

R.A No. 4/97 (O.A 88/95)

Shri A.K. Sinha

Applicant(S)

-Versus-

Union of India & Ors

Respondant(S)

Mr. B.K. Sharma, S. Sarma

Advocate for Applicant(s)

Advocate for Respondant(s)

Office Notes

Date

Courts' Orders

This Review application is filed by Mr. B.K. Sarma Advocate on behalf of The applicant, against The order dated 20-9-96 passed in O.A 88/95 in The Court of The Honble Member (Admin).

14.5.97

Mr S.Sarma, learned counsel for the petitioner is present.

This R.A has been submitted by Sri Anil Kumar Sinha, respondent No.5 in O.A.88/95 seeking review of the order dated 20.9.1996.

Issue notice on the respondents (opposite party) for objection, if any,

List for consideration of admission on 18.6.97.

Steps within 3 days.

62
Member

pg

18-6-97

SERVICE REPORT AWAITED.

Service Report awaited.

List for consideration of Admission alongwith M.P.80/97 on 16-7-97.

62
Member

lm

19/6

The final order was communicated on 4-10-96, dated of receipt of order by The applicant could not be ascertained since The A/D is not available. The R.A. is filed on 21-3-97.

Hence This application is not in time and in this regard an application (MP 80/97) for condonation of delay has been filed.

for
Consideration of Admission.

D.R. 11/12
12/5

②

R.A. 4/97. (O.A. 88/95)

16.7.97

There is no report whether service have been affected on the respondents by the registry. None is present for any of the respondents.

Adjourned to 20.8.97 for consideration of admission.

Registry to make endorsement regarding service report.

28.5.97

Notice receipt on 28.5.97 ad issued to the concerned parties on 28.5.97.

Bom

Please do the

needful.

17/7

Member

20.8.97

Mr S.Sarma for the petitioner. None for any of the respondents.

Adjourned to 19.11.97 for consideration of admission.

Send copy of this order to all the apposite parties.

Service reports are still awaited.

19/8

22.8.97

Copy of order

dated 20.8.97 issued pg

to the concerned parties on 22.8.97. 19.11.97

Service reports are still awaited.

Adjourned for consideration of admission to 17.12.97.

Registry is to ascertain and give a detail note regarding service of Review Application on the respondents.

Bom

Service reports are still awaited.

16.12.97

Requisite has been received on 26.5.97 for issuance of Notice to the respondent No 1-9 by Regd/Adm on 30.5.97. Notice only served on Reopt No. 1. Other respondents still awaited. Bom

Member

R.A. 4/97 (C.A. 88/95)

17.12.97

Mr A.K.Choudhury, learned Addl.C.G.S.C prays for adjournment on account of indisposition of Mr S.Ali. Sr.C.G.S.C. Mr B.K.Sharma, learned counsel for the petitioner has no objection.

List for consideration of admission on 7.1.1998.

Member

Notice duly served on R.No. 1. others are still awaited.

20/1/98

pg
18/12

15.1.98

7-1-98

Service report awaited. List for consideration of Admission on 11-2-98. Copy of this order be sent to all the respondents and if there is no reply/appearance on that day the matter of Admission will be taken up without reply/appearance of the private respondents.

Member

Copy of order dtd. 7.1.98 issued to the respondents.

1) Service Reports are still awaited on R.No. 2-9. 2) No reply has been given.

11.2.98

Mr S.Sarma for the petitioner. Mr M.Chanda submits on behalf of Mr S.Ali, learned Sr.C.G.S.C that he has submitted leave of absence.

List on 18.2.98 for admission.

Member

10/2/98

1) Notice duly served on R.No. 1 in other respects are still awaited. 2) No reply has been given.

18.2.98

On the prayer of Mr S.Sarma, learned counsel for the petitioner the case is adjourned to 25.2.98 for admission.

Member

5.3.98. Notice duly served on respondent No. 4, 9.

25.2.98

There is no representation. Adjourned to 11.3.98.

By order.

20/2/98

(4)

R.A. 1/97 (OA 88/95)

Received an application
from A.P. at Play Y.

MS
10/3/98.

11.3.98

List on 25.3.98 for admission
alongwith R.A.1/97.

Member

pg

MS
12/3

Notice duly served on
R.Nos. 4 & 9, the other Respondents
are still awaited.

