

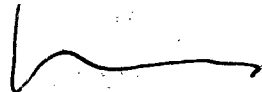


21.8.2003 Present : The Hon'ble Mr. Justice  
D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. K.V. Prahaladan,  
Administrative Member.

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

Put up again on 25.8.2003 for further orders and disposal. Mr. A. Deb Roy, learned Sr. C.G.S.C. may obtain instructions on the matter, in the meantime.

  
Member

  
Vice-Chairman

mb

25.8.2003 List the matter again on 27.8.2003 for further orders.. alongwith M.P. 92/2003.


  
Member

  
Vice-Chairman

mb

28.8.03 List the matter again on 1.9.03 for further orders alongwith M.P.No. 92 of 2003,

  
Member

  
Vice-Chairman

lm

Office Note	Date	Tribunal's Order
	1.9.2003	<p data-bbox="805 424 1540 497">Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.</p> <p data-bbox="997 505 1572 577">The Hon'ble Mr. K.V. Prahaladan, Member (A).</p> <p data-bbox="790 645 1588 2056">This application basically under Rule 24 of the Central Administrative Tribunal (Procedure) Rules praying for an appropriate order for promotion of the applicants. These four applicants were working as Junior Telecom Officer. By order dated 1.1.2002 these applicants were promoted alongwith numbers of Junior Telecom Officers. Though they were found suitable they were not promoted on the purported ground of pendency of the disciplinary proceedings. The applicants moved this Tribunal praying for a direction for their promotion. The Tribunal by its judgment and order dated 29.8.2002 in O.A. Nos. 125/2002, 134/2002, 135/2002 and 136/2002 directed the Respondents to complete the disciplinary proceedings with utmost expedition within a specified time frame. By order dated 5.5.2003 in M.P. No. 26/2003 the respondents were directed to complete the same on or before 31.5.2003. The applicants moved this Tribunal by way of this application for giving effect to the order. On the pretext of the purported disciplinary proceedings the applicants were not promoted.</p> <p data-bbox="798 2083 1580 2432">The Respondents submitted its written statement and contended that in respect of applicant Nos. 1, 2 and 4 the enquiry reports were submitted on 20.12.2002, 30.7.2003 and 5.8.2003 respectively and in respect of applicant No.3 the proceedings is under process.</p>

Office Note	Date	Tribunal's Order
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1.9.2003

Mr. S. Ali, learned Sr. counsel for the applicant submitted that the Respondents failed to complete the disciplinary proceedings though they were granted time by order dated 5.5.03 in M.P. 26/2003 and the disciplinary proceedings automatically stands dropped and the applicants stands exonerated. Therefore, there is no justification for not promoting the applicants on the strength of the office order dated 1.1.2002 to the post of TES Group 'B' in the scale of pay of Rs. 7500-250-12000/-.

We have also heard Mr. A. Deb Roy, learned Sr. C.G.S.C. for the Respondents.

Considering all aspects of the matter, we order the respondents to consider the case of the applicants for promotion on ad hoc basis in the light of the para 5.1 and 5.2 of the office memorandum dated 14.9.1992 issued by the Ministry of Personnel & Training, Public Grievances and Pension, Department of Personnel & Training. The Respondents are accordingly ordered to consider the case of the applicants for ad hoc <sup>promotion</sup> expeditiously at any date within two months from the date of receipt of the order.

Subject to the observations made above the application stands disposed of. No order as to costs.

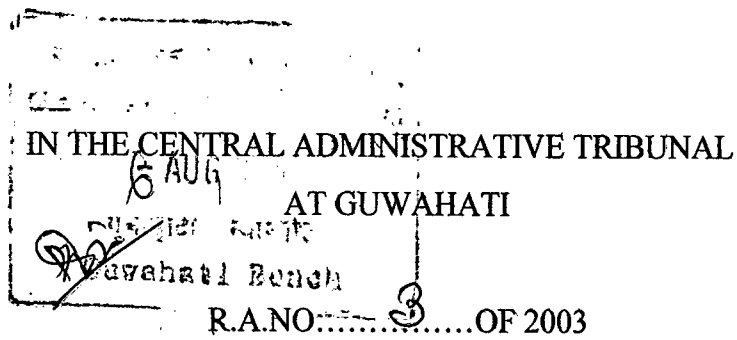
*K. R. Radhakrishnan*  
Member

*[Signature]*  
Vice-Chairman

15.9.2003

Copy of the order has been sent to the office for issuance the same to the applicant as well as to the Govt. Secy for the reply  
H.C.

cy 17/9



*Filed by the petitioners  
through me  
Mrs. Gulriya Begum*

*Sri Manoj Kumar Karki  
6/8/2003*

1. Shri Promod Kumar Pathak.
2. Shri Monoj Kumar Karki
3. Shri Pulakesh Deka
4. Shri Someswar Sonowal

.....PETITIONERS

-VERSUS-

1. Union of India, represented by the Secretary to  
The Government of India, Communication Department, New Delhi.
2. Assistant Director, Director, General (Personal-II) B.S.N.L, New Delhi-  
Sansar Bhawan.
3. The Chief General Manager, B.S.N.L, Assam Circle, Ulubari, Guwahati.
4. The General Manager B.S.N.L, Tezpur.

