

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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27/7/2015
SECTION OFFICER (JUDL.)

24.7.2011

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

1. ORIGINAL APPLICATION No : 276 / 2009
2. Transfer Application No : ----- / 2009 in O.A. No. -----
3. Misc. Petition No : ----- / 2009 in O.A. No. -----
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Applicant (S) : Shri Anup Kumar Das

Respondent (S) : Union of India & ors.

Advocate for the : Mr. M. Chanda, Mr. S. Nalini
{Applicant (S)} Ms. U. Dutta.

Advocate for the : -----
{Respondent (S)} Rly.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed in Form No. 50/- deposited No. <u>396/443457</u> Dated <u>16/12-09</u></p> <p><u>22.12.09</u> By <u>Registrar</u> <u>22/12/09</u></p> <p>4 (Four) copies of Application with envelopes received for issue notices to the Respondents No 1404. Copy served.</p> <p><u>24/12/09</u></p> <p><u>12.12.09</u> Issue notice to the respondents returnable within four weeks.</p> <p><u>12.12.09</u> Copies of notices along with order 23/12/09 send to D/Sec. for forwarding to the respondents by regd. post. D/No-143 to 146 Dt. 07-1-2010</p>	<p>23.12.09</p>	<p>Applicant made a request for promotion as JE/II. On being refusing promotion applicant was debarred for one year for further promotion by order dated 20th February 2008. Mr. M. Chanda, learned counsel for applicant invited my attention on Rule 205 of IREM in regard to currency of panel. It is stipulated in the said Rule, that the panel will be current for period of two years from the date of approval of competent authority or till a fresh panel on the date of next selection becomes available whichever is earlier. Where provisional panels are drawn the currency will count from the date of approval of the provisional panel. ^{as counsel submitted that} As because panel is live, applicant be considered for promotion.</p> <p>Considered the submissions. Issue notice to the respondents returnable within four weeks time. Pendency of this O.A. shall not be a bar to consider the promotion of the applicant, subject to availability of vacancies.</p> <p>List the matter on 08th February, 2010.</p> <p style="text-align: right;">(Madan Kumar Chaturvedi) Member (A)</p>

Notice duly served
on R-No. 1, 3

O.A.276-09

Notice received back
unserved from R.No. 2

08.02.2010

Learned proxy counsel for Mrs.B.Devi,
learned Railway counsel makes appearance
and seeks time to file reply. Vakalatnama has
also been filed on her behalf.

List on 08.03.2010.

① Notice duly served
on R.No- 1 & 3, 4

② Notice received back /bb/
unserved from R.No-2.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

5.2.2010

08.03.2010

Proxy counsel for respondents
seeks further time to file reply.

List on 8.4.2010.

5-3-10
no ADS sent.
/m

(Mukesh Kr. Gupta)
Member (J)

/pg/

No w/s filed
17.4.2010

List on 11.5.2010 along with M.P.
42/2010.

No w/s filed
10.5.2010

(Madan Kr. Chaturvedi) (Mukesh Kr. Gupta)
Member (A) Member (J)

11.05.2010

**Ms. R. Bora, learned proxy counsel
for Mrs. B. Devi, learned counsel for
Respondents states that Mrs. B. Devi,
has got some personal difficulties and,
therefore, she prays for adjournment.**

List the matter on 12.05.2010.

(Madan Kumar Chaturvedi)
Member (A)

/pb/

12.05.2010 Respondents to file reply by 20.05.2010.

List on 20.05.2010 along with M.P.No.77/2010.

(Madan Kumar Chaturvedi)
Member (A)

nkm

20.05.2010 Reply to O.A. was filed on 12.05.2010. Mrs B. Devi, learned counsel for the respondents, states that reply to M.P.Nos.42 & 77 of 2010 has been filed today in the Registry. Let rejoinder be filed by the applicant ~~to~~ all these aspects by the next date.

List for hearing on 01.06.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

9.6.2010

Rejoinder has been filed by the applicant. Copy served.
Hd 9/6/2010

The case is ready for hearing. /Lm/

17.6.2010

01.6.2010 Granting further two weeks time to file rejoinder, case is adjourned to 18th June 2010.

List the matter for hearing on 18th June 2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

12.5.2010
W/S has been filed by the respondents. Copy served to the L/Advocate for the Applicant.
Hd 14/5/2010

W/S filed.

19.5.2010

Rejoinder not filed.

31.5.2010

18.06.2010

Mr M. Chanda, learned counsel for applicant, states that he will not press M.P.No.106/2010 seeking certain amendment in the O.A. Learned proxy counsel for the respondents prays for adjournment. Very reluctantly, we adjourn the matter to 06.07.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkrm

28.7.2010

Judgment/Binal.
order Sent to both

A/S for issuing

Vide A/1752
1755 No —

nkrm

06.07.2010

Heard learned counsel for parties.
For the reasons recorded separately, O.A. is allowed. No costs.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.276 of 2009

DATE OF DECISION: 06.07.2010

Shri Anup Kumar Das

APPLICANT(S)

Mr M. Chanda

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

RESPONDENT(S)

Mrs B. Devi, Railway Standing Counsel

ADVOCATE(S) FOR THE
RESPONDENT(S)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi Administrative Member

1. Whether reporters of local newspapers may be allowed to see the Judgment?
2. Whether to be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?

Yes/No

~~Yes/No~~

Yes/No


Member (J)



X

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.276 of 2009

With

M.P.No.77 of 2010

Date of Order: This the 6th day of July 2010

The Hon'ble Sri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Shri Anup Kumar Das,
S/o Late Anil Chandra Das,
Senior Technician,
N.F. Railway, Lumding, Assam.

..... Applicant

By Advocate Mr M. Chanda

- versus -

1. The Union of India, through the
General Manager,
N.F. Railway,
Maligaon, Guwahati-11.
2. The Divisional Railway Manager (P)
N.F. Railway, Maligaon, Guwahati-11.
3. The Divisional Railway Manager (P)
N.F. Railway, Lumding, Assam.
4. Sr. Divisional Signal & Telecom Engineer
N.F. Railway, Lumding, Assam.

..... Respondents

By Advocate Mrs B. Devi, Railway Standing Counsel.

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ORDER (ORAL)**MUKESH KUMAR GUPTA, JUDICIAL MEMBER**

Anup Kumar Das, in this application filed under Section 19 of the Administrative Tribunals Act, 1985 seeks direction to the respondents to reconsider him for promotion to the cadre of JE/II/Tele in terms of panel dated 12.06.2007 with all consequential benefits.

2. Admitted facts are that: being successful against 30% Departmental Promotion quota, he was empanelled for aforementioned post in pay scale of Rs.5000-8000/- vide order dated 12.06.2007, which was approval by ADRM/LMG on 08.06.2007. Consequently, he was promoted vide order dated 09.07.2007 and was posted at Lumding. Submitting representation dated 06.08.2007, he made a request to post him at Guwahat, as vacancy in said cadre existed therein besides highlighting his personal grievances namely, two children studying in class IX and 1st year of Higher Secondary, his wife's sickness as well as maintaining his widowed sister. Vide order dated 20.02.2008 (Annexure-4), he was advised to carry out said promotion order by 29.02.2008, failing which presumption would be drawn that he was unwilling to carry out said promotion order and would be debarred for promotion for one year. Undeterred, he made further representation on 08.03.2008 (Annexure-5) reiterating his request to post on promotion at Guwahati, followed by reminders dated 03.04.2008 and 29.12.2008.

3. His grievance is that though period of debarment expired on 29.02.2009 and said panel, in terms of Rule 205 of IREM Vol.I, remained alive up to 08.06.2009, yet respondents did not promote

him. Thereafter, applicant was transferred in the same capacity i.e. Sr. Tech., Tele at Lumding vide order dated 16.09.2009 (Annexure-16).

4. Example of Shri Mukti Ram Das and Debangshu Roy was cited before us to contend that similarly situated persons, were promoted on expiry of one year period of debarment vide order dated 26.06.2006 (Annexure-10). As such it was contended that when after the expiry of debarment the panel remained in currency i.e. 20.02.2009 to 08.06.2009, there was no reason or justification not to promote him.

5. By filing M.P.No.77/2010, he has placed on record documents to the effect that the respondents have initiated further selection process for filling the post of JE/II/Tele in the scale of Rs.9300-34000 + 4200 G.P. Therefore, it was prayed that he is entitled to said promotion on expiry of one year period i.e. 20.02.2009 onward till 08.06.2009.

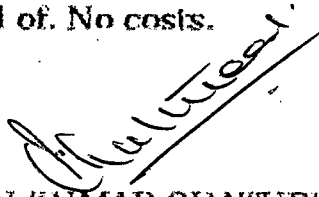
6. Contesting the claim laid and by filing reply, it was pointed out that he was directed to carry out order of transfer and promotional posting at Lumding but did not carry out said order within 07.06.2009, before the term of the panel expired. He has wrongly interpreted Rule 205 of IREM Vol.I to contend that panel was valid till 11.09.2009 (sic as 11.09.2006). The panel of JE/II/Tele was approved on 08.06.2007 and it expired after two years i.e. 07.06.2009. His appeal for retention at Guwahati was not considered by the competent authority. He was empanelled for promotion against 30% DP quota, while Debangshu Roy promoted vide order dated 26.06.2006 was empanelled for promotion against 20% LDCE quota,

and as such he is uncomparable. He ought to have complied with the administrative order of transfer on promotional post, rather than citing the reference of other incumbents and insisting his continuance at Guwahati. It is undisputed that he was transferred in the same capacity i.e. Sr. Tech./Tele vide order dated 16.09.2009. Learned counsel for the respondents pointed out that he remained at Guwahati since his initial appointment w.e.f. 24.12.1984 and, therefore, he cannot insist to continue at the same place of posting indefinitely. It was further contended that he had participated in the test conducted in terms of communication dated 19.03.2010, which aspect has been seriously disputed by applicant vide aforesaid M.P. filed by him stating the he has not appeared in said test (para 7 of M.P.No.77/2010).

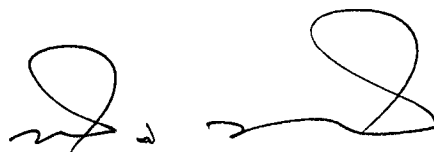
7. We have heard learned counsel for parties, perused the pleadings and other material placed on record. What has been emphasized by the respondents is that applicant did not carry out promotion order during currency of its panel upto 07.06.2009. It is undisputed that he was debarred by the order of promotion for a period of one year. Said debarment came to an end on 29.02.2009 though the panel remained in operation till 07.06.2009 as per respondent's own understanding. No communication has been pointed out by the respondents whereby they had offered said post after 20.02.2009 and prior to expiry of said panel on 07.06.2009. Once a person is debarred for certain period and that period comes to an end before expiry of said panel, it is for the respondents to offer said promotion and not for individual to beg for promotion during the currency of panel. We may note that prior to expiry of panel on 07.06.2009, no fresh panel had been drawn up. Steps for constituting

a new panel was taken only on 19.03.2010, i.e. after expiry of earlier panel. Specific contention raised by him vide M.P.No.77/2010 that he had not participated in departmental test held pursuant to Notification dated 19.03.2010 has not been disputed by filing reply. Thus, projection made by the respondents that he had participated in the test is misconceived and misplaced. It has no basis. In the circumstances we hold that there was no justification and plausible reason cited as to why they had not operated the panel after 20.02.2009 till 07.06.2009. At this stage learned counsel for the respondents states that the order dated 09.07.2007 remained in force. If that is the understanding of the respondents, why the respondents have not given effect to said promotion order after 20.02.2009 is not understood and remains a mystery. Therefore, we do not find any justification in said stand except to direct the respondents to promote him and follow said promotion order. In the circumstances, respondents are directed to promote him on expiry of one year debarment period and before expiry of the panel as the respondents have indeed failed to take the required steps to promote him within currency of the panel. Aforesaid direction shall be complied within a period of three months from the date of receipt of the order. He will be entitled to all consequential benefits including fixation of pay and seniority.

8. O.A. is allowed. Consequently, M.P.No.77/2010 stands disposed of. No costs.



(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER.



(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

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

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

O. A. No. 276 /2009

Shri Anup Kumar Das

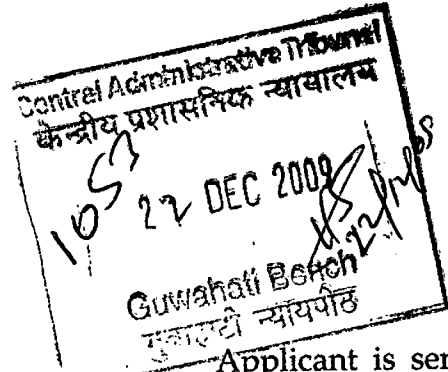
-Vs-

Union of India and Others.

