

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH



O.A. NO. 512 of 1989
~~XXXXXX~~

DATE OF DECISION 8-5-1997

Shri Bhavsingh B. Basaya and ors. Petitioner

Mr. M. R. Anand Advocate for the Petitioner (s)

Versus

Union of India and others. Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. T. N. Bhat : Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? *NO*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*



1. Bhavsingh B.Pasaya,
2. Smt.Beena Vatsalya Bhatt,
3. Smt.Yogini Sudhirkumar Thambe,
4. Sandeep Shantilal Shah,
5. Padmanabh Vasant Ray Yagnik,
6. Smt. Usha Krishnakumar Nair,
7. Smt. Dipika Ushir Shah,
8. Thomas Mathew,
9. Naimesh Ramanlal Kansara,
10. Miss Pratibha Balkrishna Khare,
11. Ramesh Nanikram Tekchandani,
12. Smt. Sumathya Ravindran,

All C/o.Office of the Chief General
Manager, Telecommunications,
Telecom Accounts Unit,
Gujarat Circle, Shah Building,
Opp. Navrangpura Bus Stand,
AHMEDABAD - 380 009.

...Applicants.

(Advocate : Mr.M.R.Anand)

Versus

1. Union of India,
Notice of the petition to be
served through Secretary,
Department of Telecommunications,
Sanchar Bhavan,
NEW DELHI - 1.
2. Chief General Manager,
Gujarat Telecom Circle,
having office at,
Ambica Chambers,
Near High Court,
Navrangpura,
AHMEDABAD - 9.

...Respondents.

(Advocate : Mr.Akil Kureshi)

(16)

JUDGMENT

O.A.NO. 512 OF 1989

Date : 08-05-'97

Per : Hon'ble Mr. T.N. Bhat : Member (J)

1. We have heard at length the learned counsel for both the parties and have also gone through the judgments cited by them in support of their respective contentions.

2. In this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicants, who are 12 in number, have assailed the notification No.19-1/87-SEA issued under G.S.R. 583 by the Assistant Director General (SEA) as also the notification No.19-8/88-SEA dated 1.5.1989, issued by the same authority. By the aforesaid impugned orders the recruitment rules called ~~the~~ the Department of Tele-Communications, Telecommunications Accounts (Lower Division Clerks, Junior Accountants and Senior Accountants) Recruitment Rules, 1988, have been notified and it has been laid down that persons holding the posts of Upper Division Clerk or Selection Grade Upper Division Clerk (Telecom Accounts) on ad hoc basis on the date of commencement of the said Rules shall also be deemed to have been appointed to the post of Junior or Senior Accountants, respectively, provided they are found fit by the appointing authority on the basis of the recommendations of the Departmental

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Promotion Committee prescribed under the Rules for appointment to the post of Junior or Senior Accountants, as the case may be. The applicants are particularly aggrieved by the fact that framing of the aforesaid Rules has adversely effected the applicants from a retrospective date. Giving the service histories of all the applicants, they have averred that after their initial appointment in the cadre of Lower Division Clerks and their subsequent promotion to the higher post of Upper Division Clerk or Junior Accountant, which promotions were given by the competent authority and were in accordance with the "Rules and Regulations" existing then, ^{they} are sought to be adversely effected on the basis of the rules framed after their initial appointment, in that, promotion is being denied ^{to} the applicants merely on the ground that according to the new Recruitment Rules (of 1988) they are not eligible for promotion. It may be stated here that under the Recruitment Rules, *ibid*, promotion from the post of Lower Division Clerk to the higher post of Upper Division Clerk or Junior Accountant can be given only if the Lower Division Clerk has completed eight years of service, while under the old "practice" promotion could be granted on completion of only three years' service as Lower Division Clerk.

3. The applicants further rely on the explanatory memorandum in the aforesaid new rules which reads as under:-

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"The retrospective effect being given to these Rules will not effect adversely any employee to whom these Rules apply".

It is contended by the applicants that in view of the above quoted specific provision the chances of promotion of the applicants cannot be adversely effected by the new rules and, therefore, the applicants continued to be eligible for promotion if they had completed three years of service as Lower Division Clerks before the 1988 Rules were framed.

4. The applicants had made representations and some effected employees had also filed one O.A.No.500/87 which was decided on 27.7.1988. The aforesaid O.A. was filed by those persons who were already holding the post of Senior Accountants but who were reverted to the Lower post of Junior Accountants. It is, however, admitted by the applicants that in the aforesaid O.A. the question of validity of the new Rules, *ibid*, was not adjudicated upon.

5. Another important fact that needs to be noticed is that under Rule-1 (2) ~~the~~ the new Recruitment Rules are deemed to have come into force on 1.4.1987 though, according to the applicants, the Rules were published only in the month of July, 1988.

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6. The applicants have assailed the impugned notifications mainly on three grounds ; firstly, it is stated that retrospective effect could not be given to such rules which would adversely effect the rights of the applicants. Secondly, it is contended that in view of the clarificatory memo the eligibility criteria fixed under the rules could not apply to the cases of the applicants. Lastly, it is contended that the rights to get promotion acquired by the applicants before the publication of the new Recruitment Rules cannot be taken away by the said Rules.

7. The respondents have contested the claims of the applicants by filing detailed reply statement and the applicants have filed a rejoinder thereto. In the reply statement the respondents have taken the plea that no right which had accrued to or vested in the applicants before coming into force of the new Recruitment Rules have been taken away by the aforesaid rules and that it is open to the employer to change the eligibility criteria at any time. As regards the explanatory memorandum the respondents have averred that while framing the new rules the protection of service conditions of all the employees have been ensured and the benefit of promotion to the higher grade has been extended from retrospective effect to a large number of employees.

The respondents further take plea that before the framing of the 1988 Rules ~~ibid~~ there were no rules in force which provided avenues of promotion to the Lower Division Clerks to the cadres of Upper Division Clerks in Telecom Accounts wing and that promotions of some of the applicants had earlier been made purely on adhoc basis subject to reversion at a later stage.

8. In the rejoinder the applicants have reiterated the contentions raised in the O.A.

9. The main question that arises for adjudication is as to whether the applicants had acquired any right to get promotion before the Recruitment Rules came into force and whether retrospective effect given to the rules from 1.4.1987 had adversely affected the said right of the applicants. On this question the learned counsel for the applicants lays much emphasis on the argument that since under the "practice" prevalent in the respondents-department earlier, persons holding the post of L.D.C. were eligible for being considered for promotion to the higher post of Upper Division Clerks on completion of three years' service and that, therefore, the applicants must be held to have acquired the right to promotion. In reply, the learned counsel for the respondents has argued before us that there is a distinction between the right to promotion and a mere chance to get promoted. We find ourselves in agreement with this contention of the respondents' counsel, as this contention finds support from a judgment delivered by the Apex Court in the case

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paluru Ramkrishnaiah and others Versus Union of India and another, reported as AIR 1990 Supreme Court, 166. In that case, supervisors in Grade-A working in the ordnance factories were promoted to the post of Chargeman-II on completion of two years service on the basis of a circular issued by the competent authority on 6.11.1962. However, subsequently, an order dated 28.12.1965 and circular dated 20.1.1966 were issued, which required three years of service for promotion to the aforesaid post of Chargeman-Grade-II. It was further provided in the circular dated 20.1.1966 that promotion should be made in accordance with the rules, and Rule-8 contemplated that promotions should be made on the basis of the selection list prepared in the manner provided under the Rules. The supervisors who sought promotion after the coming into force of the order dated 28.12.1965 and circular dated 20.1.1966, complained that they were discriminated against by denying promotion on the basis of the circular dated 6.11.1962. The Apex Court held that Supervisors who had been promoted before the coming into force of the order dated 28.12.1965, and circular dated 20.1.1966, constitutes a different class altogether and did not fall in the same category and that, therefore, no question of discrimination would arise in such circumstances. Similarly, in the instant case, the mere fact that some persons were promoted to the higher grade on the basis of the "practice" prevalent before coming into force of the 1988 Recruitment Rules

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cannot be sufficient to give a similar benefit to those who though eligible for promotion under the old "practice" ^{not} were eligible to claim promotion under the new Rules.

10. Another Judgment that has to be noticed ^{is} the one reported as AIR-1981-SC 1699 (Reserve Bank of India, Bombay Versus C.T.Dighe and others). It was held as follows :

"Where the Reserve Bank of India altered the conditions of eligibility of Stenographers and Personal Assistants for appearing at the test passing of which was necessary for ~~being~~ empanelled for promotion, during the pendency of a reference, the Bank could not be said to have contravened the provisions of Section-33 (1) (a) by altering the conditions of service of employees belonging to certain other cadres who were already empanelled, and those who hoped to be empanelled, merely because the alteration in the conditions of eligibility affected the chances of promotion of the employees belonging to those other cadres..... Further, it is well settled that a rule which affects the promotion of a person relates to his conditions of service but this is not so if what is affected is a chance of promotion only. AIR 1974 SC 1631, Rel.on".

11. In the instant case as well what has been effected is a mere chance of promotion of the applicants ; and according to the law laid down by the Apex Court, the eligibility criteria can be altered any time by the competent authority.

12. The contention of the applicants that they had acquired a right to promotion cannot be accepted on another ground also. The applicants have not been able to point out any rule or even any instructions on the basis of which they can be held eligible for promotion to the post of Senior Accountant. As already mentioned, the respondents have taken the plea that there were no Rules or even instructions relating to promotion in the Telecom-Accounts-Wing prior to the framing of the 1988 Rules. The learned counsel for the applicants has not been able to rebut this assertion of the respondents. All that he was able to state was that there was some practice in vogue in the department according to which a person holding the post of Lower Division Clerk could be promoted to the post of Upper Division Clerk if he had three years service as Lower Division Clerk. Nothing has been stated as regards the eligibility criteria for recruitment to or promotion in the Accounts Wing of the Telecom Department.



13. The next question which falls for determination is as to whether the explanatory memo could in any way help the applicants. The last two sentences of the explanatory memorandum may be extracted herein/below :

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".....accordingly these Rules are being given retrospective effect from 1.4.1987. It is certified that the retrospective effect being given to these rules, will not affect adversely any employee to whom these rules apply".

14. It is a doubtful proposition whether the explanatory memorandum can be said to be a part of the Rules. Quite clearly, this explanatory memorandum has been appended to the rules only to show that the Rules were validly framed and that these are not likely to adversely affect any employee already in service. This memorandum can by no stretch of reasoning be held to be a provision in the Rules providing that the Rules cannot have adverse effect upon the interest of any employee ~~wh~~ to whom the rules apply. Furthermore, as already held above, the Rules do not have any adverse effect upon any right that had accrued to the applicants before the Rules came into force.

15. The learned counsel for the applicants also cited some Judgments, but on going through the same we find that these are not at all relevant to the point ~~at~~ ⁱⁿ controversy in this O.A. In the judgment reported as AIR 1994 SC 55, for example, it has been held that retrospective operation of rules which is used as camouflage for appointment of Junior Engineers from a back date would be discriminatory and violative of Articles 14 and 16. In that case, Rules ~~was~~ framed in 1985 permitting appointment by transfer and making it

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operative from 1976 subject to the availability of vacancy. The aforesaid retrospective operation of Rules had resulted in appointment of a Junior Engineer with effect from 1976. It was on these facts that the Hon'ble Supreme Court quashed the Rule so far as its retrospective operation was concerned. It was held that appointing a person to a higher post in a different cadre in which he has never worked is violative of constitutional guarantee of those who are working in the cadre and that ^{this} ~~it~~ was against basic principles of recruitment to any service. It was further held that no Rule can be made retrospectively to operate unjustly and unfairly against others. The facts of the instant case are clearly distinguishable and the ratio of the Apex Court's Judgment (Supra) would not apply to this case.

16. Another Judgment to which our attention has been drawn is the one delivered by the Apex Court in the case of P.Ganeshwar Rao and others Versus State of Andhra Pradesh and others, reported as AIR 1988 SC 2068.

In that case, amendment was made to the Recruitment Rules by permitting 37½ % of only substantive vacancies to be filled up by direct recruitment to the post of Assistant Engineers, and not temporary vacancies. The Apex Court held that the amendment would not apply to the vacancies which had arisen prior to the date of amendment. The question at issue before the Apex Court in the said case was not as to whether retrospective operation of a rule would in all cases be invalid and liable to be struck down.

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In the facts and circumstances of that case, the Apex Court held that in view of the introduction of the word "arising" in explanation to Rule-2, the aforesaid provision restricting direct recruitment to only substantive vacancies was applicable **only** to those vacancies which came into existence subsequent to the date of amendment. Thus, quite clearly the principle enunciated in the said Judgment would not apply to the instant case.


17. Similarly, the judgment of the Apex Court reported as 1993 SC 155, is also clearly distinguishable. In that case, the Apex Court had the occasion to consider the doctrine of "legitimate expectation". It was held that the said doctrine imposed duty on public authority to act fairly by taking into consideration all relevant factors and to give a reasonable opportunity to the effected persons to make representations if they were likely to be effected by any change of consistent policy. We are of the considered view that the doctrine of legitimate expectations has no relevance to the question involved in the instant case. It cannot be held that an employee who joined service has the legitimate expectation of promotion to the higher post irrespective of the eligibility criteria that have already been laid down or that may be laid down in future. The case before the Apex Court (Supra) did not relate to any service matter.


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It related to a memorandum containing certain guidelines in the matter of allotment of land to the society.

18. Not a single authority has been cited by the learned counsel for the applicants to support the view that the retrospective operation of a rule should not effect a mere chance of promotion.

19. In view of what has been held and discussed above, we are convinced that the applicants have not case and that there is no merit in this O.A. filed by them. Accordingly, this O.A. is hereby dismissed, but without any order as to costs.


(T.N.Bhat)
Member(J) 8.5.1997


(V.Ramakrishnan)
Vice Chairman 8/5/1997

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABD

O. A. NO. 512 OF 1989

Bhavsingh B. Pasaya &

11 others

C/o. Office of the Chief General

Manager, Telecommunications

Telecom Accounts Unit

Gujarat Circle

Shah Building, Opp. Navrangpura

Bus Stand, Ahmedabad - 9.

.... Applicants

vs.

1. Union of India

Notice of the petition to be

served through the Secretary

Department of Telecommunications

Sanchar Bhavan

New Delhi - 1.

2. Chief General Manager

Gujarat Telecom Circle

having office at Ambika Chambers

Near High Court, Navrangpura

Ahmedabad - 9.

.... Respondents

Application under Rule 5(a) of the

Central Administrative Tribunal (Procedure)

Rules, 1987.

The applicants abovenamed most respectfully submits
as under :-

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J.D. Ajmes
27-11-89

MPH

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1. The applicants hereinabove have filed the above mentioned O.A. challenging the action of the respondent authorities applying the ~~xxxxx~~ newly made recruitment rules for the post of Upper Division Clerks, Junior Accountants etc. retrospectively and thereby taking away the vested rights of the applicants as to promotion and eligible for promotion to the post of U.D.C./Junior Accountant from the present post of Lower Division Clerks held by the applicants.

2. The applicants, thus, have common cause of action and they have absolutely common interest in the matter, they are all equally affected by the impugned policy decision, violating their legal and fundamental rights under Article 14 and 16 of the Constitution of India.

3. The applicants, therefore, pray that the Hon'ble Tribunal may be pleased to :

- (A) Permit the applicants herein to file O.A. as joint application on behalf of 12 applicants.
- (B) Any other and further relief deem fit in the interest of justice may be granted.

And for this act of kindness and justice, the applicants shall as in duty bound for ever pray.

N. Kanasa
(Applicants)

Place: Ahmedabad

Date :

M. R. Anand
Applicants' Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT AHMEDABAD

O. A. NO: 512 OF 1989

B. B. Pasaya & Ors. ... Applicants.

vs.

Union of India & Ors. ... Respondents

I N D E X

Sr.No.	Annexures	Particulars	Page nos.
1.	-	Memo of the application	1 to 19
2.	A-1	A tabular statement showing the service history of the applicants.	20
3.	A-2	A true copy of the memorandum dt. 16.7.88 along with the notification publishing the Rules.	21 - 29
4.	A-3	A true copy of the clarificatory communication dt. 1.5.89.	30 - 32
5.	A-4	A true copy of the representation dt. June 7, 1989.	33 - 39

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J.D. Ajmeri
Ad
27/11/89

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT AHMEDABAD

O. A. NO: 512 OF 1989

BETWEEN

1. Bhavsingh B. Pasaya
2. Smt. Beena Vatsalya Bhatt
3. Smt. Yogini Sudhirkumar Thambe
4. Sandeep Shantilal Shah
5. Padmanabh Vasant Ray Yagnik
6. Smt. Usha Krishnakumar Nair
7. Smt. Dipika Ushir Shah
8. Thomas Mathew
9. Naimesh Ramanlal Kansara
10. Miss Pratibha Balkrishna Khare
11. Remesh Nanikram Tekchandani
12. Smt. Sumathy Ravindran

All C/o. Office of the Chief General
Manager, Telecommunications
Telecom Accounts Department Unit
Gujarat Circle, Shah Building
Opp: Navrangpura Bus Stand
AHMEDABAD - 380 009.

..... Applicants

AND

1. Union of India
Notice of the petition to be served
through Secretary, Department of
Telecommunications, Sanchar Bhavan
New Delhi - 1.

2. Chief General Manager

Gujarat Telecom Circle

having office at

Ambica Chambers, Near High Court,

Navrangpura, Ahmedabad - 9.

..... Respondents

Details of the Application

1. Particulars of the Applicants :

- (i) Name of the applicants : As given in the cause title
- (ii) Name of Father/Husband : As given in the cause title
- (iii) Designation and office in which employed : Lower Division Clerks
In the office of respondent no.2. Office address given in the cause title.
- (iv) Office address : As given in the cause title
- (v) Address for service of all notices : As given in the cause title.

2. Particulars of the Respondents :

- (i) Name and/or designation of the Respondents : As given in the cause title
- (ii) Office address of the respondents : As given in the cause title

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(iii) Address for service of : As given in the
all notices cause title.

