

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Dropped Date-12/11/2001

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SECTION OFFICER (Judl.)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 198/2000 OF 199

Applicant(s) Sri Jatincha Kr. Roy.

Respondent(s) Union of Indu and others.

Advocate for Applicant(s) Mr. M. Chouda.

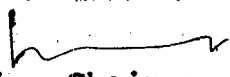

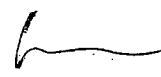
Advocate for Respondent(s) Mrs. N. D. Goohari
Mr. S. K. Ghosh.
C. G. S. C.

Notes of the Registry	Date	Order of the Tribunal
<p>488 100000 19 00</p> <p>1000 1000 1000 1000</p> <p>C. F. R. 1000</p> <p>deposited vide</p> <p>IPC BD No 492649</p> <p>Dated 1.7.2000</p> <p>1/13/17</p> <p>1/13/17</p> <p>1/13/17</p> <p>5/7/00 Notice prepared and sent to D/S for issuing the respondents No 1 to 4 vide DINO 1783 to 1786 dtd 6/7/00.</p> <p>Envelope not supplied by the Admr.</p> <p>5/7/00</p>	<p>4.7.00</p> <p>LM</p> <p>5/7/2000</p>	<p>Present: Hon'ble Mr. S. Biswas, Administrative Member.</p> <p>Heard counsel for both sides.</p> <p>The learned counsel for the respondents submits that he has not in contact on the matter with the respondents. The learned counsel for the applicant prays for an interim order on the ground that the order of reversion is exparte. However, the pay protection is there. In this situation the case is admitted with a direction to issue notice ^{to} _{post} respondents for consideration of the interim order on the next date of hearing. List on 2.8.00 for orders.</p> <p>S. Biswas Member(A)</p>

2.8.00 There is no bench.

Agreed to 4.9.00.

4.9.00 No Bench. Dtd 27.10.00

Notes of the Registry	Date	Order of the Tribunal
<p>d</p>	27.10.00	<p>Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.</p> <p>Heard Mr. M. Chanda, learned counsel for the applicant and also Mr. B.C. Pathak, learned Addl.CGSC for the respondents.</p> <p>Written statement has already been filed. Instead of passing of any interim order, the entire matter may be listed for hearing and accordingly, it is ordered that the case be listed for hearing on 12.12.00.</p> <p style="text-align: right;">  Vice-Chairman </p>
<p>15.12.2000</p> <p>Copy of the Judgment has been sent to the Secy. for issuing the same to the Applicant as well as to the Addl.CGSC.</p> <p>HS</p>	12.12.2000	<p>Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman</p> <p>Hon'ble Mr M.P. Singh, Administrative Member</p> <p>Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.</p> <p style="text-align: center;">  Member(A) </p> <p style="text-align: right;">  Vice-Chairman </p>

mk

nkm

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. No. 198 of 2000

DATE OF DECISION 12.12.2000

Shri Jatindra Chandra Roy

PETITIONER(S)

Mr M. Chanda, Mrs N.D. Goswami and

Mr S., Ghosh

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr B.C. Pathak, 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, ADMINISTRATIVE MEMBER

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.198 of 2000

Date of decision: This the 12th day of December 2000

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

The Hon'ble Mr M.P. Singh, Administrative Member

Shri Jatindra Chandra Roy,
Working as Telecom Office Assistant Gr.IV,
Office of the Chief General Manager, Telecom,
N.E. Circle, Shillong.

.....Applicant

By Advocates Mr M. Chanda,
Mrs N.D. Goswami and Mr S. Ghosh.

- versus -

1. The Union of India, through the
Secretary to the Government of India,
Ministry of Communications,
Department of Telecommunication,
New Delhi.
2. The Director General,
Department of Telecom Service,
New Delhi.
3. The Chief General Manager, Telecom,
N.E. Circle, Shillong.
4. The General Manager, Telecom District,
Meghalaya, Shillong.

.....Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The legality of the order dated 1.6.2000 reverting the applicant from Grade IV post to Grade III cadre of Telcom Office Assistant (General) is the subject matter of this O.A.

2. The applicant was initially appointed as Time Scale Clerk on 27.6.1972 in the Office of the Assistant Engineer (Phones), Military, Shillong under CGMT, Shillong. He was promoted in terms of the Time Bound Promotion Scheme or completion of sixteen years of service during the year 1988.

He was further promoted as Telecom Office Assistant (TOA for short) Grade I in the year 1990 and in the year 1992 he was promoted to the cadre of TOA Grade II. The applicant was thereafter promoted to the cadre of TOA Grade III. By order dated 26.6.1992 the applicant alongwith one Smt N.E. Marrisen (ST) was placed in Grade IV of the basic cadre of TOA with effect from 1.7.1992 or from the date of assumption of charge by the officials whichever was later, pursuant to the approval of the Chief General Manager, N.E. Telecom Circle, Shillong. The applicant in terms of the order of promotion joined in the cadre and started discharging his duties. By the impugned order dated 1.6.2000 the applicant was reverted to Grade III cadre of TOA with effect from the date of issue of the impugned order in pursuance of Department of Telecommunication Order No.22-6/94/TE-II(Vol.III) dated 30.12.1999. The applicant has challenged the impugned order dated 1.6.2000 as arbitrary, discriminatory and violative of the principles of natural justice.

