

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 107/2003.....

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 107/2003

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Applicants: - Mr. P. K. Majumdar

Respondents: - Union of India & others

Advocate for the Applicants: - Mr. J. L. Dinkar, Mr. A. Chakrabarty

Advocate for the Respondents: - C.G.S.C.

Notes of the Registry	Date	No	Order of the Tribunal
This application is in form but not in the <u>Cognoscere</u> Petition is filed / no. 107/2003 for Rs. 50/- deposited vide PO/B. no 86490456 Dated 20/5/2003 <i>(Signature)</i> <i>By Registrar</i> <i>RS</i> <i>20/5/03</i>	22.5.2003		Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S.K. Hajra, Member (A). Heard Mr. A. Chakrabarty, learned counsel for the applicant. The application is admitted. Call for the records. List on 24.6.2003 for orders.
Notice prepared and sent to 188 for arraignment - Court No. 182 by Regd. M. XINo 110011101 11/29/03	24.6.2003	mb	None appears for the applicant. Put up again on 8.7.2003 for orders.
① Service report pure still awaited.	8-7-03	mb	Vice-Chairman
	23.8.03		8-7-03. Court did not sit today The case is adjourned to 16/7/2003 M/s AC

16.7.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. N.D. Dayal, Member (A).

Heard Mr. A. Chakrabarty, learned counsel for the applicant.

Put up again on 13.8.2003 for written statement.

By
12.8.03

Member

Vice-Chairman

mb

13.8.2003 On the prayer of Mr. B.C. Pathak, learned Addl. G.G.S.C. for the respondents further four weeks time is allowed to the respondents to file written statement. List on 15.9.2003 for orders.

Vice-Chairman

mb

15.9.2003 Present : The Hon'ble Sri K.V. Prahaldan, Member (A).

List on 24.10.2003 for filing written statement.

K.V. Prahaldan
Member

mb

14.11.03

24.10.03 There is no Bench today
Adjourned to 17.11.03.

870
2.

17.11.2003 Present: Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman Hon'ble Shri S.K. Naik, Administrative Member.

Adjourned. List for orders on 19.11.2003.

Naik
Member

Naik
Vice-Chairman

19.11.2003 Present : The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman.

The Hon'ble Sri S.K. Naik, Administrative Member.

None appears for the applicant. Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.

No written statement has been filed.

26.1.04

Respondents seek and are allowed further three weeks time to file reply and two weeks for rejoinder to the applicant.

List on 05.01.2004 for orders.

~~30/12~~
Member

~~82~~
Vice-Chairman

bb

5.1.2004 List again on 22.1.2004 for orders.

K. V. Prahelan
Member (A)

22.1.2004 Present: The Hon'ble Shri Bharat Bhushan Judicial Member.

The Hon'ble Shri K.V. Prahelan Administrative Member.

Mr. A. Chakraborty, learned counsel for the applicant and Mr. A. Deb Roy, Sr. C.G.S.C. learned proxy counsel for Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents were present.

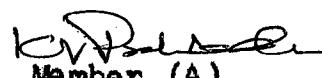
The learned proxy counsel requests for adjournment on behalf of the respondents as the counsel for the respondents Mr. B.C. Pathak, Addl. C.G.S.C. is in personal difficulty.

Allowed. Written statement be filed within four weeks. Two weeks thereafter for rejoinder. List the case on 23.3.2004 for hearing.

K. V. Prahelan
Member (A)

J
Member (J)

27.2.2004 List before the next available
Division Bench


Member (A)


Member (J)

bb

1.4.2004

Present: Hon'ble Shri Kuldeep Singh,
Judicial Member
Hon'ble Shri K.V. Prahlan,
Administrative Member.

Learned counsel for the parties are present. Me B.C. Pathak, learned Add. C.G.S.C. submits that since the written statement was to be sent to Delhi the same could not be filed in time. Therefore, he prays for some time. Prayer allowed. List the matter on 29.4.04 for hearing.

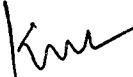
5.4.04.

W/S filed

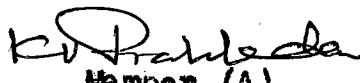
in Reponnd Nos.

182.


Member (A)


Member (J)

29.4.2004 List for hearing before the next
Division Bench.

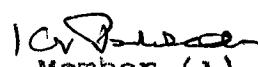

Member (A)

mb

10.5.2004 Present: The Hon'ble Shri Mukesh Kumar Gupta, Member (J).

The Hon'ble Shri K.V. Prahlan, Member (A).

Adjourned on the request made by Mr. J.L. Sarkar, learned counsel for the applicant, for 12.5.2004. It is made clear that in case, he wishes to file rejoinder, that can be filed within the ~~prescribed date~~ ^{21.5.2004}


Member (A)

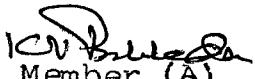

Member (J)

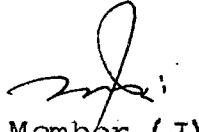
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12.5.2004 Present : The Hon'ble Sri Mukesh Kumar Gupta, Member (J).

The Hon'ble Sri K.V. Prahladan, Member (A).

Adjourned on the request made by learned counsel for the respondents as he is not keeping well. List before the next Division Bench.


K.V. Prahladan
Member (A)


Mukesh Kumar Gupta
Member (J)

mb

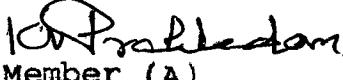
24.8.2004 present: The Hon'ble Shri D.C.Verma, Vice-Chairman (J).

The Hon'ble Shri K.V.Prahladar Member (A).

23.9.04
Rejoinder in reply to the W/S. has been filed.

Mr.J.L.Sarkar, learned counsel for the applicant as well as Mr.B.C.Pathak, learned Addl.C.G.S.C. for the respondents were present.

Mr.B.C.Pathak requests for time to get instruction from the department. Learned counsel for the applicant objected thereto. However, considering the circumstances two weeks further time is granted to the respondents by way of last opportunity. List on 20.9.2004 for hearing.


K.V. Prahladan
Member (A)


D.C. Verma
Vice-Chairman

30.9.04
W/S and rejoinder filed by the respondents and applicant respectively. bb
The case is ready for hearing.

1.10.04

Arguments of Mr J.L.Sarkar, learned counsel for the applicant and Mr B.C. Pathak, learned Addl.C.G.S.C for the respondents have been heard.

List for judgment on 6.10.04.


K.V. Prahladan
Member


D.C. Verma
Vice-Chairman

6.10.2004 As we are busy with other matters and after lunch Single Judge has to sit separately, it is not possible to dictate the judgment. Hence adjourned to 5.11.2004.

I.C. Bhattacharya
Member (A)

R
Vice-Chairman

bb

5.11.2004 ~~The parties. Learned counsel for~~

*Copy of the Judgment
handed over to the
Advocates for the
parties.*

*rec
3/11/04*

5.11.2004 Heard learned counsel for the parties. Hearing concluded. Judgement delivered in open Court. The application is allowed in terms of the order. No order as to costs.

I.C. Bhattacharya
Member (A)

R
Vice-Chairman

mb

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A. NO. 107/2003

DATE OF DECISION 5.11.2004

Sri P.K. Mazumdar APPLICANT(S)

Mr. J.L. Sarkar, Sri A. Chakrabarty ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India & Ors. RESPONDENT(S)

Mr. B.C. Pathak, Addl. C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE R.K. BATTA, VICE CHAIRMAN.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ? 78
2. To be referred to the Reporter or not ? 78
3. Whether their Lordships wish to see the fair copy of the Judgment ? 78
4. Whether the judgment is to be circulated to the other Benches ?
Judgment delivered by Hon'ble Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL :::: GUWAHATI BENCH

Original Application No. 107 of 2003.

Date of Order : This the 5th day of November, 2004.

THE HON'BLE MR. JUSTICE R.K. BATTA, VICE CHAIRMAN.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri Pijush Kanti Mazumdar
Working as Sr. SDE under the Department
of Telecommunication,
Dibrugarh - 786 001. . . . Applicant.

By Advocates Mr. J.L. Sarkar and Mr. A. Chakraborty.

- VERSUS -

1. Union of India
represented by the Secretary to the
Government of India, Ministry of
Communication, Department of
Telecommunciation, New Delhi - 1.
2. The Chief General Manager,
Telecommunications, Assam Telecom Circle,
Guwahati - 7. . . . Respondents.

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

O R D E R

BATTA, J. (v.C.) :

The applicant alongwith 656 officers of TES Group - B was ordered to be promoted to Senior Time Scale of Indian Telecom Services Group - A (for short STS of ITS) in the pay scale of Rs.10,000-325-15,200/- on temporary and ad hoc basis.