SYNOPSIS OF THE APPLICATION

Applicant is serving as Sr. Technician in the N.F. Railway, Lumding. He was selected and empanelled for promotion vide order dated 09.07.2007 to the cadre of J.E./II/Telecom under the Sr. Divisional Signal and Telecom Engineer. Applicant submitted representation on 06.08.2007 for reconsideration of his posting as JE/II/Tele under Senior Section Engineer (Tele), Guwahati or Maligaon. However, the DRM (P), Lumding vide letter dated 20.02.08 informed the applicant that his request for posting at Maligaon/Guwahati on promotion to the post of JE/II/Tele has been regretted and advised him to carry out his promotion and posting order to the post of JE/II/Tele, Lumding by 29.02.2008, failing which it would be presumed that the applicant is not willing to carry out his promotion to the post of order and would be debarred from further promotion for 1 year. Whereas as per Rule 205 of IREM Vol. I panel for promotion in N.F. Railway is valid for a period of 2 years.

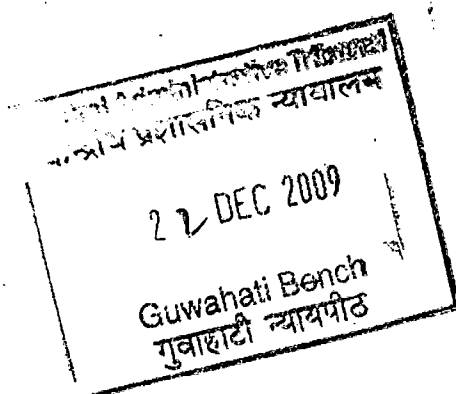
Sri Debangshu Roy and Sri M.R. Das were reconsidered for promotion to the post of JE/II/Tele by the respondents of their own after expiry of the period of one year while they initially surrendered their promotion to the post of JE/II/Tele and accommodated them against the vacancies at Guwahati but the present applicant was not given posting on promotion at Guwahati deliberately in spite of his repeated representations. Be it stated that applicant was transferred and posted from Guwahati to Lumding vide office order dated 16.09.09 in same scale of pay on administrative ground. Applicant being similarly situated like Sri Debangshu Roy, Sri M.N. Das who have been reconsidered for promotion after expiry of the period of debarment by the respondents of their own under the relevant railway rules. As such, the applicants' case is also liable to be treated in the same manner in the matter of promotion to the cadre of JE/II/Tele. More so when the vacancies



are available and other similarly situated employees have been promoted out of the same panel after February, 2009. Hence this Original application.

LIST OF DATES

- 26.06.2006- Sri M.N. Das and Sri D. Roy was empanelled for promotion to the post of JE/II/Tele. (Annexure- 10)
- 12.06.2007- Applicant was empanelled for promotion to the post of JE/II/Tele. (Annexure- 1)
- 09.07.2007- Applicant was promoted to the post of JE/II/Tele and posted under SSE, Lumding. (Annexure- 2)
- 06.08.2007- Applicant submitted representation for reconsideration of his posting as JE/II/Tele under Senior Section Engineer (Tele), Guwahati or Maligaon. (Annexure- 3)
- 20.02.2008- DRM (P), N.F. Railway, Lumding informed to the applicant that his request for posting at Maligaon/Guwahati on promotion to the post of JE/II/Tele has been regretted and advised him to carry out his promotion and posting order to the post of JE/II/Tele, Lumding by 29.02.2008, failing which it would be presumed that the applicant is not willing to carry out his promotion to the post of order and would be debarred from further promotion for 1 year. (Annexure- 4)
- 08.03.2008/03.04.08- Applicant submitted representation for accommodating him against the vacant post of JE/II either at Maligaon or Guwahati on acute domestic problem. (Annexure- 5 and 6)
- 29.12.2008- Applicant preferred an appeal for reconsideration of his posting in the cadre of JE/II/Tele either at Guwahati or Maligaon in view of his acute domestic problem. (Annexure- 7 and 8)
- As per provision laid down in Vol. I of IREM panel for promotion in N.F. Railway is valid for a period of 2 years. (Annexure- 9)
- 16.03.2009- Sri Debangshu Roy, Senior Tech, Guwahati was promoted to the post of JE/II/Tele and posted at Lumding. (Annexure- 11)
- 30.03.2009- Sr. DSTE, Maligaon recommended posting of Sri Debangshu Roy from Lumding to Guwahati. (Annexure- 12)
- 30.04.2009- Sri Debangshu Roy was transferred and posted from Lumding to Guwahati. (Annexure- 13)
- 19.05.2009- Applicant submitted representation under R.T.I Act seeking information regarding posting of Sri Debangshu Roy on promotion at Guwahati. (Annexure- 14)



- 26.06.2009- Dy. CSTE, Maligaon informed the applicant Sri D. Roy has been posted in modification of the order dated 16.03.2009 on specific request of Sr. DSTE/Maligaon. (Annexure- 15)
- 16.09.2009- Applicant was transferred and posted at Lumding under SSE/Tele, Lumding on same scale of pay on administrative ground. (Annexure- 16)
- 23.11.2009- One Sri Suman Kalyan Das, JE/II/Tele, Lumding was transferred and posted in the same capacity at Guwahati. (Annexure- 17)
- 25.11.2009- DRM (P), Lumding intimated the applicant that his request to for re-posting at Maligaon/Guwahati on same pay scale as Senior Tech, Guwahati cannot be acceded. (Annexure- 18)

PRAYERS

1. That the Hon'ble Tribunal be pleased to direct the respondents to reconsider promotion of the applicant to the cadre of JE/II/Tele in terms of panel dated 12.06.2007.
2. Costs of the application.
3. 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 direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing 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. 276 /2009

Shri Anup Kumar Das : Applicant.

-Versus-

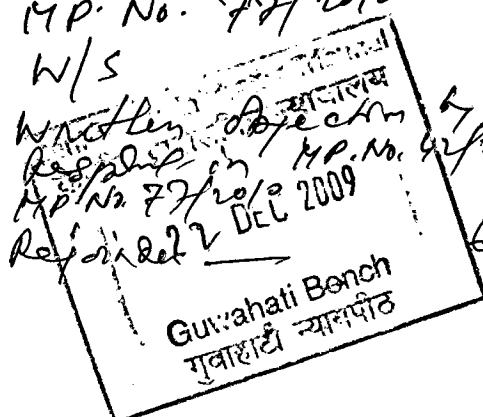
Union of India & Ors. : Respondents.

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Date: 22.12.09



Filed By: -
 The Petitioner
 Through: -
 (Shri) Anta
 Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O.A. No. 276 /2009

BETWEEN:

Shri Anup Kumar Das,
Son of Late Anil Chandra Das,
Senior Technician,
N.F Railway, Lumding, Assam.

-----Applicant.

-AND-

1. The Union of India
Through the General Manager,
N.F. Railway, Maligaon,
Guwahati-11.
2. The Divisional Railway Manager (P),
N.F. Railway, Maligaon, Guwahati- 11.
3. The Divisional Railway Manager (P),
N.F. Railway, Lumding, Assam.
4. Sr. Divisional Signal and Telecom Engineer,
N.F. Railway, Lumding, Assam.



..... Respondents.

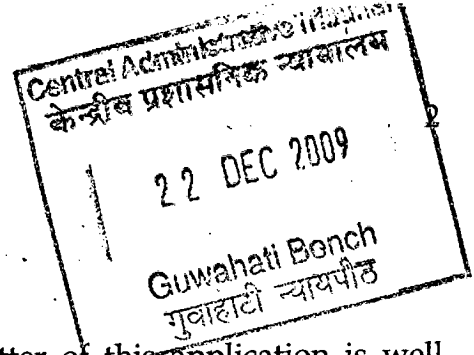
DETAILS OF THE APPLICATION

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

This application is made not against any impugned order but praying for a direction upon the respondents to re-consider promotion of the applicant to the cadre of JE/II/Tele in terms of panel dated 12.06.2007.

Anup Kumar Das.

Filed by: - *we applied*
Through: - *U. Datta*
Advocate *On*
2, 22.12.09



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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 your applicant was initially appointed on 24.12.1984 as Wireless Tele Maintainer under the Assistant Signal and Telecom Engineer, N.F. Railway, Guwahati. He was subsequently promoted to the post of Senior Technician on 07.02.2005.
- 4.3 That your applicant was called for selection to the post of J.E./II/Telecom under 30% departmental promotion quota and pursuant to order bearing letter No. E/254/1 (Selection) Tele dated 12.06.07. He was promoted from the cadre of Senior (Tech)/Tele, Guwahati to the cadre of Junior Engineer (JE)/II/Tele/LMG and posted under SSE/Tele, Lumding vide order dated 09.07.2007. The said office order dated 09.07.2007 was issued as per the order of Senior DST/LMG. However, it was stated in the said letter that the applicant will be entitled to joining time and transfer pass.

Copy of the order dated 12.06.07 and order dated 09.07.2007 is enclosed herewith and marked as **Annexure- 1 and 2.**

- 4.4 That your applicant vides representation dated 06.08.2007 prayed for reconsideration of his posting as JE/II/Tele under Senior Section Engineer (Tele), Guwahati or Maligaon. However, the DRM (P), N.F. Railway, Lumding vide letter bearing No. N/PF/1/174 dated 20.02.2008 informed to

Amal Kumar Das.

the applicant that his request for posting at Maligaon/Guwahati on promotion to the post of JE/II/Tele has been regretted. The applicant is further advised to carry out his promotion and posting order to the post of JE/II/Tele, Lumding by 29.02.2008, failing which it would be presumed that the applicant is not willing to carry out his promotion to the post of order and would be debarred from further promotion for 1 year.

Copy of the representation dated 06.08.07, order dated 20.02.08 and representation dated 08.03.08 and 03.04.08 are annexed herewith and marked as Annexure- 3, 4, 5 and 6.

- 4.5 That your applicant thereafter preferred an appeal for reconsideration of his posting in the cadre of JE/II/Tele either at Guwahati or Maligaon in view of his acute domestic problem. The said appeal of the applicant was forwarded by the Senior DST, Maligaon to the Senior DST, Lumding, N.F Railway vide letter No. E/283/1/1/ (MW) Pt. X dated 29.12.2008. Be it stated that the applicant due to his serious ailment availed medical leave w.e.f. 08.07.2007 to 04.08.2007. It is relevant to mention here that the applicant was under medical treatment under the Senior DMO, Maligaon, Central Hospital for a long time w.e.f. 21.02.2008. However, the applicant reported for duty in the month of April, 2008 and he was advised to resume duty at Passenger Reservation system, Guwahati. It is relevant to mention here that the applicant was not spared by the AST, Guwahati to join at Lumding.

Copy of the letter dated 29.12.08 and representation dated 29.12.08 are enclosed herewith and marked as Annexure- 7 and 8.

- 4.6 That it is stated that panel for promotion in N.F. Railway is valid for a period of 2 years under the relevant provision laid down in Indian Railway Establishment Manual, Vol. I (Rule 205). Therefore panel prepared under letter No. E/254/1 (Selection) Tele dated 12.06.2007 is valid till 11.09.2006 as evident from the letter dated 09.07.2007.

It is pertinent to mention here that the appeal preferred by the applicant before the Senior DST for reconsideration of his posting on

Anup k. Das,

promotion either at Guwahati or Maligaon area in fact was neither considered nor replied.

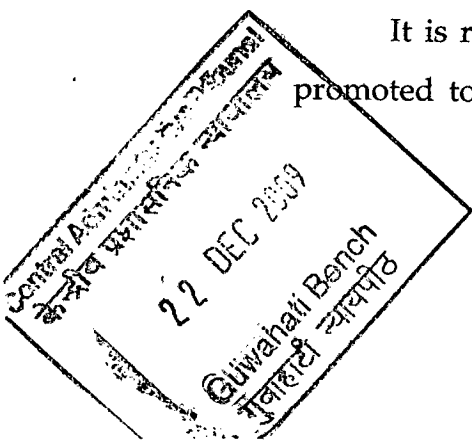
Copy of extract from IREM Vol. I (Rule 205) is enclosed herewith and marked as Annexure- 9.

- 4.7 That it is categorically stated that a few vacancies in the cadre of JE/II/Tele were lying vacant under SSE, Guwahati area as well as in Maligaon area at the relevant point of time when the applicant preferred an appeal for reconsideration of posting on promotion in the cadre of JE/II/Tele due to his acute domestic problems. But the authority deliberately did not consider his posting on promotion either at Guwahati or at Maligaon. But in spite of existence of vacancies the case of the applicant has not been considered favourably without assigning any valid reason.
- 4.8 That it is stated that one Sri Debangshu Roy, Senior Tech, Guwahati was promoted to the post of JE/II/Tele vide order dated 16.03.2009 and posted under SSE/Tele/Hill/LMG.

It is relevant to mention here that said Sri Debgangshu Roy was empanelled for promotion to the post of JE/II/Tele by the same memorandum dated 12.06.2007 wherein the name of the applicant was also empanelled for promotion to the cadre of JE/II/Tele but he was not given posting at Guwahati deliberately.

It would further be evident from the D.O letter bearing No. E/283/2/SIG/MLG dated 30.03.2009 wherein Senior DST, Maligaon requested the Senior DST, Lumding for consideration of posting of Sri D. Roy at Guwahati on promotion to the cadre of JE/II/Tele. Pursuant to such request of the Senior DST, Maligaon vide order dated 30.04.2009 Sri D. Roy was promoted and posted as JE/II/Tele under SSE, Guwahati on the recommendation of the Senior DST, Maligaon but without considering the case of the applicant for posting on promotion to the cadre of JE/II/Tele after expiry of the debarment period of 1 year is highly arbitrary, unfair and illegal.

