

30/10/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A.No.

41/95-

Misc.Petn.

C.P. No.

R.Appl:

.....Sri. Dinesh Ch. Rava.....APPLICANT'S
frs.

.....Union of India..... RESPONDENT'S

.....Mr. M. K. Chanchal.....FOR THE APPLICANTS

.....Mr. B. K. Baishya.....

.....Mr. S. Samanta.....

.....Mr. A. K. Chanchal.....FOR THE RESPONDENTS
Adv. Close

OFFICE NOTE ----- DATE ----- ORDER -----

21.3.95 Mr. B.K.Baishya for the applicant.

This application is in the form and within the C. F. of Rs. 50/- deposited vide IPO/BD No. 803882719 Dated 1-1-95

Ru-20/3
✓ C. Regd.
Par

The order of ad-hoc promotion of the applicant dated 2.2.82 Annexure 2 shows that it was passed under rule 9 of the CCS (CC & A) rules 1965, The impugned order of reversion dated 22.2.95 does not state any reason for which the reversion has been ordered. It cannot therefore be assumed at this stage that it was by way of penalty. When treated as simplicitor we are of the view that the remedy of the applicant in the first instance was to prefer an appeal against the impugned order to the appellate authority under rule 23 (v)(b) of the aforesaid CCS rules. The applicant has not exhausted that remedy. Hence the application cannot be admitted, having regard to Section 20 of the Administrative Tribunals Act. The applicant has merely stated in paragraph 6 of the application that he has no other alternative and efficacious remedy other than approaching this Tribunal. That statement is not

f

OFFICE NOTE

Date

COURT'S ORDER

21.3.95

correct for the aforesaid reason. Hence we leave it open to the applicant to file an appeal to the appellate authority if so advised. We also give him liberty to apply for interim stay of the operation of the impugned order in the said appeal. Applicant will be at liberty to approach the Tribunal if his appeal is rejected. Subject to the liberty given to file an appeal as above the application is summarily rejected.

26.4.95
copy of order dtd. 21.3.95
issued to all concerned
by Regd. Post ride Dpho,
1810 - 1813 dtd. 1.5.95.



Mr. A.K. Choudhury, Addl. C.G.S.C. seeks to appear but says that he has not so far received any instructions from the respondents. The same is noted. Mr. Choudhury is requested to file his memo of appearance.



Member



Vice-Chairman

trd



27/3

OFFICE NOTE

Date

CLINT'S ORDER

(63) 20 MAR 1995

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH

Guwahati Bench

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

Title of the case : O.A. No. 41 of 1995

Shri Dinesh Chandra Rava ... Applicant

- Versus -

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

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For use in Tribunal's office :

Date of filing :
Registration No. :

REGISTRAR

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

O.A. No. 41 of 1995

BETWEEN

Shri Dinesh Chandra Rava,
Presently working as SIPO (Mech)
Small Industries Promotion Officer (Mech.),
Small Industries Service Institute,
Bamunimaidan, Guwahati.

... Applicant

AND

1. The Union of India,
represented by the Secretary,
Ministry of Industries,
New Delhi-110 011.
2. The Development Commissioner,
Small Scale Industries,
Nirman Bhawan, New Delhi-110 011.
3. The Director,
Small ~~Sex~~ Industries Service Institute,
Guwahati- 21.

... Respondents

DETAILS OF APPLICATION

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

The application is made against the order No. A. 120 25/9/81-A(NG) dated 22.2.95 issued by the Development Commissioner, Small Scale Industries purportedly reverting the applicant from the grade of Small Industries Promotion Officer (Mech.) to the grade of Investigator (Mech.) after holding the promotional post for more than 12 years.

2. JURISDICTION OF THE TRIBUNAL :

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

Filed day - M. K. Choudhury
Advocate

3. LIMITATION :

The applicant further declares that the subject matter of the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and therefore, he is entitled to all the rights and protections guaranteed under the Constitution of India. The petitioner belongs to the Scheduled Tribe community and therefore, he is entitled to certain special privileges laid down by the Constitution of India and the laws framed thereunder.

A copy of the certificate certifying that the applicant is a member of the Scheduled Caste Community is annexed herewith as ANNEXURE-1.

