

FORM NO. 4
 (SEE RULE 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH

ORDER SHEET

Original Application No. _____

Misc. Petition No. _____

Contempt petition No. _____

Review Application No. 3/05 (OA 246/05)

Applicants. Mr. Asifur Dns & Sons.

Respondents. U.O.I. 2005.

Advocates for the Applicant. MR. M.B.U. Ahmed

Advocates of the Respondents. CGSC

Notes of the Registry	Dated	Order of the Tribunal
This R.A. Dns. been filed under Rule 49 of the C.A.T. Rules and Practice, 1993 read with Section 114(C) of the Code of Civil Procedure for Review. The order dated 18.3.05. 1998. passed in Original Application No. 246/95.	23.03.2005 bb 24.3.05.	post the matter on 24.3.2005. Rajesh Member Vice-Chairman
Laid before Hon'ble Court for order.	12.4.05.	The learned counsel for the applicant has not prepared to make submission regarding the applicability of the limitation Act for condoning the delay in filing the Review application. Hence time is granted. List on 12.4.05. Rajesh Member Vice-Chairman
Section 183-05 Section 101	1m	Post the matter on 6.5.05. Rajesh Member Vice-Chairman

R.A. 3/2005

06.05.2005 Heard the counsel for the parties in part. Post on 13.05.2005.

K. D. B. U. Ahmed
Member

Q. V. Jagannath
Vice-Chairman

(23/5/2005) mb

17.5.2005 At the request of the learned counsel for the parties list it on 7.6.05 for hearing.

K. D. B. U. Ahmed
Member

Q. V. Jagannath
Vice-Chairman

nkm

7.6.2005 Issue notice to the respondents to show cause as to why review application shall not be admitted. Post on 8.7.2005.

K. D. B. U. Ahmed
Member

Q. V. Jagannath
Vice-Chairman

bb

8.7.2005 Mr. M. B. U. Ahmed, learned counsel for the applicant is present. Mr. A. K. Chaudhuri, learned Addl. C. G. S. C. for the respondents submits that some more time is required to file reply. Post on 09.08.2005.

K. D. B. U. Ahmed
Member

Q. V. Jagannath
Vice-Chairman

mb

09.08.2005

Mr. M. B. U. Ahmed, learned counsel for the applicant is present. Mr. A. K. Chaudhuri, learned Addl. C. G. S. C. for the respondents seeks for a weeks time more to file reply. Post on 17.8.2005.

K. D. B. U. Ahmed
Member

Q. V. Jagannath
Vice-Chairman

Notice & Order
Sent to D/ Section
for issuing to
resp. Nos. 1, 2 & 3
by regd. A/D post.

16/6/05

D/No = 939 to 941

DT = 21/6/05

Notice duly

Served on resp.
Nos. 1, 2

6/7/05

7.7.05

Service completed

No cause has been
stated.

No reply has been
brought.

18.8.2005 Mr. A.K. Chaudhri, learned Addl. C.G.S.C. for the respondents submits that show cause reply has already been filed. Mr. M.B.U. Ahmed, learned counsel for the applicant submits that he wants to submit reply. Post on 19.9.2005

23.8.05
Show cause reply
has been submitted by
the respondents 1, 2 & 3.

Q/H

K. Chaudhuri
Member

G. Jaffer
Vice-Chairman

mb

19.9.2005 Mr. M.B.U. Ahmed, learned counsel for the applicant submits that he has filed reply. Mr. A.K. Chaudhri, learned Addl. C.G.S.C. for the respondents submits that this is a Division Bench matter. Post ~~xx~~ in the next Division Bench.

Reply has been
filed.

3/9/05

19.9.05
Reply filed by
the applicant.

mb

7.10.2005 Mr. M.B.U. Ahmed, learned counsel for the applicant is present. Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents submits that a written statement is filed and the applicant have also filed reply.

Post on 24.11.2005.

Q/H

D. M.
Member

G. Jaffer
Vice-Chairman

30.11.05
pleadings completed.

bb

24.11.2005 Post before the next Division Bench.

mb

G. Jaffer
Vice-Chairman

-4-

R.A. 3 OF 2005

2.1.06 At the request of learned counsel for the applicant case is adjourned to 4.1.06.

kgp
Member

E.S.
Vice-Chairman

4.1.2006 List this case on 23.2.2006 alongwith M.P.No.1/2006.

kgp
Member

E.S.
Vice-Chairman

5.1.2006 23.2.06. List this case on 7.3.06 alongwith M.P.No.1/2006.

E.S.
Vice-Chairman

kgp
Member

07.03.06. The counsel for the applicant prays for adjournment. Post the matter before the next available Division Bench.

E.S.
Vice-Chairman

E.S.
Vice-Chairman

22-2-06
Show cause reply
filed on behalf of
M.P. No. 1/2006.

E.S.
Show cause reply filed
has been filed.

E.S.
6-3-06.

04.08.2006 Present: Hon'ble Sri K.V. Sachidanandan,
Vice-Chairman.

Hon'ble Sri Gautam Ray,
Administrative Member.

When the matter came for hearing, it is verified from the records that the learned Judges, who ~~had~~ passed the order, has already retired from service. Therefore, this Bench has no authority to consider the Review Petition; the matter has to be considered by the Principal Bench constituting fresh Bench. Therefore, the Registry is directed to send the proposal to the Principal Bench to constitute appropriate Bench.