And

In the matter of: -

An order dated 5/5/2003 passed by the Hon'ble Tribunal  
in M.P. No.26/2003 against O.A. No.125/2002,O.A.No.134/2002,  
O.A.No.135/2002 and O.A.No.136/2002. -VS- Union of India and

Others

Respondents

The humble petition of the above named petitioners  
most respectfully sheweth:-

1. That your petitioners are now working as Junior Telecom Officer at  
Biswanath Chariali, Tezpur and North Lakhimpur. All the petitioners  
are eligible for promotion to the next higher grade-viz:T.E.S Group  
the pay scale of Rs 7500/-,2050/-,1200/-and accordingly as per rule

they have been promoted by the authority to the post of T.E.S. vide office order No.B.S.N.L (HQ), New Delhi Letter No.1-16-2001-pers-II dated 19/12/2001

Annexure-1 is the photocopy of letter No.1-16-2001-pers-II dated 19/12/2001

2. That though the petitioners have been promoted vide Annexure -1 but the Chief General Manager, Assam Circle, Did not promote them to the next higher grade due to pendency of vigilance case and thereby the petitioners have been deprived of their legitimate promotion vide office order No.S.T.E.S-5/2/Loose /9 dated Guwahati the 1/1/2002.

Annexure-2 is the photocopy of the order No S.T.E.S-5/2/Loose/9 dated Guwahati the 1/1/2002

3. That though promotions order was issued by the B.S.N.L, New Delhi, but the Chief General Manager did not give them promotion due to pendency of vigilance vide Letter No.S.T.E.S-5/2/Loose/51 dated 8/3/2002.

Annexure-3 is the letter issued by the Asstt. Director, Telecom (Staff)

4. That for refusal promotion, all the petitioners filed O.A. No-125/2002,134/2002, 135/2002&136/2002 before the Central Administrative Tribunal on ..... and the Hon'ble Tribunal after hearing both sides in the above cases passed judgment on 29/8/2002 with a direction to the Respondents not to drag the matter beyond 3 (three) months from the date of receipt of the order.

Annexure-4 is the photocopy of the judgment order dated 29/8/2002 passed by C.A.T.

5. That the Respondents did not comply with the order dated 29/8/2002 passed by the Hon'ble Tribunal in the above cases and after the expiry of the stipulated date, the Respondents filed the M.P. No.26/2003 praying for 3(three) months time to

6  
Sri Manoj Kumar

implement the order and the Hon'ble Tribunal further granted time vide order dated 5/5/2003 to complete the proceedings within 31/5/2003 but up till now the departmental proceeding has not been complied with.

Annexure-5 is the order dated 5/5/2003 passed in M.P.No.26/2003 granting time till 31/5/2003.

5. That in the mean time, the Hon'ble tribunal vide judgment and order dated 5.8.2003 allowed a similar case O.A. No: 102/2002 filed by Shri Kamakhya Ranjan Dey, with direction to the Respondent to consider the case of the applicant for promotion on the light of Office Memorandum more particularly paragraph 5.1 and 5.2 of the Memorandum. The Respondent are also directed to pass order of Ad hoc Promotion as expeditiously as possible at any rate within a period of 1(one) month from the date of receipt of the order

Annexure-6 is the photocopy of the judgment and order dated 5/8/2002 passed in O.A.No.102/2002 filed by Shri K.R.Dey.

Annexure-7 is the photocopy of the Office Memorandum dated 14/9/1992 issued by the Director, Government of India, Ministry of Personal, Public Grievances & Pensions, Department of personal & training, New Delhi.

7. That in another case, O.A. filed by..... was not allowed by The Hon'ble Tribunal, the applicant moved the Hon'ble High Court and the same has been allowed by the Hon'ble High Court after setting aside the order of the Hon'ble C.A.T. and the Respondent has been directed to promote him.
8. That the Respondents filed M.P.No.26/03 in O.A.134/2002,135/2002 and 136/2002 Praying for further three months time to implement the judgment dated 29/8/2002 and the Hon'ble Tribunal issued notice to Petitioners to show cause as to any time should not be granted to the Respondents. All the petitioners filed joined objection not to grant further extension of time and the Hon'ble Tribunal after hearing the

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Shri Manoj kr. (senior)



implement the judgments & orders to be defiant for which the Hon'ble Tribunal itself can draw up a contempt proceedings suo moto.

15. That it is submitted the Petitioners that by discriminating their case the Hon'ble Tribunal have caused serious miscarriage of justice.
16. That the Petitioner's submit on the following grounds that they are entitled to be promoted and posted as they have already been selected by the higher authority for promotion to higher grade.

GROUNDS:-

1. For that the Respondents ought not to have been given extension of time to complete the departmental proceedings though it was known to the Hon'ble Tribunal that they had been violating the order of the Hon'ble Tribunal deliberately.
2. For that the Petitioner's has been discriminated by not promoting them on Ad Hoc basis whereas in a similar case this Hon'ble Tribunal has given direction to the Respondents to give promotion on Ad Hoc basis in O.A.No.102/2002.
3. That the Hon'ble High Court also in a similar case the writ petitioners of that case has been given promotion on Ad Hoc basis within a period of 1(one)month from the date of the receipt of the order of the Hon'ble Tribunal.
4. From that from the facts and circumstances of the Petitioner's case it is a fit case for giving Ad Hoc promotion.

It is therefore respectfully prayed that the Hon'ble Tribunal on consideration of the facts and circumstances of the cases may be

9  
Sri Manoj Kumar

pleased to give direction to the Respondents to give Ad Hoc promotion as they have repeatedly failed to comply with the direction of the Hon'ble Tribunal to promote the Petitioners on Ad Hoc basis and this case being a covert case by the judgment and order dated 5/8/2002 passed by the Hon'ble Tribunal in O.A.No. 102/2002 be disposed off at the admission stage without further hearing in the matter for receiving ends of justice.

