

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

- 1) O.A. NO.2494/1996
- 2) O.A. NO.2640/1996

New Delhi this the 26th day of June, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

18

1) O.A. NO.2494/1996

1. Tejbir singh S/O Moolchand,
R/O Vill. Atorna, P.O. Atorna,
Distt. Ghaziabad (UP).
2. Ilam Chand S/O Nihal Singh,
R/O F-142-A, Udal Nagar,
Patel Nagar-III,
Ghaziabad (UP).
3. Narender Kumar S/O Prasadi Lal,
R/O H.No.152, Gali No.4,
Ghunga Road(Meerut Road),
Ghaziabad (UP).
4. Mamchand S/O Chandan Singh,
R/O F-142 A, Udal Nagar,
Patel Nagar-III,
Ghaziabad (UP).
5. Jaipal S/O Brahmpal,
R/O inside the premises of
Telephone Exchange,
Ghaziabad (UP).
6. Woolchand S/O Bhikari Singh,
R/O G-71, Sector-23,
Sanjay Nagar, Ghaziabad (UP).
7. Karan Pal,
Regular Mazdoor, Office of
General Manager, Telecom,
Distt. Ghaziabad (UP).
8. Ramesh Chand Sharma,
Regular Mazdoor, Office of
General Manager, Telecom,
Distt. Ghaziabad (UP).
9. Rishipal Singh,
Regular Mazdoor, Office of
General Manager, Telecom,
Distt. Ghaziabad (UP).
10. Pooran Mal,
Regular Mazdoor, Office of
General Manager, Telecom,
Distt. Ghaziabad (UP).
11. Azad Kumar,
Regular Mazdoor, Office of
General Manager, Telecom,
Distt. Ghaziabad (UP).

[Handwritten signature]

12. B.P. Tyagi,
Regular Mazdoor, Office of
General Manager, Telecom,
Distt. Ghaziabad (UP). Applicants

2) O.A. NO. 2640/1996

1. Pyare Lal S/O Narain Singh,
R/O H.No.B-389, Krishna Nagar (Bagh),
Vijay Nagar Eye Pass,
Distt. Ghaziabad (UP).
2. Dhanpal S/O Badloo Singh,
R/O Vill. Natipur, P.O. Muradnagar,
Distt. Ghaziabad (UP).
3. Mohan Lal S/O Ransingh,
R/O A-2/154, East Gokulpur,
Loani Road,
Shahdara, Delhi-110094.
4. Asey Ram S/O Lekhram,
R/O Vill. Anandpur,
P.O. Kat, Distt. Ghaziabad (UP).
5. Siya Ram S/O Ram Baksh,
R/O Vill. Hasanpur, P.O. Hasanpur,
Tehsil Jahangirpur,
Distt. Bulandshahar, UP.
6. Mahender Singh S/O Baljeet Singh,
R/O Vill. Bhadauli, P.O. Bhadauli,
P.S. Muradnagar, Distt. Ghaziabad.
7. Dhanpal Singh S/O Pyare Lal,
Regular Mazdoor, Office of
General Manager, Telecom,
Distt. Ghaziabad (UP).
8. Bhagat Ram S/O Ram Rakha,
R/O H.No.B-45, DCM Colony,
Ibrahimpur Extension,
Delhi-110036.
9. Mahadev Yadav S/O Baliraj Yadav,
Regular Mazdoor, Office of
General Manager, Telecom,
Distt. Ghaziabad (UP).
10. Krishan Kant S/O Begraj Singh,
R/O Vill. Bhopura, P.O. Pasonda,
P.S. Sahibabad,
Distt. Ghaziabad (UP).
11. Nathu Singh S/O Shyam Lal,
R/O H.No. 450, Sunder Nagri,
P.O. Nand Nagri,
Delhi-110093.
12. Munnal Lal S/O Chatter Pal Sharma,
R/O F-156/1, Udal Nagar,
Patel Nagar-III,
Ghaziabad (UP).

19

DeA

13. Shribhagwan Sharma S/O Kirorimal,
R/O E-154, Sector-9, Vijay Nagar,
Ghaziabad (UP). ... Applicants

(By Shri A.K. Bhardwaj, Advocate)

-Versus-

1. Union of India
through Secretary,
Ministry of Telecommunication,
Department of Telecommunication,
Sanchar Bhawan, New Delhi.
2. General Manager,
Department of Telecommunication,
Telecom, Distt. Ghaziabad (UP).
3. Asstt. General Manager (Admn.),
Department of Telecommunication,
Telecom Distt. Ghaziabad (UP).
4. Suraj Singh, promoted as
Phone Mechanic, Office of the
General Manager Telecom,
Distt. Ghaziabad (UP). ... Respondents
(in both OAs)
5. Asstt. General Manager (Admn.),
District Telecom, Ghaziabad,
Department of Telecom. UP. ... Respondent
No.5 in OA-2494/96

(By Shri K.R. Sachdeva, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

By an order passed on 23.2.1996, applicants had been promoted on regular basis from the post of Regular Mazdoors to that of Phone Mechanics. By the impugned order later passed on 16.9.1996, applicants were reverted back to the post of Regular Mazdoors and certain other candidates were promoted to the post of Phone Mechanic.