R.A 3/05 sent to
D/S. to transmit
to the P.B. New Delhi
NS
6/8/06

Pleadings of the case
is complete.
Hon'ble Vice-Chairman has
complied ~~and~~ ^{with} to
constitute a Bench to
hear of this R.A with
Flag 'A'.

placed for admission
before the P.B.

btd
10-1-07

Member

Vice-Chairman

15.2.07. This Review Application has been filed by the petitioner against the order dated 18.5.1998 which is reproduced as bellow:

"Learned counsel Mr.A.Ahmed appearing on behalf of the applicant submits that the applicant No.2 Shri Jiten Prasad has already been absorbed in the Canteen Stores Department at Narangi as Mukadam. Therefore, he has no grievance. The other applicant No.1 has also since been absorbed in the C.P.W.D. Silchar as Peon. Mr. Ahmed submits that the applicants do not want to press this application. In view of the above the application has become infructuous. Accordingly, this application is dismissed as infructuous."

~~RA, 3 of 2006~~

RA, 3 of 2006

15.3.07

This Review Petition has been filed after 8 (eight) years and this Court has condoned the delay in filing the Review Application. When the matter referred to the Principal Bench, New Delhi, the Principal Bench vide letter dated 15.9.06 has directed for placing the same before the Vice-Chairman/Head of Department of this Bench for constitution of Bench to hear these RAs in terms of Sub-Para 3 & 4 of Para of Rule 49 of Appendix - IV dated 18.02.1992 as and when the Bench is available. To-day Hon'ble Vice-Chairman, (K. V. Sachidanandan) himself and Hon'ble Mr. Tarsem Lal, Administrative Member has constituted the Bench and decided that the matter will be heard on 20.3.07.

Post the matter on 20.3.07.



lm

Member



vice-Chairman

20.03.2007

The Vice-Chairman has constituted the Bench consisting of himself and Hon'ble Administrative Member, Shri Tarsem Lal, for hearing the Review Application in terms of Sub Para 3 & 4 of Para 1 of Rule 49 of Appendix IV dated 18.02.1992. Since the delay condonation petition has already been allowed the R.A. is taken up for hearing by the said Bench for disposal.

Heard Mr M.B.U. Ahmed, learned counsel for the applicant and Mr M.U. Ahmed, earned Addl.C.G.S.C. Hearing concluded. Judgment reserved.

Member

Vice-Chairman

nkm

23.3.2007

Order pronounced in open Court, kept in separate sheets.

The R.A. is dismissed in terms of the order. No costs.

Member

Vice-Chairman

bb

Condoned
ASD CSD
Narenji
24/4/07

13.4.07
Copy of the order
handed over to the
L/Adv. for the
parties
et
Pawar Copy
Mr. R. J. Ds - 27/4/07
26.5.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Review Application No.3 of 2005
(In O.A.No.246/1995)

DATE OF DECISION: 23.03.2007

Shri Arjun Das Applicant(s)

Mr M.B.U. Ahmed Advocate(s) for the
applicant(s)

- Versus -

Union of India & Ors. Opposite Party/Respondents

Mr M.U. Ahmed, Addl. C.G.S.C. Advocate(s) for the
Opposite Party/Respondent(s)

CORAM:

THE HON'BLE SHRI K.V. SACHIDANANDAN, VICE CHAIRMAN
THE HON'BLE SHRI TARSEM LAL, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman

6/4/07

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.3 of 2005
(In O.A.No.246/1995)

Date of Order: This the 23rd day of March 2007

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman

The Hon'ble Shri Tarsem Lal, Administrative Member

Shri Arjun Das,
Ex. Marker, CSD Depot,
RTD, Narengi,
Presently working as Peon in the Office of the
Executive Engineer (E),
Guwahati Electrical Division No.II,
Central Public Works Department,
Guwahati-781015.Applicant

By Advocate Mr M.B.U. Ahmed

- - versus -

1. Union of India, represented by the
General Manager,
Canteen Stores Department,
Ministry of Defence,
"ADELPHI" 119 M.K. Road,
Mumbai-400020.
2. The Deputy General Manager (P&A)
Canteen Stores Depot,
"ADELPHI" 119 M.K. Road,
Mumbai-400020.
3. The Manager
Canteen Stores Depot,
Narengi, P.O. Guwahati-27.
4. The Superintending Engineer (Coordin.)
Kolkata Nijam Palace,
C.P.W.D., Kolkata.
5. The Executive Engineer, C.P.W.D.,
Guwahati Airport, Assam.Opposite Party

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

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ORDER

K.V. SACHIDANANDAN (VICE-CHAIRMAN)

The Review Application has been filed by the Review Applicant under Rule 49 of the Central Administrative Tribunal Rules and Practice, 1993 read with Section 114 (C) of the Code of Civil Procedure for review of the order of the Tribunal dated 18.05.1998 passed in O.A.No.246 of 1995, which is reproduced below:

"Learned counsel Mr A. Ahmed appearing on behalf of the applicant submits that the applicant No.2 Shri Jiten Prasad has already been absorbed in the Canteen Stores Department at Narengi as Mukadam. Therefore, he has no grievance. The other applicant No.1 has also since been absorbed in the C.P.W.D. Silchar as Peon. Mr Ahmed submits that the applicants do not want to press this application. In view of the above the application has become infructuous. Accordingly, this application is dismissed as infructuous."

