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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDL.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH;

1. Original Application No. 7/09
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(S) Tapan Barishya -VS- Union Of India & Ors

Advocate for the Applicant(S) Mr. B. Sharma, A. Chetry

Advocate for the Respondent(S) Railway advocate

Notes of the Registry	Date	Orders of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 10/- deposited vide P. No. 396376941 Dated 2.2.09</p> <p><i>N. Sharma</i> Dy. Registrar 6.2.09</p> <p><i>Steps taken with envelopes. Copy served.</i></p> <p><i>21/2/09</i></p> <p><i>Copy not yet served on Rly. counsel</i></p> <p><i>24.2.09</i></p> <p><i>An affidavit submitted by the applicant. Copy served.</i></p> <p><i>24/2/09</i></p>	<p>11.02.2009</p> <p>pg</p> <p>25.02.2009</p> <p>lm</p>	<p>On the prayer of Mr B.Sarma, learned counsel for the Applicant (made in presence of Dr J.L.Sarkar, learned Standing counsel for Railways) call this matter on 25.02.2009.</p> <p><i>(M.R.Mohanty)</i> Vice-Chairman</p> <p>Heard Mr. B. Sarma, learned counsel appearing for the Applicant and Dr. J. L. Sarkar, learned Standing Counsel for the Railways.</p> <p>For the reasons recorded separately, this O.A. stands disposed of</p> <p><i>(M.R. Mohanty)</i> Vice- Chairman</p>

✓
11.8.09

Copy of the
order along with
the copy of the
application send
to the office for
issue the line to
the Respd No 1 to 4
and a copy of the
order to the Applt
by post.
H.S.

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 7 of 2009

DATE OF DECISION : 25.02.2009

Shri Tapan Baishya

.....Applicant/s

Mr. B. Sharma & Mr. A. Chetry, Advocates

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

- Versus -

U.O.I. & Ors

.....Respondent/s

Dr. J. L. Sarkar, Railway Standing Counsel

..... Advocate for the
Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE-CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI.

Original Application No. 7 of 2009

Date of Order: This the 25th February, 2009

HON'BLE MR. MANORANJAN MOHANTY, VICE-CHAIRMAN

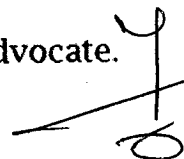
Sri Tapan Baishya resident of
Railway Quarter No. 275/A,
West Gotanagar, Maligaon
Guwahati- 781011. in the
Dist- Kamrup (Metro), Assam.

By Advocates: Mr. B. Sharma & Mr. A. Chetry. Applicant

-Versus-

1. The Union of India represented by the
The Secretary
Ministry of Railway
Railway Board, Railway Bhawan
New Delhi-1.
2. The General Manager
N.F. Railway, Maligaon
Maligaon, Guwahati (Assam)
Pin- 781011.
3. The General Manager (Personnel)
N.F. Railway, Maligaon
Maligaon, Guwahati (Assam)
Pin- 781011.
4. The Financial Advisor &
Chief Accounts Officer
N.F. Railway, Maligaon
Maligaon, Guwahati (Assam)
Pin- 781011.

By Advocate: Dr. J.L. Sarkar, Railway Advocate. Respondents



O.A. No.7 of 2009
ORDER (O R A L)
25.02.2009

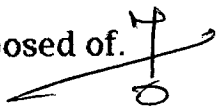
MANORANJAN MOHANTY, V.C.:

Heard Mr.B.Sarma, learned counsel appearing for the Applicant and Dr.J.L.Sarkar, learned Standing counsel for the Railways and perused the materials place on records.

2. Claiming to antedate his promotion, the Applicant has already represented to the authorities. Mr.B.Sarma, learned counsel appearing for the Applicant states that the Applicant in fact should have been absorbed in the present promotional post as ab initio.

3. Since it is the positive case of the Applicant that his representation to his authorities (for making a review of the matter) is pending; without entering into the merits of the matter; this case is hereby disposed of with directions to the Respondents to reconsider the grievances of the Applicant and grant him necessary relief (as due and admissible, in the facts and circumstances of the case) and pass necessary orders within 120 days from the date of receipt of copy of this order.

4. With the aforesaid observations and directions, this O.A. stands disposed of.



P.T.O.

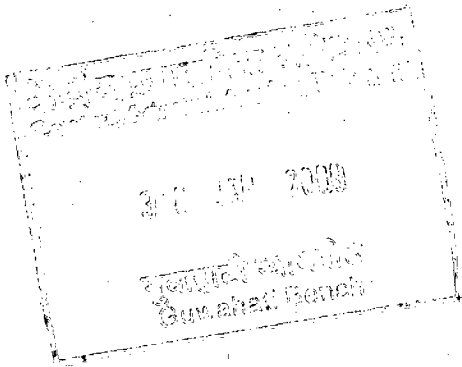
5. Send copies of this order to the Applicant and the Respondents (together with the copies of this O.A. and the separate affidavit filed by the Applicant) and free copies of this order be also supplied to the learned counsel appearing for the both the parties.


(MANORANJAN MOHANTY)
VICE-CHAIRMAN

lm

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

ORIGINAL APPLICATION NO. 7 / 2009



Sri Tapan Baishya

....Applicant

-Versus-

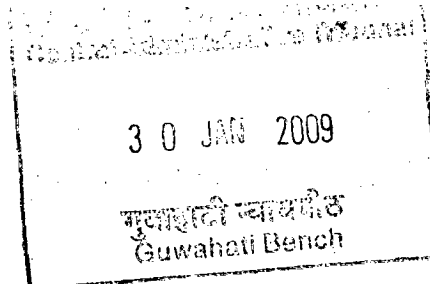
The Union of India & Ors.

....Respondents

SYNOPSIS

That the applicant has approached this Hon'ble Tribunal for the deprivation and discrimination meted out to him in not absorbing his service against a Group – C category post in the Accounts Department at the time of his absorption as a peon therein on being rendered surplus staff in the erstwhile Fire Wing Service of the Railway Protection Force.

That the applicant was initially appointed as a Fireman (Constable) in the Fire Wing Service of the RPF in the year 1988 and he continued to serve therein in the said capacity until he was absorbed on transfer against a post of peon in the Accounts Department on being rendered surplus staff. The rank and status of the applicant in the erstwhile Fire Service Wing was revised by the 5th Pay Commission to that of a Group – C category employee and the said fact came to light of the applicant only after his absorption on transfer as a peon in the Account Department of the N.F. Railways. The absorption of the applicant as a peon in the Accounts Department was on the basis of an application preferred by him on the advice of the authorities concerned for his re-deployment against a post commensurating to the rank and status of the post held by him in his erstwhile department. The application preferred by the applicant was considered favourably and he was absorbed against a Group – D category post of peon in the Accounts Department vide an order dated 01.06.1998. After his absorption in the Accounts Department against a Group – D category post, it came to light that the status and rank of the post of Fireman



(Constable) held by him in the erstwhile Fire Service Wing was that of a Group C category post and also that he had been discriminated against inasmuch as his erstwhile juniors in the Fire Service Wing were absorbed against Group – C category posts. The applicant preferred representation against the said discrepancy, but the respondent authorities rejected the representation on the ground that he had accepted all the terms and conditions of his absorption in the Accounts Department. Thereafter, the applicant approached the Railway Mazdoor Union and the said Union on behalf of the applicant espoused his case before the Railway Authorities, but in vain. Ultimately, on failure of the conciliation proceeding before the Assistant Labour Commissioner (Central), Guwahati, the matter was referred to the Central Government Industrial Tribunal, Guwahati for resolution of the Industrial dispute between the applicant/ workman and the respondents/ management vide a reference dated 10.12.02. The Hon'ble Central Government Industrial Tribunal had vide its award dated 14.03.05 held that not granting the Group – C post/ category to the applicant at the time of absorption to another department as surplus staff w.e.f. February 1998 to be unjustified and bad in law and directed the respondent authorities to promote the applicant to a Group – C category post. The award dated 14.03.05 was purportedly complied with by promoting the applicant as an Accounts Clerk w.e.f. 13.07.05 vide an order dated 28.07.06. The order dated 28.07.06 having not fully redressed the grievance of the applicant, he vide his representation dated 05.12.06 once again approached the respondent authorities for giving effect to his promotion order as an Accounts Clerk w.e.f. the date of his absorption in the Accounts Department and also prayed for fixation of his pay against the scale of pay attached to the said post w.e.f. the said date. The prayer made by the applicant vide the representation dated 05.12.06 was rejected vide an order dated 21.08.07. The applicant once again pursued his case before the Railway Mazdoor Union towards mitigating his grievance as regards not absorbing and granting to him the scale and pay attached to the post of Accounts Clerk w.e.f. the date of his absorption as a peon in the Accounts Department, without any fruitful result. As such, the applicant is before the protective hand of your Lordships for redressal of his genuine and bonafide grievance.

Filed by

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ::

GUWAHATI BENCH:: GUWAHATI

ORIGINAL APPLICATION NO. 7 / 2009

Sri Tapan Baishya

....Applicant

-Versus-

The Union of India & Ors.

....Respondents

LIST OF DATES

1. 28.03.88 - The applicant on being selected was appointed as a Fireman (Constable) in the Fire Wing Service of the Railway Protection Force.
(Annexure 1, page - 19-20)
2. 1997 - The applicant preferred an application for re-deployment against a post, commensurating into the rank and status of the post held by him in the erstwhile Fire Service Wing of the RPF.
3. 22.08.97 - The application preferred by the applicant was forwarded to the concerned authority in the Accounts Department of the N.F. Railway for his absorption therein.
(Annexure -2, page - 21)
4. 01.06.98 - The applicant was transferred against a post of peon in the Account Department of N.F. Railway.
(Annexure - 3, page - 22)
5. 25.11.99 - Order issued rejecting the prayer made by the applicant for his absorption against a Group - C category post in the Accounts Department.
(Annexure - 4, page - 23)
6. 01.12.2000- The Railway Board issued directives towards rectification of anomalies in the matter of absorption of surplus staff of the Fire Service Wing.
(Annexure - 6, page - 26)

7. 02.07.02 - On failure of the conciliatory proceedings before it, the Assistant Labour Commissioner (Central), Guwahati intimated the Ministry of Labour, Government of India as regards the said position of fact.

(Annexure – 5, page – 24-25)

8. 10.12.02 - The Ministry of Labour, Government of India referred the Industrial dispute between the applicant/ workman and the respondents/ management to the Central Government Industrial Tribunal, Guwahati for adjudication.

9. 14.03.05 - The Hon'ble Central Government Industrial Tribunal, Guwahati decided the reference as regards not granting of the Group – C category post to the applicant at the time of his absorption in the Account Department in favour of the applicant and directed the respondent authorities to promote him against a Group – C category post.

(Annexure – 7, page – 28-33)

10. 28.07.06 - The respondent authorities issued an order promoting the applicant as an Account Clerk w.e.f. 13.07.05.

(Annexure – 8, page – 34)

11. 05.12.06 - The applicant prefers representation for granting to him the benefit of absorption and fixation of his scale of pay against a Group – C category post w.e.f. the date of his absorption in the Accounts Department.

(Annexure – 9, page – 35)

12. 22.08.07 - The representation dated 05.12.06 preferred by the applicant rejected without any application of mind and in a routine and mechanical manner.

(Annexure – 10, page – 36)

Filed by

Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH:: GUWAHATI

ORIGINAL APPLICATION NO. 7 / 2009

BETWEEN

Sri Tapan Baishya, resident of Railway
Quarter No. 275/A, West Gotanagar,
Maligaon, Guwahati - 781011 in the District
of Kamrup (Metro), Assam.

....Applicant

-AND-

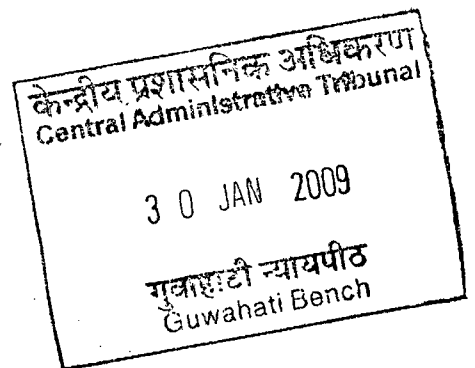
1. The Union of India represented by
the Secretary, Ministry of Railway, Railway
Board, Railway Bhawan, New Delhi – 1.
2. The General Manager, N.F. Railway,
Maligaon, Guwahati – 781011, Assam
3. The General Manager (Personnel),
N.F. Railway, Maligaon, Guwahati –
781011, Assam.
4. The Financial Advisor & Chief
Accounts Officer, N.F. Railway, Maligaon,
Guwahati – 781011, Assam.

....Respondents

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

This original application has been filed against the deprivation meted
out to the applicant is not absorbing his service in a Group – C post at the time
of his absorption in the Accounts Department under the respondent authorities,

Filed by:- the Applicant
through → Brijesh Sharma
Advocate.

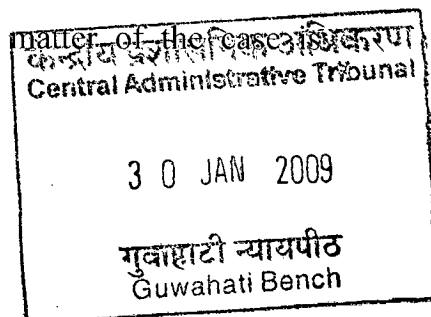


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on closure of the Fire Wing in the RPF. This application is also directed against re-fixation of his seniority in the Account Cadre and fixing his pay scale in the appropriate stage in the time scale of pay w.e.f. the date of his absorption in the Accounts Department against a Group-C post and consequently paying to him arrear pay and salary.