Five of the Officers in the said promotion were selected from the Assam Cadre including the applicant whose name was placed at Sl. No. 323. The said promotion and posting was on ad hoc basis to Bharat Sanchar Nigam Limited (BSNL in short). According to the applicant, the said promotion was not short



term or stop gap arrangement, but the promotion was for filling up of regular vacancies. Subsequent to the said promotion order, BSNL issued order dated 3.1.2002 for posting of 560 officers of TES Group-B to STS of ITS Group-A on ad hoc basis to BSNL. The name of the 5 officers from Assam Cadre were also included in the Annexure to the said order dated 3.1.2002 wherein the name of the applicant figured at Sl. No. 280. Inspite of that, the applicant was not promoted though promotion was approved by orders dated 20.12.2001 and 3.1.2002. The applicant was not communicated any reason by the respondents for not promoting him inspite of his name having figured in the select list in terms of orders dated 20.12.2001 and 3.1.2002. The applicant was also not given any opportunity to represent before passing the order dated 23.1.2002. The applicant moved O.A. 27/2002 before this Tribunal and by order dated 22.8.2002 the said application was allowed directing the respondents to give effect to the promotion dated 20.12.2001. The applicant, in the meantime, received chargesheet dated 1.2.2002 on 1.2.2002 itself. Pursuant to the order dated 22.8.2002 in O.A. NO. 27/2002, the applicant was promoted with effect from 23.01.2002 by an order dated 24.2.2003 followed by an order dated 6.3.2003. In the said order the applicant after being promoted was reverted to his substantive post w.e.f. 1.2.2002. The applicant has now impugned order dated 24.2.2003 on the ground that his promotion was against regular vacancy and he could not be promoted on ad hoc basis and that he was not given any opportunity to represent before passing the order of reversion.

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2. The Respondents in the written statement averred that since no legal notification under Sub Section 2 of Section 14 of the Administrative Tribunals Act, 1985 was issued conferring jurisdiction on the Tribunal, this Tribunal has no jurisdiction to entertain the application since the promotion is to take effect in BSNL. The Respondents further contends that the promotion of the applicant and others was ordered on ad hoc basis and the applicant was not promoted on the ground of pending disciplinary proceeding for which the charge sheet was issued on 1.2.2002. The respondents contest the claim of the applicant that his promotion was on regular basis against regular vacancy and that the department was justified in reverting the applicant to his substantive post since charge sheet for disciplinary proceeding was served on him.

3. In so far as the objection of jurisdiction is concerned, we do not find any merit since the order in question dated 24.2.2003 which is subject matter of challenge in this application had been issued by the Ministry of Communication & Information Technology, Government of India. There is nothing to indicate that the applicant has been absorbed in BSNL. In view of the Judgment of the Chandigarh Bench of the Tribunal in Phuleshwar Prasad Singh Vs. Union of India & Ors. reported in 2003 (2) ATJ 297 and Full Bench Judgment dated 24.3.2004 of Central Administrative Tribunal, Jaipur Bench in B.N. Sharma Vs. Union of India and Ors. in O.A. 401/2002 and connected O.A.s, we find no merit in respect of objection to the jurisdiction of the Tribunal raised by the Respondents.

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4. We have heard Mr. J.L. Sarkar, learned Advocate for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.

5. The first point which requires to be determined is whether the promotion of the applicant could be said to be on regular basis as claimed by the applicant. The order dated 20.12.2001 issued by the Ministry of Communication, Department of Telecommunication shows beyond doubt, that the promotion was approved on purely temporary and ad hoc basis. The posting in respect of the officers within the BSNL/MTNL is left to be decided by the authorities. The Government of India, in terms of Telecom Policy 1999 had decided to transfer the function of Department of Telecommunications to the newly formed company BSNL. Therefore, it appears that the services of the applicant and others, after promotion order was issued by the Ministry of Communication, were placed at the disposal of the BSNL/MTNL. Being transitory period, the promotion was ordered on purely temporary and ad hoc basis. The posting order dated 3.1.2002 issued by the BSNL also clearly indicates that the promotion was on ad hoc basis. Order dated 23.2.2003 of the BSNL also indicates that the promotion was on purely temporary and ad hoc basis. Therefore, it is crystal clear that the promotion of the applicant was purely temporary and on ad hoc basis. As such, there is no merit in the claim of the applicant or argument of the learned Advocate for the applicant that the promotion in question was on regular basis. The learned Advocate for the applicant further contended



before us that even if the promotion is to be treated as temporary and ad hoc basis, then also the respondents failed to comply with the principles of natural Justice in not giving opportunity to the applicant to represent before denying promotion vide order dated 23.01.2002 though the name of the applicant figured in the select list.

6. In order to appreciate the contention of the learned Advocate for the applicant, it is necessary to refer to the law on the subject. The Apex Court in Parshotam Lal Dhingra vs. Union of India, (1958 SCR 829) with reference to termination of service has laid down that one test for determining whether the termination of service was by way of punishment or otherwise is to ascertain whether under the Service Rules, but for such termination, the servant has the right to hold the post. In cases of substantive appointment to a post, temporary appointment for a fixed term and a temporary appointment which has ripened into a quasi-permanent status under the Temporary Service Rules, where such a right exists, the servant will be entitled to the protection of Article 311. It is pertinent to note that the Apex Court has observed that this would not however mean that the termination of service of a servant who has no right to the post can never be a dismissal or removal by way of punishment. It was further observed that although in such termination the actual motive of the Government must be wholly irrelevant, where it expressly chooses to penalise the service misconduct,



negligence, inefficiency or the like by inflicting on him the punishment of dismissal, removal or reduction, the requirements of Article 311 must be complied with.

7. The Apex Court in Appar Apar Singh Vs. The State of Punjab and Others, 1970 (3) SCC 338 after relying upon the case of Parshotam Lal Dhigar (Supra) has also reviewed the case-law on the subject and has approved propositions laid down in State of Punjab and Another Vs. Shri Sukh Raj Bahadur (AIR 1968 SC 1089). The Apex Court has amongst other propositions laid down that circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

8. The same principles were adopted and reiterated by the Apex Court in State of Uttar Pradesh and others Vs. Saughar Singh (AISLJ 1974 474) in a case of reversion. It was held that an order of reversion in its immediate effect is bound to always to be a reduction in rank. In this case also it was observed that the real test in all such cases is to ascertain if the officer concerned has a right to the post from which he is reverted. If he has a right to the post then a reversion is a punishment and cannot be ordered except in compliance with the provisions of Article 311. If, on the other hand, the officer concerned, has no right to the post, he can be reverted without attracting the provisions of Article 311. But even in this case, he cannot be reverted in a manner which will show conclusively that the intention was to punish him.

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It was further observed that order of reversion may cast a stigma or penal consequences including loss of seniority or postponement of future chances of promotion.

9. The position which emerge on the basis of law laid down by the Apex Court is that the reversion, by itself, may not amount to punishment. This position has been laid down by the Apex Court in State of Punjab & Another Vs. Sukh Raj Bahadur, AIR 1968 SC 1089 and in G.S. Gill and Others Vs. The State of Punjab and Others, AIR 1974 1898. When reversion amounts to punishment will depend upon the attendant or preceding no circumstances in a given case and strait jacket formula can be laid down in this respect. Nevertheless, if reversion amounts to punishment, it would be necessary to comply with the principles of Natural Justice. In B.C. Chaturbedi, (Appellant) Vs. Union of India & Others, (Respondents) with Union of India & Others, (Appellant) Vs. B.C. Chaturvedi, (Respondent), AIR 1996 SC 484 it was found that pending disciplinary proceeding, the appellant was promoted as Asstt. Commissioner of Income-tax. The Apex Court has laid down that two courses in this behalf are open to the competent authority in such eventuality, viz. sealed cover procedure which is usually followed, or promotion, subject to the result of pending disciplinary action. Obviously, the appropriate authority adopted the later course and gave the benefit of promotion to the appellant. Such an action would not stand as an impediment to take pending disciplinary action to its logical conclusion. The advantage of promotion gained by the

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delinquent officer would be no impediment to take appropriate decision and to pass an order consistent with the finding of proved misconduct.

10. In Punjab State Electricity Board and Another Vs. Baldev singh, (1998) 5 SCC 450, the Apex Court while dealing with the ad hoc promotion considered whether show cause notice was necessary while reverting the respondent from ad hoc promotion on the direction of the higher authorities to discontinue such ad hoc promotion. It was held that the respondent had not acquired any right, besides that reversion was not punitive. As such, the question of giving any opportunity to the respondent, therefore, did not arise.

