

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

C. P-19/98 ordersheet pg-1 to 2 INDEX

Closed Date- 24/11/98

M.P-141/98 ordersheet pg-1

Disposed Date- 19/6/98

O.A/T.A No. 87/95.....

R.A/C.P No. 191/98.....

E.P/M.A No. 141/98.....

1. Orders Sheet O.A- 87/95 Pg.....1.....to.....9.....

2. Judgment/Order dtd. 11/8/98 Pg.....1.....to.....3..... allowed

3. Judgment & Order dtd..... Received from H.C/Supreme Court

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11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI:5

O.A.No.

87/95

Misc.Petn.

C.P. No.

R.Appl:

.....Shri J. D. Baruah.....APPLICANT'S
frs.

.....U. O. I. T. O. M. S...... RESPONDENT'S
Mr. B.K. Sharma, Mr. M.K. Choudhury, THE APPLICANTS
Mr. S. Sonma.....

.....Mr. A. S. Sarma, Addl. C.G.S.C.

FOR THE RESPONDENTS

OFFICE NOTE ----- DATE ----- ORDER -----

Application is in
form and within time
F. of Rs. 50/-
deposited vide
PO/BD No. 884304
Dated 22.4.95

25.4.95 Heard Mr B.K.Sharma for the applicant.
Application admitted. Issue notice to
the respondents. 8 weeks for written state-
ment. Adjourned to 3.7.1995 for orders.
Liberty to the applicant to apply for early
hearing after 3.7.1995.

R. Baruah
W. B. Baruah
G. Baruah

Mr G.Sarma, Addl.C.G.S.C seeks to
appear for respondents at this stage. The
learned counsel will file memo of appearance
in due course. Notices however, be issued
directly to the respondents.

hsc
Vice-Chairman

6
Member

Revised one
dated 22.4.95
vnu.1930-32 d.4.5.85 pg

3-7-95 Mr.G.Sharma Addl.C.G.S.C. for the
respondents. Adjourned to 22-8-95.

hsc
Vice-Chairman

6
Member

Notice due day
on R.M. 1, 2 & 3.

21-7-95

29-8-95

Ex/s. Mrs. Dhumkar
on behalf of all Petts.

To be listed for hearing on
26-10-95. Liberty to file counter.

hll
Vice-Chairman

STENOPHONY REC'D.

Rao

1m

60
Member

8.12.95

To be listed for hearing on 31.1.96.

26.10.95

60
Member

Ex 8.12.95

hll
Vice-Chairman

Rao

pg

31.1.96

19.3.96

Mr. G. Sarma, learned Addl. C.G.S.C.,
is present.

List on 17.5.96 for hearing.

60
Member

nkm

17-5-96

Mr. G. Sarma Addl. C.G.S.C. for
the respondents. None for the applicant.
List for hearing on 25-6-96.

60
Member

1) The case is ready
as regards service
of Notices.

1m

2) Statement has been
filed.

Learned counsel Mr. B.K. Sharma for
the applicant. Learned Addl. C.G.S.C.
Mr. G. Sarma for the respondents.

List for hearing on 23-7-96.

24/6
w/statement has been filed
22/7

pg

60
Member

23.7.96

Mr. B.K.Sharma present for the applicant.

List for hearing on 21.8.96.

69
Member

trd

Pratap

21-8-96

List for hearing on 18-9-96.

lm

*M
21/8*

69
Member

18.9.96

Mr. G.Sarma, Addl. C.G.S.C. for the respondents.

List for hearing on 16.10.96.

69
Member

trd

16.10.96

Learned Addl. C.G.S.C. Mr G. Sarma for the respondents. List for hearing on 4.12.96.

69
Member

nkm

*M
17/10*

2.5.97

Counsel for the parties are present. List for hearing on 17.6.97.

69
Member

J.S
Vice-Chairman

pg

575

O.A. 87/95 87/95

17-6-97

Learned counsel Mr. S. Sarma

for the applicant. Mr. G. Sarma Addl. C.G.S.C for the respondents.

List for hearing on 28-7-97.

6
Member

24-7-97

Memo of appearance
Filed by Mr. G. Sarma,
Addl. C.G.S.C.

6

1m
F7/6

25.7.97
Case is ready for
hearing.

6
W/S hs been filed.

6
21/8

29.7.97

On the prayer of Mr G. Sarma,
learned Addl. C.G.S.C., the case is
adjourned till 22.8.97.

6
Member

6
Vice-Chairman

NKP
F7/7

6
W/S chs sum filed.

6
21/9

22.8.97 Left over. List on 21.9.97.

By order

6
W/S hs been filed.

6
21/10

3.9.97

On the prayer of counsel for the
parties let the case be listed for hearing
on 3.11.97.

6
Member

6
Vice-Chairman

PG
F7/9

6
W/S hs been filed
on all the respondents.

6
21/12

6
W/S hs been filed
on all the respondents.

6
21/12

3.11.97

Adjourned to 3.12.97.

By order

3.12.97

Adjourned to 18.12.97.

By order

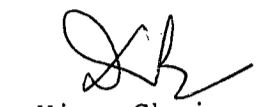
18.12.97

Left over. List on 18.2.98.

By order

(5)

5

Notes of the Registry	Date	Order of the Tribunal
	18.2.98	Mr G. Sarma, learned Addl. C.G.S.C. prays for two days time to produce the relevant records. Mr B.K. Sharma, learned counsel for the applicant, has no objection. List it on 23.2.98.
<i>The case is ready for hearing as per W/S.</i> <i>1/3</i>		 Member
	nkm	
	23.2.98	On the prayer of Mr B.K. Sharma, learned counsel for the applicant the case is adjourned till 5.3.98.
		 Vice-Chairman
<i>The case is ready for hearing as per W/S.</i> <i>1/3</i>		
	pg	
	<i>NS 26/2</i>	
<i>The case is ready for hearing as per W/S.</i> <i>1/3</i>	5.3.98	Adjourned to 11.3.98. By order.
	11.3.98	Mr A.K. Choudhury on behalf of Mr G. Sarma, learned Addl.C.G.S.C prays for adjournment as he is out of station. Counsel for the applicant has no objection. No further adjournment will be granted. In case of any party fail to appear the case will be heard ex-parte. List on 30.3.98 for hearing.
		 Member
	pg	
	<i>NS 12/3</i>	

6

O.A.No.87/95

Notes of the Registry	Date	Order of the Tribunal
	30.3.98	<p>Mr. G. Sarma, learned Addl. C.G.S.C., again prays for time, after hearing the case at some length, for production of records. Mr B.K. Sharma, learned counsel for the applicant, does not oppose the prayer. Accordingly the case is adjourned till 3.4.98 for hearing.</p> <p>60 Member</p> <p>✓ 31/3</p>
<p>Please comply immediately orders dated 3.4.98.</p> <p>✓ 6/4/98</p> <p>6.4.98</p> <p>Copy of order of 3.4.98 issued to the G. Manager, Assam Telecom. Circle, by Law no. 929 dt. 6.6.98.</p> <p>✓ w/s his benn filed 31/5 w/s his benn filed P27/5</p>	3.4.98	<p>In spite of repeated requests the relevant records namely, the confirmation of the applicant and also the rules which has been referred to in the impugned order have not been produced. Mr G. Sarma, learned Addl.C.G.S.C submits that in spite of his repeated request the authority has not handed over those records and rules. Mr B.K. Sharma, learned counsel for the applicant submits that for proper adjudication of this case those records as well as the rules are necessary.</p> <p>Issue notice to the Chief General Manager, Assam Telecom.Circle, Guwahati to cause production of the above noted records through a competent assistant. The assistant must be present before this Tribunal on 14.5.98 at 10-30 A.M with the records, failing which further steps will be taken.</p> <p>List on 14.5.98 for hearing.</p> <p>60 Member</p> <p>14.5.98</p> <p>Adjourned to 28-5-98. 3 ad-</p>

Notes of the Registry

Date

Order of the Tribunal

wts has been bilevel. 29/5/98	28.5.98	The records have not been produced in spite of repeated directions. Mr G. Sarma, learned Addl. C.G.S.C. informs this Tribunal that he has not yet received the records. Let this case be listed for hearing on 2.6.98. Mr G. Sarma shall produce the relevant records, including the record showing whether from 1960 to 1964 any examination was held as per the rules and how many chances the applicant availed of.
	60 nkm 11/5	Member
Rejoinder biled on behalf of the applicant, with a prayer not for accept- ance Rejoinder vide MP-141/98 biled by Mr. G. Gurmu, Adv.	2.6.98	Leftover. Adm'd to 15-6-98. Bare.
	15.6.98	Adm'd due to reference Case to be listed on 19.6.98. By order
26/5	19.6.98	Rejoinder has been accepted. Mr G. Sarma, learned Addl.C.G.S.C prays for one week time to file reply to the rejoinder. Prayer allowed. List on 25.6.1998 for hearing.
pg	60 Member	Vice-Chairman
25.6.98	In spite of repeated requests the learned Addl.C.G.S.C failed to produce the records. Situated thus we were compelled to issue notice to the Chief General Manager, Assam Telecom Circle to cause production of the records through a competent assistant and the said assistant was directed to be present before this Tribunal on 14.5.98 at 10 A.M.	

(8)

Notes of the Registry

Date

Order of the Tribunal

25.6.98

This order was passed on 3.4.98 and subsequently on 6.4.98 the Registry issued the notice to the General Manager. Thereafter also several adjournments were taken. However, the Chief General Manager, Assam Telecom Circle, Guwahati did not comply with the order dated 3.4.98.

Registry is directed to register a contempt case against Shri K. Padmanavan, Chief General Manager, Assam Telecom Circle, Guwahati and issue notice to him to show cause as to why a contempt proceeding shall not be drawn up against him. Returnable by 16.7.98. Shri Padmanavan shall personally appear before this Tribunal on 16.7.98.

Let this O.A. be listed for hearing on 8.7.1998.