25-3-98

To be listed alongwith R.A.
1/97 on 20-5-98 for Admission.

Member

SB
19/5

Notice duly served on
R.Nos. 4 & 9, the other
Respondents are still awaited.

lm

20.5.98

To be listed alongwith R.A.1/97
on 29.7.98 for hearing.

Member

pg

MS
2/5

Notices duly served on
R.Nos. 1, 4 & 9.

29.7.98

List on 5.8.98 for hearing along
-with R.A.1/97.

Member

SB
4/8

Notice duly served on
R.Nos. 1, 4 & 9, the other
Respondents are still awaited.

pg

MS
30/7

5-8-98

There was a reference. Adm
to 19-8-98.

by me

SB
18/8

19-8-98

Notice duly served on
R.Nos. 1, 4 & 9, the other
are still awaited.

After hearing at some length
case is adjourned to 2-9-98 on the
prayer of Mr. S. Sarma learned counsel
for the applicant.

List on 2-9-98 for hearing.

Member

SB
1/9

lm

MS
20/8

Notes of the Registry	Date	Order of the Tribunal
<p>Notice duly served on R. No. 1, 4 & 9. The other are still awaited.</p> <p>5/9 8/9</p>	2.9.98	<p>Mr G.Sarma has made a mention on behalf of Mr S.Ali who has submitted letter of absence.</p> <p>Hearing adjourned to 9.9.98.</p> <p><i>[Signature]</i> Member</p>
<p>Notice duly served on R. No. 1, 4 & 9. The other are still awaited.</p> <p>5/9 22/9</p>	<p>pg 5/9 9.9.98</p>	<p>On the prayer of Mr S.Sarma, learned counsel for the petitioner the case is adjourned to 23.9.98 for hearing. The other parties have no objection.</p> <p><i>[Signature]</i> Member</p>
<p>Notice duly served on R. No. 1, 4 & 9. The other are still awaited.</p> <p>5/9 17/11</p>	<p>pg 5/9 10/11 23.9.98</p>	<p>Ms N.D. Goswami prays for adjournment on behalf of Mr B.K Sharma, learned counsel for the review applicant. Mr S. Ali and Mr U.K. Nair learned counsel for the respondent have no objection. List for hearing on 18.11.98.</p> <p><i>[Signature]</i> Member</p>
<p>Notice duly served on R. No. 1, 4 & 9. The other are still awaited.</p> <p>5/9 24/11</p>	<p>nkm 5/9 23/11 18.11.98</p>	<p>On the prayer of Mr S.Sarma case is adjourned till 25.11.98.</p> <p>By Order</p>
<p>1-12-98. Notice duly served on R. Nos. 1, 4 & 9. The other are still awaited.</p> <p>5/9 11/12/98</p>	<p>nkm 5/9 18/11 25.11.98</p>	<p>Mr B.K.Sharma, learned counsel for the petitioner prays for a short adjournment. Mr S.Ali, learned Sr.C.G.S.C. has no objection.</p> <p>List on 2.12.98 for hearing.</p> <p><i>[Signature]</i> Member</p>

R.A.4/97 (6)

Notes of the Registry	Date	Order of the Tribunal
<p>29-12-98</p> <p>Notice duly served on R.Nos 1, 4 & 9. The others are still awaited.</p> <p>2/12/98</p>	<p>2.12.98</p> <p>pg</p>	<p>None present for respondents No6, 7, 8, and 9. Mr M.Chanda, learned counsel is directed to act as an amicus curiae on behalf of respondents No.6,7,8 and 9. Mr Chanda prays for a short adjournment to peruse the records.</p> <p>Adjourned to 30.12.98 for hearing.</p> <p>Member</p>
	<p>3.2.99</p> <p>pg</p>	<p>On the prayer of Mr U.K.Nair, on behalf of Mr B.K.Sharma the case has been adjourned to 17.2.99 for hearing. Mr B.C.Pathak, learned Addl.C.G.S.C has no objection.</p> <p>Member</p>
<p>12-1-99</p> <p>Notice duly served on R.Nos 1, 4 & 9. The others are still awaited.</p> <p>1/1/99</p>	<p>30-12-98</p> <p>lm</p> <p>3/12/98</p>	<p>Mr.A.Deb.Roy learned Sr.C.G.S.C. prays for adjournment on the ground that having being engaged standing counsel recently requires time to peruse the matter. Adjourned for hearing on 13-1-99.</p> <p>Member</p>
<p>2-2-99</p> <p>Notice duly served on R.Nos 1, 4 & 9. The others are still awaited.</p> <p>2/2/99</p>	<p>13.1.99</p> <p>pg</p>	<p>There is no representation for both sides.</p> <p>However for the ends of justice the case is adjourned to 3.2.99.</p> <p>Member</p>
<p>16-2-99</p> <p>Notice duly served on R.Nos 1, 4 & 9. The others are still awaited.</p> <p>16/2/99</p>	<p>3.2.99</p> <p>pg</p>	<p>On the prayer of Mr U.K.Nair on behalf of Mr B.K.Sharma the case is adjourned to 17.2.99 for hearing. Mr B.C.Pathak, learned Addl.C.G.S.C has no objection.</p> <p>Member</p>