And for this act of kindness the Petitioners shall everpray.

*Dr. Manoj K. Borkar*

A F F I D A V I T

I, Shri Monoj Kumar Karki, working as Junior Engineer in Telecom Department do hereby solemnly affirm and state as follows :-

1. That I the Petitioner No.2 of the above Review petition and I am fully conversant with the facts and circumstances of the case and I have also being authorized to swear this affidavit on behalf of other Petitioners also.
  
2. That the statements made in paragraph are true to my knowledge and those made in paragraph made in above petition are true to my information of the Review Petition

And I sign this Affidavit on this 28th day of July, 2003 at Guwahati.

Solemnly declared  
before me by the deponent  
Sri Monoj Karki, before me  
on this 28th day of July,  
2003 at Guwahati.

*Sri Monoj K. Karki*  
DEPONENT

*Miss Gulfiya Begum*  
30/7/03  
ADVOCATE

3 1  
4+4=8

8 Annexure: 2

**Bharat Sanchar Nigam Limited**  
**(A Government of India Enterprise)**  
**Office of The Chief General Manager, Assam Telecom Circle**  
**Ulubari, Guwahati-781007**

No. STES-5/2/loose/9

Dated at Guwahati the 1-1-2002

**OFFICE ORDER**

Sub:- Posting of TES Group B on their promotion from JTO

In pursuance of BSNL(II/Q) New Delhi letter no. 1-16/2001-Pers-II Dated 19-12-2001, the Chief General Manager, Assam Telecom Circle, Guwahati is pleased to promote the JTOs mentioned in the Annexure, to the grade of TES Group 'B' in the pay scale of 7500-250-12000/ and the promoted officers are hereby posted in the SSA/Units indicated against their names as per list enclosed.

2. The officers shall not be promoted to the higher grade by the concerned SSA/Units.
  - i) In case of disciplinary/Vigilance case is pending or contemplated against him/her.
  - ii) If the officer is under currency of any penalty.
3. The officers are required to join their promotional assignment within a period of 30 days from the date of issue of this order. All SSA Heads may ensure that the stations of postings in respect of officers are issued with a period of 7 days from the date of issue this order and the officers are relieved within the prescribed time period.
4. In case the officer concerned fails to join the promotional assignment within the prescribed time periods of 30 days, he/she should not be allowed to be relieved or join the post thereafter. In such cases, the promotion order shall become inoperative and the matter shall be reported to this office for further necessary action.
5. The leave, if any, requested by the officer should not be allowed. If any officer desires leave, he/she can apply for leave to the new Heads of SSA/Units under whom he/she has been posted only after joining the new post.

Contd to page 2

*Attested  
Miss Jyoti Beg  
Adm code  
3077/03*

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6. The JTOs who have been promoted to TES Gr. B on purely officiating arrangement basis will automatically stand reverted to their original cadre before their joining on promotional posts under this office order
7. The postings at RTTC, Guwahati shall be on temporary basis till postings are made through selection procedures
8. The date on which the above order is given effect to may be intimated and a consolidated report of the officers who have been relieved/joined their new postings may also be sent immediately on expiry of 30 days from the issue of this order.

*Sa/—*

(A.K.Chelleng)  
Asstt. General Manager(Admn.)

Copy to:-

1. The ADG(Pers-II), BSNL, Corporate office, New Delhi-110001
- 2-5 The General Manager, Telecom, Guwahati/Dibrugarh/Silchar/Jorhat
- 6-8. The Telecom Dist. Managers, Bongaigaon/Tezpur/Nagaon
9. The Deputy General Manager, RTTC, Guwahati
10. The Deputy General Manager(Installation), C.O, Guwahati
11. The Deputy General Manager(Planning), C.O, Guwahati
12. The Deputy General Manager(Operation), C.O, Guwahati
13. The Chief General Manager Telecom, Task Force, NE, Region Guwahati- He is requested to ensure before release of the officer for his promotional post that no vigilance /disciplinary case is pending against him
- 14 The Director Mtee, Eastern Telecom Region, Guwahati
- 15 The Asstt. General Manager(IT), C.O, Guwahati
- 16-17 The Circle Secretary TESA/JFOA, Guwahati
18. Guard File
- 19 Spare

*G.C. Sarma*  
(G.C.SARMA) 1/1/02

Asstt. Director Telecom(Staff)

