

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00593/2017

Tuesday, this the 23rd day of March, 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

1. M. Vikraman, aged 56 years,
S/o. late Madhavan,
Senior Accountant,
O/o. the Controller of Communications
Accounts, 5th Floor,
Door Sanchar Bhavan, PMG Junction,
Trivandrum 695 033,
permanent resident of Puthenveedu,
PO Vayakam, Kottarakara,
Kollam District 691 548.
2. P.J. Joseph, aged 56 years,
S/o. P.M. Joseph,
Senior Accountant,
O/o the Controller of Communications
Accounts, 5th Floor,
Door Sanchar Bhavan, PMG Junction,
Trivandrum 695 033,
residing at Puliyanampattayil House,
Kanjirapuzha PO, Mannarkad,
Palakad 678 591.
3. P. Sreekumar, aged 48 years,
S/o. K. Prabhakaran,
Senior Accountant,
O/o the Controller of Communications
Accounts, 5th Floor,
Door Sanchar Bhavan, PMG Junction,
Trivandrum 695 033,
residing at TC 10/108(3), SNRA 135,
Pipinmoodu, Swathi Nagar,
Peroorkada PO,
Trivandrum 695 005.

... **Applicants**

(By Advocate Mr. Shafik M. Abdul Khadir)

v e r s u s

1. Union of India,
represented by its Secretary,
Department of Telecommunications,
Ministry of Communication and Information Technology,
421, Sanchar Bhavan, 20,
Ashoka Road, New Delhi 110 001.
2. The Director (SEA),
Department of Telecommunications,
Ministry of Communication and Information Technology,
421, Sanchar Bhavan,
20 Ashoka Road, New Delhi 110 001.
3. The Controller of Communications Accounts,
5th Floor, Door Sanchar Bhavan,
PMG Junction, Trivandrum, 695 033. ... **Respondents**

(By Advocate Mr. T.C. Krishna, Sr. PCGC)

This application having been heard on 3rd March, 2021, the Tribunal on 23rd March, 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The OA is filed by three applicants working in the office of the Controller of Communication Accounts (CCA) under the Department of Telecommunications (DoT) at Trivandrum, against the impugned orders at Annexures A1 and A2 under which it is being proposed to revert them as Junior Accountant retrospectively from the date of their appointment in that office as Senior Accountant on permanent absorption basis and to regularize their appointments accordingly. Identical orders by way of a notice asking for representations have been issued on all three applicants by the CCA, Trivandrum (respondent No. 3) produced at Annexure A2. The notices have indicated that representations in this regard may be submitted within 15 days from the date of issue of the notices (10.7.2017). The applicants seek to

quash Annexure A2 notice as well as the action proposed to be taken by the DoT as indicated at Annexure A1.

2. When the case first came up for hearing on 25.7.2017, this Tribunal passed a direction to the respondents not to revert the applicants from the posts they were holding at present till the next posting date. This has been extended since then up to now.

3. All the three applicants were working in different organizations before they came first on deputation as Senior Accountants (SA) under the 3rd respondent CCA, Trivandrum. The first applicant was working as Upper Division Clerk (UDC) in his ACP scale of pay of Rs. 5,000-150-8,000/ in the office of the Deputy Commissioner, West Siang District of Government of Arunachal Pradesh. This pay scale is submitted as corresponding to the revised pay scale of Rs. 9,300-34,800/- with Grade Pay of Rs. 4,200/ which is analogous to the post of Senior Accountant. He was appointed as Senior Accountant on deputation basis and joined the deputation post under CCA, Trivandrum on 14.12.2007 forenoon, consequent to his selection against an advertisement issued by the DoT. It is submitted that, at that time, the eligibility criteria for the post of Senior Accountant was service in the analogous post of UDC, with three years regular service and having an overall good performance. Similarly the 2nd applicant who was basically an UDC promoted to Assistant (Ad-hoc) under the Directorate General of Supplies and Disposal, Ministry of Commerce & Industry, New Delhi joined on deputation after volunteering to be reverted to the post of UDC under his parent Department from the post of Assistant (Ad-hoc) which carried a

Grade Pay of Rs. 4,600/-. He joined the deputation post under the CCA, Trivandrum as Senior Accountant on 19.10.2009. The 3rd applicant was working as a UDC in the Department of Expenditure, Government of India but was on loan basis in the office of Protector of Emigrants, Trivandrum, when he was selected as Senior Accountant in the office of CCA, Trivandrum on deputation basis. He joined the office on deputation on 14.10.2009. His substantive post under the Department of Expenditure, Ministry of Finance was carrying a Grade Pay of Rs. 2,400/-.