(7)

R.A. 4/97 (O.A.88/95)

17.2.99

On the prayer of Mr J.L.Sarkar on behalf of Mr M.Chanda the case is adjourned to 3.3.99 for hearing.


Member


pg

30-3-99

There was a circuit sitting at Durgam from 15-3-99 to 17-3-99. So it was not placed before court.

31.3.99

Honble Member is on leave. Adjourn to 12-3-99.

By order,


31.3.99

Heard Mr S.Sarma, learned counsel for the petitioner and Mr A.Deb Roy learned Sr.C.G.S.C. for the respondent. and Mr M.Chanda, learned counsel as Amicus Curia on behalf of respondents No.6,7,8 and 9. Hearing concluded. Judgment reserved.


Member

lm

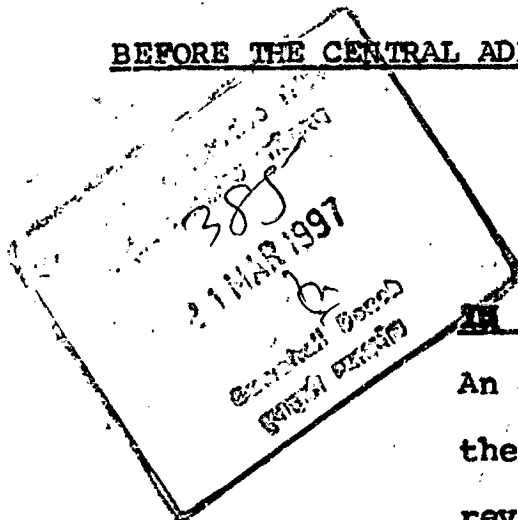
12.5.99

The facts in this case are similar with that of R.A.1/97 except that in this case notices regarding the O.A. was received by the review petitioner. In view of the fact that the order dated 20.9.1996 passed in O.A.88/95 has been set aside in R.A.1/97, this present R.A.4/97 is disposed of as infructuous.


Member

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

Review Application No. 4 /97.
In Original Application No. 88/95.



IN THE MATTER OF :

An application under Section 22(3) (f) of the Administrative Tribunal Act, 1985 for review of the Judgement and Order dated 20.9.96 passed in O.A. No. 88/95.

- AND -

IN THE MATTER OF :

O.A. No. 88/95.

Shri Gautam Kr. Das & Ors. ... Applicants.

- Versus -

Union of India & Ors. ... Respondents.

- AND -

IN THE MATTER OF :

Shri Anil Kr. Sinha,
Son of Late A. K. Sinha,
Junior Telecom Officer in the
Office of the U.H.F. Station,
Diphu, Assam. ✓

... Petitioner.

Respondent No.5
in O.A. 88/95.

- Versus -

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

Contd.....P/2.

2. The Chief General Manager (Telecom),
N.E. Circle, Shillong.
3. The Chief General Manager (Telecom),
Assam, Circle, Guwahati.

... Respondents.

Respondents in
O.A. No. 88/95.

4. Shri Girish Ch. Goswami,
Junior Telecom Officer in the
office of the Sub-Divisional
Officer(Phones), Adabari,
Guwahati-11.
5. Shri Pradip Gohain,
Junior Telecom Officer, Chapakhowa,
Under Divisional Engineer, Microwave,
Dibrugarh.

... Respondents.