4.2 That the applicant is presently working as Small Industries Promotion Officer (Mech.) (hereinafter referred to as the SIPO (Mech.) in the Small Industries Service Institute. The applicant entered into the services of the respondents way back in 1962. He was promoted as Helper and worked at Small Industries Service Institute (SISI), Guwahati in the workshop. He was, thereafter, promoted to the post of Mistri/Demonstrator in the Mobile Demonstration Van (Carpentry), with effect from 14.9.64 and worked as such till 2.3.65 and was attached to SISI, Guwahati. Subsequently, he was posted as Machine Operator in the SISI, Extension Centre, Jorhat and served as such up to

September 1970. He was transferred from SISI, Extension Centre, Jorhat to SISI, Guwahati in the same post in September 1990 and served continuously in the SISI, Guwahati in the same rank upto 7.5.74. He was promoted to the post of Investigator (Mech.) on being selected in a departmental examination. The present scale of pay in the grade of Investigator is Rs.1400 - 2300/-.

During his service career as aforesaid, the applicant was imparted technical training. Thereafter by an order dated 2.8.82, the applicant was promoted to the grade of SIPO (Mech.). The present scale of pay of the grade of SIPO is Rs.1640-2900/-. His promotion to the grade of SIPO was pursuant to a departmental selection.

A copy of the order of promotion dated 2.8.82 is annexed herewith as ANNEXURE-2.

4.3 That the applicant states that eversince he joined the promotional post of SIPO, he has been rendering his services to the satisfaction of all concerned. As stated above the present pay scale of SIPO is Rs.1640-2900/- and the present pay of the applicant in the said scale is Rs.2480/-, and his next increment is due in April 1995.

4.4 That after rendering sincere and devoted service in the promotion^{al} post of SIPO, it is the legitimate expectation of the applicant that his services would be regularised. However, no formal order of regularisation was issued ; but since the services of the applicant in the grade of SIPO continued, the applicant genuinely believed that his services in the grade of SIPO was deemed

to be regularised by the respondents.

4.5 That the applicant states that his promotion to the grade of SIPO was on the basis of his training, experience and clean service record. It is pertinent to mention here that one Shri M.C. Das who claimed to be senior to the applicant in the grade of Investigator and was not promoted as SIPO made a ~~px~~ representation making a grievance against alleged supersession. On such representation, it was replied by the respondents that since the service record of the applicant was clean the applicant was promoted and the said Shri M.C. Das was not promoted as SIPO.

A copy of the aforesaid communication dated 3.12.89 is annexed herewith as ANNEXURE-3.

4.6 That the applicant states that from the aforesaid factual position it is clear that he was promoted on the basis of his merit and efficiency and after having rendered service for more than 12 years in the promotional grade, he was expecting that his service has already been regularised by the respondents. But as against the aforesaid expectation of the applicant he was surprised to find that by letter dated 22.2.95 issued by the respondent No. 2, the applicant has been sought to be reverted from the grade of SIPO to the grade of Investigator.

A copy of the aforesaid order dated 22.2.95 is annexed herewith as ANNEXURE-4.

4.7 That the applicant states that although by order dated 2.8.82 (Annexure-2), 5 persons were promoted to the grade of SIPO, the applicant has come to learn that the services of the Shri A.R. Das, who was also promoted by the same order dated 2.8.82 has been regularised way back by order dated 9.8.88. The applicant has also learnt that the services of Shri S.C. Sarma ~~xxx~~ whose name also appears in the same promotional order dated 2.8.82 has also been regularised in the mean time. Out of other persons who were promoted as SIPO alongwith the applicant Shri P.P.M. Shastri has already been transferred out from Assam and the applicant has no ^{whether} knowledge as to his service has been regularised in the grade of SIPO or not. Shri J.K. Das who was also promoted with the applicant has expired some 4/5 years back. However, for reasons not known to the applicant the services of the applicant in the grade of SIPO was not regularised and thus he has been meted out with differential treatment.

A copy of the order dated 9.8.88 ~~and~~ regularising the services of Shri A.R. Das is annexed herewith as ANNEXURE-5.

4.8 That the applicant states that although earlier the posts of SIPO were filled up by promotion through selection ~~is~~ from the grade of Investigator, in recent years, the vacancies of SIPO are filled up 75% through direct recruitment and 25% by promotion. However, the applicant begs to state that of late there has been no direct recruitment and therefore, purported reversion

is not to accommodate any directly selected candidate. The applicant further begs to state that in SISI, Guwahati itself in addition to the post the applicant is holding at present there is another post of SIPO (Mech.) which is lying vacant since long. Therefore, there is no impediment to allow the applicant to continue as SIPO. Further in spite of the aforesaid order of reversion dated 22.2.95 the applicant is allowed to continue with the same assignment in the same place of work. The applicant is continuing to perform the same nature of duties and the only effect of the impugned order of reversion will be to put the applicant in a lower scale of pay.