4. The order series produced at Annexures A3, A4 and A5 in relation to the deputation of the above three applicants to the office of the CCA, Trivandrum also reveals that in the case of the 1st applicant the period of deputation was to be for two years from the date of joining and that the pay and other terms and conditions would be regulated in accordance with a DoP&T OM dated 5.1.1994 as amended from time to time. In the case of the 2nd and 3rd applicants it was indicated that the deputation to the office as Senior Accountant (Group-B non-gazetted) was initially to be for a period of one year from the date of joining, extendable up to 3 years. In both their cases the pay and other terms and conditions was to be regulated by the aforementioned OM dated 5.1.1994 as well as another OM dated 25.2.2009 as amended from time to time.

5. A little prior to the joining of the 2nd and 3rd applicant and about two years after the joining of the 1st applicant, the DoT issued a circular dated 12th August, 2009 produced at Annexure A6 along with two corrigendums to this circular produced at Annexures A7 and A8, issued on 18th August, 2009

and 16th September, 2009 respectfully. Vide this circular and its associated corrigendums, the DoT invited applications to fill up vacant posts of LDCs, Junior Accountants Group-C and Senior Accountants (Group-B non-gazetted) by appointment on permanent absorption basis in various offices located at the places shown in the Annexure to the circular. The office of the CCA, Kerala Telecom Circle, Trivandrum was also in the list of these offices. It is noted that the circular indicated that the last date for receipt of application was 30.9.2009. Thus, the two corrigendums were also issued before the last date for receipt of applications.

6. The details of the posts, pay band and eligibility conditions in original circular of 12th August, 2009 and as changed in the corrigendum dated 16th September, 2009 are summarized in the table below:

Sl. No.	Name of Post	Pay Band & Grade Pay	Eligibility conditions	
			As per original circular dated 12 th August, 2009	As per corrigendum issued on 16 th September, 2009
1)	Lower Division Clerk (Telecommunication Accounts Group-C)	PB-1 Rs. 5,200-20,200/- plus Grade Pay of Rs. 1,900/-	Officials holding analogous post in various Ministries/Departments of the Central Government and State Governments, on regular basis	No change
2)	Junior Accountant – Group-C	PB-1 Rs. 5,200-20,200/- plus Grade Pay of Rs. 2,800/-	Officials holding analogous post in various Ministries /Departments of the Central Government	Officials holding analogous post in various Ministries/ Departments of the Central Government and State

			and State Government on regular basis or LDCs who have rendered not less than eight years of regular service in the grade.	Governments on regular basis OR LDCs who have rendered not less than eight years in the Grade OR <u>UDCs who have rendered not less than three years in the grade.</u>
3)	Senior Accountant Group-B Non-gazetted	PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,200/-	Officials holding analogous posts in various Ministries/ Departments of the Central Government and State Governments on regular basis OR <u>UDCs/Junior Accountants/ Auditors who have rendered not less than three years of regular service in the grade.</u>	Officials holding analogous post in various Ministries/ Departments of the Central Government and State Governments, on regular basis OR <u>Junior Accountants/ Auditors who have rendered not less than three years of regular service in the grade.</u>

(emphasis added)

From the above circular read with the corrigendum it is clear that UDCs with three years of regular service were eligible to be considered only for the post of Junior Accountant and not for the post of Senior Accountant. In effect, therefore, the corrigendum issued on 16th September, 2009, corrected the original circular issued on 12th August, 2009 regarding the eligibility condition for Senior Accountants by dropping UDCs from the list of eligible officials to apply to the post of Senior Accountants. UDC's were included in the eligibility conditions for Junior Accountant, provided they had three years regular service in the grade. Further, the circular and corrigendum

indicated that persons who were already working in the DoT on deputation basis and were willing to be permanently absorbed would, before their absorption as per rules be technically repatriated to their respective parent Departments/Ministries. It was also indicated that persons once absorbed would not be allowed to revert to their parent Departments.