Private Respondents
in O.A. No. 88/95

6. Shri Gautam Kumar Das,
Son of Sri Paresh Das,
Microwave Station,
Itanagar, Arunachal Pradesh.
7. Shri Joylal Shrestha,
Junior Telecom Officer,
Resident of Dimapur,
Under S.D.O.T. Dimapur,
Under T.D.M., Nagaland.
8. Shri Brajen Gogoi,
Junior Telecom Officer,
S/O. Late Dharmeswar Gogoi,
office of the S.D.O.(T), Dimapur.

Contd.2/3.

9. Shri Swapan Kr. Bhattacharjee,
Son of Late S.K. Bhattacharjee,
Resident of Seppa, P.O. Seppa,
District East Kameng,
Arunachal Pradesh.

... Respondents.

Applicants in
O.A. No. 88/95.

The humble petition on behalf of the
above named petitioner -

MOST RESPECTFULLY SHEWETH :

1. That the present respondent Nos. 6 to 9 as the
applicants had filled O.A. No. 88/95 before this Hon'ble
Tribunal making a grievance there in with the following prayers.

- (i) that the respondents be directed to issue necessary
orders of transfer and posting allotting the applicants
into Assam Telecom Circle in the cadre of Junior
Telecom Officer
- (ii) that in terms of prayer No. (i), if the vacancies of
the J.T.O. are not available to accommodate in the
Assam Telecom Circle in that event, the posting/
allotment orders of the Respondent Nos. 4 to 6
in Assam Telecom Circle in the cadre of J.T.O. be
cancelled and in the resultant vacancies the
applicants be accommodated in the Assam Telecom
Circle.

2. That the petitioner states that although he had
received notice of the aforesaid O.A. where he was arrayed
as Respondent No. 5, he did not make any personal

appearance in as much as on approach, he was apprised by the official respondents that proper defence would be taken and that he need not make any personal appearance in the case. It was his bonafide and reasonable expectation that the official respondents would take proper defence protecting the service interest of the petitioner. However, now it appears that the official respondents took a volte face in the matter and rather informed the Hon'ble Tribunal that there was mistake in retaining the petitioner in Assam Circle. By such conduct on the part of the official respondents the petitioner lost a valuable right of defence and accordingly could not place his say in the matter. The impugned judgement and order so far as the same contain the observation and direction as regards repatriation of the petitioner to Assam Circle is concerned, same will seriously affect the service interest of the petitioner unless the same is met aside and quashed on a review of the judgement.

3. It is further stated by the present petitioner that he has got no knowledge about the final disposal as well as the judgement dated. 20.9.96 as he was not served with the copy of the said judgement. The petitioner somehow in the office could come to know about the same only on the last week.

4. That on receipt of the copy of the judgement, the applicant has since obtained copy of the application and a copy of the W.S. By going through the O.A. filed by the applicants, therein, the petitioner has come to know about the various contentions raised therein by the original applications. In the said O.A. it has been contended by the applicants therein and the respondent Nos. 6 to 9 herein that on bifurcation of the then N.E. circle in 1987 to Assam Circle and N.E. Circles they had opted for posting in Assam Circle. It is ~~the~~ their contenti

in the O.A. that during the last five years many vacancies of J.T.O. were filled up by promotion/transfer and many vacancies were available due to various reasons. It was the contention in the O.A. that after posting of the private respondents to Assam Telecom Circle, they made representations in the year 1993. It was the case of the applicants in the aforesaid O.A. that they are senior to the private respondents including the present petitioner.

4. That the grievance was made since the private respondents including the present petitioner who were juniors to the applicants in O.A. 88/95 has been accommodated in the Assam Telecom Circle, the applicants should also be accommodated in the Assam Telecom Circle. As stated above, although the said O.A. has been disposed of, but there are certain observations in the Judgement which is going to affect seriously the service interest of the petitioner. As stated above, though notice of the aforesaid O.A. filed by the applicants was received by him, he could not personally appear in the case due to the circumstances stated above and thus his case had gone unrepresented and the Judgement is an ex-parte judgement against the present petitioner.

5. That the petitioner states that it appears that many vital factual positions have either been withdrawn or not disclosed before the Hon'ble Tribunal either by the applicants or by the official respondents ; but for which the observations which have got bearing on the service career would not have been made. The actual position is made clear below

Contd.P/6.

