

58

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-505/2004  
MA-1144/2005**

New Delhi this the 14<sup>th</sup> day of November, 2006.

**Hon'ble Mr. Justice B. Panigrahi, Chairman  
Hon'ble Mrs. Chitra Chopra, Member(A)**

1. Sh. R.P. Mishra,  
S/o Sh. Sri Dayal Mishra,  
Research Officer (Map),  
Office of the Registrar General, India,  
West Block-I, R.K. Puram,  
New Delhi-66.
2. Sh. Kamal Chander Sarma Bhagabati,  
S/o Sh. Kanak Chander Sarma Bhagabati,  
Research Officer (Map),  
Office of the Director, Census Operations,  
Assam, ULUBARI, Guwahati, Assam.
3. Sh. Autar Singh,  
S/o Sh. Indraaj Singh,  
Research Officer (Map),  
Office of the Registrar General,  
India, West Block-I, R.K. Puram,  
New Delhi-66.

..... Applicants

(through Sh. L.R. Khatana, Advocate)

Versus

1. Union of India through  
Secretary to the Govt. of India,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. The Registrar General, India,  
2/A, Man Singh Road,  
New Delhi-11.
3. Sh. R.N. Chhipa,  
Research Officer (Map),  
Office of the Census Operations, Nagaland,  
Bayavu Hill,  
Kohima-797001(Nagaland).

.... Respondents

(through Sh. H.K. Gangwani, counsel for Respondents No. 1 and 2 and  
Sh. Sudershan Rajan, counsel for Respondent No.3.

59

**ORDER**

**Hon'ble Mrs. Chitra Chopra, Member(A)**

This application has been made challenging O.M. No. 2/2/2003-Ad.III dated 18.6.2003 (Annexure-A1) and O.M. No.2/2/2003-Ad.III dated 20.6.2003 (Annexure-A2) respectively as illegal, arbitrary and discriminatory whereby the representation of the applicants against the wrong fixation of seniority has been rejected and final seniority list has been issued. The applicants had also challenged the order dated 23.08.1999 (Annexure-A3) passed by this Tribunal in OA-1168/1995 in the matter of R.N. Chhipa Vs. Union of India & Ors, on the basis of which the aforesaid two Office Memoranda have been issued. It has been submitted that the said order of the Tribunal is erroneous and illegal besides being not binding on the applicants as they were not made parties in the said O.A.

2. The factual background of the case, as stated in the application, is as under:-

The applicants, namely, S/Shri R.P. Mishra, Kamal Chander Sarma Bhagabati and Autar Singh are working as Research Officers (Map) in the Office of Registrar General, India, Ministry of Home Affairs, Government of India. They were initially appointed as Geographer/Cartographer, subsequently promoted as Senior Geographer and thereafter as Research Officer (RO) (Map). Their appointments/promotions were made on regular basis in accordance with the Rules.

CC



Respondent No.3 – Sh. R.N. Chhipa , who was also working as RO (Map) in pursuance of order dated 23.08.1999 passed by this Tribunal in OA-1168/1995 was appointed as Geographer/Cartographer on 28.01.1997 and promoted as Senior Geographer on 01.01.1981.

In the year 1987, there were 11 posts in the cadre of RO (Map) and all the posts were filled up by regularly appointed incumbents. On 11.03.1987, Shri Mohd. Abbas, RO (Map) went on deputation to the post of RO (Drawing) and Shri M.L. Kumawat was promoted as RO (Map) w.e.f. 29.09.1987 in accordance with the relevant rules.

In 1989 Sh. S.D. Tyagi, RO (Map) was promoted as Map Officer and respondent No.3 Shri R.N. Chhipa was promoted as RO (Map) w.e.f. 25.09.1989. During 1990-1991 six more temporary posts of RO (Map) were created in connection with 1991 census.

Out of the above 17 posts of RO (Map) (11 regular + 6 temporary) only 16 posts were filled up at that time, leaving one post vacant for Shri Mohd. Abbas, deputationist to revert to his cadre post after expiry of period of his deputation.

With effect from 10.03.1992 Shri Mohd. Abbas after completion of five years deputation reverted to his cadre post and thus all the 17 posts of RO (Map) were filled up in 1992. Further, after reversion of Shri Abbas from deputation, all the 11 regular cadre posts of RO (Map) were occupied by the regular incumbents, all of whom were senior to Shri R.N. Chhipa, who being

Ce

junior most should have been reverted to his substantive post of Senior Geographer but because 6 temporary posts have been created for the Census work of 1991, he was adjusted and allowed to work against one of the 6 temporary posts. This position is borne out by the final seniority list of RO (Map) as on 01.05.1992 issued on 18.05.1992 wherein the name of Shri R.N. Chhipa appears at Sl.No.12 (pages 69-71).

