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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO. 4

( See Rule 42 )

# In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 65/2000 OF 199

Applicant(s) Sri Prakash Chandra Bhattacharjee

Respondent(s) Union of India and others

Advocate for Applicant(s) Mr. M. Chandra,  
Mr. N.D. Gossain

Advocate for Respondent(s) Mr. G.N. Chakrabarty  
C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
	25.2.00	Present : Hon'ble Mr. Justice D.N. Baruah, Vice-Chairman and Hon'ble Mr. G.L. Sanglyine, Administrative Member.
		On the prayer of Mrs. N.D. learned counsel for the applicant case is adjourned till 28.2.00.
	mk	Member
458832 14.2.2000 24/2/2000	28.2.00	Then on 22.3.00
	28.3.2000	On the prayer of Mr A. Deb Roy, learned Sr. C.G.S.C. case is adjourned 30.3.2000 for consideration of admission
	pg	Mem

es of the Registry

Date

Order of the Tribunal

15.3.00

On the prayer of Mr. M.Chanda, learned counsel for the applicant the case is adjourned till 16.3.00.

List on 16.3.00 for consideration of admission.

Member(J)

Member(A)

trd

16.3.2000

Mr M.Chanda, learned counsel for the applicant once again prays for adjournment, for correction of some errors in the application.

List on 23.3.2000 for consideration of admission. Mr Chanda may rectify the errors in the application as prayed for.

Member(J)

Member(A)

pg

23.3.00

On the prayer of Mr. M. Chanda, learned counsel for the applicant, the case is adjourned till 28.3.2000.

List on 28.3.2000 for consideration of admission.

Member

trd

30.3.2000

Heard Mr M.Chanda, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents.

Application is admitted. Issue notice on the respondents.

List on 3.5.2000 for written statement and further orders.

Member

pg

4-2000

Service of notices prepared and sent to The D. Section for issuing of the same to the Respondents through Regd. post with A.D. vide

D.No. 1030 dt 10/3/00

Dtd. 7-4-2000

31.5.00

1075 has not been filed. No. 2/13 is available. Adm. n. 26.5.00

370

4-1

③

MA. 65/00

7

Notes of the Registry

Date

Order of the Tribunal

28.5.00

There is no Bench today.

Adjourned to 22-6-00.

10/0  
h

22-6-00

There is no Bench today.

Adjourned to 18-7-00.

10/0  
h

18-7-00

There is no Bench today.

Adjourned to 8-8-00.

10/0  
h

8-8-00

There is no Bench.

Adjourned to 13-9-00.

10/0  
h

13-9-00

No Bench. To be listed on 21-11-00.

10/0  
h

21.11.00

Written statement has already been filed. List for hearing on 21.3.01. The applicant may file rejoinder if any, within two weeks.

Vice-Chairman

lm

A. J. J. J.  
2/11

21.3.01

On the prayer of learned counsel for the applicant case is adjourned to 15.5.01 for hearing.

Member

Vice-Chairman

lm

7-11-2000

Written Statement has been filed by the Respondent.

Rejoinder

No. Rejoinder has been filed.

20.3.01

Notes of the Registry	Date	Order of the Tribunal
	15.5.01	<p>The case is adjourned on the prayer of learned counsel for the applicant.</p> <p>List on 12.6.2001 for hearing.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>17.5.2001</p> <p>Rejoinder submitted by the applicant in reply to the W/S filed by the Respondents.</p>	<p>bb</p> <p>12.6.01</p>	<p>On the request of Mr. B. Benarjee, learned counsel for the applicant, the case is adjourned to 3-8-2001 for hearing.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><i>[Signature]</i></p> <p>The case is ready for hearing as regard W/S and rejoinder.</p> <p><i>[Signature]</i> 11.6.01</p>	<p>bb</p> <p>3.8.01</p> <p>pg</p>	<p>Heard counsel for the parties.</p> <p>Hearing concluded. Judgment delivered in open Court, kept in separate sheets.</p> <p>The application is allowed in terms of the order. No order as to costs.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>16.8.2001</p> <p>Copy of the Judgment has been sent to the Dy. Sec. for issuing the due to the Applicant as well as to the Dy. Sec. for the Respondent.</p> <p><i>[Signature]</i></p>		

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 65 of 2000.

3-8-2001.  
Date of Decision.....

Shri Pravash Chandra Bhattacharjee

-----Petitioner(S)

Sri B. Banerjee and Ms N.D.Goswami,

-----Advocate for the  
Petitioner(s)

-Versus-

Union of India & Ors.

-----Respondent(s)

Sri A.Deb Roy, Sr.C.G.S.C.

-----Advocate for the  
Respondent(s)

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

~

A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 65 of 2000.

Date of Order : This the 3rd Day of August, 2001.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Pravash Chandra Bhattacharjee,  
Son of Paresh Chandra Bhattacharjee  
Happy Valley Road,  
P.O. Rangirkhari, Silchar-788005. . . . Applicant

By Advocate Sri B.Banerjee and Ms N.D.Goswami.

- Versus -

1. Union of India  
represented by the Secretary to  
the Govt. of India,  
Sanchar Bhawan, New Delhi.
2. The Chief General Manager,  
Telecom, Assam Circle,  
Guwahati-7.
3. The Deputy General Manager (A)  
Office of the Chief Manager,  
Telecom, Assam Circle,  
Guwahati-7.
4. The Adviser (HRD)  
Department of Telecom,  
Sanchar Bhawan, New Delhi.
5. The Assistant General Manager (Admn.)  
Office of the Chief General Manager,  
Telecom, Assam Circle, Guwahati-7. . . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 assailing the legality and correctness of the action of the respondents in not considering the case of the applicant for promotion in right perspective. This is the second round of litigation by an employee of the Telecom department who attained the age of superannuation in October 1994. Earlier the applicant

came before this Tribunal claiming his entitlement to the benefit of promotion to the post of TDE with effect from 24.11.92 when some officers were promoted or at least from 14.1.93 or 25.1.93 when different batch of officers were promoted. According to the applicant because of certain adverse entries in his ACR for the period from 1.5.91 to 24.12.91 he was not selected by the DPC although the adverse remarks were not justified. His application was entertained by this Tribunal and numbered as O.A.166/93. The applicant in the aforementioned O.A. prayed for quashing of the afore-said adverse entries with a direction to allow him the benefit of promotion to the post of TDE with retrospective effect from the date the first DPC may have been constituted for the purpose of promotions made under Memo dated 24.11.92. Since the applicant retired from service he only sought for benefit of notional promotion retrospectively for raise of his retiral benefit. By order dated 6.11.95 the Tribunal issued the following directions :

"The Chief General Manager Telecom, Assam Circle (the present incumbent of the said office) is directed to examine the representations of the applicant dated 22.3.93 and 23.7.93 respectively filed against the impugned adverse remarks relating to the period from 1.5.91 to 24.12.91 and to take a decision in accordance with the prescribed rules confirming or rejecting the adverse remarks.

The aforesaid authority will intimate the decision on the representations as may be taken by him to the applicant.

In the event of the aforesaid authority being satisfied that the adverse remarks in question should be deleted or expunged the said authority shall pass necessary orders in that behalf. It will also be open to the said authority thereafter to consider the question as to whether the applicant can be given benefit of promotion on notional basis retrospectively, and if so take necessary steps.

If the said authority decides upon giving notional promotion retrospectively



he shall pass necessary orders for payment of difference of monetary benefit calculated on that basis. In that connection the fact that he had actually been officiating as TDE at Tezpur as well as at Silchar may be taken into account.

The authority will be at liberty to take the decisions as deemed appropriate and necessary to be taken in accordance with the rules and in the light of the discussion in this order.

The decisions as above to be taken within 3 months from the date of communication of this order & conveyed to the applicant.

Subject to the above directions the O.A. is disposed of. No order as to costs."

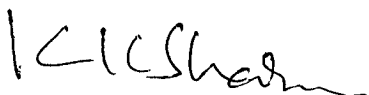
Pursuant to the direction of the Tribunal by order dated 25.1.99 the adverse entries for the period from 1.5.91 to 24.12.91 were expunged as per the modified entry. The relevant portion of the modified ACR is re-produced below :

<u>"Item</u>	<u>Existing entry</u>	<u>Modified entry</u>
Knowledge of sphere of work administrative	Susceptible to pressure	Good
Decision making ability	Able to make objective decision. However, drive to implement such decision was lacking due to prevailing situation.	Able to make objective decision
Initiative	The officer has tendency to buckle under adverse foreseen situation	Good
General Assessment	On account of long experience in the deptt. the officer is well conversant with various aspects of divisional working. However, there is scope for improvement in managerial and technical skill	On account of long experience in the deptt. the officer is well conversant with various aspects of divisional working."

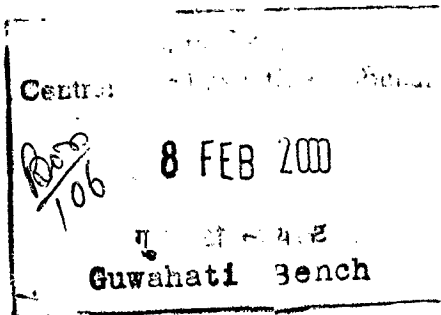
2. Heard Mr B.Banerjee, learned counsel appearing for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents at length.

