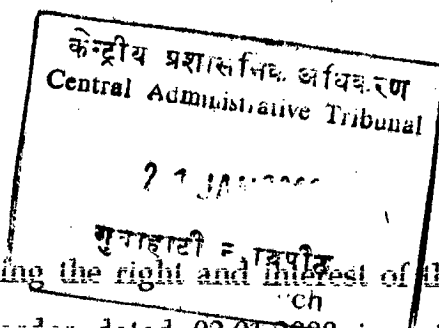
March 2000 at AIR, Itanagar and also praying for his promotion to the post of Diesel Technician. The Dy. Director Engineering for Chief Engineer (E.Z) vide his letter dated 01.05.2001 addressed to the Director General, AIR, New Delhi in connection with representation of Md. M. Islam for promotion to the post of Diesel Technician stated that there is no need to zonalise the cadres. Md. M. Islam was not eligible for consideration for promotion to the post of Diesel Technician at AIR, Itanagar. The only eligible candidates for this promotion were those working at AIR, Itanagar as DED at that time. Therefore, the action taken/procedure followed by station for promotion of DEDs to the post of D. Tech. was correct and in compliance to the existing recruitment rules and Directorate's instructions. It is very much clear from the letter dated 01.05.2001 that the authority did not found Md. M. Islam working as DED at AIR, Guwahati eligible for consideration for promotion to the post of Diesel Technician at AIR, Itanagar in the year 2001 itself and also found that the promotion of the present applicant to the post of Diesel Technician was correct. As such claim of Md. M. Islam, respondent No. 7 for promotion to the post of Diesel Technician has been rejected in the year 2001 and any claim of the respondent No. 8 for promotion to the post of Diesel Technician afterwards is barred by law of estoppel, resjudicata since the letter dated 01.05.2001 is holding the field till date and the claim of the applicant for promotion to the post of Diesel Technician without setting aside the letter dated 01.05.2001 issued by the Chief Engineer, EZ, AIR, Kolkata is bad in law. It is further stated that after elapse of about 8 years of promotion of the applicant to the post of Diesel Technician by holding DPC on 12.09.2002 as per the recruitment rule which was prevailing at that relevant point of time, issuance of the impugned order of reversion dated 02.01.2007 that too without any show cause or notice is illegal, arbitrary and the said impugned order of reversion is also in total violation of principle of natural justice. As such the impugned order dated 02.01.2007 is liable to be set aside and quashed so far the applicant is concerned.

Copy of the representation dated 20.06.2000 and the letter dated 01.05.01 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 6 and 7 respectively.

Pemi Riba

- 4.10 That the applicant states that the impugned order of reversion dated 02.01.2008 is issued in total violation of principle of natural justice since no opportunity has been provide to the applicant before issuance of the impugned order dated 02.01.2008. Moreover, the applicant was promoted to the post of Diesel Technician vide order dated 09.10.2002 pursuant to the recommendation of DPC and there was no illegality in the promotion to the applicant from the post of Diesel Engine Driver to the post of Diesel Technician as such the impugned order of reversion dated 02.01.2008 is issued in gross violation of principle of nature justice and the said impugned order is liable to be set aside and quashed.
- 4.11 That the applicant has acquired a valuable legal right after his promotion to the post of Diesel Technician in the month of October 2002, moreover, he has served in the higher post with higher responsibilities and duties and no fraud is committed by the applicant and even assuming but not admitting the promotion was granted erroneously to the post of Diesel Technician even then since the service of the applicant was utilized to the higher post and pay and allowance was granted to him accordingly to his status and rank and as such the same cannot be taken away that too without providing any opportunity. The applicant has earned seniority in the post of Diesel Technician and now he has become eligible for further promotion, as such benefit of promotion and seniority earned by the applicant in the cadre of Diesel Technician cannot be taken away by the respondents by issuing the impugned order dated 02.01.2008. Therefore, the impugned order is liable to be set aside and quashed so far the applicant is concerned. It is categorically submitted that the impugned order dated 02.01.2008 has not been effected till filing of this Original Application, as such the Hon'ble Tribunal be pleased to pass necessary interim order staying the operation of the impugned order dated 02.01.2008 so far the applicant is concerned till disposal of the Original Application since the aforesaid impugned order has been passed in violation of principle of natural justice.
- 4.12 That the applicant has no other alternative than to file this application for protection of his valuable and legal rights by passing appropriate orders,

Bomi Risa



interim order protecting the right and interest of the applicant. It is stated that the impugned order dated 02.01.2008 is going to be implemented shortly; as such there is no scope on the part of the applicant to submit representation to the authority against the impugned order dated 02.01.2008. It is further stated that till filing of this Original Application the impugned order of reversion dated 02.01.2008 has not yet been affected.

4.13 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

- 5.1 For that, the impugned order dated 02.01.2008 has been passed without application of mind, without consulting records/rules and also without providing any opportunity by way of issuing show cause or notice and on that score alone the impugned order dated 02.01.2008 is liable to be set aside and quashed so far the applicant is concerned since the impugned order dated 02.01.2008 has lead to civil consequences effecting seriously the right and interest of the applicant as well as his service prospect hence the impugned order dated 02.01.2008 is liable to be set aside and quashed so far the applicant is concerned.
- 5.2 For that, the applicant was promoted to the post of Diesel Technician following the rule prevailed at that relevant point of time vide order dated 09.10.2002 pursuant to the recommendation of DPC and there was no illegality in the promotion of the applicant from the post of Diesel Engine Driver to the post of Diesel Technician, as such the impugned order of reversion dated 02.01.2008 issued without any notice or show cause is in gross violation of principle of natural justice and the said impugned order is liable to be set aside and quashed.
- 5.3 For that, applicant has acquired a valuable legal right to the post of Diesel Technician after effecting his promotion from the month of October 2002 vide order dated 09.10.2002.
- 5.4 For that, it is apparent that the impugned order dated 02.01.2008 has been issued on the basis of Directorate's instruction vide order no. 4/1/2001-SIV

Bomi Risa

(A) dated 08.01.2001 and 4/13/2006-S.IV (A) dated 26.09.2007 and said instructions cannot be operated retrospectively at the disadvantage of the applicant since the applicant was promoted as per the rule prevailed in the month of October 2002. Moreover, the Hon'ble Tribunal vide order dated 06.02.07 in O.A. No. 26/2007 has not laid down any law or has not given any direction to promote the respondent No. 7 or to revert the applicant, as such the action of the respondents is not at all transparent. Therefore, the impugned order dated 02.01.2008 is liable to be set aside and quashed.

- 5.5 For that, the promotion and seniority are valuable legal right and the same cannot be taken away without giving any prior opportunity.
- 5.6 For that, Directorate's instruction vide order no. 4/1/2001-SIV (A) dated 08.01.2001 and 4/13/2006-S.IV (A) dated 26.09.2007 cannot be operated retrospectively for reversion of the applicant from the promotional post of Diesel Technician since the applicant got his promotion on 09.10.2002 following the rule prevailed at that relevant point of time and as per the recommendation of the DPC held on 12.09.2002.
- 5.7 For that the applicant has performed higher duties and responsibilities to the post of Diesel Technician since 09.10.2002 and after lapse of about 5 years of promotion of the applicant his reversion to the post of Diesel Technician without any show cause or notice is gross violation of principle of natural justice, as such the impugned order dated 02.01.2008 is liable to be set aside and quashed so far the applicant is concerned.
- 5.8 For that the pay and allowance have been granted to the applicant in consideration of his higher status and rank, therefore the same cannot be taken away when the applicant has not committed any fraud that too without any notice or show cause.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

Bmi Risa

2 1 JAN 2009

11

गुवाहाटी न्यायपीठ
Guwahati Bench

7. Matters not previously filed or pending with any other Court.

The applicant had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted 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 relief(s):

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order bearing letter No. CE (NEZ)/1 (36)/2007-S/DPC dated 02.01.2008 (Annexure- 4) so far the applicant is concerned.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to restore the applicant to the post of Diesel Technician in terms of promotion order dated 09.10.2002.

8.3 Costs of the application.

8.4 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned order bearing letter No. CE (NEZ)/1 (36)/2007-S/DPC dated 02.01.2008 so far the applicant is concerned till disposal of the Original Application.

Bomi Risa

- 9.2 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar to the respondents for providing the relief as prayed for.

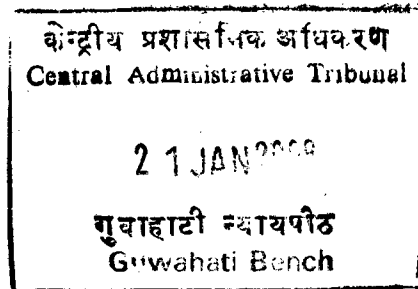
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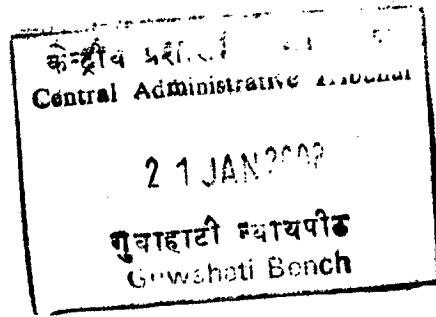
11. Particulars of the L.P.O

- i) L.P.O No. : 66F 848940, 66F 848939, 70E 048929.
- ii) Date of issue : 17/12/2007.
- iii) Issued from : C.P.O, Guwahati.
- iv) Payable at : C.P.O, Guwahati.

12. List of enclosures:

As given in the index.





VERIFICATION

I, Shri Tomi Riba, S/o- Shri Gokar Riba, aged about 38 years, working as Diesel Technician, office of Station Director, All India Radio, Itanagar, Arunachal Pradesh, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 19th day of January 2008.

Tomi Riba

- 14 -

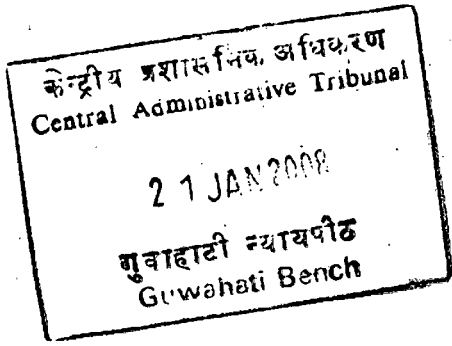
(4)
ANNEXURE - 2

Recruitment Rules for Various Posts in AIR

123

SCHEDULE 7

- | | |
|---|---|
| 1. S. No. | 65 |
| 2. Name of the post | Diesel Technician |
| 3. Classification, character and status of the post | General Central Services Group 'C' (non-gazetted) non-ministerial |
| 4. Scale of pay of the post | Rs. 380-12-500-EB-15-560 (now revised to Rs. 1320-30-1560-EB-40-2040) |
| <i>Method of recruitment and percentage of vacancies to be filled up</i> | |
| 5. Direct recruitment | Not applicable |
| 6. Promotion on selection | Selection |
| 7. Promotion on seniority/fitness | 100% by promotion failing which by direct recruitment |
| 8. Transfer | Not applicable |
| 9. Age limit for direct recruits | Below 27 years |
| 10. Educational and other qualifications required for direct recruitment | A national Trade Certificate issued by the National Council for Training in Vocational Trades (Min. of Labour Employment & Re-habilitations) in the trade of Machine/Internal Combustion Engines) A trade certificate in Craftsmanship awarded by Directorate General, Employment & Training in the trade of Machanic (Internal Combustion Engines) or
Six years experience in the operation and maintenance of Diesel Engines in a reputable factory, workshop or generating station, duly supported by a certificate |
| 11. Period of probation, if any | 2 years |
| 12. Whether age and educational qualifications for directs will apply in case of recruitment by promotion/transfer | Not applicable |
| 13. Grades/sources from which promotion/transfer is to be made | From amongst diesel engine drivers with three years service |
| <i>Authority:</i> Notified vide Min. of I&B Notification No. 16/20/69-B(D) dated 30.3.1970 circulated vide DG, AIR Memo No. A-12018/3/70-SIV dated 8/28-4-1970. | |



Attested
by
Advocate

-15-

75
10B
ANNEXURE 2 (Series)

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
ALL INDIA RADIO: ITANAGAR

No. Ita. 1(3)/2002-S/ 2734-35

Dated : 23/09/2002

MEMORANDUM

On the recommendation of the DPC held on 12/09/02 for the promotion of DED to D. Tech, Shri Tomi Riba, DED is offered the post of D. Tech. AIR, Itanagar in the pay scale of Rs.4000-100-6000. The Seniority of the official will be fixed as per exiting rules.