It is relevant to mention here that Sri Debangshu Roy while being promoted to the cadre of Senior Tech, Tele in the year 2005 along with

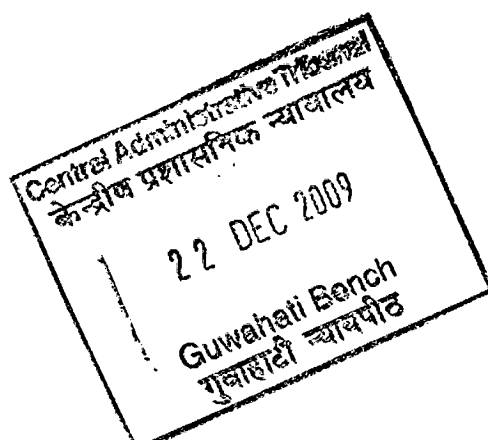


Anup K. Das.

another Sri M.R Das, they surrendered their promotion for 1 year. As a result they had been debarred from promotion for 1 year only. But on expiry of the said 1 year period said Sri Debangshu Roy and Sri M.R. Das were further considered and promoted to the cadre of Senior Tech, Tele in the scale of pay of Rs. 5000-8000/- with immediate effect and posted as Senior Tech, Tele at Guwahati under SSE, Tele, Guwahati. Therefore, it is abundantly clear that in the event of existence of vacancies the Railway employees are liable to be considered for promotion and posting immediately on expiry of 1 year period in the event of surrendering of promotion due to bonafide reasons. But in the instant case of the applicant the authority did not consider his case for further posting and promotion in spite of existence of vacancies rather Sri Debangshu Roy has been accommodated on promotion as JE/II/Tele at Guwahati. As a result the applicant has been meted out with hostile discrimination.

Copy of the order dated 26.06.06, 16.03.09, 30.03.09 and 30.04.09 are enclosed herewith and marked as Annexure- 10, 11, 12 and 13.

- 4.9 That it is stated that the applicant vide his representation dated 06.08.2007 prayed for reconsideration of his posting and promotion due to his acute domestic problem, more particularly due to serious ailment of his wife who is psychiatry patient. It is relevant to mention here that the applicant did not retain with him any copy of representation dated 06.08.2007, as such, the same could not be annexed herewith. However, it is stated that the representation dated 06.08.2007 submitted by the applicant praying for posting on promotion either at Guwahati area or Maligaon area but in the said representation the applicant never stated that he is willing to surrender his promotion on posting at Lumding. But the authority, the DRM (P), NF Railway, Lumding in an arbitrary manner issued the letter dated 20.02.2008 declared that the applicant would be debarred from further promotion for one year in the event of failure to carry out the promotion order dated 29.02.2008.



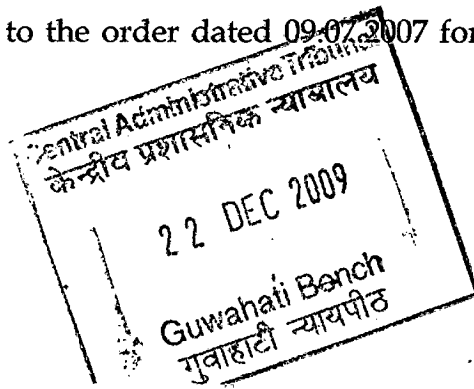
Anup k. Das.

However, even it is presumed that the applicant is debarred for promotion for 1 year in that event also the applicant is liable to be considered for promotion immediately after the expiry of 1 year period of debarment, more so when the vacancies in the cadre of JE/II/Tele were available under the disposal of the respondents. As such denial of promotion to the applicant and his future posting at Lumding in the same capacity as Sr. Technician is highly arbitrary, unfair and illegal.

It would be evident from the posting of Sri Debangshu Roy that there was a vacancy existed at the time when the applicant prayed for his posting at Guwahati or Maligaon area. In this connection it may be stated that Sri Debangshu Roy, Sr. Tech, Guwahati was also promoted against 20% LDCE quota and initially posted vide order dated 16.03.2009 as JE/II/Tele under SSE/Tele/Hill/Lumding but subsequently at the instance of Sr. DSTE said Sri D. Roy posted at Guwahati in modification of the order dated 16.03.2009 following the order dated 30.04.2009 whereas debarment period of the applicant expired in February, 2009.

4.10 That it is stated that the applicant initially submitted representation on 06.08.2007 addressed to the Sr. DSTE, Lumding for accommodation at Guwahati on promotion to the post of JE/II/Tele due to acute domestic problem. Thereafter he submitted another representation on 12.03.08 and 08.04.2008 along with relevant medical documents for sympathetic reconsideration of his posting on promotion either at Guwahati or at Maligaon on similar ground, but to no result.

4.11 That it is stated that it would be evident from letter dated 16.09.2009 that Sri Manabendra Nath Das, who was promoted and posted as Sr. Tech Tele Lumding was further accommodated at Guwahati on his own request but the case of the applicant was never considered favourably. However, the applicant pursuant to the order dated 25.11.2009 joined at Lumding in the cadre of Sr. Tech, Tele. It is relevant to mention here that after the debarment order dated 20.02.2008 the applicant resumed his duty after a lapse of two months due to his sickness under SSE, Tele, Guwahati and he was never spared pursuant to the order dated 09.07.2007 for reporting at Lumding in



Manabendra Nath Das

the promotional post of JE/II/Tele. However, vide office order dated 16.09.09 the applicant has been transferred and posted at Lumding on administrative ground in the same capacity. The applicant at present is working in the same capacity of Sr. Tech, Tele at Lumding. Be it stated that the applicant vide his representation dated 19.05.2009 under R.T.I Act sought certain information regarding posting of Sri Debangshu Roy on promotion at Guwahati. The concerned authority vide letter dated 26.06.2009 it is informed that Sri D.R. Roy has been posted in modification of the order dated 16.03.2009 on specific request of Sr. DSTE/Maligaon in the interest of Railway administration. It is relevant to mention here that the present applicant is more experienced than Sri Debangshu Roy; as such the case of the applicant cannot be ignored for reconsideration either at Lumding, Guwahati or at Maligaon.

Copy of the representation dated 19.05.09 and reply dated 26.06.09 are enclosed herewith and marked as Annexure- 14 and 15.

- 4.12 That it is stated that the applicant vide office order bearing letter No. E/230/1 (S&T) dated 16.09.2009 transferred and posted at Lumding under SSE/Tele, Lumding on same scale of pay on administrative ground. It is relevant to mention here that the case of the applicant has not been considered for posting and promotion after expiry of the period of 1 year w.e.f. 29.02.2008 in terms of the letter dated 20.02.2008 (Annexure- 4). But surprisingly, without considering the case of the applicant for promotion and posting he was transferred and posted at Lumding in the same capacity of Senior Tech, Tele in spite of existence of vacancies. As a result, the applicant suffered irreparable loss and injury in the matter of promotion to the post of JE/II/Tele.

Copy of the order dated 16.09.09 and is enclosed herewith and marked as Annexure- 16.

- 4.13 That it is stated that by the office order dated 23.11.2009 one Sri Suman Kalyan Das, JE/II/Tele, Lumding has been transferred and posted in the

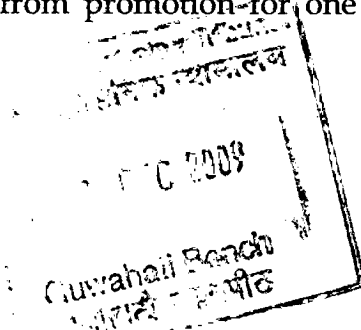
Suman K. Das

same capacity at Guwahati vide office order bearing letter No. E/283/1/A/Pt. IV dated 23.11.09. Therefore it is abundantly clear that post of JE/II/Tele was vacant at Guwahati but the prayer of the applicant to accommodate him at Guwahati was never considered by the respondents and the applicant was further discriminated in the matter of his posting and promotion after expiry of due debarment period of one year. In the instant case the applicant is highly aggrieved due to non consideration of his promotion and posting after expiry of debarment period of one year from the panel dated 12.06.2007 and also aggrieved for his posting at Lumding in same capacity vide office order dated 16.06.09.

In the circumstances as stated above applicant finding no other alternative approaching this Hon'ble Tribunal praying for a direction upon the respondents to reconsider his promotion to the cadre of JE/II/Tele in terms of his empanelment in the panel dated 12.06.2007.

Copy of the office order dated 23.11.09 is enclosed herewith and marked as Annexure- 17.

- 4.14. That it is stated that it would be evident from Rule 2005 of IREM Vol. I 1989 (revised edition) that the currency of panel would be of two years from the date of approval of competent authority or till a fresh panel becomes available after selection. In the instant case vacancies were available even after expiry of debarment of period of one year but the case of the applicant was not reconsidered for promotion to the post of JE/II/Tele. Moreover, no panel has been prepared after the panel dated 12.06.2007.
- 4.15 That it is stated that applicant submitted representation dated 16.10.2009 to the DRM, Lumding wherein he requested to consider his case for re-posting at Maligaon/Guwahati on same pay scale as Senior Tech, Guwahati. However, the authority vide letter bearing No. N/PF/1/174 dated 25.11.2009 informed that his request cannot be acceded to and further informed that since the applicant failed to carry out his promotion order as JE/II within the currency of selection panel. In this connection it may be stated that the panel remains valid for a period of two years but the applicant was debarred from promotion for one year by the order dated



Anupk. Das

20.02.2008 whereas the panel dated 12.06.2007 remained valid till 12.06.2009. As such it is obligatory on the part of the respondents to reconsider his posting and promotion immediately after expiry of the period of debarment, more so when the vacancies are available.

In the case of Sri Debangshu Roy and Sri M.R. Das they were reconsidered for promotion by the respondents of their own after expiry of the period of one year while they initially surrendered their promotion to the cadre of Sr. Technician, Tele, Guwahati which is evident from the letter dated 20.06.2006. Therefore the respondents are not entitled to take a different course in the case of the applicant and the applicant is entitled to be reconsidered for promotion since no fresh panel is prepared till filing of this original application, more so when vacancies are still available in the cadre of JE/II/Tele in terms of panel dated 12.06.2007. The applicant being similarly situated like Sri Debangshu Roy and Sri M.R Das, as such he is entitled to similar treatment in the matter of promotion. Therefore the action of the respondents is arbitrary, discriminatory and in violation of Article 14 of the Constitution.

Copy of the letter dated 25.11.2009 are enclosed herewith and marked as Annexure- 18.

4.16 That the applicant states that he has submitted several representation for his accommodation at Guwahati against the promotional post of JE/II/Tele, but the respondents in an arbitrary manner did not consider his prayer whereas other similarly situated employees have been accommodated at Maligaon and Guwahati in violation of principle of natural justice and also in violation of Article 14 of the Constitution. As such it is a fit case for the Hon'ble Tribunal to interfere with and to protect the right and interest of the applicant.

4.17 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 panel dated 12.06.2007 remains valid for a period of 2 years as per Rule 205 of the IREM Vol. I. Therefore, even after order of debarment of

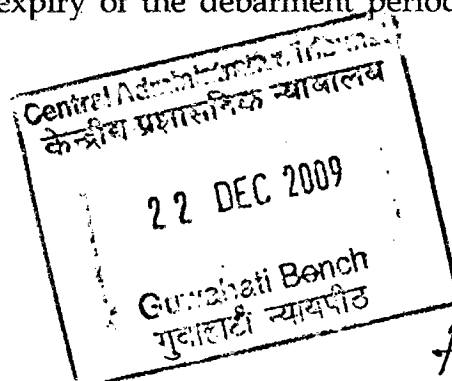
22 DEC 2009

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

Amr m. Des.

promotion for a period of 1 year w.e.f. 29.02.2008 the case of applicant is liable to be reconsidered for further posting and promotion to the cadre of JE/II/Tele in terms of approved panel dated 12.06.2007.

- 5.2 For that, no fresh panel has been prepared till filing of this original application and the vacancies in the cadre of JE/II/Tele are still available. As such, the case of the applicant is liable to be reconsidered for promotion to the cadre of JE/II/Tele.
- 5.3 For that, the similarly situated employees, namely; Sri Debangshu Roy, Sri M.N. Das have been reconsidered for promotion after expiry of the period of debarment by the respondents of their own in the cadre of Senior Tech, Tele under the relevant railway rules. As such, the applicants' case is also liable to be treated in the same manner in the matter of promotion to the cadre of JE/II/Tele. Moreso when the vacancies are available and other similarly situated employees have been promoted out of the same panel after February, 2009.
- 5.4 For that, the case of the applicant for posting on promotion either at Guwahati or Maligaon has not been considered in spite of existence of vacancies and also inspite of repeated requests whereas Sri Debangshu Roy, Shri Suman Kalyan Das subsequently were accommodated against the existing vacancies in the cadre of JE/II/Tele at Guwahati by the respondents. As such, the applicant is meted out with hostile discrimination in the matter of promotion and posting.
- 5.5 For that, the applicant merely prayed for reconsideration of his posting on promotion either at Guwahati or Maligaon due to his acute domestic problems but the authority in a most arbitrary manner debarred him from promotion for a period of 1 year. But even after expiry of the debarment period the case of the applicant was not reconsidered in spite of existence of vacancies.
- 5.6 For that, the action of the respondents for non-consideration of promotion of the applicant after expiry of the debarment period is highly arbitrary, illegal an unfair.



