

( SEE RULE -4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

ORDER SHEET

Original Application No : \_\_\_\_\_  
Misc. Petition No. \_\_\_\_\_  
Contempt Petition No. 24 /03 m.o.A254/01  
Review Application No. \_\_\_\_\_

Applicant (s) Monoranjan Das Fouz

-Vs-

Respondent (s) H.O.T Fouz

Advocate for the Applicant (s) Mr. S. Sarma, Mrs U. Das

Advocate for the Respondent(s) Case

Notes of the Registry

Date

Order of the Tribunal

The Contempt petition has been filed by the counsel for the petitioner praying for willful and deliberate violation of the order dated 13.6.2002 passed by the Honble Tribunal in O.A 254/01.

1.5.2003

Heard Mr. U.K. Nair, learned counsel for the applicant  
Issue notice to show cause as to why the contempt petition shall not be initiated.  
List on 2.6.2003 for orders.

Laid before the Honble Court for further orders.

mb

Vice-Chairman

*Warrant*  
30/6/03  
Secy to the office

Notice prepared and sent to D/S fore using the Respondent No. 1 to 3 by Regd. A/A.

D/No 938/K/940 dtd 16/5/03

ET/03

No. reply has been  
filed.

30.5.03

Vakalatnama filed  
by Mr. B.C. Pathak,  
Addl. Case.

JS  
12/6/03

No. reply has been  
filed.

30.6.03

No. reply has been  
filed.

7.8.03

No. reply has been  
filed.

4.9.03

16.9.2003

Copy of the order  
has been sent to  
The office for issuing  
the order to the L/Adv.  
for the parties.

JS

Revised  
order passed  
19/9/03

2.6.2003

Mr. B.C. Pathak, learned Addl. C.G.S.C. has entered appearance on behalf of respondent No.2 Sri L.P. Yolmo, Station Director, All India Radio, Guwahati and prays for time to file reply.

Put up the matter on 1.7.2003 for reply of the respondent No.2. The other respondents may also file reply within four weeks from today.

Vice-Chairman

bb

1.7.2003

On the prayer made by Mr. B.C. Pathak, learned Addl. C.G.S.C. the case is adjourned.

List the case on 7.8.2003 for further order.

Vice-Chairman

bb

7.8.2003

The respondents are yet to file reply. Put up again on 5.9.2003 to enable the respondents to file reply, if any.

Vice-Chairman

Member

mb

5.9.03

Heard Mr. S. Sarma learned counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents.

Mr. Pathak, learned Addl. C.G.S.C. has stated that the Judgment and Order dated 13th June, 2002 passed in O.A. No. 254 of 2001, <sup>is now</sup> the subject matter of writ Petition <sup>pending</sup> before the Hon'ble High Court in W.P.(C) No. 5157 /2003. In that view of the matter the Contempt Petition stands dropped.

Vice-Chairman

K.P. Baidyan  
Member

lm

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : AT GUWAHATI

C.P. No. 24/2003  
IN O.A No. 254/01

Manoranjan Das & Another ...Petitioners

-versus-

K.S. Sarma & Two Others ...Respondents

(Affidavit-in-reply filed by the Respondent No.2)

I, Shri L.P. Yolmo, son of Late S.P. Lama  
aged about 55 years, resident of AIR: Campus, Chanderni, Guwahati  
and at present working as the Station Director, All India Radio, Prasar  
Bharati (BCI), Guwahati, do hereby solemnly affirm and state as  
follows :

1. That I have been implicated as the respondent No.2 in the above noted Contempt Petition No. 24/2003 (hereinafter referred to as the "Petition") and a copy of the said petition has been served on me. I have gone through the same and understood the contents thereof.
2. That this Hon'ble Tribunal was pleased to pass the final order in O.A. No. 254/2001 on 13.6.2002 and by the said order this Hon'ble Tribunal directed the respondents to give effect to the promotion to the applicants notionally w.e.f. 18.4.83 i.e. the date on which their junior

Filed by:-  
Prof. J. J. J.  
(B. C. P. S. H. A. K.) 4/9/03  
Addl. Central Govt. Standing Counsel  
Central Administrative Tribunal  
Guwahati Bench : Guwahati

(Respondent No.3) was promoted in the light of the direction issued by the Jabalpur Bench in O.A. No. 104/86 instead of on 5.3.87. By the said order the seniority of the applicants were to be determined accordingly and their pay were to be fixed by granting increments with reference to the notional promotion as Programme Executives.

3. That on receipt of the said order passed in the aforesaid case, the respondents in the lower formation took up the matter with the higher authorities for advice and/or for direction to comply with the said order. The competent authority, after going through the whole gamut of the matter ultimately decided to go for judicial review (appeal) by filing a writ petition in the Gauhati High Court. Accordingly, the matter was been taken up with the Standing Counsel in the Gauhati High Court. After due consultations and scrutiny of the subject matter, the competent authority could file the writ petition in the Gauhati High Court and the aid writ petition was registered as W.P.(C) No. 5157/2003. The Hon'ble Gauhati High Court, after preliminary hearing, admitted the writ petition and notices were issued to the respondents vide order-dated 15.7.2003.

A copy of the said order passed in the W.P.(C) No. 5157/03 is annexed hereto as Annexure A.

4. That in the exercise, the process of rotating the mater through the different official channels with different hierarchy, located both in Guwahati and Delhi, the respondents had to take sufficient time in exhausting the alternative remedy available to them as a matter of right instead of complying with the order passed by this Hon'ble

Tribunal as stated above. The delay caused as explained hereinabove was unavoidable and beyond the control of the respondents.