CSG: IV Promotion

*collected  
Miss Gubini Bar  
Advocate  
30/7/03*

3 9 10

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ANNEXURE-I

Sl. No	Staff No	Name of JTO	Presently working	Posting on promotion
1	2	3	4	5
1	105764	Sri J. N. Sarma	C.O/ GH	C.O/GH
2	108466	Mrs. Aradhana Chakraborty	KTD/GH	C.O/GH
3	108631	Miss Gitanjali Nath	KTD/GH	C.O/GH
4	107715	Sri Ramkrishna Newar	ETR	C.O/GH
5	106190	Sri Madan Ch. Bania	KTD/GH	KTD/GH
6	107685	Sri K.N. Barman	KTD/GH	KTD/GH
7	107722	Sri Syamal Dutta	KTD/GH	KTD/GH
8	107812	Sri Amitava Nandi	KTD/GH	KTD/GH
9	108113	Sri Gopal Ch. Sarma	KTD/GH	KTD/GH
10	108397	Sri Hiranaya Kr. Das	KTD/GH	KTD/GH
11	108565	Sri Vivekanda Nath	C.O/ GH	KTD/GH
12	108793	Sri Maloy Chanda	KTD/GH	KTD/GH
13	109065	Mrs. Niva Baruah	KTD/GH	KTD/GH
14	108894	Sri Biren Ch. Kumar	C.O	KTD/GH
15	107877	Sri Rajib Lochan Bora	GMT/JRT	GMT/JRT
16	108088	Sri Homen Hazarika	GMT/JRT	GMT/JRT
17	106924	Sri A.K.Roy	GMT/JRT	GMT/JRT
18	108919	Miss Paporu Baruah	GMT/JRT	GMT/JRT
19	109464	Sri Rajesh Kr. Choudhary	GMT/JRT	GMT/JRT
20	109032	Sri A.K.Nath	KTD/GH	GM/JRT
21	109442	Sri Sarbeswar Kalita	KTD/GH	GM/JRT
22	108956	Sri Nirmla Kl. Chokraborty	ETR	GMT/JRT
23	108973	Sri Rajib Kr. Barman	ETR	GMT/JRT
24	109190	Sri Jayanta Kr Biswas	TASK FORCE	GMT/JRT
25	106875	Sri B.S.Paul Mazumdar	GMT/DR	GMT/DR
26	108563	Sri Sunil Mishra	GMT/DR	GMT/DR
27	109088	Sri Lakhi Prasad Sarkar	GMT/DR	GMT/DR
28	109155	Mrs. Pushpanjali Bora	GMT/DR	GMT/DR
29	109353	Sri Upen Ch. Bora	TDM/NGG	TDM/NGG
30	109515	Sri Premananda Nath	TDM/NGG	TDM/NGG
31	109459	Sri Suresh Ch. Bora	TDM/NGG	TDM/NGG
32	106537	Sri Swapan Kr. Paul	KTD/GH	TDM/NGG
33	108446	Sri G.R. Seikh	KTD/GH	TDM/NGG
34	109184	Sri S.S. Das	C.O/ GH	TDM/NGG
35	106551	Sri Bijit Nag Choudhary	GMT/SC	TDM/NGG
36	107280	Sri Bhobotosh Das	GMT/SC	TDM/NGG
37	106220	Sri C.L. Biswas	TDM/TZ	TDM/TZ
38	108677	Sri A.H. Laskar	TDM/TZ	TDM/TZ
39	109166	Sri Pradip Gohain	TDM/TZ	TDM/TZ
40	109376	Mrs. M.M.Karki	TDM/TZ	TDM/TZ
41	108073	Sri Arup Kr. Dutta	RTIC/GH	TDM/TZ

*Wesley*  
*Advocate*  
*30/7/02*  
*U.S.F.*

112.11

42	108277	Sri Seikh Sayed Ahmed	TDM/BGN	TDM/BGN
43	109170	Md. Gazi Rahman Ahmed	TDM/BGN	TDM/BGN
44	109184	Sri S.K. Sutradhar	TDM/BGN	TDM/BGN
45	109236	Sri J. K. Dhar	TDM/BGN	TDM/BGN
46	109331	Sri Chandan Kr. Choudhary	TDM/BGN	TDM/BGN
47	109432	Sri Mrinal kr. Mishra	TDM/BGN	TDM/BGN
48	109385	Sri Mridul Ch Kalita	RTTC/GH	RTTC/GH
49	106539	Sri Dinesh Ch. Barman	RTTC/GH	RTTC/GH
50	106959	Sri D.K. Sarma	GMT/GH	RTTC/GH
51	107879	Sri Bijoy Singha	RTTC/GH	RTTC/GH
52	108174	Sri Aditya kr. Jha	RTTC/GH	RTTC/GH
53	107693	Sri Dimbeswar Baishya	ETR	RTTC/GH

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Annexure - 2

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confidential

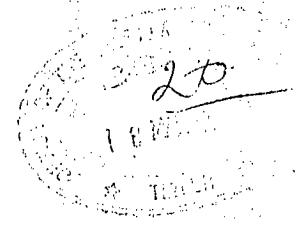
**Bharat Sanchar Nigam Limited**  
 (Government of India Enterprise)  
 Office of The Chief General Manager: Assam Tel. com Circle  
Ulubari Guwahati-781007

*Chandra*

No. STES-5/2/Loose/51  
To

Dated at Guwahati: the 08-3-2002

The Telecom Dist. Manager,  
Tezpur



Sub:- Promotion to the cadre of TES Group 'B'

Kindly refer to your letter no. E/IGA. 101-III/01-02/17  
 Dated 12-2-2002 on the above mentioned subject. The following JTOs are  
 not promoted to the cadre of TES Group 'B' due to pendency of vigilance  
 cases. Against them...

Sl No.	Staff no	Name of the JTOs
1	107515	Sri Pulakesh Deka
2	108083	Sri Monoj Kr. Karki
3	108343	Sri Promodh Kr. Pathak
4	109884	Sri Someswar Sonowal

Sri J.C.Sarma, JTO has not been promoted to the cadre  
 of TES Group 'B' in the BSNL, Head Quarter, New Delhi memo no. I-  
 16/2001-Pers. II 19-2-2001.

This is for favour of your kind information please.