3. If the adverse entry was modified naturally the respondents ought to have taken steps as per the direction given by the Tribunal in the O.A.166/93 for providing him the benefit of promotion on notional basis retrospectively as it appears that the first DPC was held on 24.11.92 in which juniors were also considered for promotion. The respondents ought to have considered his case for giving notional benefit on and from 24.11.92, namely, the date on which his juniors were promoted. It has been stated that the applicant already held the post of TDE and officiated in that post till his retirement. In the circumstances we direct the respondents to take necessary steps for providing the benefit of promotion on notional basis retrospectively on and from 24.11.92 and also provide him the necessary monetary benefit calculated on that basis and if necessary by holding a review DPC. The applicant since retired, the respondents are directed to complete the above exercise within two months from the date of receipt copy of this order.

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

  
( K.K.SHARMA )  
ADMINISTRATIVE MEMBER

  
( D.N.CHOWDHURY )  
VICE CHAIRMAN



District -

IN THE CENTRAL ADMINISTRATION TRIBUNAL  
GAUHATI BENCH - GUWAHATI.

An application under Section 19 of Central Administrative  
Tribunal Act, 1995

Title of the case - : O.A.No. .... 65 1992000

Name of the Parties :

Sri Pravash Chandra Bhattarcharjee.

..... Appellant.

- Versus -

Union of India & ors.

..... Respondents.

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Date -

Filed by -

N.D. Goswami  
(M.K. Majumdar)  
Advocate.

11  
Filed by me app 21/02/00  
N.D. Goswami  
Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GAUHATI BENCH - GUWAHATI.

14

O.A.No. 65...../99

- BETWEEN -

Shri Pravash Chandra Bhattachajee  
S/o Paresh Chandra Bhattachajee  
Ex.- Deputy Telecom District Engineer  
(Since Retired)

R/o Happy Valley Road,  
P.O. Rangirkhari, Silchar - 788005.

..... Applicant

- AND -

1. Union of India  
Represented by the Secretary to the  
Govt. of India,  
Sanchar Bhawan, New Delhi.
2. The Chief General Manager,  
Telecom, Assam Circle, Guwahati - 781 007.
3. The Deputy General Manager (A)  
Office of the Chief Manager,  
Telecom, Assam Circle,  
Guwahati - 781 007.
4. The Adviser (HRD)  
Department of Telecom,  
Sanchar Bhawan, New Delhi.
5. The Assistant General Manager (Admn.)  
Office of the Chief General Manager,  
Telecom, Assam Circle, Guwahati - 781007.

..... Respondents .

(Contd.....2)

Sri Pravash Chandra  
Bhattachajee

(2)

1. Particulars of the order against which the application is made :-

(i) The application is directed against the order No. STES-21/71/93-94/21 dated 10.12.98 passed by the Assistant General Manager (Admn.) Telecom Circle, Guwahati communicated vide letter No. TDM/SC/Misc/99 dated 28.1.99 treating that even if the adverse entry is expunged the overall grading will remain "average" which is below the minimum bench mark of good resulting in denial of notional promotion w.e.f. 24.11.92 to the post of Telecom District Engineer with all consequential benefits, though in the subsequent order No. STES-21/71/93-94/21 dated Guwahati the 25.1.99 issued by the Asstt. General Manager (Admn.) communicated by the Telecom District Manager dated 9.2.99 whereby the adverse entry recorded for the period from 1.5.91 to 24.12.91 has been expunged which has been shown as "good" and the circular dated 10.3.89 has no bearing in denying the notional promotion w.e.f. 24-11-92 to the Post of Telecom District Engineer with all consequential benefits.

The Applicant inspite of his best efforts could not collect the office memorandum circular vide DOP TOM No. 22011/5/85-Estt. dated 10.3.89 and the Hon'ble Tribunal may be pleased to direct the Respondents to produce the said circular O.M. dated 10.3.89 at the time of Hearing to subserve the cause of just justice.

2. Jurisdiction of the Tribunal :-

The Applicant declares that the cause of action has arisen within the jurisdiction and the subject matter of the order against which the Applicant seeks redressal are within the Jurisdiction of this Hon'ble Tribunal.

3. Limitation :-

The Applicant further declare that, the Application is made within the Limitation period as prescribed in Section 21 of the Administrative Tribunal Act, 1985.

(Contd.....3)

Sd/- Praveesh Chandra,  
Bhattacharya

4. Facts of the Case :-

- 4.1 That the Applicant states that, he was initially appointed as Telephone Operator in the scale of Rs.60/- - Rs. 170/- vide order dated 14.12.55 and he was posted at Agartala. On expiry of practical training he joined in the said post on 12.2.56.
- 4.2 Thereafter he was appointed as Engineering Supervisor Telegraphs in the scale of Rs. 150/- - Rs. 300/- with effect from 16.8.61 vide DPT, Shillong No. Staff- DC-9/TE/58/11 dated 15.11.61. Thereafter vide order dated 10.10.72 he was promoted to the Post of Asstt. Engr. Wireless in the scale of Rs. 650/- - Rs. 1200/- and posted at Silchar.
- 4.3 That the Applicant was placed under control of D.E.T. Silchar as S.D.O. Telegraphs w.e.f 6.7.76 till 9.5.79. Thereafter he was transferred and posted as S.D.O. Phones, Agartala and he was allowed to cross the efficiency Bar with effect from 1.10.78 and he was confirmed in the cadre of T.E.S. Grade "B" w.e.f. from 1.10.78 vide order dated 12.8.81 in the meantime he was transferred as Dy. D.E.T. on 15.7.81 to Tezpur and joined in the said post on expiry of Leave on 15.10.81, while serving as Dy. D.E.T. at Tezpur he was temporarily promoted on Adhoc basis to I.T.S. Grade 'A' officer officer and posted to officiate as TDE Tezpur w.e.f. 21.12.87 to 25.2.88 in the scale of Rs. 3,000/- - Rs. 4,500/-. On completion of 12 years service in the substantive capacity he was promoted temporarily to the Post of Senior Asstt. Engineer in scale of Rs. 2,200/- to Rs. 4,000/- vide order dated 19.10.90.

This promotion was made permanent as Senior Asstt. Engineer w.e.f. 31.10.90 vide order dated 18.11.91 while he was serving as Senior Asstt. Engineer, he was allowed

(Contd .....4)

Sri Parash. chandra  
Bhattacharya

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(4)

to officiate as T.D.E. Tezpur w.e.f. 24.11.90 to 13.12.90. Again he was allowed to officiate as T.D.E w.e.f 1.5.91 to 16.12.91 vide order dated 26.4.91.

4.4 The Applicant states that while serving at Tezpur as T.D.E (Officiating) he was transferred and posted as A.E. HRD/Dy. TDE, Silchar vide order dated 3.12.91 and thereafter he was temporarily promoted to officiate as TDE for a period for 90 days w.e.f. 29.4.92. Again, after the aforesaid period he was allowed to officiate as TDE for<sup>a</sup> period of 90 days w.e.f 3.12.92.

4.5 That the Applicant after putting 38 years of service was superannuated in the month of Oct'1994 as Dy. T.D.E. Silchar.

4.6 That the Applicant states that, the Departmental Promotion Committee was held on 24.11.92, 8.1.93, 14.1.93, 25.1.93 and 4.5.93 but his case for promotion was not placed before the D.P.C. for the reason best known to them, though the case of his juniors was placed before the D.P.C. and on the recommendation of the D.P.C. the Juniors to him were promoted to the next higher grade which amounts to hostile discrimination.

4.7 That the Respondent vide D.O.No, CGNT-15/CR MOV dated 1.3.93 issued by the Chief General Manager, Assam Telecom circle and communicated the same to the applicant that the entries during the period from 1.5.91 to 24.11.91 were adverse directing him to overcome those adverse entries mentioned in the annexure in order to enable him to earn good entries in future against the items as indicated in the Annexure.

A copy of the order dated 1.3.93 is annexed hereto as Annexure -1.

4.8 That the Applicant states that, on receipt of the said

(Contd.....5)

Sri Prakash Chandra  
Bhattacharya

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(5)

communication dated 1.3.93 he made a representation on 22.3.93 contending interalia as follows :-

- a) That under the rule the adverse entry if made, it should be communicated within 45 days from the date of entry which was not been adhered to in the instant case and as a result his case for promotion was not considered by the D.P.C.
- b) That, during the period from 1.5.91 to 24.12.91 he was allowed to officiate as T.D.E. wherein an abnormal situation prevailed due to militants violent activities resulting in uncongenial working atmosphere during that period which has been admitted by the Respondents.
- c) That adverse entry would show that against the column 'administration', it was written as succceptible to pressures which is not an adverse in service jurisprudence.
- d) That in regard to decision making, the comment were able to make objective decision. However, drive to implement such decision was lacking due to prevailing situation.
- e) That against the column initiative the comments was that, the officer has tendency to buckle under adverse unforeseen situation.

A copy of the representation is annexed as  
Annexure -2.

4.9 That the Applicant states that the adverse entry as communicated and against which a representation was made would show that, there was no adverse entry as required under the law and the case of the Applicant ought to have placed before the Departmental Promotional committee for

(Contd.....6)

*Sd/- Ravash Chandra  
Bhatnagar*



(6)

consideration his case for promotion to the post of T.D.E. But, the Respondents did not make any endeavour to dispose of his representation dated 22.3.93 resulting in denial of promotion and allowing him to superannuate on attaining the age of superannuation.