He should communicate his willingness for the said post within one month from the date of issue of this memorandum otherwise he will be debarred for promotion for one year.

To

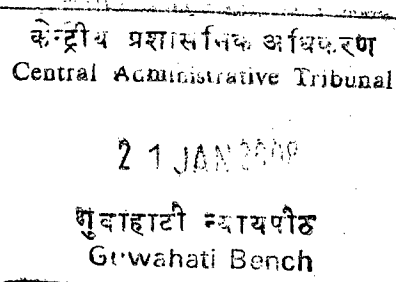
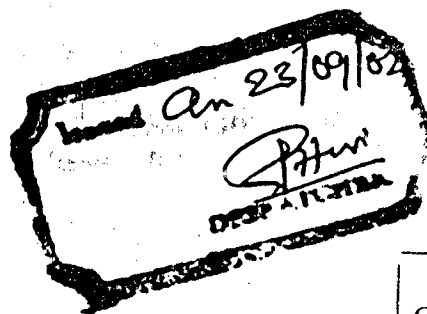
Shri T. Riba,
Diesel Engine Driver
AIR, Itanagar

Copy to :-

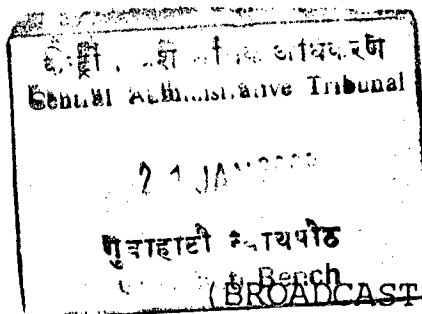
The Superintending Engineer, AIR, Itanagar


(N.M.A. Khampti)
Station Director

Station Director



Attested
for
Advocate



PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
ALL INDIA RADIO :: ITANAGAR.

NO. ITA. 1(3)/2002-S/ 8190.

Dated, Itanagar : 09/10/02

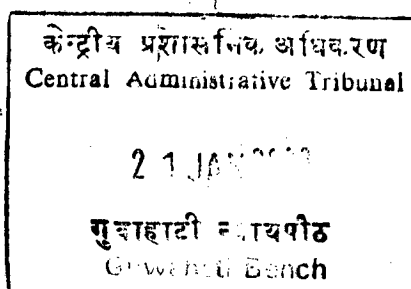
ORDER

On the basis of the DPC held on 12/09/02 at AIR, Itanagar and SD, AIR, Itanagar's Memo 1(3)/2002-S/6932-33 dtd. 23/09/02 Shri T. Riba, DED, AIR, Itanagar is appointed as Diesel Technician on promotion in the pay scale of Rs. 4000-100-6000/- at All India Radio, Itanagar with effect from 01/10/02 (FN).

He will be on probation for a period of two years from the date of his joining at this station.

To,

Shri T. Riba
D. Technician
AIR, Itanagar



sd/-
(N.M.A. Khampati)
Station Director

Copy to :

1. The Chief Engineer(EZ) (Shri R.K.Sinha, DE by name), AIR & TV, Akashvani Bhawan 4th floor, Eden Gardens, Kolkata- 1.
2. The Dy. Director General (NE), All India Radio, Chandmani, Guwahati - 781 003.
3. The Pay & Accounts Officer, Ministry of I & B, Doordarshan, Hriday Ranjan Pa Hazarika Bhawan, R.G. Baruah Road, Guwahati - 781 003.
4. The Superintending Engineer, All India Radio, Itanagar
5. Bill clerk, AIR, Itanagar (two copies)
6. Personal file.
- ✓ 7. Service book

Attested
for
Authorate

Station Director

- 17 -

(30) (3)

ANNEXURE - 3

PRASAR BHARATI
BROADCASTING CORPORATION OF INDIA
OFFICE OF THE CHIEF ENGINEER (EZ)
ALL INDIA RADIO & TV
CALCUTTA

No.Z.Cadre/18(8)/S/2001.

Akashvani Bhavan, 4th fl.
Calcutta-1.

Dated :- 19.9.2001.

This is in continuation of this office earlier letter of even no. dt.18.8.01 circulating the Directorate's instructions for filling-up of vacant posts in the subordinate engineering cadres.

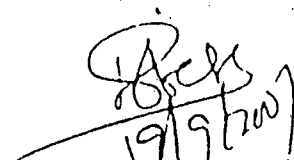
Directorate letter no.14/55/2000-S.IV(A), dt.18.7.01 and 14/42/2000-S.IV, dt.20.9.01 are very clear in all respects.

For vacant posts in zonal cadre in subordinate engg.staff of east zone, the action is already underway. Stations are advised to initiate action for vacant posts in local cadre like Tech., Helper, Diesel Tech., Mast Tech., DED etc. (to which stations themselves are the recruiting authority) in compliance to Directorate instructions as stated above.

As stated in the Directorate's memo, recruitment may be made by the stations immediately for the posts lying vacant for less than a year, while for posts lying vacant for more than a year, a proposal giving the station-wise vacancies along with detailed justification for filling-up of each of these posts may be sent to respective Maintenance section of AIR & Doordarshan so that it can be forwarded to Directorate along with their recommendations. In the proposal the posts sanctioned after the issue of ban order on 17.6.99 may also be clearly indicated. This disposes numerous letters from various stations requesting clarification on Directorate's memo.

The zerox copy of Govt. of India, Deptt. of Personnel and Training O.M.no.14024/2/96-Estt.(D), dt.18.5.98 regarding publication of recruitment notice in the Employment News is affixed overleaf for information and compliance.

Urgent action is only required for local cadres as stated above.


(N.SRINIVASAN)
DIRECTOR ENGINEERING
for CHIEF ENGINEER (EZ)

Engg.head of
All AIR/Doordarshan stations & offices/Doordarshan Maintenance
centre of East zone.

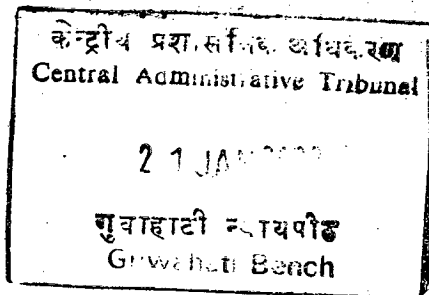
cc. The Director General, By name Shri Yogendra Pal, DE(EPM),
All India Radio, Akashvani Bhavan, Parliament Street, N.Delhi-1
2) The Director General, By name Shri Yogendra Pal, DE(EPM),
Mardi House, Copernicus Marg, N.Delhi-110001.
3) DE(AVM)/ 4) DE(TVM).

A. K. S. S.
Jm.
K. S. S.

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5

ANNEXURE → 4



Transfer/Promotion etc

Section : North East Zone

← BACK

izlkj Hkkjrh

PRASAR BHARATI

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[Broadcasting Corporation of India]

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Office of the Chief Engineer (NEZ)

vkdk'kok.kh ,oa nqjn'kZu , xqokgkVh

All India Radio & Doordarshan, Guwahati

No. CE (NEZ)/1(26)/2007-S/DPC

Dr. P. Kakati's Building,

Near Ganeshguri Flyover,
G. S. Road, Guwahati - 781 006.
Dated- 02/01/2008.

ORDER

Sub: - i) Reversion of Diesel Technician to the post of Diesel Engine Driver.

ii) Promotion of Diesel Engine Driver to the post of D. Technician for the vacancy year 2003-04 & 2005-06

As per Directorate's instruction vide order no. 4/1/2001-SIV (A) dtd. 08.01.2001 & 4/13/2006-S.IV (A) dtd. 26.09.2007 and the judgment given by Hon'ble Central Administrative Tribunal Guwahati Bench, Guwahati vide OA No. 26 of 2007 dtd. 06.02.2007 on petition filed by Sh. Md. Mohibul Islam, DED, AIR Guwahati, a review DPC for promotion of Diesel Engine Driver to the post of Diesel Technician on **zonal basis** was called. On the basis of recommendation of DPC, the following D. Technicians earlier promoted on local basis are reverted to the post of Diesel Engine Driver in the scale of **Rs. 3050-75-3950-80-4590/-** and posted at the stations mentioned against their name as below with immediate effect

Attested
Adv.
Advocate

- 19 -

6

SL. NO.	NAME	PRESENT STATION	POSTED AT
1.	SH. KAILASH MECH.	AIR KOHIMA	AIR KOHIMA
2.	SH. PURTEMSU	AIR MOKOKCHUNG	AIR MOKOKCHUNG
3.	SH. MARDZO ZIRDO	AIR ITANAGAR	AIR ITANAGAR
4.	SH. MANOJ HAZARIKA	AIR GANGTOK	AIR GUWAHATI
5.	SH. B. BORAH	AIR ITANAGAR	AIR ITANAGAR
6.	SH. T. RIBA	AIR ITANAGAR	AIR ITANAGAR

केन्द्रीय प्रशासनिक बोर्ड
Central Administrative Tribunal
21 JAN 2003
गुवाहाटी बेंच
Guwahati Bench

4263041896

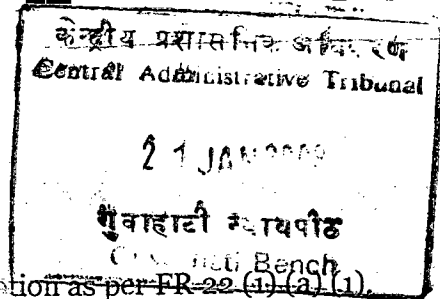
On recommendation of the same D.P.C., following Diesel Engine Driver of NE Zone by considering seniority on **zonal basis** are promoted to the grade of Diesel Technician for the vacancy year **2003-04 (from Sl. No. 1-7) & 2005-06 (Sl. No.8)**, in the scale of Rs.4000-100-6000/- and posted at station mentioned against their name with immediate effect.

SL. NO.	NAME	CATEG	PRESENT STATION	POSTED AT	REMARKS
1.	SH. BABASENA SINGH	UR	AIR SILCHAR	AIR TURA	Against vacant post
2.	SH. J. SANGKHUMA	ST	AIR AIZAWL	AIR AIZAWL	Against vacant post
3.	SH. LALMUANKIMA	ST	AIR AIZAWL	AIR ITANAGAR	Vice Sh. Mardo Zirdo
4.	SH. MD. AZAD ALI	UR	AIR GUWAHATI	AIR ITANAGAR	Vice Sh. B. Borah
5.	SH. JAGANNATH DAS	SC	AIR GUWAHATI	AIR GUWAHATI	Against vacant post
6.	SH. MD. MOHIBUL ISLAM	UR	AIR GUWAHATI	AIR GANGTOK	Vice Sh. Manoj Hazarika
7.	SH. NG. ROBIN MEETEI	UR	AIR IMPHAL	AIR KOHIMA	Against vacant post
8.	SH. TH. PREMCHAND SINGH	UR	AIR IMPHAL	AIR KOHIMA	Against vacant post

The officials are to be relieved after issue of **Vigilance Clearance Certificate**.

Service book may be sent to the concerned station after ensuring entries of probation termination, confirmation etc.

The promotees are to exercise their option in regard to fixation of pay on promotion within one month from the date of



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It may be pointed out that in the event of the promotion not being accepted by the official, he will be debarred for promotion for one year. If the reasons for declining promotion are not accepted by the competent authority, promotion may be enforced. If promotion is still declined, action may be taken for refusal to obey the order.

The date of relief and joining may be forwarded to this office immediately by concerned Stations. The confidential reports of the officials concerned should be sent to this office immediately till the date of relieving.

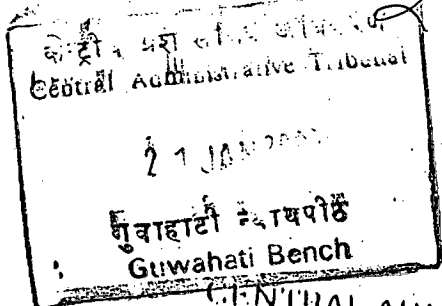
(S. M. Tanweer Alam)
Deputy Director (Engg.)
For Chief Engineer (NEZ)

To
The Engineering Head of All India Radio Kohima/ Mokokchung/ Itanagar/ Gangtok/ Guwahati/ Silchar/ Aizawl/ Imphal/ Tura.