3. The respondents have contested the claim of the applicant and submitted that the respondents resorted to the impugned reversion to accommodate only eligible official to Grade IV against 10% posts in BCR Scheme as per the judgments of the Supreme Court and the Ahmedabad Bench of the Central Administrative Tribunal. No such orders are produced before us, but the applicant has produced before us an order dated 2.6.2000 passed by the Principal Bench of the Central Administrative Tribunal in O.A.No.425 of 2000, wherein the Principal Bench has set aside the order dated 30.12.1999 which was the basis of the impugned reversion order.

X

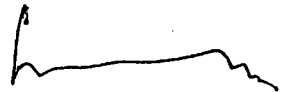
4. In view of the order of the Principal Bench and also considering the fact that the impugned order of reversion dated 1.6.2000 was passed after eight years without giving any opportunity to the applicant, we hold that the impugned order of reversion dated 1.6.2000 as illegal and accordingly the same is set aside.

5. The application is accordingly allowed. The applicant shall be given the consequential benefits.

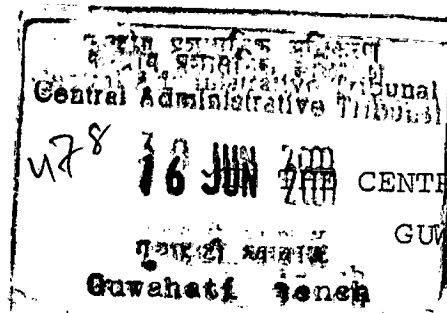
No order as to costs.



(M. P. SINGH)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN



100/12

16 JUN 2000

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Filed by the applicant
through
Sri J. K. Ghosh
Advocate
16.6.2000

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).

Title of the Case : O.A. No. 198/2000

Sri Jatindra Ch. Roy : Applicant

-versus-

Union of India & Ors. : Respondents

I N D E X

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3	1	Order dated 26.6.92	12
4	2	Impugned order dt. 1.6.2000	13
5	3	Hon'ble Principal Bench order dt. 10.3.2000	14

Date : 16.6.2000

Filed by

Sri J. K. Ghosh

Advocate

Jatindra Chandra Roy

a

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).

O.A. No. 198/2000

BETWEEN

Sri Jatindra Chandra Roy,
Son of late Hamendra Chandra Roy
Working as Telecom Office Assistant Gr.IV,
Office of the Chief General Manager, Telecom,
N.E.Circle, Shillong.

....Applicant

-AND-

1. The Union of India
Through the Secretary to the Govt.
of India, Ministry of Communication,
Department of Telecommunication,
New Delhi.
2. The Director General,
Department of Telecom Service,
Samachar Bhawan,
New Delhi-1.
3. The Chief General Manager, Telecom
N.E.Circle,
Shillong.
4. The General Manager Telecom District,
Meghalaya,
Shillong.

Contd.....

Jatindra Chandra Roy

10
Ex parte ?
- this detail -

DETAILS OF APPLICATION

1. Particulars of order against which this application is made.

This application is made against the impugned order of reversion issued under letter No. E-45/10% BCR/Gr-IV/Reversion/1 dated 1.6.2000 whereby the applicant is sought to be reverted from the post of Telecom Office Assistant Grade IV to Telecom Office Assistant Grade III with effect from the date of issue of the impugned order without following any principles of natural justice in pursuance of Department of Telecom order bearing letter No. 22-6/94/TE-II (III) dated 30.12.1999 forwarded by DGMT, ~~New Delhi~~ Shillong's No. EST/BE-504/Rlg/Pt-1 dated 27.1.2000 and also praying for a direction to the respondents to allow the applicant to continue in the said existing post of Telecom Office Assistant Grade IV.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declares that the application is within the period of limitation under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

That the applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed by the Constitution of India.

Contd....

4.3 That your applicant was initially appointed as Time scale clerk on 27.6.1972 in the office of the Assistant Engineer (Phones), Military Shillong under CGMT Shillong. Thereafter the applicant was promoted in terms of time bound promotion scheme on completion of 16 years of service during the year 1988. The applicant was further promoted as Telecom Office Assistant (for short TOA) Grade I in the year 1990. Subsequently he was promoted to the cadre of TOA Grade, II during the year 1992. The applicant was further promoted to the cadre of TOA grade III and IV. It is pertinent to mention here that the applicant was promoted to the cadre of Telecom Office Assistant Grade IV with effect from 1.7.1992 vide Memo No. STBX/BCR/TOA/92 dated 26.12.92. The said promotion was given to the applicant in pursuance of the DOT letter No. 27-4/87-TE-II (I) dated 16.10.99 which was duly approved by the Chief General Manager, NE Circle, Telecom, Shillong.