3. Particulars of the order against which application
is made :

(i) Order No	(X)	Application is against the order
(ii) Date	X	in communication No.19-8/88-SEA
(iii) Passed by	X	dated 1.5.89 and the notification
	X	No.19_1/87-SEA publishing the
	X	"Department of Telecommunications,
	X	Telecommunications accounts
	X	(Lower Division Clerks, Junior
		Accountants & Senior Accountants)
		Recruitment Rules 1988" published
		on 16th July 1988.
		Issued by respondent no.1
		Government of India.
(iv) Subject in brief E:		Retrospective application of
		the Recruitment Rules for the
		post of Lower Division Clerks and
		(U.D.C.) or Junior Accountants.

4. Jurisdiction of the Tribunal :

The applicants declare that the subject matter
of the order against which they want redressal is within
the jurisdiction of the Tribunal.

5. Limitation :

The applicants further declare that the application

is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the case :

6.1. This petition raises the identical issue as is raised in O.A.No.443 of 1989 which is pending before this Hon'ble Tribunal. In fact the applicants herein were applicants no.8 to 19 in the said petition but they have been deleted from the said petition to enable them to file separate petition as some of the consequential relief sought by them are different from those sought by the applicants no.1 to 7 in O.A. No.443/89.

6.2. The applicants are the citizens of India. The applicants are employees of respondent no.1 Union of India. The applicants are at present working as Lower Division Clerks under the respondent no.2 authority. They have either been wrongfully reverted from Upper Division Clerk or from Junior Accounts or some of them have been wrongfully not promoted to the higher post of either upper Division Clerk or junior Accountant. This has happened because of the arbitrary decision of retrospectively applying the recruitment Rules for promotion to the post of U.D.C. or Junior Accountants. The applicants have identical cause of action, and they have the same grievance and they are all equally aggrieved by it. Therefore, they are filing a joint application in this behalf. The brief facts leading to the

present application are as under :-

6.3. The applicants were appointed to the post of Lower Division Clerks between December 1978 and February 1985. A tabular statement showing the service history of the applicants including the date of first appointment as L.D.C., their present posting, date of promotion to the higher post of U.D.C. or junior accountant, if any, and the date of subsequent reversion back to the lower post of L.D.C. is annexed hereto and marked Annexure 'A-1'. The tabular statement shows that by and large the applicants were appointed in the first half of 1984 except a few who have been appointed before or thereafter. At the relevant time, that is, after the appointment of the applicants, the recruitment rules provided that a L.D.C. could be promoted to the higher post of U.D.C. or its equivalent i.e. junior accountant on completion of three years service as a L.D.C. Accordingly, as shown by the tabular statement at Annexure 'A-1' several applicants (Applicants nos. 1 to 3 and applicants nos. 6, 7, 9 and 10) were promoted to the higher post of U.D.C. or junior accountant by the competent authority. These promotions were given to them by the competent authority as per the existing departmental rules or policy or practice of promoting the LDCs on completion of three years of service. It may be clarified here that all the applicants initial appointment to the post of LDCs and subsequent promotions to the above mentioned applicants to the higher post of U.D.C. or Junior Accountants were not only given by the competent authority but were strictly in accordance

with the existing rules and regulations and procedures. None of the appointments or promotions were irregular or improper in any manner. These appointments and promotions were ordered in public interest and in the interest of public administration. Applicants nos.4, 5, 8, 11 and 12 have not been promoted to the higher post of UDC or Junior Accountant though they have completed three years of service some times in the year 1987 or 1988. The reversions of the above mentioned applicants and non-promotion of applicants nos.4,5, 8, 11, and 12 are due to a crucial intervening event of arbitrary retrospective application of the Recruitment Rules to the post.

6.4. By notification dated 16th July, 1988 published some time in August 1988, the respondent Union of India notified the rules called "the Department of Telecommunications, Telecommunications Accounts, (Lower Division Clerks, Junior Accountants and Senior Accountants) Recruitment Rules 1988". Surprisingly though these rules were issued in July/August 1988, Rule 1(2) provided that these rules "shall be deemed to have come into force on the first day of April, 1987". Rule 5 of the Rules prescribed for the initial constitution of these three cadres of post. It also provides that the persons who were holding these posts on the date of commencement of these rules, shall be deemed to have been appointed under these Rules. By this deeming

fiction of making the rules applicable with effect from 1.4.1987, the Government divided the existing staff into two parts. Those who were promoted or appointed to the ~~rep~~ respective posts or who were eligible for appointment or promotion to the existing post on or before 1st April, 1987 and those who were either promoted or could be promoted being eligible for the promotion between 1st April, 1987 and 16th July, 1988. The former were to be protected but the latter were not to be protected and they became liable for reversion or non-promotion under the then existing Rules. It may be noted that under the new Rules a L.D.C. cannot be promoted to the higher post of U.D.C. or Junior Accountant until he completes eight years of service whereas under the old rules they were promoted or could be promoted on completion of three years service as a L.D.C. It is also noteworthy that an explanatory memorandum is added to these statutory rules which directly conflicts with the provisions of Rule 1(2) making these rules retrospectively applicable. The explanatory memorandum certifies that "the retrospective effect being given to these rules will not affect adversely any employee to whom these rules apply". The explanatory memorandum at the end of the Rules is completely disregarded in the applicants' case and they are sought to be subjected to the new requirement of eight years experience as a L.D.C. for promotion to the higher post of U.D.C. A true copy of the memorandum dated 16th July, 1988 along with the notifications publishing the Annex. 'A-2' Rules is annexed hereto and marked Annexure 'A-2'.

6.5. The applicants had legitimately assumed, upon publication of the Rules at Annexure 'A-2' that being the staff who were already in service on the day the Rules at Annexure 'A-2' came into force, their service conditions and promotional avenues will be protected as per the explanatory memorandum at the end of these Rules. However, by a subsequent communication dated 1st May, 1989 addressed by respondent no.1 to respondent no.2, the effect of the explanatory memorandum which is part of the statutory rules was destroyed. According to this new clarification dated 1st May, 1989, only those LDCs who were promoted to the higher post of UDC or Junior Accountant on or before 1.4.1987 were to be protected, but those promoted between 1.4.1987 and 16th July, 1988 were to be subjected to the new Rules. Similarly those LDCs who had already completed three years service prior to 16th July 1988 were also subjected to the new Rules and denied the benefit of explanatory memorandum at the end of Rules at Annexure 'A-2'. A true copy of the so-called clarificatory communication dated 1.5.1989 is annexed hereto and marked Annexure 'A-3'.

Anne.'A-3'

6.6. As soon as the applicants came to know about the clarificatory communication at Annexure 'A-3' they made representations to the respondent authorities. A true copy of the applicants representation dated June 7, 1989 is annexed hereto and

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Annex 'A-4' marked Annexure 'A-4'. In their representations, the applicants pointed out that the impugned action was punitive and violative of Article 3(11)(2) and principles of natural justice. The applicants also pointed out that the retrospective application of the rules for the employees who were promoted and who became eligible for promotion after 1.4.1987 but before 16th July, 1988 was unfair and arbitrary. The applicants also referred to various judgments of the Hon'ble Supreme Court and High Courts pointing out that this could not be done as it was violative of Article 14 and 16 of the Constitution of India. The representation at Annexure A-4 is only one of the representations and all the applicants had sent the same representations to the higher authorities. It may also be noted here that this issue of reversion of the employees like the applicants was raised before this Hon'ble Tribunal by O.A. No.500/87 which was decided on 27th July, 1988. (This application was brought by persons holding the post of Senior Accountants who were reverted to the lower post of Junior Accountants). The question of validity of the Rules was not decided in that application. However, as the applicants in that case were continued in the higher posts. The applicants crave leave of this Hon'ble Tribunal to refer to and rely upon the judgment of this Hon'ble Tribunal in O.A. No.500/87, at the time of hearing as and when necessary. As far as the present applicants are concerned, they have not been promoted due to explanatory communication at Annexure 'A-3', otherwise they had very

well completed three years service as LDC before the July 1988 and the number of vacancies were also very much there.

6.7. Aggrieved and dissatisfied by the impugned retrospective application of the Rules at Annexure 'A-2' as clarified by the communication at Annexure A-3 and by the failure of the respondent authorities to reply to the applicants representations and by their continuous implementation of the impugned Rules at Annexure A-2 and having no other alternative remedy, the applicants approach this Hon'ble Tribunal by way of this application on the following grounds amongst others :-

6.8. The applicants submit that the impugned communication at Annexure A-3 and Rule 1(2) of the impugned Rules at Annexure A-2 have to be read in light of the explanatory memorandum annexed with the statutory rules at Annexure A-2. The applicants submit that the explanatory memorandum after Rule 8 of the Rules at Annexure A-2 is part of the statutory rules. Rule 1(2) has to be read harmoniously with explanatory memorandum at the end of the Rules. The explanatory memorandum is absolutely clear in providing that the retrospective application of the Rules "will not affect adversely any employee to whom these rules apply". These rules very ~~new~~ much apply to the applicants who were very much in service

since several years and who were also promoted to the higher post or had become eligible for promotion to the higher post of UDC or Junior Accountants. The ~~reversion~~ non-promotion of applicants to the higher post of UDC or Junior Accountants ^{though} ~~they~~ they were eligible for promotion and vacancies were available certainly adversely affected the applicants in violation of the explanatory memorandum. The non-promotion of applicants to the higher post of UDC or Junior Accountant is therefore, clearly illegal and bad in law.

6.9. The applicants submit that the clarificatory communication at Annexure A-3 is an executive instruction. It is not issued under the proviso of Article 309 of the Constitution of India. As against this, the rules at Annexure A-2 including the explanatory memorandum at the end of the rules have been issued under the proviso to the Article 109 of the Constitution of India. The executive instruction at Annexure A-3 cannot run counter to the statutory rules framed under Article 309 of the Constitution of India in as much as the communication at Annexure A-3 runs counter to the statutory rules at Annexure A-2 and adversely affect the existing employees like the applicants, it is illegal without any authority of law and clearly liable to be quashed and set aside. It hardly needs to be stated that an executive instruction can never override the statutory rules nor can the executive instruction pretend to so amend the statutory rules contrary to the very spirit of the statutory rules. The applicants ~~thus~~ submit that

once the executive instruction at Annexure A-3 is struck down, all that would remain is the statutory rules at Annexure A-2 and the applicants would be clearly protected by the explanatory memorandum at the end of the statutory rules at Annexure A-2. Their non-promotion would therefore be invalid and bad in law. It may be noted here that the applicants have not been promoted due to the clarificatory communication at Annexure A-3.

6.10. The applicants submit that if their above mentioned submissions are not accepted and if a view is taken that the applicants were hit by Rule 1(2) of the Rules at Annexure A-2 notwithstanding the explanatory memorandum after the Rule 8 of the Rules, then the applicants submit that Rule 1(2) of the Rules as also the Annexure A-3 is unconstitutional and violative of Article 14 and 16 of the Constitution of India.

6.11. The applicants submit that the Rule 1(2) of the impugned Rules at Annexure A-2 and the communication at Annexure A-3 in as much as it applies to these rules with effect from 1st April, 1987 by deeming fiction thereby depriving the applicants the right of holding higher post of UDC or Junior Accountant and/or renders them liable to be reverted to the lower posts are illegal, unconstitutional, liable to be quashed and set aside, null and void and of no effect whatsoever.

6.12. The applicants submit that it is well established preposition of law that in selecting a cut-off date deviding the existing employees into two parts, the Government must act in consonance with the requirements of the Article 14 and 16 of the Constitution guaranteeing the right of equality to all the citizens employees. Obviously the cut-off date cannot be arbitrary or irrational. In the present case cut off date is absolutely arbitrary and irrational for the simple reason that though the Rules dated 16th July, 1988 were notified on 20th July, 1988, they were made retrospectively applicable with effect from 1st April, 1987. This cut off date of 1st April, 1987 has devided the employees into two classes, those who were promoted or became eligible for promotion prior to 1.4.1987 and those promoted or became eligible for promotion after 1.4.1987 but before 16th July 1988 (or 20th July, 1988). No rational basis for this classification is coming forth from the respondent authorities. The cut off date adopted in the present case is therefore, irrational and arbitrary and violative of Article 14 and 16 of the Constitution of India.

6.13. The applicants submit that the irrational basis of classification would justify the different treatment given to the employees like the applicants who were either promoted or became eligible for promotion to the higher post of UDC or Junior Accountant between 1.4.1987 and 20th July, 1988 and tho who were promoted before 1.4.1987. In the present case it is not shown how these two categories of employees deserve different treatment inspite of the

explanatory memorandum which is part of the statutory rules. ~~Both~~ Both the classes of employees were also in service prior to the rules being notified. Selection of date of 1.4.87 is thus based merely on some noting in the file and has no rational nexus with the object of the rules. The applicants submit that if it were the intention of the Government to apply the rules to the persons who were already promoted or who have become eligible for promotion prior to 20th July, 1988, it would have never provided for the explanatory memorandum after Rule 8 of the Rules at Annexure A-2.

6.14. The applicants submit that as held by the Hon'ble Supreme Court repeatedly the prospective application of the laws is the normal rule and the retrospective application taking away the rights is an exception. The exception has to be justified by a rational basis. In the present case, no rational basis is forthcoming except a bare statement that initially the decision to frame the rules was taken on 1.4.1987 and therefore the rules have to be made applicable with effect from 1.4.1987. The applicants submit that the date of the file can have no bearing to the validity of the classification of the employees into two categories. Such an approach is clearly perverse and shows that the classification of the employees is without any rational nexus to the subject of the classification and therefore unconstitutional and bad in law.

6.15. The irrationality and absurdity of the approach of the respondent authorities has necessitated a mechanical approach resulting in promotion of juniors to the higher post & due to absolutely fortuitous circumstance of their early date of joining resulting the supercession of seniors who were given seniority on the basis of their higher merit at the time of initial recruitment. Thus three persons, namely, Shri S.B.Bhatt, Shri A.J.Jani and Shri T.H. Jain were below Shri J.R.Gandhi, Shri V.D. Pandya, Shri F.B.Parmar, Smt.Heena V Nair, M.R. Rajput and Shri B.B.Pasaya (applicant no.1 herein) in the seniority list on the basis of their lower rank in the order of merit at the time of initial recruitment to the post of L.D.C. These three gentlemen were issued appointment order in November 1985, On February 3, 1987 these persons were promoted to the higher post ~~as~~ as they had already completed three years service. Their seniors in the seniority list were not promoted to the higher post just because they had not completed three years as LDC only because their formalities for initially joining the service were not completed before the aforesaid three persons, and thus they had not completed three ~~xxx~~ years service on 3.2.1987. The aforesaid six persons completed three years service after 1.4.1987 as L.D.C. Because of the intervention of the new rules, the seniors who were higher in the merit list i.e. M/s. J.R.Gandhi, V.D.Pandya, F.B. Parmar, Smt.Heena V Nair, M.R.Rajput and B.B.Pasaya have been reverted to the lower post of L.D.C. and they will remain L.D.C. till they complete eight years as L.D.C. and meanwhile these three juniors will get one more promotion to the higher post of senior accountants. This is not because they are higher in

order of merit or they were senior to the applicants, but due to the irrational and arbitrary retrospective application of the impugned rules at Annexure A-2. If the impugned rules at Annexure A-2 were made applicable from the date they were published on 20th July, 1988, Shri Bhatt, Shri Jani and Shri Jain would remain junior to Shri Gandhi, Shri Pandya, Shri Parmar, Smt. Nair, Shri Rajput and Shri Pasaya resulting in continuation of these six persons in the higher post as well as their maintaining seniority above these three persons. The treatment given to the applicants is therefore, clearly illegal and arbitrary and violative of their fundamental rights under Article 14 and 16 of the Constitution of India.

6.16. The applicants submit that the impugned decisions at Annexure A-2 and A-3 are punitive and impose a severe penalty on the applicants in gross violation of the principles of natural justice and fair play. They are in violation of the relevant statutory rules as to imposition of penalty. The applicants are inflicted either of the penalty of reversion or of non-promotion for no fault of theirs for extraneous and arbitrary considerations. The impugned action, is therefore, illegal and bad in law.

7. Reliefs Sought :

In view of the facts mentioned in para 6 above the applicants pray for the following reliefs :-

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- (1) To ~~quere~~ declare Rule 1(2) of the impugned Rules at Annexure A-2 and the communication at annexure A-3 as illegal, unconstitutional, null, void and no effect whatsoever.
- (2) To declare that the recruitment rules at Annexure A-2 apply prospectively i.e. from the date of the notification or publication on 20th July, 1988.
- (3) To consider the case of the applicants for promotion to the higher post on the basis of old rules and on the basis that the Recruitment rules at Annexure A-2 apply only prospectively.
- (4) To confer upon the applicants all consequential benefits as to continuation in the higher post of U.D.C. or Junior Accountants or promotion to the higher post of U.D.C./Junior Accountant, pay fixation, seniority, arrears of salary etc. on the basis that the recruitment at Annexure A-2 became applicable only prospectively, that is, from 20th July, 1988.
- (5) To grant any other appropriate relief/remedy deem just and proper by the Hon'ble Tribunal in the facts and circumstances of the case.

8. Interim relief, if prayed for :

Pending admission, final hearing and disposal of this application, the Hon'ble Tribunal may be pleased

to grant interim relief staying the further operation of the Rule 1(2) of the Recruitment Rules at Annexure 'A-2' and the communication at Annexure A-3 vis-a-vis the applicants.

9. Details of the remedies exhausted:

The applicants declare that they have availed of all the remedies available to them under the relevant service rules by making representations to the concerned authorities as mentioned in the facts of the case, hereinabove.

10. Matter not pending with any other court etc.

The applicants further declare that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Hon'ble Tribunal.