2. **JURISDICTION:**

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.



3. **LIMITATION:**

The applicant declares that the instant case has been filed within the limitation period prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

4. **FACTS OF THE CASE:**

4.1. That the applicant is a citizen of India and a permanent resident in the state of Assam and as such he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India and the laws framed there under.

4.2. That the applicant states that he is lowly paid employee of the Railway Administration and pursuant to a process of selection he was initially appointed as a Fireman (Constable) in the Scale of pay of Rs. 825-1200/- per month vide an order dated 28.03.1988. The confirmation of the applicant in service was contingent upon his successful completion of the training prescribed under the RPF Rules, which the applicant carried out successfully and consequently he was confirmed in service.

A copy of the order dated 28.03.1988 is annexed as **Annexure – 1.**

30 JAN 2009

गुवाहाटी न्यायापीठ
Guwahati Bench

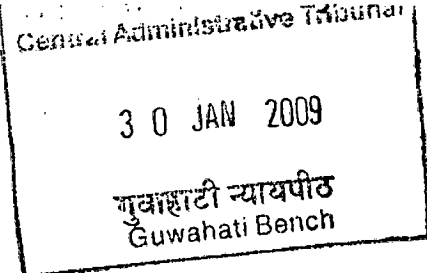
4.3. That the applicant states that his appointment as a Fireman (Constable) in the RPF was initially against a Group - D post but subsequently the pay scale of Fireman (Constable) was revised by the 5th Pay Commission and his status was upgraded to that of Group - C category and was also extended a higher times scale of pay i.e. Rs. 3050/- to 4590/- w.e.f. 01.01.1996, by an Executive Order of the Railway Board issued in the year 1997. The fact that the revision of scale of pay by the 5th pay Commission had revised his status to that of Group - C category was not officially made known to the incumbents including the applicant by the respondent authorities and they were kept in dark regarding the alleviation of their status to Group - C category. It was only after the absorption on transfer of the applicant against a Group - D post (peon) in the Accounts Department of the Railways, it came to light of the applicant regarding his actual status of being a Group - C category employee in his erstwhile department i.e. the Fire Wing of the Railway Protection Force.

4.4. That your applicant states that while he was continuing in service as a Fireman (Constable) in the Fire Wing of the RPF, in the year 1993 it was decided by the Railway Board to close the Fire Service Wing of the RPF and accordingly instructed the Zonal Railway to declare the staff surplus and accommodate them in the protection force by taking option and such staff who does not opt for redeployment were directed to be deployed in the Executive Branches against identical grades.

4.5. That your applicant states that when an establishment is closed the modalities to be followed for appropriate redeployment of the staff are as under:

- (a) A list of surplus staff is to be prepared Pay-scale-grade-status wise.
- (b) Possibility of re-deployment in other department or other wings of the same department has to be examined.
- (c) Seniority of the incumbents is to be maintained in the matter of priority for absorption.
- (d) The affected staff be kept informed of the exercises carried out by the administration for their re-deployment.





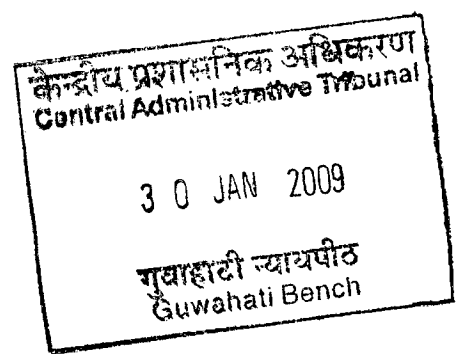
4.6. That your applicant states that in terms of the decision of the Railway Board, the N.F. Railway Authorities decided to close the Fire Wing Service under it. The said decision had the ramification of rendering the applicant defunct and jobless and the respondent authorities had also advised the incumbents to apply elsewhere for absorption. Aggravating the situation, the Railway administration also did not comply with the necessity as stated herein above. Compelled, the applicant had to apply for his re-deployment in the Accounts Department against a post commensurating to the status and rank attached to the post held by him in the erstwhile Fire Wing in the RPF. The application preferred by the applicant was forwarded by the Assistant Security Commissioner (Fire) N.F. Railway to the F.A & C.A.O, N.F. Railway vide a letter bearing No. P/ 3/ F/ Pt-VII dated 22.08.97.

A copy of the letter dated 22.08.1997 is annexed as Annexure- 2.

4.7. That your applicant states that his case for absorption in the Accounts Department was considered favourably by the respondent authorities and he was absorbed against a Group-D category post of peon vide the communication bearing no. CSC/ N.F. Railway/ Maligaon dated 01.06.1998 and was offered a lower scale of pay than what was extended to him by the revision of pay and status affected by the 5th pay commission. The pay received by the applicant in the rank of Constable was Rs.3425/- in the scale of pay of Rs. 3050 – 4590 and on his absorption as a peon in the Accounts Department was fixed at Rs. 3200/- in the scale of pay of Rs. 2550 – 3200. The applicant being in dire straits and urgent requirement of a job to feed his family, ignorant of the fact regarding the alleviation of the status of the post held by him in the erstwhile establishment to that of Group-C category accepted the offer and joined in service as a Peon (Group-D) in the Accounts Department of the respondent organisation. Nowhere in the terms and conditions imposed towards absorbing the applicant disclosed that he was absorbed against a post lower in status to that of the post held by him in the Fire Wing Service.

A copy of the communication dated 01.06.1998 is annexed as Annexure – 3.

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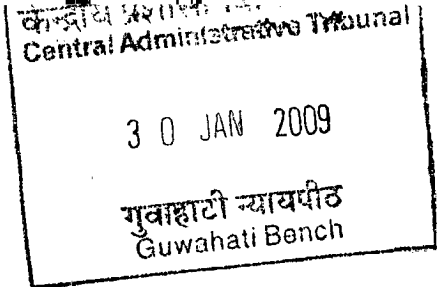


4.8. That your applicant states that after joining as a peon in the Accounts Department, it came to light that he has been discriminated in the matter of his absorption on being rendered surplus staff inasmuch as his juniors in the erstwhile Fire Wing of the RPF have been absorbed against Group-C category posts carrying a higher scale of pay and their seniority was also protected giving them the benefit of their past service. Immediately the applicant represented before the concerned authority for rectifying the anomaly towards meting him out with hostile discrimination in the matter of his absorption and prayed for his absorption against a Group-C category post with effect from the date of his absorption in the Accounts Department with a further prayer for protection of his scale of pay as extended to him by the recommendations of the 5th pay commission. The said representation did not find favour with the railway authorities and his prayer for absorption against a Group-C category post was turned down vide a communication dated 25.11.1999 on the ground that the applicant had accepted all the terms and conditions of his absorption in the Accounts Department.

A copy of the order dated 25.11.99 is annexed as Annexure – 4.

4.9. That your applicant states that mere perusal of the order dated 01.06.1998 would reveal that his absorption in the Accounts Department was on account of inter-departmental transfer and "Transfer" itself connotes placement from one place of posting to another carrying the same status and scale of pay and on this count alone the absorption of the applicant against a Group-D category post in the Accounts Department is rendered unsustainable in the eye of law. It is pertinent to mention here that after the closure of the Fire Wing in the RPF till the date of absorption of the applicant in the Accounts Department, the respondent authorities had not prepared any list of surplus staff of the erstwhile Fire Wing for re-deployment and such staff including the applicant were totally in the dark regarding their fate. The applicant was also not aware of the alleviation of his status to that of Group-C category, but the respondent authorities being his employer was very much aware of his such status. Under such circumstances it was the bounden duty of

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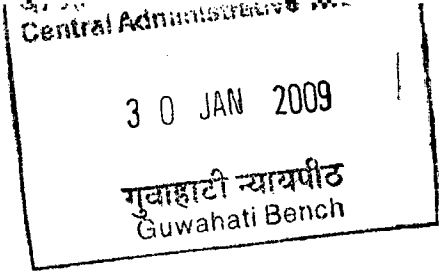
the a "Model Employer" such as the respondent authorities to seek clear option from the applicant as to whether he would prefer to join against a post carrying lower status and pay than what he was enjoying in his erstwhile place of employment. The applicant being a lowly educated employee unaware of the legalities of such absorption procedure by way of re-deployment, has been unjustly and unfairly dealt with and such indifferent attitude towards its own employee, causing huge injustice in the course, is uncalled for and unexpected on the part of a Model Employer such as the organisation of the Railways.

4.10. That your applicant states that as his prayer for absorption against a Group-C category post w.e.f. the date of his absorption in the Accounts Department was turned down by the authorities, he along with similarly situated employees approached the Railway Mazdoor Union and the Union on behalf of the affected employees espoused their cause before the respondent authorities and ultimately an Industrial Dispute was raised before the office of the Assistant Labour Commissioner and conciliation proceeding between the N.F. Railway Management and the Union representing the applicant and other employees having failed, the office of the Assistant Labour Commissioner (Central) Guwahati vide its communication bearing no. 8(63)/2000-G/A dated 02.07.2002 apprised the office of the Secretary, Government of India, Ministry of Labour on the issue. Thereafter, the matter was referred to the Central Government Industrial Tribunal for resolution of the Industrial Dispute between the Management and the applicant/workman vide a notification bearing no. L-41011/27/2002-IR(B-I) dated 10.12.2002.

A copy of the communication dated 02.07.2002 is annexed as Annexure – 5.

4.11. That your applicant states that the Hon'ble Central Government Industrial Tribunal registered the reference as Reference Case No. 9 of 2004 and both the management and the applicant participated in the proceeding before the Hon'ble Industrial Tribunal and the term of reference before it was as under :

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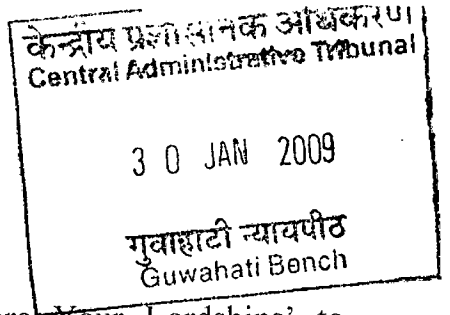


"Whether the action of the Management of N.F. Railway in not granting the Group-C post/category to Sri Tapan Kr. Baishya and Abul Naser at the time of absorption to another Deptt. as surplus staff w.e.f. February 1998 is justified? If not, what relief Sri Tapan Kr. Baishya and Abul Naser are entitled to?"

4.12. That the applicant states that amongst others, it was argued on behalf of the applicant/workman that his absorption in the Accounts Department against a Group-D category post was in violation of its own policy decision adopted by the railway authorities. The Railway Board had vide its communication bearing no. 92/Sec (E) S R-1/1 dated 16.09.1993 circulated the guidelines to be followed while absorbing surplus staff in the Executive Branches. It was categorically made clear therein that the status and scale of pay enjoyed by the surplus staff should be protected at the time of their absorption in the Executive Branches. The said aspect of the matter was reiterated by the Railway Board vide another communication bearing No.99/Sec (E) S R 3/17/C C dated 01.12.2000. By the said communication it was further decided to implement the directives passed by the Hon'ble Andhra Pradesh High Court in Writ Petition No. 20664 of 1997 with regard to the absorption of the surplus staff in the Executive Branches. The Hon'ble High Court in the abovementioned Writ Petition had directed the respondent Railways to review the cases of all the staff members who have been absorbed in the fire service with reference to the seniority which was maintained in the fire branch and to protect the same in the Executive Branches giving the benefits as per clause 2 of the decision taken on 11.01.1993 and to review the promotions given to the juniors ignoring the claims of the seniors and take appropriate steps to promote the seniors on the basis of the seniority which was maintained in the Fire Service Branch. Be it stated here that the juniors of the applicant in the erstwhile Fire Wing of the RPF who were absorbed in the Executive Branches against Group-C category posts have got further promotion in their respective branches superseding the applicant in service.

Copies of the communication dated 01.12.2000 is annexed as Annexure – 6.

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The applicant prays before Your Lordships' to direct the respondent authorities to place before this Hon'ble Tribunal copy of the communications dated 11.01.1993 and 16.09.1993.

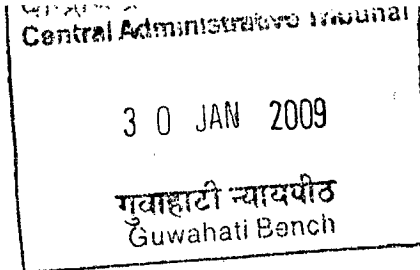
4.13. That your applicant states that the Hon'ble Industrial Tribunal decided the reference vide its award dated 14.03.2005 in favour of the applicant/workman and held that the non granting of the Group-C post at the time of absorption to the applicant in the Accounts Department to be bad in law and directed for promoting the applicant to a Group-C category post. The Hon'ble Tribunal while categorically rejecting the stand of the respondent Railways that since the applicant had accepted the terms and conditions to join against a Group-D category post at the time of his absorption, he was now estopped from raising a claim for his absorption against a Group-C category post, had held that no workman enjoying benefit of the 4th and 5th pay commission would choose to join against a lower category post.

A copy of the award dated 14.03.05 is annexed as Annexure – 7.