5. That while the process of filing the writ petition in the Gauhati High Court was going on, the petitioner/ applicant filed the instead contempt petition before this Hon'ble Tribunal thereby alleging willful and deliberate violation and disobedience of the order dated 13.6.2002 passed in O.A. No. 254/01 and for punishment for such violation. But, from the facts and circumstances of the case, it is explicit that there is no willful violation or any disobedience of the order of this Hon'ble Tribunal.
6. That the law is also well settled that to constitute a civil contempt, there must be willful disobedience of the courts order. But, willful will exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with the terms of the order. From the fact and circumstances of the instant case, it is very much clear that the order of the Hon'ble Tribunal being taken up for judicial scrutiny in the next higher court, there was some delay from the date of the order to the time of filing the writ petition in the Gauhati High Court. This period of delay so caused being casual, bonafide and unintentional acts may not amount to willful violation or disobedience of the order of this Hon'ble Tribunal.
7. That with regard to the statements made in para 1, 2, 3, 4, 5, 6, 7 and the prayer portion of the petition, the answering respondent states that as explained hereinabove, the statements made in the aforesaid paragraphs are not correct and there has not been any disobedience of the order passed by this Hon'ble Tribunal in O.A. No.

254/01. The answering respondent reiterate and reasserts the foregoing statements made in this affidavit-in-reply.

8. That in case this Hon'ble Tribunal comes a finding that the respondent is liable for contempt of court (civil contempt), in that case I respectfully submit that I have the highest regard to the authority, power of the court and I know that I am bound by the order/judgment passed by any such court except the right of appeal and judicial review and I hereby seek unqualified apology and to exonerate me from the charges of contempt of court.
9. That the statements made in this affidavit in para 1, 2, 4 to 8 are true to my knowledge and belief, those made in para 3 being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Court. I have not suppressed any material fact.

And I sign this affidavit on this 4<sup>th</sup> day of September, 2003 at Guwahati.

*Rewang Pinchoo John*

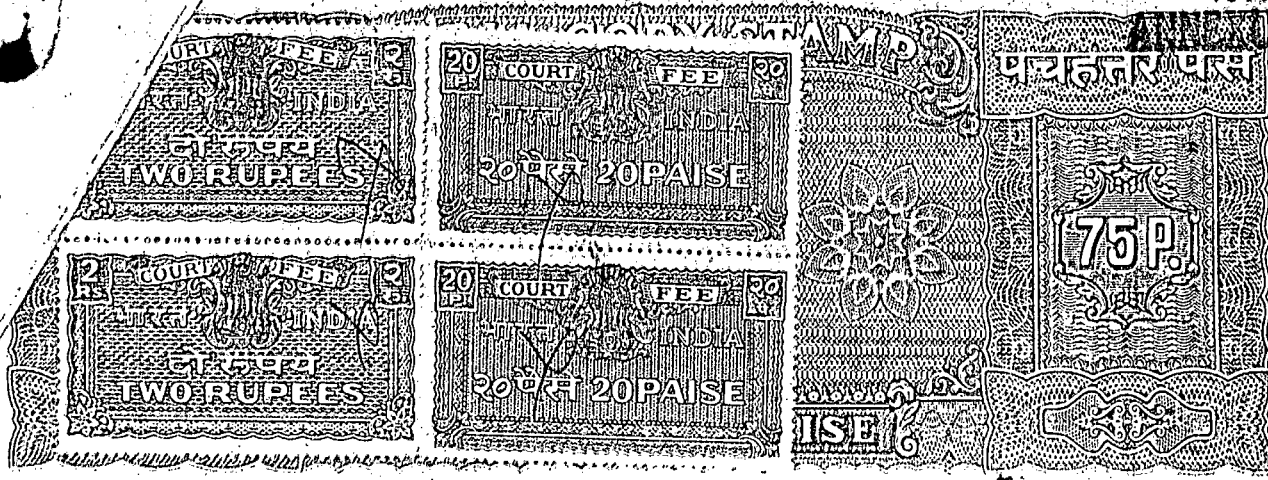
**Deponent**

Identified by me

*B.C. Pathak*  
Advocate 4/9/03

Solemnly affirmed and signed before me by the deponent, who is identified by Shri B.C. Pathak, Advocate on this 4<sup>th</sup> day of September, 2003 at Guwahati.

*Jey Dae*  
Advocate



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
22/7/03	22/7/03	22/7/03	22/7/03	22/7/2003

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA MANIPUR TRIPURA  
MIZORAM & ARUNACHAL PRADESH )

W.P.(C) NO. 5157/2003

- The Union of India,  
Represented by the Secretary to the  
Govt. of India, Ministry of Information  
and Broad Casting, New Delhi -1.

- The Director General All India Radio,  
Akashwani Bhawan, Parliament  
Street, New Delhi -1.

...Petitioner.

-Vs-

- Shri Manoranjan Das,  
Programme Executive, All India,  
Radio, Guwahati.
- Shri Dibakar Sen  
Programme Executive, All India,  
Radio, Tura.

...Respondents.

PRESENT.

