

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 046/00060/2017

Date of Order: This, the 20<sup>th</sup> day of February 2020

**THE HON'BLE SMT. MANJULA DAS, MEMBER (J)**

**THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**



1. Sri Kailash Mech  
Diesel Technician  
AIR Kohima, Control Room  
Kohima – 797001, Nagaland.
2. Sri Purtems, Diesel Technician  
AIR Mokokchung, Control Room  
Post Box-62, Mokokchung, Nagaland.

...Applicants

By Advocates: Sri S. Sarma, Sri H.K. Das, Smt. P. Dutta  
and Sri U. Pathak

-Versus-

1. The Union of India  
Represented by its Secretary  
Government of India  
Ministry of Information and Broadcasting  
A-Wing, Shastri Bhawan, New Delhi – 1.
2. Prasar Bharati Broadcasting Corporation  
Of India, represented by the Chief Executive  
Officer, Parliament Street, New Delhi – 110001.
3. The Director General  
All India Radio, Prasar Bharati  
(Broadcasting Corporation of India)  
Parliament Street, New Delhi – 110001.



4. The Chief Engineer (EZ)  
All India Radio & Doordarshan  
Akashvani Bhawan, 4<sup>th</sup> Floor  
Eden Gardens, Kolkata – 1.
5. The Additional Director General (E)  
(NEZ), Doordarshan Complex  
R.G.B. Road, Guwahati – 781024.
6. The Station Director  
Prasar Bharati  
(Broadcasting Corporation of India)  
All India Radio, Itanagar  
All India Radio, Itanagar  
Arunachal Pradesh.
7. Md. Mohibul Islam  
Son of Late Ataur Rahman  
Diesel Technician  
Office of the Station Director  
All India Radio, Guwahati – 781003.
8. NG. Robin Meitei  
All India Radio, Imphal  
Palace Compound, Imphal  
Pin – 795001, Manipur.
9. Sri Gautam Chanda  
All India Radio, Silchar.
10. Sri Khokan Nama  
All India Radio, Agartala.

### ...Respondents

By Advocate: Sri S.K. Ghosh, Addl. CGSC  
Sri A. Ahmed, for res. No. 9

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## **ORDER (ORAL)**

### **NEKKHOMANG NEIHSIAL, MEMBER (A):-**

This O.A. has been filed by two applicants under section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:



"8.1 To quash and set aside the impugned show-cause notice dated 28.09.2016 [Annexure – 14], impugned draft seniority list as on 01.01.2000 (revised on zonal seniority) circulated vide communication dated 23.11.2016 (Annexure – 16), impugned reversion order dated 09.02.2017 (Annexure – 17) and impugned promotion order dated 21.02.2017 (Annexure – 18) and grant all consequential benefits.

8.2 To direct the respondents to restore the promotion of the applicants to the rank of Diesel Technician w.e.f. 29.03.2000 in terms of recommendation order dated 29.03.2000 with all consequential benefits.

8.3 To direct the respondents to publish the latest seniority list of Diesel Technician considering the applicants to be Diesel Technician w.e.f. 29.03.2000 and consider their cases for subsequent promotion to the next higher rank as well MACP benefits.

8.4 Cost of the application.

8.5 Pass any such order/orders Your Lordships may deem fit and proper."

2. Heard Sri H.K. Das, learned counsel for the applicants, Sri S.K. Ghosh, learned Addl. CGSC for the official respondents and Sri Adil Ahmed, learned counsel for private respondent No. 9.

3. The applicant No. 1 was initially appointed vide order dated 16.10.1995 as Diesel Engine Driver in the All India Radio, Kohima w.e.f. 09.10.1995 in the pay scale of Rs. 950-20-1150-EB-25-1500 and applicant No. 2 was initially appointed on 21.02.1995. A Departmental Promotion Committee (DPC in short) was held by the respondents on 03.04.1998 towards confirmation of the services of the applicants and accordingly, by an order dated 06.04.1998, their probationary periods were terminated declaring them as confirmed staff.