On 31.12.1993 the sanction of 6 temporary posts, which had been created in connection with the 1991 census expired and Shri R.N. Chhipa was reverted to the post of Senior Geographer w.e.f. 31.12.1993.

More than 9 months after his reversion from the post of RO (Map) to the post of Senior Geographer, Shri R.N. Chhipa proceeded on deputation to the post of RO (Drawing) w.e.f. 06.10.1994.

In December 1994 three persons, namely, S/Sh. Ram Prakash Mishra, K.C. Sarma Bhagabati and R.K. Chourajit Singh, Senior Geographers were promoted in accordance with the Rules and appointed to the post of RO (Map). Shri R.N. Chhipa was also considered along with other eligible officers but he was not selected by the UPSC.

In June 1995 Shri R.N. Chhipa filed OA-1168/1995 challenging his reversion from the post of RO (Map) w.e.f. 31.12.1993. It is pertinent to mention that applicants No. 1 and 2 in the present O.A., who had been selected and promoted as RO (Map) on regular basis in December 1994, whereas Shri R.N. Chhipa was considered but not selected.

62

On 26.11.1996 respondent No.2 (Registrar General, India) circulated the final seniority list of RO (Map) as on 01.07.1996 (Annexure-A5) wherein the names of applicant No. 1 & 2 Shri R.P. Mishra and K.C. Sarma Bhagabati appeared at Sl.Nos. 8 & 9 respectively whereas the name of respondent No.3 (R.N. Chhipa) did not figure in the said list and rightly so because he was never selected and appointed to the said post after his reversion on 31.12.1993.

With effect from 28.07.1997, applicant No.3 Sh. Autar Singh was appointed as RO (Map) on regular basis after considering the claims of all eligible persons including Shri R.N. Chhipa, who was not selected.

On 17.11.1998 final seniority list of Senior Geographers as on 01.05.1998 was circulated (Annexure A-6) and in the said list the name of Shri R.N. Chhipa figures at Sl. No.2 whereas the names of the applicants do not figure in that list as they had already been regularly appointed to the next higher grade prior to 01.05.1998.

The Tribunal, vide its order dated 23<sup>rd</sup> August, 1999 in OA-1168/1995 directed the respondents to treat the applicant (Respondent No.3 in the present OA) as continuing in the higher post of RO (Map) without any reversion and the respondents complied with the said order without challenging the same although it was an illegal and invalid order (Annexure-A3).

On 25.04.2003, respondent No.2 circulated a provisional seniority list of RO (map) as on 01.04.2003. The applicants were shocked to see the

Ce

name of respondent No.3 - Shri R.N. Chhipa in the said list above them whereas Shri R.N. Chhipa was not even a member of the grade of RO (Map). The applicants made representations against the said seniority list but respondent No.2 disposed off the same vide O.M. dated 18.06.2003 (Annexure-A1) stating that it was in compliance of the Tribunal's orders dated 23.08.1999 though such a list had been issued and the Office Order dated 31.12.1993 reverting Shri R.N. Chhipa from the post of RO (Map) to the post of Senior Geographer was withdrawn vide Officer Order No.9/2/95-Ad.III dated 09.11.1999. Thereafter the respondents circulated a final seniority list vide O.M. dated 20.06.2003.

3. It has been very forcefully submitted by Shri L.R. Khatana, learned counsel appearing for the applicants that the impugned O.Ms issued by the respondent No.2 are bad in law and are liable to be set aside particularly as the applicants were not impleaded as party in OA-1168/1995. Further, the impugned order dated 23.08.1999 passed by this Tribunal is erroneous and illegal as the Tribunal failed to appreciate that is a cardinal principle of service jurisprudence that when a particular post against which an employee is working ceases to exist, the said employee was bound to be reverted to a substantive post and therefore, when the post against which Shri R.N. Chhipa was working in 1993 ceases to exist w.e.f. 31.12.1993, he was rightly reverted.