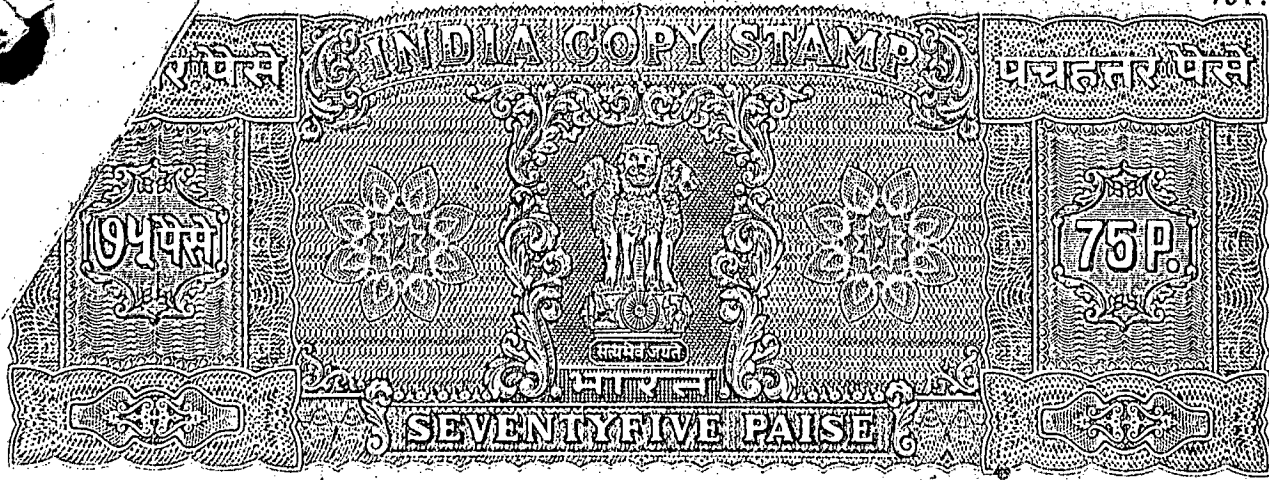
THE HON'BLE THE CHIEF JUSTICE MR PP NAOLEKAR  
THE HON'BLE MR JUSTICE AMITAVA ROY

FOR THE PETITIONER : Mr. S. Bhattacharya,  
Addl. C.G.S.C.

Contd..2.

Certified to be true Copy.

*[Signature]*  
Advocate



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
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2.

15.7.03

ORDER

Admit.

Issue notice.

Sd/-AMITAVA ROY  
 JUDGE

Sd/-PP NAOLEKAR  
 CHIEF JUSTICE

Registered No. of Follios... R984  
 Made by... 22/7/03  
 Signed by... [Signature]  
 Compared by... K.R.S. 22/7/03

...  
 Krishna Kanya Sharma  
 Date... 22nd day of July 2003  
 ...  
 ...  
 ...  
 K.R.S.  
 22/7/03

Certified to be true Copy.

[Signature]  
 Advocate

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# In the Central Administrative Tribunal

Guwahati Bench

Guwahati

## Memo. of Appearance

CP NO. 24/03  
In O. A. No. 254/01 .....

M. P. No. ....

R. A. No. ....

Manoranjan Das & Another  
..... Applicant (s)

-vs-

Shri. K.S. Sarmah & 2 others  
..... Respondent (s)

I, Shri B.C. Pathak, Addl. Central Govt. Standing Counsel, C.A.T., Guwahati Bench, have entered appearance to defend the Union of India and the official respondents in the above noted case. D. 2. L. P. Yolmo

Given under my hand and the seal on this 4<sup>th</sup> day of Sept. 2003, at Guwahati.

  
4/9/03

(B.C. PATHAK)  
Addl. C.G.S.C., C.A.T.,  
Guwahati Bench,  
Guwahati.

Notice

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From:-

BC Pathak,  
Addl. CG & S.E. CAT.

Dt: 5/9/2003

To,

S. Sarma,  
Advocate,  
Guwahati High Court.

Sub: Affidavit-in-reply  
filed by the respondent  
No. 2 in C.P. No. 24/83  
(in O.A. No. 254/01).

Sir,

Please find enclosed herewith a copy of the Affidavit-in-reply filed by the respondent No. 2 in the Hon'ble Central Administrative Tribunal Guwahati Bench at Guwahati.

Please accept the copy and acknowledge the receipt of the same.

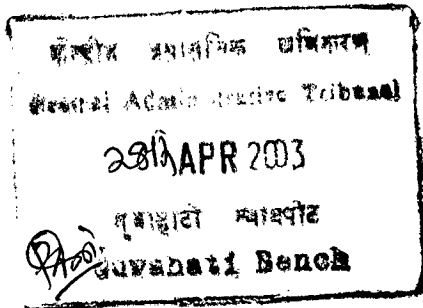
Copy Received

Advocate  
Dt:

I undertake to serve a copy  
to the petitioner's advocate

Yours sincerely,  
Debjani  
(B.C. Pathak) 5/9/03  
Addl. Central Govt. Standing Counsel  
Central Administrative Tribunal  
Guwahati Bench: Guwahati

Debjani  
5/9/03



Filed by  
the petitioners through  
Alsha Das  
Advocate  
25/4/03

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH:

C.P. NO. <sup>24</sup>.....2003.  
In OA No. 254/2001

Sri Monoranjan Das & Anr.

...Applicants

- VS -

Union of India & Ors.

...Respondents

IN THE MATTER OF

An application under Section 17 of  
the Administrative Tribunal's Act,  
1985 read with Rule 24 of the CAT  
(procedure) Rules, 1987.