11. Particulars of Bank drafts/Postal Order in respect of the Admiss Application fee :

1. Nos. of the Indian Postal Order :
2. Name of the Issuing Post office : High court Po
3. Date of issue of Postal Order : 27-11-89
4. Post office at which payable : High court P.O

12. Details of Index :

An index in duplicate containing the details of the documents to be relied upon is enclosed.

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13. List of enclosures :

1. Annexures A-1, to A-4 as mentioned in the index.
2. Vakalatnama.
3. Postal Order in respect of the application fee.

IN VERIFICATION

We, Bhavsingh B. Pasaya & 11 others working as L.D.C.
under respondent no.2 authority, resident of Ahmedabad,
do hereby verify that the contents from 1 to 13 are true
to our personal knowledge and belief and that we have not
suppressed any material facts.

(Signature of the Applicants)

1. [Signature]
2. 1) [Signature]
3. [Signature]
4. 10) [Signature]
(Miss P.B.Khare)
5. [Signature]
6. 11) [Signature]
(Mr. R.N.Tekchandani)
7. [Signature]
8. 12) [Signature]
(Mrs. Sumathy Ravindran)
9. [Signature]
10. [Signature]
11. [Signature]
12. [Signature]

Place: Ahmedabad

Date : 27-11-88

M. R. Anand
Applicants Advocate.

TO:

The Registrar
CAT Addl Bench
at Ahmedabad.

A-1

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Name of Official	Designation	Working under Division and Station	Date of Joining	Date of Promotion to UDC (Gr. Acctt.)	Date of Reversion
1 Mr. B. B. Pasaya	"	O/o. Telecom District Engineer 60. Patel Society, BHARUCH 392 002.	07.12.83	3.2.87	8.10.87
2 Mrs. B. V. Bhatt	"	O/o. General Manager Telecom District Jalaram Marg, Karelibaug, VADODARA 390 018.	27.01.83	3.2.87	8.10.87
3 Mrs. Y. S. Tambe	"	"	22.12.78	4.8.87	8.10.87
4 Mr. S. S. Shah	"	"	10.12.84	NOT PROMOTED	
5 Mr. P. V. Yagnik	Lower Division Clerk	O/o. Telecom District Engineer K. V. Road, JAMNAGAR 361 001.	12.11.84	NOT PROMOTED	
6 Mrs. U. K. Nair	"	O/o. General Manager Telecom District, Chowk Bazar, Opp. Old Civil Hospital, SURAT 394 001.	24.08.84	14.9.87	8.10.87
7 Mrs. D. U. Shah	"	O/o. Chief General Manager	16.08.84	14.9.87	8.10.87
8 Mr. Thomas Mathew	"	Gujarat Telecom Circle Telecom Accounts Unit Shah Building, Navrangpura, AHMEDABAD 380 008.	02.02.85	NOT PROMOTED	
9 Mr. N. R. Kansara	"	"	27.08.84	14.9.87	8.10.87
10 Miss P. B. Khare	"	"	18.08.84	14.9.87	8.10.87
11 Mr. R. N. Tekchandani	"	"	01.01.84	NOT PROMOTED	
12 Mrs. Sumathy Ravindran	"	"	01.02.85	NOT PROMOTED	

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A-2-13

Copy of Commn, letter No. 34.41/86-SEA dated 4/8/1988. from Shri
R.N. Ganapathy A.D.G. (SEA) Department of Telecommunications, New Delhi-
110 001. addressed to all the Heads of Telecom Circles and etc. etc.,

Subj: UDC Restructuring of Accounts Staff in organised Accounts Cadres.

Sir,

This is in continuation of this office letter No. 34-41/86-SEA dated 17.5.1988 on the subject indicated above. The Recruitment Rules for Lower Division Clerks, Junior Accountants and Senior Accountants in Telecommunications Accounts Wing have been approved and Published in the Gazette of India under G.S.R.No.583 in the issue dated 16.7.1988 in pages 2202 to 2208, a copy of which is enclosed.

2. Clause 5(2) under "Initial Constitution" of the Recruitment Rules reads as under:-

"Persons holding the post of Upper Division Clerk (Telecom Accounts) or Selection Grade Upper Division Clerk (Telecom Accounts) on adhoc basis on the date of Commencement of these rules shall also be deemed to have been appointed to the post of Junior or Senior Accountants respectively with effect from the date of meeting of the Departmental Promotion Committee concerned :

Provided the officers are found fit by the appointing authority on the basis of the recommendations of the Departmental Promotion Committee prescribed under these rules for appointment to the post of Junior or Senior Accountant, as the case may be."

In this connection a reference is also invited to para 12 of this office letter of even number dated 17-5-1988 wherein a further communication was promised. Meeting of the Departmental Promotion Committee may kindly be convened immediately first to regularise the persons holding the posts of UDC (TA) or Selection Grade UDC (TA) on adhoc basis on the date of commencement of these rules as Junior Accountant and Senior Accountant respectively as provided for in clause 5(2) of the Recruitment Rules under "Initial Constitution". Such of those persons as have been approved by the D.P.C. and appointing authority for regular appointment to the post of Junior Accountants (TA) are eligible to count their services rendered continuously on an adhoc basis as Upper Division Clerks (TA) prior to the date of the D.P.C. for the purpose of promotion to the grade of Senior Accountants (TA). This relaxation has been approved by the competent authority.

3.(i) After regularisation as mentioned above, a D.P.C. meeting may be convened for promoting the eligible Junior Accountants to the grade of Senior Accountants W.E.F. 1.4.1987 after observing the prescribed formalities.

.....2%.....

3.(ii) Similar D.P.C. meetings may also be convened for preparation of a separate panel of eligibel Junior Accountants (as on 1-7-1987 and as on 1-7-1988) for promotion to the grade of Senior Accountants for filling up vacancies in Senior Accountant's grade that arose after 1-4-1987 but upto 30-6-88 and from 1-7-1988 to 30.6.1989 and the officials promoted to the higher grade from 1-7-1987 or from the dates the vacancies fell thereafter upto 30-6-1988 from the select panel as on 1-7-1987. Promotion against vacancies that arose after 30-6-1988 will be from a prospective date, (i.e. the date from which the official takes charge of the post) from the select panel as on 1-7-1988.

A compliance report regarding the action taken may please be furnished to this office early. The receipt of this letter may kindly be acknowledged.

Encl: As Above.

Yours fiathfully,

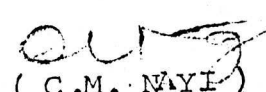
Sd/-

(K.N. GANAPATHY)
Asstt. Director General (SEA)

.....
Endst.No. Staff-27-2/Rlg/I/66 Dated at Ahmedabad-9. the 22/8/1988.
.....

Copy forwarded for information and necessary action to :-

1. The G.M. Teled-om. District Ramnivas Bldg. Khanpur Ahmedabad-1.
(2 copy for IFA)
2. The Telecom. District Manager Baroda/Rajkot/Surat (2 copy for IFA)
3. The Area Manager Telecom. Ahmedabad/ Baroda/ Rajkot.
4. CAO/CAO(TR)/AO(BGT)/ADT(S)½ AO(TA)/ AO(I/C) C.O. Ahmedabad.
5. All T.D.Engineer in Gujarat Circle.
6. All Group Officers in C.O. Ahmedabad.
7. All D.A. in Estt. Sn. C.O. Ahmedabad.
8. Guard file/ Spare.


(C.M. NAYIL)
Asstt. Director Telecom. (Staff)
For Genera l Manager Telecom.
Gujarat Circle, Ahmedabad-380 009.

RAP/18888.....
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NOTIFICATION

G.S.R...583..... In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to the posts of Lower Division Clerks, Junior Accountants and Senior Accountants in Telecommunications Accounts wing in the Department of Telecommunications, namely :-

1. Short title and commencement :

- (1) These rules may be called the Department of Telecommunications, Telecommunications Accounts (Lower Division Clerks, Junior Accountants and Senior Accountants) Recruitment Rules, 1988.
- (2) They shall be deemed to have come into force on the 1st day of April, 1987.

2. Application :

These rules shall apply to the posts specified in column 1 of the Schedule annexed to these rules.

3. Number of posts, classification and scale of pay :

The number of the said posts their classification and the scales of pay attached there to shall be as specified in columns 2, 3, and 4 of the said Schedule.

4. Method of recruitment, age limit, qualification, etc. :

The method of recruitment, age limit, qualifications and other matters relating to the said posts shall be as specified in columns 5 to 14 of the Schedule aforesaid.

5. Initial constitution :

- (1) Notwithstanding anything contained in these rules, any person already holding on a regular basis the post of Lower Division Clerk (Telecommunications Accounts) or Upper Division Clerk (Telecommunications Accounts), Selection Grade Upper Division Clerk (Telecommunications Accounts) or Lower Selection Grade (Telecommunications Accounts), on the date of commencement of these rules, shall be deemed to have been appointed to the post of Lower Division Clerk (Telecommunications Accounts) or Junior Accountant or Senior Accountant respectively under these rules.

(2) Persons holding the post of Upper Division Clerk (Telecommunications Accounts) or Selection Grade Upper Division Clerk (Telecommunications Accounts) on ad-hoc basis on the date of commencement of these rules shall also be deemed to have been appointed to the post of Junior or Senior Accountant respectively with effect from the date of meeting of the Departmental Promotion Committee concerned:

Provided the officers are found fit by the appointing authority on the basis of the recommendation of the Departmental Promotion Committee prescribed under these rules for appointment to the post of Junior or Senior Accountant, as the case may be.

6. Disqualification : No person-

- (a) Who has entered into or contracted a marriage with a person having a spouse living, or.
- (b) Who, having a spouse living, has entered into or contracted a marriage with any person shall be eligible for appointment to any of the said posts:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

7. Power to relax:

Where the Central Government is of the opinion that it is necessary or expedient to do so, it may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

8. Saving :

Nothing in these rules shall affect reservation, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, ex-serviceman and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

Explanatory Memorandum:

The Department of Telecommunications Telecommunication Accounts (Lower Division Clerks, Junior Accountants and Senior Accountants) Recruitment Rules, 1988 have been made to implement the decision of the Government of India to restructure the accounts staff in the organised accounts cadres with effect from 1.4.87 vide Government of India, Department of Expenditure O.M. No.F,5(32)/E.III/86/pt.II dated 12.6.87. Accordingly, these rules are being given retrospective effect from 1.4.87. It is certified that the retrospective effect being given to these rules will not affect adversely any employee to whom these rules apply.

Sd/-

(K.N. GANAPATHY)
Asstt. Director General (SEA)

To
The General Manager,
Government of India Press,
New Delhi.

True copy
MKM
A

THE SCHEDULE

Name of the post.	Number of posts	Classification	Scale of pay	Whether Selection post or non-selection post.
1.	2.	3.	4.	5.
1. Lower Division Clerk (Telecommunication Accounts.)	815 subject to Variation depending on work load.	General Central Civil Services Group 'C' Non-gazetted Ministerial.	Rs. 950-20-1150- EB-25-1500	Non-selection
2. Junior Accountant.	1579 subject to variation depending on work load	General Central Service, Group 'C' Non-gazetted Ministerial	Rs. 1200-30-1560- EB-40-2040	Non-selection.
3. Senior Accountant.	1250 subject to variation depending on work load	General Central Service Group 'C' Non-gazetted Ministerial.	Rs. 1400-40-1600- 50-2300-EB-60 2600.	Non-selection.

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Age limit for direct recruits.

Whether benefit of added years of service admissible under Rule 30 of the CCS (Pension) Rules, 1972

Educational and other qualification required for direct recruits.

Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.

7.

6. Not applicable.

1. Between 18 and 25 years (Relaxable for Government servants upto 35 years in accordance with instructions issued by the Central Govt.)

*Note below

2. Between 18 and 25 years (Relaxable for Government servants upto 35 years in accordance with instructions issued by the Central Govt.)

*Note Below

3. Not applicable.

*Note: The minimum and upper age limit shall be determined w.r. to the crucial date fixed for the purpose by the Staff Selection Commission from time to time.

8.

1. Matriculation or equivalent examination conducted by a Recognised University or Board

2. Typewriting with a minimum speed of 30 words per minute in English or 25 words per minute in Hindi essential.

Degree or equivalent qualification from a recognised university/Institution.

No.

Not applicable.

Not applicable.

Not applicable.

9. Not applicable.

Period of probation if any.

Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of vacancies to be filled by various methods.

Incase of recruitment by promotion/deputation/transfer from which promotion/deputation/transfer to be made.

If a Departmental promotion Committee exists, what is its composition.

Circumstances in which union public Service Commission is to be consulted in making recruitment

10

11.

12.

13.

14.

1. 2 years

Confirmation.

Selected candidates will be required to pass an aptitude test within the period of probation before he is confirmed as lower Division Clerk.

By direct recruitment through staff Selection Commission.

Not applicable

Not applicable

Not applicable

10.	11.	12.	13.	14.
2. For Direct Recruits 2 years Confirmation They will be required to pass the Departmental Confirmatory Examination on such terms and conditions and within such period as may be prescribed by the Central Government.	(1) 60% by direct recruitment (2) 20% by promotion on the basis of seniority-cum-fitness from Lower Division Clerk (Telecom Accounts) who have completed 8 years continuous service as on the 1st July of the year of recruitment (Departmental quota) (3) 20% through a competitive departmental examination for the "Lower Division Clerks (Telecom Accounts) with not less than 5 years continuous service as on 1st July of the year of recruitment.	Promotion As specified under column 11.	(1) Director (Telecom)/ Deputy General Manager in Junior Administrative Grade or Director (F&A) Chairman. (2) One Group 'A' Accounts & Finance Officer in Senior Time Scale nominated by the Head of Circle--Member. (3) Any officer of Group 'A' (From ITS/Accounts & Finance or Telegraph Traffic Service) nominated by the Head of the Telecom Circle-- Member.	Not applicable.

10.

N11.

11.

By
Promotion.

12.

Promotion
Junior Accountants who have rendered not less than 3 years regular service as Junior Accountants and who have completed satisfactorily the period of probation and have passed confirmatory examination (in the case of Direct recruits)/Departmental Examination for promotion of Lower Divisions Clerks to Junior Accountants, where prescribed.

13.

Group 'C' D.P.C. for and confirmation consisting of:
(1) Director Telecom
Dy. General Manager
Administrative Grade
Director (F&A) - Chairman.
(2) One Group 'A' Accounts & Finance Officer in the Time scale nominated by the Head of Circle/District - Member
(3) Any officer Group 'A' (From ITS/Accounts & Finance or Telegraph Traffic Service) nominated by the Head of the Telecom Circles - Member.

14.

Not
Applicable.

*True copy
M. B. B. B.*

(105)

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A-3

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10.19-8/88-SEA

Ministry of Communication, Department of Telecom.
Sanchar Bhavan at New Delhi-W dtd. 1-5-89.

To,
The Chief General Manager Telecom,
Gujarat Circle Ahmedabad-9.

Sir,

Sub : Restructuring of accounts staff in organised
accounts cadre.

I am directed to refer to your letter no. Staff/
27-2/Gr.Acctt/I/11 dated 18-1-89 and to clarify the points
raised as under:-

L.D.Cs recruited in T. through SSC prior to 1.4.87
are not required to pass any confirmation examination
and their confirmation is to be done on the same lines
as is being done for the LDCs in circle office. The
L.D.Cs who were promoted on an adhoc basis after completion
of 3 years as U.D.Cs prior to 1.4.87 can be regularised
first as Junior Accountants in accordance with the provisions
in the recruitment rules and their adhoc services in the
cadre of U.D.Cs may be taken into account for the purpose
of promotion to the grade of senior accountant in respect
of those officials who are regularised as Junior Accountants.
All promotions to the cadre of Junior Accountants and Senior
accountants after 1.4.87 should be in accordance with the
provisions in the recruitment rules. Therefore if any LDC
was promoted on adhoc basis to the cadre of UDC after 1-4-87
they may be reverted as L.D.Cs and promoted to the cadre
of Junior Accountants when they become eligible in accordance
with the provisions in the recruitment rules, after observing
the prescribed formalities.

Yours faithfully,

Sd/-

(K.M. Ganapathy)

Asstt. Director General (SEA).

After reversion from S.G.O.D.C. (Sr.Accountant) to Junior Accountant (U.D.C.), the following officials are allowed to draw the Special Pay of Rs.70/- p.m. with the designation as Junior Accountant(UDC) with Special Pay with immediate effect and posted at the stations mentioned against their names.

- | | | |
|----|----------------|---|
| 1. | Smt.D.R.Shah | Junior Accountant(UDC) with Special Pay Q/O A. O.T.A.Ahmedabad. |
| 2. | " M.H.Parmar | -do- |
| 3. | Shri B.H.Patel | -do- |
| 4. | " G.S.Mukwana | -do- |
| 5. | " K.S.Parmar | -do- |
| 6. | " H.K.Shah | -do- |
| 7. | " R.F.Valand | -do- Q/O A. O.I.C.Ahmedabad. |
| 8. | " K.A.Valand | -do- |

Shri N.K.Patel, Junior Accountant (UDC) is transferred and posted as Junior Accountant in the office of the A.O.T.A. Ahmedabad. He may be relieved on joining of Shri K.A.Valand.

Following Junior Accountants (UDCs) who were promoted on adhoc basis from the cadre of L.D.Cs., are hereby reverted to their original posts of L.D.C. with immediate effect.

- | | | |
|----|------------------|--------------------------|
| 1. | Shri B.B.Pasava | Q/O T.D.E.Bharuch |
| 2. | Smt. V.M.Patel | Q/O A. O.T.A.Ahmedabad. |
| 3. | " B.V.Bhatt | Q/O D.E.T.Ahmedabad. |
| 4. | " Y.S.Tambe | Q/O T.D.E.Baroda |
| 5. | " U.K.Wair | Q/O A. O.T.A., Ahmedabad |
| 6. | " D.H.Shah | -do- |
| 7. | Shri M.R.Kansara | Q/O A. O.I.C.Ahmedabad |
| 8. | Kum. P.B.Khare | Q/O A. O.T.A.Ahmedabad. |

The orders of promotion of Shri U.M.Padhya, L.D.C. Q/O T.D.E.Bulsar to the cadre of Junior Accountant vide this office memo No. Staff/27-2/UDC/III/15 dated 14-9-87 are hereby cancelled.