4.10 That the Applicant states that his case having not being considered by the Respondents approached this Hon'ble Tribunal being OA No. 166/93 for adjudication of his grievances caused due to non consideration of his promotion to the post of T.D.E. to which he was eligible w.e.f. 24.11.92 being the senior most Group B officer only on the ground of some adverse entries made in his A.C.R. by the Respondents, without any application of mind, and that too without communicating the same within the time specified and hence prayed for quashing the adverse entries in order to get his promotion w.e.f. 24.11.92.

4.11 That the Applicant states that, the Respondent had entered appearance in O.A.No. 166/93 and filed their written Statement admitting the case of the Applicant but did not specify in the pleadings as to whether his case for promotion was placed before the D.P.C. held on 24.11.92 and in subsequent DPC held as stated hereinabove.

4.12 That the Applicant states that the O.A.No. 166/93 came up for hearing before this Hon'ble Tribunal and the Hon'ble Tribunal after hearing the parties was pleased to dispose of the Appeal on 6.11.95 with the following observation :-

1. The Chief General manager Telecom, Assam Circle ( the present incumbent of the said office) is directed to examine the representations of the applicant dated 22.3.93 and 23.7.93 respectively filed against the impugned adverse remarks relating to the period from 1.5.91 to 24.12.91 and

(Contd.....7)

Sd/- Pravarsh Chandra  
Bhattacharjee

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(7)

to take a decision in accordance with the prescribed rules confirming or rejecting the adverse remarks.

2. The aforesaid authority will intimate the decision on the representations as may be taken by him to the applicant.
3. In the event of the aforesaid authority being satisfied that the adverse remarks in question should be deleted or expunged the said authority shall pass necessary orders in that behalf. It will also be open to the said authority thereafter to consider the question as to whether the applicant can be given benefit of promotopm on notional basis retrospectively and if so take necessary steps.
4. If the said authority decides upon giving notional promotion retrospectively he shall pass necessary orders for payment of difference of monetary benefits calculated on that basis. In that connection the fact that he had actually been officiating as TDE at Tezpur as well as at Silchar may be taken into account.
5. The authority will be at liberty to take the decisions as deemed appropriate and necessary to be taken in accordance with the rules and in the light of the discussion in this order.
6. The decisions as above to be taken within 3 months from the date of communication of this order & conveyed to the applicant.

A copy of the order dated 6.11.95 is annexed as Annexure -3.

- 4.13 That the Applicant states that, the copy of the order passed in the OA No. 166/93 has been personally served to the Chief General Manager of Telecom, but the Chief General Manager

(Contd.....8)

Sd/- Parash Chandra  
Rohette Chongu

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(8)

did not make any endeavour to comply with the order passed by the Hon'ble Tribunal on 6.11.95. The respondents being failed to comply with the order, the Applicant made a representation on 3.6.96 annexed a copy of the order with a request with a that his case was directed to be disposed off within a period of 3 months as indicated in the order of the Hon'ble Tribunal, but it did not yeild any result.

A copy of the representation dated 3.6.96 is annexed as Annexure -4.

4.14 That the applicant states that, when no communication is made from the respondent Authorities ever after lapse of six months the applicant send Advocate Notice dated 18.12.96 under registered A/D which was duly received and replied by the Deputy General Manager dated 30.12.96 by which it has been communicated that the direction of this hon'ble Tribunal has been sent to the adviser (H.R.D.) department of Telecom being the competent authority to decide the case.

A copy of the Notice dated 18.12.96 and reply of the notice dated 30.12.96 are annexed herewith and marked as Annexure 5& 6 respectively.

4.15 That the applicant states that, the Authority even after receipt of the order of the Hon'ble Tribunal, communication/representation of the applicant and his Advocate, could not decide the matter till December 1997 and another communication in the form of legal notice was sent by the Advocate of the applicant reiterating the facts for an early disposal and the Assistant General Manager after lapse of an year inform the applicant by letter dated 28.1.99 that the competent authority is strickly taking action in accordance with the direction of the Hon'ble Tribunal as follows :-

(Contd.....9)

Sri Pravash Chandra  
Bhattacharya

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(9)

- 1) The Authority has taken active action regarding expungement of adverse entries in the ACR (1991-1992).
- 2) It is found that even if the above excised result in the expungement of the adverse entry, the over all grading will remain 'Average' which is below the minimum bench mark of "Good" prescribed for induction into group A service vide DOP & T. OM No. 22011/5/86 Estt. dated 10.3.89.

Copy of the advocate notice dated 19.12.97 and letter dated 10.12.98 communicated by letter dated 28.1.99 are annexed herewith and marked as Annexure 7,8 and 9 respectively.

- 4.16 That the applicant states that, thereafter the Telecom District Manager vide his letter dated 9.2.99 communicated the decision regarding implementation of the order and judgement dated 6.11.95 whereby the adverse remarks recorded in the ACR were considered vague and not based on materials on record and accordingly modified the said remarks in certain "Good" against the adverse entries.

Copy of the decision dated 25.1.99 communicated vide letter dated 9.2.99 are annexed herewith and marked as Annexure 10 and 11 respectively.

- 4.17 That the applicant states that, though respondent Authority even after the lapse of four years could come to the decision to modify the entries in favour of the applicant as communicated, they remained firm to their illegal action of not giving any promotion/notional promotion.

- 4.18 That the Applicant states that, the adverse entries as communicated on 1.3.93 would reveal that there were no adverse

(Contd....10)

Sri. Pravash Chandra  
Bhattacharjee

B21

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entries at all in his ACR and on the basis of these alleged adverse entries his case was not placed before the DPC for consideration of his case for promotion to the post of TDE<sup>Whereas</sup> the case of his Junior were placed before the DPC and on the recommendation of the DPC the juniors are promoted superseding the claim of the Applicant which amounts to hostile discrimination in the matter of promotion.

4.19 That the Applicant states that the order communicated on 10.12.98 would show that the respondents were predetermined to grading him as "average" though the subsequent communication expunging the adverse entries as "good" would entitle him to consider his case for promotion to the post of T.D.E. w.e.f 24.11.92 when his juniors were promoted to the next higher post.

4.20 That the Application is made bonasafide and for ends of justice.

5. Grounds for relief with legal provisions :-

5.1 For that, the adverse entries as indicated in the order dated 1-3-99 having been modified vide order dated 25-1-99 would show that his performance was good and his entitlement to get his promotion as T.D.E. w.e.f. 24-11-92 can not be denied in the facts and circumstances of the case.

5.2 For that, the order dated 10-12-98 grading the Applicant as average and where in it is alleged that the minimum bench mark of good prescribed for induction in to Group A Service vide DOP TOM No. 22011/5/86-Estt. dated 10-3-89 would bely and/or negative by the subsequent order dated 25-1-99 which has been marked as good and as such his entitlement to the post of TDE can not be denied in the facts and circumstances of the case.

(Contd.....11)

Sd/- Praveen Chandra  
Bhaltecharge

- 5.3 For that, on their own admission by the Respondents in the adverse entries can not be presumed to be an adverse in view of circumstances prevailed during the year 1991 more so, when he was allowed to officiate as TDE and as such the adverse entries as recorded is non-existent in the eye of law and hence his promotion to the post of TDE can not be denied.
- 5.4 For that, the D.P.C. was held on 24-11-92, 8-1-93, 14-1-93, 25-1-93 and 4-5-93 but the adverse entry was communicated on 1-3-93 which relate to the period during 1-5-91 to 24-11-91 and the statutory period for communicating the same have not been done as required under the law, the adverse entry can not be treated for withholding his promotion to the Post of TDE for culpable delay on the part of the Respondents and as such he is entitled to be promoted (notionally) w.e.f. 24-11-92 with all consequential benefits in the facts and circumstances of the case.
- 5.5 For that, the order dated 6-11-95 passed by the Hon'ble Tribunal in O.A. No. 166/93 would show that a specific direction was issued to the Respondents for taking its decision in the matter of his promotion within a period of three months from the date of communication of the order but the Respondents did not comply with the order of the Hon'ble Tribunal which amounts to contempt of the Court and the subsequent order dated 10-12-98 would further reveal their predetermined notion not to give notional promotion to the applicant to the post of TDE with all consequential benefits inspite of its order dated 25-1-99 and his entitlement can not be denied in the facts and circumstances of the case.
- 5.6 For that, during the 38 years of service there was no adverse entries in his A.C.R. and the alleged adverse entries recorded in his A.C.R. during the period 1-5-91 to 24-11-91 made by the

(Contd.....12)

Sri Pravash Chandra  
Bhattacharjee

Chief General Manager, Assam Circle was contrary to the orders passed by the Chief General Manager, Assam Circle allowing him to officiate on promotion to the post of TDE on several occasions would nullify the adverse entries itself and he is entitled to get his promotion notionally w.e.f. 24-11-92 with all consequential benefits.

- 5.7 For that, the order dated 10-12-98 would show that there is total non-application of mind in issuing the order without expunging the adverse entries as has been done subsequently on 25-1-99 and the office Memo/Circular dated 10-3-89 has no bearing in the facts and circumstances of the case and as such direction be issued to the Respondents to pass an order of notional promotion to the post of TDE with consequential benefits with cost amounting to Rs. 1,50,000/- for culpable delay in communication the alleged adverse entries vis-a-vis in taking decisions in the matter of notional promotion with effect from 24-11-92.

6. Details of remedies exhausted :

That, the Applicant states that he has no other alternative and other efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other court :

That the Applicant declares that he has not previously filed any application, writ petition, a suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.