Copy of the promotion order dated 26.6.92 is annexed as Annexure-1.

4.3 That it is stated that after his promotion to the cadre of Grade IV Telecom Office Assistant in the pay scale of Rs. 2000-60-2300-EB-75-3200 in Grade IV TOA, the applicant started in discharging his duties and continuously served in the said post on regular basis for a period about 8 years. Most surprisingly while working as such in the cadre of Grade IV Telecom Office Assistant the applicant has been served with the impugned order of reversion vide letter bearing No. E-45-10% BCR/Gr.IV/

Jatindra Chandra Ray

Reversion/1 dated 1.6.2000 whereby the applicant is now sought to be reverted from the grade IV TOA to the cadre of Grade III TOA (General) with effect from the date of issue of the impugned order. It is stated in the said impugned order that in pursuance of DOT order bearing No. 22-6/94/TE-II (Vol.A1) dated 30.12.99 forwarded vide CGMT Shillong's letter No. EST/B-504/Rlg/ Pt.-1 dated 27.1.2000 wherein it is stated that the applicant is ineligible for grade IV promotion in accordance with the procedure prescribed vide DOT order No. 22-6/94-TE.II dated 13.12.1995, although the authority kept the applicant in dark regarding the contents of the order mentioned therein. However, it appears that the applicant is not sought to be declared ineligible following the procedure adopted by the Directorate of Telecommunication in their order dated 13.12.1995 whereas the applicant was duly promoted in pursuance of Directorate of Telecommunication letter bearing No. 27-4/87 TE-II(1) dated 16.10.90. Therefore any procedure which adopted during the year 1995 by the Directorate of Telecommunication cannot be applied retrospectively in the instant case of the applicant who was promoted long back to the cadre of Telecom Office Assistant with effect from 1.7.1992. Moreover the impugned order of reversion dated 1.6.2000 has been issued without any prior notice or show cause and in total violation of principles of natural justice. On that score alone the impugned order dated 1.6.2000 is liable to be set aside and quashed.

Copy of the impugned order dated 1.6.2000 is annexed as Annexure-2.

Jatindra Chandra Ray

4.4 That your applicant states that assuming but not admitting that he was promoted erroneously to the cadre of TOA Grade IV in that event also it is the duty of the respondents to issue a notice or show cause providing an opportunity to the applicant to submit his defence before passing the impugned order of revision. But in the instant case the respondents deliberately made a departure from the settled principles of law and issued the impugned order giving effect of the same from the date of issue of the impugned order with an ulterior motive so that the applicant cannot approach any court of law. Therefore action of the respondents is malafide and on that score alone the impugned order of reversion is liable to be set aside and quashed.

4.5 That the similar matters came up before the Hon'ble Principal Bench, New Delhi of the Central Administrative Tribunal i.e. O.A. No. 425/2000 (M.A. 592/2000), O.A. 555/2000 (M.A. 777/2000) and other similar cases before the Hon'ble Mumbai Bench, Jabbal Bench, Calcutta Bench of the Central Administrative Tribunal. All the Benches of the Hon'ble Tribunal have stayed the impugned order of reversion being found prima facie the order is ex-facie illegal. The applicant being similarly situated also entitled to at least an interim order staying the operation of the impugned order of reversion dated 1.6.2000.

A copy of the order dated 10.3.2000 passed by the Division Bench of the Hon'ble Principal Bench in O.A. No. 425/2000 (M.A. No. 592/2000) is annexed as Annexure-3 for kind perusal of the Hon'ble Tribunal.

fatimha Chandra Roy

6.6 That it is a fit case of the Hon'ble Tribunal to interfere with and to protect the rights and interest of the applicant as because the applicant is serving in the said post of TOA Grade IV for about 8 years as such he has acquired a valuable and legal right for continuing in the said post, moreover the promotion of the applicant to the cadre of TOA Grade IV has been granted after observing all required formalities and procedures as required under the rules as such the said right cannot be taken away by a stroke of pen at the whims of the respondents without following the established procedure of law that too without affording any opportunity to the applicant. It is stated that the applicant submitted representations i.e. on 1.6.2000 & 9.6.2000 against the order of reversion but to no result.

4.7 That your applicant finding no other alternative approaching this Tribunal for a direction to the respondents to allow him to continue in the cadre of TOA Grade IV and for a declaration that the applicant is entitled to continue to the said post of TOA Gr. IV and further be pleased to stay the operation of the impugned order dated 1.6.2000.

4.8 That this application is made bona fide and the cause of justice.

5. Grounds for relief with legal provisions.

5.1 For that the applicant was promoted to the cadre of TOA Grade IV after observing all required formalities as required under the rule and also following the letter of Directorate of Telecommunication bearing No.27-14/87-TE-11(1) dated 16.10.90 and also with the approval of the Chief General Manager, N.E. Telecom Circle, Shillong.