7. The three applicants in this OA applied for the posts of Senior Accountant, even though as per the circular read with the corrigendum they were not eligible. They were already working as Senior Accountants on deputation. The DoT subsequently clarified other issues relating to the absorption process of the Senior Accountants, Junior Accountants and LDCs vide another circular dated 24th August, 2010, produced as Annexure A9. In this circular one point on which the clarification was given was relating to the treatment of the candidates who were already working or had worked on deputation basis in CCA offices. It was indicated that an individual who was on deputation in CCA offices as on 17.12.2008 and beyond up to 15.2.2010, should be considered in the first instance, after fulfilment of the following conditions: (i) Availability of vacancies in the grade applied for; (ii) No objection certificate (NOC) by his/her parent Department; (iii) Signed declaration from the candidate accepting the terms and conditions of permanent absorption; and (iv) Recommendation from CCAs. It was also clarified that the officials should have submitted their applications in the prescribed proforma as circulated vide DoT HQ letter No. 33-23/2005-SEA-II/Vol.-II dated 12.8.2009, as amended vide the corrigendums of even Nos. dated 18.8.2009, 10.9.2009 and 16.9.2009 or circulars of even No. Dated 15.1.2010 and 2.2.2010. It was also clarified that only after cases of persons

who were serving or have served in the CCA offices on deputation basis had been regulated in the manner as specified above would the CCA offices consider requests/applications received from other candidates. Thus, it appears from this circular that those who were already in CCA office would have to be considered on priority in the first instance but only on fulfilment of the four conditions as indicated above. Only thereafter the request/applications received from other candidates, would be considered.

8. Almost a year after the Department first invited the applications, appointment orders as Senior Accountants were finally issued in the cases of the three applicants. In case of applicant No. 1 the appointment order was dated 3rd September, 2010 (produced at Annexure A10) wherein, it was stated that, applicant No. 1 (UDC, D.Cs Office, Aalo, Arunachal Pradesh) was appointed to the grade of Senior Accountant (Non-gazetted) in the pay band Rs. 9,300-34,800/- and Grade Pay of Rs. 4,200/- in the office of CCA, DoT. It was also indicated therein that officials working in a higher post on officiating basis, if any, shall be reverted to their substantive post before actual relief on absorption. The offer of appointment was based on the post held by the official as furnished in the application. In case of any promotion/up-gradation in the parent office subsequent to the date of application, regulation of pay would be as per Government of India orders on the subject. It was also observed that candidates once absorbed would not be allowed to revert to their parent Department. In the office order dated 14th September, 2010 (produced as Annexure A11) the applicant No. 1 was shown to have assumed charge in the office of CCA, DoT, Kerala Circle, Trivandrum on 14.9.2010 as Senior Accountant on his appointment on permanent absorption basis. Similar

orders were issued in the case of 2nd applicant (produced at Annexure A12) dated 20th September, 2010 wherein the 2nd applicant was shown to have assumed charge on 20.9.2010 (afternoon) as Senior Accountant on his appointment on permanent absorption basis. In the case of 3rd applicant the appropriate office order has not been produced in the OA as the order at Annexure A13 only seems to be in the matter of his original deputation to the post and not his permanent absorption. However, this order at Annexure A13 dated 21.10.2009 has not been replaced by the order of his permanent absorption in the rejoinder nor has it been attacked in the reply statement filed by the respondents.

9. The applicants then continued to work as Senior Accountants in the office of the CCA, Trivandrum till 2017 from 2010 when one of their colleagues who was appointed in the office of CCA, DoT, Orissa Telecom Circle, Bhubaneswar filed an OA No. 77 of 2012 in the Central Administrative Tribunal, Cuttack Bench for modification in the order issued in his case dated 3.9.2010. He asked for a direction to the respondents to absorb him on a regular basis against the post of Senior Accountant from the date his juniors and similarly situated persons got the benefit. He had been permanently absorbed in the grade of Junior Accountant (Non-gazetted) as he was a UDC when he had applied. Final Orders in the OA were passed on 8th September, 2016. It has been indicated therein that applications were invited for the post of Senior Accountant originally on deputation basis under the CCA, Bhubaneswar and the applicant had worked as such till 30.6.2008. It is indicated that he did not possess the requisite qualifications for which he could not be absorbed while