11. Coming now to the case under consideration, we may first refer to an order of this Tribunal dated 22.08.2002 in O.A. 27/2002 filed by the present applicant. The dispute therein related to withholding of promotion on the ground of disciplinary proceeding. The Tribunal noted that the applicant was found suitable for promotion and to that effect order was passed on 20.12.2001 and no disciplinary proceeding was pending that day nor any charge sheet was issued to him. On that basis, the Tribunal held that the withholding the promotion of the applicant on the ground of pendency of disciplinary proceeding was bad in law and as such, direction was given to the respondents to give effect to the order of promotion dated 20.12.2001. It is pertinent to note that when the order was passed by this Tribunal on 22.08.2002, the

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charge sheet had been served on the applicant on 1.2.2002. The respondents raised the said issue before the Tribunal that since the charge sheet had already been issued, the applicant should not be ordered to be promoted. It is well settled that the Court and Tribunal can take cognizance of developments that take place during the pendency of the proceeding. The respondents in compliance of order of the Tribunal dated 22.08.2002 passed the following order :-

"In compliance of the judgment dated 22/8/2002 of Hon'ble CAT, Guwahati Bench in O.A. No. 27/2002, Shri P.K. Mazumdar (staff No. 9096), an officer of TES Group-B is deemed to have been promoted in the grade of STS of ITS Group-A w.e.f. 23.01.2002 i.e., the date on which his juniors were promoted by Assam TC in accordance with order No. 11/1/2001-STG.I dated 20.12.2001.

2. Sri P.K. Mazumdar, an officer of STS of ITS Group-A is reverted to his substantive grade of TES Group-B w.e.f. 01/02/2002 in accordance with DOP&T OM No. 11012/9/86/1/GOs/GMTD-DR/2001-02/8 dated 1st February 2002.

3. This issues with the approval of Competent Authority.

Sd/-
(RAM AUTAR)

Under Secretary (SGT)
Tel. No. 23036282 / Fax No. 23716099"

The expression used in the order is deemed to have been promoted and the same expression has been used for the purpose of reversion of the applicant. In the same order the applicant was reverted retrospectively with effect from 1.2.2002 i.e.,

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the date on which the charge sheet was served on the applicant.

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We may to ~~stat~~ with point out that retrospective order of reversion dated 24.2.2003 is obviously punitive inasmuch as it deprived the applicant of promotional benefits retrospectively w.e.f. 1.2.2002 inspite of order of this Tribunal dated 22.8.2002.

12. In Sarwan Singh and Others Vs. Union of India and another, AIR 1960 Page 24, the Himachal Pradesh High Court dealt with the question of retrospective order of reversion and refund of excess pay drawn during the said period from which retrospective promotion came into force. The Court held that the order of reversion made to operate retrospectively during which period employee had worked and drawn salary and other emoluments which they are ordered to refund and since the reversion order entailed penal consequences it amounted to punishment for which to show cause notice had to ~~been~~ given.

13. We may at this stage refer to a decision of this Tribunal in Dhirendra Kumar Das Vs. Union of India & Ors. in O.A. No. 95/1994. In that case the applicant was promoted to the grade of Senior Assistant Engineer, who has later reverted to the original post of Assistant Engineer. On the representation submitted by him he was promoted to the post of Senior Assistant Engineer on 26.08.1993 on regular basis. Thereafter, by order dated 13.7.1993, the applicant therein was promoted in the Junior Time Scale of the Indian Telecom Service Group - A purely on ad hoc basis. He served in that capacity for a period of 9 months and was reverted on 16.5.1994 to his

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substantive grade of Senior Assistant Engineer. Relying upon the Rule 11(4) of the relevant Rules it was argued on behalf of the respondents therein that when an ad hoc officer is chargesheeted then automatically he is required to be reverted. This Tribunal after placing reliance on judgments of Apex Court in P.L.Dhingra Vs. Union of India & (Supra), State of Uttar Pradesh & Others Vs. Sughar Singh (Supra) and Regional Manager and another Vs. Pawan Kumar Dubay reported in 1976 SLJ 387 held that reversion order was on the ground that chargesheet was filed, details of which were not made available to the Tribunal. It was held that reversion was by way of punishment. Following the decisions of the Apex Court as well as decision of the Principal Bench, Central Administrative Tribunal, in Dhian Singh Vs. The Lt. Governor and others, reported in 1987 (4) SLJ 950, the order of reversion was quashed.

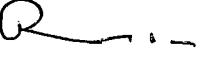
13. In the case before us the charge sheet which was served on the applicant during the pendency of the O.A. 27/2002 pertains to the acts of the year 1992. This development of serving the charge sheet on the applicant on 1.2.2002 had taken place when O.A. 27/2002 was pending before this Tribunal. The details of the chargesheet and the year to which the charges pertained were not placed before the Tribunal in O.A. 27/2002. Inspite of the same this Tribunal ordered the promotion of the applicant. The charges are also 10 years old and cannot be ⁿconsidered as sufficient justification to order reversion of the applicant who had been ordered to be promoted by the Tribunal.

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14. Admittedly, the disciplinary proceedings have been initiated against the applicant by serving charge sheet on him on 1.2.2002. Even after a period of two years, the respondents did not inform as to what has in fact happened to the disciplinary proceedings. In the circumstances of the case, we find that the order dated 23.2.2003 was infact in the nature of punishment whereby the applicant was ordered to be reverted retrospectively w.e.f. 1.2.2002 thereby depriving the benefits which the applicant had accrued under order dated 22.8.2002 passed by this Tribunal in O.A. 27/2002. In the circumstances of the case, we have no hesitation in coming to the conclusion that the reversion order is not only punitive in nature being retrospective, but also cannot be sustained since the Principles of Natural Justice have not been complied with inasmuch as the applicant was not afforded any opportunity to represent before passing reversion order by the respondents. It is clear that the order in question had been passed in order to negate and bypass the order of the Tribunal dated 22.08.2002 in O.A. 27/2002.

15. For the aforesaid reasons, the application is allowed by modifying the first paragraph of the order dated 24.2.2003 and by quashing the paragraph 2 of the said order. In paragraph 1, the expression "..... deemed to have been" in lines 2 and 3 in the said paragraph are ordered to be deleted. Paragraph 2 of the said order dated 24.2.2003 is quashed. The application is disposed of in aforesaid terms. There shall, however, be no order as to costs.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(R.K. BATTA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

GUWAHATI.

CA NO. 107/2003

SRI P K MAZUMDER
VS.
UNION OF INDIA & ORS.

2
Filed by
D. Chakraborty
Advocate

LIST OF DATES AND SYNOPSIS OF THE APPLICATION.

20.12.2001 Promotion Orders of 656 officers, including the applicant, from the post of IES Group-B to STS of ITS Group-A in the scale of Rs.10000 to Rs.15200.

03.01.2002 Applicant was selected for promotion.

23.01.2002 Juniors of the applicant were promoted

22.03.2002 The Hon'ble Tribunal has been pleased to give direction to give effect to the order of promotion dated 20.12.2001.

24.02.2003 In compliance of the Judgment in CA No. 27/2002 the applicant was given paxki promotion w.e.f. 23.01.2002 and by order dated 24.02.2003 and by the same order the applicant has also been reverted.

.....

20th MAY 2003

Guwahati Bench

P. K. Mazumdar
22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O. A. No. 107 /2003.

Sri P. K. Mazumdar

- Versus -

U. O. I. & Ors.

I N D E X

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Filed by :

A. Chakraborty
28/5/03
(A. Chakraborty)

Advocate

In The Central Administrative Tribunal
Guwahati Bench : Guwahati

O.A. NO. 107 /2003.

BETWEEN

Sri Pijush Kanti Mazumder

Working as Sr. SDE under the Department
of Telecommunication,

Dibrugarh - 786 001.

.... Applicant

- And -

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 Telecommuni-
cations, Assam Telecom Circle,
Guwahati - 7.

.... Respondents.

Details of the Application :

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

1. The application is made against the portion of the
order impugned in the office order dated 24-02-2003 and for
promotion of the applicant is the grade of STS of ITS Group -
A according to the direction of this Hon'ble Tribunal in O.A.
No. 27/2002.

23
Filed by the applicant
P.K. Mazumder. Through
P. Chakraborty & Sons
20/5/2003

P.K. Mazumder

2. Jurisdiction

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

3. Limitation

The applicant declares that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India.

4.2 That the applicant was initially appointed as Engineering Supervisor (Group - C) under the Department of Telecommunications at Jurhat w.e.f. 15-05-1973. Thereafter by an Order dated 29-04-1985 he was promoted to the selection grade JE w.e.f. 15-10-1981. He was again promoted as a Assistant Engineer (Truck) Slt (Group - B) on local officiating arrangement with effect from 4-6-1986, which was regularised with effect from 12-9-96. His service has been very efficient and without any blemish or stigma by an Order dated 2-6-98 he was further promoted to the grade of Senior SDE (Group - B) in the scale of Rs. 8,000/- to 13,500/- with effect from 3-6-98. The applicant is now working as Senior SDE at Dibrugarh.