4.9 That the applicant states that after having served for more than 12 years in the promotional post, a valuable legal right has accrued in favour of the applicant to hold the said post and his reversion in the aforesaid post, is, in fact, ~~xxxxxx~~ reduction in rank within the meaning of Article 311 of the Constitution of India and hence cannot be resorted to by the respondents in violation of the procedural safeguard of Article 311.

4.10 That the applicant states that ~~xxxx~~ other persons been promoted with the applicant having/regularised in the promotional grade, the respondents ought to have regularised the services of the applicant in the promotional grade and having not done so, the respondents have meted out the applicant with differential treatment which is violative of Articles 14 and 16 of the Constitution of India.

4.11 That the applicant states that the ~~Order of the Court~~

the annexure-4 letter has not been given effect to inasmuch as the applicant has not been released from the post of SIPO and no person as yet has been appointed to hold the post of SIPO in place of the applicant. Therefore, there is no impediment to allow the applicant to continue as SIPO till disposal of the application.

4.12 That the applicant states that he has made a *prima facie* case of arbitrariness, absence of fair play in administrative action and colourable exercise of power, the balance of convenience also lies heavily in favour of the applicant and a vested right has accrued in favour of the applicant to hold the promotional post after continuing for more than 12 years. The applicant would also suffer irreparable loss and injury if the impugned order at Annexure-4 is not stayed. The instant case as such, is a fit one wherein this Hon'ble Tribunal may be pleased to stay the operation of the Annexure-4 order and thereby extend protective hands over the applicant.

5. GROUND FOR RELIEFS WITH LEGAL PROVISIONS :

5.1 For that the impugned order dated 22.2.95 purportedly reverting the applicant is violative of provisions contained in Article 14 and 16 of the Constitution of India.

5.2 For that the impugned order of reversion visits the applicant with penal consequence. It amounts to reduction in rank within the meaning of Article 311 of the

Constitution of India. The impugned order cannot stand the test of judicial scrutiny and liable to be set aside being violative of Article 311.

5.3 For that the applicant has served for more than 12 years in the grade of SIPO and he has thus acquired a valuable legal right to hold the said post and cannot be reverted from the same in a manner as has been sought to be done by the respondents.

5.4 For that the ~~respondents~~ the applicant having served for such a long period without any ~~any~~ blemish, his services in the promotional grade ought to be deemed to be regularised.

5.5 For that the respondents are duty bound to consider the case of the applicant for regularisation and the applicant cannot be reverted without such opportunity of consideration.

5.6 For that there being vacancies and there being no suitable person available there cannot be any reasonable ground as to why the applicant should be reverted.

5.7 For that when the applicant is allowed to perform the same duties, his reversion is only to deprive him from the financial benefits and at the same time, extracting the same work of promotional post, is nothing but arbitrariness and highhandedness.

5.8 For that the impugned order has been passed in gross violation of the established principles of natural justice and ~~maxim~~ service jurisprudence.

5.9 For that the impugned order is also violative of principles of natural justice and bad in law.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative and efficacious remedy other than approaching this Hon'ble Court.

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

Contd/-2
Mr. B. K. Sharma
Mr. S. A. I. I.
Addl. C. G. S. C.
Mr. G. Sharma
Sr. C. G. S. C.
-do-
-ope-
Mr. S. A. I. I.
Under the facts and circumstances stated above, applicant prays that Your Lordships may be pleased to let this application call for the records of the case after hearing the parties on the cause or causes it may be shown, be pleased to grant the following iefs :

-do-
-do-
-ope-
Mr. G. Sharma
Addl. C. G. S. C.
1) To set aside and quash the impugned order dated 22.2.95 (Annexure-4) ;
2) To direct the respondents to allow the applicant to continue in the promotional post of SIPO (Mech.)

till such time his such promotion is regularised with retrospective effect with all consequential benefits.

- (iii) Cost of the application ;
- (iv) Any other relief or reliefs to which the applicant is entitled under the law and equity.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, the impugned order dated 22.2.95 (Annexure-4) may be suspended with further direction to the respondents to allow the applicant to continue in the present post of SIPO (Mech.) on the basis of his promotion order passed earlier.

10.