considering the other persons for permanent absorption in the post of Senior Accountant as he was a UDC. The applicant then brought to the notice of the Tribunal that similarly situated employees were absorbed as Senior Accountants whereas the applicant had been discriminated. It is also indicated that counsel for the respondents had brought to the notice of the Tribunal that a similar matter had come up for consideration before the Principal Bench of the Tribunal in OA No. 4345 of 2011. The Tribunal rejected the plea of the applicant in that OA holding that the guarantee of equality before the law is a positive concept, but the same cannot be enforced in a negative manner. The respondents submitted that since the applicant does not possess the requisite qualifications, by applying the decision of the Principal Bench of the Tribunal referred to above, the OA is liable to be rejected. However, the applicant's argument was that, on the date of notification for absorption, UDCs working on regular basis for at least three years were eligible for such absorption. While the matter was under consideration a corrigendum was issued on 16.9.2009 in which for the post of Senior Accountant, UDC was deleted and it was intimated that only Junior Accountants and Auditor having rendered 3 years regular service are eligible. It was argued by the applicant that even though he made a representation, the same was not considered favourably. However, on the basis of the very same notification as well as corrigendum, UDCs working in different Circles were absorbed as Senior Accountants and, even in one case, a person who was absorbed as Junior Accountant subsequently made a representation and was ultimately absorbed as Senior Accountant with effect from the date he was absorbed as Junior Accountant. After considering all the issues the Cuttack Bench of the Tribunal in OA No. 77 of 2012 passed the following order:

“9. Now the entire issue boils down to the effect that as to whether any person similarly situated to that of the applicant have been absorbed and thereby the applicant has been discriminated and as to whether UDC working in different circles have been absorbed as Sr. Accountant and even in one case one of the person, who was absorbed as Jr. Accountant, after making a representation was absorbed as Sr. Accountant retrospectively with effect from the date of his absorption as Jr. Accountant. As despite opportunity being granted, Ld. Counsel for the Respondents failed to submit any positive response accepting or negating the stand taken by the applicant in support of his absorption, we are not in a position to take a concrete opinion on the prayer made in the OA. Hence, we remit the matter back to the respondents to examine the case of the applicant with reference to the fact that as to whether UDC working in different circles were absorbed as Sr. Accountant and even in one case one person, who was absorbed as Jr. Accountant and on a representation being made by him subsequently was absorbed as Sr. Accountant respectively, i.e. with effect from his absorption as Jr. Accountant, and in case it is found in affirmative then the benefit as prayed for by the applicant shall be extended to him as per rules. The entire exercise shall be completed within a period of 120 days from the date of consideration.

10. With the aforesaid observation and direction, this OA stands disposed of. No costs.”

10. The applicants in this present OA submit that the respondents in purported compliance of the above order have directed that all Senior Accountants may be reverted as Junior Accountants as per the impugned orders. On receipt of the orders, the applicants had submitted comprehensive representations to the 1st respondent. A copy of the representation dated 18.7.2017 submitted by the 1st applicant has been produced as Annexure A15. It is submitted that the 2nd and 3rd applicants have also submitted identical representations. Since it was apprehended that the respondents would revert the applicants they requested for an interim order praying for stay of Annexures A1 and A2. (This was granted by this Tribunal on admission on 25.7.2017.)

11. The respondents have filed a reply statement in which they submit that as per the corrigendum dated 16.9.2009 none of the applicants were eligible

for absorption as Senior Accountants. It is admitted that they were erroneously absorbed as Senior Accountants in contravention of the orders of the DoT. All the three applicants were UDCs with more than 3 years of regular service in the grade and were therefore, eligible for absorption only as Junior Accountants. It is submitted that the absorption of the officials in the DoT was done as per the policy of the Department on all India basis. A few Circles (including Kerala) deviated from the instructions and have erroneously absorbed UDCs with more than three years regular service in the grade as Senior Accountants, instead of absorbing them as Junior Accountants. The DoT issued letters dated 22.12.2016 and 7.3.2017 in order to set right the error committed by these Circles (including Kerala.) In accordance with the affidavit submitted before the Cuttack Bench of the Tribunal followed its verdict therein in OA 77 of 2012, the cases of absorption of UDCs as Senior Accountants, including the 3 applicants in the OA, were reviewed by the CCA, Kerala Circle as directed by the DoT. As the absorption of UDC with 3 year regular service as Senior Accountant was found erroneous, notices were issued to all the UDCs absorbed as Senior Accountant, including the 3 applicants in the OA. The applicants were given a reasonable opportunity to prove their claim for absorption as Senior Accountants. They have submitted representations against the proposal for reverting them as Junior Accountants with effect from the date of absorption. However, no valid reason is seen stated against their proposed reversion as Junior Accountant.