6
Member

Vice-Chairman

pg

26/6

8.7.98

33

Records have not yet been produced. Mr G. Sarma, learned Addl. C.G.S.C. prays for a short adjournment to produce the same. Accordingly the case is adjourned till 16.7.98. The records shall be produced on that day.

6
Member

nkm

26/7


Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal
	16.7.98 34	On the prayer of counsel for the parties case is adjourned till 28-7-98 for hearing. 6 Member
W/S and Rejoinder has been filed 6/8	1m S 17/7	
	28.7.98 35	Mr. G. Sarma, learned Addl. C.G.S.C., once again prays for time as he has not yet received the records. Prayer allowed. List it on 7.8.98. 6 Member
	nkm S 30/7	
10.9.98	7-8-98	On the prayer of Mr.G.Sarma, learned Addl.C.G.S.C. case is adjourned till 11-8-98. Mr.B.K.Sharma, learned counsel for the applicant has no objection. List it on 11-8-98 for hearing. 6 Member
Copies of the Judgment have been sent to the parties for ready reference to the parties through Regd. with A.P.D.	1m 11.8.98	Heard counsel of both sides. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is allowed. No order as to costs. 6 Member
	pg	
copy of the judgment has been received & issued date & No. 2837 to 2640 dt. 11.9.98 21.9.		

Notes of the Registry	Date	Order of the Tribunal
1. 1. 1948. Registry of the following documents.	1. 1. 1948.	1. 1. 1948.
2. 1. 1948. Registry of the following documents.	2. 1. 1948.	2. 1. 1948.
3. 1. 1948. Registry of the following documents.	3. 1. 1948.	3. 1. 1948.
4. 1. 1948. Registry of the following documents.	4. 1. 1948.	4. 1. 1948.
5. 1. 1948. Registry of the following documents.	5. 1. 1948.	5. 1. 1948.
6. 1. 1948. Registry of the following documents.	6. 1. 1948.	6. 1. 1948.
7. 1. 1948. Registry of the following documents.	7. 1. 1948.	7. 1. 1948.
8. 1. 1948. Registry of the following documents.	8. 1. 1948.	8. 1. 1948.
9. 1. 1948. Registry of the following documents.	9. 1. 1948.	9. 1. 1948.
10. 1. 1948. Registry of the following documents.	10. 1. 1948.	10. 1. 1948.
11. 1. 1948. Registry of the following documents.	11. 1. 1948.	11. 1. 1948.
12. 1. 1948. Registry of the following documents.	12. 1. 1948.	12. 1. 1948.
13. 1. 1948. Registry of the following documents.	13. 1. 1948.	13. 1. 1948.
14. 1. 1948. Registry of the following documents.	14. 1. 1948.	14. 1. 1948.
15. 1. 1948. Registry of the following documents.	15. 1. 1948.	15. 1. 1948.
16. 1. 1948. Registry of the following documents.	16. 1. 1948.	16. 1. 1948.
17. 1. 1948. Registry of the following documents.	17. 1. 1948.	17. 1. 1948.
18. 1. 1948. Registry of the following documents.	18. 1. 1948.	18. 1. 1948.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::GUWAHATI-5.

O.A.No. 87 of 1995.

DATE OF DECISION... 11.8.1998.....

!! Shri Jogeswar Das, (PETITIONER(S)

S/Shri B.K.Sharma, S.Sarma. ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors. RESPONDENT(S)

Shri G.Sarma, Addl.C.G.S.C ADVOCATE FOR THE
RESPONDENTS.

THE HON. JUSTICE D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, 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..



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 87 of 1995.

Date of Order : This the 11th Day of August, 1998.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Shri Jogeswar Das,
Senior Section Supervisor,
Telecom District Engineer,
Jorhat.

... Applicant

By Advocate Shri B.K.Sharma, S.Sarma.

- Versus -

1. Union of India
represented by its Secretary,
Department of Telecommunications,
Government of India,
New Delhi.
2. The Chief General Manager,
Telecom.,
Assam Circle,
Ulubari, Guwahati-7.
3. The Telecom District Engineer,
Jorhat Telecom District,
Jorhat.

... Respondents.

By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

BARUAH J. (V.C)

This application has been filed by the applicant challenging the Annexure-12 order dated 23.2.1994 by which the confirmation given to the applicant with effect from 1.10.1960 on the basis of the decision given by the special D.P.C was cancelled. The confirmation was given by Annexure-11 order on the basis of the special D.P.C which was issued by Assistant Director, Telecom(S&E) for Area Director, Telecom, Dibrugarh. Thereafter this order was cancelled by Telecom District Engineer, Jorhat by Annexure-12 order dated 23.2.1994. By this order the Telecom District Engineer cancelled the earlier confirmation order given by the Area Director, Telecom, Dibrugarh who is a higher authority. In

QW

contd..2

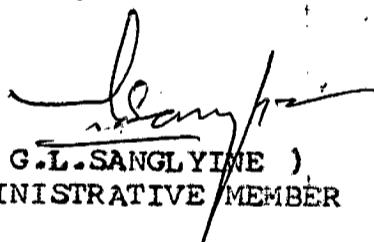
pursuance of the confirmation given by the review D.P.C the applicant was entitled to get his confirmation with effect from 1.10.1960 and thereby he acquired his right regarding his seniority. This was disturbed by the Telecom District Engineer who is admittedly lower in rank. This was done without any notice or without giving any opportunity of hearing to the applicant. Hence this present application.

2. In due course the respondents have entered appearance and filed written statement. In the written statement the respondents have disputed the claim of the applicant and tried to justify the action of cancellation of the confirmation order passed by Annexure-11 order on the ground that he could not complete the departmental examination within the prescribed four chances. A rejoinder was filed by the applicant totally denying the claim of the respondents by specifically stating that he cleared the departmental examination within the stipulated chances alongwith his colleagues.

3. After hearing at some length we felt that relevant records would give the real picture whether the applicant could clear the departmental examination. Several adjournments have been taken by Mr G.Sarma, learned Addl.C.G.S.C for production of records but till today the respondents have not been able to produce the records. This is an old case of 1995. We have given much time to the respondents to produce the record, however, to no avail of. Therefore we now proceed with the hearing without the records. Mr Sharma, learned counsel for the applicant submits that the applicant had completed the departmental examination within the time stipulated and the record would have shown it. However, the records have not been produced which compelled us to hold that had this record been produced this could have supported the submission of the applicant. Besides Mr Sharma submits that cancellation was not on the

ground of not passing the departmental examination. On the other hand as per the Annexure-A to the rejoinder it shows that his confirmation was withheld on the ground of "work and conduct under observation." In this connection Mr Sharma also refers to a letter of 1967. By the order of confirmation the applicant acquired a valuable right regarding his seniority which was cancelled without affording any opportunity of ⁱⁿ hearing. This is according to Mr B.K.Sharma is utter violation of the principle of natural justice. We find sufficient force in the submission of Mr B.K.Sharma. Accordingly we hold that the cancellation order was passed in violation of the principle ^{and quash} of natural justice and therefore we set aside the Annexure-12 and Annexure-13 order of cancellation.

Considering the entire facts and circumstances of the case we however make no order as to costs.


(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER


(D.N.BARUAH)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI

BENCH

O.A. NO. 87/95

Jogeswar Das

Vs.

Union of India & Ors.

76
Filed by
Goddamini Sircar
Advocate

S Y N O P S I S

28. 10.60 Applicant entered the services of the Deptt. of Telecommunication as Office Assistant.

1964 Cleared the departmental confirmation examination. As per the practice and procedure, on passing the examination confirmation takes ~~effect~~ effect retrospectively that is , the date of appointment to service. Applicant availed two chances as against available four. ANNEXURE - 1.

4. 9. 67 Vide Annexure - 2 some others were confirmed retrospectively. Applicant not confirmed on ground of 'Under observation' .

24.8.69 to 1.4.72 Applicant's services were dispensed with on ground of alleged unauthorised absence. Reinstated without loss of seniority etc.

 Applicant ought to have been confirmed along with others vide ANNEXURE - 2 .

28.6.74 Applicant confirmed w.e.f. 1.4.65 instead of 28.10.60 -ANNEXURE - 3 .

27.8.96 Vide ANNEXURE - 4 the Assistant Director Telecom for G.M., N.E. Telecom Circle pointed out the

the discrepancy in the date giving effect of confirmation .

31.12.77 Vide ANNEXURE - 6 letter dated 31.12.77 applicant was confirmed w.e.f.18.6.62.

Thus the Deptt. kept on giving different dated of confirmation.

14.2.86 Vide ANNEXURE-7 letter date ~~xx/xx/xx/86~~ of confirmation of the applicant was further revised to 1.3.66.

3.12.86 Vide ANNEXURE-8 letter dt. 3.12.66 issued by the Divisional Engineer Telegraph, Dibrugarh the applicant was informed in response to his representation that since he passed confirmation Examination in 5 th chance in Nov. 1965 he is not entitled to get confirmation earlier to that .

This is not correct in as much as will be evident from ANNEXURE - 1 letter dt. 12.11.64, the applicant availed only two chances as against available 4 chances .

6. 4. 92 Vide ANNEXURE- 9 representation, the applicant highlighted his grievance and pointed out as to how his colleagues got retrospective confirmation.

29.7.93 Vide ANNEXURE-10 letter issued from Area Director, Telecom , Dibrugarh the Telecom Distt. Engineer, Jorhat directed for review of date of confirmation as ~~xx~~ the applicant should have been confirmed w.e.f 1.10.60 .

16.8.93 Vide ANNEXURE-11 the applicant was confirmed w.e.f 1.10.60 as per decision of the D.P.C.

23.2.94 Impugned Order passed cancelling the ANNEXURE- 11 Order in complete violation of the principles of Natural Justice (Annexure - 12).

2.3.95 Applicant was intimated that his confirmation case was reviewed by CGMT, Assam Circle and there is no irregularity (ANNEXURE - 13).