4.14. That your applicant states the after the award dated 14.03.2005 was passed by the Industrial Tribunal directing promotion of the applicant against a Group-C category post, the respondent authorities had promoted the applicant as an Accounts Clerk (Group-C) w.e.f. 13.07.2005 vide an order dated 28.07.06, inspite of the fact that vide the term of reference it was held by the Hon'ble Tribunal that the non granting of Group-C category post to the applicant at the time of his absorption in the Accounts Department was not justified and to be bad in law.

It is pertinent to mention here that although the order dated 28.07.2006 states that the order promoting the applicant as an Accounts Clerk was given effect to w.e.f. 13.07.2005 i.e.; the date of passing the award by the Hon'ble Industrial Tribunal, but in fact, the date of passing of the award is 14.03.2005

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A copy of the order dated 28.07.06 is annexed as **Annexure – 8.**

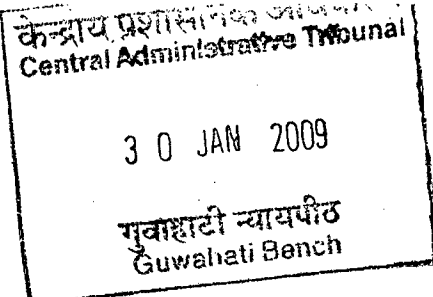
4.15. That the applicant states that in terms of the order dated 28.07.06 he joined his service as an Accounts Clerk in the Accounts Department of the Railways, but his grievance as regards his absorption against a Group-C category post w.e.f. the date of his initial absorption in the said department and also the fixation of his scale of pay against the post of Accounts Clerk w.e.f. the said date still continued. As such, he preferred a representation dated 05.12.2006 praying for extending to him the benefit of the status and the scale of pay attached to the post of Accounts Clerk w.e.f. the date of his absorption in the Accounts Department. The prayer made by the applicant vide his representation dated 05.12.2006 was rejected vide an order bearing no. PNO/AD/80/496 (Loose) dated 21.08.2007. Thereafter the applicant pursued his case once again before the Railway Mazdoor Union for a considerable period of time, but without any fruitful result. As such, the applicant is before the protective hands of Your Lordships' praying for redressal of his genuine and bonafide grievance.

Copies of the representation dated 05.12.06 and the order dated 21.08.07 is annexed as **Annexure – 9 & 10** respectively.

4.16. That the applicant states that the order dated 01.06.1998 absorbing him against a Group-D category post was prima facie illegal to the core of it inasmuch as his said absorption in the Accounts Department was by way of transfer and an incumbent posted on transfer to another place cannot be made to join against a post carrying lower status and scale of pay. As such, it was the bounden duty of the Railway authorities to rectify the said anomaly when the applicant had specifically highlighted and prayed for his absorption in the Accounts Department against a Group-C category post.

4.17. That the applicant states that in the office order issued by the General Manager (P)/ N.F. Railway, Maligaon vide communication bearing No. O. E/283 (M)/ POH dated 13.07.99 it appears that Sri Ajit Kumar Baishya

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and five others Gangman of the Fire Wing of the Security Department, who were junior to the applicant, were holding the supernumerary posts on being rendered surplus and finally absorbed as Clerk in the Mechanical Department with the protection of their status and scale. This is a sheer discrimination meted out to the applicant resulting in violation of the policy decisions of the Railways and also infringes upon the mandate of Article 14 and 16 guaranteed under the Constitutional of India and such discrimination being without any intelligible differentia, cannot stand the scrutiny of law when its legality is tested on the anvil of the provisions contained in the said Articles.

A copy of the office order dated 13.07.99 is annexed as Annexure -11.

4.18. That the applicant states that the Hon'ble Central Government Industrial Tribunal having held vide the reference dated 10.12.2002 that non granting the Group-C post/category to the applicant at the time of absorption in the Accounts Department to be unjustified and having directed the respondent authorities to promote the applicant to a Group-C category post, the applicant was entitled and is required to be promoted/absorbed against a Group-C category post w.e.f. the date of his absorption in the said department. The discrimination meted out to the him in not absorbing his service against a Group-C category post at the time of his absorption in the Accounts Department has resulted in the violation of the Policy Decision of the Railways itself, which itself renders the action of the respondents in not absorbing his service against a Group-C category post and also protecting his scale of pay to be bad in law more so, when the Hon'ble Industrial Tribunal decided the reference dated 10.12.2002 in favour of the applicant.

4.19. That the applicant states that the order dated 28.07.06 promoting him against the post of Accounts Clerk has still not redressed his grievance fully inasmuch he has been granted the status and pay of a Group-C category employee w.e.f. 13.07.2005 and his erstwhile juniors in the Fire Wing still ranks senior to him and the scale of pay received by him at present is still less than what is being received by his juniors who were absorbed against Group-C category posts in the Executive Branches, which itself is in violation of the

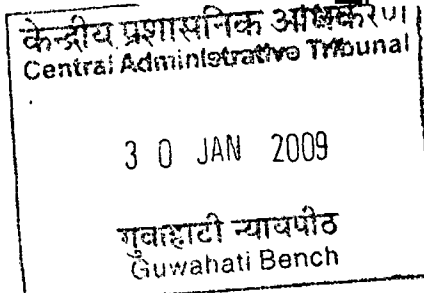
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directives contained in the communication dated 01.12.2000 issued by the Railway Board.

4.20. That the applicant states that the discrimination meted out to him in not absorbing his service against a Group-C category post at the time of his absorption in the Accounts Department has resulted in a perpetual/continuous grievance for the applicant inasmuch as he still ranks junior to his erstwhile juniors in the Fire Wing Service of the RPF and the scale of pay received by him at present against the post of Accounts Clerk has been so fixed w.e.f. the dated of the order dated 13.07.2005, which is a date much later than the date on which the scale of pay of his juniors were fixed against Group-C category posts on their absorption in the Executive Branches. Consequently, the juniors of the applicant in the erstwhile Fire Wing Service is receiving their pay at a much higher stage than that of the applicant resulting in continuous deprivation and discrimination being meted out to the applicant.

4.21. That the applicant states that interpretation and application of State Labour Welfare Policy, in the case of Re-deployment of surplus staff and retrenched employees, which are consistent with the public interest; technical grounds to deprive incumbents of employment should not be over emphasized and the case be solved in its true perspective and the said sentiment found favour in the celebrated judgment of their Lordships' of the CAT/GHY in Sri Durlove Chandra Medhi's case, reported in AISLJ, Vol 53, Pt-III, page 447, 1994 . Thus, when the applicant was kept in the dark by the Administration/their employer about their status, grade, position in the surplus list according to their service seniority, he cannot be held responsible for accepting a Group -D category employment in redeployment of his service. This is sheer violation of the Railway Rules itself.

4.22. That the applicant states that while answering to the question raised by the Assistant Labour Commissioner, Guwahati during the conciliatory proceeding before it regarding the anomalies and disparity in the matter of re-deployment of Sri Tapan Kumar Baishya and Md. Abul Naser against Grade - D of category posts in comparison to their junior staff in the Fire Department and absorbed against Group-C category posts, the N.F.



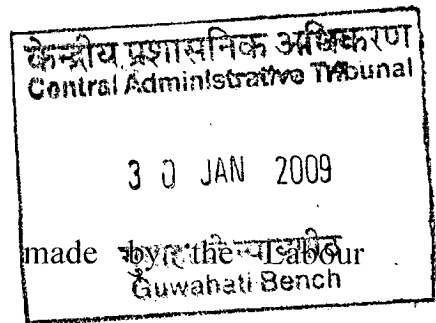
Railway's reply vide communication bearing No. E/170/Legal Cell/ 820/2000 dated 03.10.01 was far from the fact and ridiculous on the ground that since the workmen Sri Tapan Kumar Baishya and Md. Abul Naser did not raise the question of absorption in Grade – C at the time of their redeployment, therefore their transfer as peon to Accounts Department is final and irrevocable. This is really a silly reply and is not protected in the eye of law in any Rules of employment. This reply rather reminds of a treatment of the medieval master's relation to his servants when the bond labour system was in force. It was the suo motu duty of the Administration to dissect the case of absorption very carefully and meticulously while redeploying the surplus staff of the Fire Service Wing of the Railway Administration. The closure of a particular section of service of a department shall not hold its permanent employees responsible and therefore cannot seal their fate altogether due to the lack of foresight and want of prudence of the Administration.

A copy of the communication dated 03.10.2001 is annexed as Annexure – 12.

4.23. That the applicant submits that a man who has got the hunger and has no means to satiate his appetite shall have to eat anything in the dire necessity and if forced to do so, but that does not mean that one should supply most carelessly the rotten and waste food to satisfy his belly taking the advantage of his helplessness. The freezing of the Fire Wing of the security department of the N.F. Railway was not due to any inadvertent actions of its employees, it was the cause of prudence and foresight of the Administration and for such gross lapse, the employees on being rendered surplus cannot suffer for no fault of their own and more so, when the list of surplus staff was not made available to them by the administration/ management before seeking "option" from them for their transfer to other departments.

4.24. That the applicant states that while the case was pending before the Labour Commissioner for amicable settlement of the dispute, the above issues were raised by the Labour Commissioner, but N.F. Railway Administration had not thought it to be of any necessity to reply for arriving at

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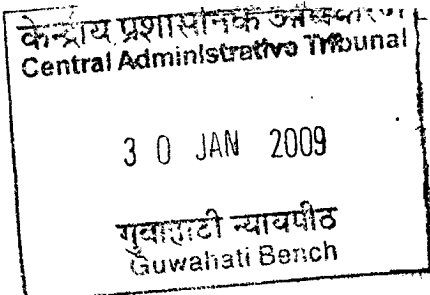


an amicable settlement to satiate the queries made by the Labour Commissioner.

4.25. That the applicant states that the letter issued by the FA & CAO/ N.F. Railway, Maligaon vide communication bearing No. E&O/ AD/ 68/ 274 Pt. XIX dated 29.11.99 is also another example of N.F. Railway adamant attitude for considering the representations of Sri Tapan Kumar Baishya and Md. Abul Naser and some others for absorption against Group-C category posts, which were not considered only on the grounds that they have accepted the terms and conditions of their absorption against Group-D category posts ignorant of their real status, which was not made to be known to them at the material time prevailing when they were rendered surplus. But it does not mean that an employee who is already in a Group-C employment against a permanent vacancy shall be treated so harshly even when there were clear vacancies in Group – C employment at the time of his redeployment on being rendered surplus because of the administrative reasons.

4.26. That the applicant states that it appears from the performance of the N.F. Railway Administration as a whole that they have not at all dealt with the cases of the employees of the Fire Wing of the Security Department sincerely, more particularly the case of the applicant when the Fire Wing was closed, violating Ministry of Railways/ Railway Board's clear direction to all General Managers of the Zonal Railways and production units communicated vide No. 99/ SEC(E)/ SR-111/ 17/ CC dated 01.12.2000. It appears that the N.F. Railway itself has formulated their own Rules of employment violating their superior body, i.e. Railway Board's guidelines and Railways' codified Rules and procedures.

4.27. That the applicant states that immediately after noticing such gross irregularly and adopting of unfair means and the blatant discrimination and wanton attitude of the Administration, the applicant appealed to the concerned authorities for rectification of such wrong perpetuated to him and prayed for redressal of his grievances according to the Rules of redeployment of surplus staff, but to their utter dismay and as ill luck would have it, they could not attract any sympathetic consideration from any of the authorities they



prayed before with their repeated representations and appeals, by both written as well as oral submissions.

4.28. That the applicant states that even in the conciliation proceedings before the Assistant Labour Commissioner (Central) Guwahati, the N.F. Railway Administration did not feel it to be an imperative necessity for rectification of the procedural lapse on their part as per the norms and procedures of the Railway's own set of rules.

4.29. That the applicant states that as per settled principles of law it is desirable that while dealing with an employee's case the employer should have to rise and act above personal consideration and remain "just" and impartial; but in the instant case the Administrative action proved to be of unfair, unjust and arbitrary, consequently violating the Railway's own set of norms and Rules.

4.30. That the applicant states that inaction and the wanton attitude of the Railway Management have violated the principles of Natural Justice, Administrative Fair Play and the set of Rules established by the Railway System itself in not extending to the applicant his "just dues" of legitimate claim and thereby infringes upon the mandate of Articles 14, 16(1), 39(a) & 309 of the Constitution of India.

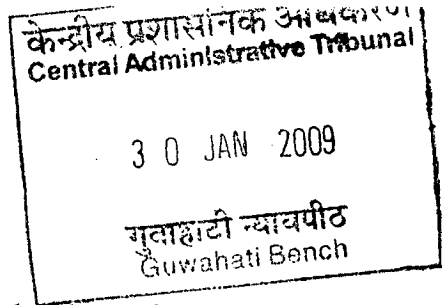
4.31. That the applicant states that he has no other appropriate, equally efficacious alternative remedy available to him and the remedy sought for herein when granted would be just, adequate, proper and effective.

4.32. That this application has been filed bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that the action on the part of the Railway Authorities in non granting to the applicant the benefit of his absorption against a Group-C

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category post in the Accounts Department w.e.f. the date of his absorption in the said department is bad in law as well as in facts.

5.2 For that the absorption of the applicant against a Group-D category post in the Accounts Department was by way of transfer and placing an incumbent on transfer against a lower category of post both in terms of status and pay is out rightly illegal and interference is called for from this Hon'ble Tribunal towards rectifying the illegalities committed and deprivation meted out as a result of such irregular absorption.