The petitioner is presently working as Junior Telecom Officer under U.H.F. Station, Diphu. The petitioner was initially resident of Assam and was initially posted as Telecom Office Assistant in the office of the D.E.T. Guwahati on 20.9.96. The petitioner was promoted as Repeater Station Assistant on 26.7.88 and worked under the U.H.F. Station, Diphu. The petitioner joined at Diphu on 26.7.88.

6. That the petitioner states that the then composite N.E.Circle was bifurcated in the year 1987 into the Assam Circle and N.E.Circle. The petitioner completed his training of R.S.A. on 20.7.88 and opted for posting in Assam Circle, pursuant to asking for exercise of option to be posted either in N.E. Circle of Assam Circle. His option was accepted for being posted in Assam Circle and was posted in Assam Circle.

7. That in the meantime, the applications were called for from the eligible candidates of Assam Circle for a competitive departmental examination of Junior Telecom Officer as per the norms laid down for such examination. The petitioner having completed 5 years continuous service of Telecom Office Assistant and Repeater Station Assistant he was eligible to be called for the competitive examination. Accordingly, he applied for the same against 15% quota in 1989 against the existing vacancies in Assam Circle. The authorities of the official respondents dully recommended his case. The said departmental examination was held on 17.2.80 and 18.2.90 in the Assam Circle. The petitioner was

Contd.....P/7.

recommended and released for appearing in the said examination. On the other hand, the applicants in O.A. 88/95 had applied for vacancies of N.E. Circle and accordingly they were recommended for appearing in the said examination in the N.E. Circle. The petitioner was issued with the Hall Permit by the C.G.M.(T), Assam Circle for the said examination and was released to appear in the examination at Guwahati.

8. That the petitioner came out successful in the said examination of J.T.O. and he was thereafter directed to undergo J.T.O. Training at Regional Telecom Training College, Kalyani with effect from 6.5.91 and accordingly, he was released to undergo the said training. The petitioner completed the said training on 17.1.92 and was posted in the Assam Circle vide C.G.M.(T) Assam Circle letter No. STES-5/43 dated 16.1.92. On the other hand, the applicants in O.A. 88/95 completed the said training after the petitioner and were posted in N.E. Circle after posting of the petitioner in Assam Circle. Thus they are junior to the present petitioner.

9. That as already stated above, the applicants in O.A. 88/95 applied for JTO Examination against vacancies in N.E. Circle and were posted to N.E.Circle. They never applied against vacancies of Assam Circle.

10. That in the O.A. it was contended by the applicants therein that they have been trying to get back to Assam Circle since 1988, however, have not stated anything in the O.A. regarding their exercise of option to appear in the said

Contd.....P/8.

in the N.E. Circle. They ought not to have exercised their option for appearing in the JTO Examination in the N.E. Circle. It is pertinent to mention here that taking into consideration the agreement of bifurcation some of the affected employees mainly belonging to the cadre of RSA, phone Inspectors were sent back to their respective Circle in terms of their willingness and the applicants in O.A. 88/95 never made any complaint and as stated above they also appeared in the examination of JTO for N.E. Circle

11. That the petitioner states that in the impugned judgement seeking a review of which the instant application has been filed, it has been noted that the present petitioner and others have not contested the application and that they have neither submitted their written statement nor appeared in the hearing personally or through an authorised person. On the other hand, it appears that the official respondents in their written statement had taken the plea that the present petitioner and others who were arrayed as private respondents in the O.A. were not entitled to be posted in Assam Telecom Circle. On the basis of such averments, the Hon'ble Tribunal in the impugned judgement has passed the following orders :

" The Written statement was submitted on behalf of the respondent Nos. 1, 2 and 3. They have now found out their mistake. They are the competent authorities to rectify their own mistake and therefore, they are at liberty to rectify the mistake committed in connection with the aforesaid posting of the respondent Nos. 4 to 6 in Assam Telecom Circle in accordance with law. It is

expected

expected that they would do so within a reasonable time.....".

A copy of the Judgement dated 20.9.96 is annexed herewith as ANNEXURE : A

12. That being aggrieved by the aforesaid observation of the Hon'ble Tribunal in its judgement dated 20.9.96 in O.A. 88/95, the instant review is filed on amongst other the following.