S U B M I S S I O N

1. On passing the departmental confirmation examination, applicant's confirmation should relate back to the date of initial appointment as was done in respect of others.
2. Applicant having been confirmed w.e.f. 1.10.60 persuant to DPC, the CGMT could not have cancelled the same and that too without affording any opportunity to the applicant.
3. Respondents have been taking different stand ~~at~~ of different time.
4. Even after the impugned order, the respondents vide their All letter annexed to the W.S. dt. 14.9.94 asked for documentary evidence from the applicant which will show that the Deptt. itself is not sure of its case.
5. The respondents cannot fix up the date of confirmation arbitrarily. It is a long pending case and due to arbitrariness on the part of the respondents, the applicant should not be made to suffer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the Case : O.A. No. 87 of 1995

Shri Joigeswar Das ... Applicant

- Versus -

The Union of India & Ors. ... Respondents

I N D E X

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7.	Annexure-5	... 17, 18
8.	Annexure-6	... 19
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For use in Tribunals Office :

Date of filing :

Registration No. :

REGISTRAR

Recd (07) Jan 1995
for filing Add (4.5C)
24/4/95

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

O.A. No. of 1995

BETWEEN

Shri Jogeswar Das,
Senior Section Supervisor,
Telecom District Engineer,
Jorhat.

... APPLICANTS

AND

1. The Union of India,
represented by its Secretary,
Department of Telecommunications,
Government of India,
New Delhi.
2. The Chief General Manager, Telecom,
Assam Circle, Ulubari, Guwahati-7.
3. The Telecom District Engineer,
Jorhat Telecom District, Jorhat.

... RESPONDENTS

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The applicant is directed against the orders contained in No. E-61/Confirmation dated 23.2.94 and No. E-61/Conf./142 dated 2.3.95.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

Filed by - M. K. Choudhury
Advocate
24.7.95

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and as such he is entitled to all the protections and privileges guaranteed by the Constitution of India.

4.2 That the applicant entered into the services of the Department of Telecommunications way back in 1960 (28.10.86) as Telecom. Office Assistant and since then has been working in the Department to the fullest satisfaction of all concerned. After his due promotion, presently he has been holding the post of Senior Section Supervisor in the office of the Telecom District Engineer, Jorhat.

4.3 That the applicant is aggrieved in the matter of his date of confirmation and hence this application before this Hon'ble Tribunal as a last resort. The respondents have been taking different stands at different times and even after restoration of his date of confirmation from the due date by an order dated 10.8.93, same has been cancelled by the impugned orders without assigning any reason and affording any opportunity to the applicant. According to the applicant, his date of confirmation should be 28.10.60 from which date his colleagues who were appointed alongwith him have been confirmed. It is unfortunate that even after elapse of more than 30 years since the date of appointment of the applicant the matter ~~is~~ relating to his confirmation is yet to be confirmed from the due date i.e. 28.10.60.

4.4 That the applicant states that he cleared the

confirmation examination in 1964, results thereof were communicated vide Memo No. E-48/Confirmation Examination dated 12.11.64. It will be pertinent to mention here that as per rules holding the field and prevalent at that time, the date of confirmation was given effect retrospectively i.e. from the date of appointment. Thus the applicant having cleared the confirmation examination, his date of confirmation to service was automatically required to be done with effect from 28.10.60. As will be evident from the said communication dated 12.11.64, the applicant availed two chances for confirmation as against total chances entitled is 4. Alongwith him other incumbents like Shri Upen Borkakati, Biman Ch. Kakoti, Maheswar Buragohain, Amal Mazumdar also qualified in the confirmation examination.

A copy of the said letter dated 12.11.64 is annexed herewith as ANNEXURE-1.

4.5 That by Memorandum No. E-48/Confn/Clerk/43 dated 4.9.67, some incumbents were confirmed retrospectively. In the said letter Shri Upen Borkakoti, Shri Maheswar Buragohain, Shri Biman Ch. Kakoti and Shri Amal Mazumdar who had cleared the confirmation examination alongwith the applicant were confirmed retrospectively i.e. from the date of their initial appointment.

A copy of the said letter dated 4.9.67 is annexed herewith as ANNEXURE-2.

4.6 That the services of the applicant was dispensed with for his alleged unauthorised absence and he remained

under order of termination with effect from 24.8.69 till he was reinstated on 1.4.72. He was reinstated without any loss of seniority etc. Be that as it may the applicant ought to have been confirmed alongwith other colleagues by theforesaid order dated 4.9.67. However, he was not so confirmed and instead he was stated to be under observation alongwith another viz. Shri Nagendra Nath Sarma who was subsequently confirmed retrospectively i.e. from the date of his initial appointment. But in the case of the applicant same was not done which has resulted in hostile discrimination.

4.7 That thereafter also whenever any occasion for confirmation arose, the incumbents were confirmed retrospectively i.e. from the date of their appointment as per rules prevalent at that time. However, the applicant was confirmed with effect from 1.4.65 instead of 28.10.60 by order dated 28.6.74.

A copy of the said order dated 28.6.74 is annexed herewith as ANNEXURE-3.

4.8 That the applicant being aggrieved by his delayed confirmation made series of representations to the respondents-

4.8 That the respondents taking recourse to the period of absence victimised the applicant in respect of his confirmation and having regard to such position, the then General Manager, N.E. Telecom Circle, Shillong had to write to the Divisional Engineer, Telegraphs, Jorhat vide his letter No. STBX-TS/Termination dated 27.8.76 by which it was stated that ~~treating~~ ^{treating} the intervening period as

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dies non was not correct and the same was not in consonance with the ~~Directorate~~ Directorate's decision dated 3.2.72.

A copy of the said letter dated 28.7.76 is annexed herewith as ANNEXURE 4.

The applicant further craves the leave of this Hon'ble Tribunal for a direction to the respondents to produce the aforesaid decision of the Directorate dated 3.2.72 as contained in D.G. P&T's Memo No. 201/109/71-STB.I.

4.9 That in the year 1971, the Dibrugarh Division was bifurcated to Jorhat and Dibrugarh Divisions and the applicant continued under the Jorhat Division. On such bifurcation the issue of confirmation of T.S. Clerk once again came and the Divisional Engineer, Telegraph, Dibrugarh Division, wrote to the ~~Div~~ Divisional Engineer, Telegraphs, Jorhat on the subject of confirmation by his letter dated 30.7.77 with copy of ADT (S&E), Shillong. The applicant has been furnished with a copy of the same by the said ADT (S&E) Shillong. As per the said letter referring to a joint meeting held on 2.3.77, request was made to cancell the confirmation order of T.S. Clerks recruited by Dibrugarh Division. As per the said letter, the date from which the applicant was proposed to be appointed substantively is indicated as 18.6.62. Consequent upon the said letter, the applicant was appointed substantively in the cadre of Clerk with effect from 18.6.62 by order under Memo No. E-5/ Confirmation/66 dated 31.12.77.

Copies of the letter dated 30.7.77 and order dated 31.12.77 are annexed herewith as ANNEXURES 5 and 6 respectively.

4.10 That thus it will be evident that the respondents kept on playing with the date of confirmation of the applicant and being aggrieved by shoddy illegalities perpetrated to the applicant he kept on representing both orally and in writing but no avail. However, as before the respondents by their order No. E-252/1 dated 14.2.86 issued revised confirmation order confirming the applicant alongwith others with effect from 1.3.66.

A copy of the said letter dated 14.2.86 is annexed herewith as ANNEXURE-7.

4.11 That being aggrieved by repeated change in the date of confirmation, the applicant made representations pursuant to which the Divisional Engineer, Telegraph, Dibrugarh Division by his letter No. E-252/21 dated 3.12.86 intimated the applicant that he passed the confirmation examination of T.S. Clerk in November 1965 in the 5th chance i.e. in special chance and thus he is not entitled to be confirmed in the grade earlier than the date of his being declared to have passed the confirmation examination. By the said letter, it was stated that the applicant had passed the confirmation examination in the fifth chance i.e. in special chance after four years of his regular service. Apparently the contents of the said letter is wrong. to the core of it inasmuch as as will be evident from Annexure-1 letter dated 12.11.64, the applicant availed only two chances as against entitled chances of four and there was no question of availing any special chance.

A copy of the said letter dated 3.12.86 is annexed herewith as ANNEXURE-8.

4.12 That when the respondents did not respond to the legitimate grievance of the applicant, the applicant had no other alternative than to espouse his case to the Employees' Union. He also pursued the matter personally inasmuch as the delayed confirmation seriously affected his service prospect, such as time bound promotion, increment and other benefits. In this connection, the applicant made a detailed representation dated 6.4.92. In the said representation, the applicant highlighted his position regarding confirmation and also pointed out as to how his colleagues viz. Shri Nagendra Nath Sarma, Shri Biman Kakoti who had passed the confirmation examination have been confirmed retrospectively i.e. from the date of their initial appointment but in the case of the applicant same benefit was not extended and instead of confirming him with effect from 28.10.60, he has been confirmed with effect from 1.3.66 after repeated supersession of orders in the matter of his confirmation.

A copy of the said representation dated 6.4.92 is annexed herewith as ANNEXURE-9

4.13 That his such representation was duly forwarded and in response to which the Assistant Director Telecom addressed a letter to the Telecom District Engineer, Jorhat Engineering Division, Jorhat dated 29.7.93 under No. STB-18/DT.DR/188 on the subject of "confirmation case of Shri Jogeswar Das, TOA(G)-II". In the said letter it was clearly indicated that the applicant who has been confirmed in the post of Telecom Office Assistant with effect from 1.10.60 and accordingly, it was requested to review the date of confirmation. Thereafter the T.D.E. Jorhat vide his letter

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No. E-61/Confirmation/Clerk/132 dated 16.8.93 redressed the long standing grievance of the applicant and by the said letter decision to confirm him with effect from 1.10.60 pursuant to special DPC held on 6.8.93 was conveyed. Thus a long standing grievance of the applicant came to a happy end.