2. O.A.No.246 of 1995 was filed by the original applicant (Review applicant herein) challenging the applicant's termination and placing him in the surplus cell. The case of the applicant is that right from 1985 the applicant was working in the CSD and his termination in 1995 is not justified and he has to be reinstated. There were two applicants in the O.A. After the pleadings were complete the learned counsel for the applicants in the O.A. submitted that the 2nd applicant, Jiten Prasad has already been absorbed in the CSD at Narengi as Mukadam. The 1st applicant in the O.A., Review applicant herein, has also been absorbed in the CPWD Silchar as Peon and therefore, the applicants did not want to press the O.A. Hence the O.A. was dismissed by order dated 18.05.1998 and the Review Application has been filed after 18.03.2005. However, the delay has been condoned and considered order is being passed.



3. Heard Mr M.B.U. Ahmed, learned counsel for the applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C. The learned counsel for the parties have taken us to the various pleadings and materials placed on record.

4. When the matter came up for hearing the learned counsel for the applicant submitted that the applicant was not aware of the proceedings in the O.A. and though the applicant was absorbed in the CPWD as Peon his junior was reinstated in the CSD which is more beneficial to an employee. The counsel also admitted that the applicant is getting pensionary benefits from the Central Service. The allegation that the 2nd applicant in the O.A. was absorbed in the CSD and got promotion has been stoutly denied by the respondents. Therefore, we are at a loss to understand as to how the applicant has been denied the benefit. On the other hand, the applicant is the gainer by joining in the Central Service with all attending benefits, which a CSD employee is not entitled to. The contention of the applicant that he was denied employment for years and that only in 2005 the applicant came to know about the position of the case also cannot be accepted. The learned counsel for the parties had categorically stated that the applicants did not want to press the O.A. since the benefits have already been granted to them. It appears that after retirement the applicant has filed this Review Application as an experimental measure, which has no legs to stand.

5. We have carefully considered the contentions of the Review Applicant and the materials placed on record. It is a settled law that review is maintainable on an error apparent on the face of



the record or on discovery of new material which even exercise of due diligence could not be procured by the concerned party.

6. The Apex Court in **Meera Bhanja vs. Nirmala Kumari Choudhury**, AIR 1995 SC 455 held that "error apparent on the face of record means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions."

7. In **Ajit Kumar Rath vs. State of Orissa & Ors. 1999 (9) SCC 596** Hon'ble Supreme Court has made the following observations:-

"Power of review available to an Administrative Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person, on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be procured by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of record or for any other sufficient reason. A review cannot be sought merely for a fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. the expression "any other sufficient reason" used in Order 47, Rule 1 means a reason sufficiently analogous to those specified in the rule." page 144 A-4

In Lily Thomas vs. Union of India, 2000 (6) SCC 224 similar observation has been made by the Apex Court.

8. Therefore, in review under Section 22(3)(f) of the Administrative Tribunals Act, 1985 no party is entitled to make a grievance that grounds not argued were not considered. The Tribunal cannot sit in appeal or judgment over the conclusions arrived at in order to substitute a different view. A mistake should be apparent on the face of record and should not involve a long drawn process to find it. Re-examination of the matter is not permissible in law. Review is not an appeal in disguise. It judicially connotes re-examination or reconsideration. This power can be exercised for correction of a mistake but not to substitute a law. Review cannot be sought for fresh hearing or arguments or correction of even an erroneous view taken. An erroneous view in law is subject to further remedy. Even the order sought to be reviewed on admission and after seven years this petition is filed without any valid grounds.

9. From the above we are of the considered view that the Tribunal had considered all aspects of the matter and had passed the order dated 18.05.1998 and there is no error apparent on the face of record. Therefore, we cannot re-examine the order sitting over it as an appellate. We cannot substitute the view already taken which is admitted by the applicant, which is not in the scope of a review. It is borne out from the records that the applicant is in no way prejudiced by the said order.

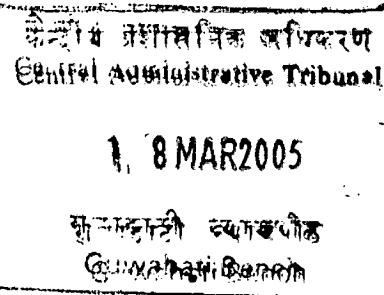
✓

10. In the result, for the foregoing reasons, the Review Application is not maintainable and is liable to be dismissed. Accordingly the Review Application is dismissed. In the circumstances there will be no order as to costs.

Tarsem Lal
(TARSEM LAL)
ADMINISTRATIVE MEMBER

K. V. Sachidanandan
(K. V. SACHIDANANDAN)
VICE-CHAIRMAN

nkm



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH AT GUWAHATI

(An application under Rule 49 of the Central Administrative Tribunal
Rules and Practice, 1993)

IT is ad by the applicant
through Pratim B. Bhowmik
Advocate

REVIEW PETITION NO. 3 OF 2005
In O.A.NO. 246/95

IN THE MATTER OF:

An application filed under Rule 49 of the
Central Administrative Tribunal Rules and
Practice, 1993 read with Section 114 (C) of
the Code of Civil Procedure for review of the
order dated 18.05.1998 passed in Original
Application No.246 of 1995.