4.3 That the next promotional scope of the applicant is to the cadre of Senior Time Scale of Indian Telecom Service Group - A (for short STS of ITS). By an Order of Assistant

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P.K. Mazumder

Director General (SGT), Department of Telecommunications, New Delhi dated 20-12-2001, the promotion of 656 officers of TES Group-B to STS of ITS Group-A is the scale of Rs. 10,000-325-15,200/- was approved on temporary and adhoc basis. It is stated that 5 (five) officers from the Assam Circle were considered and select listed for promotion to the cadre of STS of ITS by the said Order dated 20-12-2001, including the applicant. The name of the applicant was placed at the serial No. 323 in the Annexure of the said Order dated 20-12-2001.

Copy of the Order dated 20-12-2001
alongwith annexure is enclosed as
Annexure - A.

4.4. That the Order dated 20-12-2001 is for promotion and posting of officers of TES Group-B to STS of ITS Group A on adhoc basis to Bharat Sanchar Nigam Ltd (A Govt. of India Enterprise) (for short BSNL). It is stated that after considering circle wise vacancies 656 officers were considered for such promotion by the aforesaid Order. It is mentioned that the Cadre of Group-A officer has not yet been absorbed/adopted by BSNL. It is further stated that it is the policy of the respondents to make the promotions from TES Group-B service to STS of ITS Group A service on adhoc basis initially. The promotion using the nomenclature adhoc is a routine policy matter and is made following rules of seniority, efficiency, service record and other concomitants for promotion. It is not a stop-gap arrangement or short time vacancy promotion of adhoc nature. It is a regular promotion for filling up of regular vacancies.

4/6
D.K. Mazumder
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4.5 That in pursuance to the said Order, BSNL issued an Order No. 412-65/2001 - Perst. dated 3-1-2002 for posting of 560 officers of TES group-B to STS of ITS Group-A on adhoc basis to BSNL. The name of the 560 officers were shown in the Annexure-I of this Order dated 3-1-2002. It is stated that the name of these 5 (five) officers as shown in the Annexure of Order dated 20-12-2001 were also included in the aforesaid Annexure-I of the Order dated 03-01-2002. The name of the applicant was shown at the serial No. 280 of the said Annexure-I of Order dated 03-01-2002. It is also stated that the list of Officers to be promoted to STS of ITS Group-A as per annexures of Order dated 20-12-2001 and 3-1-2002 are on all India Basis. The promotion of respective officers are given effect to by a separate Order of respective Circles.

A copy of the Order dated 3-1-2002 alongwith Annexure is enclosed as Annexure - B.

4.6 That in pursuance to the aforesaid Orders dated 20-12-2001 and 3-1-2002, BSNL, Assam Telecom Circle by an Order No. STES-3/21 Pt-II/14 dated 23-1-2002 posted 4 (four) Officers on promotion (adhoc) to the ~~maxx~~ cadre of STS of ITS Group-A. Surprisingly the applicant had not been promoted by the said Order though his promotion to the cadre of STS of ITS Group A was approved by the Orders dated 20-12-2001 and 3-1-2002. It is stated that the applicant had not been communicated any reason by the respondents for not promoting him to the post of STS of ITS Group-A though he was found eligible and fit for such promotion and his name was taken into select list by the Orders dated 20-12-2001 and 3-1-2002. It is also stated that the respondents had not given any opportunity to the applicant to represent before passing the Order dated 23-1-2002.

Copy of the Order dated 23-1-2002 is enclosed as Annexure - C.

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Mazumder
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4.7 That the applicant being aggrieved by the action of the respondents for with holding his promotion move this Hon'ble Tribunal through an O.A. No. 27/2002. The Hon'ble Tribunal by an Order dated 22-8-2002 has been pleased to allow the O.A. No. 27/2002 and has further been pleased to direct the respondents to give effect to the order of promotion dated 20-12-2001. The Hon'ble Tribunal inter alia held as under:

"In the instant case the applicant was not under suspension nor any prosecution for criminal charges pending against him. No charge sheet was issued nor disciplinary proceeding was pending against him. In the circumstances we do not find any justification for withholding the promotion of the applicant on the ground of pendency of disciplinary proceeding".

Copy of the Order dated 22-8-2002 O.A. No. 27/2002 is enclosed as Annexure - D.

4.8 That the applicant begs to state that he has received a charge sheet vide Memo No. X-1/GOs/GMTD-DR/2001-02/8 dated 1-2-2002 on 1-2-2002. That after receipt of the said charge sheet the applicant has filed his defence statement. It is stated that no further proceeding has yet been started in above matter.

4.9 That in compliance of the order dated 22-8-2002 in the said O.A. No. 27/2002 the applicant was promoted in the grade of STS of ITS Group-A w.e.f. 23-01-2002 by an Order dated 24-2-2003 followed by an order dated 6-3-2003. It is stated that by the same Order dated 24-2-2003 the applicant has also been reverted to his substantive grade of TES Group-B w.e.f. 1-2-2002. It is stated that the applicant was said deemed to

have been promoted for 9 days. It is also stated that the applicant has been reverted w.e.f. 1-2-2002 on the ground said to have been in accordance with DOP&T OM No. 11 612/9/86-Estt (A) dated 24-12-1986.

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G.K. Mazumder

Copy of the Orders dated 24-2-2003 and
6-3-2003 are enclosed as Annexure 'E'
& 'F' respectively.

4.10 That the said OM No. 11 612/2/86-Estt.(A) dated 24-12-1986 stipulates as under :

" (i) where an appointment has been made purely on ad hoc basis against a short term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year, the Government servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceeding is initiated against him.

ii) Where the appointment was required to be made on ad hoc basis purely for administrative reasons (other than against a short-term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him".

4.11 That the applicant begs to reiterate that the said promotion in the ~~xxxxx~~ cadre of STS of ITS Group-A is not a

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P.K. Mozumder

stop gap arrangement or short time vacancy/leave vacancy promotion of adhoc nature. It is a regular promotion for filling up of regular vacancies. These were stated in the O.A. No. 27/2002 and the Hon'ble Tribunal was pleased to consider the same and passed the order. It is respectfully submitted that the reversion of the applicant with reference to the O.M. dated 24-12-1986 is unwarranted and illegal. A Government servant appointed on adhoc basis against a short term vacancy or a leave vacancy or if his appointment is in the nature of officiating one then only he can be reverted on the strength of the said OM Dated 24-12-1986 on initiation of a disciplinary proceeding. In any other case other than the above nature a Government servant can not be reverted only on the ground that disciplinary proceeding has been initiated against the said Government servant.

4.12 That it is stated that the promotion of the applicant was due on 23-1-2002 against regular vacancies as explained earlier Seal cover procedure was not applicable to him as in terms of Government of India instruction dated 14-9-1992 following judgment of Union of India - Vs - K. V. Janakiraman. There was no scope of withholding the promotion of the applicant. It is further submitted that the DOP&T OM dated 24-12-1986 is not relevant in the applicants case. The impugned order dated 24-2-2003 to the extent of reversion that too with retrospective effect is colourable exercise of power. The withholding of the promotion of the applicant was illegal, and after the direction of the Hon'ble Tribunal in O.A. No. 27/2002 he has been promoted and reverted by the same order putting him back to pre-promotion position resulting withholding of promotion. This is violative of the just and fair exercise of power.

4.13 That the applicant begs to submit that the respondents have acted on a wrong notion and there is no cogent reason for reverting the applicant to his substantive post of TES Group-B after giving him deemed promotion for 9 days i.e. w.e.f.

23-1-2002 to 31-1-2002. The applicant further submits that the respondents did not give any reasonable opportunity to him before passing the order of reversion. The respondents most whimsically and arbitrarily passed the order of reversion with retrospective effect violating the norms of administrative fairness and principles of natural justice. Reversion with retrospective effect is illegal and bad in law. The respondents have reverted the applicant with reference to the O.M. dated 24-12-1986 without application of mind. Malice in law and malice in fact is explicit in the facts and circumstances.

4.14 That the reversion of the applicant to his substantive post shall adversely affect the career of the applicant including financial loss and prejudice the service career including further promotional prospects.

5. Grounds of relief with legal provisions :

5.1 For that the applicant has been reverted on the strength of O.M dated 24-12-1986 on a wrong notion.

5.2 For that the respondents have most arbitrarily and whimsically reverted the applicant and thereby have denied promotion to the applicant without any cogent reason.

5.3 For that the respondents have passed the order of reversion without application of mind.

3
P.K. Mazumder

5.4 For that the promotion of the applicant in the cadre STS of IFS Group-A is not a short term or leave vacancy promotion of adhoc nature. It is a regular promotion against regular vacancies.