The orders of transfers of L.D.Cs from various Dns. to Ahmedabad issued vide this office memo No. Staff/27-2/R/VI/27 dated 8-9-87 are held in abeyance till further orders.

These orders will take effect from the date of receipt of this letter.

(D.H.Apte)

Asstt.General Manager (S&A),
for General Manager, Telecom.,
Gujarat Circle, Ahmedabad.9.

Nonin/-

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Department of Telecommunications
Office of the General Manager Telecommunications
Gujarat Circle, Ahmedabad - 380 009.

Memo. No. Staff/27-9/87/ISG/III/73

Dated at A'bad-9, the 8th Oct. 1987.

In accordance with the instructions conveyed by Director General (Telecom.) New Delhi's letter No. 19-4/87-SEA (Pt. file) dated 21.9.87, the General Manager Telecommunications, Gujarat Circle, Ahmedabad is pleased to revert the following Selection Grade U.D.C. (Senior Accountant) who were promoted on adhoc basis, to the cadre of U.D.C. (now Jr. Accountants) with immediate effect.

Sl.No.	Name.	Designation	On reversion posted at
1.	Smt. D.R. Shah	SG UDC (Sr. Acctt.) O/o AO(TA) A'bad.	Same station.
2.	Smt. M.H. Parmar.	-do-	-do-
3.	Shri B.H. Patel.	-do-	-do-
4.	" G.S. Mahwani.	-do-	-do-
5.	" K.S. Parmar.	-do-	-do-
6.	" H.K. Shah.	-do-	-do-
7.	" R.F. Valand.	-do-	-do-
8.	" K.A. Valand.	-do-	-do-
9.	" M.K. Jakhwani.	-do-	-do-
10.	Smt. H.R. Gani.	-do- O/o TDE Nadiad at Anand.	-do-
11.	" M.B. Dixit.	-do- O/o TDM Surat.	-do-
12.	Shri P.B. Patel.	-do- O/o AO(TA) AM.	-do-
13.	Smt. P.B. Modi.	-do-	-do-
14.	Shri S.A. Chaudhan.	-do-	-do-
15.	" K.C. Misra.	-do-	-do-
16.	Smt. D.R. Shah	-do- O/o AO(IC) AM.	-do-
17.	Shri M.R. Patel.	-do- C.O. A'bad.	-do-
18.	Kun. M.B. Panchal.	-do- O/o AO(TA) AM.	-do-
		-do-	-do-

Consequent upon reversion of the above officials, to the cadre of Jr. Accountant (UDC), the special pay of Rs. 70/- p.m. allowed to the following Jr. Accountants is hereby withdrawn.

Sl.No.	Name of the official.	Office in which working.
1.	Smt. G.D. Jani.	Jr. Acctt. with spl. pay (UDC) O/o AO(TA) Ahmedabad.
2.	Shri K.V. Bharwad.	-do-
3.	" S.J. Nagar.	-do-
4.	" V.M. Rabari.	-do-
5.	Smt. C.J. Vyas.	-do-
6.	Smt. Anantha Lakshmi.	-do-
7.	Shri B.N. Trivedi.	-do-
8.	" N.K. Patel.	-do- O/o AO(IC) A'bad.

contd..2..

True copy
M.R. Anand
Ad

From :

Registered

O/o The Chief General Manager
Telecommunications
Gujarat Telecom. Circle,
AHMEDABAD 380 009.

To

The Director General
Department of Telecommunications
20, Ashoka Road, Sanchar Bhavan,
NEW DELHI 110 001.

(Through Proper Channel)

Sub.: **Restructuring of accounts staff in organised
Accounts Cadres Recruitment Rules 1988.**

Ref.: Reversion orders dated 8.10.1987 & 24.5.1989

Respected Sir,

I beg to submit following lines for your honour's kind consideration

2. I was promoted/likely to be promoted on _____ as per
D.O.T. No. 203/14/85-STN dated 23.08.85, subject to availability of
vacancy. The said orders reads as under :-

"The question of extending the reduced service limit of 3 years
in the case of promotion from LDC(TA) to UDC(TA) has been
considered and it has been decided that the order contained in
this office letter No. 203/3/79-STN dated 12.12.79 may also be
extended to Telecom Accounts wing while filling up the posts
of UDC(TA) from LDC(TA) "

3. It is submitted that reversion order dated 8.10.1987 has been
quashed and set aside by Central Administrative Tribunal Ahmedabad
Branch in OA No. 500 of 1987 decided on 27.7.1988. Para 9 of the said
judgement reads as under :

"As earlier stated the petition has now been over-taken by the
stand of the respondents shown in their letter dated 20.7.1988.
Admittedly the petitioners have been given the pay scale of senior
grade UDCs as on 1.4.1987 and are under consideration for promotion
It is, therefore, appropriate that they be not reverted and be

..2..

declared to be entitled to be continued in the ad hoc promotion until selection for regular promotion after considering their claim is made. The impugned order dated 8th October, 1987 is quashed and set aside. The respondents are free to fill up on a regular basis the promotion posts of Junior and Senior Accountants and in determining the eligibility for the purposes they are directed to reckon the period of service of the petitioners in their ad hoc promotions. No order as to costs."

4. It is submitted that as no opportunity has been given to the affected officials, the reversion orders dated 8.10.87 and 24.05.89 are ultravires and illegal. It is further submitted that the basic principle of Natural Justice is that no man should be condemned unheard. The applicability of the principle of Natural Justice cannot be confined only to cases of punishment. It has been applied in all cases where an order passed affects the right of a person. Even an administrative order which involves civil consequence is to be made consistently with the rule of Natural Justice. There are decisions of the Supreme Court which recognise seniority and promotion to higher posts in the ordinary course as conditions of service and reduction to a lower post as punishment, if effected without compliance with the provisions contained in Article 311(2) of the constitution: An exhaustive discussion of this question is to be found in P.L. Dhingra V Union of India (AIR 1958 SC 36). The majority judgement was delivered by S. R. Das C.J. and his Lordship laid down

"Shortly put the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, the termination of the service of such a servant or his reduction to a lower post is by itself a prima facie a punishment for it operates as a forfeiture of his right to hold that post or that rank and to get the emolument and order benefits attached thereto."

5. It is further submitted that while giving ad hoc promotion only completion of 3 years was considered and merit in list No. was ignored. Late joining was not due to the fault of the official. But it was due to administrative delay. So promotion should be given as per merit number given by Staff Selection Commission.

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6. It is submitted that at the time of my recruitment as LDC-TA no Recruitment Rule were available. Only now the Department has finalised the Recruitment Rules on 16.7.88 and communicated by the Department in 4.8.88 and made effective from 1.4.87. This is illegal and discriminative in view of the fact that those who were promoted before 1.4.87 have not been revered. The conditions of service of a person serving can not be altered or modified to his prejudice subsequently.
7. It is submitted that under Article 16 of the constitution of India there shall be equality of opportunity for all citizens in matters relating to employment and appointment to any office under the state or to promotion from one office to a higher office there under. Article 16 is only an incident of the application of the concept of equality enshrined in Article 14. It gives effect to the doctrine of equality in the matter of appointment and promotion. The concept of equity is to be predicted when the promotees are drawn from the same source. Those who have been promoted before 1.4.87 and promoted after 1.4.87 and those who are likely to be promoted on completion of 3 years of service as per availability of vacancies in accordance with orders dated 23.08.1985 should be treated equally. A right which stands validly determined cannot revive when an amendment is made later on in the rules.
8. It is submitted that the rule making authority contemplated by Article 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants. The rules framed by the Govt. come into force as soon as these are framed. They cannot have effect to the persons to their detriment who have already been recruited before 1.4.87.
9. It is submitted that upto 16.7.88 there were no Recruitment Rules and promotion was governed as per D.O.T. orders dated 23.8.85. These orders dated 23.8.1985 are valid and have legal force as per following legal pronouncements.

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- (i) Where no rules are framed under Article 309, regulating promotions the Head of the office must use his judicious mind in making the selection. (Bikkar Singh V State 1969 Lab I.C. 56 (Punjab).
- (ii) Until statutory rule are framed the Govt. can issue instructions regarding the principles to be followed for promotion of officers concerned to higher posts. (Chander Dhar Misra V Secretary Govt. of Orissa 1908 Lab I.C. 1575 (Orissa).
- (iii) The condition of Service of Government Employee can be prescribed either by rules framed under provision to Articles 309 or in their absence of executive orders. (Krishna Kutty V State of Kerala AIR 1968 Kerala 198).

10. It is submitted that Recruitment Rules could not be given retrospective effect as per following legal pronouncement :-

- (a) Law does not permit respective review of cases. (V.V.Sharma V State of Andhra Pradesh AIR 1969 AP 118).
- (b) But Governor making a rule with retrospective effect under provision to Article 309 validating act of Government in Retiring persons to the age of 55 between the period 7.6.1957 to 28.10.1958 can not be sustained under Article 309. (Shamlal V The Director of Military Farms 1967 SKR 643).
- (c) The position of law is that all rules are to be operated prospectively. (V.C. Thimmarayappa V State of Mysore 1968/Mysore LJ 113 AIR 1968 Mysore 296).

11. Recruitment Rules 1988 have guaranteed the rights of the Person who have already been recruited before 14.5.1987. Last sentence of explanatory memorandum to the said rules reads as under :-

"It is certified that the retrospective effect being given to these rules will not effect adversely any employee to whom these rules apply."

11.1 In view of above D.O.T. orders No. 19-8/88 SEA dated 1.5.89 is violative of Recruitment Rules and Articles 14 & 16 of our constitution.

The said orders dated 1.5.89 reads as under :-

"LDCs recruited in Telecom Accounts through Staff Selection Commission prior to 1.4.87 are not required to pass any confirmation examination and their confirmation is to be done on the same lines as is being done for the LDCs in circle office. The LDCs who were promoted on an adhoc basis after completion of 3 years as UDCs prior to 1.4.87 can be regularised first as Junior Accounts in accordance with the provisions in the recruitment rules and their adhoc services in the cadre of UDCs may be taken into account for the purpose of promotion to the grade of Senior Accountant in respect of those officials who were regularised as Junior Accountants. All promotions to the cadre of Junior Accountants and Senior Accountants after 1.4.87 should be in accordance with the provisions in the recruitment rules. Therefore if any LDC was promoted on adhoc basis to the cadre of UDC after 1.4.87 they may be reverted as LDC and promoted to the cadre of Junior Accountants when they become eligible in accordance with the provisions in the recruitment rules, after observing the prescribed formalities."

11.2 In Chanderdhar Mishra V Secretary Govt. of Orissa (1968 Lab ICI 575 Orissa) it has been held that Govt. has no power to amend or supersede statutory rules by administrative instructions. Also in ILR Krishna Swamy V Director of Tech. Education (1968 Lab I C 137 Mad) it has been held that "Executive instruction have only the status of rules and are not capable of judicial enforcement. But at the same time rules cannot be changed from time to time to suit the requirement of any person or authority otherwise it may lead to arbitrary and capricious exercise of power on the part of the Government." In Krishna Kutty V. State of Kerala (AIR 1968 Kerala 198) it has been held that an executive order purporting to alter or modify an already existing rules has no legal validity is in operative". As such it is submitted that Recruitment Rules 1988 may be given effect to the recruitment made w.e.f. 1.4.87 and those who have been recruited prior to 1.4.87 may kindly be promoted as per orders dated 23.8.1985.

12. It is submitted that the differential adopted by the D.O.T. in their order dated 1.5.89 does not bear reasonable and rational nexus or relation to the object sought to be achieved. Two classes are similarly circumstance and these classes of persons are entitled to equality of opportunity in the matters relating to employment guaranteed by Article 16 (1) of the Constitution and the preferential treatment given to those who have been promoted before 1.4.87 is therefore violative of Article 16(1).

13. The paramount consideration is to be reconciliation between the two classes viz. those promoted before 1.4.87 and those promoted after 1.4.87 and likely to be promoted I beg to submit following observation of the Supreme Court of India.

"The interest to be served is always the Public interest. Public interest in the matter of the conditions of service of Civil Servants, is best served by Rules which are directed towards efficiency and integrity. Now very wide is the range covered by rules and it can never be exhaustive. Unforeseen and complex situation often arise and will be obvious even cases reported in the law Journals arising out of 'Service Controversies' very often it is found that all too strict application of a rule works undue hardship on a Civil Servant resulting in injustice and inequity, causing disappointment and frustration to the Civil Servant and finally leading to the defeat of the very objects aimed at the rules namely efficiency and integrity of Civil Servants. Hence, it is that the Central Government is vested with the reserve power under rule 3 to deal with unforeseen and unpredictable situations and to relieve the Civil Servants from the infliction and undue hardship to do Justice and equity. (R R Verma V Union of India SC 1980 (2) SLR 335/Page 343 S.C. on Public Servants - Sharma and Sarin 1988 Edition.)"

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14. It is further submitted that the Supreme Court observed that two fundamental maxim of Natural Justice are necessary to ensure that the law is applied impartially, objectively and fairly, namely (1) Audi alteram Partem and (ii) Nemojudex in causa sua. Irrespective of whether the power exercised is administrative or quasi-judicial a duty to substantive justice is generally implied, because the presumption is that in a democratic policy wedded to the Rules of Law, the state or the legislator does not intend that in exercise of their statutory Powers, its functionaries should act unfairly or unjustify (Swadesh Cotton Mills V Union of India Chartered Secretary Vol. XI No.3 March 1981 Page 249.).

15. In these circumstances, it is to be hoped that your honour will be pleased to excuse me for anything remiss that might have unintentionally crept into the foregoing submissions. It will be appreciated that no representation is possible without an exposition of the faults and infirmities in the orders and without touching up on the validity of the action of the officer passing the orders. The situation could have been avoided only if I had chosen not to make this representation at all, but this course would have been illadvised in as much as it obstruct my future career. Never-the-less I assure your honour of my continued respect for the officers concerned.

16. With these submissions I pray my worthy Head of Department to order for my promotion as per orders dated 23.8.1985 and Recruitment Rules 1988 may be given effect to those who have been recruited on or after 1.4.87. For this act of kindness I shall ever remain grateful to your honour.

Apologizing for trouble given.

Yours faithfully,

Ahmedabad

Dated :

Copy to: The Chief General Manager
Telecommunications
Gujarat Circle
Ahmedabad 380 009.

True copy
MKH
Ad

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT

AHMEDABAD.

O.A. No. 512 of 1989

Bhavsing B. Pasaya & Ors. .. Applicants

Versus

Union of India & Ors. .. Respondents

REPLY ON BEHALF OF THE

Respondents :

I, P. B. SAXENA working

as Asst. General Manager (D. I.) in the office of
O/o C. G. M. Telecom,
Ahmedabad-380009
do state as under:

I have read the copy of the application and am conversant with the facts and circumstances of the case and am authorised to file this reply on behalf of the respondents. I say that I am filing this reply for the purpose of admission of the application and do reserve my right/s of filing further reply/s if any need there be.

1. At the outset, I say that the action of the respondents is in accordance with the departmental rules, norms and instructions, therefore the application being devoid of any merits deserves

Copy sent to
Mr. M. R. Anand
Adv.

25-4-90

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to be dismissed.

2. With regard to para 3, 4 and 5, I say that I deny that the application is filed within the period of limitation and I say that the same is barred by the period of limitation. I further say that the applicants have no locus standi for filing this application by challenging the administrative action of the respondents and therefore the application being untenable and deserves to be dismissed. I say that the Hon'ble Tribunal has no jurisdiction in as much as the applicants have challenged purely ~~and~~ an administrative action which is normally not open for the judicial review and therefore the application deserves to be dismissed.

Before I deal with categorical statement of the application, it is necessary that a plethora of precedents coupled with factual back ground of the case may be brought on the record which is as follows :-

It is submitted that on the acceptance of the recommendations of the British Consultants, the maintenance of accounts of Telecom. Wing was

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taken over by the department from the Audit department in the year 1968-70 in phases. It was decided at that time to form a cadre in the time scale of pay of Rs. 260-480 (Pre-revised) as Telecom. Accounts Clerk. The recruitment rules were also framed for this cadre. The appointment of Telecom. Accounts Clerks was 50% by direct recruitment rules were also framed for this cadre. The appointment of Telecom. Accounts Clerks was 50% by direct recruitment and 50% by departmental promotion examination of the clerical staff in all the wings. On qualifying the examination/ on passing the confirmation examination both direct recruits as well as departmental candidates were allowed two advance increments in the time scale. However, subsequently on the demand made by the staff side in the JCM, Government had decided to restructure the cadre of telecom. Accounts Clerks on the pattern of LDC/UDC and Selection Grade UDC as obtaining in all other organised accounts set up. This restructuring was implemented in phases from the year 1980 to 1983. Pending finalisation of the recruitment rules, in the restructured cadres of LDC/UDC and SG UDC, the field units were permitted to recruit LDCs on

the same basis as obtaining for the cadre of LDCs in Administrative Wing of the Circle Office. They were also permitted to promote the existing Telecom. Accounts Clerks as UDCs on ad-hoc basis pending finalisation of recruitment rules. The recruitment rules were finalised subsequently with the approval of BOR&T and notified on 5.7.1988. In the meantime, the designations of UDC and SG UDC have also been changed as Junior Accountant and Senior Accountant respectively on the line of obtaining in the other organised accounts set up. Consequent on the acceptance of the recommendations of the 4th Pay Commission, the Government have also decided to place 80% of the posts of the Junior Accountants in the higher grade of Senior Accountants with effect from 1.4.1987. Hence, the recruitment rules as mentioned above were given effect to from 1.4.1987. A provision was also made in the recruitment rules for regularisation of UDCs promoted on ad-hoc basis prior to 1.4.1987. If the recruitment rules has been notified taking effect from the date of its publication in the official gazette, all promotions made to the cadre of Junior Accountants or Senior Accountants right from 1.4.1987 would have been given effect to

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only from the date of its publication thus ~~pre~~ depriving the officials the benefit of promotion from 1.4.1987 to the date of its publication. The date from which the recruitment rules were given effect to viz. 1.4.1987 did not in any way deprive the officials of the benefits that were available to them prior to 1.4.1987.

