

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-179/99 order sheet pg-1 to 2 INDEX

Disposed Date- 13/7/99

O.A/T.A No. 70/96

M.P-265/99 order sheet pg-1 to 2

R.A/C.P No.....

Disposed Date- 30/9/99

E.P/M.A No. 179/99

1. Orders Sheet O.A-70/96 Pg. 1 to 5

2. Judgment/Order dtd. 27/01/99 Pg. 1 to 4 Disposed

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... 70/96 Pg. 1 to 25

5. E.P/M.P..... 179/99 Pg. 1 to 7

6. R.A/E.P..... M.P-265/99 Pg. 1 to 13

7. W.S..... Pg. 1 to 9

8. Rejoinder M.P-30/2000 order sheet Pg. 1 to .....

9. Reply..... Disposed - Date- 10/02/2000 Pg. 1 to .....

petition copy Pg-1 to - 17

10. Any other Papers..... Pg. 1 to .....

11. Memo of Appearance M.P-242/2000 order sheet Pg-1 -

12. Additional Affidavit..... Disposed Date- 23/10/2000

13. Written Arguments..... petition copy Pg-1 to - 18

14. Amendment Reply by Respondents..... M.P-252/98 order sheet Pg-1 to 2

15. Amendment Reply filed by the Applicant. Disposed Date- 09/12/98

16. Counter Reply..... Petition Copy Pg-1 to - 5

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :::::::::: GUWAHATI

ORIGINAL APPLICATION NO: 7916  
MISC.PETITION/CONT EMPT PETITION/REVIEW APPLICATION NO:  
(O.A) 7916

Satya Narayan Pandey APPLICANT(S)

VS.

H.O.I. four

RESPONDENT (S)

Mr. P.K. Tripathi, Mr. B. Mehta Advocate for  
Applicant(s)

Mr. G. Savona, Add. Calif. Associate for  
Investigation(s)

OFFICE NOTE

DAI E

... application is to  
be and within time  
L. F. of Rs. 50/-  
deposited vide  
P.O./33/ No. 524470  
dated 22.4.96

13.5.96

Learned counsel Mr P.K.Tiwari moves this application on behalf of the applicant. Learned Addl.C.G.S.C Mr G.Sarma is present for the respondents.

Issue notice on the respondents before admission to show cause as to why this application should not be admitted and relief prayed for should not be granted. Returnable on 17.6.96.

List on 17.6.96 for disposal of shot  
cause and consideration of admission.

Re-arranged  
Received on 11-6-96  
and issued to the  
respondent wife  
No. 1436 dt. 12.6.96

6  
Member

pg

17-6-96

None is present for the applicant. Mr.G.Sarma Addl.C.G.S.C. for the respondents. No show cause has been submitted. Adjourned to 16-7-96 for show cause and consideration of Admission.

1m

Member

OFFICE NOTE

DATE.

O.R.D.E.R.

16.7.96

Applicant in person is present.

MR G.Sarma, Addl.C.G.S.C seeks 8 weeks time for filing show cause as telegraphically instructed by the respondents. Prayer is rejected.

Heard Mr Pandey for admission.

Perused the contents of the application and the reliefs sought. Application is admitted. Issue notice on the respondents by registered post. Written statement within 6 weeks.

List on 30.8.1996 for written statement and further orders.

Pendency of disposal of this O.A. shall not be a bar for the respondents to dispose of the legal notice dated 11.9.95 (Annexure-5) served by the applicant on the respondents.

18.7.96  
Notice delivered  
on resopn No. 3,64.

Bom

6  
Member

18.7.96  
Notice issued to  
the resopn and  
with copy of order  
dd. 16.7.96.

pg

NKA

30.8.96

Mr. S.N.Pandey, applicant, in person.

Mr. G.Sarma, Addl. C.G.S.C. for the respondents.

Mr. Sarma, Addl.C.G.S.C. has submitted written statement. Let the copy of the same be served on the applicant.

List for hearing on 30.9.96.

6  
Member

PGs filed on behalf  
of Resopn. at pg 26-34.

Am 3.9.96  
28/8

trd

30.9.96

The applicant, Mr S.N. Pandey, is present. Leave note of Mr G. Sarma, learned Addl. C.G.S.C.

List for hearing on 18.11.96.

6  
Member

nkm 1/30/99

18.3.97 The case is ready for hearing. Let it be listed on 5.5.97 for hearing.

*60*  
Member

*SB*  
Vice-Chairman

nkm

5.5.97 Left over. List on 19.5.97 for hearing.

*60*  
Member

*SB*  
Vice-Chairman

pg

*315*

24.6.97 Learned counsel for the parties submit that the case is ready for hearing.

List it for hearing on 5.8.1997.

*60*  
Member

*SB*  
Vice-Chairman

trd

*Y  
30/0*

20.8.97.  
1) Written statement  
has been submitted  
on respondent's  
5.8.97

Division Bench is not sitting.

Let the case be listed for hearing on  
1.10.1997.

By order

trd

*20/8/97*

*Row*

*By order*

15.9.97. Left over. List on for hearing  
on 20.1.98.

(u)

20-1-98

Case is ready for hearing. List  
on 23-4-98 for hearing.

Member

  
Vice-Chairman

lm

  
all

23.4.98

List on 16.7.98 for hearing.

Member

  
Vice-Chairman

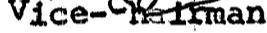
pg

  
25/7

16-7-98

On the prayer of Mr.G.Sarma learned  
Addl.C.G.S.C. case is adjourned till  
24-8-98 for hearing.

Member

  
Vice-Chairman

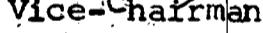
lm

  
17/7

24.8.98

There is no representation on behalf  
of ~~Mr~~ the applicant. Mr G.Sarma, learned  
Addl.C.G.S.C is present for the respondents  
The case is dismissed for default.

Member

  
Vice-Chairman

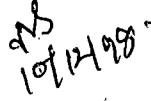
pg

  
25/8
9.12.98 Present: Hon'ble Mr Justice D.N. Baruah  
Vice-ChairmanHon'ble Mr G.L. Sanglyine,  
Administrative MemberIn view of the order passed in  
Misc. petition No.252/98 this original  
application is restored to file and is  
fixed for hearing on 14.1.1999.

Member

  
Vice-Chairman

nkm

  
10/12/98

15.1.99

There is no representation. Let this case be listed on 21.1.99.

20-1-99  
Written statement  
has been filed.

trd

6  
Member

Vice-Chairman

20-1-99  
21.1.99

21-1-99

form.

20-1-99

b

22-1-99 Adjudged to 27-1-99.

By me.  
b

27.1.99

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.

6  
Member

Vice-Chairman

11.3.99  
Copies of the Judgment  
have been sent to the  
D/Secy. for issuing the  
same to the parties through  
Regd. Mails A/FD.

6/  
issued ride despatch No.  
834 to 839 dt. 17-3-99

on  
26.3.99

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

O.A. No. 70 of 1996

DATE OF DECISION: 27.1.1999

Shri Satya Narayan Pandey

(PETITIONER(S))

Mr P.K. Tiwari and Mr S. Sarma

ADVOCATE FOR THE  
PETITIONER(S)

## VERSUS

Union of India and others

**RESPONDENT(S)**

Mr B.C. Pathak, Addl. C.G.S.C.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.70 of 1996

Date of decision: This the 27th day of January 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Satya Narayan Pandey,  
Supervisor, Barrack/Stores, Grade II,  
Office of the Garrison Engineer,  
Shillong Division, Shillong. ....Applicant  
By Advocates Mr P.K. Tiwari and Mr S. Sarma.