*EDET/MD  
190302*

*copy of  
letter  
sent to  
Muz. Secy  
Tezpur  
11/3/02*

*G.C.SARMA*  
 (G.C.SARMA) 283  
 Asstt. Director Telecom (Staff)

*101-III/01-02/17*

*D/T Tezpur, the 21-03-2002*

*copy forwarded*

- 1) Sri Pulakesh Deka, JTO, SDE (FRS) / T2
- 2) Sri Monoj Kr. Karki, JTO.
- 3) Promodh Kr. Pathak, JTO.
- 4) Someswar Sonowal, JTO.
- 5) Sri J.C. Sarma, JTO

*for kind information please*

*Attended  
 Mess Galtia Beg  
 Advocate  
 30/7/02*

**SDE HRD) BSNL**  
**OIO TDM/Tezpur-784001**

Annexure - 4/2

BY HAND/BY POST

CENTRAL ADMINISTRATIVE BUNAL  
GUWAHATI BENCH GUWAHATI

DESPATCH NO. CAT/E-Y/BUOL./ 2174 DATED GUWAHATI THE 27/7/02

- ✓ ORIGINAL APPLICATION NO. :- 131/2002
- MISC. PETITION NO. :-
- CONTEMPT PETITION NO. :-
- REVIEW APPLICATION NO. :-
- TRANSFER APPLICATION NO. :-

P. Deka APPLICANT(S)

VERSUS-

U of A OR RESPONDENT(S)

To

Sri Patekesh Deka,  
Junior Telecom Officer,  
60th Divisional Company (OC)  
Reg. No. DSSOM

Please find herewith a copy of Judgment/Order dated 27/7/02 passed by the Bench of this Hon'ble Tribunal comprising of Hon'ble Justice D N Choudhary Vice Chief Justice and Hon'ble Member K. K. Sharma Administrative in the above noted case for information and necessary action, if any.

Please acknowledge receipt of the same.  
 Encl:- As stated above.

BY ORDER  
[Signature]  
 DEPUTY REGISTRAR.

No. No. \_\_\_\_\_ Dated \_\_\_\_\_

- Copy to
- 1)
  - 2)
  - 3)
  - 4)

DEPUTY REGISTRAR

*Attested  
 Hussain  
 Advocate  
 30/7/03*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 125 of 2002  
Original Application No. 134 of 2002  
✓ Original Application No. 135 of 2002  
Original Application No. 136 of 2002

Date of Decision: This the 2<sup>nd</sup> day of August 2002

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

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

O.A.No.125/2002

Shri Pramod Kumar Pathak,  
Junior Telecom Officer,  
Office of the Telephone Exchange,  
Biswanath Chariali, Assam

O.A.No.134/2002

Shri Manoj Kumar Karki,  
Junior Telecom Officer,  
Office of the Telephone Exchange,  
Tezpur, Assam.

O.A.No.135/2002

Shri Pulakesh Deka,  
Junior Telecom Officer,  
Office of the Divisional Engineer(OCB),  
Tezpur, Assam.

O.A.No.136/2002

Shri Someswar Sonowal,  
Junior Telecom Officer,  
Office of the S.D.O.(P),  
North Lakhimpur, Assam.

By Advocates Mr S. Ali and Mr A. Chetri.

..... Applicants

- versus -

The Union of India, represented by the  
Secretary to the Government of India,  
Communication Department, New Delhi.

The Assistant Director General (Pers-II),  
Bharat Sanchar Nigam Ltd.,  
New Delhi.

3. The Chief General Manager,  
Bharat Sanchar Nigam Ltd., Assam Circle,  
Ulubari, Guwahati.

4. The Telecom District Manager,  
Tezpur, District-Sonitpur, Assam.

..... Respondents

By Advocate Mr A.K. Chaudhuri, Addl. C.G.S.C.



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O R D E R

CHOWDHURY. J. (V.C.)

The four O.A.s were taken up together for consideration since all these applications involve common question of law, namely holding over the promotion of the applicants consequent to a disciplinary proceeding.

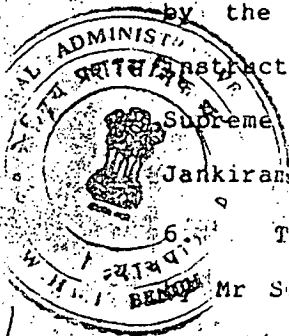
2. The four applicants are working as Junior Telecom Officer (hereinafter referred to as JTO for the sake of brevity). By Office order No.STES-5/2/loose/9 dated 1/1.2002, in pursuance to Bharat Sanchar Nigam Limited Headquarter, New Delhi letter No.1-16/2001-Pers-II dated 19.12.2001, the Chief General Manager, Assam Telecom Circle, Guwahati ordered for promotion of a number of JTOs, mentioned in the Annexure to the aforementioned order to the grade of TES Group 'B' in the scale of pay of Rs.7500-250-12000/-. The said order also included the names of these four applicants. Though these applicants were found suitable for promotion they have not been promoted till now and the same has been deferred on the ground of pendency of the disciplinary proceedings instituted against them. Hence these applications assailing the legitimacy of the action of the respondents in withholding their promotions.

3. The respondents submitted their written statement and contended that in view of the pendency of the disciplinary proceeding against all these four applicants, the authority did not give effect to the order of promotion on the basis of the policy laid down by the Government of India in O.M.No.22011/4/91-LSI (A) dated 14.9.1992.