Prior to 1.4.1987, there were no recruitment rules to the cadre of LDC/UDC and SG UDC of Telecom. Accounts Wing. While LDCs (TA) were permitted to be recruited through Staff Selection Commission as obtaining for LDCs in Circle office, the vacancies in the cadre of UDC were permitted to be filled in on ad-hoc basis subject to certain conditions. Promotions to the higher grade on ad-hoc basis were made only in special circumstances to meet the administrative exigency and therefore such ad-hoc promotions cannot be claimed as a matter of right.

3. With regard to para 6:1, I say that the relevant facts as regards averments of the applicants in this paragraph is concerned, it is submitted that the applicants are ~~at~~ presently working as LDCs in Telecom. Accounts Wing in

Gujarat Telecom. Circle. The officials were promoted as UDC purely on ad-hoc and temporary basis pending framing of recruitment rules. As stated in the back-ground, the recruitment rules were framed and notified on 5.7.1988 giving retrospective effect from 1.4.1987 for the reasons mentioned in the previous para. The decision to give retrospective effect was not arbitrary, it became necessary to implement the decision of the Government to place 80% of the posts of Junior Accountants in the higher grade of 1400-2600 as Senior Accountants from 1.4.1987. The decision to give retrospective effect, in fact, benefitted a large number of officials to get the benefit of promotion alongwith the arrears of pay and allowances from the retrospective date. Further, the recruitment rules contain a provision for regularisation of all ad hoc promotions made to the cadre of UDCs prior to 1.4.1987 for want of recruitment rules so that the officials are not put to any disadvantage. The applicants were promoted as UDCs on ad hoc basis after 1.4.1987 due to certain administrative exigencies and such ad hoc promotions cannot be claimed as a matter of right. As they did not satisfy the requirements



of the recruitment rules for promotion to the cadre of UDCs, they were reverted to the parent cadre viz. LDCs. The reversion, is therefore, quite in order and the applicants herein mentioned are not entitled to any relief as stated in this paragraph and therefore the applicants have no cause for filing the separate application as averred by the applicants in this paragraph.

4. With regard to para 6:2, I deny that the applicants are wrongly reverted. However, it is submitted that at the time of recruitment of the applicants there were no recruitment rules for the posts of LDCs and UDCs in the Telecom. Accounts Wing. The applicants were recruited to the cadre of LDCs through Staff Selection Commission on the same basis as for LDCs in the Administrative wings of the Circle offices. Therefore, there was no scope or assurances given to them that they would be promoted to the cadre of UDCs. Therefore, there was statement of the applicants that the recruitment rules provided that LDC could be promoted to the higher post of UDCs or Jr. Accountants on completion of 3 years as LDCs. is baseless and without facts. There

were no recruitment rules for promoting them to the cadre of UDCs. However, as some delay was anticipated in framing of recruitment rules, the circles promoted the Telecom. Accounts Clerks/ LDCs to the cadre of UDCs on a purely ad-hoc and temporary basis if they have completed satisfactorily 3 years of service. They were also specifically informed that their promotion was purely on ad-hoc basis subject to reversion later on. Therefore, the applicants were knowing the facts that the ad hoc promotions which are made are liable to be reverted at any time of its appropriate stage. As the applicants ~~were~~ did not satisfy the provision of recruitment rules, they were reverted to the original cadre and they would be considered for promotion on completion of requisite services as provided for in the recruitment rules. As already stated in the back ground, the provision for retrospective effect was made taking into ~~account~~ consideration the benefit that will be extended to a large number of employees for promotion to the cadre of Sr. Accountants as decided by the Government. There was no arbitrary decision and no regularly promoted officials were reverted on account of

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implementation of the recruitment rules with retrospective effect.

5. With regard to para 6:3 and 6:4, I say that the applicants have merely enumerated the facts of the case. However, they are clearly commented upon as follows :

The recruitment rules were framed taking into account the provisions for promotion existing in similar cadres in other departments and with the approval of DOR&T. The reasons for giving retrospective effect to the rules from 1.4.1987 are furnished in the background. In fact there were no recruitment rules for the LDCs of Telecom. Accounts Wing. As the implementation with retrospective effect did not affect any employee who was regularly appointed/promoted to the cadre of UDC(TA) and also ~~UDC~~ LDCs. There was no irregularity in the certificate furnished in the recruitment rules viz. "the retrospective effect being given to these rules will not affect adversely any employee to whom these rules apply". The applicants who were promoted as UDC on ad hoc basis after 1.4.1987 cannot, therefore, claim that their reversion

was illegal. While framing the rules the protection of the service conditions of all the employees have been ensured and the Government went to the extent of giving the benefit of promotion to a higher cadre from a retrospective date to a large number of employees. As already stated there were no recruitment rules providing promotion of LDCs to the cadre of UDCs in Telecom. Accounts on completion of 3 years service. Promotions of the applicants Nos. 1, 2, 3, 6, 7, 9 and 10 were made purely on ad hoc basis subject to reversion at a later stage. The remaining applicants were not due and entitled for promotion and therefore, the applicants are not deprived of any benefits that were existing prior to the framing of recruitment rules.

6. With regard to para 6:5, I deny the contents thereof. However, I say that the provisions made in the explanatory memorandum in the recruitment rules are fully in order as the retrospective effect given to the recruitments rules has not affected adversely to any employee who have been regularly promoted

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to any higher cadre. The reversion of the applicants from their ad hoc promotion and non-promotion of the applicants to the higher posts of Jr. Accountants is quite legal in view of the fact that no officials can claim for promotion on ad hoc basis.

The explanatory memorandum attached to the recruitment rules and the clarifications issued thereafter are complementary to each other and is fully valid in law. The spirit of the statutory rule was to protect the service conditions that were existing and the Government went to the extent of extending the benefit of promotions to the cadre of Jr. Accountants/Senior Accountants etc. from a retrospective date to a large number of employees. For the reasons already furnished, the rules framed and the clarifications issued in Annexure A-III to the application is quite constitutional and the same is not violative of any provision of law.

7. With regard to para 6.6, I deny the contents thereof. However, I say that the representations received from the applicants were considered carefully and they were informed of the position based on the recruitment rules

framed. There were no violation of the provisions in the constitution referred to by the applicants. Reversion of the applicants, No, 1, 2, 3, 6, 7, 9 and 10 was due to the ~~provisions~~ * reversion of SG UDC, who had lien over the UDC 's posts. Also they were working on adhoc arrangement. The officials promoted on ad hoc basis could be reverted at any time and therefore, orders for reversion of applicants are in no way violative of Article 311(2) of the Constitution of India. I further say that the same has been done in accordance with the principles of natural justice and therefore, the applicants are not left with any valid and legal grievance against the order of reversion.

The retrospective effect of the rules has not adversely affected any of the applicants. On the contrary, it has benefited quite a good number of employees of T.A. Wing all over the country. In the judgment of O.A/500/87, the Hon'ble Tribunal has directed that since the petitioners were paid the scale of SG UDC as on 1.4.1987 and were under consideration for promotion, they be not reverted and be decided to be entitled to be continued in ad hoc promotion until selection for regular

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promotion etc.

In the present case, the applicants are eligible for their regular promotion as per the provisions of the recruitment rules and they will be considered then by the respondents.

8. With regard to para 6:7, I say that the applicants are not left with any valid and legal grievance as against the action of the respondents which is in accordance with the principles of natural justice and provisions of law and therefore the application has no merits and deserves to be dismissed.

9. With regard to para 6:8, I say that the contents of this para are misconceived by the applicant, ^{which} ~~it~~ is clear from the aforesaid submission as well as back ground facts. However, it is reiterated that there were no recruitment rules for the cadre of LDCs, UDCs and SG UDC in Telecom. Accounts Wing and such a rule was framed for the first time and given effect from a date taking into account the acceptance of the recommendations of the 4th Pay Commission and issue of orders by the government to ~~the cadre~~ give the benefit with retrospective date for promotions to the cadre of

Sr. Accountants viz. 1.4.1987. As there were no recruitment rules existing either on the date of publication or on 1.4.1987, the maximum benefit that could be made available to all the sections of the employees has been extended by giving the effect to the recruitment rules from 1.4.1987 making suitable provisions therein for protecting all promotions made on adhoc basis prior to that date. There was thus, therefore, no violation of any of the provisions of law.

10. With regard to para 6:9, I say that the authority which issued the statutory rules is the authority which has issued executive clarification. The executive instructions are consistence of R/Rs. with retrospective date i.e. 1.4.1987.

The explanatory memorandum attached to the recruitment rules and the clarifications issued thereafter are complementary to each other and is fully valid in law. The spirit of the statutory rule was to protect the service condition that were existing and the Government went to the extent of extending the benefit of promotions to the cadre of Jr. Accountants/

8x.

Sr. Accountants etc. from a retrospective date to a large number of employees. For the reasons already furnished the rules framed and the clarifications issued in Annexure A-III to the application is quite constitutional and is not violative of any provision of law.

I further make it clear that the implementation of recruitment rules and the decision referred to by the applicants is quite in order. It is denied that the decision at Annexure A-2, 3 and 4 collectively are punitive in nature. I further say that the action of the respondents is fully legal and valid and the same is ~~not~~ good in law.

In view of the foregoing paragraphs, it ~~is~~ is submitted that the applicants have not succeeded in pointing out any fault in the administrative as well as departmental actions of the respondents. Therefore, the application being devoid of any merits deserves to be dismissed.

Place : Ahmedabad.

Date : 20/4/1990

Infapces
Asstt. General Manager (D. I.)
O/o C. G. M. Telecom,
Ahmedabad-380 009

Verification

I, P. B. SAXENA aged 55.

about working as Asstt. General Manager (D. I.)
in the office of O/o C. G. M. Telecom,
Ahmedabad-380009

do state and verify that what has been stated
by me hereinabove is true to my knowledge and
belief and I believe the same to be true.

Place : Ahmedabad

Date : 20/4/1990

(Deponent)

Asstt. General Manager (D. I.)
O/o C. G. M. Telecom,
Ahmedabad-380009

Reply/Rejoinder/written submission
filed by Mr. J. D. A. Meg
learned advocate for petitioner /
Respondent with second set.
Copy served/not served to other side

Dt. 21/4/90 Dy. Registrar C A T (I)
A'bad Bench

2/9/93

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT
AHMEDABAD

O.A. NO.512 of 1989

Bhavsingh B. Pasaya ... Applicant

Versus

Union of India & Others ... Respondents

REJOINDER TO REPLY FILED ON BEHALF
OF RESPONDENT :-

I, Bhavsingh B. Pasaya, the applicant do hereby state
as under:-

1. I say that what is stated in reply filed by
respondent is not true and I deny the same except
specifically admitted by me hereinbelow. I reserve
my right to file a detailed rejoinder if, as and when,
necessary in the interest of justice.

2. At the outset I say that the above mentioned
application is identical in every respect as O.A
No.500/87 which is decided by ^{this} Hon'ble Tribunal on
27/7/1988. I say that this application is identical
in every respect and the applicants hereinabove are
also reverted by the same order dated 8/10/1987
which was quashed and set aside by this Hon'ble

Tribunal by the judgment and order dated 27/7/88.

Therefore the respondent cannot take double stand and the judgment and order dated 27/7/99 is also applicable in this case as the applicants are similarly situated and in this application the applicants have challenged retrospective application of recruitment rules for the post of Lower Division Clerk (UDC) or Junior Accountants.

I say that copy of judgment and order in O.A No.500/87 is annexed herewith and marked as Annexure-A5.

Annexure-A5

3. As to paragraph-1 I deny what is stated therein. As to paragraph-2 of affidavit-in-reply, I say that this application is not barred by law of limitation as the recruitment rules were published in 1988 and the applicants have filed this application in 1989 that means the applicants have filed the application within limitation period of one year. I further say that the applicants hereinabove have challenged continuing wrong that means retrospective application of recruitment rules. I say that the applicants hereinabove are aggrieved by retrospective application of recruitment rules and therefore they have locus standi for filing this application by challenging recruitment rules in this Hon'ble Tribunal. I deny that this Hon'ble Tribunal has no jurisdiction in a matter of challenge to the recruitment rules. I deny that this administrative action is not open for judicial review and therefore the application deserves to be dismissed.

4. I say that with regard to factual position as narrated in affidavit-in-reply, I do not oppose factual

aspect except the statement of facts that decision with regard to implementation of recruitment rules is made retrospective from 1.4.1987 has any relevance with fourth Pay Commission recommendation. I say that there were total 43^{ad-hoc} Lower Division Clerks. Out of that ad-hoc promotion was granted to 35 LDCs to the post of Upper Division Clerks. I say that out of 35 promotions, 20 promotions were granted to Lower Division Clerks before 1.4.87 and thus there were 15 LDCs who were promoted after 1.4.87. I say that now if the recruitment rules which were made retrospective is made applicable it will create two class from similarly situated employees and in that case the impugned action of making recruitment rules applicable from 1.4.87 is in violation of article 14 & 16 of the Constitution of India, as the impugned action is arbitrary and no reason is given for treating equally situated employees unequally. I say that in reply filed by the respondent no reasons are given why the date of 1.4.1987 was chosen because it affects similarly situated employees who were ad-hoc promoted but their date of promotion is after 1.4.87. I say that the respondent has taken the contention that ad-hoc promotees have no rights for promotion but the said rules were not made applicable to those who have promoted before 1.4.87 and thus there is no reason to bifurcate ad-hoc promotees who were promoted before 1.4.87 and after 1.4.1987.

5. As to paragraph-3 of the affidavit-in-reply I say that the respondent has not stated any reason

why recruitment rules were given retrospective effect from 1.4.87 and not from 5.7.1988 because if the rules were made applicable from date of its notification then the applicants would not have any grievance but this problem has arisen only because it is made effective retrospectively. I say that the applicants are similarly situated to the ad hoc promotees who were promoted before 1/4/87 and in that case there cannot be two sets of recruitment rules. I say that the applicants are identically situated as the applicants were in O.A No.500/87 which is decided by this Hon'ble Tribunal and therefore this application may be disposed of in the same line.

6. As to paragraph-4 & 5 of affidavit-in-reply, I say that while disposing O.A.No.500/87 this Hon'ble Tribunal has directed the respondent to consider the period of ad hoc promotion for regular promotion to the post of ^{Upper} Lower Division Clerks or Junior Accountant. I say that in absence of any recruitment rules the service of the applicants is to be governed as per the circulars issued by the respondent from time to time and accordingly the applicants were promoted after completion of 3 years from LDC to UDC. I say that one of the circulars issued by respondent dated 23/8/85 for filling up the post of L.D.C on ad-hoc basis from LDC on seniority basis of 3 years is annexed herewith and marked as Annexure-A6. I say that thus the applicants were Annexure-A6 rightly promoted to the post of LDC and in no case they can be reverted in absence of any recruitment rules at that time.

7. As to paragraph-6, 7 & 8, I deny the contentions of respondent and I do not repeat what is stated hereinabove as reply to that are already included hereinabove.

: 5 :

8. As to paragraph-9 & 10 I say that applicants are aggrieved by retrospective application of recruitment rules from 1.4.87 and therefore they have filed the above mentioned application and they are similarly situated as applicants in O.A.No.500/87.

9. I say that the above mentioned application may be disposed of in line of O.A No.500/87 as the applicants are identically situated and challenging the same order of reversion dated 8/10/87 which is already quashed and set aside by this Hon'ble Tribunal. The applicants are praying identical relief as prayed in and decided in O.A No.500/87.

In view of the above mentioned facts, the application may be allowed with cost.

Ahmedabad

Dt. /8/1992

M. R. Anand
(Advocate for Applicant)

VERIFICATION

I, Bhavsingh B. Pasaya working as
N. R. Kansara
in the office of

do state and verify that what has been stated by me hereinabove is true to my knowledge and belief and I believe the same to be true.

Place: Ahmedabad

✓
Reply/Rejoinder/written submissions
Filed by M. R. Anand Date : /8/1992
Learned advocate for petitioner/
Respondent with second copy
Copy served/not served & other side

N. R. Kansara
D e p o n e n t

3 copies

Annex A5

Spase

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 500 of 1987 122
~~10000~~

DATE OF DECISION 27-7-1988

Smt. D.R. Shah & Ors. Petitioner

Shri N.J. Mehta Advocate for the Petitioner(s)

Versus

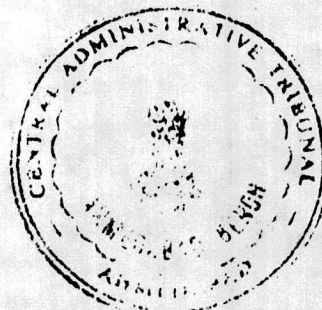
Union of India & Ors. Respondent

Shri J.D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi ; Vice Chairman.

The Hon'ble Mr. P.M. Joshi ; Judicial Member.



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J_U_D_G_M_E_N_T

QA/500/87

27-7-1988

Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman.

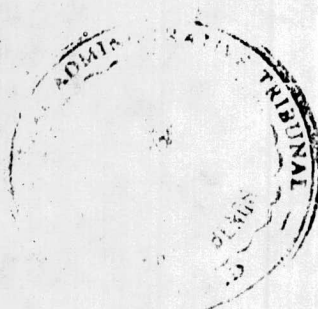
The petitioner in this case have challenged the order of 8th October, 1987 of the General Manager Telecommunication, Gujarat Circle for reverting them from the post of selection Grade U...C. (Senior Accountant) to the cadre of U.L.C. now Junior Accountant. Earlier by the order dated 11-7-86 at Annexure A3 the petitioners were promoted from the post of U.L.C. to Special Grade U.L.C. In these promotion orders the promotion was described as being purely on temporary and ad hoc basis until further orders and carried the following explicit stipulation.