-And-

IN THE MATTER OF :

O.A.No.246/95

1. PN 4039 Arjun Das,
Marker, CSD Depot,
RTD, Narengi.
2. PN 4038 Jiten Prasad,
Marker, CSD Depot,
RTD, Narengi.

■ Applicants.

-Versus-

Arjun Das

1. Union of India,
represented by the General Manager,
Canteen Stores Department,
Ministry of defence,
"ADELPHI" 119 M.K.Road,
Mumbai 400 020.

2. The Deputy General Manager
(P&A), Canteen Stores Department,
"ADELPHI" 119 M.K.Road,
Mumbai 400 020.

3. The Manager,
Canteen Stores Department,
Narengi, PO Guwahati-27, Assam.

... Respondents.

-And-

IN THE MATTER OF:

Shri Arjun Das,
Ex.Marker, CSD Depot,
RTD, Narengi,
Presently Working as Peon in the
Office of the Executive Engineer(E),
Guwahati Electrical Division No.II,
Central Public Works Department,
Guwahati 781 015.

... Applicant.

-Versus-

Arjun Das

Contd...

1. Union of India,

represented by the General Manager,

Canteen Stores Department,

Ministry of defence,

"ADELPHI" 119 M.K.Road,

Mumbai 400 020.

2. The Deputy General Manager

(P&A), Canteen Stores Department,

"ADELPHI" 119 M.K.Road,

Mumbai 400 020.

3. The Manager,

Canteen Stores Department,

④ The Suptg. Engr. (Cordon) Narengi, PO Guwahati-27, Assam.

Kolkala Nigam palace
C.W.D, Kolkala.

⑤ The Executive Engr., CPA, Guwahati Airport, Assam.

The humble applicant above-

named,

MOST RESPECTFULLY SHEWETH:

1. The applicant abovenamed along with one Shri Jiten Prasad preferred the O.A.No.246/95 for setting aside the letter No.3/Pers/A-1/1099(Surp)/2580 dated 26.05.95, Order No.3/Pers/A-1/ 1099(Surp)/3175 dated 11.06.95 and Order No.3/Pers/A-1/ 1099(Surp)/3176 dated 11.06.95 issued by the Deputy General Manager (P&A) for declaring the applicant as surplus staff and praying for a direction to continue the applicant till the date of superannuation.

Contd...

Arjun DSS

2. That the applicant states that along with the said O.A.No.246/95 an application for stay was also filed which was registered as Misc Petn No.125 of 1995. Both the Original Application and the Misc Petition were taken up on 12.12.95 whereupon the Hon'ble Tribunal was pleased issue notice on the Original Application, but declined to grant a stay with the following observations:

"Heard Mr.A.Ahmed.No interim stay of the entire scheme as prayed can be granted much less without service upon the respondents. Hence no order of M.P. The question of stay will be open to be considered if the O.A. is admitted after the respondents are served. Misc Petition is disposed of. No order as to costs."

A copy of the aforesaid order dated 12.12.95 passed in Misc Petn No.125/95 is annexed hereto and marked as **ANNEXURE-A**.

3. That the applicant states that during the pendency of the original application, the Respondent No.3 by order dated NGD/EST/71/548 dated 14.03.97 relieved from duties with effect from 15.03.97 with a direction to report to the Executive Engineer, Central Public Works Department, Electrical Division, Silchar on 25.03.97.

Ansawar

Contd... *

A copy of the aforesaid order dated 14.03.97 is annexed hereto and marked as **ANNEXURE-B**.

4. That, the applicant states that pursuant to the aforesaid order, the applicant immediately reported before the Executive Engineer, CPWD, Silchar whereupon the applicant was posted at Agartala and was there till January, 2005. Recently, by an office order dated 31.01.2005 the petitioner has been transferred and relieved from the Silchar Division, CPWD and joined as peon in the office of the Executive Engineer, CPWD, Guwahati.

A copy of the aforesaid order dated 31.01.05 is annexed hereto and marked as **ANNEXURE-C**.

5. That, the applicant states that on his absorption in the CPWD and posting at Agartala in the year 1997, the petitioner while leaving Guwahati had intimated his counsel about his posting and requested to intimate the outcome of the O.A.No.246/97. However, during the intervening period the petitioner had no information regarding disposal of the application. Accordingly, on his return to Guwahati in January, 2005 the petitioner personally went to the Central Administrative Tribunal to know the fate of the original application. On such enquiry, the petitioner could learn that on the basis of submission of the then engaged counsel, the said origi-

Contd...

A. J. D. 2005

nal application was disposed of as infructuous by the Hon'ble Tribunal by an order dated 18.05.98, which reads as under:

" Learned counsel Mr.A.Ahmed, appearing on behalf of the applicant submits that the applicant No.2 Shri Jiten Prasad has already been absorbed in the Canteen Stores Department at Narengi as Mukadam. Therefore, he has no grievance. The other applicant No.1 has also since been absorbed in the C.P.W.D., Silchar as peon. Mr.Ahmed submits that the applicants do not want to press this application. In view of the above, the application has become infructuous. Accordingly, this application is dismissed as infructuous."