4. Learned counsel Shri L.R. Khatana, appearing for the applicant has vehemently submitted that the order of the Tribunal dated 23.08.1999 was obtained by misleading the Tribunal and misstating the facts relating to

promotion of another officer, namely, Shri R.P. Singh, which did not affect the applicants. He further submitted that respondent No.3 (Sh. R.N. Chhipa) concealed the vital facts from the Tribunal that he was considered for promotion to the post of RO (Map) along with applicants No. 1 and 2 in December 1994 but he could not be selected and he did not challenge the said selection, which had, therefore, become final and binding, he could not undo the same indirectly by filing OA-1168/1995. Shri R.N. Chhipa was again considered in 1997 along with applicant No.3 but could not be selected and he did not challenge the said selection, which also consequently became final. Further, Shri R.N. Chhipa although was reverted on 31.12.1993, filed the said OA No. 1168/1995 in June 1995, almost one and a half year after his reversion, and the said OA was thus barred by limitation.

5. After hearing the arguments in this case, the Tribunal vide its order dated 18.02.2005 directed that the matter may be put up before a Larger Bench. The said direction as contained in para-14 of the order is reproduced below:-

"14. In the peculiar facts, what we have observed above prompts us to state that the said decision requires re-consideration and, therefore, the matter should be referred to a larger Bench. We direct that it may be put up before the appropriate authority for constituting of the larger Bench to consider the following question:

- (a) Whether the decision rendered on 23.8.1999 in OA No. 1168/1995 in the matter of **R.N. Chhipa Vs. Union of India & Ors.** is correct in law and on facts of the case?
- (b) If the answer is in the negative, then whether the same decision is to be set aside? If so, to what extent?"

65

6. The matter was considered by the Full Bench, and after extensive deliberation and consideration of all the facts and circumstances, it was held that the decision dated 23.08.1999 in OA-1168/1995 is neither sustainable in law nor on the facts of the case and accordingly the same was set aside with the direction that the matter be placed before the Division Bench for hearing of all the parties and decide the same on merits.

7. As this case has traversed a long history, it will be useful to recapitulate the circumstances and facts leading to filing of the present O.A.

8. OA-1168/1995 was filed by Sh. R.N. Chhipa to challenge the reversion order dated 31.12.1993 from the post of RO (Map) to the post of Senior Geographer. He had further sought a declaration for continuance against the available higher post of Map Officer and deemed to have been adjusted against the said post till a regular incumbent to the post one Sh. R.P. Singh took charge, making available the post of RO (Map) on 30.01.1994 against which he could have been adjusted without being reverted.

9. It was submitted by Shri R.N. Chhipa in that OA that he was given regular promotion in the year 1989 against a regular vacant post by superseding his juniors. Therefore, he was holding the post of RO (Map) in a substantive capacity. Further, on the day when he was reverted i.e. 31.12.1993, he was on sanctioned leave and when he rejoined after availing his leave, there was a vacant post of RO (Map) as Sh. R.P. Singh was given further promotion as Map Officer. Therefore, he could have been adjusted against that post. The Tribunal after recording the facts and circumstances

ce



allowed the OA. It was as a result of the directions given by the Tribunal in its decision dated 23.08.1999 that Shri R.N. Chhipa was restored back his seniority in the cadre of RO (Map) w.e.f. 1989. The respondents accordingly issued a provisional seniority list of RO (Map) on 25.04.2003 wherein Shri R.N. Chhipa was shown above the three persons, namely, S/Shri R.P. Mishra, K.C. Sarma Bhagabati and Autar Singh. These three persons were surprised to see the name of Sh. R.N. Chhipa above them because Shri R.P. Mishra and Sh. Kamal Chander Sarma Bhagabati were promoted as RO (Map) in December, 1994 while Sh. Autar Singh was promoted as RO (Map) w.e.f. 28.07.1997 and on both the occasions even though Shri R.N. Chhipa was considered along with them, but he was neither selected nor recommended by the DPC. That is why his name did not even figure in the final seniority list of RO (Map) issued on 26.11.1996 while the names of S/Shri R.P. Mishra and Kamal Chander Sarma Bhagabati were shown at Serial Nos. 8 and 9 as they were regularly promoted ROs (Map) (Annexure-A5).

10. On the contrary, the name of Shri R.N. Chhipa was shown at Serial No. 2 in the final seniority list dated 17.11.1998 of Senior Geographers only, which is feeder post for RO (Map) (Annexure-A6).

11. Being aggrieved, all the three persons, namely, S/Shri R.P. Mishra, Kamal Chander Sarma Bhagabati and Autar Singh gave representations. They were informed vide the impugned O.M. dated 18.06.2003 that it is pursuant to the Tribunal's order dated 23.08.1999 that Shri R.N. Chhipa has been directed to be continued in the higher post of RO (Map) without any

GA

reversion and with all consequential benefits. It was in pursuance of Court's direction that the reversion order of Shri R.N. Chhipa was withdrawn vide Office Order dated 09.11.1999 and seniority of Shri Chhipa was restored in the cadre of RO (Map) w.e.f. 25.08.1989.