(Contd.....13)

Sri Pravash Chandra  
Dhalla chargee

8. Relief sought :-

In view of the facts and circumstances stated in paragraph 4 of this application, the applicant pray for the following relief.

8.1 That the impugned order No. STES-21/71/93-94/21 dated 10.12.98 grading the applicant as "Average" being non-existent in view of the order dated 25.11.99 <sup>be set aside</sup> and he may be promoted to the post of TDE, ~~to set aside and quashed~~

8.2 That the Respondents may kindly be directed to pass an order promoting the Applicant to the Post of Telecom District Engineer w.e.f. 24.11.92 with all consequential benefits in order to enable him to live a decent standard of living in his old age.

8.3 An order be passed directing the Respondent to pay compensation amounting to Rs. 1,50,000/- for culpable delay in communicating the adverse entries vis-a-vis taking decision in view of the decision rendered by this Hon'ble Tribunal on 6.11.95 in O.A.No. 166/93.

8.4 Cost of the Application

8.5 Any other relief or reliefs to which the Applicant is entitled to as the Tribunal may deem fit and proper.

9. INTERIM ORDER PRAYED :-

During the pendency of this application before this Tribunal, the applicant pray for the following interim order :-

9.1 That the impugned order No. STES-21/71/93-94/21 dated 10.12.98 grading the applicant as "Average" being ~~set aside~~ <sup>be set aside</sup> and ~~quashed~~ <sup>be set aside</sup>



- 9.2 That the Respondents may kindly be directed to pass an order promoting the Applicant to the Post of Telecom District Engineer w.e.f. 24.11.92 with all consequential benefits in order to enable him to live a decent standard of living in his old age.

The above reliefs are prayed on the ground explained in para 5 of the application.

10. That this application has been filed through Advocate.

11. Detail of Postal address :-

- I. IPO No.  
II. Date of Issue  
III. Issued from  
IV. Payable at GPO

02 458832  
14.2.21  
G.P.O.

12. List of Annexures :

As stated in the Index.

Sri Parasli chandra  
Bhattacharya

-15-

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**VERIFICATION**

I Sri Prabhas Chandra Bhattacharyee, son of Late Poresch Ch. Bhattacharyee, aged about 63 years resident of Happy Valley Road, P.O. Rangirkhari, Silchar - 788 005 do hereby verify that the statements made in paragraph 1 to 4 and 6 to 12 of this application are true to the best of my knowledge and belief and those made in para 5 are true to my legal advise and I have not suppressed any material fact.

And I sign this verification on this <sup>February 2000</sup> 8 the day of November 99.

Sri Prabhas Chandra  
Bhattacharyee

DEPONENT

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ANNEXURE - 1

Office of the Chief General Manager,  
Assam Telecom Circle,  
Guwahati - 781 007.

Kranti Kumar,  
Chief General Manager,

D.O. No. CGMT -15/CR mov.  
Confidential/Reg. Date : 1-3-93.

My dear Bhattacharjee,

In the Annual Confidential Report for the period 1-5-91 to 24-12-91, while you have earned good entries against other items, against certain other items, against certain other items the entries are adverse. I am furnishing in the Annexure the items along with the entries earning by you. This is being conveyed to you so that you may become aware of your deficiencies and try to overcome them, so that you are able to earn good entries in future against these items.

Yours sincerely,  
Sd. Kranti Kumar

Enclo : as above  
Sri P.C. Bhattacharjee, A.E., HRD  
O/o Telecom, District Engineer,  
Silchar.

ACR OF SRI P.C. BHATTACHARJEE : A.E. FOR THE PERIOD  
1-5-91 to 24-12-91

Part-III A.3(b)

Item :

Comments :

Knowledge of sphere of work :  
Administrative -

Susceptible to pressures

B. ATTRIBUTES :

2. Decision-making ability :

Able to make objective decisions.  
However, drive to implement such decisions was lacking due to prevailing situation.

3. Initiative :

The officer has tendency to buckle under adverse unforeseen situation situations.

PART IV :

3. General assessment -

On account of long experience in the department, the officer is well conversant with various aspects of divisional working. However, there is scope for improvement in managerial and technical skill.

Sd. Prakash Chandra  
Bhattacharjee

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**ANNEXURE -2**

To

Sri Kranti Kumar,  
Chief General Manager Telecom  
Assam Circle,  
Guwahati - 7.

No. :- PC/CR/Secret/92-93/II

Dated at SC the 22-3-93

(Through the Area Director Telecom, Guwahati)

Sub : Acknowledgement of your D.O.Letter No. CGMT-15/CR-MOV  
dtd 1.3.93 and humble prayer for expunging unwarranted in my  
C/R for the period from 1-5-91 to 24.12.91.

Respected Sir,

With due respect and humble submission, I beg to state that the  
comments transpired by the reporting officer are nor correct and based on  
erroneous assessment of my performance to the within 45 days after 31.3.92  
but it was communicated to me after 1(one) year.

Item wise replies furnished below for favour of your kind  
consideration and sympathetic order for quashing the adverse entries.

Part - III A. 3(B)

ITEM

Comment

Knowledge of sphere of work  
Administrative.

Susceptible to pressures.

Reply :-

This adverse remarks given by the reporting officer has shocked  
in the verge of retirement after rendering efficient service to this department  
for a decade. I would like to mention, I had to officiate as T.D.E./Tezpur  
during the period under review in an abnormal extreme disturbed situation.  
It is a known fact that extremists violent activities during the period created

(Contd.....2)

Sd/- Prakash Chandra  
Bhattacharya

(2)

an uncongenial working atmosphere and because of my sincere diligent dedicated service during that period, I could maintain stable communication & carried out all targetted works under prevailing tremendous tension and pressure as per sweet will of higher authority without susceptibility.

## B. ATTRIBUTES

### 2. Decisions-making ability

#### Comments.

Able to make objectives decision. However, drive to implement such decision was lacking due to prevailing situation.

#### Reply :-

I am not only able to make objective decision but also quite capable of implementing such objective decisions.

All targetted works were carried out with optimum speed instipulated time in keeping with instruction of higher authority. I tried my level best & prevailing circumstances could make me successful to best of my ability. No stone left untouched by me to fulfill the objective decisions. Only 3 K PPX at Tezpur could not be installed due to non availability of recovered switching equipment from JRT because recovery delayed by T/Force on account of abnormal prevailing situation.

#### Item

#### Comments.

Initiative.

The officer has tendency to buckle adverse unforeseen situation.

#### Reply :-

In spite of extreme odd prevailing situation in different extremist situation in different extrimist areas with in my division, when lives of the general people are in danger & movement disturbed, Rly. coomunicated stopped, I well managed all difficults situation as per instructions of the higher authority of the higher authority from time to time. During that critical situation, I not only managed the smooth running of my division but also conversion of all electro-mechanical and CBM, CBNM Exchanges

(Contd.....3)

See Ravesh Chandra  
Bhatte Charge

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to electronics C-DOT, MILT & NEAC Exchange, carried out during that period under my supervision.

I am really pained on getting such remarks after long time when reporting officer himself commented with jovial mood at Tezpur during that period that he was highly satisfied with my works and managerial skill. While I was expecting that extra weightage would be given to me by the department for my rendering sincere service in extreme difficult situation, I got these adverse remarks, which came as a bolt from the blue to me.

Further, I beg to state that my name was recommended by Sri Manjit Singh, Area Director Telecom, Guwahati to officiate at TDE/Tezpur after having satisfaction on my performance. Even after my transfer from Tezpur Division to Silchar Division as A.E.(HRD), Silchar, my name was recommended by this reporting officer again to officiate as TDE/Silchar, after having assessment in my managerial & technical skill by replacing approved regular TDE, Silchar.

In view of the facts stated above, I most respectfully apprise you of the facts leaving sympathetic consideration on your judicious verdict. I appeal you to consider the case sympathetically on the merit of my submission and to expunge adverse unwarranted entries made by the reporting officer, which was communicated to me, after a lapse of one year.

With best regards.

Yours faithfully

(P.C.BHATTACHARJEE)

Dy. Telecom District Engineer

Silchar : 788 001

Sri Pravash. Chandra  
Bhattacharjee

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ANNEX

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 166 of 1993.

Date of decision : This the 6th day of November, 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Sri Provash Chandra Bhattacharjee,  
S/o Srijut Paresh Chandra Bhattacharjee  
Smriti Sastri,  
Deputy Telecom District Engineer,  
Silchar

.....Applicant

By Advocate Mr. T.C. Khatri.

-versus-

1. Union of India  
represented by the Secretary,  
Telecommunications, Govt. of India,  
Sanchar Bhawan, New Delhi.
2. Sri Manjit Singh,  
Deputy General Manager (A&P),  
Office of the General Manager,  
Telecom,  
District-Ghaziabad.
3. Sri Kranti Kumar,  
Chief General Manager,  
Telecom,  
Assam Circle,  
Guwahati-781007.

.... Respondents

By Advocate Mr. S. Ali, Sr. C.G.S.C.

ORDER

CHAUDHARI J. (V.C.)