G R O U N D S

I. For that the from the judgement in question, it is not clear whether the petitioner is junior or senior to the respondent Nos. 6 to 9. The respondent Nos. 6 to 9 have misled the Hon'ble Tribunal showing a list of attestation of posts as gradation list. The Annexure-1 is the list for allocation of respective posts from which seniority cannot be determined. But as per the successful merit list of CTTC, Guwahati for RSA trainees the petitioner is senior to the respondent Nos. 6 as per letter No. E-31/88-89 76 dated 20.7.88. However, the Hon'ble Tribunal while passing the said order made observation that the petitioner is junior to the respondent No. 6 which is an error apparent on the face of the record.

II. For that the petitioner is senior to the respondent Nos. 6 to 9 as he had been posted as JTO much earlier to the respondent Nos. 6 to 9 but the Hon'ble Tribunal failed

Contd.....P/10.

to take consideration regarding the seniority position which is an error apparent on the face of the record.

III. For that the departmental examination for the posts of JTO was held on 1990 i.e., 17/18.2.90 whereas the Hon'ble Tribunal has failed to take into consideration the actual date and year of the said examination which is an error apparent on the face of the record.

IV. For the the Hon'ble Tribunal ought to have taken into consideration that the instant petitioner had completed his JTO training on 17.1.92 at RTTC, Kalyani not in RTTC, Ahmedabad.

V. For that the Hon'ble Tribunal ought to have taken into consideration the fact that as the instant petitioner as has been working in the Assam Telecom Circle since fairly long spell, he opted for Assam Circle and accordingly after completing all the official procedure he has been promoted to JTO for the existing vacancies of Assam circle.

VI. For that the bifurcation took place in the year 1987 and the petitioner submitted application for JTO Examination under Assam Circle and Examination was held in February 1990 and the training was held on 6.5.91, the respondents Nos. 6 to 9 could have objected the said matter at that time but to take some advantage they filled the said O.A. in 1995 for which the Hon'ble Tribunal ought to have rejected the prayers mainly relief No.2 on the point of limitation, taking

Contd.....P/11.

into consideration of the principles of not to unsettle the settled position after long lapse of time.

VIII. For that the Hon'ble Tribunal ought to have taken into consideration that the respondent Nos. 6 to 9 instead of objecting the said matter of posting and absorption of the petitioner in Assam Circle opted to N.E. Circles JTO test and accordingly applied in the same of their own will and volition.

IX. For the while disposing of the O.A., the Hon'ble Tribunal ought to have made the observation and difection as contained in the impugned judgement and order, Such observation and direction having not passed on factual position are error apparent on the face of the record. The Hon'ble Tribunal ought not to have disturbed the petitioner after such a long lapse of time with his promotion to JTO in the Assam Circle. The Hon'ble Tribunal lost sight of the Fact that the position of the petitioner in the Assam Circle is secured and his seniority etc. has also been determined in the Assam Circle. Now if the inpugned observation and direction of the Hon'ble Tribunal is implemented, his service career will be seriously affected and he might be made the juniormost JTO in the N.E. Circle. This vital aspect os the matter having not been pointed out to the Hon'ble Tribunal either by the applicants or by the official respondents, same has resulted into the observation and direction which is error apparent on the face of the record.

X. For that the bifurcation having been taken place way back in 1987 and the petitioner having been continued in

the Assam Circle including the promotional post of JTO and nearly 7/8 years having been elapsed and the position of the petitioner in the Assam Circle having been secured, such a position ought not to have been interfered with, in the manner as has been done in the impugned judgement and order.

XI. For that in any view of the matter, the impugned judgement and order so far as it affects the service interest of the petitioner is not sustainable and liable to be set aside on a review of the same.

In the premises aforesaid, it is most respectfully prayed that the Hon'ble Tribunal would be pleased to admit the instant review application, call for the records of the case, issue notice on the respondents and upon hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to set aside and quash that part of the judgement and order dated 20.9.96 passed in O.A. No. 88/95 by which the service prospect of the petitioner is adversely affected in so far as the direction towards his posting in the N.E. Circle is concerned, and / or be pleased to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper.


- AND -

Pending disposal of the review application, be pleased to stay the operation of the observation and direction as contained in the judgement dated 20.9.96 in O.A. No. 88/96 by which the official respondents have been directed to do the needful in respect of the petitioner and others towards repatriation to N.E. Circle.