4. Mr S. Ali, learned Sr. Counsel, assisted by Ms K. Chetri, learned Advocate, appearing on behalf of the applicants strenuously assailing the action of the respondents as illegal contended that the applicants who were working as JTO for about a decade were promoted at long last could not have been denied the fruits of promotion on the purported ground of pendency of the disciplinary proceeding. Disdainfully decrying the O.M. dated 14.9.1992 the learned Sr. counsel submitted that the executive instructions cannot supersede the statutory law. Referring to the Discipline and Appeal Rules, Mr S. Ali submitted that the rules by itself is a complete code and therefore, such matters are to be regulated by the rules. The executive instructions as mentioned by the respondents cannot arrogate. In support of his contention the learned Sr. counsel also referred to the decision of the Supreme Court in State of Mysore Vs. C.R. Seshadri and others, reported in AIR 1974 SC 460 and the Full Bench decision of the Central Administrative Tribunal, New Bombay Bench in O.A.No.169/1987 and others (Abraham Titus and Others Vs. Union of India and others) decided on 23.8.1990.

5. Mr A. Deb Roy, learned Sr. C.G.S.C., appearing on behalf of the respondents submitted that there is no infirmity in the O.M. dated 14.9.1992, which was issued by the Government of India on review of the earlier executive instructions in the light of the decision rendered by the Supreme Court in Union of India and others Vs. K.V. Jankiraman and others, reported in AIR 1991 SC 2010.

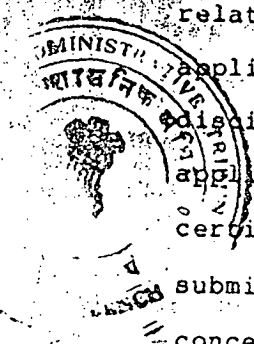
There is no dispute as to the principles enunciated by Mr S. Ali, learned Sr. counsel to the effect that the executive instructions cannot supersede statutory provisions. Statutory rules will prevail over the executive instructions.....



instructions, but where statutory rules are silent, executive instructions can fill up the gap. In the instant case, by the executive instructions the Central Government has only sought to plug the hole. By the aforementioned O.M. the Central Government issued instructions to meet the eventualities of promotion of Government servants against whom disciplinary/criminal proceedings were pending in the context of the decision of the Supreme Court in Union of India Vs. K.V. Jankiraman and others (Supra). The said instructions, therefore, cannot be said to be unlawful on the facts and circumstances of the case. Admittedly, as on 19.12.2001 when the Bharat Sanchar Nigam Limited decided to promote the officers, which also included the names of these applicants the disciplinary proceedings were pending against the applicants. On our enquiry the learned counsel for the parties stated that, in fact, in some cases the disciplinary proceedings are nearing completion and in some cases the proceedings are under progress.

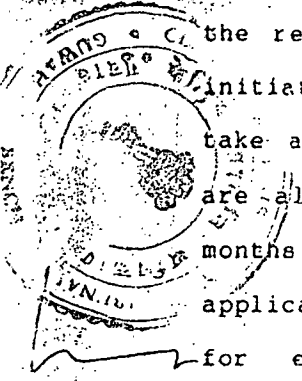
6. Mr S. Ali, the learned Sr. Counsel reacting to the submissions made by the learned Sr. C.G.S.C. submitted that the disciplinary proceedings initiated by the respondents suffers from the vice of malafide. The learned Sr. Counsel submitted that the purported disciplinary proceedings relate to certain events that took place in 1996 when these applicants were working in their respective fields. In the disciplinary proceedings the only allegation against these applicants is pertaining to countersignature in experience certificates of casual workers. The learned Sr. counsel submitted that the certificates were prepared by the concerned competent authority and they only countersigned on verification of the matter. There is no illegality on this issue. The learned Sr. counsel also questioned the initiation of the proceedings after a long lapse of time as malafide. We are not making any comments on this issue at

this.....



this stage since the disciplinary proceedings are not directly under challenge before us. As a matter of fact, the proceedings are nearing completion. Therefore, it would not be appropriate for us to make any comment on the nature of the disciplinary proceedings at this stage. It would always be open for the applicants to assail the legitimacy of the disciplinary proceedings if occasion arises. We also deprecate the action of the respondents in keeping alive the disciplinary proceedings for such a long period. The executive instructions of the Government of India vide O.M. dated 14.9.1992 was issued to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and directed that all efforts should be taken to finalise expeditiously the proceedings. The executive instructions of the Government of India, which are equally binding on the respondents, itself indicate for the review of such cases for promotion on the expiry of six months from the date of convening of the first DPC which adjudged the suitability.

7. Taking into consideration all the facts and circumstances of the case, including the nature of the disciplinary proceedings as well as the materials produced before us as to the progress of the proceedings, we direct



the respondents to conclude the disciplinary proceedings initiated against the applicants with utmost expedition and take appropriate decision on the matter. The respondents are also directed not to drag the matter beyond three months from the date of receipt of the order. The applicants are also ordered to cooperate with the authority for expeditious completion of the proceedings. On conclusion of the disciplinary proceedings, the respondents

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are ordered to take necessary follow-up action as per law.

8. Subject to the observations made above, the applications are disposed of. There shall, however, be no order as to costs.



Sd/VICE CHAIRMAN  
Sd/MEMBER (A)

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C.A. ...  
...