Copy to:-

1. The Directorate General (Kind Attn.: Shri S. P. Pant, DDA(E)), All India Radio, Akashvani Bhavan, Parliament Street, New Delhi-110001 for kind information and necessary action.
2. Vice President, "ARTEE", North East Zone, Post Box No. 83, O/o CE (NEZ), AIR & TV, Guwahati, Assam.
3. Vice President, A.I.R. & D.D. T.E.A., Post Box No.123, Guwahati -1, Assam.
4. Hindi section of this office.

For Chief Engineer (NEZ)



ANNEXURE 75

CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Original Application No. 20 of 2007.

Date of Order: This the 0th Day of February, 2007.

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

Md. Mohibul Islam
Son of Late Ataur Rahman
Diesel Engine Driver
Office of the Superintending Engineer,
(HPT), All India Radio, Guwahati-14.

By Advocate Mr. A. Ahmed.

-Versus-

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Information & Broadcasting
A-Wing, Shastri Bhawan
New Delhi-1.

2. The Director General
All India Radio, Sansad Marg
New Delhi-110001.

3. The Station Director,
All India Radio
Guwahati-3.

The station Director
All India Radio,
Itanagar,
Post Office-Itanagar,
Arunachal Pradesh

5. The Chief Engineer (NEZ)
All India Radio & Doordarshan
Dr. P. Kakoti Building
Near Ganeshguri Flyover
Ganeshguri, Guwahati-6

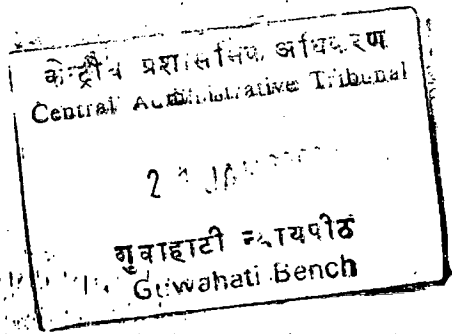
6. Shri M. Zirdo
Diesel Technician,
Office of the Station Director,
All India Radio, Itanagar,
Post Office Itanagar,
Arunachal Pradesh

7. Shri K. N. Das,
All India Radio,
Kokrajhar, Post Office-Kokrajhar, Assam



Attested
By
Advocate

8. Shri B. Borah
Diesel Technician,
Office of the Station Director,
All India Radio, Itanagar,
Post Office-Itanagar,
Arunachal Pradesh.



9. Shri Tomi Riba,
Diesel Technician,
Office of the Station Director,
All India Radio, Itanagar,
Post Office-Itanagar,
Arunachal Pradesh.

Respondents

By Advocate Mr. G. Balshya, Sr.C.G.S.C.

ORDER(ORAL)

K.V.SACHIDANANDAN,V.C.



The applicant was appointed to the post of Helper in the All India Radio in the year 1984. Thereafter, the applicant was promoted as Diesel Engine Driver in the Office of the Superintendent Engineer (HPT), All India Radio, Guwahati. The next promotion from Diesel Engine Driver is Diesel Technician. The posts of Diesel Technicians are filled up through 100% promotion on seniority/fitness basis falling which by direct recruitment. The Diesel Engine Drivers with three years service experience are eligible for promotion to the post of Diesel Technician. The Respondent No.5 informed all the Heads of All India Radio Stations Tawang, Tura, Agartala, Dibrugarh, Shillong, Guwahati, Gangtok, Kohima Imphal, Passighat, Silchar, Aizawl and the Chief Engineer East zone,(AIR & T.V) Calcutta about filling up the two posts of Diesel Technicians at All India Radio, Itanagar. But the Respondents No.6, 7,8 and 9 were promoted to the said post at Itanagar although they are junior to the applicant.

I have heard Mr.A.Ahmed learned counsel for the applicant and Mr. G. Balshya, Sr.C.G.S.C. for the Respondents. When the matter came up for consideration, the learned counsel for the applicant has

[Signature]

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केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal ②
21 JAN 2008
गुवाहाटी बेंच
Guwahati Bench

submitted that he will be satisfied if direction is given to the Respondent No.2 to consider the applicant and promote him to the post of Diesel Technician either at All India Radio, Guwahati, Kohima, Tawang and Aizwal where the aforesaid posts are lying vacant. The learned counsel for the respondents has submitted that he has no objection if such direction is given to the respondent.

Considering the facts and circumstances of this case, this Court directs the applicant to file comprehensive representation before the 2nd respondent within one month from to-day. If such representation is filed by the applicant, the Respondent No.2 shall consider and dispose of the same within three months and pass appropriate orders thereon.

O.A. is accordingly, disposed of. There shall be no order as to costs.



LM

84/ VICE CHAIRMAN

TRUE COPY

प्रमाणित

9.2.07

अनुभाग

8.2.07

Central Administrative Tribunal

गुवाहाटी बेंच

GUWAHATI BENCH

पुनर्निर्देशित 11-5

9/2/07

To

The Chief Engineer (East Zone)
(Kind attr. : Sri S.K. Arora, DDI)
All India Radio & Television,
Akashvani Bhawan (4th floor),
Eden Gardens
Calcutta 700 001

ANNEXURE-6

Date : 20/6/2000

Sub : Anomally noticed during promotion from Diesel Engine Driver to the post of Diesel Technician during March 2000 at AIR, Itanagar

Sir,

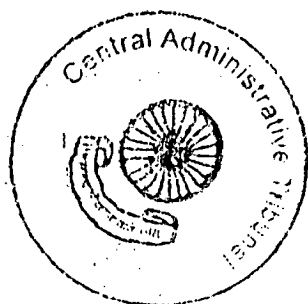
With due respect I beg to draw your kind attention for the following discrimination followed at AIR Itanagar in respect of promotion to the cadre of Diesel Technician from Diesel Engine Driver in recent past, i.e., in March, 2000.

From the reliable source I came to know that there were two posts of Diesel Technicians lying vacant at AIR Itanagar. Soon I have opted for the same in December, 1999 as I was expecting promotion in near future as a Gr. Diesel Engine Driver. Also I have given my willingness for posting at AIR, Itanagar if I am given chance on promotion.

But it is quite sorry to say that without giving chances to willing senior candidates from AIR Itanagar only chosen for promotion as it has happened with Sri Khagen Das and Sri M. Dibra who are both DED and promoted to Diesel Technician is appears to be illegal as they are junior to me, thus depriving me from a legitimate claim.

May I, therefore, pray to your goodness to kindly look into the matter and do the needful so that I may kindly not be deprived from consideration of post to the Diesel Technician at anywhere in Northeast States. The xeroxcopy of my earlier representation and copy to Sg. Eng., AIR Itanagar are enclosed herewith for your kind reference.

Yours faithfully,



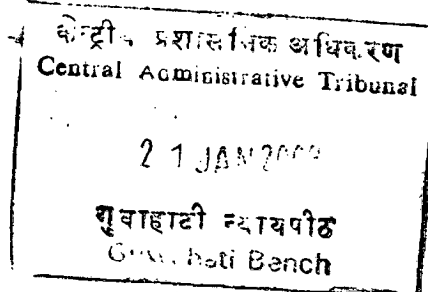
(M. ISLAM)
Diesel Engine Driver
HPT : AIR, GUWAHATI

Copy to -

- 1) The Superintending Engineer, A.I.R., Guwahati
- 2) The Superintending Engineer, A.I.R., Itanagar
- 3) Vice President, (By name : Sri A.K. Buragohain) HPT, A.I.R. & D.D.T.E. A.I.R., Guwahati
- 4) Vice President, (By name : Sri Soham Chakraborty) HPT, A.I.R. & D.D.T.E. P.Box GPO 2607, Calcutta 700 001
- 5) Unit Secretary, TFO, AIR, Guwahati

ATTESTED

ADVOCATE



Attested
Advocate

Central Administrative Tribunal

21 JAN 2001

गुवाहाटी बेंच
Guwahati Bench

PRASAD BHARATI
(BROADCASTING CORPORATION OF INDIA)
OFFICE OF THE CHIEF ENGINEER (EAST ZONE)
ALL INDIA RADIO & TELEVISION

ANNEXURE-7

No. 1 (35)/2001-S (D.Tech.)

Akashvani Bhavan,
4th floor,
Kolkata-700001,
Dated: 01.05.2001.

The Director General,
All India Radio,
(By name: Shri M.P.Swan, Swan, DDA),
Akashvani Bhavan,
Parliament Street,
New Delhi-110001.

ALL INDIA RADIO
GUWAHATI

Diary No. 204
File No.
Date 23/5/01

Sub.: Promotion of Shri M. Islam, DED, AIR,
Guwahati to the post of Diesel Tech.

Ref.: DG, AIR letter No. 4/1/2001-S IV(A)/216
dated 08.01.2001 & dt. 26.03.2001.

Sir,

The view expressed in this office earlier letter that Diesel Engine Driver & Diesel Technician are of local Cadres and promotion from DED to D.Tech. is dealt at station level, was based on the Directorate General, AIR office Memo. No. 14/6/90-SIV(A) dated 09.04.1991. The xerox copies of the same is enclosed herewith.

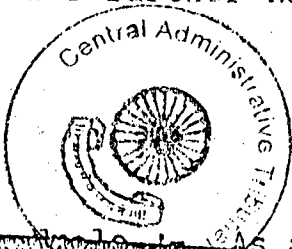
It states very clearly in para II that there is no need to zonalise the cadres. The proposal for zonalisation is untenable.

It states in para III that promotion is required to be made under the recruitment rules and for that issue of seniority list is, on local basis.

Accordingly Shri M. Islam, DED, AIR, Guwahati was not eligible for consideration for promotion to the post of Diesel Tech. at AIR, Itanagar.

The only eligible candidates for this promotion were those who were working at AIR, Itanagar as DED at that time. Thus the action taken/procedure followed by station for promotion of DEDs to the post of D.Tech. was correct and in compliance to the existing Recruitment Rules and Directorate's instructions.

However, if there is any amendment to these rules/instruction, the same may please be intimated to this office for further necessary action.

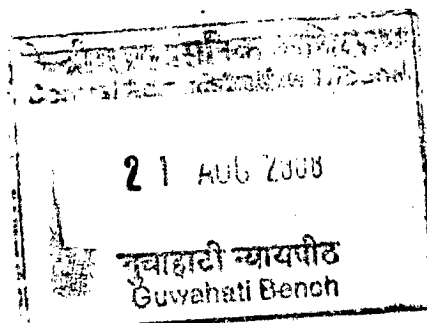


ATTESTED

ADVOCATE

Yours Faithfully,

(S.R. ARORA)
DY. DIRECTOR ENGINEERING
FOR CHIEF ENGINEER (E.Z.)



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Title of the case

OA No 10 of 2008

BETWEEN
SHRI TOMI RIBA

.....Applicant.

AND

UNION OF INDIA & ORS

.....RESPONDENTS

WRITTEN STATEMENT SUBMITTED BY THE RESPONDENTS

I N D E X

Sl No.	Particulars	Page No.
1.	Written statement	1-7
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3.	Annexure-1	9 & 10
4.	Annexure-II	11
5.	Annexure- III	12
6.	Annexure- IV	13
7.	Annexure- V	14
8.	Annexure- VI	15 & 16
9.	Annexure- VII	17, 18 & 19
10.	Annexure- VIII	20 & 21
11.	Annexure- IX	22
12.	Annexure- X	23
13.	Annexure- XI	24

Filed by : M. U. Ahmed
Motin-Uddin Ahmed
Addl CGSC

Date 21/8/08

केन्द्रीय प्रशासनिक न्यायाधीश
Central Administrative Tribunal
21 AUG 2008
गुवाहाटी न्यायपीठ
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

महोदय, गुवाहाटी
उप संचालक (प्रशासन)
Dy. Director (Admin.)
मुख्य अभियन्ता का कार्यालय (उप क्षेत्र)
अकाउंट्स/प्रशिक्षण प्रो. बुरहान
O/O CE (NEZ) AIR & TV
GUWAHATI-781006

IN THE MATTER OF :

Original Application. NO.10/2008

Shri Tomi Riba

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

AND -

IN THE MATTER OF :

Written statement submitted by the Respondents No.