Contd....

- 5.2 For that the impugned order of reversion has been issued without affording any opportunity to the applicant or notice/show cause and in total violation of principles of natural justice.
- 5.3 For that the applicant is serving for a long period of 8 years on regular basis in the cadre of TOA Grade IV thereby he has acquired a valuable ~~right~~ and legal right to continue in the said post.
- 5.4 For that the applicant has kept in dark regarding the contents of the impugned letter dated 30.12.1999, and 27.1.2000.
- 5.5 For that the applicant was promoted vide order dated 26.6.1992, therefore procedure prescribed in the DOT order bearing No. 22-6/94-TE II dated 13.12.95 cannot be applied retrospectively in the instant case of the applicant that too without providing any opportunity to the applicant.
- 5.6 For that the impugned order of reversion will lead to a civil consequence as such the same is liable to set aside and quashed.
- 5.7 For that the impugned order of reversion is bad in law and on that ground the same is liable to be set aside and quashed.

8. ~~Relief sought for~~ Details of remedy exhausted.

~~Under the facts and circumstances of the case~~

The applicant begs to state that there is no other remedy under any rule, than to file this application before this Hon'ble Tribunal for redressal of his grievances.

Jatindra Chandra Ray

7. Matter not pending before any other Court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which the application has been made before any court of law or any other authority or any Bench of the Tribunal and/or any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for :

Under the facts and circumstances of the case the applicant prays that Your Lordships would be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicants shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s).

8.1 That the impugned order of reversion issued under letter No. E-45/10% BCR/Gr.IV/reversion/1 dated 1.6.2000 (Annexure- 2) be set aside and quashed.

8.2 That the impugned letter issued by the Directorate of Telecommunication vide letter No. 22-6/94-TE-11/Vol. III dated 30.12.99 be set aside and quashed.

8.3 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to continue to the cadre of TOA grade IV in terms of the promotion order dated 26.6.1992.

Jatindra Chandra Roy

8.4 Cost of the application.

8.5 Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

9. Interim Reliefs prayed for :

During the pendency of this application, the applicant prays for the following reliefs :

9.1 That the impugned order of reversion issued under letter No. E-45/10% BCR-IV/Reversion/1 dated 1.6.2000 (Annexure- 2) be ~~xxxxxxx~~ stayed till disposal of this application.

10.

This application is filed bonafide and for the cause of justice.

11. Particulars of Postal Order :

- i. I.P.O. No. : 06 497649
- ii. Date of Issue : 1.7.2000
- iii. Issued from : G.P.O., Guwahati.
- iv. Payable at : G.P.O., Guwahati.

12. Particulars of the Enclosures.

As stated in the Index.

V E R I F I C A T I O N

I, Jatindra Chandra Roy, son of late Hamendra Chandra Roy, working as Telecom Office Assistant Gr.IV in the office of the Chief General, Manager, Telecom, N.E.Circle, Shillong, do hereby verify and declare that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice which I believe to be true and I have not suppressed any material fact.

I, sign this verification on this the 16th day of June, 2000.


Signature

Annexure-1

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GENERAL MANAGER, N.E. TELECOM CIRCLE
SHILLONG-793001

Memo No. STBX/BCR/TCA/12

Dated at Shillong the 26.6.
1992.

In pursuance of the DOT Letter No. 27-6/87-TE-11(1) dated 16.10.1990, approval of the Chief General Manager, N.E. Telecom Circle Shillong is conveyed to place the following TOA's Grade III 1) Sri Smti N.E. Marrisen S/T 2) Sri J.C.Roy S/C in the scale of pay Rs.200-60-2300-EB-75-3200 in Grade IV of the basic cadre of TCA with effect from 1.7.92 or from the date of assumption of Charge by the officials whichever is later. ✓

Pay of the officials will be fixed under FR 22 (1) a(1) Charge report should be sent to all concerned.

In case any disciplinary case is pending against the officials is current, the fact should be reported to this office immediately and the concerned official should not be promoted.

Sd/- M.Aquil
Asstt. General Manager (A)
for Chief General Manager N.E. Telecom
Circle, Shillong.

Copy for information to:

1. The AO (TA)
2. Smti M.E. Marrisen TOA Gr. III
3. Sri J.C. Roy TOA Gr. III
4. The TDM/Shillong
- 5-6 P/F of the officials
7. GL file of TOA
8. AO (A&P) Office of the TDM/Shillong
- 9-10. Spare & Office copy.

Sd/- Illegible
for Chief General Manager N.E.
Telecom Circle, Shillong.