Copies of the said letter dated 28.7.93 and 16.8.93 are annexed herewith as ANNEXURES 10 and 11 respectively.

6.14 That the applicant was surprised to receive a communication under No. E-61/Confirmation dated 23.2.94 issued by the T.D.E. Jorhat conveying the decision to cancel the confirmation order dated 16.8.93 (Annexure-11). However, before such order of cancellation, the applicant was not given any opportunity of being heard and thus the order was passed behind the back of the applicant without affording any opportunity of hearing. The applicant once again had to make representation against such illegal cancellation of his confirmation pursuant to which the respondents issued letter No. E-61(Conf.)/142 dated 2.3.95. By the said letter, the applicant was intimated that his confirmation case has been reviewed by the Chief General Manager (Telecom), Assam Circle, Guwahati and did not find any irregularity in the matter of his confirmation. It was pointed out that he had passed the confirmation examination held in November 1965 and could not be confirmed from a date earlier than the date of confirmation. By the said letter, the matter has been stated to be finally closed.

Copies of the said letter dated 23.2.94 and 2.3.95 are annexed herewith as ANNEXURES 12 and 13 respectively.

6.15 That the applicant states that the aforesaid sequence of events will go to show that the respondents themselves are not sure of as to what would be the date of confirmation of the applicant and ~~the plight of the applicant~~ thus kept on issuing different orders of confirmation in respect of the applicant and the plight of the applicant is hanging to the detriment of ~~the~~ his service prospect and career. The impugned orders have been passed behind the back of the applicant and before issuance of such orders, he was not given any opportunity of being heard and to explain his case. Thus the impugned orders are liable to be quashed ~~for~~ being violative of principles of natural justice.

6.16 That the applicant states that when he passed the confirmation examination alongwith his colleagues and when his colleagues have been confirmed from their due date there is no earthly reasons as to why the applicant should be deprived from the due date of his confirmation.

6.17 That the applicant states that by such long date of confirmation he has been deprived of his promotional prospect increment and other service benefits and thus, it is a fit case in which the Hon'ble Tribunal would interfere in the arbitrary and illegal action on the part of the respondents.

5. GROUND\$ FOR RELEEF WITH LEGAL PROVISIONS :

5.1 For that the *prima facie* the impugned orders are illegal and not sustainable being violative of the principles of natural justice.

5.2 For that there being gross and hostile discrimination meted out to the applicant, the impugned orders are not sustainable and liable to be set aside and quashed.

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5.3 For that the applicant having cleared the confirmation examination alongwith his colleagues and the said colleagues having been confirmed from their due dates, there is no earthly reasons as to why the applicant should be deprived of equal treatment. Thus there being gross violation of the Articles 14 and 16 of the Constitution of India, interference of the Hon'ble Tribunal is called for in the matter.

5.4 For that the applicant having been meted out with hostile discrimination and the impugned orders are being founded on such discrimination cannot stand judicial scrutiny and accordingly, liable to be set aside and quashed.

5.5 For that the applicant's case of confirmation having been duly considered by the Review DPC in 1993, the DPC which recommended his confirmation from the initial date of entry into the service, the Chief General Manager (Telecom) could not have reviewed such decision. In any case he cannot substitute his own decision with that of the Review DPC. Thus the impugned order is grossly illegal and liable to be set aside and quashed.

5.6 For that in ~~xxx~~ view of the ~~xxxxxx~~ position that have been created by the respondents themselves resulting in delayed confirmation of the applicant, the applicant has been meted out with long sufferings which is required to be remedied by this Hon'ble Tribunal. Accordingly, proper direction for confirmation of the applicant from his due date is required to be issued.

5.7 For that in any view of the matter the impugned orders are not sustainable and liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative remedy other than approaching this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which the application has been made before any other Court of law or any other authority and/or other Bench of the Tribunal and/or any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

In the premises aforesaid, it is most respectfully prayed that the Hon'ble Tribunal would be pleased to admit this application, call for the records of the case and on perusal of the same and upon hearing the parties on the cause or causes that may be shown, be pleased to set aside and quash the impugned orders dated 23.2.94 and 2.3.95 (Annexures-12 and 13 respectively) with direction to the respondents to maintain the date of confirmation fixed by order dated 16.8.93 (Annexure-11) with all consequential reliefs to the applicant.

And/or
pass

Be pleased to ~~pass~~ any other order of orders and/or reliefs as may be deemed fit and proper by the Hon'ble Tribunal under the facts and circumstances of the case.

And for this the applicant as in duty bound shall ever pray.

9. INTERIM ORDER PRAYED FOR :

The applicant does not pray for any interim relief at this stage.

10.....

The application is filed through Advocate

11. PARTICULARS OF THE I.P.O. :

(i) I.P.O. No. 8-03-884304 (ii) Date 22.4.95

(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I, Shri Jogeswar Das, aged about 54 years, son of Late K. Das, at present working as Senior Section Supervisor, O/O the Telecom District Engineer, Jorhat do hereby solemnly verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraphs 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the 23rd day of April 1995 at Guwahati.

Jogeswar Das

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ANNEXURE 1

Indian Posts & Telegraphs Department
(Office of the Divisional Engineer, Telegraphs
Dibrugarh Division, Dibrugarh.

Memo No. E-48/Confirmation Exam/ Dated at Dibrugarh the
13.11.64

Sub : Confirmation Examination of Engg. Clerks
in May 1964.

Sl. No.	Name of the official	Chances availed due	Chances Total	Office to which attached
1.	Sri Gopal Buragohain	Clerks	5	6
2.	" Upen Borkakati	"	4	5
3.	" Moheswar Buragohain"	"	2	4
4.	" Jogeswar Das	"	2	4
5.	" Biman Ch. Kakoti	"	2	4
6.	" Nogendra Nath Sarma"	"	2	4
7.	Mrs. Priti Hazarika	"	1	4
8.	Sri Surjya Kanta Das	"	1	4
9.	" Amal Mazumdar	"	1	4
10.	" Naresh Das	"	1	4
11.	Miss Nibedita Dutta	"	1	4
12.	" Tripti Sengupta	"	1	4
13.	Sri Sarbeswar Hazarika	"	1	4
14.	" Bhabesh Duarah	"	1	4
15.	" Hem Nath Das	"	1	4
16.	" Jawahar Lal Pantry	"	1	4
17.	" Hem Kanta Bora	"	1	4
18.	" Probhat Ch. Dutta	"	1	4
19.	" Mukul Ch. Hazarika	"	1	4
20.	" Bapuram Das	"	1	4
21.	" Benoy Bhusan Das	"	1	4
22.	" Barindra Kumar Das	"	1	4
23.	" Hiteswar Das	"	1	4
24.	" Dhajendra Nath Saikia	1	3	4
25.	Miss Nihar Kona Das	"	1	4

NB : The case of Sri Nogendra Nath Sarma, Clerk office of the SDOT Jorhat, will be decided lateron. Vide this office No. E-48/Confirmation Exam/43 dated 5.11.64.

Sd/-
Divisional Engineer Telegraphs
Dibrugarh Division.

Copy forwarded for information to :

1. The PMG, Shillong. This has ref. to his Tele Coded XXP-1525 dt. 27.10.64.
2. The SDOT DR/JRT/TP/AEW JRT
3. 1-29 official concerned.

Sd/-
Divisional Engineer, Telegraphs
Dibrugarh Division.

Attested
M. K. Chetry
Advocate

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INDIAN POSTS & TELEGRAPHS DEPARTMENT

Office of the Divisional Engineer, Telegraphs, Dibrugarh Dn.
Dibrugarh.

Memo No. E-48/Confm/Clerk/43 Dated at Dibrugarh the 4th Sept/67

The following Time Scale Clerks are hereby confirmed against the permanent vacancies of this division with effect from the date shown against each :

Sl. No.	Name of the official	Station of posting	Date of confirmation
1.	Miss Parul Pramanic	S.D.O.T. Dibrugarh Office	1.3.59
2.	Sri Upen Borkakaty	D.E.T. Office, Dibrugarh	1.10.60
12.	Sri Amal Ch. Mazumdar	Divl. Office, Dibrugarh	1.3.62

Vacancies for the following officials have been kept reserved (permanent post) accordingl to their due position. They could not be confirmed now due to the reasons shown against each. They will be confirmed later.

1.	Sri Jogeswar Das, T/S Clerk SDOT, Jorkat office (sl. No. 5)	work & conduct under observation
2.	Sri Nogendranath Sarma, T/S Clerk -do- (sl. no. 6)	
3.	Sri Surja Kanta Das, T/S Clerk, Divl. Office, Dibrugarh (sl. No. 11) - Not passed the confirmation exam.	

Sd/-

Divisional Engineer, Telegraphs
Dibrugarh Division.

Copy forwarded for information and necessary action to :

1. The Post Master General, Assam Circle, Shillong.

.....
11. E-21/TO file

Sd/-

Divisional Engineer, Telegraphs
Dibrugarh ~~Exxx~~ Division.

...

Attested
M.K. Chetry
Advocate

INDIAN POSTS & TELEGRAPHS DEPARTMENT
OFFICE OF THE DIVISIONAL ENGINEER TELEGRAPHS: JORHAT DIVISION
JORHAT

No. E-60/Conf/Clk/41 Dated at Jorhat the 18th June 1974.

Sri Jogeswar Das, T/S Clerk, O/O the D.E.T. Jorhat is hereby confirm against his permanent vacancy of Jorhat Engineerin Division with effect from 1.3.65. This is in continuation of this office order No. E-61/Conf./Clk/17 dated 4.8.72.

Sd/- Illegible

Six

Divisional Engineer Telegraph
Jorhat Division, Jorhat.

Copy to :

1. P.M.G. N.E. Circle, Shillong.
2. C.A.O. C/O the P.M.G. N.E. Circle, Shillong
3. D.E.T. Dibrugarh, 4. Sri Jogeswar Das, T/S Clerk O/O the D.E.T. Jorhat.
5. E-21/Cl-File 6. Spare.