The applicant has already retired from service of the respondents as Deputy Telecom District Engineer from the office of the TDE, Silchar. According to Mr. Khatri he retired in October 1994. The grievance of the applicant is that he was entitled to the benefit of promotion to the post of TDE with effect from 24.11.1992 when some officers were promoted or at least from 14.1.93 or 25.1.93 when different

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batch of officers was promoted. It is his assumption that because of the existence of certain adverse entries in his ACR for the period from 1.5.91 to 24.12.91 he was not selected by the DPC although the adverse remarks were not justified and he deserves to be considered for promotion. He has therefore inter alia prayed that the adverse entries in his ACR from the period from 1.5.91 to 24.12.91 be expunged or deleted and the DPC may be directed to consider allowing him the benefit of promotion to the post of TDE with retrospective effect from the date of the first DPC may have been constituted for the purpose of promotions made under Memo dated 24.11.92. We wish the applicant had been more specific in this respect. Mr. Khatri submits that as the applicant has retired and if he gets benefit of notional promotion retrospectively that might raise his retiral benefits and the applicant therefore is still interested in pursuing this application keeping in view the monetary benefit which he hopes to get.

2. The adverse remarks communicated to the applicant related to the period from 1.5.91 to 24.12.91. The written statement shows that the applicant was eligible and was placed before the screening committee for consideration for promotion in the meeting held on 4.5.93. That would mean the eligibility of the applicant was taken into account with reference to 4.5.93. Nothing has been stated in the written statement as to when actually the applicant had become eligible and whether his name had been considered by the committee convened in connection with the promotions made on 24.11.92, 8.1.93, 14.1.93 and 26.1.93.

3. The applicant has not challenged the decision of the screening committee which considered his case according to the written statement in the meeting held on 4.5.93 and did not recommend him for promotion as he was assessed 'unfit'. Ordinarily the objective assessment made ...by



by a selection committee is not open to review by the Tribunal unless there appears to be some illegality attached to the same or otherwise the decision is tainted. In the absence of challenge to the decision of the screening committee it is difficult to enter into that arena.

4. The relief sought by the applicant is involved in the sense that it would require quashing the adverse remarks, then quashing the decision of the screening committee dt. 4.5.93 on the assumed ground that it was influenced by the adverse remarks, then constituting a fresh screening committee to re-evaluate the applicant and grant him notional promotion and thereafter grant the consequential retiral benefits. That would however be required to be done as of today. However Mr. Khatri submits that the application must be decided with <sup>reference</sup> to the date when it was filed namely 16.8.1993 and when the applicant was very much in service and merely because of pendency of the application so far the applicant may not be denied justice. Hence we have heard him in great detail and have also heard the submissions of Mr. Ali, the learned Sr. C.G.S.C. for the respondents.

5. It is not denied by the respondents that on recommendation of respondent No. 2 (who is also the Reporting Officer of the Adverse Remarks) that the applicant was appointed to hold the responsibility of TDE/Tezpur during the period under review as if stating TDE, as stated by the applicant.

6. It is also evident from the written statement that at the time when the applicant was posted to Tezpur the law and order situation was grave. That is imp ed in what is stated in paragraph 2 of the written statement in answer to paragraph 6.1 of the application. In paragraph

.....

6.1 the applicant has stated that he had to work under extreme circumstances created by the terrorists. While purporting to deny this allegation the respondents have stated in para 2 of the written statement that the contention is not correct because the situation was similar all over Assam. In paragraph 3.1 of the written statement it is stated that while the applicant was officiated as TDE, Tezpur there were many occasions when he had under the pressure of Staff Unions made concessions and this was done without the approval of competent authority. That shows there was some kind of pressure under which the applicant had to work apart from the disturbed general law and order situation. The written statement also shows that the office of the TDE Tezpur was ransacked causing loss of property and man-handling of Senior Officers. Fault however is laid to the applicant for failure to handle the situation effectively. The fact however remains that the situation was not absolutely normal either in the office or outside. Perhaps the applicant was given charge at Tezpur to meet the situation as stated in the written statement. That charge was given to him because he was the seniormost Group B Officer at the station, Tezpur. The applicant has in the rejoinder referred to the resentment of the staff over the question of arrears of payment and to the intimidation suffered by some of the officers of the department during the anti-Foreigners Movement between 1982-83 which has not been denied by the respondents.

7. In the background of the situation the impact of the impugned adverse remarks has to be understood. The communication of the remarks from the ACR Annexure A-2 dated 1.3.93 contained some favourable remarks and some adverse remarks. Against the item of knowledge and sphere of work-Administrative, it is recorded "Susceptible to pressures".

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This pressure appears to be due to unrest amongst the staff and its agitational attitude in respect of which the respondents contend that the applicant had acted under the pressure of staff Unions without approval of competent authority and was advised to take firm steps to counter such pressures. According to the respondents the applicant instead of initiating action against the elements creating trouble he took refuge in his house and applied for long leave and applied for long leave and also requested for transfer to Silchar which request was accepted and he was transferred to Silchar. The very description of the situation given by the respondents indicates that even though some officer may have acted differently or with some courage that by itself did not mean that the applicant could not muster enough courage in the situation in which he may have been placed and therefore it appears to us that the remarks in the Confidential Record that he was susceptible to pressures would not be quite justified. The other adverse remark reading as "The Officer had tendency to buckle under adverse unforeseen situations" when understood in the context of the remark reading

"Able to make objective decisions. However, ~~due~~ gave to implement such decisions was lacking due to prevailing situation"

is sufficient to explain the deficiency on the part of the applicant as may have been noticed during the period under consideration to take stiff action as even according to the remarks the situation was unforeseen. It is difficult to read these remarks in the background in which these came to be recorded to be such as should have resulted in treating the applicant unfit for promotion. Even otherwise he had taken any decision on the spur of the moment in the

....existing



situation without approval of the competent authority that could call for cancellation of those steps but how that makes him one deserving adverse comment is difficult to appreciate. Similarly the remark about lack of initiative to take action against the trouble makers or the tendency to buckle under pressure may not be taken as incapacity when the situation was such that even the office was ransacked. Rather it could be looked upon as his inability to act in the prevailing situation.

Lastly under item No. 3 under general assessment after recording that on account of long experience in the department the officer is well conversant with various aspects of divisional working it has been observed thus "However, there is scope for improvement in managerial and technical skill".

Now when it is stated that the applicant was the seniormost Group B Officer and was also later on transferred to Silchar in the very same capacity and it is also noted that he was well experienced and well conversant with various aspects of divisional working it is somewhat difficult to understand as to what was intended by observing that there was scope for improvement in the managerial and technical skill. The fact cannot be lost sight of in this connection that it was respondent No. 2 i.e. Dy. General Manager who had recommended placing the applicant in charge of the post of TDE. By itself therefore the remarks contained in Annexure-2<sup>A-1</sup> would not appear to be so damaging or strong as should have resulted in not finding him eligible for promotion. Indeed it is only because these remarks had been conveyed to the applicant that these are to be read as adverse in part. We have therefore no hesitation in holding that these remarks do not look justified in the circumstances.

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8. The above aspect however was required to be considered in the first instance by the reviewing authority namely Chief General Manager, Telecom, Assam Circle on 22.3.93 to whom applicant had filed a representation requesting for expunging the adverse remarks. The second representation was filed by the applicant to the said authority on 23.7.93 repeating the same prayer. Neither of these representations was replied by the CGMT, Assam Circle as is apparent from the pleadings of the parties. It is unfortunate that neither the applicant has stated that these were not replied nor the respondents on their part have stated that the reviewing authority had taken a decision on the representations.

9. Mr. Khatri has brought to our notice an extract from Postl Manual Vol. III paragraph 174 which relates to confidential record of the officers and employees required to be maintained. The procedure prescribed is that a representation against adverse remarks lies to the authority immediately superior to the reviewing authority or to the reporting officer as the case may be and where the competent authority feels that there is not sufficient ground for interference the representation may be rejected and the petitioner be informed accordingly. It was incumbent upon the authority to whom the representations were filed by the applicant to have conveyed his decision on the same to the applicant. Since the applicant was never informed that the remarks in question were expunged or condoned it has to be presumed that either no order on the representations was passed or that the representations were rejected. This circumstance has a very direct bearing on the question of promotion. As noted earlier the fact that the second representation was filed on 23.7.93 would mean that the representation dated 22.3.93 had not been decided till then. The meeting of the screening committee however

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was held on 4.5.93 as stated in the written statement and <sup>that</sup> leads to the inevitable inference that in all probability the screening committee had the adverse remarks in question contained in the ACR before it. Although we cannot positively say in the absence of record that the screening committee had considered the adverse remarks or that its opinion about the applicant was influenced by the same, yet there is every reason to believe that it must have been taken into account because otherwise the committee was not likely to categorise him as 'unfit' when admittedly he had been the seniormost Group B Officer. The respondents on their part have not claimed in the written statement that the screening committee had not made the assessment of the applicant taking into account the adverse remarks <sup>or</sup> ~~to~~ conversely the assessment was made without taking into account the adverse remarks. That renders the decision of the screening committee not to recommend the applicant for promotion vulnerable. In any event while the representation of the applicant was pending the placing of his name before the DPC for consideration and the DPC assigning him the gradation as 'unfit' cannot be said to have been fair. The failure on the part of the competent authority to decide the representations and yet placing the name of the applicant for consideration before the screening committee in the manner aforesaid appears to us to have been erroneous. The irregularity which may amount to illegality needs to be rectified. It may be stated in this context that nothing prevented the respondents from giving more details about the procedure adopted by the screening <sup>committee</sup> or producing its minutes even though that was not ~~may~~ directly the subject matter of challenge. It needs to be emphasized that the authorities who are respondents are not supposed

... merely

merely to deny or controvert the averments made by the applicant but in addition to that they are expected to fairly place before the Tribunal all relevant material as may be necessary to deal with the various contentions raised by the applicant and assist it in doing justice to the case. In that respect the respondents are always at an advantageous position since all the records would be easily available to them. Unfortunately the written statement in this case is sketchy and is not of much assistance.