*certified to be true copy
Shillong
Advocate*

Jatindra Chandra Roy

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE GENERAL MANAGER TELECOM DISTRICT
MEGHALAYA SSA
SHILLONG

No. E-45/10% BCR/Gr-IV/Reversion/1 Dated At Shillong the
1st June 2000

In pursuance of DoT order No. 22-6/94/TE-II
(Vol III) dated 30.12.99 forwarded vide CGMT Shillong's
No. EST/BE-504/Rig/Pt-I dated 27.1.2000, Sri J.C.Roy
who is ineligible for Grade IV promotion in accordance
with the procedure prescribed vide DoT order No. 22-6/94-
TE II dated 13.12.1995 is hereby reverted to Grade III
cadre of TOA (General) with effect from the date of
issue of this order.

On reversion to Grade III post, the pay of Sri J.
C.Roy will be protected under the provision of FR 31
and the additional pay may be treated as person pay,
which should be, adjusted in future increments.

Sd/-

(S.S.Sundaram)

General Manager Telecom District
Meghalaya, Shillong.

Copy to

1. The CGMT North East Telecom Circle, Shillong for information.
2. The Sr. A.O (A&P) O/o CGMT, Shillong.
3. The AGM(A) O/o CGMT Shillong
4. SS Staff Section O/o GMTD Shillong.
5. Sri J.C.Roy O/o CGMT Shillong.
6. E-8/T&P File
7. Secretary LJCM Staff side O/o SDE Trunk Shillong.
8. Secretary NFTE Class III, Shillong.
9. Secretary FNTD Class III, Shillong.

Sd/-

(S.S.Sundaram)

General Manager Telecom District
Meghalaya, Shillong.

Contributed to be true copy
Sri J.C.Roy
Advocate

2800
1972
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1972
1845

Jatindra Chandra Roy

Annexure-3

1.

OA 425/2000

MA 592/2000

10.03.2000

Present : Shri T.C.Agarwal proxy for Mrs. Rani Chhabra,
counsel for the applicants.

Issue Dasti notices to respondents returnable
on 24.3.2000.

Pending further orders, there will be an
ad interim order of stay in terms of prayer contained
in para 9(a).

Sd/-

(Ashok Agarwal)
Chairman

Sd/-

(V.K.Majotra)
Member (A)

Certified true copy

Dated

Sd/- Illegible

(K.Singh) 14.8.2000

Section Officer (J-I)
Central Administrative Tribunal,
Principal Bench,
New Delhi.

SEAL

*certified to be true copy
Anjil Chhabra
Advocate*

Jatindra Chandra Roy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
 Central Administrative Tribunal
 In the matter of
 O.A. NO 198/2000
 गुवाहाटी बेंच
Guwahati Bench

27 OCT 2000

Shri Jatindra Chandra Roy Applicant

15
 Filed by
 Prof. Anand 22
 Adal. ChSC.
 27/10/2000

Vs.

Union of India and Others Respondents

*In the matter of written statement
 on behalf of all the respondents.*

I Shri C.Murmu, Vigilance Officer, Office of the Chief General Manager N.E.Telecom Circle Shillong do hereby solemnly affirm and declare as follows :-

1. That a copy of application have been served upon the official respondents and being asked upon written statement is filed which will be common for all the respondents. I categorically state that save and except what is specifically admitted in written statement, rest may be treated as total denial by all the respondents. Before I go for parawise comments of the present application a background history of the case is incorporated in this written statement and same will constitute a part and parcel of defence.

Background History

1. The fact of the case is that the scheme of BCR and 10% BCR (Gr IV) was introduced in the Department vide No 27-4/87-TE II dated 16.10.90. The promotion to Gr IV was earlier being done on the basis of seniority in BCR. The issue was challenged in the Court. In view of the judgement of Principal Bench, New Delhi upheld by the Supreme Court, it was decided in supersession of earlier instruction that promotion to Gr IV may be given from amongst official in Gr III on the basis of their seniority in the basic cadre. Accordingly the order No 22-6/94-TE II dt.13.12.95 was issued. As per the order the promotion to the Gr IV was to be reviewed and the same was to be regulated as per court judgement restricting the number of officials thus promoted strictly to 10% of the posts in Gr III and the official already promoted in Gr IV became intelligible and facing reversion. In OA No 623/96 in Hon'ble CAT Ahmedabad where it was challenged against the normal rules of reservation to promotion in Gr IV and in the judgement and order dated 11.4.97 has passed in order that Reservation Roster will not apply for placement for BCR (GR III) to 10% BCR (GR IV) which was upheld by the Hon'ble High Court Gujarat. (Annexure R1, R2, R3). To comply with the Ahmedabad CAT order all the intelligible officials promoted to Gr IV by application of Reservation Roster were to be reverted with immediate

effect vide DOT letter No 22-6/94-TE II dated 22.8.97. Only eligible officials are to be placed in Gr IV.