Sd/-

Divisional Engineer Telegraphs
Jorhat Division, Jorhat.

*Attested
M. K. Chetry
Advocate*

INDIAN POSTS AND TELEGRAPHS DEPARTMENT
OFFICE OF THE GENERAL MANAGER : N.E. TELECOMMUNICATIONS CIRCLE
SHILLONG - 793 001.

No. STBX-TS/Termination Dt. Shillong the 27/8/76.

To The Divl. Engineer Telegraphs
Jorhat.

Sub : Dies-non- in service, loss of seniority and promotion
to S.G. Cadre - case of Sri Joigeswar Das, TS Clerk,
Jorhat.

Ref Your No. 1 OD-117/3 dt. 9.3.72 and (2) E-21/GL/Genl/
55 dt. 10.12.75.

The official Sri Joigeswar Das was not in service with
effect from 24.2.69 and he reported for duty on re-instatement
on 13.3.72 (F/N) as was seen from DET/DR's No.OD-120 dt. 7.1.70
and 9.7.71 (copies enclosed) and your No. E-21/GL/Genl/55 dt.
10.12.70 respectively.

As per D.G. P&T's Memo No. 201/109/71-STB.I dt. 3.2.72
(copy enclosed) the intervening period during which Sri Das was
not in employment may be treated as dies-non. The period of dies-
non from 24.8.69 appearing in your letter No. OD-117/3 dt. 9.3.72
and E-21/GL/Genl/55 dt. 10.12.75 and DET DR's No. OD-120/55
dt. 1.3.72 appears to be not in consonance with the Directorate's
decision dt. 3.2.72 referred to above.

You are therefore requested to kindly to look into
the matter and to intimate this office the reasons for the
discrepancy in date of giving effect.

The seniority of Shri Das is not affected by dies-non
and the case for his promotion to LSG (20%) is under active
consideration at this end and hence his representation dt.
26.2.76 to D.G. P&T is retained in this office. This may please
be intimated to him.

The S/Book (2 parts) with L/Acs of Sri Joigeswar Das
is returned herewith.

Encl. as above.

Sd/-

(B. Bhattacharjee)
Asstt. Director Telecom (S&E)
For G.M.N.E. Telecom Circle SH

Copy to : DET Dibrugarh
His case mark - OD-12 refers.

Copy to Shri J. Das for information.

For General Manager N.E. Telecom
Circle, Shillong.

...

Attested
Mr. K. Chetry
Advocate

36
INDIAN POSTS & TELEGRAPHS DEPARTMENT

D.O. No.E-5/Confirmation/53
Office of the Divisional Engineer
Telegraphs Dibrugarh-786001.

Dated Dibrugarh the 30.7.77

J.N. Dey
Divisional Engineer Telegraphs
Dibrugarh Division.

Dear Shri Somayajulu,

Kindly refer to your D.O.E.61/Conf/CLK/35 dt. 19.7.77 regarding the confirmation case of T.S. Clerks. Confirmation orders for T.S. Clerks who were recruited by this division but were transferred to the Jorhat Division due to bifurcation is proposed to be issued from the dates shown against each is enclosed herewith for your perusal. As agreed upon on the joint meeting of yourself and my predecessor on 2.3.77 you are requested to kindly cancell the confirmation orders of T.S. Clerks recruited by Dibrugarh Division but subsequently confirmed by the DET Jorhat and furnish a copy of the orders to this office.

With best wishes,

Yours sincerely,

Sd/-

(J.N. Dey)

To

Shri G.U. Somayajulu,
DET Jorhat.

...

Attested
M. K. Chetan
Advised

Sl. No. Name of T.S. Clerk Date from which proposed to be appointed substantive. Proposed to be confirmed against the vacancy.

1. Shri Gopal Ch. Borgohain 8.10.60

Vice Ratna Medhi TS Clerk confirmed in GH Wireless Dn from 8.10.60

2. Shri Joigeswar Das

18.6.62

Vice Shri P. Bhattacharjee TS Clerk confirmed in GH Dvn. from 18.6.62

3. Shri Barindra Kumar Das 26.9.63

Vice Sri Nani Gopal Das TS Clerk confirmed in GH Wireless Dn. from 26.9.63

19. Shri Krishikesh

Bhattacharjee 1.3.75

Against 9 posts made permanent from 1.3.75 by GH SG Vide his EST. B/R-4/DR/III dt. 28.3.77.

After
M. K. Meen
Advocate

(Extract)

Memo No.E-5/Confirmation/66 Dated Dibrugarh the 31.12.77

Following T.S. Clerks are hereby appointed substantively prior to bifurcation of Jorhat Engg. Division (30.9.70) in the cadre of clerk against permanent vacancies with effect from the dates mentioned against each :

Sl. No.	Name of the official and office to which attached	Dt. from which confirmed	Particulars of vacancy
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1.	Sri Gopal Borgohain O/O DET JRT	8.10.60	Vice Sri Ratna Medhi contd. in GH Wireless Dn from 8.10.60
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2.	" Joigeswar Das, Dt. 28.9.60	-do- 18.6.62	Vice Sri Paritosh Bhattacharjee, confd. GH Dn from 29.6.62 18.6.62
----	------------------------------	--------------	--

3.	" Barindra Kr. Das C/O DET Sil-Char	18.9.62 26.9.63	Vice Shri Nani Gopal Das Confid. in GH Wireless Dn. from 26.9.63.
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12.	" Thanu Saikia BDOP Maxxim 1.3.69 Dibrugarh	Against the PMG SH Sanction No. FX-3/R-4/DR/III dt.
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Sd/-

(J.N. Dey)
Divisional Engineer Telegraphs.
Dibrugarh.

Copy to :

1. G.M. N.E. Telecom. Circle, Shillong for favour of information.
2-11. The DET JRT/Silchar/SH/GH/TZ/AGT/Dimapur/IP & DE Phones
GH for information.

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46. G.L. File.
Spare.

Sd/-

Divisional Engineer Telegraphs
Dibrugarh.

Attested
M. K. Chetry
Dowali

...

DEPARTMENT OF TELECOMMUNICATION
OFFICE OF THE DIVISIONAL ENGINEER TELEGRAPHS DIBRUGARH DVN.
No.E-252/1 Dated DR the 14.2.86

In pursuance of the G.M.T. Shillong letter No. STBZ-9/
Conf dated 2.12.82, the cases of confirmation of T.O.As. of
unbifurcated Dibrugarh Engg. Division has been carefully
examined with the records available and the following revised
confirmation order is hereby issued in respect of T.O.As. who
have been substantively appointed in the grade of the dates
shown against each.

The confirmation orders issued earlier in respect of the
above by the office are hereby cancelled.

Sl. No.	Name of the official	Date of confirmation	Remarks
1.	Sri Gopal Burgeohain	8.10.60	Vide Sri R. Medhi of GH Dva. confirmed on 8.10.60
2.	Sri Barindra Kr. Das	29.4.63	available vide PMG Bo.FX-7/ ESTB/-4/DR/81 dt. 23.7.82 and ESTB/ - / ACTR/5 dt. 17.12.63
.....		
22.	Sri Joigeswar Das	1.3.66	Vide Suprio Dutta confirmed in GH Da in 1.3.66
.....		
40.	Sri Ashit Baran Nandi	1.3.68	Vide PMG SH No. ESTB/R-4/DR dt. 23.9.68 & EX-1/ESTB/R-4/ AOTR dt. 28.9.68.

Sd/-

Divisional Engineer Telegraph
Dibrugarh Division, Dibrugarh.

Copy to :

1. The G.M. Telecom, Shillong.

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53-93 - Personal file of the official concerned.

94. Spare.

Sd/-

Divisional Engineer Telegraph
Dibrugarh Division, Dibrugarh.

Attested
M. K. Chetry
Advocate

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Corr-7

INDIAN P & T DEPARTMENT
Office of the D.E.T./DR

No. E-252/21 Dated at DR the 3.12.86

To

Sri Joigeswar Das,
Section Supervisor,
O/O the A.E. Carr./Jorhat.

Sub : Discrepancy in r/o confirmation of T/S Clerk

Ref : Your copy of representation dtd. 27.6.85 ; 7.11.85.

Please refer to your representation under reference
on the above subject.

In this connection, it is intimated that you have
passed the Confirmation Examination of T/S Clerk in November,
1965 in the 5th Chance i.e. in special chance as per office
records available in this office. And, as per rules and orders,
if an official passes the Confirmation Examination in a special
chance after 4(four) years of his/her regular service as T/S
Clerk, he/she may be confirmed in the grade not earlier than
the date of his/her being declared to have passed the Confir-
mation Examination subject to his/her fitness and availability
of permanent post. Accordingly, you have been confirmed against
the confirmed post of T/S Clerk.

This is for your information.

Sd/-

For Divisional Engineer Telegraphs
Dibrugarh Division, Dibrugarh.

Copy to :

1. The G.M..T. N.E. Circle, Shillong for ~~inform~~ favour of kind
information w.r. to his L.No. STBX-9/Conf/I dt. 23.10.86.
2. The Director, Telecom. Dibrugarh for favour of infom.
3. The D.E. Telegraphs, Jorhat for information.
4. The E/5/Confirmation.

Sd/-

For Divisional Engineer Telegraphs
Dibrugarh Division, Dibrugarh.

*Attested
M. K. Mehta
Adviser*

...

To

The Chief General Manager Telecom
Assam Circle, Guwahati.

(Through Proper channel)

Dated at Jorhat the 6.4.92.

Subject : Discrepancy in confirmation of T.O. As recruited by the un-bifurcated Dibrugarh Division.

Reverend Sir,

It is with utmost regard and submission I beg to invite your kind personal attention to my original representation dated 12th January 1990 addressed to your goodself on the subject mentioned above followed by subsequent reminders and prayed for finalising the badly pending case with justice as assured by you to look into the case at your goodself's initiative.