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ORDER SHEET

Original Application No. \_\_\_\_\_  
Misc. Petition No. 26/03 in O.A. 125/02, 134/02, 135/02  
Contempt Petition No. \_\_\_\_\_ and 136/02  
Review Application No. \_\_\_\_\_

Applicant (s) Union of India Jans

- Vs. -

Respondent (s) Pranmod Kr. Pathak

Advocate for the applicant (s) A.K. Chaudhury Addl. C.G.S.C.

Advocate for the respondent (s) Mr. S. Ali, Ms. K. Chetri

Notes of the Registry

Date

Order of the Tribunal

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5.5.2003

Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman  
The Hon'ble Mr. S. Biswas Administrative Member.



Heard Mr. A.K. Chaudhury, learned Addl. C.G.S.C. for the petitioner/respondent and also Mr. S. Ali, learned Sr. counsel for the opposite party.

By our judgment and order dated 29.8.2002 passed in the O.A.s, namely, O.A. Nos. 125/2002, 134/2002, 135/2002 and 136/2002, the respondents, considering all the aspects, were directed

contd.

*[Faint handwritten notes and signatures at the bottom of the page, including a signature that appears to be 'S. Biswas']*

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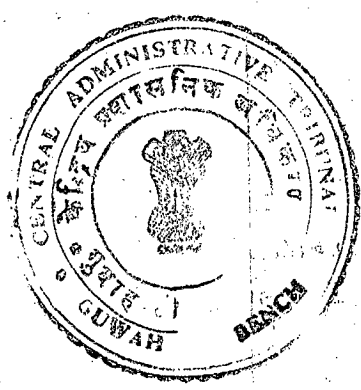
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5.5.2003 to complete the departmental proceeding with utmost expedition and accordingly time was prescribed. The respondents of these applications sought for further extension of time for completion of departmental proceeding. No indication is given as to why the respondents could not complete the proceeding within the time prescribed. The department itself laid down the norms for proceeding with utmost expedition.

On the facts situation the respondents were directed to complete the exercise within the time specified. No reason not to speak any good reason are cited to show as to why the departmental proceeding could not be completed. It seems that the respondents authority have not taken the matter with right earnest. By this application the petitioners/respondents have prayed for three months time to complete the proceedings.

Considering the facts and circumstances of the case, the respondents are allowed to complete the same on or before 31.5.2003.

With this the application stands disposed.



Sd/ VICE-CHAIRMAN

Sd/ MEMBER (A)

Copy for information and necessary action to:  
 1) Mr. A.K. Choudhury, Addl. C.S.C., C.A.T.  
 2) Mr. S. Ali, Sr. Advocate, Gauhati High Court.

*[Handwritten signature]*  
 Section Officer (S)  
 20/5/2003

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Annexure - 6

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./XXX.No.102.of.2002..ox

DATE OF DECISION. 6.8.2002.....

Sri Kamakhya Ranjan Dey ..... APPLICANT(S)

Mr.J.L.Sarkar, Mrs.S.Deka & ..... ADVOCATE FOR THE APPLICANT(S)  
Mr.A.Chakraborty

-VERSUS-

Union of India & Others. .... RESPONDENT(S)

Mr.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.

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.102 of 2002.

Date of Order : This the 6th Day of August, 2002.

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

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

Sri Kamakhya Ranjan Dey  
S/O :- Late Harendra Kr. Dey  
Working as Junior Telecom Officer  
Hojai. . . . . Applicant.

By Advocates mr.J.L.Sarkar, Mrs.S.Deka &  
Mr.A.Chakraborty.

- Versus -

1. Union of India  
Represented by the Secretary  
to the Government of India  
Ministry of Communication  
Department of Telecommunications  
New Delhi - 1.

2. The Chief General Manager  
Assam Telecom Circle, Ulubari  
Guwahati - 781 007.

3. Telecom District Manager  
Nagaon Telecom District  
Nagaon - 782 001. . . . . Respondents.

By Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C.):

The matter pertains to promotion to the post of Telecommunication Engineering Service (for short) TES Group-B in the scale of Rs.7,500-12,000/-.

1. The applicant was initially appointed as Technician in the department of Telecommunication w.e.f.3.3.1969. He was promoted as Junior Engineer now designated as J.T.O., w.e.f.3.9.1977. While he was

working as J.T.O., Lumding, a disciplinary proceeding was initiated against him interms of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for alleged misconduct of committing gross irregularities by issuing some Advice Notes vide memo dated 27.7.1998. The applicant submitted his reply to the chargesheet on 6.8.1998. The Enquiry Officer concluded the enquiry and submitted its report on 11.8.2000 exonerating the applicant from the charges. It was stated that the concerned authority forwarded the enquiry report to the competent authority by memo dated 5.9.2000. In the meantime the respondents authority issued promotion list of Junior Telecom Officer, who were promoted to TES Group-B vide memo dated 26.4.2000. In the aforesaid order amongst others the name of the applicant appeared at Sl.No.978 in the list. Though the applicant was promoted as such on the ground of the pendency of the disciplinary proceeding the applicant was yet to be promoted. The applicant submitted representation dated 31.8.2000 to the concerned authority. The Telecom District Manager, Nagaon, in his turn forwarded the representation of the applicant to the Chief General Manager, Assam Circle/BSNL, Guwahati seeking for expeditious disposal of the matter. In the said memo the Telecom District Manager, Nagaon mentioned that the enquiry report dated 11.8.2000 in respect of the applicant was sent to the office of the C.G.M., Guwahati vide memo dated

5.9.2000. It was also mentioned that the applicant go his name in the progress list of TES-Group-B from D.O.T., but his case could not be considered due to non-clearance of the disciplinary proceeding. By the said memo the C.G.M., Assam Circle, Guwahati was requested to take up the matter at his level for early decision in the case of the applicant. The applicant submitted another representation to the respondent No.2 to drop the charges leveled against him on the basis of the enquiry report. Failing to get any appropriate remedy from the respondents the applicant moved this Tribunal by way of this application.