The application is filed through Advocate.

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

- (i) I.P.O. No. : 8-03 882719
- (ii) Date : 4.1.95
- (iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

VERIFICATION

I, Shri Dinesh Chandra Rava, aged about 53 years, son of late Kaliram Rava, presently working as Small Industries Promotion Officer, Small Industries Service Institute, Guwahati, do hereby solemnly verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice. I have not suppressed any material fact.

And I sign this verification on this the 20th day of March 1995 at Guwahati.

Sri Dinesh Ch. Rava.

CERTIFICATE TO BE PRODUCED BY SCHEDULED CASTE/SCHEDULED TRIBES CANDIDATES

This is to certify that Shri Dinesh Chandra Rava son of Late Kalia Ram Rava, of village Andherijuli District Kamrup, Division Gauhati in the Assam State belongs to the Tribal community which is recognised as Scheduled Tribe under the Constitution (Scheduled Caste) Order, 1950/the Constitution (Schedule Caste) (Part A State) Order, 1951/the Constitution (Scheduled Tribes (Part C State) Order, 1950.

Shri Dinesh Chandra Rava and/his family ordinarily resides) in the Kamrup District/Division of Assam State.

Sd/-

(SEAL) District Magistrate/Deputy Commissioner/Sub-Divisional Officer, District _____ State _____

• • •

Attested.

M. K. Choudhury
Advocate.

New

① OA.109/89

Mr. G. Sharma
Addl. C.G.S.C.

-do-

-do-

Mr. G. Sharma
Addl. C.G.S.C.

-do-

-do-

Mr. S. Ali
Sr. C.G.S.C.

Mr. G. Sharma
Addl. C.G.S.C.

Mr. S. Ali
Sr. C.G.S.C.

Mr. B. K. Sharma

Contd/-2

No. A 120 25/9/81-A(NG)
Government of India
Ministry of Industry
Office of the Development Commissioner
(Small Scale Industries)

Nirmal Bhawan,
New Delhi-110011
Dated 2-2-82.

O R D E R

Subject : Adhoc promotion of Investigators, Metallurgy, Mech. & Chemical trade to the grade of SIPO (Metallurgy, Mechanical & Chem).

In exercise of the powers conferred by Rule 9 of the Central Civil Service (Classification, Control & Appeal) Rules, 1965, the Development Commissioner (Small Scale Industries), is pleased to order the adhoc promotion of the following Investigators to the grade of SIPO w.e.f. the date they join duty at the place of posting mentioned hereunder against each :

<u>Sl.No.</u>	<u>Name</u> <u>S/Shri</u>	<u>Present Place</u> <u>of posting</u>	<u>Place of posting</u> <u>as SIPO</u>
1.	P. Phanindra Sastry Inv(Metallurgy)	SISI, Hyderabad	SISI, Gauhati
2.	Jamini Kumar Das Inv(Mech).	Br.SISI, Dimapur	SISI, Gauhati
3.	Dinesh Chandra Rava Inv.(Mech.)	EC, Jorhat	SISI, Gauhati
4.	A.R. Dass Inv(Mech)	SISI, Gauhati	SISI, Gauhati
5.	S.C. Sharma Inv(Chem.)	SISI, Ludhiana	SISI, Gauhati.

The above promotions are purely on adhoc basis and shall not confer any right on the officers to continue indefinitely in the posts or to claim seniority/confirmation in that grade on the basis of this adhoc arrangement.

Sd/-

(B.P. Singh)
Dy. Director (Admn.)

To

1. The Director, SISI, Hyderabad with spare copy for communication to Shri P. Phanindra Sastry, Inv(Met.)
2. The Director, SISI, Gauhati with spare copies for communication to S/Shri J.K. Das, D.C. Rava & A.R. Dass, Inv.(Mech.).
3. The Director, SISI, Ludhiana with spare copy for communication to Shri S.C. Sharma, Inv(Chem.).

Attested.

M. K. Chawey

Advocate.

- 4.
- 5.
6.

9
OFFICE OF THE DEVELOPMENT COMMISSIONER
(Small Scale Industries)

Ministry of Industries
Nirmal Bhawan, (South) Wing, 7th Floor,
Maulana Azad Road, New Delhi-110011.

No. 22/7/77-A(NG) Dated the 7th Dec 1989.

To

The Director,
Small & Industries Service Institute,
Gauhati.