12. The respondents in the reply statement have submitted that the argument of the applicants that they worked as Senior Accountant in the

Department on deputation basis does not make them eligible for absorption as Senior Accountants as per the Annexures A6 and A8 instructions for absorption. It is also submitted that the post of UDC is not an analogous post for Senior Accountant. The preference which was to be shown for those already working in the Department was only with reference to the absorption to the posts to which they were eligible and fulfilling all the conditions and not for the post on which they hold on deputation basis. It is submitted that UDCs were totally excluded from the eligibility criteria for Senior Accountant. The applicants possess the required eligibility for appointment as Junior Accountants i.e. UDCs who have rendered not less than 3 years regular service in the grade. The respondents submit that, as the appointment of UDCs to the post of Senior Accountants was in contravention of their orders which has now been discovered and it needs to be rectified. In order to set right the error, action has been taken to revert the applicants as Junior Accountants as per Annexure A1. It is submitted that the orders of the coordinate Bench at Cuttack to the effect of remitting the issue to the respondents was only to examine the case as to whether any UDC was absorbed as Senior Accountant and also if any person who was absorbed as Junior Accountant on representation made by him was later absorbed as Senior Accountant, then whether the benefit was to be extended to the applicant therein also. It is submitted by the respondents that extension of the benefit would lead to the error being repeated again. Thus, it was decided to revert the applicants as Junior Accountant.

13. The respondents have also submitted that all the three applicants had given undertakings that they have read the offer of appointment and would

accept the offer unconditionally and that this was under their own will. The applicants themselves have submitted that they have accepted the post of Senior Accountant because it was in their home towns. The statement in the OA that they would not have accepted the offer had it been for the post of Junior Accountant is contrary to the same. Moreover, one of the conditions in the offer of appointment was that it was subject to the outcome of pending court cases, if any. Their service on deputation as Senior Accountant would not be a reason for their absorption as Senior Accountant, though preference was given to the officials who have worked on deputation. It is to be noted that service on deputation was not mandatory for absorption as Senior Accountant / Junior Accountant or LDCs as per Annexures A6 and A8 notifications.

14. We have heard learned counsel for the applicant Shri Shafik M. Abdul Khadir and learned counsel for the respondents Shri T.C. Krishna, Sr. PCGC. The applicant has unleashed a series of arguments in the matter on the grounds of natural justice and equality of treatment, among other grounds. It is submitted by counsel for applicant that the judgment of the Cuttack Bench of the Tribunal was only directed to grant the same benefit to the applicant therein, if it is extended to others. The present action to revert the applicants and similarly placed applicants just not to give any benefits to the applicant in the OA filed before the Cuttack Bench of the Tribunal is therefore, malafide. None of the applicants had opted for deputation nor permanent absorption as Junior Accountants and, hence, the option they exercised to become Senior Accountant has become nugatory, disabling them to make an informed choice. This is patently arbitrary, unreasonable

and discriminatory. Further, the offer of appointment was issued not on the basis of seniority in the parent Department but in the chronological order of the period the officials were holding the deputation post in the CCA office from 17.12.2008 to 15.2.2010. Absorption to a post in a permanent capacity from a deputation capacity is within the ambit of rules. The qualification for absorption to the post of Senior Accountant in the office of CCA was not the UDC post that the applicants were holding in their parent Department. They, therefore, do not fall in the category of officials to be reverted to the post of Junior Accountants referred to in the letter of the DoT. Further, the appointment was made 7 years back (2010) as the legal requirements were satisfied and followed before calling for options. As per the Annexure A6 notification the applicants had submitted their application for permanent absorption in the same proforma as prescribed by the DoT. They had given all information regarding their qualifications, past service etc. No information was hidden nor was any wrong information given by them to influence the consideration of their candidature. Thus, it was up to the Department to consider their eligibility for the post of Senior Accountant. It appears that the applications received were duly verified by the Committee of Officers set up for the purpose and all cases found suitable were selected and recommended to the DoT Headquarters for approval of absorption. As such, appointment was done after a two/three tier verification of the credentials and with the approval of the authority concerned. In case the applicants were lacking the requisite qualifications, the authority could have rejected their case then and there. Further to their best of knowledge, numerous officials who did not possess the qualifications and eligibility as per the corrigendum but were on deputation, were absorbed as Senior

Accountants in various CCA offices. This, being the case, reversion of only a handful of officials that too only in Kerala, Karnataka, West Bengal and Punjab, as can be seen from Annexure A1, is highly discriminative and is against natural justice as well as against the spirit of the equality clauses enshrined in Articles 14 and 16 of the Constitution.