2. That with regard to the contents made in paragraph 1 of the application the respondents beg to state that the Department had to modify the existing policy of fixing seniority on promotion on the lines of the judgement of the Hon'ble CAT Principal Bench New Delhi upheld by Supreme Court and Judgement and order dated 11.4.97 in OA No 623/96 by the Hon'ble CAT Ahmedabad upheld by High Court Gujarat. ✓
3. That with regard to the contents made in paragraph 2,3 & 4 of the application the respondents have nothing to comment.
4. That with regard to the contents made in paragraph 4.3 of the application the respondents have nothing to comment.
5. That with regard to the contents made in paragraph 4.3 of the application the respondents beg to state that reversion order was issued to accommodate only eligible official to Grade IV against 10% posts in BCR scheme as per Supreme Court and CAT judgements. The applicant was reverted as per judgement of the Hon'ble Tribunal Ahmedabad and there is no provision to issue any prior notice or show cause and Department has not violated the principles of Natural Justice. ✓
6. That with regard to the contents made in paragraph 4.4 of the application the respondents beg to state that there is no provision to issue a notice or show cause. The action taken by Department is correct. It is further clarified that Gr.IV was to be given to the official in the restructured cadre who were senior to the official of old cadre placed in Gr IV because of their seniority in basic cadre.
7. That with regard to the contents made in paragraph 4.5 of the application the respondents have nothing to comment.
8. That with regard to the contents made in paragraph 4.6 of the application the respondents beg to state that the action was taken as per the judgement of Hon'ble Supreme Court and CAT/Ahmedabad.
9. That with regard to the contents made in paragraph 4.7 of the application the respondents beg to state that the promotion to the Gr IV was to be reviewed and the same was to be regulated as per the court judgement restricting the number of officials thus promoted strictly to 10% of the posts placed in GR III.
10. That with regard to the contents made in paragraph 4.8 of the application the respondents beg to state that the promotion was regulated as per the court judgement and did not violate the principle.
11. That with regard to the contents made in paragraph 5.1 to 5.7 of the application the respondents beg to state that the applicant was reverted as per the court order.

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12. The scheme for promotion to Gr IV strictly against 10% of the posts placed in Gr III and the Department cannot increase the post from 10%.
 13. That with regard to the contents made in paragraph 6 & 7 of the application the respondents have nothing to comment.
 14. That with regard to the contents made in paragraph 8.1 to 8.5 of the application regarding reliefs sought for the respondents beg to state that the applicant is not entitled for any relief sought for and hence the application is liable to be dismissed with cost.
 15. That with regard to the contents made in paragraph 9.1 of the application for the interim relief prayed for the respondents beg to state that the applicant is not entitled for the interim relief prayed for and hence the application is liable to be dismissed with cost.
 16. That with regard to the contents made in paragraph 10,11 & 12 of the application the respondents have nothing to comment.
 17. That the respondents beg to state that the applicant knowing the judgement of the court has filed the application to mislead the Hon'ble Tribunal and to create administrative problem.
 18. That the respondents submit that in fact there is no merit in this case and as such the application is liable to be dismissed with cost.

In the premises, it is therefore prayed that your lordship would be pleased to hear the parties, peruse the records, and after hearing the parties further be pleased to dismiss the application with cost and/or further be pleased to pass such further or other orders as your lordship may deem fit or proper.

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VERIFICATION

I, Shri C. Murmu Vigilance Officer, o/o the Chief General Manager,
North Eastern Telecom Circle, Shillong – 793 001 as authorised do hereby solemnly
declare that the statements made above in the Petition are true to my knowledge, belief
and information and I sign the verification on this26th..... day of
.....July..... 2000.


26/7/20
DECLARANT

ANNEXURE A1

No. 27-4/87-TE
Govt. of India
Department of Telecommunications
(Telecom Commission)
TE-2 Section

1056
AD (Exam)
22

Date: 16-10-1969.

To

All Heads of Telecom. Circles/Metro Districts/Maintenance Regions/Projects Circles.
All Heads of other Administrative Offices.

Sub: Recruitment in the cadre of JTO in the Dept. of Telecom.

Sir,

As per recruitment rules for the cadre of JTO, 55% recruitment is from the market amongst the candidates having either B.E. in Elec or B.Sc. 1st Class with Physics and Mathematics. Out of the remaining 35% posts, the recruitment is made amongst the departmental candidates.

2. The proposal for restructuring of cadres in Groups 'C' & 'D' with a view to rationalise and eliminate overlapping duties and also to meet the requirements of the changing technologies, has recently been approved by the Government.

3. It has now been decided that for the posts of Junior Telecom Officers, the departmental recruitment quota of 35% will be filled through competitive examinations open to all cadres and from those officials who possess a three-years Engineering Diploma after 10th standard or 1st Class in B.Sc. with Physics and Mathematics. This arrangement will be during transitional stage. However for the department examinations i.e. up to 1970 and the period in 1971 the existing recruitment rules for the departmental employees will be followed.