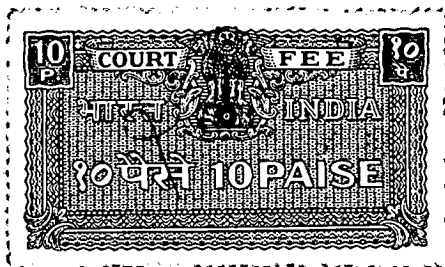
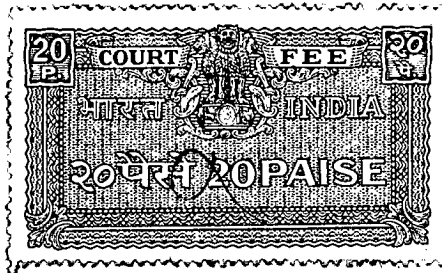
And for this, as in duty bound, the petitioner shall ever pray.

C E R T I F I C A T E

I, Shri Siddhartha Sarma, Advocate for the petitioner of the instant review application, do hereby certify that the above are good grounds of review and I undertake to support them at the time of hearing of the same.


(Siddhartha Sarma)
Advocate.

Affidavit.....



- 14 -

A F F I D A V I T

I Shri Anil Kumar Sinha, Aged about 38 years Son of Late A.K.Sinha at present working as J.T.O. in the office of the U.H.F. Station, Diphu, do thereby solemnly affirm and state as follows :

1. That I am the petitioner in the instant Review Application and as such I am well conversant with the facts and circumstances of the case and also competent to swear this affidavit.
2. That the statements made in this affidavit and in the accompanying petition in paragraphs 1 to 10 are true to my knowledge and those made in paragraphs (grounds) are true to my legal advice.

And I sign this affidavit on this the 17 day

of March/97 at Guwahati.



Anil Kumar Sinha
DEPONENT

Identified by me :

[Signature]
17.3.97
Advocate .

Solemnly affirmed and declared by

the deponent who is identified by Shri B. Mehta

Advocate, Guwahati at Guwahati.

[Signature]
17.3.97
MAGISTRATE

Special Judicial Magistrate
Guwahati

- 15 -

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 88 of 1995.

Date of Order : This the 20th Day of September, 1996.

Shri G.L.Sanglyine, Administrative Member.

1. Sri Gautam Kumar Das,
2. Sri Joylal Shrestha,
3. Sri Brojen Gogoi &
4. Sri Swapan Kumar Bhattacharjee . . . Applicants

By Advocate S/Shri J.L.Sarkar & M.Chanda.

- Versus -

1. Union of India
through the Secretary,
Govt. of India, Department of
Telecommunication, New Delhi.
2. Chief General Manager,
Telecommunication,
North Eastern Circle, Shillong.
3. Chief General Manager,
Telecommunication,
Assam Circle, Guwahati.
4. Sri Girish Ch. Goswami,
J.T.O., Jorhat.
5. Sri Anil Krishna Singha,
J.T.O., Diphu. ✓
6. Sri Pradip Gohain,
J.T.O., Chapakhowna under
Divisional Engineer,
Microwave, Dibrugarh. . . . Respondents.

By Advocate Shri S.Ali, Sr.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER

The applicants in this application are Sri Gautam Kumar Das, Sri Joylal Shrestha, Sri Brojen Gogoi and Sri Swapan Kumar Bhattacharjee. Sri Girish Ch. Goswami is respondent No.4, Sri Anil Krishna Singha respondent No.5 and Sri Pradip Gohain respondent No.6. Sri Girish Ch. Goswami was junior to Sri Gautam Kumar Das. Sri

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20.9.96


Anil Krishna Singha was junior to Sri Joylal Shrestha and Sri Pradip Gohain is junior to Sri Swapan Kumar Bhattacharjee. All of them were working within the territorial jurisdiction of Assam under the erstwhile North Eastern Telecom. Circle. In 1987 this Telecom. Circle was bifurcated into Assam Telecom. Circle with headquarter at Guwahati and North Eastern Telecom. Circle with headquarter at Shillong. Under the scheme of bifurcation options were called for from the staff to opt either for North Eastern Telecom Circle or for Assam Telecom Circle. Most of the staff opted for Assam Telecom Circle. This created administrative and practical difficulties as all of them could not be accommodated in Assam Circle and as telecommunication services will have to be maintained in the other parts of the North Eastern Region. Therefore selection was made on the basis of seniority. As a result some of the junior officials were allotted to the North Eastern Telecom Circle. The 4 applicants together with respondents No. 4, 5 and 6 were allotted to North Eastern Telecom Circle. The applicants were however, physically relieved to join North Eastern Telecom Circle earlier than the private respondents No.4 to 6. In the year 1989 a J.T.O departmental competitive examination was held. The applicants submitted their applications for the examination to the North Eastern Telecom Circle but the private respondents who were not released from Assam Circle at that time submitted their applications to Assam Circle. All the 7 officials were selected for