5.5 For that reversion with retrospective effect is illegal and bad in law.

5.6 For that the action of the respondents is the result of arbitrariness whimsical and non-application of mind and offends Article 14, 16 and 21 of the constitution of India.

5.7 For that malice in law and malice in fact is patent in the facts and circumstances.

5.8 For that the applicant is entitled to the promotion on law and also on equity.

5.9 For that the respondents are barred by the principles of resjudicata.

6. Details of remedy exhausted.

There is no remedy under any rule and the Hon'ble Tribunal is the only forum for redressal of the grievances of the applicant.

7. Matter not pending before any other court.

The applicant declares that he has not filed any other case in any tribunal, court or any other forum against the impugned order.

8. Reliefs sought for :

Under the facts and circumstances of the case the applicant prays for the following reliefs:

8.1 The Order dated 24-2-2003 (Annexure -) be modified and para-2 of the said Order dated 24-2-2003 be set aside and quashed.

8.2 Cost of the case.

8.3 Any other relief or reliefs as the Hon'ble Tribunal deem fit and proper.

The above reliefs are prayed for on the grounds stated in para 5 above.

9. Interim relief :

During the pendency of this application the applicant prays for the following ~~in~~ interim relief :

9.1 The applicant be promoted in the cadre of STS of ITS Group-A w.e.f. 23-1-2002.

10. This application has been filed through Advocate.

11. Particulars of the postal order :

- i) IPO No. :
- ii) Date of issue :
- iii) Issued from :
- iv) Payable at :

12. Particulars of Enclosers.

As stated in the Index.

..... Verification.

VERIFICATION

I, Pijush Kanti Mazumdar, son of Late R.N. Mazumdar, aged about 55 years resident of Dibrugarh do hereby verify that the statements made in para 1, 4, 6 and 12 are true to my knowledge and these made in para 2, 3, and 5 are true to my legal advice and that I have not suppressed any material facts.

And I, sign this verification on this ¹⁵ ~~23~~th day of May, 2003 at Guwahati.

P.K. Mazumdar
Signature.

Annexure - A

— 12 —

Book - ②

(5)

No.11/1/2001-STG-I (Vol.II)

Government of India

Ministry of Communications

Department of Telecommunications

Room No.419, Sanchar Bhawan
20 Ashoka Road, New Delhi-110001
Dated: December 20, 2001

Order

Subject:- Promotion and posting of officers of TES Group-B to STS of ITS Group-A on ad-hoc basis - Regarding.

The Competent Authority has approved the promotion of following 656 officers of TES Group-B to STS of ITS Group-A in the pay-scale of Rs.10000-325-15200 on purely temporary and ad-hoc basis as indicated in the Annexure enclosed. On their ad-hoc promotion to STS of ITS Group-A the officers are posted as indicated in the Annexure under column "POSTING ON PROMOTION". Further posting in respect of the officers within BSNL/MTNL will be decided by BSNL/ MTNL respectively.

2. The officers would not have any claim for their seniority in STS of ITS Group-A based on this ad-hoc promotion. Their seniority will be determined with reference to his basic seniority in the substantive grade i.e. TES Group-B.

3. The officers shall not be promoted to the higher grade by the concerned Circles/Units

- i. In case of disciplinary / vigilance case is pending against him
- ii. If the officer is under the currency of any penalty; or
- iii. the officer is on deputation to TCSL etc.

*Telecom Circular
India Ltd.*

Such cases will be decided by this office on receipt of information from the concerned Telecom Circles. Information in this regard may be brought to the notice of this office within 15 days from the date of issue of this order.

4. In accordance with the instructions contained in this office Circular No.12/75/2000-STG.I dated 18/8/2000, the officers are required to join their promotional assignment within a time period of 40 (forty) days. The CMD/CGM concerned may ensure that the station of posting orders in respect of the officer is issued in time and such officer is relieved accordingly so as to enable him to join the promotional assignment within a prescribed time period of 40 days from the date of issue of the promotion order by this office.

4.1 In case the officer concerned fails to join the promotional assignment within the prescribed time period of 40 days, he should not be allowed to be relieved or join the post thereafter. In such an event the promotion order shall become inoperative and the matter shall be reported to this office for further necessary action. Further no request for modification of promotion orders shall be entertained after the expiry of the 40 (forty) days period.

4.2 The CMD/CGM concerned are further directed that the pending request of the officer(s) for modification of the promotion orders cannot be taken as a ground for holding of the implementation of the promotion orders in respect of the officer.

6. If there are any other administrative difficulties faced by the concerned Circle(s) for implementing the ad-hoc promotion order in respect of the officer(s), the concerned CMD/CGM may ensure to bring it to the notice of this office within the prescribed time limit. No request after this period will be entertained.

6. The leave, if any, requested by the officer, who has been posted on promotion to a different circle, should not be allowed. If any officer desires leave, he / she can apply for leave to the new Head of Circle under who he / she had been posted only after joining the new post and new CGMT will sanction leave, if it is considered justified in the normal course.

7. The date on which the above order is given effect to may be intimated and charge-reports sent to all concerned. A consolidated report of the officers who have relieved / joined their new postings may also be sent immediately on completion of 40 days from the date of issue of this order.

8. This is further subject to the outcome of various court cases pending in various courts.

Ram Autar

[RAM AUTAR]

Assistant Director General [SCT]

Tel.No.3036282 / Fax No.3716099

Encl: ANNEXURE.

To :-

1. The CMD BSNL / MTNL / Sr. DDG TEC
2. The CGMs/CAOs of the above mentioned Circles / Units
3. Officers concerned (Through CGMs Concerned)

Copy To :-

1. PS to MOS(C)
2. M(S)/Adv(HRD)/DDG(Estt)/Dir(Staff)/ADG(SGT)
3. DDG(Pers)/Jt.DDG(Pers)/ADG(Pers.I)/SO(Pers-I), BSNL, [Corporate Office]
4. CS to Adv(HRD)
5. Order Bundle
6. Spare Copy -3

A K Mathur

[A K MATHUR]

Section Officer [STG-I]

Tel.No.3036290 / Fax No.3716099

14

Bhawan - B
Box - 10
81

BHARAT SANCHAR NIGAM LIMITED

[A Government of India Enterprise]

CORPORATE OFFICE

PERSONNEL - I SECTION

R. No. 419, Sanchar Bhawan, 20, Ashoka Road, New Delhi - 110 001.

F. No. 412-65/2001-Pers.I

Dated: January 03, 2002.

ORDER

Subject: Posting on promotion of officers of TES Group 'B' to STS of ITS Group 'A' of on ad-hoc basis - Regarding

In pursuance of DoT Order No. 11-1/2001-STG-I (vol.II) dated 20.12.2001, 24.12.2001, 28.12.2001 & 03.01.2002, the following 560 officers of TES Group 'B' who have been posted to BSNL on their ad-hoc promotion to STS of ITS Group 'A' (DET) in the pay scale of Rs. 10000-325-15200, are hereby posted as shown in annexure - I.

2. The officers would not have any claim for their seniority in STS of ITS Group-A based on this ad-hoc promotion. Their seniority will be determined with reference to their basic seniority in the substantive grade of TES Group 'B'.

3. The officers shall not be promoted to the higher grade by the concerned Circles/Units.

- i. In case of disciplinary / vigilance case is pending against him
- ii. If the officer is under the currency of any penalty; or
- iii. The officer is on deputation to TCIL etc.

This office will decide such cases on receipt of information from the concerned Telecom Circles. Information in this regard may be brought to the notice of this office within 15 days from the date of issue of this order.

4. In accordance with the instructions contained in DoT Office Circular No.12/75/2000-STG.I dated 18/8/2000, the officers are required to join their promotional assignment within a time period of 40 (forty) days. The CGM concerned may ensure that the station of posting orders in respect of the officers are issued in time and such officer is relieved accordingly so as to enable him to join the assignment within a

Cont.2

*After read
Anil K. Patwari*

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prescribed time period of 40 days from the date of issue of the promotion order by this office. In case the officer concerned fails to join the promotional assignment within the prescribed time period of 40 days, he should not be allowed to be relieved or join the post thereafter. In such an event the promotion order shall become inoperative and the matter shall be reported to this office for further necessary action. Further no request for modification of promotion/posting orders shall be entertained after the expiry of the 40 [forty] days period.

The CGM concerned are further directed that the pending request of the officer(s) for modification of the promotion orders cannot be taken as a ground for holding of the implementation of the promotion orders in respect of the officer(s).

5. If there are any other administrative difficulties faced by the concerned Circle(s) for implementing the ad-hoc promotion order in respect of the officer(s), the concerned CGMT may ensure to bring it to the notice of this office within the prescribed time limit. No request after this period will be entertained.