- versus -

1. The Union of India, through the  
Secretary, Ministry of Defence,  
Government of India,  
New Delhi.

2. The Engineer-in-Chief,  
Army Headquarter,  
New Delhi.

3. The Chief Engineer,  
Headquarter Eastern Command,  
Fort William, Calcutta.

4. The Chief Engineer,  
Shillong Zone,  
Shillong.

5. The Commandar Works Engineer,  
Shillong. ....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

O R D E R

BARUAH.J. (V.C.)

This application has been filed by the applicant seeking certain directions.

2. Facts for the purpose of disposal of this application are:

The applicant, at the material time, was working as Supervisor, Barrack/Stores, Grade II in the office of the Garrison Engineer, Shillong Division. On 13.2.1964 he was appointed Civil School Master at 3, EME Military Centre, Bhopal. He continued in the said post till 1967. Thereafter he was declared surplus. As per the Scheme of Adjustment of

Surpluses and Deficiencies of Civilian Personnel, the applicant was adjusted in the post of Store Keeper Grade II which is a post lower in rank than the Civil School Master. He worked in the said post for about eighteen years. It may be mentioned that in the year 1983 the applicant appeared before the Selection Committee for selection of direct recruit Supervisor, Barrack/Stores Grade II. As per the Select List his name appeared at serial No.2. One Shri S.B. Prasad was placed at serial No.1 in the said Select List. However, no appointment was made. Situated thus, the said Shri S.B. Prasad approached the Hon'ble Gauhati High Court by filing a writ application (Civil Rule No.301 of 1984). After the Act of Central Administrative Tribunal came into force the said case was transferred to this Bench of the Tribunal and registered and numbered as G.C.No.353 of 1986. The said original application was disposed of by this Tribunal by an order dated 19.8.1987. In the said judgment and order the Tribunal referred to the Circular dated 18.4.1986 and held thus:

".....But this circular is dated 18.4.1986 and on that date the applicant had crossed the maximum relaxable limit of 35 years of age. What the circular states is however the department's view that the experience in the lower posts in the E/M Branch will have utility in the post of Supervisor B/S II. This aspect of the matter was apparently not considered before disallowing the relaxation of age to the applicant. But it should have been considered in view of the Office Memorandum of the Personnel & A.R. department as well as the Army H.Q. letter dated 07.4.1980 but it was not done. The department's view as contained in their letter dated 18.4.1986 must be held as being applicable from the date of the original circulars of the Personnel department on the subject. In the result it must be held that the applicant is entitled to the age relaxation when the selection for the post was made. Therefore the application is to be allowed and we allow it accordingly. It is directed that the case of the applicant be now considered after allowing him the age-relaxation due to him on or about the date of selection in January 1983 and decide upon his appointment to the post of Supervisor B/S II."

*B*

Pursuant to the said judgment of this Tribunal the applicant of that case (G.C.No.353/86) was appointed Supervisor, Barrack/Stores Grade II with effect from 18.11.1987. From the order of appointment it was found that the promotion of the said Shri S.B. Prasad was not given with retrospective effect. Therefore, being aggrieved, the said Shri S.B. Prasad approached this Tribunal by filing original application No.38 of 1991. The said original application was disposed of by this Tribunal by order dated 5.8.1993 directing the respondents to count/give effect of the appointment of said Shri S. B. Prasad in the post of Supervisor Barrack/Stores Grade II with retrospective effect from January 1983 with all consequential benefits including salary, increments and seniority. The Tribunal further directed the respondents of that case to record the previous service benefits of the said Shri S.B. Prasad till end of 1982 for calculating his pensionary benefits. The present applicant was appointed to the post of Supervisor Barrack/Stores Grade II with effect from 15.9.1989, but he was not given promotion with retrospective effect as it was done in the case of the said Shri S.B. Prasad. Hence the present application.

3. We have heard Mr S. Sarma, learned counsel for the applicant and Mr B.C. Pathak, learned Addl. C.G.S.C. Mr Sarma submits that the case of the applicant was rejected by the authority on the ground of overage, but according to the learned counsel, pursuant to the judgment of this Tribunal dated 17.3.1989 passed in original application No.11 of 1988, age should not have been the factor for considering the appointment of the applicant. Mr Pathak, on the other hand, submits that after appointment of the said Shri S.B. Prasad there was no post whatsoever, and therefore, the applicant could not be appointed during this period. Mr Pathak further submits that the applicant was appointed in

Q3

1989....

1989 when the post was available. However, Mr. S. Sarma firmly disputes this fact and submits that according to his information there were several posts lying vacant and the applicant should not have been deprived of his promotion. According to Mr Sarma as in the case of the said Shri S.B. Prasad the applicant should have been given promotion with retrospective from January 1983 when the selection was made and he was selected and placed at serial No.2 immediately after Shri S.B. Prasad.

4. On the claims and counter claims of the parties it is not possible for this Tribunal to consider and decide the matter. We feel that matter requires certain examination of the records. Therefore, we dispose of this matter with direction to the respondents to consider the case of the applicant and while considering the authority shall take into consideration of the decisions of this Tribunal in G.C.No.353/86 dated 19.8.1987, Original Application No.11/88 and Original Application No.38/91 dated 5.8.1993 and thereafter dispose of the matter by a reasoned order. This must be done as early as possible, at any rate within a period of three months from the date of receipt of this order. If the applicant is still aggrieved he may approach the appropriate authority.

5. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.

  
( G. L. SANGLYINE )

ADMINISTRATIVE MEMBER

  
( D. N. BARUAH )

VICE-CHAIRMAN

6 MAY 1996

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

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

Title of the case : O.A. No. 70 of 1996

Shri Satya Narayan Pandey ... Applicant

- Versus -

The Union of India & Others ... Respondents

I N D E X

<u>Sl.No.</u>	<u>Particulars of the documents</u>	<u>Page Nos.</u>
1.	Application ...	1 to 12
2.	Verification ...	12
3.	Annexure-1 : <del>Exhibit No. 1 of O.A. No. 70 of 1996</del>	13 - 17
4.	Annexure-2 : ...	18
5.	Annexure-3 : ...	19 - 20
6.	Annexure-4 : ...	21
7.	Annexure-5 : ...	22 - 25

Copy's of Record

26-34

For ~~affix~~ use in Tribunal's Office :

Date of filing :

Registration No. :

REGISTRAR

COPY OF THE  
OA could not be  
served on Shri G. Sharma  
as he was not  
available. It would be  
handed over to him personally  
as soon as possible.  
P. K. D. was  
Advocate.  
6.5.96.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUW

H  
Filed by: P.K. J.  
Advocate, 6.5.96

O.A. No. 70

BETWEEN

Shri Satya Narayan Pandey,  
Supervisor, Barack/Stores, Grade-II,  
office of the Garrison Engineer,  
Shillong Division, Shillong-793002

... Applicant

AND

1. Union of India through the  
Secretary, Ministry of Defence,  
Government of India,  
New Delhi.
2. Engineer-in-Chief,  
Army Headquarter, New Delhi-11
3. The Chief Engineer,  
Headquarter Eastern Command,  
Fort William, Calcutta-21
4. The Chief Engineer,  
Shillong Zone,  
Spread Eagle Falls,  
Shillong - 11.
5. Commandar Works Engineer,  
Spread Eagle Falls,  
Shillong-11

... Respondents

DETAILS OF APPLICATION

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

2. The instant application under Section 19 of the  
Administrative Tribunals Act, 1985 is being made against  
the deemed refusal of the respondents to treat the  
applicant at par with another similarly situated official  
(viz. Shri Shyam Bihari Prasad, Supervisor B/S-II, MES-224876  
G.E. 583).