WRITTEN STATEMENT

The humble answering respondents
submit their written statement as
follows :

- 1.(a) That I Shri Mahadev Sarmah, Deputy Director (Admn.)
Prasar Bharati (Broadcasting Corporation of India) Office of the Chief
Engineer (NEZ), aIR & TV, Guwahati and Respondents No.5 in
the above case and I have gone through a copy of the application served
on me and have understood the contents thereof. Save and except
whatever is specifically admitted in the written statement, the
contentions and statements made in the application may be deemed to
have been denied. I am competent and authorized to file the statement
on behalf of all the respondents.

Received
Mulla
19.08.08

Filed by
The Respondents Through
Motin Ud-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)
19/8/08

21 AUG 2008
2

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

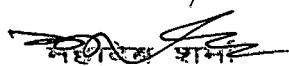
(c) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(d) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

2. That with regard to the statements made in paragraphs 1 of the Application, the answering Respondents beg to state that the applicant was promoted to the post of Diesel Engine Technician in the Scale of Pay Rs.4000-100-6000/- at AIR, Itanagar and subsequently reverted to the post of Diesel Engine Driver in the Scale of Rs.3050-75-3950-80-4590/- vide CE (NEZ) AIR & TV, Guwahati order No.CE (NEZ)/1/(36)/2007-S/DPC dated 02.01.2008 on the recommendation of the Review DPC (copy enclosed as Annexure-I).

3. That with regard to the statements made in paragraphs 2, 3 and 4.1 & 4.2 of the Application, the answering Respondents beg to state that they do not admit anything which is beyond the record and based on legal foundation and as such the applicants are put to strict proof thereof.

4. That with regard to the statements made in paragraphs 4.3, 4.4. and 4.5 of the Application, the answering Respondents beg to state that as per recruitment rule (copy enclosed as annexure-II) the Diesel Engine Driver with 3 years service in the grade is eligible for promotion to the post of D/Tech. But the applicant was promoted on the basis of local seniority as per CE(EZ), Kolkata's circular No.Z.Cadre/18(8)/5/2001 dated 19.09.2001 (copy enclosed as Annexure-III).


Mahadev Sarmah

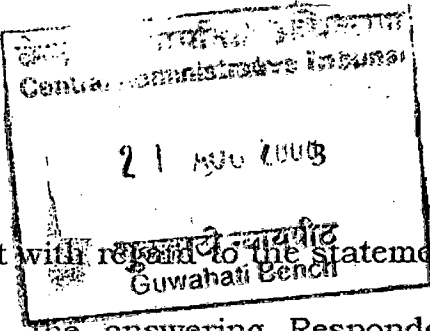
उप-संन्यालक (प्रशासन)
Dy. Director (Admin.)

मुख्य अभियन्ता का कार्यालय (उ.पू.क्षेत्र)

आकाशवाणी और दूरदर्शन

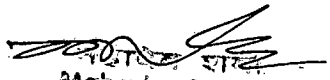
O/O CE (NEZ) AIR & TV

गुवाहाटी- 781005



 21 AUG 2008

5. That with regard to the statements made in paragraph 4.6 of the Application, the answering Respondents beg to state that Md. Mohibul Islam was appointed as DED at AIR, Guwahati on 6.9.1990 while Sri ~~Toni Rika~~ was appointed as DED at AIR, Itanagar almost 4 years after on 15.12.1996. Md Mahibul Islam, DED being senior to the applicant represented for promotion to the post of D/Tech in AIR Itanagar vide his letter dated 22.5.2000. (Copy enclosed as Annexure-IV). When it was intimated vide CE(EZ) AIR & TV, Kolkata letter No.1(35)/2001-S(D-Tech), dated 1.5.2001 (copy enclosed at Annexure-V) that D/Tech being a local cadre post Md Islam, DED, at AIR, Guwahati would not be eligible for promotion to the post of D.Tech in AIR, Itanagar, he intimated DG, AIR, New Delhi vide letter dated 8.1.2007 forwarded by SD, AIR, Guwahati vide letter No.1(11)/2007-S/D-Tech/DED/6207 dated 31.1.2007 that he would go to court for redressal of his grievance. (Copy enclosed as Annexure-VI). Accordingly, Md Islam, DED who is senior to the applicant, as per seniority list on zonal basis filed an OA No.26 of 2007 in the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for promotion to the post of D/Tech on zonal seniority basis. The Hon'ble Cat, Guwahati vide judgment dated 6.2.2007 (copy enclosed as Annexure-VII) directed the Respondents to consider of promotion of Md. Islam and pass appropriate orders on receipt of the representation from the applicant within 1 month from the date of judgment. Md Islam, DED filed contempt petition No.12/2008 also for delay in disposal of his representation. Which was dropped by the Hon'ble CAT vide order dated 4.1.08 on the written assurance for promotion of the applicant to the post of D/Technician (copy enclosed as Annexure-VIII). Therefore, Director General, all India radio, New Delhi vide O.M.4/13/2006-S.IV(A) dated 26.09.2007 in continuation to the Directorate's earlier instruction


 Mahabir Samra
 Dy. Director (Admin.)
 मुख्य अभियंता एवं कार्यालय (उ.प. क्षेत्र)
 आकाशवाणी और दूरदर्शन
 O/O CE (AIR & TV)
 गुवाहाटी

21 AUG 2008

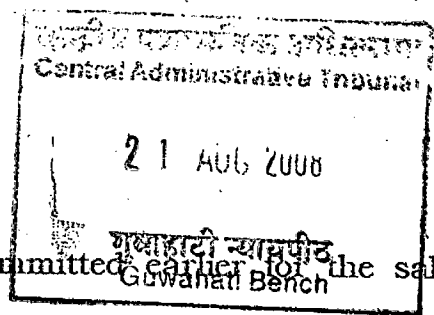
गुवाहाटी न्यायाधीश
Guwahati Bench

vide O.M. No.4/1/2001-SI V (A) dated 8.1.2001 (copy of each enclosed as Annexure-IX & X) directed ~~CE~~ (NEZ) AIR & TV Guwahati to cancel the DPCs held earlier whose action resulted in injustice and hold a Review Departmental Promotion Committee for promotion of DED to the post of D/Tech on zonal seniority basis. Accordingly, on the basis of the recommendation of the Review DPC, the DED promoted to the post of D/Tech earlier on local seniority basis, have been reverted to the post of DED in the scale of pay of Rs.3050-75-3950-80-1590/- and posted at the station mentioned in this order of the reversion dated 02.01.2008 (copy enclosed as Annexure-I).

6. That with regard to the statements made in paragraph 4.7 of the Application, the answering Respondents beg to state that Directorate O.M.No.4/1/2001-SIV (A) dated 08.01.2001 and 4/13/2006-SIV (A) dated 26.09.2007 (copy already enclosed as Annexure-IX & X) were meant for the O/O I) ~~CE~~ (EZ) AIR & TV Kolkata and II) CE (NEZ), AIR & TV, Guwahati respectively and not for circulation to the applicant and hence, no copy was supplied to the applicant. The respondents beg to state further that judgment passed on the OA No.26 of 2007 is very much clear regarding promotion of Md Mohibul Islam to the post of D/Tech. in AIR Station.

Accordingly, a zonal seniority list (copy enclosed as Annexure-XI) of DED of AIR and Doordarshan in the North East Zone has been drawn and promotion of those DED's who were senior to the applicant and suitable have been considered and promotion order was issued vide order dated 02.01.2008 (copy already enclosed as Annexure-I) resulting in reversion of the juniors like the applicant. In this connection respondent beg to submit further that department can hold


महादेव सार्मा
Mahadev Sarmah
उप संचालक (प्रशासन)
Dy. Director (Admin.)
मुख्य अभियन्ता का कार्यालय (उ.पू.क्षेत्र)
आकाशवाणी और दूरदर्शन
O/O CE (NEZ) AIR & TV
गुवाहाटी-781006
GUWAHATI-781006

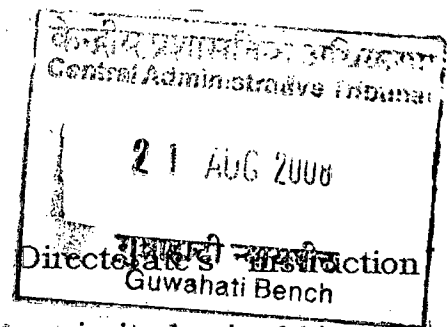


Review DPC to correct the mistake committed earlier for the sake of justice.

7. That with regard to the statements made in paragraph 4.8 of the Application, the answering Respondents beg to state that for implementation of the order dated 6.2.2007 on OA No.26/2007 Director General, vide OM No. dated 26.09.2007 directed the Chief Engineer (NEZ)/AIR & TV, Guwahati to hold the review DPC for promotion of DED to the post of D/Tech on zonal seniority basis. Accordingly, a Review DPC was held for promotion of the DED on zonal seniority basis which resulted in reversion of the juniors like the applicant. The issue of notice to all respondents in OA No.26/2007 was up to the Hon'ble CAT about which the respondents beg to offer no comments. The respondents beg to state further that Director General vide O.M.Nos. 4/1/2001-SIV (A) dated 08.01.2001 and 4/13/2006-SIV (A) dated 26.09.2007 (copy already enclosed as Annexure IX & X) issued instruction for promotion of Md Islam, DED, AIR, Guwahati on zonal seniority basis. In spite of the Directorate's instruction promotion of the applicant was wrongly considered on local seniority basis and therefore, a review DPC was held for consideration of promotion of the DED senior to the applicant for the sake of justice.


8. That with regard to the statements made in paragraph 4.9 of the Application, the answering Respondents beg to state that the Applicant of OA No.26/2007 before filing the OA represented to DG, AIR, New Delhi for promotion to the post of Diesel Tech. Directorate vide letter No.4/1/2001-SIV (A) dated 8.1.2001 clarified that the post of DED and D/Tech. are of Zonal Cadre and therefore asked CE (EZ), AIR & DD, Calcutta to decide the case of promotion of DED at Zonal level under intimation to Directorate by 27.01.2001.

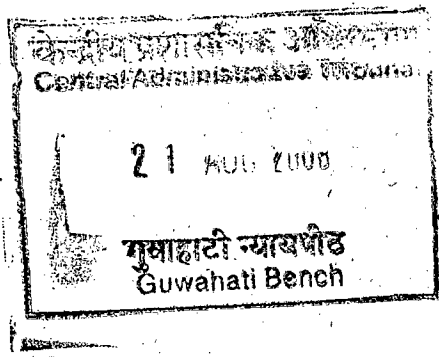
महादेव सोनिया
Mahaadev Soniya
उप-संचालक (प्रशासन)
Dy. Director (Admin.)
मुख्य अभियन्ता का कार्यालय (उ.पू.क्षेत्र)
आकाशवाणी और दूरदर्शन
O/O CE (NEZ) AIR & TV
गुवाहाटी- 781005
GUWAHATI-781005



In spite of the above Directorate's Instruction when promotion of DED was done at station seniority basis, Md Islam, DED, AIR, Guwahati who was senior to the applicant by more than 4 years, on zonal seniority basis filed the OA No.26/2007 in the Hon'ble CAT, Guwahati for redressal of his grievances. Therefore, the action of the respondent to hold a review DPC as per Directorate's instruction for promotion of DED on zonal seniority basis after canceling the earlier DPCs which resulted injustice is correct to meet the end of justice.

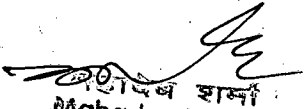
9. That with regard to the statements made in paragraph 4.10 of the Application, the answering Respondents beg to state that the action of the respondent in finalizing the promotion of the senior after canceling the promotion of junior is legal. It is very much justified and not in violation of natural justice.
10. That with regard to the statements made in paragraph 4.11 16 of the Application, the answering Respondents beg to state that the applicant was wrongly promoted and hence he is not entitled to seniority and pay and allowances in the grade of D/Tech after reversion to the post of DED.
11. That with regard to the statements made in paragraph 4.12 of the Application, the answering Respondents beg to state that the applicant was wrongly promoted earlier and therefore he has been reverted to correct the mistake done by the earlier DPCs and hence the O.A may please be dismissed without any relief to the applicant.
12. That the application is devoid of any merit and deserved to be dismissed.
13. That this reply has been made bona fide and for the ends of justice and equity.