6. The leave, if any requested by the officers, who are under transfer, should not be allowed. If any officer desires leave, he can apply for leave to the Competent Authority only after joining the new posting and this Competent Authority will sanction leave, if it is considered justified, in the normal course.

7. The date on which the above order is given effect to may be intimated and charge-reports sent to all concerned. A consolidated report of the officers who have been relieved / joined their new postings may also be sent immediately on completion of 40 days from the date of issue of this order.

8. This is further subject to the outcome of various court cases pending in various courts.

9. This issues with the approval of Competent Authority.

3.1.2011
(J. B. Jain)
Assistant Director General (Pers.)
Telephone: 303 - 6468

...contd 3

Encl. Annexure

To

1. All Heads of Telecom Circle.
2. Officers concerned/CAO(s) concerned

Copy to :-

1. PS to MOC/MOS(C).
2. Chairman/Members, Telecom. Commission.
3. CMD, BSNL, New Delhi.
4. Directors of Board, BSNL New Delhi.
5. Sr. DDG (Pers.)/ Joint DDG (Pers.)/ADG (Pers.I)&(Pers.II) BSNL.
6. DDG (Estt)/ Dir.(ST-I/II) DoT.
7. CS to Adv.(IIRD)
8. ADG(SGT)/SO(STQ-I/II) - wrt DOT order No. 11-1/2001-SI I(vol.II) dated 20.12.2001
9. Sparc copy/Order Bundle.

D. R. Meena
 6/3/2002
 (D. R. MEENA)
 Section Officer (Pers.I.)
 Tel. No. 303-6081

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PN

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415.	30709	K SREENATH	AP	AP
431.	32593	S VASUDEVARAO	AP	AP
461.	17460	S VENKATESWARA RAO	AP	AP
466.	16019	K VENKATA REDDY-II	AP	AP
475.	16415	A K VISWANATHA RAO	AP	AP
487.	17521	VVL RAMESH BABU	AP	AP
491.	16456	K HARIKRASADA RAO	AP	AP
500.	31388	D VIJAYAKUMAR	AP	AP
517.	9360	S SURYA RAO	AP	AP
523.	32353	VH VRL N V PRASAD	AP	BSNL CO
529.	9376	G NAGESHWAR RAO	AP	AP
531.	30593	P RAVINDRA REDDY	AP	BSNL CO
544.	30550	K RAJENDRA PRASAD	AP	BSNL CO
552.	9406	P SESHAGIRI RAO	AP	AP
557.	8962	V. LAKSHMANA RAO	AP	AP
560.	14161	T PRABHU PRASAD	AP	AP
129.	8947	DIPAK KUMAR BASAK	AS	AS
189.	9003	SUBHAS CHANDRA BASU	AS	AS
230.	9096	PRABHU KANTI MAJUMDAR	AS	AS
306.	9120	N K ROY	AS	AS
518.	9133	S K SAHA-II	AS	AS
69.	8876	KAMESHWAR PRASAD	BR	BR
93.	17197	S C SAHU	BR	HP
112.	8928	SHAMBHU NATH	BR	BR
143.	8963	P JAISWAL	BR	BR
200.	9013	LALIT KUMAR	BR	BR
226.	9038	RAJINDER RAI	BR	BR
268.	9086	SHASHI BHUSHAN RAJAK	BR	BR
275.	9093	RAJBANSI LAL	BR	BR
304.	9119	NATHUNI PRASAD	BR	BR
430.	9255	MANORANJAN PRASAD SINGH	BR	BR
503.	9341	A K JHA	BR	BR
63.	8867	A K BIJORIA	BRBRAITT	BRBRAITT
79.	14635	BASHIR AHMED SIDDIQUI	BRBRAITT	MP
192.	14207	GUPTA SABIR	BRBRAITT	MP
225.	9037	BINDHYACAL PRASAD SINGH	BRBRAITT	BR
248.	14234	MONDAL KRIPASINDHU	BRBRAITT	CTD
445.	9271	K C KHARIYA	BRBRAITT	BRBRAITT
494.	9329	S K BHATIA	BRBRAITT	BRBRAITT
495.	9330	S K BAIS	BRBRAITT	CHTS
527.	9372	R R JAIN	BRBRAITT	CHTS
89.	8904	N K KALRA	BSNL CO	BSNL CO
137.	8957	H D GUPTA	BSNL CO	BSNL CO
19.	14145	GANESAN B	CHENNAI TO	CH-TD
28.	14160	VELRAGHAVAN M	CHENNAI TD	CH-TD

Encl. Annexure

To

1. All Heads of Telecom Circle.
2. Officers concerned/CAO(s) concerned

Copy to :-

1. PS to MOC/MOS(C).
2. Chairman/Members, Telecom. Commission.
3. CMD, BSNL, New Delhi.
4. Directors of Board, BSNL New Delhi.
5. Sr. DDG (Pers.)/ Joint DDG (Pers.)/ADG (Pers.I)&(Pers.II) BSNL CO
6. DDG (Eatt)/ Dir.(ST-I/II) DoT.
7. CS to Adv.(IIRD)
8. ADG(SGT)/SO(STG-I/II) wrt DOT order No. 11-1/2001-STG-I(vol.II) dated 20.12.2001
9. Sparc copy/Order Bundle.

D.R. Meenai
03/01/2002
(D.R. MEENAI)
Section Officer (Pers.I.)
Tel. No.303-6081

DRB/31

R.D.S.

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

No. STES-3/21/Pt-II/14

Dated at Guwahati the 23-1-2002

Sub:-

Posting on promotion of TES of officers of Group 'B' to STS of ITS
 Group 'A' on adhoc basis-reg.

In pursuance of DOT New Delhi memo No. 11/1/2001-STG-J(Vol.II)
 dated 20-12-2001 and BSNL(LV/Q), New Delhi OM No. 412-65/2001-Pers-I Dated
 03-1-2001, the TES Group 'B' officers as mentioned in the annexure are promoted
 to STS of ITS group 'A' in the pay scale of 10000-325-15200 on purely temporary
 and ad-hoc basis and posted at the stations indicated against their names.

2. The officers would not have any claim for their seniority in STS of ITS Group 'A' based on this adhoc promotion. Their seniority will be determined with reference to their basic seniority in the substantive grade of TES Group 'B'
3. 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; or
 - ii) If the officer is under currency of any penalty.

Contd. page

*Revised
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4. In accordance with the instruction contained in BSNL (H/Q) New Delhi letter No. 412-65/2001-Pers.I Dated 3-1-2002 the officers are required to join their promotional assignment within a time period of 40 (forty) days. The concerned SSA Heads may ensure that the station of posting orders in respect of the officers are issued in time and such officer relieved accordingly so as to enable him to join the promotional within a prescribed time period of 40 days. In case the officer concerned fails to join the promotional assignment within the prescribed time period of 40 days, he should not be allowed to be relieved or join the post thereafter. In such an event, 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 can apply for leave to the new Heads of SSA/Units under whom he/she has been posted only after joining the new post.

6. The date on which the above order is given effect to may be intimated and charge reports sent to all concerned.

Enclo:-

Annexure

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

5/6

Copy to:-

1. The ADD(Pers-II), BSNL Corporate office, New Delhi-110001
- 2-4 The General Manager Telecom District, Guwahati/ Silchar/Jorhat
5. The Telecom Dist. Manager, Nagaon
6. The Deputy General Manager (Plg), C.O, Guwahati
- 7-8. The Accounts Officers(A&P)(TA), C.O, Guwahati
9. Guard File
10. Spare

CJ
(G.C.SARMA) 23/10/02
Asstt. Director Telecom(Staff)

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Annexure

No. STES-3/21/Pl-I/14 Annexure -I Dated at Guwahati the 23-1-2002

Sl. No.	Staff No.	Name of Officer	Present posting	Place of posting on promotion	Remarks
1	08947	Sri Dipak Kumar Basak	SDE GM, KTD, Guwahati	GM, KTD, Guwahati	Against vacant post
2	09003	Sri Subash Ch. Basu	SDE GM, KTD, Guwahati	AGM(plg-I), Circle office , Guwahati	Against vacant post
3	09120	Sri N.K. Roy	SDE GM,T, Silchar	GMT, Silchar	Vide Sri D.K.Das Sarkar transferred
4	9133	Sri S.K. Saha-II	SDE GM,KTD, Guwahati	TDM, Nagaon	Vice M.N. Pegu transferred

(G.C.SARMA) 22/1/02
Asstt. Director Telecom(Staff)

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 27 of 2002.

Date of Order : This the 22nd Day of August, 2002.

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

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

Sri Pijush Kanti Mazumder,
Working as Sr. SDE under the
Department of Telecommunications,
Dibrugarh-786 001.

...Applicant

By Advocate Sri J.L.Sarkar.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Communication,
Department of Telecommunication,
New Delhi-1.