Contd... P/2.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

In the instant case ~~under~~ the applicant had submitted a legal notice dated 11.9.95 to the Chief Engineer Eastern Command, Fort William, Calcutta. After serving the aforesaid ~~not~~ legal notice, reasonable period has elapsed but till now there has not been any response from the respondents. Hence it is stated that the instant application fulfills the legal requirement of limitation as laid down under Section 20 and 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant is a resident of Shillong Cantonment area and he is presently employed as Supervisor Barack/Stores, Grade-II in the office of the Garrison Engineer, Shillong Division, Shillong 793002.

4.2 That the applicant had initially joined as Civil School Master (CSM) at 3, EME Military Centre, Bhopal to which he joined on 13.2.64 and served until 10.2.67, When he was considered surplus in terms of the scheme of adjustment of surplus and deficiencies of civil personnel. The applicant was adjusted as Store Keeper, Grade-II in the Military Engineering Services which is a lower post. Having worked for long 18 years, from the date of being declared

surplus, the applicant was eventually promoted as Store Keeper Grade-I on 10.4.85.

4.3 That on 17.1.83, the applicant had appeared at the direct recruitment test of Supervisor, Barack/Store Grade-II and in the said test, he secured second position in the merit list. It is pertinent to mention here that the said post of Supervisor, B/S-II is in the identical scale with that of CSM. Although having emerged a successful and eligible in all respects to be appointed in the said post of Supervisor B/S-II, however, the same was stalled. The plea taken by the appointing authority ~~was~~ that according to the recruitment rules, since the applicant had crossed 35 years of age, he cannot be appointed in the said post.

4.4 That being highly aggrieved by the action of the authorities concerned, the applicant had no other option but to approach this Hon'ble Central Administrative Tribunal at Guwahati with the prayer for appropriate direction to the authorities concerned to appoint him to his original post or equivalent grade and/or to the post of Supervisor B/S-II with all consequential benefits of service. The aforesaid case was registered and numbered as G.C. 11 of 1988.

4.5 That by judgment and order dated 17.3.89, the Hon'ble Tribunal having dealt into the broad gamut of the issues involved observed inter alia that the age bar cannot and should not apply in the applicant's case. Moreover, it was observed that same was not applicable even under the terms of the scheme of adjustment. Direction was issued that the applicant should be considered for promotion

to Supervisor B/S-II within six months from the date of receipt of the Judgment and order dated 17.3.89.

A copy of the Judgment and order dated 17.3.89 in G.C. No. 11/88 is annexed herewith and marked as ANNEXURE-1.

4.6 That pursuant to the Annexure-1 Judgment and order dated 17.3.89, the competent authority accorded promotion ~~as~~ of the applicant to the B/S, Grade-II vide order dated 15.9.89. Consequent to the said order, the applicant was appointed to the post of B/S, Grade-II and although his pay was not protected, initially, by virtue of another order passed by the Hon'ble Tribunal on 9.7.90 in a Miscellaneous application, his grievances were redressed.

Copy of the order dated 15.9.89 is annexed herewith and marked as ANNEXURE-2.

4.7 That it is noteworthy that MES-224875 Shri Shyam Bihari Prasad had appeared in the direct recruitment test of Supervisor, B/S, Grade-II alongwith the applicant on 17.1.83. It is also pertinent to mention that the aforesaid Shri Shyam Bihari Prasad stood first in the said test ~~while~~ while the applicant was placed second in the merit list. Moreover Shri Shyam Bihari Prasad was also denied the appointment like that of the applicant. It is thus seen that both this applicant as well as Shri Shyam Bihari Prasad were similarly placed and situated. However, notwithstanding the fact, the applicant and the said Shri Shyam Bihari Prasad being similarly situated, the fact remains that Shri Shyam Bihari Prasad was subsequently appointed to the post of

Supervisor B/S Grade-II in the year 1987. It may be mentioned that the said order of appointment was the outcome of a case filed by Shri Shyam ~~Bihari~~ Bihari Prasad before the Hon'ble Central Administrative Tribunal, Guwahati Bench which was registerd as G.C. 353/86. The Hon'ble Tribunal vide its judgment dated 19.8.87 disposed of G.C. No. 353/86 holding that the aforesaid Shri Shyam Bihari Prasad acquired age relaxation upto 35 years as departmental candidate on ~~the~~ ~~way~~ or about the date of selection in January 1983 anddirected to appoint him in the post of Supervisor, B/S Grade-II. Thereafter the applicant was appointed in 1987 and joined the post of Supervisor B/S-Grade-II on 18.11.87.

The Hon'ble Tribunal may be pleased to call for the records of the case No. G.C. 353/86.

4.8 That it is also pertinent to mention that the aforesaid Shri Shyam Bihari Prasad subsequently filed yet another application before the Hon'ble Central Administrative Tribunal, Guwahati Bench which was registered as O.A. No. 38/91. In the aforesaid application, the aforesaid Shri Shyam Bihari Prasad prayed for direction to the respondents to recall his service in the post of Supervisor B/S-Grade II with retrospective effect from January 1983 on the ground ~~not~~ that he was/then appointed due to deliberate negligence and fault of their part which resulted in loss in seniority and salary for entire service period and had adverse effect in the retirement effect. The Hon'ble Tribunal, Guwahati Bench vide its Judgment and order dated 5.8.93 disposed of the O.A. No. 38/91 and directed the respondents to count/give effect of the appointment of Shri Shyam Bihari Prasad in the

post of Supervisor B/S Grade-II with retrospective effect from January 1983 with all consequential benefits including salary, increments and seniority.

Copy of the Judgment and order dated 5.8.93 passed in O.A. No. 38/91 is annexed herewith and marked as ANNEXURE-3.

4.9 That passing of the aforesaid order dated 5.8.93 in O.A. No. 38/91 in the matter relating to Shri Shyam Bihari Prasad was not within the knowledge of the applicant. It is stated that the judgment and order dated 5.8.93 passed in O.A. No. 38/91 was of great significance to this applicant also because issues involved in the aforesaid case were absolutely the same in regard to this applicant also. Hence the principle which was applied by this Hon'ble Tribunal in its judgment and order dated 5.8.93 while disposing of the O.A. No. 38/91 was equally applicable in regard to this applicant because he was similarly circumstances, placed and situated like that of ~~the~~ Shri Shyam Bihari Prasad. Therefore, it was in the fitness of things that the benefit conferred upon Shri Shyam Bihari Prasad pursuant to the Judgment and order of this Hon'ble Tribunal dated 5.8.93 in O.A. No. 38/91 ought to have been extended to this applicant also without his specially asking for it. Unfortunately, the applicant did not have any knowledge of passing of the judgment and order dated 5.8.93 in O.A. No. 38/91 and counting of the seniority of Shri Shyam Bihari Prasad with effect from 17.1.83 came to the knowledge of the applicant for the first time in December 1994 when he had occasion to peruse the All India Seniority List of

Superviser B/S Grade-II, the applicant was astonished to learn that although being similarly situated his seniority was being granted with effect from 15.9.89 whereas in respect of Shri Shyam Bihari Prasad it was 17.1.83 i.e. from the date date ~~xx~~ on which direct recruitment test was held and in which both the applicant and Shri Shyam Bihari Prasad had appeared together.

4.10 That immediately thereafter, the applicant vide letter dated 10.12.94 duly apprised the Chief Engineer Eastern Command, Calcutta-21 (through proper channel) of the with said fact with all details ~~xx~~ a prayer that his seniority as in the case of Shri Shyam Bihari Prasad should also be granted with effect from 17.1.83. Unfortunately, till this very date, the applicant has not received any favourable response ~~xx~~ or any intimation on the said issue.