- AND -

IN THE MATTER OF

Judgment and order dated 13.6.2002  
passed in OA No. 254/2001 passed by  
this Hon'ble Tribunal.

- AND -

IN THE MATTER OF

Willful and deliberate violation of  
the above order.

- AND -

IN THE MATTER OF

1. Shri Monoranjan Das, Programme Executive, All India Radio, Guwahati.

2. Sri Dibakar Sen, Programme Executive, All India Radio, Tura (Meghalaya).

... Petitioners

-vs-

1. Sri K.S. Sarma, Chief Executive Officer, Prasar Bharati (All India Radio) New Delhi.

2. Sri L.P. Yolmo, Station Director, All India Radio, Guwahati.

3. Sri O.P. Bhatti, Superintending Engineer, AIR, Shillong, Meghalaya.

... Respondents/Contemners

The humble petition on behalf of the petitioners abovenamed;

MOST RESPECTFULLY SHEWETH,

1. That the petitioners abovenamed being aggrieved by the action on the part of the Respondents in not promoting them to the rank of Programme Executive with retrospective effect i.e. from the date on which their immediate juniors were so promoted, preferred the abovenoted OA before the Hon'ble Tribunal. The Hon'ble Tribunal after hearing the

parties to the proceeding was pleased to allow the said DA directing the Respondents to give effect the said promotion with effect from 18.4.83 i.e. from the date on which their junior was so promoted notionally with correct fixation of seniority and to refix their pay accordingly.

A copy of the said judgment and order dated 13.6.2002 is annexed herewith and marked as Annexure-1.

2. That the Petitioners abovenamed immediately on receipt of the said judgment and order dated 13.6.2002, submitted representations to the concerned authority endorsing the said judgment with a prayer for implementation of the same. The Contemner No. 1 who is the incharge, has received the said copy of the judgment alongwith the representations. The Contemners No. 2 and 3 also received the copy of the said judgment and order dated 13.6.2002 through CGSC.

A copy of the said representation is annexed herewith and marked as Annexure-2.

3. That the Petitioners kept on pursuing the matter before the concerned authority by submitting representations but same yielded no result in positive. The Petitioners in continuation to their earlier representations preferred another representation dated 26.11.2002 but as yet no reply has been received by them from the contemners.

A copy of the said representation is annexed as Annexure-3.

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4. That the Petitioners having no other alternative served a legal notice to the contemners but till date nothing has been communicated by the contemners. In the said legal notice, the Petitioners demanded implementation of the said judgment and order dated 13.6.2002 within a stipulated time frame.

A copy of the said legal notice dated 16.12.2002 is annexed herewith and marked as Annexure-4.

5. That the Petitioners state that the contemners have full knowledge about the Annexure-1 judgment and order dated 13.6.2002 but they wilfully and deliberately violating the same. It is further stated that the wordings of the said judgment dated 13.6.2002 is unambiguous and there left no room for any other interpretation. However, for the reasons best known to the authority concerned, the contemners are continuously violating the same and for which they are liable to be punished severely for committing contempt of court's order.

6. That the Petitioners state that several months have been passed from the date of judgment but even after repeated persuasion, the contemners are bent upon not to implement the same. Under these fact situation of the case, the Petitioners through this petition also prays for an appropriate direction towards the Respondents/contemners for appropriate execution of the Annexure-1 judgment and order dated 13.6.2002 passed in OA No. 254/2001 by the Hon'ble Tribunal, invoking Rule

24 of the Central Administrative Tribunal (Procedure) Rules 1987.

7. That this application has been filed bonafide and to secure the ends of justice.

In the premises aforesaid, it is most respectfully prayed that Your Lordships would graciously be pleased to initiate appropriate contempt proceeding against the contemners for their willful and deliberate violation of the judgment and order dated 13.6.2002 passed in OA No. 254/2001, and to punish them severely for their such act and to pass appropriate order for execution of the judgment dated 13.6.2002 within a stipulated time frame and/or be pleased to pass such further order/orders as the Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case so as to give complete relief to the Petitioner.

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

AFFIDAVIT

I Shri Monoranjan Das, aged about 52 years, son of I Das, presently working as Programme Executive, All India Radio, Guwahati, do hereby solemnly affirm and state as follows :

1. That I am the Petitioner No. 1 of this instant petition and conversant with the facts and circumstances of the case and as such competent to swear this affidavit.

2. That the statements made in this affidavit and in the accompanying application in paragraphs 5 to 7 \_\_\_\_\_ are true to my knowledge ; those made in paragraphs 1 to 4 are matters of records which I verily believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 24th day of April, 2003.

Identified by me :

*Monoranjan Das*

Deponent

*Usha Das*

Advocate

Solemnly affirmed and declared before me by the Deponent who is identified by Miss Usha Das, Advocate on this 24th day of April, 2003.

*Usha Das*

DRAFT CHARGE

Whereas Sri K.S. Sarma, Chief Executive Officer, Prasar Bharati (AIR) New Delhi, Sri L.P. Yolmo, Station Director, AIR Guwahati and Sri O.P. Bhatti, Superintending Engineer, AIR, Shillong have wilfully and deliberately violated the judgment and order dated 13.6.2002 passed in OA No. 254/2001 by the Central Administrative Tribunal, Guwahati Bench, Guwahati and for that they are liable to be punished severely for committing contempt of court's order .

- 8 -

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 254 of 2001.

Date of decision : This the 13th day of June, 2002.

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

Hon'ble Mr. K.K. Sharma, Member (A).

