

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI - 5

O.A. No. II62/94
T.A. No. (Shillong)

DATE OF DECISION 22.9.1994

Sri Bishnu Swaroop

PETITIONER(S)

Sri J.L.Sarkar, Sri M.Chanda,
& Sri A.P.Roy

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri G.Sharma, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M G CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE)

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?

Judgement delivered by Hon'ble Justice

SHRI M.G.CHAUDHURI, VICE-CHAIRMAN

M.G.Chaudhuri

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CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 102/94
(Shillong)

Date of decision : This the 22nd September, 1994

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

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

Sri Bishnu Swaroop
Son of Sri D.N.Singh,
A.S.W., Telecom Civil Circle
Shillong-793003
Staff No. 94009
Roll No. NETC/CE-05

..... Applicant

By Advocates Shri J L Sarkar, Shri M Chanda & Sri A.P.Roy

-versus-

1. Union of India,
through the Chairman, Telecommunication Commission,
Department of Telecommunication,
"Sanchar Bhawan", New Delhi.
2. The D.D.G.(Training),
Department of Telecommunications,
"Sanchar Bhawan",
New Delhi-110 001
3. A.D.G.(Exam.), Department of Telecommunication,
"Dak Bhawan",
New Delhi-110 001. Respondents

By Advocate Sri G.Sharma, Addl. C.G.S.C.

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ORDER

CHAUDHARI J (VC)

The applicant was appointed as direct Group A Officer as A.E.E.(Civil) with effect from 22.3.1990 in the scale of Rs. 2200/- to Rs. 4000/- with usual probation period of two years by Department of Telecommunication and was posted at

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at Shillong. He belongs to 1987 batch. As per the conditions of service he has to pass a departmental test consisting of eight papers. The applicant cleared seven papers earlier and gave examination for the remaining one paper that is Accounts Paper-I at the examination held on 6.6.1993. He was shocked when the result was declared in February 1994 as he found that his name was not included in the pass list published by the department. He applied for reexamination and also submitted a representation to the A.D.G.(Exam.) and D.D.G.(Training). However there was no response to it. He was therefore filed this application. He seeks the relief that the answer script in respect of Accounts Paper-I held on 6.6.93 be submitted to the Tribunal and on perusal thereof he be declared successful in that Paper-I at the examination held on 6.6.93 and his promotion to the E.E. (Civil) be considered alongwith 1987 batch officers. Apart from these reliefs he has also sought that his increments be granted to him on regular basis.

2. The applicant had sought a direction to the respondents to submit his answer script of the Accounts Paper-I for perusal of the Tribunal. The respondents were directed to produce the same. However it has not been produced. It is stated by the learned counsel for the respondents that the said answer script was lost in transit and was not traceable.

3. In the written statement filed by the respondents it is inter-alia contended that no further increments can be granted to the applicant after the initial two increments unless he passes the departmental test consisting of eight papers and nor his promotion to the next higher post in the Telecom department as E.E. can be considered and since he had not cleared the Accounts Paper-I and had not passed the departmental test as required, both these relief are not available to him.



It is submitted that since the marksheet sent by the examiner did not contain the marks of the applicant, the results of the examination were tabulated without his marks. The respondents also contend that declaring any person to have passed on account of non-availability of the answer book due to loss in transit is not permissible as passing of the test is a condition precedent required to be fulfilled and in view of the importance attached to it the applicant cannot be allowed to take advantage of the situation that has arisen. They point out that supplementary examination was arranged by the department to enable the applicant to re-appear at the examination. According to them thus the application is illconceived. In the written statement it is stated that all the answer books were despatched to the examiner under Registered Insured Parcel on 6.6.1993 but the examiner had reported that the Answer Books had not reached him and that the matter has been taken up with the postal authorities. It is also stated that though efforts were being made to trace out the paper with the postal authorities it could not be traced so far.

3. It is now submitted by Mr. Sarkar that the applicant appeared for the Accounts Paper-I at the subsequent departmental examination held on 12.7.94 and he has passed in the paper and has thus completed the test in all the eight papers. For that purpose the letter of Assistant Director General (DE) dated 26.8.94 is produced wherein it is mentioned that the applicant has qualified in paper-I of the departmental examination for Assistant Engineers held in July, 1994. In view of the same the hurdle in the way of the applicant for getting the increments as per rules as well as for being considered for promotion stands removed and it can be safely assumed that the respondents will now proceed to do the needful in that respect. Thus,

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substantilly the applicant has achieved his object of filing this application. However, Mr. Sarkar submitted with some amount of justification that for the fault of the department the applicant should not be deprived of the benefit of his eligibility for being considered for promotion on the basis of the earlier examination held on 6.6.93. He submitted that according to the performance of the applicant in other papers the applicant legitimately hopes that if the answer script were to be traced it would show that he has passed in the eighth paper also after obtaining the requisite marks for passing the examination. He further submitted that at that stage there were avenues open for promotion to the applicant as there were vacancies in the post of E.E.(Civil) and officers of the 1987 batch could be considered and that in fact some such officers have been promoted. The applicant happens to be from that batch. Mr. Sarkar therefore urged that the passing of the examination by the applicant in July 1994 should be given retrospective effect and it should be deemed that applicant has passed in the examination held on 6.6.1993 and he should be extended all the benefits on the footing that he had passed in that examination. It is however difficult for us to presume that the applicant has passed in the examination in the absence of the answer paper being before us though there is a strong possibility that in all probability, looking to the merit of the applicant and his performance in other papers he may have cleared that paper. We cannot however proceed on the basis of such assumption. The respondents cannot be said to be wrong in applying the rules strictly and in contending that as factually as the applicant cannot be said to have cleared the paper he cannot be held to have passed at the qualifying examination. Even so we feel that in the peculiar circumstances of the case when the applicant had



nothing to do with the loss of the answer script the injustice that has been caused to him deserves to be removed to the maximum extent possible. The future of a brilliant officer should not be marred for no fault of his driving him into frustration. That would not be in the interest of the department also. We think, there is need to adopt some sympathetic and realistic approach in the matter. ^{Her As} Yet we are not able to make any positive direction to the respondents in that behalf ~~but we~~ would make following order :

4. The respondents shall consider: (i)

- i. Whether by reason of the applicant having passed in the accounts paper in the examination held on 12.7.94 and thereby having completed the departmental test he should be considered for due promotion as on the date when other officers from his batch were promoted on the basis of the examination held on 6.6.1993.
- ii. Alternatively whether as and when the applicant may be considered for promotion in due course hereafter he can be given seniority as from the date on which he would have become eligible for being considered for promotion in the light of the result of the examination held on 6.6.1993.
- iii. The respondents also shall consider whether benefit of increments can be extended to the applicant on the footing that he should be deemed to have become entitled to the same on the basis of the examination held on 6.6.1993,

5. The respondents may constitute a review DPC for examining this question if necessary. The decision on the above aspects is left to the respondents but we do hope that the observations made above in the judgement will be kept in mind. The decision as and when taken, and we do hope it will be taken expeditiously,

to be communicated to the applicant. The applicant will be at liberty to approach the Tribunal if occasion arises thereafter.

6. Subject to the observations made above the application is disposed of with no order as to costs.



Vice-Chairman

trd

Member