A copy of the letter dated 10.12.94 is annexed herewith and marked as ANNEXURE-4.

4.11 That it is stated that the denial of the seniority has usually jeopardised the service career of the applicant. Had he been given the ~~xx~~ eligible seniority, he could well have been promoted to the post of Supervisor, B/S Grade-II alongwith all other promotees whose name figured in the panel for promotion as per the list contained in the notification No. 41206/EIR(Sub) dated 10.7.95 issued from the office of the Coord and Pers Directorate/EIR (Sub), Engineer-in-Chief Branch, Army Headquarter, DHQ P.O. New Delhi-11. In fact out of the list of 231 promotees, the applicant's name would have figured well within Sl. No. 115 of the list had he been given due seniority.

4.12 That it is stated that the applicant is also otherwise qualified for the post of Supervisor B/S Grade-IX being duly passed the examination in the year 1992 for the the post of Supervisor B/S Grade-II.

4.13 That in flagrant contravention of the principles of service jurisprudence, the applicant has virtually remained stagnant in the same post/grade for long years. To make it worse, junior staff have been promoted to the next higher rank in supersession of the right of the applicant. The same is ~~impartial~~ improper and not sustainable in law.

4.14 That when the applicant failed ~~in~~ in getting any proper response from the respondents towards the redressal of his grievances, he served upon the respondents a legal notice dated 11.9.95. In the aforesaid legal notice, sent on behalf of the applicant, details of the issues involved in applicant's case were explained and the applicant's grievances were elaborately stated. The legal notice called upon the respondents to render to the applicant all those ~~xxxxxx~~ ~~xxxx~~ ~~xxxxxx~~ benefits which were extended to Shri Shyam Bihari Prasad ~~in~~ applying the same principle which pursuant to the Judgment of this Hon'ble Tribunal was applied in case of Shri Shyam Bihari Prasad inasmuch as both this applicant as well as aforesaid Shri Shyam Bihari Prasad were similarly circumstanced, situated and placed.

Copy of the legal notice dated 11.9.95 is annexed herewith and marked as ANNEXURE-5,

4.15 That despite the submission of legal notice dated 11.9.95, the respondents have chosen to sleep over the matter

and there has not been any action on their part. Due to this prolong procrastination and inordinate delay on the part of the respondents, in redressing the grievances of the applicant, the applicant has not been left with any other appropriate alternative remedy but to approach this Hon'ble Tribunal in the instant application.

4.16 That in the instant application, the applicant has not made Shri Shyam Bihari Prasad a party respondent inasmuch as no relief is being sought against him and the relief which is being prayed for by this application if granted would not in any way adversely effect the interest of Shri Shyam Bihari Prasad. Therefore, it is stated that Shri Shyam Bihari Prasad is neither a proper nor a necessary party in the instant case and as such, he has not been made a party respondent in the instant application.

4.17 That the applicant files this application bonafide and to secure the ends of justice.

#### 5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the prolong procrastination and inordinate delay on the part of the respondents in redressing the grievances of the applicant has resulted in violation of the Article 14 of the Constitution inasmuch as the applicant and the aforesaid Shri Shyam Bihari Prasad are similarly situated.

5.2 For that the respondents have acted mechanically in extending the benefit of the judgment and order passed in O.A. No. 38/91 to Shri Shyam Bihari Prasad while ignoring the case of the applicant. Due to this mechanical approach of the

respondents the two similarly situated persons have been treated unequally without any intelligible differential and reasonable and objective criteria.

5.3 For that passing of the Judgment and order dated 5.8.93 in O.A. No. 38/91 in favour of Shri Shyam Bihari Prasad cannot be the intelligible differentia ~~or~~ or reasonable or objective criteria to extend the benefit of the said Judgment only to said Shri Shyam Bihari Prasad ignoring this applicant inasmuch as the legal principle cannot be applied in a partisan manner ignoring the stark reality of ~~this~~ this applicant and Shri Shyam Bihari Prasad being similarly situated.

5.4 For that the action of the respondents in not confirming upon the applicant the benefit of seniority is unreasonable and arbitrary and is not in conformity with the principles of service jurisprudence.

5.5 For that the judgment and order dated 5.8.93 in O.A. No. 38/91 though judgment in personam has the effect of laying down the legal principle which has to be made applicable to all those who are similarly circumstanced. Any ~~view~~ ~~or~~ ~~the~~ contrary to this would negate the equality clause enshrined in Article 14 of the Constitution of India.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative efficacious remedy except by way of filing the instant application.

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

The applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Authority, Court or any other Bench of this Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT :

In the premises aforesaid, the applicant prays for the following reliefs :

- (i) Counting of his date of seniority as Supervisor Barack/Store Grade-II with effect from 17.1.83 with all consequential benefits as in case of Shri Shyam Bihari Prasad who is similarly situated with the applicant.
- (ii) Promotion to the post of Supervisor Barack/Store-I with due seniority on All India basis with all consequential benefits and further promotion in accordance with law.
- (iii) Any other or further order or orders as may be deemed fit and proper in the facts and circumstances of the case.
- (iv) Cost of this application.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of this application shall not be a bar for the respondents to take appropriate action towards redressal of this applicant's grievance as stated in the legal notice dated 11.9.95.

10. .....

The application is filed through Advocate.

11. PARTICULARS OF THE IPO :

(i) I.P.O. NO. : 524470 (ii) Date 22.4.96  
(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I, Shri Satya Narayan Pandey, aged about 53 years, son of Late R.S. Pandey, presently working as Supervisor B/S Grade-II, Garrison Engineer, Shillong-793002, do hereby verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge ; those made in paragraph 5 are true to my legal advice, and I have not suppressed any material facts.

And I sign this verification on this the 2nd day of April 1996. *sk*

*Saty Narayan Pandey*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

G.C.No.11 of 1988.

Shri Satya Narayan Pandey : Applicant

vs.

Union of India & Ors : Respondents

PRESENT:

The Hon'ble Shri G.S. Sharma, Member

The Hon'ble Shri J.C. Roy, Member

For the applicant : Mr. A. Sarma, Advocate  
Smt. B. Dutta, Advocate  
Mr. I. Ali, Advocate  
Mr. M. Bhuyan, Advocate

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

Date of Judgment & Order : The 17<sup>th</sup> day of March, 1988.

JUDGMENT & ORDER

We are considering an application under Section 19 of the Administrative Tribunal Act, 1985, from Shri Satya Narayan Pandey, praying for being appointed to an equivalent post or grade in the Civilian Defence Establishment, under the Adjutant General, Army Headquarters, New Delhi. The facts leading to the case are that the petitioner, who is a Graduate, initially joined as Civilian School Master(CSM) at 3 EME Centre, Bhopal and joined on 13.2.1964, and served there till 10.2.1967 when he was considered surplus. In November, 1966, Army Headquarters Adjutant General's Branch prepared Scheme of Adjustment of Surpluses and Deficiencies of Civilian Personnel (in short, the Scheme of Adjustment), as under:

" Under the scheme of adjustment of surpluses and deficiencies civilian personnel serving in the Defence Installations, when declared surplus, are eligible for alternative appointments during their notice period against available deficiencies in the same or equivalent grades in the same or another Defence Installation. If vacancies in the same or equivalent grades are not available, they are adjusted in lower posts in the same or another Defence Installation provided the persons concerned are willing to serve such lower grades. Under the existing rules they are eligible for re-employment in their

original....

Attested  
R.K. Deka  
Advocate  
6.5.96

original grades if and when vacancies occur in the unit or establishment where they are working after adjustments have been made under the above scheme. In a large number of cases, however, re-classification of individuals cannot be carried out owing to non-availability of vacancies in the unit or establishment concerned.