1. Sri Monoranjan Das  
Programme Executive,  
All India Radio  
Guwahati.

2. Sri Dibakar Sen,  
Programme Executive,  
All India Radio,  
Tura.

...Applicants

By Advocate Mr. S. Sarma.

-versus-

1. Union of India,  
represented by the Secretary to  
the Government of India,  
Ministry of Information and Broadcasting,  
New Delhi-1.

2. The Director General,  
All India Radio,  
Akashbani Bhawan,  
Parliament Street,  
New Delhi.

Sri M.D.Samel,  
Programme Executive,  
All India Radio,  
Bolangir, Orissa.

...Respondents

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

ORDER (ORAL)

CHOWDHURY J. (V.C.)

This is the third round of litigation. The core issue pertains to the date of promotion of these two applicants to the post of Programme Executive vis-a-vis the

Attested  
W.D.M.  
Advocate.

respondent no.3. The basic facts for the purpose of adjudication are as follows :

The two applicants were the direct recruits as Transmission Executive and they joined the post on 10.5.1976. The 3rd respondent joined the post of Transmission Executive on 19.8.1976 as an ad hoc promotee. According to the applicants the services of the 3rd respondent was regularised on 19.8.1976. The applicants pleaded that the 3rd respondent was junior to them. The applicants further pleaded that the post of Programme Executive was a Gazetted Group 'B' post and as per the prevalent rules notified for recruitment to the post, 75% of the posts were to be filled up from amongst the Transmission Executive having five years qualifying service in the grade. Earlier at one point of time the cadre was centralised and seniority was determined on centralised basis. All the Transmission Executives who were appointed on the basis of centralised cadre had since been promoted to the grade of Programme Executive of All India Radio. The cadre of Transmission Executive was decentralised into 24 recruiting zones. Till 1982 the selection and appointment to this grade were being done by the Head of the 24 stations of All India Radio. The seniority list was prepared for each zone separately. It was inter alia averred in the application that with a view to grant promotion to the Transmission Executive, after the cadre was decentralised, to the grade of Programme Executive against the 25% departmental promotion quota it was decided to draw up an All India List of Transmission Executives. The concerned authority advised for drawing up an All India eligibility list of Transmission Executives who were appointed/promoted after the revision of the recruitment rules on the basis of length of continuous regular service

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Attested  
W.D.W.  
Advocate.

in the grade. It was also recommended that the names would be arranged in order of seniority based on the date of appointment. Accordingly an All India Eligibility List of Transmission Executives as on 31.12.1981 was published by the Director General on 21.6.1982. In the said eligibility list name of 3rd respondent was shown at serial no. 11 and his date of continuous appointment to the grade as well as the date of regular appointment in the grade was shown as 19.8.1986. On the other hand the name of the 1st applicant was shown at serial no. 117 and that of the 2nd applicant at serial no. 125, though the applicants joined the post on 10.5.1976 on direct recruit basis. The applicants contended that the 3rd respondent was admittedly junior to them and erroneously he was shown senior to them. A large number of representations were filed by the Transmission Executives including the applicants assailing the aforesaid list. A revised eligibility list of All India Radio and Doordarshan as on 1.1.1982 was published. In that list the name of the 1st applicant appeared at serial No. 203 and that of the 2nd applicant at serial no. 202. The name of the 3rd respondent did not figure in the said list. Meanwhile, the respondents held a SPC for promotion of Transmission Executives to the post of Programme Executive on the basis of the 1981 eligibility list. In view of the wrong assignment in the seniority list the 3rd respondent was promoted along with others, but the applicants were not considered for promotion without any just cause. The respondent no.3 was promoted to the grade of Programme Executive with effect from 18.4.1983 on the strength of erroneous fixation of seniority. The applicants submitted their representations. Other Transmission Executives had

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Attested

Wan

Advocate.

also submitted representation to that effect. One of the Transmission Executive - V.L.N. Rao filed an application before the Allahabad Bench of the Central Administrative Tribunal challenging the 1981 All India Eligibility List and the promotions made on the basis of the said list. The said application was subsequently transferred to the Jabalpur Bench of the Tribunal. The Jabalpur Bench passed an interim order restraining the respondents in that case from holding any DPC based on the impugned eligibility list. As a result the DPC for promotion to the grade of Programme Executive was not held from 1983 to 1987. The Jabalpur Bench delivered its judgment vide order dated 5.3.1987 in T.A. No. 104 of 1986 in the case of V.L.N. Rao Vs. Director General, AIR, New Delhi. The Tribunal quashed the eligibility list of 1981 and directed the respondents prepare a revised eligibility list following the principles laid down in that judgment. Thereafter in terms of the said judgment of the Jabalpur Bench a revised All India eligibility list of Transmission Executives of AIR and Doordarshan was prepared as on 1.1.1982 and the same was circulated on 2.8.1988. In the said list the name of the 1st applicant was shown at serial No. 200 and that of the 2nd applicant at serial No. 1999 and the name of the 3rd respondent at serial no. 235. The applicants further stated that a Special DPC was held on 25.8.1987 and 26.8.1987 in pursuance to the judgment of the Jabalpur Bench of the Tribunal and on the recommendation of the Special DPC a total of 117 Transmission Executives were promoted to the grade of Programme Executive by order dated 28.8.1987. It was clearly mentioned in the said order that the promotion of the aforesaid persons were given retrospective effect i.e. the date on which their junior

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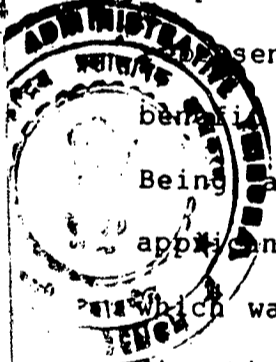
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W.D. An  
Advocate.