In the light of the above discussed circumstances and since the possibility of injustice having been caused to the applicant cannot be ruled out we are constrained to pass the following order :

- 
1. The Chief General Manager Telecom, Assam Circle (the present incumbent of the said office) is directed to examine the representations of the applicant dated 22.3.93 and 23.7.93 respectively filed against the impugned adverse remarks relating to the period from 1.5.91 to 24.12.91 and to take a decision in accordance with the prescribed rules confirming or rejecting the adverse remarks.
  2. The aforesaid authority will intimate the decision on the representations as may be taken by him to the applicant.
  3. In the event of the aforesaid authority being satisfied that the adverse remarks in question should be deleted or expunged the said authority shall pass necessary orders in that behalf. It will also be open to the said  
...authority

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authority thereafter to consider the question as to whether the applicant can be given benefit of promotion on notional basis retrospectively, and if so take necessary steps.

4. If the said authority decides upon giving notional promotion retrospectively he shall pass necessary orders for payment of difference of monetary benefit calculated on that basis. In that connection the fact that he had actually been officiating as TDE at Tezpur as well as at Silchar may be taken into account.
5. The authority will be at liberty to take the decisions as deemed appropriate and necessary to be taken in accordance with the rules and in the light of the discussion in this order.
6. The decisions as above to be taken within 3 months from the date of communication of this order & conveyed to the applicant.

Subject to the above directions the O.A. is disposed of. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- M ER (ADMN)

trd

TRUE COPY

Section of  
Central  
Group

12/6/96  
-1)

12/6/6



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## ANNEXURE - 4

To,  
The Chief General manager, Telecom,  
Assam Circle,  
Guwahati - 781 007.

Sir,

I have the honour to forward herewith a Zerox copy of the order dated 6.11.95 passed by the Hon'ble Central Administrative Tribunal, Guwahati Branch in original Application No. 166 of 1993 and request you to comply with the several directions made in the said order. Though the order was passed over six month before in your presence through your advocate. It is unfortunate that nothing has yet been done for complience of the several direction made therein to my knowledge within three months of the order as directed.

I would therefore request you to look into the order and direction therein made by the Hon'ble Tribunal immediately and o redree my grievences as sought for.

Thanking you.

Dated at Silchar  
the 3rd june'96

Yours faithfully.

Enclo : Order (in five  
sheets).

(P.C.BHATTACHARJEE)  
Retd. Dy. TDE/Silchar.

Sri Parash Chandra  
Bhattacharjee

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## ANNEXURE - 5

From : Sri S.K. Senapati  
Advocate,  
District Bar Association,  
Silchar - 788001, Cachar,  
Assam.

Dated: 18.12.96.

To

1. Union of India, represented by the Secretary,  
Telecommunications, Govt. of India,  
Sanchar Bhawan, New Delhi.
2. Shri Monjit Singh, Deputy General Manager ( A & P )  
Office of the General Manager, Telecom,  
District Ghazizbad, U.P.
3. Shri Kranti Kumar, Chief General Manager,  
Telecom, Assam Circle, Guwahati - 781 007.

..... Notice Receivers.

This notice is sent under instructions from my client Sri Pravash Ch. Bhattacharjee, son of Shri Paresh Chandra Bhattacharjee, Srimati Shastri, Deputy Telecom District Engineer, Silchar (now retired) residing at Happy Valley Lane, P.O. Rangirkhari, Silchar - 78005.

My aforesaid client was an officer of your department and served at various places in Assam and lastly retired in October, 1994 while he was working as Deputy Telecom District Engineer, Silchar. He was entitled to the benefit of promotion to the post of Telephone District Engineer with effect from 24.11.92 but while considering for promotion of other officers of various batches, juniorate my client were promoted, but my client's case was not considered by the Departmental promotion committee on the alleged ground of existence of adverse remarks in ACR for the period from 1.5.91 to 24.12.91. My client was not aware of such or any adverse remarks in his ACR passed behind his back and when became to

(Contd.....2)

Sri Pravash Chandra  
Bhattacharjee

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(2)

know about the remarks he files representation dated 22.3.93 and 23.7.93 against these seeking expunging those remarks. But those representations were not considered by the authorities and therefore he had to file original Application No. 166 of 1993 before the Hon'ble Ventral Administrative Tribunal at Guwahati.

The said case before the C.A.T. has since been disposed of by order dated 6.11.95 giving certain specific direction for compliance by you. The Order of the Hon'ble Tribunal has directed you notice receiver No. 3 to consider the representations dated 22.3.93 and 23.7.93 of my client for expunging the adverse remarks relating to the period from 1.5.91 to 24.12.91 in the ACR of my client and to take a decision in accordance with the prescribed Rules while holding in para 7 of the order that "we have therefore no hesitation in holding that these remarks do not look justified in the circumstances" and further commented in para 8 that "the irregularity which may amount to illegality needs be rectified". The Tribunal has also made some further direction for the follow up action and to calculate the monetary benefits my client is entitled to receive after expungment of the adverse remarks in the ACR. Since he is now retired and only notional promotion with monetary benefit is possible.

Very unfortunately, though the order of the Tribunal with a direction to take "... decision as above to be taken within three months from the date of communication of this order ..." and as you failed to take up the follow up action as directed by the Tribunal within the time frame. A copy of the order was forwarded to you by my client along with his letter dated 3.6.96 asking you for compliance of the C.A.T. order. But in spite of several requests and demands of my client you have so far taken no step to obey the order of the C.A.T., which, beside causing delay in getting the monetary benefit as contemplated in the order of the C.A.T. in favour of my client, also amounts to contempt of Court. It may not be out of place to mention that on another occasion also, my case client was compelled to file Original Application No. 177 of 1990 before the C.A.T. for realisation the balance of his G.P.F. account illegally withheld by you

(Contd.....3)

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(3)

and only with the interference of the Tribunal by you and only with the interference of the Tribunal you ultimately released the G.P.F. balance together with 15% interest thereon as directed by the Tribunal in the order dated 9.5.95 passed in the said case.

I have been therefore asked by my said client to demand of you to comply with the order dated 6.11.95 of the Hon'ble Central Administrative Tribunal passed in original Application No. 166 of 1993 and make payment of the balance salary and other benefits on the basis of his notional promotion after expunging the ex-parte remarks in his ACR immediately, otherwise my instruction are to take appropriate action in an appropriate court for realisation of my client's demands and in that case you will be further liable for cost, compensation and interest.

Sd/

(S.K. Senapati)

Advocate.

Registered A/D

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ANNEXURE - 6

Department of Telecommunications  
Office of the Chief General Manager : Assam Telecom Circle  
Ulubari, Guwahati - 781 007.

No. DGM(A)/Adv.entry/Review/98

Dated the 30th December, 1996

To

Sri S.K. Senapati  
Advocate,  
District Bar Association  
Sillchar - 788 001

Sub : OA No. 166/93 - implementation of directions of Hon'ble CAT, Guwahati thereof.

Dear Sir,

The receipt of the above said notice is hereby acknowledged. The directions of the Hon'ble CAT, Guwahati passed in OA No. 166/93 have already been forwarded to the Adviser (HRD), Deptt. of Telecom, Sanchar Bhawan, New Delhi who is the competent authority to decide the case. The case will be disposed of on receipt of the directions from DOT.

Thanking you,

Yours Sincerely

Sd/

(M.K. Sudarsanam)

D. General Manager(A),  
o/o the CGMT, GHY -7

Copy to :-

The adviser (HRD), Deptt. of Telecom, Sanchar Bhawan, New Delhi - 110001.

The notice received on the above case is forwarded in original for further disposal please.

Sd/

(M.K. Sudarsanam)

D. General Manager(A),  
o/o the CGMT, GHY -7

Sri Ravash Chandra  
Bhattacharjee

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ANNEXURE - 7

To,

19-12-97

1. The Adviser (HRD),  
Deptt. of Telecom, Sanchar Bhawan,  
New Delhi - 110 001.
2. The Chief General Manager,  
Telecom, Assam Circle, Guwahati - 781 007.

Sub : Expugne of Adverse remarks in ACR for the period from  
1.5.91 to 24.12.91 and to consider for promotion.

Ref : Order dated 6.11.95 passed by the Hon'ble Central  
Administrative Tribunal, Guwahati Bench in O.A.  
No. 166 of 1993.

Sir,

Under authority and upon instruction of my client Shri Provash Chandra Bhattacharjee, Deputy Telecom District Engineer, Silchar, (now retired), resident of Happy Valley Lane, P.O.- Rangirkhari, Silchar - 788666, I do hereby give this legal notice to the following effect :-

1. That my aforesaid client was an officer under your department and retired in the month of October 199 while he was working as Deputy Telecom District Engineer, Silchar under Assam Circle. In the month of November 1992 a number of officers were promoted to the post of Telecom District Engineer who were junior to my aforesaid client, but my client was not considered for the same on the alleged ground of existence of adverse remarks in A.C.R. for the period from 1.5.91 to 24.12.91 about which my client was not aware of and hence after coming to know about the same my client submitted two representations dated 23.3.93 and 23.7.93. But the same were not considered and hence my client filed original Application No. 166 of 1993 before the Central Administrative Tribunal, Guwahati Bench and the Hon'ble Tribunal was pleased to dispose of the same by an order dated 6.11.95 giving a number of directions to the chief General Manager, Assam Circle.