5.3 For that the N.F. Railway Administration have not followed the cardinal principles of "Equal Pay for Equal Work" and "Equal Protection of the Laws" and thereby invited discrimination amongst employees and infringed the Constitutional provisions guaranteed under Article 14 and 16.

5.4 For that the N.F. Railway Administration have flouted their own set of Rules and violated the directives of the Railway Board, the Apex Authority on Railway systems', rules and proceedings as regards redeployment of the employees of the Fire Service Wing on being rendered surplus.

5.5 For that the N.F. Railway's stand towards not granting to the applicant the status and pay of a Group-C category post was absolutely unjustified and in violation of its own policies and rules and resulted in blatant discrimination and the infringement of Constitutional safeguards for the Right to Equality and Right to Employment and thereby hits the Article-14, 16(1) of the Indian Constitution.

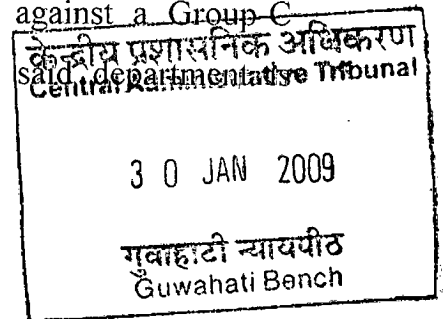
5.6 For that the N.F. Railway Administration turned down all the representations/ appeals preferred by the applicant to examine his cases on merits as per law/ rules and consider granting of Group - C status in true perspective of dealing with the case of employees in a welfare state and not according to its whims and caprices.

5.7 For that the Hon'ble Industrial Tribunal having decided the reference in favour of the applicant vide its award dated 14.03.2005, the action

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on the part of the respondent authorities in not granting to the applicant the status and pay attached to the post of Accounts Clerk w.e.f. the dated of his absorption in the Accounts Department is bad in law and in interference is called upon from this Hon'ble Tribunal towards rectification of the said anomaly.

5.8 For that in any view of the matter the impugned action on the part of the respondent authorities in denying to the applicant the benefit of absorption of his service in the Accounts Department against a Group C category post w.e.f. the date of his absorption in the said department is unsustainable in the eye of law.



6. **DETAILS OF THE REMDIES EXHAUSTED:**

The applicant declares that he has no other alternative and efficacious remedy except by way of filing this application. As such he is seeking urgent and immediate relief.

7. **MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:**

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other court, authority or any other bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. **RELIEF SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the relief's sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs.

8.1 To direct the respondent authorities to absorb/promote the applicant against a Group-C category post i.e. Accounts Clerk in the Accounts Department w.e.f. the date of absorption as a peon in the said department.

8.2 To direct the respondent authorities to fix his pay in the scale prescribed for the post of Accounts Clerk w.e.f. the date of his absorption as a peon in the Accounts Department and thereafter extend to him the annual increments as he would have been entitled to.

8.3 To direct the respondent authorities to equalise his scale of pay with that of his erstwhile juniors in the Fire Wing Service on being absorbed against Group-C category posts in the Executive Branches.

8.4 To direct the respondent authorities to restore the seniority of the applicant in the Accounts Department as was maintained in the Fire Service Wing.

8.5 Cost of the application.

8.6 Any other relief/ reliefs that the applicant in the facts and circumstances of the case would be entitled to.

9. **INTERIM ORDER PRAYED FOR:**

In this facts and circumstance the applicant does not pray for an interim direction at this stage but however prays for early hearing in the matter.

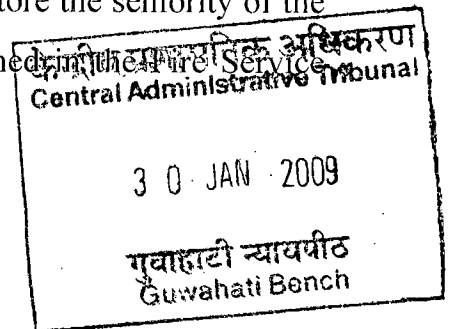
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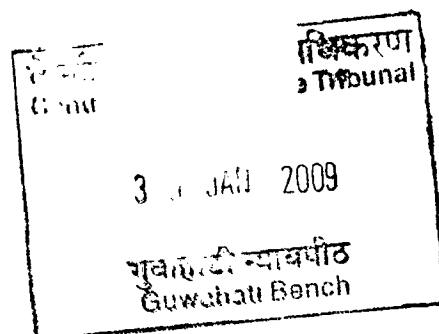
11. **PARTICULARS OF THE I.P.O:**

- i) I.P.O No. : 39637441
- ii) Date : 2.2.69
- iii) Payable at : Guwahati

12. **LIST OF ENCLOSURES:**

As stated in the index.





VERIFICATION

I, Sri Tapan Baishya, aged about 39 years, resident of Railway Quarter No. 275/A, West Gotanagar, Maligaon, Guwahati - 781011 in the District of Kamrup (Metro), Assam, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case, the statements made in paragraph 1, 2, 3, 4, (1, 3, 4, 5, 9, 16, 18, 19, 20, 21 and 23 to 32), 5 to 12 are true to my knowledge; those made in paragraphs 4, (2, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17 and 22) are true to my information derived from the records and the rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed and material facts of the case.

And I sign this verification on this the 30th day of January, 2009, at Guwahati.

Tapan Baishya
DEPONENT

NORTHEAST FRONTIER RAILWAY.

OFFICE OF THE DIVL. SECURITY COMMISSIONER: N.F. RAILWAY: LUMDING.

No. E/12/P-IX

Lumding, dated 28-3-88

To

Shri Tapan Baishya,S/o Shri. Dharmeswar Baishya. Vill-GP.O- Sowalkuchi(Dharamtoli)
P.S- Hajo. Dist. Kamrup (Assam)

On being found medically fit in Category B/1, you are hereby provisionally appointed as Temporary probationer Constable/RPF/Fire on a pay scale of Rs. 825-15-900-EB-20-1200/- RSP) per month plus usual allowance as admissible under the Rules subject to your passing the prescribed training for Constable/RPF/Fire.

2. In case you fail to qualify in the training prescribed under the Rly. Protection Force Rule, you will be discharged and no further notice for termination of your service will be served.

3.(a). The appointment is terminable in the event of expiry of temporary sanction of the post in which you are appointed, your mental or physical incapacity or your gross misconduct, without notice.

(b) If the termination of service is due to some other reasons, you will be entitled to a notice of one month on either sides.

4. Your appointment is also subject to satisfactory report about your character and antecedent from the concerned Civil authorities.

5. You will be required to execute service agreement and take an Oath of allegiance or make an affirmation as per extent RPF Rules.

6. You will be liable under extent Railway Protection Force Discipline & Appeal Rules and will be required to maintain a standard of discipline as required for Armed Force of Union of India and will be liable to be deployed any part of the Union of India.

7. You will be held responsible for the charges and care of Government money, goods, stores equipments and all other properties that may be entrusted to you.

8. Your appointment will take effect from the date you actually report for duty after completion of initial training at RPF Training College/Lucknow and prescribed practical training.

Contd...2..

Continued to 2..



/Enclosure

9. You are required to report to this office on 29-3-88 for submission of documents, issue of uniform clothing etc. and proceed to Lucknow, so as to report to Principal, RPF Training College/Lucknow on 2-4-88 (F.N) in terms of Chief Security Commissioner/N.F.Rly./Maligaon's letter No. P/285/TRG/LKO/Pt.III/EB dated 14-3-88 for your initial training.

10. On reaching RPF Training College/Lucknow, you shall have to deposit the Mess Security Money etc. as per the standing order for RPF Training College/Lucknow.

30 JAN 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

[Signature]
28/3

DIVISIONAL SECURITY COMMISSIONER
N. F. RAILWAY. : LUMDING.

Copy to :- Inspector/RPF/DS/Lumdung for information and to issue uniforms as per scale.

- 2) The Chief Security Commissioner, N.F.Railway/Maligaon for favour of information.
- 3) FA & CAO/N.F.Railway/Maligaon for favour of information.
- 4) ASC/RPF/Fire/Maligaon for information and necessary action please.

[Signature]
28/3

DIVISIONAL SECURITY COMMISSIONER
N. F. RAILWAY. : LUMDING.

No. E/3/F/Pt. VII.

To
The FA & CAO,
N.F. Railway: Maligaon.

Office of the
Asstt. Security Commissioner/Fire,
N.F. Railway: Maligaon.

dt. 22-08-97

Sub:- Change of category from Fireman to
Peon in FA & CAO/Maligaon.

The application submitted by Shri Tapan Baishya,
Fireman, S/N: 666/F is sent herewith for your disposal
please.

His bio-data is furnish below:-

- 1) Name : SHRI TAPAN BAISHYA.
- 2) Designation : Fireman
- 3) Basic pay : 1020/- (1st scale Rs. 825-1200/-)
- 4) Educational Qualification : H.S.C. Passed.
- 5) Date of birth : 28-1-1969.
- 6) Date of appointment : 01-04-1988.
- 7) Residential Address : Vill & P.O. Sualkuchi.
Vila: Dharmatala.
Dist: Kamrup (Assam)
- 8) Medical category : B/One.
- 9) DAR case if any : NIL

There is no objection to spare the above named staff
if observed for the post applied for.

This has the approval of CSC/Maligaon.

DA: One application.

ASSTT. SECURITY COMMISSIONER (FIRE),
N.F. RAILWAY: MALIGAON

Copy to : Fire Inspector/INO for information.

ASSTT. SECURITY COMMISSIONER (FIRE),
N.F. RAILWAY: MALIGAON

22/8/97

Central Administrative Tribunal

30 JAN 2009

Guwahati Bench

Corrified to be true copy

Advocate

No. B/3/P/Pt.VII.

Office of the
Asstt. Security Commissioner (Fire),
N.F. Railway, Malignan.

dt. 01-05-98.

To
The Fire Inspector, Pandu,
N.F. Railway, Malignan.

Subj:- Transfer of Tapan Lalshya,
Fireman under Fire Inspector/
Pandau.

Ref:- PA & CAO's C.O.No.454 dt. 13-5-98.

In reference to PA & CAO's above quoted letter
Shri Tapan Lalshya, Fireman under Fire Inspector/Pandau
in scale B. 3050-4590/-(P23) is hereby transferred and directed
to report to PA & CAO/AD/LIC for joining as Fire in scale
B. 2550-3200/-(R26) as he has submitted a declaration to
accept all the terms and conditions as laid down vide
PA & CAO's above quoted order. There is no SFR/Vig. case
pending against him. Before starting the st-off, you should
take over Railway (ra. and other materials which are to
be deposited as per rule. NDT will be issued to the
undersigned accordingly.

This has the approval of CAO/N.F. Railway.

ASSTT. SECURITY COMMISSIONER (FIRE),
N.F. RAILWAY, MALIGNAN.

Copy to : - 1) CAO/N.F. Railway/Malignan.

- 2) PA & CAO/AD/LIC in reference to his C.O. No.
454 dated 13-5-98.
- 3) Ctr. control at office.
- 4) St-off concerned.
- 5) C.O. Book.
- 6) S/Copy.

ASSTT. SECURITY COMMISSIONER (FIRE),
N.F. RAILWAY, MALIGNAN.

30 JAN 2009

न्यायपीठ
Bench

Office of the
PA & Chief A/c. Officer,
N. F. Railway, Maligaon.

No. PNO/AD/64/274 Pt. XIX

Dated 23.12.2008

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

To
DAC/ADP...
SRO/PF & PN...
AAO/EN...
AAO/Fin(S)...
AAO/TA/CG...
AAO/TA/Goods...

Subj- Appeal for absorption in the Group 'C' category.

Appeals for absorption in Class III category submitted by the staff who were posted in Class IV category in Accounts Department against interdepartmental transfer from Security Department were scrutinised with their original interdepartmental transfer applications. As per their clear option they have been posted in Class-IV category in the grade of Rs. 2550-3200/- as Office Peon. Hence their appeal for absorption in Class-III category as Accounts Clerk at this stage cannot be considered.

The name of the applicants with section/office of their posting are given below:-

1. Shri Mridul Baishya, Peon under Fin(S)
2. " Uttan Mazunder, Peon SRO/ADP.
3. " Subrata Banerjee, Peon, DAC/ADP.
4. " Mohindra Nath Boro, AAO/TA/CG.
5. " Tapan Baishya, Peon/AAO/EN.
6. " Chandan Kumar, Peon/TA/CG.
7. Md. Abul Naser, Peon/SRO/ADP. EN
8. Shri Nitai Shankar Bhatta Chatterjee, Peon/SRO/PF & PN.
9. " Jiten Ranchiary, Peon/TA/Goods

Please intimate the above staff accordingly.

[Signature]
for PA & Chief A/c. Officer/AD.
N. F. Railway, Maligaon.

Certified to be true

[Signature]
Advocate

FAILURE OF CONCILIATION

Govt. of India **PART - I**

Ministry of Labour

O/O the Assistant Labour Commissioner (C)

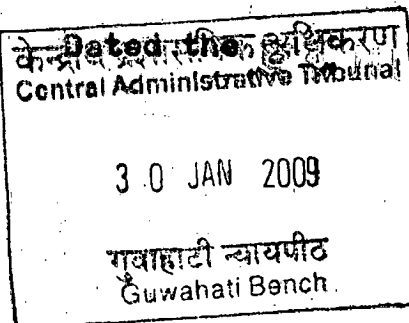
Rajgarh Road, Chandmari,

Guwahati-781 003.