That sir, I was appointed as TOA in the unbifurcated Dibrugarh Division on 28.9.60 and passed the Confirmation Examination held on 14.11.1965. All my contemporary officials were declared confirmed according to their due dates vide DET/Dibrugarh Memo No. E-48/Conf/Clerk/43 dated 4.9.67 except myself at Sl. 5 and Shri Nogendra Nath Sarma (Sl.6) copy of which is enclosed herewith. We were not confirmed due to our work and conduct being kept under observation. But it was stipulated to confirm us according to our due position for which vacancies were kept reserved (permanent posts at Sl. 5 and 6). Subsequently Shri N.N. Sharma was confirmed on due date but unfortunately my case was left out.

That sir, I have representing the case of discrepancy last 20 years for regularising the same to which however, no favourable decision was received. In the year 1986, it was intimated by the DET, Dibrugarh in his letter No. E-252/21 dated 3.12.86 that my confirmation was not fixed on due date due to passing the confirmation examination in a special chance. I am extremely perturbed to receive this intimation after 20 years long back.

That sir, I am not satisfied with the reasons attributed to the discrepancy on the following grounds.

Name of the officials.	Date of appointment	Year of passing the confirmation examination	Date of confirmation.
1. Sri Moheswar Burgeohain	27.9.60	1965	1.10.60
2. Sri Joigeswar Das	28.9.60	1965	1.3.66
3. Sri Nogendra Nath Sarma	29.11.60	1965	29.11.60
4. Sri Bimal Kakati	26.10.60	1965	26.10.60

The above chart reveals that we four officials were appointed together (difference by only a month or so) and passed the confirmation examination in the same chance vide PMG/SH letter No. STB-16/Exam.Clerks/Nov.'65 dated 9.3.66.

Contd...P/23.

*Attested
M. K. Dey
Admit*

2. Neither in the above PMG/SH memo publishing the result of confirmation examination was elsewhere nor was there any remark to the effect that I passed the confirmation examination in a special chance.

3. There is also no such entry even in my Service Book.

4. The DET/DR who was actually dealing with all the cases of confirmation examination held in 1965, has issued the confirmation order No.E.48/Conf./Clerk/43 dated 4.9.67 after proper Scrutiny wherein myself and Shri Nogendra Nath Sharma proposed to be confirmed at Sl. 5 and 6 according to our due position and vacancies were kept reserved for us. It does not contain any stipulation of special chance in the above order for discriminating my case. In case, I was to be confirmed as later as on 1.3.66 instead of due date on 28.9.60 my name would not have been included in the confirmation order dated 4.9.67. There was no any comments whatever to that effect. It pains me to observe that in spite of repeated prayers clarifying the position and that there can be no plausible ground for discriminating my case, no favourable response has come from the DET/DR.

That sir, in view of the above facts, your honour is very earnestly prayed for favour of looking onto the case personally and sympathetically so that I being a scheduled cast official should n't be the subject of loosing the legal and due benefit of my service seniority as described like other officials of that time.

Lastly sir, it is highly prayed with expectation that the abnormally pending case is finalised at the disposal of your goodself with a fair decision and for this act of your kindness I shall remain grateful to your honour with ~~xxxxxx~~ appreciation ever.

With due respect.

Yours faithfully

(Joigeswar Das)
Section Supervisor
O/O the T.D.E.Jorhat-785001

Attested
M. K. Chetry
Advocate

•••

- 24 -

DEPARTMENT OF TELECOM
OFFICE OF THE AREA DIRECTOR TELECOM: DIBRUGARH

No. STB-18/DT.LR/188

Dt. at DR the 29.7.93.

To

The Telecom District Engineer,
Jorhat Engineering Division,
Jorhat.

Sub : Confirmation case of Sri J.C. Das, TOA(C)-II

Ref : Your letter No.E-61/Conf/130 dated 5.7.93.

With reference to your letter No.cited above,
I am directed to inform you that the above official should
have confirmed in the post of TOA with effect from 1.10.60
and accordingly, the case may kindly be reviewed for preparing
the date of confirmation provided the official was not found
unfit for confirmation for the reasons other than non-passing
of confirmation examination.

Sd/-

(N.N. KACHARI)
Asstt. Director Telecom (S&E)
For Area Director Telecom.
Dibrugarh.

Abstid
M. K. Chetry
Advocate

....

GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TELECOM DISTRICT ENGINEER
JORHAT - 785001.

No. E-61/Confirmation/Clerk/132 Dated at Jorhat the 10/8/93

In pursuance of the Area Director Telecom, Dibrugarh letter No. STB-18/DR.DR/188 dated 29.7.93 regarding confirmation of Sri Joigeswar Das, T.O.A. (Genl.) Gr. II, the special D.P.C. was held on 6.8.93 at 13.00 hrs. As per decision of D.P.C. Sri Joigeswar Das T.O.A. (Genl) Gr. II is hereby confirmed w.e.f. 1.10.1960 retrospectively.

Sd/-
TELECOM DISTRICT ENGINEER
JORHAT-785001

Copy to :

1. C.G.M.T. Assam Circle, Guwahati-7
2. The Area Director Telecom, Dibrugarh- for favour of kind information w.e. to his letter quoted above.
3. The T.D.E. Dibrugarh - for information.
4. Shri Joigeswar Das, T.O.A. (Genl.) Gr. II/ O/O the T.D.E. Jorhat.
5. P/File
6. D-21/G.L./Clk.

Sd/-
TELECOM DISTRICT ENGINEER
JORHAT -785001.

Attested
M. K. Chetry
Adm. Officer

...

GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATION
OFFICE OF THE TELECOM DISTRICT ENGINEER : JORHAT 785001

No. E-61/Confirmation Dated at Jorhat the 23.02.94

In pursuance of order contained in the Area Director Telecom, Dibrugarh letter No. STB-18/DY.DR/195 dated 19.2.94 orders for confirmation of Sri Joigeswar Das, T/S Clerk which were issued vide this office letter No. E-61/Confirmation/Clerk/132 dt. 16.8.93 is hereby treated as cancelled. Since the official belongs to pre-bifurcated Dibrugarh Division.

Sd/-

Telecom District Engineer,
Jorhat-785001

Copy to :

1. The C.G.M. Telecom, Assam Circle, Guwahati for favour of information.
2. The A.M.T. Dibrugarh for favour of information
3. The T.D.E. Dibrugarh for information and necessary action.
4. Sri Joigeswar Das, TDA(Genl.) Gr. III, O/O the TDE, Jorhat
5. P/File
6. E-21/G.L./Clk.

Sd/-

Telecom District Engineer,
Jorhat Telecom District
Jorhat-785001.

...

Attested
M. K. Chetry
Advocate

DEPARTMENT OF TELECOMMUNICATION

From : T.D.E. Jorhat

To Shri Joigeswar Das, S.S
O/O the E T.D.E. Jorhat.

No.E-61/Conf./142 Dated at Jorhat the 2.3.95

Sub ; Revised confirmation in the cadre of T/S
Clerk - case of Sri Joigeswar Das S.S.

As per C.G.M.T. Assam Circle, Guwahati's letter
No. STES-16/9/Pt. 1/17 dated 4.10.94 on the subject cited
above, it is intimated that your confirmation case has been
reviewed by C.G.M.T. Assam Circle, Guwahati and did not
find any irregularity in the matter of your confirmation.
You have passed the confirmation examination held on
November 65 and could not be confirmed from a date earlier
than the date of confirmation.

The case has been finally closed and this is for your
information. A copy of the above mentioned letter received
from C.G.M.T/Guwahati is enclosed herewith for your
information.

Sd/-

Encl. as above.

Telecom District Engineer
Jorhat Telecom District
Jorhat-785001.

Attested
M. K. Chetry
P. D. M. D.

...

Central Administrative Tribunal
Guwahati Bench

13 JUL 1995
325

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Filed in Court
on..... 13.7.95
Court Master

GUWAHATI BENCH

In the matter of :

O.A.No.87/95
Shri Joigeswar Das
-Vs-
Union of India & Ors.

- AND -

In the matter of :

Written Statement on behalf
of all the Respondents.

I, Shri M.Sinha, Asstt.Director, Telecom(S)
do hereby solemnly affirm and declare as follows :-

1. That the respondents are in receipt of the copy of application along with an order passed by the Hon'ble Tribunal and being called upon I file the written statement and categorically say that save and except what is admitted in this written statement rest may be treated as total denial by all the respondents.
2. That with regard to the contents made in paragraph 4.1 of the application I beg to state that I have no comment to make.

Contd...

28-
Filed by
Gola Jami
Additional Central Govt. Legal
Secretary
Starting Court
Central Administrative Tribunal
Guwahati Bench

13/7/95

3. That with regards to the contents made in paragraph 4.2. of the application I beg to state that the applicant could not pass the confirmation examination for T.S. Clerk within the stipulated time frame of 4 chances from his date of appointment that is from 28.10.1960. Whereas his colleagues who were also appointed with him cleared the confirmation examination within 4 chances and hence got confirmed before him.

4. That with regard to the contents made in paragraph 4.3 of the application the applicant actually passed the confirmation examination in his 5th chance held in November 1965 the results for which was declared on 9.3.1966. Hence as per rule the applicant could be confirmed with effect from 1.3.1966 only.

The order dated 10.8.93 (Annexure-11 of the application) confirming the applicant with effect from 1.10.1960 was wrongly issued without taking into consideration the criteria of his passing the confirmation Examination. However, the mistake was soon detected and corrected by issuing another order dated 23-2-94 (Annexure-12 of the application) cancelling the earlier order dated 10.8.93. (Annexure-11 of the application)

5. That with regard to the contents made in paragraph 4.4 of the application I beg to state that the contention of the application is not correct. The applicant did not pass the confirmation examination within....

within 2 chances as claimed. Annexure-1 submitted by the applicant in this connection is not indicative of the fact that the applicant has cleared the confirmation examination with ⁱⁿ 2 chances. Rather it indicates the number of chances he has already availed.