4. On recommendation of Departmental Promotion Committee held on 29.03.2000, both the applicants were recommended and promoted to the post of Diesel Technician from Diesel Engine Driver at Kohima in the pay scale of Rs. 4,000-100-6,000/- w.e.f. 29.03.2000 as per the Rule prevailing at the relevant point of time vide order dated 31.03.2000. Thereafter, the Assistant Director (Engineering) for Chief Engineer (East Zone) by an order dated 10.12.2002, upgraded the pay of the applicants to Rs. 4,500-125-7000/- w.e.f. 29.03.2000. In terms of the order dated 10.12.2002, the

Station Director, Kohima issued an order dated 13.03.2003 implementing the up-gradation in the pay scale of the applicants. Accordingly, pay of both the applicants was fixed in the pay scale of Rs. 4,500-125-7000/- w.e.f. 29.03.2000.



5. However, after eight years vide order dated 02.01.2008, the applicants were sought to be reverted from the post of Diesel Technician to the post of Diesel Engine Driver. The respondents authority stated that as per judgements passed by this Tribunal, Guwahati in O.A. No. 26/2007 filed by one similar incumbent namely Mahibul Islam, Diesel Engine Driver, AIR, Guwahati, a review DPC for promotion from the post of Diesel Engine Driver to the post of Diesel Technician on Zonal Basis was called. On recommendation of DPC, the applicants along with other five Diesel Technician earlier promoted on local basis are reverted to the post of Diesel Engine Driver.

6. Sri H.K. Das, learned counsel for the applicants vociferously argued that the applicants were promoted

to the post of Diesel Technician with due procedure of law on regular basis and rendered more than 16/17 years but all of a sudden the respondent No. 4 vide order dated 02.01.2008 reverted the applicants without any notice or show cause. As such, said action of the respondent authorities is in gross violation of principles of natural justice.



7. Against the aforesaid order dated 02.01.2008, both the applicant No. 2 submitted representation on 10.01.2008 ventilating his grievance. However, no heed was shown by the respondents in considering aforesaid representation. Being aggrieved, both the applicants approached before the Hon'ble Gauhati High Court by filling WP(C) No. 245/2008. While issued notice on 23.01.2008, the Hon'ble Gauhati High Court directed the opposite parties/respondents to maintain status-quo pertaining to the service of the applicants until further orders. Accordingly, both the applicants continued in the post of Diesel Technician. Subsequently, the case of the applicants had been transferred from Hon'ble Gauhati High Court to this Tribunal and the same was

registered as T.A. No. 03/2013. This Tribunal vide judgement and order dated 05.12.2013 set aside the reversion order dated 02.01.2008 of the applicants by holding that the reversion order is not sustainable in the eye of law. According to the learned counsel for the applicants, no appeal was preferred by the respondents against the order of this Tribunal dated 05.12.2013. Hence the matter attained finality and binding upon the respondents. Sri Das also pointed out that this Tribunal has already adjudicated in the case of similarly situated employees like the present applicants vide common judgment and order dated 06.05.2019 in O.A. Nos. 045/00051/2017, 045/00054/2017 and 045/00070/2017.



8. Sri H.K. Das, learned counsel for the applicants further pointed out that in a similarly situated matter, the respondent authorities challenged the order of this Tribunal dated 25.03.2009 before the Hon'ble Gauhati High Court vide W.P.(C) No. 3646/2009 where Hon'ble Gauhati High Court by judgement and order dated 26.06.2013 upheld the decision of this Tribunal dated

25.03.2009. According to Sri Das, in comply with the judgement and order dated 25.03.2009 passed by this Tribunal in O.A. No. 28/2008, O.A. No. 11/2008 and O.A. No. 10/2008 the promotion of the applicants therein were further restored in the cadre of Diesel Technicians and posted at AIR, Tawang and Itanagar, respectively under Arunachal Pradesh State, on restoration of their promotion in the grade of Diesel Technician.



9. Long after restoration of promotion of the applicants in the grade of Diesel Technician the respondents again reverted the applicants to the post of Diesel Engine Driver from the post of Diesel Technician. As such, the applicants have agitated before this Tribunal by challenging the said impugned reversion order dated 09.02.2017 vide the instant O.As.