ANNEXURE-5

No.8(63)/2000-G/A

To
The Secretary,
Government of India
Ministry of Labour
Shram Shakti Bhawan
Rafi Marg, New Delhi



Subject:- Industrial Dispute over non-granting of Pay Scale and status in respect of absorption of Surplus Staff in between the Management of N.F.Rly. & Railway Mazdoor Union.

Sir,

The General Secretary, Rail Mazdoor Union, 27/B, Rest Camp, P.O. Guwahati-12 raised an Industrial Dispute in respect of the non-granting of proper Grade at the time of absorption of Surplus staff violating the guidelines and policy of the Railway Board in their letter vide No. Nil dated 6.7.2000 (copy enclosed in Annexure-I). The Union stated that Shri Tapan Baishya and others have been working in the Fire Service in the N.F.Rly. due to abolition of Fire Service in the N.F.Rly. in the year 1998 they required to be absorbed. While the policy and principle of absorption as per Junior and Senior had not been considered. Union stated that Sri Tapan Baishya and others had serving in Category 'C' in the Fire Service but while they were absorbed, they were absorbed in Group 'B'. Even more, the Union stated that the juniors also while absorbed had given the Group 'C' Category.

On having the Dispute to the parties were noticed for Joint discussion/conciliation and accordingly it were held on several dates. But it appears that no position out come in resolving the dispute amicably came out resulting to seized the dispute in conciliation on 3.10.01 and finally on 18.10.01 the dispute in question recorded failure exparte for the non appearance of the Management.

The Management on several dates attended the Joint discussion but without on effective participation. However vide letter No.E/170/Legal Cell/820/2000 dated 3.10.2001 (Copy enclosed in Annexure-II) the Management stated that Shri Tapan Baishya and others joined as Peon in the Pay Scale of Rs.2550-3200 (Gr.D) while admitting the fact that at the time of the clearing surplus staff at the Fire service Department they were in the Pay Scale of Rs.3050-4590/= i.e. Gr.'C' category. The Management pointed out that the incumbent concerned did not raised the question of

Contd.p-2/

Certified to be true

Advocate

absorption or for their pay protection and otherwise to say that the incumbent concerned has accept the terms and condition of absorption which is final and irrevocable and as such the instant dispute has got no merit.

The Union further explain that Shri Tapan Baishya and others while declared surplus in the Fire Service Deptt. in the year February, 1998, they applied to the FA & CAO, Maligaon to absorbed in the Account Deptt. in the same capacity i.e. Category 'C' in the Pay Scale of Rs.3050-4590/-. But they were absorbed in the Lower Scale in Grade 'D'. On the other hand other constables of Fire service had been absorbed in Gr.'C' category who were Junior to Shri Tapan Baishya and Md.Abul Naser as per seniority list. As a whole the Union contradicted the views of the Management are not tenable due to the basic fact of 1. the policy decision of the Rly.Board was not followed in respect of absorption and surplus staff 2. the staff concerned applied for their absorption in the Accounts in the similar scale but not a grade 3. the Management on revision of Pay Scale in June/July'98 w.e.f. 1.1.96 did not asked the staff concerned, if they wanted to pay accept the pay scale in which they were absorbed in reference to the pre-revised scale. Also the staff concerned preferred appeal in the year 1999 for granting them the benefits of absorption in reference to the revised Pay scale of 5th Central Pay Commission w.e.f. 1.1.96. However, during the course of conciliation it appears that the demand of the Union has not been accepted by the Management. Also, the Union remain adamant on their stand that there had been certain lapses on the part of the Management in respect of amending the proper status and scale which is absolutely corrigible. In that state the undersigned made constant persuasion and put all out effort to apprise both the parties for resolving the dispute amicable but unfortunately none of the parties receded from their own stand/own views and hence the dispute in question would not have been resolved and thus ended in a failure.

Central Administrative Tribunal

30 JAN 2009

Yours faithfully,

Encls:As above

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

(A.K. Chakraborty)
Asstt.Labour Commissioner(C)
Government of India:Guwahati

Copy for information to :

1. R.L.C.(C),Guwahati
2. General Manager(Personal).N.F.Rly,Maligaon
Guwahati-11
3. General Secretary, Rly.Mazdoor Union, 27/B,
Rest Camp,Pandu,Guwahati-12

Asstt.Labour Commissioner(C)
Government of India:Guwahati

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD.

Count 6/28

No. 99/Sec (E)/S R 3/17/C C

New Delhi, Dt. 01.12.2000

The General Managers,
All Zonal Railways &
Production Units.

Sub: Absorption of fire staff in Executive Branch.

When the Fire Branch of RPF was partially closed in the year 1992 and 1997, the fire staff, rendered surplus were absorbed in the Executive Branch in accordance with the guidelines issued vide Board's letter No. 92/Sec (E) S R-1/E Dt. 16/09/1993. The Fire Branch was completely closed in 1999 and the surplus staff were absorbed in the Executive Branch and in RPSF. Some of the fire staff absorbed in the Executive Branch in 1992 were promoted to higher ranks in the normal course and had become senior to some of the fire personnel absorbed in the year 1997. This may be the case with some of the fire personnel who have been absorbed in the Executive Branch and RPSF in the year 1999. The transfer of fire staff to Executive Branch in RPSF has been done due to administrative exigency. Hence, the staff who were absorbed in Executive Branch in the year 1997 and those who were absorbed in the Executive Branch and RPSF in the year 1999 shall get the seniority and promotion, if any, at par with their immediate juniors who were absorbed in the said branches on earlier occasions.

However, it was not done so. Aggrieved by this, some fire staff of South Central Railway filed a writ petition in the Hon'ble High Court of Andhra Pradesh at Hyderabad in Writ Petition No. 20664 of 1997 against the administration. The Court has given the following directions:-

1. That the respondents shall review the cases of all the staff members who have been absorbed in the fire service with reference to the seniority which was maintained in the fire branch and to protect the same in the Executive Branch giving the benefits as per clauses 2 of the decision taken on 11.01.1993 and also to review the promotions given to the juniors ignoring the claims of the seniors and take appropriate action to promote the seniors on the basis of the seniority which was maintained at the fire service branch subject to promotion rules. If necessary notices should be given to the junior employees who were given promotions in preference to petitioners and hear them and then pass appropriate orders.

2. However, it is made clear that the absorption shall be made only in Executive Branch except the employees who voluntarily opted to remain in the Special Force.

(General Manager)

दिनांक

Date

दु. सी. रेल्स, नालिगाँव, गुवाहाटी

N. P. Railway

Naligaon, Guwahati

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Confirmed to be true

Advocate

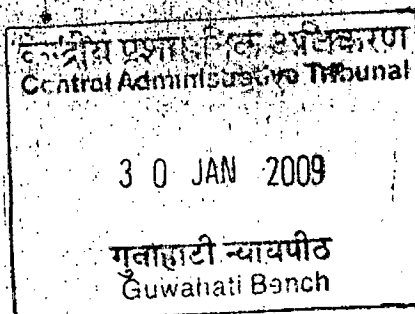
The above directions were examined in Board's office in consultation with the Legal Cell and Finance. It is decided to implement the first direction with immediate effect. As regards directive No. 2, South Central Railway may file an appeal before the appropriate judicial forum.

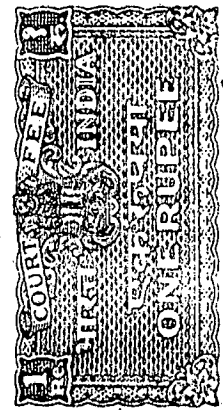
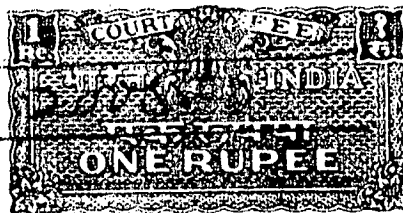
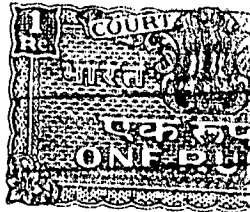
The dead line prescribed by the Hon'ble court for the implementation of the directives is over. Hence, immediate action is requested in this matter.

This issues with the approval of the Finance Directorate of this Ministry.

(C. Thanotharan)
Joint Director/RPF
Railway Board

Copy to the Chief Security Commissioners/RPF/All Zonal Railways and the Chief Security Commissioner/RPSF. They are advised to take immediate action to implement the Court's order as mentioned above.





Date of application for the copy.	Date fixed for notifying the number of stamps and folios.	Date of Delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
11. 7. 2005	12. 7. 05	12. 7. 05	13. 07. 2005	13. 07. 05

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
GUWAHATIASSAM.

Present :- Shri H.A.Hazarika,
Presiding Officer,
CGIT-Cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between :-

The General Manager(P), N.F.Railway, Guwahati.

- vs -

Their Workmen rep. by the General Secretary, Rail Mazdoor Union, N.F.Railway, 27/B, Rest Camp, Pandu.

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

REFERENCE CASE NO. 9 OF 2004.

Date of Award:- 14.03.05.

- A W A R D -

1. The Govt. of India, Ministry of Labour, New Delhi vide its Notification No.L-41011/27/2002 -IR(B-1) dated 10.12.02. referred this Industrial dispute arose between the Management of N.F.Railway and the workman Sri T.K. Baishya and Abul Naser for adjudication and to pass an Award by exercising power conferred under Clause-D of Sub-Sec.(1) and Sub-Sec.(2-A) of Section 10 of the I.D.Act, 1947 on the basis of the following Schedule.

SCHEDULE.

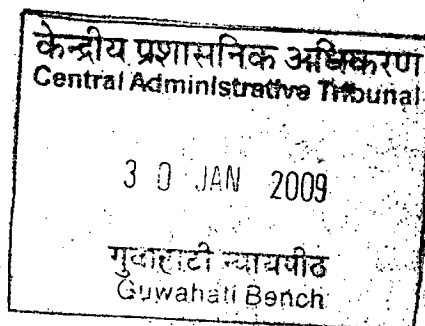
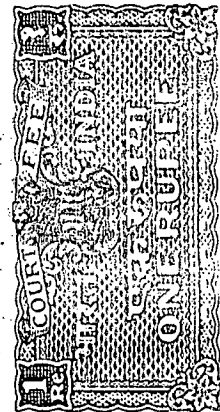
"Whether the action of the Management of N.F. Railway in not granting the Group-C post/category to Shri Tapan Kr. Baishya and Abul Naser at the time of absorption to another Deptt. As surplus staff w.e.f. February 1998 is justified? If not, what relief Shri Tapan Kr. Baishya and Abul Naser are entitled to?"



Certified to be true copy

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Advocate

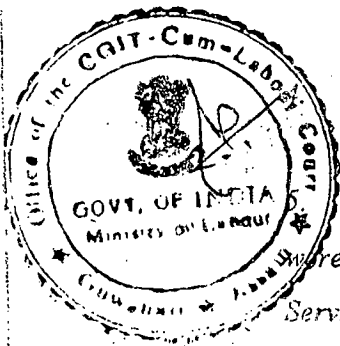


- 2 -

2. On receipt of referred matter the State Industrial Tribunal, Guwahati issued notice to both the parties. Having receipt the Notice both the parties appeared before the State Tribunal.

3. It is pertinent to note here that after establishment of CGIT-Cum-Labour Court for North East Region at Guwahati, record of proceeding is received by the CGIT-Cum-Labour Court at Guwahati.

Meanwhile both the parties have submitted their written Statement, etc.

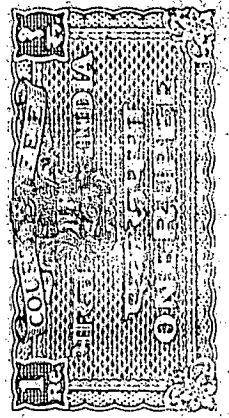


The Case of the Workmen briefly from their Written Statement is that they were appointed in Group-D category post in N.F.Railway's Security Department of Fire Service Wing in the year 1998 with all the benefits till their transfer in the Accounts Department on being rendered surplus due to freezing of the Fire Services Wing and at this stage their actual status was of Group-C Category. According to Board's revised policy and list of Group-C staff surplus was not available to them because of the non publishing of list by Management. As per Railway Board's policy relating to redeployment importance should be given to senior staff for absorption in the same pay and Scale Comparison to their junior staff. But in case of the workmen the Management has done whimsically violating the Railway Board's categorical instruction. They were Group-C employees enjoying the Scale of 4th as well as 5th Pay Commission but they were absorbed in Group-D category though their status was upgraded to Group-C and Scale with effect from 1.1.96. Both the workmen were working in the Fire Service Wing at Pandu and Guwahati respectively and those bases were closed in the year 1995. When an establishment is closed there ought to have been modality of redeployment. The Management has not complied of modality as a result of that they had to apply for their redeployment in the Accounts Department in Group-D post.

6. That for closure or freezing of particular Section of service the permanent employees are not responsible but Management is responsible.

7. That the Management did not try to settle all the claims of the workmen. Even before the Labour Commissioner the Management did not try to settle it.

Contd.....p/3.



केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

- 3 -

8. That the inaction of the Railway Management has violated the principle of Natural Justice.

9. Hence, the workmen prayed to pass award to give them benefit of status of Group-C category with full protection of seniority and Pay and Allowances.

10. The case of the Management in brief is that the claim of the workmen is not maintainable in law.

11. That this Tribunal has got no jurisdiction to adjudicate the referred matter as it ought to have been before the Hon'ble Central Administrative Tribunal u/s 14(A) of the CAT's Act 1985.