2. The Chief General Manager,
Telecommunications, Assam Circle,
Guwahati-7.

3. Assistant General Manager (Admn),
Bharat Sanchar Nigam Ltd.,
Office of the Chief General Manager,
Assam Telecom Circle, Ulubari,
Guwahati-7.

...Respondents

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

O R D E R

CHOWDHURY J. (V.C)

*Addressed
Chowdhury
Advocate*
The dispute relates to withholding of promotion
on the purported ground of disciplinary proceeding.

2. By order dated 20.12.2001 the Government of India, Ministry of Communication, Department of Telecommunications approved the promotion of 656 officers of the Telecom Engineering Service Group B to Senior Telecom Service of Indian telecom Service Group-A

in the pay scale of Rs. 10000-325-15200/- on purely temporary and adhoc basis as mentioned in the annexure enclosed. In the said list the name of the applicant Pijush Kanti Mazumder appeared at serial No.323. Pursuant to the promotion order officers were posted including persons junior to the applicant. The applicant was not given the benefit of promotion despite the order passed. The applicant therefore moved this Tribunal for appropriate direction for giving effect to the order of promotion.

3. The respondents submitted its written statement denying and disputing the claim. In the written statement the respondents specifically stated at para 11 to the effect that "the promotion of the applicant has not been considered only due to the fact that a disciplinary proceeding is going on against him." The respondents also raised a preliminary issue as to the maintainability of the application. In view of the Memorandum of Understanding of the Government of India and the Bharat Sanchar Nigam Limited the other Group B officers are deemed to be in deputation with the Government of India therefore the jurisdiction point does not arise.

4. We have heard Mr J.L.Sarkar, learned counsel appearing for the applicant and Mr B.C.Pathak, learned Addl.C.G.S.C for the respondents at length. The preliminary objection that was raised by Mr B.C.Pathak,

learned Addl.C.G.S.C as to the maintainability of the application is liable to be rejected. Admittedly the order of promotion was given by the Government of India, Ministry of Communications, Department of Communications promoting 656 officers including the applicant. The applicant was not given promotion on the ground mentioned at para 3 of the said communication dated 20.12.2001 that a disciplinary case was pending against him. As per ofice memorandum dated 30.9.2000 which was referred to by Mr Pathak, as per new telecom policy 1999 the Government of India had decided to corporatise the service provision, function of Department of Telecommunications (DoT) and transfer the same to the newly formed company, Bharat Sanchar Nigam Limited and also transfer all assets and licencing wireless spectrum management, administrative control of PSUs, standarisation & validation of equipment and P & D etc. These would be the responsibility of Department of Telecommunications (DoT) and Telecom Commission. In respect of matters relating to personnel (Government servants) pending before various Tribunals, High Courts and Supreme Court the company was directed to defend as assignees or successor in interest as per existing rules till the time employees are/were on deemed deputation with the company. The application in the facts situation cannot be dismissed as not maintainable.

5. In the instant case admittedly the applicant was found suitable for promotion and to that effect order was passed on 20.12.2001 and no disciplinary

proceeding was pending against the applicant on that date and on our enquiry Mr B.C.Pathak, learned Addl.C.G.S.C submitted that a charge memo initiating disciplinary proceeding against the applicant was issued on 1.2.2002 and the same was served on the applicant on the same day. It thus appears that disciplinary proceeding was initiated only after the order of promotion. We have perused the Government of India (DoT) Office Memorandum No.22011/4/91-Estt.(A) dated 14.9.1992 containing the procedure to be followed by DPC in respect of Government servants under cloud. The relevant part of the Government instructions are re-produced below :

"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."

In the instant case the applicant was not under suspension nor any prosecution for criminal charges pending against him. No charge sheet was issued nor disciplinary proceeding was pending against him. In the

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circumstances we do not find any justification for withholding the promotion of the applicant on the ground of pendency of disciplinary proceeding. The application is accordingly allowed and the respondents are directed to give effect to the order of promotion dated 20.12.2001.

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

Sd/VICE CHAIRMAN

Sd/MEMBER (Admn)

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COURT CASE
IMMEDIATE

No.115/2/2002-STG.I

Government of India

Ministry of Communications & Information Technology

Department of Telecommunications

[STG-I Section]

Room No.419, Sanchar Bhawan,
20, Ashoka Road, New Delhi-110001.

Dated: 24th February 2003.

ORDER

Subject: Promotion of officer of TES Group-B to SIS of ITS Group-A on ad-hoc basis -
Regarding.

✓ In compliance of the judgement dated 22/08/2002 of Hon'ble CAT, Guwahati Bench in OA No.27/2002, Shri P K Majumdar (Staff No.9096), an officer of TES Group-B is deemed to have been promoted in the grade of SIS of ITS Group-A w.e.f. 23/01/2002 i.e. the date on which his juniors were promoted by Assam TC in accordance with order No.11/1/2001-STG.I dated 20/12/2001.

- Shri P K Majumdar, an officer of SIS of ITS Group-A is reverted to his substantive grade of TES Group-B (w.e.f. 01/02/2002) in accordance with DOP&T OM No.11012/9/86-Estt.(A) dated 24/12/86, consequent to issuance of charge-sheet vide memo No.X-1/GOs/GMTD-DR/2001-02/8 dated 1st February 2002.
- This issues with the approval of Competent Authority.

Ram Autar

[RAM AUTAR]

Under Secretary(SGT)

Tel. No.23036282 / Fax No.23716099

To

- The Chief General Manager, Assam Telecom Circle - The officer shall be paid pay and allowances for the period from 23/01/2002 to 31/01/2002 in the grade of SIS of ITS Group-A. After taking necessary action in the light of this order, compliance with regard to the implementation of judgment dated 22/08/2002 may be filed in the Hon'ble CAT, Guwahati Bench.
- CAO, Assam TC
- Officer concerned (through CGM Assam TC)
- Sh. DDG(Pers.), BSNL CO, New Delhi
- File No.11/1/2001-STG.I

DGM/A

4/3/03

A K Mathur
24.2.2003.

[A K MATHUR]

Section Officer (STG-I)

Tel. No.23036790 / Fax No.23716099

IMMEDIATE

No.115/2/2002-STG.I
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications
[STG-I Section]

Room No.419, Sanchay Bhawan,
20, Ashoka Road, New Delhi-110001.
Dated: 6th March 2003.

ORDER

Subject: Promotion of officer of TES Group-B to STS of ITS Group-A on ad-hoc basis -
Regarding.

In partial modification of this office order of even number dated 24th February, 2003 the date indicated in Line 3 under Paragraph 1 may be read as 23/01/2002 in place of 23/01/2001.

2. The other terms and conditions of the said order dated 24/02/2003 will remain unchanged.

(Signature)

[Dr. VINCENT BARIA]
Under Secretary (STG-III)
Tel. No.23036282 / Fax No.23716099

To

1. The Chief General Manager, Assam Telecom Circle
2. CAO, Assam TC
3. Officer concerned (through CGM Assam TC)
4. Sr. DDC(Pers.), BSNL CO, New Delhi
5. F. No.11/1/2001-STG.I

Alvin Baria

[A K MATIUR]
Section Officer (STG-I)
Tel. No.23036790 / Fax No.23716099

*After seeing
Rakesh
10/03/03*

(29)

~~File No. 1045~~

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI**

Guwahati Bench

O.A. NO.107/2003

(B. C. Pathak)
Addl. Central Govt. Standing Counsel

Sri Pijush Kanti Mazumdar ... Applicant

-vs-

Union of India & Another ... Respondents

(Written statements filed by the respondent No.1 to 2)

The written statements of the above noted respondents are as follows:

1. That the copies of the O.A. No.107/03 (hereinafter referred to as the "application") have been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of ~~all~~ the respondent No. 1 and 2 is different after and with effect from 1.10.2000 when the company named and styled as the Bharat Sanchar Nigam Ltd. (referred to as the "BSNL") came into existence with its separate and distinct legal entity and there being no notification under sub-section 2 of the section 14

of the Central Administrative Tribunal Act, 1985 (referred to as the "Act") conferring jurisdiction of the Hon'ble Tribunal to the same.

2. That the statements made in the application which are not specifically admitted by the answering respondents are hereby denied.
3. That with regard to the statements made in **para 1** of the application, the respondents state that there is no cause of action in bring the application before this Hon'ble Tribunal and hence the same is liable to be dismissed. The subject matter in the application is the same and arising between the same parties and the said matter has been finally decided by the Hon'ble Court on 22.8.2002 in OA No.27/2002. Therefore, the application is barred by the doctrine of res judicata.
4. That with regard to the statements made in **para 2** of the application, the respondents state that the respondent No.2 being an authority of the BSNL, no direction could be issued to him as the BSNL has not been notified under the Act as an covered establishment under the jurisdiction of the Hon'ble Tribunal.
5. That the answering respondents have no comments to offer to the statements made in **para 3 and 4.1** of the application.