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started officiating as Programme Executive and the name of the applicants did not figure in the said list since only 117 Transmission Executives were promoted and since the name of the applicants appeared at serial nos. 199 and 200 in the revised eligibility list. Another promotion list was issued sometime in the month of November 1988 promoting about 67 Transmission Executives to the grade of Programme Executive. As per the Notification dated 21.4.1989 their promotion was given effect from 18.4.1983. The applicants contended that their case was not considered for promotion in 1987-88 though they became eligible for promotion in 1981 as per rules. The applicants further contended that by an order dated 27.10.1989 40 Transmission Executives including the applicants were promoted but they were not given retrospective effect. According to the applicants the promotion of the 3rd respondent was erroneous which was quashed by the Jabalpur Bench the applicants ought to have been promoted to the grade of Programme Executive with effect from 1983 after placing them above the 3rd respondent. The applicants submitted number of representations before the authority, to give them the benefit of the judgment of the Jabalpur Bench (Supra). Being aggrieved by the action of the respondents the applicants moved this Tribunal by way of filing an O.A. which was registered as O.A. No. 163 of 1992 praying for a direction to promote the applicant with retrospective effect from 18.4.1983, the date when their juniors had been promoted with all consequential benefits including correct fixation of inter se seniority. The said O.A. was disposed of by this Tribunal on 7.12.1995 with a direction to the 2nd respondent of that O.A. to dispose of the representation dated 30.4.1991 on merits within the period

Contd....



**Attested**

*W.D.*  
Advocate.

specified therein. However, the representation of the 1st applicant was rejected and the representation of the 2nd applicant was not disposed of. The applicants again moved this Tribunal by filing of O.a. No. 131 of 1997. By an order dated 23.12.1999 the Tribunal again directed the respondents to consider the case of the applicants afresh and directed them to pass a reasoned order. The respondents vide its impugned order 16.6.2000 rejected their representations. Hence this application assailing the legitimacy of the order dated 16.6.2000.

2. The applicants in this application reiterated their plea as was raised in the earlier application. It was inter alia contended that the issue raised in the application was no longer res integra. The Jabalpur Bench already adjudicated the matter and directed the authority to constitute a Special DPC for consideration of the case of the applicants also along with V.L.N. Rao on the basis of the revised eligibility list. The Tribunal instead of setting aside the order of promotion of ineligible persons protected the promotion already given on the basis of earlier eligibility list and safeguarded their interest by not directing for their reversion. In the instant case respondent authority however in an illegal fashion rejected the claim of the applicants without duly applying their minds to the judgment and order rendered by the Jabalpur Bench of the Tribunal (Supra).

3. The respondents submitted its written statement and reiterated their stand as mentioned in the impugned order dated 16.6.2000. The relevant part of the order dated 16.6.2000 is reproduced below :

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" The perusal of the file No.4/8/87 S I (B) and 4/245/88 S I (B) (Part II) reveals that first DPC was held on 25.8.87 and 26.8.87 in respect of 131 vacancies (117 firm vacancies and 14 anticipated vacancies). In the DPC held on 25.8.87 and 26.8.87 all the 143 TREXs included in the Eligibility List circulated vide DG; AIR's O.M. no. 4/8/87 SI (B) dated 13.8.87 were considered and 131 TREXs were recommended in the panel for promotion. However, orders could only be issued in respect of 117 official against the clear vacancies vide order No. 79/87 S I (B) dated 28.8.87 (from file No. 4/8/87 S I (B). As already stated above the Eligibility List circulated vide DG :AIR's O.M. dated 13.8.87 was further challenged in the O.A. No. 671/87 and the Hon'ble CAT, Calcutta Bench in its judgement dated 29.4.88 without quashing the those TREXs who have completed 5 years regular service as on 31.12.1981 should also be incorporated in the Eligibility List. This judgment was examined in file No. 4/245/88 S I (B) (Part II) published on 27/28.8.87 for the cadre of the Transmission Executive in the Directorate and that the eligibility list referred to in the judgement dated 29.4.88 must be the eligibility list circulated vide No. 4/8/87-SI (B) dated 13.8.87. Further it was construed that this judgement is just an improvement on the earlier judgement dated 5.3.87 delivered in O.A. included in the Eligibility List dated 13.8.87. A promotion order vide No. 4/8/8 S I (B) dated 28.8.87 was also issued in respect of 117 Transmission Executives The Eligibility List circulated vide O.M. dated 13.8.87 was further challenged in O.A. NO. 671/87 filed in the CAT, Calcutta Bench by Shri Debasis Gautam and others. The Hon'ble CAT, Calcutta Bench in its judgement delivered on 29.4.88 in O.A. No. 671/87 inter alia directed that the names of those Transmission Executives who have completed 5 years service in accordance with the Recruitment Rules for Programme Executives in force as on 31.12.81, should also be incorporated in the Eligibility List. It is stated that as per the Recruitment Rules which were in force prior to the Transmission Executives for promotion to the grade of Programme Executive was five years. The Eligibility period for Transmission Executives for promotion to the grade of Programme Executive was raised to 8 years in the recruitment rules notified in 1984. Therefore as per the directions contained in the judgement dated 29.4.88 another Eligibility List was prepared and circulated vide DG; AIR's OM No. 4/8/87 S I (B)/S.VII dated 2.8.88 for inviting objections. In this list the name of Applicants appeared at S. Nos. 200 and 199 and Respondent No.3, Shri M.D. Samal figured at S. No. 235. Subsequently, an Eligibility List