12. That the Workmen namely Sri Tapan Kr. Baishya and Abul Naser applied to absorb them respectively in Group- D category Post and Junior Clerk in the Accounts Department in Maligaon.

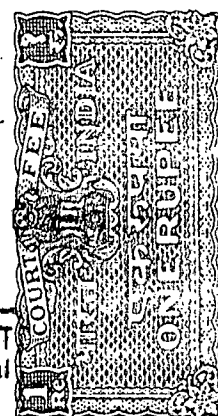
13. That the applications of the workmen were accepted by the Competent Authority for absorption in Scale of Rs.2550-3200/- for the Post of Peon vide Office order No. G/454 dated 13.5.1999 and G/459 dated 13/14.5.98 with certain terms and conditions such as :-

- i) That their seniority will be assigned.....
- ii) They can not seek retransfer to their parent.....
- iii) Their lien will be maintained in their parent.....
- iv) Their option to seek transfer as Peon in scale
- v) No T.A. D.A. Transfer grant.....
- vi) Their Pay will be fixed as per extant Rules
- vii) They can not seek transfer within one and

14. That the above terms and conditions are accepted by the Workmen and there is no scope to reopen the matter as such Management prayed to dismiss the claim of the Workmen.

Contd.....p/4.





केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्याय-पीठ
Guwahati Bench

-4-

15. The workman Abul Naser appeared as WW.1 and Tapan Kr. Baishya appeared as W.W.2. Both of them are cross examined by the learned Advocate Mr. S.N.Choudhury, for the Management.

16. Both the Workmen deposed that at the time of their transfer to Accounts Section they were working in Group-C Category having Scale of 4th and 5th Pay Commission.

17. That they were told by the Management that Fire Wing will be abolished and to apply elsewhere as on abolition they will be surplus. Finding no other alternative they were compelled to apply in Group-D category but no surplus list was shown by the Management.

That their names are apparent in the seniority list.

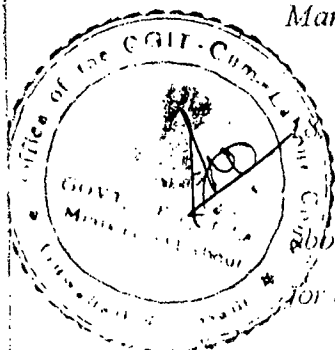
In cross-examination WW.1 deposed that he has not received any letter about abolition of Fire Wing of RPF. That in his application he has not mentioned that for being surplus in Fire Wing RPF, he had to apply for the Post of Junior Clerk.

So also in cross-examination WW.2 deposed as regards the surplus, he was getting information from his office, but he has not received any written notices. He knows 6 workers Junior to him were absorbed in Category-C which he objected. They denied in their deposition that Management has not committed any injustice to them by giving them Group-D Post.

19. Heard the argument submitted by learned Advocate Mr. K.K.Biswas for the Workmen and Mr. S.N.Choudhury for the Management. Perused the evidence recorded by me and all other documents in the record.

20. The Workmen claimed that they were enjoying the benefits of Scale etc. of Group-C of 4th and 5th Pay Commission prior to their absorption in Category-D in Accounts Department. Afraid of the abolition of RPF Fire Wing and to be defuncted they complied the direction of the Management and under compelled circumstances they applied to get absorption in Accounts Department. Accordingly under compelled circumstances they joined.

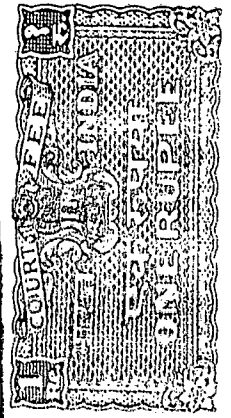
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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench



-5-

21. The Management denied the ground agitated by the Workmen that due to abolishment and being surplusd they were absorbed in the Accounts Department.

22. On perusal of evidence of solitary Management Witness I find the MW is evasived about the abolition of Railway Fire Wing and about surplus. The MW is also evasive about the exact status of Workman at the stage of absorption from RPF Security to accounts department. Categorically the MW could not say that there was no question of abolishment, surplus and that they were not the workmen under Group-C category.

23. What I find both the workmen were enjoying the benefits of Pay and Status of the Category-C at the time of their absorption in Accounts department. Admittedly they were absorbed in Category-D in Accounts Department.

24. I find there was question of abolition of RPF Fire Wing and to be surplusd. Being afraid to be surplusd due to abolition of RPF Fire Wing the workmen joined in the Category D of the Accounts Department. Hence, the ground forwarded by the workmen about compelled circumstances has got force because no workman will select to be defuncted at the stage while they are earning their monthly salaries. On the other hand it is to be seen that no workman who is enjoying benefit of Pay of 4th and 5th Pay Commission will choose to come to join in Category of Law salary. So the ground of compelled circumstances is quite natural. During these sky high price rising days no workman will prefer to join in law salary leaving the high salary.

25. They ought to have been modality for abolition of a Wing for redeployment, I find no such procedure is followed by the Management. So also there is no list of surplus. The workmen claimed that 6 persons junior to them were promoted to Group-C. The answer of the MW in this connection is also evasived. So what I find the claim of the workmen has got legal force that they are deprived from legitimate entitlement. As per the MW there is presently no existence of vacancy in Group-C. What I find workmen are in continuous service in the N.F.Railway Management, Maligaon. For ends of Natural Justice, the Management can not deny the legitimate claim of the workmen in present circumstances of the case. It is the responsibility of the Management

Contd.....p/6.





to give proper justice for the welfare of the workmen by way of promotion. I find both the workmen are entitled to get the promotion to Category-C. The Management is to arrange for their promotion. Accordingly this Schedule (Issue) is decided in favour of the workmen. Prepare the Award and transmit it to the Government urgently as per procedure.

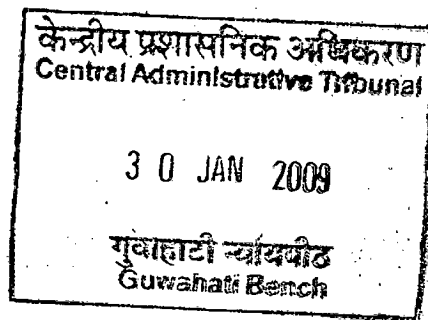
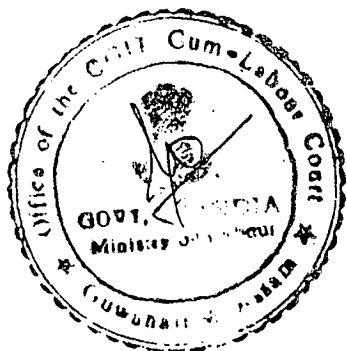
Copied by : *Maiti*
13/7/05

Compared by : *S13/7/05*

Sd/- H.A. Hazarika, 14.3.05.
Presiding Officer,
CGIT-Cum-Labour Court, Guwahati.

Certified to be true copy:

Bhupen Sarma
13/7/05.
Secretary,
CGIT-Cum-Labour Court
Guwahati.





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ANNEXURE- 8

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

Dated. 28/07/2006.

Office Order No.G/ 024 (06-07)

In compliance to the order of Hon'ble Central Govt. Industrial Tribunal-cum-Labour Court dt. 13.07.05 in Case No.4(C)/03(9/04 New) forwarded by GM (P)/MLG vide No.E/170/LC/819/2000 dt. 2/6-9-2005, the following 2(two) Group-D staff (Peon) in scale Rs.2550-3200/- is promoted to Group-C Accounts Clerk in scale Rs.3050-4590/- w.e.f. 13.07.05 (Date of verdict) and posted where they are working at present.

1. Shri Tapan Baishya, Peon/EGA
2. Shri Abul Naser, Peon/EN Suspense

This issues with the approval of FA & CAO

(S.Bose)
Sr.AFA/AD

For FA & Chief Accounts Officer
N.F.Railway/Maligaon

Dated. 28/07/2006.

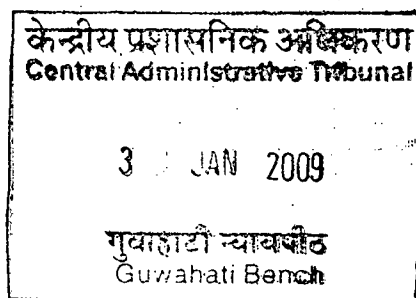
No.PNO/AD/80496/ Pt.-XI

Copy forwarded for information & necessary action to:-

1. GM(P)/LC/MLG
2. Sr.AFA/EGA & ENGA (2 copies)
3. Sr.AFA/AD/Cadre
4. AFA/CPB (2 copies)
5. AFA/PF & PN
6. Staff concerned through Branch Officer

(S.Bose)
Sr.AFA/AD

For FA & Chief Accounts Office
N.F.Railway/Maligaon



Certified to be true Copy

Advocate

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

To
FA&Chief A/cs Officer
NF Railway/Maligaon

(Through Proper Channel)

Sub: - Payment Of Arrear in scale Rs.3050-4590/- w.e.f. 10-06-1998.

Sir,

I beg to state that in compliance to the order of Hon'ble Central Govt. Industrial Tribunal cum Labour Court/Guwahati dt. 13-07-2005 in case no. 4(C)/03 (9/4 New) forwarded by GM (P)/MLG vide No. E/170/LC/819/2000 dt. 26-09-2005, I have been promoted to Group 'C' as Accounts Clerk in scale Rs.3050-4590/- vide office order no G/024(06-07) dated-28.07.2006. Accordingly I have joined as Accounts Clerk on 28-07-2006, I have been given the scale 3050-4590 w.e.f.13.07.2005 (date of verdict).

Before joining the Accounts Deptt. I was posted in the Security Deptt. as RPF/Fireman/Constable in scale Rs.3050-4590/- and my basic pay was Rs.3425/-. I was transferred to Accounts Deptt. on 10-06-1998 and I joined the same on 10-06-1998 where my pay was fixed at Rs.3200/- in scale Rs.2550-3200/-. Now, after the Court's verdict the scale Rs.3050-4590/- has been offered to me and in the office order no. G/024(06-07) dt. 28-07-2006 it is mentioned that I have been promoted to Group 'C' as Accounts Clerk in scale Rs.3050-4590/-. The question of promotion to this scale Rs.3050-4590/- does not come as I was originally in the existing scale Rs.3050-4590/- and without implication of mind the administration decided to reduce the scale to Rs.2550-3200/- whereas my existing scale was Rs.3050-4590/- and compelled me to accept this scale. Under the circumstances prevailed at that time I had to accept that scale at that moment, but I represented the matter immediately to the administration. The administration did not hear my claim and I had to take shelter from the hon'ble Court. Hon'ble Labour Court ordered in my favour and directed the administration to offer me the scale of Rs.3050-4590/- vide aforesaid case no. dt. 26-09-2005.

Hence, I should be offered my existing scale when I was in the Security Deptt. w.e.f. 10-06-1998. It is pertinent to state that six RPF personnel vide letter no. E/283(M) PON dt. 13-07-1999 was transferred to Mechanical Deptt. as clerks. All those RPF personnel were junior to me and they were transferred in the year 1999. Their pay scales were not reduced also.

I therefore, request your honour to re-fix my basic pay w.e.f. 10-06-1998 in scale 3050-4590/- and all the consequential benefits from 10-06-1998 with arrear may be paid to me immediately.

Thanking You.

Dated:- 05-12-06

Yours faithfully,

Tapan Baishya

(Tapan Baishya)
Accounts Clerk/EGA
NF Rly. /Maligaon

Filed
5/12

Certified to be true

[Signature]

Advocate

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

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

NO.PNO/AD/80/496 (Loose)

Dated 21.08.2007

1. Shri Tapan Baishya, AC/EGA
2. Md. Abul Naser, AC/EN(Susp.)

(Through AFA/EGA & ENGA)


Sub: - Payment of arrear in scale Rs. 3050-4590/- w.e.f. 11.06.1998
As Accounts Clerk.

Ref: - Your appeals dated 05.12.06 and 21.05.2007.

Your appeals under reference have been carefully examined. As per order of the Hon'ble CGIT-cum Labour Court, Guwahati dt. 13.07.05 you have been given the benefit of Accounts Clerk in scale Rs. 3050-4590/- w.e.f. 13.07.2005 vide this Office Order NO.G/024 (06-07) dated 28.7.2006 circulated vide NO.PNO/AD/80/496/PT.XI dated 28.07.2006 with retrospective effect i.e. from the date of Hon'ble CGIT-cum Labour Court order 13.07.2005.

Hence, your appeals for giving you the benefit from the date of your joining in Accounts Department could not be considered.

This issues with the approval of FA & CAO/F & B.


21/8/07

(S. Bose)
Sr. AFA/AD
For FA & Chief Accounts Officer
N.F. Railway/Malligaon.

Certified to be true copy



Advocate

N.E. RAILWAY
OFFICE ORDER

The following RPF personnel who were declared surplus and holding the supernumerary posts applied for their induction in the Mechanical Department on acceptance of bottom seniority are hereby posted against the post mentioned against each. Their seniority etc. will be decided as per rule.

S/No.	Name & Design.	Father's Name	Inducted as
1.	Sri Ajit Kr. Baishya; Fireman/PNO	Sri Ramnarayan Baishya	Clerk
2.	Sri Khushi Lal Oraon, (ST), Fireman/IMG	Sri Parasadi Oraon,	Clerk
3.	Sri Pradip Kr. Deka, Fireman/MLG	Late Bhudam Deka,	Clerk
4.	Sri Dwijen Sarma, F/MAN/MLG	" Sambhu Nath Sarma,	Clerk
	Mr. Abdul Ali, Fireman/PNO	" Ajituddin Ahmed,	Clerk
	Sri Ganesh Ch. Baishya, Fireman/CHY	Late Santu Ram Baishya,	Clerk

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

for General Manager(P)/MLG
Maligaon, Dt. -7-99.