2. In the written statement the respondents admitted that the enquiry officer submitted its report exonerating the applicant on 11.8.2000. Since the charge issuing authority was not competent to decide the case, the matter was referred to CGMT, Assam Circle for issuance of final order in consideration of the materials on records and the enquiry officer's report. It was also mentioned that due to up-gradation of the J.T.O. cadre from Group "C" to Group "B" there was change in the disciplinary/appointing authority interms thereof. The papers of the case were required to be forwarded to the appropriate authority and therefore it took time. The respondents authority stated that the case would be processed as soon as disciplinary authority takes up its decision. Admittedly, the disciplinary proceeding against the applicant was

initiated long back in 1998. The enquiry was completed and the enquiry officer submitted its report on 11.8.2000. The authority was only to take a decision on the matter. Keeping the matter alive since 2000 till date cannot be said to be reasonable. The Govt. of India on being aware of such situation issued instructions from time to time for promotion of the Govt. servant. The need to complete the disciplinary proceeding with utmost expedition is not to be recounted and order of promotion was not to be withheld at the pretext of disciplinary proceeding unreasonably.

As a matter of fact, the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training issued Office Memorandum dated 14.9.1992 to take care of such situation. There is no justification on the part of the respondents for not giving the promotional benefits to the applicant at the pretext of the disciplinary proceeding, enquiry of which was completed far back. At this stage we are not making any further comment since the matter is pending before the disciplinary authority. We, however, feel that the authority need to consider the case of the applicant for giving adhoc promotion in the light of paragraph 5 of the Office Memorandum dated 14.9.1992.

3. On consideration of materials on record, we accordingly direct the authority to consider the case for promotion of the applicant on adhoc basis in the

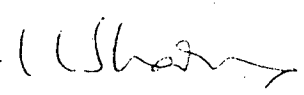
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light of the Office Memorandum, more particularly, in the light of paragraphs 5.1 and 5.2. The respondents are also directed to pass appropriate order of adhoc promotion as expeditiously as possible at any rate within a period of one month from the date of receipt of the order.

The application is allowed to the extent indicated above.

There shall, however, be no order as to cots.



( K.K.SHARMA )  
ADMINISTRATIVE MEMBER



( D.N.CHOWDHURY )  
VICE CHAIRMAN

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27 28 Annexure - 7

Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel & Training

North Block, New Delhi - 110001

Dated, the 14th Sept., 1992

OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose Conduct is under investigation - Procedure and guidelines to be followed.

O.M.No.  
39/3/59-Estt.A dt.31.5.60  
7/26/63-Estt.Adt.22.12.64  
22011/3/77-Estt.A  
dt.14.7.77  
22011/1/79-Estt.A  
dt.31.1.82  
22011/2/86-Estt.A  
dt.12.1.88  
22011/1/81-Estt.A  
dt.31.7.91.

Cases of Government Servants to whom Sealed Cover Procedure will be applicable.

Procedure to be followed by DPC in respect of Government servants under cloud.

Procedure by subsequent DPCs.

Action after completion of disciplinary case/criminal prosecution.

Six Monthly review of "Sealed Cover" cases.

The undersigned is directed to refer to Department of Personnel & Training OM No.22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgement dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V. Jankimman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of ..... in respect of Shri ..... (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri ..... The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of 'censure' should be imposed.

3.4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be

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Miss Justice  
Advocate  
30/7/03

done subsequently also every six months. The review should, *inter alia*, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

is for ad-hoc action.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him *ad-hoc* promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after *ad-hoc* promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow *ad-hoc* promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on *ad-hoc* basis. Where the Government servant is considered for *ad-hoc* promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2 After a decision is taken to promote a Government servant on an *ad-hoc* basis, an order of promotion may be issued making it clear in the order itself that:-

- i) the promotion is being made on purely *ad-hoc* basis and the *ad-hoc* promotion will not confer any right for regular promotion; and
- ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the *ad-hoc* promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the *ad-hoc* promotion already made may be confirmed and the promotion treated as a regular one from the date of the *ad-hoc* promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his *ad-hoc* promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the *ad-hoc* promotion granted to him should be brought to an end.

6. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions have been issued after consultation with the Comptroller and Auditor General of India.

9. Hindi version will follow.

*(M.S. BALI)*  
DIRECTOR

To  
All Ministries and Departments of the Government of India with usual number of spare copies.  
No. 22011/4/91-Est(A) Dated the 14th Sept., 1992.

Copy forwarded for information to:-

- 1. Central Vigilance Commission, New Delhi.
- 2. Central Bureau of Investigation, New Delhi.
- 3. Union Public Service Commission, New Delhi.
- 4. Comptroller and Auditor General, New Delhi.
- 5. President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat and Prime Minister's Office.
- 6. Chief Secretaries of All States and Union Territories.
- 7. All Officers and Administrative Sections in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.

*(M.S. BALI)*  
DIRECTOR

Sealed cover procedure for confirmation.

Sealed cover procedure applicable to officers coming under cloud after holding of DPC but before promotion.