10. The position of reversion was narrated by the respondents authority that while the direction given by the Hon'ble Gauhati HighCourt in WP(C) No. 3646/2009 was started to carried out, some Diesel Engine Driver namely, Shri Khokan Nama, Sri Swapan Das, Sri Biswader



Swargiary, Sri Gautam Chanda and Sri Y. Swarsing had filed O.A. Nos. 334/16, 335/16, 346/16, 347/16 and O.A. No. 348/16 respectively before this Tribunal praying for a direction from this Tribunal to conduct review DPC as per order passed by the Gauhati High Court. During the pendency of the aforesaid O.A.s, the respondents authority had reverted the applicants along with some other Diesel Technician to Diesel Engine Driver vide impugned order dated 09.02.2017 and promoted some incumbent including the private respondents vide order dated 21.02.2017.



11. Here we noted that vide impugned order dated 09.02.2017 the applicants were reverted from the post of Diesel Technician to Diesel Engine Driver. However, some other seven drivers were promoted to the post of Diesel Technician. Further, vide impugned promotion order dated 21.02.2017 the private respondents were promoted to the post of Diesel Technician on the basis of Zonal seniority against the vacancies for the years of 2005-06, 2007-08, 2009-10, 2011-12, 2012-13 and 2013-14 respectively.



12. According to the respondent's counsel, the promotions from Diesel Engine Driver to Diesel Technician were to be done on Zonal seniority basis and not on local seniority basis. But the Chief Engineer (EZ) by ignoring the clarification of Director General's, had promoted the applicants on local seniority basis, as a result, the senior Diesel Engine Driver of Zonal cadre have been deprived of promotion. According to the respondents, rectifying this inadvertent mistake, the respondent authority have initiated the review DPC by which the applicants had been reverted back to their original post of Diesel Engine Driver.

13. In reply to the respondent's above pleas, Sri H.K. Das, learned counsel for the applicants heavily countered by submitting that the Hon'ble Gauhati High Court while issued notice upon the respondents/opposite parties on 23.01.2008 in WP(C) No. 245/2008, granted status-quo pertaining to the service of the applicants until further orders. This Tribunal also vide judgment and order dated 05.12.2013 quashed and set aside the reversion order of the

applicants dated 02.01.2008, therefore, the authority has no jurisdiction to revise the seniority list on Zonal basis in the cadre of Diesel Engine Driver with retrospective effect.



14. Sri Das relying para 15 of common judgment and order dated 06.05.2019 in O.A. Nos. 045/00051/2017, 045/00054/2017 and 045/00070/2017 submitted that the Office of the Director General, All India Radio, Government of India, New Delhi made it clear vide O.M. dated 09.04.1991 that promotion in the cadre of Diesel Technician as required to be maintained on the basis of local seniority i.e. Station wise seniority. The applicants were appointed as Diesel Engine Driver in the year of 1995 in the office of the All India Radio, Kohima and as per Director General's O.M. dated 09.04.1991 and also in terms of the recruitment rules for the post of Diesel Technician published under authority notified vide Ministry of Information and Broadcasting Notification No. 16 /20/69-B(D) dated 30.03.1970 circulated vide DG, AIR Memo No. A-12018/3/70-SIV dated 8/28-4-1970, where it was specifically stated

therein that the post of Diesel Technician are required to be filled up 100% by promotion, failing which, by direct recruitment. In the absence of any amendment of O.M. dated 09.04.1991 it is mandatory on the part of the authorities to grant promotion to the eligible Diesel Engine Driver to the post of Diesel Technician on the basis of local seniority.



15. Further, argued that the settled seniority position of the applicants in the cadre of Diesel Engine Driver at this belated stage after a lapse of 16/17 years shall adversely affect the applicants' promotion which was given way back in the year of 2000.