15. Further it is submitted that, in many Circles including Kerala Circle, officials holding the posts such as Head Clerk, Data Entry Operator Grade C and B, Technical Assistant, Store Keeper, Assistant, UDC, Data Processing Assistant, Chargeman, Office Assistant, Recovery Inspector, Office Superintendent, Industrial Extension Officer, etc. in the parent Departments were absorbed as Senior Accountant, although none of these posts were analogous with the Senior Accountant of CCA. If the intention of the DoT was to set right the erroneous absorption of Senior Accountants, then they should have reviewed all cases involving absorption from all the above mentioned categories. Instead, the respondents have chosen to punish only a very few number of employees leaving the majority of the so called erroneous absorptions untouched.

16. It is reiterated that the direction of the Cuttack Bench of the Tribunal was only to extend the benefit to the applicant therein and not to revert, downgrade or punish any official. As regards the respondents pointing out that the applicants' gave an undertaking to the effect that the appointment is subject to outcome of pending court cases, if any, is not at all relevant. The OA in question in Cuttack i.e. OA No. 77 of 2012 was filed in 2012 and it cannot be, therefore, a pending case at the time of issue of offer of

appointment in 2010. Thus the contention of the respondents in this regard is also not tenable. The three applicants were not appointed to the post of Senior Accountant directly from the parent office but were working in the office of CCA as Senior Accountants on deputation basis. There was not even a single day's break in between deputation and absorption. The absorption was effected by applying a technical repatriation without moving to the parent Department. The applicants continued to do the same duties after absorption that they were doing while on deputation. It is submitted that permanent absorption to the post holding on deputation is natural and within the ambit of rules.

17. In addition the applicants submit that in *Bhoop v. Matadin Bharadwaj*– (1991) 2 SCC 128, in *Nirmal Chandra Bhattacharjee v. Union of India*– 1991 Supp. (2) SCC 363 and *State of UP & Ors. v. Mahesh Narain & Ors.*– (2013) 4 SCC 169, the apex court has taken the stand that the mistake or delay on the part of the Department should not be permitted to recoil on the party. The applicants are being made to suffer solely on account of the action of the Department in trying to implement Annexure A14 order of the Cuttack Bench in a negative manner, which is impermissible. The applicants also submit that had they remained in their parent Department they would have got certain benefits which they have lost by opting to come first on deputation and then being permanently absorbed in the office of the CCA, DoT. For example it is claimed that in the case of the 1st applicant he was eligible for 3rd MACP with effect from March, 2012 which was not considered by the CCA office as he came from another organization. As regards the 2nd applicant before joining as Senior Accountant he was already working in the post of Assistant (Ad-hoc) with

Grade Pay of Rs. 4,600/-. In order to take up the post of Senior Accountant he had volunteered to be reverted to the post of UDC in his parent Department and he was then offered absorption to the post of Senior Accountant in the office of CCA, Kerala. He preferred the post of Senior Accountant in the office of CCA, Kerala as it was in his home town even though monetarily he was losing heavily. Similarly the 3rd applicant was holding the post of UDC in the Ministry of Finance, Government of India carrying Grade Pay of Rs. 2,400/-. After joining the present office as Senior Accountant in the Grade Pay of Rs. 4,200/- on deputation, he was offered the post of Assistant with Grade Pay of Rs. 4,600/- in his parent Department. He was asked to give his option to revert to the parent cadre within one month of receipt of the order. However, before the date of expiry of the period of option, he was offered absorption to the post of Senior Accountant in the office of CCA, Kerala. He preferred the post of Senior Accountant in the office of CCA, Kerala as this office was in his home town even though he was monetarily losing slightly. It is submitted that all the three applicants accepted the offer of appointment on absorption only because the offer was for the post of Senior Accountant. Had the offer been for the post of Junior Accountant they would not have accepted the offer and rather they would have opted for the posts in their parent Department as the difference between the salary of Junior Accountants in CCA office and that of the posts in their parent Department was large. The difference in pay between Junior Accountant in CCA office and the pay in the erstwhile Department at the time of absorption would make a huge impact in the pensionary benefits at the time of retirement.

18. We have elaborately detailed all the arguments and points made by the applicants at Paragraphs 14 to 17 above. One of the main contentions of the applicants is on the ground that the decisions have been taken by the respondents without giving them the opportunity to make an informed choice and thus the same is arbitrary, unreasonable and discriminatory. Another point is that they have burnt their bridges with the parent departments and there is, thus, no way at this stage that, they can go back to the earlier posts held by them, which they claim would have in the long run proved more beneficial to them both in terms of their remaining service as well as in terms of pension benefits. However, in this regard, we have already noted earlier that in at least two of the three cases under consideration, the applicants had willingly opted for their deputation/appointment to a post with a lower Grade Pay compared to what they were actually earning either by holding a higher post or being eligible and being considered at the time of appointment for a promotion in their parent department. Thus, it appears to us that the main reason that they opted to come on deputation to the post of Senior Accountant and for getting absorbed in the same, was the definite advantage and convenience of serving within their home State, as compared to Arunachal Pradesh or New Delhi. It appears that this advantage of serving in their home State seems to have outweighed their considerations of monetary loss by losing their higher positions in the parent departments.