No. E/283/(M)/POH

Copy forwarded for information and necessary action to:

- 1) ASC/Fire/MLG. He is requested to spare and direct them to report of Sr. DME(C&W)/IMG for further posting/duty.
- 2) FA&CAO/MLG
- 3) DIM(P)/IMG
- 4) DAO/MLG
- 5) CWE/MLG
- 6) Sr. DME(C&W)/IMG

for General Manager(P)/MLG

Certified to be : (P)

Advocate

N. F. RAILWAY

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

No. 1/170/Legal Cell/820/2000

Dated: 05.10.2001

To
The Assistant Labour Commissioner,
Bajgarh Road,
Ghandimari, Guwahati.সিনিয়র আফিসার
Industrial Tribunal


2009

Sub: Industrial Disputes arising due to
absorption of surplus staff junior in
the higher scales and status of Mr. Abul Kader
and Tapan Raishya, Peon/PA & GAO.

The above two candidates joined as Peon in
scale Rs. 2550-3200/- (RPS) in PA & GAO's office vide E/3/
E/Pt. VII dated 1.6.98 accepting all terms and conditions
as laid down by the administration on circumstantial
ground while they were surplus staff from higher service
in scale Rs. 3050-4590/- (RPS) they alleged that Constables
of Fire Service holding the same pay scale were absorbed
in Gr. 'C' in Mechanical Department under DRM/LMO. But at
the time of joining in A/cs deptt. directed from ASC they
did not arise the question of absorption of in Gr. 'C' as
or for their pay protection.

In short, the complainants had accepted the terms
and conditions and as such their transfer as Peon to A/cs
deptt. is final and irrevocable. Thus their appeal has no
merit.

Yours faithfully,


(B. Barua)
APO/Legal Cell /MLG
for General Manager (P)

Certified to be



Ld. Officer

24 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH: GUWAHATI

ORIGINAL APPLICATION NO. 07 / 2009

BETWEEN

Sri Tapan Baishya, resident of Railway
Quarter No. 275/A, West Gotanagar,
Maligaon, Guwahati - 781011 in the District
of Kamrup (Metro), Assam.

.... Applicant

-AND-

1. The Union of India represented by
the Secretary, Ministry of Railway, Railway
Board, Railway Bhawan, New Delhi - 1.

2. The General Manager, N.F. Railway,
Maligaon, Guwahati - 781011, Assam

3. The General Manager (Personnel),
N.F. Railway, Maligaon, Guwahati -
781011, Assam.

4. The Financial Advisor & Chief
Accounts Officer, N.F. Railway, Maligaon,
Guwahati - 781011, Assam.

.... Respondents

AFFIDAVIT

I, Sri Tapan Baishya, presently working as Accounts Clerk in the office
of the Financial Advisor and Chief Accounts Officer in the North East Frontier
Railway, aged about 39 years, son of Late Dharmeswar Baishya, residing at

Filed by:- the Applicant/Deposent
through → Bijesh Sharma.
Advocate.

Recd. Gm.
28.
24/2/09.
S.C. Nys.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal 24 FEB 2009 गुवाहाटी न्यायपीठ Guwahati Bench

Railway Quarter No. 275/A, West Gotanagar, Maligaon, the district of Kamrup (Metro), Assam do hereby solemnly affirm and state as follows:

1. That I am the applicant in the above noted case, conversant with the facts and circumstances of the case and as such competent to swear this affidavit.

2. That the deponent begs to state that the present affidavit has been filed for bringing on record developments in the matter subsequent to the filing of the abovementioned Original Application.

3. That the deponent begs to state that he has preferred the abovementioned Original Application before this Hon'ble Tribunal against the arbitrary, illegal, discriminatory and malafide action on the part of the N.F. Railway Authorities in depriving and discriminating against him in absorbing him against a Group-D category post and not against a Group-C category post in the Accounts Department under it on being rendered surplus in his erstwhile department i.e. the Fire Service Wing of the Railway Protection Force; whereas his juniors in the said erstwhile department were absorbed against Group-C category posts.

4. That the deponent begs to state that the abovementioned Original Application was listed for admission hearing before this Hon'ble Tribunal on 11.02.2009 as Item No.6 and the Learned Counsel appearing on behalf of the deponent as well as on behalf of the respondent Railway argued the matter on that day and after hearing the Learned Counsels, this Hon'ble Tribunal was of the view that further hearing would be required in the matter and had posted the matter for admission hearing again on 25.02.2009.

5. That the deponent begs to state that the dispute regarding non-granting of the status of a Group-C employee to the deponent at the time of his absorption in the Accounts Department was referred by the Ministry of Labour, Government of India to the Central Government Industrial Tribunal, Guwahati vide a notification bearing No. L-41011/27/2002-IR (B-I) dated 10.12.2002 for

resolution of the Industrial Dispute between the Management of the N.F. Railway and the applicant/workman and the term of reference was as under;

"Whether the action of the Management of the N.F. Railway in not granting the Group-C post/category to Sri Tapan Kr. Baishya and Abul Naser at the time of absorption to another Deptt. as surplus staff w.e.f. February 1998 is justified? If not, what relief Sri Tapan Kr. Baishya and Abul Naser are entitled to? "

The Hon'ble Central Government Industrial Tribunal, Guwahati decided the dispute vide Reference Case No. 9/2004 and in terms of an award dated 14.03.2005 passed by in the said case, the deponent was promoted as an Accounts Clerk w.e.f. 13.07.2005 vide an order dated 28.07.2006, but he was not extended the benefit of promotion against the said post w.e.f. the date of his absorption against a Group-D category post in the Accounts Department

6. That the deponent begs to state that being aggrieved in not giving effect to the promotion order dated 28.07.2006 w.e.f. the date of his initial entry into the Accounts Department, he preferred a representation dated 05.12.2006 before the Financial Advisor and Chief Accounts Officer praying for granting to him the benefit of promotion with retrospective effect i.e. w.e.f. the date of his initial entry in the Accounts Department, which prayer was rejected vide an order dated 21.08.2007. Therefore the present proceeding was instituted before this Hon'ble Tribunal.

7. That the deponent begs to state that he had on 12.02.2009 preferred an application for Review/re-consideration of the order dated 21.08.2007 rejecting his prayer for retrospective promotion as an Accounts Clerk and the receipt of the said application has been duly acknowledged by the office of the Financial Advisor and Chief Accounts Officer on 13.02.2009.

A copy of the application dated 12.02.2009 along with the forwarding letter is annexed as Annexure-A.

8. That the deponent begs to state that the application dated 12.02.2009 is presently pending consideration before the Reviewing Authority. The fact of preferring the application dated 12.02.2009 being a development occasioning subsequent to filing of the Original Application No.7/2009, this affidavit is being filed to bring the same on record.

The statements made in paragraphs 1 to 8 are within my personal knowledge and those made in paragraphs ~ ~ ~ ~ ~ are based on information received by me, which I believe the same to be true.

Place: Guwahati

Date: 23.02.2009

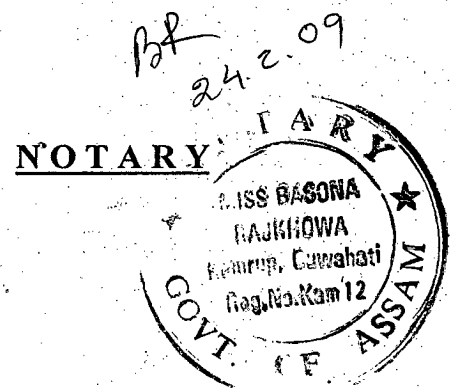
Identified by:

Amar Chetry

Advocate

Tapan Baishya
TAPAN BAISHYA

Solemnly affirmed and declared before me by the deponent who is identified by Sri Amar Chetry, Advocate on this 23rd day of February 2009.



केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

To,

The Financial Advisor & Chief Accounts Officer
N.F. Railway, Maligaon,
Guwahati, Assam.

(W. 2009) 13/2/09

Sub:- An application for Review/ re-consideration of the order dated 21.08.2007.

Enclosed please find herewith a copy of the application for Review/ re-consideration of the order dated 21.08.07.

Kindly acknowledge the receipt of the same.

Thanking you

Yours faithfully

Tapan Baishya

(Tapan Baishya)
Accounts Clerk

Under FA & CAO's office
EGA Section, MLG
dt. 13.02.09

Attested
[Signature]
CB. Sharma
Advocate

To,

Dated : 12.02.2008 2008 प्रशासनिक अधिकरण
Central Administrative Tribunal

The Financial Advisor & Chief Accounts Officer
N.F. Railway, Maligaon,
Guwahati, Assam.

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Guwahati Bench

Ref:- Order bearing No.O.PNO/AD/80/496(Loose) dated 21.08.2007

Sub:- An application for Review/re-consideration of the order passed under reference.

Sir,

With due deference and profound submission, I beg to lay the following few lines for your Honour's kind consideration and necessary action;

That I am a lowly paid employee of the Railway Administration and was initially appointed against a Group-D category post of Fireman (Constable) in the Fire Service Wing of the Railway Protection Force in the Scale of pay of Rs. 825-1200/- per month vide an order dated 28.03.1988.

That while I was continuing in service as a Fireman (Constable) in the Fire Service Wing, in the year 1993 it was decided by the Railway Board to close the said Wing and accordingly instructed the Zonal Railway to declare the staff surplus and accommodate them in the protection force by taking option and such staff who does not opt for redeployment were directed to be deployed in the Executive Branches against identical grades.

That it is a matter of procedure established by policy that when an establishment is closed, the modalities to be followed for appropriate redeployment of the staff are as under:

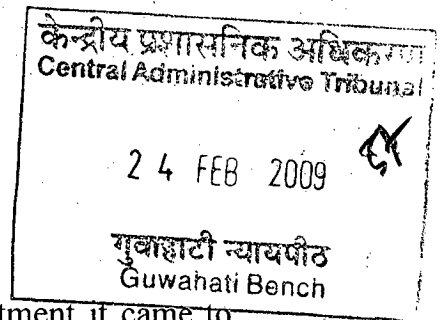
- (a) A list of surplus staff is to be prepared Pay-Scale-Grade-Status wise.
- (b) Possibility of re-deployment in other department or other wings of the same department has to be examined.
- (c) Seniority of the incumbents is to be maintained in the matter of priority for absorption.

Attested
B.
(B. Sharma)
Associate.

(d) The affected staff be kept informed of the exercises carried out by the administration for their re-deployment.

That in terms of the decision of the Railway Board, the N.F. Railway Authorities decided to close the Fire Wing Service of the RPF under them. The said decision had the ramification of rendering me defunct and jobless and aggravating the situation, the procedure prescribed towards declaring the surplus staff for re-deployment was also not finalized. Therefore, on advise of the higher authorities in the RPF and also compelled by the circumstances, I had to apply for my re-deployment in the Accounts Department against a post commensurating to the status and rank attached to the post held by me in the erstwhile Fire Service Wing in the RPF. The application preferred by me was forwarded to the Your Honour vide a letter bearing No. P/ 3/ F/ Pt-VII dated 22.08.97 by the by the Assistant Security Commissioner (Fire), RPF, N.F. Railway which was considered favourably and I was appointed on transfer as a "Peon" in the Accounts Department of the N.F. Railway vide an order bearing No. P/ 3/ F/ Pt-VII dated 01.06.1998.

That my appointment as a Fireman (Constable) in the RPF was initially against a Group - D post but subsequently the pay scale of pay of Fireman (Constable) was revised by the 5th Pay Commission and my status was upgraded to that of Group - C category and was also extended a higher time scale of pay i.e. Rs. 3050/- to 4590/- w.e.f. 01.01.1996, by an Executive Order of the Railway Board issued in the year 1997, the actual implementation of the Railway Board's order was at a later stage. The fact that the revision of scale of pay by the 5th pay Commission had revised my status to that of a Group - C category employee was not officially made known to me or for that matter to any other incumbent receiving similar benefit by the authority concerned and I was in the dark regarding the alleviation of my status to Group - C category. It was only after the absorption on transfer against a Group - D post (peon) in the Accounts Department of the Railways, it came to light regarding my actual status of being a Group - C category employee in the erstwhile department i.e. the Fire Service Wing of the Railway Protection Force.



That immediately after joining in the Accounts Department it came to light that I have been discriminated in the matter of my absorption on being rendered surplus staff inasmuch as my juniors in the erstwhile Fire Service Wing of the RPF and who have also applied for their absorption in the Executive Branches against identical posts commensurating to the rank and status of the posts held by them in the Fire Service Wing have been absorbed against Group-C category posts carrying a higher scale of pay. Consequently I represented for rectifying the anomaly towards absorbing me against a Group-D category post and prayed for my absorption against a Group-C category post with effect from the date of my absorption in the Accounts Department with a further prayer for protection of my scale of pay as extended to me by the recommendations of the 5th pay commission. The said representation did not find favour and my prayer for absorption against a Group-C category post was turned down vide a communication dated 25.11.1999 on the ground that I had accepted all the terms and conditions of my absorption in the Accounts Department.