"These promotions are on ad hoc basis and on purely temporary basis and likely to be terminated at any time irrespective of their seniority.

It is further certified that they are not entitled to any seniority in the grade concerned and these ad hoc promotions do not confer any right upon them for seniority, confirmation, or regular promotion etc. in the grade concerned."

The petitioners have joined the service of the respondents in Telecommunication Accounts Unit as T.A. Clerks in the years 1972, 1973 and 1974 in the pay scale of Rs. 260-480 (pre-revised) as new staffing pattern was introduced in 1981 by which T.A. Clerks were converted as U.D.Cs and were placed in the pay scale of Rs. 330-560 (Pre-revised). After completion of 10 years of service as T.A. Clerks and

.....2/-



later on as U.I.Cs the applicants were promoted as Grade U.D.Cs. and placed in the pay scale of R.425-640 and R.425-700. The service put in by the petitioners is stated at Annexure A2. Respondent No.1 by his letter dated 7th July, 1987 changed the designation of U.I.Cs (T.A. Clerks) and Selection Grade U.D.Cs (T.A.) as Junior Accountant and Senior Accountants respectively. The applicants are called Senior Accountants. Director General by the letter dated 11th December, 1975 at Annexure A5 empowered the circles to create 20% selection grade posts in the cadre of Telecommunication Accounts Clerical that such cadre in which the petitioners were initially appointed by the letter dated 28th August, 1982 he clarified that for the purpose of appointing T.A. Clerks in selection grade 10 years of service as T.A. Clerks and ad hoc U.I.C. should be reckoned. Most of the applicants were promoted as selection grade U.D.Cs. after their completion of 10 years of service as T.A. Clerks and U.D.Cs. In the case of a few applicants who had not completed 10 years of service, the respondent authorities relaxed the requirement of 10 years service and had appointed them as selection grade U.I.Cs. All the applicants, therefore, are working for more than 3 years as selection grade U.D.Cs., now called Senior Accountants. According to the applicants no recruitment rules either for Junior Accountant (previously U.I.C.) or for the post of Senior Accountant (previously the selection grade U.D.C.) have been promoted. When the applicants were promoted as Senior Accountant, there were no recruitment rules, they are required, therefore, to be regularised as Senior Accountants when the posts of Senior Accountants has to be done by way of upgradation by the letter dated 17th November, 1986. Instructions were issued that

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it was neither desirable nor permissible to postpone the policy of the D.P.C. meeting solely on the grounds are not revised or amended and that the D.P.C. and the panel of officers for promotion should be finalised in accordance with the existing recruitment rules instead of following these instructions. According to the respondents have sought to revert them from the post of Senior Accountant to those of Junior Accountant by the impugned orders. According to the petitioners the respondents have not so far implemented the impugned order of reversion nor have the applicants hitherto handed over the charge nor the respondents have appointed any one as Senior Accountant in place of applicants. For these reasons the petitioners claim that after completion of 10 years' service as T.A. Clerks and U.D.Cs their services should have been regularised for appointment as Senior Accountant by holding the D.P.C. meeting in time and there is violation of the instructions dated 17th November, 1986 at Annexure A7. The petitioners also rely upon the judgment of the Delhi High Court in 1978(2) SLR 379, Kuldip Chand Vs. Delhi Administration and a Division Bench of the Gujarat High Court in Special Civil Application 1522 of 1973. The petitioners have also stated that two persons namely Balolkar and B.B. Shah were similarly promoted.

2. In reply the respondent's stand is that the petitioners were admittedly promoted on ad hoc basis and have no right to the promotion post when the U.D.C. and L.D.C. pattern was introduced in place of Telecommunication Accounts Clerks, it was ordered that the existing posts which were not filled were down graded to the cadre of U.D.Cs and L.D.Cs by Government orders dated 25-6-81. It was ordered that the recruitment rules of U.D.C and L.D.C. of circle office would be made applicable for the U.D.Cs. and L.D.Cs. of

.....4/-



the Telecommunication Accounts Wing until the recruitment rules for U.D.Cs. and L.D.Cs for Telecommunication Accounts Wing are received. There are no separate orders or rules for promotion of special grade U.D.Cs and on a reference being made to Director General his reply dated 28-8-82 intimated that since ad hoc promotion is no promotion, the T.A. Clerks promoted to the U.D.Cs. have to be considered for the promotion to the cadre of special grade on completion of 10 years' service as T.A. Clerks and ad hoc U.D.Cs. On making another reference dated 19-11-82 regarding counting of both the services of T.A. Clerks and ad hoc U.D.Cs the words eligibility of 10 years' service for the purpose of promotion to Senior Grade U.D.Cs, Director General Telecommunication rejected the suggestion by his letter dated 4-4-83. This causes reversion to all ad hoc S.G. U.D.Cs to the cadre of U.L.Cs. In the mean time the pattern of U.D.C/L.D.C. has been changed by letter dated 7-7-87 and the designation U.D.C. are Selection Grade U.D.Cs and has been changed to Junior and Senior Accountants respectively. As no recruitment rules for Junior and Senior Accountants have been framed, the question of regularisation of the petitioners does not arise and therefore, the petitioners have no right to continue in the posts.

3. During the hearing the suggestion was made whether the petitioners can be allowed to continue on ad hoc basis in the special grade of T.A. scale "R.425-640" but the respondents came up with the reply that the suggestion cannot be accepted at the local level. They have also stated that 80% of the posts of Junior Accountants have been allowed to be placed in the higher functional grade and in the light of this the petitioners should now have no case. The

.....5/-

respondents have filed a copy of their letter dated 20-7-88 in which they state that the applicants were working as ad hoc senior grade U.D.Cs. as on 1-4-87 and being sufficiently senior will come within the purview of consideration for promotion for D.P.C. in placing them in the grade of Rs.1400-2600 w.e.f. 1-4-1988 and accordingly the petition does not survive in the above circumstances.

4. We must first dispose of the question of the petitioners being entertainable or not on the ground of non-exhaustion of remedy which the respondents have pleaded. Reversion is not a penalty especially when it is a reversion from ad hoc promotion and therefore there is no appeal or remedy provided as a matter of right. No state order can be obtained from the appellate authority. The tribunal, therefore, cannot shut its doors on the petitioners for this reasons.

5. From the convoluted reply of the respondents we must observe that much of the problem has been created by changing the designation frequently without sufficient thought of the proper pattern for staffing the Telecommunication Accounts Wing. The petitioners were appointed as T.A. Clerks in the early 70s. On the interruption of being a clerical cadre their posts were converted to those of U.D.Cs in which they had a selection grade. Their designations were changed to Junior and Senior Accountants in 1987. The conditions for eligibility were also changed. In August, 1982 the Director General stated for appointing T.A. Clerks and Selection Grade, 10 years of service as T.A. Clerks and ad hoc U.D.Cs could be reckoned but later he took the line that ad hoc promotion was no promotion and the services as U.D.C. in ad hoc capacity will not count for the purpose. There is no dispute that the

.....6/-



petitioners have served in the promotion posts for considerable period and have enjoyed the selection grades and U.D.C. pay scales in term of the seniority on promotions given by the respondent authorities. Recruitment rules for Junior and Senior Accountants have admittedly not been made and the D.P.Cs have not made selections on the basis of such recruitment rules as governed, the selection of either U.D.Cs or Junior or Senior Accountants. The petitioners have pleaded that holding of D.P.C. is a serious irregularity. From the reply it appears that in the name of restructuring posts have been down-graded and suddenly a number of posts which should have been filled up on regular basis have been shown disappeared and came under a new name. This cannot be a reason for not filling up the posts on regular basis. The respondent authorities have the competence to decide not to fill up the promotion posts as this is an administrative matter but they have no right to cause reversion if the incumbents are appointed on ad hoc basis and who are awaiting regularisation but the respondents are unable to cause regularisation because they have not framed rules and for that reason selection by L.P.C. is not possible. This vicious circle of regularisation chasing selection and selection chasing D.P.C. and D.P.C. chasing rules and rules chasing respondents' decision is entirely of the respondents' making. It seems that confusion has been worse confounded by conflicting instructions regarding the period of eligibility including ad hoc service as U.D.Cs.

6. The petitioners are on strong ground in urging that the service of that of ad hoc nature cannot be regarded as a nullity and they have cited 1978(2) SLR 379

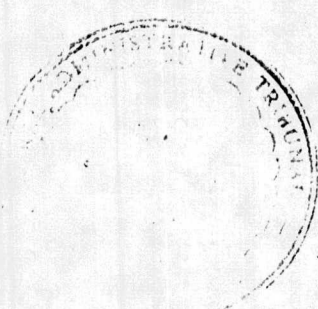
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Kuldip Chand Vs. Delhi Administration in which it was observed as follows.

"True, an ad hoc appointment is in the nature of stop gap arrangement, made for a variety of reasons, on account of which it is not possible to make a regular appointment. It may be that the Rule under which a regular appointment has to be made have yet to be framed because regular incumbent is not available or the process for regular selection involves time and the exigencies of service are such that the posts cannot be allowed to remain unmanned meanwhile. Such an appointment however, does not affect the rights of those who were not considered for such appointment, though within the range of eligibility. In that sense ad hoc appointment does not by itself confer any right on the said appointee for regular appointment to such a post. But it is equally true that once an ad hoc appointee is eventually selected for the post in a regular selection, the regular appointment would relate back to the date of ad hoc appointment. To that extent, therefore, the period during which an ad hoc appointee has served as such in the appointment contributes to his service career and, therefore, legitimately forms basis of a certain rights that accrues by subsequent appointment. It is also beyond doubt that even though an ad hoc appointee has no right to hold that post to which he is so appointed, he can nevertheless be reverted to his lower substantive position only for valid reasons such as his unfitness to hold the post, the availability of the person holding a lien on the post,

.....S/-



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selection of a regular incumbent or other exigencies of public service. An ad hoc appointee can not, therefore, be reverted, without any rhyme or reason (1). An ad-hoc appointment, though by its nature a precarious tenure, nevertheless carries a limited right to that extent and if such an ~~an~~ appointee is reverted without a valid reason, he would be entitled to challenge it and seek an enforcement of the right."

7. The respondents' plea that 80% of the posts of Junior Accountants are placed in terms of the circular dated 17-5-1988 has been resisted by the petitioners as valid and adequate redressal of their grievance. We do not go into the merits of this measure being adequate or not because the plea raises entirely new circumstance.

8. The petitioners are entitled to be protected against reversion until the post of Junior and Senior Accountants can be filled whether after recruitment rules are framed or otherwise. The petitioners are also entitled to count their period of ad hoc services as U.D.Cs, covers the eligibility for promotion to the selection grade or equivalent designation. While impressing upon the respondents the urgent need to fill up the posts of Junior and Senior Accountants on a regular basis and to decide whether the recruitment rules should be framed for doing so, we must allow the respondents to decide the suitability of the petitioners for such regularisation in terms of selection by L.P.C. in accordance with the rules which govern their cases. Their service as ad hoc U.D.C., however, must be counted in deciding their eligibility or selection.

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9. As earlier stated the petition has now been over-taken by the stand of the respondents shown in their letter dated 20-7-1988. Admittedly the petitioners have been given the pay scale of senior grade U.L.Cs as on 1-4-1987 and are under consideration for promotion. It is, therefore, appropriate that they be not reverted and be declared to be entitled to be continued in the ad hoc promotion until selection for regular promotion after considering their claim is made. The impugned order dated 8th October, 1987 is quashed and set aside. The respondents are free to fill up on a regular basis the promotion posts of Junior and Senior Accountants and in determining the eligibility for the purpose they are directed to reckon the period of service of the petitioners in their ad hoc promotions. No order as to costs.



Sd/-
(P.H. TRIVEDI)
VICE CHAIRMAN

Sd/-
(P.M. JOSHI)
JUDICIAL MEMBER

28/7/88

TRUE COPY

P.M. Christian
28/07/88
Section Officer
Central Administrative Tribunal,
Ahmedabad Bench.

True copy
M R Anand
Advocate

Annex A-6 Union (CST)
HOTA
Copy of comm. No. 203/14/85-STN dtd. 23 August 85 from Govt. of India Ministry of Communications Deptt. of Telecom. addressed to All ~~ex~~ Heads of Telecom Circles, & Telephone Districts & Other.

subi. Filling up the posts of UDC(TA) on adhoc basis from LDC(TA) on seniority basis - relaxation of condition of 5 years to 3 years service limit. (69)

I am directed to refer to this office letter No. 203/9/79-STN dated 12.12.79 wherein the service limit of 5 years prescribed for the purpose of promotion from LDC to UDC in Circle and Administrative offices has been reduced to 3 years. The question of extending the reduced service limit of 3 years in the case of promotion from LDC(TA) to UDC(TA) has been considered and it has been decided that the orders contained in this office letter No. 203/9/79-STN dated 12.12.79 may also be extended to Telecom. Accounts wing while filling up the posts of UDC(TA) from LDC(TA).

2. Hindi version may follow.

sd/-

(V. Ramaswamy)

Asstt. Director General (STN)

No. staff. 27-2/Rlg/II dtd. at A'bad the 7/10/85

Copy forwarded for information to:-

1. All the Director Telecom. in Gujarat Circle.
2. All the D.M.T.s in Gujarat Circle.
3. All the D.E.T.s /D.T.E.s in Gujarat Circle.
4. C.A.O./A.O.L(BGT)/A.O.(TA) C.O. A'bad-9.
5. D.A. in staff section.
6. Guard File.

7. spare.

8. ADT(R&E)/AO(VC)/C.O. AM

9. Recognized Unions / Assoc. in Gujarat Circle

(C.M. NAYI)

Asstt. Director Telecom. (staff)
O/O The General Manager Telecom.
Gujarat Circle, Ahmedabad-380 009.

JKP/8/10/85

Contd. page 2/-

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-12/-

Copy of the letter No.203/9/79-STN dated 2.8.79 from D.G.P&T. to G.M.Telecom.Trivendrum/Bengalora/Ambala/Bhopal.

Subject: Filling up of posts of U.D.C. on ad-hoc basis from IDC on seniority basis-Relaxation of condition of 5 years to 3 years service limit regarding.

Sir,

I am directed to refer to your D.O. Letter No. 23/5/79 dated 23.2.79/R&B/1-4/79 dated 19.5.79/STB/p-9/111 dated 20.3.79/STA.1-24/83 dated 13.2.79 on the subject mentioned above and to say that even after the examination of 1978 for the U.D.C. posts it is found that large number of posts of UDC are lying vacant for want of eligible candidates under various quotas, as the candidates of requisite service limit are not available, and the difficulty is being experienced by the Circle due to the shortage in the cadre of U.D.C.s. The case has been examined by the Government and it has been decided that the vacant U.D.C. posts may be filled up by you on an "ad-hoc" basis from IDC on seniority basis till such time sufficient candidates are available from the merit rating test for L.D.C. and T.S.Clerks of subordinate units, when the "Ad-hoc" arrangements should be regularized.

Since the filling up posts of U.D.Cs on ad-hoc basis are likely to continue for fairly a long time, it has also been decided that while ordering ad-hoc promotion, the reservation orders for SC & ST are also to be applied.

Yours faithfully,

sd/-

M.S.YEGNESHWARAN
ADG (STN)

JKP

True copy by
M.R. Arund
H.V. C. C. C.

09/12/82/87

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, AHMEDABAD

M. A. NO. 634 OF 1994

D/O
18/12/85

IN

ORIGINAL APPLICATION NO.512 OF 1989

Received Copy
R.K. Bener
Clerk to A/c Kureshi
19/12/94

1. Bhavsingh B. Pasaya
2. Smt. Beena Vatsalya Bhatt
3. Smt. Yogini Sudhirkumar Thambe
4. Sandeep Shantilal Shah
5. Padmanabh Vasant Ray Yagnik
6. Smt. Usha Krishnakumar Nair
7. Smt. DipikaUshir Shah
8. Thomas Mathew
9. Naimesh Ramanlal Kansara
10. Miss Pratibha Balkrishna Khare
11. Ramesh Nanikram Tekchandani
12. Smt. Sumathy Ravindran

All C/o Office of the Chief General
Manager, Telecommunications,
Telecom Accounts Unit, Gujarat Circle
Shah Bldg. Opp:Navrangpura Bus Stand
Ahmedabad 380009

..Applicants

Versus

1. Union of India (Notice to be
served through Secretary, Department
of Telecommunications, Sanchar Bhavan,
New Delhi - 1

Filed by Mr. Shri. M. R. Anand
Learned Advocate for Petitioners
with second copy of the petition
to the Secretary, Gujarat Circle
other side copy served.

By Registrar C.A.T.
19/12/94
Ahmedabad Bench




: 2 :

2. Chief General Manager
Gujarat Telecom Circle having
Office at Ambica Chambers
Nr. High Court, Navrangpura,
Ahmedabad - 9

..Respondents

APPLICATION FOR AMENDMENT

1. The applicants state that above mentioned Original application No.512/89 was admitted by this Hon'ble Tribunal and thereafter there ~~was~~^{is} a further develop-
ment in the matter as the respondents by circular dated 21.8.1991 relaxed the statutory rules and operation of the new recruitment rules which came into force retrospectively from the first day of April '87, has been relaxed. But the relaxation as in the rules are not given uniformly and even in the relaxation the respondents have discriminated the petitioners and the petitioners are not given the benefit of relaxation. Therefore the petitioners are challenging discriminatory treatment by way of this amendment.