Amr K. Das

5.7 For that, panel dated 12.06.2007 is still valid, moreover, the post of JE/II/Tele is still available. As such, the case of the applicant is liable to be considered for promotion.

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.

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

The applicant further declares that he had not previously filed any application, Writ Petition or Suit 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 direct the respondents to re-consider promotion of the applicant to the cadre of JE/II/Tele in terms of panel dated 12.06.2007.

8.2 Costs of the application.

8.3 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: -

Anup K. Das

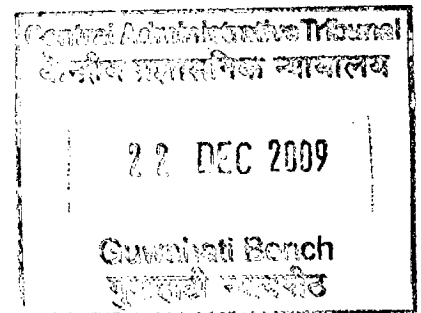
- 9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

10.

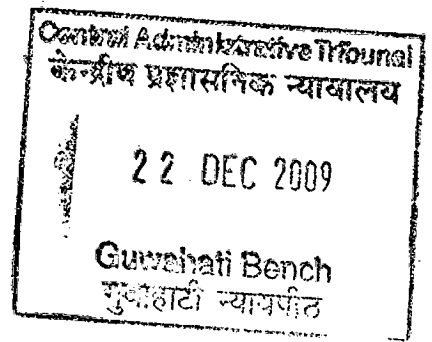
11. Particulars of the I.P.O

- i) I.P.O No. : 399443497
 ii) Date of issue : 18.12.2009
 iii) Issued from : G.P.O., Guwahati.
 iv) Payable at : G.P.O., Guwahati.

12. List of enclosures:
 As given in the index.



Anup K. Das



VERIFICATION

I, Shri Anup Kumar Das, S/o- Late Anil Chandra Das, aged about 50 years, working as Sr. Technician, in the office of the Sr. DSTE, N.F. Railway, Lumding, 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 21st day of December, 2009.

Anup K. Das

-14-

Vol. ASSE/ghy.

ANNEXURE-1

MEMORANDUM.

N.F. Railway.

Office of the
DRM(P)/LMG,
Dt. 12.06.2007.

Sub : Result of the Selection for filling up 01(UR)
vacancy of JE/II/Tele in Scale Rs.5000-8000/-
against 30% DP Quota.

Ref : This Office Notification of even no. dated.
11.9.06 & 23.11.06.

In the Selection for the post of JE/II/Tele in Scale Rs.
5000-8000/- against 30% DP Quota notified vide this Office Noti-
fication under reference, the following candidate has been empa-
nelled.

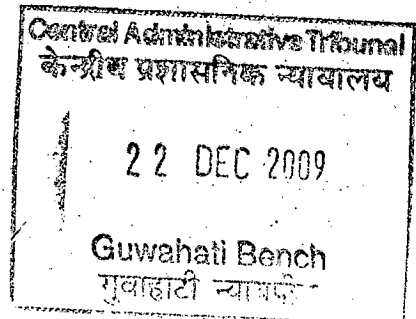
1) Shri Anup Kr. Das, Sr. Tech./Tele/GHY,

The above panel has been approved by ADRM/LMG on 08.6.07.

(N. Mukherjee
APO/I/LMG,
for DRM(P)/LMG,
N.F. Railway.

No.E/254/1(Selection)Tele, dated. 12.06.2007.
Copy forwarded for information and n/action to :-

- 1) GM(P)/MLG,
- 2) Sr.DSTE/LMG,
- 3) ASSE/GHY,
- 4) BFM/LMG,
- 5) SSE/Tele/GHY,
- 6) Staff concerned through : Sr.Subordinate,
- 7) Spare copy for P/Case,
- 8) Divisional Secy./NFRMU/LMG,
- 9) Convenor/NFRMU/LMG,
- 10) Office Order file.



for DRM(P)/LMG
N.F. Railway.

20.6.07

Attended
Butta
Adh

ANNEXURE-2

22 DEC 2009

OFFICE ORDER.

N.F. Railway.

Office of the
DRM(P)/LMG,

Dt. 09.07.2007.

The following Sr.Tech.Tele in Scale Rs.5000-8000/- who has been empanelled for Promotion to the post of JE/II/Tele in Scale Rs.5000-8000/- against 30% DP Quota vide this Office Memorandum No.E/254/1(Selection) Tele, dtd. 12.06.2007 is hereby promoted to the Post of JE/II/Tele in Scale Rs.5000-8000/- with immediate effect i.e. from the date of shouldering higher responsibility and posted at the station as shown below :-

<u>SN.</u>	<u>Name.</u>	<u>Design.&Station.</u>	<u>Promoted as and posted at.</u>
1)	Shri Anup Kr.Das,	Sr.Tech.Tele/GHY,	JE/II/Tele/LMG under SSE/Tele/LMG.

The staff concerned may exercise option if he desires fixation of pay on promotion from the date of next increment in substantive grade within one month from the date of promotion.

He is entitled for CTG, Joining Time and Transfer Pass.

This is issued as per order of Sr.DSTE/LMG.

(Narayan Mukherjee)
APO-I/Lumding,
for Divisional Railway Manager(P),
N.F. Railway, Lumding.

No.E/254/1(Selection) Tele, dt. 9.07.2007.

Copy forwarded for information and necessary action to :-

- 1) Sr.DSTE/LMG, 2) ASTE/GHY, LMG,
- 3) DRM/LMG, 4) SSE/Tele/GHY,
- 5) SSE/Tele/LMG, 6) Divisional Secy./NFRU/LMG,
- 7) Convenor/NFRMU/LMG, 8) Staff concerned through : Proper Channel,
- 9) Spare copy for P/Case,
- 10) Office Order File.

- for DRM(P)/LMG

Attested
By
Asst

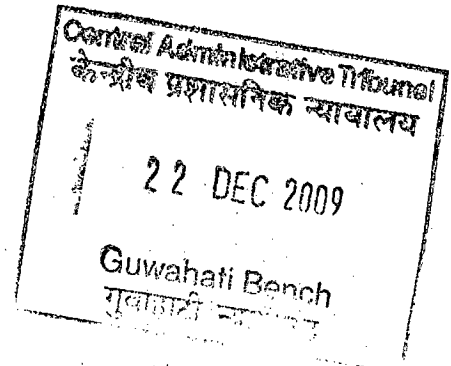
To,
The Sr.D.S.T.E.
N.F.R.L.Y/Lumding.

(Through Proper channel)

Sir,

Sub: Regarding promotion /posting
to the post of JE/II/TELE in
scale of Rs.5000-8000/-

Ref. : Your No.: E/254/1(Selection)
TELE. Dt. 09.07.2007



I am really glad to receive your above mention office order promoting me to the post of JE/II/TELE in scale of Rs.5000-8000/- But shocked me in seeing that I have been transfered to Lumding under SSE/TELE/LMG

I, Beg to submit before you the instant appeal that your honour would persue my grievances and review the office order and favored with the posting order under SSE/TELE GHY. In this connection I beg to inform you that it is reliably known that two (2) post of JE/II/TELE is lying vacant at GHY.

That Sir, regarding my place of posting at LMG. I beg to submit before you the following few lines for favour of your kind perusal and sympathetic order please

That Sir, I am working here as SR.TECH/ TELE inscale of Rs. 5000-8000/- under SSE/TELE/GHY very sincerely with entire satisfaction of my superiors apart from complain free service.

In this context I beg to state that due to my family exigency and my wifes related health hazards I am afraid it aggrevite mty wifes health condition if I am required to move out of Guwahati at this juncture.

That Sir, it is needless to mention here, like other young boys. I am also in persuit my only son's education who is reading in H.S. 1st year at Pandu College, if in the middle of college session if I go out of Guwahati in this crutial juncture it it will be definety affect his studies.

That Sir, my widow sister who is living with me with two children one in class IX other in 1st year H.S. and they are wholly depedent on me. If I go outside Ghy. at this stage it will adversely affect their education. It is not possible to maintain to run two establishment during this hard days

In view of the above I parvently to honour to kindly consider my case

*Attested
By
Adv*

to run two establishment during this hard days

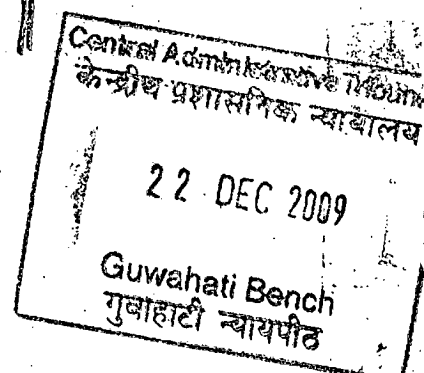
In view of the above I parvently to honour to kindly consider my case sympathetically and on humanterian ground, As a specialground. By Retaining/ posting me as JE/II/TELE under SSE/TELE/GHY for this act of your kindness I and all other family members will remain ever grateful.

With regards.

Yours faithfully

Anup Kr. Das
(Anup Kr. Das)
SR.TECH/ TELE/GHY

Dt.: 06.08.2007



Received

6/8/07

SSE / Tele / GHY
N. F. RLY

N. F. Railway.

NO. N/PF/1/174.

Office of the
DRM(P)/LMG,
Dt. 20.02.08

To,
✓ Shri Anup Kr. Das,
Sr. Tech. Tele/GHY.

Through : SSE/Tele/GHY.

Sub : Promotion & Posting order to the post
of JE/II/Tele in scale Rs. 5000-8000/-
at SSE/Tele/GHY or SSE/Tele/Auto/MLG.

Ref : Your application, dt. 6.8.07 received
by this office on 21.1.2008.

In reference to your above application it is to inform you that your request for posting at MOG/GHY area on promotion to the post of JE/II/Tele has been regretted by the Competent Authority.

You are therefore, advised to carry out your promotion & Posting order to the post of JE/II/Tele/LMG under SSE/Tele/LMG by 29.2.2008. Calling which it will be presumed that you are unwilling to carry out your promotion and posting order and you will be debarred for future promotion for one year.

This issues with the approval of competent authority.

(N. Mukherjee)
APO-I/LMG,

for Divisional Railway Manager(P),
N. F. Railway, Lunding.

Copy forwarded for information & n/ action to :-

- 1) Sr. DSTE/LMG,
- 2) ASTE/GHY,
- 3) SSE/Tele/GHY. He is advised to spare and direct the above named staff to carry out his promotion and posting order as JE/II/Tele/LMG.
- 4) S/Copy for P/Case, 5) Office Order file.

- for DRM(P)/LMG

Attested
by
Adm

6/20/08

To
SR.DSTE/LMG
Lumding.
NF Railway

March 08, 2008

Sub: Promotion & Posting
Ref: DRM/P/LMG Letter No.N/PF/1/174. Dt.20.02.08

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
22 DEC 2009
Gurgaon Branch

Respected Sir,
Sorry to intrude your valuable time.

In reference to your above mentioned letter, where you have mentioned to debar my promotion for one year if I would not carry out my promotion & transfer order as JE/II/TELE/LMG under SSE/T/MLG within 29.02.2008 is a heart break news to me. In reply to my previous appeal I once again I request your honour to be kind and sympathetic to reconsider my case to be posted at MLG/EXCH where the post exists. After serving long 22 years in Technician cadre where I had worked with my full efficiency and vigor giving the full satisfaction to my authority, I got the opportunity to become in the supervisory cadre which is naturally a dream to all the technicians to avail.

Sir, as you know the promotion simply allowing me to get a mere increment if I had to move. In the long 22 years of service in the Railway the family also expanded and the children's education is on the mid-way. If I had to move than it is not possible for me to incur double establishment expenditure as I cannot shift my family due to children's half-way education, Mrs. severe health trouble and financial constrains will be an additional burden to cope up which already rounded me like an octopus.

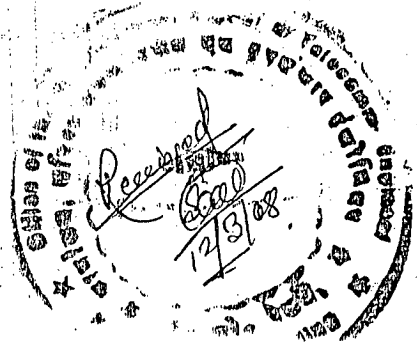
So further any elaboration may occupy more space to disturb you more, I therefore fervently request your honor to be very kind enough to, please reconsider my case with sympathetic perception and allow my posting at MLG/EXCH where the post is already exist.

Leaving here with expectation.