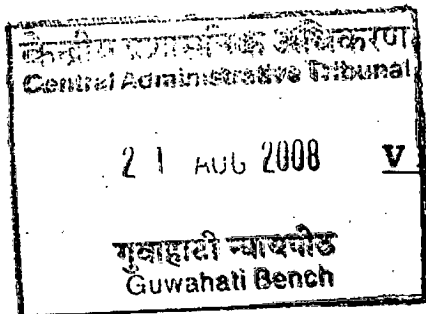

 महादेव शर्मा
 Mahadev Sharma
 उप संचालक (प्रशासन)
 Dy. Director (Admin.)
 मुख्य अभियंता का कार्यालय (उ.पू. क्षेत्र)
 आकाशवाणी और दूरदर्शन
 O/O CE (NEZ) AIR & TV
 गुवाहाटी- 781006
 GUWAHATI-781006



7

It is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed with cost.


Mahaboy Saman
उप संचालक (प्रशासन)
Dy. Director (Admin.)
मुख्य अभियन्ता का कार्यालय (उ.पू.क्षेत्र)
आकाशवाणी और दूरदर्शन
O/O CE (NEZ) AIR & TV
गुवाहाटी- 781006
GUWAHATI-781006




8

I, Shri Mahadev Sarma

Son of Lata Pampa Nath Sarma aged about 58 years, resident of Rukminigam, Guwahati - 22 working as Dy. Director (Admin) of CE (NE2) AIR & DB, Guwahati duly authorized and competent officer of the answering respondents to sign this verification, do hereby solemnly affirm and verify that the statements made in Paras ^{2 & 3} ~~3, 4 & 10~~ are true to my knowledge, belief and information and those made in Para ~~2 & 3~~ being matters of record are true to my knowledge as per the legal advice and I have not suppressed any material facts.

And I sign this verification on this 29th day of May 2008 at Guwahati.


Dy. Director (Admin)
CE (NE2) AIR & DB
Guwahati
29/05/2008

-27-

09

प्रसार भारती
PRASAR BHARATI

भारतीय प्रसारण निगम

[Broadcasting Corporation of India]

मुख्य अभियन्ता (उत्तर पूर्व क्षेत्र) का कार्यालय

Office of the Chief Engineer (NEZ)

आकाशवाणी एवं दूरदर्शन, गुवाहाटी

All India Radio & Doordarshan, Guwahati

No. CE (NEZ)/1(36)/2007-S/DPC

ANNEXURE

21 AUG 2008

गुवाहाटी न्यायपीठ

Guwahati District Building

Near Ganeshtura Chowk

G. S. Road, Guwahati - 781 006.

Dated- 02/01/2008.

ORDER

- Sub: - i) Reversion of Diesel Technician to the post of Diesel Engine Driver.
ii) Promotion of Diesel Engine Driver to the post of D. Technician for the vacancy year 2003-04 & 2005-06

As per Directorate's instruction vide order no. 4/1/2001-SIV (A) dtd. 08.01.2001 & 4/13/2006-S.IV (A) dtd. 26.09.2007 and the judgment given by Hon'ble Central Administrative Tribunal Guwahati Bench, Guwahati vide OA No. 26 of 2007 dtd. 06.02.2007 on petition filed by Sh. Md. Mohibul Islam, DED, AIR Guwahati, a review DPC for promotion of Diesel Engine Driver to the post of Diesel Technician on zonal basis was called. On the basis of recommendation of DPC, the following D. Technicians earlier promoted on local basis are reverted to the post of Diesel Engine Driver in the scale of Rs. 3050-75-3950-80-4590/- and posted at the stations mentioned against their name as below with immediate effect

SL. NO.	NAME	PRESENT STATION	POSTED AT
1.	SH. KAILASH MECH.	AIR KOHIMA	AIR KOHIMA
2.	SH. PURTEMSU	AIR MOKOKCHUNG	AIR MOKOKCHUNG
3.	SH. MARDZO ZIRDO	AIR ITANAGAR	AIR ITANAGAR
4.	SH. MANOJ HAZARIKA	AIR GANGTOK	AIR GUWAHATI
5.	SH. B. BORAH	AIR ITANAGAR	AIR ITANAGAR
6.	SH. T. RIBA	AIR ITANAGAR	AIR ITANAGAR

On recommendation of the same D.P.C., following Diesel Engine Driver of NE Zone by considering seniority on zonal basis are promoted to the grade of Diesel Technician for the vacancy year 2003-04 (from Sl. No. 1-7) & 2005-06 (Sl. No.8), in the scale of Rs.4000-100-6000/- and posted at station mentioned against their name with immediate effect.

SL. NO.	NAME	CATEG	PRESENT STATION	POSTED AT	REMARKS
1.	SH. BABASENA SINGH	UR	AIR SILCHAR	AIR TURA	Against vacant post
2.	SH. J. SANGKHUMA	ST	AIR AIZAWL	AIR AIZAWL	Against vacant post
3.	SH. LALMUANKIMA	ST	AIR AIZAWL	AIR ITANAGAR	Vice Sh. Mardo Zirdo
4.	SH. MD. AZAD ALI	UR	AIR GUWAHATI	AIR ITANAGAR	Vice Sh. B. Borah
5.	SH. JAGANNATH DAS	SC	AIR GUWAHATI	AIR GUWAHATI	Against vacant post
6.	SH. MD. MOHIBUL ISLAM	UR	AIR GUWAHATI	AIR GANGTOK	Vice Sh. Manoj Hazarika
7.	SH. NG. ROBIN MEETEI	UR	AIR IMPHAL	AIR KOHIMA	Against vacant post
8.	SH. TH. PREMCHAND SINGH	UR	AIR IMPHAL	AIR KOHIMA	Against vacant post

The officials are to be relieved after issue of Vigilance Clearance Certificate.

महादेव शर्मा
निदेशक (अभियन्ता)
मुख्य अभियन्ता का कार्यालय (उत्तर पूर्व क्षेत्र)
आकाशवाणी और दूरदर्शन
O/O CE (NEZ) AIR & TV
गुवाहाटी-781006
GUWAHATI-781006

(10)

Service book may be sent to the concerned station after ensuring entries of probation term and confirmation etc.

The promotees are to exercise their option in regard to fixation of pay on promotion within one month from the date of promotion as per Fik 22 (1) (a) (i).

It may be pointed out that in the event of the promotion not being accepted by the official, he will be debarred for promotion for one year. If the reasons for declining promotion are not accepted by the competent authority, promotion may be enforced. If promotion is still declined, action may be taken for refusal to obey the order.

The date of relief and joining may be forwarded to this office immediately by concerned Stations. The confidential reports of the officials concerned should be sent to this office immediately till the date of relieving.

[Signature]
2/1/08
(S. M. Tanweer Alam)
Deputy Director (Engg.)
For Chief Engineer (NEZ)

To
The Engineering Head of All India Radio Kohima/ Mokokchung/ Itanagar/Gahlot/ Guwahati/ Silchar/
Aizawl/ Imphal/ Tura.

Copy to:-

1. The Directorate General (Kind Attn.: Shri S. P. Pant, DDA(E)), All India Radio, Akashvani Bhavan, Parliament Street, New Delhi-110001 for kind information and necessary action.
2. Vice President, "ARTEE", North East Zone, Post Box No. 83, O/o CE (NEZ), AIR & TV, Guwahati, Assam.
3. Vice President, A.I.R. & D.D. T.E.A., Post Box No.123, Guwahati -1, Assam.
4. Hindi section of this office.

[Signature]
2/1/08
For Chief Engineer (NEZ)

Recruitment Rules for Various Posts in AIR

SCHEDULE 7

1. S. No.
2. Name of the post
3. Classification, character and status of the post
4. Scale of pay of the post

65
Diesel Technician
General Central Services Group 'C'
(non-gazetted) non-ministerial
Rs. 380-12-500-EB-15-560 (now re-
vised to Rs. 1320-30-1560-EB-40-
2040)

Method of recruitment and per-
centage of vacancies to be filled up

5. Direct recruitment
6. Promotion on selection
7. Promotion on seniority/fitness
8. Transfer
9. Age limit for direct recruits
10. Educational and other quali-
fications required for direct re-
cruitment

Not applicable
Selection
100% by promotion failing which
by direct recruitment

Not applicable
Below 27 years
A national Trade Certificate issued
by the National Council for Train-
ing in Vocational Trades (Min.
of Labour Employment & Re-
habilitations) in the trade of
Machine/Internal Combustion
Engines) A trade certificate in
Craftsmanship awarded by Dir-
ectorate General, Employment &
Training in the trade of Mechanic
(Internal Combustion Engines)

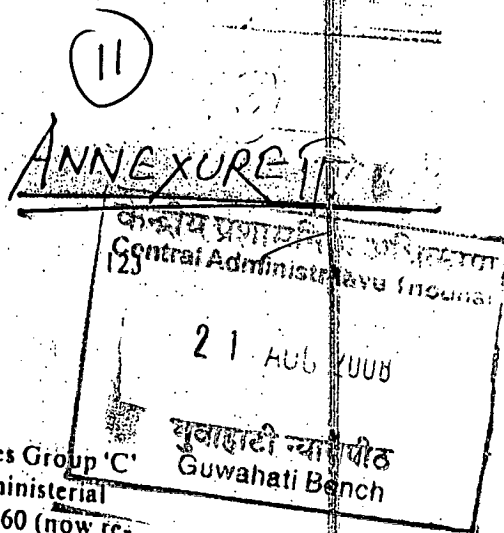
or
Six years experience in the operation
and maintenance of Diesel Engi-
nes in a reputable factory, work-
shop or generating station, duly
supported by a certificate

11. Period of probation, if any
12. Whether age and educational
qualifications for directs will
apply in case of recruitment by
promotion/transfer
13. Grades/sources from which
promotion/transfer is to be
made

2 years
Not applicable

From amongst diesel engine drivers
with three years service

Authority: Notified vide Min. of I&B Notification No. 16/20/69-B(D)
dated 30.3.1970 circulated vide DG, AIR Memo No. A-12018/
3/70-SIV dated 8/28-4-1970.



Mahadev Sharma
Dy. Director (Admin.)
O/O CE (NEZ) AIR & T
GUWAHATI-781006

ANNEXURE 7

HRASAN BHARATI
BROADCASTING CORPORATION OF INDIA
OFFICE OF THE CHIEF ENGINEER (EZ)
ALL INDIA RADIO & TV
CALCUTTA

केन्द्रीय प्रशासनिक प्रणाली
Central Administrative Services

21 AUG 2000

गुवाहाटी न्यायपीठ
Guwahati Bench

Akashvani Bhavan, 4th fl.
Calcutta-1.

Dated 1- 19.9.2001.

No.Z.Cadre/18(0)/S/2001.

This is in continuation of this office earlier letter of even no. dt.18.8.01 circulating the Directorate's instructions for filling-up of vacant posts in the subordinate engineering cadres.

Directorate letter no.14/55/2000-S.IV(A), dt.18.7.01 and 14/42/2000-S.IV, dt.20.9.01 are very clear in all respects.

For vacant posts in zonal cadre in subordinate engg.staff of east zone, the action is already underway. Stations are advised to initiate action for vacant posts in local cadre like Tech., Helper, Diesel Tech., Mast Tech., DED etc. (to which stations themselves are the recruiting authority) in compliance to Directorate instructions as stated above.

As stated in the Directorate's memo, recruitment may be made by the stations immediately for the posts lying vacant for less than a year, while for posts lying vacant for more than a year, a proposal giving the station-wise vacancies along with detailed justification for filling-up of each of these posts may be sent to respective Maintenance section of AIR & Doordarshan so that it can be forwarded to Directorate along with their recommendations. In the proposal the posts sanctioned after the issue of ban order on 17.6.99 may also be clearly indicated. This disposes numerous letters from various stations requesting clarification on Directorate's memo.