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promotion to J.T.O. cadre and were sent for training and on completion of the training the Principal, Regional Telecom Training Centre, Ahmedabad posted the applicants to North Eastern Telecom Circle and the private respondents 4 to 6 to Assam Telecom Circle. The position remains that the options of the private respondents No. 4 to 6 for the Assam Telecom Circle stand fulfilled. This has created the grievance of the applicants in this instant application.

2. In this application the applicants have prayed for the following reliefs :-

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- 1) That the respondents be directed to issue necessary orders of transfer and posting allotting the applicants into Assam Telecom Circle in the cadre of J.T.O.
 - ii) That in terms of prayer No.1 if the vacancies of JTOs are not available to accommodate the applicants in the Assam Telecom Circle in that event the posting/allotment orders of the Respondents No.4 to 6 in Assam Circle in the Cadre of JTOs be cancelled and in the resultant vacancies, the applicants be accommodated in Assam Telecom Circle.

The ground for the reliefs is mainly based on discrimination on the ground that the private respondents who were juniors to the applicants were preferred by sending them to Assam Telecom Circle. The respondents have stated in their written statement as follows :

"In fact all the above officials should have been posted to N.E. Telecom Circle had the Government's

orders were implemented timely. Because of the non-implementation of the orders, the mistakes in entertaining the applications before joining N.E.Circle and the wrong posting orders issued by Principal training centres this anomaly has arisen.

Since this anomaly has arisen because of the non-implementation of the Government's orders, administrative mistakes and wrong posting orders it is fair and justified to transfer the three respondents to N.E.Circle as JTOs for where vacant posts are available otherwise we have to insist for implementation of the earlier Government orders which means that the three private respondents have to come back to N.E.Circle on their original cadre then appear for JTO promotion examination if they so wish.

Hence to avoid any such hardship, it is prayed to the Lordship, to pass an order to transfer them to N.E. Telecom Circle where vacancies in JTO's cadre exists and we are ready to accommodate them to meet the end of the justice."



3. The respondents No.4, 5 and 6 have not contested this application. They have neither submitted their written statements nor appeared at the hearing personally or through an authorised person.

4. From the facts on records it is gathered that the applicants being junior in the relevant Gradation list of the erstwhile N.E.Telecom Circle in comparison with other officials, who were senior to them, were not entitled to be posted in Assam Telecom Circle in accordance with the policy adopted by the administration for the purpose of transfer of staff in the circumstances prevailing during the bifurcation. Similar is the case with the respondents No.4 to 6. The only difference is that the applicants had been posted in the N.E Telecom Circle and had actually joined their posts in the Circle while the respondents No.4 to 6 had somehow been posted in the Assam Telecom Circle and are actually continuing in that Circle. The official Respondents have claimed in their written statement that the respondents

No.4 to 6 were wrongly posted in the Assam Telecom Circle. The written statement was submitted on behalf of Respondents No.1, 2 and 3. They have now found out their mistake. They are the competent authorities to rectify their own mistake. They are therefore at liberty to rectify the mistake committed in connection with the aforesaid posting of the Respondents No.4 to 6 in Assam Telecom Circle in accordance with law. It is expected that they would do so within a reasonable time. The applicants may approach this Tribunal again if they are aggrieved with the order of the respondents in this regard. As far as the case of the applicants is concerned, I am of the view that they had been correctly posted in the N.E.Telecom Circle in view of their seniority and the aforesaid policy adopted by the respondents. They cannot get a posting in the Assam Telecom Circle simply because the respondents No.4, 5 and 6 were posted in Assam Telecom Circle in the facts and the circumstances of their case as mentioned hereinabove.

The application is dismissed. No order as to costs.

Sd/-MEMBER(A)

Certified to be true Copy

[Signature] 30/12/06
Deputy Registrar
Central Administrative Tribunal,
Guwahati Bench, Guwahati.

Deputy Registrar ~~10/12~~
Central Administrative Tribunal
Guwahati

[Signature]
30/12