Yours Faithfully

Anup Kumar Das

(Anup Kumar Das)
Sr.Tech/T/PRS/GHY



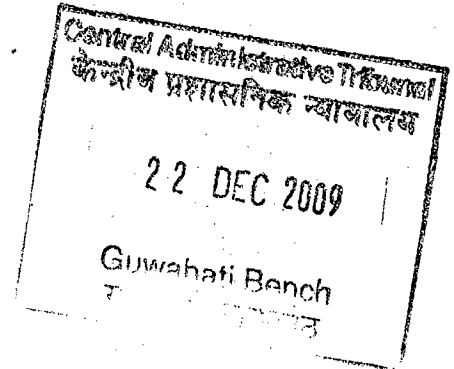
*Affected
Wttr
Adi*

Dated: 03/04/2008

To,
SR. DSTE/LMG
Lunding
N.F.Railway

Sub: Promotion & Posting.

Ref: DRM/P/LMG Letter no N/PF/1/174 Dt: 20.02.08



Respected Sir,

In reference to my previous two letters once again I request your honour to remainder my case looking after some points which I didn't elaborate due to shame of domestic trouble but now I have no other way to convey my suffering.

Sir, my wife is a psychiatric patient since long who makes my life miserable as you cannot realize if anybody doesn't suffer from such situation. The whole family including lots of problems has to bear by me as there is no other options.

As my wife is a Psychiatric patient, so her every action effect the whole of my family for which I have to manage in all way to make a balance to run the family at least in a survival conditions.

As it is very much shameful to me to highlight these fact considering the future of my child and this I didn't mention it earlier.

Sir, I have no words to demonstrate further more. Please look my case from the mental perception that can save me from disaster if I had to go outside. All the medicals documents in support of the above fact is attached herewith.

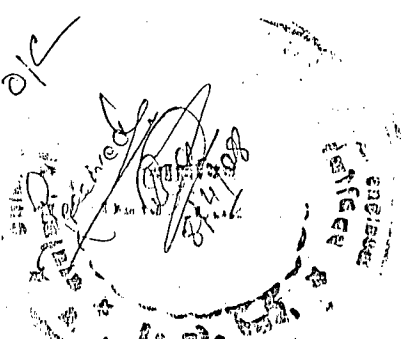
Leaving herewith expectation.

Yours faithfully

Anup K. Das.

(Anup Kumar Das)
Sr. Tech/T/PRS/Ghy

Attached
With
Adv



NORTHEAST FRONTIER RAILWAY

ANNEXURE-7

Office of the
Sr. DSTE/Maligaon
Guwahati - 781011

No.E/283/1/1 (MW) PLX

Dt.29-12-2008

To
Sr.DSTE/Lumding
N.F. Railway

Sub: -Prayer for posting as JE/T/II under SSE/T/GHY or MLG
Ref: - DRM (P)/LMG's Office Order No.E/254/1(Selection) Tele
Dt. 09-07-2007.

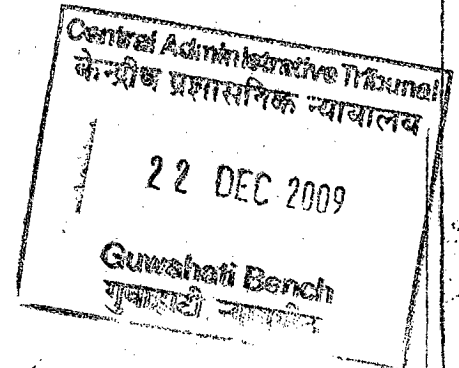
With reference to the Office Order mentioned above, Sri Anup Kr. Das
has made an appeal for posting in GHY / MLG area in view of the problems being
faced by him.

The appeal is forwarded for kind consideration on humanitarian ground.

DA:- As above.

29/12/08
Sr. DSTE/Maligaon

*Attested
Dutta
Ash*



To,
Sr. DSTE/MLG
N.F. Railway,
Maligaon.

-22-

ANNEXURE-8.

(Through proper channel)

December 29, 2008

Sub:- Prayer for posting as JE/T/II under SSE/T/GHY or MLG.

Ref:- Sr. DSTE/LMG O/O No. E/254/1 (Selection) Tele dated 09/07/07.

Sir,

I have the honour to state the following few lines for your kind information and favour please. I request your honour that my case looking after some points which due to shame of domestic trouble but now I have no other way to convey my suffering.

Sir, my wife is a psychiatric patient since long who makes my life miserable as you cannot realize if anybody doesn't suffer from such situation. The whole family including lots of problem has to bear by me as there is no other options.

As my wife is a Psychiatric patient, so her every action effect the whole of my family for which I have to manage in all way to make a balance to run the family at least in a survival conditions.

As it is very much shameful to me to highlight these fact considering the future of my child and this I didn't mention it earlier.

Sir, I have no words to demonstrate further more. Please look my case from the mental perception that can save me from disaster if I had to go outside.

I will remain oblige for your kind favour please.

With kindest regards.

Yours faithfully,

Anup Kr. Das.

(Anup Kr. Das)
Sr. Tech/T/GHY
Under SSE/T/GHY

Recorded for
consideration pc

Attached
with
for

(Hand)

ANNEXURE-9



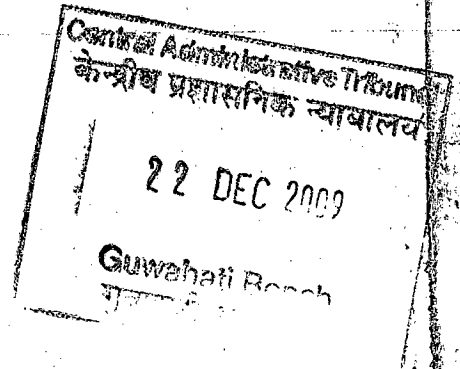
सत्यमेव जयते

भारत सरकार

रेल मंत्रालय
(रेलवे बोर्ड)

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

Establishment matters was
on Code rules and allied
and current upto 31st
directions up to



भारतीय रेल स्थापना मैनुअल,
भाग I

(संशोधित संस्करण-1989)

INDIAN RAILWAY ESTABLISHMENT MANUAL
Volume I
(Revised Edition-1989)

Affected
Banta
Ach

to attempt the questions on official language policy. Official language rules the questions should not be compulsory.

204.4. The setting of the question paper and evaluation of answer books should be done by and the same member of SA grade Level I who need not necessarily be a member of the Selection Committee. Questions on official language policy and official language rules should be set by or in consultation with the Mukhya Rajadharma Adhikari.

204.5. No moderation of the performance is permissible.

204.6. *Personality, Address and Qualities of Leadership should be assessed at the viva-voce test.*—In case a written test is not held for adjudging professional ability this should also be assessed at the viva voce through questions with a practical bias.

204.7. Marks for record of service should be given on the basis of Confidential reports and relevant service records. Integrity of character should receive special consideration.

204.8. The successful candidates shall be arranged as follows :—

- (1) Those securing 80% marks and above graded as 'Outstanding'.
- (2) Those securing between 60% marks and 79% marks graded as 'Good'.

204.9. The panel should consist of employees who are qualified in the selection, corresponding to the number of vacancies for which the selection was held. Employees securing the gradation 'Outstanding' will be placed on top followed by those securing the gradation 'Good' inter se seniority within each group being maintained.

204.10. The recommendations of the Selection Committee should be put upto the General Manager for approval. If he does not approve of the recommendations he will record his reasons in writing there for and order a fresh selection. Once a panel is approved by the General Manager no amendment or alteration in the panel should be made except with the prior approval of the Railway Board.

204.11. *Currency of Panel.*—The panel will be current for a period of 2 years from the date of approval of the competent authority or till a fresh panel on the basis of next selection becomes available whichever is earlier. Where provisional panels are drawn the currency will count from the date of approval of the provisional panel. If the operation of an approved panel has been held in abeyance either wholly or

partly as a result of injunction from the Court of Law the currency of the panel should be reckoned after excluding the period covered by the Court's directive. Before operating the panel after the vacation of the injunction/after disposal of the case by the Court of Law, the personal approval of the General Manager should be taken.

206.1. *Consideration of Employees on deputation.*—

In cases where employees eligible to take the selection are abroad on deputation/secondment and are not likely to return in a few months time, the selection held in their absence should be finalised without waiting for their return. On their return they should be called for the first selection held thereafter and on the basis of their performance in the selection they should be considered for proforma inclusion in the panel framed during their absence abroad. If an employee is thus included in the panel no arrears would be payable to him and entitlement to pay in Group 'B' would commence only from the date of his actual official promotion. For the panel thus enlarged Board's approval should be obtained. In respect of eligible employees who are on deputation to offices/establishments, within the country, it should be ensured that adequate advance notice is given to such employees and they are considered at the selection without fail.

206.2. *Medical fitness of employees selected for promotion to Group 'B'.*—Employees selected for promotion to Group 'B' service either on a regular or on ad hoc basis should be fit in all respect including physical fitness for the duties assigned to the particular category of posts to which the promotion is made. If, however, relaxation in the medical standard is required the same should be proposed only in the cases of employees who have exceptional qualifications and whose services in Group 'B' cadre will be beneficial to the Administration. Promotion with relaxed medical standard should be made only with the approval of the Board and will be purely ad hoc in nature and will not confer on the officers promoted any right to continue to claim retention in Group 'B' as a regular measure. The continuance of ad hoc promotion will be subject to the availability of a post conforming to the suitability of the officer, from the medical point of view.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

22 DE

Guwahati
गुवाहाटी

ANNEXURE-10

25

DR. P. P. M. G.
D. O. No. 1000/06

By office order No. 1-230/1 (Reclassification Pt-III dt. 21.01.05) the following staffs were promoted to the post of 'Sr. Tech. Tele in scale Rs 5000-8000/-' and posted at LMCI but surrendered their promotion for one year vide this office letter No E/230/1 (MCN) dt. 9/14/05. Now on expiry of the one year period they are hereby promoted to the post of 'Sr. Tech. Tele in scale Rs 5000-8000/-' with immediate effect and posted at the station as shown against each below:-

Sl. No.	Name	Desig. & station	Promoted as & Posted at
1)	Sri Mukti Ram Das (SC)	Tech/Tele/LGHY	Sr. Tech. Tele at GHY under SSE/Tele-GHY
2)	Sri Debangshu Roy	Tech/Tele/LGHY	Sr. Tech. Tele at GHY under SSE/Tele-GHY

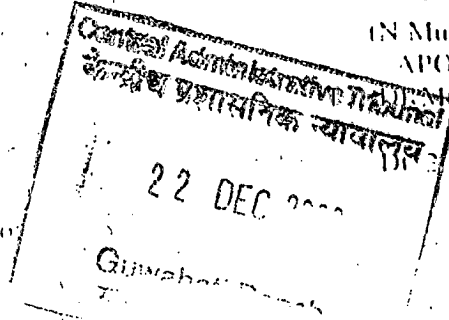
The staff concerned may exercise their option if they desire fixation of their pay on promotion from the date of next increment in substantive grade within one month from the date of promotion.

This issues with the approval of competent authority.

NO. 1-283/1 (S&T Trans & Posting)

Copy forwarded for information & action to:-

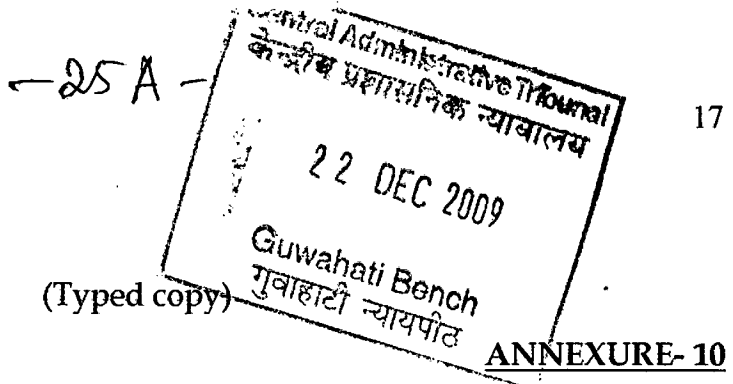
- 1) a) DSTE/IC/1 MIG.
- 2) b) ASSE/IC/1 MIG.
- 3) c) SSE/Tele/GHY & Auto-MIG.
- 4) d) Staff concerned thru respective Sr. Subordinate.
- 5) e) Spare copy for P. Case.



(N Mullhence)
APO. 11 MIG
NIGP/11 MIG
22/06/06

*Attested
With
Adn*

28/6/06
DR. P. P. M. G.



Office of the
DRM (P)/LMG
Dt. 26/06/06

In terms of the office order No. E/230/I (Reclassification) Pt. III dt. 25/04/05 the following staffs were promoted to the post of Sr. Tech/Tele in scale of Rs. 5000-8000 and posted at LMG but surrendered their promotion for one year vide this office letter No. E/230/I (MCM) pt-III dated 9/11/05. Now on expiry of the one year period they are hereby promoted to the post of Sr. Tech/Tele in scale Rs. 5000-8000/- with immediately effect and posted at the station as shown against each below:-

Sl. No.	Name	Desig & station	Promoted & posted in
1)	Sri Mukti Ram Das (SC)	Tech/Tele/I/GHY	Sr. Tech/Tele at GHY
2)	Sri Debangshu Roy	Tech/Tele/I/GHY	Sr. Tech/Tele at GHY under SSE/Tele/GHY

The staff concerned may exercise their option if they desire fixation of their pay on promotion from the date of next increment in substantive grade within one month from the date of promotion.