After paragraph. 6.6 add 6.6A:

6.6A The applicants state that by Office memorandum No.19/20/90-SEA dt.21.8.91 from D.O.T, New Delhi - the relaxation were given through circular and retrospective effect of the statutory rules which were published in 1988 but the effect of the said rules were given with effect from '87 has been relaxed. Copy

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Annexure-A7

of circular dated 21.8.1991 is annexed herewith and marked as Annexure-A7. The applicants state that by circular dated 21.8.91 the department has issued a circular to the effect that "those LDC (TA) who have promoted and working as ad hoc UDC (TA) during the period from 2.4.87 to 15.7.88 may also be regularised as Jr.Accountant in the same manner as has been prescribed for regularisation of adhoc UDC in para-2 of OM No.54-41/86 SEA dtd.4.8.88". The applicants state that if the respondents have given the similar treatment as has been given to the petitioners of OA No.500/87 wherein this Hon'ble Tribunal has quashed and set aside the impugned order dated 8.10.87 reverting the applicants, then the applicants would have been working as ad hoc UDC during period from 2.4.87 to 15.7.88. The applicants state & submit that in O.A No.500/87 the order of reversion from promoted post of UDC to LDC was challenged and the said order was quashed and set aside by the Hon'ble Tribunal but so far as the applicants of above mentioned O.A are concerned, they are not given the benefit of order & judgment of the Hon'ble Tribunal. The applicants submit that they were not party in O.A No.500/87 but once the order which was a common order and when the said order is quashed & set aside it is the duty of the respondents to give the similar effect to all the employees whether they were appearing before the court or not. If the order of reversion dated 8.10.87 is quashed and set aside the effect

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4/5/93

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would be that applicants hereinabove would have continued on promoted post of UDC and in that case, the applicants are entitled to benefit of relaxation as given in circular dt.21.8.91. The applicants submit that by not giving the similar treatment as given to the applicants of OA No.500/87 the respondents have deliberately flouted the order of this Hon'ble Tribunal and discriminated the applicants which discrimination continued by not giving the benefit of relaxation in statutory rules published in July/August '88. The applicants therefore prays that equal treatment and are entitled to the benefit of judgment in OA No.500/87 and the benefit of relaxation as stated in above mentioned circular dt.21.8.91.

6.6B The applicants state that by OM dtd.13.5.92 the applicants were given the benefit of relaxation as provided in circular dt.21.8.91 and by order dt.13.5.92 it was ordered to regularise the promotion of the applicants from 2.4.87 to 15.7.88 during which the applicants were holding the post on ad hoc basis. The order dt.13.5.92 is annexed herewith and marked as Annexure-A8. The applicants state that by another order dtd.11.6.92 the respondents have cancelled the effect of the order dt.13.5.92 and promotions which were given to the applicants were stand cancelled, and thus the applicants were wrongfully denied the benefit of OM dated 21.8.91 which itself shows that there is a discrimination in violation of Articles 14 & 16 of the Constitution of India so far as relaxation of retrospectivity are concerned. The applicants submit

Annex.A8

: 5 :

that applicants of OA No. 443/89 which was filed along with the above mentioned OA were given the benefit of OM dated 21.8.91 while the applicants of above-mentioned O.A are denied which itself shows that there is a discrimination in violation of Articles 14 & 16 of the Constitution of India. The order dated 15.5.92 cancelling the earlier promotion order dtd. 15.5.92 is annexed herewith and marked as Annexure-A9.

Annexure-A9

6.6C The applicants submit that the reversion order dt. 8.10.87 was not challenged by the applicants of OA only because the said order was quashed and set aside by this Hon'ble Tribunal in OA No. 500/87. The applicants state & submit that when the impugned order dt. 8.10.87 which was common and identical order in all the applicants hereinabove and in case of applicants in OA No. 500/87 and when same order is quashed by this Hon'ble Tribunal, it is the duty of the respondents to give similar treatment in case of all whether they have challenged before this Hon'ble Tribunal or not. The applicants submit that the said order was passed by this Hon'ble Tribunal on 27.7.88. The applicants state that as stated in Annexure-A1 the applicants were promoted and they were reverted by order dt. 8.10.87 illegally and therefore applicants could not work from 2.4.87 to 15.7.88 as ad hoc UDC. The applicants state & submit that when order of reversion dt. 8.10.87 is quashed and set aside by this Hon'ble Tribunal, the effect that the earlier



: 6 :

promotion order was survived and now the respondents cannot create a class between those who have actually worked on adhoc post of UDC and those who could not work because of reversion order dt. 8.10.1987. The impugned classification is without any justification, without any rational basis and is required to be quashed and set aside.

6.6D The petitioner submits that Shri S.S.Shah, P.V. Yagnik and Thomas Mathew the petitioner though they were senior in their cadre, date of joining is 10.12.1984, 12.11.84 & 2.2.85 respectively were not given promotion due to late joining and as per Annexure-1 they were not promoted illegally and therefore not reverted. The petitioner state & submits that the respondent-Department has acted arbitrarily because in case of Shri M.V.Patel who is also petitioner in O.A No.443/89 though he joined earlier than Shri V.D.Pandya, he was not given the benefit of continuous officiation while in this the 3 petitioners were not given the benefit of date of appointment and thus the impugned action is arbitrary in violation of Articles 14 & 16 of the Constitution of India.

In para-7 add prayer (6)

- (6) To quash and set aside the reversion order dt.8.10.87 and to give the similar treatment as decided by this Hon'ble Tribunal in case of O.A. No.500/87

....7/-

: 7 :

- (7) To direct the respondents to give the benefit of circular dt.21.8.1991
- (8) To direct the respondents to revive order -dt.13.5.92 and all consequential benefits may be issued accordingly.

To allow this Misc. Application in the interest of justice.

Ahmedabad

Dt. 15/12/1994

A.M. Raval
Advocate for Applicants

Verification

-: ~~Signature~~ :-

I, Thomas Mathew

the applicant herein, do hereby take on oath and say that what is stated hereinabove, in paragraphs are factual submissions, and true to my knowledge, information and belief and I believe the same to be true.

Affirmed at Ahmedabad this 15th day of December, 1994.

Thomas Mathew
(Thomas Mathew)

Submitted.

Application has been scrutinized and found in order.

May be placed before Hon'ble Bench for necessary order.

cc:claf
26/12/94

28/12/94
S.G.

28/12/94
S.G.

Ameane A-7' 83

Copy of communication no.19-20/90-SEA dated 21.8.91 copy from B.O.I.
New Delhi addressed to All Heads of Telecom. Circles etc. etc.

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(60)

OFFICE MEMORANDUM

Sub: Regularisation of LDCs promoted as UDCs on adhoc basis from 2.4.87 to 15.7.88 in the Telecom. Accounts Units of the Circle Office including TCO, Calcutta as Junior Accountants (Telecom. Accounts).

2 4-87

A number of representations were received from LDCs working in TA Units of various Circle Offices and also from the All India Administrative employees Union requesting for regularisation of such LDCs working as adhoc UDCs from 2-4-87 to 15-7-88 (till the date of publication of Recruitment Rules) as Junior Accountants(TA) .The case was also taken up in the Departmental JCM, The Government have considered the matter in detail and is now pleased to order that the LDCs (TA) who were promoted and working as adhoc UDC(TA) during the period from 2-4-87 to 15-7-88 may also be regularised as Junior Accountant; in the same manner as has been prescribed for regularisation of adhoc UDCs in para 2 of O.M. No. 34-41/86-SEA Dated 4-8-88. They may also be allowed the arrears of pay and allowances as Junior Accountants for the period , if any, during which they were revered as LDCs after 15-7-88 till their date of promotion as Junior Accountants. Such of these persons approved for regular appointment as Junior Accountant are eligible to count their services rendered continuous on an adhoc basis as UDCs.(TA) for the purpose of promotion to the grade of Senior Accountants(TA).

Sd/-

(K.N.GANAPATHY.)
Director (SEA .)

To,

1. All the Heads of Telecom Circles/Telephone Districts/Including Delhi and Bombay Telephones.
2. CAO TCO Calcutta/TF/T, Stores and other Admn Offices employees
3. Shri R.G.Ramchandran, General Secy, All India Admn Officers Union New Delhi/Secy Bharatiya Telcom employees Federation New Delhi.
4. S.R.Section with reference to JCM item No AIII/March -91/23
5. DDC(PLF) DDC(B&A), Dir(TA-I) Dir(TA-II) , Dir(FA-I)

STAFF/27-2/JR AGOFF/1/61 Dated at Ahmedabad the

6/8/91. 6-9-91

Copy forwarded to CHMD Ahmedabad-1 for necessary action to his end.

2. CMC CAO/AD(TA) /AO(I/C) /AO(BG) Circle Office Ahmedabad-9

True copy
m r m r

(Sd/-)
Asstt. Director, Telecom(STAFF.)
The Chief U.M. Telecom,
Gujarat Circle, Ahmedabad-1

Amree AS 54
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DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GENERAL MANAGER TELECOMMUNICATIONS
GUJARAT CIRCLE, AHMEDABAD-380004.

Memo.No.Staff/27-2/Jr,Acctt/I/86 Dated at AM-1, the 13/5/92.

In pursuance to Department of Telecom New Delhi's Commn. No.19-20/90-SEA dated 21-8-91 and comm.No.34-41/86-SEA dated 4-8-88 and on recommendation of the Departmental Promotion Committee, the Deputy General Manager Telecom (Admn.) O/o Chief General Manager Telecom., Gujarat Circle, Ahmedabad-380001 is pleased to issue the following orders in the cadre of Junior Accountants of Telecom. Accounts wing.

The following LDC(TA) holding the Post of UDC(TA) on adhoc basis during the period 2-4-87 to 15-7-88 and who were reverted as per DG's Commn.No.19-8/88-SEA dated 1-5-89, are hereby regularised and promoted as Junior Accountants with effect from 27-4-92, in the pay scale of Rs.1200-30-1500-EB-40-2040.

They are eligible to count their services rendered continuously on adhoc basis as UDC(TA) prior to the date of the DPC for the purpose of the promotion to the grade of Sr.Accountant (TA), They are posted at the Stations/Offices where they are working at present.

Sl.No.	Name of the Official.	Sl.No.	Name of the Official.
1.	Shri J. R. Gandhi,	9.	Mrs. V. D. Patel,
2.	" V.D. Pandya,	10.	" B. V. Bhatt,
3.	" F. B. Parmar,	11.	" Y. S. Tambe,
4.	Mrs H. V. Nair,	12.	" U. L. Nair,
5.	Shri M. R. Rajput,	13.	" D. U. Shah,
6.	" N. M. Chhastia,	14.	Shri N. R. Kansara,
7.	" M. V. Patel,	15.	Miss P. B. Khare,
8.	" B. B. Pasaya,		

Necessary charge reports may be sent to all concerned.

Sd/-
(Parshotam Singh)
Dy, General Manager (Admn.)
O/o Chief General Manager Telecom.,
Gujarat Circle, Ahmedabad-380001.

Copy forwarded for information and necessary action to:-

1. The AJ(TA) A'bad-1. (with 9 spare copies)/AJ(Bgt) C.U. AM-1.
- They are requested to draw the arrears of pay and allowances as Jr. Accountant for the period if any, during which these official were reverted as LDC(TA) after 15-7-88 till their date of promotion as Jr, Acctt.
2. The TDE Palanpur. with 2 Copies.
3. The TDM Nadiad. (4) TDE Godhna.
5. The GMTD Baroda. with 4 spare copies.
6. Officials concerned/P/Files of the Official/Guard file.

(Y. K. RATNI)
Asstt. Director Telecom (Staff)
O/o Chief General Manager Telecom.,
Gujarat Circle, Ahmedabad-380001.

True Copy
pr R Prasad

TELEX

Amesara **DATE: 15-5-92** *A 9* *SS*

- TO**
- 1. THE GENERAL MANAGER
TELECOM DISTRICT
VAHODARA-390 018.**
 - 2. A.O.(TA) C.O.
AHMEDABAD-380 001.**
 - 3. TELECOM DISTRICT ENGINEER
G O D H R A**
- 10*
(79)

**= NO: STAFF.27-2/JR A/C/1/87 AAA REFER THIS OFFICE PROMOTION ORDERS
IN THE CADRE OF JR. ACCOUNTANT FROM LDC(TA) TO JR.ACCOUNTANT ISSUED
VIDE THIS OFFICE LETTER OF EVEN NUMBER DTD. 13-5-92 AAA THAT THE
PROMOTION ORDERS DTD: 13-5-92 AS CANCELLED IN RESPECT OF FOLLOWING
OFFICIALS :**

- 1. SHRI B.B.PASAYA WORKING UNDER TDE GODHRA**
- 2. MRS. V.D.PATEL WORKING UNDER AO(TA)A' BAD**
- 3. " B.V.HATT WORKING UNDER GMED BARDOL**
- 4. " Y.S.TAMRE - do -**
- 5. " U.K. NAIR WORKING UNDER AO(TA) A' BAD**
- 6. " D. U. SHAH - do -**
- ✓ 7. SHRI N.R.KANSARA - do -**
- 8. MISS P.B.KHARE - do -**

= C.G.M.T. AHMEDABAD.

SC/-

**(OM BHARMA)
ASSTT.GENERAL MANAGER (S)
O/o C.G.M.T. AHMEDABAD-1.**

Endst.No: TAC/16/Genl/

Dt: 18-5-1992

Copy to the concerned officials for information please.

*Accounts Officer (TA),
The C.G.M. Telecom.,
Ahmedabad-380 001.*

KRS/18592

Toni
19/12/94

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BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH AT AHMEDABAD

ORIGINAL APPLICATION NO. 512 OF 19 **89**

Shri B.B.Pasaya & ors.

.. Applicants

Vs.

The Union of India & Ors.

.. Respondents

Written Reply on behalf of the respondents to the
amended original application

I,

K.M. SOLANKI

working as

AGM (D.I.) o/o CGMT AND
with the

respondent No. **2** herein, do hereby state in reply to
the above application as under:

1. That I have perused the relevant papers and
files pertaining the above matter and I am conversant
with the facts of the case and I am authorised to file
this reply on behalf of the respondents.

2. I say and submit that the application is
misconceived, untenable and requires to be rejected.

3. At the outset I say and submit that no part
of the application shall be deemed to have been

Retrieved
copy on 6-3-95
at 1.00 P.M.
Presented before
Hons Court by
Mr. AAT KUMAR
AAT KUMAR
CO. 11
06.3.85

admitted by the respondeents unless specifically stated so herein. All the statements, averments and allegations contained in the application shall be deemed to have been denied by the respondents unless specifically admitted by me herein.

4. At the outset I say and submit that the recruitment rules for lower division clerk, junior accountant and senior accountant in Telecom Accounts unit were published in Gazette of India on 16.7.1988. As per para 2 of the said rules Clause 5(2) under initial constitution of the Recruitment Rules record as under:

"Persons holding the post of Upper Division Clerk (Telecom Accounts) or Selection Grade Upper Division Clerk (Telecom Accounts) on ad hoc basis on the date of commencement of these rules shall also be deemed to have been appointed to the post of Junior or Senior Accountants respectively with effect from the date of meeting of the Departmental Promotion Committee concerned:

Provided the officers are found fit by the appointing authority on the basis of recommendation of the Departmental Promotion

Committee prescribed under these rules for appointment to the post of Junior or Senior Accountant, as the case may be."

In this connection a reference is also invited to para-12 of the office letter of even number dated 17.5.1988 wherein a further communication was promised. Meeting of the Departmental Promotion Committee may kindly be convened immediately first to regularise the persons holding the posts of UDC (TA) or Selection Grade UDC (TA) on ad hoc basis on the date of commencement of these Rules as Junior Accountant and Senior Accountant respectively as provided for in Clause 5(2) of the Recruitment Rules under "Initial Constitution". Such of those persons as have been approved by the D.P.C. and appointing authority for regular appointment to the post of Junior Accountants (TA) are eligible to count their services rendered continuously on ad hoc basis as Upper Division Clerks (TA) prior to the date of the D.P.C. for the purpose of promotion to the grade of Sr. Accountants (TA). This relaxation has been approved by the competent authority.

After regularisation as mentioned above a D.P.C. meeting may be convened for promoting the eligible Junior Accountants to the grade of Senior Accountants with effect from 1.4.1987 after observing

the prescribed formalities.

The Department of Telecom, New Delhi has issued instructions regarding promotion to LDC as UDC on ad hoc basis from 2.4.87 to 15.7.88 in the Telecom Accounts Unit of circle office including TCO, Calcutta as Junior Accountant (Telecom Accountants) vide communciations No.19-20-SEA dated 21.8.1991 (Annex.A7 to the OA). Those LDC officials were promoted continuously officiating on ad hoc basis from 2.4.87 to 15.7.1988 on ad hoc basis UDCs on regular vacancies may also be regularised as Junior Accountants (UDC) in the same manner as has been prescribed for regulrisation of adhoc UDCs in accordance with para-2 of O.M. No.34-41/86-SEA dated 4.8.1988 (Annexure A7 to the O.A.).

In accordance with DOT New Delhi communication No. 34-41/86 SEA dated 4.8.1988 and 19-20/90 SEA dated 21.8.1991 promotion orders have been issued on 12.8.92 and 30.8.1994 (Annexures R2 and R3) and the following applicants have been promoted:

1. Shri J.R. Gandhi
2. Shri V.D. Pandya
3. Shri F.B. Parmar



4. Smt. H.V. Nair
5. Shri M.R. Rajput
6. Shri H.M. Chhasatia
7. Shri M.V. Patel
8. Shri B.B. Pasaya
9. Smt. B.V. Bhatt
10. Shri Y.S. Tambe
11. Shri S.S. Shah
12. Shri P.V. Yagnik
13. Smt. U.K. Nair
14. Smt. D.U. Shah
15. Shri N.R. Kansara

Shri J.R. Gandhi, Shri V.D. Pandya, Shri F.B. Parmar and Smt. H.V. Nair have been further promoted as Senior Accountant vide order Annexure R3. I say that the applicants are misguiding the Honourable Tribunal. I say that the Department has taken legal proper and just action in accordance with the recruitment rules already notified and proper benefit has been extended and so no discriminatory treatment has been given to any of the official.