A copy of the aforesaid order dated

18.05.98 is annexed hereto and

marked as **ANNEXURE-D.**

6. That, the applicants states that although in the original application the applicants prayed for setting aside the orders by which he was declared as surplus, but in course of time the applicant No.2 namely, Shri Jiten Prasad, who is junior to your petitioner has been retained in the department without considering the case of the petitioner. Accordingly, the grievance of the petitioner in the O.A.No.246/98 was not at all mitigated by the Respondent authorities. However, due to

Contd...

Arjun D/S

misconception the engaged counsel made a submission that application has become infructuous in respect of the applicant No.1 also and the Hon'ble Tribunal accepting the submissions of the said counsel has been pleased to dispose of the application as infructuous.

7. That, the applicant states that on coming to know about the order dated 18.05.98, in the first week of February, 2005 the petitioner immediately consulted the matter and engaged a counsel, who after thorough examination of records opined to prefer this review petition along with an application under Section 5 of the Limitation Act.

8. That, being highly aggrieved the applicant begs to prefer this review application on amongst others the following:

G R O U N D S

A] For that in view of the absorption order dated 14.03.97 the applicant has been discriminated to his junior i.e. applicant No.2, who has been retained in the C.S.D. Therefore, the learned counsel was wrong in his submission that in view of his absorption in the C.P.W.D. the application in so far the applicant No.1 is concerned, also became infructuous.

A. J. S. Doss Contd...

B] For that, the fact that because of the absorption of the applicant in the Central Public Works Department he has been deprived of his promotional avenue available in the CSD being a senior to the applicant No.2, which was not at all pointed out before the Hon'ble Tribunal resulting in dismissal of the application as infructuous.

C] For that, from the post of Marker in CSD the next promotion is Carpenter in a higher scale of pay. However, due to non-consideration of his case for absorption in the CSD the applicant has been deprived of his legitimate promotion and financial benefits to which he was otherwise entitled to be considered over the applicant No.2 Sri Jiten Prasad. The said fact having not been placed and considered at all, for the ends of justice the order dated 18.05.98 is liable to be reviewed by the Hon'ble Tribunal.

D] For that the learned counsel having been properly instructed to press the matter for setting aside the impugned orders and retention of the service of the applicant No.1 in the department, has misconstrued the order of absorption in the CPWD to be the final relief.

Contd...

Ans

and proceeded to submit that the petition has become infructuous and the resultant passing of the order dated 18.05.98 by this Hon'ble Court, which has highly prejudiced the case of the applicant. Therefore, there is no proper adjudication of the matter calling for review of the order dated 18.05.98 in so far as the applicant No.1 is concerned.

E] For that, in the C.P.W.D, which is a Group 'D' post, there is no avenue for promotion to any higher post, whereas in the CSD from the post of Marker the next promotion is Carpenter in the higher scale of pay. That apart, the applicant being senior to the Applicant No.2, the respondent authorities ought to have considered the case of the applicant first for absorption in the parent Department. However, instead of doing so, the respondent authorities retained the applicant No.2 i.e. Jiten Prasad, a junior to your petitioner, in the CSD whereas the applicant has been pushed away to CPWD where he has no scope of promotion. Therefore, the applicant has also been discriminated in the matter of absorption, which was not at all placed before the Hon'ble Tribunal and, as such, for the

Contd...
Agarwal

ends of justice the order dated 18.05.98 insofar as the applicant (applicant No.1) is concerned is liable to be heard afresh and reviewed by this Hon'ble Tribunal.

F] For that, because of his illness and posting at a distant place, had no knowledge of such disposal and therefore has been virtually deprived of getting justice for no fault of his own and as such the order dated 18.05.98 may be reviewed by this Hon'ble Tribunal.

G] For that, the applicant is at the verge of his retirement and because of such misrepresentation of facts, is and will be illegally deprived of the promotional and financial benefits available in the parent Department i.e. CSD. Therefore, for the ends of justice the order dated 18.05.98 passed in O.A. No. 246/95 is liable to be reviewed insofar as the applicant is concerned.

H] For that, admittedly when post of Marker was available under the CSD the Respondent authorities while retaining the services of Sri Jiten Prasad, did not at all considered the seniority and performance of your appli-

Contd...

As per 205

applicant thereby depriving him of his legitimate scope of promotion and better scale of pay.

II For that, in any view of the matter, the order dated 18.05.98 passed in O.A.No.246/95 is liable to be reviewed for the sake of justice and equity.

9. That, this application has been made bona fide and for the ends of justice.

In the premises aforesaid, it is respectfully prayed that your Honour would be pleased to admit this application, call for the records and issue notice on the opposite parties and on cause or causes that may be shown, be pleased to review/ modify the order dated 18.05.98 passed in O.A.No.246/95 in so far as the applicant is concerned and/or pass such further or other orders as this Hon'ble Tribunal may deem fit and proper.

And for this act of kindness, the applicant as in duty bound shall ever pray.

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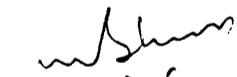
Arjun Ds

A F F I D A V I T

I, Shri Arjun Das, son of late Jagdev
resident of Agara, Guwahati,
Guwahati, do hereby solemnly affirm and declare as
follows:

1. That, I am the applicant No.1 in the present case and am fully conversant with the facts and circumstances of the case.
2. That, the statements made in this affidavit and in the accompanying petition at paragraphs 1, 6, 7, 8, 9 are true to my knowledge, those made in paragraphs 2, 3, 4 and 5 being matters of record of the case are true to my information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

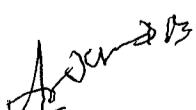
Identified by



Advocate.