This issues with the approval of competent authority.

(N. Mukherjee)
APO/I/LMG
For DRM (P) LMG

No. E/283/I/(S&T) (Trans & Posting)

Dt. 26/06/06

Copy forwarded for information & n/action to:

- 1) DSTE/IC/LMG
- 2) ASTE/GHY
- 3) SSE/Tele/GHY & Auto-MLG
- 4) Staff concerned thereto respective Sr. Subordinate
- 5) Spare copy for P/case

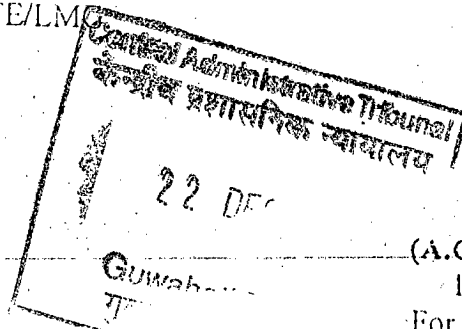
affixed
10/11/06
Adv

Office order,

Sri Debangshu Roy, Sr.Tech.Tele/GHY in scale Rs. 9300-34800+4200 G.P (Rs.5000-8000/- Pre.rev.) under SSE/Tele/GHY who has been empanelled for promotion to the post of JE/II/Tele against 20% LDCE Quota in scale Rs.9300-34800+4200 G.P (Rs.5000-8000/- Pre.rev.) vide this office Memorandum No.E/254/I(Selection) Tele, dated 12-06-07 has successfully completed field training and initial course training at IRISSET/Secunderabad in terms of Director IRISSET/SC's L/No TRG/ITIN2/002S dt.24-10-08 and accordingly promoted to the post of JE/II/Tele in scale (5000-8000/- pre-rev.) Rs.9300-34800+4200/- with immediate effect (i.e. from the date of shouldering higher responsibility) and posted under SSE/Tele/Hill/LMG.

The staff concerned may exercise option if he desire fixation of his pay from the date of next increment within one month from the date of promotion.

This issues as per order of Sr. DSTE/LMG



(A.Chakraborty)
DPO/LMG
For DRM/P/LMG
N.F.Railway

No. E/254/1 (Selection) Tele, dt.16-03-09

Copy forwarded for information and necessary action to:-

- 1] Sr. DSTE/LMG.
- 2] Sr. DSTE/MLG.
- 3] DSTE/GHY.
- 4] Sr. DFM/LMG.
- 5] SSE/Tele/GHY
- 6] Staff concerned.
- 7] Spare copy for P/case.
- 8] SSE/Tele/Hill/LMG at Tele/LMG.
- 9] Divisional Secy. N.F.Rly MU/LMG
- 10] Convener N.F.Rly. MU/LMG.
- 11] Spare copy for office order file.

Received
on-25/03/2009
Debangshu Roy

Attested
Dutta
Adu

Debangshu Roy
16/03/09
For DRM/P/LMG
N.F.Railway.

G.M. Off.

N.F. P. 11

ANNEXURE-12

144

Office of the
Sr. Divisional Signal & Telecom Engineer
Maligaon, Guwahati - 11

(S. Chauhan)
Sr. DSTE/MLG

D.O.NO.E/283/2/SIG/MLG

Dated: 30.03.2009.

My dear Chauhan,

Sub: Posting Order of Sri Debangshu Roy, Sr. Tech.
promoted as JE/II.

Sri Debangshu Roy, Sr.Tech who is now to be promoted as
JE/II/Tele is presently working at PRS/GHY as Sr.Tech. His vast
experience of maintaining the PRS locations and keeping liaison with
the BSNL authorities, and Console at Kolkata largely reduces the
downtime, (as such his posting at PRS/GHY is very much needed)

The matter may kindly be looked into.

Yours sincerely

(U. Bhumi)
Sr. DSTE/Maligaon

(S. Chauhan)
Sr. DSTE/MLG

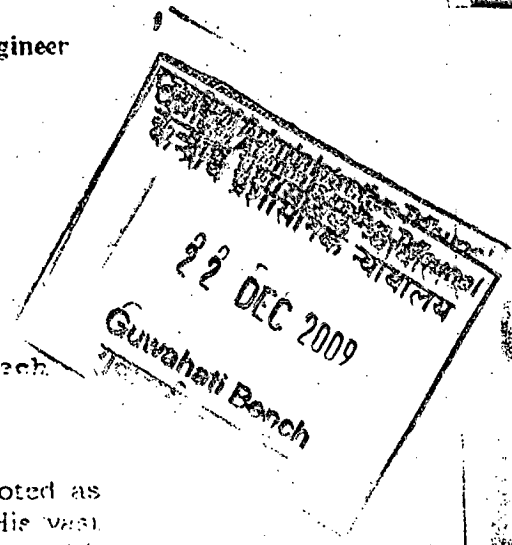
S. Chauhan
30/3/09

*Need & Approved. modified
pl immediate orders accordingly*

(Signature)
24/3/09

S. Chauhan
30/3/09
Sr. DSTE/MLG

*Left to
Butta
Adh*



ANNEXURE-13

Office order

Office of the
DRM(P)/LMG
Dtd. 30-04-09

In partial modification of this office order of even no. dtd. 16-3-09, the following promotion posting order is issued to take immediate effect.

Shri Debangshu Roy, Sr. Tech/Tele/GHY under SSE/Tele/GHY who was under order of posting at Lumding under SSE/Tele/Hill/LMG on promotion as JE/II/Tele in scale Rs. 9300-34800 + 4200 vide this office order No E/254/1 (selection) Tele, dtd. 16-03-09 is now posted at PRS/GHY under SSE/Tele/GHY on promotion as JE/II/Tele in scale Rs. 9300-34800 + 4200.

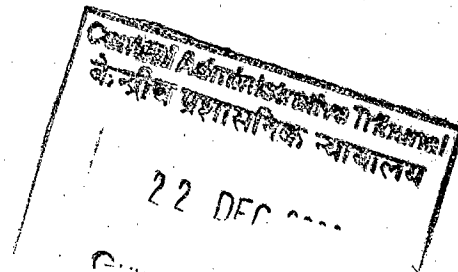
This has the approval of Sr. DSTE/LMG.

(Mrs. P. Roy)
APO/I/LMG
For DRM(P)/LMG
N.F. Railway

No. E/254/1 (Selection) Tele. dtd. 30-04-09

Copy forwarded for information & n/a to:-

1. Sr. DSTE/LMG
2. Sr. DSTE/MLG
3. DSTE/GHY
4. Sr. DFM/LMG
5. SSE/Tele/Hill/LMG at Tele/LMG
6. SSE/Tele/GHY
7. Staff concerned
8. Spare copy for p/case
9. Divl. Secy. N.F.R.E.U/LMG
10. Convener N.F.R.M.U/LMG
11. Spare copy for office order file.

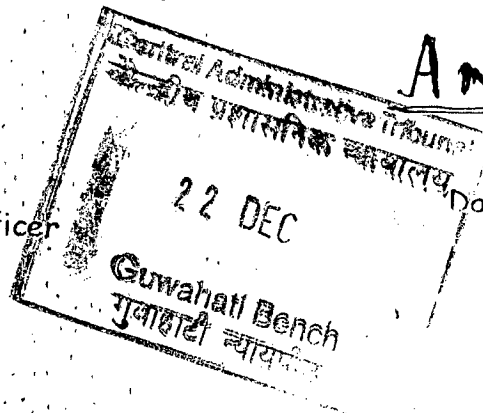


Sri 30/4/09
For DRM(P)/LMG
N.F. Railway

*Sheeted
With
Adv*

To
The Public Information Officer
N.F.Railway

Sir,



19.05.09
Dated: 20.03.09

Anup Kr. Das

Sub: Information under Right to Information Act on policy of
promotion and posting of JE/II/Tele against 20% LDCE quota.

I have the honour to state that I am under order of promotion to the post of JE/II/Tele against 30% DP Quota with posting at LMG vide order No.-E/254/1(Selection)Tele, Dated 12.06.2007. But due to unavoidable circumstances I requested the authority, the Sr.DSTE/LMG to effect my promotion at my present place of work at Guwahati. Although my appeal was not considered, another promotee to the same post against 20% LDCE quota has been considered to be posted at his original place of work at Guwahati in partial modification of the earlier order of promotion and posting despite the promotee was junior to me.

I therefore request you to kindly furnish the information's under the Right to Information Act so as to enable me to be acquainted with the rules.

1. Policy adopted for promotion and posting of JE/II/Tele both against 30% DP and 20% LDCE quota.
2. Any other rule/provision for effecting promotions of JE/II/Tele without any order of transfer.
3. The reason for partial modification of the office order No. E/254/1 (Selection) Tele, dated 16-03-09 enabling Shri Debangshu Roy, Sr Tech/Tele/GHY to be posted at Guwahati under SSE/Tele/GHY.

A postal order No.-72E 100776 of Rs. 10/- (rupees ten) in favour of the FA & CAO/N.F.Rly is enclosed as requisite fee.

Address for communication:
Sri Anup Kr. Das Rly, Qtr No. 18/B
Central Gotanagar, Maligaon,
Guwahati-11

Yours faithfully,

Anup Kr. Das.

(Sri Anup Kr. Das)

Attested
Dutta
Kali

19/5/09
G.M. office

मुख्य विम एवं दू. सं. 30 का कार्यालय
मालीगांव गुवाहाटी 781011
दिनांक : 26/06/09

सं. N/1/8

TO

DGM/G/Cum P.I.O/HQ

Sub: Application of Shri Anup Kr. Das, Rly.Qrs.18/B, Central Gotanagar
Maligaon dt.28.05.09.

Ref: Your L/No.Z/RTI Cell/HQ/688/2009 dt.28.05.09.

With reference to the above, it is clarified that the subject matter related with LMG division . Accordingly remarks were asked from Sr.DSTE/LMG. These itemwise remarks given by Sr.DSTE/LMG is appended below:

1. For DP quota filling up process, options are invited from all the Sr.Tech/Tele and written test are conducted by Division. Successful candidates are chosen as per guideline. After training of successful candidate's posting is decided based on vacant posts, calibre of candidate and interest of Railway administration.
2. For LDCE quota filling up process, options are invited from the Tech/Tele completed 3 years service and written/tests are chosen as per guideline. Successful candidate's posting is decided based on vacant post, calibre of candidate and interest of Railway administration.
3. For smooth functioning of operational works, Rly, Administration has right to transfer from one place to another place .
4. Transfer & posting order dated 16/03/09 of Sri Debagshu Roy, Sr.,Tech/Tele/GHY(promoted to JE/II/Tele/GHY) has been reviewed in the interest of Rly.Administration and on Specific request of Sr.DSTE/MLG vide their DO letter to Sr.DSTE/LMG vide No.E/283/2/SIS/MLG dt.30.03.2009.

(S.Chakraborty)
Dy.CSTE/Tele
for GM(S&T)/Maligaon

*Received
10/11/09
Adv*

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
22 DEC 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

ANNEXURE-16Office of the
DRM/P/LMG

Date 16/09/09

Office Order

The following Transfer & Posting order are issued to take immediate effect.
In partial modification of this office order No.E/230/1 (MCM) dtd.3/7.08/09,

1. Sri Manabendra Nath Das (SC) Tech/Tele/I/GHY in scale Rs.5200-20200+2800GP under SSE/Tele/GHY, Who was under order of Posting at LMG under SSE/Tele/LMG on Promotion as Sr.Tech/Tele in scale Rs.9300-34800+4200GP, is now posted at GHY under SSE/Tele/GHY on promotion as Sr. Tech Tele in scale Rs.9300-34800+4200GP at his own request.

2. Sri Anup Kr. Das(UR) Sr. Tech Tele/GHY in scale Rs.9300-34800+4200 GP under SSE/Tele/GHY is here by transferred and posted at LMG under SSE/Tele/LMG on his same pay & scale on administrative ground.

SL N.2 is entitled to get transfer pass, transfer grant joining limit etc.

This has the approval of Sr. DSTE/LMG.

(Mrs.P.Roy)
APO/L/LMG
For DRM/P/LMG
N.F.Railway

NO.E/230/1 (S&T) dtd. 16/09/09

Copy forwarded for information & necessary action to:-

- 1] Sr.DSTE/LMG
- 2] Sr.DSTE/MLG
- 3] Sr.DFM/LMG
- 4] SSE/Tele/LMG
- ✓ 5] SSE/Tele/GHY
- 6] Spare copy for P/case
- 7] Staff concerned
- 8] Divl. secy. N.F.R EU/LMG
- 9] Convener N.F.R MU/LMG
- 10] Office order file.

*Attested
Datta
Adv*

Sr
16/9/09
For DRM/P/LMG
N.F.Railway

Office of the
DRM/P/LMG
Date-23/11/2009

Office Order

The following transfer and posting order are issued to take immediate effect.

Shri Suman kalyan Das (SC) JE/II/Tele/LMG in scale Rs.9300-34800+4200 GP under SSE/Tele/LMG is here by transferred and posted at GHY under SSE/Tele/GHY on his same Pay & Scale on administrative ground against existing vacancy.