The zerox copy of Govt. of India, Deptt. of Personnel and Training O.M.no.14024/2/96-Estt.(D), dt.18.5.98 regarding publication of recruitment notice in the Employment News is affixed overleaf for information and compliance.

Urgent action is only required for local cadres as stated above.

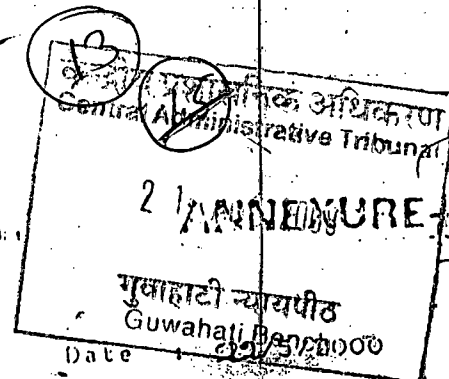
(N.SRINIVASAN)
DIRECTOR ENGINEERING
for CHIEF ENGINEER (EZ)

Engg.head of
All AIR/Doordarshan stations & offices/Doordarshan Maintenance
of East zone.
cc. The Director General, By name Shri Yogendra Pal, DE(EPM),
All India Radio, Akashvani Bhavan, Parliament Street, N.Delhi-1
2) The Director General, By name Shri Yogendra Pal, DE(EPM),
Mardi House, Copernicus Marg, N.Delhi-110071.
3) DE(AVR)/ 4) DE(TVR).

महोदय
Mahadev Sarmah
उप-निदेशक (प्रशासन)
Dy. Director (Admin)
मुख्य अभियन्ता का कार्यालय (उप-प्रदेश)
आकाशवाणी और दूरदर्शन
O/O CE (EPM) AIR & TV
गुवाहाटी-781005
GUWAHATI-781005

7/26/01

The Chief Engineer, East Zone
 (Kindly Attn. : Mr. S.K. Deka, DM)
 All India Radio & Television, Guwahati
 Akashvani Bhawan (4th floor)
 Eden Gardens
 Calcutta 700 001



Sub : Anomally noticed during promotion from Diesel Engine Driver to the post of Diesel Technician during March 2000 at AIR, Itanagar

Sir,

With due respect I beg to draw your kind attention for the following discrimination followed at AIR Itanagar in respect of promotion to the cadre of Diesel Technician from Diesel Engine Driver in recent past, i.e., in March, 2000.

From the reliable source I came to know that there were two posts of Diesel Technicians lying vacant at AIR Itanagar. Soon I have opted for the same in December, 1999 as I was expecting promotion in near future as a Sr. Diesel Engine Driver. Also I have given my willingness for posting at AIR, Itanagar if I am given chance on promotion.

But it is quite sorry to say that without giving chances to willing senior candidates from AIR Itanagar only chosen for promotion as it has happened with Sri Khagen Das and Sri M. Dibra who are both DED and promoted to Diesel Technician is appears to be illegal as they are junior to me, thus depriving me from a legitimate claim.

May I, therefore, pray to your goodself to kindly look into the matter and do the needful so that I may kindly not be deprived from consideration of post to the Diesel Technician as a low paid employee. The xeroxcopy of my earlier representation and copy to Sg. Eng., AIR Itanagar are enclosed herewith for your kind reference.

Yours faithfully,

(M. ISLAM)
 Diesel Engine Driver
 HPI : AIR, GUWAHATI

Copy to :-

- 1) The Superintending Engineer, A.I.R., Guwahati
- 2) The Superintending Engineer, A.I.R., Itanagar
- 3) Vice President, (By name : Sri A.K. Bhargohain), NIT, AIR (DD-TE), A.I.R., Guwahati
- 4) Vice President, (By name : Sri Subhas Chakraborty), NIT (DD-TE), P.Box GPO, 2607, Calcutta 700 001
- 5) Unit Secretary, IEO, AIR, Guwahati

ATTESTED

Guwahati
 ADVOCATE

महोदय सचिव
 Mohadev Samal
 उप सचिव (प्रशासन)
 Dy. Director (Admin.)
 मुख्य अभियंता का कार्यालय (उप श्रेणी)
 आकाशवाणी और दूरदर्शन
 O/O CE (AET) AIR & TV
 गुवाहाटी-781006
 GUWAHATI-781006

ANNEXURE

GUWAHATI JOURNAL
No. 12109131

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
OFFICE OF THE CHIEF ENGINEER (EAST ZONE)
ALL INDIA RADIO & TELEVISION

Central Administrative Tribunal

21-05-2008

Guwahati Bench

No. 1(35)/2001-S(D.Tech.)

Akashvani Bhavan,
4th floor,
Kolkata-700001
Dated: 01.05.2001

The Director General,
All India Radio,
(By name: Shri M.P. Swan, Swan, DDA),
Akashvani Bhavan,
Parliament Street,
New Delhi-110001.

ALL INDIA RADIO

GUM
Diary No. 214
File No.
Date 23/5/01

Sub.- Promotion of Shri M. Islam, DED, AIR, Guwahati to the post of Diesel Tech.

Ref.- DG, AIR letter No. 4/1/2001-S IV(A)/216 dated 00.01.2001 & dt. 26.03.2001.

Sir,

The view expressed in this office earlier letter that Diesel Engine Driver & Diesel Technician are of local Cadres and promotion from DED to D.Tech. is dealt at station level, was based on the Directorate General, AIR office Memo. No. 14/6/90-SIV(A) dated 09.04.1991. The xerox copies of the same is enclosed herewith.

It states very clearly in para II that there is no need to zonalise the cadres. The proposal for zonalisation is untenable.

It states in para III that promotion is required to be made under the recruitment rules and for that issue of seniority list is on local basis.

Accordingly Shri M. Islam, DED, AIR, Guwahati was not eligible for consideration for promotion to the post of Diesel Tech. at AIR, Itanagar.

The only eligible candidates for this promotion were those who were working at AIR, Itanagar as DED at that time. Thus the action taken/procedure followed by station for promotion of DEDs to the post of D.Tech. was correct and in compliance to the existing Recruitment Rules and Directorate's instructions.

However, if there is any amendment to these rules/instruction, the same may please be intimated to this office for further necessary action.

Yours faithfully,

ATTESTED

ADVOCATE

(Sd/- ARORA)
DIRECTOR ENGINEERING
OFFICE OF THE CHIEF ENGINEER (E.Z.)

O/O C.E.
GUWAHATI-781005

15

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
21 AUG 2008
IMMEDIATE
BY HAND
Guwahati Bench
dnnex ne V1

No.1 (11)/2007-S (D.Tech/DED)/ 6207

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
ALL INDIA RADIO: GUWAHATI

31 JAN 2007

Chandmari, Guwahati-781 003
Dated the January 29, 2007

The Chief Engineer (NEZ),
All India Radio & Television,
3rd floor, Dr. P.Kakoti's Building,
Near Ganeshguri flyover,
G.S.Road,
Guwahati-781 006

Sub: Forwarding of representation of Md Mohibul Islam, DED,
AIR, Guwahati.

Sir,

A representation dated 08/01/2007 received from Md. Mohibul Islam, DED of this office regarding promotion to the post of Diesel Technician is forwarded herewith for necessary action.

Yours faithfully,

Enclosed: As above

NOT FOR ISSUED
31/01
DESPATCHED

(A.K.Dhar)
Administrative Officer
for Station Director

29/01/07

महादेव शर्मा
Mahadev Sharma
उप संचालक (प्रसारण)
Dy. Director (Broadcasting)
मुख्य अभियन्ता का कार्यालय (उप क्षेत्र)
O/O CE (REZ) AIR & TV
गुवाहाटी-781003
GUWAHATI-781003

The Station Director,
All India Radio,
Guwahati-3.

अकाशवाणी, गुवाहाटी
All India Radio, Guwahati
File No. / दिनांक: 08.01.2007
Date / दिनांक: 08.01.2007
Dated : 08.01.2007

(16)

(24)

Annexure - VI

(Through proper channel)

Sub:- Intimation to move to CAT (CENTRAL ADMINISTRATIVE TRIBUNAL) for justice.

Sir,

With due respect I would like to intimate to this office that I am going to move to CAT (CENTRAL ADMINISTRATIVE TRIBUNAL) for the justice.

I have joined here as DED (Diesel Engine Driver) December 1990. But till now I have not been promoted to Diesel Technician as Diesel technician post is lying vacant and our department is not in the position to tell me that Diesel Technician post is a Zonal based seniority promotion post or a local seniority promotion post.

Regarding this anomalie I have written to this department several times but could not able to get positive response from your site.

Sir, I am bound to move to the court for the justice. This is for the information and necessary action please.

Thanking you.

Yours faithfully,

(Signature)
8.1.07

(MD. MOHIBUL ISLAM)

Diesel Engine Driver,
HPT, Jitukbari,
AIR, Guwahati.

Mohibul Islam
Dy. Director (Admin)
O/O CE (Admin) IV
GUWAHATI BENCH

केंद्रीय प्रशासनिक अपील न्यायालय
Central Administrative Tribunal
21 JAN 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

श्रीमान
श्रीमान
श्रीमान S. K. Mazumdar
28/01/08

17

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ANNEXURE 7 VII

CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Original Application No. 20 of 2007.

Date of Order: This the 6th Day of February, 2007.

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

Md. Mahibul Islam
Son of Late Ataur Rahman
Diesel Engine Driver
Office of the Superintending Engineer,
(H/T), All India Radio, Guwahati-14.

By Advocate Mr. A. Ahmed.

Versus-

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Information & Broadcasting
A-Wing, Shastri Bhawan
New Delhi-1.

2. The Director General
All India Radio, Sansad Marg
New Delhi-110001.

The Station Director,
All India Radio
Guwahati-3.

The station Director
All India Radio,
Itanagar,
Post Office-Itanagar,
Arunachal Pradesh

5. The Chief Engineer (NEZ)
All India Radio & Doordarshan
Dr. P. Kakoti Building
Near Ganeshguri Flyover
Ganeshguri, Guwahati-6

6. Shri M. Zirda
Diesel Technician,
Office of the Station Director,
All India Radio, Itanagar,
Post Office Itanagar
Arunachal Pradesh

7. Shri K.N. Das,
All India Radio,
Kokrajhar, Post Office-Kokrajhar, Assam

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
21 AUG 2008
गुवाहाटी न्यायपीठ
Guwahati Bench



Mahadev Sharma
Dy. Director (Admin)
मुख्य अभियन्ता, प्रशासन
आकारा (अ.प्र.)
कोकराज्हर

Shri B. Borah
Diesel Technician,
Office of the Station Director,
All India Radio, Itanagar,
Post Office-Itanagar,
Arunachal Pradesh.

9. Shri Tomi Riba,
Diesel Technician in the Office of the Station Director,
All India Radio, Itanagar, Post Office-Itanagar,
Arunachal Pradesh.

By Advocate Mr. G. Balshyn, Sr.C.G.S.C.

ORDER(ORAL)

K.V.SACHIDANANDAN,V.G.



The applicant was appointed to the post of Helper in the All India Radio in the year 1984. Thereafter, the applicant was promoted as Diesel Engine Driver in the Office of the Superintendent Engineer (HPT), All India Radio, Guwahati. The next promotion from Diesel Engine Driver is Diesel Technician. The posts of Diesel Technicians are filled up through 100% promotion on seniority/fitness basis failing which by direct recruitment. The Diesel Engine Drivers with three years service experience are eligible for promotion to the post of Diesel Technician. The Respondent No.5 informed all the Heads of All India Radio Stations Tawang, Tura, Agartala, Dibrugarh, Shillong, Guwahati, Gangtok, Kohima Imphal, Passighat, Silchar, Aizawl and the Chief Engineer East zone,(AIR & T.V) Calcutta about filling up the two posts of Diesel Technicians at All India Radio, Itanagar. But the Respondents No.6, 7,8 and 9 were promoted to the said post at Itanagar although they are junior to the applicant.