Deponent.


Arjun Das

CANTEEN STORES DEPARTMENT

Harangi Depot

Address : 100, 101, 102, 103
 District : Assam
 Telephone : 7340
 Telegram : CANSINDO GUWAHATI
 Telex : 0235, 3450 CSD IN

Assam, Dibrugarh, Assam
 P. O. Salgaon
 Guwahati-781027 (Assam)
 CSD Depot Navangi
 P. O. Salgaon
 Guwahati-781027 (Assam)

Ref. Ref. NGD/EST/71/548

Recd. Date : 14-3-97

PN-4039 Shri Arjun Dass,
 Mankar, CSD Depot, Harangi

RELEAVING ORDER

This has reference to HO CSD Mumbai letter No. 3/Pers/A-1/PN-4039/667 dated 30-1-97 in response to Min. of Labour (DGST) Govt of India Gp 'D' Surplus Coll, New Delhi letter No. 21(p9)/Peon/EE/C/Cal/55 dated 20-1-97.

2. In terms of Min. of Labour letter and our HO CSD Mumbai letter stated above, you are hereby relieved from your duties w.e.f 15-3-97(A/N) with a direction to report to Executive Engineer, Central Public Works Department, Electrical Division, P.O. Silchar, Dist-Cachar (Assam) on 25-3-97.

3. You may draw TA/DA Advances and other allowances from local Accounts Section as per rule.

(P) K. K. K. K. K.
 K. K. K. K. K.

MANAGER
 CANTEEN STORES DEPARTMENT
 (L.K. K. K. K. K.)

cc: HQ(E) : For kind information please.

cc: The AGM (P), HO CSD, Mumbai :- For information please.

cc: The Executive Engineer,
 Central Public Works Department,
 Electrical Division, P.O. Silchar,
 Dist:- Cachar (Assam) :- This has reference to CEWD,
 Calcutta letter No. 21(9)/Peon/SE/(E)/NZ/Cal/55 dtd
 20-1-97 and our Head Office letter No. 3/Pers/A-1/PN-
 4039/647 dated 30-1-97.

The above individual is relieved from his duties on 14-3-97(A/N) with an instructions to report your office on 25-3-97. You are requested to intimate the date of reporting of the individual please.

cc: The Superintendent Engineer, Co-ordination Civil (E),
 Govt of India, Central Public Works Department,
 Calcutta-20 :- For information please.

(Local Accounts Sec):- You are advised to pay the TA/DA Advance and other allowances to the above individual as per rule.

cc: The AAO (Pay Roll) :- For information and necessary action.

ORIGINAL APPLN. NO. 246 OF 1995

TRANSFER APPLN. NO.

OF 1995

CONT EMT APPLN. NO.

OF 1995 (IN

NO.)

REVIEW APPLN. NO.

OF 1995 (IN

NO.)

MISG. PETITION NO.

OF 1995 (IN

NO.)

As per the Application(s)

-vs-

Respondent(s)

For the Applicant(s)

... Mr.

A. Ahmed

Mr.

Mr.

Mr.

Mr.

For the Respondent(s)

S. Ali, Sr. Cash.

OFFICE NOTE

DATE

ORDER

18-5-98

Learned counsel Mr. A. Ahmed appearing on behalf of the applicant submits that the applicant No. 2 Shri Jiten Prasad has already been absorbed in the Canteen Stores Department at Narangi as ^{Mukadam} ~~as~~ ^{Silchar}. Therefore, he has no grievance. The other applicant No. 1 has also since been absorbed in the C.P.W.D. ~~as~~ ^{people}. Mr. Ahmed submits that the applicants do not want to press this application. In view of the above the application has become infructuous and ~~as~~ ^{is} dismissed. Accordingly, this application is dismissed as infructuous.

Sd/ VICE CHAIRMAN

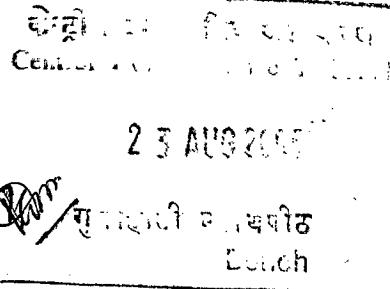
Sd/ MEMBER (A)

certified to be true
সত্যাগ্রহ প্রতিষ্ঠানSection Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati 781005

31/1/05

31.1.05

ESL
JDROKT R1
R. 23



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

In the matter of :-

R.A. No. 3 of 2005

in

O.A. No. 246 of 1995

Arjun Das ... Applicant

-Versus-

Union of India & Ors.

.. Respondent

SHOW CAUSE REPLY ON BEHALF OF THE RESPONDENTS

NOS. 1, 2 & 3.

I, D.S. Sharma, Regional Manager (East) Canteen Stores Department, Narangi, Guwahati, do hereby solemnly affirm and say as follows :-

1. That I am the Regional Manager (East), Canteen Stores Department, Narangi, Guwahati and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. I am authorised to file the ~~written~~ show cause reply on behalf of all the respondents.
2. That the respondents beg to state that the applicant is absorbed in CPWD Silchar way back in 1997 and therefore it is difficult to trace out his record after 8 years.
3. That the respondents beg to state that the case is suffering from laches off as per CAT (procedures) Rule 17(I) as review should have been filed within 30 days, but applicant is agitating the matter after 8 years.

