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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 8 of 1998
..... of

14.12.2000
DATE OF DECISION

Shri Kumud Chandra Deka PETITIONER(S)

Mr. B.K.Sharma. ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors. RESPONDENT(S)

Mr. B.S. Basumatary, Addl.C.G.S.C. ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE MR. M.P.SINGH, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 8 of 1998

Date of decision : This the 14th day of December, 2000.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Hon'ble Mr. M.P.Singh, Member (A).

Shri Kumud Chandra Deka,
Retired Chief Section Supervisor,
Office of the Central Telegraph Office,
Panbazar, Guwahati,
Resident of South Sarania,
Guwahati.

...Applicant.

By Advocate Mr. B.K.Sharma.

-versus-

1. The Union of India,
Represented by the Secretary to the
Government of India, Ministry of
Communication, New Delhi.
2. The Director General,
Department of Telecommunication,
New Delhi.
3. The Chief General Manager,
Telecom, Assam Telecom Circle,
Ulubari, Guwahati-7.
4. The Deputy General Manager (Admn.),
O/o the Chief General Manager,
Telecom, Assam Telecom Circle,
Ulubari, Guwahati-7.

...Respondents

By Advocate Mr. B.S. Basumatary, Addl. C.G.S.C.

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O R D E R (ORAL)

CHOWDHURY J. (V.C.).

The legality of the order datd 21.8.97 by which the order of promotion of the application dated 26.9.96 was cancelled is the subject matter of this proceeding in the following circumstances. The applicant prior to the impugned order was holding a Grade IV post and was working as Chief Section Supervisor in the office of the Central Telegraph Office, Panbazar, Guwahati. He was further promoted vide office order dated 27.9.96 from the

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Grade of Senior Section Supervisor (TOA(G) GR-III to GR-IV under the Biennial Cadre Review in the scale of Rs. 2000-3200. The applicant accepted the order of promotion but represented to the Chief General Manager Telecom for giving his promotion with effect from 1.7.95 instead of 27.9.96 since his junior was already promoted to the above post on 1.7.95. The applicant in the meantime attained superannuation with effect from 28.2.97. By the impugned Memorandum No.ASM/TA/PEN/KCD/2-97/97-98/2 dated 2.7.97, the Accounts Officer, Assam Telecom Circle, Guwahati, intimated the concerned authority with a copy to the applicant that the promotion granted to the applicant was contrary to law and accordingly sought for clarification. In the meantime the Accounts Officer held up for settlement of pension case. Close to the said order the impugned order was passed on 21.8.97 cancelling the order of promotion on the ground that it was issued erroneously on the basis of a factually incorrect representation of the affected official. The order also mentioned that the monetary benefit which was accrued to the officials as a consequence of the said erroneous promotion order was also withdrawn on retrospective basis. The applicant submitted a representation stating that there was no misrepresentation on his part and he rightly deserved promotion as per the BCR scheme vide his representation dated 1.9.97/3.9.97. The respondent authority vide order dated 19.11.97 declined to intervene in the matter. Hence this application challenging the legitimacy of the order as arbitrary and discriminatory.

2. According to the respondents since the applicant was absorbed in restructured cadre his promotion to the post of Chief Supervisor under BCR scheme was irregular as per the existing departmental

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instructions prevailing at the relevant time. The DOT/ND letter No. 27-4/87-T-II(PL) dated 16.06.97 which was referred by the applicant was said to be not applicable by the respondents and stated that the said communication was prospective in nature. There is no dispute that as per the Government order communicated by the DOT/ND letter No. 27-4/87-E-II (PL) dated 16.6.97, the Govt. decided to allow 10% BCR scale of Rs. 2000-3200 (Grade IV) also to the staff working in the restructured cadre. The said communication also indicated that the benefit would be given to the staff in the restructured cadre from the date their juniors in the old cadre was given this benefit as per the seniority in the basic grade of the old cadre. The grounds assigned by the respondents for cancellation of the promotion of the applicant in their Memo dated 19.11.97 to the effect that a person absorbed in the restructured cadre such person would not be promoted in the BCR scheme. The view expressed by the department is contrary to the Govt. order communicated by order dated 16.6.97. Mr. B.S. Basumatary, learned Addl. C.G.S.C. time and again submitted that the aforesaid Govt. order is prospective in application. We are not inclined to accept the said contention of the learned counsel for the respondents since the Govt. order dated 16.6.97 was dealing with the earlier office letter dated 22.10.93 allowing BCR of the basic grade to the official those who have moved to the restructured cadre. The letter itself indicated that earlier decision taken in the year 1993 was reviewed. The Govt. order expressed through communication dated 16.6.97 is thus explanatory and clarificatory in character, therefore clarificatory and explanatory orders are retrospective in effect (Reference- S.S. Grewal Vs. State of Punjab & ors, reported in SLJ 1993 (3) (SC) 21). The communication dated 16.6.97 as we have mentioned earlier itself

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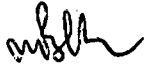
indicated that benefit was to be given to the staff in the restructured cadre from the date their juniors in the old cadre were given the benefit as per the seniority in the basic grade of the old cadre. The applicant by his representation dated 20.11.96, therefore sought for giving effect to his promotion linking the same inter-service seniority. The applicant accordingly mentioned that his promotion was to be computed with effect from 1.7.95 i.e. the date while his junior was promoted. In paragraph 4.5 of the application, the application has mentioned the name of Shri A.C. Nath, Chief S.S. (Accounts) who had joined in 1965 i.e. after joining the applicant in 1959 and was granted promotion on 1.7.95. The respondents did not rebut the aforesaid statement of the applicant in the written statement.


3. In the circumstances the claim of the applicant to give effect to his promotion on and from 1.7.95 i.e. the date on which his junior was promoted cannot be said to be untenable. The respondents in terms of the Government policy clarified by memo dated 16.6.97 ought to have taken note of the aforesaid fact and computed his promotion on and from 1.7.95.

4. For the foregoing reasons we hold that the impugned communication bearing No. TTES-1/12/BCR-KCD/97-98/24 dated 21.8.99 (Annexure-6) and Office Order bearing No. TTES-1/12/BCR-KCD/97-98/27 dated 19.11.97 (Annexure-8) are liable to be set aside and accordingly we set aside the same and the respondents are directed to compute the date of promotion of the applicant on and from 1.7.95 with all consequential service benefits. The respondents shall complete the exercise within two months from the date of receipt of the certified copy of this order.

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5. The application is allowed to the extent indicated above. There shall, however, be no order as to costs.


(M.P.SINGH)
Member (A)


(D.N.CHOWDHURY)
Vice-Chairman

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