6. That with regard to the contents made in paragraph 4.5 of the application I beg to state that the contention of the applicant that the applicant has passed the confirmation examination along with Shri Upen Borkakoti, Shri Maheswar Buragohain, Shri Biman Ch.Kakoti and Shri Amal Mazumdar is not correct. The order dated 4.9.67 (Annexure -2 of the application states that while some officials are declared confirmed against available vacancy, the vacancy for the applicant has been kept reserved for future confirmation.

7. That with regard to the contents made in paragraph 4.6 of the application I beg to state that the contention of the applicant has got no relevancy with his date of confirmation examination which is solely dependent on his passing the confirmation examination within 4 chances from 28.10.1960, the date of applicant's appointment.

Contd.

8. That with regard to the contents made in paragraph 4.7 of the application I beg to state that the applicant after becoming unsuccessful in 4 stipulated chances, could clear the confirmation examination, in his 5th chance, the examination for which was held in November, 1965 and results declared on 9.3.66. Hence the applicant was confirmed i.e. substantively absorbed in the T.S.Clerk cadre with effect from 1.3.1966 as per prevailing rules.

9. That with regard to the contents made in paragraph 4.8 of the application I beg to state that the confirmation of the applicant has been delayed because of his reported Dies-non case, has got no relevance with his date of confirmation.

10. That with regard to the contents made in paragraph 4.9, 4.10 and 4.11 of the application I beg to state that the bifurcation of Dibrugarh Division into Jorhat and Dibrugarh Division has in no way affected the date of confirmation of the applicant which remained 1.3.1966. This date was arrived at after verifying all the records in the concerned and connected offices and the final order was issued on 14.2.1986(Annexure-7 of the application) after nullifying and correcting all previous mistakes which was due to lack of co-ordination among different offices and non-compilation of related data. This view is being supported by the enclosed copies of relevant and upto-date orders of competent offices namely letter No. STBX-9/Conf/I dated 16.12.1986 - Annexure-I, letter No. NET/Cell-II dated

Contd.....

dated 16-8-79 - Annexure-II, letter No.E-252/45 dated 14-9-94 - Annexure-III, letter No.STB-18/DT DR/QP-DIVM/145 dated 30.11.89 - Annexure-IV and letter No.31ES-16/9/Pt.I/17 dated 4.10.94-Annexure-V.

11. That with regards to the contents made in paragraph 4.12. of the application I beg to state that the time bound promotion of the applicant, increment and other benefits etc. have all been affected because of his delayed confirmation is not correct. To be specific, drawing of increment, position in the seniority list, time bound promotions etc. these are absolutely dependent on the actual date of joining in the department in a particular cadre and not on the date of confirmation.

12. That with regard to the contents made in paragraph 4.13, 4.14 and 4.15 of the application I beg to state that the bifurcation of Dibrugarh Division into Jorhat and Dibrugarh Division has in no way affected the date of confirmation of the applicant which remained 1.3.1966. This date was arrived at after verifying all the records in the concerned and connected offices and the final order was issued on 14.2.86 (Annexure-7 of the application) after nullifying and correcting all previous mistakes which was due to lack of coordination among different offices and non-compilation of related data. This view is being supported by enclosed copies of relevant and upto-date orders of competent offices, enclosed as Annexure-I to Annexure-V.

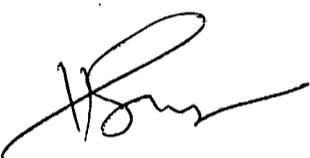
Contd.....

13. That with regard to the contents made in paragraph 4.16 of the application I beg to state that the applicant has been confirmed with effect from his date of passing the confirmation examination namely 1.3.1966 (Nov/65 Confirmation Examination).
14. That with regard to the contents made in paragraph 4.17 of the application I beg to state that the contention of the applicant is not correct. The applicant has been given promotions and all other timely benefits in due time alongwith his colleagues by virtue of which he is presently working as Senior Section Supervisor in the office of the Telecom. District Engineer, Jorhat.
15. That the present application is illconceived of law and misconceived of facts.
16. That the present application being devoid of merits as such the same is liable to be dismissed.
17. That the present application is not maintainable in the present form.
18. That the present application is barred by law of limitation.
19. That the applicant has not exhausted all the remedies available to him, and in view of that the application is liable to be dismissed.
20. That the respondents crave leave to file additional written statement if the Hon'ble Tribunal so ordered.
21. That the written statement is filed bonafide and for the cause of justice.

Verification.....

VERIFICATION

I, Shri H. Sinha, Asstt. Director, Telecom (S) Assam Circle, Guwahati do hereby declare that paragraph 1 of this written statement is true to my knowledge and those made from paragraphs 2 to 14 are derived from records which I believe to be true and those are made from paragraphs 15 to 21 are my humble submissions before this Hon'ble Tribunal and nothing been suppressed, I sign this verification on this 10th day of July, 1995 at Guwahati..



10.7.95

संश्लिष्ट निदेशक दूरसंचार (एच.आर.डी.)
Asstt. Director Telecom (H. R. D.)
कार्यालय मुख्य महाप्रदन्वक दूरसंचार
C/o The Chief General Manager
वस्त्र दूरसंचार परिषमडल, गुवाहाटी-7
Assam Telecom Circle, Guwahati-7

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE GENERAL MANAGER N.E. TELCOM, SHILLONG
793001

18 DEC 1986

Dibrugarh

NO. STAX-9/Conf/I

Dated at Shillong, the 16/8/86.

To,

Shri Joigenwar Das.
L.S.O. Clerk
Office of the A.C., Jorhat,
Jorhat.

Sub :- Prayer for review of confirmation order in respect
of Rept. T.V.A. of unblfurated Dibrugarh Division.

Ref :- Your representation dated 24.1.1986.

With reference to your above petition addressed to U.M.
I am directed to inform you that after, careful examination, of
the case, it is found there is no unblfurated in the issue
of confirmation orders in respect of the T.V.A. of unblfurated
Dibrugarh Engg. Division under D.E.T. Dibrugarh Letter No. B-292/1
dated 14.2.86 and the date of your confirmation shown therein as
1-3-86 is correct.

(S. P. /
S. N. Manuji)
Asstt. General Manager Telcom (M)
For General Manager N.E. Telcom, Circle,
Shillong-793001.

Copy to :-

1. The D.E.T./Dibrugarh,
2. The D.E.T./Jorhat.
3. The Area Manager/Dibrugarh.

(P. Chakraborty)
For General Manager N.E. Telcom, Circle,
Shillong-793001.
G.P.

P. Bhatnagar
Director of Telecommunications
Dy. General Manager

North-Eastern
Telecommunications Circle
Shillong-793001

D.O. No. NIT/1611-11

Sh. Shillong the 16th Aug. '79.

Dear Shri Subramanian,

The D.M.T. Dibrugarh in his letter No. Q.D.120/52 dt.29.10.71 had reported that Shri Joigeswar Das, T/S Clerk of your Division (formerly at unbifurcated Dibrugarh Engg. Division) passed the confirmation examination held on 14th November 1965. Shri Das being appointed in T/S Clerical cadre on regular basis with effect from 28.9.60, he had to pass the confirmation examination prior to November, 1965.

As per existing rules and orders, if an official passes the confirmation in a higher grade after 1 year of his regular service as T/S Clerk, he may be confirmed in the grade not earlier than the date of his being declared by the D.O. P&T to have passed the confirmation examination subject to his fitness and availability of permanent post.

I find some irregularity and anomaly in the date of confirmation of Shri Joigeswar Das (Shown 18.6.62 by D.E.T., Dibrugarh and 1.5.65 by the D.E.T., Jorhat). I shall, therefore, be thankful if you kindly get the date of confirmation of Shri Das corrected in view of his passing the confirmation examination at a later date and revised position intimated immediately for fixing necessary action at this end.

The release of gratuity list is held up for the correct any information.

With best wishes,

Yours sincerely,

P.D./-
(P.M. Bhatnagar)

Shri P.S. Subramanian,
D.E. Telegraph,
Jorhat.

Department of Telecommunications
Office of the Telec. Dist. Engineer: Dibrugarh.

No. E-252/45

Dated at Dibrugarh the 14th Sept' 94.

To

Shri K.S.K.Prasad Sharma,
Asstt. Director Telecom. (Staff),
O/O The C.G.M. Assam Telecom. Cirel,
G U W A H A T I - 7.



Sub:-Revised confirmation in the case of T.S. clerk
case of Sri J.Das.

Ref:-Your L.No. STES-16/9/118 dtd. 7-1-94.

Kindly refer to your letter no. cited above addressed to the AST/DR and copy to this office on the subject noted above and to intimate you the following facts for your perusal.

Through examination has been made to review the confirmation date of Sri J.Das as per guideline incorporated in your letter no. cited above and it is presumed that no irregularity has been done on this office order No. E-252/1 dt. 14-2-86 issued by Shri K.Khan the then TDE.

The following facts also furnished in support of the order dtd. 14-2-86.

1. As per DO No. NET/cell-11 dtd. 16-8-79 from P.K.Bhatnagar Dy. GMT/SH. to the TDE/Jerhat (copy enclosed) Sri Das had to pass the confirmation examination prior to Nov' 65 but he passed in Nov' 65 result declared on 9-3-66.

2. The GMT/Shillong already intimated to the official vide his L.No. STBX-9/conf./1 dtd. 15-12-86 (copy enclosed) that there is no irregularity in the issue of confirmation orders in r/o of T.O. As of unbifurcated Dibrugarh Engg. Division.

3. The DT/DR also intimated to you vide his L.No. STB-18/DT.DR/QP-Divn/145 dtd. 30-11-89 (copy enclosed) that the case is has been thoroughly examined and request of the official can't be considered as per rules on the subject.

On the light of the above facts the case in question may kindly be treated as closed. However concerned official may be given one more chance to furnish documentary evidence if any against his claim.

Telecom. Dist. Engineer
Dibrugarh

Copy to:- 1. The DT/DR w.r.t his L.No. STB-18/DT.DR/195 dt. 19.2.94 copies of letter noted at item 1, 2&3 above are furnished for ready reference.