One typed copy of the said order dated 6.1.95 is annexed herewith as ANNEXURE- A.

See Provash Chandra  
Bhattacharjee

2. That though the aforesaid order was passed in the month of November 1995, the Chief General Manager did not comply with the same and hence my client sent one legal notice dated 18.12.96 and requested to comply with the order. After receiving the said legal notice the Dy. General Manager (A), O/O the CGMT, Guwahati send one reply under letter No. DGM(A)/Adv. entry/Review/96 dated 30.12.1996 to the Advocate of the petitioner stating interalia that the matter has already been forwarded to the Adverser (HRD), Deptt. of Telecom, New Delhi who is the competent authority to decide the casee and after receiving the direction from the said authority the case will by disposed of.

One type copy of the said letter dated 30.12.96 is annexed herewith as ANNEXURE -B.

3. That though the said order was passed in the month of November 1995 and the said communication by the Dy. General Manager made in the month of December 1996, till date no step has been taken to give relief to my client expunging the adverse entries and giving him retrospective promotion w.e.f. 24.11.92 i.e. on which his juniors were promoted to the post of Telecom District Engineer and hence this last legal notice.

Under the fact and circumstances I give this legal notice requesting to consider the case of my client within a period of one month from the date of receipt of this legal notice and comply with the order dated 6.11.95 of the Hon'ble C.A.T. failing which I have the clear instruction of my client to file contempt of Court nbefore the appropriate forum dragging you personally in the same. I hope and surely believe that you will appreciate the present state of mind of my client and will do justice to my client considering the matter in light of the order of Central Administrative Tribunal within the stipulated period as stated avoiding unnecessary litigation.

Thanking you,

Yours sincerely -

(ASHOK KUMAR RAY)  
ADVOCATE  
GAUHATI HIGH COURT.

See Pravash. Chandra  
Bhattacharya

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ANNEXURE - 8

DEPARTMENT OF TELECOMMUNICATIONS  
OFFICE OF THE CHIEF GENERAL MANAGER TELECOMMUNICATION  
ASSAM CIRCLE : GUWAHATI - 781007.

No.STES-21/71/93-94/21

Dated at Guwahati, the 10th Dec, 98.

To,

Shri P.C.Bhattacharjee,  
Sr. S.D.E. (Retd)  
Silchar.

DTL  
Dy T

Sub : CAT, Guwahati O.A.No. 166/93 :- Implementation of the order dated 6.11.95.

Dear Sir,

This refers to the Judgement and order dt. 6.11.95 passed by the Hon'ble Tribunal Guwahati Bench in O.A.No. 166/93.

Kindly be informed that the competent authority is taking action strictly in accordance with the direction and order of the Hon'ble Tribunal as follows :-

1. The Competent Authority has taken active action regarding expungtion of adverse entries in the ACR (91-92). ✓

2. It is found that even if the above exercise result in the expungtion of the adverse entry, the overall gradating will remain "Average" which is below the minimum bench mark of "Good" presecrbed for induction into Group A Service vide DOP&T.OM No. 22011/5/86-ESTT.d dt 10.3.89.

Sd/

(A.K.Chelleng)

Asstt. General Manager (Admn.)

Copy to : ADG (SGT). D.O.T. New Delhi for favour of information w.r.t his letter No. 115-11/93-STG.I dt. 24.22.98.

Sd/-

For C.G.M.T. Guwahati

Sd/ Praveesh. Chandra  
Bhattacharjee

Attested  
for  
Admn.



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ANNEXURE - 9

CONFIDENTIAL

DEPARTMENT OF TELECOMMUNICATIONS  
OFFICE OF THE TELECOM DISTRICT MANAGER  
CACHAR DISTRICT : SILCHAR

No. TDM/SC/Misc/99

Dated at Silchar, the 28th Jan'99.

To

Sri P.C.Bhattacharjee,  
Ex- Dy. TDE, Silchar.

Sub : CAT Guwahati O.A.No. 166/93 - Implementation of the  
order dated 6.11.95.

Kindly find enclosed herewith CGMT letter  
No. STES-21/71/93-94/21 dated 10.12.98 on the above-mentioned  
subject.

You are, requested to acknowledge the receipt of the same  
through the bearer of this letter.

Encl : As above.

Sd/-

( I.R.Paul)

Divisional Engineer ( P & A)

O/O TDM, Silchar.

Sri Parvati Chandra  
Bhattacharjee

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ANNEXURE - 10

GOVERNMENT OF INDIA  
DEPARTMENT OF TELECOMMUNICATIONS  
OFFICE OF THE CHIEF GENERAL MANAGER TELECOMMUNICATION  
ULUBARI, GUWAHATI - 781007.

No. STES-21/71/93-94/21

Dated at Guwahati, the 25.1. 98-99

To,

Shri P.C. Bhattacharjee,  
Sr. S.D.E. Silchar (Rctd.)  
Silchar.

Sub : -- Implementation of the CAT Guwahati order and judgement dated  
6.11.95 passed in O.A.No. 166/93.

Dear Sir,

In continuation to this office letter No. STES-21/71/93-94/21 dt. 10/12/98 the undersigned has been directed to intimate as follows :

The Advisor (HRD) has carefully considered the facts and circumstances of the case and observed that the adverse remarks recorded in your A.C.R. for the period from 1.5.1991 to 24.12.1991 are gague and not based on materials on record. Accordingly, it has been decided to modify the said remarks to the following extent :-

Item	Existing entry	Modified entry
Knoledge of sphere of work administrative	Susceptible to pressure	Good
Decision making ability	Able to make objective decision. However, drive to implement such decision was lacking due to prevailing situation.	Able to make objective decision
Initiative	The officer has tendency to buckle under adverse forseen situation	Good
General Assessment	On account of long experience in the Dept., the officer is well conversant with various aspects of divisional working. However, there is scope for improvement in managerial and technical skill	On account of long experience in the Deptt., the officer is well conversant with various aspects of divisional working

Sd/-

(N.C.Das)

Asstt. General Manager (Admn.)  
For C.G.M. Telecom, Guwahati.

Sd/- Pravash Chandra  
Bhattacharjee

- 30 -

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ANNEXURE -11

CONFIDENTIAL

DEPARTMENT OF TELECOMMUNICATIONS  
OFFICE OF THE TELECOM DISTRICT MANAGER  
CACHAR DISTRICT : SILCHAR

No. TDM/SC/Misc/99

Dated at Silchar, the 9th Feb'99.

To

Sri P.C.Bhattacharjee,  
Ex- Dy. TDE, Silchar.

Sub : CAT Guwahati O.A.No. 166/93 - Implementation of the  
order dated 6.11.95.

Kindly find enclosed herewith CGMT letter  
No. STES-21/71/93-94/24 dated 25.1.99 on the above-mentioned  
subject.

You are, requested to acknowledge the receipt of the  
same.

Encl : As above.

Sd/-

( S.K.Samanta)

Telecom District Manager  
Silchar - 788 001.

*Pravash Chandra  
Bhattacharjee*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
 Central Administrative Tribunal GUWAHATI BENCH  
 07 NOV 2000 O. A. No. 65 OF 2000  
 767 Shri P. C. Bhattacharjee  
 Guwahati Bench

Filed by

6/11/2000  
 (A. DEBROY)  
 Sr. C. P. O.  
 C.A.T., Guwahati Bench

- VS -

Union of India & others

IN THE MATTER OF

Written statement submitted by respondents

(WRITTEN STATEMENT)

1. That with regard to para 1 the respondents beg to state that the order No.s STES-21/71/93-94/21 dated 10.12.98 and STES-21/71/93-94/21 dated 25.1.99 were issued in compliance to the order and judgement dated 6.11.95 passed by Hon'ble Tribunal in O. A. No. 166/1993.

2. That with regard to the paras 2 and 3 the respondents beg to offer no comment.

3. That with regard to para 4.1 to 4.5 the respondents beg to offer no comment as the same is matter of record.

The applicant while working as Sr. SDE was promoted on local adhoc officiating arrangement to held the charge of TDE for short spells on temporary basis. Such local arrangement does not confer any right on the applicant for regular induction in the cadre of TDE.

4. That with regard to para 4.6 the respondents state that the case of the applicant was indeed placed before the duly constituted DPC which met on 4.5.93. The DPC graded him 'Unfit' on the basis of overall assessment which was 'Average'.

Contd.... 2/P

According to the procedure laid down by the Govt. of India issued under DOPT. O.M. No. 22011/5/86-Estt. D dt. 10.3.89, the officers with overall grading 'Good' and above only are included in the panel for promotion to Group 'A'. The post of DET is in the grade of STS of ITS ~~Group~~ Group 'A' and the Sr. AEs whose overall grading is 'Good' 'Very Good' and 'Outstanding' are taken into consideration for induction into DET. Since the overall grading of the applicant at the relevant period was below the prescribed minimum bench mark of 'Good' his case was not included in the panel by the DPC which met on 4.5.93. This does not amount to hostile discrimination.

5. That with regard to para 4.7 the respondents state that the Resp. No. 2 as the Reviewing Authority communicated the adverse remark to the applicant for his information and for making effort to improve his performance and overcome the adverse remarks.