4. As a long-term measure for the recruitment of JTOs, 65% quota for open recruitment will be filled by graduates who are engineering graduates. In case of non-availability of graduates, candidates with 1st Class B.Sc. with Physics and Mathematics will be considered.

5. The existing recruitment rules and instructions issued separately.

Yours faithfully,
16-10-69

Copy to:-

- i) All recognised Unions/Associations/Representatives.
- ii) The Secretary, Staff Side, Permanent J.M.
- iii) Guard File.

Government of India
Ministry of Communications
Department of Telecom.
Sanchar Bhavan, New Delhi-1.

20 (3) (S)
VI 0011005
212/13.11.95

No.22-6/94-TE-II

To

Dated, 13-12-95.

All Heads of Telecom. Circles,
Metro Districts, Mtce. Regions,
Project Circles and all other
Heads of Administrative Units.

Sub:- Procedure for promotion to Gr.IV (scale of Rs.2000-3200)
against 10% posts in the BCR Scheme.

.....

Your kind reference is invited to the instructions contained in this office letters No.27-4/87-TE-II dated 7.1.94 and 12.2.94 and letter No.27-1/94-TE-II dated 30-8-94 which stipulate promotions to Gr.IV in the scale of Rs.2000-3200 (against 10% posts in the BCR), as per the seniority position in Grade-III. The said procedure had been challenged by certain officials before the CAT Principal Bench New Delhi by filing OA No.1455/91.

The Hon'ble CAT vide its judgement dated 7.7.92 directed that the promotions to 10% posts in the scale of Rs.2000-3200 would have to be based on seniority in the basic cadres subject to fulfillment of other conditions of the BCR viz. those who are regular employees as on 1.1.90 and had completed 26 years of service in the basic grade (including higher grades). The DOT filed an SLP against the said judgement and the Hon'ble Supreme Court vide their order dated 9.9.93 upheld the judgement of CAT Principal Bench, New Delhi. Similar applications had also been filed before other CAT Benches in the country and in those cases as well, the judgements in line with the judgement of Principal Bench, New Delhi had been given.

Review of the existing procedure of promotion to Grade-IV now designated as Chief Section Supervisor) under the BCR Scheme has been under consideration in view of the judgement of Principal Bench, New Delhi upheld by the Supreme Court. It has now been decided in supersession of earlier instructions that promotion to the said Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic Grade. The promotions would be subject to fitness determined by the DFC as usual.

The cases of promotion to the said Grade-IV in the scale of Rs. 2000-3200 against 10% posts under the ECR scheme may be reviewed and the same may be regulated accordingly restricting the number of officials thus promoted strictly to 10% of the posts placed in Grade-III (scale of Rs. 1500-2660) as provided in the ECR Scheme.

B. S. Verma
(B.S. VERMA)
Director (TE)

Copy to:-

1. P.S. to Chairman, Telecom. Commission, New Delhi.
2. All Members/Advisor, Telecom. Commission, New Delhi.
3. Additional Secretary(1), D.O.T. New Delhi.
4. DDG(E&IT)/DDG(Pers.)/DDG(TS)/DDG(SR)/DDG(NM), DOT New Delhi.
5. Dir(TE)/Dir(ST-I)/Dir(ST-II)/Dir(SR)/Dir(FA-I)/Dir(TSP), DOT, New Delhi.
6. ADG(NCG)/ADG(SGT)/(TE)/STN/Pers. (FA-I) DOT, New Delhi.
7. Budget/FA-I/TE-I/TE-II/SIG, I, II, III, NCG, STN, I, II/Sections DOT New Delhi.
8. All recognised Federation/Unions/Associations.
9. Secty. Staff Departmental Council(JCM).
10. All Members, Staff Departmental Council(JCM).
11. O.L. Section for Hindi Version.
12. Spare copies-50.

T. R. Garg
(T.R. GARG) 13/1/85
Section Officer(TE-II)

ANNEXURE R3 16

GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
SANCHAR BHAVAN, NEW DELHI

No. 22-6/94-TE-II

Dated 22nd August, 1997

To

✓ All Head of Telecom Circles,
MTNL, Delhi/Mumbai.

Sub: Procedure for promotion to Grade-(IV) (Rs. 2000-3200) against 10% posts in the BCR Scheme.

Kindly refer to this Office letter of even number dated 01.03.1996 on the above subject wherein it was clarified that the normal rules of reservation would apply to promotion in Grade IV.

Hon'ble CAT, Ahmedabad vide its judgement dated 11.04.1997 in O.A. No 623/96 with MA/660/96 has passed an order that reservation roster will not apply in this case. A copy of the order is enclosed herewith.

Accordingly, you are hereby directed to follow these orders for any promotion to Grade IV with effect from 11.04.1997.

This will be, however, subject to the outcome of Writ Petition being filed in the Gujarat High Court against the CAT Order.

This may be treated as MOST URGENT.