12. It is in this background that the present O.A. was thus filed by these three persons, namely, S/Shri R.P. Mishra, K.C. Sarma Bhagabati and Autar Singh seeking the following reliefs:-

- "(A) That the Respondent No.2 Registratr General, India) be directed to produce the original records pertaining to the number of vacancies which existed from time to time in the grade of R.O. (Map) along with the regular incumbency position as also the record of the promotion of the applicants herein to the post of R.O. (Map) and the consideration and non-selection of respondent No.3 in the said selections.
- (B) That the Order dated 23.8.1999 passed by this Hon'ble Tribunal in O.A.No.1168/1995 be reconsidered/reviewed and declared as untenable in law and quashed and set aside and the order dated 31.12.1993 passed by the respondent No.2 be declared as legal and valid.
- (C) That the impugned O.Ms dated 18.6.2003 and 20.6.2003 be quashed and set aside and the respondent No.2 be directed to delete the name of respondent No.3 from the final seniority list of Research Officer (Map) as on 20.6.2003 circulated vide O.M. dated 20.6.2003 as the respondent No.3 cannot be senior to the applicants herein because he was considered along with them for regular promotion in accordance with rules and was no selected and instead the applicants herein were duly selected and promoted to the post of the Research Officer (Map).
- (D) Award costs of this O.A.
- (E) Pass any such other or further order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

Ce

19

13. In the counter-affidavit filed on behalf of official respondents, it has been submitted that the respondent No.3 in the OA, namely, Shri R.N. Chhipa, who was senior to Sh. Autar Singh but junior to the applicants Shri R.P. Mishra and Sh.K.C. Sarma Bhagabati in the feeder grade of Senior Geographer, was promoted as RO (Map) in September, 1989 on the recommendation of the DPC as per relevant Recruitment Rules against the Census post. The post, against which he was promoted was abolished on 31.12.1993 and he was reverted to the post of Senior Geographer. It has been further submitted that the reversion orders of Shri R.N. Chhipa were cancelled in implementation of Tribunal's order dated 23.08.1999. So also the provisional seniority list of RO (Map) was circulated in the year 2003 consequent upon implementation of Tribunal's order. In response to Para 5.A of the O.A., namely, that the applicants were not impleaded as party in the earlier O.A. even though they were adversely affected, it has been submitted that the earlier OA-1168/1995 was defended by the respondents and the order dated 23.08.1999 passed by the Tribunal is based on the factual position presented before the Tribunal at that time. It is also observed that the final seniority list of RO (Map) as on 01.05.1992 issued vide OM No.2/3/90-Ad.III dated 18.05.1992 wherein Shri R.N. Chhipa has been shown at Serial No.12. This is obviously for the reason that the 11 persons senior to him were those occupying the regular posts whereas he was against a census post.

ce



14. In the counter-affidavit filed on behalf of respondent No.3 Viz. Shri R.N. Chhipa, it is submitted that there are no grounds for setting aside the seniority list of RO (Map) dated 20.06.2003.

15. As the earlier order dated 23.08.1999 of the Tribunal in OA-1168/1995 has been set aside by the Full Bench of the Tribunal, the main questions for our consideration that arise in the present O.A. are:-

(a) Whether Shri R.N. Chhipa was appointed on a regular post of RO (Map)? and

(b) Whether he was senior to the applicants in the seniority list of RO (Map)?

16. Admittedly, there were 11 posts of RO (Map) in the year 1987 and all the posts were filled by the regular incumbents. Shri R.N. Chhipa was given promotion to the post of RO (Map) in a temporary capacity. Subsequently, he was adjusted against a temporary post of RO (Map), which was one of the 6 temporary posts of RO (Map), which were created in connection with the 1991 census. As sanction of these posts expired on 31.12.1993, Shri R.N. Chhipa, being junior-most amongst the officers promoted to the post of RO (Map), was reverted to the post of Senior Geographer. It was also specified in the said order that his promotion was made against the 1991 census posts sanctioned only upto December 31, 1993 (Page-56).