2. In order to provide for the individual who cannot be adjusted against the same or equivalent appointment and are absorbed in lower posts during their notice period, in the same or another Defence Installation, it has been decided by Army HQ to offer them alternative appointments in their original or equivalent grades against vacancies left over after carrying out adjustment provided they have rendered at least 6 months service in the higher grades."

2. Since vacancies in equivalent posts were not available, the applicant joined as Store Keeper Grade II in the Military Engineering Service, which is a lower post. He was promoted Store Keeper, Grade I with effect from 10.4.1985, which is after 18 years of his discharge from the post of CSM. During this long period, when he was adjusted and had worked in a lower post under the Scheme of Adjustment, he represented several times for getting an equivalent post without success. Even his pay was not protected. On 17.1.1983, the petitioner appeared at the recruitment test of Supervisor, Barrack/Store and secured position 2 in the merit list. This post of Supervisor, Barrack/Store is in identical scale as that of CSM. He was informed by the authorities on 9.12.1983 (Annexure '2' to the application) that according to the existing Recruitment Rules, since he has crossed the age of 35 years, he could not be appointed in the post of Supervisor, Barrack/Stores as departmental candidate. During the argument, the learned counsel for the respondents produced a copy of office memo No.4/4/74-Estt.(D) dated 20th July, 1986, of the Department of Personnel & A.R., Government of India, where this age limit of 35 years for departmental candidates, who want to compete with relaxed age limit with the norms

of.....

of Employment Exchange/Open Market candidates for higher posts to be filled by direct recruitment was circulated. According to this document, upper relaxable age limit of 35 years was imposed for candidates who have rendered not less than 3 years continuous service in the ~~same~~ <sup>the</sup> said department.

3. On the question of protection of his pay in the original scale of CSM in the letter dated 9.9.1983, of the Adjutant General's Branch, Army Headquarters, it is stated that since CSM is a dying cadre, vacancies occurring on account of casualties amongst surviving Civilian School Masters will not be available to civilians and the applicant could not be considered for his protection of pay.

4. Being baffled on these accounts, the applicant served a legal notice to the Chief Engineer, Shillong Zone on 25.5.1984. In this he wanted to be granted the equivalent of a Civilian School Master post and to be appointed as Supervisor, Barrack/Stores. He wanted a review of the earlier decisions communicated in 1983 to be done. This representation was also finally rejected and communicated to him on 21.7.1986.

5. In the written reply, and during the argument, none of the above facts have been disputed. The respondents, however, have pointed out that on 3.12.1987, a case of protection of pay of the applicant and refixation of his pay with effect from 24.2.1967, the date when he was first appointed in the M.E.S. was initiated. The learned counsel for the respondents also furnished a copy of the department of Personnel & A.R. office Memo dated 20th July, 1986, already mentioned, in support of their contentions that in 1983, when the applicant was refused the promotion to the post of Supervisor, Barrack/Stores, the order was in accordance with the Government's policy on this subject.

6. During the argument, the learned counsel for the applicant submitted that although at a late stage, the M.E.S. authorities have started action for equalisation of pay, for which the candidate has been representing for the last 18 years, in view of special claim of the applicant arising out of the scheme of adjustment, the candidate should also be promoted to the grade of Supervisor, Barrack/Stores, for which he stands qualified in the test. He further prayed for giving time limit to the respondents for finalising and issuing orders on these two legitimate claims of the applicant.

7. On behalf of the respondents, the question of equalisation of pay has not been disputed and although at a very late stage they have initiated action for redressing this grievance of the applicant. We feel that it is necessary to give a time limit for finalising this issue and a period of six months will be a realistic time limit. As for the second prayer of the applicant, we feel that surplus staff who had accepted and worked under Scheme of Adjustment in a lower scale for 17 years should not be at par with normal aspirants for a higher post in the same department. The age relaxation upto a maximum of 35 years for departmental candidates who compete with outsiders for a vacancy in higher post is the general rule. It cannot and should not be applied in the present case as from 1967 onwards, the applicant ~~candidate~~ has worked in a lower post after he was declared surplus in a higher post, where he had rendered almost 3 years of service. In the Scheme of Adjustment also there is no time limit given for adjusting a surplus staff who has accepted the lower grade to his equivalent grade in the same department or establishment when a vacancy occurs in future. In fairness to the ~~candidate~~ <sup>applicant</sup>, therefore, we feel that he should be promoted <sup>considered for</sup> to Supervisor, Barrack/Stores, Grade II against any existing

or.....

-17-

: 5 :

and if found otherwise suitable promoted within six months of the date of receipt of this order.

8. The application is disposed of accordingly.

There is no order as to costs.

sd/- J. C. Roy  
17.3.89  
Member

sd/- G. S. Sharma,  
Member

Cancelled on 28/3/89

Accredited

28/3/89

Deputy Commissioner (Central)  
Central Anti-Tribalism Bureau  
Guwahati Bench  
28/3/89

Affected  
P. K. Deka  
Advocate.

- 18 -

CDS(I) Shillong

Tele: PW/914

Purvo Kaman Mukhyalaya  
 Mukhya Abhiyanta  
 HQ Eastern Command  
 Chief Engineer  
 Fort William,  
 Calcutta-11

15/04/89/398/Engg/ED

Sep-89

Chief Engineer,  
 Shillong Zone  
 Shillong

PANEL CUM PROMOTION/POSTING ORDER TO BS GDS II

1. Consequent to the CAT Gauhati Bench judgement dated 17 Mar 89 delivered in the case of Satya Narayan Pandey Vs Union of India and others and on the recommendation of a DPO held at this HQ, the following SK Cdo I have been approved for promotion to BS 64 II :-

(a) 246768 Shri Satya Narayan Pandey, the undersigned

2. The panel will be operative upto and including 08 Sep 90 unless reviewed earlier by the DPO or specifically extended beyond this date by the competent authority.

3. Consequently the promotion cum posting of the above mentioned individual is ordered in the interest of state as given under :-

S.No	NBS No and Name	Transferred		Remarks
		From	To	
1.	246768 Sh Satya Narayan Pandey SK Cdo I	CDS (I) Shillong	GB (P) Balasore Promoted to CME Kalikunda	SBPPY DG CDS II
		OWB Shillong	OB Cal Zone	SBPPY to reporting
		OB Shillong	OB Shillong	OB Shillong to the PWD Deptt. Bagan, Bagan

Item one only )

(I) OIC

SKB 5/PSD Feb 87 — May 78 (A) 2/-  
 Gf Nar Jam 78 — 15/GB/87

SKI 503 16/4/87 to 21/4/87

Gh(I) Umri 22/4/87 — 15/7/88

CDS (I) Shillong 16/7/88  
 GP (I) Balasore

149  
219

Attested  
 P.K. Dinesh  
 Advocate

4. Before the above mentioned individual is placed in position please ensure that he is not involved in any disciplinary case and that there is nothing else against him to warrant withholding of promotion.

5. The date from which the above mentioned individual is brought in position against the post of Offg. Supvr BS Gde II should be intimated to this HQ. The actual date of promotion to Offg. Supvr BS Gde II and seniority as fixed by the DPC will then be notified by this HQ.

6. Volunteers if available may be moved failing which promotee to move. In case volunteers are available their particulars should be intimated to this office for consideration and issue of posting order.

7. Movement order should be issued by the unit concerned within one month from the date of issue of this order and move to be completed within 3 months time. Refusal of promotion if any should be submitted within 45 days from the date of issue of this order.