6. That the statements made in **para 4.2** pertain to records. Hence nothing is admitted which is not supported by such records.

7. That with regard to the statements made in **para 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10 and 4.11** of the application the respondents state that the applicant was promoted to STS of ITS-Group A on purely temporary basis vide Office order No.11/1/2001-STG-I(Vol.II) dt.20.12.2001 (Annexure-A in the Application). On the basis of the DOTs (Dept. of Telecommunications)order, the BSNL posted him to Assam Circle vide their order No.412-65/2001-pers. Dt. 3.1.2002 (as in Annexure-B in the application). Further vide Assam Circle order No.STES-3/21/Pt.II/14 dt. 23.1.2002 the officers including the juniors of the applicant were posted at different places but the applicant was not promoted due to the pendency of a disciplinary case against him. The charge sheet was issued to the applicant on 1.2.2002, i.e. after the other officers were promoted and posted by the Assam Circle on 23.1.2002.

The applicant earlier filed the OA No.27/2002 challenging the action of the Department in withholding his promotion. The said application was allowed by this Hon'ble Tribunal with the direction to give effect to the order of promotion dated 20.12.2001. In compliance of the order dated 22.8.2002, the applicant was promoted vide order dt.24.2.2003 w.e.f. the date when his juniors were promoted in terms of order dated 20.12.2001. Simultaneously, the applicant was reverted w.e.f.

1.2.2002 i.e. the date on which charge sheet was issued to him in terms of the Govt of India: DOPT O.M. No.11012/9/86-Estt.(A) dt. 24.12.1986, which provides that if a person has worked for less than a year in higher post on ad-hoc basis such arrangement is to be terminated and the officer be reverted to the post held by him substantively or on regular basis. The applicant as well as other officers were promoted on purely temporary and ad-hoc basis as quite evident and being clearly indicative in the order of promotion dated 20.12.2001. Therefore the contention of the applicant that his promotion was against the regular vacancies is not correct. In this connection, the respondents make it clear that only the officers who are regular in Junior Time Scales of ITS Group A with requisite qualifying service are eligible to be promoted to STS of ITS Group A on regular basis. The applicant has not been promoted to STS of ITS Group A on regular basis and his claim that his promotion was a regular promotion is without any basis. In all respect the promotion of the TES Group B Officers as ordered vide order dated 20.12.2001 is purely on ad-hoc and temporary basis and consequent upon issuance of a charge sheet against the applicant, he was reverted rightly reverted to his substantive grade of TES Group B w.e.f 1.2.2002 in accordance with the O.M. dt. 24.12.86. The order dated 22.8.2002 passed by the Hon'ble Tribunal in OA No.27/2002 has been duly obeyed and complied with by promoting the applicant w.e.f. 23.1.2002 i.e the date on which his juniors were promoted. This, however, does not prevent the respondents from proceeding with the disciplinary

action and reverting him from a subsequent date consequent upon issuance of a charge sheet against him. Even if the applicant had been promoted in the normal course in terms of the order dated 20.12.2001 along with his juniors, he would have been reverted to his substantive grade on issuance of charge sheet against him. The action initiated by the respondents including the reversion is, therefore, completely lawful and such action does not suffer from any illegality or infirmity so far.

8. That with regard to the statements made in **para 4.12, 4.13 and 4.14** the answering respondents state that the respondents acted bonafide and in exercise of its power and authority in accordance with law as indicated above. There is no illegality committed by the respondents and the ratio laid down by the Hon'ble Supreme court has application in this instant case.
9. That with regard to the statements made in **para 5.1 to 5.9** the respondents state that the grounds shown by the applicant are not legally valid ground and the same are not tenable in law. Hence the application is liable to be dismissed with cost.
10. That the respondents have no comments to offer to the statements made in **para 6 and 7** of the application.
11. That with regard to the statements/ prayer made in **para 8.1 to 8.3 and 9.1**, the respondents state that in view of the facts and circumstances of the case

and the provisions of law, the applicant is not entitled to get any relief as prayed for and the application is liable to be dismissed with cost.

In the premises aforesaid, it is therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application with cost.

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Verification

I, Shri Sankar Chandra Das, at present working as the Assistant Director (Legal) in the office of the chief General Manager, Bharat Sanchar Nigam Ltd., Assam Circle, Guwahati, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para I to 10 and II _____ are true to my knowledge and belief, those made in para _____, being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 2nd th day of
April
November, 2004 at Guwahati.

Shankar Chandra Rao

DEPONENT

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In the Central Administrative Tribunal
Guwahati Bench : Guwahati

O.A. No.: 107/2003

Sri P.K. Mazumder

Vs.

Union of India & Others

In the matter of :

Rejoinder in reply to the
Written Statement

Filed by the applicant
Prakash Kumar Majumder, 23/9/03, Adm
23/9/03/2004

The humble applicant most respectfully beg to state as under :

1. That the applicant has gone through the Written Statement filed by the respondents and understood the contents thereof.
2. That in reply to the statements in Written Statement (for short WS) the applicant reiterates the statement in the O.A. and does not admit any statement which are not supported by records.
3. That the applicant begs to state that the deponent signing the verification of the WS filed is not the competent officer to verify the statements in the WS.
4. That the contentions of para 1 of the WS is denied and the matter has already been decided in O.A. No.: 27/2002.
5. That in reply to statement in para 3 of the WS the applicant denies the correctness of the statement that there is no cause of action. The order challenged gives cause of action

and the action of the respondents demonstrates apathy and negligence in implementing the order of the Hon'ble Tribunal. The respondents have taken the plea of doctrine of res judicata whereas the promotion and reversion by order dated 24.02.2003 cannot be subject matter for res judicata. The applicant states that the action of the respondents to retrospectively revert the applicant in the name of O.M. dated 24.12.1986 is grossly barred by the principles of res judicata/constructive res judicata. This O.M. dated 24.12.86 was with the respondents during the pendency and hearing of the O.A. No.: 27/2002. The purported action on the plea of said O.M. dated 24.12.86 is barred by principles of res judicata.

The promotions during pendency of disciplinary action/criminal proceedings attained concrete shape in the policy decision of Government of India in O.M. dated 14.09.92 and all previous orders including that of O.M. dated 24.12.86 became redundant and therefore O.M. dated 24.12.86 has no force.

6. That the applicant denies the correctness of the statement in para 4 of the WS. The applicant denies that in the facts of the present case the respondent no. 2 is an authority of the BSNL. The respondent no. 2 is a Group-A officer of the Government of India and in the arrangement after constitution of BSNL continues to be an officer of the Government of India, Ministry of Communication, Department of Telecommunication.

The respondents suppressing material facts that the applicant has not been absorbed in the BSNL. It is stated that due to the pendency of charge-sheet he has not been absorbed in the BSNL. It is also stated that due to such non-absorption in the BSNL the applicant is suffering loss of emoluments because he

Prakash Kanki Mayunder

would get higher pay in BSNL. The applicant states that this Hon'ble Tribunal is the only Court of first instance having jurisdiction on the subject matter.

It is also stated that the matter of jurisdiction has already been decided in O.A. No.:27/2002 and the respondents' objection as regards jurisdiction is barred by principles of res judicata.

It is further stated that the promotion orders of Group-A officers including the order dated 24.02.2003 have been issued by the Ministry of Communication, Department of Telecommunication and as such the Hon'ble Tribunal has jurisdiction over said order.

7. That in reply to the statements in para 7,8,9,10 and 11 it is stated that the subject matter has already been decided in O.A. No.:27/2002. The respondents are barred to take pleas and grounds as in the said paragraphs of the WS. The DOPT O.M. dated 24.12.86 mentioned in para 7 of the WS has no application in the facts and circumstances of the case.

8. That it is stated that a charge-sheet was issued to the applicant on 01.02.2002 relating to very old matter. The finalisation of the departmental proceedings is being delayed arbitrarily. On the plea of such belated/delayed departmental proceedings the promotion of the applicant is being arbitrarily and illegally delayed. It is prayed that the Hon'ble Tribunal may be pleased to consider this aspect and be pleased to pass an order effecting the promotion of the applicant with arrears.

9. That in the facts and circumstances stated above the application deserves to be allowed with cost.

Manmohan
Kohli
Digvijay

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VERIFICATION

u

I, Sri Pijush Kanti Mazumder, son of Late R.N. Mazumder resident of Dibrugarh do hereby verify that the statements made in para 1 to 9 are true to my knowledge and that I have not suppressed any material facts.

And, I, sign this verification on this 18th day of September, 2004.

Pijush Kanti Mazumder
Signature