2. The TDE/Jerhat, The S/Book forwarded vide your L.No. E-61/conf./139 dtd. 18-6-94 and P/file forwarded vide No. E-36/Pt-I/72 dtd. 10.8.94 are returned h/w for necessary record.

3. Sri J.Das, SS Supr. O/O the TDE/Jrt. for information. He is requested to furnish any documentary evidence, if any, against his claim.

Telecom. Dist. Engineer
Dibrugarh

1472

-11-

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Annexure-IV

(DEPARTMENT OF TELECOM)
(O/O THE DY. GENERAL MANAGER TELECOM)
(DIBRUGARH)

No. STB-10/DT.DR/UP-DIVN/149

DT. AT DR TEL 20-11-89

TO

The Chief General Manager,
Assam Telecom Circle, Guwahati

Re/

Sub : Alleged discrepancy in confirmation of
TOLa-comes of Sri Jageswar Das, LHO Clerk

Ref : Your no. STB-10/3 dt. 3-11-89

- - - - -

Kindly refer to your letter on the above
subject. It is intimated that the case has been thoroughly
examined and the request of the official can not be
considered as per rules on the subject.

This is favour of your kind information

Sd/-

(M.N.TALUKDAR)
ASSTT.DIRECTOR TELECOM(S&E)
FOR DY.GENERAL MANAGER TELECOM
DIBRUGARH.

Copy to :-

- 1) The Telecom District Engineer, Nowrang w.r.t. H.O. no. E-37/Conf/TOL/4 dt. 10-3-89, he is requested to inform the official accordingly.
- 2) The Telecom District Engineer, Jorhat for information.
- ✓ The Telecom District Engineer, Dibrugarh for information.

For Dy. General Manager
Assam Telecom, Dibrugarh

Department of Telecommunications
Office of the Chief General Manager: Telecom.
Assam Circle : Guwahati-781007.

No. STES - 16/9/Pt.I/17 Dated at Guwahati, the 04-10-94.

To

1. The Telecom District Engineer, Dibrugarh.
2. The Telecom District Engineer, Jorhat.

Sub:- Revised confirmation in the cadre of T.S.Clerk case of Shri Jaigeswar Das.

Ref:- Your letter No.E-252/45 dated 14-09-94.

Kindly refer to your above cited letter, I am directed to inform you that after a through examination of the case the fact remains the same that the official could not pass the confirmation examination within the maximum permissible chance and period. The official, therefore, lost his position to those who passed the examination within the prescribed time period.

There do not appear to be any kind of irregularity in the matter of confirmation of Shri Das. The official had finally passed the confirmation examination held on Nov '65 and he could not be ~~be~~ confirmed from a date earlier than the date of examination.

T.D.E./Jorhat is requested to inform the decision to the official accordingly. The case has been finally ~~be~~ closed at this end.

4/17/94

(K.S.K.PRASAD SARMA)
Asstt. Director Telecom(staff)
Chief General Manager Telecom
Assam Circle, Ulubari, Guwahati.

For

EEEEE

11 JUN 1993

Guwahati Bench
Original Motion

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH : GUWAHATI

O.A. No. 87/95

Shri Jogeswar Das

Filed by

-Vs-

Union of India & Ors.

Rejoinder to the written statement filed by the
Respondents.

1. That with regard to the statements made in paras 1 and 2 of the W.S., the Applicant does not admit anything contrary to the relevant records.
2. That with regard to the statements made in paragraph 3 of the W.S., the Applicant categorically denies that he could not pass the confirmation examination within the stipulated time frame of 4 chances. It appears that the Respondents have counted the 4 chances from the date of appointment of Applicant without deducting the chances which were not given to the Applicant and/or the confirmation examination which were never held. It may be mentioned here that examination were not held regularly at regular intervals. It is emphatically stated that the Applicant had cleared the examination within the stipulated 4 chances along with his colleagues namely, Sri Upen Borkakoti, Maheswar Buragohain, Biman Chandra Kakoti, Nagendra Nath Sarma etc. In this connection Annexure-2 order dated 4.9.67 may be referred to, as per which the said officials were confirmed with effect from the respective date of appointment to service. However,

Siddhartha Sarma
Advocate
15-6-98

the case of Sri Nagendra Nath Sarma and the Applicant was kept aside with the remark "work and conduct under observation". In this order, there is no other remark so as to bring home the contention of the Respondents that the Applicant cleared the examination in his fifth chance. Chances have to be counted on the basis of the practical chances given to the Applicant. Be it stated here that Shri Nagendra Nath Sarma has also been confirmed with retrospective effect, that is, the date of initial appointment by a subsequent order leaving aside the case of the Applicant alone. All these officials had availed of equal number of chances and cleared the confirmation examination within the stipulated chances and so also the Applicant.

Full text of the Annexure-2 order dated 4.9.67 is annexed as ANNEXURE-A.

3. That with regard to the statements made in paragraph 4 of the W.S. while denying the contentions therein the Applicant reiterates and reaffirm the statements made herein above. There was no mistake as alleged by the Respondent. In any case, the order of confirmation could not have been cancelled without affording any opportunity to the Applicant. As regards the contention passing the confirmation examination in the fifth chance held in November 1965, the Applicant begs to state that his colleagues also appeared in the said examination along with the Applicant and availed of the same number of chances as was availed of by the Applicant. It is denied that the Applicant passed the

examination in his fifth chance rather he cleared the examination within the stipulated 4 chances.

4. That with regard to the statements made in paragraph 5 of the W.S., the Applicant begs to state that in para 4.4 of the O.A. inadvertently it has been stated referring to Annexure-1, that the result of the confirmation examination was declared in November 1964. In fact the same was declared in November 1965. By the time Annexure-1 letter was issued all the officials named above, including the Applicant had availed of 2 chances each and by the time all of them could clear the departmental examinations, those were the 2 chances they had availed of and thus all of them having cleared the examination within the stipulated 4 chances, they have been confirmed retrospectively barring the Applicant.

5. That the Applicant denies the correctness of the statement made in paragraph 6 of the W.S. and reiterates and reaffirms the statement made herein above. It is emphatically stated that the officers named above passed the confirmation examination along with the Applicant.

6. That while denying the contentions raised in paragraphs 7 to 21 of the W.S. the Applicant reiterates and reaffirms the statement hereinabove as well as in the O.A. Once again the Respondents have counted the number of chances with effect from 28.10.60 without ascertaining the actual number of chances given tot he Applicant. The fact that the Respondents are not sure

of themselves is amply evident from the fact that they have been taking different stand at different times and have given different dates of confirmation to the Applicants, but have made it a point not to give the correct and entitled one to the Applicant. The Respondents cannot approbate and reprobate and go on taking different stand to their suit their case. Accordingly, the Respondents may be directed to produce the relevant records.

7. That under the facts and circumstances stated above, the O.A. filed by the Applicant deserves to be allowed with cost.

VERIFICATION

I, Shri Jogeswar Das, the Applicant in O.A. no. 87 of 1995, do hereby solemnly affirm and verify that the statements made in para 1 to 6 are true to my knowledge, those made in paragraphs X are matters of records, information derived from which I believe to be true and rest are my humble submissions before this Hon'ble Tribunal. Accordingly, I sign this verification on this the 13th day of June 1998 here at Guwahati.

Jogeswar Das

ANNEXURE-A

INDIAN POSTS & TELEGRAPHS DEPARTMENT

Office of the Divisional Engineer, Telegraphs,
Dibrugarh Dn. Dibrugarh.

Memo No. E-48/Conf/Clerk/43 dated at Dibrugarh the 4th
Sept/67.

The following Time Scale Clerks are hereby
confirmed against the permanent vacancies of the
Division with effect from the date shown against each :

Sl. No.	Name of the official	Station of posting	Date of confirmation
1.	Miss Paul Pramanick	S.D.O.T. Dibrugarh Office	1.5.59
2.	Sri Upen Borkakaty	D.E.T. Office, Dibrugarh	1.10.60
3.	Sri Moheswar Bura- gohain	S.D.O.T. Office, Jorhat	1.10.60
4.	Sri Biman Ch.Kakaty	A.E. Wireless, Jorhat Office.	28.10.60
5.	Vacant		
6.	Vacant		
7.	Sri Noreswar Kolita	D.E.T. Gauhati Dn. Office	15.12.60
8.	Shri K.V. Philip	-do-	2.1.61
9.	Shri Sumsuddin Bora (Confirmed U.D.Clerk of P.M.G., Shillong	Divl. Office, Dibrugarh	16.1.61
10.	Mrs. Prity Das	-do-	5.7.61
11.	Sri Amal Ch. Mazumdar	-do-	1.3.62

Vacancies for the following officials have been
kept reserved (permanent post) according to their due
position. They could not be confirmed now due to the
reasons shown against each. They will be confirmed
later.

W. K. N. N. A. Advocate

1. Shri Jogeswar Das, T/S Clerk, SDOT, Jorhat Office (Sl. No. 5)	Work and conduct under observation
2. Sri Nogendranath Sarma, T/S Clerk -do- (Sl. No. 6)	
3. Sri Surjya Kanta Das, T/S Clerk, Divl. Office, Dirbugarh (Sl. No. 11)	Not passed the confir- mation ex- amination.

Sd/-
Divisional Engineer, Telegraphs,
Dibrugarh.

Copy forwarded for information and necessary action :

1. The Post Master General, Assam Circle, Shillong.
2. The SDOT, Dibrugarh/Jorhat/Tinsukia/Imphal
3. The Director of Audit and Accounts, P&T, Calcutta
4. The D.E.T. Gauhati Dn., Gauhati
5. The A.E.W, Jorhat
6. All Officials concerned
7.
11. E-21/To file.

Sd/-
Divisional Engineer, Telegraphs,
Dibrugarh.

Attested
J. M. D. D.
(J. M. D. D.)
(C. L. K. N. P. R.)
Advocate