19. Besides this, the Department of Telecommunication (DOT) has fully accepted that it had made a mistake in permanently absorbing the applicants along with a few others in some Circles to the post of Senior Accountants in

2010. This is now sought to be corrected after the orders of the Cuttack Bench of this Tribunal in O.A.No.77/2012. Further, a reading of this order in full does not appear to preclude the Department, in any way, from correcting the mistake that it has made. The order has to be read in its totality. We find that the DoT has taken an informed decision to correct the error that they had made in a few Circles by reverting the officials to the post for which they were eligible. The principles being followed apparently is that there would be no discrimination in service between different officials of the same eligibility working in the offices of the Controller of Communication Accounts in different States. Hence, we do not find the action proposed as arbitrary or discriminatory. The steps taken by the Department to correct the error committed is the reason behind the issue of the impugned notice at Annexure A-1, followed by the orders of reversion as Annexure A-2. What is being done or proposed to be done by the DoT in a few States including Kerala cannot be termed as against natural justice because it appears that in the vast majority of Telecom Circles in different States the officials in-charge had actually followed the rules and had appointed the officials correctly.

20. Further, we have also considered whether the seven years that the applicants continued to work as Senior Accountants gives them, as is being claimed by the applicants, some vested right for the post of Senior Accountant. This is a slippery slope and this Tribunal has to adjudicate matters judicially without being guided purely by sentimental considerations. A relevant issue we have considered in this regard is the date when the corrigendum relating to the removal of the post of UDC from the

eligibility for Senior Assistant was issued. We note that this corrigendum was issued on 16.09.2009 i.e., before the last date of application for the posts of LDC, Junior Accountant and Senior Accountant was to get over ie., on 30.09.2009. This shows that the Department had discovered the mistake and issued the corrigendum before the last date for receipt of applications. Applicants and Circle heads in most of the Circles acted accordingly in the light of the corrigendum. It appears that for as long as seven years this mistake was not discovered in a few Circles including Kerala until the filing of the O.A.No.77/2012 in the Cuttack Bench brought this out. Thus, taking all possibilities into consideration, we feel that this does not amounts to taking away the right of the respondents to correct the mistake committed by them or give applicants any vested right in the position of Senior Accountant. This is particularly so as the DoT has to be conscious of taking a judicious position with respect to all categories of employees working under it. Further, the argument that in case the eligibility was only for the post of Junior Accountant then applicants might not have even applied because the difference in scales would have been huge cannot be considered at this late stage. In any case, details in this regard are not provided by the applicants as to what the so called actual loss would have amounted to, given all relevant considerations. As stated earlier, the balance of convenience of being in the home State was also the principal factor which influenced the decision. Issue of corrigendum after the process of receipt of applications was completed would have implied change in the conditions and clear interference in the process of selection. However, it is quite clear that from the dates, as pointed out above, this was not so. This factor has also been taken into consideration by us while deciding the matter.

21. It is also relevant to point out that the error was made perhaps just in a few Circles including Kerala and, as mentioned, allowing the mistake to be committed in one Circle will also have an impact in a majority of Circles especially disadvantaging those who had followed the instructions while scrutinizing the applications given to them by the officials who wanted to work in those Circles. Further, if we allow the O.A in this Circle, naturally other UDCs who were appointed correctly in other Circles as Junior Accountants would also make similar claims. The decisions of the Apex Court brought out in paragraph 17 will have to be seen in this context. Further, at this stage, we are unable to verify allegations made during hearing that officials holding other non-eligible posts in their parent departments were also absorbed as Senior Accountant in some Circles although these posts were not analogous with the Senior Accountant of CCA. If that is the case, it is for the Department of Telecommunication to take necessary steps to pass relevant orders on the issue in these Circles. Thus, we cannot agree that just because the applicants were already working as Senior Accountants on deputation, it gives them a permanent vested right to be absorbed in the same post. A decision was taken that the eligibility of UDC's was for the post of Junior Accountant by the Department and this cannot be questioned later on after discovery as it is against the interest of the applicants. Thus, on all the grounds as detailed above we do not find in favour of the applicants and cannot allow the OA.