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as on 1.1.82 was finalised and circulated vide DG; AIR' O.M. No. 4/8/87 S I (B)/S VII dated 16.9.88 read with a corrigendum No.4/8/87 S I (B)/S.VII dated 15.11.88. Corrigendum had to be issued as the name of Respondent No.3 was missing from the said Eligibility List dated 16.9.88. As per the corrigendum dated 15.11.88 the name of Shri M.D.Samal, TREX was incorporated between the names of Shri J.P. Bhatt (S. No. 33) and Shri T.T. Haokip (S. No. 34) of the Eligibility List circulated on 16.9.88. A DPC was also held on 22.11.88 on the basis of the Eligibility List issued vide 4/8/87 S I (B)/S VII dated 16.9.88 which recommended the names of 46 Transmission Executives for promotion apart from 117 Transmission Executives already promoted as per the recommendations of DPC held on 25/26-8-87.

On the other hand, the case of the Applicants is that they were Direct Recruit TREXs appointed on 10.5.1976, on regular basis. In the OA NO. 131/97, it has been stressed that the Applicants' name in the Seniority list as on 31.12.81 circulated vide No. 5/33/79-SI dated 21.6.82 figured at Sr. No. 117 and Sr. No. 125 respectively though they joined AIR on 10.5.76 and the name of Sh. M.D. Samal figured at Sr. No. 11 whose date of regular appointment is 19.8.76. The Applicants have also referred to the draft Eligibility List issued vide O.M. No. T.A.A. No. 104/86 by CAT, Jabalpur Bench and that it only supplements the judgment dated 5.3.87 in T.A.A. No. 104/86 in as much as it extends the benefits contained in the judgment dated 5.3.87 by CAT, Jabalpur Bench in the matter of promotion to those TREXs who have completed 5 years of regular service as on 31.12.81. Therefore, another DPC was held on 22.11.1988 by including the TREXs who had rendered five years continuous service as on 31.12.1981 in the Eligibility List circulated vide O.M. No. 4/8/87 S I (B) dated 13.8.87. The revised eligibility list was issued vide No. 4/8/87-SI (B)/S.VII dated 16.9.88. The DPC, which was held on 22.11.88 had considered the Transmission Executives with five years regular service for promotion to the grade of Programme Executive and did not affect the promotion of 117 Transmission Executives vide order No. 79/87 S I (B) dated 28.8.1987 who had completed 8 years regular service as on 31.12.1981 and who were recommended for promotion by the DPC held on 25-26.8.1987. In the DPC held on 22.11.88 the Transmission Executives who were considered and promoted were the ones who joined AIR before December, 1975. The total number of vacancies existing as well as anticipated were 161 (including 117 against which orders were already issued vide order dated 28.8.87 on the recommendations of DPC held on 25 and 26.8.87). the last Transmission Executives who was considered and empanelled for promotion in the DPC held on 25/26-8-87- and 22.11.88 is Smt. Sheila Modi who figured at S. No. 179 of the



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 Advocate.



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serial no. 235. The name of the respondent no.3 was not shown in the eligibility list published on 21.6.1982. After the decision rendered by the Jabalpur Bench on 5.3.1987 protecting the promotion made on the basis of earlier list, therefore question of corrigendum dated 15.11.88 placing the respondent no.3 between serial no. 33 and 34 did not arise. At any rate it was contrary to the direction issued by the Jabalpur Bench. As a matter of fact the respondents duly adhered in letter and spirit, the decision of the Jabalpur Bench in its promotion order dated 28.8.87 and 28.11.88 promoting the 117 Transmission Executives. But curiously the similar benefit was not given to these applicants without assigning any reason. The Jabalpur Bench did not direct for reversion of the person who was promoted on the basis of earlier eligibility list but at the same time the directions were issued for holding a Special DPC to consider the case of the officers like the applicants and other similarly placed officers were entitled for promotion as the result of the revised Eligibility List as at the DPC had met at that time when they became eligible for consideration on the basis of their records of performance. In the event the DPC cleared them for promotion, they were to give notional promotion retrospectively from the dates their immediate juniors were promoted to the post of Programme Executives already and their seniority in that cadre determined accordingly and their pay fixed by grant of increments with reference to the notional date of promotion as programme executives. As per the direction including the applicants could not be entitled to arrears of pay or emoluments in the higher post of Programme Executive until they actually assume the charge of posts of Programmes Executive treating the earlier period on the principles of 'No work No Pay'.

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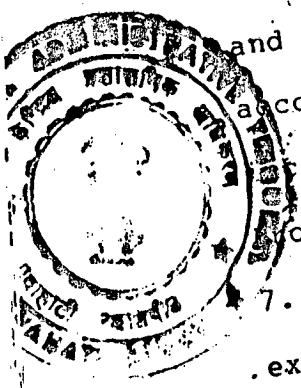
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5. In our considered opinion therefore the respondents were not justified in not giving the same benefit to the applicants as that of respondent no.3.