I have heard Mr.A.Ahmed learned counsel for the applicant and Mr. G. Balshyn, Sr.C.G.S.C. for the Respondents. When the matter came up for consideration, the learned counsel for the applicant has

सहायक न्यायाधीश
Central Administrative Tribunal

मुख्य अभियन्ता का/असिस्टेंट (डी.ए.ए.)
ऑफिसियल ओर सुपरीजन
O/O Central Board of Secondary Education
गुवाहाटी-781035
GUWAHATI-781035

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal
21 AUG 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

18

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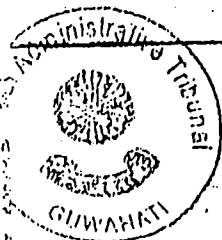
27

Central Administrative Tribunal
21 AUG 1971
गुवाहाटी न्याय
Guwahati Bench

submitted that he will be satisfied if direction is given to the Respondent No.2 to consider the applicant and promote him to the post of Diesel Technician either at All India Radio, Guwahati, Kohima, Tawang and Aizawl where the aforesaid posts are lying vacant. The learned counsel for the respondents has submitted that he has no objection if such direction is given to the respondent.

Considering the facts and circumstances of this case, this Court directs the applicant to file comprehensive representation before the 2nd respondent within one month from to-day. If such representation is filed by the applicant, the Respondent No.2 shall consider and dispose of the same within three months and pass appropriate orders thereon.

O.A. is accordingly, disposed of. There shall be no order as to costs.



LM

84/ VICE CHAIRMAN

TRUE COPY

प्रतिप्रति
9.2.07
अनुभाग 11-5
S. C. 11-5
Central Administrative Tribunal
गुवाहाटी न्याय
GUWAHATI BENCH
गुवाहाटी न्याय 11-5

16/9/07

महादेव शर्मा
Mehadev Samah
उप सचिव (प्रशासन)
By Director (Admin.)
उप सचिव (उ.पू.क्षेत्र)



21

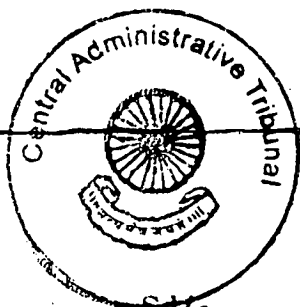
-4-

C.P. 12/07

04.01.2008

the Applicant has already been granted, to the post of Diesel Technician by order dated 02.01.2008.

In the aforesaid premises the Contempt Petition is closed, dropped.



Sd/-
Khushiram
Member (A)

Sd/-
Manoranjan Mohanty
Vice-Chairman

27.01.16-1-08

Memo No. 195

Copy for information and necessary action to:

1) Md. Mahibul Islam, S/o Late Ataur Rahman, Diesel Engineer S/o The Superintending Engineer, (HPT) All India Radio, Guwahati-781 014.

2) Mr. G. Baishya, Sr. C.G.S.C., C.A.T. Guwahati Bench

Manoranjan Mohanty
Section Officer (V)
10/1/08

22 24
S.No. 14 C
Amend 1A
MOST IMMEDIATE

PRASAR BHARTI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL: ALL INDIA RADIO
AKASHWANI BHAWAN NEW DELHI-

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
21 AUG 2008
गुवाहाटी न्यायपीठ
Guwahati Bench
Dated: 26th -Sept-07

F.NO. 4/13/2006-SIV(A)

Subject : Regarding promotion of Diesel Engine Driver to the post of Diesel Technician in North East Zone.

Reference CE (NEZ)'s letter No. CE (NEZ)/1(36)2007-S/DED/9993, dated 21.05.2007 on the above mentioned subject.

CE(NEZ) is requested to initiate the process for review DPC to rectify the mistake and do justice to the eligible candidates by following the instructions approved by CEO as given below:-

- (a) Cancel the DPCs held earlier whose action has resulted in injustice.
(b) Hold a review DPC to consider the cases on zonal basis vide this Directorate's letter No.4/1/2001-S-IV(A) dated 8.01.2001 (copy enclosed)to give promotion to the eligible candidates.

Encl: As above.

Sunder K G

(S.K.GARG)

Dy. Director of Admn.(P)
For Director General.

Chief Engineer(NEZ)
(Kind attn: Sh. Mahesh Chandra, DE),
AIR & TV, P, Kakoti Building,
Ganeshguri Flyover,
G.S.Road, Dispur,
Guwahati-781006.

महादेव चार्मा
Mahadev Charma
उप निदेशक (प्रशासन)
Dy. Director (Admin)
मुख्या अति प्रमुख का. प्रशा. वि. (उ.प्र. वि. क्षेत्र)
अका. प्रशा. वि. क्षेत्र
G.O. No. 1487
गुवाहाटी

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL: ALL INDIA RADIO

No. 4/1/2001-SIV(A)/

New Delhi, dated; 08.01.2001

Subject: Promotion of Shri M. Islam, D.E.D. AIR, Guwahati
to the cadre of Diesel Technician - regarding.
.....

In the meeting held on 23th November 2000 under the Chairmanship of E-in-C, AIR with the representatives of the Assn. of AIR & DD, the Association has raised an issue relating to settlement of promotion case of Shri M. Islam, DED, AIR, Guwahati.

2. Office of CE(EZ) has stated that the promotion of Diesel Engine Driver to the cadre of Diesel Technician is done at the station as both the posts belong to local cadre.
3. The view expressed by O/o CE(EZ) donot appear to be correct. Since these posts of Diesel Engine Driver and Diesel Technician are of Zonal cadre, CE(EZ) is requested to decide this case at zonal level under intimation to this Directorate by 27th January 2001 so that the Association is informed accordingly.

(M.P. SWAN)
DY. DIRECTOR OF ADMN.

Chief Engineer(EZ)
(Attn: Shri S.K. Arora, DDE),
All India Radio & Television,
4th floor Akashvani Bhavan,
Eden Garden,
Calcutta.

महादेव शर्मा
Mahadev Sharma
उप संचालक (प्रशासन)
Dy. Director (Admin)
मुख्य अभियंता का कार्यालय (उप क्षेत्र)
अकाशवाणी का मुख्यालय (उप क्षेत्र)
O/O of Dy. Director (Admin)
GUWAHATI

24 25 Annexure 1X

DRAFT SENIORITY LIST OF DIESEL ENGINE DRIVER OF NE ZONE AS ON 01-01-2008

SL. NO.	NEZ PANEL NO	NAME	CATE	DOB	QUALF	DOJGS	DOJ DED	PRESENT STATION	REMARKS
1	8001	\$MR BABASENA SINGH	UR	31/08/1953	VI	19/06/1972	18/02/1983	AIR SILCHAR	PROMOTED AS D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
2	8002	\$MR J. SANGKHUMA	ST	01/03/1961	VIII / ITI (MOTOR MECH. VEHI)	29/09/1983	29/09/1983	AIR AIZAWL	PROMOTED AS D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
3	8003	\$MR LALMUANKIMA	ST	14/10/1961	VIII / ITI (MOTOR MECH. VEHI)	29/09/1983	29/09/1983	AIR AIZAWL	PROMOTED AS D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
4	8004	\$MR MD AZAD ALI	UR	31/12/1951	V	14/05/1973	24/10/1986	AIR GUWAHATI	PROMOTED AS D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
5	8005	\$MR JAGANNATH DAS	SC	01/10/1949	VI	25/07/1974	31/08/1988	AIR GUWAHATI	PROMOTED AS D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
6	8006	\$MD MOHIBUL ISLAM	UR	27/04/1965	X	17/04/1984	06/09/1990	AIR GUWAHATI	PROMOTED AS D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
7	8007	\$MR NG ROBIN MEETEI	UR	01/03/1970		16/04/1992	16/04/1992	AIR IMPHAL	PROMOTED AS D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
8	8008	\$MR TH. PREMCHAND SINGH	UR	01/02/1968	X	24/04/1992	24/04/1992	AIR IMPHAL	PROMOTED AS D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
9	8009	MR GAUTAM CHANDA	UR	02/01/1968	HSLC / ITI (D. MECH.)	16/01/1993	16/01/1993	AIR SILCHAR	
10	8010	MR S. DAS	SC	03/10/1968	X / ITI (D. MECH.)	06/04/1994	06/04/1994	AIR AGARTALA	
11	8010A	\$MR. MARDO ZIRDO	ST	06/04/1976	XII	29/09/1994	29/09/1994	AIR ITANAGAR	REVERTED TO DED FROM D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
12	8010B	\$MR. B. BORAH	UR	09/03/1969	X	19/10/1994	19/10/1994	AIR ITANAGAR	REVERTED TO DED FROM D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
13	8011	MR Y. SURSING SINGH	UR	01/03/1974	X/ITI(WM)	11/11/1994	11/11/1994	AIR IMPHAL	
14	8012	MR MONYUM BAGRA	ST	22/05/1970	XII / ITI (MOTOR MECH.)	23/01/1995	23/01/1995	AIR ITANAGAR	
15	8013	MR UDHAB CH. DEORI	ST	04/01/1961	VIII / ITI (MOTOR VEHICLE)	24/09/1986	06/02/1995	AIR TEZU	
16	8014	MR SAMARENDRA DAS	UR	29/02/1962	VIII	06/01/1987	07/02/1995	AIR TEZU	
17	8015	MR K. AKUMBA Y.	ST	01/03/1969	ITI (FIT)	14/09/1995	14/02/1995	AIR TUENSUNG	
18	8015A	\$MR. TOMI RIBA	ST	01/08/1965	VIII/ITI(MOTOR MECH)	26/10/1989	15/02/1995	AIR ITANAGAR	REVERTED TO DED FROM D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
19	8016	MR KHOKAN NAMA	SC	24/07/1966	X / ITI (D. MECH.)	28/03/1995	28/03/1995	AIR AGARTALA	
20	8017	MR HOPSON	ST	01/04/1957	VIII	12/05/1980	28/08/1995	AIR KOHIMA	
21	8017A	\$MR. KAILASH MECH	ST	25/02/1976	ITI(D. MECH)	09/10/1995	09/10/1995	AIR KOHIMA	REVERTED TO DED FROM D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
22	8017B	\$MR. PURTEMSU	ST	28/10/1976	ITI (D.MECH)	21/10/1995	21/10/1995	AIR MOKOKCHUNG	REVERTED TO DED FROM D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
23	8018	MR BISWADEV SWARGIARY	ST	01/03/1969	XII / ITI(MOTOR) / CITI (ELECT)	06/01/1996	06/01/1996	AIR GUWAHATI	
24	8019	MR J. DEB BARMA	ST	18/09/1966	VIII / ITI (D. MECH.)	20/05/1996	20/05/1996	AIR AGARTALA	
25	8019A	\$MR. MANOJ HAZARIKA	ST	01/11/1966	PRE-DEGREE/ITI(D.MECH)	02/09/1996	02/09/1996	AIR GANGTOK	REVERTED TO DED FROM D. TECH VIDE CE (NEZ) ORDER NO. CE(NEZ)/1(36)/2007-S/DPC DTD. 02.01.2008
26	8020	MR RAJESH GOGOI	OBC	30/11/1972	XII	18/10/1996	18/10/1996	AIR DIBRUGARH	
27	8021	MR IROM SHANTA SINGH	UR	06/05/1976	XII / ITI(WIREMAN)	30/09/1999	30/09/1999	AIR IMPHAL	
28	8022	MR N. ATHONG TEP	ST	05/02/1979	X/ITI(D. MECH)	06/06/2002	06/06/2002	AIR KOHIMA	
29	8023	MR SWEDEVIZO KIKHI	ST	09/09/1983	HSLC/ (D. MECH)	06/06/2002	06/06/2002	AIR KOHIMA	

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महादेव शर्मा
Mahadev Samrah
उप निदेशक (आवक)
Dy. Director (Inv)
मुख्य अभियन्ता का कार्यालय (उ. प्र. क्षेत्र)
आकाशवाणी और दूरदर्शन
0/10 CE (NEZ) AND IV
मुम्बई-400 002
01/01/2008

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of: -

O.A. No. 10/ 2008

Shri Tomi Riba

-Versus-

Union of India & Ors.

-And-

In the matter of: -

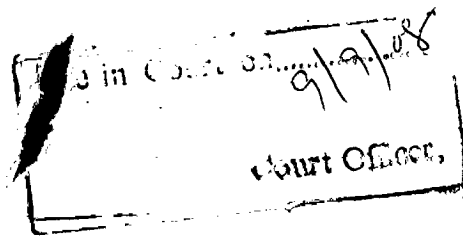
Rejoinder submitted by the
applicant in reply to the written
statements submitted by the
respondents.