He is entitled for CTG, Transfer Pass & joining time etc.

This issues with the approval of *Competent Authority*.

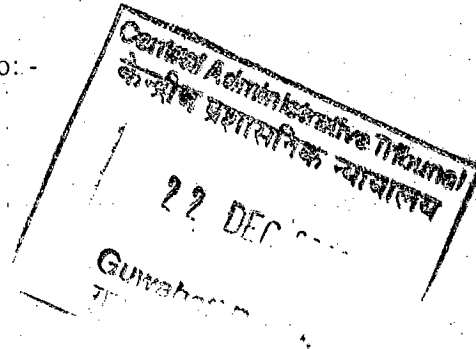
(Mrs. P. Roy)
APO/I/LMG
For DRM/P/LMG
N.F.Railway

NO.E/283/1/A/Pt. IV

Dt.23/11/2009

Copy forwarded for information & necessary action to: -

- 1] Sr.DSTE/LMG
- 2] Sr.DSTE/MLG
- 3] Sr.DFM/LMG
- 4] SSE/Tele/LMG
- 5] SSE/Tele/GHY
- 6] Staff Concerned
- 7] Spare copy for P/case
- 8] Office order file



*Affected
Dutta
#44*

Sr. 23/11/09
For DRM/P/LMG
N.F.Railway

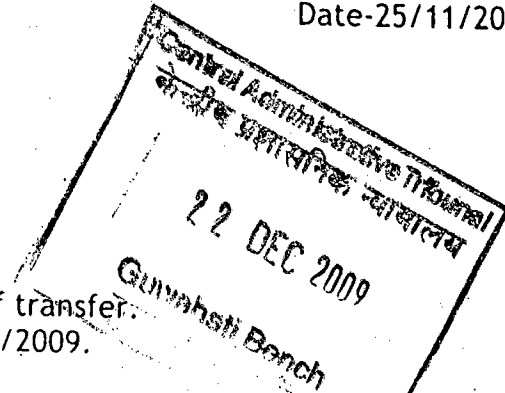
Northeast Frontier Railway

Office of the
DRM/P/LMG
Date-25/11/2009

NO.N/PF/1/174

To,
Shri Anup Kr. Das
Sr.Tech/Tele/GHY
Through: SSE/Tele/GHY

Sub: - Appeal for consideration of transfer.
Ref: - Your application dtd.16/10/2009.



In reference to your application as quoted above, it is intimated that you have refused your promotion order as JE/II since you have not carried out your promotion order as JE/II within the currency of selection panel.

Besides the above, it is also intimated that your request for posting at MLG/GHY on same pay & scale has been regretted by the competent authority.

You are therefore advised to carryout your transfer order on same pay & scale under SSE/Tele/LMG immediately.

This issues with the approval of competent authority.

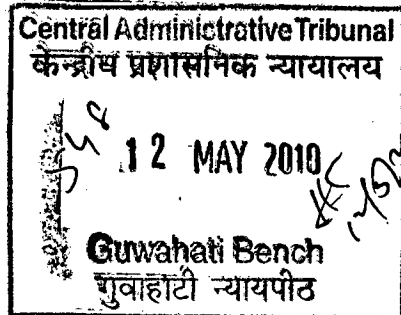
(Mrs. P. Roy)
APO/I/LMG
For DRM/P/LMG
N.F.Railway

Copy forwarded for information & necessary action to: -

- 1] Sr. DSTE/LMG
- 2] Sr.DSTE/MLG
- 3] DSTE/GHY
- 4] Sr.DFM/LMG
- 5] SSE/Tele/GHY- He is advised to spare immediately Shri Anup Kr. Das Sr.Tech/Tele/GHY for further joining at SSE/Tele/LMG and his pay should not be drawn at SSE/Tele/GHY unit
- 6] Staff Concerned
- 7] Spare copy for P/case.
- 8] SSE/Tele/LMG
- 9] Office order file

*Attested
Butta
Adh*

Shri
For DRM/P/LMG
N.F.Railway



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

O.A. No. 276 of 2009

Sri Anup Kumar Das

.....Applicant

-Vs-

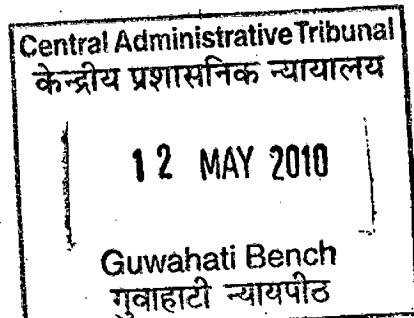
Union of India & others

..... Respondents.

**WRITTEN STATEMENTS ON
BEHALF OF THE RESPONDENTS.**

The Written statements of the Respondents are as follows: -

1. That a copy of the Original Application No. 276/09 (herein after referred to as the " application" has been served upon the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except the statements which are specifically admitted by the respondents, the rest of the statements made in the application may be treated as denied.
3. That the statement made in paragraph 4.1& 4.2. to the application the answering respondent has no comment unless contrary to the records.
4. That in regard to the statements made in paragraph 4.3 & 4.4 to the application the answering respondent begs to state that vide DRM(P)/LMG Office memorandum dated 12.6.07 the applicant was selected and empanelled for promotion against 30 % DP Quota to the post of JE/II/Tele and the said panel was approved by the ADRM/LMG on 08.06.07 . In terms of the said selection the applicant was promoted to the post of JE/II/Tele and posted at Lumding under SSE/Tele/LMG vide



Office Order dated 09.7.07. The applicant availed medical leave from 08.7.07 to 04.08.07 as it appears. The applicant thereafter submitted representation on 6.08.07 to the Sr. DSTE and the Office of the DRM/LMG received the same on 21.1.2008 for consideration of his posting order and retain him at GHY, the said request was regretted vide office letter No.H/PF/1/174 dated 20/02/08 and he was advised to carry out his promotion and posting order to the post of IE/11/Tele under SSE/Tele/LMG by 29/2/08 and failing which it will be presumed that he is unwilling to carry out the order and he will be debarred from promotion for a period of one year.

5. That the statements made in paragraph 4.5 to the application are incorrect and not acceptable at all. The deponent begs to state that the applicant was directed to carry out the order of transfer on promotion posted at Lumding but he did not carry out the said order within 7.06.09 before the term of the panel was expired (Panel approved on 8.6.07). No such information was received from the ASTE/GHY that the applicant was not spared by the ASTE to join at Lumding, rather the request was from the applicant to retain him at GHY on promotion as IE/11/Tele.

6. That while denying the statements made in paragraph 4.6 to the application the deponent begs to state that the applicant has wrongly interpreted the Rule 205 of the IREM, Vol. I that the penal prepared dated 12.6.07 is valid till 11.9.06 as evident from the letter dated 09.07.2007 as stated in the said paragraph.

As per Rule 205,IREM the currency of the selection panel would be current for two years from the date of approval of the competent authority or till a fresh panel on the date of next selection becomes available whichever is earlier. As such the panel of IE/II/Tele against 30% DP quota which was approved on 8.6.07 was expired after 02 (two) years ie on 7.6.09. The appeal for retention at Maligaon /Guwahati on promotion as IE/II/Tele was not considered by the

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or Divl. Rly: Manager (P)
M.F. Rly: Lumding

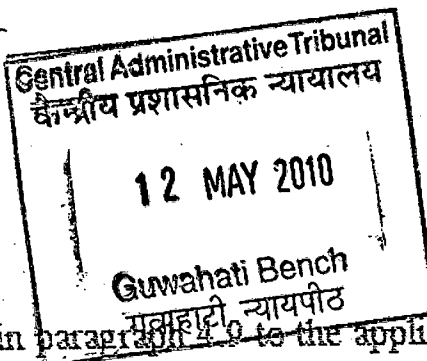
Central Administration
केन्द्रीय प्रशासनिक न्यायालय
12 MAY 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

competent Authority and the same was communicated to the applicant dated 20.2.08 directing him to carry out his promotion order.

7. That the statements made in paragraph 4.7 to the application are incorrect and hence denied by the deponent. The vacancy of IE/II/Tele against 30% DP quota are to be filled up by option from Sr. Tech/Tele who had completed 02 years residency service and the vacancy of IE/II/Tele against 20 % LDCE (Limited Departmental competitive Examination) quota are to be filled up by option from the staffs who are working in Tele wings subject to having 03 years residency service having Matriculation qualification and below 45 years of age. Successful candidates are chosen as per guideline and posting of the staff on promotion is decided on the basis of vacant post, caliber of the candidate and in the interest of the Railway administration. The applicant was posted at Lumding on promotion as IE/II/Tele on administrative ground.

8. That the statements made in paragraph 4.8 are baseless and hence denied. The deponent begs to state that the applicant was empanelled for promotion against 30 % DP quota and Sri Debangshu Roy was empanelled for promotion against 20% LDCE quota and as such their promotion criteria are different. Sri Debangshu Roy was promoted and posted at Lumding and accordingly he attended training of IE/II/Tele at Secunderabad from 16.6.08 to 24.10.08 and successfully completed the said training and thereafter he was posted at Ghy by modifying the earlier posting order at Lumding as per administrative requirement vide DRM(P) /LMG Office order dated 30.4.09. Sri M.R.Das (SC) was promoted as Sr. Tech.Tele in scale of Rs. 9300-34800 + 4200 GP which is not a selection post and the said post of Sr. Tech/Tele was filled up by suitability and therefore expiry of panel of 2(two) years does not arise. The applicant ought to have complied with the administrative order of transfer and promotion posted at Lumding rather citing the reference of other incumbents and restricting his own stand to stay at Guwahati.

अधिवक्ता (आप) के
पु. नं. १२५, २०१०
-or Divl. Rly. Manager (P)
NIF Rly: Lumding- 28



9. That the statements made in paragraph 4.9 to the application are hereby denied by the answering deponent. The panel of JE/II/Tele against 30 % DP quota was expired on 08.06.09. The applicant who was empanelled for promotion did not carry out his posting and promotion order before 08.6.09. Sri Debangshu Roy was not debarred from promotion of JE/II/Tele against 20 % LDCE quota.

10. That the averments made in paragraph 4.10 to the application are not acceptable. The applicant was posted on promotion at LMG with immediate effect from the date of shouldering higher responsibility. Therefore, his request for retention at MLG/GHY was regretted.

11. That the statements made in paragraph 4.11, 4.12 & 4.13 are confusing and misleading having no basis at all. The administration has no malafide intention to undulate its employee unreasonably and to harass him unjustly. The respondent has no grudge on the applicant or on anybody else in the Railway establishment. Sri Manabendra Nath Das was promoted and accommodated at Ghy as Sr. Tech./Tele but not as a JE/II/Tele on his own request who is a reserve community staff. The promotion of the applicant was not denied. He did not carry out his promotion and posting order as JE/II/Tele at Lumding within 02 years of selection panel rather he had requested to consider his retention at MLG/GHY area on promotion which was regretted. Since the panel of JE/II/Tele against 30% DP quota was expired on 7.6.09, therefore, there is no scope for further review. The applicant was transferred in his same capacity ie as Sr. Tech/Tele at Lumding vide office order dated 16.9.09 under SSE/Tele/LMG. The applicant again made an appeal for his retention at MLG/GHY. Regretting the appeal of the applicant dated 16.10.2009 the applicant was advised to carry out his transfer order on the same pay and scale immediately vide office order dated 25.11.09.

It may be mentioned herein that Sri Suman Kalyan Das (SC), JE/II/Tele was promoted against 20% LDCE quota and he was

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 or Divl. Rly: Manager (F
 S/F Rly: Lumding

Amherst College

10. Mr. Tolson, attention
Mr. Divl. Rly: Manager (D)
Mr. Rly: Lumsdase

J.F. Alv: Lumbago

J.F. Alv: Lumbago

J.F. Alv: Lumbago

J.F. Alv: Lumbago

[illegible]

the same can not be termed as arbitrary, discriminatory and in violation of Article 14 of the constitution of India. And as such there is no scope of judicial review and the judicial interference is unwarranted

17. That from the facts and circumstances quoted above, no illegality has been committed by the Railway Authority as alleged by the applicant. The applicant has no prima facie case at all.

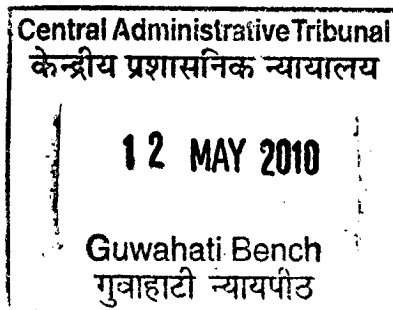
18. That the application filed by the applicant is baseless and devoid of merit and as such not tenable in the eye of law and liable to be dismissed

19. That in any view of the matter raised in the application and the reasons set forth thereon, there cannot be any cause of action against the respondents at all and the application is liable to be dismissed with cost.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to peruse the documents on record and after hearing the parties be pleased to dismiss the application with cost. And pass such other orders/orders as to the Hon'ble Court may deem fit and proper considering the facts and circumstances of the case and for the ends of justice.

And for this the humble respondent as in duty bond shall ever pray.