Union of India & Ors
Respondent
Arjun Das
Bench
Through
Arup Kumar Das
Central Govt. Standing Counsel
C. A. T.
Guwahati
17/3/05

4. That the respondents beg to state that no cause of action has arisen in favour of the applicant against respondent.

5. That the respondents beg to state that the applicant was offered alternative employment through surplus cell according to rule and he has accepted the same. Consequently OA No. 246/95 was declared in-fractious and therefore dismissed on the basis of statement made by the counsel of the applicant, that the applicant has been absorbed in CPWD Silchar as Peon.

6. That the respondents beg to state that the applicant is no longer holding a lien with the Respondent and has therefore no right to seek an employment.

7. That the respondents beg to state that if applicant is not promoted in CPWD due to isolated post or any other administrative reasons, the Govt. has a scheme of ACP.

8. That the respondents beg to state that there is a no rule quoted by the applicant in support of his claim.

9. That the respondents beg to state that according to rules an action for redeployment of a surplus employee is completed when he is relieved to join another post.

10. That the respondents beg to state that even if the applicant claim for re-deployment under CCS (Readjustment of redeployed surplus employees) order 1991, he should have applied through his Head of Office within two months from the date of joining of new post in which he has for the time being, been redeployed. Moreover, re-adjusted surplus employee shall have no claim to count his part service towards fixation of seniority in the post in which he is re-adjusted. Therefore, the applicant will not gain in anyway.

11. That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

VERIFICATION

I, D.S. Sharma, presently working as Regional Manager (East), Canteen Stores, Department, Narangi, Guwahati being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs / of the application are true to my knowledge and belief, those made in paragraphs 2- 10 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 5 th day
of Aug, 2005

D.S. Sharma

DEPOVENT
(D. S. SHARMA)
Regional Manager (East)
Canteen Store Department
Govt. of India, Ministry of Defence
Guwahati-781027

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

19 SEP 2005

Guwahati Bench
Guwahati Bench

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Filed by the applicant
through Martin B.G. Alwin
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH,
GUWAHATI

IN THE MATTER OF:

Review Application No.3 of 2005

(in O.A.No.248 of 1995)

Shri Arjun Das ... Applicant

-Versus-

Union of India & Others.

... Respondents.

REPLY FILED BY THE APPLICANT TO THE
SHOW CAUSE FILED BY THE RESPONDENTS.

I, Shri Arjun Das, son of late Jagdev Das, aged about 60 years, resident of Azara, Guwahati, District Kamrup, Assam, do hereby solemnly affirm and state as follows:

1. That, I am the applicant in the present case and am fully conversant with the facts and circumstances of the case. A copy of the show cause reply filed on behalf of the Respondent Nos. 1, 2 and 3 having served upon my counsel, I have gone through the same and understood the contents thereof.

Contd...
Arjun Das

2. That, with regard to the statements made in paragraph 1 of the show cause reply, the deponent has no comment to offer.

3. That, the deponent denies the correctness of the statements made in paragraphs 2 and 3 of the show cause reply and states that the challenge in the O.A.No.248/95 was the order dated 11.06.95 declaring the applicant as surplus staff and prayed for a direction to continue him in the CSD till the date of his superannuation. That apart, during pendency of the original application the applicant was relieved vide order dated 14.08.97 while his junior was retained in the CSD. Therefore, the answering respondent cannot say that it is difficult for them to trace out the record. The Central Administrative Tribunal being creation of statute only vested with certain powers vested on Courts, the provisions of the Indian Limitation Act, 1963 is not applicable in its strict sense and thus the Hon'ble Tribunal in exercise of powers vested on it has rightly condoned the delay in preferring the review application, which the respondents cannot call in question at this stage.

4. That, the deponent denies the statements made in paragraphs 4, 5 and 6 of the show cause reply and states that while retaining the others in the Department, the

Contd...

Ans 100

applicant has been discriminated and shunted to another Department on re-employment resulting in loss of seniority, promotional benefits etc. Further, during pendency of the original application, the deponent was declared surplus by the Respondent authorities and subsequently re-employed in the CPWD and thus the question was to be decided by the parent department and not by the applicant.

5. That, as regards the statements made in paragraphs 7 to 10 of the show cause reply, the deponent states that the Assured Career Progression Scheme for the Central Government Civilian Employees has been introduced vide Govt of India Department of Personnel & Training O.M. No.35034/1/97-Estt(D) dated 09.08.1999. Be it stated that the deponent's case before the Hon'ble Tribunal relates to his claim for absorption in the CSD and the consequential benefits of service. Para 14 of the O.M. dated 09.08.99 provides that in case of an employee declared surplus in an organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme. However, no such benefits have been extended to the deponent by the CPWD and the deponent being oblivious of such scheme of the Government was under the impression that once the

Contd...

✓ *Arjun Ds*

O.A.No.248/95 is decided his seniority, pay and other benefits in the parent department will be restored. Hence, the deponent cannot be blamed for not making such claim within two months from the date of joining in the department. Rather, it is the Respondents, for whose illegal, arbitrary and discriminatory treatment the applicant has been made to suffer pecuniary loss and therefore liable to a direction from this Hon'ble Tribunal by allowing the Original Application No.248/95.