Sub : Representation of Shri M.C. Das, Investigator (Mech.)
SISI, Gauhati for his promotion to the grade of
SIPO (Mech).

Ref : SISI, Gauhati letter No. A-20014(1) 83 dt. 22.11.89

Sir,

I am to refer to your letter No. A-44014(2)/88-Admn
Vol-IV dated the 5th July 1989 and to say that Shri M.C.
Das, Investigator (Mech) also applied alongwith other
candidates for adhoc promotion to fill up the vacancies
in the North East Region in 1981. Since his service
record was not up to the mark, he was not promoted as
adhoc SIPO (Mech). His junior Shri D.C. Rava who had
got clean service records was promoted as SIPO (Mech)
on ad-hoc basis.

Shri M.C. Das Inv. (Mech) may be informed
accordingly.

Yours faithfully,

Sd/-
(B.P. Singh)
Dy. Director (Admn.)

Attested.

M.K. Chetry
Advocate

No. A.12025/9/81-A(NG)
Ministry of Industries
Office of the Development Commissioner
(Small Scale Industries)

Nirmal Bhawan,
New Delhi
Dated 22-02-95.

O R D E R

Development Commissioner (Small Scale Industries) is pleased to order the reversion of Shri Dinesh Chandra Rava from the grade of SIPO (Mech.) which he is holding on ad-hoc basis to the grade of Investigator (Mech.) with immediate effect.

On his reversion, Shri D.C. Rava is posted to SISI, Guwahati as Investigator (Mech), with immediate effect.

Sd/-
(O.A. SHAKRAVARTY)
DEPUTY DIRECTION (ADMN).

To

1. The Director, SISI, Guwahati with a spare copy to the individual. A copy of Shri Rava's joining report as Investigator (Mech.) may please be sent to this office.
2. I/O SIDC, Calcutta.
3. Vigilance/B $\frac{1}{4}$ CMC Section
4. Personal file.
5. Rectt. Asstt.
6. Estt. Register
7. Shri D.C. Rava,
SIPO(Mech.) of SISI, Ghy.

..

Attested.

M.K. Chatterjee
Advocate

NO. A-32016/1/87-A(NG)
Government of India
Ministry of Industry
Office of the Development Commissioner
(Small Scale Industries)

Nirmal Bhawan,
New Delhi-110011.
Dated the 9th Aug. 1988.

O R D E R

Subject : Promotion of Inv(Mech) to the grade of SIPO(Mech) on regular basis through DPC in the S.I.P.O.

In exercise of the powers conferred by Rule 9 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, the Development Commissioner (Small Scale Industries) is pleased to order the officiating promotion of the following Inv(Mech) to the grade of SIPO (Mech) on regular basis w.e.f. 22.6.1987 :

Sl. No.	Name S/Shri	Present Place of posting	Place of post- ing as SIPO Mech.
1.	Anand Ram Das(SC) adhoc SIPO (Mech)	SISI, Gauhati	SISI, Gauhati
2.	Surinderjit Singh, adhoc SIPO (Mech)	SISI, Ludhiana	SISI, Ludhiana

Sd/-

(B.P. Singh)
Dy. Director (Admn)

To

1. Directo~~ss~~, SISI, Gauhati/Ludhiana with spare copies for concerned officials.
2. P&AO, SIDO, Calcutta/New Delhi
3. Personal file
4. Vigilance sections at Hrs. Office, New Delhi
5. DPC Folder
6. Estt. Register.

Attested.

M.K. Choudhury
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI - 5

O.A. 41/95

Sri Dinesh Chandra Rava ... Applicant
-VS-
Union of India & Ors. ... Respondents

P R E S E N T

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE CHAIRMAN
THE HON'BLE SHRI G. L. SANGLYINE, MEMBER (ADMN.).

For the Applicant ... Mr. M.K. Choudhury,
Mr. B.K. Baishya,
Mr. S. Sarma.

For the Respondents ... Mr. A.K. Choudhury,
Addl. C.G.S.C.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Memo No. :

Date :

Copy for information & necessary action to :

- (1) Sri Dinesh Ch. Rava, S.I.P.O.(Mech.), Small Industries Service Institute, Bamunimaidan, Guwahati.
- (2) The Secretary, Ministry of Industries, Govt. of India, N.Delhi-11.
- (3) The Development Commissioner, Small Scale Industries, Nirman Bhawan, New Delhi - 110 011.
- (4) The Director, Small Industries Service Institute, Guwahati-21.

SECTION OFFICER (J)