VERIFICATION



VERIFICATION

I, Shri. AMBESWAR SAIKIA Son of LATE CHANDRA
SAIKIA resident of LUMDING, DISTT- NOGAON
at present working as the SENIOR DIVISIONAL PERSONNEL OFFICER
LUMDING, NF-RAILWAY, being competent and duly authorized to
sign this verification on behalf of all the Respondents do hereby
solemnly affirm and state that the statements made in paragraph
1 to 8, 9, 10, 11, 12, 13, 14 are true to my knowledge and belief, and the
statements made in paragraph X are true to my
information derived from records which I believe to be true and
the rests are my humble submission before this Hon'ble
Tribunal. I have not suppressed any material fact.

And I sign this verification on this 11th day of
May 2010 at LUMDING

Ambeswar Saikia

DEPONENT

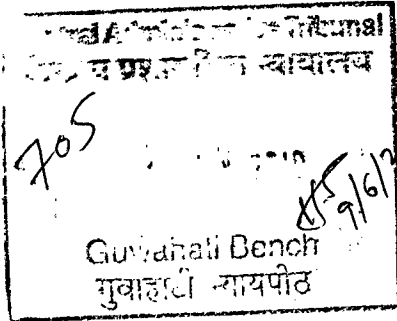
एम्. ए. एस. वि. प्र. अधिकारी (आवृत्ति-)

दू. जी. रोल्ड, गुवाहाटी

Divl. Rly. Manager (I)

NF Rly: Lumding

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI



In the matter of:-

O.A. No. 276 of 2009.

Shri Anup Kumar Das.

..... Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of:-

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

The humble applicant above named most humbly and respectfully state as under:-

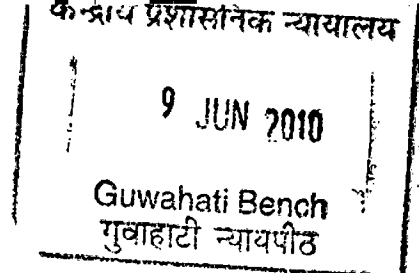
1. That your applicant duly received a copy of the written statement and carefully gone through the same and understood the contents thereof. The applicant categorically denies all the averments made in the written statement save and except which are borne on record.
2. That with regard to the statements made in Para 4,5,6 & 7 of the W.S. the applicant while denying the correctness of the same further begs to say that the applicant was not able to join at Lumding due to his serious ailment and also due to serious domestic problem. The applicant repeatedly approached the authorities and submitted representations to accommodate him in the existing vacancy at Guwahati. However, the order of debarment has been passed vide letter dated 20.2.2008 by DRMP, N.F. Railway, Lumding. Wherein, it is specifically stated that in the event of non-joining at Lumding in the promotional post by 29-02-2008, it would be presumed that applicant is not willing to carry out his promotion and posting order. Therefore, he would be debarred from future promotion for one year.

I undertake to
serve a copy to
Mrs. B. Devi, Rly C.
Dutta
09/08/10

Received copy
for Mrs. B. Devi, Rly C.
by Minak Kumar Das.
09/08/10

Anup K. Das.

Filed by the applicant
through U. Dutta, advocate
on 09.06.10 & 3



Therefore, debarment period is one year i.e. for the period from 29.02.2008 to 28.02.2009. However as admitted by the respondents, the validity of the panel is two years i.e. w.e.f. 08.06.2007 to 07.06.2009 or alternatively till a fresh panel is made which ever is earlier. In the instant case the panel is valid upto 07.06.2009 as admitted by the respondents in Para 5 of the W.S., whereas, applicant has been debarred for promotion till 28.02.2009. But thereafter neither any selection is made nor any offer of promotion was issued to the applicant in between the period of 29.2.2008 to 7.6.2009, when the vacancies in the promotional cadre i.e. in the cadre of JE/II/Tele is very much available under the office of the DRMP, Lumding. It is relevant to mention here that it would be evident from the record the vacancy in which the applicant offered promotion, remained vacant till 7.6.2009 when the panel dated 9.7.2007 is very much in force, moreso, when no selection is held during the year 2008 to 2009. As such it is obligatory on the part of respondents UOI to act upon the panel dated 9.7.2007, after expiry of the deferment period of 1 year, which expired on 28.02.2009, but surprisingly the respondent did not take any step to offer promotion to the applicant or to act upon the panel dated 9.7.2007. As a result the applicant has been denied promotion in the cadre of Junior Engineer (II/Tele) inspite of existence of vacancies in the appropriate level. The written statement is also silent about the date of occurrence of existing vacancies which is now sought to be filled up by notification dated 19.03.2010. It is evident from the office order dated 19.03.2010. As many as 3 post of Junior Engineer/II/Tele is now sought to be filled up by the respondents by notification dated 19.03.2010, that too after receipt of the notices from the learned Tribunal in the instant proceeding. It is a settled position of law i.e., once a matter is Sub Judice before the learned Tribunal the respondent should not issue any notification for filling up the vacancies without leave of the Hon'ble Tribunal under the relevant of the Administrative Tribunal Act, 1985, but in the instant case the respondents deliberately violated the provision laid down in 19(4) of the A.T. Act, 1985. It is categorically submitted that no selection proceeding held during the recruitment year 2008-2009 and 2009-2010 as such the panel approved as on 08.06.2007 is valid upto 07.06.2009 as admitted by the respondents in para 6 of W.S. since the vacancies in the

Anup W. Das

9 JUN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

J.E.(II)/Tele) was available the respondent ought to have appointed the applicant in the existence vacancies of J.E.(II)/Tele) after expiry of the debarment period.

So, far contention raised in para 7 & 8 in the W.S. It is harmely submitted that in the instant proceeding the basic question involve as to whether a govt. employee is entitled to be appointed after the expiry of one year debarment period in the event of vacancies are available in the appropriate level, as such question of 20% quota cannot be a relevant consideration in the present proceeding. The applicant cited the example of Sri Debangshu Roy and Sri M.R. Das who had surrendered their promotion in the cadre of Senior Technician Tele as such they were debarred for promotion for a period of one year. But after expiry of debarment period of one year both Sri Debangshu Roy and Mukti Ram Das were further promoted to the post of Senior Technician Tele by the DRM(P), Lumding by order dated 26.06.2006 (annexure 10 of the O.A.). As such, the applicant being similarly situated deserve similar treatment in the hand of railway administration being a model employer.

It is relevant to mention here that once the order of debarment is passed the applicant cannot join of his post after expiry of the debarment period until and unless a fresh order is passed by the competent authority, as done in the case of Shri Mukti Ram Das & Sri Debangshu Roy in the Telecommunication Department of the railways.

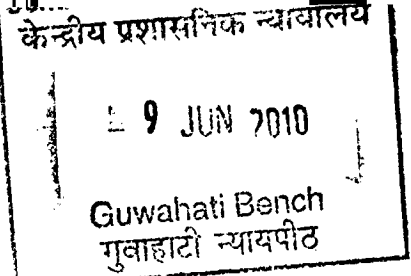
The applicant further like to say that since the railway administration did not prepare any panel for filling up the existing available vacancies of J.E./II/Tele during the year 2008-2009 & also in the year 2009-10 moreover no offer of appointment is issued to the applicant in terms of approved panel as indicated in office order dated 09/7/2009. Railway also violated the mandatory provision of holding regular selection in each recruitment year and respondent further violated the railway rules by not offering any order of promotion to the applicant in terms of approved panel dated 08.06.2007. As such, there is an infraction of provisions of the railway rules and no explanation is available in the

Anup K. Das.

written statement, indicating the circumstances under which the exercise could not be undertaken.

3. That which regard to the statement made in 8,9,10,11,12 & 13 the applicant while denifying the correctness of the statement and further beg to say that the promotion was granted to Sri Debanshu Roy and Sri M.R. Das after expiry of debarment period of one year after issuing a fresh order of promotion by the respondent on expiry of the debarment period, but no such fresh order have been passed by the respondents in respect of the present applicant offering promotion to the applicant on expiry of the debarment period as such the applicant has been matted out with hostile discrimination in the hands of the respondents and there after with the malafide intention he was transferred and posted to Maligaon in the same capacity where he joined in November, 2009. It would be evident from rule 148 that 20% and 30% quota of promotion prescribed as a different source of recruitment. But the rule of debarment of one year period has been prescribed in general for each and every promotion irrespective of 20%/30% quota therefore it is obligatory on the part of railway administration to adopt a fair policy in the matter of granting promotion after expiry on one year debarment period, irrespective of rank status and grade. It would be evident from letter dated 26.6.2006 (annexure 10 of O.A.) that both Sri Debanshu Roy and Sri M.R. Das have been offered fresh order of promotion after expiry of the debarment period. So far statement made in respect of Sri Suman Kalyan Das alleged that he was promoted under 20% I.DC quota has no relevancy in the issue of the instant case. It is fairly admitted that the applicant preferred appeal before the higher authorities for his accommodation in Guwahati in the promotional post of JE/II/Tele due to his domestic problem but the respondent in a very arbitrary manner did not consider his posting at Guwahati inspite of vacancies at Guwahati, whereas subsequently an attempt is made for posting of Sri Suman Kalyan Das at Guwahati by order dated 23.11.2009 (annexure 17 of O.A.) and as such the action of the respondent is highly arbitrary and also attract the article 14 and 16 of the constitution. So far contention raised in Para 14 is empathically denied. The statement made in

Anup K. Das



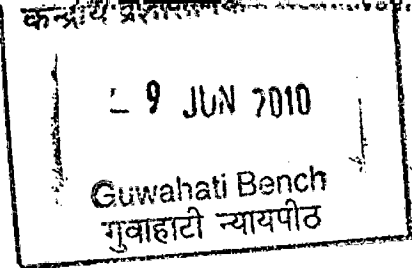
para 15, 16 & 17 also categorically denied and further beg to say that the transfer order of Sri Debangshu Roy has been reviewed by the executive authority in the interest of railway administration. In this connection it may be stated that, it appears from the action of railway administration that in the case of Sri Debangshu Roy fresh order of retrocession of his promotion as well as his posting has been issued with extra care that too without any representation from Sri Debangshu Roy. Whereas applicant being senior to Sri Debanshu Roy and repeatedly prayed for reconsideration of his promotional posting to Guwahati, but to no result.

It is relevant to mention here that the respondents are absolutely silent about the date of occurrence of the vacancies during the year 2008-2009 and 2009-10 in the cadre of JE/II/Tele in order to ascertain as to whether vacancy was available for promotion of the applicant after expiry of the debarment period. It is categorically submitted that vacancy in the cadre of JE/II/Tele was very much in existence even after expiry of the debarment period of one year. As such there was no difficulty on the part of the respondents to reconsider his promotion in the cadre of JE/II/Tele as the vacancies were available. It would be evident from the office order dated 19/3/2010 that the respondents issued a notification on 25/01/2010 much after filling of the instant original application for filling up all together 3 vacancies against 30% departmental promotional quota, where, in 2 posts have been earmarked for unreserved quota and one post of reserved quota the aforesaid notification dates 25.1.2010 and the subsequent office order dated 19.3.2010 proposing to hold a fresh selection for filling up the vacancies in the cadre of JE/II/Tele has been issued with a mala fide intention including the name of the present applicant as eligible candidate, along with others in order to deny the legitimate promotion of the application that too without taking any leave from the Hon'ble Tribunal.

Moreover it is further submitted that the case of the present applicant is squarely covered following the order passed on 22.2.2009 in O.A. No. 172/2007 (Smt. Gauri Sarkar - Vs- Union of India & Others).

A copy of order dated 22-02-2009 is enclosed as Annexure-A.

Anup K. Das.



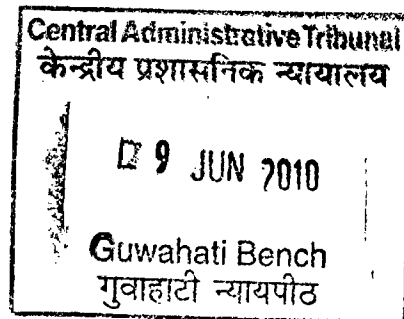
4. That it is stated that during the pendency of the original application Sri Debangshu Roy Junior to the applicant who was working as Senior Technician has been promoted to the cadre of JE/II/Tele vide order dated 30.3.2009 when the panel which was approved on 8.6.2007 was very much valid but the respondents deliberately ignored the case of the applicant for reconsideration of his promotion after the expiry of debarment period of one year. Be it stated that promotion to the cadre of JE/II/Tele may be either from 20% quota or 30% D.P. quota, but the fact remain that junior has been promoted to the rank and status of JE/II/TELE as applicant has acquired a valuable and legal right for reconsideration of his promotion to the cadre of JE/II/TELE. Promotion of Sri Debangshu Roy would be evident from the order dated 30.3.2009 (Annexure-12) of the O.A.
5. In the facts and circumstances stated above the original application deserves to be allowed with cost.

Anup W. Das

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VERIFICATION



I, SHRI ANUP KUMAR DAS son of Late Anil Chandra Das, aged about 50 years, working as Sr. Technician, in the Office of the Sr. DSTE, N.F. Railway, Lumding, do hereby verify the statements made in Paragraph 1 to 4 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 6th day of May, 2010.

Anup K. Das.