5. In reply to amended para-6A of the application I say that the decision in O.A. No.500 of 1987 dated 27.7.1988 is not relevant to the present case. The recruitment rules were framed and published

in the Gazette of India on 16.7.1988. They shall be deemed to have come into force on the 1st day of April 1987. The retrospective effect of the rules has not adversely effected any of the applicant. On the contrary, it has been benefiteed quite a good number of employees of T.A. Wing all over the country. This case was also taken up in the Departmental J.C.M. the Govt. has considered the matter in detail and is now pleased to order that LDC (TA) who were promoted and working as ad hoc UDC (TA) during the period from 2.4.87 to 15.7.88 continuously on regular posts may also be regularised as Jr. Accountant in the same manner as has been prescribed for regularisation of ad hoc UDC in pra-2 of OM dated 4.8.1988 etc. (Recruitment Rules). The present applicants (Sl.No.1 to 10, 13, 14, 16 and 17) were promoted purely on temporary and ad hoc basis and likely to be terminated at any time irrespective of their seniority. They were also not entitled to any seniority in the grade concerned and ad hoc promotion do not confer any right upon them for seniority, confirmation or regular promotion, etc. Applicants' serial No. 11, 12, 15, 18 and 19 were not promoted at all. According to the recruitment rules and orders issued by the Telecom Directorate from time to time all the applicant except S/Shri Thomas Mathew, P.B. Khare, R.N. Tekchand^{ani} and Miss Sumathy Ravindra (Sr.No. 15,

17, 18,, 19 page No.22 of the O.A.443) have already been promoted (Annexure R2&3).

6. In reply to para-6.6B of the application I say that the order Memo Staff.27.2/Jr.Acctt/I/86 dated 13.5.92 was cancelled vide office Memo No. Staff-27-2/JA/C/I/87 dated 15.5.⁹² (Annexure A8 and A9) as concerned applicants were not holding the post of UDC (TA) on ad hoc basis during the period 2.4.87 to 15.7.1988 continuously and they were not entitled to get promotion as per the recruitment rules. They have been given promotion according to their seniority position subject to availability of posts vide (Annexures R2 and 3)., There is no discrimination or violation of Articles 14 and 16 of the Constitution of India as applicants were not entitled to even for ad hoc promotion as UDC. They were reverted as per the directive vide DOT New Delhi communications dated 21.9.1987 (Annexure R4).

7. In reply to amended para-6.6C of the application I say that the Department has taken the right proper and just action in accordance with the recruitment rules/order issued by the Telecom Directorate from time to time. The decision of the

Honourable CAT dated 27.7.1988 in OA No.500 of 11987 has no relevance in the presenc case (Annexure R5).

8. In reply to amended para 6.6D of the application I say that the applicants are misguiding the Honourable Court. They were not entitled to promotion s recruitment rules/orders issued by the Telecom Directorate from time to time. Detailed replay has been filed on 6.3.1990, 15.9.1992 (in O.A. No.443 of 1989) and on 20.4.1990 (in O.A. No.512/89) and there is no violation of Articles 14 and 16 of the Constitution of India.

9. In reply to amended para 7(6) of the application I say that the Department has rightly issued the reversion order No.Staff-27-9/SG/LSG/III dated 8.10.1987 in respect of present applicants (page No. 35 of the O.A. No.443 of 1989 and page-32 of OA. No. 512/89) in accordance with the Telecom Directorate order dated 21.9.1987 (Annexure R4) as applicants were not entitled to even ad hoc temporary promotion at that time. They were also not entitled to promotion in accordance with the recruitment rules vide DOT New Delhi Communications dated 4.8.1988 and 21.8.1991 (Annexures A2 and A7 of the OA). The judgment dated 27.7.1988 in O.A. No. 500 of 1987 is not applicable to

the present applicants. The eligible officials, in accordance with the recruitment rules/orders issued by the Telecom Directorate from time to time, have already been promoted (Annexure R2, 3 and 3A).

10. In view of what has been stated above I say and submit that the application is totally misconceived, untenable and the applicant is not entitled to any relief either interim or final and the Honourable Tribunal be pleased to reject the application forthwith.

Ahmedabad,
Dt. 21-2-1995.

Ch. h. m.
सहायक महाप्रबंधक (वि. वि.)
Asstt. General Manager (D. I.)
कार्यालय मुंबई महाप्रबंधक
S/o. the Chief General Manager Telecom
मुंबई संचालक, अहमदाबाद-380 001
Gujarat Circle, Ahmedabad-380001

Verification

I, K.M. SOLANKI
working as AGM (D.I.) O/o CGMT AHD.
with respondent No. 2 herein, do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Verified at Ahmedabad on this 21st day of February 1995.

Ch. h. m.
सहायक महाप्रबंधक (वि. वि.)
Asstt. General Manager (D. I.)
कार्यालय मुंबई महाप्रबंधक
S/o. the Chief General Manager Telecom
मुंबई संचालक, अहमदाबाद-380 001
Gujarat Circle, Ahmedabad-380001

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GENERAL MANAGER, GUJARAT
TELECOM. CIRCLE, AHMEDABAD-380 001.

Memo No.: Staff/27-2/Jr. Acctt/I/89 dated at AM-1, the 12-8-92.

In pursuant to Department of Telecom., New Delhi's Commn. No.: 19-20/90-SEA dtd. 21-8-91 and Commn. No.: 34-41/86-SEA dtd. 4-8-88 and on recommendation of the Departmental Promotion Committee held on 21-7-92, the Dy. General Manager(A), C/O Chief General Manager, Telecom., Gujarat Circle, A'bad-1, is pleased to issue the following orders in the cadre of Junior Accountants of Telecom. Accounts wing.

2. The following L.D.Cs (TA) holding the post of U.D.Cs (TA) on adhoc basis during the period 2-4-87 to 15-7-88 and who were reverted as per DG's Commn. No. 19-8/88-SEA dtd. 1-5-89 are hereby regularised and promoted as Junior Accountants with effect from 21-7-92 in the pay scale of Rs. 1200-30-1560-EB-40-2040.

3. As per DOT No. referred in para-1, they are also eligible to count their services rendered continuously on adhoc basis as U.D.C. (TA) prior to the date of the D.P.C. for the purpose of the promotion to the grade of Senior Accountant (T.A.). They are posted at the stations/offices where they are working at present.

Sl. No.	Name of official	Station of posting
✓ 1.	Mr. J.R. Gandhi	T.D.E. Palanpur
✓ 2.	Mr. V.D. Pandya	A.O.(TA) % C.G.M.T. A'bad.
✓ 3.	Mr. F.B. Parmar	do
✓ 4.	Mrs. H.V. Nair	do
✓ 5.	Mr. M.R. Rajput	T.D.E. Palanpur
✓ 6.	Mr. N.M. Chhasatia	T.D.M. Nadiad

Necessary charge report may be sent to all concerned.

Sd/-
(Parshotam Singh)
Dy. General Manager (A)
Gujarat Telecom. Circle
AHMEDABAD-1.

...2/-

7.0

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GENERAL MANAGER, GUJARAT
TELECOM CIRCLE, AHMEDABAD-380 001

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Copy forwarded for information & necessary action to:

1. A.O. (TA), O/O C.G.M.T. Ahmedabad-1 (with 3 spare copies).

2. A.O. (Bgt), Circle office, Ahmedabad-1.

3. Telecom District Engineer, Palanpur (with 2 spare copies).

4. The Telecom District Manager, Nadiad (with one spare copy).

They are requested to draw the arrears of pay and allowances as Jr. Accountant for the period, if any, during which these officials were reverted as LDC (TA) after 15-7-88 till their date of promotion as Jr. Accountant.

5. Officials concerned.

6. P/File of the officials.

7. Guard file.

(Y.K. PATNI)
Asstt. Director Telecom.(S)
O/O C.G.M.T. Ahmedabad-1.

86

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GENERAL MANAGER TELECOM
GUJARAT CIRCLE, AHMEDABAD-360 001.

Memo No. Staff/27-2/Jr.Acctt/50

Dated at AM the 30-8-94

In pursuant to Department of Telecom., New-Delhi's Commn.No 19-20/90 SEA Dated 21-8-91 and Commn. No 34-41/88 SEA dated 4-8-88 and on recommendation of the Departmental Promotion Committee, the Deputy General Manager Telecom (Admn) O/o The Chief General Manager, Telecom, Gujarat Circle, Ahmedabad 360 001 is pleased to issue the following Promotion orders in the Cadre of Junior Accountants of Telecom Accounts Wings.

The following TAC/LDC (TA) are hereby promoted to officiates as Junior Accountants on recommendation by the Departmental Promotion Committee from the date of assuming the charge as Jr.Acctt in the pay Scale of Rs.1200-30-1560-EB-40-2040. Subject to the Conditions that there is no Disciplinary/Vigilance case pending, or contemplated against them or punishment is current.

Sl No.	Name of the official	Present working Unit	Posted on Promotion
1.	Shri S.V.Ninama S/T	TAC	GMTD-AM
✓ 2.	* M.V.Patel O/C	LDC TA	ACTA-AM
✓ 3.	* B.B.Pasaya S/T	"	TDE-GDR
✓ 4.	Smt. V.D.Patel O/C	"	ACTA-AM
✓ 5.	* B.V.Bhatt O/C	"	GMTD-BRD
✓ 6.	* Y.S.Tambe O/C	"	GMTD-BRD
✓ 7.	Shri S.S.Shah O/C	"	GMTD-BRD
✓ 8.	* P.V.Yagnik S/C	"	TDM-JMN
✓ 9.	Smt. U.K.Nair O/C	"	AD TA AM
✓ 10.	* D.U.Shah O/C	"	ACTA-AM
✓ 11.	Shri N.R.Kansara O/C	"	"
12.	* B.J.Maheria S/C	"	"
13.	* P.M.Solanki S/C	"	"
14.	* M.H.Sindhav S/C	"	GMTD-SRT
15.	* B.V.Parmar S/C	"	GMTD-SR
16.	* K.V.Chavda S/C	"	AD TA AM
		"	ACTA-AM
		"	TDM-JND

Charge report may be sent to all concerned.

Sd/-

(S.Sriramamurthy)
Dy. General Manager (Admn)
O/o The Chief General Manager Telecom
Guj Circle Ahmedabad-1.

Copy forwarded for information and
 3 copies of the official concerned & P/F.

4. The TDE GDR.
5. The CAO O/o The CGMT AM-1.
6. The Vigilance Officer O/o GNTD/ CO AM.
7. PA to Director Finance CO AM.
8. Shri J. I. Christian Circle Sec. (FNTD) O/o CGMT AM-1.
9. ADT (R&E) to divert the posts wherever necessary.

Asstt. Director (Telecom (Staff))
The Chief General Manager Telecom
Gujarat Circle Ahmedabad-380 001.

[illegible]

Annexure 3-A

DEPARTMENT OF TELECOMMUNICATIONS

Office of the Chief General Manager Telecom.
Gujarat Circle, Ahmedabad - 380 001.

Memo No.Staff/27-2/Sr.Acctt./53 dtd.at AM-1 the 11.01.1994

In pursuant to Department of Telecom. New Delhi communication No.34-41/80-SEA dated 17.5.88 and even No. dated 4.8.88 and on recommendation of the Departmental Promotion Committee, the Dy. General Manager Telecom. (Admn.), O/o.the Chief General Manager Telecommunications, Gujarat Circle, Ahmedabad-1 is pleased to issue the following promotion orders in the cadre of Senior Accountant (TA) in the Telecom. Accounts wing.

The following Junior Accountants are hereby promoted to officiate as Senior Accountants on recommendations by the Departmental Promotion Committee from the date of assuming the charge of Senior Accountant in the pay scale of Rs. 1400-40-1600-50-2300-EB-60-2600 subject to the conditions that there is no disciplinary/vigilance case pending or contemplated against them or punishment is current.

Sl. No.	Name of official	Present working Unit	Posted on promotion
01.	Shri A.M. Vasava	TDE Bharuch	TDE Bharuch
02.	Smt. D.P. Shah	AO(TA) AM	AO(TA) AM
03.	Shri J.R. Gandhi	TDE Palanpur	TDE Palanpur
04.	Shri V.D. Pandya	AO(TA) AM	AO(TA) AM
05.	Shri F.B. Parmar	EE Civil Dn.II AM	EE Civil Dn.II AM
06.	Smt. H.V. Nair	AO(TA) AM	AO(TA) AM
07.	Shri M.R. Rajput	TDE Palanpur	TDE Palanpur
08.	Shri N.M.Chhasatiya	GMTD Nadiad	GMTD Nadiad

Necessary Charge Report may be sent to all concerned.

(Purushottam Singh)
Dy. General Manager (Admn.)
O/o. C.G.M. Telecom.
Gujarat Circle
AHMEDABAD - 1.

contd..2



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Annexure R-4

No.19-4/87-SEA(Pt. File),
Government of India
Ministry of Communications,
(Deptt. of Telecom.)
* * *

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Dated, New Delhi, the 21.9.1987.

To

The General Manager,
Telecommunications,
Gujarat Circle,
Ahmedabad-380009.

Sir,

I am directed to refer to your letter No.Staff/27-9/SG/LSG/III/69 dated 13.8.1987 and to request you to intimate the basis/authority under which the officials were promoted as S.G. UDCs in T.A. on ad-hoc basis. No such orders were issued from this Directorate and recruitment Rules for the same are yet to be finalised. Hence all such officials promoted to SG. UDCs(TA) on an ad-hoc basis should be reverted as UDCs until further orders. As regards the exercising of an option for the benefit envisaged under the orders dated 26.9.81, such option's are not applicable in the above cited cases.

Yours faithfully,

(Signature)

(K.N. Ganapathy)
Asstt. Director General(SEA).

21/157

10/25/87

ADTCS

8.8.87

SSS

21/25/87

(89) 11/11

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL

ADDITIONAL BENCH AT AHMEDABAD

ORIGINAL APPLICATION NO.512 OF 1989

B.B.Pasaya & Others

...Applicants

V/s

The Union of India & Ors.

...Respondents

-: Rejoinder-to-Written Reply to
amended Original Application:-

I, Smt. D. U. SHAH, the
petitioner do hereby state in reply to written
statement of respondent to amended Original
application as under:-

1. I say that I have read the written
reply filed by the respondent to amended Original
Application and I deny the statements and aver-
ments made in the written reply except specifically
admitted by me hereinbelow. Before I file parawise
remarks to written reply to amended Original
application, I say that the respondents have framed

...2/-

File in
Court II
Mr. Kaur
for Mr. Ahmed
16/6/95

: 2 :

recruitment rules which were published in gazette of India on 16.7.1988 but the effect of the said rules were given from 1.4.1987 meaning thereby the retrospective effect was given. I say that as per the latest ratio laid down by Hon'ble Supreme Court of India in case of Ravindranath Pai and another V/s State of Karnataka JT 1995 (2) SC page 520, that power of legislature to retrospectively amended as statute should not be exercised in a manner which would ~~ix~~ violate fundamental right under Article 14 read with Article 16 (1). It was also further laid down that retrospective amendment to statutory rule should not result in a discrimination or in violation of a constitutional right. I say that the identical facts are here in this case and in this case also the retrospective effect of the rules which were prejudicial to the service condition of the employees were given effect in violation of Article 14 & 16 of the Constitution of India and not only that but the said retrospective effect was relaxed in case of those who were actual working on ad hoc basis on the post of LDC. I say and submit that we were denied the right of promotion and in spite of the illegal reversion order which was quashed and set aside by this Hon'ble Tribunal in OA No.500/87, the petitioners were not promoted to the post of LDC and therefore this discriminatory treatment is given in violation of articles 14 & 16 of the Constitution of India even in relaxing the said rules.

....3/-

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2. As to paras-2 & 3 of the written reply, I deny the statements and averments made therein.

3. As to para-4 I reiterate what is stated in paragraph-6.6 & 6.6A. I deny that the Department has taken legal, proper and just action in passing the order of promotion as per Annexure-R3. I say that the benefit of relaxation of recruitment rules are not given in true spirit but this relaxation were interpreted by the respondent in their own way in violation of Articles 14 & 16 of the Constitution of India.

4. As to para-5 I deny the statements and averments made therein and I say that decision of O.A No.500/87 is very much applicable for the simple reason that in OA No.500/87 this Hon'ble Tribunal has quashed and set aside the ~~xx~~ reversion order dated 8.10.1987 and the identical order of 8.10.1987 was there in the case of petitioners and therefore it is too much for the respondents to say that decision in OA is not relevant to the present case. I say that the respondent has not stated why decision of 500/87 is not complied in case of the petitioners and instead of clarifying that it is simply stated that decision of OA No.500/87 is not applicable in the present case. I say that while relaxing the rules, it is stated that those LDC who have promoted and working as ad hoc during the period from 2.4.87 to 15.7.88 may also be regularised as Jr.Accountants in

the same manner as has been prescribed for regularisation of ad hoc UDC in para-2 of OM No.54-41/86 dated 4.8.1988. I say that when it is stated in OM to consider the case of those LDC who were working on ad hoc basis for regularisation in the affidavit it is stated that those LDC were not entitled to any seniority in the letter concerned and ad hoc promotion does not confer any right. Thus this itself shows that respondents are acting discriminatory in implementing the rules and by way of grace they want to regularise those LDC who are working on ad hoc without looking to the relaxation granted in OM dated 21.8.1991.

5. As to paragraph-6 I reiterate what has been stated hereinabove and I reiterate that respondents has acted arbitrarily in giving the benefit of relaxation of rules and acted in violation of articles 14 & 16 of the Constitution of India in a matter of promotion.

6. As to paragraph-7, I deny the statements and averments made therein and I reiterate that decision of OA No.500/87 is very much relevant and said decision is applicable in the present case.

7. As to paragraphs-8, 9 & 10 of the written reply, I deny the statements and averments made therein.

...5/-

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In view of what has been stated hereinabove I say and submit that the above mentioned application may be allowed finally along with the cost.

--: VERIFICATION :-

I, B.B. Pasaya, aged about years,
resident of Ahmedabad do hereby verify that the
contents of paras hereinabove are true to my
personal knowledge, and are true be on legal
advice and that I have not suppressed any material
fact.

Ahmedabad

Dated: 26/3/75

Shah

(Smt. D. U. SHAH)