6. That, under the facts and circumstances stated in this reply and in the Review Application, the applicant is entitled to the retrospective effect of the ACP and all such benefits on his retirement from the service.

Verification.....

Contd...

✓ Adm 003

V E R I F I C A T I O N

I, Shri Arjun Das, son of late Jagdev Das, aged about 60 years, resident of Azara, Guwahati, District Kamrup, Assam, do hereby solemnly affirm and state that the statements made in paragraph are true to my knowledge and belief, those made in paragraphs being matter of record are true to my information derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal and that I have not suppressed any material facts.

And, I sign this verification on this 19 day of September, 2005 at Guwahati.

Arjun Das

Deponent.

केन्द्रीय अधिकारी बोर्ड
Central Administrative Board

- 5 JAN 2006

IN THE CENTRAL ADMINISTRATIVE
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF :-

R.A. No. 3 of 2005

In

O.A. No. 246 of 1995

Shri Arjun Das : Applicant

- Versus -

Union of India & Others : Respondents

ADDITIONAL SHOW CAUSE REPLY ON BEHALF OF
RESPONDENT NOS. 1, 2 AND 3.

I, D.S. Sharma, Regional Manager (East) Canteen
Stores Department, Narangi, Guwahati, do hereby solemnly
affirm and say as follows :-

1. That I am the Regional Manager (East), Canteen
Stores Department, Narangi, Guwahati and as such fully
acquainted with the facts and circumstances of the case. I
have gone through a copy of the application and have
understood the contents thereof. I am authorized to file
the additional written show cause reply on behalf of all
the respondents.

2. That with regard to the statements made in
paragraph 6 of the Review Application, the respondents beg
to state that PN-4038 Shri Jiten Prasad Marker is not a

Union of India & Others
Through
Shri Arjun Das
C. A. T.
Guwahati
4/1/06/08

Addl. Central Govt. Standing Counsel
C. A. T.
Guwahati

junior to applicant i.e. PN-4039, Shri Arjun Das applicant joined the department as Mazdoor on 12 April 1967 and promoted as Marker on 22 March 1991 where as Shri Jiten Prasad joined the department on 01 April 1967 and promoted as Marker on 22 March 1991. Further the contention of the petitioner that he was relieved within the pendency of his O.A.No.246 of 1995 does not hold good.

The applicant was offered alternative employment through Surplus Cell according to rule and he has accepted the same. Consequently O.A.No.246 of 1995 was declared in fructuous and therefore dismissed on the basis of statement made by the counsel of the applicant Shri Arjun Das that the applicant has been absorbed in CPWD Silchar as Peon.

As such there is no provision to withhold the relieving of employee declared surplus, within the pendency of any court case.

3. That with regard to the statements made in paragraph 8(A) of the application, the respondents beg to state that Shri Jiten Prasad is not at all junior to the applicant as clarified above. Further, both were declared surplus vide our order dated 26 May 1995. Shri Arjun Das was re-deployed by Surplus Cell vide their order dated 11 December 1996 in CPWD Calcutta. Where as till March 1998 Shri Jiten Prasad, Marker was awaiting re-deployment from the Surplus Cell. Hence Shri Jiten Prasad was absorbed in

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CSD on the post of Mukadam in accordance to rule which reads as under with approval of C.A. (~~copy attached~~).

Comments :

"Notwithstanding anything contained in sub-rule (2), (3), (4) and (5) and subject to the provision of Rule 12, the Ministry or Head of Department may, under intimation to the concerned cell, adjust an employee declared surplus by it against a vacancy (if any available at that time he is declared surplus or before he is re-deployed through the Cell) in any post located in any office under its control and carrying equivalent pay scale for appointment to which he is considered by the appointing authority to be suitable."

4. That with regard to the statements made in paragraph 8(B) of the application, the respondents beg to state that if the applicant is not promoted in CPWD due to isolated post or any other administrative reasons, the Government has a scheme of ACP.

5. That with regard to the statements made in paragraphs 8(C) and 8(E) of the application, the respondents beg to state that the petitioner was re-deployed as he has received offer of appointment where as Shri Jiten Prasad was awaiting re-deployment and subsequently absorbed as per rule. Even if the applicant claim for re-deployment under CCS (Readjustment of re-

deployed surplus employees) Order 1991, he should have applied through his Head of Office within two months from the date of joining of new post in which he has for the time being, been re-deployed. Moreover, re-adjusted surplus employee shall have no claim to count his past service towards fixation of seniority in the post in which he is re-adjusted. Therefore, the applicant will not gain in any way.

6. That with regard to the statements made in paragraph 8(H) of the application, the respondents beg to state that Shri Jiten Prasad was absorbed in the capacity of Mukadam and not as Marker. Further Shri Jiten Prasad was not re-deployed. Whereas the applicant has complied with all the rules and action on redeployment and relieved from the post.

7. The respondents beg to state that the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

VERIFICATION

I, D.S. Sharma, presently working as Regional Manager (East), Canteen Stores, Department, Narangi, Guwahati being duly authorized and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1 of the application are true to my knowledge and belief, those made in paragraphs 2 - 6 being matters of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 31st day of December 2005.



DEPONENT

D. S. Sharma
REGIONAL MANAGER
CANTEEN STORES DEPARTMENT
GOVT. OF INDIA
MINISTRY OF DEFENCE
Satgaon, Guwahati-27