*S. D. Singh*  
( S D Singh )  
Col  
Col (Pers)  
For Chief Directorate

Copy to :-  
CDA New Delhi, CDA Lucknow, CDA Patna,  
CDA Patna, DCDA Shillong, DCDA Siliguri, JODA Calcutta  
Concerned CWS/CB

Internal

BIR (I)

BIR : 2 Copies

BID (A)

Attest  
P. K. Dinesh  
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A.No. 38 of 1991

Date of decision: The 5th day of August 1993.

Shri Shyam Bihari Prasad, son of  
 Shri Jagdip Roy, aged about 41 years,  
 Supervisor B/S II, MES 224876 GE 583  
 Engr. Paik, C/o 99 APO. ... Applicant

## -Versus-

- ✓ 1. Union of India, represented by  
 the Secretary, Home, Government of  
 India, New Delhi
- ✓ 2. The Chief Engineer, HQ Eastern  
 Command, Fort William, Calcutta-21
- ✗ 3. Garrison Engineer, 583 Engineer  
 Paik, C/o 99 APO
- ✗ 4. Commandar Works Engineer, A.T. Road,  
 Shantipur, Guwahati
- ✗ 5. Garrison Engineer, Narangi,  
 P.O. Satgaon, Guwahati

... Respondents

For the applicant : Mr M.Z. Ahmed and  
 Mrs B. Dutta, Advocates

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

C O R A M :

THE HON'BLE JUSTICE SHRI S. HAQUE, VICE-CHAIRMAN  
 AND  
 THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A).

5/8/73

Attested  
 P.K. Dhar  
 Advocate.

JUDGMENT

HAQUE.J.

The applicant Shri Shyam Bihari Prasad was serving as Switch Board Attendant on regular basis in the establishment of the Garrison Engineer, Narangi. He applied for the post of Supervisor B/S Grade II (direct recruit) as a departmental candidate in 1983.

The maximum age limit for direct recruitment for departmental candidates was 35(thirtyfive) years. The applicant was aged 32 (thirtytwo) years in 1983 when he applied for that post. He secured first position as per selection merit list held on 17.1.1983. The appointments to the post of Supervisor B/S II were made from that list, but the applicant was not appointed on the ground of over age. He approached the Hon'ble High Court by a Writ Petition (Civil Rule 301/84), which was subsequently transferred to this Tribunal and disposed of vide judgment dated 19.8.1987 in G.C.No.353/86 holding that the applicant acquired age relaxation upto thirtyfive years as departmental candidate on or about the date of selection in January 1983 and directed to appoint him in the post of Supervisor B/S II. Thereafter he was appointed in 1987 and joined the post on 18.11.1987.

2. The applicant files this application for a direction on the respondents to record his service in the post of Supervisor B/S II with retrospective effect from January 1983 on the ground that he was not then appointed due to deliberate negligence and fault on their.....

5/8/97

their part which would cause loss in seniority and salary for entire service period and would affect in the retirement benefits (pension, gratuity etc.). Learned counsel Srimati B. Dutta for the applicant submits that he would lose salary and seniority for intentional fault of the respondents who had the knowledge that as a departmental candidate his age relaxation was thirtyfive years. It is also submitted that as per Tribunal's direction dated 19.8.1987 the respondents ought to have appointed him with retrospective effect from January 1983 to compensate the loss caused due to their fault. Learned Addl. Central Government Standing Counsel Mr A.K. Choudhury submits that age relaxation was granted by the Tribunal in 1987 with direction to appoint him and so he was accordingly appointed in November 1987 and there is no scope to relate back his appointment retrospectively from January 1983. He also refers to the interpretation given in the written statement on the directions of the Tribunal dated 19.8.1987.

3. The Tribunal did not grant any age relaxation, but it held that applicant was entitled to age relaxation due to him on or about the selection time in 1983 and directed to decide his appointment. The applicant acquired age relaxation upto thirtyfive years as of right being a departmental candidate and further had right to get appointment on or about January 1983, being No.1 in the select list, but was deprived due to fault of the respondents. Loss of seniority and increments in salary emoluments for four years(1983-87) would cause serious irreparable injury in service career of the applicant as well as in his retirement benefits on superannuation. It is appropriate time to repair the loss.....

AN  
5/4/91

loss and injury and the same can be done by giving effect of his appointment in the post of Supervisor B/S II with effect from January 1983.

4. The applicant was a permanent Switch Board Attendant and therefore, he is entitled to the service benefits of that period (previous service) for the purpose of pension and gratuity in due course. The respondents also agree as per their statement in paragraph 3(6) of the written statement to calculate his previous service for grant of pension/gratuity.

5. In the result this application under Section 19 of the Administrative Tribunals Act 1985 is allowed. The respondents are directed to count/give effect of the appointment of the applicant, Shri Shyam Bihari Prasad in the post of Supervisor B/S II with retrospective effect from January 1983 with all consequential benefits including salary, increments and seniority. The respondents are also directed to record previous service benefits of the applicant till end of 1982 in calculating pension and gratuity/<sup>and</sup> grant it in due course on superannuation.

6. The respondents shall implement the first direction within a period of two months (60 days) from the date of receipt of copy of the judgment by issuing notification/order or by modification of the appointment order No.1013/BS-II/83/EIB dated 30th September 1987.

7. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Attested  
P.K. Dinesh  
Advocate

-21-

From : MES/246768  
 S.N. Pandey  
 Supvr B/S Gde-II  
 GE Shillong.

To : The Chief Engineer  
 Eastern Command  
 Fort William  
 Calcutta 21. (Through Proper Channel)

SUB: DATE OF SENIORITY - SUPERVISOR B/S GDE-II

Sir,

1. I have the honour to submit the comparative statement of two Supervisors B/S-II of this Command which will establish the truth and enable your HQ to arrive at a justifiable decision at the earliest.

MES-246768  
 S.N. PANDEY, SUPVR B/S-II

MES-224876  
 S.B. PRASAD, SUPVR B/S-II

i) Qualification - Graduate	Graduate
ii) Prev. Post held - SK-II	SBA
iii) Date of Exam - 17.1.83 for direct recr.	17.1.83
iv) Place of Test - CWE Guwahati	CWE Guwahati
v) Result in merit list - IInd	First
vi) Promoted/Appointed as Supvr B/S-II	15-8-89
vii) Date of seniority of Supvr B/S-II in Command	17-1-83
viii) Qualified B/S Gde-I Exam in 1992	Not qualified as yet

2. In view of above you are requested to review the date of seniority in comparison to MES-224876 Sri S.B. Prasad and ensure that I am not deprived of the same date of seniority i.e. 17-1-83 which ought to be in accordance with the principles of justice and equality.

Thanking you,

Yours faithfully,

Station : SHILLONG  
 Dated : 10 Dec '94

Sd/-  
 ( S.N. PANDEY )  
 MES-246768  
 Supvr B/S Gde-II

Attested  
 P.K. Deka  
 Advocate

11th September, 1995

To,

The Chief Engineer,  
Eastern Command,  
Fort William,  
Calcutta 700 021.

Sir,

SUB: LEGAL NOTICE

Under instructions of my client Shri Satya Narayan Pandey, resident of Shillong Cantonment Area, presently employed as Supervisor Barrack/Stores Grade II in the office of Garrison Engineer, Shillong Division, Shillong 793002, please take notice as under :-

1. That my client had initially joined as CSM (Civilian School Master) at 3 EME Military Centre, Bhopal to which post he joined on 13.2.64 and served until 10.2.67. When he was considered surplus in terms of the scheme of Adjustment of surpluses and deficiencies of Civilian personnel, my client was adjusted as Storekeeper, Grade II in the Military Engineering Service which is a lower post. Having worked for long 18 years from the date of being declared surplus he was eventually promoted as Storekeeper, Grade I on 10.4.85.