That on rejection of my prayer vide the communication dated 25.11.1999, I along with similarly situated employees approached the Railway Mazdoor Union and the Union espoused our cause before the Railway Administration and ultimately an Industrial Dispute was raised before the office of the Assistant Labour Commissioner and conciliation proceeding between the N.F. Railway Management and the Union representing me and other employees having failed, the office of the Assistant Labour Commissioner (Central) Guwahati vide its communication bearing no. 8(63)/2000-G/A dated 02.07.2002 apprised the office of the Secretary, Government of India, Ministry of Labour on the issue. Thereafter, the matter was referred to the Central Government Industrial Tribunal for resolution of the Industrial Dispute between the Management and the workman i.e. myself vide a notification bearing no. L-41011/27/2002-IR(B-I) dated 10.12.2002 and the term of reference before it was as under :

"Whether the action of the Management of N.F. Railway in not granting the Group-C post/category to Sri Tapan Kr. Baishya and Abul Naser at the time of absorption to another Deptt. as surplus staff w.e.f. February

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Guwahati Bench

1998 is justified? If not, what relief Sri Tapan Kr. Baishya and Abul Naser are entitled to?"

That amongst others, it was argued on behalf of me and the other workman before the Hon'ble Industrial Tribunal that my absorption in the Accounts Department against a Group-D category post was in violation of its own policy decision adopted by the Railway Authorities. The Railway Board had vide its communication bearing no. 92/Sec (E) S R-1/1 dated 16.09.1993 circulated the guidelines to be followed while absorbing surplus staff in the Executive Branches. It was categorically made clear therein that the status and scale of pay enjoyed by the surplus staff should be protected at the time of their absorption in the Executive Branches.

That the Railway Board reiterated the above stated aspect of the matter vide another communication bearing No.99/Sec (E) S R 3/17/C C dated 01.12.2000. By the said communication it was further decided to implement the directives passed by the Hon'ble Andhra Pradesh High Court in Writ Petition No. 20664 of 1997 with regard to the absorption of the surplus staff in the Executive Branches. The Hon'ble High Court in the abovementioned Writ Petition had directed the Railway Authorities to review the cases of all the staff members who have been absorbed in the fire service with reference to the seniority which was maintained in the fire branch and to protect the same in the Executive Branches giving the benefits as per clause 2 of the decision taken on 11.01.1993 and to review the promotions given to the juniors ignoring the claims of the seniors and take appropriate steps to promote the seniors on the basis of the seniority which was maintained in the Fire Service Branch. Be it stated here that my juniors in the erstwhile Fire Wing of the RPF who were absorbed in the Executive Branches against Group-C category posts have got further promotion in their respective branches superseding me in service.

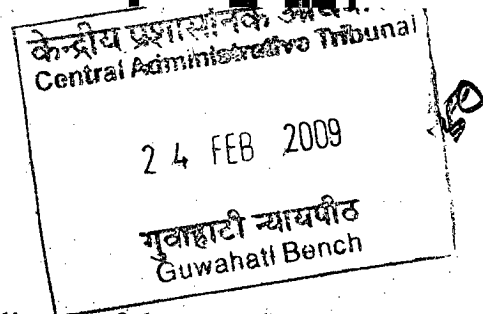
That the Hon'ble Industrial Tribunal decided the reference vide its award dated 14.03.2005 in my favour and held that the non granting of the Group-C category post to me at the time of absorption in the Accounts Department to be bad in law and directed for promoting me to a Group-C category post. The Hon'ble Tribunal while categorically rejecting the stand of

the Railways Authorities that since I had accepted the terms and conditions to join against a Group-D category post at the time of my absorption, I was estopped from raising a claim for absorption against a Group-C category post, held that no workman enjoying benefit of the 4th and 5th pay commission would choose to join against a lower category post. It is categorically stated herein that nowhere in the terms and conditions imposed towards absorbing me disclosed that I was absorbed against a post lower in status to that of the post held by me in the Fire Wing Service and I had never accepted any such condition.

That after the award dated 14.03.2005 was passed by the Industrial Tribunal directing my promotion against a Group-C category post, Your Honour had promoted me as an Accounts Clerk (Group-C) w.e.f. 13.07.2005 vide an order dated 28.07.06, but I was not extended the benefit of absorption against the post of Accounts Clerk w.e.f. the date of my absorption in the Accounts Department, inspite of the fact that vide the term of reference it was held by the Hon'ble Tribunal that the non granting of Group-C category post to me at the time of my absorption in the Accounts Department was not justified and to be bad in law.

It is pertinent to mention here that although the order dated 28.07.2006 states that the order promoting me as an Accounts Clerk was given effect to w.e.f. 13.07.2005 i.e.; the date of passing the award by the Hon'ble Industrial Tribunal, but in fact, the date of passing of the award is 14.03.2005.

That the grievance as regards absorption against a Group-C category post w.e.f. the date of my initial absorption in the Accounts Department and also the fixation of my scale of pay against the post of Accounts Clerk w.e.f. the said date still continued. Therefore, I preferred a representation dated 05.12.2006 praying for extending to him the benefit of the status and the scale of pay attached to the post of Accounts Clerk w.e.f. the date of my absorption in the Accounts Department. The prayer made by me vide the representation dated 05.12.2006 was rejected vide an order bearing no. PNO/AD/80/496 (Loose) dated 21.08.2007 on the purported ground that I was given the benefit



of absorption as Accounts Clerk w.e.f. 13.07.2005 in compliance of the award dated 14.03.2005.

That the fact that my erstwhile juniors in the Fire Service Wing of the RPF were absorbed against Group-C category posts in the Executive Branches under similar facts and circumstances inasmuch as they were also so absorbed on the basis of their applications for absorption against identical posts commensurating to the status of the posts held by them in the erstwhile department was not known to me earlier and very recently the said fact came to my knowledge. The said juniors persons have been further promoted to higher grades consequently superseding me in service, which fact also I could gather very recently. Further, I could also lay my hands on the Railway Board's communication bearing No.99/Sec(E)/SR 3/17/CC dated 01.12.2000, which was not available to me at the time of preferring my earlier representations, the contents of which are in my favour and speaks of review of previous anomalous decisions regarding absorption of incumbents in the Executive Branches and also review of all cases where juniors were promoted ignoring the claims of the seniors and permitting the said juniors to supersede their erstwhile seniors. Therefore my case is required to be reviewed by the Railway Administration in terms of the communication of the Railway Board as abovementioned and the said exercise having not been carried out suo moto by the Railway Administration, I beg to prefer this application to carry out the said exercise and ameliorate my grievances.

That the order dated 21.08.2007 has shattered my hopes and aspirations and lent me in an embarrassing situation of being inferior in rank and status to my erstwhile juniors in the Fire Service Wing of the RPF in addition to affecting my pay and allowance perpetually in comparison to my said juniors. Therefore, I prefer this application for Review/re-consideration of my prayer for granting to me the status and pay of a Group-C category post w.e.f. the date of my absorption in the Accounts Department of the Railway Administration on the following grounds;

GROUND

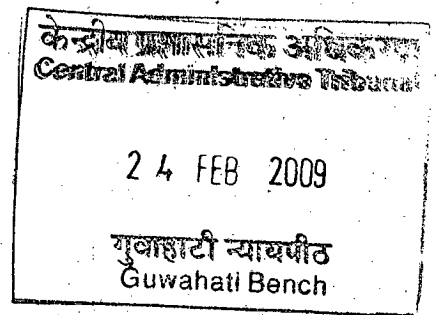
(A) For that the Policy Decision adopted by the Railway Board vide letter No. 92/Sec(E)SR-1/1 dated 16.09.1993, clause 2 of the decision taken on 11.01.1993 and also the provisions of the Railway Board's letter No.99/Sec(E)SR-3/17/CC dated 01.07.2000 clearly mandates the protection of the seniority, status and pay of the staffs of the erstwhile Fire Wing Service of the RPF on their absorption in the Executive Branches.

(B) For that the judgment of the Andhra Pradesh High Court in Writ Petition No.20664 of 1997 clearly mandates the protection of the seniority of the Fire Service Personnel in the Executive Branches and grant of benefit as per clause 2 of the decision dated 11.01.1993 and also to review all case where juniors have been promoted ignoring the claims of the seniors and the Railway Board i.e. the highest authority of the Railway System having decided to implement the said direction, it was the suo moto duty of the N.F. railway Administration to review my case and grant to me the benefits as prayed for.

(C) For that it was not open to the Railway Authorities to absorb me against a Group-D category post without taking clear option from me as to whether I would prefer to join against a post carrying lower status and pay i.e. Group-D category post in view of the abovementioned Policy Decisions adopted by the Railway Board.

(D) For that my absorption in the Accounts Department was by way of transfer and "Transfer" connotes placement from one place of posting to another carrying the same status and pay and hence my absorption against the post of Peon i.e. Group-D category was bad in law as well as in facts.

(E) For that at the time of my absorption in the Accounts Department, I was not aware of alleviation of my status of being a Group-C category employee by the revision of scale of pay effected by the 5th pay commission and being ignorant of my status, I joined against the Group-D category post of Peon in the Accounts Department, but the Railway Administration being a "Model Employer" cannot and is not permitted to take advantage of such ignorance more so, when they were in the knowledge of the fact regarding the alleviation of my status.



(F) For that clear option ought to have been taken from me to deny to me the benefit of absorption against a Group-C category post and absorbing me against a Group-D category post and the said option having not been taken and my absorption against the post of Peon being due to ignorance of facts, the contention that I had accepted the terms and conditions of my absorption in the Accounts Department is untenable and unjustified. Nowhere in the terms and conditions imposed towards absorbing me disclosed that I was absorbed against a post lower in status to that of the post held by me in the Fire Wing Service and I had never accepted any such condition.

(G) For that my juniors in the Fire Service Wing who were absorbed against Group-C category were so absorbed on the basis of the applications preferred by them for their absorption in the Executive Branches against identical posts commensurating to their rank and status and they having been absorbed against Group-C category posts, the Railway Administration could not have absorbed me against a Group-D category post thereby discrimination was meted out to me, which is in clear violation of the mandate of Article 14 and 16 of the Constitution of India.

(H) For that the Hon'ble Industrial Tribunal vide its award dated 14.03.2005 having held that non granting of the status of Group-C category post to me at the time of absorption in the Accounts Department to be bad, I was required to be extended the benefit of the absorption in the Accounts Department w.e.f. the date of my absorption in the said department.

(I) For that the order dated 21.08.2007 rejecting my prayer was not passed on merits of the case and it was passed in a routine manner towards disposal of my representation. It is settled law that in the case of Re-deployment of surplus staff, technical grounds to deprive incumbents of their due benefits should not be over emphasized and the case be solved in its true perspective and the said sentiment found favour in the celebrated judgment of their Lordships' of the CAT/GHY in Sri Durlove Chandra Medhi's case, reported in AISLJ, Vol 53, Pt-III, page 447, 1994.

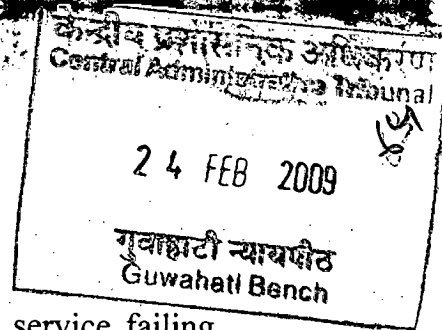
(J) For that the decision towards rejecting my prayers vide the order dated 21.08.2007 being based on erroneous appreciation of the award dated 14.03.2005 inasmuch it was rejected on the purported ground of compliance of the award dated 14.03.2005, renders the order dated 21.08.2007 erroneous on the face of it and infact, the said award when read in the light of the reference that was made to the Hon'ble Tribunal, entitles me to the benefits as claimed for.

(K) For that the Railway Administration ought to have carried out the exercise of suo moto review of the cases of the affected incumbents absorbed in the Executive Branches in terms of the Railway Board's decision dated 01.07.2000 and the order dated 21.08.2007 having been passed without taking into consideration the said decision of the Railway Board, it is required to be reviewed/re-considered in the light of the said decision and other relevant provisions regarding the issue.

(L) For that in any view of the matter the action on the part of the Railway Administration in denying to the me the benefit of absorption in the Accounts Department against a Group-C category post w.e.f. the date of my absorption in the said department and rejection of my prayer vide the order dated 21.08.2007 is unsustainable in the eye of law.

The above narrated position of facts and circumstances, if and when considered and examined can materially alter the consequence of the order dated 21.08.2007 in my favour and there is every possibility that Your Honour may accede to the prayers made by me in this application redressing my genuine and bonafide grievance.

In view of the above, it is humble and most respectfully prayed that Your Honour would consider the contentions raised by me in this application and on consideration of the matter in its entirety would be pleased to grant to me the status and pay of a Group-C category employee w.e.f. the date of my absorption in the Accounts Department as a "Peon" and also to extend to me the benefit of promotion to the grade to which my erstwhile juniors in the Fire



Wing Service have been further promoted superceding me in service failing which, I stand to suffer irreparable loss and injury.

I hope and trust that this application of mine would receive a kind and sympathetic consideration from Your Honour and should Your Honour be pleased to accede to my prayer made herein above, I shall ever remain indebted in gratitude and obliged. I categorically and sincerely undertake that I shall honestly and diligently continue to discharge the duties and responsibilities entrusted to me as before and there shall be no occasion for Your Honour to be displeased with my demeanor at any point of time.

Thanking you,

Yours faithfully

(Tapan Baishya)
Accounts Clerk