6. For the reasons stated above the impugned order dated 16.6.2000 is not sustainable in law and liable to be set aside and accordingly the same is set aside. The respondents are directed to give effect the promotion to the applicants notionally with effect from 18.4.1983 i.e. the date on which their junior (Respondent No.3) was promoted in the light of the direction issued by the Jabalpur Bench in O.A: No.104/86 disposed of on 5.3.1987 and the seniority of the applicants would be determined accordingly and their pay would be fixed by granting increments with reference to the notional of promotion as Programme Executives.

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



certified to be true copy  
प्रमाणित प्रतिलिपि

Sd/VICE CHAIRMAN  
Sd/MEMBER (A)

*[Signature]*  
20/6/02

Section Officer (J)  
उपसहायक अधिकारी (अनुसूचित शाखा)  
Central Administrative Tribunal  
केन्द्रीय प्रशासनिक अधिकरण  
Guwahati Bench, Guwahati-7  
गुवाहाटी न्यायाधीश, गुवाहाटी-7

trd

Attested  
*[Signature]*  
Advocate

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To  
The Director General,  
(Directorate General)  
(Shri C.P.S. Nonghulo DDA(P) by name, for kind attention),  
All India Radio,  
Akashvani Bhavan,  
Parliament Street,  
New Delhi-110001.

Sub:- Judgment and order dated 13.06.2002 passed in  
O.A. No.-254/01.

Sir,

With due deference and profound submission I beg to lay  
before your honour the following few lines for necessary action  
thereof.

That I, being aggrieved by wrong fixation of seniority,  
was constrained to move the Hon'ble Tribunal by way of filing  
O.A. No.254/01. On 13th June, the said O.A. has been allowed by  
the Hon'ble CAT/Guwahati Bench and passed a judgment in my  
favour. (Copy enclosed for ready reference).

I hope, your honour would be kind enough to implement  
the said judgment at an early date.

Thanking you,

Yours faithfully,

Encl:- Copy of the Judgment.  
=====

( M.R. DAS )  
Programme Executive,  
Commercial B'casting Service,  
All India Radio : Guwahati.

**Attested**

*Wan*  
**Advocate.**

To,  
The Director General,  
(Directorate General)  
(Shri C.P.S. Nenghule DDA(P) by name, for kind attention)  
All India Radio,  
Akashvani Bhavan,  
Parliament Street,  
New Delhi:-110001.

Sub:- Judgment and order dated 13.06.2002 passed  
in O.A. No-254/01.

Sir,

With due deference and profound submission once again I beg to lay before your honour the following few lines for necessary action thereof.

That I, being aggrieved by wrong fixation of seniority, was constrained to move the Hon'ble Tribunal by way of filing O.A No.254/01. On 13th June, the said O.A has been allowed by the Hon'ble CAT/Guwahati Bench and passed a judgment in my favour. (Copy enclosed for ready reference).

I hope, your honour would be kind enough to implement the said judgment at an early date.

Thanking you,

Yours faithfully,

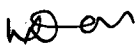


( M. R. DAS )  
Programme Executive,  
Commercial B'casting Service,  
All India Radio; Guwahati.

Enclo:- Copy of the judgment.

Date: 26.11.02.

Attested



Advocate.

copy

Date

Date: 16.12.2002

To,

1. The Director General,  
(Directorate General),  
All India Radio, Akashbani Bhawan,  
Parliament Street, New Delhi-1.
2. The Station Director,  
All India Radio, Guwahati.
- 3. The Station Director,  
All India Radio, Shillong.

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21/4/03

L.P. YBLMO →

Sub: Legal Notice.

Sir,

Upon authority and as per the instruction of my client Sri Monoranjan Das, Programme Executive, All India Radio, Guwahati, and Sri Dibakar Sen, Programme Executive, All India Radio, Shillong, I give you this notice as follows.

That my clients aforesaid praying for antedating their promotion to the post of Programme Executive, vis-a-vis one Sri M.D.Samel, Programme Executive, preferred O.A.254/2001 before the Central Administrative Tribunal, Guwahati Bench, Guwahati. The Hon'ble Tribunal after discussing the entire factual aspect of the matter, was pleased to allow the said O.A. directing you to give notional promotion to my clients to the post of Programme Executive w.e.f. 18.4.83 with a further direction to fix their pay granting the increments with reference to the said notional promotion (copy enclosed for ready reference). The aforementioned judgment was delivered by the Hon'ble Tribunal on 13.6.2002 but as yet nothing has been done in the matter. My clients aforesaid made representations to you praying for implementation of

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Advocate.

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the said judgment but knowing fully well about the said judgment you have not taken any step for implementation of the said judgment.

The aforesaid action on your part amounts to violation of the directive passed by the Hon'ble Tribunal and same is contemptuous in nature. The factual discussion, conclusion and directive of the Hon'ble Tribunal in its judgment is very clear and as such there should not have been any difficulties in implementing the same.

Under the aforesaid facts and circumstances I give you this notice making a demand that the judgment and order dated 13.6.2002 be implement by promoting the aforesaid clients to the post of Programme Executive, nationally w.e.f.18.4.83 and to fix their pay by granting the increments in reference to such notional promotion, within a period of 15 days from the date of receipt of this notice, failing which instruction of my clients is to initiate contempt proceeding against to for your willful and deliberate violation of the judgment and order dated 13.6.2002 passed in O.A.No.254/2001 by the Hon'ble Tribunal and for which you will be solely responsible for the consequences thereof.

I hope and trust that there would be no such occasion for any such litigation dragging you unnecessarily into the same.

Thanking You,

Sincerely Yours,



(S. Sarma.)

**Attested**

*Wan*  
Advocate.