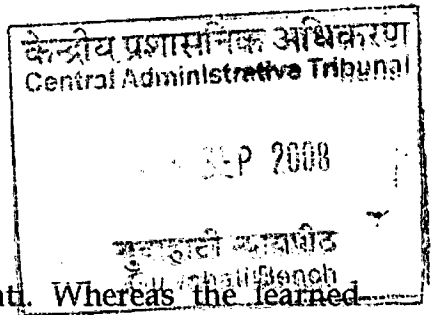
The applicant above named most humbly and respectfully begs to state as
under; -

1. That with regard to the statements made in paragraph 1 (b), (c), (d), 2, 3 and 4 of the written statement, the applicant categorically denies the correctness of the same save and except which are borne out of records, and further begs to say that the decision of the respondents to revert the applicant from the post of Diesel Engine Technician (for short DET) to the post of Diesel Engine Driver (for short DED) without providing any reasonable opportunity at the distant point of time is highly arbitrary, illegal and unfair and such action of the respondents also suffer from vice of illegality. It is categorically submitted that no valid reason has been assigned for holding of review DPC rather it appears from the impugned order dated 02.01.2008 that the review DPC has been constituted by the respondent department on the basis of the order dated 06.02.2007 passed by the learned CAT, Guwahati Bench in O.A. No. 26/2007 filed by one Shir Mahibul Islam,

Tomi Riba

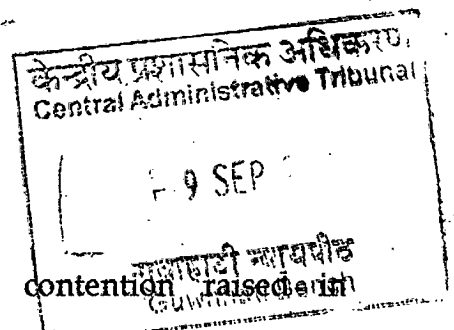
Filed by the applicant
through U. Datta, advocate
on 09.09.08





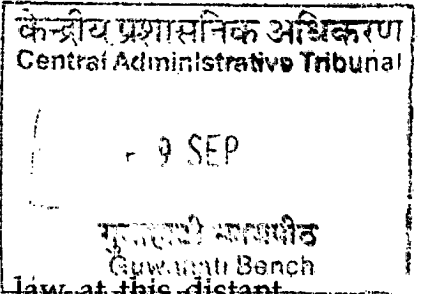
Diesel Engine Driver, All India Radio, Guwahati. Whereas the learned Tribunal vide its order dated 08.02.2007 did not pass any order of holding review DPC rather, the learned Tribunal directed to consider representation of the applicant, if any, filed within a period of one month, as such the reason indicated in the order dated 02.01.2008 for holding review DPC is factually incorrect and misleading. Moreover, the decision of considering promotion to the cadre of DED of N.E. Zone on zonal basis is a decision of the respondent department taken in recent past and that too not based on any statutory rule governing the field, rather it can be said that such decision of the respondents to effect promotion to the post of DET in All India Radio and Doordarshan on zonal seniority basis is an executive decision of the respondent department whereas promotion of the present applicant was considered and given on station seniority basis on 09.10.2002. As such in the absence of any allegation of violation of statutory rule while effecting promotion of the applicant in the year 2002, the respondents are not entitled to hold a review DPC after a lapse of 6 years from the date of promotion of the applicant that too without providing any opportunity. Such action of the respondents to issue order of reversion by the impugned order dated 02.01.2008 is not sustainable in the eye of law. It is also relevant to mention here that respondents in para 4 of the written statement also admitted that as per recruitment rule, 3 years service is required for promotion in the cadre of DET. The present applicant was found eligible by the DPC held on 12.09.2002 for promotion as per Recruitment Rule and as such recommended for promotion to the cadre of DET by the duly constituted DPC. The circular dated 19.09.2001 issued by the Chief Engineer, Eastern Zone based on Directorate's letter dated 18.07.2001 and 20.09.2000 whereby clarification is given for effecting promotion for filling up vacant posts of local cadres like Technician, Helper, DET, DED etc. and also clarified that Station authority is vested with the power of recruitment of such posts. Therefore on the basis of letter dated 19.09.2001 and also on the basis of other instructions of the higher authority, the applicant was duly promoted to the cadre of DET and as such the respondents are barred by law of estoppel to find fault with those instructions at this belated stage, in the absence of any allegation of violation of any statutory rule.

Bm: Risa



2. That your applicant categorically denies the contention raised in paragraphs 5, 6, 7 and 8 of the written statement and further begs to say that Md. Mahibul Islam, respondent No. 8 was not an employee of AIR, Itanagar at that relevant point of time and as such respondent No. 8 cannot raise any grievance against the promotion of the applicant which was given effect in the year 2002 on the basis of Station seniority as per the clarification received from the office of the Chief Engineer, Eastern Zone, Kolkata vide letter dated 19.09.2001. Moreover, the cause of action, if any for the respondent No. 8 arose in the year 2001 but the respondent No. 8 remained silent for last 7 years except submitting repeated representations. Therefore claim of the respondent No. 8 for retrospective promotion is barred by law of limitation, law of estoppel and law of waiver and the respondents cannot stall the promotion of the applicant at this belated stage on the basis of D.G's letter bearing No. 4/13/2006-SIV (A) dated 26.09.2007. It appears from the representation of the respondent No. 8 dated 22.05.2000 and 08.01.2001 enclosed in the written statement that he is aware of the promotion of the present applicant and others way back on 22.05.2000 and also on 08.01.2001 but he remained silent, as such claim of the respondent No. 8 is barred by law of limitation, and the decision of the D.G communicated through letter dated 26.09.2007 for holding review DPC in the absence of allegation of violation of any statutory rule is arbitrary, illegal and not sustainable in the eye of law. Such decision of the D.G for holding review DPC on the basis of zonal seniority prepared as on 01.01.2008 is not sustainable in the eye of law, more so when there was no direction in the order dated 06.02.2007 passed by the learned Tribunal in O.A. No. 26/2007 for holding any review DPC. Moreover, it appears from the documents enclosed in O.A. No. 26/2007 that representation of the respondent No. 8 claiming his promotion to the post of DET at AIR, Itanagar was rejected by the Station Director, AIR, Guwahati vide Memorandum dated 29/31.05.2001, hence his claim for promotion is grossly barred by limitation when the promotion of the applicant was granted on Station seniority basis, as such claim of the respondent No. 8

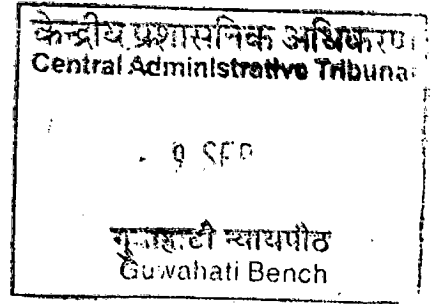
Comi Riba



that he is senior to the applicant is not sustainable in law at this distant point of time.

3. That with regard to the statement made in para 9, 10, 11, and 12 of the written statement the applicant denies the correctness of the same and further begs to say that it appears from the draft seniority list of DED of N.E Zone prepared as on 01.01.2008 on zonal basis for the first time. It is categorically submitted that prior to 01.01.2008 the seniority list was never maintained on zonal basis rather seniority of the DED used to be maintained on Station wise. Therefore, decision of the respondents to effect the promotion to the cadre of DET on zonal basis is a recent decision of the authority that too following an executive instruction. It is further categorically submitted that in the absence of any statutory rule the promotion of the applicant was rightly given on Station seniority basis, as such the claim of the respondent No. 8 at this distant point of time is not sustainable in the eye of law. Moreover, in the fact and circumstances as stated above, the promotion of the applicant is not liable to be interfered with by the respondents, and as such the impugned order of reversion dated 02.01.2008 is liable to be set aside and quashed.
4. That the applicant reiterates the submission made in the Original Application and in the facts and circumstances as stated above, the Original Application deserves to be allowed with cost.

Om Riba



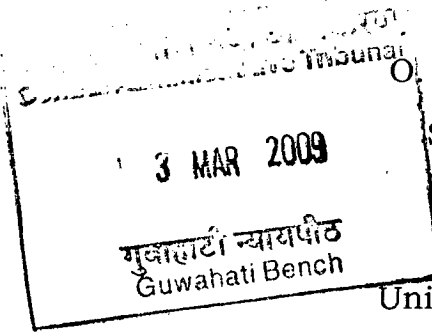
VERIFICATION

I, Shri Tomi Riba, S/o- Shri Gokar Riba, aged about 38 years, working as Diesel Technician, office of Station Director, All India Radio, Itanagar, Arunachal Pradesh, do hereby verify that the statements made in Paragraph 1 to 4 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 24th day of August 2008.

Tomi Riba

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI
BENCH AT GUWAHATI**



O. A. No. 10/2008

Sri Tomi Riba

.....Applicant

-Vs-

Union of India & Ors.

.....Respondents

-And-

In the matter of:-

Reply to Rejoinder submitted
by the Applicant.

The present Deponent most respectfully begs to state as under:-

I, Sri Mahadev Sarmah, son of Late Puspanath Sarmah aged about 59 years, presently serving as Deputy Director (Administrative) in the office of the Chief Engineer (NEZ) AIR & DD, Guwahati-781006 do herby solemnly affirm and state as follows :

1. That, a copy of a Rejoinder submitted by the Applicant in reply to the written Statements submitted by the Respondents have been served on the Deponent.
2. That, the present Deponent categorically denies the correctness of the same, save and except those statements made in the rejoinder which are specifically admitted herein this reply to Rejoinder. Other statements made in the Rejoinder shall be deemed to be repudiated and are herby denied by the Answering Deponent.
3. That, with regard to averments made in Para 1 of the Rejoinder, the Answering Deponent begs to submit that the decision of the concerned Officials of Union of India to revert the present Applicant from the post of Diesel Engine Technician to the post of Diesel Engine Technician to the post of Diesel Engine Driver has been taken after due consideration of the rules and regularizations

Received
M. D. D.
10.02.09

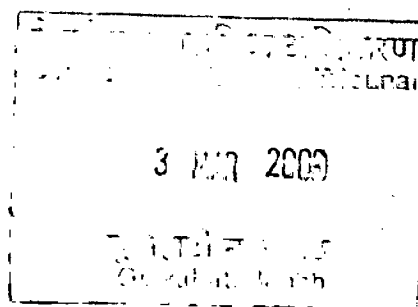
M. D. D.
Motin Ud-Din Ahmed
M.A., B.Sc., LL.B.
Addl. Central Govt. Standing Counsel
Guwahati Bench (CAT)

of the concerned Department and is a legitimate exercise of Executive Authority. That, the Answering Deponent begs to submit that the Honorable Apex Court in a number of cases have settled the Principle of law that, in a case of erroneous promotion, any mistake in decision can be duly rectified by Authority concerned and such the averment made in Para 1 of the rejoinder is not correct and hereby denied by the Answering Deponent.

4. That, with regard to averments made in Para 2 & 3 of the Rejoinder the Answering Deponent begs to submit no comments as the same are narration of factual positions looked at from the point of view of the Applicant and the same need not to be repudiated again by the Answering Deponent as the same has been already submitted in his Written Statement before this Honorable Tribunal and the same will be duly substantiated at the time of hearing in the matter.
5. That, in the premises aforementioned it is therefore submitted that, the Honorable Tribunal will consider the factual positions and settled Principles of Law submitted through the Written Statement along with the present Reply to the Rejoinder and after hearing the Counsel of the Respondents will be pleased to dismiss the misplaced and misconceived Original Application filed by the Applicant.
6. That, the Statements made in this paragraph and paragraphs _____ are true to my information derived from records of the case and the paragraphs _____ are true to my knowledge and belief and the rests are my humble submissions before this Honorable Court.

And accordingly, I sign this reply to rejoinder on this _____ day of _____, 2009 here at Guwahati.

Identified by



DEPONENT

महादेव शर्मा
Mahadev Sharma
उप सचिव
Dy. Secy.
मुख्य अ.
OFF. SECY.
गुवाहाटी- 781006
GUWAHATI-781006