2. It is inter alia contended on behalf of the respondents that those who had been promoted by the later order passed on 16.9.1996 had been erroneously omitted to be promoted though senior to the applicants. Aforesaid correction was, therefore, required to be made. Applicants have thereafter once

again been promoted with effect from 3.4.1997 though vacancies had been created since June, 1995. According to applicants, in the process they have been placed junior to the candidates who had been later promoted by the impugned order passed on 16.9.1996. Before the order of promotion of applicants dated 23.2.1996 was set aside by the order passed on 16.9.1996, it is common ground, no hearing was given to applicants. In the case of *Neelima Misra v. Harinder Kaur Paintal*, 1990 LAB.I.C.1229, the Supreme Court has observed as follows :

19.....An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no obligation, the decision is called 'purely administrative' and there is no third category. This is what was meant by Lord Reid in *Ridge v. Baldwin* (1963) 2 All E.R.66,75-76:

"In cases of the kind with which I have been dealing the Board of Work.... was dealing with a single isolated case. It was not deciding, like a judge in a law suit, what were the rights of the persons before it. But it was deciding how he should be treated - something analogous to a judge's duty in imposing a penalty.... So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter and to require it to observe the essentials of all proceedings of a judicial character the principles of natural justice. Sometimes the functions of a minister or department may also be of that character and then the rules of natural justice can apply in much the same way....."

22. An administrative order which involves civil consequences must be made consistently with the rules expressed in the Latin Maxim *audi alteram partem*. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an

adverse decision is taken. Ridge v. Baldwin, (1963-2 All ER 66) (supra); State of Orissa v. Dr. Binapani Dei, (1967) 2 SCR 265 : (AIR 1967 SC 1269)."

22

Aforesaid decision has been followed by the Madras Bench of this Tribunal in case of S. Mohd. Rqfiq & Ors. v. Union of India & Ors., 1991 (1) ATJ 666, wherein it has inter alia been observed as follows :

"11. Be that as it may, the short point to be considered in this case is whether the unilateral reversion of the applicants from the post of HSG-II, to which they have been legitimately promoted in accordance with the extant orders, and in which they had been continuously working, presumably satisfactorily, for more than two years, by the impugned order dated 1-9-1987, without following the principles of natural justice by way of notice or opportunity for representation, is legally valid and sustainable. When the applicants were promoted admittedly in a legitimate manner in accordance with the orders available at that time, they have acquired a certain right to continue in that post of HSG-II without being reverted except for valid and sound reasons and in accordance with law. Legitimate incumbency of a post in the Government gives rise to a vested right which cannot be disturbed except in accordance with law, and particularly, in conformity with the principles of natural justice and fairness. In this case, all that the respondents contend is that the original promotion order dated 10-6-1985 was issued without taking into account the letter dated 19-4-1985 of the Government and, therefore, the earlier promotion was erroneous. So far so good, but in our opinion, this does not give any licence to the respondents to nullify the promotion order unilaterally, and revert the applicants as they have done, without any ceremony. As we have already pointed out, the applicant had played no part in any alleged wrongful promotion. The failure, if any, is entirely on the part of the respondents. Such being the case, the respondents ought to have put the applicants on notice in regard to the so called error and given an opportunity to them to submit any representation questioning the happening of the error. The applicants were certainly entitled to show that there was no error in their earlier promotion....."

ACJ

3. If one has regard to the aforesaid decisions, we have no hesitation in holding that applicants were entitled to be heard before passing of the impugned order reverting them and promoting others in their place. Respondents, in the circumstances, are directed to give a hearing both to the applicants as also to those who have been promoted by the impugned order passed on 16.9.1996 and pass fresh orders de novo. It goes without saying that the order of promotion passed on 23.2.1996 and that on 16.9.1996 will be subject to orders to be passed after affording hearing as directed. It is clarified that such of those who may be adversely affected by orders to be passed after giving the aforesaid hearing, will be entitled to impugn the same, if so advised. 23

4. Present O.As. are allowed in the aforestated terms, but without any order as to costs.

(V.K. Majotra)
Member (A)

(Ashok Agarwal)
Chairman

/as/

Attested

Ashok Agarwal
CO. CS