6. That with regard to the paras 4.8, 4.9, 4.10, 4.11 and 4.12 the respondents ~~are in~~ ~~in~~ state that the contents of these paras received the consideration of the Hon'ble Tribunal and after discussing the points in details, as para 8 and 9 the Hon'ble Tribunal was pleased to pass the order dated 6.11.95. The respondent department has duly complied with the orders. The applicant can not diarise the points for re-consideration of the Hon'ble Tribunal.

7. That with regard to para 4.13 the respondents state that the Resp. No. 1 and 2 took immediate action to

comply with the order dated 6.11.95 with utmost sincerity. The Resp. No. 2 in particular took up the matter with TCHQ for examination and compliance of the Hon'ble Tribunal's order dated 6.11.95 at appropriate level.

8. That with regard to para 4.14 the respondents state that the Legal notice dated 8.12.96 served by the applicant was replied under letter no. DGM(A) Adv entry/Review/98~~dated~~ dated 30.12.98 under the signature of DGM(A).

9. That with regard to para 4.15 the respondents state that the process of review is a time consuming one and involves examination at different levels. Despite the best efforts, the matter could not be finalised within the prescribed time limit. Never the less the effort was tireless and sincere. The applicant was also kept informed of the progress of the case. The Respondent's letter dated 28.11.99 (Annex. 9 to O. A.) to the applicant is self contained as the applicant was informed in clear terms that even if the impugned adverse entries are expugned his overall grading would still remain 'Average' which is below the minimum bench mark 'Good' for induction into Group 'A' service.

10. That with regard to para 4.16 the respondents state that the competent Authority, after careful examination of the case, finally decided to modify the impugned adverse entries and passed orders for substitution of the entries by the modified entries.

The above decision and modified entry was communicated to the applicant under Respondent's letter No. ~~STK~~

29.11.92  
29.4.92  
54 44  
p 3-43  
pg.

STES-21/71/93-94/21 dt. 25.1.98 (Annex. 10 to O. A.).

The same was delivered to the applicant by the TDM/  
Silchar vide his forwarding letter No. TDM/SC/Misc/99  
dt. 9.2.99.

11. That with regard to the paras 4.17 and 4.18 the respondents state that ~~the~~ for the purpose of consideration for promotion to JTS, the ACRS for the period from 1987-88 to 1991-92 (preceeding 5 years) were assessed and based on the assessment the applicant was graded as 'Average'. As such the ground stated by the applicant that after modification of adverse entries he became eligible for promotion to JTS, are devoid of merit, since the overall assessment remain unchanged even after the alternations of the impugned entries. As the applicant had retired from Govt. service in October, 1994 i.e. even before the expunction of the adverse entries was ordered vide dated 8.12.98 the question of holding of a review DPC does not arise. However, as per the order of the Hon'ble Tribunal in O.A. No. 166/93 his representation has been examined and decision of the competent Authority has already been conveyed to him.

12. That with regard to the para 4.19 the respondents state that the adverse entries containing in ACR for the period from 1.5.91 to 24.12.91 only have been expunged. The performance of the officer as reflected in the ACR for other years/period remained unchanged. The modification of the adverse entries in the ACR for 1.5.91 to ~~(of the adverse entries in the ACR for 1.5.91 to 24.12.91)~~ does not change the overall grading of the applicant.

24.11.92  
24.1.93  
14.1.93  
25.1.93  
4.3.93

Contd..... 5/P

As such the finding of the DPC remained 'Average' which is not upto the prescribed Benchmark. He is still considered unfit for promotion.

13. That with regard to the para 4.20 the respondents state that the induction of the cadre of DE through promotion from lower group on selection method. According to the approved procedure, all the officers within the consideration zone would be given an overall grading after evaluation of CRs. The grading shall be one among (i) Outstanding (ii) Very Good (iii) Good (iv) Average (v) Unfit.

For promotion to Group 'A' post, the prescribed benchmark is 'good' and all officers whose assessed overall grading is 'Good', 'Very Good' and 'Outstanding' are placed in the select panel upto the number of vacancies. The officers who are graded as 'Average' 'Unfit' donot have any place in the panel.

On an overall assessment on the basis of CR including the modified ACR, the applicant is graded as 'Average' which is below the bench mark and he is not fit for promotion to DE. Accordingly it is inferred that the relief claimed by the applicant in the O. A. No. 65/2000 is devoid of merit. It is humbly prayed that the Hon'ble Tribunal may kindly dismiss the O. A.

DE

Verification

3.12.92 W



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

I Shri G. C. Sarma, Asstt. Director Telecom (Legal),  
Assam Circle, Guwahati being authorised do hereby  
verify that the statements made in the written statement  
are true to my knowledge, information and believe and I  
have suppressed no material fact.

And I sign this verification on this 30<sup>th</sup> day  
November  
of 2000.

Ganesh Ch. Sarma  
DECLARANT

OA 65/200

- 4 -

ANNEXURE-I

**CONDITIONS FOR GRANT OF BENEFITS  
UNDER THE ACP SCHEME**

1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;
2. The highest pay-scale upto which the financial upgradation under the Scheme shall be available will be Rs.14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy based promotions;
3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;
4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;
- 5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;
- 5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;
6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;

.....5/-

7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme;

9. On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(I) a(1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No.1/6/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay-fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade;

10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade;


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11. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules, 1965 and instructions thereunder;

12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department -- not the employees -- shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;

14. In case of an employee declared surplus in his/her organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme; and

15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme.

  
(K.K. JHA)

Director(Establishment)

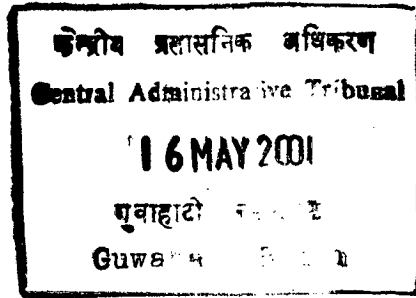
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**STANDARD/Common PAY-SCALES**

**As per Part-A of the First Schedule Annexed to the Ministry of Finance  
(Department of Expenditure) Gazette Notification dated September 30, 1997**

**[REFERENCE PARA 7 OF ANNEXURE I OF THIS OFFICE MEMORANDUM]**

S.No.	Revised pay-scales (Rs)	
1.	S-1	2550-55-2660-60-3200
2.	S-2	2610-60-3150-65-3540
3.	S-3	2650-65-3300-70-4000
4.	S-4	2750-70-3800-75-4400
5.	S-5	3050-75-3950-80-4590
6.	S-6	3200-85-4900
7.	S-7	4000-100-6000
8.	S-8	4500-125-7000
9.	S-9	5000-150-8000
10.	S-10	5500-175-9000
11.	S-12	6500-200-10500
12.	S-13	7450-225-11500
13.	S-14	7500-250-12000
14.	S-15	8000-275-13500
15.	S-19	10000-325-15200
16.	S-21	12000-375-16500
17.	S-23	12000-375-18000
18.	S-24	14300-400-18300



*Filed by the applicant  
through advocate  
G. N. Chakravarty on 16.5.01*

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWHATI BENCH**

O.A. No. 65 of 2000

Sri P.C. Bhattacharjee

-vs-

Union of India & Others.

-And-

**In the matter of :**

Rejoinder submitted by the applicant in reply to  
the written statement submitted by the  
respondents.

That your applicant above named-

**MOST RESPECTFULLY SHEWETH :**

1. That the applicant states that the respondents on appearance have filed their written statements which are not in conformity/legal provisions and the applicant hereunder preferred comments on the written statement and hence denies the statements and averments except those which are borne out of records.
2. That your applicant categorically denies the statements made in paragraph 1 of the written statement is partly denied, in so far the issuance of the letter dated 10.12.1998 is itself a expression of predetermined notion, however the other part i.e. the letter dated 25.1.1999 appears to be application of mind in compliance with the Tribunal's order passed in O.S. No. 136/93 and the applicant deserve to be awarded with the benefit.
3. That your applicant categorically denies that statement made in paragraph 3 relating to the comments forwarded for non-consideration of promotion and statement made in

paragraphs 4,5 and those made in paragraph 6 confirming the compliance of the Tribunal's decision and paragraph 7 of the written statement.

4. That it is stated that the Respondent in paragraph 8 of the written statement admitted their recklessness by preferring the statement that how they delayed the matter in replying the legal notice that too in a mechanical manner and the applicant denies the fairness.

It is further stated that the statements made in paragraphs 8,9,10 and 11 the respondents have not maintained fairness in exercise of power under administrative capacity, in so far, confirming their predetermined decision and following of any Rule and/or guidelines framed for promotion and holding of DPC and as such baseless and denied and put the Respondents to in a strict test proof thereof.

5. That your applicant categorically denies the statement made in paragraph 12 & 13 of the written statement and your applicant reiterates the facts stated in the Original Application to be true facts and relies on the grounds set forth to award relief under legal provisions and prays before the Hon'ble Tribunal for granting relief as has been prayed in the Original Application.

6. In the facts and circumstances stated above, the application is deserves to be allowed with costs.

**VERIFICATION**

I, Sri Prabhas Chandra Bhattacharjee, son of Late Paresh Chandra Bhattacharjee, aged about 65 years, resident of Happy Valley Road, P.O. Rangirkhari, Silchar-788 005 applicant in the O.A. No. 65 of 2000 do hereby verify and declare that the statements made in this Rejoinder in paragraphs 1 to 6 are true to my knowledge and belief and I have not suppressed any material fact.

And I sign this verification on this the      day of May, 2001.

29.4.92  
3.12.92

- Prabhas Chandra  
Bhattacharjee