2. That on 17.1.83 my client had appeared at the Direct Recruitment Test of Supervisor Barrack/Stores Grade II and in the said test he has secured second position in the merit list. Pertinent to mention here that the said post of Supervisor B/S Grade II is in the identical scale of that of CSM. Although having emerged as successful and eligible in all respects to be appointed in the said post of Supervisor B/S Grade II, however, the same was stalled. The plea taken by the appointing authority was that according to the Recruitment Rules since my client had crossed 35 years of age, he cannot be appointed in the said post.

3. That being highly aggrieved of the actions of the authorities concerned, my client had no other option but to approach the Central Administrative Tribunal at Guwahati with the prayer for appropriate directions to the authorities concerned to appoint my client to his original post or equivalent grade and/or to the post of Supervisor B/S Grade II with all consequential benefits of service. The said case was registered and numbered as G.C. No. 11 of 1988.

Contd....2

Attested  
P.K. Deka  
Advocate

4. That by Judgement and Order dated 17.3.89 the Hon'ble Tribunal having dealt into the entire facts and circumstances of the case observed, inter alia, that the age bar cannot and should not apply in my client's case. Moreover, it was also observed that the same was not applicable even under the terms of the scheme of Adjustment. Direction was issued that my client should be considered for promotion to Supervisor B/S Grade II within six months from the date of receipt of Judgement and Order dated 17.3.89.

5. That thereafter, my client was appointed to the said post and although his pay was not protected initially, by virtue of another order passed by the Hon'ble Tribunal on 9.7.90 in a Miscellaneous application, his grievances were redressed.

6. I am informed that MES-224875 Shri Shyam Bihari Prasad had appeared in the Direct Recruitment Test of Supervisor B/S Grade II along with my client on 17.1.83. Mention may be made that the said Shri S.B. Prasad stood first in the said test while my client was placed second in the merit list. Although Shri S.B. Prasad was denied appointment like that of my client, he was subsequently appointed to the said post in the year 1987. It may be mentioned that the said order of appointment was the outcome of a case filed by Shri S.B. Prasad before the Hon'ble CAT, Guwahati. As per the order dated 5.8.93 passed in O.A. No. 38 of 91, the respondents so arrayed were directed to count/give effect of the appointment of Shri S.B. Prasad in the post of Supervisor B/S Grade II with retrospective effect from 17.1.83 with all consequential benefits including salary, increments and seniority etc.

7. That my client informed me that the passing of the aforesaid order dated 5.8.93 was not within his knowledge. The counting of the seniority of Shri S.B. Prasad with effect from 17.1.83 came to the knowledge of my client for the very first time in December 1994 when he had occasion to peruse the All India Seniority List of the Supervisor B/S Grade II. My client was aghast to learn that although being similarly situated, his seniority was being counted with effect from 15.9.89 whereas in respect of Shri S.B. Prasad it was 17.1.83, that is from the date on which the Direct Recruitment Test was held and in which both, my client and Shri Prasad had appeared together.

8. That immediately thereafter my client vide letter dated 10.12.94 had duly apprised Chief Engineer, Eastern Command, Calcutta 21 (through proper channel) of the said fact with all details with a prayer that my client's seniority, as in the case of Shri S.B. Prasad, should also be counted with effect from 17.1.83. Unfortunately my client is yet to receive any favourable response or any intimation on the said issue.

A copy of the said letter dated 10.12.94 is annexed herewith and marked as Annexure - I.

Contd....3

9. That it is stated that the denial of the seniority has seriously jeopardised the service career of my client. Had he been given his legitimate date of seniority, he could well have been promoted to the post of Supervisor B/S Grade I along with all other promotees whose names figure in the panel for promotion as per list contained in the Notification No. 41206/EIR (Sub) dated 10.7.95 issued from the office of Coörd. & Pers. Directorate/EIR (Sub) Engineer-in-Chief's Branch, Army Head Quarters, HQ, P.O. New Delhi - 11. In fact out of the list of 231 promotees my client's name would have figured well within serial No. 115 of the list, had he been given due seniority.

10. That it is stated that my client is also otherwise qualified for the post of Supervisor B/S Grade I having duly passed the examination in the year 1992 for the post of Supervisor B/S Grade I.

11. That contrary to the principles of service jurisprudence my client has virtually remained stagnant in the same post/grade for long 28 years. To make it worse, junior staff have been promoted to the next higher rank in supersession of the rights of my client. The same is impermissible and unsustainable in law.

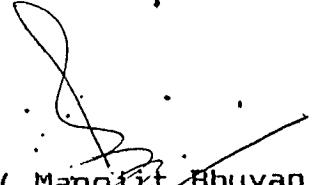
12. That by this notice my client seeks redressal of two primary grievances -

- (a) Counting of his date of seniority as Supervisor B/S grade II with effect from 17.1.83 with all consequential benefits as in the case of Shri S.B. Prasad who is similarly situated.
- (b) Promotion to the post of Supervisor B/S Grade I with due seniority on All India basis with all consequential benefits and further promotion in accordance with law. That my client who has put in his entire life into the service of the Department and having served with all diligence and sincerity is to be given his due status. On the contrary he is being discriminated against and has been denied justice and fair play. He is left with only four years from the date of retirement and at this fag-end of his career he demands appropriate dispensation of justice.

13. This notice is being sent under the instruction of my client as aforesaid. Also please take notice that in case the grievances of my client are not redressed within 60 days from the date of receipt of this notice, my client will be constrained to approach the competent court of law for appropriate directions as in above.

14. That this legal notice is being sent under Registered Post Acknowledgement Due and a copy of the same is being retained at my office for future use.

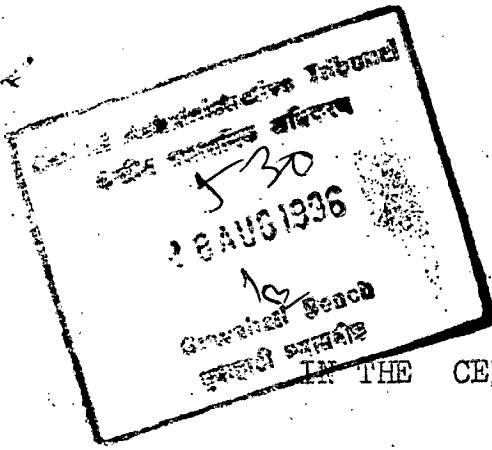
Yours faithfully,

  
( Manojit Bhuyan )  
ADVOCATE

Copy to:

- 1: The Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Engineer-in-Chief, Army Head Quarters, DHQ PO New Delhi 11.
3. Chief Engineer, Shillong Zone, Shillong 11.
4. Commander Works Engineer (Air Force), A.T. Road, Guwahati-9.
5. Garrison Engineer, Shillong Division, Shillong 2.

Attested  
P.K. Jiwani  
Advocate.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

In the matter of :

O.A. No. 70/96

Shri Satya Narayan Pandey  
...Applicant.  
- Versus -

Union of India & Ors. ... Respondents

- AND -

In the matter of :

Written Statement on behalf of  
the Respondents.

I, Major Ashok Madan, Garrison Engineer, Shillong

do hereby solemnly affirm and declare as follows :-

1. That a copy of application alongwith an order passed by this Hon'ble Tribunal have been served upon the respondents and being called upon to file written statement, I do hereby file the same which may be treated as common defence on behalf of all the official respondents.

respondents. Further, I say categorically that save and except what is admitted in this Written Statement, rest may be treated as total denial by all the official respondents.

2. That with regard to the contents made in paragraph 1 & 2 of the application, I beg to state that I have nothing to comment being formal.