(BAL KISHAN)
Director (MPP)

No. 22-6/94-TE-II/PE.I

Dt. at Shillong the 2nd Sept '97

Forwarded for information and necessary action to :-

TDMS- SH/AGT/DUP/IMP/ITH/ATL

SETS- SH/AGT/IMP/IMP/ITH/ATL

DE I/C CTSD/CH-9

DDP (HRD)/ADP CC/SH

For Chief General Manager
N.E. Telecom. Circle Shillong

9
CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

30

O.A. NO. 623/96 with MA/660/96
~~File NO.~~

DATE OF DECISION 11th April 1997

All India Non-Schedule Caste/
Schedule-Tribe-Telecom Employees' Association and another Petitioner

Mr. P.H. Rathak

Advocate for the Petitioner (s)

Versus

Union of India & another

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

FORAM

the Hon'ble Mr.

V. Ramakrishnan,

Vice Chairman

the Hon'ble Mr.

T.N. Bhat,

Member (J)

32/4/97

22
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(1) All India (Non Schedule Caste/
Schedule Tribe Telecom
Employees' Association
Through its Secretary
Shri A.K. Patel
having its office at
"Nirav" B/22, Vasoya Park
B/h Giriraj Vibhag-2
Chandlodia, Ahmedabad 382481.

(2) J.E. Solanki
C.T.O. Ahmedabad ... Applicants

Advocate: Mr. P.H. Pathak

Versus

(1) Union of India
Notice to be served thro
Chairman
Telecom Commission
Deptt. of Telecom
20, Ashoka Road
New Delhi-110 001.

(2) Chief General Manager
Telecommunication
Gujarat Circle
Khanpur, Ahmedabad. Respondents

Advocate: Mr. Akil Kureshi-

ORAL ORDER

IN

GA/623/96 with RA/660/96

Dated 11th April 1997

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

We have heard Mr. Pathak for the applicant
and Mr. Akil Kureshi for the respondents.

2. The question involved in this case is whether the
rules for reservation will apply to upgraded posts.
It is not in dispute that the posts involved are in fact
upgraded posts which do not carry any change in the
duties and responsibilities but certain percentage of
posts was fixed for grant of the higher pay scales.
The reservation rules were applied while filling up the

92
upgraded posts. Mr. Pathak refers to the judgement of the Jabalpur Bench in the case of Samsudden & Others vs. Union of India and others in O.A. 450/91 dated on 9.5.96. He makes available a copy of this to the Court and also to Mr. Kureshi. A copy of the judgement is taken on record. He also says that Jabalpur Bench of Tribunal has considered an identical issue in the case of Ashok Kumar Shrivastava and another vs. Union of India and Others (1987) wherein the A.M.C. 385 which was upheld by the Supreme Court on merits. Mr. Pathak makes available copy of the Supreme Court Decision dated December 3, 1987 wherein the Apex Court affirmed the judgement of the C.A.T. - Jabalpur Bench along with the reasons given by the C.A.T. and dismissed the Special Leave Petition. A copy of the Supreme Court Judgement is taken on record. Mr. Pathak says that Ashok Kumar Shrivastava's case is also identical and in fact, Jabalpur Bench refers to this case in para 12 of its judgement. He says that the action of the department in applying the reservation rules for upgraded posts is clearly illegal in terms of the Court decision and the O.A. should be allowed and that the order dated 1.3.96 issued by the department in this regard as at Annexure A-1 should be quashed.

3. Mr. Kureshi Counsel for the respondents has gone through the judgements relied upon by Mr. Pathak. Mr. Kureshi says that he is not able to distinguish the present O.A. from the cases of Shrivastava and Samsudden. He however brings out that in Jabalpur case there is a direction that the persons who are wrongly promoted should still be retained whereas in the present

12 -1-

O.A. the applicant, had not impleaded any of the officials belonging to the reserved categories who had been promoted by following the reservation policy. 23 33

4. In the facts and circumstances of the case and in the light of the judgements referred to supra in particular the decision of the Supreme Court we hold that the action of the department in applying the reservation roster for upgraded posts as in the present case cannot be sustained. We accordingly quash the letter dated 1.3.96 as at Annexure A-1 and direct the department to take appropriate steps in the light of the law laid down by the Supreme Court in Ashok Kumar Shrivastava's case.

In other words we direct the department to take appropriate action for effecting promotions to the upgraded posts without applying the reservation roster. If the applicants are considered fit for such promotions, they shall be promoted from the relevant date but no arrears would be payable to them.

We also make it clear that the department shall take further action in accordance with law in respect of those officials belonging to the reserved categories who had been promoted and who in terms of the judgement would not be eligible for such promotion. The whole exercise should be completed within four months from

the date of receipt of a copy of this order! c/s - *Shri*
5. M.A. 660 of 96 is disposed of as having become
infructuous.

Sd/-
(T.N. Bhat)
Member (J)

Sd/-
(V. Ramakrishnan)
Vice Chairman

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Icer (TE-II)