22. We are, at the same time quite conscious of the fact that the applicants have been continuing to work as Senior Accountants in the office of the Controller of Communication Accounts, Thiruvananthapuram for almost 12 to 14 years continuously, first on deputation and then from 2010 onwards on permanent absorption till 2017 and then from 2017 till date on the basis of the

interim order of this Tribunal. While this does not give a vested right, we cannot ignore this ground position. Thus, we feel that ends of justice would be met, if we direct the respondents to take steps as follows:

(a) The applicants' reversion to the post of Junior Accountants will be with effect from the different dates that they joined as a result of the permanent absorption process in the office of the Controller of Communication Accounts in 2010.

(b) Any recovery of the excess salary drawn by them from the date of their erroneous absorption as Senior Accountants in 2010 will be covered by the ratio of the judgment of the Hon'ble Apex Court in *State of Punjab & Ors. v. Rafiq Masih (White Washer)* – Civil Appeal No. 11527 of 2014. According to this judgment recoveries by employers would be impermissible in law from employees belonging to class-III and class-IV service (or Group-C and Group-D service). Further paragraph 12(iv) also states that recoveries would be impermissible in cases where the employee has wrongly been required to discharge duties of a higher post and has been paid accordingly even though he should have rightfully been required to work against the inferior post.

(c) Further, their seniority in the post of Junior Accountant should be counted from the date that they were absorbed permanently in 2010 and thus their eligibility in terms of seniority for promotion, under the Rules applicable to them to the next higher post would also therefore, count from these dates that they were permanently absorbed. This date would also count in case they are also eligible for financial

upgradation as per the relevant rules.

23. Thus, we do not allow the OA as we have not found merit in the contentions made by the applicants. However, we direct the respondents that any reversion in their post etc., would also follow the directions given above. There shall be no order as to costs.

(Dated this the 23rd day of March, 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

“SA”

List of Annexures in Original Application No.180/00593/2017

1. **Annexure A1** – True copy of the letter No. 33-04/2016-SEA-III dated 7.3.217 issued by the 2nd respondent.
2. **Annexure A2(i) to (iii)** – True copy of the notice No. CC/KRL/60-226/2016/Admn dated 10.7.2017 issued by the AO/Admn of the 3rd respondent.
3. **Annexure A3** – True copy of the order N. CCA/KRL/6-69/2007-08/Admn dated 31.10.2007 issued by the Dy. Controller of Communication Accounts.
4. **Annexure A4** – True copy of the order No. CCA/KRL/6-69/06-Adm dated 14.9.2009 issued by the Dy. Controller of Communication Accounts.
5. **Annexure A5** – True copy of the order No. CCA/KRL/6-69/06Admn dated 14.9.2009 issued by the Dy. Controller of Communication Accounts.
6. **Annexure A6** – True copy of the letter No. 33-23/2005-SEA-II/Vol.II dated 12.8..009 issued by the Under Secretary of the 2nd respondent.
7. **Annexure A7** – True copy of the corrigendum No. 33-23/2005-SEA-II/Vol.II dated 18.8.2009 issued by the Under Secretary of the 2nd respondent.
8. **Annexure A8** – True copy of the corrigendum No. 33-23/2005-SEAI/Vol.II dated 16.9.2009 issued by the Under Secretary of the 2nd respondent.
9. **Annexure A9** – True copy of the letter No. 33-23/2005-SEA-II dated 24.8.2010 issued by the Under Secretary of the 2nd respondent.
10. **Annexure A10** – True copy of the letter No. CCA/KL/60-48/2010.Admn/D-15 dated 3.9.2010 of the Dy. Controller of the 3rd respondent
11. **Annexure A11** – True copy of the office order No. CCA/KRL/60-48/2010-Admn/31 dated 14.9.2010 by the Dy. Controller of the 3rd respondent.
12. **Annexure A12** – True copy of the office order No. CCA/KRL/60-48/2010-Admn/54 dated 20.9.2010 of the Dy. Controller of the 3rd respondent.
13. **Annexure A13** – True copy of the office order No. CCA/KRL/60-48/2010-Admn/195 dated 14.9.2010 by the Dy. Controller of the 3rd respondent.
14. **Annexure A14** – True copy of the order dated 8.9.2016 of the Cuttack Bench of this Hon'ble Tribunal in OA No. 77/2012.

15. **Annexure A15** – True copy of the representation dated 18.7.2017 submitted by the 1st applicant.