16. For coming to a logical decision, we have gone through the Hon'ble Gauhati High Court's judgement and order dated 26.06.2013 passed in W.P.(C) No. 3646/2009. The said W.P.(C) was filed by the respondent authorities for setting aside the common judgement and order dated 25.03.2009 passed in O.A. Nos. 9/2008, 10/2008, 11/2008 and 28/2008 filed by the other similarly situated applicants as well as other aggrieved persons.

The Hon'ble Gauhati High Court vide judgement and order dated 26.06.2013 disposed of the above Writ Petition which reads as hereunder:



"Learned counsel for the petitioners is unable to show how without giving the opportunity of being heard, promotion granted 6/8 years earlier could have been cancelled. He only submits that opportunity may be given to the petitioners to pass fresh order in the matter. Accordingly, we modify the impugned order to the effect that while order of the Tribunal quashing the reversion order dated 2.1.2008 is upheld but this order will not debar the petitioners from passing any fresh order in the matter in accordance with law. If aggrieved, the respondents will be at liberty to take remedy against such order.

The petition is disposed of."

17. In compliance with the Court's dated 25.03.2009, the service position of the applicants therein restored to the cadre of Diesel Technician. Subsequently, by taking note of Director's instruction No. 08.12.2008-S IV(A) Pt./380 dated 13.08.2013 and judgement of Hon'ble Gauhati High Court on W.P.(C) No. 3646/2009 a review DPC for promotion of Diesel Engine Driver to the post of Diesel Technicians on Zonal basis was convened.

18. With the above detail thorough discussion of the entire case of the applicants as well as hearing of the

rival submissions, we are of the view that when the department issued the impugned reversion order dated 09.02.2017 by which the applicants sought to be reverted from the Diesel Technician to Diesel Engine Driver, no notice or show cause was issued to the applicants which is flagrant violation of principles of natural justice. In the present context, we are of the considered view that the respondents ought to have given the opportunity to the applicants before heating the settled service position of the applicants. At the same time, we are not closing our eyes to avoid the very fact that the attempt of reversion is not once but twice. Once this Tribunal allowed the T.A. of the applicants vide order dated 05.12.2003 by setting aside the earlier reversion order of the applicants dated 02.01.2008 which was complied with by the departments should not create the complicated and confusing situation by issuing further reversion orders. It is also crystal clear that against the order of this Tribunal dated 05.12.2003, the respondent authorities have not approached the higher forum.



19. We are of the view that, once the respondents settled the service position of the applicants as Diesel Technician on restoration in view of the court's order, the respondents ought to have stood by the decision and not to disturb what has been settled.

20. In **Shib Sankar Mohapatra Vs. State of Orissa**

**[(2010 12 SCC 471)]**, the Hon'ble Apex Court as

hereunder:



"...the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K. R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenge the seniority and is case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

21. We further noted that the respondents authority operated DG's instruction dated 26.09.2007 by which the promotion of Diesel Engine Driver to Diesel Technician on Zonal basis was initiated adversely affecting the applicants service position without affording any

opportunity is not a fair Administrative play and against the service jurisprudence.



22. We further opined that the applicants were promoted from Diesel Engine Driver to Diesel Technician with due procedure of law and that too through recommendation of DPC. But twice the applicants had suffered by way of reversion order without their being any fault on their part but lack of competency or fault or lapse on the part of the respondents and the employees should not suffer. In case of **State of Maharashtra vs Jagannath Achyut Karandikar 1989 Supp (1) SCC 393**, the Hon'ble Apex court held that:

"Employees should not be suffered for the fault or lapse on the part of the Government."

23. After taking into entire conspectus of the case and as per ratio laid down by Hon'ble Apex Court as discussed in above, we hold that the impugned reversion order dated 09.02.2017, so far the applicants are concerned, is bad in law and same is hereby set aside and quashed.



24. Consequently, the impugned revised draft seniority list dated 01.01.2000 circulated vide communication dated 23.11.2016 shall not be taken into effect so far the applicants are concerned.

25. With the above observations and directions, O.A stands allowed. No order as to costs.



**(NEKKHOMANG NEIHSIAL)**  
**MEMBER (A)**

**(MANJULA DAS)**  
**MEMBER (J)**

**PB**