17. The final seniority list of Senior Geographers at Registrar General's Office as on 01.07.1985 was issued in November 1985 vide their letter No. 11/3/85-Ad. I. In this list the three applicants figure at Serial Nos. 13, 14 & 19 respectively. Shri R.N. Chhipa is at Serial No. 17 (pages 57-61). Again, the



final seniority list of Senior Geographers as on 01.05.1998 circulated vide the Office of the Registrar General letter dated 17.11.1998 shows Shri R.N. Chhipa at Serial No. 2 of the list of Senior Geographers (Annexure-A6) and the final list of RO (Map) as on 01.07.1996 circulated vide OM dated 26<sup>th</sup> November, 1996 shows the applicant No. 1 Sh. R.P. Mishra at Serial No. 8 and applicant No.2 Sh. K.C. Sarma Bhagabati at Serial No.9 but does not contain the name of Shri R.N. Chhipa as obviously he did not stand promoted as RO (Map).

18. In so far as the three applicants are concerned, the position of various posts held by the applicants from time to time are as follows:-

Name	Apptd. as Geographer/ Cartographer	Promoted as Sr. Geographer	Promoted as Research Officer (Map)
R.P. Mishra	26.5.1973	13.7.1979	12.12.1994
Kamal Chander Sarma Bhagabati	2.11.1973	31.7.1979	26.12.1994
Autar Singh	27.6.1977	29.9.1981	28.7.1997
R.N. Chhipa	28.1.1977	1.1.1981	25.9.1989

19. It clearly emerges from the above facts that Shri R.N. Chhipa was junior to the first two applicants Sh. R.P. Mishra and Sh. K.C. Sarma Bhagabati and also that while they were occupying the regular posts, he had been given temporary appoint<sup>ment</sup> for census work and had to be reverted once the sanction for the posts expired. In these circumstances, the reversion order cannot be said to be illegal in any manner. His contention cannot be upheld in view of the judgment of the Hon'ble Supreme Court in the case

**Union of India and Others Vs. Tara Chand Sharma and Others**

(1995(6)SCC 589) wherein it was held as under:-

"Learned counsel appearing for the respondents, however, placed reliance on the fact of orders issued to the respondents regarding satisfactory completion of probation and contended that in view of such orders, the respondents cannot be reverted. We do not think that we can accept this contention of the learned counsel for the respondents. On the facts of this case, we have seen that the order of promotion itself in unmistakable terms indicated that the promotions were temporary and then the fact of abolition of posts created for fixed period is not in dispute. In any event, that fact of abolition of posts is now established by document produced before us, namely, the letter of Registrar General of India dated 30.11.1993 extracted above. In view of the established position that the posts temporary created to which posts respondents were temporarily promoted having been abolished, the respondents cannot raise any objection for the consequential reversion order."

20. It is also clear that as the rights of the applicants were definitely affected, they were necessary parties and should have been impleaded in the earlier OA-1168/1995 filed by Shri R.N. Chhipa. As observed in the order of the Full Bench, it seems that various relevant facts were not brought to the notice of the Tribunal in OA-1168/1995 either by Shri R.N. Chhipa or even by the official respondents.

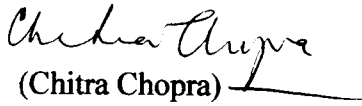
21. During the course of arguments, learned counsel Shri L.R. Khatana very strongly contended that the seniority list of RO (Map) as on 20.06.2003 issued by the respondents vide their O.M. No. 2/2/2003-Ad.III dated 20.06.2003 (Annexure-A2) is not only illegal, arbitrary but totally violative of all cannons of natural justice as it has been proved that Shri R.N. Chhipa was not senior to the applicants and should not, therefore, have been placed above them in the seniority list. He strongly pleaded that the said seniority list deserves to be quashed.

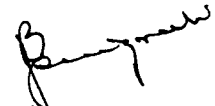


22. Learned counsel for official respondents Shri H.K.Gangwani reiterated the position stated in their counter-affidavit.

23. After careful consideration of all the facts and circumstances of the case, we find that it is clear beyond any doubt that Shri R.N.Chhipa had been appointed as RO (Map) only temporarily against a post sanctioned for Census work and that there is nothing illegal about his reversion from the post of RO (Map) to Senior Geographer for the simple reason that the sanction of the post expired. In fact, placing him above the regularly appointed officers was not only illegal but adversely affected the senior persons who are the applicants in this case.

24. In view of the clear configuration of the seniority position of the applicants, and promotions vis-à-vis Shri R.N.Chhipa as has <sup>ce</sup>~~been~~ emerged from the documents as well as factual position, we allow the OA. The impugned O.Ms dated 18.06.2003 and 20.06.2003 are set aside. The respondents are directed that the applicants be restored to their original seniorities in the seniority list. No costs.

  
(Chitra Chopra)  
Member(A)

  
(B. Panigrahi)  
Chairman

/vv/