3. That with regard to the contents made in paragraph 3 & 4.1, I beg to state that I have no comment to offer.

4. That with regard to the contents made in paragraph 4.2 of the application, I beg to state that these are matter of records. The applicant being surplus at 3 EME Military Centre, Bhopal was adjusted as Store Keeper Grade II as per policy. He was promoted to SK Grade I in 1985 after passing SK Grade I Examination.

5. That with regard to the contents made in paragraph 4.3, I beg to state that since the applicant crossed the age limit of 35 years relaxable for departmental employees for direct recruitment of Supervisor B/S Grade-II, he was not selected for the post.

6. That with regard to the contents made in paragraph 4.4, I beg to state that the applicant was promoted to the post of Supervisor B/S Grade II in Sept'1989 as per this Hon'ble Tribunal's judgement dtd.17.3.89 in GC No.11 of 1988.

Contd.....

7. That with regard to the contents made in paragraph 4.5 of the application, I beg to state that the direction was given by this Hon'ble Tribunal in G.C. No.11 of 1988 to consider promotion of the applicant to the post of Supervisor B/S Grade II within six months from the date of the judgement. The judgement of the Hon'ble Tribunal was implemented and the applicant was promoted to Supervisor B/S Grade II with effect from 15th September, 1989.

8. That with regard to the contents made in paragraph 4.6 of the application, I beg to state that I have nothing to comment except the statements made in para 7 above.

9. That with regard to the contents made in paragraph 4.7 of the application, I beg to state that MES/224875 Shri Shyam Behari was appointed as Supervisor B/S Grade II w.e.f. 17.1.83 as per judgement dated 05.08.93 in O.A.No.38/91.

10. That with regard to the contents made in paragraph 4.8, I beg to state that I have nothing to comment except the statement made in para 9 above.

11. That with regard to the contents made in paragraph 4.9 of the application, I beg to state that the contention of the applicant is not tenable. The applicant had crossed the permissible age limit of

35 years for the departmental candidates for direct recruitment of Supervisor B/S Grade II. As such, the applicant cannot compare himself with Shri Shyam Behari Prasad who was within the age limit for direct recruitment of Supervisor B/S Grade II and awarded the benefit of appointment w.e.f. 17.1.83 as per judgement in O.A.No.38/91. The applicant crossed the age limit of 35 years on the date of direct recruitment of Supervisor B/S Grade II and so he was promoted to the said post during 1989 as per this Hon'ble Tribunal's order in O.A.No.11 of 1988. He has been given seniority rightly w.e.f. 15th September '89 and accordingly placed in the All India seniority list of Supervisor B/S Grade II.

12. That with regard to the contents made in paragraph 4.10, I beg to state that the matter regarding the date of seniority had already been communicated to the applicant through CEC Shillong Zone vide CEEC letter No.131834/6/2440/Engr/BID dated 21st Oct '94 as intimated vide B-in-C's Branch, Army Headquarters letter No.41268/ELE(Sub) dated 30th Sept '94 in response to applicant's appeal dated 29th April '94 received vide CEC Shillong Zone letter No.70860/3/4456/EID dated 28th June '94. As such, reply to the applicant's letter dated 10th Dec '94 was not considered necessary as he did not also bring any extra points in the application.

13. That with regard to the contents made in paragraph 4.11 of the application, I beg to state that the question.....

question of denial seniority does not arise. He has been assigned seniority with effect from 15th Sept '89 as Supervisor B/S Grade II.

14. That with regard to the contents made in paragraph 4.12, I beg to state that I have nothing to comment being matter of records.

15. That with regard to the contents made in paragraph 4.13, I beg to state that the contention of the applicant is not correct. MES-202291 Shri Viresh Kumar Pant who is senior to the applicant has not been promoted to Supervisor B/S Grade I also.

16. That with regard to the contents made in paragraph 4.14, I beg to state that the reply to the Legal Notice is not mandatory for the respondents, as the applicant can file O.A. at his own even without taking permission from the Department.

17. That with regard to the contents made in paragraph 4.15, I beg to state that I have nothing to comment.

18. That with regard to the contents made in paragraph 4.16, I beg to state that the applicant once again comparing himself with Shri Shyam Behari Prasad which is not correct at all.

Contd.....

19. That with regard to the contents made in paragraph 4.17, I beg to state that I have nothing to comment.

20. That with regard to the contents made in paragraph 5.1, I beg to state that there ~~is~~ has been no violation of Article 14 of the Constitution of India.

21. That with regard to the contents made in paragraph 5.2, I beg to state that I have nothing to comment except as have been explained in the aforesaid paragraphs.

22. That with regard to the contents made in paragraph 5.3 of the application, I beg to state that I have nothing to comment except what have been explained in paragraph 11 above in reply to para 4.9 of the application.

23. That with regard to the contents made in paragraph 5.4, I beg to state that the applicant has rightly been assigned seniority w.e.f. 15th Sept '89. The question of arbitrary action by the department does not arise at all.

24. That with regard to the contents made in paragraph 5.5, I beg to state that the judgement in O.A. No.38/91 is applicable to Shri Shyam Behari Prasad only. Para 5 of the judgement in OA No.38/91 is very clear in this respect.

Contd.....

25. That with regard to the contents made in paragraphs 6 and 7, I beg to state that I have nothing to comment.

26. That with regard to the contents made in paragraph 8(i), I beg to state that the applicant cannot be assigned seniority w.e.f. 17 Jan '81 as he was not directly recruited as Supervisor B/S Grade II like Shri Shyam Behari Prasad due to crossing of age limit applicable for the departmental employees.

27. That with regard to the contents made in paragraph 8(ii), I beg to state that the applicant will be promoted to Supervisor B/S Grade I in his turn and as per rules. However, it is stated that Shri Viresh Kumar Pant who is senior to the applicant has also not been promoted to Supervisor B/S Grade I due to non availability of vacancies.

28. That with regard to the contents made in paragraph 8(iii), I beg to state that no interim order is prayed for.

29. That with regard to the contents made in paragraph 8(iv), I beg to state that these are not at all accepted.

30. That with regard to the contents made in paragraph 9 of the application, I beg to state that I have nothing to comment except that the reply to the legal

Notice is not mandatory for the respondents, as the applicant can file O.A. at his own even without taking permission from the Department.

31. . . That the present application is ill-conceived of law and mis-conceived of fact.

32. . . That the present application is without any cause of action and as such the same may be rejected out-right.

33. . . That the applicant has not exhausted all the remedies available to him and it is a fit case for outright rejection.

34. . . That the present application is barred by law of limitation and hence liable to be rejected.

35. . . That the Respondents crave leave of this Hon'ble Tribunal to file written statement in addition if this Hon'ble Tribunal so directs.

36. . . That this Written Statement is filed bonafide and in the interest of justice.

VERIFICATION ....

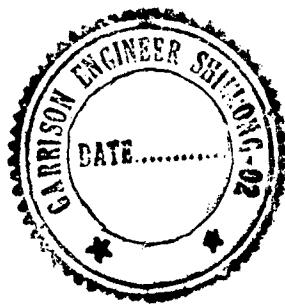
35  
A

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

I, Major Ashok Madan, Garrison Engineer, Shillong

do hereby solemnly affirm and declare that the contents made in paragraph 1 of this Written Statement are true to my knowledge and those made from paragraph 2 to 30 are derived from records which I believe to be true and rest are humble submissions before this Hon'ble Tribunal.

AND I sign this Verification on this 16 day of August ,1996 at GE Shillong .



*Ashok Madan*  
(Ashok Madan)  
Major  
Garrison Engineer Shillong  
DEPONENT